CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 759 of 2012

(Arising out of Order-in-Original No. 01/Central Excise/2012 dated 19.01.2012 passed by the Commissioner of Central Excise, Pune-I)

SKF India Ltd. (ISD) **.... Appellant**
Chinchwad, Pune- 411 035.

Versus

Commissioner of Central Excise and Service Tax, Pune-I **.... Respondent**
ICE House, 41-A, Sasoon Road,
Opposite Wadia College, Pune- 411 001.

With

Excise Appeal No. 85512 of 2013

(Arising out of Order-in-Original No. 35/RKS/CEX/P-1/2012 dated 01.11.2012 passed by the Commissioner of Central Excise, Pune-I)

SKF India Ltd. (ISD) **.... Appellant**
Chinchwad, Pune- 411 035.

Versus

Commissioner of Central Excise and Service Tax, Pune-I **.... Respondent**
ICE House, 41-A, Sasoon Road,
Opposite Wadia College, Pune- 411 001.

APPEARANCE:

Shri S.S. Gupta, Chartered Accountant for the Appellants

Shri Xavier P.M. Mascarenhas, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87591-87592/2024

Date of Hearing: 17.12.2024

Date of Decision: 17.12.2024

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants are engaged in the manufacture of excisable goods i.e., Ball and Roller Bearing and also engaged in the trading activity i.e., import and sale of ball bearings. The appellants avail Cenvat Credit of Central Excise duty paid on the inputs and service tax paid on the input services. During the disputed period, since the appellants had availed common input services for manufacture of both the excisable goods as well as for trading activity, the department had objected to such availment of Cenvat Credit on the ground that the appellants had not maintained separate accounts for availing the Cenvat Credit in respect of the services used for manufacturing activity and for trading. The show cause proceedings initiated by the department were culminated into the adjudication orders dated 19.01.2012 and 01.11.2012 (impugned herein), wherein the original authority has disallowed the Cenvat Credit along with interest and also imposed equal amount of penalty on the appellants. Feeling aggrieved with the impugned orders dated 19.01.2012 and 01.11.2012, the appellants have preferred these appeals before the Tribunal.

2. Heard both sides and perused the case records.

3. The appellants have assailed the impugned orders on the grounds that in respect of Appeal No. E/758/2012, the adjudged demands confirmed against them are partially time barred. In this context, they had submitted that there were conflicting views by the judicial forums with regard to consideration of the issue, whether the activity of 'trading' should be considered as exempted service or otherwise, in terms of Rule 2(e) of the CENVAT Credit Rules, 2004. Thus, it was contended that since there was no element of fraud, suppression etc., in wrong availment of Cenvat Credit, the denial of cenvat benefit, if any, should be confined to the normal period, and the extended period of limitation cannot be invoked for recovery of the Cenvat Credit availed on the disputed services, used for the manufacturing activity as well as for trading. It was further contended by the appellants that the credit on input services viz., consulting engineer's service, management consultant service, maintenance or repair service, banking and other financial services, security agency service etc., specified in Rule 6 (5) *ibid* should be available, even if those services are used for the trading activity. Appellants have also stated that computation of the value of exempted services by the department based on the gross sale price of trading is not in conformity with the statutory provisions inasmuch as such value has to be determined based on the formula provided in the explanation to Rule 6(3)(d) *ibid*. With regard to proportionate reversal of Cenvat Credit on the common input services, the appellants have stated that where the assessee is engaged in both manufacturing as well as trading activities, then in such cases, proportionate reversal of common Cenvat Credit is required to be made; and that when input services are exclusively used

only for the manufacturing purpose, then such credit amount should not be considered, while determining the proportionate reversal of credit amount.

4. On perusal of the case records, more particularly the impugned orders dated 19.01.2012 and 01.11.2012, we find that the above issues raised by the appellants in the appeal memorandum had not been properly addressed to by the original authority. Further, the appellants have also relied upon various judicial pronouncements to support their stand that the adjudged demands cannot be confirmed against them. Since, the factual aspects involved in the present appeals are required to be examined in line with the statutory provisions and the judicial pronouncements made on the subject issue, we are of the view that the matters arising out of the present appeals should go back to the original authority for proper adjudication, whether the adjudged demands can be confirmed on the appellants.

5. In view of the foregoing discussions, the impugned orders are set aside and the appeals are allowed by way of remand to the original authority for *de novo* adjudication. The original authority should consider the submissions made/to be made by the appellants with regard to their entitlement to the benefit of Cenvat Credit availed by them on the disputed services. The judgments delivered by the judicial forums, cited by the appellant at the time of hearing of appeals, should also be considered for the purpose of *de novo* adjudication. Needless to say, that opportunity of personal hearing should be granted to the appellants before passing the *de novo* adjudication order(s).

6. In the result, the appeals are allowed by way of remand.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM