

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

PRINCIPAL BENCH – COURT NO. – III

**Service Tax Appeal No. 52965 of 2018 [DB]**

[Arising out of Order-in-Appeal No. 185(CKJ)ST/UDR/2018 dated 11.04.2018 passed by the Commissioner of CGST and Central Excise (Appeals), Udaipur]

**M/s. Jai Durge Ice Factory**

8-Barani, Sirsa Road,  
Industrial Area- Bhadra,  
Hanumangarh Jn., Sikar,  
Rajasthan

**...Appellant**

*VERSUS*

**Commissioner of CGST & Central Excise,  
Udaipur**

142-B, Sector-11, Hiran Magri,  
Udaipur, Rajasthan - 313001

**...Respondent**

**APPEARANCE:**

Ms. J. Kainaat, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

DATE OF HEARING: 17.02.2025

DATE OF DECISION: **18.03.2025**

**FINAL ORDER No. 50409/2025**

**BINU TAMTA**

The appellant has assailed the Order-in-Appeal No. 185(CKJ)ST/UDR/2018 dated 11.04.2018. The demand was confirmed for the period 30.06.2012 in the post negative list period as covered under the definition of 'service' under Section 65B(44) of the Finance Act, 1994<sup>1</sup> along the interest and the benefit of cum tax benefit under Section 67 (2) of the Act.

2. The appellant is engaged in Chilling of Milk for M/s. Sriganaganagar Zila Dugdh Utpadak Sahakari Sangh Ltd.<sup>2</sup>. The

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1. the Act

2. SZDUS

appellant is also providing the services of renting of godowns to SZDUS under the purview of taxable service namely, 'Renting of Immovable Property Service', defined under Section 65(19a) and taxable under Section 65 (105) (zzzz) of the Act. The appellant was found to be liable to discharge the service tax on the gross amount received towards chilling charges (including fuel, power and electricity charges) and rent under the taxable Services BAS and renting of immovable property for the period 2012-13. Vide letter dated 25.06.2013 and 11.07.2013, the appellant was requested to get themselves registered under the service tax and furnished the documents and payment details for the period in question but the appellant failed to comply with the same. Letter was also sent to SZDUS and in response thereof they submitted the details of chilling charges and others for the said period. On examination, it revealed that appellant had received total amount of Rs.15,09,320/- as chilling charges and Rs.23,400/- towards godown rent. Thus they have provided the taxable services of gross value of Rs.15,32,720/- on which they were liable to pay service tax of Rs.1,89,439/-. The show cause notice dated 17.10.2020 was issued towards the said demand along with the interest, penalty and late fee charges. On adjudication, the demand was confirmed by the Order-in-Original dated 15.01.2015. Being aggrieved the appellant filed an appeal before the Commissioner (Appeals). The appellate authority relying on the decision in the case of **M/s. Sharma Ice Factory**<sup>3</sup> –held that the services of chilling of milk provided by the appellant up to 30.06.2012 is not leviable to service tax. For the remaining period the demand of Rs.1,18,097/-

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3. 2015 (37) STR 660 (Tri.-Del.)

along with the interest was confirmed after allowing the benefit of of cum duty tax and benefit of immunity from the penalty under Section 80 of the Act. Aggrieved by the confirmation of service tax, w.e.f. 01.07.2012, the appellant has preferred the present appeal.

3. Heard Ms. J. Kainaat, learned Advocate for the appellant and Shri Manoj Kumar, learned Authorized Representative for the revenue and perused the record of the case.

4. At the outset, learned counsel submitted that the appellant is not contesting duty amount confirmed in respect of godown rent under Renting of Immovable Property. The submissions made by the learned counsel for the appellant are therefore limited to the levy of service tax for the period after 30.06.2012 on services of chilling of milk. She submitted that since 01.07.2012 the structure of service tax was changed with the introduction of negative list and therefore she relied on the provisions of Section 66D(d)(iii) to say that the activity carried out by them falls in the negative list. Learned counsel has relied on the Notification No. 11/2017 dated 28.06.2017 and also the decision of the **Gujarat Co-operative Milk Marketing Federation Ltd.**<sup>4</sup> Therefore, according to her, the demand raised is not sustainable and needs to be set aside.

5. Learned Departmental Representative has reiterated the findings of the authorities below and prayed for dismissal of the appeal.

