

Query No. 23

Subject: *Principal vs. agent relationship for recognition of revenue.*¹

A. Facts of the Case

1. X Farmers Producer Company Limited (hereinafter referred to as 'X FPC' or 'the Company') is incorporated in the State of Maharashtra in the year 2014 under the Companies Act, 2013 as a 'Company Limited by Shares' pursuant to section 7(2) of the Companies Act, 2013 and Rule 8 of Companies (Incorporation) Rules, 2014. X FPC is an unlisted company. With reference to section 465(1) of the Companies Act, 2013, "Part IX A of Companies Act 1956: Producer Companies" is applicable to X FPC.

2. As per its Memorandum of Association, X FPC has the following main objectives:

- a. *To facilitate* to carry on in the state or in India or elsewhere the business of procurement, production, plantation, nursery raising, harvesting, storing, grinding, grading, pooling, handling, bottling, packing, supplying, trading, marketing, selling, buying, warehousing, distribution, export, import, processing including preserving, drying, distilling, brewing, venting, canning and packing of the produce, items and products of farmers arising from agriculture (including medicinal plant, animal husbandry, dairy, aquaculture, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of farmers, primary producers and to deal in all kinds of seeds, grains, vegetables, foods, cereals, herbals, fruits, commercial and non-commercial crops, fertilizers, growth regulators, bio products, feed and related products, pesticides, agriculture machinery/tools etc., required for the above objects by itself or through other institution.
- b. *To facilitate and support its members* for building their capacities and to manufacture, sale, supply of machinery, equipment, consumables, providing education on the mutual assistance principle, promoting techniques of mutuality and mutual assistance, rendering technical and logistic services, consultancy services, training, research and development to its members and all other activities for the promotion of the interest of its members and to take all welfare measures or facilities for the benefit of members.

(Emphasis supplied by the querist.)

3. With reference to the Articles of Association of X FPC, 'Member' means a producer or producer institution (whether incorporated or not) or a cooperative society admitted as a member of a producer company and who retains the qualifications necessary for continuance as such.

4. The querist has stated that each holder of equity shares is entitled to one vote per share. There are 520 members of X FPC as on 31st March 2022. All these members are farmer producer companies incorporated under the Companies Act, 2013. X FPC procures agriculture commodity from grower farmers, through farmer producer companies (who are

¹ Opinion finalised by the Committee on 13.12.2022.

the members of X FPC). Many times, agriculture commodity is also collected by Farmer Producer Companies from grower farmers, who are not necessarily the members of the Farmer Producer Company who procure the commodity for X FPC.

5. The Ministry of Agriculture and Farmers Welfare, Government of India has appointed Central Nodal Agencies for implementation of Price Support Scheme (PSS) and Ministry of Consumer Affairs and Food and Public Distribution, Government of India appointed Central Nodal Agency for Price Stabilization Fund (PSF) Scheme for the benefit of farmers (a copy each of these schemes has been provided by the querist for the perusal of the Committee).

6. X FPC has been notified as State Level Agency for PSS by the Government of Maharashtra. In addition, X FPC is also acting as State Level Supporter of National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) for PSF Scheme. X FPC has entered into the Agreements with Central Nodal Agencies viz. National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) and Food Corporation of India (FCI) for procurement and supply of Tur, Chana, Moong, and Onion under PSS and PSF Schemes. Thus, X FPC is acting as State level Agency/Supporter for these schemes.

