IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/1307/2011

[Arising out of Order-in-Appeal No: M-I/AV/199/2011 dated 19th April 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Essentials …***Appellant***

versus

Commissioner of Central Excise
Mumbai – IV …***Respondent***

Appearance:

Shri V S Sejpal, Advocate for appellant

Shri S V Nair, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**28/07/2017**
Date of decision:	**01/05/2018**

ORDER NO: A/86289 / 2018

M/s Essentials challenges order-in-appeal no. M-I/AV/199/2011 dated 19th April 2011 which held them liable to central excise duty of ₹ 1,19,007 and ₹ 1,87,467, along with interest thereon, besides penalty of ₹ 1,87,467, as reduced from the original

₹ 3,06,474 under section 11AC of the Central Excise Act, 1944.

2. Allegedly, the appellant manufactured and cleared branded ‘readymade garments’ without payment of duty. The matter had been subject to adjudication and in the earlier round of appeal, the Tribunal *vide* order No. A/102501027/WZB/EB dated 22nd September 2005, had remanded the matter to the original authority for verifying the genuineness of the certificate produced by the appellant that the place of manufacture was situated in a rural area.

3. This certificate was relevant as the non-entitlement of branded goods of ineligible owners of the brand to those claiming small scale exemption excluded such goods manufactured in rural areas as per paragraph 5(h) of notification no. 8/2002-CE dated 1st March 2002. According to jurisdictional officer, CIDCO being the designated planning authority over this area, precluded claim of the area to be rural. The original authority had come to the conclusion of liability to duty thus

> *’13. On close examination of the Notification and the above mentioned Decisions, it is found that the term ‘Rural Area’ has been defined as an area comprised in a village as defined in the land revenue records. The implied meaning is that a certificate, which is based on land revenue records and issued by a competent authority has to be considered as Certificate for the purpose of extending the exemption. In the instant case, the Certificate has been issued by the Sativali*

Gram Panchayat. The Gram Panchayat and officers thereof are not competent to issue such Certificate as they are neither maintaining Land Revenue Records not they are Land Revenue Officer. Even in the matter of Karunya Matha Social Centre supra, the Tribunal has held that a Certificate issued by the Village Officer is not valid. Under the circumstances, in the instant case, the benefit of Notification cannot be granted o the Assessee merely on the grounds that specific certificate has been issued to them by the Gram Panchayat. The CESTAT has not extended the benefit of the exemption but remanded it back as in the Order-in-Original and Order-in-Appeal, the issue of the said certificate has not been dealt with. The subject Order is specific with regard to verification of the genuineness of the said certificate. It is not out of scope of the verification to see whether the Certificate issued by the Officers are competent to issue such certificate.'

4. Before the first appellate authority, it was the contention of the appellant that the remand order required the original authority to restrict itself to ascertainment of the genuineness of the certificate and not the veracity of the contents therein which was beyond the competence.

5. Heard Learned Counsel for appellant and Learned Authorised Representative for Revenue.

6. Examination of the relevant provisions of the exemption notification *i.e.*

'4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade

name, whether registered or not, of another person, except in the following cases :-

xxxx

(c) where the specified goods are manufactured in a factory located in a rural area.'

shows intent to allow branded goods of any sort to be manufactured in rural areas with the benefit of exemption. 'Rural area' has been defined therein.

(*H) "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,'

7. The terms of the remand order are very clear. Eligibility to manufacture branded goods under the exemption notification was available to such small scale units as are situated in a rural area. The definition of 'rural area' does not envisage an interpretation on the part of the adjudicating authority or the appellate authority, the State Government alone is empowered to classify and segregate its territorial jurisdiction into urban and rural area for various purposes of administration. Exemption is available to such as are contemplated in exemption notification to be eligible. The scope and work of the competent authority of the State Government cannot detract from the content of the certificate which, in this case, is categorical.

Accordingly, the lower authority was misguided in denying the benefit of notification on the ground that the said area was urban and hence liable to duty.

8. Appeal is, therefore, allowed.

(Pronounced in Court on 01/05/2018)

(C J Mathew)
Member (Technical)

**/as*