A KRISHI UPAJ MANDI SAMITI, NEW MANDI YARD, ALWAR

v.

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, ALWAR

B (Civil Appeal No.1482 of 2018)

FEBRUARY 23, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Rajasthan Agricultural Produce Markets Act, 1961: s.9(2) –
C *Liability of Market Committees to pay service tax on market fees received for allotting/renting/leasing the shop/shed/platform/land – Held: Exemption circular No.89/7/2006 dated 18.12.2006 provides that service tax is not leviable on activities performed by the public authorities under the provisions of law which are*
D *mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statutes and is deposited into the Government Treasury – Under sub-section(2) of s.9, the word used is "may", therefore, the activities mentioned in s.9(2)(xvii) cannot be said to be mandatory statutory duty and/or activity – Under s.9(2),*
E *it is not a mandatory statutory duty cast upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders – Even the fees which is collected is not deposited into the Government Treasury – It will go to the Market Committee Fund and will be used by the Market Committee(s) – Such a fee collected cannot have the*
F *characteristics of the statutory levy/statutory fee – Thus, activities of allotting/renting/leasing of shop/shed/platform/land by Market Committees to the traders is not a mandatory statutory duty cast upon the Market Committees under s.9 of the Act and therefore, Market Committees are not exempt from payment of service tax on such activities.*

G *Interpretation of Statutes: Exemption notification – Construction of – Held: Not be liberally construed – Notification has to be read as a whole – If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification – Circular/Government Order/Notification.*

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Interpretation of Statutes: Taxing statutes – Exception or exempting provision – Construction of – Held: An exception and/or an exempting provision in a taxing statute should be construed strictly – It is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard – The statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

Interpretation of Statutes: Taxing statutes – Interpretation of – Strict interpretation – In a taxing statute, it is the plain language of the provision that has to be preferred – Strict interpretation of the provision is to be accorded to each case on hand – Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity.

Interpretation of Statutes: Fiscal/Taxing statutes vis-a-vis Exemption notification – Interpretation of – Held: In the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted – However, said principle shall not be applicable to construction of an exemption notification, when it is clear and not ambiguous – Thus, it will be for the assessee to show that he comes within the purview of the notification – Eligibility clause in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language – Thus, there is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification.

Dismissing the appeals, the Court

HELD: 1.1 As per the exemption circular "Circular No. 89/7/2006 dated 18.12.2006" no service tax is leviable on activities which are performed by the sovereign/public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and is deposited into the Government Treasury. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity

and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning. [Para 7][711-D-F]

1.2 The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication. [Para 8][711-F-G]

1.3 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions. [Paras 8.1, 8.2] [711-G-H; 712-A-B]

2.1 In a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is so not found in the present case. [Para 8.3][712-B-C]

2.2 Now, so far as the submission on behalf of the respondent that in the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption notification, when it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause, it is well settled, in relation to exemption notification must be given

effect to as per the language and not to expand its scope deviating from its language. Thus, there is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification. [Para 8.4][712-C-E]

2.3 In the present case, it is the case on behalf of the appellants that the activity of rent/lease/allotment of shop/land/ platform/space is a statutory activity and the Market Committees are performing their statutory duties cast upon them under Section 9 of the Act, 1961 and therefore they are exempted from payment of service tax on such activities. The aforesaid submission seems to be attractive but has no substance. Section 9(2) is an enabling provision and the words used is "market committee may". In so far as sub-section (1) of Section 9 is concerned, the word used is "shall". Therefore, wherever the legislature intended that the particular activity is a mandatory statutory, the legislature has used the word "shall". Therefore, when under sub-section(2) of Section 9, the word used is "may", the activities mentioned in Section 9(2)(xvii) cannot be said to be mandatory statutory duty and/or activity. Under Section 9(2), it is not a mandatory statutory duty cast upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders. Hence, such an activity cannot be said to be a mandatory statutory activity as contended on behalf of the appellants. Even the fees which is collected is not deposited into the Government Treasury. It will go to the Market Committee Fund and will be used by the market committee(s). In the facts of the case on hand, such a fee collected cannot have the characteristics of the statutory levy/statutory fee. Thus, under the Act, 1961, it cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/ platform on rent/lease. If the statute mandates that the Market Committees have to provide the land/shop/platform/space on rent/ lease then and then only it can be said to be a mandatory statutory obligation otherwise it is only a discretionary function under the statute. If it is discretionary function, then, it cannot be said to be a mandatory statutory obligation/statutory activity. Hence, no exemption to pay service tax can be claimed. [Para 9][712-E-H; 713-A-D]

