CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 251 of 2012

(Arising out of **Order-in-Original** (Denovo) No.14/2011 – S.Tax dated 31.10.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

The Regional Manager, .. **APPELLANT**
Tobacco Board
H.No.CA-5673-C,
14th Main,
Near Yoganarasimha
Swamy Temple,
Vijayanagar,
Mysore – 570 003.

VERSUS

Commissioner of Central Excise .. **RESPONDENT**
And Service Tax
Guntur
P.B.No.331,
C.R. Building,
Kannavari Thota,
Guntur,
Andhra Pradesh – 522 004.

WITH

Service Tax Appeal No. 624 of 2012

(Arising out of **Order-in-Original** (Denovo) No.14/2011 – S.Tax dated 31.10.2011 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Commissioner of Central Excise .. **APPELLANT**
And Service Tax
Guntur
P.B.No.331,
C.R. Building,
Kannavari Thota,
Guntur,
Andhra Pradesh – 522 004.

VERSUS

Tobacco Board .. **RESPONDENT**
H.No.CA-5673-C,
14th Main,
Near Yoganarasimha
Swamy Temple,
Vijayanagar,
Mysore – 570 003.

AND

Service Tax Appeal No. 2145 of 2012

(Arising out of **Order-in-Original** No.48/2012-S.Tax (Commnr.) dated 30.03.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Tobacco Board .. **APPELLANT**
H.No.CA-5673-C,
14th Main,
Near Yoganarasimha
Swamy Temple,

Vijayanagar,
Mysore – 570 003.

VERSUS

Commissioner of Central Excise And Service Tax Guntur .. **RESPONDENT**
P.B.No.331,
C.R. Building,
Kannavari Thota,
Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:
Shri B. Venugopal, Advocate for the Assessee.
Shri A. Rangadham, Authorized Representative for the Department.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30161-30163/2026

Date of Hearing: 26.11.2025
Date of Decision: 13.03.2026

[ORDER PER: ANGAD PRASAD]

Appeal No. ST/251 & 642/2012:

M/s Tobacco Board, Vijayanagar, Mysore (hereinafter called as appellant) has filed this appeal against Order-in-Original dated 24.03.2009/ 26.03.2009 (Denovo No. 14/2001) dated 31.10.2011 passed by the Commissioner (Appeals), Guntur where the demand re-quantified amounting to Rs. 2,62,22,286/- under the provision of Section 73(1) of the Finance Act 1994 along with interest under Section 75 of the Act and against penalty imposed under Section 76 and 77 of the Act. Whereas, Department filed an appeal against the same Order-in-Original for non-imposition of penalty under Section 78 of the Finance Act 1994.

2. The facts in brief are that the appellants are engaged in the auctioning of tobacco leaves through their 10 auction platforms situated in Mysore & Hassan Districts of Karnataka for which the appellants are collecting service

charges from the growers as well as buyers of the tobacco. During the period 01.05.2006 to 31.03.2008 in terms of Section 65(105)(zzzr) of the Finance Act under the category of 'auction of property' service as defined under Section 65(7a) the demand was made.

3. A Show Cause Notice dated 19.12.2008 was issued against the appellant and they had filed a reply and contested. After due process of law, Learned Commissioner of Service Tax, Mysore vide Order-in-Original dated 24.03.2009/26.03.2009 rejected the contentions of the appellant and confirmed the proposal issued by the Department except to impose penalty under Section 76 of the Act.

4. The Appellant filed an appeal (Appeal No. ST/369 of 2009) against the Order-in-Original before the CESTAT, Bangalore on various grounds, which was disposed of vide Final Order No. 874/2010 set aside the impugned order and remanded the case for fresh adjudication.

5. The denovo proceedings were taken up by the Commissioner of Customs, Central Excise & Service Tax, Guntur, as by that time, the Appellant has obtained Centralised Registration. After considering the various submissions Learned Commissioner passed Order-in-Original (Denovo dated 31.10.2011) and confirmed the levy of Service tax at a re-quantified amount of Rs. 2,62,22,286/- under provisions of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act and also imposed penalties under Section 76 and 77 of the Act and dropped the penalty proposed under Section 78 by invoking Section 80 of the Act.

