CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

Excise Appeal No. 51007 of 2021

(Arising out of Order-in-Original No. 02-09/Commr/Dehradun/2018 dated 23.02.2018 passed by Commissioner CGST, Dehradun)

M/s. Diamond Entertainment Technologies Pvt. Ltd. ...Appellant
7th K.M. Stone Moradabad Road, Kashipur
Distt. Udham Singh Nagar
(Uttarakhand) - 244713

VERSUS

Commissioner, Central Goods & Service Tax, Commissionerate Dehradun, ...Respondent
E-Block Nehru Colony, Haridwar Road
Dehradun (Uttrakhand)

APPEARANCE:

Shri Piyush Kumar, Shri Sharad Chandra Shrivastava and Ms. Gunjan Tanwar, Advocates for Appellant
Shri Rakesh Agarwal, Authorised Representative of Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 24.03.2025
Date of Decision: 02.04.2025

FINAL ORDER No. 50457/2025

JUSTICE DILIP GUPTA:

M/s. Diamond Entertainment Technologies Pvt. Ltd.[1] has sought the quashing of the order dated 23.02.2018 passed by the Commissioner Central Goods and Services Tax Commissionerate, Dehradun[2] denying the benefit of exemption from payment of central excise duty to the appellant under a Notification No. 50/2003-CE dated

---

1. **the appellant**
2. **the Commissioner**

10.06.2003[3], and consequently confirming the demand of central excise duty under section 11A of the Central Excise Act 1944[4] with interest and penalty.

2. The issue that arises for consideration in this appeal is whether the appellant is entitled to claim exemption from payment of central excise duty under the Exemption Notification in respect of goods manufactured and cleared from the factory of the appellant situated at 7 KM Stone, Muradabad Road, Kashipur. The said Exemption Notification grants exemption to goods, other than those specified in Annexure-I, manufactured and cleared from a unit located in the areas specified in Annexure-II of the Exemption Notification from payment of whole duty of excise or additional duty of excise.

3. The appellant is the owner of a contiguous piece of land situated at 7 KM Stone, Moradabad Road, Kashipur admeasuring 2.446 Hectares falling in Village Hariyawala, Tehsil Jaspur, District Udham Singh Nagar having Khasra No's. 281, 282, 283 and 284 in Khata Khatoni No's. 37 and 38 of the land records of Tehsil Jaspur, District Udham Singh Nagar.

4. Out of the aforesaid 4 Khasras, 3 Khasras namely Khasra No's. 282, 283 and 284 are mentioned at Serial No. C-29 of Annexure-II of the Exemption Notification dated 10.06.2003, but Khasra No. 281 measuring a meagre 0.146 Hectares is not included.

5. The appellant has indicated the nature of constructions on these four Khasras in the following manner:

Khasra No.	Area	Construction on the land
281	0.146 Hectare	A Government Drain passes along the entire length of the Khasra. Boundary Wall of factory is constructed upon the said Khasra.

---

3. the Exemption Notification
4. the Central Excise Act

		Sewer line from toilets passes through said Khasra and sewage treatment pit is also located on this Khasra. The Sewage line finally terminates into Government Drain.
282	0.401 Hectare	No construction
283	0.80 Hectare	No construction
284	1.819 Hectare	Appellant's factory and Administrative Block are located on this Khasra.
Total	**2.446 Hectare**	

6. The appellant further claims that Khasra No. 281 is 290 Meters in length and 2.53 Meters in width and is located next to a government drain. A boundary wall of the factory is constructed on this Khasra and the remaining land is of odd shape. The sewer line for extermination of sewage from factory/administrative block toilets passes through Khasra No. 281 and a pit for treatment of sewage before discharge in the government drain is also located in said Khasra. The said sewer line and sewage treatment pit situated in Khasra No. 281 is for the toilet waste i.e. domestic discharge in terms of consent letter for establishing the factory that was issued by the Uttarakhand Environment & Pollution Control Board, Dehradun.

7. A show cause notice was issued to the appellant alleging that though the manufacturing unit of the appellant is situated on land bearing Khasra No's. 281, 282, 283 and 284, the appellant failed to satisfy the conditions specified in the Exemption Notification in as much as the appellant was manufacturing goods even from Khasra No. 281, which was not a specified Khasra mentioned in Annexure-II of the Exemption Notification.

8. The appellant filed a reply stating that manufacturing activity of the unit was not undertaken in Khasra No. 281 and, therefore, the appellant would be entitled to the benefit of the Exemption Notification.

9. The Commissioner, by order dated 25.02.2011, did not accept the contention of the appellant and confirmed the demand.

10. This order was assailed by the appellant by filing Excise Appeal No. 1299 of 2011 before the Tribunal and the Tribunal by an order dated 31.01.2017 remanded the matter to the adjudicating authority to decide the issue in the light of the observations made in the order. The said order is reproduced below:

> "The present appeal is filed against the Order-in-Original No. 31-32/2011 dated 25.2.2011.
>
> 2. The facts of the case are that the appellant's factory is located in the State of Uttaranchal and were availing the benefit of Notification No. 50/2003-CE under which the goods manufactured in the specified khasra numbers of village Hariawala, Tehsil Jaspur in District Udhamsingh Nagar, was exempted from Central Excise duty. Khasra Nos. 282, 283 and 284 are specified and 281 is not specified in the notification. **It is the claim of the appellant that their factory is located in Khasra Nos. 282, 283 and 284. But their boundary wall is built enclosed a small strip of land falling under Khasra No. 281. This strip is actually a public drainage. The allegation of the Revenue is that they were not eligible for the said exemption because part of the land within their boundary wall falls in Khasra No. 281.** So, duty was demanded and confirmed with equal amount of penalty, only for this reason. Being aggrieved, appellant has knocked the door of the Tribunal.
>
> 3. With this background, we have heard Shri Piyush Kumar, ld. Advocate for the appellant and Shri Yogesh Agarwal, ld. DR and also perused their written submission.
>
> 4. After hearing both the sides and on perusal of the record, it appears that Khasra No. 281, 282, 283 and 284 are belonging to the appellant. **It is the claim of the appellant that the new factory was located in Khasra No. 282,**

> **283 and 284. According to the Counsel for the appellant, plot 281 is still vacant which was only boundary wall. The department relied on the report submitted by the Tehsildar which is ambiguous as it was mentioned that the possession is illegal which is not in our domain.**
>
> 5. **On considering the rival submissions, we set aside the impugned order and remand the matter to the adjudicating authority with a direction to visit the factory and decide the issue de novo. If Plot No. 281 is vacant with the boundary wall then department has no case and if the factory is located in the Khasra No. 281 than the appellant has no case.**
>
> 6. In view of the above, we set aside the impugned order and remand the matter to the original authority to decide the issue in the light of above discussion. The appellant shall be provided an opportunity of being heard. Additional evidence, if need be, may be admitted.
>
> 7. In the light of the above, the appeal is allowed by way of remand."
>
> **(emphasis supplied)**

11. A perusal of the aforesaid order would indicate that the Division Bench of the Tribunal noticed the contention advanced on behalf of the learned counsel for the appellant that Khasra No. 281 was vacant and had a boundary wall and also noticed that the department had relied upon a report of the Tehsildar. It was observed by the Tribunal that this report was ambiguous since it merely mentioned that the possession of the appellant was illegal. It is for this reason that the Tribunal remanded the matter to the adjudicating authority with a direction that it should visit the factory and decide the issue denovo. The Tribunal also observed that if Khasra No. 281 is vacant and has a boundary wall, then the department would have no case, but if the factory is located in Khasra No. 281 than the appellant would have no case. The Tribunal

also observed that the appellant shall be provided an opportunity of being heard and additional evidence, if led, may be admitted.

12. After remand, the Commissioner passed an order dated 20.03.2018 which is reproduced below.

> "5.1 **Issue involved in the present case is eligibility of the party for exemption under notification no. 50/2003-CE dated 10.6.2003 w.e.f 30.01.2009 which is dependent on the fact whether khasra no. 281 is vacant with the boundary wall or factory is located in the said khasra.**
>
> 5.2 As it was not possible to visit the factory since it was revealed that the unit is lying closed, jurisdictional Assistant Commissioner, CGST, Kashipur was directed to submit a report on the basis of factual position on the ground as well as on the basis of available records. **Assistant Commissioner, Kashipur vide his report dated 1.11.2017 submitted that the factual position on the ground has been ascertained with the help of local administration. Sub Divisional Magistrate, Jaspur in his letter c.no. 309/S.T./2017 dated 30.10.2017, while referring to the report of Tehsildar, Jaspur, has informed that khasra no. 281 is situated in Vill. Hariywawala, Tehsil Jaspur and entire area of khasra no. 281 is in possession of M/s Diamond Entertainment Technologies (P) Limited and there is a water treatment plant of the party situated in this khasra no. 281. The party has covered the total area of land/khasra by constructing a boundary wall.**
>
> 5.3 On the basis of aforesaid report I observe that in the said khasra no. 281 party had built a water treatment plant and therefore question now arises is whether the said water treatment plant is part of the factory or not. In this regard I find that as per Section 2(e) of the Central Excise Act, 1944, "factory" means "any premises including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods, is being carried on or is ordinarily carried on".

> 5.4 I observe that process of manufacturing any goods involves various stages as well obligations under various laws of the land. **Water Treatment plant is set up in a factory to meet the obligations under the Pollution Control Laws in cases where manufacturing process of goods manufactured in that factory warrant setting up of such plant. I also observe that "pollution control equipments" are duly covered under the definition of capital goods as provided under Rule 2(a)(A)(ii) of Cenvat Credit Rules, 2004. I thus observe that water treatment plant falls under the definition of "capital goods" and the process for which water treatment plant is used is to be considered as an integral process for manufacturing the goods. Accordingly, the place where water treatment plant is situated has to be considered as part of the factory premises.**
>
> xxxxxxxxxx
>
> 5.6 As water treatment plant is situated at khasra no. 281 in case of the party, khasra no. 281 has to be considered as a part of the factory premises. **Accordingly, I conclude that unit of the party is located on the area covered under khasra No. 281 to 284 of Village Hariyawala, Tehsil Jaspur, District Udham Singh Nagar.**
>
> 5.7 It is not disputed that khasra no. 281 is not appended to Annexure-II to notification no. 50/2003-CE dated 10.6.2003. **Therefore it is concluded that the party is not eligible for exemption from payment of excise duty in terms of notification no. 50/2003-CE dated 10.6.2003.** Accordingly I hereby confirm the demand of Central Excise duty from the party as under:
>
> xxxxxxxx"
>
> **(emphasis supplied)**

13. It is this order dated 20.03.2018 that has been assailed in this appeal.

14. Shri Piyush Kumar, learned counsel appearing for the appellant assisted by Shri Sharad Chandra Shrivastava and Ms. Gunjan Tanwar, made the following submissions:

(i) The order is based on a report dated 01.11.2017 of the Assistant Commissioner, which in turn is based on a letter dated 31.10.2017 of the Sub-Divisional Magistrate submitted on the basis of a report submitted by the Tehsildar. However, neither the letter nor the report was ever made known to the appellant nor was it admitted in evidence before taking a decision. Learned counsel, therefore, submitted that no reliance can be placed on this report;

(ii) Even otherwise, the report is factually incorrect as Khasra No. 281 does not have a Water Treatment Plant. In fact it only contains drain and a sewage treatment pit and a boundary wall;

(iii) Khasra No. 281 measures 0.146 Hectares and is 290 Meters in length and 2.53 Meters in width and is located next to a government drain and has a boundary wall. It has a sewer line for extermination of sewage from the factory/ administrative block toilets and a pit for treatment of sewage before discharge in the government drain;

(iv) The manufacturing activity of the appellant is for assembly of consumer electronic goods namely TV and washing machines from components procured from other manufacturers/imported and does not involve any process involving water or any other fluid/liquid;

(v) The report dated 19.01.2010 and the layout plan dated 28.01.2011 duly certified by the jurisdictional lekhpal clearly show that the manufacturing unit is situated in Khasra No. 284, which measures 1.89 Hectares, whereas a drain passes through Khasra No. 281. Khasra No's. 282

and 283 are vacant land with no construction. The appellant is, therefore, clearly entitled to the benefit of the Exemption Notification;

(vi) The Notification grants exemption to goods manufactured on units located on notified Khasras, but does not bar availment of exemption if some area of the factory is also situated on non-notified Kharas; and

(vii) The Exemption Notification is a piece of beneficial provision for providing relief to manufacturing units situated in underdeveloped areas of Uttrakhand and, therefore, when there is no dispute that Khasra No's. 282, 283 and 284 are mentioned in the Exemption Notification and the manufacturing unit of the appellant is situated in Khasra No. 284, the Exemption cannot be denied to the appellant because of Khasra No. 281 which is only 7% of the plot of the factory and where no manufacturing process is carried out. In support of this contention, learned counsel placed reliance upon the decisions of the Tribunal in **Forbes & Company Ltd.** vs. **Commissioner of C. Ex., Meerut-II**[5] and **Saral Wire Craft Pvt. Ltd.** vs. **Commissioner of Central Excise, Meerut-II**[6]**.**

15. Shri Rakesh Agarwal, learned authorised representative appearing for the department, however, submitted that:

(i) The report submitted by the Assistant Commissioner after the remand by the Tribunal is based on a report submitted by the Sub Division Magistrate on the basis of a report submitted by the Tehsildar. This report clearly mentions

---

5. 2018 (359) E.L.T. 580 (Tri.-All.)
6. 2017 (358) E.L.T. 512 (Tri.-Del.)

that there is a water treatment plant of the appellant situated in Khasra No. 281 and the appellant has covered the total area by constructing a boundary wall;

(ii) Thus, as manufacturing process is carried out from Khasra No. 281, the appellant would not be entitled to benefit of the Exemption Notification; and

(iii) **'**Factory**'** under section 2(e) of the Central Excise Act is defined to mean any premises, including the precincts thereof, wherein or in any part excisable goods manufacturing process connected with the production of these goods is carried out. Since a water treatment plant is situated in Khasra No. 281, which is within the precincts the factory, manufacturing activity is carried out in Khasra No. 281, which is not a Khasra mentioned in Annexure-II of the Exemption Notification and, therefore, the appellant would not be entitled to the benefit of the Exemption Notification.

16. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

17. It is not in dispute is that the appellant is the owner of Khasra No's. 281, 282, 283 and 284.

18. The layout plan clearly indicates that the entire manufacturing unit of the appellant is situated in Khasra No. 284, which measures 1.819 Hectares. Khasra No. 281 measures only 0.146 Hectares and is a long strip of land measuring 290 Meters in length and 2.53 Meters in width. The layout plan does not show that any manufacturing activity is carried in this Khasra No. 281, which is only about 7% of the total plot

of the appellant. The appellant has placed reliance upon a report dated 20.01.2010 submitted by the lekhpal, which clearly mentions that no manufacturing activity is carried out in Khasra No. 281, which measures point 0.146 Hectares. It also mentions that this Khasra No. 281 has a boundary wall and the remaining area is vacant.

19. The Tribunal, while remanding the matter to the adjudicating authority, observed that if Khasra No. 281 is vacant and has a boundary wall then the department would have no case, but if a factory is located in Khasra No. 281 then the appellant would have no case. This finding of the Tribunal has attained finality as it was not challenged either by the department or by the appellant in higher proceedings. The Tribunal, while remanding the matter to the adjudicating authority to decide the issue in the light of the aforesaid observation, also observed that the appellant shall be provided in opportunity of being heard and additional evidence, if need be, may be admitted.

20. The impugned order mentions that it was not possible to visit the factory since the unit was closed. It is for this reason that the Assistant Commissioner was directed to submit a report and the Assistant Commissioner in his report dated 01.11.2017 stated that the factual position was ascertained with the help of local administration. It also mentions that the Sub-Divisional Magistrate, in his letter dated 30.10.2017, referred to a report of the Tehsildar that the entire area of Khasra No. 281 is in possession of the appellant and there is a water treatment plant on it. It also mentions that the appellant has covered the total area by construction of a boundary wall. There is nothing in the order which may show that the letter dated 01.11.2017 of the Assistant Commissioner or the report submitted by the Sub-Divisional Magistrate

were ever made known to the appellant and he was given an opportunity to respond to it.

21. The order passed by the Tribunal shows that it was the adjudicating authority that had to visit the factory and decide the issue denovo. On record is an application dated 12.09.2018 submitted by the appellant which clearly mentions that the impugned order dated 20.03.2018 was passed by the Commissioner in contravention of the direction issued by the Tribunal and that too without affording any opportunity to the appellant. It also mentions that the adjudicating authority has relied upon a document which was neither a part of the show cause notice nor part of the earlier proceedings and no response was invited from the appellant. No reliance can, therefore, be placed on these two documents, which in fact are the sole document on the basis of which the Commissioner has recorded a finding that manufacturing activity is being carried out in Khasra No. 281.

22. Even in this appeal, the department has not placed either the letter dated 01.11.2017 submitted by the Additional Commissioner or the letter dated 30.10.2017 submitted by the Sub-Divisional Magistrate.

23. The Tribunal, in the order dated 31.01.2017, had clearly held that if no manufacturing activity was carried out in Khasra No. 281, the department would have no case. From a perusal of the layout plan and the report dated 20.01.2010 submitted by the lekhpal, it is clear that no manufacturing activity was carried out in Khasra No. 281. The layout plan, in fact, clearly shows that the manufacturing activity was carried out only in Khasra No. 284. Khasra No. 281 admeasures 290 Meters in length and 2.53 Meters in width. It has a boundary wall and according to the appellant only a sewer line for extermination of sewage from the

factory passes through Khasra No. 281. It also has a small pit for treatment of the sewage before it is discharged in a government drain located in the said Khasra. No manufacturing activity, therefore, can be said to have been carried out in Khasra No. 281.

24. It would not be appropriate to examine the contention of the learned authorized representative for the department on the definition of 'factory' in view of the terms of the earlier order passed by the Tribunal, which has attained finality.

25. Even otherwise, the area of Khasra No. 281 is about 7% of the total area of the area covered by the Khasra No's. 281, 282, 283 and 284. The Exemption Notification is a beneficial notification for promoting manufacturing activity in the backward area of the State of Uttrakhand. Merely because Khasra No. 281 measuring 0.146 Hectares is not mentioned in Annexure-II of the Exemption Notification, which in fact includes Khasra No's. 282, 283 and 284, should not result in denying the benefit of the Exemption Notification to the appellant, when no manufacturing activity is taking place in Khasra No. 281.

26. In **Forbes & Company**, a Division Bench of the Tribunal, observed as follows:

> "8. Having considered the rival contentions and on perusal of the facts on record, we hold that it is not the intention of Revenue (on a harmonious reading of the said Notification No. 50/2003-C.E.) that exemption be allowed with respect to only particular plot numbers. The notification starts with the words - "Exemption to goods other than specified goods cleared from units located in the Industrial Growth Centre or Industrial Infrastructure Developer Centre, etc. of Uttranchal and Himachal Pradesh." And further mentions - "The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in 1st Schedule and the 2nd Schedule to the

> Central Excise Tariff Act, 1985 other than the goods specified in Annexure-I appended hereto (negative list), and cleared from a unit located in the Industrial Growth Centre or Industrial Infrastructure Developer Centre, etc." as the case may be specified in Annexure-II appended hereto, from the whole of duty of excise or additional to excise, as the case may be leviable thereon under any of the said Acts. Accordingly, we hold that there is no intention of the Government in the said notification to give exemption with respect to particular plot numbers. We further clarify that the reference to plot or Khasra Numbers is only by way of abundant caution to identify the particular Industrial Area/Estate or the Growth Centre, etc. We have also taken notice of the fact as demonstrated during the course of hearing with reference to the map as certified by the Tehsildar/Patwari and a supervisor that the majority portion including the entire production activity is located in the specified plot numbers. Accordingly, in view of our findings and observations, we allow this appeal with consequential benefit to the appellant, if any, in accordance with law and set aside the impugned order."

27. The Civil appeal filed by the department to assail the said order of the Tribunal was dismissed by the Supreme Court on 26.10.2018.

28. In **Saral Wire Craft**, a Division Bench of the Tribunal, observed as follows:

> "3. It is not a disputed fact that all 8 khasras are adjacent where the unit was established. It is not necessary that every inch of the land will be utilized for installation of machines. There may be some area left free and open. Notification did not cover Khasra No. 130M which is only 0.0030 hectare. It means that this covered only 0.90 per cent. of the total area of the factory plot which is negligible. When it is so, then the benefit of area based exemption cannot be denied specially when plots are adjacent and not separated. In view of the above, we set aside the impugned demand and the appeal filed by the appellant is allowed."

29. It transpires from the aforesaid two decisions of the Tribunal that where production is carried in a majority portion covered by the Exemption Notification, the assessee would be entitled to the benefit of the Exemption Notification. The decisions also hold that it is not necessary that every inch of the land should be utilized for installation of the machines for there can be some open area. In such cases, the benefit of area based exemption should not be denied when the plots are adjacent.

30. In view of the aforesaid discussion and the two decisions of the Tribunal it is not possible to uphold the order dated 20.03.2018 passed by the Commissioner. It is, accordingly, set aside and the appeal is allowed.

(Order pronounced on **02.04.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Jyoti