आयुक्त का कार्यालय केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क ,अहमदाबाद उत्तर, कस्टम हॉउस(तल प्रथम) नवरंगपुरा- अहमदाबाद ,380009		Office of the Commissioner of Central Goods & Services Tax & Central Excise, Ahmedabad North, Custom House(1st Floor) Navrangpura, Ahmedabad-380009
फ़ोन नंबर./ PHONE No.: 079-2754 4599 फैक्स/ FAX : 079-2754 4463 E-mail:- *oaahmedabad2@gmail.com*		

निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. F.No. V.84/15-63/OA/2012

आदेश की तारीख़ / Date of Order : 29.11.2019

जारी करने की तारीख़ / Date of Issue : 09.12.2019

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR –02-10/2019-20

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति -इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार ,सीमा शुल्क ,उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ,O-20, मेघाणीनगर ,न्यु मेन्टल हॉस्पीटल कम्पाउन्ड ,अहमदाबाद -380016 को संबोधित होनी चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, O-20, Meghani Nagar, Mental Hospital Compound, Ahmedabad-380 016.

2.1 इस आदेश के विरुद्ध अपील न्यायाधिकरण में अपील करने से पहले मांगे गये शुल्क के 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है ।

An appeal against this order shall lie before the Tribunal 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)

3. उक्त अपील प्रारूप सं .इ.ए 3.में दाखिल की जानी चाहिए। उसपर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 ,के नियम 3 के उप नियम (2)में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो ,उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ)उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए(। अपील से संबन्धित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

The Appeal should be filed in Form No. E.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Central Excise (Appeals) Rules, 2001. It shall be filed in

quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैंल की चार प्रतियों में दाखि , उसकी भी उतनी ही प्रतियाँ संलगन ,जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) की जाएंगीम एक प्रमाणित प्रति होगी।(

The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. अधिनियम की धारा 35बी के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

The prescribed fee under the provisions of Section 35 B of the Act shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. न्यायालय शुल्क अधिनियम 1970 ,की अनुसूची ,1-मद 6 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर 1.00रूपया का न्यायालय शुल्क टिकट लगा होना चाहिए।

The copy of this order attached therein should bear a court fee stamp of Re. 1.00 as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1970.

8. अपील पर भी रु 4.00 .का न्यायालय शुल्क टिकट लगा होना चाहिए।

Appeal should also bear a court fee stamp of Rs. 4.00.

विषयः -कारण बताओ सूचनाः

Subject- Proceedings initiated vide followingShow Cause Notices issued to M/s. SKF Technologies (I) Pvt. Ltd. Sarkhej- Bavla Highway, Bavla, Dist. Ahmedabad

Sr.No.	SCN no. & Date	Period of SCN
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oct 2013 to March 2014
3	V.84/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14
4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15
6	III.DSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016
8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017
9	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	April 2017 to June 2017

Brief Facts of the case-

M/s. SKF Technologies (I) Pvt. Ltd. Sarkhej- Bavla Highway, Bavla, Dist. Ahmedabad (hereinafter referred to as 'the said assessee') is holding Central Excise Registration No.AAACC4393DXM002. The said assessee is engaged in the manufacture of Ball or Roller Bearings falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The assessee is availing Cenvat Credit facility under Cenvat Credit Rules, 2004 (hereinafter referred to as CCR 2004).

2. During the course of audit for the period April, 2008 to July 2011 and subsequent investigation it was observed that the assessee had availed Cenvat credit on various services which do not fall under the definition of input services; and on the basis of documents which are either not in the name of the assessee or on the basis of photocopies. The assessee had also availed cenvat credit without any documents in certain instances.

3. The definition of input service defined under Rule 2(*l*) Cenvat Credit Rules, 2004 is reproduced under:-

"input Service' means any service:-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether, directly or indirectly, in or relation to the manufacturer of final products and clearances of final product upto the place of removal.

and includes services used in relation to setting up, modernization, renovation or repairs of a factory premises of provider of output service or an office relating to such factory premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

4. The phrase 'clearance of final products from the place of removal' was substituted by phrase 'clearance of final products **up to** place of removal' w.e.f. 01.04.2008. From above, it appears that the inclusive part of definition of 'input service' covers the various services, which are used upto the place of removal, and includes outward transportation upto the place of removal, which are allowed for availing Service Tax credit as input service.

5. The term "place of removal" is defined in section 4(3) (c) of Central Excise Act, 1944 which reads as under:-

(c) "place of removal" means –

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed;

6.1 **Cenvat Credit availed on services which do not fall under the definition of input service:**

The services on which cenvat has been availed which do not fall under the definition of input services are as under:

Sr.No	Name of service	Amount of service tax	As per Annx. Attached to the SCN dated 18.12.2013
1	*2*	*3*	*4*
1	Services at Guest House	2,30,757	Annx-A
2	Customs House Agent service	2,45,014	Annx-B
3	Event Management Service	1,93,864	Annx-C
4	Outdoor Catering Service	58,278	Annx. G
5	Technical Inspection and Certification / Test, Inspection and certification	3,07,474	Annx. H
6	Interior Decorator Service	1,82,596	Annx. I

7	Maintenance or Repair Service	12,51,258	Annx. J
8	Commercial or Industrial Construction Service	3,73,006	Annx. K
9	Management Consultancy Service	93,24,634	Annx. L
10	Business Support Service	55,40,420	Annx. M
11	Cleaning Services	6,34,248	Annx. N
12	Real Estate service	2,673	Annx. O

It appeared that all the above mentioned services availed Guest House, services of Customs House Agent, Event Management service, Outdoor Catering Service, Technical Inspection and Certification/Test, Inspection and Certification, Interior Decorator Service, Maintenance or Repair Service, Commercial or Industrial Construction Service, Management Consultancy Service, Business Support Service, Cleaning Services and Real Estate service have not been used in or in relation to manufacture of final product and also not used for clearance of final product up to the place of removal. These services are also not related in relation to activity specified in the inclusive part of the definition of the input service, therefore these are not input service and credit thereof is not available.

6.2 Credit availed on the basis of photo copy of invoices:

The assessee had availed Cenvat Credit of **Rs. 47,85,079/- (Annexure-D)** on the basis of photo copy of invoices in the name of Bangalore office address and also on proportionate basis for the Services provided by M/s AKTEIBOLAGET SKF situated abroad and M/s Mphasis Limited. The assessee is also having another manufacturing unit at Bangalore.

As per Rule 9(1) of the Cenvat Credit Rules, 2004, certain documents have been prescribed for availment for cenvat credit, which reads as follow:-

Rule 9 : Documents and accounts.- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(c) a bill of entry; or

(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(e) a Challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

(f) an invoice, a bill or Challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(g) an invoice, bill or Challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

From the above provisions of law, it appears that Cenvat Credit is eligible on the basis of invoices of manufacturer, registered dealer or service provider or an input service distributor. Photo copy of invoice is not a valid document for availing cenvat credit. In respect of common services received at other locations of assessee, cenvat credit can be taken only on the basis of invoice issued by **an input service distributor under rule 4A of Service Tax Rules, 1994.** It appears that their Bangalore Unit has not issued any invoice **under Rule 4A of Service Tax Rules, 1994** and hence the assessee is not eligible for avail cenvat credit on the basis of invoices in the name of their Bangalore Unit.

6.3 **Credit taken for which assessee did not have valid documents in their name:** On scrutiny of the documents, it was further noticed that some invoices are not in the name of the assessee. The invoices are either in the name of Bangalore unit or Pune office or Mumbai address or Kolkatta address or Gurgaon addresses etc. These cannot be considered as valid documents under Rule 9 of the Cenvat Credit Rules, 2004, for availing credit. The assessee was given ample time to submit evidence to prove that these services have been used at Ahmedabad plant and payment for these have also been made by Ahmedabad plant only. But the assessee could not produce the same. The assessee also could not produce any evidence to prove that no service tax credit has been taken at the places/addresses which have been shown in the invoices. The assessee availed Cenvat Credit of **Rs. 1,01,671/-**,on such invoices., as detailed in the **Annexure** –E of the SCN dated 18.12.2013.

6.4 **Cenvat credit availed without any document:** In respect of the Service Tax credit of Rs. 5,41,188/-, the assessee could not produce any documents/invoices as detailed in **Annexure** – F of the SCN dated 18.12.2013. In absence of any documents/invoices the credit availed by the assessee is not admissible.

7. Therefore it appeared that the said assessee has availed (i) Rs. 2,30,757/-as the Cenvat Credit on Service Tax paid at Guest House Service (**Annexure-A**), (ii) Cenvat Credit of Rs. 7,21,815/- on service tax paid on Custom House Agent services (**Annexure- B**), (iii) Cenvat Credit of Rs. 1,97,306/- on service tax paid for arranging event of inauguration function and event management services (**Annexure-C**), as "input services", (iv) Cenvat Credit amounting to Rs. 47,85,079/- availed on the basis of invalid documents i.e. photo copy of invoices (**Annexure-D**), (v) Cenvat credit of Rs. 1,01,671/- for which invoices are in the name of Bangalore address as detailed in (**Annexure-E**) (vi) cenvat credit of Rs. 5,41,188/- without Invoices and as detailed in (**Annexure-F**) and (vii) **Rs. 1,76,74,587/-** on services like outdoor catering, Technical Inspection and Certification/Test, Inspection and Certification, interior decorator, maintenance and repair, commercial or industrial construction, management consultancy service, business support service, clearing service and real estate service which do not fall under the definition of input service as detailed in above paras **(Annex. G to O),** consolidated work sheet marked as **Annexure-P.**

8. It appeared that such credit had been taken by the assessee by way of suppression of facts and in contravention of the provisions of the CCR 2004, with intent to evade payment of duty. It appeared that it was very well known to the assessee that the services in respect of which they had taken cenvat credit were services availed, either beyond the factory gate, ineligible documents, without documents or on the services which have not been used in or in relation to manufacture of final product and also not used for clearance of final product from the place of removal and also not in relation to activity specified in the inclusive part of the definition of the input service. It is the responsibility of the assessee to take Cenvat Credit only if the same is admissible.The amount being shown in the monthly ER-1 returns is the consolidated amount of credit taken. Further, in absence of specific mention about the nature of services availed by the assessee, the Department was also unable to know and verify the nature of services and use thereof. Thus, it was not possible for Department to ascertain whether the services are falling under the definition of 'input service' or not. It was only during the course of audit, upon verification of documents and further follow up, it came to the notice that the said assessee had

availed/taken such ineligible Service Tax credit of as detailed in **Annexure-A to O and summarized in Annexure-P** to the said show cause notice.

9. Further, Rule 9(6) of the CCR 2004 stipulates that the burden of proof regarding admissibility of cenvat credit shall lie upon the manufacturer or provider of output service taking such credit. In this era of self assessment, the onus of taking legitimate cenvat credit has been passed on the assessee in terms of the said rule. In other words, it is the responsibility of the assessee to take cenvat credit only if the same is admissible. In the instant case, the credit taken in respect of services availed are inadmissible in as much as the same do not fall within the ambit of the definition of 'input services' as specified under Rule 2(l) of the CCR 2004 as discussed hereinabove. Thus, it appeared that it was very well known to them that the services in respect of which they had taken cenvat credit were services which are not admissible. Thus, it appeared that the assessee has taken and availed cenvat credit on services which do not qualify as 'input services' despite of knowing that same would not fall within the ambit of the definition of 'input service'. Thus, it appeared that the assessee have failed to discharge the obligation cast on them under Rule 9(6) of the CCR 2004. The said cenvat credit which appeared to have been wrongly taken and utilized for the payment of duties of excise, which resulted in loss of revenue to the Government. Thus, it appeared that the assessee had contravened the provisions of the CCR 2004 with an intent to evade payment of duty especially in light of the fact that the assessee admittedly knew that the Cenvat Credit of the above services, which had been availed by them, are not admissible in terms of the discussion in above paras.

10. The Range Superintendent has summoned Shri Prashant Sharma, Controller/ Authorized Signatory of M/s SKF Technologies (India) Pvt Ltd and recorded his statement dated 28.09.2013 under Section 14 of the Central Excise Act, 1944. On being asked regarding paras in dispute arising out of Final Audit Report No 82/2011-12, dated 27.12.2011 issued by the Assistant Commissioner, (Audit), Central Excise, Ahmedabad, Shri Prashant Sharma stated that the reply has already been given and the same is shown in the said audit report. Further, on being asked, why the credit taken as per Audit report has not been brought to the notice of the Department and not shown in the monthly return i.e. ER-1, Shri Sharma, accepted that the credit taken as detailed in Audit report has not been shown in the monthly ER-1 return. They are showing the total credit taken during the month and not the service wise credit. On being asked if there was any doubt about the admissibility of any services, they should have approached the Department and got the matter clarified; he stated that they were convinced that the above mentioned credit is admissible, hence, did not approach the Department. The above statement also confirms that the said assessee has suppressed the material facts i.e. Cenvat credit on the above mentioned services in their monthly returns. The assessee did not produce documents to the department on demand and delayed the matter for one reason or other. From the above, it is very clear that the assessee has suppressed the facts with an intent to evade payment of Central Excise duty, hence, the demand is to be made in terms of rule 14 of CCR 2004 read with Section 11A(5) of Central Excise Act, 1944 invoking extended period of five years.

11. Thus, it appeared that the said assessee had contravened the provisions of Rule 2(l) read with Rule 3(1) of the CCR 2004, by wrongly availing Cenvat credit on the services, which were not falling under the definition of 'input service' and were availed by them beyond the place of removal as discussed in foregoing paras; Rule 9(6) of the CCR 2004 in as much as they have failed to discharge the burden of proof regarding admissibility of Cenvat Credit; All these acts of contravention on the part of the assessee have rendered themselves liable for penal action under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

12. Therefore, the Cenvat credit amounting to **Rs. 2,42,52,403/-** (inclusive of education cess and higher education cess) for the period from April, 2008 to September, 2013, as detailed in **Annexure-A to O**, to the show cause notice, is inadmissible. The same is required to be disallowed and recovered from them by invoking extended period of limitation under provision of Rule 14 of the CCR, 2004 read with provisions of Sub-section (1) of erstwhile Section 11A and Sub-section (5) of current Section 11A of the Central Excise Act, 1944, along with interest at the applicable rate as provided under erstwhile Section 11AB & current Section 11AA of the Central Excise Act,1944. Further, the assessee also appeared to be liable for penalty under the provisions of Rule 15(2) of the CCR 2004 read with Section 11AC of Central Excise Act, 1944.

13. Therefore, M/s. SKF Technologies (I) Pvt. Ltd. were issued a Show Cause Notice F. No.**V.84/15-63/ OA/2012** dated **18.12.2013** as to why:-

(i) the total Cenvat credit amounting to **Rs. 2,42,52,403/-** (inclusive of education cess and higher education cess) as detailed in above **(Annex. A to O),** should not be disallowed, demanded and recovered from them under Rule 14 of CCR 2004 read with provisions of Sub-section (1) of erstwhile Section 11A and Sub-section (5) of current Section 11A of the Central Excise Act, 1944;

(ii) Interest at prescribed rate should not be charged and recovered from them in terms of Rule 14 of CCR 2004 read with erstwhile Section 11AB & current Section 11AA of the Central Excise Act,1944.;

(iii) Penalty under Rule 15 (2) of CCR 2004 read with Section 11AC of Central Excise Act 1944 should not be imposed upon them.

14. Further the SCN no. F.no V.84/15-63/OA/2012 dated 18.12.2013 was adjudicated by the Commissioner, Central Excise, Ahmedabad-II, vide OIO no. AHM-EXCUS-002-COMMR-62-13-14 dated 11.03.2014. Vide this OIO, the adjudicating authority; out of the total demand of Rs. 2,42,52,403/- as proposed in the show cause notice has dropped the demand pertaining to Rs. 25,72,882/- on certain input services & upheld the demand for the balance amount of Rs.2,16,79,521/- along with interest & penalty.Being aggrieved by the aforesaid OIO, the assessee appealed before CESTAT wherein, CESTAT had remanded the case back for deciding the issues afresh, taking into consideration the evidences on record and the evidences that would be produced by the assessee.

15. The assessee appeared to have continued with the practice of wrongly availing Cenvat Credit on the above mentioned services, for the further periods also. Therefore, the following SCNs were issued to the party for subsequent periods upto June, 2017. The details of the Show Cause Notices and the amount demanded under different categories.

Sr.		1	2	3	4	5	6	7	8	9	TOTAL
	SCN No/Date ⇨	V.84/15-63/OA/2012, Dtd. 18.12.13	V.84/15-106/OA/2014, Dtd. 21.10.2014	V.84/15-39/OA/ 2015, Dtd. 21.4.2015	V.84/15-104/OA/2015, Dtd. 19.10.2015	V.84/15-21/OA/2016, dtd. 18.4.2016	III.DSCN/SKF Technologies/94/16-17, dtd.22.11.2016	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	
	Period of SCN ⇨	April 2008 to Sept 2013	Oc 2013 to March 2014	April 14 Sept 14	Oct-14 to Mar-2015	April 15 to Sept 15	Oct 15 to March 2016	April 2016 to Sept 2016	Oct 2016 to March 2017	April 2017 to June 2017	
1	Guest House Service	230757	0	0	0	0	0	0	0	0	230757
2	CHA	721815	326226	246105	223932	318530	107606	234058	301759	1228197	3708228
3	Event Management Service	197306	2837	52385	0	0	0	0	0	0	252528
4	Import of Service	4785079	0	0	0	0	0	0	0	0	4785079
5	Other than Bavla address	101671	0	0	0	0	0	0	0	0	101671
6	No invoices submitted	541188	0	0	0	0	0	0	0	0	541188
7	Outdoor Catering Service	58278	0	0	0	0	0	0	0	0	58278
8	Technical Inspection Certification	307474	0	0	0	0	0	0	0	0	307474
9	Interior Decoration Service	182596	0	0	0	0	0	0	0	0	182596

10	Management Or Repair Service	1251258	0	0	0	0	0	0	0	0	1251258
11	Comm. Or Indus Constr. Service	373006	0	0	0	0	0	0	0	0	373006
12	Management Consultancy Service	9324634	22514	1385027	200704	3560	28373	62653	222652	629695	11879812
13	Business Support Service	5540420	925906	2052813	1336144	1009892	948259	1028077	1664093	1844101	16349705
14	Cleaning Service	634248									634248
15	Real Estate Agent	2673	0	0	0	0	0				2673
16	TOTAL	24252403	1277483	3736330	1760780	1331982	1084238	1324788	2188504	3701993	40658501

15.1. Para 11.2 of CBEC's Circular No. 1053/02/2017-CX, dated 10th March, 2017, stipulates that, in case different Show Cause Notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty. In light of this Circular, all the above Show Cause Notices, involving the same issue, answerable to Additional Commissioner and Assistant Commissioner , have been taken up for adjudication.

