Karnataka High Court Smt. L.V. Sankeshwar, ... vs Superintendent Of Central ... on 22 September, 2006 Equivalent citations: (2006) 206 CTR Kar 274, 2006 (112) ECC 188, 2006 ECR 188 Karnataka, 2006 4 S T R 257, 2007 6 STT 31 Author: M Shantanagoudar Bench: M Shantanagoudar ORDER Mohan Shantanagoudar, J. Page 0889 1. The issue involved in all these writ petitions is levy of 'Service Tax' on tour operators, whose services are brought under the 'Service Tax' net by the Finance Act 1997 (by amending Finance Act 1994) which came into force with effect from 01.09.1997 vide Notification No. 37/97 (dated 22-8-97). The petitioners being the owners of contract carriages and taxies have obtained the tourist permits under the provisions of Section 49 of the Karnataka Motor Vehicles Act (hereinafter referred to as "M.V. Act" for short) in respect of the motor vehicles owned or operated by them. The Petitioners in W.P.No. 300/2002 and W.P. 38821/2002 are the contract carriage bus operators. The petitioners in other writ petitions are all the taxi operators. Since the common questions of facts and law are involved in all these writ petitions, they have been clubbed and disposed of by this common order. Page 0890 2. I have heard learned Counsels Sri K.R. Prasad, Vijayshankar Associates, Sri. N. Nagaraju, ENNAR Associates, Sri. C.B. Sreenivasan appearing on behalf of the petitioners and Sri. Aravind Kumar learned ACGSC, Sri. Ashok Harnahalli, CGSC appearing on behalf of the respondents and perused the material on record. 3. It is relevant to note certain provisions of Chapter V of the Finance Act 1994 (as amended) relating to Service Tax on tour operators as they stood on the date of filing of writ petitions, which read thus: Section 65(72) Taxable Service means any service provided- (a) xxxxxx (n) to any person, by a tour operator in relation to a tour: Section 65(76) "tour" means a journey from one place to another irrespective of the distance between such places; Section 65(77) "tourist vehicle" has the meaning assigned to it in Clause (43) of Section 2 of the Motor Vehicles Act, 1988 (59 of 1988) Section 65(78): "tour operator" means any person engaged in the business operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder: Section 67: For the purpose of this Chapter, the value of any taxable service: (a) XXXX (m): in relation to service provided by a tour operator to a client, shall be the gross amount charged by such operator from the client for services in relation to a tour and includes the charges for any accommodation, food or any other facilities provided in relation to such tour; It is also relevant to note the provisions of Section 2(40) and 2(43) of the Motor Vehicles Act 1988 (hereinafter referred to as 'M.V. Act' for short) which are as under: Section 2(7) "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; Section 2(40): "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; Section 2(43): "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; Page 0891 4. Learned Counsel for the petitioners argued that as the petitioners are not providing any service except renting out the vehicle or carrying the passengers in their vehicles to the particular destination, they are not liable to pay service tax on the gross bill raised by them towards the charges for hiring or renting the taxies or towards carrying the passengers. According to them, the gross amount charged by the petitioners on the customers is subjected to service tax without even identifying the service element in it. The entire transaction value is taxed as service even though there is no service element involved in it. In other words, measure of tax is used to determine the nature of tax and there is no machinery provision to identify the exact value of service and charge tax on such aspect of service. Hence, in the absence of machinery provision to identify the exact value of the service rendered, the imposition of service tax on the gross amount charged by the petitioners is bad in the eye of law. The petitioners further questioned the competency of the Parliament to enact the Service Tax Law by referring to entries-54 and 56 of List-II of the VII Schedule of the Constitution. According to the petitioners, as levy of tax in question is traceable to entry 54, 56 and 60 of VII Schedule of List-II of the Constitution r/w. Article 366(29A)(d) of the Constitution, the levy of service tax by the Parliament is bad in the eye of law and that therefore, the Parliament has no jurisdiction to enact the impugned provisions. 