
	<p>आयुक्त का कार्यालय, केंद्रीय उत्पाद शुल्क, अहमदाबाद- II  'सीमा शुल्क सदन', नवरंगपुरा, अहमदाबाद - 380009  दूरभाष सं. 079-27544599 फैक्स - 27544463  Email- oaahmedabad2@yahoo.co.in</p>	
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निबन्धित पावती डाक द्वारा/By R.P.A.D

फा.सं./ F. No. V.34/15-83/OA/2016

आदेश की तारीख/Date of Order:- 20.04.2017

जारी करने की तारीख/Date of Issue:- 20.04.2017

द्वारा पारित/Passed by:-

आर एम गौतम / *R. M. Gautam*

अपर आयुक्त / *Additional Commissioner*

मूल आदेश संख्या / Order-In-Original No. 01/ADC/2017/RMG

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप संख्या इ.ए-1 (EA-1) में दाखिल कर सकता है। इस अपील पर रु. 2.00(दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner(Appeals), Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त में अपील करने से पहले मांगे गये शुल्क के (अपील)7.5% का भुगतान करना होगा, जहाँ शुल्क या निःशुल्क या विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act,1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील), नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

1. उक्त अपील की प्रति।

2. निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रतियाँ हों, या दूसरे आदेश की प्रति जिसपर रु. 2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:-

1. Copy of accompanied Appeal.

2. Copies of the decision or, one of which at least shall be certified copy, the order appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

**विषय:-** कारण दर्शाने सूचना/ Show Cause Notice bearing SCN DGCEI/MZU/I&IS/A/30-136/2016 dated 06.09.2016 issued to M/s SKP India Limited, C/O Robinson Cargo & Logistics Pvt. Ltd, Zeeta Electrical Campus, Survey No. 124 & 1187, Near Zydus Cadila, Chanchravadi Mataji Na Patia, Sarkliej-Bhavla Road,



**Brief Facts:**

On the basis of a specific intelligence collected and developed by the DGCEI, Mumbai Zone to the effect that M/s. SKF India Ltd. having their corporate office at Mahatma Gandhi Memorial Building, Netaji Subhash Road, Charni Road, Mumbai -400002 (hereinafter referred to as 'M/s SKF') holding Central Excise Registration No. AAACS0684HXDO16 as dealer are also engaged in importation of 'BEARINGS' and after import they are putting stickers showing MRP, which amounts to manufacture but are not discharging proper central excise duty, case was taken up by them for detailed investigation.

2. The preliminary investigation carried out by the DGCEI have revealed that M/s SKF are having their units at Pune, Bangalore & Haridwar which are engaged in manufacture of 'Bearings' (falling under Chapter 8482 of Central Excise Tariff Act, 1985) and the same are being cleared on payment of Central Excise duty by way of assessment under MRP (under Section 4A of the Central Excise Act (CEA), 1944), to the retail market through their dealers for use in automobiles and other purposes. However M/s. SKF, who are also engaged in importation of 'Bearings' from Singapore & Europe at its Direct Customer Delivery (DCD) hubs located at Panvel, Chennai, Delhi, Ahmedabad, Kolkata & Bangalore are clearing the same on payment of duty under Section 4 of the Central Excise Act, 1944, thus evading the Central Excise duty which is payable under Section 4 A of the CEA, 1944.

3. On the basis of above intelligence, simultaneous searches were carried out by the DGCEI, Mumbai Zonal Unit on 5.10.2015 at the premises of corporate office of M/s SKF India Limited as well as DCD Hub Panvel and DCD Hub Ahmedabad. The searches revealed that after import, the 'Bearings' were labeled with stickers containing MRP and other details at the premises of Direct Customer Delivery (DCD) Ahmedabad hub situated at Zeeta Electrical Campus, Survey No. 124 & 118P, Near Zydus Cadila, Chanchravadi Mataji Na Patia, Sarkhej-Bhavla Road, Sanand, Changodar, Ahmedabad- 382213 [*registered as importer having Registration No. AAACS0684HEI062 and also as dealer having Registration No. AAACS0684HED061 under Central Excise Ahmedabad-II Commissionerate*] and cleared the same without giving intimation to the Central Excise department and without discharging proper Central Excise duty though said activity appears amounting to manufacture as per Section 2(f)(iii) of the CEA, 1944. M/s. SKF had not obtained Central Excise registration and also did not discharge the Central Excise duty on such deemed manufactured products

(bearings) at the time of clearance from the factory.

4. During the search, the relevant records required for further investigation were withdrawn from the Corporate office, Mumbai and from other places searched by the DGCEI, under Panchnama dated 05.10.2015. Statements of various officials of M/s. SKF, Shri Vrijendra Patwari, General Manager (Taxation), Shri Chandramowli Srinivasan, Director (Finance) , Shri Vijay S. Apte, the technical expert of M/s SKF (GM Engineering) & Shri Pranab Lasker (GM Application Engineering) were recorded under Section 14 of the Central Excise Act (CEA), 1944. The statements in brief are as under -

**A.** A Statement of **Shri Vrijendra Patwari, General Manager (Taxation)** was recorded on 05.10.2015, wherein he stated that M/s SKF is into business of manufacturing and trading of Bearings in India; that the company has manufacturing plants at Pune, Bangalore and Haridwar; that trading of Bearing includes import from affiliated companies of SKF group; that M/s SKF has depots all across India and many such depots also deal in imported goods; that the Bills of Entry of imported goods were / are filed by respective depots; that the company procures imported bearing from its sister companies situated outside India located in various countries. Shri Vrijendra Patwari further stated that the types of bearing manufactured / imported by them are covered by the Legal Metrology Act and accordingly they are bound to follow the rules and regulations there under; that the imported bearings are received at their depots with duly affixed labels of MRP / RSP as needed, that they did not do any operation at depots; that sometimes depots received imported bearing without affixing MRP / RSP on the products packages, in such circumstances, M/s SKF at their depots undertake repacking / labeling and affixing MRP / RSP on the product packages as per requirement of trade. He further stated that for assessment of valuation of bearing manufactured in India, the Central Excise duty was discharged on transaction value in respect of clearances made from factory to OEM customers; however in respect of the clearances made to distributors, the central excise duty was discharged on MRP basis, under Section 4A of Central Excise Act, 1944. He further stated that during importation of bearing 'M/s SKF discharged duty of Basic Customs duty, CVD & SAD on transaction value in respect of all import consignments. On being asked as to why M/s SKF adopted different mode of valuation for 'Bearings' manufactured in India and on importation from outside India for further sale to distributors, Shri Vrijendra Patwari stated that the imported bearings were

cleared on transaction value for further sale to the distributors & were non-automotive application bearings. Shri Patwari stated that M/s SKF at their manufacturing units in India was manufacturing bearings both for industrial (non-automotive) and automotive applications and Central Excise duty has been discharged on the basis of MRP assessment in respect of both the segments of sales made to distributors. In respect of imported bearings the duty has been discharged on transaction value as the same was imported for the purpose of trading.

**B.** A Statement of **Shri Vijay S Apte, General Manager (Engineering)** of M/s SKF was recorded under Section 14 of Central Excise Act 1944 on 08.12.2015 wherein he deposed that he is responsible for handling industrial market providing technical support to industrial OEMs for selection of bearing arrangement, validation of bearing arrangement and providing all technical support to industrial market customers. He deposed that there are varieties of application where same bearing can be used and confirmed that the product designation shown in column 'Industrial Distributors' are used for various industrial applications. He submitted the company wise list of bearing requirements given by companies such as M/s JCB, Wirtgen, Volvo, Schwing, Greaves Cotton, CAT and BEML, manufacturing the Industrial Vehicles / off highway vehicles falling under chapter 8426 41 00, 8427, 8429& 8430 10 (RUD-11). Shri Apte vide his email dated 18.12.2015 (RUD-12) submitted that there can be very high number of variants & sizes that can be used based on capacity of the machines and make of the machines. He also submitted the vehicle (off highway) wise bearing types which can be used in the machines.