7. The modus operandi under these schemes is as under:

- a. PSS scheme is announced by the Department of Agriculture, Cooperation & Farmers welfare (DAC&FW), Ministry of Agriculture and Farmers Welfare, Government of India for Kharif and Rabi seasons specified crops, to procure and supply of commodities like Tur, Chana, Moong etc. at pre-decided Minimum Support Price on recommendation of appointed Commission by Government for agriculture costs and prices.
- b. Under PSF, commodities like onion, pulses etc. are procured through State Level Supporters at prevailing market rates fixed by Central Nodal Agencies.
- c. The commodity is procured during pre-announced period by farmer producer companies (who are the members of X FPC) from their producer farmers (members and non-members of Farm Producer Companies) after getting information and documents like 7/12 Extract, Crop Area, Bank Account details etc. For these procurement and arrangements at primary procurement centres, an agreement is entered into by X FPC with each Farmer Producer Company. (A copy of Draft Agreement has been supplied by the querist for the perusal of the Committee.)
- d. The commodity received at primary procurement centres (Farmer Producer Companies) is checked and sorted for specified quality and weightage. With due quality check and weighment of the commodity (duly packed in new jute bags of 50 Kg), Lot Entry Slip data is entered at the primary procurement centre on the software provided by Central Nodal Agencies, already provided to all these primary centres. The Lot Entry Slip contains:
 - i. Purpose, Date
 - ii. Season ID
 - iii. Agency Name
 - iv. Society Name
 - v. Farmer Name, Address and Mobile No.

- vi. Commodity
- vii. Lot ID
- viii. Lot Short Code
- ix. Lot Ref No.
- x. No. of Bags
- xi. Bag Type
- xii. Quantity (Quintals)
- xiii. Rate (Rs. Per Quintal) at Minimum Support Price
- xiv. Value of Commodity (Rs.)
- xv. Bank Details
- xvi. Farmer TracId

Soft copy of the loaded slip in the system is automatically communicated to the State Level Agency, viz., X FPC. Printed acknowledgement copy of the slip is physically handed over to the supplying farmer.

- e. The commodity procured at primary procurement centre with full truck load (within 2-3 days of collection) is then transported to Warehousing Regulatory Development Authority/Central Warehousing Corporation (CWC)/State Warehousing Corporation (SWC) accredited warehouses as directed by Central Nodal Agency. These transportation arrangements are made by Farmer Producer Companies. On acceptance and receipt of commodity, the Electronically Generated Warehouse Receipt (EWHR) is prepared in the name of Central Nodal Agency with weight and value (at Minimum Support Price only). Soft copy of the receipt is loaded in the system and automatically communicated to the State Level Agency, viz., X FPC as well as Central Level Agency. Physical WHR copy is handed over to the primary procurement centre representative/State Level Agency.
- f. In few instances, there is a negligible/minor (Shortage/Excess) difference in loaded weight of the commodity at primary procurement centre and at the warehouse. This surplus/deficit value difference is shared/borne by the Farmer Producer Companies of the primary procurement centre.
- g. Due reconciliation is made for quantity procured from farmers in lots and supplied to the warehouse on behalf of Central Nodal Agency.
- h. New jute gunny bags (50kg) are purchased only by X FPC directly from manufacturer/supplier and delivered to the primary procurement centres as per individual requirement of the centre. The actual cost of gunny bags consumed is being reimbursed at actuals to X FPC from the respective Central Nodal Agency.
- i. Following expenses incurred by Farmer Producer Companies are claimed by them from X FPC (the State Nodal Agency):
 - i. Labour charges for sorting, grading, weighing, loading and unloading at Procurement Centre and at Godown at pre-determined rate fixed by the Government of Maharashtra.
 - ii. Transportation charges at fixed rate by the Government of Maharashtra (upto 50 kms)
 - iii. Transportation charges at fixed rate (beyond 50 kms in exceptional case reimbursed with special approval of Chief Secretary of the Government of Maharashtra).