5. Sri. Arvind Kumar, learned Assistant Socilitor General of India countered the arguments advanced on behalf of the petitioners by submitting that the provision relating to Service Tax is a self contained Act by itself which contains all the necessary requirements of law and that the levy is not traceable to either of the entries 54, 56 & 60 and consequently, the Parliament can levy Service Tax. 6. There cannot be any dispute that the vehicles involved in all these matters are 'Contract Carriages' as defined Under Section 2(7) of the M.V. Act. If a motor vehicle 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 on a fixed or an agreed rate or sum from one point to another, such vehicle is a contract carriage. The 'Contract Carriage' means and includes the maxi cab as well as a motor cab notwithstanding that separate fares are charged for its passengers. All the vehicles in the present case are issued with the tourist permits. The petitioners are offering the services of contract carriage from one destination to another on certain conditions. An individual passenger or group of passengers approach the petitioners for the purpose of undertaking tours, for which, the petitioners offer a contract. These facts clearly establish that there would be a valid contract either written or oral between the passengers and the petitioners for engaging and plying the vehicle for the purposes of tour. Though under given circumstances, an individual passenger may purchase his ticket to travel in a contract carriage bus, the places of boarding and the destination are common for all the passengers. In other words, the contract carriage bus runs from point to point and will not ply as a stage carriage bus. The passengers have to Page

0892 become parties to the contract after knowing fully well that the entire bus is going to one common destination as one unit. There cannot be any dispute that taxi is engaged by single passenger or group of passengers from tour operators as one unit to go from one point to another. Section 65(77) defines the Tourist Vehicle' to have same meaning assigned to it in Clause (43) of Section 2 of the M.V. Act. Section 65(78) of the Act defines the word 'tour operator' to mean and include any person engaged in the profession of operating tours in a tourist vehicle covered by a tourist permit granted under M.V. Act. Hence, for levy of Service Tax on the 'tour operator', the person should be engaged in the business of operating tours as defined under the Act and the tour must be operated under tourist vehicle which is covered by the permit granted under M.V. Act. As aforesaid, all these petitioners are operating the tourist vehicles which are granted with tourist permits under the provisions of M.V. Act. Thus, all these petitioners can be termed as 'tour operators' or 'contract carriage operators' and consequently, they are liable to be levied service tax, whether or not, such taxes are recovered by the petitioners from their customers. 7. The earlier definition of 'tour operator' was "any person who held a tourist permit granted under the M.V. Act 1988" and therefore, the persons responsible for payment of service tax were the tour operators, who necessarily had the tourist permits. Therefore, non-permit holders who operated as 'tour operators' by using tourist permits which may have been leased or hired from persons who held tourist permits were not covered under the definition of tour operators. Section 65(78) of the Finance Act 1994 (as amended) has been revised to mean a tourist operator, any person engaged in the business of operating a tourist vehicle covered by a permit granted under the M.V. Act 1988. Therefore, as per the new definition, even non-permit holders who operate as 'tour operators' by using tourist vehicles of other permit holders also are covered under the new definition of 'tour operators' and therefore, such persons who provide service are also liable to pay service tax. 8. The contention of the petitioners that the Parliament has no legislative competence to make enactment and to levy the service tax cannot be accepted. It is to be noted that 'Service Tax' is levied by introducing amendment to the Finance Act and the same is within the legislative competence of the Parliament in exercise of residuary entry-97 of list I of VII Schedule to the Constitution. Under Article 248 of the Constitution, the Parliament has exclusive powers to make any law in respect of any matter not enumerated in the concurrent list or the State List and such power includes the power to make any law imposing taxes which are not mentioned in either of those lists. It is relevant to note that the Division Bench of the Madras High Court, while dealing with similar question in the case of Secretary, Federation of Bus-Operators Association of Tamil Nadu v. Union of India Page 0893 has upheld the legislative competence of the Parliament to enact the law in levying service tax. The service tax cannot be equated to a tax on income or tax on goods or passengers as contended by the petitioners. The service tax is a tax levied on the service rendered by the 'service provider' to his client or customer and it has the distinct nature of taxable event other than two taxes mentioned above. In the case on hand, there is neither a sale nor transfer of interest but