16. Defence reply

As per the CESTAT Remand order no. A/10197/2016 dated 10.03.2016, the assessee has filed their submission to the SCN no **V.84/15-63/ OA/2012** dated **18.12.2013,** vide letter dated 30.11.2017, wherein interalia they submitted as -

1. M/s SKF Technologies (India) Pvt. Ltd. situated at, Sarkhej-Bavla Highway, Bavla, Dist. Ahmedabad (hereinafter referred to as the 'Assessee') is holding Central Excise Registration No. AAACC4393DXM002. The assessee is engaged in the manufacture of Ball or Roller Bearings falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. The assessee is availing CENVAT credit facility under CENVAT Credit Rules, 2004.
2. During the audit of the assessee's records and subsequent investigation comprising of period April '08 to Sept '13, it was alleged that the assessee has availed CENVAT credit on various services which were not allowed; the details of which are summarized in the tables below:

a) CENVAT Credit pertaining to various services is as follows:

Ineligible as they do not qualify as "input services

Sr. No.	Services	Service tax (Rs.)	Annexure to SCN
1	Services at Guest House	2,30,757	A
2	Custom House Agent Service	7,21,815	B
3	Event Management Service	1,97,306	C
4	Outdoor Catering Service	58,278	G
5	Technical Inspection and Certification/Test, Inspection and certification	3,07,474	H
6	Interior Decorator Service	1,82,596	I
7	Maintenance and Repair Service	12,51,258	J
8	Commercial or Industrial Construction Service	3,73,006	K
9	Management Consultancy Service	93,24,634	L
10	Business Support Service	55,40,420	M

11	Cleaning Services	6,34,248	N
12	Real Estate Service	2,673	O
Total		1,88,24,465/-	

b) CENVAT credit pertaining to various other invoices, the details of which are as follows:

Sr. No.	Particulars	Service Tax (Rs.)	Annexure to SCN
1	Credit on Photocopy of invoices	47,85,079/-	D
2	Invoices pertaining to other than Bavla	1,01,671/-	E
	(Ahmedabad) unit address		
3	Invoices not submitted	5,41,188/-	F
Total		54,27,938/-	

3. Accordingly, the show cause notice F. No. V.84/15-63/OA/2012 dated 18.12.2013 was issued to the assessee, wherein it had been alleged that the credit taken on the various services as detailed in the above table does not fall under the definition of "Input service". Further, it was alleged that the assessee had availed credit on certain ineligible documents. Thus, proposing to deny the total CENVAT credit of Rs. 2,42,52,403/- (i.e. Rs. 1,88,24,465/- + Rs. 54,27,938/-) to the assessee.

4. The assessee vide their letter dated 10-Feb-2014 submitted their reply to the said show cause notice, wherein the assessee contested that the input services are used in or in relation to their business of manufacturing & therefore submitted that the CENVAT credit is eligible to them. Further the assessee in their reply had provided detailed explanation in support of their contention, explaining the nature of each input service in relation to their output service. Copy of reply to Show Cause Notice is attached as Annexure 3.

5. A personal hearing was granted to the assessee, which was attended by the authorized representatives of the assessee. They reiterated the submission made in their replies to the show cause notice.

6. Further, after the personal hearing, the assessee made the additional submission with respect to the following:

> Credit availed on the basis of photocopy of invoices (import of service) (Rs. 47,85,079/-)

> Credit of invoices not submitted to the audit party (Rs. 5,41,188/-)

> Import of service included in the Annexure L to the SCN dated 18.12.2013.

7. The assessee received the order in original (O-I-O) bearing no. AHM-EXCUS-002-COMMR-062-13-14 dated 11.03.2014 passed by the Commissioner of Central Excise Ahmedabad-II, wherein the adjudicating authority, out of the total demand of Rs. 2,42,52,403/- as proposed in the show cause notice has dropped the demand pertaining to Rs. 25,72,882/- on certain input services & upheld the demand for the balance amount of Rs.2,16,79,521/- along with interest & penalty.

8. Being aggrieved by the same, the assessee filed an appeal before CESTAT Ahmedabad.

9. The Hon'ble CESTAT vide order no. A/10197/2016 dated 14.03.16 remanded the matter back to adjudicating authority.

16.1. Submissions of the assessee with respect to the said demand, consequent of denovo proceedings are as follows:

At present demand involved is for Rs. 2,16,79,521/- for the period April 2008 to September. 2013. The details of the same are summarised in the table below:

Credit denied on services on the ground that the same does not fall under the definition of "input service": -

Table -1

Sr. No.		Prior to 1-4-2011	After 1-4-2011	Total Credit	Annexure to SCN
1	Services at Guest House	2,30,757	Nil	2,30,757	Annexure -A
2	Custom House Agent	2,45,014	4,76,801	7,21,815	Annexure -B
3	Outdoor Catering Service	11,454	46,824	58,278	Annexure -G
4	Commercial or Industrial Construction Service	1,25,500	2,47,506	3,73,006	Annexure -K
5	Management Consultancy Service	8,81,056	84,43,578	93,24,634	Annexure -L
6	Business Support Service	7,45,772	47,94,648	55,40,420	Annexure -M
7	Real Estate Service	2,673	Nil	2,673	Annexure -O
Total		**22,42,226**	**140,09,357**	**1,62,51,583**	

Credit denied owing to Technical lapses: -

Table-II

Sr.no	Credit denied on the following:	Total Credit	Annexure to SCN
1	Photocopy of invoice (Import of service)	47,85,079	Annexure -D
2	Address of Bangalore/Pune unit	1,01,671	Annexure -E
3	Invoices not submitted	5,41,188	Annexure -F
Total		**54,27,938**	

A. Submission for CENVAT credit of Rs. 1,62,51,583/-, denied on the ground that the input services are ineligible

1. The definition of input service should be interpreted widely to construe meaning of word input services:

The definition of "Input service" prior to the amendment of 1-4-2011 as given in rule 2(1) of Cenvat Credit Rules, 2004 reads as follows:

"input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of -removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;"

(a) The Bombay High Court has in the case of Coca-Cola India Pvt. Ltd. 2009 (15) STR 657 (Bom.) analyzed the definition of input services & has interpreted the same very liberally. It has been observed by the High Court that the definition of input services can be divided into 5 categories. The observation made in Para 39 of this case is as follows:

"39. The definition of input service which has been reproduced earlier, can be effectively divided into the following five categories, in so far as a manufacturer is concerned:

(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products

(ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal

(iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory,

(iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(v) Services used in relation to activities relating to business and outward transportation upto the place of removal.

Each limb of the definition of input service can be considered as an independent benefit or concession exemption. If an assessee can satisfy any one of the limbs of the above benefit, exemption or concession, then credit of the input service would be available. This would be so even if the assessee does not satisfy other limb/limbs of the above definition."

Thus, it can be seen from the above observation that the definition of input services can be divided into 5 limbs and if any input service gets covered under any of these 5 limbs, the same can be said to be input services.

(b) The definition of input services extends to all services used in relation to business of manufacturing of the assessee & includes activities integrally connected with the business of manufacturing:

The High Court of Bombay in the case of M/s Ultratech Cement Ltd. 2010 TIOL 745 HC has elaborately discussed the judgment of Supreme Court in the case of Maruti Suzuki Ltd. 2009 TIOL 94 & judgment of High Court in the case of Coca Cola India Pvt. Ltd. (supra) & has observed that the definition of 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. The relevant paras of the observation made by the High Court in this case are as follows:

"28. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service" covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product."

31. In our opinion, the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd. (supra) in the context of the definition of 'input' in Rule 2(k) of 2004 Rules would equally apply while interpreting the expression "activities relating to business" in Rule 2(1) of 2004 Rules. No doubt that the inclusive part of the definition of 'input' is restricted to the inputs used in or in relation to the manufacture of final products, whereas the inclusive part of the definition of input service extends to services used prior to during the course of/after the manufacture of the final products. The fact that the definition of 'input service' is wider than the definition of 'input' would make no difference in applying the ratio laid down in the case of Maruti Suzuki Ltd (supra) while interpreting the scope of 'input service'. Accordingly, in the light of the judgment of the Apex Court in the case of Maruti Suzuki Ltd, we hold that the services having nexus or integral connection with the manufacture of final products as well as the business of manufacture of final product would qualify to be input service under Rule 2(1) of 2004 Rules.

33. It was argued on behalf of the Revenue that not only the ratio but the decision of the Apex Court in the case of Maruti Suzuki Ltd (supra) must be applied ipso facto to hold that the credit of service tax paid on outdoor catering services is allowable only if the said services are used in relation to the manufacture of final products. That argument cannot be accepted because unlike the definition of input, which is restricted to the inputs used directly or indirectly in or in relation to the manufacture of final products, the definition of 'input service' not only means services used directly or indirectly in or in relation to manufacture of final products, but also includes services used in relation to the business o f manu facturing the final products. Therefore, while

interpreting the words used in the definition of 'input service', the ratio laid down by the Apex Court in the context of the definition of 'input' alone would apply and not the judgment in its entirety. In other words, by applying the ratio laid down by the Apex Court in the case of Maruti Suzuki Ltd (supra), it cannot be said that the definition of 'input service' is restricted to the services used in relation to the manu facture o f final products, because the definition o f 'input service' is wider than the definition of 'input'."

Thus, it can be seen from the above observation, that in view of the inclusive clause of the definition of 'input services', the services which are used in relation to business of the assessee shall also be eligible for Cenvat credit.

(c) The definition of input services was amended with effect from 1/4/2011- In view of amended definition also the credit is eligible to the assessee:

The definition of input service with effect from 1/4/2011 is as follows:

"(l)"input service" means any service,-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching, and training, computer networking, credit rating, share registry, and security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes services, -

(A) *specified in sub-clause (p), (zn), (zzl), (zzm), (zzq), (zzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-*

(a) Construction of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structure for support of capital goods, except for the provision of one or more of the specified services; or

(B) *specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or*

(C) *such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Construction, when such services are used primarily for personal use or consumption of any employees;"*

The definition was again amended w.e.f. Ist July 2012. The amended definition is as follows:

(l) "input service" means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes, -

(A) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(a) construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

It will be observed from above that the substantive part of the definition has not been amended. Hence the services used by manufacturer in relation to manufacture of goods continue to be considered as input services. Further the input service should be used directly or indirectly for manufacture of goods and clearance of final product upto the place of removal.

The word 'used' has been interpreted in the case of Varuna Sulphonators Vs. UOI as reported in 1993 (68) ELT 42 (All) to mean to put to some purpose; to make use; to take or to consume. The relevant extract of the judgment is reproduced below:

".....The words 'used' and 'consumed' are not identical and synonymous. They

have make use of; to take or consume....". The verb 'consume' in the same dictionary means: "to destroy by wasting, fire, evaporation; to use up; to devour; to waste or spend; to exhaust....". The word 'used' does not indicate that a thing, which is liquid, can be said to be used only when it is spent up to the last drop. The word 'consumed' may be used in the sense that a thing which is consumed must be finished, exhausted or devoured in full, but that is not the sense in which the word 'used' is used. To qualify for MODVAT credit, what is required is that a given input should be used in the manufacture of final product. There is nothing to show that MODVAT credit will not be allowed, if a manufacturer is not able to prove that required input has been exhausted so as to not leave even a drop of it behind "

Hence any input service which has been utilized to carry out any operation required in or in relation to manufacture finished goods service will be considered as used to manufacture finished goods.

The inclusive part of the definition only has been amended with effect from 1/4/2011. With effect from 1/4/2011 the service used in relation to activities mentioned in inclusive part of the definition will be considered as input service. The expression 'in relation to' has been interpreted in the case of Doypack Systems (Pvt.) Ltd. 1988 (36) E.LT. 201 (S.C.) as follows:

"48. The expression "in relation to" (so also "pertaining to"), is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see State Wakf Board v. Abdul Aziz (A.I.R. 1968 Madras 79, 81 paragraphs 8 and 10,following and approving Nitai Charan Bagchi v. Suresh Chandra Paul (66 C.W.N. 767), Shyam Lai v. M. Shayamlal (A.I.R. 1933 All. 649) and 76 Coipus Juris Secundum 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 Corpus Juris Secundum at pages 620 and 621 where it is stated that the term "relate"' is also defined as meaning to bring into association or connection with. It has been clearly mentioned that "relating to" has been held to be equivalent to or synonymous with as to "concerning with" and "pertaining to". The expression "pertaining to" is an expression of expansion and not of contraction."

Hence it is evident from the above that expression "in relation to" widens the scope of the word succeeding it. The expression is very broad and comprehensive in nature. Hence the credit denied for category of service for the period April 2011 to September 2013 has to be considered in light of the above legal position.

2. The show cause notice is vague and hence it must be set aside

In Para 6.1 of the show cause notice, a table pertaining to various services is given & it has been simply mentioned that these services are not used in or in relation to manufacture of final product & also not used for clearance of final product upto the place of removal. There is no explanation as to why such services are not in relation to manufacture of final product.

Even the nature of services has not been discussed in the show cause notice. The show cause notice merely makes a sweeping statement that credit of such services is not allowed.

We rely on the judgment of Supreme Court in the case of M/s Brindavan Beverages (P) Ltd. 2007 (213) ELT 487 (SC) wherein it has been held by the Apex court that show cause notice is foundation on which the Department has to build up its case; If allegations in show cause notice not specific and on the contrary vague, lack details and/or unintelligible, it is sufficient to hold that noticee is not given proper opportunity to meet allegations indicated in show cause notice. The Supreme Court further allowed the benefit to the assessee by affirming the order of the tribunal & setting aside the demand.

Therefore, it is submitted that the present show cause notice being vague is liable to be set aside.

3. The nature of services on which the credit has been denied is explained below. It will be evident from the same that the credit of input service is eligible to the assessee:

The assessee has utilised various services in and in relation to manufacture of their final products. These services were taken by the assessee in order to smoothly carry on its manufacturing activities. In para 6.1 of the SCN, it has been alleged that the services availed by the assessee (as detailed in table I) are not used in relation to the manufacturing of the final product. Further, there is also no explanation in the show cause notice as to how the services are used & why it is considered that the same are not used in relation to the manufacture of final goods.

Therefore, it is submitted that in order to determine the nexus of the input service with the manufacturing activities of the assessee, it is important to understand the nature of each input service. The nature of all the input services on which the credit is sought to be denied on the ground that the same is not in relation to manufacture has been explained below in detail so as to clearly explain their nexus with the manufacturing activity of the assessee.

(i) **Service at Guest House:**

The credit of this service pertains to the period April, 2008 to Feb 2010. It is submitted that during this period, the Ahmedabad unit was not fully operational, as the same was under construction. The plant & warehousing facilities in this unit were partially set-up & constructed by the end of 2009. Subsequently, site office and canteen was operational by 201011. Therefore, during this period, to carry out the plant installation & site construction work of the factory, the assessee had availed the services of consultants & engineers. The guest house services were utilised for the stay of these consultants & engineers.

It is also submitted that the factory of the assessee is situated in 'Bavla' village which is 35 km away from the nearby city of Ahmedabad. Since the location of the factory is the remote area where there is no proper accommodation facilities, the assessee had no other option but to station these engineers, consultants & expats at the nearby city with proper accommodation facility. The assessee for this purpose has availed the services of M/s Prefer Corporate Services Ltd., who provided accommodation facility to the assessee. Further, the said vendor has also provided warehousing facility to the assessee to warehouse its material used for production activity & other tools & plant and

machinery. This fact that the assessee was being provided the warehousing facility & accommodation facility can be evident from the said vendor's invoice given in the Annexure-A to the show cause notice at Sr. No. - 7 & 26 attached as Annexure 6 & Annexure 7.

It is submitted that in the present case the services of guest house had not been utilised for the employee or staff of the assessee but are utilised to provide accommodation to the engineers, consultants & expats whose services were availed by the assessee in setting-up of the factory plant & site construction work. As already mentioned above and in the reply to show cause notice that during the period April, 2008 to December 2010, the Ahmedabad unit (factory) of the assessee was under construction & not fully operational. It is pertinent to note that the services in relation to the setting-up of the factory were specifically covered in the inclusive clause of the definition of input services during the said relevant period. Hence, there is a direct relation between the setting-up of the factory and manufacturing process of the assessee. The services of these engineers, consultants & expats were availed in order to carry out the activities of setting-up of the factory. As already mentioned above the factory is located in remote area where there is no proper accommodation facilities. Thus, the assessee had availed the services of guest house.

It is further submitted that the assessee has relied on the judgment of the Hon'ble Andhra Pradesh High Court in the case of ITC Ltd. 2013 (32) STR 288 (A.P.), wherein it was held that the definition of input service has the widest amplitude & therefore it includes all the services used directly or indirectly in or in relation to the manufacturing activity of the company. The commissioner in the order has merely stated that the judgment relied upon by the assessee stands distinguished, however there is no explanation as to how the cases relied upon by the assessee are not applicable to the present issue.

The Commissioner in his order dated 11.03.2014 at 27.1 has relied on the judgment of Hon'ble Mumbai High Court in the case of M/s Manikgarh Cement 2010 (20) STR 456 and Gujarat High Court in the case of M/s Gujarat Heavy Chemicals Ltd. 2011 (22) STR 610 to deny such credit.

The said judgment of Mumbai High Court in the case of M/s Manikgarh Cement and Gujarat High Court in the case of M/s Gujarat Heavy Chemicals Ltd is not applicable to the present case as it was regarding residential colony and not guest house. Residential colony for employees is for permanent stay of employees and hence High Court observed that it is welfare in nature. However, guest house is being used not by employees but by consultants, technicians, expats etc. for temporary stay purpose when they visit the factory for official work. They are not staying permanently in the guest house, hence it is not welfare activity. Thestay is for limited official purpose only.

We rely on the following judgments:

- JSW Steel (Salav) Ltd. 2016 (46) S.T.R. 863 (Tri. - Mumbai)

- Mahindra & Mahindra Ltd. 2016 (46) S.T.R. 51 (Tri. - Mumbai)

It must further be noted that even if it is held that credit of guest house is not eligible on merits, the demand does not sustain on limitation. Hon'ble Gujarat High court in the case of M/s Saurashtra Cement Ltd. 2016 (42) S.T.R. 632 (Guj.) has observed that credit of guest house services was decided in favour of the assessees by Tribunal and was subsequently held against by the High Court. Hence, there was a bonafide when the assessee took credit of the same. Hence, extended period of limitation cannot be applied. Relevant portion of the same is as follows:

3. *It can thus be seen that the case of the assessee on the issue of payment of CENVAT credit on such services was decided by the High Court later on and, till then, the decision of the Tribunal was in favour of the assessee, was accepted by the Tribunal. It was, therefore, held that when the issue was disputable and, at one point of time, the view of the Tribunal was in favour of the assessee, there was no question of invocation of extended period of limitation of imposing penalty.*

Accordingly, demand will not sustain even on limitation.

(ii) **Custom House Agent Service (CHA):**

The assessee is engaged in export of goods namely bearings manufactured in their factory. In present case, the assessee has utilised the services of Custom House Agent for the purpose of export of goods after their clearance from the factory. The services of the CHA are used in relation to the preparation of export documentation & loading of goods to be exported at the ports. It is pertinent to note that these services of CHA are very much essential for the assessee in case of export of goods so as to expedite the export of goods to its importer. Further it can be noted from the nature of these services that these services availed from CHA can be utilised only after the clearance of goods from the factory premises & in such cases of export the point of removal is not factory but the port.