- j. In turn, the following expenses incurred by Farmer Producer Companies are claimed by X FPC (the State Nodal agency) from NAFED/FCI (the Central Nodal Agency):
 - i. Reimbursement of gunny bags cost at actuals.
 - ii. Labour charges for sorting, grading, weighing, loading and unloading at Procurement Centre and at Godown at pre-determined rate fixed by the Government of Maharashtra.
 - iii. Transportation charges at fixed rate (upto 50 kms)
 - iv. Transportation charges at fixed rate (beyond 50 kms in exceptional case reimbursed with special approval of Chief Secretary of Government of Maharashtra).
- k. X FPC submits the claim of procured commodities supplied to the accredited warehouses at Minimum Support Price only with respective Central Nodal Agency.
- l. The sums received by X FPC from the Central Nodal Agency towards supplies are immediately digitally passed on from the Bank Account of X FPC to the respective producer farmer's Bank Account from whom the commodity is procured, with an intimation to the Farmer Producer Company. Thus, both procurement and supply transactions are recorded at Minimum Support Price and without any price difference between procurement and supply value.
- m. The sums received by X FPC from the Central Nodal Agency towards reimbursement of expenses are also digitally passed on to the respective Farmer Producer Company's Bank Account to the extent of their due claim.
- n. For procurement and supply of these specified commodities within overall quota of specified quantities, State Level Agency/Supporter is entitled to receive 2% commission (termed as Mark-Up) based on the value of commodity at Minimum Support Price. Out of this 2% commission, 1% commission is required to be passed on to the respective farmer producer company, who procured and supplied the commodity.
- o. X FPC is thus acting as State Level Agency/Supporter of Central Nodal Agencies and Farmer Producer Companies are acting as sub-agent of X FPC.

8. Following further contentions have also been provided by the querist for the consideration of the Committee:

1. X FPC is not acting as a trader. The role of X FPC and Central Nodal Agency institutions is to facilitate the Government of India for effective implementation of PSS and PSF Schemes for the benefit of farmers.
2. Trader has always a freedom to buy and sell any commodity, however X FPC has to procure and supply restricted commodity only.
3. Trader has a right to choose from whom to buy and whom to sell, however X FPC has to procure only from member farmers and supply only to Central Nodal Agencies appointed by the Government.

4. Trader has a right to negotiate the buying and selling price, however X FPC has no such choice and has to procure from member farmers and supply to Central Nodal Agencies at minimum support price as announced by the Government of India.
5. For a trader, profit is difference between selling price and purchase price less expenses; however for X FPC, profit is the difference between commission and indirect expenses like administrative and marketing etc.
6. Buying and selling is a part of trader's business, however for X FPC, the activity is to support the Government to facilitate for benefit of farmers.
7. Trader incurs direct and indirect expenses on his own account; however, X FPC gets direct expenses reimbursed, may be at fixed pre-determined base or at actuals.
8. On purchase, title in the property is passed on in case of a trader, however in the case of X FPC, the procurement and supply is on behalf of Central Nodal Agency.
9. Till 31st March 2022, Central Nodal Agencies deducted TDS under section 194 H of the Income-tax Act on commission (mark-up amount), but recently Central Nodal Agencies have deliberated upon section 206(c) with specified conditions, viz., TCS @ 0.10% on sale value (exceeding Rs. 50 lakh in immediately preceding financial year (F.Y.)) or section 194Q with specified conditions, viz., TDS @ 0.10% on purchase value (exceeding Rs. 50 lakh in immediately preceding F.Y.).
10. It has been informed to X FPC that the Central Nodal Agencies are recording the corresponding transactions as purchases and sales, which according to the querist, does not necessarily mean that X FPC has also to treat the arrangement/transactions in the same way as the other party. X FPC is following accounting system based on the concept of 'Substance over Form'.

As per the querist, taking into consideration the principle of 'Substance over Form', the arrangement of procurement is not a purchase and supply is not a sale.

