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

Appeal(s) Involved:

ST/702/2008-DB

[Arising out of Order-in-Appeal No. 145/2008 dated 18/09/2008 passed by the Commissioner of Central Excise, Mangalore]

Bola Raghavendra Kamath & Sons Kukkundur, Karkala Taluk	**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 #1010, 1st floor(Above Corp.Bank) 26th Main, 4th T Block, Jayanagar, Bangalore – 560 041 Karnataka	For the Appellant
Mr. Pakshirajan, Assistant Commissioner (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. 20282 / 2018

Per: V. PADMANABHAN

The present appeal is against the Order-in-Appeal No. 145/2008 dated 18.09.2008. The appellant is engaged in the manufacture and export of cashew kernels. For export of such goods, appellant used the services of overseas agents for procurement of orders and paid commission to such agents. The Department was of the view that the appellant is liable to pay service tax on such commission paid to overseas agents under the reverse charge mechanism specified in Section 66A of the Finance Act 1994. Service tax has been demanded by denying the benefit of Notification No. 13/2003 ST dated 20.06.2003 which extended the benefit in respect of sale or purchase of agriculture produce. The authorities below took the view that the benefit cannot be extended to the activity carried out by the appellant i.e. removing the shell and recovery of cashew kernels and export of the same. Aggrieved by the impugned order, present appeal has been filed.

2. After considering both sides and on perusal of the record, we note that the Notification No. 13/2003 as amended by Notification No. 8/2004 dated 09.07.2004 has extended the benefit to commission agents in relation to sale or purchase of agriculture produce. The notification itself specifies a definition for "Agriculture Produce" as follows:

> *"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".

From the above, it is clear that nuts are to be treated as "Agriculture Produce". The activity of the appellant is to remove the shell and recover the cashew kernels. We are of the view that this is very much covered under the definition of "Agriculture Produce" and hence the benefit of the Notification will be allowable to the appellant. We also note that the applicability of the Notification was clarified by the CBEC through clarification No. 143/12/2011-ST dated 26.05.2011 in which it has been specifically explained that the benefit is extendable to cashew nuts. In view of the above, the impugned order is set aside and appeal is allowed.

(Order Dictated in Open Court on **12/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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