

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
HYDERABAD**

Division Bench – Court No. – I

**Service Tax Appeal No. 30423 of 2018**

(Arising out of Order-in- Appeal No.GUN-EXCUS-000-APP-0186-17-18 dt.31.01.2018  
passed by Commissioner of Central Tax & Customs (Appeals), Guntur)

**Commissioner of Central Tax  
Guntur - GST**

PB No.331, CR Building, Kannavarithota,  
Guntur, Andhra Pradesh – 522 004

.....Appellant

*VERSUS*

**M/s Premier Tobacco Packers**

Karedu, Near Singarayakonda, NH-5,  
PB No.1, Prakasam Dist., AP – 523 101

.....Respondent

**Appearance:**

Shri K. Sreenivasa Reddy, AR for the Appellant.  
Shri C.S. Srinivas, Consultant for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)  
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30159/2026**

Date of Hearing: 25.11.2025  
Date of Decision: 13.03.2026

**[Order per: ANGAD PRASAD]**

The Department is in appeal against OIA dt.31.01.2018, whereby, the Commissioner (Appeals) has set aside the order of the adjudicating authority confirming the demand of service tax of Rs.1,66,98,271/- and penalties imposed on M/s Premier Tobacco Packers (hereinafter referred to as the Respondent) (impugned order).

2. The brief facts of the case are that the respondents are in the business of trading in tobacco and are also engaged in the activity of threshing and re-drying of tobacco leaves on job work basis. The department noticed that the respondents failed to discharge service tax liability on the job work

charges received from their customers, which would fall under the category of 'Business Auxiliary Services' (BAS) and issued SCN proposing demand towards BAS along with interest and imposition of penalty. On adjudication, the adjudicating authority, vide OIO dt.21.12.2016, confirmed the demand along with interest and imposed penalties. Aggrieved by the same, the Respondents filed an appeal before the Commissioner (Appeals), who set aside the order of the adjudicating authority.

3. Learned AR for the department has submitted that the main issue involved in the present case is the liability of service tax on BAS provided by the respondents in connection with the process undertaken in relation to cured/seasoned tobacco. He has further submitted that tobacco is grown by the farmers who are termed as Growers and primarily seasoned which is called 'curing' in Barns located at their agricultural fields after cutting and threshing. The seasoned/cured tobacco is brought to the auction platforms designated by the Tobacco Board, in the form of Bales. There the Buyers/Exporters purchase the Tobacco on the auction platforms with the mediation of the Tobacco Board. For this the Tobacco Board also charges auction charges from both the growers and Buyers, along with other charges under Tobacco Board Act. These buyers/exporters, whoever purchased the 'cured tobacco' bring it to their respective godowns. According to the demand and quality lying with them, the buyers/ exporters get their product processed by the respondent or similar industries. These companies/ firms come in to picture only after tobacco auctions are planned and conducted by the Tobacco Board. Thereby, it is clear that the respondent company has no nexus with growing, harvesting, seasoning of tobacco at primary stage. The claim made by the respondent that their process is in relation to Agriculture is not tenable and the charges collected by them attract Service Tax under BAS.

4. He has further submitted that the processing done in the respondent's factory is one of the processes carried out for cigarette manufacturing. The Board's Circular No.143/12/2011-ST, dated 26.05.2011 is not applicable to the instant case as the said Circular was issued in the context of processing of tobacco involving threshing and drying of tobacco leaves fall within the meaning of expression in relation to agriculture appearing in Notification No. 14/2004-ST as amended. It clarifies that, "Client processing which falls

under Business Auxiliary Service undertaken on primary agricultural produces namely tobacco or raw cashew does not result in any change in their essential character of tobacco. In view of the above, the process of threshing and drying of tobacco leaves and thereafter packing the same are covered by the expression "processing of goods, for or on behalf of the client and provided in relation to agriculture" appearing in the said Notification.

5. He has also submitted that to determine whether the facts are in consonance with this circular, it has to be seen whether the tobacco processed by the respondent is "primary agricultural produce or not?" and whether the processes undertaken by them are "threshing and drying or not?" From the 'flow chart of tobacco process available in the website [www.suncotobacco.com/processing/php](http://www.suncotobacco.com/processing/php), it is clear that after harvesting, tobacco goes through the process of curing and fermentation. In fact, flue-cured Virginia tobacco is the principal type grown in Andhra Pradesh. Hence, it will be difficult to hold that what comes to the factory of the Respondent is primary agriculture produce. There is considerable value addition by the service being provided by the Respondent and the consideration received for undertaking the said service with the involvement of large machinery and labour. The product will stabilize after threshing and the shelf life of tobacco will increase. In the absence of these processes the object of Virginia tobacco cultivation will remain incomplete and gets defeated and therefore, the entire threshing operation can be technically called Post Harvest operation of Virginia Tobacco cultivation for quality control and pre-shipment inspection. As regards the processes tobacco undergoes, the circular refers to two processes "threshing and drying". The normal dictionary meaning of threshing is "to separate grains of rice, wheat etc. from the rest of plant using a machine or especially in the past, by hitting it with a special tool, (Oxford Advanced Learners Dictionary New 7th Edition).

6. On the issue of whether the impugned activity undertaken by the respondents, who are not cultivators will make it out of purview of 'agriculture produce' or not, he has submitted that in terms of the Service Tax (Removal of Difficulty) Order, 2002, which come into force on the 16th day of August, 2002 it is clarified that, for the purposes of clause (87) of Section 65 of the said Act, the expression "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 make it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane jiggery, raw vegetable fibres such as cotton, flax, jute etc. indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food, processed tobacco. As brought out above, there are several processes the impugned goods have undergone and hence, the goods in question cannot be termed as unmanufactured product. It is settled law that there is distinction between manufactured goods and processed goods. The aspect of agriculture produce differs from the commercial crops like cotton, tobacco, turmeric, sugar cane, etc. Even in the category of commercial crops, tobacco is distinct from the others in terms of identity, character & use. The goods in question i.e. the processed tobacco are used as an input for the manufacture of cigarettes in India and outside India. In India to dissuade public from smoking cigarette and wean away from consumption of tobacco products, the tobacco products are charged at very high rate of taxes. It appears that the same treatment has to be meted out to the precursor product of cigarettes.

7. In view of the above, he has submitted that the Departmental contentions may be allowed and the Order-in-Appeal passed by the Commissioner (Appeals) may be set aside, in the interest of justice.

8. Learned Advocate for the respondent has submitted that the issue is squarely covered by the decision of the Tribunal, vide Common Order No. A/30302-30350/2017 dt.22.02.2017, in the case of Green Leaf Tobacco Threshers Ltd and others Vs CCE & ST, Guntur, wherein, the demand of service tax on BAS has been set aside and the appeals filed by the appellants were allowed. Against this order, the Department went on appeal before the Hon'ble Supreme Court, whereby the Hon'ble Supreme Court has dismissed the appeals as reported in [2018 (18) GSTL J38 (SC)]. In view of the above, the respondent has submitted that the present appeal filed by the department is liable to be dismissed.

9. Heard both sides and perused the records.

10. The short issue that arises for consideration is whether further processing, drying and packing of tobacco leaves undertaken on job work basis amounts to 'Business Auxiliary Service' or whether the same is processing of agricultural produce not liable to service tax. The definition of 'agricultural produce' under the Service Tax (Removal of Difficulty) Order, 2002, clarifies that agricultural produce includes produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator, which does not alter its essential characteristics but make it only marketable. This issue came up for consideration before this Bench in Green Leaf Tobacco Threshers Ltd and others Vs CCE & ST, Guntur (supra), wherein, it was held that processing and drying of tobacco leaves do not result in manufacture of any new product. The essential characteristic of tobacco remains unchanged. The activity is in relation to agricultural produce and such activity is not liable to service tax under BAS. In this regard, the relevant para of the order is cited below for ease of reference.

*"5.2 It is seen that as per Notification No.14/2004-ST, BAS in respect of inter alia, 'production of goods on behalf of client', inter alia 'in relation to agriculture' is exempted from service tax liability. This exemption got further broadbanded vide Notification No.19/2005 dt.07.06.2005 as a result of which such BAS in respect of 'production of processing of goods for, or on behalf of the client' was exempted. Board's circular No.143/12/2011 had, in the wake of representations, clarified that the process of threshing and drying of tobacco undertaken for, or on behalf of the clients by the processing units are covered by the expression 'processing of goods for, or on behalf of, the client... and provided in relation to agriculture....' Appearing in the Notification No.14/2004-ST (as amended) dated 10.09.2004. We further note that product of agriculture has been defined by the Hon'ble Supreme Court in the case of CIT Vs Cynamid India Ltd (supra). Here, dictionary meaning of 'agricultural product' was also discussed. Accordingly, tobacco and these activities come under the product of agriculture. In the case of Tasty Bite Eatables Ltd (supra), the issue was regarding the preparation of vegetables, fruits, processing the same packing in consumer packs for their clients. That was not considered as business activity. Relevant para 5.1 of the Tribunal's decision is reproduced below: -*

*5.1 The above said clarification would squarely apply in the facts of this case as it is undisputed that appellant is undertaking the processing of vegetables on behalf of their client. It is settled law that revenue officers cannot argue against the board's circular. In the case in hand, the first appellate authority as well as the authorized representative of the Revenue are arguing against the board's clarification as reproduced hereinabove. We do not have any hesitation to hold that such arguments put forth by the departmental representative needs to be dismissed. In our view, the activity of processing the vegetables by the appellant will be in relation*

*to agriculture hence not liable to service tax under business auxiliary services.*

5.3 *The Ministry of Agriculture, Department of Agriculture and Co-operation has clarified in letter dt.20.10.2010 as under:-*

*Directorate of Marketing and Inspection, Ministry of Agriculture, Government of India, deals with only food and agricultural commodities. It does not deal with industrial commodities. The grading of tobacco by the Directorate of Marketing and Inspection is purely Agricultural quality control operations for facilitation exports. The certification is done only after removing unwanted/not useful material from the tobacco leaf as per the standard specifications. Here the product form will not change. Only the shape of the leaf will change. There are no chemical changes involved. The product will stabilize after threshing and the shelf life of tobacco will increase. In the absence of these processes, the object of Virginia tobacco cultivation will remain incomplete and gets defeated. After threshing also the tobacco is still called as manufactured tobacco only. Therefore the entire threshing operation can be technically called Post Harvest Operations and Virginia Tobacco cultivation for quality control and pre-shipment inspection.*

5.4 *In view of the above, we are of the view that the activity of the assessee is in relation to the agriculture and not subject to service tax as a Business Auxiliary Service even before or after the negative list was issued on 01.07.2012. Hence, we find no merit in the impugned orders where the said activity of threshing and redrying was brought under BAS. On this issue, the concerned assessee-appellants will get the relief. By implication, Department's appeals against the relevant impugned orders which have set aside demands made by original authorities on BAS will require to be dismissed."*

11. We further note that the said decision has attained finality, as the appeals filed by the Revenue before the Hon'ble Supreme Court, were dismissed. Once the Coordinate Bench has taken a view on an identical set of facts and the same has been affirmed by the Hon'ble Apex Court, judicial discipline mandates that we follow the same.

12. It is a settled principle that when an issue is squarely covered by a binding precedence, the same must be followed unless distinguished on facts. The department has not brought on record any distinguishing features in the present case. We also find that the processing undertaken by the respondents does not bring into existence any new distinct commodity. The tobacco continues to remain tobacco. The activity merely stabilizes and prepares it for storage and export. Therefore, the same cannot be brought under BAS.

13. In view of the binding precedence of this Bench in the case of Green Leaf Tobacco Threshers Ltd and others Vs CCE & ST, Guntur (supra) and in

the absence of any distinguishing facts, we find no infirmity in the impugned OIA. Therefore, the appeal filed by the department is devoid of merit and the same is liable to be dismissed.

14. Accordingly, the appeal is dismissed.

(Pronounced in the Open Court on 13.03.2026)

**(A.K. JYOTISHI)**  
**MEMBER (TECHNICAL)**

**(ANGAD PRASAD)**  
**MEMBER (JUDICIAL)**