9. *Conclusion by the querist:*

1. As per paragraph 11 of Accounting Standard (AS) 9, 'Revenue Recognition', ***"In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:***
 - (i) ***the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and***
 - (ii) ***no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods."***
2. In the case of X FPC, question of title in the commodity transfer from a farmer to X FPC at the time of procurement and from X FPC to Central Nodal Agency at the time of supply does not arise as the entire transaction is of a facilitator on behalf of Central Nodal Agency in the capacity as an agent and hence, there is no need to show the transactions as purchases and sales.
3. As per paragraph 12 of AS 9, ***"In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever***

relates the revenue to the work accomplished. Such performance should be regarded as being achieved when no significant uncertainty exists regarding the amount of the consideration that will be derived from rendering the service”.

According to the querist, procurement is not a purchase and supply is not a sale, based on the above deliberations. X FPC follows the completed service contract method and recognises the Commission as revenue.

4. The querist has also mentioned that AS 9 is silent on the accounting for similar type of transactions relating to X FPC.

B. Query

10. On the basis of the above, the querist has sought the opinion of the Expert Advisory Committee as to whether X FPC in the above referred arrangements/transactions is acting as a principal or as an agent.

C. Points considered by the Committee

11. At the outset, the Committee notes from the Facts of the Case that X FPC is acting as State Level Supporter of National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) for PSF Scheme. X FPC has also entered into the Agreements with Central Nodal Agencies, viz., National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) and Food Corporation of India (FCI) for procurement and supply of Tur, Chana, Moong, and Onion under PSS and PSF Schemes. Thus, X FPC is acting as State level Agency/Supporter for these schemes. In this context, the Committee notes that the basic issue raised by the querist relates to determination of capacity in which X FPC is acting in relation to its transactions with Central Nodal Agencies, viz., NAFED or FCI under the PSS and PSF Schemes. In other words, whether it is acting as an agent or as a principal for its transactions with these central agencies. The Committee has, therefore, examined only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, the capacity in which X FPC is acting vis-à-vis the farmer producing companies or procurement agencies, accounting treatment in the financial statements of central nodal agencies or farmer producing companies, timing and manner of recognition of revenue, etc. Further, the Committee has examined the issue only from accounting perspective and not from any tax (GST or income-tax) or legal perspective, including any legal interpretation of the PSS and PSF schemes, agreements between X FPC and other agencies/parties, etc. Furthermore, the opinion expressed hereinafter is in respect of the specified quantity and quality of commodities purchased by X FPC under the schemes only and not otherwise. The Committee also wishes to state that the considerations for determination of tax may be different from accounting considerations and therefore, the treatment thereunder may not be relevant for accounting purposes.

Further, since the querist has referred to the provisions of Accounting Standard (AS) 9, ‘Revenue Recognition’, the Committee has opined considering the requirements of Accounting Standards notified under the Companies (Accounting Standards) Rules, 2021. Furthermore, the Committee has expressed its opinion in the context of sample/draft agreements entered into by X FPC with NAFED under both the schemes and has not considered any other agreement. Therefore, if there is any change in the terms of the Agreement, the opinion may change.

12. The Committee notes that as per paragraph 17(b), ‘Substance over Form’ of Accounting Standard (AS) 1, ‘Disclosure of Accounting Policies’, “The accounting treatment

and presentation in financial statements of transactions and events should be governed by their substance and not merely by the legal form”. In the context of revenue recognition, the principle of ‘Substance over Form’ is recognised by paragraph 6.1 of AS 9, which inter alia states that there may be situations where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership and in those situations, revenue should be recognised at the time of transfer of significant risks and rewards of ownership to the buyer. The Committee further notes that paragraphs 10 and 11 of Accounting Standard (AS) 9, state as below:

***“10. Revenue from sales or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.*”**

11. In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:

- (i) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and***
- (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.”***

The Committee notes that as per the above requirements, it is essential for recognition of revenue from sale of goods that significant risks and rewards of ownership in the goods should be transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In other words, significant risks and rewards of ownership and effective control over goods at the time of effecting the sale should vest in the (designated) seller (and not in another party). Unless this condition is satisfied, a sale cannot be recognised by the seller. Therefore, in determining the proper accounting treatment of the arrangement of procurement and sales in the extant case, it must be ascertained, whether the significant risks and rewards of ownership and effective control over the agricultural commodities first get transferred from the farmers to X FPC and then from X FPC to Central Nodal Agency. If it is not so, the transaction does not constitute a sale of X FPC and should not be so recognised; instead, X FPC should recognise only the service margin/commission earned by it for effecting the transaction.

