

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 10989 of 2015

(Arising out of OIO-AHM-EXCUS-002-COMMR-22-14-15 dated 27/02/2015 passed by Commissioner of Central Excise-AHMEDABAD-II)

M/s. SKF Technologies India Pvt Ltd

.....Appellant

Milestone Kandla-333, Village : Kerala,
Taluka : Bavla, Ahmedabad Rajkot Highway,
Ahmedabad, Gujarat

VERSUS

C.C.E., Ahmedabad-ii

.....Respondent

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

WITH

Excise Appeal No. 10990 of 2015

(Arising out of OIO-AHM-EXCUS-002-COMMR-22-14-15 dated 27/02/2015 passed by Commissioner of Central Excise-AHMEDABAD-II)

M/s. SKF India Ltd

.....Appellant

Safe Express Logistic Park,
Changodar,
Ahmedabad, Gujarat-382220

VERSUS

C.C.E., Ahmedabad-ii

.....Respondent

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

AND

Excise Appeal No. 11177 of 2015

(Arising out of OIO-AHM-EXCUS-002-COMMR-22-14-15 dated 27/02/2015 passed by Commissioner of Central Excise-AHMEDABAD-II)

M/s. Chandramowli Srinivasan

.....Appellant

Chairman & Dir Of M/S, Skf Tech Milestone Kandla-333,
Village: Kerala,
Taluka : Bavla, Ahmedabad Rajkot Highway,
Ahmedabad, Gujarat-382220

VERSUS

C.C.E., Ahmedabad-ii

.....Respondent

Custom House... First Floor,
Old High Court Road, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:

Shri. S.S. Gupta & Archit Agarwal, Chartered Accountant for the Appellant
Shri. T.G. Rathod, Joint Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/11135-11137 / 2020

DATE OF HEARING: 12.03.2020
DATE OF DECISION: 25.08.2020

Raju

These appeals have been filed by M/s. SKF Technology India Private Limited & Shri. Chandramowli Srinivasan, against remand of Central Excise duty, interest and imposition of penalties.

2. Learned Counsel stated that the appellants are engaged in the manufacture of ball or roller bearing classified under Chapter Heading 84 of the Central Excise Tariff Act, 1985. These bearings are ultimately used by railways or in generation of wind energy or for other purposes. The entire goods are sold through SKF India Limited. As regards to the bearings used for wind energy, the appellants have availed the benefit of exemption provided under Notification No.6/2006-CE.

3. Learned Counsel stated that during investigation, statement of various persons including Shri. Chandramowli Srinivasan was recorded u/s. 14 of the Central Excise Act, 1944. The statement of Shri. Chandramowli Srinivasan is not relied upon by the department. The similar facts were recorded in the statement of Shri. Vijendra Patwari which was relied upon by the department.

4. Shri. Chandramowli Srinivasan in his statement has in Q.No.5 & 6 enumerated the method of fixing the price by the appellant. The same is reproduced below:

Q.5 "How are the prices fixed of the above mentioned types of bearing?

Ans. With respect to the price at which the goods are sold by M/s. SKF Technology India Pvt. Ltd. And M/s SKF India Ltd. I state that the prices at which the goods are sold by SKF Tech to SKf India depend up on the segment in which such goods are sold by SKF India to the end customer. The same is elaborated as under:-

Wind customer:- The price at which goods are sold by SKF Tech depends up on the end customer price of SKF India. In wind segment generally SKF Tech, Ahmedabad unit sells the goods at a price which is 8% to 15% less than SKF India sales price. I understand SKF Tech is aware of the end selling price of SKF India at the time of invoicing. In support of this I here with submit two sets of documents duly signed by me, containing end use certificate from the customer, PO issued by the customer of SKF India, invoice issued by SKF Tech on SKF India & Invoice issued by SKF India on the customer.

Indian Railways:- The Price at which goods are sold by SKF Tech depends upon the end customer price of SKF India. In Indian Railways segment generally SKF Tech, Ahmedabad unit sells the goods at a price which is 8% less than SKF India at the time of invoicing. In support of this I here with submit two sets of documents duly signed by me, containing, PO issued by the Customer on SKF India, invoice issued by SF Tech on SKF India & invoice issued by SKF India on the customer.

Q.6 what are the criteria for variation of prices 8-15%?

Ans. Generally, it depends within the product range of wind mill bearings. In slewing bearing it is generally 8% main shaft 10-15%, We are manufacturing these two broad types of bearings for the wind mill customer. As per these guidelines sometimes purchase order has been placed by SKF Tech and sometimes SKF Tech itself raised the invoices on this basis.