it is only the permission or license granted to passengers to travel in the tourist vehicle. There is neither sale of vehicle nor sale of interest or transfer of interest in favour of passengers or purchasers of tickets. On the other hand, the domain of vehicle on which the passengers travel to the fixed destination remains with the owner of the vehicle or the permit holder as the case may be. Thus, the tour operator cannot be termed as transferor of right to use the vehicles as contemplated under Article 366(29A)(d) of the Constitution but they can be termed as "service providers". As aforesaid, a person who is providing service as a 'tour operator though does not own any vehicle or permit comes within the definition of 'tour operator'. Consequently the 'service provider' i.e., 'tour operator' comes within the ambit of provisions of 'Service Tax' and he is liable to be levied service tax as he is indulging in rendering taxable service as defined Under Section 65(72) of the Finance Act. The Judgment relied upon by the petitioners in the case of International Tourist Corporation v. State of Haryana and Ors. and in the case of Builders Association of India v. State of Karnataka and Ors. reported in AIR 1993 SC- 991 (popularly known as Builder's case) are not helpful to the case of the petitioners. In the second case, i.e., Builder's case, the levy of tax on works contract was challenged and the Hon'ble Apex Court has held that the levy of tax is traceable to Entry-54 based on sale and purchase. In that case it is observed that whenever the contractor constructs the building on behalf of his client or the owner of the building, the sale of goods namely the cement, bricks, iron, mortar etc., takes place and therefore, the levy is traceable to entry-54 of list-II. In the first matter i.e., AIR 1981 SC-774, the levy of tax on passengers by the State Government was challenged and the Apex Court has held that levy of tax is traceable to Entry-56 of List-2 and therefore, the State Government is competent to levy the tax. Further, in the aforesaid decision it is held that the taxable event was "the carrying of the goods and passengers on roads within the State and thereby making use of the facilities provided by the State". But in the case on hand, the levy of service tax is neither tax on the passengers nor goods, but it is the levy on the "Service Provider" i.e., service provided by the tour operator. Thus, the levy of tax is not traceable either under Entry-54 or 56 of List-2, Schedule-VII. 9. Learned Counsel appearing on behalf of the petitioners submitted that levy of Service Tax in the cases on hand is nothing but the tax on passengers Page 0894 who are carried on the road. According to the learned Counsel for the petitioners, the tax is charged because the passengers are carried in the motor cab or maxi cab and that therefore, the same is integral part of the tax levied against the 'tour operator' or 'rent a cab scheme operator', because both these persons are bound to pay the tax on their carrying the passengers on road in a tourist vehicle. They also argued relying on the doctrine of "pith and substance" that in reality, though the tax was nomenclatured as 'service tax' and the same was being purported to be charged on the so-called services provided by the 'tour operators', in reality, it is a tax on the passengers. Considering the aforementioned relevant provisions of Section 65 of the Act, it cannot be said that the levy of service tax amounts to a tax on the passengers carried by road. As aforesaid, there is neither the element of sale or purchase of the goods and the domain over the tourist vehicle

remains with the petitioners, therefore, the levy will not fall under entry-54. So also, though the act of carrying of the passengers may be a part of the exercise of the tour operators or rent a cab scheme operators in conducting tour, the element of service rendered by the petitioners is a separate and distinct element. While considering the similar question, the Division Bench of Madras High Court, in the case of Secretary, Federation of Bus-Operators Association of Tamil Nadu v. Union of India has observed in paragraph-76, thus: 76. When we consider the provisions of Section 65(48)(n) and (o) the language thereof has to be appreciated independently and with its natural meaning along with the language of Section 65(38) and Section 65(62). Considering both these provisions, it cannot be said that this amounts to a tax on the passengers carried by road. The whole concept of the service tax is unique and could not be said to be a part of Entry 56 even if we give broadest possible scope to that entry as is contended by the learned Counsel. The incidence of tax is the service provided by the 'tour operator' or the 'rent-a-cab scheme operator' and it need not be always a service provided to a passenger at least in case of a 'rent-a-cab scheme operator' though the carrying of passengers may be part of the exercise. We wish to clarify that the tax under Entry-56 is because a passenger is