13. The Committee is of the view that the question whether significant risks and rewards of ownership are transferred to X FPC and thereafter to the Central Nodal Agency involves judgement based on the facts and circumstances of the extant case. In this regard, the Committee notes the following clauses from the sample/draft agreements between X FPC (which is a State Level Supporter/State Level Agency) and NAFED (which is Central Nodal Agency) in the context of PSS and PSF Scheme, which have been supplied by the querist as follows:

Format of Agreement to be entered into between NAFED and State Level Supporters (SLSs) for Price Support Operations of Oilseeds and Pulses during Rabi Marketing Season 2022 under PSS:

Responsibility of State Level Supporter (SLS):

i. SLS will give preference to the member societies / Farmer Producer Organisations (FPOs) of NAFED for procurement of Pulses & Oilseeds under PSS through them.

...

iii. It will be essential for SLS to ensure that all procuring societies enter data of daily procurement on the portal/procurement system. Some of the necessary details to be entered inter alia as under:

...

k) The procurement society will raise a Proforma invoice of the stock purchased from the farmers, which may be sent along the dispatch details to the warehouse...

...

10. Identification of procurement Centres:

i. The State Level Supporter (SLS) shall be required to procure/ purchase the notified FAQ commodity at the Minimum Support Price (MSP) ____ (name of the commodity) in the notified mandies/ procurement centers.

...

13. Limit of purchase in a single day: Only 50 bags (50 kg. each) of produce shall be purchased from one farmer in one day.

14. Logistic Arrangements:

...

iv. The logistic costs shall be reimbursed by DAC&FW as per the norms/expenditure approved under PSS Scheme.

...

vii. The SLS will also ensure that every procurement centre has adequate number of weighing machines, moisture meters, foreign matter / oil contents, testing machines, adequate number of gunny bags, stitching machines, labour arrangement, transport facility and adequate number of staff to handle procurement, identification, verification and checking of records, accounting officials etc. to ensure the procurement in an organized and proper manner.

viii. Costs towards the utilized warehousing space, gunny bags, transport, incidental and handling expenses will be reimbursed to SLS, subject to the norms/expenditure approved by DAC &FW under the PSS scheme.

...

16. Deposit & Hypothecation of stocks:

i. The SLS shall deposit the stocks, procured from the farmers, as per prescribed quality and packing at the designated CWC/SWC warehouse within five days of procurement beyond which the SLS has to provide explanation for the delay.

- ii. The SLA shall be responsible to take the custody of the stocks and get it hypothecated in the name of NAFED within the prescribed period so as to get the funds from NAFED.

17. Quality/Grade Specifications:

...

- iii. The SLS shall be responsible for the quality and quantity and also safety of the stocks from the point of procurement up to the point of final storage in CWC/SWC warehouses or up to the dispatching point where the stocks have to be dispatched simultaneously with the procurement.

...

- vii. SLA has to provide an undertaking to NAFED for reimbursement of any loss on account of stock found not confirming to the FAQ after deposit in warehouses.

18. Quality check by Surveyor:

...

- ii. Nafed will accept the stocks confirming to FAQ specification... In case the quality does not conform to FAQ specification, the stocks shall not be accepted by Nafed under PSS and the SLS shall lift the rejected quantity immediately at its own cost.

- iii. Nafed will not be responsible for expenses & any consequential losses incurred directly or indirectly for such stocks not accepted under PSS.

...

- 21. Quantum of procurement:** The overall quantity of procurement by Central Government will be restricted to 25% of the actual production of the commodity for that particular season. ...

22. Working Capital Arrangement and Revolving Fund:

- i. The SLS will seek revolving fund from the State Govt. to ensure adequate liquidity to the State procuring agency so as to pay the dues of farmers for their produce within 3 days from the receipt of their produce. The cost of such investment of State/UT government shall be duly reimbursed by the DAC&FW up to 10 days at the market rate of the interest or actual cost, whichever is less. ...

...

- vi. On sanction of CC limit, Nafed shall release 100 % of the MSP value of FAQ stocks and 50 % Incidental expenses to SLS on receipt of stock/hypothecation in its name by way of clean WHRs along with survey reports received against the procured stocks and incidentals expenses bills backed by the supporting documents.

- vii. Balance 50% incidental expenses shall be released on completion of settlement of Bills as per defined norms/expenditure approved under PSS scheme.

...

27. Finalization of Incidental Expenses:

...

v. The logistic costs shall be reimbursed by DAC&FW as per the norms/expenditure approved under PSS Scheme.

vi. The expenses from the point of procurement of stock at procurement centres in mandies upto storage in warehouse include labour charges, packing, stitching, marking, loading, transportation, unloading and stacking in godown etc. ...

...

xi. Visits & Inspections: SLS shall be responsible to closely monitor the PSS operations and ensure the strict compliance of the provisions and conditions of the scheme and its guidelines.

28. Maintenance of records:

...

iii. The SLS shall maintain proper account of the funds received, from Nafed and also payments made to the farmers and expenses incurred towards incidentals and other costs.

...

v. The purchase register, payment register, movement/ transportation register / gunny bags register, stock register will be issued by Nafed branch, properly numbered and signed at each page by Nafed official for its maintenance at procurement centre.

vi. ...The SLS shall also furnish periodical statement of procurement etc. as directed by the Branch Manager, Nafed concerned.

vii. The SLS shall, on demand, make available the aforesaid registers and accounts, documents etc. for inspection by the representatives of Nafed and /or the GOI from time to time or whenever required.

29. SLS to work only for Nafed:

a. As the SLS shall be working for Nafed under the PSS (Price Support Scheme), it will not undertake purchases of the same commodity in their own account or on behalf of anybody else/other agencies except Government Agency at a price below or at the MSP.

b. The SLS shall not shift/dispose off /or mortgage whole/ part of the stocks purchased and/or hypothecated under PSS at MSP without specific prior approval, in writing by Nafed.

30. Administrative markup:

a. The administrative markup included in the Bills/Invoices raised by SLS on Nafed ...will cover up its administrative expenses and margin if any.

b. The administrative markup shall be:-

A maximum of 2% of MSP Value will be paid to procuring agencies at the state/procurement level. ...

33. Bills/Invoices for commodity procured:

i. SLS shall raise bills /invoices for the quantity of the commodity procured by it under this agreement and supplied or delivered at Nafed designated

warehouses/ godowns. The bill /invoice shall reflect all the components of the amount payable by Nafed to SLS ...

...

35. Audit System:

All the claims and expenses are also subject to spot verification of records by the Office of Chief Advisor (Cost), Department of Expenditure, Ministry of Finance, New Delhi and CAG. In case of disallowance of any expenses/claims, relating to procurement operation of that commodity, by the Ministry of Finance / DAC & FW and CAG, the same shall be recoverable from the concerned SLS.

...

40. Indemnity Clause:

The SLA shall indemnify NAFED and keep indemnified against any loss or damage, claims, compensation, penalty, fine, levies, etc. on account of slackness, deficiency, failure to observe any obligations under the contract, failure to comply with statutory/ mandatory provisions pertaining to the contract by the SLA in respect of the services provided etc., whatsoever.”

