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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**EXCISE APPEAL BRANCH**

Appeal No. E/5820-5821/2004 - EX[DB] Date 02/09/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S WHALE GRAPHICS INDIA LTD. ← 19. SH. MUKESH GUPTA,
50-MOHBEWALA,INDL.AREA DEHRADUN

M/S WHALE GRAPHICS INDIA LTD. Appellant
Vs
C.C.E.MEERUT-I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 594-595/2009- **EX[DB]** dated 06-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**
1. Respondent
   C.C.E.MEERUT-I
   UNIVERSITY ROAD.MANGAL PANDAY NAGAR MEERIT-I
2. Adv. / Consult
   MR.K.K ANAND
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
3. C.D.R
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi

COURT-I

Date of hearing/decision: 06.08.2009

**Excise Appeal No. 5820 - 5821 of 2004**
[Arising out of order-in-Appeal No. 532-533 CE/Appl/MRT-I/2004 dated 2.09.2004 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-I].

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

| | | |
|---|---|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982. | Yes |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | Yes |
| 3 | Whether Their Lordships wish to see the fair copy of the Order? | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities? | No |

M/s Whale Graphics India Limited — Appellant

Vs.

CCE, Meerut-I — Respondent

Appearance:

Appeared for the Appellant – Shri K.K. Anand with Shri Hemant Bajaj, Advocates
Appeared for the Respondent – Shri P.K. Singh, DR

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final Oral Order No. 594 to 595/09-Ex

Per Shri Justice R.M.S. Khandeparkar:

Since in both the appeals common questions of law and facts arise, they were heard together and are being disposed of by this common order.

2. The appeals arise from the order dated 27.08.2004 passed by the Commissioner (Appeals), Meerut-I whereby the appeals filed by the appellants have been dismissed. The said appeals were filed by the appellants against the order dated 21.06.2004 passed by Deputy Commissioner, Dehradun whereby the SSI exemption claimed by the appellants was sought to be rejected and the demand of duty to the tune of Rs. 4,40,000/- was confirmed and recovery thereof was ordered under Section 11A of the Central Excise Act, 1944 alongwith interest thereon and further penalty of the amount equal to the duty was also imposed under Rule 25(1)(d) of the Central Excise Rule 2002 as well as the penalty of Rs. 5,000/- under Rule 27, and further penalty of Rs. 10,000/- on the Managing Director was also imposed. The benefit of SSI exemption was sought to be denied to the appellants on the ground that the appellants had failed to establish that their unit was situated within the rural area within the meaning of the said expression under the said notification.

3. While assailing the impugned order, the learned Advocate appearing for the appellants submitted that the authorities below failed to consider in proper perspective the certificate dated 12.05.2004 produced by the appellants. According to the learned Advocate, the certificate clearly discloses that the area in question lies within the territory of Zila Panchayat and, therefore, the authorities below could not have denied the benefit of SSI exemption to the appellants unit. He further submitted that the authorities, if were not satisfied, with the material on record about the claim of the appellants, they could have given further opportunity to the appellants to produce further evidence in relation to the claim of the appellants that the area in question is a rural area. In that connection, attention was drawn to the decisions in the matter of Canan Technologies vs. CCE, Bangalore-I reported in 2007 (207) ELT 737 (Tri.-Bang.), CCE, Calicut vs. Malabar Regional Co-op. Milk Producers Union Ltd., reported in 2006 (201) ELT 21 (Tri. Bang.), CCE, Bangalore-III vs. Srijee Foods reported in 2006 (198) ELT

219 (Tri. Bang.), Katyani Foods & Beverages (P) Ltd., vs. CCE, Meerut reported in 2004 (170) ELT 82 (Tri. Del.) and Karunya Matha Social Centre vs. CCE, Cochin reported in 2004 (168) ELT 226 (Tri. Bang.). He further submitted that the appellants have further evidence in the form of certificate issued by the Managing Director of Zila Udyog Kendra, Dehradun as well as by the Tehsildar of Dehradun. The first certificate would disclose that the area in question comprises of rural area and second certificate would disclose the survey number of the concerned land situated in the rural area. According to the learned Advocate, the certificates refer to the factual aspect of the matter and, therefore, the appellants should be allowed to rely upon those certificates even at this stage. He further submitted that in case the Tribunal has difficulty in allowing the appellants to rely upon the additional evidence then while setting aside the impugned order the matter should be remanded to the original authority permitting the appellants to produce further evidence in the matter thereby directing the authorities to reconsider the matter on the basis of such evidence to be produced by the appellants.

4. On the other hand, learned DR submitted that perusal of the impugned order discloses that the certificate dated 12.05.2004 has been duly considered by the lower appellate authority and only thereupon the claim of the appellants has been rejected. He further submitted that the requirement under Notification that the units should be situated within the rural area and the same should be satisfied by producing satisfactory evidence in that regard by the assessee is not an empty formality but same is the pre-requisite for claiming the benefit under the concerned notification. He further submitted that the records placed before the authorities disclose that the unit is situated in the industrial area and, therefore, the presumption would be that it is not a rural area. Lastly, it was submitted that the appellants are not entitled to produce additional evidence unless the appellants makes out a case in that regard and in the matter in hand no such case has been

made out and, therefore, the so-called certificates sought to be produced, should not be allowed to be relied upon nor there is a case for remand. Reliance was sought to be placed in the decision of Eagle Flask Industries Limited vs. CCE, Pure reported in 2004 (171) ELT 296 (SC).

