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Tour de Service Tax



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Service tax is leviable on "tour operators" for quite some time. The definition of tour operator, presently reads as under.

"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 Motor Vehicles Act, 1988 or the rules made thereunder".

The definition of the term "tour" read as

"Tour means a journey from one place to another irrespective of the distance between such places".

In this connection, the following industrial practices are worth noting. Vehicles, which are covered by a specific "tourist permit", are used for conducting various organised tours. The term tourist vehicle is defined in section 2 (43) of the Motor Vehicles Act, 1988 as

"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".

Another major type of vehicles are covered by "contract carriage permits". The term "contract carriage" is defined in Section 2 (7) of the said Act, as

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.

Vehicles which are plying passengers between fixed destinations are known as "stage carriage", which term is defined in section 2 (4) of the MV Act, 1988 as

"Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey"

There is a concept of "private service vehicles" which has been defined as below under section 2 (33) of the MV Act.

Private service vehicle means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business, otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

All the above vehicles are covered by specific permits issued for the specific purpose. Since the term "tour" is widely defined in the Finance Act, 1994, vehicles covered by any of the above types of permits, were sought to be covered under the ambit of "tour operator services".



In this context, various judicial forums have started taking a view, that the levy will be attracted only in case the vehicle is covered by a "tourist permit".

Now, the Finance Bill 2008 proposes to amend the definition of tour operator, as below:

*"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 **or a contract carriage by whatever name called** covered by a permit, **other than a stage carriage permit, granted under the Motor Vehicles Act, 1988 or the rules made thereunder**".*

As a result of the above amendment, all the various types of vehicles explained above (excluding stage carriages), would be covered by the levy. In all major cities, "omni buses" have evolved as an effective mode of transportation. Most of these services, though operate between fixed destinations, which require stage carriage permit, are operated only under contract carriage permits, for various industrial reasons. These omni buses would also be covered by the levy, hereinafter. Similarly, such contract carriage vehicles are hired by various industries for transportation of their employees, which will also be subjected to the levy, hereinafter.