carried by road while this challenged service tax is because of the service provided in locating or making available by engaging a taxi. The tax under Entry-56 will not be payable by a person who does not own or ply a vehicle while such would not be a necessity in case of a person who is merely in the business of engaging a cab for that, such person need not also own any taxi. It is enough if he is in the business of engaging taxis for his customers and giving them this service. I respectfully agree with the said dictum laid down by the Madras High Court. Page 0895 10. As aforesaid, a 'tour operator' is a person engaged in the business of operating tourist vehicle covered by the permit granted under the provisions of the Motor Vehicles Act. Even if a person does not own any vehicle or permit, still he may come within the definition of the 'tour operator' inasmuch as, he may get a vehicle on lease or hire from the original permit holders and ply the vehicle for the purpose of tour. Even a person who is in the business of engaging taxies for his customers and giving them the service will come within the ambit of taxable service provider. Whereas, the tax under entry-54 or 56 of the list-II of Schedule-VII of the Constitution of India is levied only on person owing or plying the vehicle. As the levy in question does not fall either under Entry-54 or 56 of List-II as contended by the petitioners, the service tax levied is within the legislative competence of the Parliament under entry-97 of list-I of VII schedule of the Constitution. 11. There cannot be any dispute that when the Constitution enumerates elaborately the topics on which the Center and State should legislate, some overlapping over the field of legislation is inevitable. Hon'ble Supreme Court in the case of Federation of Hotel and Restaurant v. Union of India has upheld the validity of the Expenditure Tax Act 1987 enacted under Entry-97 of the Union List. The said Act was challenged on the ground that it encroached on the State power to levy tax on luxury vide Entry-62 of the State list. While dealing with this question, the Apex Court has observed that the law with respect to a subject might incidentally affect another subject in some

way but that is not the same thing as the law being on the latter subject. There might be overlapping, but the overlapping must be in law. The same transaction may involve two or more taxable events in different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects. "Aspect" must be understood from 'aspect' or point of view of the legislator in legislating the enactment. As aforesaid, the service tax is not the tax on income or tax on goods or passengers as contended by the petitioners, inasmuch as, the service tax is a tax on the service rendered by a 'service provider' to a client or customer and it has a distinct nature of taxable event. The two taxes, one levied on passengers or on owner of the vehicles and another levied on service provider may in one sense may overlap. But in law there is no overlapping. The taxes are separate and distinct imposts. Since such a levy of service tax does not find place in the State list, obviously, the center has power to legislate under residuary power of the Parliament i.e., under Entry-97 of the Union list read with Article 248(2) of the Constitution. Hence, the challenge of the Enactment on that score is not sustainable. 12. The present levy of service tax also does not affect the Entry-60 of II List of 7th Schedule of the Constitution, inasmuch as, the levy is a tax on service rendered by the 'tour operators' for remuneration. If the petitioners do not render any service, there will be no service tax. On the other hand, Page 0896 the professional tax or tax on trade is a tax for the privilege of belonging to a profession or being a member of the profession. Such a tax is irrespective of the fact whether he does or does not render professional service for remuneration. The chargeable event in two statutes are wholly distinct and different. Service tax is totally different from levy of professional tax on professionals by the State Legislature, which is a one-time tax, unrelated to actual service rendered for remuneration. In the two cases, the fact that there may some overlapping is of no consequence and, in any event, it is justified by the 'aspect doctrine'. 13. According to Sri. Nagaraj, learned Advocate for petitioners, in substance there is a deemed sale in the case on hand inasmuch as, the right to use taxi or contract carriage bus is transferred from petitioners to their customers for a temporary period and consequently, the same falls under Entry-54 of List-II of the VII Schedule r/w. Article 366(29A)(d) of the Constitution. 