

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. 1

SERVICE TAX APPEAL NO. 50031 OF 2019

[Arising out of Order-in-Appeal No.1073-1074(CRM)ST/JDR/2018 dated 27.09.2018 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur]

M/s. Shree Balaji Agro Services
18KM Stone, NH 15, Village Khara,
Bikaner (Raj.)

..... Appellant

Versus

Commissioner of CGST, Jodhpur

..... Respondent

With

SERVICE TAX APPEAL NO. 50032 OF 2019

[[Arising out of Order-in-Appeal No.1073-1074(CRM)ST/JDR/2018 dated 27.09.2018 passed by the Commissioner (Appeals), CGST & Service Tax, Jodhpur (Raj.)]

M/s. Shree Kishan Agro Services
18KM Stone, NH 15, Village Khara,
Bikaner (Raj.)

..... Appellant

Versus

Commissioner of CGST, Jodhpur

..... Respondent

APPEARANCE:

Shri Ajay K. Mishra, Advocate and Ms. Sukriti, Chartered Accountant for the Appellant

Shri Anand Narayan, Authorized Representative for the Department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing:30.01.2025
Date of Decision:05.05.2025

FINAL ORDER No's. 50582-50583/2025

HEMAMBIKA R. PRIYA:

The present two appeal arises out of the common Order-in-Appeal No. 1073-74(CRM)ST/JDR/2018 dated 27.09.2018 passed by Commissioner (Appeals), Service Tax & CGST, Jaipur against M/s. Balaji Agro Service and M/s Kishan Agro Services¹.

2. The facts of the case in brief are that the appellants were engaged in providing 'Storage & Warehousing' services for "agricultural produce" and had been additionally charging for 'cleaning & grading' as well as 'handling' of consignment in the warehouse, which was required in a few special cases. The consideration received against storage, cleaning & grading and handling were accounted for as 'warehouse rent'; 'cleaning & grading and 'handling & transportation', respectively. For the period up to 30.06.2012, the activity of 'storage & warehousing' of agricultural produce was exempted from the levy of service tax being excluded from the definition of "Storage and Warehousing" service as per clause (102) of Section 65 of the Finance Act, 1994. The appellants were of the opinion that the said two activities of agricultural produce was exempted as it was ancillary to the main service. The Department formed an opinion that as the appellant

1. the Appellants

were charging separately for the three services hence the same were taxable as Cargo Handling Services and Business Auxiliary Services. Thereafter, show cause notice dated 27.12.2016 was issued for the period 01.04.2011 to 31.03.2016 demanding service tax on the said activities. The Assistant Commissioner vide order-in-original dated 14.10.2017 confirmed the demand on clearing and grading, handling and transportation charges. The impugned order upheld the said order-in-original. Hence, the present appeal.

3. Learned Counsel for the appellant submitted that the activity of "cleaning & grading" in relation to agricultural produce is exempted. He stated that the adjudicating authorities have held that the cleaning and grading charges collected by the appellants are taxable under Business Auxiliary Services taxable under Section 65 (105) (zzb) of the Act till 30.06.2012 and thereafter from 01.07.2012 being 'service' as defined under Section 65B (44) of the Act. In this context, learned counsel relied on the CBEC Circular No. 143/12/2011-S.T., dated 26-5-2011 which clarifies that the processing of agricultural produce for, or on behalf of client, in relation to agriculture cannot be taxed under Business Auxiliary Service being exempted vide Notification 14/2004-S.T.' (as amended) dated 10th September, 2004. He drew attention to the Tribunal decision in **M. L. Agro Products Ltd. Vs CCE & ST, Nellore²**, which had allowed the appeal filed by the appellant by taking the aforesaid view. Learned Counsel submitted that this decision was upheld by the Supreme Court in **Commissioner vs.**

2. 2017 (6) G.S.T.L. 94 (Tri. Hyd.)

M.L. Agro Products Ltd.³. For the period 01.07.2012 onwards, learned counsel contended that entry no. 30 (i) (a) of Notification No. 25/2012-ST dated 20.06.2012 exempts services by way of carrying out "any intermediate production process as job work not amounting to manufacture or production in relation to agriculture"; which covers the 'cleaning & grading activity' involved in the present case.

4. As regard the activity of "Cargo Handling Agency", learned Counsel submitted that such activity in relation to agricultural produce cannot be taxed, as the same was exempted under notification no. 10/2002-ST dated 01.08.2002. He contended that the adjudicating authorities had wrongly denied the benefit of Notification No. 10/2002-ST dated 01.08.2002 in respect of receipts booked against the activity of 'handling & transportation' of agricultural produce. The said order has held the same to be taxable under the 'Cargo Handling Agency Service' on the ground that exemption pertains to warehousing of agricultural produce in cold storage alone, as the words used are "cargo handling agency in relation to agricultural produce or goods intended to be stored in a cold storage". Therefore, exemption applies to cargo handling agency services in relation to agricultural produce as well as in respect of the goods intended to be stored in cold storage. Learned Counsel further stated that the principal activity of 'storage & warehousing' services in respect of agricultural produce have been held to be exempted. The impugned services of

3. 2018 (16) GSTL J76(Supreme Court)

'cleaning & grading' and handling & transportation' were not provided on standalone basis, but had been performed in a few instances which required such services for storage of agricultural produce. Hence, the same was classifiable along with the principal activity of storage of agriculture produce, as per Section 65A of the Finance Act, 1994 for classification of composite services consisting of a combination of different services which is liable to be classified based on the service which gives them their essential character. Learned Counsel also relied on the C.B.E.C. Letter No. 334/4/2006 dated 28.02.2006 which clarified that a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service and accordingly classified.

5. In the above context, learned Counsel submitted that the services of cleaning & grading' and 'handling & transportation' services' are bundled services with 'storage and warehousing' service and therefore, in view of the provision contained in sub-section (3)(a) of Section 66F, both the allied services of 'cleaning & grading' and 'handling & transportation', being naturally bundled should be treated as one single service which gave its essential characteristics.

6. As regards the invocation of the extended period, learned Counsel stated that as the case did not involve any of the ingredients of proviso to Section 73 such as suppression of facts

with intent to evade payment of tax, hence, the 'extended period of limitation not applicable.

7. Learned Authorised Representative submitted that the appellants were engaged in providing renting of godown/warehouse for use of furtherance of business or commerce to various firms/persons but not paying service tax. He stated that the godowns/warehouses were clearly covered under the meaning of immovable property as enumerated in Explanation 1 of Section 65(90a) of the Act. Learned Authorised Representative stated that during examination of records, the Department noted that consideration has been received on account of "Warehouse Rent", 'Handling and Transportation' and 'cleaning & grading'. Learned Authorised Representative stated that there were three distinct services being provided by the appellants viz., 'Renting of Storage Area', 'Cargo Handling Service' and BAS in respect of cleaning and grading service. Hence, the contention of the appellants that there were exemptions were not acceptable.

8. We have heard the learned Counsel for the appellants and the learned authorised representative for the Department.

9. We note that the appellant was engaged in the provision 'Storage and Warehousing services' for agricultural produce and, in addition, charged for cleaning and grading as well as handling of consignments in the warehouse. The appellants had also received Legal Consultancy Service. In the instant case, we note that it is an admitted fact that the department, based on intelligence sought

information from the appellants regarding the nature of their activities. Based on the said information, the Department formed an opinion that the appellants were renting godowns/warehouse for commercial purposes and furtherance of business. In addition, the appellants were also providing handling and transportation services, cleaning and grading services to their clients. The Department also noted that the appellants were making payment for receiving legal services.

10. In order to appreciate the submissions of the learned Counsel and the learned Authorised Representative, it would be relevant to examine 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 manufacture of excisable goods.”

11. The Department has held that the cleaning and grading of agricultural produce is covered under production and processing of goods. In this context, 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. Notification No: 14/2004-ST dated 10.09.2004 is reproduced hereinafter for ease of reference:-

"Notification No. 14/2004-Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable service provided to a client by a commercial concern in relation to the business auxiliary service, in so far as it relates to,-

(a) procurement of goods or services, which are inputs for the client;

(b) production of goods on behalf of the client;

(c) provision of service on behalf of the client; or

(d) a service incidental or auxiliary to any activity specified in (a) to (c) above,

from the whole of the service tax leviable thereon under section 66 of the said Finance Act:

Provided that nothing in this notification shall apply to,-

(i) a factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(ii) a company established by or under the Companies Act, 1956 (1 of 1956);

(iii) a partnership firm, whether registered or not registered;

(iv) a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India;

(v) a co-operative society established by or under any law;

(vi) a corporation established by or under any law; or
 (vii) a body corporate established by or under any law, unless such factory, company, partnership firm, society, co-operative society, corporation or body corporate, as the case may be, **provides any business auxiliary service in respect of any activity specified in (a) to (d) above in relation to agriculture, printing, textile processing or education.**"

11.1 In the instant case, it is an admitted fact that the cleaning and grading was carried out on agriculture produce. Further, this Notification was amended by Notification by 19/2005-ST dated 07.06.2005 wherein the following was substituted:-

"Notification No. 19/2005-Service Tax

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that the following notifications of the Government of India in the Ministry of Finance (Department of Revenue) as specified in column (2) of the Table below, shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely:-

Notification No	Amendment	
14/2004-Service Tax, dated 10th September, 2004 [G.S.R. 588 (E), dated the 10 th September, 2004]	<i>In the said notification,-</i>	
	(i)	<i>in clause (b), for the words "production of goods on behalf of the</i>

		<i>client;”, the words “production or processing of goods for, or on behalf of, the client;” shall be substituted;</i>
	<i>(ii)</i>	<i>for the words “from the whole of the service tax”, the words “and provided in relation to agriculture, printing, textile processing or education, from the whole of service tax” shall be substituted;</i>
	<i>(iii)</i>	<i>the proviso shall be omitted.</i>

2. This notification shall come into force on the 16th day of June, 2005.

F. No. B1/6/2005-TRU”

12. It is clear that consequent to the aforesaid amendment, production or processing of goods for, or on behalf of, the client in relation to agriculture continued to be exempted, which is the case in this present appeal.

13. We also note that our aforesaid conclusion is supported by the CBIC Circular No. 143/12/2011 dated 26/5.2011 which clarified that the agricultural produce when subject to processing, if retains 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'.

14. In the instant case, the appellants were providing cleaning and grading services for few of the agricultural products which were warehoused by them for their clients which did not change the essential characteristics of the agricultural product stored /warehoused by the appellant. Consequently, the activity has to be considered to be in relation to the agriculture and is exempted from payment of service tax for the period upto 30.06.2012. In this context, we draw support from Hon'ble Supreme Court's judgment in **M.L. Agro Products Ltd.**, wherein the Apex Court 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.

15. As regards the period from 01.07.2012 the negative list under section 66D clause (v) of the Act exempts the entire gamut of services related to agricultural produce.

16. In view of the above discussions, we hold that the activity of cleaning and grading carried out by the appellants stood exempted for both pre and post negative period.

17. As regards the issue of the demand confirmed for handling and transportation charges, we hold that for pre negative list period, the discussion above squarely applies to the present activity as well, as the same is in relation to storage of agricultural

produce. The impugned order has denied the benefit of the Notification 10/2002 dated 1.08.2002 holding that it exempts agricultural produce meant for cold storage. However, that would restrict the benefit being extended to all activities related to agricultural produce. A close reading of the said notification reveals that it 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. Cargo Handling Service is defined in Circular No. B11/1/2002-TRU, dated 01-08-2002 as services of transporting coupled with loading, unloading, packing, unpacking if those are done by the authorities as that of Container Corporation of India, Airport Authority of India, Inland Container Depot, Container Freight Stations etc. Clearly, the appellant herein are not covered by the aforesaid definition.

18. We also take note of the departmental Circular no. B11/1/2002 -TRU dated 1.08.2002 which 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.

19. In view thereof, we are of the opinion that the handling and transport of agricultural produce was not taxable even prior 1.07.2012. This activity is also stood exempted from levy of service tax for the period 01.07.2012.

20. We find support from the Tribunal decision dated 10.01.2025 in the case of **Shree Ram Agro Services vs. Commissioner, CGST, Jodhpur**, where on identical issues the Tribunal held that cleaning and grading, handling and transportation of agricultural produce constitute a composite service even if it consists of more than one service as the guiding principle was to identify the essential feature of the transaction.

21. We now come to the issue of payment of service tax on legal fees paid during the years 2012-13 to 2015-16. In this context, we note that as per Notification No.30/2012-ST dated 20.06.2012 legal service provided by any person as represented to any business entity the service tax is liable to be paid by the Recipient of the Service. The appellants being a business entity were liable to pay service tax on such legal consultancy charges on reverse charge basis. In view of the above, we uphold the demand on such legal fees.

22. The extended period cannot be sustained as the department has not been able to establish any intent to evade by the appellant, as has been consistently held in several judgments of the Supreme Court⁴ and the Delhi High Court⁵.

4. (i) Pushpam Pharmaceuticals Company vs. Commissioner of Central Excise, Bombay (1995 (78) E.L.T 401 (SC)).

(ii) Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut (2005(188)E.L.T. 149(S.C.)

5. Bharat Hotels Ltd. vs. Commissioner of Central Excise, (Adjudication) 2018 (12) G.S.T.L. 368 (Del.)

23. In view of the above discussions, we set aside the demand on 'cleaning and grading' services and Cargo Handling Services. However, the demand of service tax on legal fees is upheld for the normal period only. The penalties are also set aside. Accordingly, the appeals are allowed to the extent indicated above and the impugned order, consequently, stands modified.

(Order pronounced in the open Court on 05/05/2025)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Archana