5. The controversy in the matter in hand relates to the claim of benefit under Notification No. 8/2002-CE dated 01.03.2002, whereunder the SSI exemption for units not availing cenvat credit was sought to be granted subject to condition that the specified goods were manufactured in a factory located in the "rural area". The explanation to the said notification under clause 5(H) defines the term "rural area" means the area comprised in a village as defined in the land revenue records, excluding –

(i) the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee, or

(ii) any area that may be notified as an urban area by the Central Government or a State Government.

6. Being so, if one reads the notification and the meaning attached thereunder to the expression "rural area", it would mean that all the area which is comprised under a village as defined in the land revenue record, the same would be a rural area except that which falls in exclusion clause under clause 5(H) of the said notification. Undoubtedly, as the law stands, there is no presumption that particular area is a rural area or non rural area. It would depend upon the facts of each case. However, in cases where a Statute or the Rules framed thereunder specifically defines an area to be rural area, in those cases the authority will have to ascertain from the revenue record as to whether such area falls within the meaning of the expression as defined under the notification or not.

7. If we read clause 5(H) of the notification, it would be clear that any area which lies within the territory of a village as defined in the land revenue record, it would be a rural area for the purpose of availing SSI benefit under the said notification, unless the Department is able to show that the concerned area falls within the parameters of the exclusion clause under sub-clauses (i) or (ii) of the said clause 5(H) of the notification.

8. In the case in hand, the appellants while claiming the benefit under the said notification had produced a certificate dated 12.05.2004. The contention that such certificate was not at all considered by the authority is to be rejected in limine in view of the fact that Commissioner (Appeals) in its order has in fact considered the said certificate and rejected the same for valid reason. The certificate nowhere discloses to have been issued by an authority who is competent to certify as to whether the particular area forms part of any village or not. The law clearly requires that the area should be shown as the rural area as defined in the land revenue records. In other words, the revenue authorities should have to verify and certify as to whether the particular area lies within a particular village or not. Considering the same merely because Zila Panchayat officer or authority certifies that particular area is situated within a village, it would not lead to a conclusion that the concern area is a rural area within the meaning of the said expression under the said notification.

9. It is equally true that the exemption under the said notification cannot be availed unless the unit is in fact situated within the rural area and primarily it will be for the claimant to show that the area wherein the unit is situated is a rural area within the meaning of the said expression under the said notification.

10. It is pertinent to note in case in hand that when the show cause notice was issued to the appellants, it was not the case of the Department that the appellants are not entitled for the exemption on the ground that appellants' unit is not situated

within the rural area. At the same time it was within the knowledge of the Department that the unit was situated in the industrial area and there is specific mention in that regard in the show cause notice. Learned DR has not pointed out any material on record which could reveal that merely because the unit is situated in the industrial area it would lead to a conclusion that the area is not a rural area. As already observed above, there is no general presumption that particular land is rural area or that it is urban area because there is industrial establishment and not rural area. We have various instances in the country where establishment of industries in rural area is encouraged. Being so, it is difficult to accept the contention on behalf of the Department that merely because it is shown that the unit is situated in the industrial area, it would lead to the conclusion that it will cease to be the rural area.

11. As already observed above, once it was not the case of the department while issuing show cause notice that the area in question was not rural area and merely on the basis of the reply filed by the appellants claiming that the area is rural area, the authority without calling the appellants to produce the evidence in that regard, having proceeded to deny the benefit under said notification, undoubtedly the action on the part of the authority cannot be said to be in keeping with the requirements of law or by observing the rules of natural justice. As rightly submitted by learned Advocate for the appellants in the facts and circumstances of the case, it will be appropriate to set aside the impugned order and to remand the matter to the original authority by allowing the appellants to lead necessary evidence as regards the claim that the area in question is situated in the rural area. Undoubtedly the letter dated 12.05.2004 is not sufficient to establish the area to be rural area. But at the same time, there is no material on record which would help the Tribunal to arrive at a final conclusion about the nature of the concerned area. Before taking appropriate decision on the entitlement or disentitlement of the exemption, it would therefore, be necessary to

allow the parties to lead appropriate evidence in support of their rival contentions and the authority to decide afresh the claim of the appellants.

12. Considering the view we are taking in the matter it is not be necessary to deal with the case law which are sought to be relied upon. Suffice to observe whether the area is rural area within the meaning of the said expression under notification, the authority has primarily to rely upon the materials which are produced by the competent authority i.e. by the revenue authority in relation to the concerned area. The assessee has to establish that the area in question is comprised of a village as defined in the land revenue record. As against this, the Department can establish that such area falls within the exclusion clause under clause 5(H) of the said notification. After taking into consideration whatever material is produced in this regard, the authority will have to decide about the claim of the appellants. In the circumstances for the reasons stated above we set aside the order and remand the matter to the original authority to decide the claim bearing in mind the observations herein above, as expeditiously as possible, and in any case prior to 31.01.2010.

13. The appeals are disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/