14. It is no doubt true that if there is any transfer of right to use any goods for any purpose for cash or deferred payment or valuable consideration, such aspect of transfer shall be treated as sale or purchase of goods and consequently, tax can be levied by the State Government. But in the case on hand, there is no transfer of right to use any goods in whatsoever manner, inasmuch as, the passengers have got no right to use the vehicle as if the said vehicle belongs to them even for a temporary period. In case if there are two or more independent passengers who have hired the taxi or contract carriage bus as the case may be, it cannot be said that each of the passengers have got right to use the taxi or contract carriage bus as their own and according to their will and wish. The permission granted to them will be only limited to travel from one point to another point by paying consideration. Every inch of the vehicle belongs to the permit holder or owner of the contract carriage or the taxi. The vehicle will be driven by a person engaged/employed by the owner or organisation. At the

most, the said event can be regarded as a license or permission given to the passengers to use the vehicle on payment of consideration and the entire control or domain of the vehicle is always with the petitioners i.e., the owners of the vehicles or permit holders. It is relevant to note the observation of the Hon'ble Supreme Court in the case of 20th Century Finance Corporation Ltd., and Anr. Etc., v. State of Maharashtra wherein it is held as under: Our endeavour here is to discern what transfer, in the context of Clause (d), means. Is it simply signing of a document that brings about a transfer of light to use any goods or is it also necessary to give control of the goods to complete the transfer with the intent of passing the right to use the goods to the hirer? A combined reading of the first and the second limb of Clause (29A) suggests that mere execution of a Page 0897 document de hors passing the domain of the goods does not result in transfer of right to use any goods and will not constitute a 'deemed sale' within the meaning of Clause (29A). The 'deemed sale' envisaged in Sub-clause (d) involves not only a verbal or written transfer or right to use any goods but also an overt act by which the transferor places the goods at the disposal of the transferee to make their use possible. On this construction, it is explicit that transfer of right to use any goods involves both passing of a right in as well as domain of the goods in which right to use is transferred. The taxable event in regard to the sale of goods is passing of the property in the goods or appropriation of the goods. In regard to each of the deemed sales the taxable event are specified in Sub-clause (a) to (f) of Clause (29A) of Article 366 of the Constitution. For purposes of levy of a tax on transactions referred to in Sub-clauses (a) and (b) the taxable event is transfer of property in goods, in Sub-clause (c) it is delivery of goods, in Sub-clause (d) it is transfer of right to use any goods, whereas in Sub-clauses (e) and (f), supply of goods is postulated as taxable event. It must, however, be made clear that no tax can be levied under a legislation enacted by virtue of the power conferred in Entry-54, List II of the Seventh Schedule of the Constitution on the agreement of sale, therefore, necessarily the taxable event has to be on the completion of a deemed sale. We have also discussed above as to when and where a deemed sale will be complete in regard to specified goods as also in regard to unspecified goods. However, some aspects which remained untouched may be dealt with here. In the case of a deemed sale of goods, whether specified or unspecified, under Sub-clause (d), where more States than one are involved, the taxable event will arise where the transfer is complete: if the contract is oral at the place of the delivery of the goods in which the right to use is transferred but if the contract is in writing, subject to the terms and conditions of the contract evidencing the intention of the parties, where giving the control/domain of the goods is postulated. In other words, the transfer will be complete where the contract is executed and the control/domain of the goods which are the subject matter of the contract, is giver to the hirer. Let us take an example - the hirer is in Delhi, the lessor is in Mumbai and the goods are in West Bengal, the contract of the transfer of right to use any goods is entered into in Mumbai. On the execution of contract on the lessor's direction, the goods moved from West Bengal to Delhi to be delivered to hirer. As the deemed sale occasions movement of the goods from West Bengal