2.4 Now, so far as the submission on behalf of the appellants relying upon Rule 45 of the Rules, 1963 that the fees, which is collected shall be deposited with the Government Treasury and therefore also the Market Committees are exempted from payment of service tax is concerned, it is to be noted that on fair reading of Rule 45, the amount of fee so collected on such activities – rent/lease shall not go to the Government. Rule 45 provides how the money received by the Market Committees shall be invested and/or deposited. It provides that all money received by the Market Committee shall be credited to the fund called the Market Committee Fund. It further provides that all money paid into the Market Committee Fund shall be credited once a week in full into Government Treasury or sub-treasury, or a bank duly approved for this purpose by the Director and all balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn except in accordance with the Rules. Therefore, it does not provide that on deposit of the money received by the Market Committees into the Government Treasury/sub-treasury or a bank duly approved, it ceases to be the Market Committee Fund. It will continue to be the Market Committee Fund. Even it is the case on behalf of the appellants that the fees collected, which will be deposited in the Market Committee Fund will be utilized by the Market Committee for expanding/benefit of the Market Committee etc. [Para 10] [713-G-H; 714-A-C]

2.5 Even otherwise, on and after 01.07.2012, such activities carried out by the Agricultural Produce Market Committees is placed in the Negative List. If the intention of the Revenue was to exempt such activities of the Market Committees from levy of service tax, in that case, there was no necessity for the Revenue subsequently to place such activity of the Market Committees in the Negative List. The fact that, on and after 01.07.2012, such activity by the Market Committees is put in the Negative List, it can safely be said that under the 2006 circular, the Market Committees were not exempted from payment of service tax on such activities. [Para 11][714-D-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1482 of 2018.

From the Judgment and Order dated 25.05.2017 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, Principal Bench at New Delhi in Service Tax Appeal No.ST/51774/2016.

With

Civil Appeal Nos. 1861, 1851, 1850, 1863, 1862, 1860, 1859, 1856, 1858, 3158, 3160, 3369, 3367, 3368, 3370, 3371, 3372, 3373, 3374, 4384, 4382, 4383 and 6012 of 2018 and Civil Appeal Nos. 715 and 3356-3358 of 2019.

Prakul Khurana, Ms. Shradha Agarwal, Mayank Goyal, Tarun Gupta, Abhishek Sharma, Ms. Archana Pathak Dave, Tanuj Agarwala, Abhimanyu Garg, Aman Gupta, Advs. for the Appellant.

Ms. Swarupama Chaturvedi, Ms. Nisha Bagchi, V. Chandra Shekara Bharathi, Rajat Nair, M. K. Maroria, B. Krishna Prasad, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. As common questions of law and facts arise in these group of appeals and as such are arising out of the impugned common judgment and order passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "CESTAT"), all these appeals are decided and disposed of together by this common judgment and order.

2. That the respective appellants herein are the Krishi Upaj Mandi Samiti (Agricultural Produce Market Committees) located in different parts of State of Rajasthan. The respective appellants are established under the provisions of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter referred to as "Act, 1961"). That the State Government constituted various Market Committees (including the appellants herein) in the notified market areas to carry out the functions as envisaged in the Act, 1961 and the Rules made thereunder. That the respective appellants regulate sale of agricultural produce in the notified markets. They charge "market fee" for issuing license to traders, agents, factory /storage, company or other buyers of other agricultural produce. The

A appellants also rent out the land and shops to traders and collect allotment fee/lease amount for such land/shop. That the Revenue was of the view that the appellants are liable to pay the service tax on the services rendered by them by renting/leasing the lands/shops. Show cause notice was issued by the concerned jurisdictional authorities. That after adjudication, it was held that the appellants were not liable to pay the service tax on "market B fee" or "mandi shulk" collected by them. However, the appellants were held liable for service tax under the category of "renting of immovable property" in respect of renting of land(s)/shop(s) for a consideration. Accordingly, the Service Tax demands were confirmed. Penalties under Sections 76, 77 and 78 of the Finance Act, 1994 were also imposed on C them. The appellants preferred appeals before the CESTAT.

