CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21638 of 2015

(Arising out of Denovo Order No. 007/HEB/COMMR/B/1/2015 dated 31.03.2015 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, Bengaluru.)

M/s. SKF India Ltd.
No.2, Bommasandra Indl. Area,
Hosur Road, Bommasandra,
Bangalore – 560 099. **....Appellant(s)**

VERSUS

Commissioner of Central Excise, Bangalore - I
C. R. Building, P. B No. 5400, Queens Road,
Bengaluru – 560 001. **....Respondent(s)**

WITH

Central Excise Appeal No. 21639 of 2015

(Arising out of Denovo Order No. 007/HEB/COMMR/B/1/2015 dated 31.03.2015 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, Bengaluru.)

M/s. SKF India Ltd.
No.2, Bommasandra Indl. Area,
Hosur Road, Bommasandra,
Bangalore – 560 099. **....Appellant(s)**

VERSUS

Commissioner of Central Excise, Bangalore - I
C. R. Building, P. B No. 5400, Queens Road,
Bengaluru – 560 001. **....Respondent(s)**

AND

Central Excise Appeal No. 21640 of 2015

(Arising out of Denovo Order No. 007/HEB/COMMR/B/1/2015 dated 31.03.2015 passed by the Commissioner of Central Excise, Bangalore – I Commissionerate, Bengaluru.)

Shri. Chandramowli Srinivasan
Director – Finance of M/s. SKF India Ltd.
No.2, Bommasandra Indl. Area, Hosur Road,
Bommasandra,
Bangalore – 560 099. **....Appellant(s)**

VERSUS

Commissioner of Central Excise,
Bangalore - I
C. R. Building, P. B No. 5400,
Queens Road,
Bengaluru – 560 001. **....Respondent(s)**

Appearance:
Mr. Abhi Parakh, Mr. Ramakrishna and Ms. Evita, Chartered Accountants (CAs) for the Appellant.
Mr. Vikalp Jain, Superintendent (AR) for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20005-20007 /2026

Date of Hearing: 06.10.2025
Date of Decision: 09.01.2026

PER: P.A. AUGUSTIAN

This appeal is filed against the Denovo Order No. 007/HEB/COMMR/B/1/2015 dated 31.03.2015 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, Bengaluru.

2. The issues in the present appeals are regarding demand of service tax against ineligible CENVAT availed by the appellant pertaining to trading activity and services which are not eligible input services and the penalties imposed on the appellant and their Director, Finance.

3. The facts in brief are M/s. SKF India Ltd., the Appellant is manufacturing and clearing goods including 'Ball bearing' and also taken the service tax registration. Appellant was availing CENVAT credit on inputs, capital goods and input services under CENVAT Credit Rules, 2004. Since Appellant is engaged in trading of 'Ball Bearings', investigation was commenced and during investigation, it appeared that for the period from 2006-2007 to 2010-2011 upto January 2011, CENVAT credit availed on common input services used for manufacturing as well as trading activities in their Input Service Distributor (ISD) Pune Account was passed to their Pune manufacturing unit and the balance CENVAT Credit of 33% was availed at their Bangalore Unit on being passed on by their ISD, Pune. Since ISD can distribute only the credit of service tax paid on services used in relation to manufacture of dutiable goods and in providing taxable services, considering that the Appellant is not maintaining separate accounts for service tax credit for the manufactured and traded goods, proceedings were initiated and show cause notice (SCN) dated 03.02.2012 was issued. Adjudication Authority as per the impugned order held that CENVAT credit amounting to Rs. 3,19,66,726/- availed during the period from January 2007 to March 2011 as detailed in Annexure-I of the impugned order was irregular. Thus, confirmed the demand and ordered for recovery of the same. Further it is held that CENVAT credit of Rs. 4,53,09,024/- as detailed in Annexure-II & III of the impugned order are availed on ineligible services during the period from January 2007 to March 2011. Thus, confirmed the demand and ordered recoveries. The Adjudication Authority also imposed penalty on Appellant under various provisions of Finance Act, 1994, penalties on the Pune unit who is the Input Service Distributor (ISD) under Rule 15 of the CENVAT Credit Rules, 2004 and also on Director of Finance Shri. Chandramowli Srinivasan. Aggrieved by the said order, an appeal was filed before this Tribunal, and the appeal was disposed by way of remand to the original authority for re-adjudication vide Final Order Nos. 20723-20724/2014 dated 07.05.2014. Thereafter on Denovo Adjudication, the Respondent confirmed the entire demand of service

tax along with interest and imposed penalties vide Denovo Order No. 007/HEB/COMMR/B/1/2015 dated 31.03.2015. Aggrieved by said order, present appeals are filed.

4. When the appeals came up for hearing, as regards the demand against disallowance of input credit on common services including the trading activities prior to 01.04.2011, Learned Chartered Accountant (CA) submits that trading was included as part of exempted service vide Notification No. 3/2011-CE with effect from 01.04.2011 and issue was considered in the matter of **M/s Anglo French Drugs and Industry Ltd. Vs. CCE,** wherein as per Final Order No. 20739-20741/2024 dated 10.07.2024, it was held that amendment in Rule 2(e) was only prospective and therefore demand up to 01.04.2011 was held unsustainable. This view was upheld in catena of cases including the following:-

i. ***Anglo French Drugs & Industries Ltd Vs. The Commissioner of Central Excise vide Final Order No. 20739-20741/2024 dated 10.07.2024***
ii. ***Anglo French Drugs & Industries Ltd Vs. The Commissioner of Central Excise vide Final Order No. 20540/2023 dated 09.06.2023***
iii. ***S. Gopal Kamath (Cochin) Vs. C.C, C.C.E. & S.T-Cochin vide Final Order No. 20076-20077/2019 dated 14.01.2019***
iv. ***Ingersoll-Rand Technologies and Services Pvt. Ltd. Vs. Commissioner of Central Excise, Ghaziabad - (2023) 8 Centax 41 (Tri.-All) (18-08-2022]***
v. ***Marudhan Motors Vs. Commissioner of Central Excise & S.T., Jaipur-II - 2017 (47) S.T.R. 261 (Tri.-Del) [29-07-2016]***
vi. ***Commr. of C. Ex., Bhopal Vs. My Car (Bhopal) Pvt. Ltd., - 2019 (22) G.S.T.L. 273 (Tri.-Del) [31-01-2018]***
vii. ***Tricity Auto Vs. Commissioner of C. Ex., Chandigarh-II - 2016 (44) S.T.R. 601 (Tri.-Chan) [07-04-2016]***

viii. ***Infinium Motors Guj. Pvt. Ltd. Vs. Commissioner of Service Tax, Ahmedabad - (2023) 11 Centax 245 (Tri.-Ahmd) [30-09-2022]***

ix. ***Franke Faber India Ltd. Vs. Commissioner of C. Ex., Aurangabad - 2017 (52) S.T.R. 155 (Tri.-Bom) [20-01-2017]***

x. ***Adani Energy Ltd Vs. C.S.T., Ahmedabad vide Final Order No. A/10520/2022 dated 15.03.2022***

5. The Learned Chartered Accountant (CA) for the Appellant further submits that in the case of **Lally Automobiles Vs. CC-[2014 (35) S.T.R. 26 (Del)],** while computing the CENVAT Credit to be reversed due to trading during the period prior to April 2011, the appellant adopted the formula introduced vide Explanation 1(c) below Rule 6(3D) of Cenvat Credit Rules, 2004, inserted vide Notification 3/2011-CE(NT) dated 01.03.2011. In the said case, the Revenue had essentially considered 10% of total trading turnover as exempt turnover and thereafter applied the above formula. This computation was upheld by the Hon'ble Delhi High Court, and the said case was later affirmed by the Hon'ble Supreme Court. The Hon'ble Mumbai bench of CESTAT has in case of **Mercedes Benz India Pvt. Ltd. Vs. Commissioner of Central Excise, Pune I [Final Order No. A/85162-85165/2020] dated 31.01.2020]**, held that for computation of CENVAT Credit to be reversed in case of trading turnover, the turnover of purchase of goods for trading should be reduced and only thereafter the CENVAT Credit demand should be computed. When the demand of CENVAT Credit is recomputed on the basis the above principles same will be significantly reduced.

6. As regards CENVAT credit disallowed on the ground that services purchased on which credit has been claimed, do not have nexus with the manufacturing of excisable goods, Learned Chartered Accountant (CA) submits that nexus between input services purchased, and excisable goods manufactured is not a pre-requisite for CENVAT Credit eligibility. Input services not only covers services used directly or

indirectly in or in relation to manufacture of final products but also includes services used in relation to business of the Company. This principle has been upheld by Hon'ble Courts in numerous occasions. Appellant submits that each of the service purchased on which CENVAT Credit has been disputed has been held as eligible input service by Tribunals / Courts. The Learned Chartered Accountant (CA) also draws our attention to the following chart showing details of the services and the judicial proceedings against each services and submits that each and every input services availed by the Appellant as input credit are eligible for availing CENVAT credit on output services and there is no illegality committed by the Appellant as alleged in the impugned order and the entire demand on the said account is also unsustainable.

Sl. No	Details of Services	CENVAT Credit Disallowed	Judicial Precedence
1	Information technology Software Service	87,60,823	India Alloys Industries Ltd - (2023) 6 Centex 42 (Tri-Del)
2	Courier service	67,60,035	Evonik Specialty Silica India Pvt. Ltd. - (2024) 18 Centex 223 (Tri-Ahmd); P&P Overseas - 2015 (317) E.L.T. 585 (Tri-Del)
3	Custom House Agent service	85,19,803	Sundaram Clayton Ltd - 2018 (43) S.T.R. 741 (Tri-Chennai); Magal India Pvt. Ltd - (2023) 5 Centex 159 (Tri-Bom)
4	Cargo Handling agent Services	20,95,832	Maruti Suzuki (India) Ltd - (2024) 16 Centex 4 (Tri-Chan)
5	General Insurance Services	23,10,057	AEC Intermetalli Ltd - (2023) 9 Centex 198 (Tri-Del); Capgemini Technology Services India Ltd - (2023) 29 Centex 407 (Tri-Bom)
6	Rent a Cab Service	22,38,871	Expro Ltd - (2023) 7 Centex 92 (Tri-Bom)
7	Storage and warehousing Services	19,63,622	Lifelong Meditech Ltd - 2016 (42) S.T.R. 828 (Tri-Chan)
8	Construction service	17,85,847	Sundaram Clayton Ltd - 2018 (43) S.T.R. 741 (Tri-Chennai); Lupin Ltd - 2012 (23) S.T.R. 261 (Tri-Mumbai)
9	Cleaning service	14,85,833	Sundaram Clayton Ltd - 2018 (43) S.T.R. 741 (Tri-Chennai); Indo Alusys Industries Ltd - (2023) 6 Centex 42 (Tri-Del)
10	Clearing and forwarding agent Service	14,35,833	Sundaram Clayton Ltd - 2015 (43) S.T.R. 741 (Tri-Chennai); Indo Alusys Industries Ltd - (2023) 6 Centex 42 (Tri-Del)

11	Commercial Training and Coaching Services	13,50,833	Maruti Suzuki (India) Ltd - (2024) 18 Centex 8 (Tri-Chan)
12	Security Agency Services	9,50,633	Toyota Kirloskar Motor Pvt. Ltd - 2011 (24) S.T.R. 645 (Kar)
13	Goods Transport Agency Service	5,50,828	Evonik Specialty Silica India Pvt. Ltd - (2024) 18 Centex 223 (Tri-Ahmd)
14	Event management Service	5,95,813	Reliance Industries - (2024) 14 Center 33) (Tri-Bom); J.P. Morgan Services (I) Pvt. Ltd - 2018 (45) S.T.R. 188 (Tri-Mumbai); VITP Pvt. Ltd - (2023) 23 Centex 150 (Tri-Hyd)
15	Banking service	5,12,622	Evonik Specialty Silica India Pvt. Ltd - (2024) 18 Centex 223 (Tri-Ahmd)
16	Travel agent Service	2,78,022	Sundaram Clayton Ltd - 2018 (43) S.T.R. 741 (Tri-Chennai); Oddity South (India) Securities Pvt. Ltd - (2025) 22 Centex 118 (Tri-Bom)
17	Outdoor Catering service	1,83,803	Real Chemicals Pvt. Ltd - 2019 (43) S.T.R. 1263 (Kar)
18	Business exhibition Service	1,85,811	Covered Under Definition of Rule 2(l)
19	Interior decorator Services	1,45,832	Shvrat Fits Wiener Ltd - 2011 (43) S.T.R. 425 (Tri-Bang)
20	Club and Association services	80,824	Indian Bank - (2025) 23 Centex 88 (Tri-Cal); Erton Ltd - (2023) 7 Centex 42 (Tri-Bom)
21	Share transfer agent Service	64,483	Covered Under Definition of Rule 2(l)
22	Cleaning service	45,815	Adoniss Garments Ltd - (2023) 4 Centex 351 (Tri-Ahmd)
23	Group insurance policy	18,341	Rana TRW Steering Systems Ltd - 2015 (38) S.T.R. 13 (Mad.); Reliance General Insurance Ltd - (2023) 4 Centex 257 (Tri-Bom); Tata Teleservices (Maharashtra) Ltd - (2024) 16 Centex 161 (Tri-Lib)
24	Architect service	9,853	J.P. Morgan Services (I) Pvt. Ltd - 2015 (43) S.T.R. 185 (Tri-Mumbai); Lupin Ltd - 2012 (28) S.T.R. 201 (Tri-Mumbai)
25	Real estate agent	8,037	Omega Healthcare Management Services Pvt. Ltd - (2023) 2 Centex 49 (Tri-Bang)
26	Insurance auxiliary service	7,554	Capgemini Technology Services India Ltd - (2023) 29 Centex 407 (Tri-Bom)

27	Other Services	5,067	-
28	Legal consultancy service	3,084	Sundaram Clayton Ltd - 2018 (43) S.T.R. 741 (Tri-Chennai)
29	Health insurance Service	513	Reliance Corporate Park Ltd - (2025) 4 Centex 287 (Tri-Bom); Tata Teleservices (Maharashtra) Ltd - (2024) 18 Centex 159 (Tri-Lib)
30	Secretarial service	419	-
31	Mandap service	413	Omega Healthcare Management Services Pvt. Ltd - (2023) 2 Centex 49 (Tri-Bang)
	Total	4,59,00,035	

7. As regards invoking the extended period of limitation, Learned Chartered Accountant (CA) submits that the demand up to January 2011 has been confirmed by invoking extended period of limitation. In this regard, Learned Chartered Accountant (CA) submits that Appellant had obtained first stage dealer registration for its depots where from trading was being undertaken. The Learned Chartered Accountant (CA) also drew our attention to the registration certificate and the sample invoice copies, Form RC under Rule 9 of the Central Excise Rule, 2002. Thus, the demand confirmed by invoking the extended period of limitation based on the show cause notice issued on 03.12.2012 is unsustainable.

8. The Learned Chartered Accountant (CA) further submits that it is well settled that when complex interpretation of law is involved, conflicting or divergent judgments are available, invocation of extended period of limitation and levy of penalty are unjustifiable. In this regard Learned Chartered Accountant (CA) draws our attention to the following decisions:-

i. Asst. Commissioner of GST & C.Ex., Chennai Vs. Shriram Value Services Pvt. Ltd. – 2019 (368) ELT 928 (Mad.)

ii. ***Bharat Heavy Electricals Ltd. Vs. Commr. of C.T. C.Ex & S.T., Medchal – 2020 (43) GSTL 395 (Tri. – Hyd.)***
iii. ***U. N. Automobile (P) Ltd. Vs. C.E. & S.T, Udaipur vide Final Order Nos. 50219-50220/2019 – Delhi CESTAT***
iv. ***Mahindra & Mahindra Ltd. Vs. Commissioner of Central Excise Pune – I vide Final Order No. A/87472-87473/2024 – Mumbai CESTAT***
v. ***Pravesh Kumar Maurya Vs. Commissioner of Central Excise and CGST (2024) 19 Centax 375 (Tri. – All.)***
vi. ***C.S.T, New Delhi Vs. Kamal Lalwani – 2017 (49) S.T.R. 552 (Tri. - Del.)***

9. The Learned Chartered Accountant (CA) also relied on the following decisions:-

i. **Aban Loyd Chiles Offshore Ltd. Vs. Commr. of Cus., Maharashtra – 2006 (200) ELT 370 (S.C.) –** If the department was having full knowledge of the activities of the business, extended period of limitation cannot be invoked.

ii. **Commissioner of CCE, Indore Vs. Syncom Formulation (I) Ltd. – 2004 (172) ELT 77 (Tri – Del.) –** Extended period of limitation is not invocable if the facts have come to the knowledge of the Department. This was the view expressed by the Tribunal in the case of Rubicon Steels (supra) which has been confirmed by the Hon'ble Supreme Court.

10. The Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and further submits that during investigation, to a specific question as to whether the fact of availing and distribution of service tax credit on trading activity by ISD Pune was brought to the notice of the department, Shri Virijendra Patwari, General Manager, stated that since ISD are not taking credit of services which were exclusively meant for trading for distribution, the department was not informed of the same. Further to a specific query

whether their Bangalore factory had brought to the notice of the department at any point of time before being pointed out by the department that they were availing Cenvat credit of trading services extended by their ISD, Pune and availing of credit on trading services which were not at all used in or in relation to manufacture of final products, he stated that the Bangalore factory has taken Cenvat credit on the basis of ISD invoices received from Pune; since the ISD was not taking credit of service tax which were exclusively meant for trading activity, the department was not informed of the same. As regards the Appeal filed by Shri. Chandramowli Srinivasan, Director, Finance of M/s. SKF India Ltd, Learned AR reiterated the finding in the impugned order and further submits that in his statement dated 26.07.2011, *inter alia* stated that; he was taking policy decisions pertaining to taxation matters; he concurs with the statement dated 12.07.2011 of Shri. Vrijendra Patwari, General Manager (Taxation) shown to him and it was the decision of the company to avail Cenvat Credit on service tax paid on common input services which were used in both manufacturing and trading activity. Thus, responsibility to maintain proper record of availment and utilization of CENVAT credit is cast on them. Inspite of the said statutory requirements they availed and utilized Cenvat Credit attributable to services used for trading activities. The above fact is noticed only when the Head Quarters Preventive Unit (HPU) took up investigation on being informed of irregular Cenvat availment and scrutinized the records of the Appellant. Except for the information from Pune Commissionerate and detailed investigation by the HPU, the appellant would have continued availing inadmissible Cenvat credit of input services used for trading activities. Further, the Cenvat credit of service tax availed on such services is irregular in as much as the said categories of service are beyond the purview of definition of input service as defined under Rule 2(l) of Cenvat Credit Rules, 2004 as the same are not used either directly or indirectly in or in relation to manufacture of the final goods which are used commonly for manufacturing activity as well as trading activity and the credit of services attributable to trading activities is inadmissible. Thus, adjudicating authority righty confirmed the demand and imposed penalty.

11. Heard both sides and perused the records.

12. As regards the demand against CENVAT credit by considering the trading activities as exempted goods prior to 01.04 2011, we find that divergent views are taken by different Tribunals and Hon'ble High Courts. However, it is considered that amendment would be considered with retrospective effect but should exclude the cost of purchase of goods and not on the total turnover. As regards invoking the demand by confirming extended period of limitation, we find that the Appellant have a strong case specifically since the disputes were pending regarding the trading activity. Further as evident from the registration, the premises were registered and returns were filed for the relevant period. Considering the submissions, the demand confirmed by invoking the extended period of limitation is unsustainable.

13. As regards the demand against ineligible CENVAT credit against ineligible inputs used, we find that that issue is also covered under various decisions of the Tribunal. Accordingly, all the inputs services as claimed by the Appellant are eligible inputs for availing CENVAT credit. We find that the Coordinate Bench of Tribunal in the matter of **M/s. Mercedes Benz India Vs. CCE, Pune-I** vide Final Order No. A/85162-85165/2020 dated 31.01.2020 held that:-

> *"10. In the present proceeding, the learned Sr. Advocate Shri V. Sridharan, however, advanced his argument mainly on two principal issues, that is, whether the appellants are eligible to CENVAT Credit on common input services described under Rule 6(5) of the CENVAT Credit Rules, 2004 and in calculating the proportionate CENVAT Credit attributable to sale of cars; secondly in the formula prescribed under Rule 6(3A) of CCR, 2004, it is only the margin of value addition of the traded cars be considered or otherwise".*

14. After detailed discussion on the above issue, the Tribunal held that:-

> *"19. A plain reading of Section 67 of Finance Act, 1994 along with Service Tax (Determination of Value) Rules, 2006, and principles of law settled in this regard, it can easily be construed that the value of taxable services cannot include the value of the material/goods used in rendering the taxable services. Simultaneously, it is an accepted principle that the cost of all ancillary and incidental services for providing the taxable service be part of the value of the taxable service. Applying the said principles to the present case also, that is, in determining the value of non-taxable service i.e. 'trading' of imported cars, it cannot include the value of the imported cars while apportioning the quantum of credit availed on common input services and attributable to the sale of imported cars, but the total value of the services/expenses incurred in trading of the imported cars ought to be considered as part of "value" for the purpose of the formula prescribed at sub-rule 3A(c) (iii) for the period 01.4.2008 to 31.3.2011".*
>
> *"20. More or less similar principle has been incorporated in understanding the value of traded goods under amended provisions of sub-rule 3(iv) of the CENVAT Credit Rules, 2004 w.e.f. 01.04.2011".*
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> ....
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> ....
>
> *"24. Thus, to apportion the quantum of CENVAT Credit availed on various common input services and attributable to sale of the imported Cars as per the formula prescribed at Rule 6(3A)(c) (iii) of CCR, 2004, for the period 01.4.2008 to 31.3.2011 the matter needs to be remanded to the adjudicating authority, who would determine the said amount by applying the principles discussed above and other factors for the normal period of limitation. We make it clear that no penalty is imposable in the present circumstances".*

15. Thus, considering the ratio of above, the demand confirmed by the Adjudication authority by invoking the extended period of limitation is unsustainable. Further as regards demand for the normal period, though there are various conflicting decisions it is settled that the amendment brought in April 2011 is only clarificatory in nature and trading activities have to be included in the turnover. However following the ratio of the above, the entire value of the goods cannot be included as consideration for ascertaining the service tax. Since the disputes are involved in the above issue, penalties imposed on Appellant and Co-Appellants are also liable to be set aside. Appellant is directed to produce the worksheet certified by Chartered Accountant confirming the consideration involved in trading of goods excluding the value of the goods as held in the matter of **M/s. Mercedes Benz (supra)** and thereafter Adjudication authority shall verify the records and finalize the demand, accordingly.

16. Accordingly, the impugned order is modified and Appeal No. E/21638/2015, is partly allowed in the above terms with consequential relief, if any, as per law. The impugned order in Appeal nos. 21639, 21640/2015 to the extent of imposing penalties is set aside and the Appeals are allowed.

(Order pronounced in open court on 09.01.2026)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)