The observation of Commissioner & our submissions with respect to the same is as follows:

The commissioner in para 28.1, 28.2 & 28.3 in OIO has observed that the "place of removal" as defined u/s 4(3)(c) of Central Excise Act 1944 is factory gate and the services of CHA had been utilised after the goods have been cleared from the factory gate therefore the services of CHA has been utilised beyond the place of removal & hence the credit of these services is not eligible to the assessee.

It is submitted that the findings & observation of the Commissioner are erroneous. The commissioner has erred in construing the place of removal of goods as factory gate. In present case the place of removal is the port and not the factory gate.

The term "place of removal" is defined under sec. 4(3)(c) of the Central Excise Act, 1944 which is as follows: -

"place of removal" means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory

It is evident from above definition that as per sub-clause (iii) 'place of removal' is any other place or premises from where the goods are to be sold after their clearance from the factory. In the present case, the goods are sold on FOB/ CIF basis. The same is evident from invoices raised by the CHA service provider - M/s Marks Shipping Pvt. Ltd. For instances,

- Entry at sr. no. 134 of Annexure B to show cause notice pertains to invoice no. EXP1604 dated 28.01.2011 raised by M/s Marks Shipping Pvt. Ltd. for Rs. 17,889. Copy of the invoice is attached as Annexure 8. It can be seen from the invoice that the goods are being exported to 'United States' through agent 'Panalpina'. Invoice copy of the agent is attached along with the invoice as Annexure 9, from which it can be seen that the delivery terms specify "FOB Nhava". This indicates that the goods are sold on FOB basis and therefore the place of removal is Port & not factory gate.
- Similarly, entry at sr. no. 311 of Annexure B to show cause notice pertains to invoice no. EXP128 dated 26.04.2012 raised by M/s Marks Shipping Pvt. Ltd. for Rs. 47,701. Copy of the invoice is attached as Annexure 10. It can be seen from the said invoice that the goods are being exported to U.S.A at FOB Value of Rs. 34,39,272.79. Further, the invoice includes transportation charges, a separate invoice for these charges has been attached by the vendor, copy of the same is attached along with the invoice as Annexure 11. It can again be seen from this transportation invoice that the transportation charges are upto "port of Nhava Sheva". Hence, it is the assessee's responsibility for transporting the goods upto Nhava Sheva port. Therefore, the port is the 'place of removal'.

Thus, the assessee bears the risk of the goods till the same is loaded on the vessel at the port. Therefore, the place of removal is the port & not the factory.

- The Commissioner in para 28.4 of the OIO has also observed that the reliance placed by the

assessee in various judgments relates to the period prior to 1.4.2008 & also circular no. 97/6/2007-ST dated 23.08.2007 is not relevant as they relates to the prior period. It is submitted that it is not the contention of the assessee that credit of the input services is eligible from the place of removal, as was the case prior to the amendment of 1-4-2008 in the definition of input service, but the contention of the assessee is that the place of removal is the Indian port or the buyers' port and not the factory. Further, it is pertinent to note that the definition of the term 'place of the removal includes any place from where the goods have been sold after their clearance from the factory premises. This specific mention clearly implies that there is no compulsion that factory can only be the place of removal; it can be any place from where the goods are sold. Similar clarification in respect of the term 'place of removal' was explained in the Board's Circular No. 97/6/2007-ST dated 23.08.2007.

The relevant portion of para 8.2 of the circular is reproduced as follows:

It is, therefore, clear that for a manufacturer/consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer/consignor may claim that the sale has taken place at the destination point because in terms of the sale contract/agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under Section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

It is evident from above that the said circular though issued prior to the amendment in the input service definition, does not contradicts the provision of the input service definition. The said circular only clarifies the scope of the term "place of removal'. Further, it must be noted that the circular also clarifies that in cases where the sale contract/ agreement provides that the sale has taken at the point of destination in such cases the point of removal will be such destination place and therefore the credit of services utilised upto such place would be eligible.

- The commissioner in para 28.8 has further observed that such contention would extend the scope of the definition of input service beyond what is desired by the law makers. It is submitted that if such was the intention of the law makers to restrict the definition of the term place of removal only to factory, then the definition of 'place of removal' would not include the words "after clearance from the factory" in sub-clause (iii).

- The commissioner has relied on the judgment given in the case of M/s Vesuvious India Ltd. 2013-TIOL-1038-HC-KOL-ST & M/s Rico Auto Industries 2013 (32) S.T.R. 121 to deny the credit. It is submitted that the above mentioned cases are not applicable to the present case. In both the cases, there was no dispute regarding the place of removal being factory. However, in the present case the place of removal is Indian port or Foreign port and not factory and the assessee had been contesting the same. Further, it is submitted that in the case of Vesuvious India Ltd. the Hon'ble Karnataka High Court has further held that the Circular no. 97/6/2007-ST dated 23.08.2007 provides relaxation to the cases based on the factual background. Therefore, the ratio of the said circular is applicable in the present case also and hence the Cenvat credit of the CHA services shall not be denied to the assessee. Further, the judgment of Vesuvious India Ltd. is with respect to GTA services and it has been held that amendment in 2008 will apply retrospectively. In the present case, it is not in dispute that services of CHA are used upto the 'place of removal' i.e. port (in the case of export).

Further the Hon. Delhi Tribunal in Rico Auto Industries case has only given part stay on the matter & the issue is yet to attain finality. Therefore, in such a situation, reliance cannot be placed on such a case until it attains finality. **We rely on the judgment of Becton Dickinson India Pvt. Ltd. 2015 (326) E.L.T. 712 (Tri. - Del.) wherein it has been held that stay**

judgments do not have any binding precedence. Thus, the ratio of decision in the case of Rico Auto Industries cannot be applied.

- The commissioner has further observed in para 28.9 that since the assessee is exporting the goods they are eligible to the exemption granted by the govt, to the specified services which specifically includes services of CHA, therefore the assessee must have filed a refund claim instead of taking Cenvat credit of the same.

It is submitted that for claiming such refund under the said notification there are certain proviso which has to be satisfied. Proviso (c) in the notification provides as follows:

(c) *no CENVAT credit of service tax paid on the specified services used for export of the said goods has been taken under the CENVAT Credit Rules, 2004;*

This clearly indicates that the credit of such specified services is eligible under Cenvat credit rules, 2004 and therefore, it is submitted that the credit of such services shall be allowed to the assessee.

- The assessee relies on the judgment given in the case of M/s Rajdhani Crafts 2013 (32) S.T.R. 607 (Tri. - Del.), wherein the credit of such services was allowed to the company. The relevant para of the judgment is as follows:

4. I have considered arguments on both the sides. I find that the issue is already settled in the case of services of outward transportation and Custom House Agent. The other services are essentially of the same nature as that of Custom House Agent in the matter of eligibility for taking CENVAT credit, therefore I find merit in the argument of the assessees and allow the appeal filed by the assessees with consequential benefits.

We also rely on the following judgement:

- M/s Kennametal India Ltd. 2016 (46) S.T.R. 57 (Tri. - Bang.)

5. I have heard the learned Counsel for both the parties and perused the records. Learned Counsel for the assessee also submitted that vide Circular No. 999/6/2015-CX, dated 28-22015 the Central Board of Excise and Customs has clarified the position. In the circular at Para 6, it has been clarified as under :

"6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT credit shall be determined accordingly."

Further judgments relied upon by the learned Counsel for the assessee, I find that the issue is squarely covered in favour of the assessee. Both the authorities have denied the Cenvat credit on the ground that the said service is not an 'input service' as per Rule 2(1) of the Cenvat Credit Rules, 2004 because the service was utilized after the clearance of the goods from the factory. After the clarification by the Board and the judgments cited supra by the assessee, I am of the considered view that the ownership of the goods and the risk related thereto remains with the assessee up to the loading of the goods on the ship at the port of shipment. Further Section 4 of the Central Excise Act, 1944 inter alia states that the 'place of removal' is any other place from where the excisable goods are to be sold after the clearance from the factory. Thus, the 'place of removal' in case of export of goods is port of shipment. CHA services are utilized by the assessee before the goods were loaded on to the ship and therefore, the same falls within the definition of 'input services'. Therefore, keeping in view the circular of the Board and the judgments cited at bar by the learned Counsel for the assessee, I am of the view that the impugned order is not sustainable and the same is set aside by allowing the appeal of the assessee with consequential relief, if any.

Further, the Board has vide Circular no. 999/6/2015-CX dated 28-2-2015 clarified as follows:

In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After

Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly.

Hence, in view of the above submission it is submitted that the credit of the custom house agent availed upto the port is an input service & the same shall not be denied to the assessee. Further, it is an activity in relation to the business of the assessee & hence credit on the same must be allowed.

(iii) Outdoor Catering Services

The Commissioner in para 30 of the order has observed that the facility of providing food to the employees is the welfare activity and has no nexus with the manufacture of the final product, therefore the credit is not eligible to the assessee. Further it was observed that there is no statutory requirement on the assessee under the Factory Act, 1948 for providing food to the employees.

It is submitted that as already stated in reply to the show cause notice, the factory of the assessee is located at 35KM away from the city. The workers in the factory are working for 8 hours in a day in one shift. There are no eating arrangements around the factory area. Hence, the assessee has availed the services of 'Outdoor Catering' to provide food to the employees while they are working. The sample copy of invoice raised by such outdoor caterer is attached as Annexure 12.

Further it is submitted that the assessee is recovering Rs.200 per month per employee. Therefore, we have accordingly reversed the credit of Rs. 5,718/- to that extent vide entry no. 198 dated 31-05-14. Hence, we are eligible for remaining Cenvat credit. (Copy of the relevant extract of Cenvat register is attached as Annexure 13)

It will be evident from the definition of Input Service after April, 2011 that the credit of outdoor catering service has been specified in the exclusion clause. The very fact that the outdoor catering service has been excluded from the definition implies that such services were part of the definition of "Input service" during the period prior to April, 2011.

It is further submitted that the assessee in their very own case M/S SKF Technologies (I) Pvt. Ltd. 2014-TIOL-576-CESTAT-BANG had been allowed the credit of outdoor catering services. Further it was also held that it is not necessary that the number of employees should be more than 250. Providing 'catering services' in the factory premises will improve manufacturing efficiency of the factory & therefore the credit is eligible. The relevant portion of para 4 is as follows:

Appeal No. 1652/2011 is regarding eligibility of CENVAT credit of service tax on 'Outdoor Catering Service'. The learned AR submitted that if the number of employees is less than 250, there is no statutory obligation on the assessee to provide 'Outdoor Catering Service' and in this case there is a clear finding that the number of employees in the assessee's factory is less than 250. Therefore, in the absence of statutory obligation, the assessee is not eligible for the benefit of CENVAT credit. However the learned counsel relies upon the decision in the case of CCE, Delhi-III *Vis.* Suzuki Powertrain India Ltd. (2012 (27) S.T.R. 141 (Tri-Del.)]. In this case the Tribunal considered the similar issue and came to the conclusion that it is not necessary that the number of employees should be more than 250. Para 6 of this decision is relevant and is reproduced below:

"Considered arguments on both the sides. As far as outdoor catering service is concerned, there is no law laid down anywhere that such service will be in relation to manufacture only if the number of employees is more than 250. In some of the decisions, the affected parties had argued that they were required under Factories Act to provide such services. The ratio of the decisions quoted by the Respondent cannot be understood to mean that catering will qualify as input service only if number of employees is more than 250 or less than 250. The effect of providing canteen within the factory is same whether the number of employees is more than 250 or less than 250.1 am satisfied that providing catering services in the factory premises will improve their

manufacturing efficiency and therefore, I respectfully follow the decision of Bombay High Court and Gujarat High Court (supra) and allow the credit in respect of catering services".

Similar view has been taken in the case of M/s Sansera Engineering Pvt. Ltd. 2016 (41) S.T.R. 611 (Kar.) and M/s Reliance Capital Asset Management Ltd. 2016 (41) S.T.R. 508 (Tri. - Mumbai). The relevant para of the judgements are as follows:

- **M/s Sansera Engineering Pvt. Ltd. 2016 (41) S.T.R. 611 (Kar.)**

  3. There is no dispute with regard to the stand of the assessee that catering services are admissible as eligible input services. The only question raised before us is that such benefit can be given to the establishments who have employed more than 250 employees. Reliance is placed by the learned counsel under Section 46(1) of the Factories Act, 1948, which requires that factories employing more than 250 workers should provide catering services. Relying on the said provision, learned counsel submits that factories or establishments having less than 250 workers would not be entitled to the benefit of Cenvat credit.

  4. The Tribunal, after relying on the decisions of the Bombay High Court in the case of Ultratech Cement Limited [2010 (260) E.L.T. 369 (Bom.) = 2010 (20) S.T.R. 577 (Bom.)] and Gujarat High Court in the case of Ferromatik and Milacron India Limited [2011 (21) S.T.R. 8 (Guj.)], has held that there is no law providing for catering service to qualify as input service only if number of employees exceed 250.

- **Reliance Capital Asset Management Ltd. 2016 (41) S.T.R. 508 (Tri. - Mumbai)**

  6. Having considered the rival contention and perused the records of appeal before me, I find that it has not been held by the Hon'ble Bombay High Court in the case of Ultratech Cement Ltd. that outdoor catering service is allowable only in the case of more than 250 workers, as it was mandatorily required under the provisions of the Factories Act, 1948 for providing canteen services. It shows that the legislation appreciates the need of canteen service for the workers at the place of work. Only to avoid the hardship for an essential need, the legislation have provided, that at least in factories having employees more than 250, should provide, that does not mean that the service was not required for any industrial or service organization having less than 250 workers. Even the employees of a smaller organization having less than 250 workers will also be hungry and required to be provided with canteen facility for the employees. Therefore, I hold the ruling in the case of IFB Industries Ltd. (supra) per incuriam, as the provisions of Factories Act, have been wrongly interpreted, with respect to the provisions of input service. In view of my findings I hold that the respondent-assessee is entitled to Cenvat credit in respect of outdoor catering service and accordingly the appeal of the Revenue is dismissed.

Thus, by applying the ratio of the above judgements, it is submitted that the credit should not be denied to the assessee.

Therefore, it is submitted that the credit of these services is eligible to the assessee as the credit pertains to the period prior to 1-4-2011.

It can be seen from the Table-I shown above, the credit for the period prior to April 2011 is Rs. 11,454 & for the period after April 2011 is Rs. 46,824. It must be noted that for Rs. 46,824 only the credit has been availed after April 2011, however the service has been used during the period prior to April 2011. The invoice-wise break-up of the said amount is as follows:

Sr. No.	Invoice No.	Invoice date	Amount of ST (Rs.)
1	087	07/01/2011	11,857/-
2	097/099	07/02/2011 & 09/02/2011	11,905/-
3	105	07/03/2011	12,635/-
4	11/23	17/02/2011	10,427/-
Total			46,824/-

It can be seen that the invoices are pertaining to the period prior to April 2011 when such credit was allowed. All the above stated invoice is attached as Annexure 14.

We also rely on the Board circular no. 943/4/2011-CX dated 29.04.2011 wherein it has been clarified that when provision of service has been completed before April 2011, its credit will be allowed. The relevant portion of the said circular is as follows:

12.	*Is the credit available on services before 1-4-11 on which credit is not now? e.g. rent-a-cab service?*	*The credit on such service shall be available if its provision had been completed before 1-4-2011.*

Similar view has been taken in the case of M/s Aditya Birla Retail Ltd. 2015 (2) TMI 961 - CESTAT MUMBAI. The relevant para is as follows:

> *6.* The issue of availment of service prior to April 2011 is not in dispute. Therefore, I hold that as per Rule 6(5) of Cenvat Credit Rules, 2004, during the relevant time, the assessees are entitled to take CENVAT Credit on inputs service namely security service. It is immaterial whether the same is taken later on as held in the Circular No. 943/04/2011-CX dated 29.04.2011. In these circumstances, I hold the assessees are entitled to take CENVAT Credit and are not required to reverse the amount equivalent to 5%/10% of the value of the exempted goods.

(iv) **Commercial or Industrial Construction service**

At the outset it is submitted that the commissioner has erred in quantifying the amount of credit for the period after 1-4-2011. It can be evident from para 33 of OIO that the commissioner has only denied credit pertaining to the period after 1-4-2011 i.e. Rs. 2,47,506. However, while totalling the amount of credit denial which can be evident from para 40 of the OIO, it can be noted that total cenvat credit of Rs. 3,73,006 (Rs.1,25,000 + Rs.2,47,506) had been denied under this category. Hence, it is submitted that the credit of Rs. 1,25,000 is already eligible to the assessee and the credit in dispute is only of Rs. 2,47,506 and not Rs.3,73,006.

Further, it is also submitted that out of the total cenvat credit of Rs. 2,47,506 (Rs. 1,50,174 + Rs. 97,332), cenvat credit of Rs.1,50,174 pertains to Interior decorator service which had been wrongly classified into this category. It is further submitted that out of Rs. 97,332 pertaining to Commercial or Industrial Construction service, only credit of Rs. 11,910/- & out of Rs. 1,50,174 pertaining to Interior Decorator service, credit of Rs. 556 pertains to the period after 1-4-2011 & balance credit is for the period prior to 1-4-2011. The entire credit of Rs. 12,466/- has been reversed vide debit entry no. 197 dated 31.05.2014. (Copy of the relevant extract of Cenvat register is attached as Annexure 15)

The break-up of the entire amount of Rs. 3,73,006 is as follows:

Sr. No.	Service	Prior 1-4-2011	After 1-4-2011	Total	Remark
1	Commercial or Industrial Construction Service	1,25,500		1,25,500	Credit allowed - refer para 33. However erroneously quantified in para 40 of the OIO.
2	Commercial or Industrial Construction Service	85,422		85,422	Credit denied on the basis that the credit pertains to the period after 1-4-2011. Refer below for invoice-wise break-up of the amount. It pertains to period prior to April 2011.
3	Commercial or Industrial Construction Service	-	11,910	11,910	Credit reversed vide entry 197 dated 31.05.2014
4	Interior Decorator Service	1,49,618		149,618	Credit denied on the ground that the same relates to Construction & pertains to the period after 1-4-2011. Refer below for invoice-wise break-up of the amount. Services are in the nature of Interior Decorator and pertains to period prior to April '11.
5	Interior Decorator Service	-	556	556	Credit reversed vide entry 197 dated 31.05.2014
	Total	**3,60,540**	**12,466**	**3,73,006**	

It can be seen that amount of Rs. 85,422/- & Rs. 1,49,618/- with respect to Construction service & Interior Decorator service resp. pertains to the period prior to April 2011. The break-up of the same is given below.

Invoice wise bifurcation of this amount is as follows:

Cenvat credit under Commercial or Industrial Construction service prior to 1-4-2011:

Sr. No.	Invoice No.	Invoice date	Amount of ST (Rs.)
1	KB/PL/1	21-02-2011	67,981
2	44/2010-2011	03-10-2010	17,441
Total			85,422

Cenvat credit under Interior decorator service:

Sr. No.	Invoice No.	Invoice date	Amount of ST (Rs.)
3	TI-02/11-12	22-07-2011	68,286
4	TI-11/11-12	18-10-2011	37,965
5	n-12/11-12	18-10-2011	31,285
6	TT-01/11-12	22-06-2011	1,031
7	19/SKF	31-05-2011	10,124
8	MCPUBA/24/11-12	19-10-2011	927
9	164	28-02-2013	556
Total			1,50,174/-

Similar submissions were made in reply to show cause notice, however, the commissioner has failed to give any findings on the same.