Format of Agreement for procurement/purchase of onion under Price Stabilization Fund (PSF), Scheme of GoI during Rabi Marketing Season 2021 By Support Agency for and on behalf of NAFED to the delivery point of NAFED:

1. SCOPE OF WORK:

(I) Broad scope of work of the Support Agency shall be as follows:

- a) Organizing procurement operations on behalf of NAFED for procurement of freshly harvested onion bulbs.
- b) Quality control to ensure procurement as per quality laid down by NAFED.
- c) Maintenance of records of all farmers / farmer organizations from whom procurement is made.
- d) Identification and hiring of suitable godowns within the production hub for storage of commodities.
- e) Bagging, transportation and storage of onion in identified and verified godowns.
- f) Ensuring quality control and proper maintenance of stocks during storage period.
- g) Extraction, bagging and dispatch of commodities as per agreed quality norms and as per NAFED indents.

(II) Broad scope of work of the NAFED shall be as follow:

- a) Target procurement price will be informed by NAFED to Support Agency;
- ...
- c) The quantity to be procured will be conveyed by NAFED to Support Agency on daily basis.
- d) NAFED will decide the procurement price as per the prevailing rates, quality and quantity of Onion to be procured directly from the farmers / Farmers' groups / Farmers' Producer Organizations (FPOs) on a day to day basis for buffer stocking and the support agency will have to purchase at this target price.

2. Terms and Conditions:

...

2.1 Description of the work:

...

2.1.5 NAFED will not be responsible for residual stock of onion obtained after sorting and grading of procured product. Support Agency shall make arrangement for disposal of such onion and pay to the farmers for such onion directly.

...

2.1.8 The Support Agency will be responsible for the quality and quantity of procured onion while in their custody until such time stocks are transferred to NAFED after due verification of quantity and quality, which shall be binding on Support Agency at the storage point.

2.1.9 The Support Agency shall not shift/dispose off /or mortgage whole/ part of the procured stocks without specific and written prior approval of NAFED.

2.1.10 The maximum permissible limit for qualitative and quantitative storage losses in case of onion shall be upto 25% with maximum storage period of 6 months. Alternatively, if storage period is less, the lesser can be applied on pro-rata basis. Excess losses, if any, will be recovered from the Support agency.

...

4. Volume of work:

4.1 Initially a targeted quantity of around 25,000 MT shall be allocated to X- FPC for this season. However, quantity of onion to be procured shall be decided by NAFED on day-to-day basis.

6. Maintenance of records:

...

6.5 Proper maintenance of record /documents relating to the operation and list of Documents as notified from time to time.

...

6.A The Support Agency shall keep & maintain up-to-date proper/correct and separate accounts/ registers of center-wise procurement showing the name of the farmer, village, quantity procured, and status of payment made in respect of each transaction. This information will be forwarded to NAFED within 2 days of procurement.

6.B The Support Agency shall also make available for inspection by the representatives of NAFED and any designated office/agency of the Government of India from time to time or whenever required the aforesaid registers and accounts, documents etc. The Support Agency shall maintain proper account of the funds received, from NAFED and expenses incurred towards incidentals and other costs.

8. Payment to Support Agency by NAFED

8.1 NAFED will pay fixed service charges to Support Agency to the tune of Rs. 10 per qtl., in addition to all other charges for storage, sorting, grading and bagging etc. ...

8.2 Payment of labour, transportation (in case arranged by the Support agency) and other incidental expenses will be made directly by the Support Agency.

8.3 The statutory expenses vis. Mandi fee, purchase tax, cess, octroi, etc. will be paid by the Support Agency, which will be reimbursed on actual basis by NAFED after receipt of the bill from the Support Agency along with original receipt issued by the concerned authorities.

8.4 The Support Agency will submit a demand for 80% payment of stock deposited in chawls. Along with demand letter support Agency will provide the chawl wise deposit duly certified by support agency. Balance payment of 20% shall be made to the Support Agency after scrutiny of bills and the supporting documents submitted by them after receiving satisfactory report of losses during storage. The support agency will submit the bills along with supporting documents in complete within 15 days after closure of procurement.

