

DELHI URBAN SHELTER IMPROVEMENT BOARD
GOVERNMENT OF N.C.T. OF DELHI

Punarvas Bhavan , I.P. Estate
New Delhi -110002

No. D-18/BZFO/DUSIB/2016

Dated 9-11-2016

LEGAL OPINION ON SERVICE TAX MATTER

Quotations are invited from the advocates who are practising in Delhi and having minimum 10 years experience in service tax matters, for giving legal opinion on the enclosed points. The quotations may be furnished to undersigned within seven days at 45, Punarwas Bhawan, IP Estate, New Delhi-110002. The terms and conditions of engagement and scope of work may be seen at DUSIB website-delhishelter.nic.in. / *Delhi Shelter board. in*

J. S. Khanna

(BUDGET & FINANCE OFFICER)
Delhi Urban Shelter Improvement Board.

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GOVERNMENT OF N.C.T OF DELHI

TERMS AND CONDITIONS FOR GIVING LEGAL OPINION

1. The advocates who are practising in Delhi and having minimum of 10 years experience in service tax matters can apply.
2. The quotation should accompany a copy of registration certificate with Bar Council of Delhi High Court along with brief of the court cases on service tax matters dealt with by the advocate during the last ten years.
3. The advocate should be on panel of Government of India/Delhi Government.

SCOPE OF WORK

To provide legal opinion on the enclosed points.

FEES:- One time fee may be quoted.

Last date of receipt of quotation:- 17.11.2016

**Opening of quotation:- 17.11.2016 at 3.30 PM in room No. 45,
Punarwas Bhawan, IP Estate, New Delhi**

POINTS REQUIRING LEGAL OPINION

Delhi Urban Shelter Improvement Board (DUSIB) functions under the control of Govt. of NCT of Delhi and is primarily functioning under the purview of the DUSIB Act, 2010. This act empowers the DUSIB to notify certain areas as Slums, where with the passage of time, the buildings have become dilapidated and the basic civic services are missing. Apart from this, DUSIB has also been assigned the role of looking after the Jhuggie Jhomprie squatter settlements / clusters by way of provision of civic amenities and their re-settlement too. The Slum & JJ Department which was earlier part of MCD has been transferred to this Board. Thus, DUSIB is a Government Authority which is providing services by way of activities *in relation to* any function entrusted to a municipality under article 243W of the Constitution of India which are exempted from services tax vide entry No. 39 of the mega exemption notification No. 25/2012 dated 20.06.2012 as amended from time to time.

2. DUSIB has taken a stand that it is not a commercial organization and leasing out of Chunks/ Parking lots/ Community centers is not the main activity of the DUSIB, It is an activity in relation to main activity to raise funds as specified under the DUSIB Act 2010 for achievements of its objectives.
3. The Term "in relation to" is used in the provision of service tax, intends to cover all direct and indirect services, which are provided in rendering the main taxable services. The Hon'ble Supreme Court in the year 1988 in the case of Doypack System (P) Ltd. Vs Union of India held that the expression "Pertaining to", "in relation to" and "arising out of", used in the deeming provision, are used in the expansive sense.
4. Therefore, leasing out immovable property by DUSIB is in relation to the activities entrusted to it by the DUSIB Act is not subject to service tax and service tax may not be levied on the services provided by DUSIB on leasing out such immovable property and such services will be treated as services provided by DUSIB in relation to main activity for raising funds and smooth functioning of its work for slum improvement and upgradation, urban poverty alleviation and urban planning.
5. It is also mentioned that incase this renting of Grounds/ Chunks would have fallen under the purview of service tax, non charging and recovery of service tax by DUSIB has not resulted in any loss to the Government because all the Lessee of the Grounds/ chunks are liable and registered under service tax and had paid the service tax on the services provided by them through these leased properties. Had DUSIB charged any service tax from the lessees, the same would have been available to them as CENVAT.
6. However, the Service tax department may not agree with the stand taken by DSUIB and may raise a demand for service tax against the DUSIB. In such a situation, appeal against the Demand raised will be required to be filed before the appellate authority. It may be noted that for stay of demand, an amount equivalent of 7.5% of demand raised on account of tax and penalty shall be required to be deposited with the department at the first appeal.

7. The Service tax department can also initiate the proceedings against the officers of the DUSIB for failure to comply with the provisions of the Service Tax Act.

8. Therefore, it is requested that a legal opinion may be given regarding the stand taken by the DUSIB and whether the initiation of proceedings against the officers of the DUSIB can be challenged in the court of law as the officers acted on bonafide belief that DUSIB is not liable to collect and pay service tax