C.C.E. Vs. Progressive Organics (P) Ltd.

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SooperKanoon Citation : sooperkanoon.com/38008

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-08-2005

Reported in : (2005)(184)ELT221TriDel

Judge : N T C.N.B.

Appellant : C.C.E.

Respondent : Progressive Organics (P) Ltd.

Judgement :

1. None appeared for the respondent assessee. Accordingly, the appeal is being disposed of after hearing the learned SDR and perusing the records.

2. The dispute in the present case is about the exemption under Notification No. 9/01. Under the Adjudication order, the exemption was denied to the assessee on the ground that the assessee was not located in a rural area. In appeal the Commissioner (Appeals) has overturned that finding with the following observations : In the instance case, the department has not adduced any evidence that village Sujruh has been declared as an urban area, whereas the appellant shave produced a certificate dt. 25.7.2000 of Tehsildar, Muzaffarnagar, which is placed on record, Certifying that village Sujruh is situated beyond the limits of Municipal Committee, Muzaffarnagar and alls under the rural area, as per the orders of the Government of Uttar Pradesh. The said certificate duly satisfies the definition of rural area as given in the said Notification, since it has been issued by the Land Revenue Officer(s) of the State of Uttar Pradesh on the basis of land

revenue records. The appellants have also produced a letter dt. 07.12.2002 from the Executive Engineer, M.D.A. which is also placed on record, clarifying that village Sujruh, though within the limits M.D.A., is out of the limits of Municipal Committee, Muzaffarnagar and falls under the rural area. Thus, if any area is notified under the jurisdiction of any development authority, it does not necessarily mean that such area has been declared as urban area and the adjudicating authority has wrongly interpreted the word "urban area" taking it as notified area under the jurisdiction of M.D.A. Here, it is also observed that the exclusion clause (i) of Explanation (H) to the said Notification has not been involved in the impugned SCN for denying S.S.I., exemption to the appellants. As such, the adjudicating authority has traveled beyond the scope of allegation contained in the S.C.N.3. In the present appeal also, the Revenue is contended that village Surjuh has to be treated as not falling within rural area in view of is forming part of Muzaffarnagar Development Authority area.

4. The Notification contains definition of 'rural area', which reads as under : "Rural area' means the area comprised in a village ad defined in the land revenue records excluding (i) the area under any municipal corporation, town area committee, cantonment board or notified area committee or (ii) any area that my be notified as in urban area by the Central Government of State Government" 5. It is clearly for the Revenue authorities to certify whether any area is rural area or not. In the present case, the juridictional Tehsildar has certified that the Village in which the assessee's unit is located is rural area. The Commissioner has rightly gone by the certificate of the Tehsildar. In these facts and circumstances, there is no merit in the Revenue's appeal. It fails and is rejected.