

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50747 of 2019

(Arising out of order-in-original No. 103/2018-CE dated 26.12.2018 passed by the Additional Director General (Adjudication) GST Intelligence, New Delhi).

M/s Spring Dells

Khasra No. 119, Village Raipur
Bhagwanpur, Roorkee
Distt – Haridwar (Uttarakhand).

Appellant

VERSUS

**Commissioner of Central Goods &
Service Tax,**

E-Block, Nehru Colony,
Haridwar Road, Dehradun.

Respondent

AND

Excise Appeal No. 50748 of 2019

(Arising out of order-in-original No. 103/2018-CE dated 26.12.2018 passed by the Additional Director General (Adjudication) GST Intelligence, New Delhi).

**Saurabh Chhabra, Working Manager of
M/s Spring Dells**

Khasra No. 119, Village Raipur
Bhagwanpur, Roorkee
Distt – Haridwar (Uttarakhand).

Appellant

VERSUS

**Commissioner of Central Goods &
Service Tax,**

E-Block, Nehru Colony,
Haridwar Road, Dehradun.

Respondent

APPEARANCE:

Shri Kapil Vaish, C. A. for the appellant

Shri R. K. Mishra, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER Nos. 50619 – 50620/2020

DATE OF HEARING: 19.09.2019

DATE OF DECISION: 13.03.2020

ANIL CHOUDHARY:

The issue in this appeal are-

- (i) Whether the appellant correctly availed the 'Area based exemption' under Notification No. 50/2003-CE with respect to goods manufactured in the factory shed at Khasra No. 115 and Plot No. B of Khasra No. 119?
- (ii) Whether in view of Board Circulars dated 22.12.2010, 17.02.2012 and 01.04.2013, manufacturing facilities in Khasra No. 115, Plot No. F of Khasra No. 119 and Plot No. B of Khasra No. 119 can be said to be single factory, eligible for area based exemption under the said notification?
- (iii) Whether goods lying in factory on 17.11.2016 were liable to be seized / confiscated?
- (iv) Whether penalties under Section 11AC and Rules 26 and 27 of Central Excise Rules are rightly imposed?

2. Brief facts are that the appellant is a partnership firm having their factory at Roorkee falling in the State of Uttarakhand. A private industrial campus was developed by the Partners of the appellant's firm and their relatives in Khasra Nos. 114, 115, 118 and 119 of Village Raipur, Bhagwanpur, Roorkee, District – Haridwar, Uttarakhand. The said land has been acquired by one of the Partners of the appellant firm alongwith relatives and friends. The industrial complex have been developed by laying in a private road/ lane, construction of boundary wall, construction of different sheds in the campus, so that industrial units could produce goods and avail exemption under the 'Area based exemption' Notification No. 50/2003-CE.

3. The Area based exemption under the said notification was available for a period of ten years to the units, which have commenced its commercial production (initially), or had undertaken expansion during 10.06.2003 to 31.03.2010. Such units should be located in the State of Uttarakhand or Himachal Pradesh.

4. All the units located in the different sheds availed 'Area based exemption'. In the initial declaration, Khasra number had been written in a combined way as it was difficult to identify location of each khasra separately. Each shed is or may be overlapping in more than one khasra - 'Plot number'. The sketch /diagram of the plot(s) and the complex (as per SCN) is as follows:-

Entry Gate	Common Road								Gate-II
	South East								
	Khasra No. 114 (M/s Care Plus)	Khasra No. 115 (Unit-II of M/s <u>Spring Dells</u>)	Khasra No. 118 Factory premises of M/s Fantasy	Common Road	Plot-F Khasra No. 119 (Main Unit of M/s <u>Spring Dells</u>)	Khasra No. 119 Factory premises of Jyoti Lab.	Open Space	Plot-B of Khasra No. 119 (Unit-III of M/s <u>Spring Dells</u>)	
Common Road			Common Road						
To public road	North West								
	Factory premises	Factory premises			<u>Plot-D & Plot-E</u>		<u>Plot-C of Khasra No.119</u>		

5. The said complex and /or the sheds situated in the complex have one common entry/ exit from the public road. Initially, the appellant had their manufacturing unit at Plot No. 'C' (Khasra No. 119), which was later on, shifted to Plot No. F, Khasra No. 119. There is no dispute about the exemption available to the manufacturing activity undertaken in the said unit at Plot 'F'/plot 'C'.