The assessee has used the services of interior decorator to set up office in the factory premises. The services used in relation to "setting up" of an office relating to a factory are specifically given in inclusive clause of the definition of "Input Services". Hence the credit of such services must be allowed to the assessee.

Further the commissioner himself in OIO at para 32 has observed that the credit of interior decorator services is eligible to the assessee as during the said period the input service definition specifically included the term 'setting up'.

Hence, it is submitted that the credit of Rs. 3,60,540 (Rs. 1,25,000 already allowed + 2,35,040 (pertaining to the period prior to April 2011) is also eligible to the assessee.

(v) **Management Consultancy service**

As already stated above, the Ahmedabad factory unit had started its operation in 2009-10. During such period, there was need for the assessee to evaluate the feasibility for initializing various projects. Since the factory was newly set up, there was need for technical, managerial & quality assessment services. For this purpose, assessee had availed the services of various management consultants & experienced engineers. It can be seen from Annexure L to the show cause notice, that the assessee had availed the services from various parties such as Mr. A.A. Chaubal, M/s Axis Risk Consulting Services, Mr. Curt Holymr, M/s Ernst & Young Pvt. Ltd., Mr. Rajendra J Rathod, M/s Customized Energy Solutions etc.

It is submitted that these parties provided various management consultancy services to the assessee. For instances,

- During the inception of production at the factory the feasibility of the project was assessed by M/s Ernst & Young Pvt. Ltd.,
- Internal control & management evaluation services for the purpose of management were provided by M/s Axis Risk Consultant,
- M/s Rational Management provided the plant installation services after the plants are bought into the factory premises,
- Mr. Rajendra] Rathod provided the services of obtaining factory license under the

Factories Act, 1948,

- The factory requires the electricity for the purpose of manufacturing activity. M/s Customized Energy Solutions India Pvt. Ltd. provided the consultancy services & services in relation to obtaining the No-objection certificate (NOC) & other necessary approval with power trading with Indian Energy Exchange Ltd. (IEX), from where the assessee purchase the electricity at a cheaper rate for the factory usage.

  Sample copy of invoices of above mentioned service providers is attached as Annexure 17.

  Along with above services, for the technical support and other project management related services, the assessee has also availed the services of other experienced individual consultants. As already explained in the reply to show cause notice the assessee is a group company and a part of the SKF Group located at Sweden. The SKF Group has various branches located at abroad in places like China, Germany, etc. The assessee to provide necessary technical & project management support to its Ahmedabad unit had availed the services of retired as well as experienced engineers working with these Group companies. Some of the employees of the group entities are Mr. A.A. Chaubal, Mr. Curt Holymr, Mr. S.H. Oswal, Mr. Jean Pear, Ms. Erric Robba etc.

  These experienced engineers provided various consultancy services at the Ahmedabad Factory unit. These consultancy services were in respect of establishment of utility (such as power utility, air compressor utility from the inception to the end of the project), Plant & machinery and providing consultancy in respect of civil engineering work & consultancy for various other project managerial service (PMS).

Further it is submitted that there are certain entries pertaining to import of services in the said Annexure L. These entries pertain to the services availed from the retired as well as employees working with SKF Group companies such as M/s SKF AB (located at Sweden), M/s SKF China & M/s RKS (located at Germany). Some of them are Mr. Jean Pear (retired),

Ms. Erric Robba (employee at M/s RKS), Mr. Curt Holymr (retired), etc. These engineers were appointed as consultant at Ahmedabad factory by the assessee to provide technical support during the start-up phase of the Ahmedabad factory & share their experience among the employees of the assessee. The sample copy of the invoices raised by these service providers in case of retired employee & group company in case of Engineer still working with the group company is attached as Annexure 18. The assessee has paid service tax on all these import of services under reverse charge mechanism.

The Commissioner in the OIO in para 34 has observed that the assessee has not provided any evidence in respect of their contention that the services availed from these engineers are in nexus with the manufacturing process at the factory.

It is submitted that as already explained above the services of these engineers are in relation to the consultancy towards technical & managerial aspect of the manufacturing activity of the factory.

For instance, let us consider the entry at Sr. No. 37 of Annexure L to SCN pertaining to invoice no. 2011/001 raised by Mr. S.H. Oswal for services provided in January 2011. From the said invoice, it is evident that the service pertains to consultancy. Further from the 'statement for January 2011' enclosed along with the invoice, it is evident that the key activities performed by the party are *'Hard drilling info. Sharing to all', 'control plan for drilling & tapping for Enercon rings', 'Format for localization of project', 'Trial at PMT for 3 days', 'Format for raw material cost calculation for Enrecon ring', ... etc* (Copy of the said invoice bearing no. 2011/001 is attached as Annexure 19)

Let us consider one more example from the said Annexure L. Entry at sr. no. 63 pertains to the invoice raised by M/s Customized Energy Solutions India Pvt. Ltd. It can be seen from the description of service in the said invoice that the charges are towards - *'professional fees for preparatory task services for power trading at SKF Technologies India Pvt. Ltd. - Ahmedabad unit' & 'Reimbursement for NOC charges for Oct, 2012'.*

The definition of input service means any service used in or in relation to manufacture of final product whether directly or indirectly & also specifically includes services used in relation to setting-up of factory & accounting, auditing, quality control etc. Hence, it is submitted that the services under the management consultancy category are used directly & indirectly for the purpose of carrying on the manufacturing activity at the factory, therefore the credit of Rs. 93,24,634 pertaining to such services shall be allowed to the assessee.

In the case of M/s Cabot Sanmar Ltd. 2010 (19) STR 681, credit of consultancy service used even for environmental evaluation including onsite evaluation has been allowed.

We also rely on the following judgments wherein credit of consultancy service has been allowed -

- Castrol India Ltd. 2013 (30) STR 214 (Tri-Ahm)
- Rotork Control (India) Pvt. Ltd. 2010 (20) STR 684

(vi) **Business Support Service**

The assessee & M/s SKF India are both subsidiaries of AB SKF Sweden. The assessee & SKF India decided to pool & combine their respective manpower & other resources for the purpose of achieving maximum synergetic benefits. Some of the services which were decided to be shared include corporate marketing, business development, taxation etc. The assessee has entered into an agreement with M/s SKF India in this regard. Copy of such agreement is attached as Annexure 21. M/s SKF India raises an invoice on the assessee towards such sharing of cost along with service tax. Sample copy of invoices raised by M/s SKF India is attached as Annexure 22. As these services are used in manufacturing activity, credit of the same must be allowed.

For example, corporate marketing & business development expense are used for promotion services which are specifically mentioned in the definition of 'input service'.

Similarly, recruitment activity & HR services are also specifically mentioned in the definition of 'input service'.

The commissioner in para 35 of the OIO has observed as follows:

35. The assessee submitted that the assessee and M/s. SKF India were subsidiaries of AB SKF Sweden. Tire assessee submitted that that they had entered into an agreement with M/s. SKF India to pool & combine their respective manpower & other resources for achieving maximum synergetic benefits. From the perusal of the agreement submitted by the assessee, I find that there is nothing to suggest availment of any service by the assessee from SKF India. TI\e agreement, it appears to me, that is to share some common expenditures in between both the parties. Mere fact that service tax has been paid on the amount transferred from one unit to another does not make any transaction an input service. As discussed in foregoing paragraph, to qualify as an input service, the activity must have nexus with the business of the assessee. The assessee has not adduced any evidence to prove that they had availed particular service in relation to their manufacturing activity. Therefore the cenvat credit ofRs. 55,40,420 cannot be allowed.

It is submitted that the observation of the commissioner that the agreement is only of cost sharing and there is no provision of service is totally erroneous. It is submitted that the assessee has entered into an agreement with M/s SKF India for pooling their respective manpower for common use. Accordingly, the company supplying the manpower would raise an invoice on the other company and service tax is also recovered on the same, since it is an activity of supply of manpower in the nature of Business support service.

For example, Mr. A is an employee of M/s SKF India (HR team) and is on its pay roll. As per the agreement between M/s SKF India and M/s SKF technologies (i.e. assessee), central HR team looks after all HR related activities of both the companies. Now though the employee & the department is working for M/s SKF Tech for only part period, he is being paid by M/s SKF India and therefore M/s SKF India in turn recovers the cost and charges incurred in respect of such department from SKF Tech

(as per agreed terms). As the manpower is supplied by SKF India to the assessee, they have recovered charges along with service tax.

This is evident from the agreement between the assessee and M/s SKF India. For the purpose of easy reference, the relevant paras of the said agreement is reproduced below:

d) The Parties are desirous of pooling and combining their respective manpower and other recourses for the purpose and with an objection to achieve maximum synergistic benefits, cost saving so as to avoid duplication of cost which will in turn assist the Parties in sharing and allocation of cost in equal proportion for costs incurred towards inter alia manpower, managerial resources and all other resources of the parties which are otherwise being incurred independently:

e) SKF Tech has approached SKF India to avail various types of services from SKF India through its resource as described in annexure in order to reduce cost and achieve maximum synergic benefit.

2.3 The common personnel shall at all times remain the employees of the respective parties. The Party employing the manpower and /or the managerial personnel, shall have the sole liability, statutory or otherwise towards such personnel for the purpose including but not limited to payments of salary, perquisites, benefits, amenities or other compensation or otherwise and the other Party shall not be liable in any manner whatsoever.

3.1 The fee payable by each party for services received shall be the as follows:

a) Each party will bear the expenses, charges and all other related cost incurred by other party against the service received which shall be determined in accordance with generally accepted accounting principles. These charges shall also include cost of resources, salary costs and travel expenses of the personnel engaged in the performance of the work described in the Agreement.

b) The fees payable by each party will be determined on pro rata basis according to allocation key as a portion of the total actual service costs incurred by respective parties. The allocation Key will be based on a weight average method using combination of parameter for each different type of service rendered.

As stated earlier, the commissioner has observed that the agreement between the assessee and SKF India are cost sharing and is not liable for service tax & mere fact that the service tax has been paid on the amount transferred from one unit to another does not make any transaction as eligible for input service. It is submitted that the observation of the commissioner is erroneous. The transaction between the assessee and SKF India is in nature of business support service, whereby both the companies have pooled their manpower for common use and support their various business activities & they have rightfully paid the service tax on the same.

Without prejudice to anything mentioned above, it is submitted that even if the observation made by the Commissioner that no tax was payable by SKF India on cost recovered by them from assessee is accepted, credit must be allowed to the assessee. It has been consistently held by various courts that even if tax/duty was not payable (which has been paid) by the service provider/ manufacturer, the credit of such tax/ duty must be allowed at the receiver's end. We rely on the following judgments for the same:

M/s Spentex Industries Ltd 2012-TIOL-1756-CESTAT-MUM

M/s Nahar Granities Ltd 2014-TIOL-582-ITC-AHM-CX

M/s Colour Roof (India) Ltd 2014-TIOL-628-CESTAT-MUM

M/s Hino Motors Sales India Pvt Ltd 2013-TIOL-1232-CESTAT-MUM

Therefore, it is submitted that applying the ratio of the above mentioned judgments the credit shall not be denied to the assessee since the service tax has been paid by the assessee and further as already explained above the services are also covered under the definition of input service.

(vii) **Real Estate Agent service**

The assessee during the period April 2009, when the factory was being set-up has availed the services of real estate agent to arrange for accommodation facilities like guest house for the employee in Ahmedabad. Invoice raised by the service provider is attached as Annexure 23. It must be noted that during these period the definition of input service in its inclusive clause specifically included the phrase 'services in relation to business activity'. As the services utilised were for the purpose of employee accommodation during the set-up of the factory premises, the activity is well covered into the scope of the said phrase. Therefore, it is submitted that the credit of Rs. 2,673 shall be allowed to the assessee. The assessee relies on the following judgements wherein such credit has been allowed:

- M/s Supreme Industries Ltd. 2010-TIOL-485
- M/s Bharat Fritz Werner Ltd. 2011- TIOL -1065

B. **Submission for Cenvat credit of Rs.54,27,938/- denied owing to procedural lapses**

It can be seen from the above Table-II that the total credit of Rs.54,27,938/- has been denied on the following grounds:

- Photocopy of Invoices.
- Invoices pertaining to Pune/ Bangalore units and not Bavla (Ahmedabad) unit.
- Invoices not submitted.

It is submitted that the details of these invoices is clearly specified in the Annexures - D, E, F respectively. Further, it is submitted that the only allegation for denial of the above stated credit relates to procedural lapses. There is no dispute regarding the eligibility of the credit for these services, both in the show cause notice & order in original. Hence, it is submitted that the only allegation in the show cause notice pertains to procedural lapses.

1) Credit availed on the basis of photocopy of invoices (import of service) (Rs. 47,85,079/-

It is submitted that the credit of Rs.47,85,079/- denied pertains to Business Support Services & Information Technology services provided by M/s Akteibolaget SKF (hereinafter referred to as 'SKF AB') & M/s Mphasis Ltd.

The party-wise bifurcation of Rs.47,85,079/- is as follows:

Sr	Party Name	Amount of Credit	Remarks
1	M/s SKF AB	47,21,735/-	Paid under reverse charge & credit availed on the basis of challan.
2	M/s Mphasis Ltd.	63,344/-	Credit availed on the basis of invoice.

The above amounts can also be verified from Annexure D to the show cause notice. Hence, majority of the credit is taken on the basis of challans & not on the basis of invoice raised by the service provider.

The challan-wise break-up of the above amount is as follows:

Sr. No.	Challan No.	Challan date	Service Tax (in Rs.)
1	69103331407201010014	14.07.2010	19,53,212
2	69103331407201010014	14.07.2010	83,806
3	69103331407201010014	14.07.2010	87,813
4	69103331407201010014	14.07.2010	84,143
5	69103331407201010014	14.07.2010	3,79,103
6	69103330610201013216	06.10.2010	4,31,798
7	69103330610201013216	06.10.2010	99,051
8	69103330601201110308	06.01.2011	96,277
9	69103330601201110308	06.01.2011	1,05,114
10	69103330601201110308	06.01.2011	1,17,559
11	69103330601201110349	06.01.2011	4,81,360
12	69103331211201110017	12.11.2011	1,80,377

13	69103330712201110050	07.12.2011	2,34,079
14	69103330601201210148	06.01.2012	1,92,905
15	69103330602201210389	06.02.2012	94,201
16	69103330603201210096	06.03.2012	1,00,935
			47,21,735

The payment for such service has been made along with service tax hereon.

The Bangalore office of the assessee is the head office from where the agreements are entered into in respect of services common for all the unit of the assessee. The Bangalore unit had entered into a common agreement on behalf of all its unit with M/s SKF AB & M/s Mphasis Ltd. for receiving their services at all the units. Copy of agreement is attached as Annexure 24.

Since the agreement had been entered into with Bangalore office, the vendors raise a common invoice for the services provided by them and the invoice is addressed to the Bangalore unit only. However, the vendor provides the working statement along with the invoice bifurcating the invoice amount into unit-wise service consumption. The Bangalore office of the assessee is also the centralised finance for all the units of the assessee i.e. payments of all the common services are made from the Bangalore office only and after the payment the proportionate credit is taken by the respective units of the assessee. No credit of one unit is availed at another unit.

The above mentioned procedure of payment under reverse charge mechanism & availment of credit can be understood with the help of following example:

Sr. No. 21 of Annexure D pertains to the invoice no. KUIN22349 dated 28.12.2011 for SEK 3,83,336 raised by SKF AB in respect of the total services provided by them. Copy of the invoice is attached as Annexure 25. As mentioned earlier the vendor also provides working for bifurcation of total invoice value on the basis of unit-wise service consumption. The copy of such working is attached along with the invoice copy as Annexure 26. It can be seen from this working that the amount has been allocated into two units:

Unit Code	Unit Name	Amount in SEK
3SI - M722	Bangalore unit (now Mysore unit)	1,30,246.96
LSB - 722L	Ahmedabad Factory unit	2,53,089.03
	TOTAL	3,83,335.99

Thus the value of services provided to Ahmedabad Unit is SEK 2,53,089.03. The said value in INR was Rs. 18,72,858.82

Service tax @ 10.3% on Rs.18,72,858.82 = Rs. 1,92,904.46

The assessee had paid the above derived service tax amount under reverse charge mechanism vide challan no. 6910333-06012012-10148 dated 06.01.2012. Copy of the challan is attached along with invoice as Annexure 27.

Let us consider one more example:

Sr. No. 23 of Annexure D pertains to the invoice no. KUIN21979 dated 28.11.2011 for SEK 4,19,756 raised by SKF AB in respect of the total services provided by them. Copy of the invoice is attached as Annexure 28. Copy of the working bifurcating the total invoice value on the basis of unit-wise service consumption is attached along with the invoice as Annexure 29. It can be seen from the working that the amount has been allocated into two units:

Unit Code	Unit Name	Amount in SEK
3SI - M722	Bangalore unit (now Mysore unit)	1,14,707.21
LSB - 722L	Ahmedabad Factory unit	3,05,048.79
	TOTAL	4,19,756.00

Thus, the value of services provided to Ahmedabad Unit is SEK 3,05,048.79. The said value in INR was Rs. 22,72,613.49.

Service tax @ 10.3% on Rs. 22,72,613.49 = Rs. 2,34,079.19

The assessee had paid the above derived service tax amount under reverse charge mechanism vide challan no. 6910333-07122011-10050 dated 07.12.2011. Copy of the challan is attached along with invoice as Annexure 30.

Copy of balance challans as per above given table is attached as Annexure 30-A.

Therefore, it is submitted that the assessee had not availed the credit on the basis of photocopy of invoice but on the basis of the challan vide which the service tax has been paid under reverse charge. Hence, the credit shall not be denied to the assessee.

As per rule 9(I)(e) of CENVAT Credit Rules 2004, CENVAT credit can be taken on the basis of challan evidencing payment of service tax.

It is further submitted that in order to avail the CENVAT credit of service tax paid on input service, the following basic condition are required to be fulfilled;

(i) The services on which CENVAT credit has been availed are eligible as an input service;

(ii) The service should have been received by the person availing the CENVAT credit;

The assessee rely on DBS CHOLAMANDALAM SECURITIES LTD. 2012 (286) E.L.T. 475 (Commr. Appl.), wherein it was held as under:

5.5 It is seen that there is no dispute about the eligibility of input service and also the remittance of Service tax by the service provider. It is also not in dispute that the relevant input service has been utilized by the assessee in or in relation to manufacture of final products. It is not the case of the Department that the relevant debit notes does not contain name and address of service receiver, description of service provided and quantum of Service tax. The assessee submitted that the relevant debit note is a valid document. This implies that all the relevant details required as are available in any invoice are available in these debit notes. Hence, the details available in the debit notes and also the genuineness of payment o f Service tax by the service provider satisfy the conditions laid down in Rule 9(2) of CCR, 2004 for permitting Cenvat credit. Such being the case, there should not be any ground for the LAA to deny this credit. Also, I find that in the case o f Phannalab Process - 2009 (16)

S.T.R. 94 (T-Ahd.) = 2009 (242) E.L.T. 467 (Tribunal), it has been held that if details required under Rule 9(2) of CCR 2004 is satisfied, then the assessee is entitled for credit based on debit notes.

It is submitted that since there is no dispute regarding the payment of service tax and the service is in the nature of input service, the credit shall not be denied to the assessee. Further, the assessee in the present case has availed the credit on the basis of GAR-7 challan which is a valid document u/r 9(1) of Cenvat Credit Rules, 2004. Further, it is also submitted that as per rule 9(2) of the Cenvat Credit Rules, 2004, all the required details such as name of the service receiver, service tax & Cess amount, ST registration no., etc are mentioned on the challan. Therefore, it is submitted that there is no reason for denying the Cenvat credit to the assessee & hence, the credit shall not be denied to the assessee.

The commissioner in para 38 of the OIO has also observed that the in respect of common credit for services received at other location of assessee, CENVAT credit can be taken only on the basis of invoice issued by an Input Service Distributor (ISD) u/r 4A of Service Tax Rules, 1994.

It is submitted that in the case of Valeo Industries Ltd. 2012 (286) E.L.T. 54 (Tri. - Del.), the Hon. Delhi Tribunal has observed as follows:

10. I have considered arguments on both sides. One main objection of Revenue is that the impugned services had no nexus with process of manufacture. But from the definition of input services at Rule 2(1) of Cenvat Credit Rules, it is very clear that the level of nexus required in the case of input services is lower than that for inputs. Input services taken for furthering business prospects also is covered though such services may not be have direct nexus with manufacturing process. One of the main objections raised by Revenue is that the assessee did not follow the procedure of getting registered as 'input

service distributor'. In the instant case bills received at Headquarters were transferred to one factory. There was no distribution as such. Since there have been decisions of the Tribunal that there is no serious irregularity in taking credit in one factory based on duty paying documents addressed to the main office of the company there is no sufficient reason to deny credit when proviso to Rule 9(2) of Cenvat Credit Rules also is taken into account. The only issue is that they did not comply with provisions of Rule 6 of Cenvat Credit Rules, since one of those factories was in the exempted area. This issue can be taken care of.

Applying the ratio of the above judgment in the present case, it is submitted that the credit shall not be denied to the assessee in absence of ISD registration obtained by Bangalore unit.

Without prejudice to anything mentioned above, the original copy of invoices is now available with the assessee at their factory premises. The original copy of the invoice was not available at the time of audit as they were lying at our Bangalore factory. **The copy of all these invoices was attached along with additional submissions dated 14.03.14 & it was requested that any central excise officer may be deputed to verify these original invoices.** However, as these submissions were received by the Commissioner after the order was passed, it was not taken into account.

2) Credit of invoices pertaining to Bangalore/Pune address - Rs. 1,01,671

The credit of Rs. 1,01,671/- pertains to Ahmedabad unit itself. It is submitted that the services are used in Ahmedabad only, however the invoices are raised at other units of the assessee. At the time of set-up of factory, the finance department of the Ahmedabad unit was not functional locally & was being managed from Pune. Hence, some of the vendors had raised the invoice for their services to the Central finance department at Pune.

As stated earlier, in order to avail the cenvat credit of service tax paid on input service, the following basic condition are required to be fulfilled;

(i) The services on which cenvat credit has been availed are eligible as an input service;

(ii) The service should have been received by the person availing the cenvat credit;

(iii) The payment for such service has been made along with service tax thereon.

Sample copy of some of the invoices on which such credit has been availed is attached as Annexure 31. These invoices are towards services used by the assessee at Ahmedabad unit.

For example, invoice no. 4418 dated 20-01-2008 has been raised by M/s Shree Kshetrapaleshwar Tourist towards rent-a-cab service. This invoice has been raised at Pune address. It can be seen from the invoice that the user of service is Mr. Hemant Jog. He is employed at Ahmedabad factory as a Factory Manager. On the face of the invoice, it has been written "Visit to M/s Gherzi Estern Co. along with Mr. Puran Lala". M/s Gherzi Estern Co. is Project Management Consultants. They have used such rent-a-cab service for official work of Ahmedabad factory. (Copy of the invoice dated 20-01-2008 is attached as Annexure 32)

Let us take another example, invoice no. Bn.3244 dated 11-06-2008 has been raised by M/s Niranjana Travels towards rent-a-cab service. This invoice has been raised at Pune address. It can be seen from the invoice that the user of the service is Mr. Narendra Bhagwanani. He is an employee (Manager-Manufacturing Engineering) of the assessee. It can be further seen from the invoice that the service was airport pick-up & local travelling of Mr. Narendra Bhagwanani in the city. This local travelling was nothing but the visit to the factory of the assessee. As mentioned earlier the factory is located 35 kms away from the city, thus the service of rent-a-cab has been availed by the assessee

for its employee to travel to the factory comfortably. (Copy of the invoice dated 11.06.2008 is attached as Annexure 33)

Thus, it can be seen that the services has been utilised in relation to the work of Ahmedabad factory and thus the credit of the same is allowed to the assessee.

The assessee relies on the judgment laid down in the case of Sambhaji vs Gangabai 2009 (240) E.L.T. 161 (Supreme Court) wherein it has been held that the rules of procedure are handmaids of the justice & absence of the compliance with the same shall not be the ground for denial of the substantial benefit. The relevant extract of the judgment is as follows:

> 9. All the rules of procedure are the handmaids of justice. The language employed by the draftsman of processual (sic) law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process o f justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to he construed in a manner which would leave the court helpless to meet extraordinary situations in the ends o f justice.
>
> 10. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.
>
> 11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex dehito justitiae where the tragic sequel otherwise would he wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right o f prosecution or defence in the manner for the time being hy or for the court in which the case is pending, and if, by an Act o f Parliament the mode o f procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient o f justice is not to he followed.
>
> 12. Processual law is not to he a tyrant but a servant, not an obstruction hut an aid to justice. A procedural prescription is the handmaid and not the mistress, a lubricant, not a resistant in the administration o f justice.

In view of the above, it is submitted that, it would be travesty of justice if the assessee is denied benefit, to which it is otherwise entitled to, for no fault of the assessee. Thus, it is submitted that the procedural rules are just aid to justice. Also in the present case the assessee has paid the service tax on the input services availed by them in relation to their business activity viz. manufacturing of rollers & bearing.

Hence, it is submitted that the credit of the same shall not be denied to the assessee only on the ground that the assessee has not complied with the procedural rules.

The assessee relies on the following judgments wherein it has been specifically held by the Hon'ble Tribunal that credit cannot be denied where there is no dispute regarding the duty paid nature and receipt of inputs. The assessee relies upon the following judgments:

- GREEVA 2008 (232) E.L.T. 736 (Tri. - Ahmd.).
- RAMPAL CEMENT LTD. 2006 (205) E.L.T. 405 (Tri. - Kolkata)
- SUKAM GRAVURES LTD. 2008 (225) E.L.T. 66 (Tri. - Del.)
- Bajaj Auto Ltd. 1999 (113) ELT 0954 (T)
- Shri Ram Refrigeration 1999 (112) ELT 0511 (T)

In para 39 of the OIO it has been observed by the Commissioner that the assessee has not produced any evidence to prove that no credit has been taken of these invoices at the other units.

A copy of undertaking stating that credit of such invoices has not been availed at their other unit will be submitted shortly.

3) **Credit of invoices not submitted to the audit party (Rs. 5,41,188)**

The copies of invoices along with list of all the invoices with respect to credit of Rs.4,45,439 is given in sheet attached as Annexure 34. We are in the process of sourcing invoices for the balance credit of 95,749/- (Rs.5,41,188 - Rs.4,45,439).

The assessee had submitted all these invoices along with their additional submissions letter dated 14.03.2014 submitted on 18.03.2014. However, since the order was passed by that time, the same has not been taken into consideration by the Commissioner.

C. **Common Submissions**

1. Interest

Without prejudice to anything mentioned above, it is submitted that even if the demand is upheld, interest must not be demanded as the credit has only been availed & not utilized. The monthly cenvat credit balance at Ahmedabad factory during the period in dispute is attached as Annexure 35.

It is submitted that the said credit was only availed & was not at all utilized for payment of excise duty on their final product & hence there is no liability to pay any interest.

The assessee relies on the judgment of Karnataka High Court in the case of M/s Bill Forge Pvt. Ltd. 2012 (26) STR 204 (Kar-HC). In the said case, the Karnataka High Court had observed on an identical issue that no interest is payable on reversal of cenvat credit not utilized by the company. The relevant extract of the said case is reproduced below: -

> "22. In the instant case the facts are not in dispute. The assessee had availed wrongly the Cenvat credit on capital goods. Before the credit was taken or utilized, the mistake was brought to its notice. Tlie assessee accepted the mistake and immediately reversed the entry. Thus, the assessee did not take any benefit of the wrong entry in the account books. As he had taken credit in a sum of Rs.11,691/- a sum of Rs.154/- was the interest payable from the date the duty was payable which they promptly paid. The claim of the Revenue was though the assessee has not taken or utilized this Cenvat credit, because they admitted the mistake, the assessee is liable to pay interest from the date the entry was made in the register showing the availment of credit. According to the Revenue, once tax is paid on input or input service or service rendered and a corresponding entry is made in the account books of the assessee, it amounts to taking the benefit of Cenvat credit. Therefore, interest is payable from the date, though, in fact by such entry the Revenue is not put to any loss at all. When once the wrong entry was pointed out, being convinced, the assessee has promptly reversed the entry. In other words, he did not take the advantage of wrong entry. He did not take the Cenvat credit or utilized the Cenvat credit. It is in those circumstances the Tribunal was justified in holding that when the assessee has not taken the benefit of the Cenvat credit, there is no liability to any interest. Before it can be taken, it had been reversed. In other words, once the entry was reversed, it is as if that the Cenvat credit was not available. Therefore, the said judgement of the Apex Court has no application to the facts of this case. It is only when the assessee had taken the credit, in other words by taking such credit, if he had not paid the duty which is legally due to the Government; the Government would have sustained loss to that extent. Then the liability to pay interest from the date the amount became due arises under Section 11AB in order to compensate the Government which was deprived of the duty on the date if became due. Without the liability to

pay duty the liability to pay interest would not arise. The liability to pay interest would arise only when the duty is not paid on the due date. If duty is not payable, the liability to pay interest would not arise."

We also rely on the following judgments wherein similar observations are made.

- M/s M.J. Pharmaceutical Indus. Ltd. 2010 (258) ELT 38 (Guj.)
- Rana Sugar Ltd. 2010 (253) ELT 366 (All.)

2. Time-Bar

Without prejudice to anything mentioned above, it is submitted that even if the demand is upheld on merits, the same is hit by limitation. The demand pertains to the period April 2008 to September 2013. The show cause notice has been issued on 18.12.2013. Hence, the major portion of demand is hit by limitation. The show cause notice proposes to invoke extended period of limitation on the ground that the assessee had suppressed the facts & wilfully evaded the payment of service tax. It is submitted that the extended period of limitation must not be invoked in the present case, due to the following reasons:

a) Bonafide Belief:

It is submitted that the assessee were under a bonafide belief that the credit of the input services is admissible to the assessee. There was no malafide intention on the part of the assessee in not paying the service tax on the said activity. The assessee relies on the following judgments in support of their contention that extended period must not apply in the present case:

Cosmic Dye Chemical *Vs.* Collector of Central Excise, Bombay 1995 (75) ELT 721 (SC).

The court held that 'intent to evade duty must be proved for invoking proviso to section 11A(1) of the Central Excise Act, 1944' which deals with the provisions for extended period of limitation. In this case, it was held that mis-statement or suppression of fact in the SSI declaration cannot be called wilful, unless it is proved that it was done willfully with an intent to evade duty, for the purpose of invoking the extended period of limitation.

The Supreme Court has observed in the above case that -

-intent to evade duty is built in to the expressions 'fraud' and 'collusion'

-'mis-statement' and 'suppression' have been qualified by immediately preceding words 'wilful'

-'contravention of any of the provisions of this Act or rules' has been qualified by the immediately following words 'with intent to evade payment of duty'.

Thus to invoke the proviso to the section and the extended period of limitation it should be proved that the assessee made a misstatement or suppression which is 'wilful' or has acted with 'intent to evade payment of duty'

In CCE Vs. Chemphar Drug and Liniments 1989(40) ELT 276 (SC), the court held that something positive, rather than mere inaction or failure on the part of manufacturer, has to be proved before invoking the extended period of limitation as per proviso under section 11A(1). Also it has been held that where department has full knowledge about the facts and the manufacturer's action or inaction was based on the belief that they were required or not required to carry out such action or inaction, the extended period cannot be made applicable.

In Pushpam Pharmaceuticals company VS. CCE Bombay 1995 (78) ELT 401 (SC) is important in construing the meaning of the words 'suppression of facts' as used in the proviso to section 11A(1) of the Act. The gist of the judgment is as follows :

-the expression 'suppression of facts' has been used in the company of strong words such as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet in the surroundings in which it has been used, it has to be

construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning and that is 'that the correct information was not disclosed deliberately to escape from payment of duty'.

the assessee cannot be held guilty on the mere 'suppression of facts' when the law itself is not clear or there are conflicting judgments or when the position is not settled in law, unless it can be proved that the intention of the assessee was to evade payment of duty.

b) Interpretation of the statute:

The issue involved relates to interpretation of the statute. It is a matter of interpretation that whether the activity such as housekeeping service, event management service etc are covered under the definition of input service or not. In the case of M/s ITW India Ltd. 2009 (14) STR 826 & Shervani Indus. Syndicate 2009 (14) STR 486 it has been observed that when the issue relates to interpretation, extended period of limitation cannot be levied. Hence, the demand is hit by limitation.

3. Penalty

Without prejudice to anything mentioned above, it is submitted that even if the demand is upheld, there must be no levy of penalty due to the following:

a) Interpretation of statute:

As stated above, the issue involved in the instant case relates to interpretation of the definition of the input service given in the statute. The Hon. Tribunal has consistently held that the penalty should not be imposed where the question of interpretation of any statutory provision are involved. The assessee relies upon the following judgments for the above proposition.

- Uniflex Cables Ltd 2011 (271) ELT 161 (SC)
- Sonar Wires Pvt. Ltd. Vs. CCEx. 1996 (87) ELT 439 (T)
- Synthetics & Chemicals Ltd. 1997 (89) ELT 793 (T)
- Man Industries Corporation 1996 (88) ELT 178 (T)
- Sports & Leisure Apparel Ltd. CCE., Noida 2005 (180) ELT 429
- Aquamall Water Solutions Ltd. 2003 (153) ELT 428

b) Penalty under rule 15 read with section 11 AC

The order in original proposes to invoke penalty u/r 15 of Cenvat Credit Rules 2004 read with section 11 AC of Central Excise Act, 1944. It is submitted that penalty u/r 15(2) can be levied only when the demand arises on account of fraud, suppression etc. In the present case, as stated earlier, the assessee had no malafide intention & was under a bonafide belief that cenvat credit is eligible on the various input services utilised by the assessee in or in relation to manufacture of final product. Hence, no penalty must be levied.

• Without prejudice to above, penalty under rule 15(2) cannot be levied upto February 2010.

Penalty has been sought to be levied under rule 15(2) of Cenvat Credit Rules 2004. Upto February 2010, rule 15 read as follows:

(2) In a case, where the CENVAT credit in respect of input or capital goods has been taken or utilized wrongly on account of fraud, wilful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

It can be seen from the above that the above rule is applicable to credit of inputs or capital goods. The above rule is not applicable to credit on input services. Also, it is clear that the above issue relates to denial of credit on input services. Therefore, upto February 2010, no penalty can be levied under the above rule and therefore, the penalty upto such period is liable to be dropped.

We rely on the following judgments wherein it was held that upto February 2010 the rule 15(2) is not applicable in case penalty is in respect of "input service":

- Oil & Natural Gas Corporation Ltd. 2013 (31) S.T.R. 214 (Tri. - Mumbai)
- M/s Balrampur Chini Mills Ltd. 2012 (283) E.L.T. 96 (Tri. - Del.)
- M/s Davangere Sugar Company 2011-TIOL-1197-CESTAT-BANG
- M/s Schott Glass India Pvt. Ltd. 2013-TIOL-518-CESTAT-AHM

17. REPLIES IN RESPECT OF ALLTHE SHOW CAUSE NOTICES:

The assessee has filed reply to SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13 on 30.11.2017, consequent of denovo proceedings. They have reiterated the facts as mentioned in their reply dated 30.11.2017 in the replies to the subsequent Show Cause Notices.

18. PERSONAL HEARING:

A personal hearing, in consequence of denovo proceedings was granted to the assessee on 15.11.2019, which was attended by Shri Archit Agarwal, C.A. and Shri Durgesh Kathuria., represented . which was attended by the authorized representatives of the assessee. They reiterated the submission made in their replies to the show cause notice.

DISCUSSION AND FINDINGS:

19. I have gone through the records of the case and the submissions made by the assessee. The Show Cause Notice was issued by the Commissioner, Central Excise, Ahmedabad-II, for Rs. 2,42,52,403/- on 18.12.2013, covering the period from April 2008 to September 2013, for wrong availment of Cenvat Credit on ineligible Input Services; invalid invoices & ineligible Cenvat Credit in terms of per Rule 9 of the Cenvat Credit Rules, 2004.

20. It was alleged in the Show Cause Notice that:

1) Cenvat Credit was availed on ineligible input services like Guest House Service, CHA Service, Event Management Service, Outdoor Catering Service, Technical Inspection and Certification, Interior Decorator Services, Management, Maintenance and Repair Service, Commercial or Industrial Construction Service, Management Consultancy Service, Business Support Service, Cleaning Service and Real Estate Service.

2) The following are the different services which the notice proposes that they do not fall under the definition of input service.

Sr.No	Name of service	Amount of service tax
1	*2*	*3*
1	Services at Guest House	2,30,757
2	Customs House Agent service	2,45,014
3	Event Management Service	1,93,864
4	Outdoor Catering Service	58,278
5	Technical Inspection and Certification / Test, Inspection and certification	3,07,474
6	Interior Decorator Service	1,82,596
7	Maintenance or Repair Service	12,51,258
8	Commercial or Industrial Construction Service	3,73,006
9	Management Consultancy Service	93,24,634
10	Business Support Service	55,40,420
11	Cleaning Services	6,34,248
12	Real Estate service	2,673

3) Cenvat Credit wrongly availed on the basis of photo copy of invoices, which were not issued under Rule 4A of the Service Tax Rules, 1994.

4) Cenvat Credit wrongly taken for which assessee did not have valid documents in their name, in as much as the invoices were not in the name of the assessee, as per Rule 9 of the Cenvat Credit Rules, 2004.

5) Cenvat Credit was availed without any document, as the assessee could not **produce any documents/invoices on which the Cenvat Credit was availed.**

21. The above Show Cause Notice was adjudicated vide OIO No. AHM-EXCUS-002-COMMR-062-13-14, dated 11.03.2014, wherein the adjudicating authority has ordered as under:

1) Denied the credit of Rs.2,30,757/- on Guest House Service, relying on the judgment of Hon'ble High Courts of Mumbai and Gujarat, in the case of M/s. Manikgarh Cement and M/s. Gujarat Heavy Chemicals, respectively.

