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, 22nd 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 API 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 activity solely in the interest of licensees. Hence, APMC cannot be said to be render ‘business support service’ to the licensees. ‘Market fee’ is not in the nature consideration for such BSS.

5. As statutory bodies, APMCs provide basic facilities in the market area out of ‘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 procurements of agricultural produce, which are ‘inputs’ in terms of the definition given in sect 65(19) of the Finance Act, 1994 itself. To that extent the meaning of ‘input’ is more 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 B 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 shops in the market area, etc. would be liable to tax under the respective taxable head. This Circular may be communicated to the field formations and service tax assesses through Public Notice/Trade Notice. Hindi version to follow.

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