

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

REGIONAL BENCH – COURT NO.2

(E-Hearing)

Service Tax Appeal No.75724 of 2015

(Arising out of Order-in-Original No.05-06/S. Tax/Commr/2015 dated 12/05/2015 passed by Commissioner of Central Excise & Service Tax, Ranchi-I)

M/s Jharkhand State Agricultural Marketing Board
(Itki Road, Piska More, Ranchi)

Appellant

VERSUS

Commr. of Central Excise & Service Tax, Ranchi
(5A, Main Road, Ranchi-I-831001)

Respondent

APPEARANCE :

Ms. Poonam Agarwal, CA for the Appellant

Mr. S. K. Dikshit, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76534/2025

Date of Hearing : 15th May 2025
Date of Pronouncement : 17.06.2025

PER R. MURALIDHAR

Jharkhand State Agricultural Marketing Board (JSAMB / Board for short) is constituted by the Government of Jharkhand basically to cater to the needs of agricultural related issues like marketing, storing, warehousing of Agricultural produce. On the ground that JSAMB was letting out their premises on lease and they were collecting rent on the same but no Service Tax was being paid, one Show Cause Notice was issued on 09/10/2013 demanding the Service Tax under the category of "Renting of Immovable Property" services for the period 2008-2009 to 2011-12. Subsequently, one more Show Cause Notice was issued on 24/03/2014 demanding Rs. 64,85,298/- on the same ground.

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2. The appellant submitted that they are a Board constituted by the Jharkhand Government and they are basically carrying out sovereign function and hence they are not required to pay any Service Tax. They also claimed exemption under various clauses. They further submitted that they have not providing the services to any of the lessees. The Agricultural Produce Marketing Committees (APMC) which were located at various places within Jharkhand, were providing such services. In view of these submissions, they prayed that the demand may be dropped. However, the Adjudicating Authority in the impugned order has confirmed the demands along with interest. He also imposed penalty under Section 78 of the Finance Act, 1994. Being aggrieved, the appellant is before the Tribunal.

3. The Learned Chartered Accountant appearing on behalf of the appellant makes the following submissions:-

3.1 The premises are let out by APMC. There are totally 28 APMCs working under the JSAMB. These are independent entities. They are responsible for their income and expenditure. For taking care of their expenditure needs, they let out the premises on rent and the same is being received by them. The Board does not get the rents received by such APMC, nor any portion of the same is shared by the APMC with the Board.

3.2 The Learned Chartered Accountant submits the Affidavit issued by the Secretary JSAMB to the effect that no rent is being collected by them. The rents are being collected only by the APMC. She also submits that the APMCS are also registered under Income Tax provisions with separate PAN numbers. She submits that JSAMB only overseas the overall operations of the APMC. The APMCs are separate body corporates and they are responsible for their finances. The appellant gets funds by way of market development fund and the same is used for their day-to-day activities. She submits a copy of the source of

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funds along with application of fund duly certified by the Chartered Accountant.

3.3 During the earlier hearing, the appellant was asked to submit copies of the rental agreement to get the clarification to know as to who is lessor. The Learned Chartered Accountant has submitted the sample Rental Agreements of APMC Deoghar and APMC Daltonganj. She submits that it can be seen from these Agreements that the lessor is APMC only and not the JSAMB. In view of above submissions, she prays that the impugned order may be set aside on account of merits.

3.4 She further submits that being a Board duly constituted by the Jharkhand Government, no allegation of suppression with an intent to evade Service Tax can be made against the appellant. It is on record that they are not the Lessor in any of the Rental Agreements. The income received by the APMC are their income and the APMC are required to handle their Income Tax Returns through their PAN Number. Therefore, they carried bonafide belief that they are required to pay the Service Tax. Accordingly, she prays that the demand in respect of the extended period may be set aside on account of time bar also.