6. Being aggrieved by the above order, appellant has filed this appeal before the Tribunal.

7. Learned Counsel for the appellant submits that the appellant is a Statutory body established to regulate the production of Virginia tobacco and to operate an agricultural market yard to provide for the sale of tobacco by arranging auctions, in addition to making the best efforts to promote exports. The Commodity Board under the overall control of the Ministry of Commerce and Industry of Government of India. Learned Counsel for the appellant submits that the Tobacco Board is wholly on par with a regulated Agricultural Produce Market Committee, exclusively permitted to deal with Virginia tobacco. The principal function of the Appellant is to ensure that the growers are not exploited by intermediaries or money lenders and is also required to provide several facilities like providing the market infrastructure for the purchase and sale of tobacco by auction, unloading tobacco bales, arranging tobacco bales in auction hall for classification and grading, selling tobacco bales through e-auction and shifting tobacco bales from the auction hall to the godowns after completion of auction. Add-on facilities are providing rest houses to the growers and buyers, drinking water, parking of vehicles, etc. Therefore, the appellant was not engaged in any business activity except as a market facilitator. For providing all such infrastructure, the Board is collecting 2% fees (1% each from the buyer and the seller) and nothing else in terms of Section 14-A of the Act.

8. Learned Counsel for the appellant submits that the appellant is collecting fee as a statutory levy, such an activity performed by the Board under the provisions of law does not constitute provision of service to a person and, therefore, no service tax is leviable on such activities. In this reference, Learned Counsel for the appellant places reliance on CBEC Circular No. 89/7/2006-ST dated 18.12.2006.

9. Learned Counsel for the appellant submits that for carrying certain functions/activities and collect some statutorily prescribed fee as empowered under the Act, such fee cannot be construed in law as 'consideration' as defined in Explanation to Section 67 of the Finance Act, 1994. In this reference, Learned Counsel for the appellant has relied upon the following decisions:

- Commissioner of Central Excise and Service Tax, Ahmedabad-III Vs. Gujarat Industrial Development Corporation [2023 (5) Centax 171 (S.C.)]
- Rosmerta Technologies Ltd. Vs. Commissioner of Central Excise and Service Tax, LTU, Delhi [2023 (8) Centax 183 (Tri.-Chan)].
  [Affirmed by the Hon'ble Supreme Court as reported in Commissioner of Central Excise and Service Tax, LTU, Delhi Vs. Rosmerta Technologies Ltd - (2023) 8 Centax 184 (S.C.)]

10. Learned Counsel further submits that the appellant falls within the meaning of 'STATE' in terms of Article 12 of Part III of the Constitution of India and created by Statute to carry out governmental or quasi-governmental functions. Learned Counsel for the appellant submits that Tobacco Board is the 'State', and thereby Government and resultantly, no Service tax becomes payable since the Appellant is discharging the statutory duties. In this reference he relied on the following decisions:

- Electricity Board, Rajasthan v. Mohan Lal [1967 AIR 1857]
- U.P. Warehousing Corporation v. Vijai Narain (3 SCC 459)
- Som Prakash v. Union of India [1981 AIR 212, 1981 SCR (2) 111]
- Ramana Dayaram Shetty vs The International Airport
  [1979 AIR 1628]

11. Learned Counsel for the appellant submits that earlier to the enactment of the Tobacco Board Act, APMCs used to levy market fee on the tobacco. It means whatever the Tobacco Board is now doing was earlier done by the

APMCs in respect of tobacco. Thus, practically no difference could be drawn between the activity of the Tobacco Board and APMCs. In this reference, reliance is placed on the decision in the case of *ITC Limited Vs APMC and Others in Civil Appeal No.6453 of 2001 dated 24.1.2002*, wherein the Hon'ble Supreme Court held as follows:

> *"We are also not persuaded to agree with the submission of Dr. Singhvi that the Market Committee Act can still be operative and the Market fee could be levied by the Market Committee under the State Act for services provided by it on the principle of quid pro quo even if the Court comes to the conclusion that the Tobacco Board Act is a valid piece of legislation enacted by the Parliament and that Act also has made necessary provision for growing of tobacco as well as purchase and sale of tobacco. We are also unable to sustain the argument of Mr. Sanghi, learned senior counsel appearing for Krishi Mandi in the Madhya Pradesh batch of appeals, that the enquiry in the case should be whether the State legislature had the legislative competence to enact Market Committee Act under 28 of List II."*

12. Learned Counsel for the appellant further submits that as the Tobacco Board is wholly on par with the APMCs, whatever principle that would be applicable to APMCs would also be applicable to the Tobacco Board and no service tax is leviable on all kinds of fee collected by the Tobacco Board.

13. Learned Counsel for the appellant submits that authorisation fee collected from the traders for registering as a buyer under Regulation 13 of Tobacco Board (Auction) Amendment Regulations 1984 and the said amount is refundable in case the authorisation is refused. Being a registration fee for participating in the auction collected as mandated under the Act with regulations made thereunder, the same is not liable to Service tax for the reasons explained in the foregoing paras, both on merits and also on limitation. Learned Counsel for the appellant submits that a part of the demand under the impugned order is also hit by limitation as the extended

period of limitation cannot be invoked in this case, on the reason as stated below:

i) During the material period (May 2006 to Sep 2010), the Appellant carried a bona fide belief and continued to carry such belief that the activities performed by them are statutory and therefore outside the purview of Service tax.

ii) The controversy regarding the taxability was between the Ministry of Commerce and Industry and the Ministry of Finance vide Memorandum dated 14.08.2008 had clarified that only such statutory / sovereign duties, the fee collected for which is compulsory/ statuary and the same is deposited in the Government account would alone be not liable to Service Tax.

iii) The issue of taxability of activities of the appellant was under debate between the concerned Ministries and appellant was under a bona fide belief that no Service tax is liable to be paid, therefore, no any wilful suppression of facts regarding activities and intention to evade the payment of Service tax.

14. The demand in the present case for the period from 01.05.2006 to 31.03.2008 and the due date of filing of return i.e. 25.04.2008. Thus, the period of limitation will expire on 25.04.2009 and impugned show cause notice has been issued on 19.12.2008. Thus, the demand raised for the period 01.05.2006 to 19.12.2007 is barred by limitation. Learned Counsel for the appellant further submits that imposition of other penalties under Section 77 of the Act is not justified. It is a fit case for invoking the provision of Section 80 of the Act for dropping the penalties imposed against the appellant.

15. In Appeal No. ST/2145/2012 apart from above, the following additional grounds have also been taken. Further, the dispute in this appeal pertains to

the period from May 2006 to September 2010 and this appeal has been filed against Order-in-Original and Corrigendum dated 30.03.2012 & 23.05.2012 (impugned order).

16. The Appellant levy demurrage charges for delay in lifting of tobacco stocks stored in the godown in order to avoid blocking of godowns. This activity being related to storage and warehousing of goods and is correctly falls 'storage and warehousing' service as defined under Section 65(102) of the Finance Act, 1994 and reads as follows:

"'Storage and warehousing' includes storage and warehousing services for goods including liquids and gases <u>but does not include any service provided for storage of agricultural produce</u> or any service provided by a cold storage"

The Tobacco Board provides infrastructural facilities like storage or warehousing of Virginia tobacco brought by farmers for auctions in the auction platforms of the Board. The Virginia tobacco, which are meant for auction is a produce resulting from cultivation or plantation on which no processing is done and is unmanufactured tobacco, which is an 'agricultural produce' and thus goes out of the purview of *'Storage and warehousing'* service. The term 'agriculture produce' has been clarified by the Board at sl. no. 4 of Annexure III of the Order No. 1/2002-ST dated 01.08.2002, as follows:

4. Service provided in relation to agriculture produce and service provided by cold storage is outside the ambit of the levy. Doubts have been raised about the scope of term "agricultural produce". In order to clarify the scope of this term beyond doubts, an order has been issued under the power vested under section 95 of the Finance Act (see Order No. 1/2002-S.T., dated 1-8-2002). As clarified in the order,

the term agricultural produce would cover all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, and similar products. However, manufactured products such as sugar, edible oils, processed food etc. will not come under the purview of the term 'agricultural produce'."