2.1 By impugned common judgment and order, the CESTAT noted that with the introduction of Negative List Regime of taxation w.e.f. 01.07.2012, the services in question were excluded from the tax liability and therefore the appellant(s) being an Agricultural Produce Market D Committee was/were excluded from tax liability on and after 01.07.2012. The CESTAT also took note of the circular issued by the Board. Accordingly, the CESTAT held that the appellants – respective Market Committees are not liable to service tax on renting of immovable property used for storage of agricultural produce in the market area. The CESTAT observed that the respective Market Committees are not liable to service E tax on renting shops/sheds/platforms/land in the notified market area for traders for temporary storage of agricultural produce traded in the market. The CESTAT also observed that in respect of shops, premises, buildings, etc. rented/leased out for any other commercial purpose other than with respect to the agricultural produce (likebank, general Shop etc.), the F same shall not be covered by the Negative List and the market committee(s) shall be liable to service tax. Accordingly, the CESTAT held that the appellants – Market Committees are not liable to service tax for the period after 01.07.2012. The CESTAT also set aside the penalties imposed on the appellants. The CESTAT ultimately disposed of the appeals in the following terms:-

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"(I) The appellants are liable to pay service tax under the category of "renting of immovable property service" for the period upto 30.06.2012.

(II) For the period from 1.7.2012 (Negative List Regime), the appellants are not liable to pay service tax under the said

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tax entry in respect of shed/shop/premises leased out to the traders/others for storage of agricultural produce in the marketing area. The Negative List will not cove the activities of renting of immovable property for other than agricultural produce.

(III) The demands, wherever raised invoking restricted to the normal period. Penalties imposed to extended period, shall be the appellants are set aside.

(IV) The threshold exemption available to the small scale service provider in terms of the applicable notifications during the relevant years, shall be extended to the appellant on verification of their turnover."

2.2 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the learned CESTAT holding that the appellants – respective Market Committees are liable to pay service tax under the category of "renting of immovable property service" for the period upto 30.06.2012, the respective Market Committees located in the State of Rajasthan have preferred the present appeals.

3. Shri Prakul Khurana and Ms. Divyasha Mathur, learned counsel appearing on behalf of the respective appellants – respective Market Committees have vehemently submitted that as the activity of allotment of shops/premises/spaces to traders and brokers by the respective Market Committees for the purpose of storage and/or marketing of agricultural produce is in the nature of a statutory activity as mandated under Section 9 of the Act, 1961 and, therefore, the Market Committees are exempted from payment of service tax on such services as per Circular No.89/7/2006 dated 18.12.2006.

3.1 Learned counsel appearing on behalf of the appellants have submitted that under Section 9(2)(xvii) of the Act, 1961, it is the duty cast upon the respective Market Committees for allotment/disposal of land or any movable or immovable property for the purpose of effectively carrying out its duties. It is submitted that as per Section 9(2)(xiii), the Market Committees are authorised to levy, recovery and receive rates, charges, fees and other sums of money to which the Market Committee is entitled. Therefore, it is the case on behalf of the respective Market Committees that the activities of the said Market Committees of allotment/ leasing/renting the shop/land/platform is in the nature of a statutory activity

A and therefore as per Circular No.89/7/2006 dated 18.12.2006, the respective Market Committees are exempted from payment of service tax on such activities, which are in the nature of statutory activity.

3.2 It is further submitted by Shri Khurana, learned counsel appearing on behalf of the appellants – respective Market Committees
B that even the fees collected/recovered by the respective Market Committees on renting/leasing the land/shop will be deposited in the Market Committee Fund and the same shall be ultimately used for the betterment of the market area. It is submitted therefore that when the respective Market Committees are the public authorities constituted under the
C Statute – Act, 1961 and when they perform the statutory duty / statutory function of the allotment/renting/leasing of land/shop, the respective Market Committees are entitled to the exemption provided under the 2006 circular.

4. All these appeals are vehemently opposed by Ms. Nisha Bagchi,
D learned counsel appearing on behalf of the Revenue.

4.1 It is submitted that all the authorities below have rightly held that the activities of allotment/renting/leasing of the shop/shed/platform/ land cannot be said to be a mandatory statutory activity and therefore, the Market Committees are not exempted from service tax as per 2006
E circular as claimed by the respective Market Committees.

4.2 It is submitted by learned counsel appearing on behalf of the Revenue that Section 9 of the Act, 1961 is an enabling provision and there is no mandatory duty cast upon the Market Committees for allotment/renting/leasing of the shop/land/platform. It is submitted that
F even under Section 9(2), the words used are "market committee may". It is submitted therefore that it cannot be said that it is a mandatory statutory duty cast upon the Market Committee to allot/lease/rent the shop/land. It is urged that the activities of renting/leasing by the Market Committees to the traders cannot be said to be a statutory activity and therefore the market committee(s) is/are not entitled to claim any
G exemption under the 2006 circular.

4.3 Learned counsel appearing on behalf of the Revenue has submitted that the appellants are claiming an exemption under the 2006 circular. That as held in a catena of decisions of this Court that an exemption notification has to be read as a whole. That an exception and/
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or an exemption provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in an exemption notification. It is submitted that the exemption notification should be strictly construed and given meaning according to legislative intendment. It is contended that the Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

4.4 It is further submitted that as per the law laid down by this Hon'ble Court in a catena of decisions in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation to the provision is to be accorded to each case on hand.