**C.** A statement of **Shri Pranab Laskar, General Manager (Application Engineering)** of M/s SKF was recorded under Section 14 of Central Excise Act 1944 on 14.12.2015 wherein he deposed that he is looking after application engineering segment for automotive market such as evaluation of various applications. Shri Laskar also confirmed that some standard catalogue bearing can be used for both industrial and automotive applications and can be used for off highway vehicles, i.e. earthmovers, backhoe loader etc.

**D. (I)** In continuation to above investigation, a statement of **Shri Chandramowli Srinivasan, Director (Finance)** of M/s SKF was recorded under Section 14 of Central Excise Act, 1944 on 25.05.2016 wherein he deposed

that the above activity conducted by M/s SKF at their DCD hubs and DCs in respect of imported bearings was limited to a very small proportion of products where the printing and pasting of MRP labels was missing at the time of import and therefore in order to comply with the provision of Legal Metrology Act of having such information on all products in retail pack, they were printing and pasting MRP labels. This activity advised to be stopped due to requirement of complying with the provisions of Legal Metrology Act and they have further tightened up the process of having these already printed and affixed before the goods are dispatched to India so that this small proportion was also eliminated. However on being asked about the above activity conducted by M/s SKF India Ltd at their DCD Hubs and DC and their implication under Central Excise provisions with reference to Section 2(f)(iii) of Central Excise Act, 1944, Section 4A of Central Excise Act, 1944 (Sr.No. 108, 109 of MRP based assessment under Notification No. 49/2008 dated 24.12.2008 as amended by Notification No. 09/2010-CE (NT) dated 27.02.2010 & Notification No.19/2010-CE (NT) dated 29.04.2010) read with Third Schedule to the Central Excise Act, 1944 (Sr. No. 100, 100A), Shri Chandramowli gave evasive statement stating that in his opinion it was not applicable to them in respect of such imported bearings as these bearings were generic products having multiple applications and are not covered specifically under sr. no. 100 and 100A of Third Schedule to the Central Excise Act, 1944 and by Sr. no. 108, 109 of Appendix VI (MRP based assessment).

( ii ) Shri Chandramowli further stated that they imported bearings from different manufacturing factories around the world through international warehouses; when the products went from those factories to the international warehouses, it was not known at that point of time whether the bearings would be sold to industrial/ institutional consumers or to industrial distributors. Since the packing of the bearings, whether sold to industrial/ institutional consumers or to industrial distributors was common, they affixed MRP on all the packages. He further stated that the imported bearings, in retail pack, meant to be sold to industrial distributors require RSP/MRP to be printed on the individual package.

( iii ) Shri Chandramowli ,on being asked whether M/s SKF India Ltd had discharged the Countervailing Duty (CVD) on the basis of RSP/ MRP (sold to industrial distributor) under Section 3(1) of Customs Tariff Act, 1975 at the

time of importation, replied that in respect of imported bearings M/s SKF India Ltd. had not discharged the Countervailing Duty (CVD) on the basis of RSP/ MRP (sold to industrial distributor), at the time of importation. However CVD was discharged on the basis of transaction value.

( iv ) On being specifically asked as to why the valuation of domestically manufactured bearings (sold to industrial distributors) was done by M/s SKF India Ltd. under Section 4A of Central Excise Act, 1944 for discharging Central Excise duty while the valuation for imported bearings (sold to industrial distributors) was done on transaction value, as per Section 4 of Central Excise Act, 1944, Shri Chandamowli Srinivasan stated that M/s SKF India Ltd. manufactures bearings primarily for automotive applications; that when they sold domestically produced bearings in retail pack, through automobile dealers, they paid excise duty under Section 4A (MRP based) of Central Excise Act, 1944 because they were reasonably sure due to the channel of distribution that these bearings would be used as parts and components of automobiles; that the packing of bearing in retail pack was common between automobile dealer and industrial distributors and since most of the sales happened through different distribution centers across the country, therefore at the point of dispatch from the factory they could not ascertain whether it would be sold in automobile market or to industrial distributors and hence they discharged Excise duty on MRP basis even when such bearings were finally sold to industrial distributors; that in case of imported bearings, these were primarily for industrial applications and not for automobile and off highway vehicles and hence since these imported bearings, have multiple industrial applications, the valuation for the same was done on the basis of transaction value and CVD paid under Section 4 of Central Excise Act, 1944. He also stated that in respect of the imported bearings sold in retail pack, MRP label is mandatory under Legal Metrology Act; he accepted that the affixing of MRP label, on individual packet of imported bearing, renders the product marketable, however he has not accepted the fact of MRP based assessment and taken shelter of statutory provisions of Legal Metrology Act.

5. The scrutiny of records withdrawn / seized from DCD Hub Panvel and Corporate office Mumbai, and above statements recorded revealed that M/s SKF are manufacturing bearings at their units situated at Pune, Bangalore, Haridwar and have also been importing bearings from Europe and Singapore. For distribution of imported as well as indigenous bearing, M/s SKF have 6

DCD's Hub (Direct Customer Delivery) located at Panvel, Chennai, Ahmedabad, Delhi, Kolkata & Bangalore; and 13 DC's (Distribution Centres) located at Haridwar, Ludhiana, Ghaziabad, Gurgaon, Delhi, Ahmedabad, Chakan (Pune), Bangalore, Hosur, Chennai, Cochin, Jamshedpur & Kolkata. The bearings manufactured / imported are further supplied to various Automobile OEMs (Original Equipment Manufacturer), Industrial OEMs & Industrial Distributors across the India. They have dealers' network throughout India to cater to the market. M/s. SKF have adopted two types of assessment for valuation of products / bearing sold to distributors / dealers. The bearings manufactured in India sold to distributors / dealers are assessed under MRP valuation for payment of Central Excise duty; however the bearings imported and sold to distributors/dealers are assessed under transaction value at the time of importation and on further clearance without payment of duty on dealers' invoice even after doing labeling of MRP sticker, which is deemed manufacturing activity in terms of Section 2 (f) (iii) of Central Excise Act, 1944. The bearing has various application, i.e, industrial, automobile, etc. As per statement of the technical expert of M/s SKF, Shri Vijay S. Apte (GM Engineering) & Shri Pranab Lasker (GM Application Engineering) the imported bearings have various applications including automobile. Both the above technical experts have submitted that the various types of bearings (with products designation) are used in automobile and in off highway vehicles. The process of labeling of MRP stickers on the individual packets of bearing with the help of MRP printing machine at Ahmedabad DCD Hub appears amounting to manufacture. Thus they are liable to pay the duty on MRP basis.

6. MRP based assessment is being resorted to vide entry no. 108, 109 of Notification No. 49/2008- C.Ex ( NT ) dated 24.12.2008 as amended by Notification No. 09/2010-CE (NT) dated 27.02.2010 & Notification No.19/2010-CE (NT) dated 29.04.2010) read with Third Schedule to the Central Excise Act, 1944 (Sr. No. 100, 100A), parts, components and assemblies of automobiles; and parts, components and assemblies of goods falling under 84264100,8427,8429 & 843010 (excavator, earthmovers, dumper, etc. - off highway vehicles) falling under any chapter heading will be subjected to assessment under Section 4A (MRP) of Central Excise Act, 1944, in terms of Section 2 (f) (iii) of the Central Excise Act, 1944.