Hence, the no service tax is applicable on the demurrage charges.

17. Learned Counsel for the appellant submits that appellant do not charge separately for short-term storage as the same included and is part of 'auction fee' charged to the farmer. Further, the as explained above, the demurrage charges are collected separately as penal fee for the delay in lifting of tobacco stocks stored and not for any provision of taxable service and do not find place in any category of 'taxable service' defined under Section 65 of the Act. Further, the demurrage charges are being penal in nature, the same do not qualify as 'consideration' as defined. Since the demurrage charges collected are not for provision of any taxable service, the same will not be liable for Service tax.

18. Learned Counsel for the appellant submits that the difference between financial records and ST-3 Returns are on account of no proper representation made by the Appellant, no findings were given on this count in the impugned order. The Appellant therefore prays to the Hon'ble Tribunal to remand this issue to the original authority with the liberty to the Appellant to produce the evidences to substantiate the claims made above.

19. Learned Counsel for the appellant submits that the rental income received was for storage of unmanufactured tobacco and paddy (from M/s Karnataka State Warehousing Corporation, Shimoga, Karnataka), which

would correctly fall within the category of 'storage and warehousing' service falling under Section 65(102) of the Finance Act, 1994. Since the said warehousing charges collected was for storage of agricultural produce, the same are not liable to Service tax for the reasons already submitted relating to demurrage charges.

20. Learned Counsel for the appellant further submits that Section 65(105)(zzzz) of the Finance Act, 1994 came into effect from 1.6.2007 to levy Service tax on 'renting of immovable property' for use in the course or furtherance of business or commerce'. This levy was subject to litigation from the very beginning and was under challenge before the Hon'ble High Court of Delhi in various Writ Petitions. The Hon'ble Delhi High Court while disposing the Writ Petitions, held that 'renting property per se does not amount to service as no value addition is involved and no Service tax is payable on the activity of renting' **[*Home Solutions Retail India Ltd. Vs. Union of India– 2009 (237) ELT 209 (Del)].*** Due to this, no Service tax was collected. This decision of the Delhi High Court was challenged by the Revenue in the Supreme Court and the Government also in Finance Act 2010, amending Section 65(105)(zzzz) retrospectively w.e.f. June 1, 2007 to explicitly include *"any other service in relation to such renting".* Thereafter the Hon'ble Supreme Court overruled the said decision as reported in **2011 (24) S.T.R. 129 (Del.)** by *affirming that renting commercial property inherently involves value addition* and also *upheld the retrospective amendment as a legitimate exercise by Parliament to cure a judicial lacuna.* During this entire period of the dispute battled in the courts, neither the tenants paid Service tax nor the Appellant collected Service tax.

21. Learned Counsel submits that while inserting the retrospective amendment to Section 65(105)(zzzz) of the Finance Act, 1994 in Finance Act, 2010 on 01.04.2010, the Government safe guarded the interest of tax payers for any act or omission with regard to offence under the Finance Act, 1994 in the Explanation appended thereto. The show cause notice in this case was issued on 20.11.2011, much after the retrospective amendment was inserted on 01.04.2010, which is reproduced below:

THE FINANCE ACT, 2010
[Act No. 14 of 2010]

[8th May, 2010]

An Act to give effect to the financial proposals of the Central Government for the financial year 2010-2011.

Be it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

77. Validation of action taken under sub-clause (zzzz) of clause (105) of Section 65. *— Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under sub-clause (zzzz) of clause (105) of section 65 of the Finance Act, 1994 (32 of 1994), at any time during the period commencing on and from the 1st day of June, 2007 and ending with the day, the Finance Bill, 2010 receives the assent of the President, shall be deemed to be and deemed always to have been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendment made in subclause (zzzz) of clause (105) of section 65, by sub-item (i) of item (h) of sub-clause (6) of clause (A) of section 76 of the Finance Act, 2010 had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, —*

(a) any action taken or anything done or omitted to be taken or done in relation to the levy and collection of service tax during the said period on the taxable service of renting of immovable property, shall be deemed to be and deemed always to have been, as validly taken or done or omitted to be done as if the said amendment had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for the levy and collection of such service tax and no enforcement shall be made by any court of any decree or order relating to such action taken or anything done or omitted to be done as if the said amendment had been in force at all material times;

(c) recovery shall be made of all such amounts of service tax, interest or penalty or fine or other charges which may not have been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded, as if the said amendment had been in force at all material times.

Explanation. — For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable had this amendment not come into force.

22. Learned Counsel for the appellant submits that in terms of the Explanation, *no act or omission shall be punishable as an offence in view of the retrospective amendment*, hence, any demand has to be for the normal period and therefore the demand beyond the normal period along with interest and penalty cannot be sustained.

23. Learned AR for the Department reiterates the findings recorded in the impugned order and further submits that the appellant provides infrastructure facilities such as auction halls, storage facilities and other amenities to growers and buyers and the fees collected for consideration for service rendered. Therefore, the activities are correctly classified as taxable services under the provision of Finance act 1994.

24. We have carefully considered rival submissions and perused the records.

25. The following issues are to be decided:

i) whether the auction fee collected by the Tobacco Board constitutes consideration for taxable service.

ii) whether storage of un-manufactured tobacco attracts service tax under the category of storage and warehousing service

iii) whether demurrage charges collected for delayed lifting of tobacco are liable to service tax

iv) whether the extended period of limitation is invokable

26. The Tobacco Board is a Statutory Authority created under the Tobacco Board Act 1975 for regulating production, marketing and export of Virginia

Tobacco. The activities carried out by the Board includes conducting tobacco auction, grading and classification of tobacco, facilitating marketing of tobacco and regulating growers and traders under the statutory provisions of the Act. For facilitating such auction and providing infrastructure, the Board collect auction fee @2% (1% from buyer and 1% from seller) as prescribed under the Statutory Regulations. Section 14A of the Tobacco Board Act 1975 provides that -

14-A(1) – "Where Virginia tobacco is sold at any auction platform established by the Board under this Act, it shall be competent for the Board or for any officer of the Board authorized by it in this behalf to levy fees, for the services rendered by the Board in relation to such sale, at such rate not exceeding two percent of the value of such tobacco as the Central Government may from time to time, by notification in the Official Gazette, specify;"

14-A(2) – "The fees levied under sub-section (1) shall be collected by the Board or such officer, equally form the seller of the Virginia tobacco and the purchaser of such tobacco, in such manner as may be prescribed."

27. Therefore, the auction fee collected by the Board is prescribed under the Statutory Provisions as above. Hon'ble Supreme Court in the case of CCE and ST Vs Gujarat Industrial Development Corporation [2023 (5) CENTEX 171 (SC)], wherein, it was held that statutory levies collected by statutory authorities in discharge of statutory obligation cannot be treated as consideration for service unless there is a clear element of commercial activity. Similarly, in the case of Rosmerta Technologies Ltd., Vs CCE and ST, LTU, Delhi [2023 (8) CENTEX 183 (Tri-Chandigarh)] which is affirmed by the Hon'ble Apex Court [2023 (8) CENTEX 184 (SC)], wherein, it was held that activities performed pursuant to statutory mandate do not constitute taxable service. Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samit Vs

Commissioner of Central Excise and Service Tax, Alwar [2022 (58) GSTL 129 (SC)], wherein, it was held that the sovereign/public authority under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government treasury, no service tax leviable on such activities. It is also held that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for the consideration, then in such cases, service tax would be leviable. The relevant para of the judgment is as follows:

> **6.** At the outset, it is required to be noted that the respective Market Committees are claiming exemption under the 2006 circular. The exemption circular issued by the Board reads as under :-
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> **Circular No. 89/7/2006, dated 18-12-2006 :-**
>
> "A number of sovereign/public authorities (*i.e.*, an agency constituted/set up by Government) perform certain functions/duties, which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant lows. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.
>
> A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.
>
> 2. The issue has been examined. The Board is of the view that the activities performed by the sovereign/public authorities under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provision of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/ public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.
>
> 3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."
>
> **7.** As per the exemption circular only such activities performed by the sovereign/public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning.

