CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Service Tax Appeal No. 50036 of 2019 [DB]

[Arising out of Order-in-Appeal No. 1199(CRM)ST/JDR/2018 dated 30.10.2018 passed by the Commissioner of Central Excise & Central Goods and Service Tax (Appeals), Jodhpur]

M/s. Shree RamAgro Services **...Appellant**
18 KM Stone, NH 15,
Village Khara, Bikaner,
Rajasthan-334601

VERSUS

Commissioner of Central GST
and Central Excise, Jodhpur **...Respondent**
G-105, New Industrial Area,
Basni, Near Diesel Shed,
Jodhpur, Rajasthan - 342003

APPEARANCE:
Shri Ajay K. Mishra, Advocate for the Appellant
Shri Anand Narayan, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 19.09.2024
DATE OF DECISION: **10.01.2025**

FINAL ORDER No. 50049/2025

DR. RACHNA GUPTA

M/s Shree RamAgro Services, the appellant is engaged in providing taxable services namely Renting of Immovable Property Service, Business Auxiliary Service, Cargo Handling Service. They also received Legal Consultancy Service. The department received an intelligence that the appellants were renting godowns / warehouse for used in course of business / commerce to various firms. They were also providing handling and transportation services, cleaning and grading services to those firms. In addition they were making payment for receiving legal services. But none of these activities the appellant were discharging the service tax liability under forward / reverse charge mechanism. The appellant did not respondent to any of the summons served by the department.

2. Based on the examination of final accounts, Form 26 AS from Income Tax Department the department observed that the appellant has received an amount of Rs.2,50,24,153/- during the financial year 2011-12 to 2015-16 but the service tax. The department issued a Show Cause Notice no. 241/2016 dated 27.12.2016 proposing the recovery of service tax amounting to Rs.29,64,185/- along with the interest and the penalties under section 77 and 78 of the Finance Act 1994. The said show cause notice had been adjudicated vide Order-in-Original (O-I-O) 22/2017 dated 13.10.2017 confirming demand of service tax amounting to Rs.3,66,314/- on the activities of:

i) cleaning and grading holding it to be Business Auxiliary Service being provided by the appellants
ii) Handling and Transportation of goods holding it to be Cargo Handling Service.

The appeals against the said order had been rejected vide Order-in-Appeal (O-I-A) bearing no. 1199/2018 dated 30.10.2018 being aggrieved the appellant is before this Tribunal.

3. We have heard Shri Ajay Kumar Mishra, learned Advocate for the appellant and Shri Anand Narayan, learned Authorised Representative for the department.

4. Learned Counsel for the appellant has submitted the activities of 'Cleaning & Grading' and 'Handling &Transportation' are integral and ancillary to the principal activity of 'Storage and Warehousing' of agricultural produce, hence, are exempted from the levy of service tax as the later is exempted. Demand is also held to be time barred as extended period of limitation cannot be invoked thus penalty also is not impossible. It is impressed upon that there is no suppression of facts with the intention to evade payment of service tax is involved.

4.1 Learned Counsel has relied upon Circular No. 143/12/2011 dated 26.5.2011 and Notification No. 14/2004 dated 10.09.2004. Notification 10/2002 dated 1.08.2002 is also relied upon. It isbrought to the notice that the issue involved in the present case has already been decided bythis tribunal in the case **of M.L. Agro Products Ltd. Vs. CCE and ST Nellore reported at 2017 (6) GSTL 94 (Tri.) Hyd.** Learned Counsel also mentioned that the said decision has been upheld by the Hon'ble Supreme Court. With these submissions the order under challenge is prayed to set aside and appeal is prayed to be allowed.

5. While rebutting the submissions made on behalf of the appellant, learned Departmental Representative reiterated the findings of the order under challenge. Para 17 to 21 of Order-in-Original dated 13.10.2017 are relied upon and the appeal is prayed to be dismissed.

6. Having heard both the parties at length and perusing the record, we observe and hold as follows:

6.1 The appellant admittedly has godown/warehouse which is used providing the storage facility of various agricultural commodities / food grains to the various client pursuant to the agreement with them there is no denial to the fact that appellant is provided warehouses and storage facilities of the agricultural produced, we observed that demand has been confirmed holding that cleaning and grading activity amounts to providing business auxiliary service and handling &transportation activity was taxable prior 1.7.2012 whereafter it got covered under negative list provided under section 66 (d) of amended Finance Act.

6.2 Formost we look into the definition of 'Business Auxiliary Service' under section 65 (19) of the act and taxable under section 65 (105) (zzb) of the act which means any service in relation to, -

> *(i)………Or*
> *(ii)………or*
> *(iii)………or*
> *(iv)………or*
> *(v) production or processing of goods for or on behalf of the client or*
> *(vi)………or*
>
> *and includes services as commission agent, but doesn't include any activity that amounts to manufacturer of excisable goods.*

6.3 The cleaning and grading of agricultural produce is held to be covered under production and processing of goods (as above). We observe that the production and processing of goods for, or on behalf of, the client if provided in relation to agricultural is exempted from whole amount of tax vide Notification No. 19/2005 dated 07.06.2005 which amended the previous Notification No. 14/2004 dated 10.09.2004 with respect to exemption to specified services in relation to Business Auxiliary Service.

6.4 We have also perused the Circular No. 143/12/2011 dated 26/5.2011 which clarifies that the agricultural produce when subject to processing if retain their essential characteristics at the output stage, the process undertaken on or behalf of client should be considered as covered by the expression 'in relation to the agriculture'.

6.5 The above observations and the facts that the cleaning and grading activity was for few of the agricultural products which were warehoused by the appellants for their clients and that this activity did not change the essential characteristics of the agricultural product stored /warehoused by the appellant, the activity has to considered as the one in relation to the agriculture which is exempted from payment of tax.

6.6 For the post negative period also our attention is brought to Notification no. 25/2012 dated 20.06/2012, the entry no. 30 includes carrying out an intermediate production process as job work in relation to agriculture. With effect from 1.7.2012 the negative list under section 66D clause (v) of the act exempts the entire gamut of services related to agricultural produces.

6.7 The Hon'ble Apex Court in the case of **Commissioner v. M.L. Agro Products Ltd. – 2018(16) G.S.T.L. J76 (S.C.)** has held that threshing and redrying of tobacco leaves, being an activity "in relation to agriculture" is covered under entry "production of goods on behalf of client in relation to agriculture" which is entitled for exemption under Notification No. 14/2004-S.T. Hence, Service Tax is not payable C.B.E. & C. Circular No. 143/12/2011-S.T. dated 26-

5-2011, also clarifies the same. Thus even with the introduction of negative list, said activity remained non-taxable.

6.8 Coming to the issue of the demand confirmed for handling and transportation charges:

6.8.1 For pre negative list period, we hold that the entire above discussion is applicable to the present activity as well as it also pertains in relation to storage of agricultural produce. This activity is also exempted from levy of service tax for the period 01.07.2012. Also attention has been brought to the notification 10/2002 dated 1.08.2002 which exempts the taxable service provided to any person by a cargo handling agency in relation to agricultural produce or goods intended to be stored in cold storage, from whole of the service tax leviable thereupon. We are also of the opinion that cargo handling service under section 65 (21) means loading, unloading, packing, or unpacking of cargo and includes cargo handling service provided for freight in special container service provided by a container freight terminal or any other terminal meant to be transported by any means of transportation namely truck, rail, ship or aircraft buy the authorities likecontainer cooperation India, Airport Authority of India, in Land Container Depot, Container Freight Station etc. The department clarification no. B11/1/2002 -TRU dated 1.08.2002 clarifies that the cargo handling services provided in relation to storage of agricultural produced are covered under storage and warehousing services and have been exempted from the levy of service tax. In view thereof, the handling and transport of agricultural produce was also not taxable even prior 1.07.2012 hence the demand is held to have been wrongly confirmed.

6.9 Above all both the activities i.e. cleaning and grading and handling and transportation of agricultural produce to be stored and warehoused constitute a composite but single service. The TRU clarification dated 28.2.2006 also clarifies that a composite service, even if it consists of more than one service, should be treated as single service based on main or principal service and be accordingly classified. The guiding principal is to identify the essential feature of the transaction. The method of charging doesn’t in itself determine whether the service provider is a single service or multiple services.

7. In the light of the above discussion the two activities are held to be part of one service i.e. storage and warehousing of agricultural produce. The said composite activity is out of service tax net for pre as well as post negative list period, as discussed above, hence it is held that even partial demand of Rs.3,66,314/- has wrongly been confirmed by the adjudicating authority below. The order under challenge is therefore set aside and the appeal is allowed.

[Order pronounced in the open court on **10.01.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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