4.5 Now, in so far as the submission on behalf of the appellants that in the event of any doubt or any absurdity in a provision in a fiscal statute, construction favourable to the assessee should be adopted is concerned, it is submitted that the said principle shall not be applicable to construction of an exemption notification.

4.6 It is urged that there is a vast difference and distinction between a charging provision in a taxing statute and an exemption notification and the same have to be borne in mind in the instant cases.

4.7 It is submitted that in the present case, the language used in the exemption circular 2006 is very clear and unambiguous. That as per the 2006 circular issued by the Board, only such activities performed by the public authorities which are in their very nature statutory obligations, the fee collected by them for performing such activities is a compulsory levy as per the provisions of the relevant statute and is deposited into the Government Treasury, shall not be subjected to tax. It is submitted that in paragraph 3, it is specifically made clear that if such authorities perform a service, which is not in the nature of statutory activity and the same is undertaken for consideration and not in the nature of a statutory fee/ levy then, in such cases, the service tax would be leviable if the activities undertaken falls within the ambit of taxable service.

4.8 It is submitted that in the present case, the activity of renting/ leasing performed by the Market Committees cannot be said to be in the nature of a statutory activity and the fee collected cannot be said to be in the nature of a statutory fee/levy. It is contended that the allotment/rent/

A lease of shop/land is for a consideration and it is not the mandatory statutory activity/duty to provide on rent/lease the shop/platform/land to the traders.

4.9 It is further submitted that even subsequently and on and after 01.07.2012 such an activity is put in the Negative List. That from the B aforesaid, the intention of the legislature can be gathered. That if the activities, which are now put in the Negative List were already exempted from service tax, as per the case on behalf of the respective Market Committees in view of 2006 circular, in that case, there was no necessity for the Revenue to put such services in the Negative List subsequently.

C 4.10 Making the above submissions, it is prayed to dismiss the present appeals.

5. Heard the learned counsel for the respective parties at length.

6. At the outset, it is required to be noted that the respective Market Committees are claiming exemption under the 2006 circular. The D exemption circular issued by the Board reads as under:-

"**Circular No. 89/7/2006 dated 18.12.2006:-**

"A number of sovereign /public authorities (i.e., an agency constituted/set up by Government) perform certain functions/duties, E which are statutory in nature. These functions are performed in terms of specific responsibility assigned to them under the law in force. For examples, the Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; the Regional Transport Officer (RTO) issues fitness certificate to the vehicles; F the Directorate of Boilers inspects and issues certificate for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant lows. Fee as prescribed is charged and the same is ultimately deposited into the Government Treasury.

G A doubt has arisen whether such activities provided by a sovereign/public authority required to be provided under a statute can be considered as 'provision of service' for the purpose of levy of service tax.

2. The issue has been examined. The Board is of the view H that the activities performed by the sovereign/public authorities

under the provision of law are in the nature of statutory obligations which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of compulsory levy as per the provision of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are not in the nature of service to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/ public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service. tax is leviable on such activities

3. However, if such authority performs a service, which is not in the nature of statutory activity and the same is undertaken for consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

7. As per the exemption circular only such activities performed by the sovereign / public authorities under the provisions of law being mandatory and statutory functions and the fee collected for performing such activities is in the nature of a compulsory levy as per the provisions of the relevant statute and it is deposited into the Government Treasury, no service tax is leviable on such activities. In paragraph 3, it is also specifically clarified that if such authority performs a service, which is not in the nature of a statutory activity and the same is undertaken for consideration, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service. Thus, the language used in the 2006 circular is clear, unambiguous and is capable of determining a defined meaning.

8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.

8.1 It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/ or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard.

A 8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions.

B 8.3 As per the law laid down by this Court in a catena of decisions, in a taxing statute, it is the plain language of the provision that has to be preferred, where language is plain and is capable of determining a defined meaning. Strict interpretation of the provision is to be accorded to each case on hand. Purposive interpretation can be given only when there is an ambiguity in the statutory provision or it results in absurdity, which is C so not found in the present case.

8.4 Now, so far as the submission on behalf of the respondent that in the event of ambiguity in a provision in a fiscal statute, a construction favourable to the assessee should be adopted is concerned, the said principle shall not be applicable to construction of an exemption D notification, when it is clear and not ambiguous. Thus, it will be for the assessee to show that he comes within the purview of the notification. Eligibility clause, it is well settled, in relation to exemption notification must be given effect to as per the language and not to expand its scope deviating from its language. Thus, there is a vast difference and distinction E between a charging provision in a fiscal statute and an exemption notification.