28. Applying the ratio of these judgments, we find that the Tobacco Board performs regulatory functions under the statute and the fee collected is a statutory levy. Hence, the auction fee cannot be treated as consideration for taxable service.

29. The next issue is storage and warehousing for which Learned Counsel for the appellant submits that un-manufactured tobacco is an agricultural produce and therefore storage of such goods is excluded from the scope of taxable service. Section 65(102) of the Finance Act define the word "storage and warehousing" as follows:

> "Storage and warehousing includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by cold storage"

Demand of service tax on rental income received was for storage of un-manufactured tobacco and paddy (from M/s Karnataka State Warehousing Corporation, Cimoga, Karnataka) is correctly falls within the category of storage and warehousing service falling under Section 65(102) of the Finance Act. Since, the said warehousing charges collected were for storage of agricultural produce. Therefore, not liable to service tax.

30. The term 'agricultural produce' has been clarified by the Board at serial no. 4 of Annexure III of the order no. 1/2002-ST dated 01.08.2002 as follows:

> *4. Service provided in relation to agriculture produce and service provided by cold storage is outside the ambit of the levy. Doubts have been raised about the scope of term "agricultural produce". In order to clarify the scope of this term beyond doubts, an order has been issued under the power vested under section 95 of the Finance Act*

(see Order No. 1/2002-S.T., dated 1-8-2002). As clarified in the order, the term agricultural produce would cover all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, and similar products. However, manufactured products such as sugar, edible oils, processed food etc. will not come under the purview of the term 'agricultural produce'."

Hence, the no service tax is applicable on the demurrage charges.

Therefore, statutory definition of storage and warehousing service excludes storage of agricultural produce. Therefore, activity undertaken by the appellant is outside the scope of taxable service. It is also important that demurrage charges are penal in nature and cannot be treated as consideration for any service. Therefore, no any service tax is applicable on the demurrage charges.

31. The demurrage charges collected by the appellant are in the nature of penalty charges for delaying in lifting goods, such penal charges cannot be treated as consideration for any service. The Tribunal in the case of South Eastern Coal Field Ltd., Vs CCE [2016 (42) STR 239 (Tri-Del)] held that penal charges cannot be treated as consideration for taxable service. Therefore, storage of un-manufactured and demurrage charges collected for delayed lifting of tobacco are not taxable.

32. Since, demand is not sustainable on merits in above mentioned services, hence no need to discuss invocation of extended period of limitation. Yet, the appellant acted under bonafide belief that the activities were not taxable, it is also important that the issue regarding taxability of statutory boards was under considerable doubts during the relevant period. Hon'ble

Supreme Court in the case of Uniflex Cables Ltd., Vs Commissioner of Central Excise, Surat-II [2011 (271) ELT 161] wherein, it was held that extended period cannot be invoked where the issue involved is interpretation of law. The relevant para of the judgment is as follows:

> **12.** When we take into consideration the aforesaid facts and also the fact that the Commissioner himself found that it is only a case of interpretational nature, in our considered opinion, no penalty could be and is liable to be imposed on the appellant herein.

33. In view of the above, we hold that statutory fee collected by the Tobacco Board is not consideration for service. Storage of un-manufactured tobacco is outside the scope of taxable service, demurrage charges are not taxable and extended period of limitation is not invokable. Therefore, party's appeal is liable to be allowed and the Department's appeal is liable to be dismissed.

34. Appeal Nos. ST/251/2012 & ST/2145/2012 are allowed with consequential reliefs, if any, in accordance with the law and Department Appeal No. ST/624/2012 is dismissed.

(Pronounced in the open court on 13.03.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

jaya