7. The data of imported bearings, during last five years was called for



from M/s SKF, which was submitted by M/s SKF on 06.11.2015, on 05.02.2016 and 14.06.2016. On perusal of above data, it is seen that during the last five years, from August 2011 to September 2015, sale of imported bearings was made under four categories of business (i)Automotive—OEM, (ii)Industrial Distributors, (iii)Industrial OEM & (iv)VSM—Automotive. Accordingly, 710 types of bearings were identified, which were sold by the distributors of M/s.SKF in retail market intended to be used for automobiles. M/s. SKF vide letter dated 14.6.2016 under the signature of Sh. Chandramowli Srinivasan, confirmed that 230 types of imported bearings are common to Automobiles OEM and Industrial Distributor. On analysis of the data it was noticed that in addition to 710 types of bearings 68 types of imported bearings were sold by the distributors of M/s. SKF in retail market which could be used for automobiles. M/s. SKF vide e-mail dated 09.08.2016 submitted & confirmed that out of 68 types of bearings, 27 types of bearings which can be used for automobiles purpose and sold by their distributors in retail market. The bearings intended to be used for automobiles and off highway vehicles, sold to industrial distributor attracts central excise duty under MRP assessment. The printing of labels and affixing them on the individual packets thereby declaring the MRP on the imported bearings at DCD Hub Ahmedabad amounts to manufacture as per Section 2(f)(iii) of the Central Excise Act, 1944 and this premises is also required to obtain registration under Central Excise Act, 1944, as a manufacturing unit. Thus as per the submission made by M/s. SKF, total quantity of 6 94,24 067 numbers of bearings (valued at Rs.11,00,73,524/- ,MRP value abating @ 30% , works out to Rs 7,70,51,465/ ) manufactured by M/s. SKF at Zeeta Electrical Campus, Survey No.124 & 118P, Near Zydus Cadila, Chanchravadi Mataji Na Patia, Sarkhej Bhavla Road, Sanand, Changodar, Ahmedabad to the industrial distributors and VSM automotive segment during the period January, 2013 to September, 2015 was made without payment of duty. The duty liability on abated MRP value of Rs.7,70,51,465/- works out to Rs.95,56,582/- .

8. Therefore, M/s SKF India Limited Zeeta Electrical Campus, Survey No. 124 & 118P, Near Zydus Cadila, Chanchravadi Mataji Na Patia, Sarkhej-Bhavla Road, Sanand, Changodar, Ahmedabad- 382213 (Noticee No. 1), Shri Chandramowli Srinivasan, Director(Finance) (Noticee No. 2), and Shri Vrijendra Patwari, General Manager (Taxation) (Noticee No. 3), were called upon to show

cause to the Commissioner, Central Excise, Ahmedabad-II Commissionerate, having office at Custom House, Ashram Road, Navrangpura, Ahmedabad-380009, within 30 days of receipt of this notice as to why:-

- (i) The process of printing and affixing of MRP labels and thereby declaring MRP on the individual packet of imported bearing (which can be used in the automobiles & Off highway vehicles — excavator, earthmovers, dumper, etc.) falling under Chapter 8482 of the first schedule of Central Excise Tariff Act, 1985, should not be treated as amounting to manufacture as per Section 2(f)(iii) of CEA, 1944.
- (ii) Central Excise duty amounting to **Rs.95,56,582/- (Rs. Ninety Five Lakh Fifty Six Thousand Five hundred Eighty Two Only)** (including Education Cess and Secondary and Higher Education Cess), on the goods manufactured and cleared by them during the period from 1<sup>st</sup> January, 2013 to 30th September, 2015 should not be paid by them under provisions of Section 11A(4) [erstwhile proviso to Section 11A (1)] of the CEA, 1944.
- (iii) Interest on the amount of duty payable as mentioned at (ii) above should not be recovered from them under Section 11 AA (erstwhile Section 11AB) of CEA, 1944.
- (iv) Penalty should not be imposed on them under Section 11AC of the CEA, 1944
- (v) Penalty under Rule 25 of CER, 2002 should not be imposed on them.
- (vi) the excisable goods valued at **Rs.7,70,51,465/-** cleared by M/s SKF without payment of applicable Central Excise duty should not be held liable for confiscation under Rule 25 of the CER, 2002 for the reasons stated in the foregoing paras.
- (vii) the noticee at Sr. No. 2 & 3 were also called upon to show cause to the above mentioned adjudication authority as to why penalty should not be imposed upon them under Rule 26 of CER, 2002.

## 9. Defence Reply:

In response to the above mentioned Show Cause Notice dated 06.09.2016, M/s SKF, Shri Chadramowli Srinivasan Director (Finance) & Shri Vrijendra Patwari, G.M.(Taxation) vide their letter dated 27.10.2016, stated *inter alia* that;

- The products imported by Company from Singapore were affixed with label at the time of import in almost all cases. In extremely few cases, label was affixed on products imported from Singapore at our Distribution Centre. The products imported from European countries did not have label on packages in few of the consignments. The labels were affixed on packages whenever products were intended to be sold in retail and where the labels were not already affixed by the supplier. This is evident from the statement recorded from various persons during investigation. Mrs. Roopa Tak stated that the company has been importing bearing from Singapore. Europe (France, Italy, Sweden, Germany, Belgium, etc) etc. The MRP is printed on almost all the packages contained in the consignments imported from Singapore. In case the consignments are imported from Europe, few of the packages did not contain MRP. Therefore, MRP was required to be printed on only those few packages which do not contain MRP, wherever the goods are intended to be sold in retail. Mr. Ravindra Kulkarni also stated that the MRP label was affixed by DCD only when the packages do not have MRP. The department has raised demands on all goods imported on various bills of entry. The company in respect of imports from Singapore did not affix any label containing MRP on the packages in vast majority of the cases. The amount of demand pertaining to goods imported from Singapore will be submitted at the time of personal hearing. The labels were already contained on the packages imported by the company. Therefore, no activity amounting to manufacture of goods has been carried out by the company on such packages. Hence demand to this extent is required to be set aside.
- MRP is affixed on a very limited quantity (not exceeding 1% of the total goods imported). It is evident from the statement of Mr. Vrijendra Patwari, Mr. Nirod Nath, Mr. Ravindra Kulkarni, Mrs. Roopa Tak, & Mr. Chandramowli Srinivasn that in most of imported consignment the MRP is pre-printed and fixed at the time of import and when the MRP was not preprinted on the said consignment at the time of importation, then only the same was affixed at depot/warehouse of the company. It is submitted that ratio of the said imported product which does not contain MRP label was very small in comparison with total imports of the company. Therefore, the demand of duty shall be restricted to consignments on which label is affixed. These statements were not disputed therefore the facts stated therein are correct.
- The manner of computing the demand given in para 11 to 11.4 of the

show cause notice is highly exaggerated. In almost all cases, no activity has been carried out in respect of goods imported from Singapore. The value of goods includes value of goods imported from Singapore and sold in India. The demand in respect of these imported goods is required to be set aside. The label was affixed only on approximately 1% of the bearing imported. The value of goods includes value of goods imported both from Europe & Singapore, having MRP pre-printed at the time of their importation. The demand in respect of these imported goods is required to be set aside. These bearings are not predominantly used in automobiles. Even the show cause notice in para 11.2 uses the words 'imported bearings can be used for automobiles'. The demand is raised on sale of bearings amounting to Rs. 49,96,82,955/- in respect of bearing sold to off highway vehicles like forklifts etc. How the amount of Rs. 49,96,82,955/- has been arrived at in the SCN is not clear. As per show cause notice this represent the amount of bearings sold from various DCD hubs across India. The detailed submission will be made as and when the information is provided to us.