4. The Learned AR reiterates the detailed findings of the Adjudicating Authority. He submits that APMCs are directly working under the control and directions of the Board. Therefore, irrespective of as to whether APMC or the Board is lessor, still it has to be taken that the appellant is the ultimate beneficiary of the rental amount. Hence, the onus to discharge the Service Tax is on the Board.

5. He also relies on the case law of **Krishi Upaj Mandi Samiti Vs. Commr. of Central Excise & Service Tax, Alwar-2022 (58) G.S.T.L. 129 (S.C.)**. In this judgment, the Hon'ble Supreme Court has held that only in respect of the sovereign function undertaken and the consideration received towards the same would be exempted from payment of Service Tax. It has been clearly held that in case of rental

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income received by Krishi Upaj Mandi Samiti, the same would be liable for Service Tax. Accordingly, he justifies the confirmed demand.

6. Heard both sides and perused the appeal papers.

7. We find that the JSMAD is a Board established in March 2001 under Section 33A of the Jharkhand Agriculture Produce Market Act, 2000. On the other hand, the APMC is established in terms of Section 6 of this Act. The relevant portion of rental agreement of APMC Deoghar and APMC Daltonganj is reproduced as under:-

Rent Agreement

between APMC and tenant

for the year 2008-09 to 2012-13

OF

AGRICULTURAL PRODUCE MARKET COMMITTEE
DEOGHAR

ST/75724/2015

भारतीय रिपब्लिक

दस रुपये

TEN RUPEES

₹.10

Rs.10

INDIA

INDIA NON JUDICIAL

JHARKHAND

01AA 875230

AGRICULTURAL PRODUCE MARKET COMMITTEE, DEOGHAR

DEED OF LEASE FOR SHOP-CUM-GODOWN No. H/01

An Agreement made the 1st September, 2008 between the Secretary, Agricultural Produce Market Committee, Deoghar here in after called the Market committee, Deoghar, District Deoghar of one part and Sri Ramdhari Jha S/O Late Gajadhar Jha, Prop. Of M/S Jha Chura Mill, L.No. 94, Shahid Ashram Road, Jhousagarhi, P.S.-Kunda, Distt.- Deoghar, hereinafter called the lessee/ licensee which unless repugnant the context shall include his successor and assigns of the other part.

Whereas the lessee/licensee has applied for lease /licence to erect/use a building for business of Agricultural Produce "Foodgrain" upon the land belonging to the State Government and lease put to the Market Committee described in the said purpose has been granted to the Deoghar Market Committee in consultation with the State Agricultural Marketing Board (hereinafter called the Board) Now is hereby mutually agreed to the following terms and conditions.

1st 9/9/2008
 Secretary
 Agriculture Produce Market Committee
 Deoghar

Attested
 L.D.
 21/09/08
 Secretary
 Agriculture Produce Market Committee
 Deoghar

Rent Agreement

between APMC and tenant

for the year 2008-09 to 2012-13

OF

AGRICULTURAL PRODUCE MARKET COMMITTEE
DALTONGANJ

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... lease made on the Thirty day of the month of June in the year 2008 between the **Agricultural produce Market Committee Daltonganj** through its secretary here in after called "the Lessor" of the one part and **M/s Maa Gaytri traders, Pro- Sri Govind Narayan Singh, S/o Sri Suresh Narayan Singh, Hira mandir road, PO- Daltonganj Dist- Palamu** Proprieter / Manager / Managing Partner (hereinafter called "the Lessee" of the other part)

WITNESSES : as follows :-

1. The Lessor hereby demises to the Lessee all that Ipremises / Godown / Shop/ Building descreeb in the Sechedule hereto which is owned by the Lessor and which has been in Lessee's possession since First Day of May 2008 Lessee from the date of possession for the term of One years, paying there for during the said term to the Lessor monthly rent / charges for use and occupation at the rate of @ 1.25 per sq fit to be paid on or before the 7th day of the succeeding month at the Office of the Lessor or at such other place from time to time in this behalf, arrears of such payments till this day to be made within two months from the date of his agreement.

