

ANALYSIS OF CIRCULAR NUMBER 157/8 /2012-ST dated 27.04.2012

CBEC Circular No. 157/8 /2012-ST dated 27.04.2012, clarifies that market fee (mandi shulk) charged by Agricultural Produce Marketing Committee (APMC) /Board is covered under business auxiliary services and eligible for exemption under NN 14/2004 ST dated 10-09-2004.

Notification No. 14/2004 St dated 10-09-2004 exempts Business auxiliary services provided in relation to agriculture, printing, textile processing or education, from the whole of service tax leviable thereon under section 66 of the said Finance Act.

With Warm Regards,

CA. Puneet Goyal

ACA, ACS, B.Com (Hons.)

Email id: capuneetgoyal.delhi@gmail.com

Contact Number: 9211274295, 9711988362

(Disclaimer: The above analysis has been drafted as per various provisions of Finance Act 1994, and notifications and circulars issued thereunder. The analysis may not be entirely correct for reader to reader due to different interpretations by different readers. The readers are advised to take into the consideration the prevailing legal position before acting on any of the comments in this reply. We shall not be responsible for any loss caused based on this interpretation.)

ANNEXURE

Circular No. 157/8 /2012-ST

F.No.354/234/2011-TRU
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Tax Research Unit)
153, North Block,

New Delhi, 27th April, 2012

To

Chief Commissioner of Customs and Central Excise / Central Excise & Service Tax (All)

Director General of Service Tax /Central Excise Intelligence /Audit;
Commissioner of Customs and Central Excise/ Central Excise and Service Tax/
Service Tax (All)

Madam/Sir,

Subject: Services provided by the Agricultural Produce Marketing Committee (APMC) /Board-- regarding.

Representations have been received, seeking clarification regarding the levy of service tax on certain services provided by the Agricultural Produce Marketing Committee (APMC)/Board, using the 'market fee', in the light of Notification No.14/2004-ST. The representations have been examined.

2. APMCs are statutory bodies created with a view to regulate agricultural produce markets. APMCs charge market fee for issuing licenses to whole sale trader-cum-commission agent, wholesale traders, commission agent, mill / factory / cold storage owners or any other buyers of agricultural produce, for an agricultural year. The amount so collected by the APMC, from the licensees, is used for providing among other things facilities like roads, drinking water, weighing machines, storage places, street lights, etc. in the market area. These services are not provided on one-to-one basis i.e. in consideration or as an obligation to the persons who have tendered the license fee. Some of these services may be capable of being used more conspicuously by the licensees but they do not form part of any contractual obligation to any of the licensees.

3. Reportedly some field formations are inclined to take a view that services provided by the APMCs are in the nature of Business Support Service (BSS), and hence the exemption made available for BAS in relation to agriculture vide Notification No.14/2004-ST will not be applicable. As a consequence, service tax becomes leviable on the 'market fee' popularly known as '*mandi shulk*', collected by the APMC.

4. When examined with reference to its constitution and functions, the services provided by APMC out of the 'market fee' collected from the licensees, do not appropriately fall under the category of BSS. The distinction between BSS and BAS is explained in the instructions dated 28.02.2006 issued from F.No.334/4/2006-TRU. In the light of the above instruction, the service provided by APMC out of the market fee is not in the nature of 'outsourced service'. It is not possible to hold that the licensees have outsourced the development and maintenance of agricultural market to the APMC, which could have been otherwise undertaken by them, solely in their business interest. Development and maintenance of agricultural market infrastructure undertaken by APMC in accordance with the statute, is for the benefit of all users, rather than an activity solely in the interest of licensees. Hence, APMC cannot be said to be rendering 'business support service' to the licensees. 'Market fee' is not in the nature of consideration for such BSS.

5. As statutory bodies, APMCs provide basic facilities in the market area out of the 'market fee' collected from the licensees, mainly to facilitate the farmers, purchasers and others. APMCs provide a host of services to the licensees in relation to the procurement of agricultural produce, which are 'inputs' in terms of the definition given in section 65(19) of the Finance Act, 1994 itself. To that extent the meaning of 'input' is much wider in scope than the meaning assigned in rule 2(k) of Cenvat Credit Rules, 2004. **Therefore, it is clarified that the services provided by the APMC are classifiable as BAS and hence covered by the exemption under Notification 14/2004-ST.**

6. However, any other service provided by the APMCs for a separate charge (other than 'market fee') to either the licensees or farmers or any other person, e.g. renting of shops in the market area, etc. would be liable to tax under the respective taxable heads. This Circular may be communicated to the field formations and service tax assesseees, through Public Notice/Trade Notice. Hindi version to follow.

(Samar Nanda)
Under Secretary, TRU
Tel/Fax: 011-23092037
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