6. After 31.03.2010 (end of the period for claiming eligibility, to avail exemption), Circulars dated 22.12.2010, 17.02.2012 and 01.04.2013 have been issued by Board clarifying that the exempted units could also manufacture by installing new plant and machinery, there may be change in ownership of the eligible unit, the eligible unit may expand by acquiring an adjoining plot and installing new plant and machinery. It was further clarified that the expansion should be done by acquiring the adjoining Plot with atleast one common wall/ boundary to make it one unit.

7. The appellant expanded its commercial production by way of installing additional plant and machinery in the shed at Khasra No. 115 and being eligible in view of circulars dated 17.02.2012 read with 01.04.2013, exemption was claimed for the expanded capacity also. Further, Plot 'B' of Khasra No. 119 was used for storage of raw material and finished goods.

8. It appeared to Revenue that the appellant was wrongly availing Area based exemption with respect to goods manufactured at Khasra No.115 and being claimed as adjacent plot/ shed, as the said plot – Khasra No. 115 could not be termed as adjacent to Plot-F/119, since there was a common road/ open space and other factory premises / manufacturing unit established in between the existing manufacturing units at Plot-F Khara No. 119, could not be made available or applicable to the manufacturing – expanded capacity at Plot No. 115, as the same was not adjacent. In the course of inspection by the officers on 17.11.2016 and physical verification of all the three sheds / manufacturing premises of the appellant and the adjoining area, it was

observed that the manufacturing unit in question – main unit at Plot No. F/119, unit-II at Plot No. 115 and Unit 3 at Plot B/119, were found to be established at three different premises as detailed hereinabove in the sketch.

9. From the aforementioned sketch depicting the location of the unit(s), it appeared that the appellant had established their main unit at Plot No. F/119, Unit-II at Khasra No. 115 and Unit-III at Plot 'B' of Khasra No. 119. The other units /factory separated by open space and common private road, carved out alongwith their relocated main unit (shifted by them) as well as their expanded units (Unit-II and III), which appeared to be not adjacent to the main unit.

10. It appeared to Revenue that all the above three plots (Unit-I, II, III) were not adjacent to one another. Appellant deliberately tried to give evasive reply and created a virtual corridor in between those three units, in order to show that those units in question were adjacent. As M/s Jyoty Laboratories and M/s Fantasy were situated in between those units, even no real corridors was feasible to be built. Also their rent agreement does not divulge the above stated fact of 'virtual corridor' and it appears that M/s SD tried to mislead the department in order to fraudulently avail area based exemption on plot 'B' of Khasra No. 119 and Khasra No. 115.

11. From the facts and records as discussed and detailed in foregoing paras, it appears that the unit at Plot – B of Khasra No. 119 and Khasra No. 115 of M/s SD could not be termed or considered as adjacent to the main unit of M/s SD at Plot No. F of Khasra No. 119 and therefore,