6. The issue to be considered is whether the activity of chilling of milk would fall under 'services' as defined under Section 65B(44) or

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4. 2020 (36) GSTL 211 (Guj.)

would fall under the negative list as per Section 66D(d)(iii) as claimed by the appellant.

7. Before considering the submissions of the appellant, it is necessary to refer to the provisions of Section 65B(44) and 66D (d) (iii) as under:

**65B(44)** *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—*

*(a) an activity which constitutes merely,—*

*(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*

*(ii) a transaction in money or actionable claim;*

*(b) a provision of service by an employee to the employer in the course of or in relation to his employment;*

*(c) fees taken in any Court or tribunal established under any law for the time being in force.*

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

**(d)** *service relating to agriculture or agricultural produce by way of —*

**(iii)** *processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;*

The Act defines "agriculture" and "agricultural produce" in Section 65B (3) & (5), which reads as under:

**"(3) "agriculture"** *means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products;*

**(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;

8. From the definition of 'services' in the post negative era, w.e.f. 01.07.2012 'services' means any activity carried out by a person for another for consideration. The activity performed by the appellant embraces all the three elements, i.e., service provider, service recipient and consideration and is therefore covered under the definition of 'service' and is chargeable to service tax w.e.f. 01.07.2012.

9. In order to fall under the negative list of services as provided in section 66D, it is necessary that the activity falls in any of the categories specified therein. Clause (d) of section 66D provides for services relating to 'agriculture' or 'agricultural produce'. The appellant is therefore required to satisfy that the activity of chilling of milk falls within the category of 'agriculture' or 'agriculture produce', which has not been substantiated with reference to the provisions of the Finance Act. In terms of the definition of 'agriculture' and 'agricultural produce', chilling of milk is not covered. The conjoint reading of the aforesaid provisions clearly shows that the activities enshrined in the negative list are only related to agricultural activities and cannot embrace within it the activity of chilling milk.

10. The reliance placed by the learned counsel on the Notification No. 11/2017, we find that the same has been issued under the provisions of the Central Goods and Service Tax Act, 2017.

Reference made to Heading 9986 specifically deals with support services to agriculture, forestry, fishing, animal husbandry and therefore the processes carried out has to be read in context thereof and therefore the same is not applicable to the demand made under the provisions of the Finance Act. Even the decision of the Hon'ble Gujarat High Court in **Gujarat Cooperative Milk (supra)** is also not applicable as the prayer in that case was that milk chilling and packing services provided by the contractors to the petitioner's dairies are exempted by virtue of Serial No. 24 of the table to Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. The relevant part of the notification is quoted below:

| Sl.No. | Chapter, Section or Heading | Description of Service   | Rate (per cent.) | Condition |
|--------|-----------------------------|--|------------------|-----------|
| (1)    | (2)                         | (3)  | (4)              | (5)       |
| 24     | Heading 9986                | <p>(i) Support services to agriculture, forestry, fishing, animal husbandry.</p> <p><b>Explanation. –</b><br/> <b>“Support services to agriculture, forestry, fishing, animal husbandry” mean –</b></p> <p>(i) Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by</p> | Nil              | -         |

|  |  |   |  |  |
|--|--|---|--|--|
|  |  | <p>way of—</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> |  |  |
|--|--|---|--|--|

While interpreting the said notification the Court quashed the letter / circular issued by the government and held that milk chilling

and packing service provided by the contractors to the petitioners are exempted by virtue of the notification.

11. The distinguishing feature in the aforementioned notification is the Heading 9986 which specifically speaks of 'animal husbandry'. The term 'animal husbandry' as per the meaning ascribed to it in the Cambridge Dictionary is, "farming of animal to produce foods such as meat, eggs and milk." The term 'animal husbandry' being of wider import would include chilling of milk and therefore, the Gujarat High Court has rightly held the activity of chilling of milk to be exempted. However, there is no such provision in the Finance Act either in the negative list under section 66D(d)(iii) or under the definition of 'agriculture' and 'agricultural produce'.

12. We are, therefore of the view that the Commissioner (Appeals) rightly held that the activity of chilling of milk during the post negative period amounts to rendering 'services' as defined in section 65B (44) and is therefore, leviable to service tax. We do not find any error in the impugned order and hence the same is affirmed. The appeal is, accordingly dismissed.

[Order pronounced in the open court on **18.03.2025**]

**(BINU TAMTA)**  
**MEMBER (JUDICIAL)**

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**