Provided that in case of failure on the part of the lessee to make payments reserved on the appointed dates the lessee shall pay penal charges at the rate of Rs. 10/- (Ten) per day.

The Lessee hereby covenants with the Lessor as follows :-

2. That he will, during the continuance of his lease, pay to the lessor the monthly rent charges for use and occupation hereby reserved on the days and in manner herein before appointed.

3. That he will, during the said term, pay all rates, taxes electric and other charges of every description now payable or hereinafter to become payable in respect of the demised Premises/ Godown/ Shop/ Building.

4. That he will not erect or build or permit to be erected or built on the demised premises / any building not will he make any alteration or allition in the demised premises/ Godown / Shop/ Building except with the approval of the Lessor in writing.

5. That he will during the term of lease hereby created keep the demised premises/ Godown / Shop/ Building in good repair and and condition

6. That he will not without consent in writing of the lessor use or permit the use of the demised premises/Godown/Shop/Building for any prupose other than that for which it is let namely to carry on his Trade and Business of Agricultural Produce as defined under the Jharkhand State Agricultural Produce Market Act.

7. That he will at the expiration of the said term or sooner determination there of peacefully and quietly surrender to the Lessor the demised premises/ Godown/ Shop/ Building.

8. That he will not assign or sublet or otherwise part with the premises/Godown/Shop/Building without the permission in writing of the lessor.

अभिप्रमाणित
जोषि-महेश्वर
सिंह

पण्डित श्री २५
कृषि उ.पा.देन बाजार समिति
डालतंगंज (पलामू)

contd.....
Market Secretary
Agriculture Produce Market Committee
Daltonganj

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(2)

The Lessor hereby covenants with the lessee as follows :-

(I) That the lessee paying Rent/ Charges for use and occupation reserved and performing all the covenants by the lessee herein contained may hold and enjoy the demised premises/Godown/Shop/Building during the said term without any unlawful interoption by the lessor or any other person whosoever.

(II) That he will at the request and cost of the lessee at the end of the term of years hereby granted and so on from time to time thereafter at the end of each such successive further term of years as shall be granted, execute to the lessee a new lease of the demised premises/Godown/Shop/Building by way of renewal for the term of years on such covenants and provision herein contained except that relating to the monthly Rent/ charge for use and occupation as shall apply to such renewal of lease. PROVIDED that the lessor shall not be bound to grant any such renewal except at such enhanced, Rent/ charge for use and occupation not exceeding 50% of the Rent/ charges for use and occupation payable immediately before such renewal as the lessor may deem reasonable.

(III) Provided always and it is hereby agreed as follows :-

(1) That the lessee allotted the demised premises/Godown/Shop/ Building obtains a licence to carry on trade and Business in Agricultural Produce under the Jharkhand state Agricultural Produce Markets Acts and the lessee shall abide by all the terms and conditions applicable to a licensee trader under the said Act. Rules and Bye-laws including filling of necessary returns and depositing of requisite Market Fee as required under the Act and getting his licence as a Trader renewed under the Law from time to time.

(2) That the Lessee shall not kip the premises/Godown/Shop/ Building closed contionuously for more than a week in a month without prior permission/ approval of the lessor.

(3) That the lessor reserves the right to right to shift/ change the premises/Godown/Shop/Building of the lessee in its descretion in view of turn over and requirements of lessee after giving lessee a notice of 15 days and reasonable opportunity to be heard in the matter.

(4) That if the lessee fails to comply with the provisions of the Jharkhad State Agricultural Produce Markets Act/ Rules and Bylaws as a Trader licensee or commits any breach of the covenants by the lessee herein contained or any part of the Rent/ Charges for use and occupation hereby reserved shall fall in Arrears for three months after due date the lessor may re-enter on the demised premises/Godown/Shop/Building determining the lease.

(5) In case of determination of the lease by the lessor the lessee in case of failure to vacate the premises/Godown/Shop/Building shall be liable to pay penal charges at the rate of Rs. 30/- (Thirty) per day.