to Delhi the deemed sale in Sub-clause (d) will be an inter-State sale in respect of each of the said State and the transaction cannot be taxed under any of the States Acts. Let us take another example, where by the contract the transfer of right to use car 'X' is executed in Delhi: the car 'X' is in Gurgaon (Haryana), the hirer is handed over the key of the car 'x' in Delhi: as both the execution of the contract as well as the act of passing of the control/domain of the car takes place in Delhi, the transfer is complete in Delhi, so the deemed Page 0898 sale is within Delhi State and outside all other States: the taxable event will, therefore, be in Delhi no matter where the situs of the car 'x' is at the time of transfer and no matter where the car 'X' will be used in or out of India. If the hirer takes the car 'X' to Bombay, Tamil Nadu or any part of India, no State in which it is used will be entitled to levy tax for in none of the States the taxable event under Sub-clause (d) arises. Regarding non-existent and unspecified goods, the following example will clarify the position. In the example referred to above - the contract of the right to transfer an unspecified equipment (which is not in existence or which maybe with the supplier) is entered into in Gujarat. The lessor places the order to the manufacturer/supplier who is in West Bengal. On the principle discussed above, the sale of the equipment itself will be complete only on delivery of the equipment to the lessor or on his instruction to the hirer at Delhi. The taxable event cannot, therefore, be at any earlier stage and at a place other than Delhi. The aforementioned observations of the Apex Court would make it clear that the deemed transfer will be completed if the domain of the vehicle is given to the passenger of the vehicle. Therefore, Entry-54 of list-II r/w. Article 366(29A)(d) is not attracted to the facts of the case on hand. Article 366(29A)(d) only permits the State to impose tax on the transfer of right to use any goods for any purpose. It does not conceptually or otherwise include the tax on services rendered by the 'service providers'. Transfer of right to use is not taxed but the aspect of providing service by the petitioners to their customers is being taxed under the present enactment. More over, as noticed earlier, the 'service tax' is leviable on tour operators, as contemplated Under Section 65(78) of the Act, but not merely on taxi operators. Although certain portions of "service" might have been referable to any other entry of the State list, as the service element is "more weighty, visible and predominant", there is no element of deemed sale as contended by the petitioners. 15. The service aspect in respect of 'tour operators' has clearly distinguishable feature from renting the cab. The Phrase 'in relation to' used in the definition in the taxable service has to be construed widely. The Apex Court in the case of Doypack Systems Pvt. Ltd., v. Union of India and Ors. , while dealing with similar situation has observed thus: The expressions 'pertaining to', 'in relation to' and 'arising out of used in the deeming provision, are used in the expansive sense. The expression 'arising out of has been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur Undertaking. The words 'Pertaining to' and 'in relation to' have the same wide meaning and have been used interchangeably for among other reasons which may include avoidance of repetition of the same phrase in the same clause Page 0899 or sentence, a method followed in good drafting. The word 'pertain' is

synonymous with the word 'relate'. The term 'relate' is also defined as meaning to bring into association or connection with. The expression 'in relation to (so also 'pertaining to), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context. The phrase 'in relation to' the tour means "in the aid of tour also. Therefore, if any service is rendered in relation to or in the aid of tour is liable to be taxed. The taxable service is therefore not only means mere providing of car, taxies, contract carriages on a temporary basis but it would also include other facilities supplied in relation to tour as a whole. 16. The tour operators provide wide varieties of services apart from service of allowing the temporary user of the motor vehicle. The petitioners, apart from proper maintenance of the motor vehicles also provide wide range of other value-added services such as providing the service of porters, guides, providing tape records, some time Television in taxies and buses etc. The tour operators will even book the lodgings, arrange for site seeing by purchasing necessary tickets for the same. Various services provided by the 'tour operators' are covered in the 'tour' undertaken for their clients. They even suggest as to how the passengers should go about in any tour to save time, money and fatigue. In most of the times, the logistics of selection of places, selection of lodgings, selection of food is the responsibility of the tour operators. The services of the 'tour operators' cannot be possibly be termed as hire agreement of right to use the goods or property. The service of 'tour operator' is the professional service provided by him by virtue of his experience. The customers approach the 'tour operators' not merely for the car, taxi or contract carriages but will approach for the entire variety of services that may be provided by the 'tour operators' which result in enjoying the tour with required effect and comfort. The customers in such matters will chose the kind of comforts that are needed. Thus, the 'tour operators' shall render such comforts in the form of service. Organising the tour is not possible without the element of professional service provided to the customers. Clearly, the service element is more weighty, visible and predominant in the case of 'tour operations'. It cannot be considered as a case of transfer of right to use the goods or deemed sale of goods. Service aspect is entirely different and distinguishable from supply aspect. 