2) Denied Cenvat Credit of Rs. 2,45,014/- on CHA services for the period prior to 1.4.2008 on the ground that the service of 'Customs House Agent, availed beyond place of removal, does not fall under the definition of *'input service'* under rule 2(l) of CCR 2004 after 1.4.2008.

3) Allowed the Cenvat Credit of Rs.1,93,864/- on Event Management Services.

4) Disallowed Cenvat Credit of Rs. 58,278/- on Outdoor Catering Service.

5) Allowed the Credit of Rs.3,07,474/- on Technical Inspection and Certification services based on the decision of CESTAT in the case of *Cadila Healthcare Ltd- 2010 (17) STR.134 (Tri.-Ahmd),* which is upheld by Hon'ble Gujarat High Court in the case law reported at *2013 (30) S. T.R. 3 (Guj.);* and *Castrol India Ltd-2013 (291) ELT.469 (Tri.-Ahmd.).*

6) Allowed the Cenvat Credit of Rs. 1,82,596/- on Interior Decorator Services.

7) Allowed the Cenvat Credit of Rs.12,51,258/- on Maintenance or repair service.

8) Disallowed the credit of Rs.2,47,506/- out of Rs. 3,73,006/- on Commercial and Industrial Construction Service for the period after 1.4.2011.

9) Disallowed the Cenvat Credit of Rs. 93,24,634/- on Management Consultancy Services, since the nexus between the manufacturing activity and the services could not be established by the assessee.

10) Disallowed Cenvat Credit of Rs. 55,40,420/- on Business Support Services, since there was no nexus between the manufacturing activity and the services.

11) Allowed Cenvat Credit of Rs.6,34,248/- on cleaning services of factory premises.

12) Disallowed the Cenvat Credit of Rs.2673/- on Real Estate Agent Services.

13) Disallowed the Cenvat Credit amounting to Rs. 47,85,079/-, availed on the basis of photo copies of the invoices.

14) Disallowed the Cenvat Credit amounting to Rs. 1,01,671/-, availed without valid documents in their name.

15) Disallowed Cenvat Credit amounting to Rs. 5,41,188/-, availed without any document.

22. The assessee had appealed against the OIO No. AHM-EXCUS-002-COMMR-062-13-14, dated 11.3.2014, passed by the Commissioner, Central Excise, Ahmedabad-II. CESTAT, Ahmedabad, vide their order No. A/10197/2016, dated 10.03.2016, has remanded back the matter back to the Adjudicating Authority for deciding the issues afresh, taking into consideration the evidences on record and the evidences that would be produced by the **assessee. All the issues have been kept open by CESTAT.**

23. I hereby take up all the issues and the evidences brought forward by the assessee, subsequent to the CESTAT order.I also take up all the Show Cause Notices, as per Para 15

for adjudication.I hereby take up each issue separately and examine the same, vis-à-vis the definition of Input Services and the submissions made by the assessee.

DEFINITION OF INPUT SERVICE:

23.1 The definition of input services was amended with effect from 1/4/2011- In view of amended definition also the credit is eligible to the assessee:

The definition of input service with effect from 1/4/2011 is as follows:

"(l)"input service" means any service,-

(iii)used by a provider of taxable service for providing an output service; or

(iv) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching, and training, computer networking, credit rating, share registry, and security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes services, -

(D) *specified in sub-clause (p), (zn), (zzl), (zzm), (zzq), (zzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-*

(c) Construction of a building or a civil structure or a part thereof; or

(d) Laying of foundation or making of structure for support of capital goods, except for the provision of one or more of the specified services; or

(E) *specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or*

(F) *such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Construction, when such services are used primarily for personal use or consumption of any employees;"*

23.2 The definition was again amended w.e.f. I[st] July 2012. The amended definition is as follows:

(l) "input service" means any service, -

(i) used by a provider of output service for providing an output service; or

(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

but excludes, -

(D) service portion in the execution of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -

(c) construction or execution of works contract of a building or a civil structure or a part thereof; or

(d) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(E) services provided by way of renting of a motor vehicle, in so far as they relate to a motor vehicle which is not a capital goods; or

(BA) service of general insurance business, servicing, repair and maintenance, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -

(c) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(d) an insurance company in respect of a motor vehicle insured or reinsured by such person; or

(F) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee;

A. GUEST HOUSE SERVICE.

24. The demand was raised for vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs.2,30,757/-, availed on Guest House Service.

24.1. The submission of the assessee in respect of the above service is that, since the village Bavla, where the factory situated is 35 km away from the nearby city Ahmedabad, no proper accommodation was available.Hence the engineers, consultants & experts were provided accommodation at Ahmedabad by M/s Prefer Corporate Services Ltd, which also provided facility to warehouse materials used for production and plant & machinery. Thus it is evident that the Guest House service was provided by a third party and it was not their own guest house. In order to qualify a service as 'input service' first of all it has to be established that the service has nexus with manufacture. Otherwise it should have specifically included in the definition of 'input service'. In the present case the accommodation facility provided to the engineers etc., is only a welfare activity and has no nexus with the manufacture of goods. Neither, is it specifically included in the definition of 'input service'. I find that Hon'ble High Court of Mumbai, in the case of Manikgarh Cement-2010 (20) S.T.R. 456 (Born.), has observed that to qualify as "input service", the activity must have nexus with the business of the assessee. In the said case Hon'ble High Court has held as under:

8. In our opinion, establishing a residential colony for the employees and rendering taxable services in that residential colony may be a welfare activity undertaken while carrying on the. business and such an expenditure may be allowable under the Income Tax Act. However, to qualify as an input service, the activity must have nexus with the business of the assessee. The expression 'relating to business' in Rule 2(l) of CENVAT Credit Rules, 2004 refers to activities' which are integrally related to the business activity of the assessee and not welfare activities undertaken by the assessee.

24.2 Following the ratio of the above order Hon'ble High Court of Gujarat in the case of Gujarat Heavy Chemicals Ltd.- 2011(22)STR.610 (Guj) held that;

10. Definition of input service is expressed in the form of 'means' and 'includes'. 'Means' part of the definition contains, inter alia, service used by the manufacturer whether directly or, indirectly or in relation to the manufacture of final products and clearance of final produ;:R , from the place of removal. This definition, of course, is worded to include variety of services, used not only for, but in relation to manufacture of final products and also for clearance· of final products upto the place of removal. This Court in Tax Appeal No. 419 of 2010 and connected matters decided on 6th April 2011 held that the said definition is exhaustive in nature.

11. Despite such wide connotation of the term 'input service' as defined in Rule 2(1) of the Cenvat Rules, the question is whether the present case would be covered in the said definition. Facts are short and not in dispute. Respondent assessee, manufacturer of soda ash, has provided residential quarters for its workers. In such residential quarters, the assessee also provided security services. Can such security services be stated to be service used by the manufacturer directly or, indirectly in or· in relation to the manufacture of final product? Our answer has to be in the negative. We do not see any connection between the security service provided by the manufacturer in the residential quarters maintained for the workers as having any direct or indirect relation in the activity of manufacture of the final product. This is also the view of the Bombay High Court in the case of Manikgarh Cement (supra).

24.3 From the above decisions of Hon'ble High Courts of Mumbai as well as Gujarat, it is clear that the service provided for accommodation of the staff at Guest Houses has no nexus with the manufacture of goods and hence cannot be treated as 'input service'. The decisions of *Hindustan Zinc Ltd-2009 (16) STR.704 (Tri.-Ban), ITC Ltd-2023 (i32) STR.288 (AP)* and *L 'Oreal India Pvt. Ltd-2011 (22) STR.89(T),* relied upon by the assessee stand distinguished in view of the orders of High Courts discussed above. Therefore the demand of Rs.2,30,757/- in respect of services availed at Guest House is sustainable. I disallow the Cenvat Credit amounting to Rs.2,30,757/- , availed on Guest House Service.

B. EVENT MANAGEMENT SERVICE:

25. The Cenvat Credit amounting to Rs.2,52,528/-, availed on Event Management Service, has been proposed to be denied as under:

SCN NO. ⇨	V.84/15-63/OA/2012, Dtd. 18.12.13	V.84/15-106/OA/2014, Dtd. 21.10.2014	V.84/15-39/OA/2015, Dtd. 21.4.2015	TOTAL
Period of SCN ⇨	April 2008 to Sept 2013	Oct 2013 to March 2014	April 14 to Sept 14	
Event Management Service	197306	2837	52385	252528

25.1 Event Management Service was introduced as taxable service on 16.08.2002 vide **Notification No.8/2002-ST, dated 01.08.2002.**, wherein it was defined as any service provided in relation to planning, promotion, organizing or presentation of any arts, entertainment, business, sports, [marriage]* or any other event and includes any consultation provided in this regard.

25.2 For the period from April 2008 to September 2013, the adjudicating authority vide OIO dated 11.3.2014, had observed that it was used in setting up of the factory premises as the same was availed at the time of inauguration ceremony of their factory premises, and allowed the Cenvat Credit for the amount of Rs.1,97,306/-. However, I chose to differ from this view, on the grounds that just because a service was used for the inauguration of factory premises, it cannot be termed as an activity for setting up of the factory premises and therefore, the activity does not qualify as input service, as defined under Rule 2(l) of the Cenvat Credit Rules, 2004. I rely on the decision of CESTAT,Mumbai, in the case of M/s.Hindustan Zinc Ltd, reported in 2010(18)STR 33(T), wherein the Tribunal has held as under:

".....Service tax also a tax on value addition by rendering service, assessee to establish service rendered relating to business activity - No profile of event produced to substantiate that event organized for sale promotion/advertisement - Credit not eligible - Rule 2(l) of Cenvat Credit Rules, 2004. - *The contention of the learned advocate that any expenses incurred relating to business activity would be treated as input service cannot be accepted, unless it is established by evidence that the service was rendered for the purpose of business include advertisement or sales promotion as claimed by the assessee. [para 6]"*

25.3 In para 6 of the said CESTAT order, it is observed as under,

" It appears that in the present case, "Event Management Service" was provided for entertainment of employees for expansion of Chanderia Plant. The Commissioner (Appeals) has rightly observed that the assessees failed to produce any profile of the said event to substantiate that the event was organized in order to sales promotion/advertisement and upheld adjudication order."

25.4 In view of the above, I hold that the assessee is not eligible for availing the Cenvat Credit of Rs. 1,97,306/-.

25.5 For the period from Oct 2013 to March 2014, the assessee has contended that the assessee had organized an event with the suppliers to maximize the local purchase and to minimize the cost of material as well as indirect costs related to purchase. The event was arranged as "Supplier Meet Event" and the same was attended by the suppliers.

25.6 Further, for the period from April 14 to September 2014, the service provider of the assessee, M/s. Hexagon, provided them with concepts best fit for their clients' requirements, blending creativity with technology and strategizing a detailed plan for their clients; which include corporate events with interactive formats.

25.7 Thus the above services have been used in relation to planning, promotion, business, etc., and aptly falls within the purview of the definition of Input Service under Rule 2(l) of the Cenvat Credit Rules.

25.8 I also rely decision of CESTAT, WZU,Mumbai, in the case of M/s. Axis Bank Ltd., reported in 2017 (3) GSTL 427 (Tri. Mum.), wherein it has been held as under:

"Cenvat credit of Service Tax - Input service credit - Event management services - Services availed for organizing various events as part of business promotion activity - *HELD :* Professional event management personnel engaged paying Service Tax and billing assessee for the same - On perusal of invoices, events organized by assessee in order to attract more business from high network customers - Cenvat credit taken/availed not to be denied - Issue also settled in Oceans Connect India Pvt. Ltd. [2016 (46) S.T.R. 858 (Tribunal)] and John Deere India Pvt. Ltd. [2016 (41) S.T.R. 990 (Tribunal)] - Impugned order unsustainable and liable to be set aside - Impugned order set aside - Rule 2(l) of Cenvat Credit Rules, 2004. *[paras 4.2, 4.3]*

Assessee's appeal allowed/Department's appeal rejected"

25.9 I hereby also rely on the decision of CESTAT, Principal Bench, New Delhi, reported in 2011 (22) STR 508 (Tri. Del.), wherein it has been held as under:

Stay/Dispensation of pre-deposit - Cenvat credit of Service tax - Event Management Service availed in connection with sales promotion and linked with sales promotion activity - Prima facie services covered by definition of input service in Rule 2(l) of Cenvat Credit Rules, 2004 - Pre-deposit waived, recovery stayed - Section 35F of Central Excise Act, 1944. *[para 3.1]*

25.10 I also find that the case laws of Toyota Kirloskar Motor Pvt.Ltd-2011 (24) STR.645 (Kar), Heuback Colour Pvt. Ltd-2013 (32) STR.225 (Ti.-Ahmd), Castrol India Ltd-2013 (30) STR.214 (Tri.-Ahmd), Endurance Technologies Pvt. Ltd- 2013 (32) STR.95 (Tri.-Ahmd) relied upon by the assessee are relevant to the issue.

25.11 In view of the above, I allow the Cenvat Credit amounting to Rs. 2,837/- availed during the period from Oct 2013 to March 2014 and also allow the Cenvat Credit amounting to Rs. 52,385/- availed during the period from April 2014 to September 2014, availed on Event Management Services. I disallow the Cenvat Credit amounting to Rs.1,97,306/-., availed on these services for the period from April 2008 to September 2013.

C: OUTDOOR CATERING SERVICE:

26. The demand was raised for vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs. 58,278/-, availed on Outdoor Catering Service.

26.1 The submission of the assessee about the outdoor catering service is that as their factory is located 35 km away from the city, that there are no eating arrangements around factory area and hence they availed the service of outdoor catering to provide food to the employees. They were recovering Rs.200 per month per employee and they stated that they would shortly compute the amount of reversal to be made to that extent. They relied

upon the decision in the case of *Imagination Technologies India Pvt. Ltd-2011-TIOL-719 and Ultratech Cement (supra).* However I find that providing food to employees is only welfare activity and it has no nexus with manufacture and clearance of finished goods. Therefore the cenvat credit thereof cannot be allowed. In the case of *Ultratech Cement* relied upon by the assessee, Hon'ble High Court has upheld the availability of cenvat credit on catering service as it was mandatory under Factories Act to run canteen by a factory having more than 250 employees. In the present case the assessee has not adduced any evidence to prove that they were statutorily required to provide food to the employees. On the other hand, from the bill No.87 dated 07.01.2011 of Somnath Catering Services submitted by the assessee alongwith their reply, I find that the number of lunches served in the month of December 2010 was 2000. Considering a maximum of 25 working days in the month, the total number of employees to which the lunch served would be 80 (eighty) which is no where near the mandatory requirement of 250 numbers to maintain a canteen. Therefore I hold that there was no mandatory requirement on the part of assessee to provide food to its employees and therefore, the cenvat credit on the catering service cannot be allowed as 'input service' even prior to 1.4.2011. Since the said service is specifically excluded from the definition of 'input service' with effect from 1.4.2011, the question of allowing the cenvat credit on 'catering service' does not arise.

26.2 I rely on the decision of CESTAT, Mumbai, in the case of M/s. Empire Industries Ltd., reporte d in 2018 (15) G.S.T.L. 274 (Tri. - Mumbai), wherein it has been held as under:

Cenvat credit - Input service - Exclusions - Outdoor catering services primarily for personal use or consumption for any employee - Such services provided in assessee's factory exclusively meant for use by its employee covered under exclusion - That it is necessity under Factory Act, 1948 or shown as expenditure in books of account will not make it eligible - Assessee not eligible for credit of duty paid on such services - Rule 2(l) of Cenvat Credit Rules, 2004. *[2015 (39) S.T.R. 360 (Bom.) distinguished]. [para 4]*

26.3 In view of the above, I disallow cenvat credit of Rs. 58,278/- on Outdoor Catering service.

D: TECHNICAL INSPECTION AND CERTIFICATION SERVICE:

27. The demand was raised for vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs. 3,07,474/-, availed on Technical Inspection and Certification Service.

27.1 I concur with the view of my predecessor adjudicating authority on allowing the Cenvat Credit availed on Technical Inspection and Certification service. Regarding the service of 'Technical Inspection & Certification' availed, the assessee submitted that in order to ensure the bearings manufactured by them were as per specifications of buyers, they had to use the standing measurement tools. They had used the service to ensure proper calibration of these tools and hence these services were directly in relation to manufacture. I fully agree with the said argument as measurement tools are required to ensure the required specifications of their final products and hence the calibration thereof is directly related to the manufacture of final products.

27.2 I rely upon the decisions in the case of Cadila Healthcare Ltd- 2010 (17) STR.134 (Tri.-Ahmd), which is upheld by Hon'ble Gujarat High Court in the case law reported at 2013 (30) S. T.R. 3 (Guj.) and Castrol India Ltd-2013 (291) ELT.469 (Tri.-Ahmd) in this regard.

27.3 The Hon'ble High Court of Gujarat, in the judgment in the case of M/s. Cadila Healthcare Ltd, reported in 2013 (30) S.T.R. 3 (Guj.), has held as under:

Cenvat - Input service - Technical Inspection and Certification services - Availed in respect of instruments used for measuring (i) size : gauges and vernier calipers, (ii) weight : scales, (iii) temperature : temperature indicators, and (iv) humidity and temperature : thermo hygrometers -

HELD : All these instruments measure various factors with precision - By their very nature, they have to be of required standards, accurate and precise, and checked/calibrated from time to time, for which assessee requires services of technical inspection and certification - Also, since it was statutory requirement of Drugs and Cosmetics Act, 1940 and Drugs and Cosmetic Rules, 1945, it was necessary for assessee to avail such services - As these instruments/equipment were used in and in relation to manufacture of final products, their maintenance, checking and calibration, as necessary corollary, would be in relation to manufacture of final products - In that view, these were input service under Rule 2(l) of Cenvat Credit Rules, 2004 - It was more so as Technical Inspection and Certification services fall under Sections 65(105)(zzi), 65(108) and 65(109) of Finance Act, 1994, which was specified under Rule 6(5) ibid. [para 5.6(iv)]

Cenvat - Input service - (i) Repair/maintenance of copier machine, air-conditioner, water cooler, (ii) Management consultancy, (iii) Interior Decorator, (iv) Commercial or Industrial Construction services - Falling respectively under Sections 65(105)(zzg), 65(105)(r), 65(105)(q) and 65(105)(zzq) of Finance Act, 1994 - All of them specifically covered under Rule 6(5) of Cenvat Credit Rules, 2002 - HELD : These were input services eligible for Cenvat credit - Department's plea that these services were for repair of equipments which was not related to manufacture of final product and were covered neither in main clause of definition of input service nor related to activities specified in inclusive part of definition, rejected - Rule 2(l) of Cenvat Credit Rules, 2004. [para 5.5(vi)]

Cenvat - Input service - Interior decorator, Commercial and Industrial Construction services - These are covered in inclusive part of definition of 'input service' in relation to renovation or repairs of factory or office relating to it - Rule 2(l) of Cenvat Credit Rules, 2004 - Sections 65(59), 65(105)(9) and 65(105)(zzzzd) of Finance Act, 1994. [para 5.5(x)]

Cenvat - Input service - Repair and maintenance of copier machine, air-conditioner, water cooler, etc. - These equipment are necessary for factory buildings as well as for activities relating to business - In that view, they are eligible for Cenvat credit - Rule 2(l) of Cenvat Credit Rules, 2004. [para 5.5(xi)]

Cenvat - Input services - For understanding scope of definition in Rule 2(l) of Cenvat Credit Rules, 2004, Rule 6(5) ibid can be considered - Legislative intention of rule making authority has to be determined by reading the Rules as a whole - Rule 6(5) ibid indicates that rule making body intended that services mentioned therein to be input service - Otherwise, there was no necessity for specific stipulation about admissibility of credit for services specified therein - If services mentioned in Rule 6(5) ibid are not considered to be 'input services', it would not reconcile with Rule 2(l) ibid. [para 5.5(vii)(ix)]

Cenvat - Input service - Definition - Rule 2(l) of Cenvat Credit Rules, 2004 - In inclusive part, since "activities relating to business" is followed by "such as", the later expression has to be given some meaning - "Such as" indicates that what is mentioned thereafter are only illustrative and not exhaustive of activities relating to business included in definition of input service - In that view, such activities could also be other than those mentioned in the Rule 2(l) ibid - However, this does not mean that every activity related to business of assessee would fall within the inclusive part of definition - Activity related to business has to be analogous to activities mentioned after words "such as". [para 5.2(ix)]

27.4 Thus the Hon'ble High Court of Gujarat, has held that Technical testing and analysis services as well as technical inspection and certification services availed for testing of samples of medicines manufactured on trial basis prior to commencement of commercial production were eligible to input service credit.

27.5 In view of the above, I allow the Cenvat Credit amounting to Rs. 3,07,474/-, availed on Technical Inspection and Certification Service, during the period from April 2008 to Sept 2013.

E. INTERIOR DECORATOR SERVICE
&
F: MAINTENANCE AND REPAIR SERVICE.

28. The demand was raised vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13,

denying the Cenvat Credit amounting to Rs. 1,82,596/-, availed on Interior Decoration Service and Cenvat Credit of Rs. 12,51,258/- on Management or Repair Service.

28.1 The above two services, according to the assessee, were used to set up office in the factory premises and for plant maintenance. These services were specified under rule 6(5) of CCR 2004. Further,the Hon'ble High Court of Gujarat in the case of Cadila Healthcare Ltd *2013 (30)* STR.3 (Guj), as elaborated in the above para, had held that the fact that service were specified under Rule 6(5) of the Cenvat Credit Rules, meant that the same was covered under the definition of input service.

28.2 Para 5.5 (vi) of the judgment, reads as under:

(vi) Thus, sub-rule (5) of Rule 6 of the Rules specifically provides that credit shall be allowed in respect of the services mentioned therein unless such service is used in the manufacture of exempted goods. The present case undisputedly does not relate to the manufacture of exempted goods. Hence, what is required to be examined is as to whether the miscellaneous services availed by the assessee fall within the categories specified in sub-rule (5) of Rule 6 of the Rules. It may be pertinent to note that repair and maintenance services fall under sub-clause (zzg), Management Consultancy services are covered under sub-clause (r), services rendered by an Interior Decorator fall under sub-clause (q) and Commercial or Industrial Construction Services fall under sub-clause (zzq) of clause (105) of Section 65 of the Finance Act. Thus, all the above miscellaneous services availed by the assessee find a specific mention in sub-rule (5) of Rule 6 of the Rules in respect of which credit of the whole of service tax paid on taxable service is admissible.

28.3 Para 5.5 (x) of the judgment, reads as under:

Besides, the inclusive part of the definition of input service specifically includes services used in relation to renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, activities relating to business, such as accounting, computer networking etc. Thus, the services rendered by interior decorator, commercial and industrial construction services would squarely fall within the inclusive definition of input service. Such services would, therefore, fall within the ambit of input service as defined under Rule 2(l) of the Rules.

29. I find that credit on interior decorator services was availed during the period April 2009 to December 2010. During this period the service used for setting up of a factory or office was specifically included in the definition of 'input service'. Since this service was used for setting up of office, there is no logic in disallowing the cenvat credit on this service and accordingly I allow the same.

30. The modernization, repair or maintenance of factory is included in the definition of 'input service' after its amendment on 1.4.2011 also. Therefore, Cenvat credit availed on maintenance and repair of factory building or plant cannot be denied. Accordingly I drop the demand on both these services. I hereby allow the Cenvat Credit amounting to Rs. 1,82,596/-, availed on Interior Decoration Service and Cenvat Credit of Rs. 12,51,258/- on Management or Repair Service.

G: MANAGEMENT CONSULTANCY SERVICE:

31. Cenvat Credit amounting to Rs. 1,18,79,812/-, availed on Management Consultancy Services have been disallowed, under the following Show Cause Notices.

	SCN No/Date	Period of SCN	Management Consultancy Service
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013	9324634
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oc 2013 to March 2014	22514
3	V.89/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14	1385027

4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015	200704
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15	3560
6	III.DSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016	28373
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016	62653
8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017	222652
9	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	April 2017 to June 2017	629695
		TOTAL	11879812

31.1. Definition and scope of service:

"Taxable Service" means any service provided or to be provided to any person, by a management or business consultant in connection with the management of any organization or business in any manner;

[Section 65 (105) (r) of Finance Act, 1994 as amended]

31.2. "Management or business Consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management;

[Section 65(65) of Finance Act, 1994 as amended]

31.3. The assessee had submitted that technical services of experienced engineers were required to provide support to the new factory and paid service tax on the services under reverse charge mechanism. The assessee contended that M/s SKF AB (Sweden) had employed Mr. Jean Pear, Mr. Curt Holymr and Ms Erric Robba as engineers in their factory. These engineers had retired from M/s SKF AB and were appointed by assessee to provide technical support. The preceding adjudicating authority had held that it was not forthcoming as to what service was exactly availed by the assessee. In absence of the evidence to prove that the services were integrally connected with the manufacture and clearance of finished goods, the service cannot be treated as input service. In the present case, at that time of adjudication, the assessee had failed to prove that the services availed by them were in relation to the manufacture and clearance of goods. Further, this service has not been specifically included in the definition of 'input service' under rule 2(l) of CCR 2004. Therefore merely on the ground that they had paid service tax under reverse charge mechanism, one service does not become 'input service' but it has to fall within ambit of 'input service' as defined in the rules. The preceding adjudicating authority, in absence of any evidence to prove the nexus of such service with the manufacture and clearance of goods, disallowed Cenvat credit of Rs. 93,24,634/- .

31.4 After the matter was remanded back for denovo adjudication, the assessee has further filed their submissions on 30.11.2017 and 07.03.2018. They have also reiterated their case on this issue in their replies to the subsequent Show Cause Notices.

31.5 The assessee had contended that the factory unit at Ahmedabad had started its operation in 2009-10. During this period, there was need for the assessee to evaluate the feasibility for initializing various projects. Since the factory was newly set up, there was need for technical, managerial & quality assessment services. For this purpose, assessee had availed the services of various management consultants & experienced engineers. It can be seen from Annexure L to the show cause notice, that the assessee had availed the services from various

parties such as Mr. A.A. Chaubal, M/s Axis Risk Consulting Services, Mr. Curt Holymr, M/s Ernst & Young Pvt. Ltd., Mr. Rajendra J Rathod, M/s Customized Energy Solutions etc.

31.6 An overview of the activities covered under Management Consultancy Service is as under:

(i) *Considering the entry at Sr. No. 37 of Annexure L to SCN pertaining to invoice no. 2011/001 raised by Mr. S.H. Oswal for services provided in January 2011. Further from the 'statement for January 2011'* enclosed along with the invoice, it is evident that the key activities performed by the party *are* 'Hard drilling info. Sharing to all', 'control plan for drilling & tapping for Enercon rings', 'Format for localization of project', 'Trial at PMT for 3 days', 'Format for raw material cost calculation for Enrecon ring', ... etc. From the said invoice, it is evident that the service pertains to consultancy.

(ii) *The Entry at sr. no. 63 pertains to the invoice raised by M/s Customized Energy Solutions India Pvt. Ltd.* It can be seen from the description of service in the said invoice that the charges are towards - 'professional fees for preparatory task services for power trading at SKF Technologies India Pvt. Ltd. - Ahmedabad unit' & 'Reimbursement for NOC charges for Oct, 2012'. The factory required electricity for the purpose of manufacturing activity. M/s Customized Energy Solutions India Pvt. Ltd. provided the consultancy services & services in relation to obtaining the No-objection certificate (NOC) & other necessary approval with power trading with Indian Energy Exchange Ltd. (IEX), from where the assessee purchase the electricity at a cheaper rate for the factory usage.

(iii) During the inception of production at the factory the feasibility of the project was assessed by M/s Ernst & Young Pvt. Ltd.,

(iv) Internal control & management evaluation services for the purpose of management were provided by M/s Axis Risk Consultant,

(v) M/s Rational Management provided the plant installation services after the plants are bought into the factory premises,

(vi) Mr. Rajendra Rathod provided the services of obtaining factory license under the Factories Act, 1948,

(vi) Along with above services, for the technical support and other project management related services, the assessee has also availed the services of other experienced individual consultants. As already explained in the reply to show cause notice the assessee is a group company and a part of the SKF Group located at Sweden. The SKF Group has various branches located abroad in places like China, Germany, etc. The assessee to provide necessary technical & project management support to its Ahmedabad unit had availed the services of retired as well as experienced engineers working with these Group companies. Some of the employees of the group entities are Mr. A.A. Chaubal, Mr. Curt Holymr, Mr. S.H. Oswal, Mr. Jean Pear, Ms. Erric Robba etc.These experienced engineers provided various consultancy services at the Ahmedabad Factory unit. These consultancy services were in respect of establishment of utility (such as power utility, air compressor utility from the inception to the end of the project), Plant & machinery and providing consultancy in respect of civil engineering work & consultancy for various other project managerial service (PMS).

(viii) Ms. Erric Robba (employee at M/s RKS), Mr. Curt Holymr (retired), etc. These engineers were appointed as consultant at Ahmedabad factory by the assessee to provide technical support during the start-up phase of the Ahmedabad factory & share their experience among the employees of the assessee.

(ix) Considering the entry at Sr. No. 37 of Annexure L to SCN pertaining to invoice no. 2011/001 raised by Mr. S.H. Oswal for services provided in January 2011. From the said invoice, it is evident that the service pertains to consultancy. Further from the 'statement for January 2011' enclosed along with the invoice, it is evident that the key activities performed by the party are *'Hard drilling info. Sharing to all', 'control plan for drilling &*

tapping for Enercon rings', 'Format for localization of project', 'Trial at PMT for 3 days', 'Format for raw material cost calculation for Enrecon ring', ...

31.7 I have gone through the copies of the invoices and submissions made by the assessee on this issue of Management Consultancy Service.The definition of input service means any service used in or in relation to manufacture of final product whether directly or indirectly & also specifically includes services used in relation to setting-up of factory & accounting, auditing, quality control etc. I find that all the activities are aptly covered under Management Consultancy Service and the services were used directly & indirectly for the purpose of carrying on the manufacturing activity at the factory

31.8 I rely on the decision of CESTAT, Ahmedabad, in the case of M/s. Castrol India Ltd., reported at 2013 (30) S.T.R. 214 (Tri. - Ahmd.), has held that:

Cenvat credit of input services - Admissibility of credit of Service Tax paid on various services – *HELD:* Credit of Service Tax paid on Advertising Agency services, Business Auxiliary Services, Business Support Services, Management and Consultancy services, Online Information and Data Base Access service, Port service, Maintenance and Repair service, Consulting Engineer's service, Security Agency service and Storage and Warehousing service, admissible - Credit of Service Tax paid on Construction services in respect of office and factory, etc., admissible - Credit taken in respect of service availed for housing colony or received other than for the purpose of factory/office having been reversed, credit of the input services available to the assessee - Rule 3 of Cenvat Credit Rules, 2004. *[para 9]*

31.9 Para 9 of the above order held as under:

9. In the light of the decision of the Hon'ble High Court of Bombay in *Ultratech Cement Limited* and in the light of following decisions; *Metro Shoes Pvt. Limited* - 2008 (10) S.T.R. 382 (Tri.), *Cadila Healthcare Limited* v. *CCE* - 2010 (17) S.T.R. 134 (Tri.), *Semco Electrical Pvt. Limited.* v. *CCE* - 2010 (18) S.T.R. 177 (Tri.), *CCE* v. *Mundra Port & Special Economic Zone Limited* - 2011 (21) S.T.R. 361 (Guj.), *Ambalal Sarabhai* - TA No. 433 of 2010 (Guj. HC), *Rajratan Global Wires Limited.* v. *CCE* - 2011 (21) S.T.R. 383 (Tri.), *CCE, Guntur* v. *Hindustan Coca-cola Beverages Pvt. Limited* - 2010 (18) S.T.R. 500 (Tri.-Bang.), the credit of service tax paid on Advertising Agency Services, Business Auxiliary Services, Business Support Services (in the case of this assessee, it is Advertising Agency Service), Management and Consultancy Services, Online Information and data base Access Service, Port service, Maintenance and Repair Service, Consulting Engineer's service, Security Agency Service and Storage and Warehousing credit is admissible.

31.10 I rely on the judgment passed by the Hon'ble High Court of Gujarat, in the case of M/s. Cadila Healthcare Ltd, reported in 2013 (30) S.T.R. 3 (Guj.),, wherein, it has been held as under:

*Cenvat - Input service - (i) Repair/maintenance of copier machine, air-conditioner, water cooler, **(ii) Management consultancy,** (iii) Interior Decorator, (iv) Commercial or Industrial Construction services - Falling respectively under Sections 65(105)(zzg), 65(105)(r), 65(105)(q) and 65(105)(zzq) of Finance Act, 1994 - All of them specifically covered under Rule 6(5) of Cenvat Credit Rules, 2002 - HELD : These were input services eligible for Cenvat credit - Department's plea that these services were for repair of equipments which was not related to manufacture of final product and were covered neither in main clause of definition of input service nor related to activities specified in inclusive part of definition, rejected - Rule 2(l) of Cenvat Credit Rules, 2004. [para 5.5(vi)]*

Para 5.5 (vi) of the judgment, reads as under:

(vi) Thus, sub-rule (5) of Rule 6 of the Rules specifically provides that credit shall be allowed in respect of the services mentioned therein unless such service is used in the manufacture of exempted goods. The present case undisputedly does not relate to the manufacture of exempted goods. Hence, what is required to be examined is as to whether the miscellaneous services availed by the assessee fall within the categories specified in sub-rule (5) of Rule 6 of the Rules. It may be pertinent to note that repair and maintenance services fall under sub-clause (zzg), Management Consultancy services are covered under sub-clause (r), services rendered by an Interior Decorator fall under sub-clause (q) and Commercial or Industrial Construction Services fall under sub-clause (zzq) of clause (105) of Section 65 of the Finance Act. Thus, all the above miscellaneous services availed by the assessee find a specific mention in sub-rule (5) of Rule 6 of the Rules in respect of which credit of the whole of service tax paid on taxable service is admissible.

32. The definition of input service means any service used in or in relation to manufacture of final product whether directly or indirectly & also specifically includes services used in relation to setting-up of factory & accounting, auditing, quality control etc. Hence, it is submitted that the services under the Management Consultancy category are used directly & indirectly for the purpose of carrying on the manufacturing activity at the factory. I have gone through replies filed by the assessee and have also gone through all the supporting documents submitted by the assessee in this regard. In view of the above, I allow the credit amounting to **Rs. 28,16,652/-** for the period from April 2008 to June 2017.

33. Further I also find Cenvat Credit has also been availed on invoices pertaining to import of services, as detailed below. Service tax on all these import of services under reverse charge mechanism. These entries pertain to the services availed from the retired as well as employees working with SKF Group companies such as M/s SKF AB (located at Sweden), M/s SKF China & M/s RKS (located at Germany).

33.1 The assessee had availed the above Cenvat Credit on the basis of photo copies of invoices in the name of Bangalore office address and also on proportionate basis for the services provided by M/s. AKTEIBOLAGET SKF, situated abroad and M/s. Mphasis Ltd. The assessee is also having another manufacturing unit at Bangalore. Bangalore unit had not issued any invoices under Rule 4 A of the Service Tax Rules, 1994. Under Rule 9(1) of the Cenvat Credit Rules, 2004, certain documents are prescribed for availment of Cenvat Credit. Vide their letter dated 26.11.2019, the assessee has produced the copies of all the invoices pertaining to Import of services. On going through these invoices, the following observations have been made:

(i) The invoices have been issued by the Service provider in the name of the M/s. SKF, Bangalore unit,by their service providers located abroad.

(ii) Service Tax has been made under Reverse Charge Mechanism.

(iii) The service provider has provided a statement along with the Invoice, wherein, they have shown the bifurcation of the services rendered to Bangalore unit and Ahmedabad unit separately. Accordingly the Service Tax payable has also been proportionately distributed among Bangalore and Ahmedabad units.

(iv) The bifurcation of Service Tax tallies with the Service Tax Credit availed by Ahmedabad Unit.

(v) The assessee has claimed that the proportionate Cenvat Credit pertaining to Ahmedabad unit has been paid by Ahmedabad and they have produced the copies of Challans evidencing the payment of Service Tax.

(vi) From the challans, it is noticed that all the payment of Service Tax has been made by Bangalore unit, in the name of Service Tax Ahmedabad Commissionerate.

(vii) However, in respect of some Service Tax challans, in respect of Cenvat Credit availed in Ahmedabad, the payment of Service Tax has been done in the name of

Bangalore Commissionerate.

(viii) The Bangalore unit of the assessee was not registered under Input Service Distributor service at the relevant time and has not distributed the Cenvat Credit under Rule 4A of Service Tax Rules, 1994.

(ix) The copies of invoices issued by the Input Service Distributor are computer generated invoices, i.e they are mere print-outs of the invoices.

(x) Cenvat Credit has also been availed on the basis of Service Tax Challans. Further, challan is not a proper document to avail Cenvat Credit as prescribed under Rule 9(1) of the Cenvat Credit Rules.

(xi) The assessee has not produced any proof to prove that no service tax credit has been taken/availed at the Bangalore unit, as the payment has been done by their Head office in Bangalore, which also has a manufacturing unit. Therefore, the possibility of availing Cenvat Credit at both the units, cannot be ruled out.

33.2 Hence the assessee is not eligible for avail cenvat credit on the basis of invoices in the name of their Bangalore Unit, with regard to import of services.

33.3 From the perusal of the list of documents prescribed under Rule 9(1) of CCR 2004, for availing Cenvat Credit, it is evident that Cenvat Credit is eligible only on the basis of invoices of manufacturer, registered dealer or service provider or an input service distributor. In respect of common services received at other locations of assessee, cenvat credit can be taken only on the basis of invoice issued by an input service distributor under Rule 4A of Service Tax Rules, 1994. Bangalore Unit of the assessee has not issued any invoice under Rule 4A of Service Tax Rules, 1994 and hence the assessee is not eligible for avail cenvat credit on the basis of invoices in the name of their Bangalore Unit and availed on the basis of photo copies.

33.4 In view of the above, I find that the assessee has failed to follow the prescribed norms to avail Cenvat Credit as prescribed under Rule 9 and Rule 4 A of the Cenvat Credit Rules. I, thereby,disallow all the credit availed on such challans.