units at Plot -B of Khasra No. 119 and at Khasra No. 115 cannot be treated as expansion of unit at Plot No. F of Khasra No. 119, for the purpose of area based exemption from payment of excise duty in terms of CBEC Circular No. 960/03/2012-CX.3 dated 17.02.2012. The CBEC had clarified that the situation of expansion of an eligible unit by acquiring an adjacent plot of land and installing new plant and machinery on such land, is akin to expansion by way of installing new plant and machinery inside the existing plot/ premises. Further, vide Circular No. 968/2/2013-CX dated 01.04.2013, CBEC clarified that para 5 of the aforesaid Circular dated 17.02.2012 is meant for a situation where the expansion is done by acquiring the adjoining plot with at least one common boundary, which merges with the existing plot/ premises to make it one unit; installing of new plant and machinery in a plot which is away from the existing plot is not akin to the situation mentioned in para 5 of the said circular and installation of plant and machinery on such a plot would tantamount to setting up another unit by the manufacturer, the eligibility of exemption of which is independent of the eligibility of exemption to the existing unit. It was thus finally clarified that the clarification in para 5 of the Circular No. 960/03/2012-CX dated 17.02.2012 is meant for the units which undertake expansion by acquiring the adjoining plot with at least one common boundary with the existing plot and merge it with the existing plot / premises to make it one unit.

12. During the preliminary scrutiny of the documents/ records being maintained by M/s SD, it was observed that M/s SD had misled the jurisdictional central excise department by way of intimating the

expansion of their main unit, to their so-called adjacent units, since vide their letter dt. 10.04.2016, they had submitted the ground plan omitting the existence of any other unit/ factory/ premise(s) in between their main unit and the newly so-called adjacent plots so as to obviate the scrutiny in the backdrop of the clarification laid down by para 5 of CBEC Circular No. 960/03/2012-CX, dated 17.02.2012, as elaborated in previous paras, which might have led to discontinuation of exemption from payment of excise duty on the excisable goods, to be manufactured in these so-called adjacent/ extended premises.

13. Therefore, on the basis of the belief that M/s SD had been wrongly availing area based exemption from payment of excise duty under Notification No. 50/2003-CE, in respect of their so-called expanded units (Unit-II & Unit-III), which was not factually correctly disclosed to the Central Excise Department, with the sole intent to evade Central Excise duty on the excisable goods manufactured therein, the officers seized the stock of manufactured goods viz: 'Alovera Kanti Body cleanser Soap' (75 g. & 150 gm) valued of Rs. 1,11,15,702/- under Section 110 of Customs Act, 1962 as made applicable to Section 12F(1) of Central Excise Act, 1944 read with Rule 24 of Central Excise Rules, 2002, with the reasonable belief that the same were liable for confiscation under Rule 25 of the said rules under drawl of panchnama on the spot and handed over the same to Shri Sandeep Kumar, Production Manager of M/s SD for safe custody vide supurdnama dated 17.11.2016. In view of the above, it appears that the party had contravened the provisions of Rule 8 of the Central Excise Rules, 2002, as they had cleared the finished excisable goods without payment of excise duty. It also

appears that the said manufactured excisable goods, seized by the officers, is liable to confiscation and party is liable for penal action under Rule 25 of Central Excise Rules, 2002 for contravention of the said Rule in as much as they had wrongly availed area based exemption with the intent to evade payment of duty.

14. To verify the declarations made by M/s SD to the jurisdictional Central Excise Commissionerate, the relevant file of M/s SD was called for from the jurisdictional Assistant Commissioner, Central Excise Division, Roorkee. On examination of the aforesaid file, it transpired that the appellant had neither submitted the map regarding main unit at Plot – F nor submitted any map showing factual expansion to the so-claimed adjacent plots.

15. It appears that the exemption from payment of excise duty which was initially extended to the appellant at Plot – C and subsequently to Plot-F (the existing main unit), had been incorrectly availed in respect of their unit-II and Unit-III, in as much as M/s SD had not fulfilled the conditions as laid down in the aforesaid CBEC Board's Circular, during expansion of their units (Unit-II & Unit-III). The main unit (at plot –F/ Khasra -119) has no common boundary with Unit-II or Unit-III and hence, Unit-II and Unit-III could not be termed as merged with the existing plot/ premises at Plot F of Khasra No. 119 to make these as one unit in terms of CBEC Circular No. 968/2/2013-CX dt. 01.04.2013. As discussed above, area based exemption from payment of excise duty to M/s SD, was not available in respect of goods manufactured and cleared from Unit-II and Unit-III, they were required to assess and discharge applicable Central Excise duty amounting to Rs. 5,43,55,005/- on the