17. Sri. Nagaraj learned Advocate nextly contended that no machinery is provided to identify or measure the service element. Now the entire transaction of tour is treated as service and the tax is levied on the entire amount paid by the passengers to the petitioner. The said act of the authorities in charging service tax on the entire amount of bill treating the entire transaction as service is illegal and arbitrary. 18. Though, the service tax is leviable on the gross amount charged by the tour operators in relation to the tour, the Government has decided to charge only 40% of the gross amount charged by the tour operators to the Page 0900 customers. As has been held by the Apex Court in the case of Tamil Nadu Kalyana Mandapam Association v. Union of India and Ors. reported in 2004 AIR SCW 3991, the measure of taxation cannot be affect the nature of taxation and therefore, the fact that the service tax is levied as a percentage on the gross charges collected by tour operators cannot

alter or affect the Legislative competence of the Parliament in the matter. 19. It is further argued on behalf of the petitioners that the enactment is violative of Article 14 of the Constitution by contending that there is no rationale or reason as to why stage carriage operators are kept out of the Service tax net. 20. Said contention also is liable to be rejected. Having regard to the diverse economic criteria that go into the formulation of a fiscal policy, the legislature enjoys wide latitude in the mater of selection of persons, subject matter, and events for taxation. It is sufficient if the law deals equally with the members of the well-defined area. Un-equals cannot be treated equally. It is not open to challenge the law on the ground that it is not made applicable to other persons. A legislature does not have to tax everything in order to be able to tax something. It there is equality and uniformity within each group, the law would not be discriminatory. It is for the legislature to determine the categories, it should be embrace and merely because certain categories which stand on the same footing as those which are covered by the Legislature are left out, the same would not render the Legislation in any manner discriminatory or violative of Article 14 of the Constitution. In this context, it is relevant to note the observations of the Hon'ble Supreme Court in the case of Gujarat Ambuja Cements Ltd., and Anr. v. Union of India and Anr. reported in 2005 AIR SCW 2051 wherein it is held as under: The final challenge to the 2000 amendment to the Service Tax Act, 1994 is that if operated in a discriminatory manner in that it chose the recipient of the services to be the assessee only in the case of services rendered by goods transport operators and clearing and forwarding agents. We are unable to accept the submission. Because of the inherent complexity of fiscal adjustments of diverse elements in the field of tax, the legislature is permitted a large discretion in the matter of classification to determine not only what should be taxed but also the manner in which the tax may be imposed. Courts are extremely circumspect in questioning the reasonability of such classification but after a"judicial generosity is extended to legislative wisdom, if there is writ on the statute perversity, madness in the method or gross disparity, judicial credibility may snap and the measure may meet with its funeral. The same opinion is expressed by the Apex Court in the case of Federation of Hotel Restaurant Association of India v. Union of India and Ors. wherein it is observed thus: It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide Varity of diverse economic criteria Page 0901 that go into the formation of a fiscal policy, legislature enjoys a wide latitude in the matter of selection of persons, subject matter, events etc., or taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment, what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. For the foregoing reasons, This Court is of the

considered view that there is no substance in any of the grounds urged by the Petitioners in these writ petitions challenging the levy of service tax on the taxable service rendered by the "tour operators" and "Contract Carriage Operators" and consequently, the writ petitions are liable to be dismissed. These writ petitions are dismissed accordingly.