

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.**

Date of Hearing/Order: 28.5.2018

Appeal No. E/50360/2018-DB

(Arising out of Order-in-Appeal No. 275-278(SM)CE/JPR/2017 dated 12.10.2017 passed by the Commissioner (Appeals), Central Excise, Jaipur)

CGST & CE. Jaipur

Appellant

Vs.

M/s C.P. Udyog

Respondent

Appearance

Shri R.K. Mishra, D.R.

- for the appellant

Shri Jitin Singhal, Advocate

- for the respondent

**CORAM: Hon'ble Mr. Bijay Kumar, Member (Technical)
Hon'ble Ms. Rachna Gupta, Member (Judicial)**

Final Order No. 52046/2018

Per Rachna Gupta :

The present appeal has been filed against the order of Commissioner (Appeals) dated 12.10.2017 vide which the demand raised by the department and confirmed by the original adjudicating authority has been dropped along with the penalties imposed.

2. The facts relevant for the purpose are that the respondent M/s C.P. Udyog was engaged in the manufacture of detergent and soap falling under the Chapter 34 of the Schedule to the Central Excise Tariff Act, 1985 and was enjoying exemption under Central Excise. It was on an enquiry as was initiated against it by the Anti Evasion

Team, Central Excise Division, Ajmer that they were found to have been availing the exemption of Notification No. 8/2003-CE dated 1.3.2003 incorrectly. Resultantly, four show cause notices dated 30th October, 2015, 30th November 2015, 30th November 2015 and 1st August, 2016 for the period with effect from 3rd September to December 2013, Jan. 2014 to September, 2014, October, 2014 to March 2015 and April, 2015 to September 2015 respectively were issued. While adjudicating the same the original adjudicating authority vide its order dated 18th November 2015 has not only confirmed the demand, but in addition, has imposed the penalty.

3. Being aggrieved, an appeal was filed and the Commissioner (Appeals) who vide its impugned order has dropped both the levy upon M/s CP Udyog. The department is here before us being the aggrieved parties.

4. Arguments of both the parties heard where the appellant department has impressed upon that for availing the benefits of exemption as per Notification No. 8/2003, the unit of the manufacture has to exist in a rural area. Rule 5(H) of the said notification, while defining the rural area excludes the area falling within the Cantonment area. Rule 5(H) is extracted herein above:

“5(H) “Rural Area” means 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.”**

It is impressed upon that as per the information obtained under RTI by the manufacturer itself their unit falls in village Derathu and the same falls within 2 Kms. periphery of the cantonment area and hence the benefits of the impugned notification have rightly been denied. The order under challenge has failed to consider the same and accordingly is prayed to be set aside.

5. While rebutting these arguments, it is submitted by the respondent manufacturer that admittedly the unit of the respondent falls outside the peripheral limit of cantonment area as such village Derathu falls under definition of rural area. The information sought under RTI also corroborates the same. Order under challenge therefore has no infirmity. Appeal is prayed to be rejected.

6. We have heard both the parties and our considered observations and findings are as follows:

The issue to be decided in the present case is whether the location of the factory of the manufacturer i.e. the Derathu village falls within the municipal limit of Nasirabad cantonment or was not without going into the details of the definition of rural area as

impressed upon by both the parties, the apparent admission is that village Derathu is outside the periphery of the cantonment area i.e. beyond 2 Kms. Thereof. Now a glance at Rule 5H of the impugned notification shows that very specific mention for unit to avail the exemption under the said notification is to fall within rural area. It is only if the unit falls within municipal limit or within the limits of Cantonment Board etc. that it shall be out of the definition of rural area and out of the ambit of notification under which the appellant has claimed benefit. The provision is absolutely silent extending any peripheral area to be included within the definition of the said municipal area or the Cantonment Board Area.

In a plethora of cases, it has been stated by various judicial pronouncements that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law; is and not what it should be.

7. In the given circumstances, we opined that the Commissioner (Appeals) has rightly adjudicated upon the controversy holding that village Derathu does not fall within the cantonment area in as such is well covered under the definition of rural area for which the notification is very much applicable. The appeal, accordingly, stands rejected.

(Dictated & pronounced in open Court)

(Bijay Kumar)
Member (Technical)

(Rachna Gupta)
Member (Judicial)

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