8.5 The NAFED technical team will verify the stock procured and stored at godown before release of final payments to Support Agency.

...

10. Insurance:

The support agency shall be responsible for insurance of the procured stock of onion in hand and in transit in their own account, covering all risks including burglary, fire with SRCC [Strikes, Riots, Civil Commotion], Terrorist strike, and natural calamities [like floods, inundation, storms, typhoon, earthquake and subsidence] and any other risk. Insurance of stock of onion available in storage shall be taken by NAFED.”

14. From the above, the Committee notes the following facts:

- The Company does not have any price discretion. The procurement price is fixed as per the schemes and risk and rewards due to increase or decrease in market prices of the goods do not lie with the Company. The Company is getting a fixed commission/margin for undertaking various functions/activities and towards indirect expenses incurred by it as per the Schemes and reimbursement of specified direct expenses at the fixed specified rates in the Schemes. (Refer clause 10(i) of the Sample Agreement under PSS and clause 1(II)(d) of the Sample Agreement under PSF Scheme)
- The Company does not have any discretion in terms of quantity and quality of goods, manner of sale and purchase, party with whom sale and purchase is to be made, etc. (Refer clause 13 and 17 of Sample Agreement under PSS and clause 1(II)(c) of the Sample Agreement under PSF Scheme)
- The Company cannot use or deal with the goods as per its discretion, for example, use them for its own activities, pledge or sell to whomsoever it pleases, etc. as the goods as per the schemes have to be hypothecated in the name of central nodal agency. (Refer clause 16(ii) of the Sample Agreement under PSS and clause 2.1.9 of the Sample Agreement under PSF Scheme)
- The funds for entire procurement and other activities are being provided by the Central Nodal Agency/Government. (Refer clause 22(vi) of the Sample Agreement under PSS and clause 8 of the Sample Agreement under PSF Scheme)

- The Company has to maintain various records and give detailed reports as specified in the schemes or as per the instructions of central nodal agencies and are subject to audit, inspection and verification, which indicate that the Company is acting on behalf of these central agencies. (Refer clause 28 of the Sample Agreement under PSS and clause 6 of the Sample Agreement under PSF Scheme)

From the above, the Committee is of the view that the substance of contract needs to be assessed based on nature of obligation in an arrangement. Based on the facts furnished by the querist, it appears that the predominant and significant obligation on XFPC is to arrange for Government/government agencies, goods in exchange for a commission. The Committee is of the view that XFPC does not seem to have 'control' in terms of ownership, price discretion, purchase decisions, etc. over the purchased commodities and also does not appear to have significant rewards of ownership of goods (as it receives a fixed commission/margin for its activities). Moreover, certain risks, such as, risk due to fluctuation in the price of commodities, inventory risk (e.g., risk of perishability or risk of non-sale), risk of damage of goods beyond certain point, etc. are also borne by the Central Nodal Agency. However, the Committee notes that the Company appears to bear certain risks as well, such as, risk of damage of goods from the point of procurement to the point of storage in CWC/SWC warehouses or upto the despatching points, risk of non-acceptance of goods by Central Nodal Agency due to being inferior in terms of quality or excess quantity, disallowance of any expenses/claims relating to the procurement operation, loss or damage due to any deficiency or failure on the part of XFPC, etc. Considering the facts furnished by querist, the Committee is of the view that such risks do not appear to be significant in the overall contractual arrangement. Thus, the terms and conditions of the Agreements under the schemes and the facts provided by the querist, provide an indication that the Company is acting as an agent since it does not appear to have control over the goods and significant risks and rewards from the transactions undertaken do not vest with the Company.

D. Opinion

15. On the basis of the above, the Committee is of the opinion that in the extant case, XFPC appears to be acting as an agent of Central Nodal Agency, as discussed in paragraph 14 above.
