

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

**Service Tax Appeal No. 42121 of 2016**

(Arising out of Order in Appeal No. CMB-CEX-000-APP-174-16 dated 04.08.2016 passed by the Commissioner of Service Tax (Appeals – I), Coimbatore)

**And**

**Service Tax Appeal No. 40031 of 2018**

(Arising out of Order in Appeal No. CMB-CEX-000-APP-256-17 dated 06.10.2017 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore)

**Glenworth Estate Ltd.**

New No. 30, Old No. 22, 2<sup>nd</sup> Floor  
Trinity Tower, Conron Smith Road  
Gopalapuram, Chennai – 600 086.

**Appellant**

Vs.

**Commissioner of GST & Central Excise**

6/7, A.T.D. Street, Race Course Road  
Coimbatore – 641 018.

**Respondent**

**APPEARANCE:**

Shri T.R. Ramesh, Advocate for the Appellant

Shri M. Selvakumar, Authorised Representative for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

**Hon'ble Shri Ajayan T.V., Member (Judicial)**

FINAL ORDER NO. 41262-41263/2025

Date of Hearing: 31.10.2025

Date of Decision: 10.11.2025

**Per M. Ajit Kumar,**

Both these appeals involve a common issue, hence they were heard together and disposed by this common order.

2. Appeal No. 42121/2016 is against of Order in Appeal No. 174/2016 dated 4.8.2016 and Appeal No. 40031/2018 is against Order in Appeal No 256/2017 dated 6.10.2017.

3. Brief facts of the case are that the appellant has paid commission to their foreign agents for sale of their black tea. It appeared to the department that the commission so paid attracts service tax as per section 65(44) and

65(19) of the Finance Act, 1994 read with Notification No. 30/2012 dated 20.6.2012. Hence Show Cause Notices were issued to demand service tax of Rs. 63,115/- and Rs.83,823/- respectively along with interest and for imposing penalties. After due process of law, the lower authorities confirmed the demand along with interest and imposed equal penalties. In appeal, the Ld. Commissioner (Appeals) rejected the appeals. Hence the present appeals.

4. The learned Advocate Shri T.R. Ramesh appeared for the appellant and Ld. Authorized Representative Shri M. Selvakumar appeared for the respondent.

4.1 Shri T.R. Ramesh the Ld. Counsel for the appellant submitted that the service rendered as Commission Agent is not liable for service tax since the same is provided for purchase or sale of agricultural produce, which is not subjected to Service Tax in terms of provision of Sec.65B(5) and Sec.66D(vii) of Finance Act, 1994. Further, just because the tea was allowed to wither and ferment in the air for some time before being subjected to heating process, the product would not lose the character of agricultural produce. The Ld. Counsel stated that it has been clarified vide CBEC Circular No. 143/12/2011-ST dated 26/05/2011 that agricultural produce viz. raw cashew which are subjected to roasting/drying, shelling and peeling would not alter the essential character of cashew. The said view applies to the impugned product viz, black tea as well. Even though this CBEC Circular was cited before the Lower Appellate Authority, no finding was given on its applicability. Further, the Lower Authority has erroneously held that the product is covered under Central Excise Tariff and accordingly, the same would cease to be an 'agricultural produce', which is wholly incorrect since Chapter 9 is covered under Section II of the Tariff under the Heading "Vegetable Products". By no stretch of imagination, can a vegetable product would cease to be an 'agricultural produce' just because there is an entry in the Central Excise Tariff for such product. The Ld. Counsel drew attention to

this Tribunal Final Order No.40350/2023 dated 26/05/2023, for the earlier period viz. 2007-08 to 2009, in the appellants own case holding that the processes involved in converting "green tea" into "black tea" does not alter the basic character of the tea as such and the same could not be considered as a non-agricultural product. Further, export commission paid to foreign commission agent would not be liable for service tax in India, since no service was provided in India, as held by the Hon'ble Tribunal in the case of **Genom Biotech Pvt. Ltd. vs. CE & Cus., Nasik** reported in 2016 (42) STR 918 (Tri.-Mum.). The appellant would also be entitled to the benefit of exemption Notification No.42/2012-ST inasmuch as the brokerage paid was less than 10% FOB value. The Ld. Counsel stated that the penalties imposed under Sec.76 and 77 of Finance Act, 1994 are wholly unsustainable since the issue involves taxability as well as the place of provision of service, besides exemption and in fact the Lower Authority has held that there was no suppression. Accordingly, the penalties imposed may be waived under Sec.80 of the Finance Act, 1994. Without prejudice, it is further submitted that whatever the tax payable by the appellant would have been availed as credit and also eligible for refund under Rule 5 of Cenvat Credit Rules, 2004. Accordingly, the exercise was revenue neutral. He hence prayed that the appeal may be allowed.

4.2 Shri M. Selvakumar the Ld. A.R. representing revenue has reiterated the findings of the OIO and the impugned order. He prayed that the appeals may be rejected.

