

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76674 of 2018

(Arising out of Order-in-Appeal No.22/KA-I/2018 dated 21.02.2018 passed by Commissioner of Central Tax, Kolkata Audit-I CGST & CX Commissionerate, Kolkata.)

M/s.Bayer Crop Science Ltd.

(Ecospace Building No.3A, Unit No.502, 5th Floor, 59M, Wide (Row) Road, New Town, Rajarhat, Kolkata-700156.)

...Appellant

VERSUS

Commissioner, CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanor Chandidas Road, Sian, Bolpur, Distt.Birbhum, West Bengal.)

APPEARANCE

Shri Tarun Chatterjee & Ms. Sneha Das, Advocates for the Appellant (s)
Shri P. Halder, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO. 76076/2026

DATE OF HEARING : 17.08.2026

DATE OF DECISION : 17.08.2026

R. MURALIDHAR :

The Appellant was given an Order to supply Hybrid Seeds to West Bengal State Seed Corporation Ltd. (WBSSCL). The Appellant has been given the offer price of Rs.275/- / 271/- per Kg. of Hybrid Seeds. The Appellant have appointed Commission Agent M/s. Gopal Fertilizer to procure the seeds on behalf of them and to supply the same to WBSSCL. For this activity, the commission agent was being paid Rs.45/- per Kg. The commission agent has raised bills for such commissions wherein they have charged Service Tax of Rs.2,41,947/-.

Later on, the Appellant came to know that since the commission agent is rendering service under BAS in respect of agricultural seeds, there is no Service Tax to be paid. The Appellant has filed a refund claim for Rs.2,41,947/-. The lower authorities have agreed that there is no need to pay any Service Tax on such BAS Services rendered by the commission agent since the service has been rendered towards procurement of agricultural seeds. However, the refund has been held as not grantable on the ground that the Appellant has not proved the applicability of unjust enrichment clause. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Counsel, appearing on behalf of the Appellant takes me through the letter dated 31.07.2013 to show that the Appellant was not rendering any service to the WBSSCL. They were selling the hybrid seeds on outright sale basis @ Rs.275/- / 271/- per Kg. They have engaged the commission agent M/s. Gopal Fertilizers by paying them commission @ Rs.45/- per Kg. Only the service rendered by M/s. Gopal Fertilizer could be classifiable as a service under BAS. However, even under this category, the Service Tax is not payable since the commission agent was dealing with the agricultural produce. He submits that this fact is not disputed by the lower authorities. Since the activity undertaken by the Appellant is that of sale, the question of passing on of the Service Tax element to the buyer would not arise. Accordingly, he prays that the Appeal may be allowed.

3. The Ld.AR for the Department submits that the WBSSCL has submitted a letter on 21.02.2014 stating that the rate of hybrid paddy seed supplied by the Appellant is "*inclusive of all applicable taxes (Service Tax)*". Therefore, he submits that the lower authorities are correct in holding that the price of Rs.275/- / 271/- per Kg. paid by the WBSSCL is inclusive of Service Tax element. Accordingly, he justifies the rejection of the refund claim.

4. Heard both sides.
5. The letter dated 31.07.2013 about the pricing of the hybrid seeds is extracted below :-

Bayer CropScience Limited

Dated : July 31st 2013

To,
The Managing Director
West Bengal State Seed Corporation Limited
4-Gangadhar Babu Lane, 5th Floor, Kolkata - 700012

Sub : Offer Price for Hybrid Rice seed- Arize 6444
Ref : Your letter No 847 Dated 25th July 2013

Dear Sir,

At the outset, we are grateful to West Bengal State Seed Corporation, Kolkata, West Bengal and Department of Agriculture, West Bengal for giving us the opportunity to supply Hybrid Rice seeds in Rabi 2012-13.

We are also thankful to you for the interest shown in promotion of Hybrid Rice. In continuation of the joint effort of Hybrid Rice Promotion in the state, we hereby propose our offer Price and other details for the subject cited above.