For goods which are other than wind & railways & sold to SKF india, the basis of pricing by applying mark up to respective products reference value."

It will thus be observed that the margin of 8% to 15% given by M/s. SKF India Ltd. is on sales made to wind energy customers or railways. In case of others, the price is fixed at station cost plus markup. The comparison of the price shows that sometimes M/s. SKF India Ltd. has made loss or has earned the profit of 5% to 15%.

5. After investigation the department has alleged that the appellants and M/s. SKF India Ltd. are related persons. Hence, the price at which the goods are sold by the appellant to M/s. SKF India Ltd. is sought to be rejected. The value is sought to be determined on the basis of price at which M/s. SKF India Ltd. has sold the product. It is also alleged that the appellant is not entitled to the benefit of Notification No. 6/2006-CE.

6. The commissioner has vide the impugned order confirmed the demand and levied equal amount of penalty u/s. 11AC of the Central Excise Act, 1944. The Order also imposes penalty under Rule 26(1) on M/s. SKF India Ltd. and on Shri Chandramowli Srinivasan.

7. Learned Counsel submitted that the 'related person' has been defined in section 4(3)(b) of the Central Excise Act, 1944. It is submitted that mutuality of interest must be substantiated in order to consider M/s. SKF India Ltd. as related person. The definition or 'related person' is reproduced below:

- (b) "persons shall be deemed to be "related" if-
- (i) they are inter-connected undertakings;

(ii) *they are relatives;*

(iii) *amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or*

(iv) *they are so associated that they have interest, directly or indirectly, in the business of each other."*

Only clause (iv) can apply in present facts.

7.1. Learned Counsel submitted that since there is no mutuality of interest, M/s SKF India Ltd. cannot be considered as 'related person'. The appellants made this submission and referred to various judgments before the authority. There is no finding given by the Commissioner to substantiate the mutuality of interest between the appellants and M/s SKF India Ltd.

7.2. Learned Counsel submitted that the Commissioner in para 41.11 has concluded that the appellants and M/s SKF India Ltd. are inter-connected units. Further in para 42 it is concluded that M/s SKF India Ltd. and M/s SKF India Technology India Ltd. are inter-connected units in terms of Section 4(3)(b)(i) of Central Excise Act, 1944. He argued in the same para a statement has been made without any basis that they have interest in each other.

7.3. Learned Counsel submitted that in absence of mutuality of interest, that the appellants and M/s SKF India Ltd. are not related persons. The appellants also rely upon the following judgments:

- M/s S.M. Chemicals & Electronics & Another 1980-(6)-ELT-197 (Bom.)
- M/s. New India Industries Ltd. 1988-(37)-ELT-547 (Bom)
- M/s. Goodyear South Asia Tyres Pvt. Ltd. 2015-(322)-ELT-389 (SC)
- M/s. Lloyds Metals & Engineers Ltd 2008-(222)-ELT-84 (Tri. Mum.)

7.4. Learned Counsel submitted that the show cause notice has alleged that the appellants have received loan of Rs. 2.40 crores from M/s SKF India Ltd. It is submitted that is not an interest free loan. The interest amount is recovered from the appellant. Further, they have already paid of the principal amount to M/s SKF India Ltd. Therefore, this cannot be a factor for purpose of treating the appellant as related to M/s SKF India Ltd.

7.5 Learned Counsel submitted that assuming without admitting that the appellants and M/s SKF India Ltd. are related persons, even when the price cannot be rejected If the price is not influenced because of relationship. The Supreme Court in the case of M/s. Xerographic Ltd. reported in 2010-(257)-ELT-11 (SC) has held that the following three criteria must be satisfied to reject the price.

- Mutuality of interest,
- Related person as defined in the statutory provisions;
- Price charged from related person should be lower than the normal value i.e. the price should be influenced with the relationship.

As it is evident from the statement of Finance Director that the difference between the price charged by the appellants and the price at which the goods sold by M/s SKF India Ltd. is 10% to 15% M/s SKF India Ltd. undertakes various functions namely procuring the order, follow-up for delivery of goods, ensure proper delivery, follow-up for raising of invoice, follow-up for the payment, etc. It is submitted that the margin of 8% to 15% is quite reasonable compared to the efforts involved. Therefore, it is submitted that the price has not been influenced by the relationship. Hence, the price cannot be rejected.

7.6 Learned Counsel submitted that the Tribunal in the case of M/s Themis Medicare reported in 2012-276-ELT-539 has held that the margin of 7% to 8% is quite reasonable. Therefore, it is submitted that the price at which the goods have been sold to M/s SKF India Ltd. should be accepted. The appellants also rely upon the following Judgment:

- M/s. Nagpal Petro-Chem Ltd. 1979-(4)-ELT-117 (Mad.)
- M/s. Power Tech International 2001-(431)-ELT-401 (Tri.-Mum)
- M/s. Christo George 2006-(227)-ELT-410(Tri.-Bang.)
- Hind Lamps Ltd. 1981-(8)-ELT-11(Del.)
- M/s. Hind Lamps Ltd 1998-(98)ELT A208 (SC)

7.7 The royalty agreement between appellant & M/s. AB SKF (Sweden) was submitted in response to query from the bench. In para 11 of the agreement for the period 2008 to 2012 it is stated that the appellant cannot use the know-how given by & M/s. AB SKF to design, produce, assemble or market any product which is in competition with the

product of & M/s. AB SKF. He submitted that this is a standard clause in most of the royalty agreements to make sure that there is no misuse of the know-how granted. He also stated that these agreements were never part of the investigation carried out by the department on the basis of which SCN has been issued. He also pointed out that royalty amount has been paid and service tax payable thereon under reverse charge has also been paid. There is no query from service tax department in this regard.

7.8 Learned Counsel submitted that loan agreement dt. 8th Dec 2008 between SKF India & SKF Tech prescribes that 9% rate of interest. Further, it has been specified that the rate will be revised every half yearly depending upon deposit rate of lenders bank and shall not be lesser than prevailing bank rate u/s 49 of RBI Act, 1934. The repayment schedule has also specified in clause 5 of the agreement.

7.9 Learned Counsel submitted that M/s. SKF India Ltd. (hereinafter referred to as "M/s. SKF India") have factories located at Bangalore, Haridwar, Pune, Manesar & Jamshedpur and also have 5 branches located all over India. They have two associate companies namely M/s. SKF Technologies India Pvt. Ltd (appellant) and M/s Lincoln Helios India Ltd. in India. They have employed 2015 persons in the year 2013-14.

7.10 Learned Counsel submitted that M/s. SKF India has indentified the departments who are functioning not only for SKF India, but for other associate company as well namely M/s. SKF Technologies India Pvt. Ltd. (appellant). Therefore, M/s. SKF India has entered into an agreement with the appellant for sharing of cost incurred for the services provided by the employees to the appellant as well. They have been raising the debit note for recovery of the cost on monthly basis and paying service tax on the same.

7.11 Learned Counsel submitted that the agreement between appellant and M/s. SKF India. It indicates the basis of allocation of expenses. The departments which were commonly working for M/s. SKF India and the appellants are broadly classified into following.

- Corporate Marketing (including corporate communication), Business Excellence, Finance Director, Legal & secretarial, HR Director
- Business Development
- Central Finance
- Taxation
- Centre for Learning (CFL) Talent Management Recruitment
- Business Application Support
- Company Purchase.

7.12 Learned Counsel submitted that the allocation is made to independently assess the profitability of each of the companies. These details have been audited by the departments under various acts namely Income Tax Act, Service Tax, Excise Etc. and no query has been raised by them.

7.13 Learned Counsel submitted that the appellant (M/s SKF Technologies India Pvt. Ltd) has factories at Ahmedabad & Mysore and depots (sales units) at various location. The Ahmedabad factory has its own departments like purchase, human resource, maintenance, product & process Engineering, production, quality assurance, supply chain & planning etc. The persons are employed by appellant on their payroll for carrying out the day to day functions in various departments. However, in order to bring the uniformity in functioning, the policy matters are advised by employees of M/s. SKF India Ltd. For example, the employees of human resource department employed by appellant carries out the functions of compliance of various statutory provisions like provident fund, employees state insurance corporation and other labour laws etc. However, the central human resource department of M/s. SKF India Ltd. advises on employees' Wages/salaries, training and other policy matters. He argued that there is no mutuality of interest and therefore, they cannot be treated as related persons under section 4(3)(b) of CEA, 1944

8.1 Learned Counsel submitted that the appellants have availed the benefit of Notification No. 6/2006- CE dated 01/03/2006. The item No.13 of list 5 under which the benefit is availed reads as follows:

"Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller."

All the components and parts of wind operated electricity generator including rotor and turbine controller are exempt under this notification. This entry has been interpreted by Larger Bench of Tribunal and also by Hon'ble Supreme Court in the following cases/Circulars:

- Notification No. 6/2006 – CE dated 01/03/2006
- M/s. Rakhoh Enterprises 2016 (338)-Elt-449 (Tri.-LB)
- M/s. Hyundai Unitech Electrical Transmission Ltd. 2005-(187)- ELT-312 (Tri.-Mum) and affirmed by Hon. Supreme Court in 2015-(323)- ELT-220 (SC)
- M/s Fag Bearings India Ltd. 2019 (1) TMI 247 CESTATE-AHM

The observation made by Hon'ble Larger bench in the case of M/s Rakhoh Enterprises 2016 (338)-ELT-449 (Tri.-LB) is as follows:

"We find that the anchor rings and the load spreading plates are specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts for the same. The anchor rings and the load spreading plates are an extension of the tower, though the same is fixed to the foundation first and later attached to the tower. Thus they are parts of the tower".

The ball bearing manufactured by the Company are used in various places of the wind mill line i.e rotor shaft, gearbox (step-up gear), generator, yaw gearbox (reduction) yaw slewing table, blade pitch revolving seat and hydraulic pump.

8.2 Learned Counsel submitted that the Circular No. 1008/15/2015- CX dated 20/10/2015 of the Board clearly specified that the following items used by wing operated electricity generator, will be exempt form payment of excise duty:

- (i) Tower: which supports the nacelle and rotor assembly of a wing operated electricity generator.
- (ii) Nacelle: which contains of gearbox, generator, yaw components, flexible couplings, brake hydraulic, brake callipers, sensors, nacelle plate, nacelle cover and other smaller components.
- (iii) Rotor: consists of blades, hub, nosecone, main shaft, special bearings.
- (iv) Wind turbine controller, nacelle controller, main shaft, special bearings."

The ball bearings are used in these items only. Therefore, following the ratio of these judgments, the benefit of the notification shall be allowed.

8.3 Learned Counsel submitted that the Show cause Notice has been served on 19/09/2014. The demand for the period 2009-2010 to 2013-2014 has been raised. It is submitted that the demand for the period beyond one year is time barred. Therefore, the demand for the period prior to August-2013 is time barred as there was no malafide intention in non-payment of duty, due to the following reasons:

- (i) *The bearings are used in the rotor shops and are also used in various places of the wing mill i.e nacelle part of the wing mill i.e. rotor shaft, gearbox (step-up gear), generator, yaw gearbox (reduction) yaw slewing table, blade pitch revolving seat and hydraulic pump. Therefore, there was a bonafide belief that these are components of wing operated electricity generator. This belief has been vindicated by the judgment of the Supreme court in the case of M/s. M/s. Hyundai Unitech Electrical Transmission Ltd. reported in 2015-(323)- ELT-220 (SC) as well as circular No.1008/15/2015- CX dated 20/10/2015. Hence in any event the demand for the extended period cannot be invoked.*
- (ii) *There is no mutuality of interest between the appellant and M/s. SKF India Ltd. as there is not flow back of funds. Further, the relationship has not influenced the price in as much as the margin is maximum of 15% which is very reasonable, comparing to the nature of work undertaken by M/s. SKF India Ltd. Therefore, the extended period of five years cannot be invoked.*

8.4 Learned Counsel submitted that the penalty u/s. 11AC of the Central Excise Act, 1944 has been levied. It is submitted that in view of the above submissions, the penalty u/s. 11AC of the said Act should not be levied.

8.5 Learned Counsel submitted that the personal penalty under Rule 26(1) of the Central Excise Rules, 2002 is leviable when the person deals with the goods in a manner specified in the rule, with a reason to believe that the goods are liable for confiscation. In this case as it will be evident from the above submission that the appellants have correctly paid the excise duty and no further duty is payable. Therefore, there is no reason for confiscation of goods. There is no reason to believe that the goods are liable for confiscation. Hence, the penalty shall not be levied. Without prejudice to above, the Tribunal in the case of M/s. Homag India Pvt. Ltd. reported in 2017-(357)-ELT-1194 (Tri.-Bang) has held that the person mentioned in rule

26 means the living person and corporate companies are not covered under this rule. Hence penalty under Rule 26 should not be levied under M/s. SKF India Ltd.

8.6 Learned Counsel submitted that the order has imposed penalty under Rule 26(1) of the Central Excise Rules, 2002 on Shri. Chandramowli Srinivasan on the ground that he is Chairman and Director of M/s. SKF Technology India Pvt. Ltd. It is submitted that the goods are not liable for confiscation as mentioned above. Hence the penalty under Rule 26 should not be levied. Further, Mr. Chandramowli has not played any role in non-payment of duty.

9 Learned Authorized Representative, Shri. T. G. Rathod Joint Commissioner relied upon the impugned order.

9.1 Learned AR submitted that M/s. Aktiebolaget SKF, Sweden holds 92.89% of the shares of M/s. SKF Technologies and 46.7% shares of M/s. SKF India. Thus, it is evident that M/s. AB SKF, Sweden has control over both the body corporate Viz. M/s. SKF Technologies and M/s. SKF India. These facts lead to the inevitable conclusion that both, M/s. SKF Technologies and M/s. SKF India are under the same management.