goods viz 'Alovera Kanti Body Cleanser Soap' and 'Amla Hair Oil' falling under tariff item 34011190, 330590 of central Excise Tariff Act, 1985, manufactured in these units at Plot-B/ Khasra -119 and Plot at Khasra No. 115 during April 2016 to 16.11.2016 and assessed to Central Excise duty under Section 4A of the Central Excise Act, 1944 read with Notification No., 49/2008-CE (NT). The gist of calculation of duty is tabulated as under:-

Name of the finished goods	Quantity of finished goods cleared upto 16.11.2016 (in pcs/ bottle)	MRP/ Piece or unit	Total value	Abatement as per Nfn. 49/2008-CE (NT)	Abated value	Total duty payable @ 12.50%
Alovera Kanti Soap 75 g.	34506144	13	448579872	30%	291576917	36447115
Alovera Kanti Soap 150 gm	5683392	25	142084800	30%	92355120	11544390
Amla Hair Oil	1958000	40	78320000	35%	50908000	6363500
			668984672	Total	434840037	54355005

The above chart has been prepared based on the print out of stock/ sale ledgers for the above referred period, taken out from the computers of M/s SD on spot, on 17.11.2016 and has been duly acknowledged and signed by the authorised person i.e. Sh. Devender Dwivedi, Stock Manager of M/s SD, and has been admitted by Sh. Saurav Chabra, Working Manager of M/s SD in his statement recorded on 17.11.2016.

16. From the foregoing paras it appears that M/s SD was liable to pay Central Excise duty to the tune of Rs. 5,43,55,005/- on the abated value of Rs. 43,48,40,037/-, as discussed above, during the period April, 2016 to 16.11.2016 and whereas they had failed to pay such duty, it appears that they had contravened the provisions of Central Excise Rules, 2002.

Accordingly, show cause notice dated 11.05.2016 was issued invoking the extended period of limitation proposing to demand duty on the seized stock of shop – finished goods valued at Rs. 1,11,15,072/- involving duty of Rs. 9,74,938/- seized by the Officer on 17.11.2016, which have been provisionally released with further proposal to demand of duty to the tune of Rs. 5,43,55,005/- on the dutiable goods cleared till 16.11.2016 with proposal to impose penalty under Rule 25, Rule 26 of Central Excise Rules, 2002. Further, penalty was also proposed under Rule 26 on Shri Saurabh Chhabra, Working Manager/ Partner of M/s spring Dells. The show cause notice was adjudicated on contest vide impugned order-in-original dated 26.12.2018 confirming the proposals in the show cause notice for levy of duty including confiscation of the seized goods with option to redemption on fine of Rs.20 lakhs with equal amount of penalty under Section 11AC(1)(c) read with Rule 25 of Central Excise Rules. Further, penalty of Rs. 50 lakhs was imposed on Shri Saurabh Chhabra, Working Manager of M/s Spring Dells and further penalty of Rs. 5,000/- was imposed under Rule 27 on M/s Spring Dells.

17. Being aggrieved, the appellant and its Working Manager Shri Saurabh Chhabra are in appeal before this Tribunal. Learned Counsel urges that the learned Commissioner in the impugned order has held that the connectivity of the three sheds / plots through corridor etc. cannot be said to merge the new unit with the original unit. He thus rejected the certificate of the Chartered Engineer and also the certificate issued by the other units M/s Jyoti Lab. And M/s Fantasy.

18. It is further urged that unit-II located at Khasra No. 115 and Unit-III located at Plot -B of Khasra No. 119 are adjacent to Plot F/119. These form one single industrial unit, eligible to avail area based exemption under Notification No. 50/2003, as the arrangement is in terms of the area based exemption notification read with the three circulars. In the said private industrial complex there is a continuous boundary and there is only one entry and/ or exit from this continuous boundary for all the industrial sheds in the said complex. Thus, this constitutes a single factory/ industrial unit.