(6) That the lease hereby created shall be determinable at the option of the lessor/ lessee or either party by giving to the lessee/ lessor or the other party one calendar month's notice in writing.

अतिरिक्त
(7) 05/12/15
जिला प्रमुख, जिला
अgriculture Produce Market Committee


confd.....
Market Secretary
Agriculture Produce Market Committee

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8. From the above rental agreement, it is seen that the lessor is APMC and as per the terms and condition given therein, the amount of rent is required to be paid by the lessee to APMC only. Thus, the service provider in this case would be by APMC.

9. The Affidavit given by the secretary JSAMB is reproduced below:-

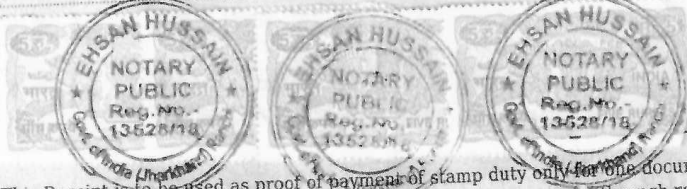

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Government of Jharkhand
Receipt of Online Payment of Stamp Duty
NON JUDICIAL

Receipt Number : 845d4e8bb117940546f1
Receipt Date : 29-Aug-2024 11:53:53 am
Receipt Amount : 500/-
Amount In Words : Five Hundred Rupees Only
Document Type : Affidavit
District Name : Ranchi
Stamp Duty Paid By : JHARKHAND STATE AGRICULTURAL MARKETING BOARD RANCHI
Purpose of stamp duty paid : AFFIDAVIT
First Party Name : JHARKHAND STATE AGRICULTURAL MARKETING BOARD RANCHI
Second Party Name : NA
GRN Number : 2403881876


Authorized Under Notaries Act 1952 and Notaries Rules 1958 by the Government of India (Jharkhand)
29 AUG 2024
Ref 121 Data

:- This stamp paper can be verified in the jharnibandhan site through receipt number :-

This Receipt is to be used as proof of payment of stamp duty only for one document. The use of the same receipt as proof of payment of stamp duty in another document through reprint, photo copy or other means is penal offence under section-62 of Indian Stamp Act, 1899

इस रसीद का उपयोग केवल एक ही दस्तावेज पर मुद्रांक शुल्क का भुगतान के प्रमाण हेतु ही किया जा सकता है। पुनः प्रिन्ट कर अथवा फोटो कॉपी आदि द्वारा इसी रसीद का दूसरे दस्तावेज पर मुद्रांक शुल्क का भुगतान के प्रमाण हेतु उपयोग भारतीय मुद्रांक अधिनियम, 1899 की धारा 62 अन्तर्गत दण्डनीय अपराध है।



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**IN THE CUSTOM, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AT
KOLKATA**

Service Tax Appeal No.75724 of 2015

Jharkhand State Agriculture Marketing Board..... Appellant

Versus

Commissioner of Service Tax, Ranchi Respondent

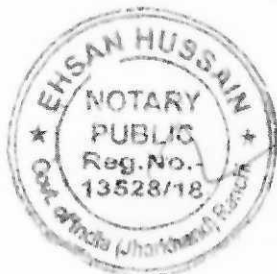
Humble Affidavit on behalf of the Appellant.

I, **ANUJ KUMAR PRASAD**, aged about 52 years, S/o LATE LAKSHMAN PRASAD. Residing at- LALPUR P.O. & P.S.- - LALPUR, District-RANCHI do hereby solemnly affirm and state as follows:-

1. That I am posted as SECRETARY, JHARKHAND STATE AGRICULTURE as MARKETING BOARD and have been duly authorized to swear the present affidavit.
2. That I have gone through the contents of the petition and have fully understood the same.

