CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/580/2008-DB

[Arising out of Order-in-Appeal No. 154/2008 dated 19/09/2008 passed by the Commissioner of Central Excise, Mangalore]

MNC Corporation, No. 4-90, 10, "Saraswathi, Malemar Road, Derabail, Mangalore, Karnataka,	**Appellant(s)**

Versus

Commissioner of Central Excise and Service Tax, Mangalore 7th Floor, Trade Centre, Bunts Hostel Road, Mangalore - 575 003 Karnataka	**Respondent(s)**

Appearance:

Mr. Rajesh Kumar, CA Hiregange & Associates #1010, 1st floor (Above Corp. Bank) 26th Main, 4th T Block, Jayanagar, Bangalore – 560 041 Karnataka	For the Appellant
Mrs. Kavitha Poduwal, Superintendent (AR)	For the Respondent

Date of Hearing: 12/02/2018
Date of Decision: 12/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20290 / 2018

Per: V. PADMANABHAN

The present appeal is against the Order-in-Appeal No. 154/2008 dated 19.09.2008. The appellants are engaged in rendering the taxable service of Commission Agent for export of cashew and for these services they receive commission both from the exporters as well as purchasers from abroad. Revenue proceeded against them on the ground that they are liable to pay service tax on the amounts received under the category of 'Business Auxiliary Service'. It is the contention of the appellant that they would be entitled for exemption from service tax in terms of Notification No. 13/2003 ST dated 20.06.2003 as amended. In terms of the amendment, the services provided by a commission agent in relation to sale or purchase of agricultural produce are exempted from service tax leviable. According to Revenue, the product 'cashew nut' would not be covered under this Notification.

2. The learned Chartered Accountant invited our attention to the definition of 'Agricultural Produce', which is reproduced below.

> *"Agricultural produce means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured*

products such as sugar, edible oils, processed food and processed tobacco."

3. We have carefully gone through the definition of 'agriculture produce' finding place in the Notification as above. We have also gone through the CBEC clarification No. 143/12/2011-ST dated 26.05.2011 which has explained that the benefit of Notification will be applicable to cashew nut. After carefully considering the records and the Notification, we are of the view that the benefit of the Notification is extendable to the activity carried out by the appellant and hence we find no reason to sustain the impugned order which is set aside and appeal is allowed.

(Order was pronounced and dictated
in Open Court on **12/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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