It has been clarified in Circular dated 17.02.2012, that on expansion of an eligible unit by acquiring an adjacent plot of land and installing new plant and machinery on such land, is akin to expansion by way of installing new plant and machinery.

The underlying principal is that after merger, the two or more plots should become plot/ factory with a continuous boundary. A mere glance at the site plan as reproduced hereinabove 'forming part of the show cause notice', it would be noticed that the three plots put together form one single factory/ industrial unit, inasmuch as the boundary of the said units are continuous. Further, M/s Fantasy and M/s Jyoti Lab located on Khasra No. 118 and 119 respectively, have certified that they have independent entry /exit on south east side.

Further, M/s S. Pal & Associates, Chartered Engineer have cerified that the factory located at Khasra No. 115 (unit-II), Plot B of Khasra No. 119 (Unit-III) and Plot F of Khasra No. 119 is having a continuous boundary. It is a single factory having an independent / separate entry / exit in North West. The adjudicating authority have erred in ignoring the certificate of Chartered Engineer without any plausible reason.

Further, reliance is placed on the ruling in **Dhampur Sugar Limited vs. CCE, Meerut -2001 (129) ELT 73** which have been upheld by the Hon'ble Supreme Court reported in **2007 (216) ELT A23**.

Further, the appellant have common management and owner, single balance sheet and single factory registration (under Factories Act).

19. Further, Shri Saurabh Chhabra, Working Manager in his statement dated 17.11.2016 inter alia stated that they have made provisions for corridor running from both the expanded units with their main exempted unit, and in this manner they had interconnected them to the main unit. The connectivity to the main unit through the corridor fulfils the requirement of adjacent unit, particularly as the corridor has exclusively used by the appellant. The other unit namely M/s Jyoti Lab and M/s Fantasy do not have any interference / access to the said corridor. The contra view taken by the learned Commissioner on the basis of lease agreement with regard to use of open space is irrelevant leading to erroneous conclusion. Learned Counsel also makes the alternative argument – earlier to taking over the shed on plot B/ 119 (Unit-II) from the erstwhile firm - M/s Innovate was engaged in manufacturing of ayurvedic products and have filed declaration on 27.12.2006 (Annexure 20 in appeal paper book) and have been availing the area based exemption. Similarly, M/s Careplus was engaged on Plot No. 115 and availing Area Based exemption vide declaration dated 27.12.2006. Therefore, on standalone basis also, the appellant (Unit-II & III) is eligible for exemption for a period of ten years, upto 27.12.2016.

20. Further urges, even for argument sake if the three units are held to be not adjacent to each other, still all the three units are admittedly eligible for area based exemption under the aforementioned facts. Thus, denial of exemption is bad and fit to be set aside.

Further, by way of argument, learned Counsel urges, for argument sake, if the exemption is not allowed, still they are eligible for cenvat credit on the inputs which is valued at Rs. 2.6 crore during the period under dispute (Annexure 18 & 19 to the appeal memo). Learned Commissioner has not given any finding on this issue.

It is further urged that the demand of Rs. 5.53 crore includes the demand of Rs.63.63 lakh on account of hair oil alleged to have been manufactured in Plot B/119, whereas admitted fact is that Plot B have been used only for storage of raw material and finished goods. The facilities for manufacturing of hair oil is admittedly as Plot F/119, it is admittedly eligible for exemption.

21. Further, as the show cause notice has been issued within the normal period of limitation, thus, there was no mis-declaration on the part of the appellant. Hence, penalty under Section 11AC is not attracted. Further, admittedly goods were lying inside the factory, thus was neither liable for seizure nor confiscation. Thus, the confiscation / redemption fine and penalties on the appellant are fit to be set aside. Further, there was no instance of clandestine removal of goods, nor any clandestine activity of manufacturing. The whole issue is interpretational in nature.