- The purpose of making amendment in 27-2-2010 in Notif.No.2006-CE(NT) dated 29.5.2006 is evident from the relevant para of the speech of Finance Minister. As per the speech, parts, components are not only used in vehicle but are also used in earthmoving machinery like loaders, excavators etc. Thus parts and components are multiple use. The entry No. 100 prior to 27-2- 2010 did not cover such parts and components. The parts and components with multiple use were covered only from 1-3-2016.
- The bearings to fall under Sr. no 100 or Sr. 100A of the notification must be a part, component, or assemblies of either the vehicle falling under Chapter 87, or goods falling under tariff item 8426.4100 or tariff headings 8427 and, 8429 or subheadings 8430.10. The bearings manufactured by the company are also used in the manufacture of motor vehicles. However, the bearings manufactured by the company are generic or universal products like nut, bolts and screws. It is not identified as a part of vehicle. In other words, bearings can be used in a wide range of industrial applications and electrical products. The Sr. no 100 and 100A covers only those parts, components, accessories or assemblies which are specific to the category of goods mentioned therein. Thus, Sr. no 100 would cover only the part or components which are identifiable as parts

of vehicles covered under Chapter 87 and would not extend to the generic parts which can be used in a wide range of products, including vehicles. The bearings imported by the company, which are common to automobiles as well as other industrial application, will not be covered by the Sr. No. 100 or 100A of the Third schedule. They relied on following decisions:-

- a) Insulation Electrical (P) Ltd. reported at (2008) 12 SCC 45
- b) Union Carbide India Ltd- v. state of Andhra Pradesh (1995 Supp (2) SCC 267)

- The bearings manufactured are primarily meant for automotive applications. Therefore, the company has affixed MRP label on the packages and determined the value under section 4A. However, in case of imported bearings, majority of the bearings are not meant for automotive industry. They are primarily for other use in various industrial applications like textile machinery, industrial gearboxes, electrical motors material handling conveyors pumps etc. Therefore, CVD is not paid based on MRP.
- The allegation that the company stopped the practice of affixing label only after investigation had commenced is erroneous. As mentioned above, such practice was being carried out only in minor part of the total imports. The company, therefore instructed the suppliers to ensure that MRP is affixed on all products, and hence the process is not carried out in India. This has nothing to do with investigation carried out by DGCEI. Various persons in the statement recorded under section 14 as well as in reply to show cause notice, reiterate that affixation of label on the product does not amount to the process of manufacture under section 2(f)(iii) of Central Excise Act
- Generic products are not parts of Vehicle- they relied on case laws Hon'ble High Court of Kerala in the case of Paul Lzzar vs State of Kerala reported at (1977) 19 STC 437; Tribunal decision in case of Hico products Ltd., Bombay v. collector of Central Excise, Bombay reported at 1983 (14) E.L.T. 2493 (CEGAT).
- Bearings predominantly used in automobile sector shall only be considered as parts/ components of vehicle. The company in Annexure-1 attached to letter dated 14.6.2016 has only stated that the product is capable of being sold to automobile OEM and industrial distributors. The affidavit from technical person/customers/ marketing department in respect of bearing product no. 608-2RSH,

6202-2Z to substantiate the fact that bearings are generic nature and are not meant only for use in automobile will be submitted at the time of personal hearing. Statement of distributors cannot be considered as conclusive evidence of interpretation of statutory provisions. The statutory provisions need to be interpreted by appropriate authority and not by the dealers. Therefore, the statements of distributors have no effect and not binding on the company. Since the show cause notice heavily rely upon the statement of these persons, we request for cross examination of these persons. We request your good self to kindly permit calling of dealers whose statements were recorded for cross examination during personal hearing.

➤ No evidence has been laid down in the show cause notice to substantiate that the product manufactured by the company in India are not predominantly used for automobile purposes. Further, no evidence has been laid down to substantiate that imported bearings are predominantly used for automobile. Therefore, the conclusion drawn in the show cause notice that Shri Chandramowli Srinivasan gave patently wrong reasoning for adoption of two different method of assessment is totally erroneous. As submitted above, the product can be clarified as parts, components only when it is predominantly used for automobile purpose. This is supported by various judgments referred above. Therefore conclusion drawn in the show case notice that Shri Chandramowli Srinivasan gave patently wrong reasoning is totally erroneous. It is submitted that Shri Chandramowli Srinivasan has given the correct statement which is supported by judicial interpretation.

➤ Affixing of MRP label does not amount to 'manufacture'. The company rely on following judgment in the case of M/s Mega Pro (India) 2007(206) ELT 637 (Tr-Del), Hon'ble Delhi International Pvt. Ltd. 2003 (154) E.L.T. 520 (Th. - Del.)

➤ Credit of CVD and SAD paid at the time of importation shall be allowed to the company. The company has imported the consignments of bearing from Singapore, Europe etc. and paid CVD & SAD at the time of importation of goods. Assuming without admitting that the process of labeling carried out by the company amounts to the process of

manufacture, the company will be entitled to the credit of CVD and SAD paid on such imported bearings. Once duty has been confirmed, credit of CVD and SAD will be available to the company. The company relies upon the following judgments.

- a. Formica India Division 1995 (77) E.L.T. 511 (S.C.)
  - b. E.L.M. Bags Vs. CCE 1995 (75) ELT 171 (T)
  - c. Roche Product 1995 (78) ELT 127
- The Custom Authorities has already accepted the classification; since CVD was paid on the transaction value under Section 14(1) of CA, 1962 and not on the PSP therefore, Excise Authorities cannot dispute the same at a later stage especially when the goods imported have not undergone any change. Reliance placed on case of Jay Industries vs Collector of Central Excise, Hyderabad reported at 1984 (16) ELT 462 (Trib.).
- Even if the process carried out by the company amounts to manufacture, the excise duty is payable only on the bearing sold for use as parts/components in the manufacture for vehicle. The bearing used for the purpose other than used in the manufacture of vehicle will not amount to manufacture and therefore the demand in the show cause notice is required to be recomputed.
- The partial demand for the period January 2013 to September 2014 is time barred as the company had a bona fide belief that the process of activity of affixing MRP stickers on bearings imported by company would not amount to manufacture under Section 2(f)(iii) of the Central Excise Act, 1944. It is an established law that the extended period of limitation cannot be invoked where M/s SKF has bona-fide belief. Reliance is placed on following judgments:
- 1) Cosmic Dye Chemical Vs. Collector of Central Excise, Bombay 1995(75) ELT 721 (SC).
  - 2) CCE Vs. Chemphar Drug and Liniments 1989(40) ELT 276 (SC),
  - 3) Pushpam Pharmaceuticals company VS. CCE Bombay 1995 (78) ELT 401 (SC)
- Since the issue in the present case relates to interpretation of the statute. It is a matter of interpretation that whether the bearing imported by company falls under Sr. No. 100 & 100A of the Third schedule of the Central Excise Act, 1944. Extended period cannot be invoked. Relied on following decision:-

- a) M/s Shervani Indus. Syndicate 2009 (14) STR 486 (T)
- b) M/s ITW India Ltd. 2009 (14) STR 826 (T), the Tribunal
- c) M/s. Uniflex Cables Ltd 2011 (271) ELT 161 (SC)

➤ Penalty u/s 11AC can be levied only when demand for duty arises on account of fraud, collusion, willful misstatement, suppression of facts etc. It is submitted that the company had a bona fide belief that the process of sticking MRP stickers on goods imported by company does not amount to manufacture under section 2(g)(ii) of the Central Excise Act, 1944. The same has been substantiated by the various submission made above. It has been consistently held that when M/s SKF has bona-fide belief that no duty is payable, then no penalty should be leviable on the same.

The company relies upon the following judgments:

- a) CCE Vs Chemphar Drugs & Liniments, 1989 (90) ELT 276 (SC)
- Pushpam Pharmaceuticals Co Vs CCE, Bombay, 1995 (78) ELT 401 (SC)
- b) Sonar Wires Pvt. Ltd. Vs. CCE, 1996 (87) ELT 403 (T)
- c) Synthetics & Chemicals Ltd. 1997 (89) ELT 799 (T)
- d) Man Industries Corporation 1996 (88) ELT 471 (T)
- e) Sports & Leisure Apparel Ltd. CCE, Noida 2005 (180) ELT 490
- f) Aquamall Water Solutions Ltd. 2003 (153) ELT 428
- g) Blue Cross Laboratories Ltd. vide order no. A/3329/C-IV/SMB/2007

➤ The show cause notice does not specify the clause of rule 25 under which penalty is proposed to be levied. Rule 25 contains 4 sub-clauses; however, the show cause notice does not mention the sub-clause which has been violated by the company. The Supreme Court in the case of Amrit Foods 2005 (190) ELT 433 (SC) has observed that it is necessary for M/s SKF to be put on notice as to the exact nature of contravention for which M/s SKF was liable under any provision. In United Telecom Ltd. 2011 (21) STR 234 (T), the Tribunal has with respect to Business Auxiliary Services observed that show cause notice must specify the clause under which the demand is proposed to be raised. The observation made in the case is as follows:

