

SERVICE TAX ON TOUR OPERATORS

(By P. Dwarakanath, Swamy Associates)

The levy of service tax was introduced on "tour operators", with effect from 01.09.1997. The levy was exempted, vide Notification 52/98 ST Dated 18.07.98 and this exemption was in force upto 31.03.2000. As such, "tour operators" are liable for payment of service tax, with effect from 01.04.2000. Of late, the Department is holding that buses which are given on hire basis to various companies to ferry their personnel either within the city limits or even covering sub-urban areas would be liable to pay service tax under the category of tour operators. Reliance is placed by the department on the definition of the term "tour". There is flurry of summons issued under the provisions of Section 14 of the Central Excise Act, 1944 and investigations are launched left, right and center. This article is an attempt to look into the relevant statutory provisions in this regard and the sustainability of the allegations.

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In this connection, it is pertinent to refer to the definition of certain relevant terms, as per the Finance Act, 1994, as it stood during the relevant period.

From 01.04.2000 To 09.09.2004

Term defined	Reference to the Finance Act, 1994	Definition
Tour	Section 65 (50)	"Tour" means a journey from one place to another irrespective of the distance between such places.
Tourist vehicle	Section 65(51)	"Tourist vehicle" has the meaning assigned to it in clause 43 of Section 2 of the Motor Vehicles Act, 1988.
Tour Operator	Section 65(52)	"Tour Operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the rules made under the Motor Vehicles Act, 1988 or the rules made thereunder.

From 10.09.2004.

While the definition of the terms “tour” and “tourist vehicle” continues as such, even today, the definition of the term tour operator has underwent a change with effect from 10.09.2004 and the amended definition reads as under.

Term defined	Reference to the Finance Act, 1994	Definition
Tour Operator	Section 65(115)	“Tour Operator” means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services), by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the rules made under the Motor Vehicles Act, 1988 or the rules made thereunder.

Now certain provisions of the Motor Vehicles Act, 1988 and the Rules made there under may also be taken cognizance of, in order to appreciate the issue in its proper perspective.

Term defined	Reference	Definition
Tourist vehicle	Section 2 (43) of the MV Act, 1988.	Tourist vehicle means a contract carriage constructed or adapted and equipped or maintained in accordance with such specifications as may be prescribed in this behalf.
Contract carriage	Section 2 (7) of the MV Act, 1988.	Contract carriage means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf, on a fixed or an agreed rate or sum – (a) on a time basis, whether

		or not with reference to any route or distance or (b) from one point to another and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey.
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From the provisions of the Finance Act, 1994, reproduced above, it may be observed, that a person can be considered as a tour operator, only if he is engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the MV Act, 1988 or the Rules made there under. From the above, it may be observed that the following essential ingredients have to be satisfied, so as to attract the levy of service tax, under the category of "tour operator", namely,

- **The vehicle used must be a "tourist vehicle".**
- **The vehicle must be covered by a permit granted under the MV Act, or the rules made thereunder.**
- **The person must be engaged in the business of operating tours.**

Further as per clause (43) of Section 2 of the Motor Vehicles Act, 1988 a "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained **in accordance with such specifications as may be prescribed in this behalf.** From the above statutory position, it can reasonably inferred that, every vehicle registered under the "Contract Carriage" cannot be treated as a "Tourist Vehicle" unless such vehicle is "in accordance with such specifications as may be prescribed in this behalf". As per Rule 128 of Motor Vehicle Rules, 1989 a number of specifications in respect of dimension, structure, door, lighting, seating, public address system so and so forth have been prescribed and only those vehicles, which satisfies all these specifications needs to be treated as a "Tourist Vehicle" and not every vehicle that is plying under a "Contract Carriage".

As such, the essential requirement for attracting the levy of service tax is that the vehicle must be a "tourist vehicle" is not at all satisfied in the instant case. A careful reading of the definition of the term "tourist vehicle" would reveal that a tourist vehicle (a) must be a contract carriage and (b) must be constructed or adapted and equipped or maintained in accordance with such specifications as may be prescribed

in this behalf. The specifications in this regard are prescribed under Rule 128 of the Central MV Rules, 1989.

To cite a few examples, as per Rule 128 (10)(ii) thereof, the seating arrangement shall be either two and two or one and two or one and one on either side, in respect of tourist vehicles. Similarly, as per Rule 128 (11) thereof, tourist vehicles must be painted in white with a blue ribbon of 5 cm width at the center of the exterior of the body, which is not applicable for the vehicles in question. Rule 85 of the Central Motor Vehicle Rules provides for certain additional conditions for grant of tourist permit for a tourist vehicle. As per sub rule (7) thereof, the word "Tourist" shall be inserted on two sides of the vehicle. In a nutshell the specifications under Rule 128 *ibid* are so exhaustive, a person plying a latest Volvo Class Bus informed that even his bus is not as per the above specifications,

Thus a careful reading of various definitions under the relevant enactments would reveal that *prima facie*, a vehicle could be a stage carriage or a contract carriage. While picking up passengers en-route and operating between fixed destinations are the hallmark of a stage carriage, contract carriage deviates in both the aspects. It would carry passengers as a group and would not pick up passengers en-route. A tourist vehicle must first of all be a contract carriage fulfilling the specifications of a tourist vehicle under the MV Rules and then only if any tour is conducted in such a vehicle the levy of Service Tax is attracted.

From the above, it may be observed that a contract carriage, covered by any permit cannot be subjected to the levy of service tax. The levy of service tax can be attracted, only if the contract carriage is a tourist vehicle (satisfying all the specifications) and also granted with a tourist permit. This is the true intention of the levy.

Before parting...

One more group of people who are also under the microscope of the Department are those who are plying buses between cities as Stage Carriers, albeit under contract carriage permit. According to conservative estimates about 600 buses start every

day from Hyderabad to various destinations in AP and equal number of buses come to Hyderabad. Now, the hawk's eye is on these operators.