22. Learned Authorised Representative appearing for the Revenue has relied on the impugned order. Further, reliance is placed on the ruling

of Hon'ble Supreme Court in **Commissioner of Customs (Import) Mumbai vs. Dilip Kumar & Company -2018 (361) ELT 577 (SC)** wherein it has been held that in case of claim of tax exemption under a notification, the burden to prove for its entitlement is on the assessee claiming exemption. If there is any ambiguity in the exemption notification, the benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue. Further, reliance is placed on the ruling of A.P. High Court in **Principal Commissioner of Service Tax vs. R. R. Global Enterprises Pvt. Limited - 2016 (45) STR 5 (A.P.)** wherein it has been held that an exemption notification is a creation of statute and must be construed strictly. The Court should interpret notifications in such a way that discretion is reduced to minimum. Learned Authorised Representative also relied on the dictionary meaning of the word 'adjacent' and the right synonym for adjacent is – adjoining, contiguous, juxtaposed, meaning being in close proximity. Adjacent may or may not imply contact but always implies absence of anything of the same kind in between, like a house with an adjacent garage, adjoining definitely implies meeting and touching at some point or line. Reliance is also placed on the ruling of Apex court in the case of **Liberty Oil Mills (P) Ltd., vs. Collector of Central Excise, Bombay -1995 (75) ELT 13 (S.C.)** where it is held that in an exemption notification under a taxing statute, in case of ambiguity or doubt, should be resolved in favour of the Revenue and not in favour of the assessee. Reliance is also placed on the ruling in **Commissioner of C. Ex., New Delhi vs. Hari Chand Shri Gopal -2010 (260) ELT 3 (S.C.)** wherein also the Apex court have held that a person who claims exemption or concession has to

establish that he is entitled to that exemption or concession. Further, the provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. Of course, some of the provisions of an exemption notification may be directory in nature and some are mandatory in nature.

23. Having considered the rival contentions, we find that it is undisputed that the appellant is entitled to area based exemption with respect to their main unit/ (unit-I) located at Plot F/119. Further, it is undisputed that so far the other two plots are concerned at Khasra No. 115 (Unit-II) earlier M/s Careplus was functioning and availing area based exemption vide declaration dated 27.12.2006. Thus, the appellant unit-II being admittedly the successor of M/s Careplus is also entitled to area based exemption till 27.12.2016. Further, admittedly at the present unit-III of the appellant (Plot B/119), earlier M/s Innovate was functioning and availing area based exemption vide declaration dated 27.12.2006, and admittedly the appellant unit-III is a successor of the said M/s Innovate and is accordingly eligible for exemption till 27.12.2016 under the exemption scheme (notification read with clarifications). Further, it is also admitted fact that from the public road, there is one common entry /exit for all units /sheds located in the private industrial complex. Thus, there is a virtual corridor / private road existing between the three sheds, admittedly located in one industrial complex and hence for all practical purposes, the three units can be said to be adjacent to each other. Further, it is admitted fact

that the two units namely M/s Fantasy and M/s Jyoti Lab have their entry exit gate from the South East common passage, whereas the three units of the appellant are using the common passage on the North West side. Thus, there is no practical interference in movement between the three units of the appellant and virtual corridor exits. In this view of the matter also, Unit-II and Unit-III of the appellant are held to be eligible for area based exemption.

24. In view of our finding, we hold that the appellant is entitled for area based exemption with respect to their unit-II located at Khasra No. 115 and unit-III located at Plot B/119. Accordingly, these appeals are allowed and the impugned order is set aside. The appeal of the Working Manager Shri Saurabh Chhabra is also allowed. The appellants are entitled to consequential benefits, in accordance with law.

(Pronounced on 13.03.2020).

(Anil Choudhary)
Member (Judicial)

(C. L. Mahar)
Member (Technical)