That it is stated that the shops and godown situated at Agriculture Produce Market committee of various district of Jharkhand state is owned by concerned AGRICULTURE PRODUCE MARKET COMMITTEE ONLY and rent of said shops and godown is collected by the concerned AGRICULTURE PRODUCE MARKET COMMITTEE and deposited in own account of AGRICULTURE PRODUCE MARKET COMMITTEE.

4. That it is stated that Jharkhand State Agriculture Marketing



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- Board is not the owner any shops and godown situated at concerned AGRICULTURE PRODUCE MARKET COMMITTEE in various districts of Jharkhand and not collected any rent for shops and godown of concerned AGRICULTURE PRODUCE MARKET COMMITTEE in various districts of Jharkhand.
5. That I have gone through the contents of the affidavit under reply and have fully understood the same.
6. That the answering appellant reserves his right to file a further affidavit, if necessary.
7. That the statements made in para nos. 02,03,04,05 and 06 are true to my knowledge, those made in para nos. 03,nd 04 are based upon information derived from the records of the case and rests are by way of submissions before this Hon'ble Tribunal.
- I, do hereby verified, sworn and signed on 28 August, 2024 before this Hon'ble Tribunal.



29 AUG 2024

NOTARY PUBLIC RANCHI

NOTARY PUBLIC
RANCHI

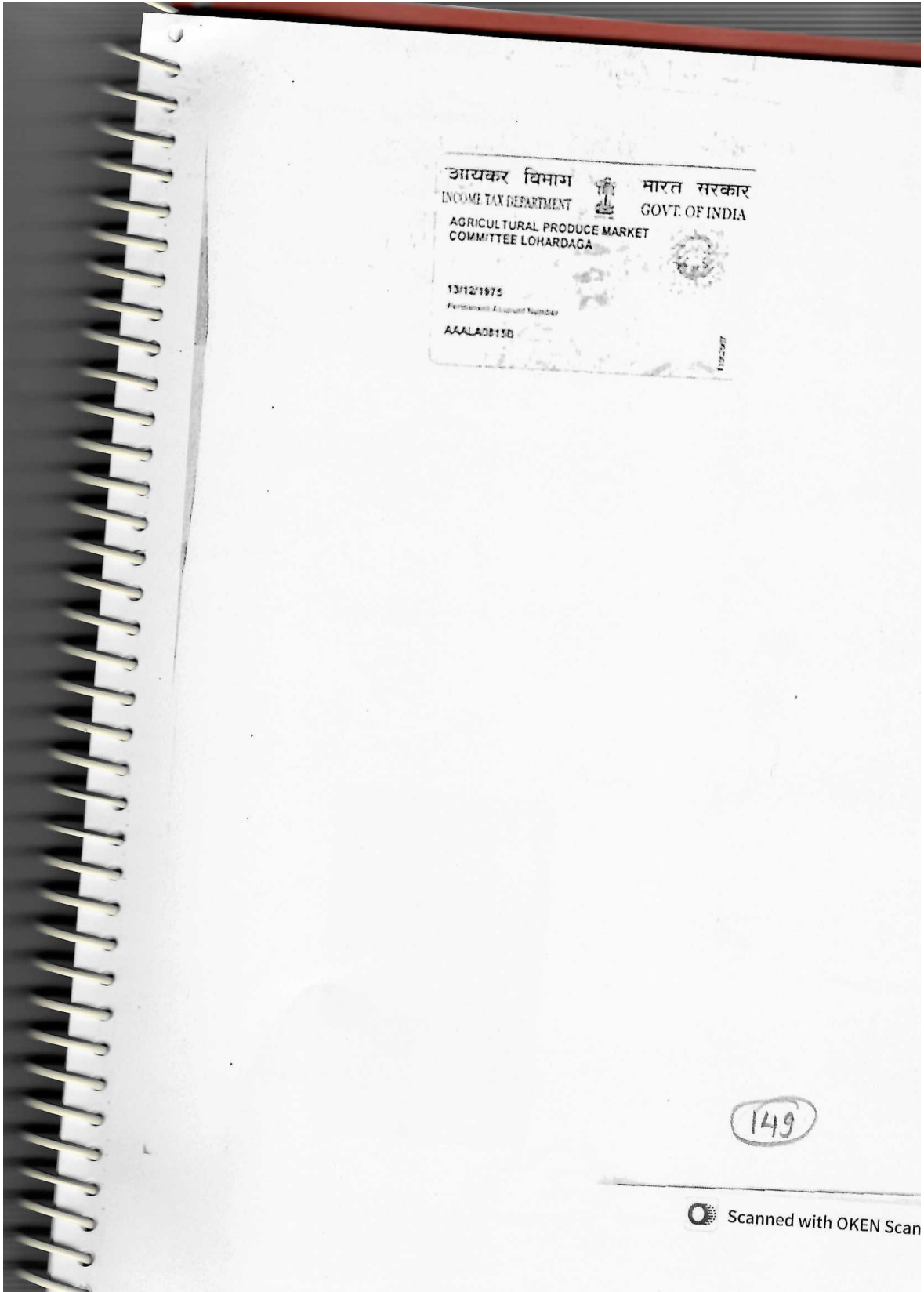
Dr. K. K. Basu
DEPONENT
IDENTIFIED BY ME
ADVOCATE
Signature
Identification No. 1216/98