A. Proposal for supply of Arize Brand Notified Hybrid Seeds

Name of Hybrid	Packing	Offer Price Rs/Kg	Maximum Retail Price Rs/Kg	Offered Quantity (in Qnits)	Remarks
Arize 6444	1 Kg	275/-	300/-	1250	Notified by Govt of India
Arize 6444	3 Kg	271/-	295/-	1250	Notified by Govt of India

B. Terms & Conditions

- The supply shall be made through our authorized consignment Distributor in West Bengal
- The supply shall be made within 3 weeks after receiving confirm order from WBSSC Ltd
- The supply of seeds shall be made only in 1 & 3 Kg pack only
- The supply of the seed shall be made at the Distt warehouse of WBSSC Ltd.
- Good receipt /acknowledge copy to be provided by the respective warehouses of WBSSC Limited where ever the stock would be supplied as per order
- The supply shall be made in company's standard pack material and design only

We are confident that our offer shall be considered in a very positive way
Thanking you & assuring you of our best services and support.

Yours Sincerely,
Bayer CropScience Limited

(Rajendra Prasad)
General Manager- East

Bayer CropScience Limited
"ECOSPAC" Bldg. No. 3A
Unit No. 602, 6th Floor
59 M. Vada (R.O.W.) Road
New Town, Paschim
Kolkata - 700 156

Tel : 033 6622 7123
Fax : 033 6622 7193/7199
www.bayercropscience.com

Registered Office:
Olympia, First Floor,
Central Avenue,
Hiranandani Gardens,
Powai, Mumbai - 400 076

Bayer CropScience Limited
Kolkata

6. A copy of the Bill raised by M/s. Gopal Fertilizer is extracted below :-



GOPAL FERTILIZER

Prop. Uttam Mondal

FERTILIZER PESTICIDES SEEDS SPRAYER & EQUIPMENTS DEALER

KALANDARBAGH ♦ LALBAGH ♦ P.S + P.O. + DIST. MURSHIDABAD ♦ W.B.

Mobile : 9434070288

Ref. No.

Date

BILL FOR COMMISSION

80000003360
2403703987

Billed to :
Bayer Crop Science Ltd.
"Eco Space" Bldg. No.3A
Unit No. 502, 5th Floor
59M Wide (R.O.W) Road, New Town
Rajarhat, Kolkata – 700 156

Particulars	Qty (kg/MT)	Rate (Kg/MT)	Value (₹)
Commission charges against supply of Hybrid seeds to West Bengal State Seed Corporation Ltd. (As per Annexure – 1 of the agreement against payment realized)	42000kg	45/-	18,90,000/-
Total (Round off)	Service Tax 12.36		2,33,604/-
Value in Words : Rupees twenty one lakhs twenty three thousand six hundred four only			21,23,604/-

Service Tax Code (Registration No) : AIDPM6758LSD001
Taxable services - Business auxiliary service

E. & O.E

For Gopal Fertilizer

Uttam Mondal,

GOPAL FERTILIZER
Prop. UTTAM MONDAL
Kalandarbagh, Lalbagh
P.S. + P.O. + Dist. Murshidabad - 742114

RECEIVED
18 DEC 2013

Bayer Crop Science Limited
Kolkata

7. From the letter dated 31.07.2013 it is seen that the transaction between the Appellant and the WBSSCL is that of sale of hybrid seeds. Therefore, even if it is taken as inclusive of taxes, the taxes here would refer to VAT and not to Service Tax. If the activity of the Appellant would amount to service, the Appellant would be eligible to take the Cenvat of the Service Tax paid to the commission agent. It is undisputed that no Service Tax is required to be paid when the product being dealt is that of agricultural product. The lower authorities, are in error in treating the sale transaction of the appellant as service transaction. There is nothing to indicate that the Appellant has passed on the Service Tax burden to the buyer WBSSCL. Therefore, I set aside the impugned order and allow the appeal.

8. I direct the Adjudicating authority to grant the refund of Rs.2,41,947/- along with interest at the applicable rate. The interest would be payable from 91st day of filing of this refund claim till the time the entire refund is made available to the Appellant along with interest. As the refund claim has been pending for more than 8 years, I direct this process to be completed within 8 weeks from the date of receipt of this order.

9. The Appeal stands allowed thus.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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