➤ No penalty shall be levied under Rule 26 of the Central Excise Rules, 2002. Sub-rule (i) to Rule 26 provides that the penalty is leviable on the person who has acquired possession or in any way dealt with the excisable goods



which he owns or has a reason to believe that they are liable for confiscation. There is no evidence to substantiate that Chandramowli Srinivasan had reason to believe that goods are liable to confiscation. The issue relates to interpretation of Section 2(f). Therefore there can be no reason to believe that there was reason to know that goods are liable for confiscation. He relied on case laws (i) Ruby Impex versus Commissioner of C. Ex., Jalandhar/Ludhiana 2004 (173) E.L.T. 161 (Tn. - Del.) & (ii) AIA Engg. Pvt. Ltd. versus Commissioner of Central Excise, Ahmedabad-II 2006 (195) E.L.T. 154 (TH. - Mumbai) Being the Finance Director of the Company will not get any benefit from any wrong done by company which benefits company. He relied on judgment of Shilpa Printing Press (2013(297) ELT 417) (Tri-Mum). Further he is not looking after the day to day function of the Company hence penalty is not imposable as per tribunal's decision in the case of Patel Widecom India Ltd. 2004(170) ELT 16 (Tri-Del).

- No penalty shall be levied under Rule 26 of the CER, 2002 on Mr. Vrijendra Patwari as there is no evidence to substantiate that Mr. Patwari had reasons to believe that goods are liable to confiscation. Issue relates to interpretation of Section 2(f) hence there can be no reason to believe that there was reason to know that the goods are liable for confiscation. Being the General Manager of the Company he was not benefited from any wrong done by Company which benefits the Company. He also relied on case laws (i) Ruby Impex versus Commissioner of C. Ex., Jalandhar/Ludhiana 2004 (173) E.L.T. 161 (Tn -Del.) & (ii) AIA Engg. Pvt. Ltd. versus Commissioner of Central Excise, Ahmedabad-II 2006 (195) E.L.T. 154 (TH.-Mumbai); Shilpa Printing Press (2013(297) ELT 417) (Tri-Mum).
- They also requested to be heard in person.

**10.** However before finalization of this case by the Commissioner, the Board vide Circular No.1049/31/2016-CX dated 29.09.2016 revised the monetary limits for adjudication of Show Cause Notice in Central Excise & Service Tax. As a consequent duty/tax/credit demand for Central Excise & Service Tax above Rupees Fifty lakh but not exceeding Rupees Two crore will be issued and adjudicated by Additional/Joint Commissioner. In light of this circular, the present case wherein the assessee was made answerable to Commissioner shall now be adjudicated by the undersigned.

**11.** On receipt of this case for adjudication, personal hearing was accordingly granted to M/s. SKF. S/o. Mehuji Jivani, C.A. and Shri Durgesh R. Kathuria,

Associate Taxation on behalf of M/s SKF and the tax notice appeared for personal hearing on 03.01.2017 and submitted a detailed reply with a copy of citations in support of their claim. They also furnished submissions dated 02.01.2017 certifying that the goods are capable of multiple applications and also sought some time for submission of bifurcation of goods country of import wise which was granted.

12. In continuation to above, M/s. SKF vide letter dated 17.01.2017, submitted that during personal hearing, they were asked to submit information of imports from Singapore and other countries. They submitted that in r/o demand of Rs.70,65,631/- pertaining to Singapore imports, the Company has not done any labeling activity at all as the labels were proper and intact at the time of import itself. Regarding the un-traceable demand of Rs.15,76,436/- they are still trying to compute the same and shall provide the information as soon as possible. They are also eligible for the credit of CVD & SAD paid at the time of imports hence the demand must be reduced accordingly. As the data is voluminous, the complete invoice-wise / bill of entry-wise break-up of the information will be sent through e-mail, which they sent on 17.01.17.

### **DISCUSSION AND FINDINGS**

13. I have very carefully gone through the facts of the case, show cause notice, written submissions made vide letters dated 27.10.2016, 20.12.2016, 02.1.2017, 17.1.2017, relevant citations submitted at the time of personal hearing and details submitted in Annexure-1-3 via e-mail.

14. The issue under consideration is whether the activity of printing and affixing of the MRP label on the individual packets of imported bearings amounts to manufacture under Section 2(f) (iii) of the CEA, 1944? So let us examine section 2 (f) (iii) of the Central Excise Act, 1944.

15. As per Section 2(f)(iii) of Central Excise Act, 1944, manufacture includes any process,

(i) *incidental or ancillary to the completion of a manufactured product;*

(ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or relabeling of containers including the declaration or alternation of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer,"

and the word "manufacture shall be constructed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

16. From the above definition of manufacture, it is clear that labeling or relabeling, declaration or alteration of retail sale price on the products or adoption of any other treatment to make the product marketable to the consumer would amount to manufacture. With effect from 1.3.2003, the definition of "manufacture" under Section 2(f) has wide amplification. Thus the declaration of retail sale price on goods, specified in the Third Schedule, would be construed as **deemed manufacture**. The goods included in the Third Schedule to the Central Excise Act (CEA), 1944 are those which are assessed under Section 4A i.e. on the basis of the MRP printed on the package. Third Schedule was amended as under vide Finance Bill, 2011, which shall be deemed to have substituted with effect from 27.02.2010 --

(1)	(2)	(3)
100	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under headings 8712, 8713, 8715 and 8716

(b) A further amendment was made after S.No. 100, which shall be deemed to have been added with effect from 29.04.2010 namely:-

(1)	(2)	(3)
100A	Any Chapter	Parts, components, accessories and assemblies of goods falling under tariff item 8426 41 00, heading 8427, 8429 and subheading 8430 10

The Finance Act, 2011 amended / inserted above mentioned entries with retrospective effect from the day when Notification No. 9/2010-C.E.(N.T.) dated 27.02.2010 and Notification No. 19/2010-C.E.(N.T.)

dated 29.04.2010 were issued. Thus the parts, components and assemblies irrespective of their classification are covered under third schedule. Since there is no specific entry for components or assemblies of automobiles in the Tariff, all the goods which are commonly known and sold in the market as parts, components and assemblies are covered by said entries, irrespective of their classification in the Tariff. The erstwhile Circular No.107/38/2008-CX.4 dated 16.12.2008 has clarified that the term parts & components and assemblies includes items like ballances, brake assembly, tyres, tubes and flap, IC engine, ball bearings etc.

17. The goods 'Bearings' imported by M/s SKF were in retail packing and the foreign principal suppliers have not affixed the labels containing information as per the Indian Legal Metrology Act. Hence to sell the imported goods in the retail market, M/s SKF affixed information like (name & address of the importer, Common Name, Month & Year of Import, Quantity, MRP (Inclusive of Taxes), Model Type, for Customer's comments & feedback please contact etc) on the individual packets of bearings which was carried out at their DCD's hub and DC situated all over India. MRP was not affixed on each consignment and the printing of affixing of MRP was done with the help of label printing machine installed at respective DCD hubs. The transfer pricing mentioned in the purchase import invoice were taken as assessable value whereas the domestically manufactured bearings cleared to distributors were assessed on MRP.

18. The processes of printing and affixing of MRP labels and thereby declaring the MRP on the individual packet of imported bearing clearly fall within the scope of "labeling or relabeling", "packing or repacking" or "adoption of any other treatment to render the products marketable to the consumer". The bearings were intended to be used as parts, components and assemblies of vehicle falling under chapter 87 of Central Excise Tariff and parts, components and assemblies of goods falling under tariff item 84.09.00, heading 8427, 8429 and sub-heading 8430 10 cleared to Industrial Distributors. Thus affixing MRP labels on the individual packet, amounts to deemed manufacture as per the third schedule to the CEA, 1944 vide entries of S No 100 and 100 A which attract Central Excise duty under Section 4A of Central Excise Act, 1944. Hence, these 'Bearings' are squarely covered by the definition of manufacture as mentioned in the Central Excise Act, 1944.

19. Packing and repacking and labeling and relabeling are clearly specified as processes of manufacture in the Act. Hon'ble CESTAT in the case of *Nitin Patki v. CCE, Thane-II* [2011 (273) E.L.T. 104 (Tri.-Mumbai)] held that affixing of MRP stickers and bar codes amounted to manufacture. Further CESTAT in the case of *Cipla v. CCE, Bangalore* [2007 (208) E.L.T. 140 (Tri.-Mumbai)] held that de-foiling and repacking of medicines did amount to process of manufacture. Similarly, deemed manufacture has been upheld by the Supreme Court in *CCE, Goa v. M/s. Phil Corporation Ltd.* [2003 (228) E.L.T. 9 (S.C.)]; further Hon'ble Apex Court in *S.D. Fine Chemicals* [1995 (77) E.L.T. 49 (S.C.)] held that the definition of manufacture is expansive and includes processes deemed to be manufacture even if they were not actually manufacture. The court in the said judgment held that certain processes which may not otherwise amount to manufacture have been deemed to be manufacture by the Parliament under section 2(f)(iii). The relevant paragraph 12 of the said judgment is as under: -

*"The decisions aforesaid make it clear that the definition of the expression 'manufacture' under Section 2(f) of the Act is not confined to the natural meaning of the expression 'manufacture' but is an expansive definition. Certain processes, which may not have otherwise amounted to manufacture, are also brought within the purview of and placed within the ambit of the said definition by Parliament. Not only processes which are incidental and ancillary to the completion of manufactured product but also those processes as are specified in relation to any goods in the section or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985 are so brought within the ambit of the definition."*

20. The Bearings manufactured in India sold to distributors / dealers were assessed under MRP valuation for payment of Central Excise duty; however the 'Bearings' imported and sold to distributors/dealers were assessed under transaction value at the time of importation and on further clearance without payment of duty on dealers' invoice even after doing labeling of MRP sticker, which in terms of Section 2(f)(iii) read with Third Schedule of Central Excise Act, 1944 is deemed manufacturing activity. The fact that the bearing has various applications i.e. industrial, automobile, etc was confirmed by various employees in their statement. As per statement of the technical expert of M/s SKF, Shri Vjay S. Zote (Gen. Engineering) & Shri Pranab Lasker (GM Application Engineering), the imported bearings have various applications including automobile. So, the above technical experts have submitted that various types of bearings with products designation are used in automobile and in off

highway vehicles. Further Shri. Pranav Baskar, GM (Application Engineering) of M/s. SKF also confirmed that the product designation for a range of bearings sold is common to Automotive OEM & Industrial Distributors. He also revealed that some standard catalogue bearing can be used for both Industrial & Automotive applications and can be used for off highway vehicles like earthmovers, backhoe loaders etc.

**21.** From the statements of various distributors/dealers of M/s SKF situated at Pune and Mumbai; and of Shri. Navin Bhatkare, Zonal Manager of M/s SKY Chakan, it is established that for retail sale of SKF brand ball bearings, MRP is mandatory to render the products marketable. Without MRP the bearing can't be sold into the retail market. The activity of printing and affixing of MRP label on the iron case packets of ball bearings at the DCD Hub Ahmedabad is done not only to comply with the statutory requirement under Legal Metrology Act, 2009, as issued by Shri. Mijendra Patwari, General Manager (Taxation) of the Hub, dated 05.01.2015 & 15.01.2016, but also to render the product marketable into the retail market.

**22.** Hon'ble Tribunal in the case of Komarko Traders Pvt Ltd (2017(345) ELT 256 (Tr-Mum) confirmed the demand along with interest by relying the decision of Tribunal in the case of Larsen and Toubro Ltd. v. CCE reported in [2015-TIOL-2561-CESTAT-MUM] wherein Tribunal held that parts, components and assemblies of certain earth moving vehicles like trucks, dumpers, motor graders, wheel loaders, dozers and hydraulic excavators are liable for central excise duty as per Section 2(f)(ii) of the Central Excise Act, 1944. The Tribunal also disagree with the appellant's arguments that time-lapse period cannot be invoked.

**23.** M/s. SKF has argued that labels were affixed only on bearings imported from Europe. The company did not affix any label containing MRP on the products imported from Singapore and that in view, revealed in the products were required to be affixed with label hence the demand containing entire imports from Singapore should be related to the goods having gone through the details submitted vide e-mail. As per the details of structure demand is shown as Rs.2,93,123/-; Singapore demand of Rs.76,65,631/- and non-traced transaction demand is shown as Rs.15,76,436/-. Further SKF is claiming that the demand of Rs.76,65,631/- (pertaining to Singapore imports) should be set-aside as no label was affixed on these import consignments. Other than this information

no documentary evidence was provided hence I don't find any justification in the above argument hence I uphold the entire demand of Rs. 95,56,582/-.

24. Another contention raised is that in case of imported bearings, majority of the bearings are not meant for automotive industry. These 'Bearings' are primarily for other use in various industrial applications like textile machinery, industrial gearboxes, electrical motors, material handling conveyors pumps etc. Therefore, CVD is not paid based on MRP. I find that the Central Government while exercising powers under Section 4A of the Central Excise Act, in the Finance Bill, 2011 amended the Third Schedule by substituting /inserting below mentioned entries ( Sr.No. 100 & 100A) with retrospective effect i.e. the day when Notification No. 9/2010-C.E. (N.T.) dtd 27.02.2010 and 15/2010-C.E. (N.T.) dtd 29.04.2010 were issued respectively.

S. No.	Chapter Heading, sub-heading or tariff	Description of goods
(1)	(2)	(3)
100	Any Chapter	Parts, components and assemblies of vehicles (including chassis fitted with engines) falling under Chapter 87 excluding vehicles falling under heading 8712, 8713, 8715 and 8716.
100A	Any Chapter	Parts, components and assemblies of goods falling under Tariff item 8426 41 00, Headings 8427, 8429 and sub-heading 8430 10.

Thus as per above entries, parts, components & assemblies falling under any chapter in the Tariff are governed by the aforementioned notification, as there is no specific entry for components or assemblies of automobiles given in the tariff. I therefore do not accept notices above number.

25. The Board of Circular E. No. 357/58, 2008-CX-4, dated 16-12-2008, regarding MTR's assessment clarified the scope of entry No. 97 of the Notification No. 14/2006-C.E. (N.T.) inserted with amending Notification No. 11/2006-C.E. (N.T.) [Present entry no. 107 in the Notification No. 14/2008-C.E. (N.T.)]. On the issue whether 'parts' classified in Chapter 87 shall only be covered under the said entry or all parts irrespective of their classification should be covered. Board specified that "*the said entry provides that 'parts, components and assemblies' falling in any heading in the Tariff are covered. Therefore, it is logical that all 'parts, components and assemblies,' irrespective of their classification shall be covered. It is also important to note that there is no*

*specific entry for 'components' or 'assemblies' of automobiles in the Tariff, therefore, this also supports the view that all goods (be they commonly known and sold in the trade as 'parts, components and assemblies' are covered by said entry, irrespective of their classification in the tariff."*

26. Thus in terms of boards and classification with reference to entries No. 100 and 100A of Third Schedule of Central Excise Act, 1944, provide that parts, components and assemblies falling under any chapter in the Tariff are covered. The Board has also clarified that meaning of the words 'parts, components and assemblies' of automobiles include the items like batteries, brake assembly, tyres, doors and top, AC engine, oil bearing, etc. Subsequently, Board vide Instruction No. 10/2011 dated 12.9.2011 clarified that MRP based excise duty under Section 4A of the Act would be applicable on spare/parts/components of automobiles falling under tariff item 8426 41 00, 8427, 8429, 8430 10 which is effective from 10/04/2010.

27. Thus as per entry no. 100 of Part I based assessment under Notification No. 43/2008 dated 24.12.2008 read with Notification No. 09/2010-CE (NT), dated 27.02.2010 and Notification No. 84/2010-CE (NT) dated 29.04.2010; read with Third Schedule to the Central Excise Act, 1944 (Sr. No. 100, 100A) parts, components and assemblies of automobiles; and parts, components and assemblies of goods falling under 84264100,8427,8429 & 843010 (tractor, parts thereof, etc. - off highway vehicles) falling under any chapter heading will be subjected to assessment under Section 4A (MRP) of Central Excise Act, 1944 in terms of Section 2 (f) (in force Central Excise Act, 1944).

28. M/s. SKF have claimed that most of the bearings issued were for industrial applications like textile machinery, lawnmowers, garboxes, electrical motors, material handling, etc. and hence no licence CVD based on MRP was not paid. This argument has not been supported by any documentary evidence moreover during the course of investigation it was noticed that the Product Catalogue of SKF bearings sold is common to Automotive OEM and Industrial Distributors. Furthermore, Shri Pranab Laskar, G.M. (Application Engineering) of M/s. SKF in his statement dated 14.12.2015 deposed that some standard catalogue bearings can be used for both industrial and automotive applications and can be used for off highway vehicles



i.e. earthmovers, backhoes, loaders etc. Thus, I do not find any merit in the above argument.

29. As regards the eligibility to avail Cenvat credit of the CVD & SAD paid by M/s. SKF on the goods imported, I find that M/s. SKF are eligible for the credit of CVD & SAD paid on imported bearings in terms of Rule 3 (1) of the CENVAT Credit Rules (CCR), 2004. I place reliance on Tribunal's decision in the case of **Komatsu India Pvt Ltd** [2017(345) ELT 256 (Tr-Mum)] wherein Hon'ble Tribunal at para -10 held that

*"As regards the eligibility to avail Cenvat credit of the CVD paid by the appellant on the goods imported, we find strong case in favour of the appellant as it has to be held that if the appellant is saddled with the central excise duty on the ground of "deemed manufacture", the parts which have been imported by the appellant in bulk, if they have suffered CVD, the benefit of Cenvat cannot be denied as the same parts are considered as manufactured on repacking and central excise duty is paid. On this point also, the need in favour of the appellant is that they are eligible for Cenvat credit of the CVD paid, subject to production of duty paying documents/bills of entry on the parts which were imported, repacked and sold. For availing of its claim of the CVD, the appellant has matter back to the adjudicating authority to re-quantify the demands after extending the eligible Cenvat credit to the appellant."*

30. In terms of Tribunal's instruction B. No. 341/33/2011 TRU dated 12-9-2011, the CENVAT credit of inputs shall be allowed to be taken on the inputs contained in the imported bearings on the basis of the available duty paying documents/bills of entry issued at the time of purchase/imports. Theonus to provide a certificate regarding the authenticity of such transactions maintained in their books of account will be on the manufacturer (M/s. SKF), duly authenticated /certified by the registered Chartered Accountant and the directors/proprietor of the company

31. M/s. SKF being in the organized sector, should have known the law and should have considered the implications of adopting two methods of valuation for charging Central Excise duty on bearings beforehand. Statements of concerned person of authorized distributors / dealers of M/s SKF confirmed that affixing of MRF labels on each data packets of imported bearings are an essential requirement of the market to make the product saleable. The activity of

printing and affixing of MRP labels and not retail sale without which the imported bearings could have been made available to the public. Bearings will not be marketable. Thus, the said activity renders the product marketable as per section 2(f) (iii) of the CE Act, 1944. The said process commenced at the DCD hub amounting to a manufacturing activity as per the said section. M/s SKF, though aware of the statutory requirements to declare to the department their activity of printing and affixing of MRP labels on individual packets of imported bearings, wilfully and deliberately kept a secret on the said procedure. They suppressed this activity from the department with an intention to evade payment of excise duty when it was mandatory to declare the manufacturing activity and take central excise registration under Central Excise Rules. In fact, when alerted by the department to stop the investigation, they stopped the activity at the DCD hub at which Shri Ravindra Kurkarni Deputy Manager (DC Deptt) in his statement dated 09.05.2016 confirmed that the activity of production by M/s SKF this activity was stopped. The above activities were done with the legal counsel of M/s SKF Mrs. Reni Varghese in her statement dated 22.05.2016. In view of this, it is clear that the above activities of M/s SKF were done in a clandestine manner and were not done under the *bona fide* belief in the law. In the light of the Apex Court's decision in *(Gujarat Industries v. Commissioner)* reported in 2021 (1) 5) ELT 4153 (SC) wherein the Apex Court dismissed the writ petition filed against the above Judgment and Order dated 14-12-2015 in Civil Appeal Nos. 1754-5788 of 2005 with C.A. Nos. 9196-9202 of 2012 as reported in 2014 (3) 28) 111 (S.C.). Apex court held that "....since assessee was dealing with several similar manufacturing units who paid Excise duty on identical processes, *bona fide* belief that the process did not amount to manufacture cannot be taken as assessee would have known that Excise registration was required for carrying out its. Extended period of demand was held rightly invocable." In light of the above judgment, I find that the invocation of extended period is correct and sustainable.

32. In so far as imposition of penalty under Section 11AC is concerned, I find that M/s SKF were fully cognizant of the nature of the fact that activity of declaring printing and affixing of MRP label on individual packets of imported bearings, which can be used in private cars, mobiles and other off highway vehicles would amount to manufacture under Section 2(f) (iii) of Central Excise Act, 1944, Section 4A of Central Excise Act, 1944 read with Third Schedule to the Central Excise Act, 1944. M/s SKF have intentionally suppressed the fact from the department that they were doing the printing and affixing of MRP

label on the individual packets of imported bearing and cleared them under Section 4. Valuation was done by appellant under Section 4 with the sole intention of evading the payment of duty as is revealed by the fact. Suppression of material facts was manifested resulting in invocation of extended period in terms of proviso to Section 11A of the Act. Once suppression was manifested, M/s. SKF is liable to the imposition of penalty.

33. In so far as question of confiscation of the goods is concerned, I find that M/s. SKF engaged themselves in the activity of printing and affixing of MRP label on the imported bearings which amounts to "Manufacture" under section 2(31) of Central Excise Act, 1944 and cleared these goods without discharging appropriate duty. Thus they have contravened the provisions of Rule 9, 9, 8, 11, 12, 10 of Central Excise Rules, 2002. Thus the excisable goods valued at Rs.7,70,81,465/- are liable for confiscation under clause (c) & (d) of Rule 25 of the CER, 2002. However as the goods have already been cleared, I find that Hon'ble High Court of Punjab & Haryana in the case of *M/s. Raja Impex Pvt. Ltd.* reported at **2008 (279) ELT 185 (PBH)**, has held that where the goods are neither available for confiscation nor cleared under Bond/Undertaking no redemption fine could be imposed. Therefore, even though the goods are liable for confiscation, I find that redemption fine is not imposable. Hon'ble Bombay High Court in the case of *Finesse Creation Inc - 2009 (248) ELT.122 (Bom)* and *Sudarshan Cargo Pvt. Ltd-2010 (253) ELT.157 (Bom)* has upheld the decisions of Tribunal to the effect that fine in lieu of confiscation was not imposable when goods were not available. Hon'ble Tribunal in the case of *CCE, Surax v/s Blue Sky Synthetics 2014 (300) ELT 3 (Trib. Ind. No)* held that confiscation and imposition of redemption fine not possible when goods not available for confiscation. I find that the excisable goods in question are liable for confiscation however, in view of the above analysis, relief from the confiscation of the said goods or imposition of redemption fine since the goods are not yet liable for confiscation.

34. As regards imposition of separate penalty under Rule 25, I find that Rule 25 of the CER, 2002 has to be read with Section 11AC of the Act. Since penalty under Section 11AC is already imposed on M/s. SKF, I therefore refrain from imposing penalty again under rule 25.

35. On a perusal of the above facts and circumstances, in view of Rule 25 under which goods are seizable, M/s. SKF has failed to justify that an Apex Court

passed in the case of *Amrapur* (2005 191) EIT 473(SD) and *Tribunals* decision in the case of *Tejendra* (2011 11) STR 234 (T). In view of the above citations, I find that Hon'ble High Court upheld decision of Tribunal who has set aside the order of the Commissioner on the ground that neither the show cause notice nor the order of the Commissioner specified which clause of Rule 173Q had been allegedly contravened by the appellant. In the instant demand notice it is clearly brought out that *M/s. S. S.* was manufacturing excisable goods without obtaining central excise licence or without removing the excisable goods in contravention to the provisions of Central Excise Rules and Notification No.27/2010-CE(NT) dated 27.2.2010 and Notification No.19/2010-CE(NT) dated 25.1.2010 and that *M/s. S. S.* was liable to pay excise duty. I find that the above contradiction is squarely covered under clause (c) or (d) of Rule 25 of CGR, 2001 and hence my reliance on Hon'ble Supreme Court judgment passed in *Tejendra* (2011 11) STR 234 (T) and *S. S. Ltd.* (2011 11) STR 105 (S.C.) wherein it was held that a person who made the demand was competent to make demand for the goods (2) as per clause (c) or (d) of Rule 25 of CGR, 2001. The exercise of a power can be traced to a legitimate source, the fact that the same was purported to be exercised under a different provision does not vitiate the exercise of the power in question. Similarly, in the case of *21. Calcutta v. Pradyumna Steel Ltd. - 1994 (82) EIT 441 (S.C.)*, Apex Court held that in the case of a wrong provision as was mentioned in the *show cause notice* does not invalidate imposition of penalty. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power.

**36.** Regarding procedural irregularity under Rule 27 of the Act 1902 on *Shri Chadramowli Shriwasari Director (Finance) Unit, Sr. Assistant Patwari, G.M.(Taxation)*, I find that the Director is responsible for general supervision and compliance of Central Excise law and procedure. It is also stated that the activity of printing and affixing of NRE label on individual packets of imported bearing was conducted at DCD Hub Ahmedabad and the same was stopped after the action was initiated by the Director of Taxation. It is also stated that this was limited to a very small proportion and was taken up only in view of Legal Metrology Act. Regarding adoption of two methods of procedure for charging Central Excise duty, he failed to give convincing reasons for not leading the investigation. Being Director (Finance), he is independent and all activities are conducted under his overall supervision. It is therefore held that *Shri*

Chandramowli Srinivasan, has aided and abetted M/s SKF in contravention of the provisions of Central Excise Act, 1944 and Rules made there under with intent to evade payment of Central Excise duty hence have rendered himself liable to penal action under Rule 26 of the Central Excise Rules, 2002. Shri Vrijendra Patwari, General Manager (Taxation) should have been responsible for compliance of Central Excise Law and procedure. He also admitted that the activity of printing and affixing of MRP label on individual packet of imported bearings was conducted at DCD Hub Ahmedabad and the same was stopped after the action of DGCEI. He however cannot shirk his responsibility by stating that the same was done by the logistic team in order to comply with Legal Metrology Act. He has also accepted the fact that imported bearings shall be subject to MRP based valuation less abatement as applicable. Being G.M. (Taxation) he should have knowledge of the legal position and guide the Company to discharge correct payment of Central Excise duty which he failed to do. I therefore find that Shri Vrijendra Patwari has aided and abetted M/s SKF in contravening of the provisions of Central Excise Act. 1944 and Rules made there under with an intent to evade payment of Central Excise duty and have rendered himself liable to penal action under Rule 26 of the Central Excise Rules, 2002.

37. In view of above findings, I hold the process of printing & affixing of MRP labels and declaring MRP on the individual packet of imported bearing used in automobiles & Off highway vehicles falling under Chapter 8482 of the first schedule of Central Excise Tariff Act, 1985 as a manufacturing activity under Section 2(f)(iii) of CEA, 1944. I therefore pass the following order.

#### ORDER

- (i) I confirm the demand of Central Excise duty amounting to **Rs.95,56,582/- (Rupees Ninty Five Lakh Fifty Six Thousand Five hundred Eighty Two Only)** { Rs 73,72,782/ from Jan,2013 to April,15 and Rs 21,83,800/ from May,15 to Sept,15 }(including Education Cess and Secondary and Higher Education Cess),on the goods manufactured and cleared by them during the period from **January,2013 to September, 2015** under provisions of Section 11A(4)[ erstwhile proviso to Section 11A (1)] of the CEA, 1944.
- (ii) I order to recover interest at appropriate rate on the amount of duty payable as mentioned at (i) above under Section 11 AA

(erstwhile Section 11AB) of CEA, 1944.

- (iii) I also impose a penalty of **Rs.36,86,391/-** (50% of the duty) (Rupees Thirty Six Lakh Eighty Six Thousand Three Hundred and Ninety One Only) **for the period (Jan,2013 to April,2015)** under proviso to Section 11AC(1)(c) of the CEA, 1944 (erstwhile Section 11AC(1)(b) of the CEA, 1944). If the duty confirmed above is paid along with interest within 30 days of receipt of this order, the penalty payable will stand reduced to 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.
- (iv) I also impose a penalty of **Rs.21,83,800/-** (equal to duty) (Rupees Twenty one Lakh Eighty Three Thousand and Eight Hundred Only) **for the period May,2015 to Sep,2015)** under Section 11AC(1)(c) of the CEA, 1944. If the duty confirmed above is paid along with interest within 30 days of receipt of this order, the penalty payable will stand reduced to 25% of the duty determined, subject to the condition that such reduced penalty is also paid within the period of thirty days.
- (v) I also impose penalty of **Rs.3,00,000/-** (Rupees Three Lakh Only) on Shri Chandramowli Srinivasan, Director (Finance) and **Rs.3,00,000/-** (Rupees Three lakh Only) on Shri Vrijendra Patwari, General Manager (Taxation), under Rule 26 of CER, 2002.
- (vi) The excisable goods valued at **Rs.7,70,51,465/-**, which have been cleared by M/s SKF without payment of applicable Central Excise duty , are though liable for confiscation, however since these goods are not available I do not impose any penalty under Rule 25 of the CER, 2002.

**38.** The Show Cause Notice issued vide F. No. DGCEI/MZU/ I&IS/A/ 30-136/2016 dated 6.9.2016 to M/s SKF India Limited Zeeta Electrical Campus, Survey No. 124 & 118P, Near Zyduş Cadila, Chanchravadi Mataji Na Patia, Sarkliej-Bhavla Road, Sanand, Changodar, Ahmedabad-382213 (Noticee No.1), Shri Chandramowli Srinivasan, Director(Finance) (Noticee No. 2), and Shri Vrijendra Patwari, General Manager (Taxation) (Noticee No. 3), stands disposed of in above manner.

  
[ R. M. GAUTAM ]

Additional Commissioner  
Central Excise ,Ahmedabad-II

**By Regd. Post A. D./Hand Delivery**

To,

(1) M/s SKF India Limited,  
C/O Robinson Cargo & Logistics Pvt. Ltd,  
Zeeta Electrical Campus, Survey No. 124 & 118P,  
Near Zydus Cadila, Chanchravadi Mataji Na Patia,  
Sarkliej-Bhavla Road, Sanand,  
Changodar, Ahmedabad-382213.

(2) Shri Chandramowli Srinivasan,  
Director(Finance), M/s. SKF India Ltd.,  
Mahatma Gandhi Memorial Building,  
Netaji Subhash Road, Charni Road,  
Mumbai-400002.

(3) Shri Vrijendra Patwari,  
General Manager (Taxation), M/s. SKF India Ltd,  
Mahatma Gandhi Memorial Building,  
Netaji Subhash Road, Charni Road,  
Mumbai-400002.

**Copy to:**

1. The Commissioner, C.Ex., Ahmedabad-II.
2. The Deputy Commissioner, C.Ex., Division-IV, Ahmedabad-II.
3. The Deputy Commissioner (RRA), C.Ex., Ahmedabad-II
4. The Superintendent, Central Excise, AR-V, Division-IV, Ahmedabad-II.
5. Guard File.

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