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10. From the above affidavit, it is seen that the Board has not given any shop or premises on rent. The rent is being collected by the concerned APMC and the same is deposited in their account by the lessee.

11. We also perused the copies of the PAN numbers issued to various APMCs. Sample copies of some of the PAN cards issued to various APMCs are reproduced below:

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आयकर विभाग
INCOME TAX DEPARTMENT

भारत सरकार
GOVT. OF INDIA

स्थायी लेखा संख्या कार्ड
Permanent Account Number Card

AAALA4897R

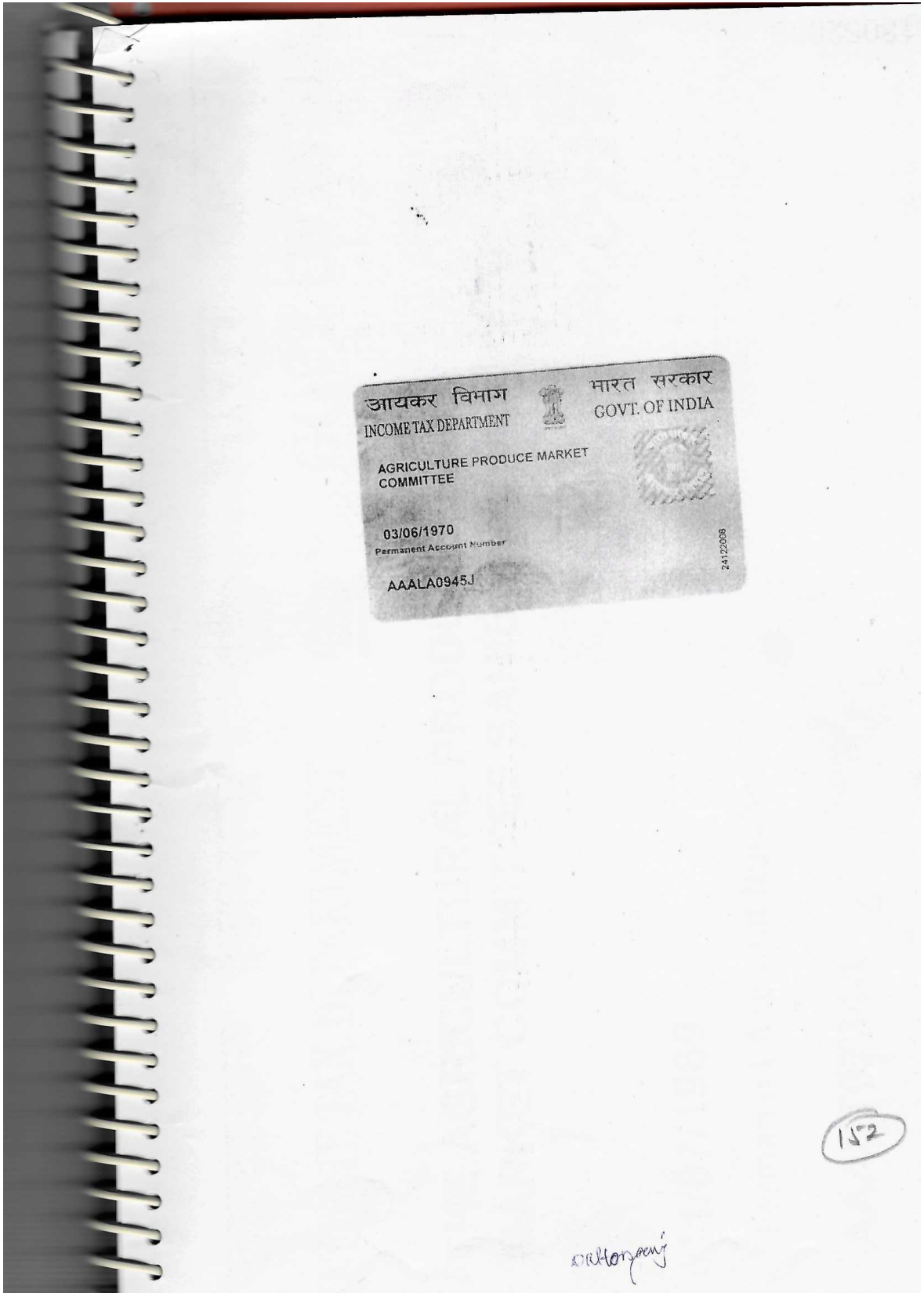
नाम / Name
AGRICULTURAL PRODUCE MARKET COMMITTEE
KHUNTI