9.2 Learned AR submitted that the fact that M/s. AB SKF, Sweden is holding company of both M/s. SKF Technologies and M/s. SKF India has been admitted by SKTF in their written reply dated 04.12.2014 at Para No. 6, whereby they submitted that Cost sharing agreement for charging on the basis of turnover is very common wherein group companies are involved. Moreover, Shri Anil Raskar, Manager Excise and Service tax with SKF India, Pune, who is responsible for handling all matters related to Central Excise and Service Tax for whole of India pertaining to SKF India, including SKF Technologies has also categorically stated in his statement dated 23.04.2012 that all the actions and directions undertaken by the SKF India and SKF Technologies were within the purview of the cost sharing agreement. Further, they have common Umbrella ERP package for all the units of SKF in India, developed by AB SKF, Sweden, such as I.T. cost was shared and paid independently by both the units i.e. SKF India and SKF Technologies of AB SKF, Sweden.

9.3 Learned AR submitted that the Audited Balance Sheet for the year – 2010-2011 of SKF Technologies finds mention of M/s. SKF India as “parties under common control” at Clause 17.17 forming part of Notes to Accounts pertaining to “Related party disclosures”. This fact has also been admitted by Shri Vijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai, in his statement dated 04.09.2014 and he has also deposed that AB SKF, Sweden was the ultimate holding company of both these two companies viz. SKF India & SKF Technologies and hence transactions between these two companies were reported under the related party disclosure of the balance sheet.

9.4 Learned AR submitted that the Audited Balance Sheet for the year- 2010-11 of SKF Technologies reported transaction with SKF India totalling to Rs. 45,10,25,51/- under the head of “particulars of related party transactions” at clause 17.17 (2) in revenue from operation. This fact was admitted by Shri Vijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai in his statement dated 04.09.2014.

9.5 Learned AR submitted that there are common as managing directors or at common personnel at senior position of management. A few of them have been discussed hereunder on an illustrative basis:

- (i) *“Shri Anil Raskar holds the designation of Manager Excise and Service Tax with SKF India, Pune. However, as per his statement, he handles all matters related to Central Excise and Service Tax for the whole of India in respect of all companies of SKF in India as well as SKF Technologies.*
- (ii) *Shri Vijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai whose profile includes handling of tax matters pertaining to Income Tax, Central Excise, Service Tax, VAT & CST Laws and also supported SKF Technologies in respect of the above mentioned areas of taxes.*
- (iii) *Mr. Chandramowli Srinivasan- Director Finance being employee of SKF India was also Chairman & Director in SKF Technologies.*
- (iv) *Mr. Srikant Savangikar – Director Business Excellence Quality & Sustainability being employee of SKF India was also director in SKF Technologies.”*

These facts were admitted by Shri Anil Raskar and Shri Vrijendra Patwari in their statement dated 23.04.2012 and 04.09.2014 respectively.

9.6 Learned AR submitted that in the instant case, M/s. SKF Technologies does not have any backup for selling goods in market and they use the manpower, know-how and proficiency of M/s. SKF India for getting orders for manufacture product. Likewise, M/s. SKF India doesn't have manufacturing facility and they are solely engaged in the marketing of products manufactured by M/s. SKF Technologies. Thus, the entire business of M/s. SKF Technologies and M/s. SKF India is inter-dependent in as much as M/s. SKF Technologies is entirely dependent on M/s. SKF India for marketing of the Bearings manufactured by them and M/s. SKF India is entirely dependent on the supply of bearing from M/s. SKF Technologies for its marketing activity. Learned AR submitted that M/s. SKF Technologies manufactures goods under the technical guidance of M/s. SKF India and also sells the entire quantity to M/s. SKF India. By way of this arrangement M/s. SKF Technologies gets the stable market and M/s. SKF India secures the technical know-how from their competitors. Learned AR Submitted that M/s. SKF Technologies in not at a liberty to decide the price of their goods as per cost valuation / cost manufacture basis. Rather, the price is decided by applying the backward calculation method of 8% to 15% of the order rate accepted by M/s. SKF India to the ultimate buyer. Keeping in view the PO issued by the ultimate Customer on SKF India, the invoice is raised by SKF Technologies on SKF India. In the preset case M/s. SKF Technologies has sold their entire goods exclusively to or through related person.

9.7 Learned AR submitted that a substantial loan amounting to Rs. 240 Crore has been extended to M/s. SKF Technologies by M/s. SKF India. The re-payment terms have been kept as per convenience of both. The Supplementary agreement indicates that the terms of re-payment kept on changing whereby relief was extended to SKF Technologies in repayment schedule. As per clause (d) of the agreement Cost sharing and Service Agreement dated 6th April, 2010 between SKF Technologies and SKF India, both the parties were pooling and combining their respective manpower and other resources for the purpose. The types of services rendered and availed were specifically mentioned in their annexure which, clearly shows that almost all the activities of SKF technologies were

controlled or governed by SKF India, though the same has been projected in the guise of Cost Sharing Agreement. There was no clear mechanism to share the actual cost between both the parties.

9.8 Learned AR submitted that the mutuality of interest in this case is amply demonstrated by revenue based on the association that they have interest, directly or indirectly, in the business of each other on the factual grounds mentioned at Para 41.2 (internal page no. 38).

9.9 Learned AR relied upon the decision in case of Sanjay Bahadur V/s commissioner of central excise, belapur (2009 (240) ELT 282 (Tri-Mumbai) in which following has been held in para-6 of the order for section 4(3)(b) that:

- "(i) they are inter-connected undertakings,
- (ii) they are relatives,
- (iii) amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor, or
- (iv) they are so associated that they have interest, directly or indirectly, in the business of each other.

The explanation to this clause states that "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of Section 2 of the Monopolies and Restrictive Trade Practices Act, 1969. Under Section 2(g) of MRTP Act, 1969, two or more undertakings are inter-connected with each other if the conditions specified in any of the seven specified manners which include (i) if one owns or controls the other (ii) if one body corporate manages the other and (iii) if the bodies corporates are under the same management are satisfied. We are of the opinion that UPL and UTL are under the same management in view of clause (ii) of Explanation 1 to Section 2 *ibid*, that is to say, if the managing director or manager of one such body corporate is the managing director or manager of the other or clause (iii), that is to say, if one such body corporate holds not less than one third of the equity shares in the other or.....We find that Shri Sanjay Bahadur is the managing director of UPL and simultaneously is the director of UTL. Further, Shri Ramesh Chandra, is director in both UPL and UTL. They are no mere managers. Hence, the condition of clause (ii) referred to above is satisfied. We find that UTL holds 40% shares of UPL i.e., more than $33\frac{1}{3}\%$ which means that UPL and UTL are under the same management and hence both are inter-connected undertakings within the meaning of Section 2(g) of the MRTP Act, 1969. The roles played by Shri Sanjay Bahadur in his dual capacity is pivotal because he executed the policies of both the units. Similarly, Shri Ramesh Chandra executed the policies of both the companies. All these factors indicate that UTL controls UPL and being inter-connected undertakings having direct or indirect interest in the business of each other are related in terms of the provisions of Section 4(3)(b) of the Central Excise Act, 1944. The ratio of the case law *M/s. South Asia Tyres P. Ltd. v. CCE, Aurangabad* reported in [2003 \(152\) E.L.T. 434](#) (Tri.) cited by the appellants is not applicable to the present case as in the case of *M/s. South Asia Tyres P. Ltd.* although *M/s.*

South Asia Tyres P. Ltd. and M/s. Goodyear India Lt. were interconnected undertakings yet they did not have interest in the business of each other whereas in the instant case the appellants and UTL have interest in the business of each other."

9.10 Learned AR submitted that in the instant case it can also be seen that there are key managerial personnel at senior levels for example, Mr. Chandramowli Srinivasan – CFO of SKP India was also Chairman & Director in SKF Technologies

9.11 Learned AR submitted that further, regarding invocation of rule 10 of central excise valuation rules and the new valuation rule, 9 At para 7 of the said case law of Sanjay Bahadur, it was noted that rule 10 of the central excise valuation rules, 2000 can be invoked only when the entire production of the goods by a manufacture is sold to or through an interconnected undertaking, which is the exact case in this appeal also.

9.12 Learned AR submitted that in this case it is found that M/s. SKF Technologies was selling their entire production for home consumption to M/s. SKF India Ltd., a distribution centre situated at Safexpress logistic park, Changodar. M/s. SKF India in turn sold the same to ultimate buyer at much higher price than the value on which the Central Excise duty was paid by SKF Technologies.

9.13 Learned AR submitted that in Commissioner of central excise, Mumbai-V versus 'J' Foundation (2015 (324) E.L.T. 422 (S.C), Hon. Apex Court has clearly held at para-14 that where the two companies/ firms etc., belong to the same group then the test of mutuality is established and satisfied. Further it has also deliberated upon holding company and subsidiary company.

9.14 In respect of bearing supplied for wind mills Learned AR submitted that the language employed in the notification clearly indicates that the exemption is not extended to each and every non-conventional energy devise or system. The scope of exemption has been restricted only to such devices or systems which have been specified in List 5. Further, it is evident that while some entries in List 5 above refer to individual items or devices, some other entries include systems as a whole or a combination of an equipment and the corresponding systems. In this background each of the

entries in list 5 would have to be constructed strictly as per the text of the entry itself without expanding the scope merely because group heading in entry 84 of the table refer to systems.

9.15 Learned AR submitted that, adj. authority has examine history of exemption given to non conventional energy devices/ system. Earlier such exemption was governed under the provisions of notification No.5/1999 dated. 28.02.1999. Under SI. No. 265 " Non- conventional energy devices / systems specified in list 4" falling under " any chapter" of the said first schedule were exempted from the whole of the duty leviable thereon without any condition serial No. (13) of list 4 in respect of the said entry reads as follows:

"Windmills, parts of windmills and any special designed devises which run on windmills."

Learned AR submitted that the above indicates that description of the goods entitled for exemption was changed from " windmills, parts of windmills and any special designed devices which run on windmills" to " wind operator electricity generator, its components and parts thereof including rotor and wind turbine controller." These facts clearly indicate that the intention of legislature while amending exemption was to restrict the exemption to the part of wind operated electricity generator instead of allowing exemption to entire wind mill and parts thereof. The entry at Sr. No. (13) of list 5 covers only the generator and its parts and its scope cannot be extended to include the entire wind mill and parts thereof.

9.16 Learned AR submitted that M/s SKF Technologies manufactures bearings for windmills as per the diagram/ picture given in SCN, the generator is a part of wind mill and exemption is available to part of generator. The "Bearings" manufactured by SKFT were used in various places of the windmills i.e. nacelle part of windmill i.e. rotor shaft gearbox (setup gear) , generator , yaw gearbox (reduction), yaw slewing table, blade pitch revolving seat and hydraulic pump. Further, from any records such as invoices or ER-1 returns it is not imminent that the "Bearings" cleared by the M/s SKF Technologies have actually been used in the generator or in any other part.

9.16 Learned AR relied on the decision reported, in notification entitlement, Hon. SC has held in 2018 (361) ELT 577 (SC), in Commissioner of Customs

(IMP) Mumbai V.s Dilip Kumar and company to assert that burden to prove entitlement is on assessee and benefit of ambiguity in notification cannot be claimed by the assessee and must be interpreted in favour of revenue.

9.17 Learned AR submitted that M/s. SKF Technologies were very much aware of their relation with M/s. SKF India and they were the best judge to ascertain the relation of the two units despite having such knowledge, they chose to value their excisable goods on 'transaction value' basis with the sole intention to evade the payment of duty at appropriate rates. Further found that the language employed in Notification No. 12/2012 dtd. 17.03.2012 is unambiguous and yet the assessee chose to avail of the benefits which were not available to them.

10. We have considered rival submissions. We find that there are two issues which are needed to be decided. Firstly, if M/s SKF India Ltd. and M/s SKF Technologies India Pvt. Ltd. are related persons in terms of the Central Excise Act, 1944. Secondly, to see if the benefit of notification no. 06/2006 can be extended to the bearings manufactured by the SKFTIL and supplied for use in the wind operated electricity generators.

10.1 It has been asserted by Revenue that M/s SKFIL and M/s SKFTIL are related as both of them are controlled by their holding company, namely M/s AB SKF, Sweden. It has been asserted by Revenue that M/s SKFTIL in their balance-sheet have reiterated under the heading "related parties transactions" with SKFIL. It has also been asserted that there is a loan agreement dated 08/12/2008 between M/s SKFIL and M/s SKFTIL under which M/s SKFIL has extended significant amount of loan to M/s SKFTIL. It has also been asserted by Revenue that SKFTIL does not have any backup for selling goods in the market and the entire marketing is looked after by the SKFIL. Similarly, M/s SKFIL does not have manufacturing capabilities and they are dependent on M/s SKFTIL for manufacturing of goods. On the basis of assertions, Revenue has sought to treat M/s SKFIL and M/s SKFTIL as related parties under clause (iv) section 4(3)(b) of the Central Excise Act, 1944. The said section 4 reads as under:

(b) *"persons shall be deemed to be "related" if-*

(i) they are inter-connected undertakings;

- (ii) *they are relatives;*
- (iii) *amongst them the buyer is a relative and a distributor of the assessee, or a sub-distributor of such distributor; or*
- (iv) *they are so associated that they have interest, directly or indirectly, in the business of each other."*

Clause (iv) has been involved in present facts.

10.1 We find that so far as loan granted by M/S SKFIL to M/s SKFTIL is concerned interest at the rate of 9% has been fixed. It has also been specified that the rate of interest would be revised regularly at half yearly basis and shall not be less than the prevailing bank rate under section 49 of RBI Act, 1934. In view of above, it is apparent that this a purely business transaction and not a transaction creating interest in the business of each other.

10.2 It is seen that M/s SKFIL and M/s SKFTIL are sharing some staff cost. It is seen that M/s SKFIL has factories located in Bangalore, Haridwar, Pune, Manesar and Jamshedpur, also for 5 branches located all over the country. There are also two associate companies namely M/s SKF Technologies Ltd. and M/s Lincoln Helios India Ltd. Among these organisations, M/s SKFIL has identified the departments where they share the cost incurred on staff. We find that these are purely business transaction and cost sharing cannot be treated as transaction creating interest in business of each other. Had it been the case that M/s SKFIL were providing such services free of cost or at subsidised rates to the other, then one could have asserted that there was an interest in business of each other. In this case, the costs of staff are charged to each other. Therefore, it can only be treated as business transaction.

10.3 The mere fact that the entire production of M/S SKFTIL is sold through M/s SKFIL is not sufficient to make them related parties. There has to be positive evidence of them having interest in the business of each other. The mere fact that M/s SKFTL are reporting transactions with M/s SKFIL as "related party transaction" in their balance sheet is irrelevant. The criteria for treating two parties as related is very well defined in Central Excise Act and treatment given by the appellant in their balance sheet has no relevance in the facts of this case.

10.4 We find that no such evidence has been produced by Revenue and in these circumstances they cannot be treated as related parties. Since the two cannot be treated as related parties, the transaction value between SKFIL and SKFTIL has to be accepted for the purpose of assessment. The appeal on this count is allowed.

11. The next issue related to the admissibility of notifications of 06/2006 to the bearings manufactured by the M/s SKFTL and ultimately sold for use in the wind operated electricity generators as parts. Revenue has sought to deny the benefit of this notification by asserting that the earlier notification no. 05/99 dated 28/02/1999 exempted the following in serial no. 13 of list 4:

"Windmills parts of windmills and any special designed devises which run on windmills"

Revenue has asserted that the description was changed from "windmills, parts of windmills and any special designed devises which run on windmills" to "wind operator electricity generator, its components and parts thereof including rotor and wind turbine controller."

11.1 It has been argued that only parts of 'generators' are exempted and not parts of wind mill. The crux of the argument being that only the generator used in the wind mill is windmill generators and balance, that is, blades and the towers are not parts of the generators. It is seen that circular no. 1008/15/52015-CX dated 20/10/2015 of the Board clearly specified that the following items used by wind operated electricity generator, will be exempt from payment of excise duty:

- (i) Tower: which supports the nacelle and rotor assembly of a wing operated electricity generator.
- (ii) Nacelle: which contains of gearbox, generator, yaw components, flexible couplings, brake hydraulic, brake callipers, sensors, nacelle plate, nacelle cover and other smaller components.
- (iii) Rotor: consists of blades, hub, nosecone, main shaft, special bearings.
- (iv) Wind turbine controller, nacelle controller, main shaft, special bearings."

From the above, it is clear that the CBIC treats the entire 'wind mill' as the 'wind operated electricity generators'. The generator fixed in the 'wind operated electricity generator is merely a sub system.

11.2 The appellants have also relied on the decision of larger bench of Tribunal in the case of Rakhoh Enterprises 2016 (338)-ELT-449 (Tri- L.B.) is as follows:

"We find that the anchor rings and the load spreading plates are specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts for the same. The anchor rings and the load spreading plates are an extension of the tower, though the same is fixed to the foundation first and later attached to the tower. Thus they are parts of the tower".

This decision also supports the appellant's case.

11.3 Appellants have contended that the bearings are used at various places in the wind mill like rotor shaft, gearbox, generator, yaw gearbox, etc. We find that the interpretation sought by Revenue is very narrow. The term wind operated electricity generator appeared in notification 06/2006-CE dated 01.03.2006 includes the entire setup i.e. the tower, the generator, the blades which are used to generate electricity from wind. The term 'wind operated electricity generator' in the notification does not refer to solely to the generator which is just one of the parts of the wind operated electricity generator. In view of above, we do not find any merit in the argument of Revenue and the demand on that is set aside. Hence, the appeal is consequently allowed.

(Pronounced in the open court on 25.08.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)