5. We have gone through the appeals and have heard the rival parties. We find that the major issues are as below:

a) Whether 'black tea' is an 'agricultural produce' and services provided thereon by the Commission Agent would be covered under the Negative List in terms of Sec.65B(5) and 66D(vii) of the Finance Act, 1994?

b) Whether the export commission paid to foreign commission agent for export of 'black tea' is liable for service tax under Reverse Charge Mechanism, especially when no service was provided in India?

c) Whether the demand of interest and imposition of penalties under Sec.76 and 77 of Finance Act, 1994, is sustainable?

6. Section 65B(5) and 66D(vii) of the Finance Act, 1994 which are relevant to the understanding of the issues are reproduced below:

**65B. Interpretations** : In this Chapter, unless the context otherwise requires,-- . . . .

(5) "agricultural produce" means any produce of agriculture on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;"

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**66D. Negative list of services:** - The negative list shall comprise of the following services, namely:-

. . . .

(d) services relating to agriculture by way of—

. . .

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

7. CBEC **Circular No. 143/12/2011-ST dated 26/05/2011** issued from F.No. 332/37/2010-TRU, referred to by the appellant is also reproduced below.

Subject: Processing for or on behalf of client, in relation to agriculture - Causing sale or purchase of agricultural produce - Regarding

Representations have been received that client processing of tobacco involving threshing and drying of tobacco leaves and client processing of raw cashew involving roasting/drying, shelling and peeling of raw cashew to recover kernel, are considered by the field formations as not falling within the meaning of the expression "in relation to agriculture" appearing in notification 14/2004-S.T. (as amended) dated 10th September, 2004, resulting in avoidable disputes and litigation.

2. These representations have been examined. In the cases represented, the agricultural produce namely tobacco or raw cashew, which are subject to client processing retains their essential characteristics at the output stage and therefore the processes undertaken on or behalf of client should be considered as covered by the expression 'in relation to agriculture. Client processing which falls under business auxiliary service undertaken on the primary agricultural produce namely tobacco or raw cashew, does not result in any change in their essential character of tobacco or cashew. in the light of the above principle (1) process of threshing and drying of tobacco leaves and thereafter packing the same and (i) processing

of raw cashew and recovering kernel, undertaken for, or on behalf of, the clients by 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 said notification.

3. Also where the commission agents stationed abroad provide business auxiliary service to promote the export of rice, said business auxiliary service is covered by Notification 13/2003-S.T. (as amended) because, the word 'rice' is mentioned under the explanation to the term 'agricultural produce', in the inclusive portion along with other items like cereals, pulses, etc.

4. Trade Notice/Public Notice may be issued to the field formations accordingly.

5. Please acknowledge the receipt of this circular. Hindi version to follow."

8. We find that the question whether 'black tea' is an 'agricultural produce' has been examined by this Tribunal in the appellant's own case vide Final Order No.40350/2023 dated 26/05/2023. Relevant portion is extracted below:

"9. We find that it is too difficult for us to agree with the above findings of the First Appellate Authority for the following reasons.

10.1 The meaning of "agricultural produce", as extracted in the above paragraphs per Notification No. 08/2004 *ibid.* undoubtedly covers, *inter alia*, Tea, but, as specified therein, does not include manufactured products such as sugar, edible oils, processed food and processed tobacco. Therefore, the activity of manufacture is limited to products such as sugar, edible oils, processed food and processed tobacco and nothing beyond that.

10.2 We find that the production of Black Tea involves processes for which there is no bar in the said Notification. Further, the said Notification does not distinguish between Tea or Green Tea or Black Tea, and it is also well understood that there is no alteration to the essential characteristic other than, perhaps, making it marketable as either Green Tea or Black Tea.

10.3 **In our considered view, even the processes involved in converting Green Tea into Black Tea does not alter the basic characteristic of the Tea as such and the same could not be considered as a non-agricultural product under any stretch of imagination.**" (emphasis added)

9. Neither of the parties have brought to our notice that the said Order of the Tribunal has been modified or set aside. Hence the same is binding. Further, even as per Board's circular dt. 26.05.2011 (*supra*) which is binding on the department, client processing in which the essential characteristics of the agriculture produce is retained should be considered as covered by the expression '*in relation to agriculture*'. Once the black tea is found to be agricultural produce, services provided by a commission agent for sale or purchase of agricultural produce is covered by the negative list as per

Section 66D of the Finance Act, 1994 and is not exigible to Service Tax. This being so the other issues raised become redundant.

10. In the light of the discussions above, we set aside the impugned orders and allow the appeals. The appellant is eligible for consequential relief as per law. The appeals are disposed of accordingly.

(Order pronounced in open court on 10.11.2025)

sd/-  
**(AJAYAN T.V.)**  
Member (Judicial)

sd/-  
**(M. AJIT KUMAR)**  
Member (Technical)

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