गठन / गठन की तारीख
Date of Incorporation/Formation
04/12/1975

12122022

(15)

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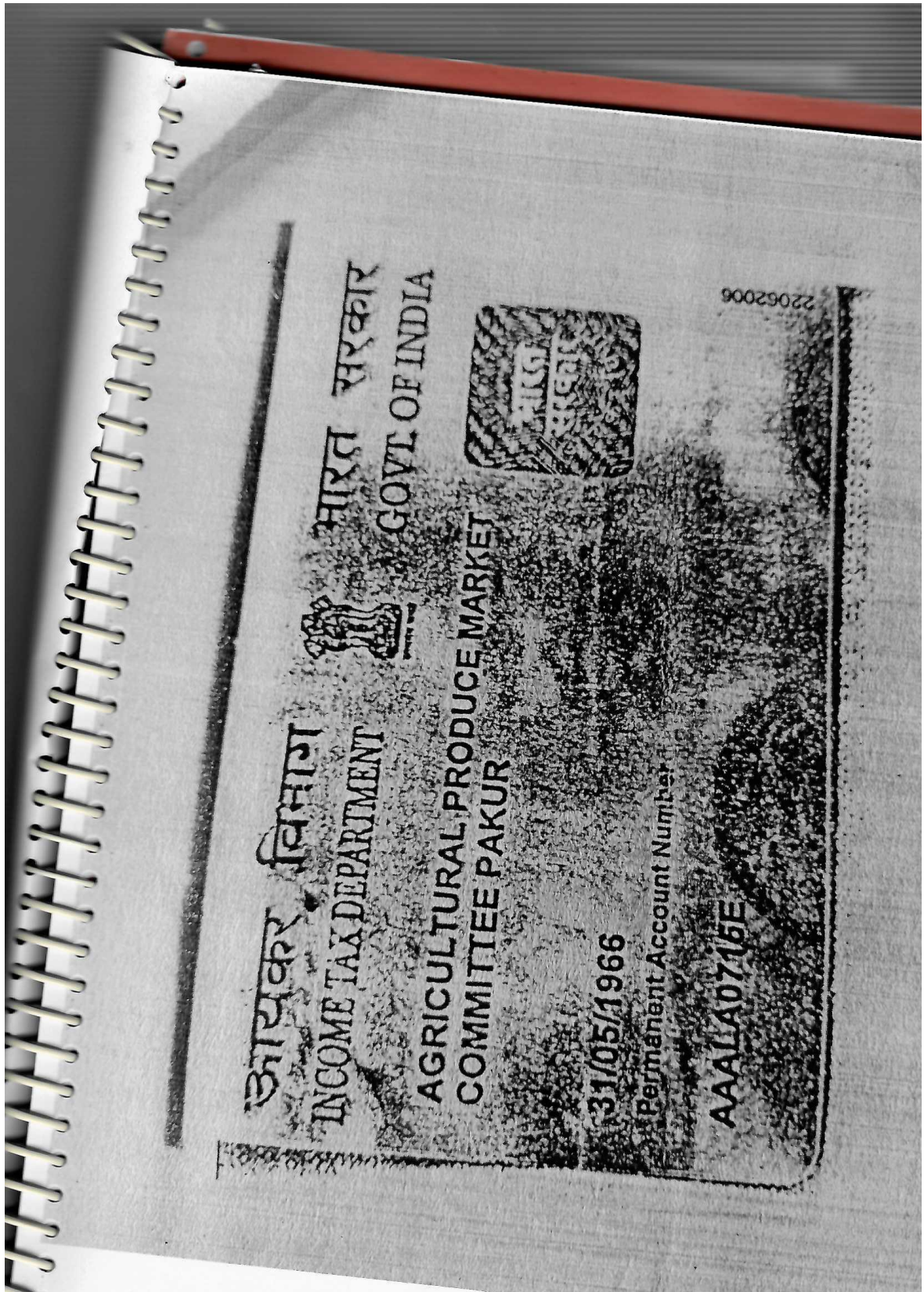
ST/75724/2015

आयकर विभाग
INCOME TAX DEPARTMENT
KRISHI UTPADAN BAZAR
SAM SERAIKELLA
20/07/1981
Permanent Account Number
AAALK0302K
Signature

भारत सरकार
GOVT. OF INDIA

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12. From the PAN numbers, it is seen that APMCs are independent entities so far as the Income Tax statues are concerned. For all purposes, the Rent received by the APMC would be treated as their

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income and not as the income of the Board. Therefore, for the purpose of Service Tax, the income of the APMC cannot be treated as the income of the Board.

13. The documentary evidence extracted above, clarify that the lessor is APMC and not JSAMB. The Service Tax is payable by the entity/person who provides the service. In case of 'Renting of Immovable Property', the Service Tax liability is on the person who lets out the premises on lease. In the present case, the Revenue has proceeded under the erroneous assumption that the Board is the lessor and the beneficiary of the rent received. From the above documents, there is no iota of doubt that the Board is neither the owner, nor is the lessor, nor is the rent being received by them.

14. The Supreme Court judgement relied upon by the Revenue, pertains to the Rental Income received by the Krishi Upaj Mandi Samiti which is the Hindi name for Agricultural Product Market Committee [APMC]. As per this decision, the APMC is liable to pay the Service Tax. The issue of the Board monitoring the working of the APMC, being liable to pay the Service Tax was not the issue. Therefore, the case law is of no help to the Revenue.

15. In view of the above detailed discussions, we find that the confirmed demand is not sustainable on merits. Accordingly, we set aside the impugned order and allow the appeal.

16. As held above, the Show Cause Notice has been issued to the appellant which should not have been issued in the first place. Therefore, holding that no case of suppression has been made out against the appellant, we set aside the confirmed demand on extended period as time barred.

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17. Thus, the appeal is allowed on merits and on account of time bar. The appellant would be eligible for consequential relief, if any, as per law.

(Pronounced in the open court on 17/06/2025)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja