The Delhi high court has struck down the levy of service tax on commercial property rentals. The order will help retail companies.

The high court's order is applicable in the entire country with retrospective effect from the day the tax was levied on commercial property rentals.

“The court, in a judgment on Saturday, ruled that mere renting of commercial space does not constitute a service,” advocate Jaiveer Shergill, who represented retailer Home Solutions, one of 26 petitioners who had challenged the tax on commercial rentals, told Financial Chronicle.

The service tax, at an effective rate of 12.36 per cent after the education cess, was levied on commercial property rentals from June 1, 2007 till February 23, 2009. However, after the government reduced the tax from 12 per cent to 10 per cent with effect from February 23, the effective rate came down to 10.3 per cent.

The tax is applicable to over 100 services and yielded Rs 65,000 crore in revenue for the government last year. In the current year, the collection target is Rs 68,000 crore. The growth in revenue from the levy is the fastest among all taxes.

Retailers take commercial property on rent not only in malls and markets but also at airports, railway stations and metro stations. However, they have always complained of very high rentals, which, they claim, account for up to 15 per cent of their total operational costs.

The service tax, coming over and above this, hurts them still more. The 26 petitioners included big retail companies like Lifestyle International and Shopper's Stop.

J K Mittal, lawyer for Vinnamr Hospitality, one of the petitioners, said, “As per the law any order passed on a writ petition questioning the constitutionality of a legislation has an effect throughout India.”

He said that once a levy was held to be improper, it necessarily would have implication from the day it was levied. “Therefore, the high court's order will be applicable from June 1, 2007, when the tax was levied on commercial property rentals.”

Elated after the court order, retailers said they would now save a lot of money. V-Mart CMD Lalit Agarwal said, “This is a landmark judgment. We will save close to Rs 20 lakh a year on our rental expenditure.” Vishal Retail group president Ambeek Khemka said, “We will save close to Rs 85 lakh a year on rental spending ” Bata India chairman P M Sinha too welcomed the judgment.

Pratik Jain, executive director of KPMG, said the government was likely to go in appeal to the Supreme Court. “The retailers need to examine if they wish to stop paying the service tax as of now, because if the Supreme Court rules in favour of the government then not only will they have to shell out the tax amount but also interest.”