9. In the present case, it is the case on behalf of the appellants that the activity of rent/lease/allotment of shop/land/platform/space is a statutory activity and the Market Committees are performing their F statutory duties cast upon them under Section 9 of the Act, 1961 and therefore they are exempted from payment of service tax on such activities.

The aforesaid submission seems to be attractive but has no substance. Section 9(2) is an enabling provision and the words used is G "market committee may". It is to be noted that in so far as sub-section (1) of Section 9 is concerned, the word used is "shall". Therefore, wherever the legislature intended that the particular activity is a mandatory statutory, the legislature has used the word "shall". Therefore, when under sub-section (2) of Section 9, the word used is "may", the activities mentioned in Section 9(2)(xvii) cannot be said to be mandatory statutory H duty and/or activity. Under Section 9(2), it is not amandatory statutory

duty cast upon the Market Committees to allot/lease/rent the shop/platform/land/space to the traders. Hence, such an activity cannot be said to be a mandatory statutory activity as contended on behalf of the appellants. Even the fees which is collected is not deposited into the Government Treasury. It will go to the Market Committee Fund and will be used by the market committee(s). In the facts of the case on hand, such a fee collected cannot have the characteristics of the statutory levy/statutory fee. Thus, under the Act, 1961, it cannot be said to be a mandatory statutory obligation of the Market Committees to provide shop/land/platform on rent/lease. If the statute mandates that the Market Committees have to provide the land/shop/platform/space on rent/lease then and then only it can be said to be a mandatory statutory obligation otherwise it is only a discretionary function under the statute. If it is discretionary function, then, it cannot be said to be a mandatory statutory obligation/statutory activity. Hence, no exemption to pay service tax can be claimed.

10. The next provision relied upon by the appellants – respective Market Committees is Rule 45 of the Rajasthan Agricultural Produce Markets Rules, 1963 (hereinafter referred to as "Rules, 1963"), which reads as under:-

> "**45.The Market Committee fund**.- All money received by the Market Committee shall be credited to the fund called the Market Committee fund. Except where Government on application by the Market Committee or otherwise shall direct, all money paid into the Market Committee fund shall be credited at least once a week in full into Government treasury or sub-treasury, or a bank duly approved for this purpose by the Director. All balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn upon except in accordance with these rules."

10.1 Now, so far as the submission on behalf of the appellants relying upon Rule 45 of the Rules, 1963 that the fees, which is collected shall be deposited with the Government Treasury and therefore also the Market Committees are exempted from payment of service tax is concerned, it is to be noted that on fair reading of Rule 45, the amount of fee so collected on such activities – rent/lease shall not go to the Government. Rule 45 provides how the money received by the Market Committees shall be invested and/or deposited. It provides that all money

A received by the Market Committee shall be credited to the fund called the Market Committee Fund. It further provides that all money paid into the Market Committee Fund shall be credited once a week in full into Government Treasury or sub-treasury, or a bank duly approved for this purpose by the Director and all balance from the fund shall be kept in such treasury or sub-treasury or bank and it shall not be withdrawn
B except in accordance with the Rules. Therefore, it does not provide that on deposit of the money received by the Market Committees into the Government Treasury/sub-treasury or a bank duly approved, it ceases to be the Market Committee Fund. It will continue to be the Market Committee Fund. Even it is the case on behalf of the appellants that the
C fees collected, which will be deposited in the Market Committee Fund will be utilized by the Market Committee for expanding/benefit of the Market Committee etc.

11. Even otherwise, it is to be noted that on and after 01.07.2012, such activities carried out by the Agricultural Produce Market
D Committees is placed in the Negative List. If the intention of the Revenue was to exempt such activities of the Market Committees from levy of service tax, in that case, there was no necessity for the Revenue subsequently to place such activity of the Market Committees in the Negative List. The fact that, on and after 01.07.2012, such activity by the Market Committees is put in the Negative List, it can safely be said
E that under the 2006 circular, the Market Committees were not exempted from payment of service tax on such activities. At this stage, it is required to be noted that it is not the case on behalf of the Market Committees that the activity of rent/lease on shop/land/platform as such cannot be said to be service. However, their only submission is that the Market
F Committees are exempted from levy of service tax on such service/ activity as provided under the 2006 circular, which as observed hereinabove has no substance.

12. In view of the above and for the reasons stated above, all these appeals fail and the same deserve to be dismissed and are
G accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending applications, if any, also stand disposed of.

Devika Gujral Appeals dismissed.