

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Service Tax Appeal No.40144 of 2014

(Arising out of Order-in-Appeal No.72/2013-(SLM) ST dated 21.03.2013 passed by Commissioner of Central Excise (Appeals), Salem]

**M/s.The Mettupalayam Agricultural Producers
Co-operative Marketing Society Ltd.(No.K-913)**
No.302, Municipal Girls Higher Secondary School Road,
Mettupalayam 641 302.

Appellant

VERSUS

The Commissioner of GST & Central Excise,
No.1, Foulks Compound, Anaimeedu,
Salem 636 001.

Respondent

APPEARANCE :

Shri M. Muthukumar, Consultant
For the Appellant

Shri Arul C. Durairaj, Superintendent (Authorized Representative)
For the Respondent

**CORAM : HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**DATE OF HEARING : 22.10.2021
DATE OF PRONOUNCEMENT :01.02.2022**

FINAL ORDER No. 40031 / 2022**PER : P. ANJANI KUMAR**

This appeal is directed against Order-in-Appeal No.72/2013 dated 21.03.2017 passed by Commissioner (Appeals) Salem.

2. The brief facts of the case are that appellant M/s. M/s.The Mettupalayam Agricultural Producers Co-operative Marketing Society Ltd. are engaged in conducting of auction of goods and property for a consideration. Revenue opined that this constitutes a taxable service under "Auctioneers' Service" and the appellants are required to pay the service tax to the tune of Rs.10,24,322/-. Show cause notice dt. 11.10.2011 was issued and it was confirmed vide OIO dated 05.06.2012 passed by Additional Commissioner, Salem. On appeal, filed by the appellant Learned Commissioner (Appeals) passed the impugned order.

3. Ld. Consultant Shri M. Muthukumar appearing on behalf of the appellant submits that they are a registered cooperative society and their principle activities comprise of arranging for and undertaking of purchase, storage, purchasing and marketing of the agricultural produce of their farmer members by arranging supply of quality seeds, fertilizers, pesticides and other farm equipments at competitive rates and they also assist farmers in processing, storing and marketing of agricultural produce. The appellants organize sale of agricultural produce of its members on a day to day basis through an open tender system wherein registered merchants quote price for each farmers' produce separately and the merchant quoting the maximum price is offered the merchandize.

4. Ld. Consultant submits that they are only facilitating the auction and actual auction would be carried out by the owners of the agricultural produce and prospective buyers; they have no role in fixing the sale price. They charge only a fixed percentage of commission / market fee at the prescribed rates. He submits that department wrongly concluded that their services conform to taxable service under section 65 (105) (zzzr) of Finance Act, 1994. He also submits that Notification No.MF (DR) No.1/2002-ST dated 1.8.2002 (issued under Section 95 of the Finance Act, 1994) defined agricultural produce to mean "any produce resulting from cultivation or plantation, on which either no further processing is done or such processing done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristic but make it only marketable and include all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggary, raw material fibres such as cotton, flax, jute etc. indigo, unmanufactured tobacco, rice, coffee and tea, but does not include manufactured products such as sugar, edible oils, processed foods, processed tobacco. He submits that prior to 01.07.2012 taxable services excluded the services provided in relation to cultivation of agriculture, services relating to agricultural produce, services relating to selling of agricultural produce or services provided by Agricultural Product Marketing Committee and status quo is maintained even after the introduction of negative list regime wherein clause (d) of Section 66D mentions services relating to agriculture or agricultural produce. He also relies upon Board's Circular No.157/8/2012-ST dated 27.04.2012.

5. Ld. Consultant submits that Ld. Commissioner has ignored the ratio laid down by the Hon'ble Apex Court in the case of *Dunlop India Ltd. Vs UOI - 1983 (13) ELT 1566* and the notification and circular cited above. He further submits that Ld. Commissioner has erred in passing an order holding their activity to be a taxable service attracting the legislative intent. He relies upon the Tribunal decision in *Dr. Lal Path Lab (P) Ltd. Vs CCE Ludhiana - 2006 (4) STR 527 (Tri.-Del.)*.

6. Ld. Consultant for the appellant also submits that this Bench vide Final Order No.40978/2019 dated 30.07.2019 have decided an identical issue in respect of *M/s.Attur Agricultural Producers Co-operative Marketing Society Ltd. Vs CCE Salem*.

7. Ld. A.R Shri Arul C. Durairaj appearing for the department reiterates the findings of OIO and OIA.

6. Heard both sides and perused the records of the case.

8. The brief issue which requires for consideration in the instant case is as to whether the appellants are rendering "Auctioneers' Service" in respect of their assistance rendered in the auctioneering of the agricultural produce by their member farmers. We have gone through the submissions of the appellant and the order of this Bench cited above. We find that this Bench vide Final Order cited above observed as under :

"10. We have considered the arguments on both sides and perused the records. As far as Auctioneers' Service is concerned, it can be levied on the service of auctioning. Undisputedly, in the present case, as recorded in the impugned order itself, the appellants are selling goods through tender and NOT through auctions. The Auctioneer's service

does not cover the service of tender. As far as the demand under BSS is concerned, evidently, the cooperative society is engaged in the business of lending money to their members and have been collecting some charge towards appraising the value of the pledged jewels in the process. This is not service rendered to anybody at all. It is true that, in turn, the appellant has been borrowing money from their bank but it does not mean that the appellant is supporting service of the bank. They are borrowing money from the bank on their account and in turn lending it to their members. In view of the above, we find that demands on both these counts are not sustainable and need to be set aside and we do so. Consequently, the demand of interest and penalties also deserve to be set aside. The impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.”

9. We find that the facts of the case are identical on four legs. We find that impugned order does not survive in view of the decision of this Bench cited above. We hold that the assistance rendered by the appellants to their member farmers in auctioning their agricultural produce does not tantamount to rendering any service classifiable under “Auctioneers’ Service”.

10. In view of the above, the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in court on 01.02.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