33.5 I hereby disallow the Cenvat Credit amounting to **Rs.68,24,899/-** , availed during the period from April 2008 to September 2013, as detailed below.Apart from the Cenvat Credit amounting to **Rs.68,24,899/-** availed on invoices pertaining to import of services and other ineligible documents, as discussed above, during the period from April 2008 to September 2013; the assessee has availed ineligible Cenvat Credit of such documents/invoices, during the subsequent periods also. I disallow the Cenvat Credit of **Rs. 23,18,440/-** availed on such invoices with respect to import of service and on the basis of these invalid challans,during the subsequent periods.The details of which are shown below:

CENVAT CREDIT AVAILED ON MANAGEMENT CONSULTANCY SERVICE FOR THE PERIOD FROM APRIL 2008 TO SEPT 2013								
Sr. No	Cr Entry No.	Cr Entry Date	Vendor /Party Name	REFERENCE 4 (Invoice No.)	CENVAT CREDIT AVAILED BY THE ASSESSEE	Remarks	CENVAT CREDIT ALLOWED	CENVAT CREDIT DISALLOWED
1	30	30-04-09	A.A. CHAUBAL	AUG/JULU08	28428	Pertains to Ahmedabad	28 428	0
2	92	30-04-09	A.A. CHAUBAL	SEP TO NOV08	26574	-do-	26 574	0
3	117	30-04-09	A.A. CHAUBAL	08-Dec	6798	-do-	6 798	0
4	133	30-04-09	A.A. CHAUBAL	901	2472	-do-	2 472	0
5	134	31-08-09	A.A. CHAUBAL	902	2575	-do-	2 575	0
6	200	30-04-09	A.A. CHAUBAL	AA/DEC/12207-LSB	2546	-do-	2 546	0
7	204	30-04-09	A.A. CHAUBAL	AAC/JAN/0108-LASB	8912	-do-	8 912	0
8	205	30-04-09	A.A. CHAUBAL	SSC/NOV/1107-LSB	9548	-do-	9 548	0
9	214	30-04-09	A.A. CHAUBAL	208-LSB	9548	-do-	9 548	0
10	229	30-04-09	A.A. CHAUBAL	AAC/MAR/0308-LSB	8912	-do-	8 912	0
11	279	30-04-09	A.A. CHAUBAL	ACC/APR/0408-LSB	11455	-do-	11 455	0

12	300	30-04-09	A.A. CHAUBAL	ACC/MAY/0508-LSB	12731	-do-	12 731	0
13	301	30-04-09	A.A. CHAUBAL	ACC/JUN/0608-LSB	14004	-do-	14 004	0
14	93	30-04-09	AXIS RISK CONSULTING SERVICES	307,306	76872	-do-	76 872	0
15	106	31-08-10	AXIS RISK CONSULTING SERVICES	21	1288	-do-	1 288	0
16	107	31-12-10	AXIS RISK CONSULTING SERVICES	429B DTD 20.12.10	95793	-do-	95 793	0
17	353	31-08-10	CHESS MANAGEMENT SERVICES PVT	21 DT. 30.06.10	4893	Pertains to Bangalore	0	4 893
18	354	31-08-10	CHESS MANAGEMENT SERVICES PVT	21 DT. 30.06.10	4893	Pertains to Bangalore duplicate entry as above	0	4 893
19	353	31-08-10	CHESS MANAGEMENT SERVICES PVT	21 DT. 30.06.10	4893		0	4 893
20	354	31-08-10	CHESS MANAGEMENT SERVICES PVT	21 DT. 30.06.10	4893		0	4 893
21	364	31-12-10	CHESS MANAGEMENT SERVICES PVT	49 DT. 11.1.10	1100	Pertains to Bangalore	0	1 100
22	365	31-12-10	CHESS MANAGEMENT SERVICES PVT	49 DT. 11.1.10	857	Pertains to Bangalore	0	857
23	345	30-04-09	CURT HOLMYR	08-Nov	75252	Pertains to Ahmedabad	75 252	0
24	347	30-04-09	CURT HOLMYR	SER TAX-ON ADD	44899	Pertains to Ahmedabad	44 899	0
25	243	30-04-09	CURT HOLYMR-NON TDS	SKF/0813 DT.07	356	Pertains to Ahmedabad	356	0
26	266	30-04-09	CURT HOLYMR-NON TDS	SKF/0814 DT.13	344	Pertains to Ahmedabad	344	0
27	267	30-04-09	CURT HOLYMR-NON TDS	SKF/0817 DT 05	424	Pertains to Ahmedabad	424	0
28	268	30-04-09	CURT HOLYMR-NON TDS	SKF/0816 DT 19	509	Pertains to Ahmedabad	509	0
29	269	30-04-09	CURT HOLYMR-NON TDS	SKF/0815 DT 16	1019	Pertains to Ahmedabad	1 019	0
30	494	31-12-10	ECOTECH IT SERVICES PRIVATE	10-10-96	32222	Pertains to Ahmedabad	32 222	0
31	190	30-04-09	ERM INDIA PVT LTD	002/ERM/16742 (FI	105212	Pertains to Ahmedabad	1 05 212	0
32	187	30-04-09	ERNST & YOUNG PVT LTD	INL0100031459	57899	Pertains to Ahmedabad	57 899	0
33	215	30-04-09	ERNST & YOUNG PVT LTD	INL0100036197	48912	Pertains to Ahmedabad	48 912	0
34	230	30-04-09	ERNST & YOUNG PVT LTD	INL0100037250	110585	Pertains to Ahmedabad	1 10 585	0
35	303	30-04-09	ERNST & YOUNG PVT LTD	INL0100048304	52005	Pertains to Ahmedabad	52 005	0
36	519	31-12-10	PATWA ASSOCIATES	PA/DN/SKF-10_Oct	11433	Pertains to Ahmedabad	11 433	0
37	119	30-11-11	S.H.OSWAL	2011/001	13205	Pertains to Ahmedabad	13 205	0
38	120	30-11-11	S.H.OSWAL	2011/002	13205	Pertains to Ahmedabad	13 205	0
39	287	31-12-11	S.H.OSWAL	2011/003	13205	Pertains to Ahmedabad	13 205	0

40	440	29-02-12	RATIONAL MANAGEMENT SERVICES	2010/10/351	1442	Pertains to Ahmedabad	1 442	0
41	441	29-02-12	RATIONAL MANAGEMENT SERVICES	2010/12/445	17108	Pertains to Ahmedabad	17 108	0
42	442	29-02-12	RATIONAL MANAGEMENT SERVICES	2011/06/218	1808	Pertains to Ahmedabad	1 808	0
43	443	29-02-12	RATIONAL MANAGEMENT SERVICES	2011/06/219	9891	Pertains to Ahmedabad	9 891	0
44	444	29-02-12	S.H.OSWAL	2011/006_JUNE-20	13205	Pertains to Ahmedabad	13 205	0
45	841	31-03-12	R.V.PAWAR	RVP/1212_JAN-2012-LSB	6815	Pertains to Ahmedabad	6 815	0
46	842	31-03-12	RAJENDRA J RATHOD	299	7210	Pertains to Ahmedabad	7 210	0
47	439	29-02-12	PATWA ASSOCIATES	DN/SKF/11 & 12	22866	Pertains to Ahmedabad	22 866	0
48	866	31-03-12	THE MENTORS	10-11/105	3090	Pertains to Ahmedabad	3 090	0
49	109	30-04-12	RAJENDRA J RATHOD	298	515	Pertains to Ahmedabad	515	0
50	112	30-04-12	S.H.OSWAL	2011/004_APRIL-1	13206	Pertains to Ahmedabad	13 206	0
51	113	30-04-12	S.H.OSWAL	2011/005_MAY-201	13206	Pertains to Ahmedabad	13 206	0
52	114	30-04-12	S.H.OSWAL	2011/007_JULY-20	13206	Pertains to Ahmedabad	13 206	0
53	223	30-06-12	S.H.OSWAL	2011/008_JAUGUST	13206	Pertains to Ahmedabad	13 206	0
54	313	30-06-12	Import of Services	Ser Tax Cr A2 -- 11-12	3208594	Pertains to Bangalore	0	3208594
55	316	30-06-12	Import of Services	Ser Tax Cr A2 -- 11-12	67332	Pertains to Ahmedabad	67 332	0
56	317	30-06-12	Import of Services	Ser Tax Cr A2 -- 11-12	343788	Pertains to Ahmedabad	3 43 788	0
57	319	30-06-12	Import of Services	Ser Tax Cr A2 -- 11-12	182347	Pertains to Ahmedabad	1 82 347	0
58	322	30-06-12	Import of Services	Ser Tax Cr A2 -- 12-13	159786	Invoice not produced	0	159786
59	340	31-07-12	Import of Services		3040720	Pertains to Bangalore	0	3040720
60	381	31-08-12	CEREBRUS CONSULTANTS P. LTD.	201	5408	Pertains to Ahmedabad	5 408	0
61	541	30-09-12	CUSTOMIZED ENERGY SOLUTIONS INDIA PVT. LTD.	SKF2012/01	9270	Pertains to Ahmedabad	9 270	0
62	675	31-12-12	RATIONAL MANAGEMENT SERVICES	RM/SK/12/248	5137	Pertains to Ahmedabad	5 137	0
63	702	31-01-13	CUSTOMIZED ENERGY SOLUTIONS	SKF/2012/02	18540	Pertains to Ahmedabad	18 540	0
64	703	31-01-13	CUSTOMIZED ENERGY SOLUTIONS	SKF/2012/02	9270	Pertains to Ahmedabad	9 270	0
65	779	28-02-13	Import of Services	A2PAYMENT	77261	Pertains to Ahmedabad	77 261	0

66	780	28-02-13	Import of Services	A2PAYMENT	1017647	Only 9 out of 11 invoices pertaining to Ahmedabad found attached	633799	3 83 84
67	783	28-02-13	Import of Services	A2PAYMENT	50685	Pertains to Ahmedabad	50 685	0
68	788	31-03-13	CEREBRUS CONSULTANTS P. LTD.	256	12618	Pertains to Ahmedabad	12 618	0
69	789	31-03-13	CEREBRUS CONSULTANTS P. LTD.	256A	612	Pertains to Ahmedabad	612	0
70	844	31-03-13	Import of Services	A2PAYMENT	10422	Invoice not produced		10 422
71	867	31-03-13	CUSTOMIZED ENERGY SOLUTIONS	SKF/2013/06_1/2_	771	Pertains to Ahmedabad	771	0
72	104	31-05-13	CONFEDERATIO N OF INDIAN	GBC/GBS/2012/144	45611	Pertains to Ahmedabad	45 611	0
73	252	31-08-13	CUSTOMIZED ENERGY SOLUTIONS	SKF/2013/21_16/5	1370	Pertains to Ahmedabad	1 370	0
				G.TOTAL	9324634		24 99 735	68 24 899

33.6 Thus, in a nutshell, in view of the above discussion, I allow the Cenvat Credit amounting to **Rs. 27,36,473/-** and disallow the Cenvat Credit amounting to **Rs.91,43,339/-** , for the period from April 2008 to June 2017, as shown below.

Sr. No.	SCN No/Date	Period of SCN	Management Consultancy Service	CONFIRMED DEMAND/ CENVAT CREDIT DISALLOWED	DROPPED DEMAND/ CENVAT CREDIT ALLOWED	Remarks
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013	9324634	6824899 (as per above table)	2499735	As per above table
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oct 2013 to March 2014	22514	0	22514	---
3	V.84/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14	1385027	1339123 (Cenvat credit entry no.- 707,999,289,294,298,305 of annx-B to SCN)	45904	Disallowed as no invoices produced, Cenvat Credit availed on Service Tax challans, Import of service by Bangalore unit.
4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015	200704	167950 (cenvat credit entry no.- 1128,1132,1436,1608, of annx B to SCN)	32754	Disallowed as no invoices produced & Cenvat Credit availed on Service Tax challans
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15	3560	0	3560	---
6	III.DSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016	28373	0	28373	Disallowed as no invoices produced & Cenvat Credit availed on Service Tax challans
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016	62653	0	62653	---

8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017	222652	188740 (cenvat credit entry no.-1518, of annx A to SCN)	33912	Disallowed as no invoices produced, Cenvat Credit availed on Service Tax challans, import of service by Bangalore unit
9	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	April 2017 to June 2017	629695	622627 (Sr.no.-9,10,11, of annx C to SCN)	7068	Disallowed as no invoices produced, Cenvat availed on Service Tax challans, import of service by Bangalore unit.
		TOTAL	11879812	9143339	2736473	

H: COMMERCIAL OR INDUSTRIAL CONSTRUCTION SERVICE:

34. The demand was raised vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs.3,73,006/-, availed on Commercial or Industrial Construction Service.

34.1. "Construction of a building or a civil structure or a part thereof", has been specifically excluded from the definition of Input services with effect from 01.04.2011.The preceding adjudicating authority held that, only in respect of one bill viz. Invoice No. KBL_2, involving Cenvat Credit of Rs.1,25,500/-, availed vide Cenvat Credit Entry No. 503/31.12.2010, had been availed before 1.4 2011 and the remaining credit of Rs.2,47,506/- had been availed after 1.4.2011. The adjudicating authority has allowed the Cenvat Credit of Rs.1,25,500/-, availed prior to 1.4.2011 and disallowed the remaining Cenvat Credit of Rs.2,47,506/- availed after 01.04.2011.

34.2 The assessee, in their submissions under denovo proceedings and their letter dated 25.11.2019, has submitted that out of the Cenvat Credit amount of Rs. 2,47,506/-, disallowed vide the impugned OIO, the Cenvat Credit amounting to Rs.85,422/- pertained to Commercial or Industrial Construction Service prior to 1.4.2011. The details of the same are as under:

SR.NO.	INVOICE NO	INVOICE DATE	AMOUNT OF S.TAX (Rs.)
1	KB/PL/1	21.02.2011	67,981
2	44/2010-2011	03.10.2010	17,441
TOTAL			85,422

34.3 They submitted that the Cenvat Credit amounting to Rs.1,50,174/- pertains to Interior Decorator Service and the same is admissible to them. However, on examining the invoices, which the assessee claimed to be pertaining to Interior Decorator Service, I observe that the invoice No.19/SKF, dated 31.5.2011 and the invoice no. 164, dated 28.02.2013, pertains to Construction Service and therefore, the Cenvat Credit amounting to Rs.10,680/- is not admissible to the assessee as the same pertains to the period after 1.4.2011. However, I find that the remaining invoices pertain to Interior Decorator Service and thus, the Cenvat Credit is admissible to them.

34.4 Therefore, I allow the Cenvat Credit amounting to Rs. 1,39,494/-, availed on Interior Decorator Service.I concur with the view taken by the predecessor adjudicating authority and allow the Cenvat Credit of Rs.1,25,500/-, in respect of one bill viz. Invoice No. KBL_2 availed vide Cenvat Credit Entry No. 503/31.12.2010.I allow the Cenvat Credit amounting to Rs. 85,422/-, as the same has been availed before 1.4.2011.

34.5 I disallow the Cenvat Credit amounting to Rs. 11,910/- (as detailed below),Rs. 556/- and Rs. 10124, as the same pertain to Construction service availed after 1.4.2011.I find that the assessee has also reversed the Cenvat Credit amounting to Rs. 11,910/- vide entry no. 197, dated 31.5.2014 and also reversed Rs.556/-.

34.6 The break-up of the credit allowed and disallowed out of the total Cenvat Credit of Rs.3,73,006/- is as under:

Sr. No.	Invoice no.	Invoice date	Amount of Cenvat Crediit	Allowed	Disallowed	Reason
1	KBL_2		125500	125500	0	Credit availed before 1.4.2011
2	KB/PL/1	21.2.2011	67981	67981	0	Invoice prior to 1.4.2011
3	44/2010-2011	3.10.2010	17441	17441	0	Invoice prior to 1.4.2011
4	T1-02/11-12	22.7.2011	68286	68286	0	Pertains to Interior Decorator Service.
5	T1-11/11-12	18.10.2011	37965	37965	0	Pertains to Interior Decorator Service.
6	T1-12/11-12	18.10.2011	31285	31285	0	Pertains to Interior Decorator Service.
7	T1-01/11-12	22.6.2011	1031	1031	0	Pertains to Interior Decorator Service.
8	MCPL/BA/24/11-12	19.10.2011	927	927	0	Pertains to Interior Decorator Service.
9	164	28.2.2013	556	0	556	Pertains to Construction Service, Invoice issued after 1.4.11
10	19/SKF	31.5.2011	10124	0	10124	Pertains to Construction Service, Invoice issued after 1.4.11
11	Cenvat Credit Entries no. 315, 316, 317, 318, 623, 626, 52	Cenvat Credit of Rs. 11910/- reversed vide entry no. 197/31.5.2014.	11910	0	11910	Invoice issued after 1.4.2011
	TOTAL....		373006	350416	22590	

I: CLEANING SERVICES:

35. The demand was raised vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs.6,34,248/-, availed on Cleaning Services.

36. The assessee submitted that the cleaning services were used in order to ensure that the workers work in a clean & hygienic premises and hence the said services were necessary for the assessee. They relied upon the decisions in the case of L'Oreal India Pvt.Ltd-2011(22)STR.89(T), Rotork Control (India) Pvt. Ltd- 2010(20)STR.684, Rotork Control (India) Pvt. Ltd-2010 (20) STR.29 and Hindustan Coca Cola Beverages P. Ltd-2010 (19) STR.93. The assessee further submitted that as per Section 11 of the Factories Act 1948, every factory must ensure that its premises were clean and the workers did not work in unhygienic area. They submitted that Hon'ble Karnataka High Court in the case of Micro Labs Ltd- 2011 (270) ELT.156 (Kar) observed that in case services were used as a part of statutory obligation, the same must be treated to be in relation to manufacture of final product and credit of the same must be allowed.

37. I find that cleaning service is used to ensure that the workers work in a clean & hygienic premises and hence the said services are necessary for the assessee. The assessee further submitted that as per Section 11 of the Factories Act 1948 every factory must ensure that its premises were clean and the workers did not work in unhygienic area. They submitted that Hon'ble Karnataka High Court in the case of ***Micro labs Ltd-2011 (270) ELT.156 (Kar)*** observed that in case services were used as a part of statutory obligation, the same must be

treated to be in relation to manufacture of final product and credit of the same must be allowed

38. CESTAT, Principal Bench, New Delhi, in the case of M/s. Delphi Automotive Systems P. Ltd.,, in its decision reported in 2015 (315) E.L.T. 255 (Tri. - Del.), has held as under:

Cenvat credit of Service Tax - Cleaning services - To keep the factory clean is a legal obligation under Section 11 of Factories Act, 1948 - Commissioner (Appeals) denied Cenvat credit on the ground that factory included the space used by technical and administrative staff however not made any effort to find out the area occupied by technical and administrative staff - In absence of working of area occupied, the vague order not sustainable - In view of obligation of assessee under Factories Act, 1948 to keep the factory clean, assessee is entitled to Cenvat credit of Service Tax paid on factory cleaning service. [paras 1, 4]

Appeal allowed

39. CESTAT, Principal Bench,New Delhi, in the case of M/s. Delhi Automotive System P. Ltd., in its decision, reported in 2014 (36) S.T.R. 1089 (Tri. - Del.), has held as under:

"Cenvat credit of Service Tax - Input service - Cleaning service - Credit admissible - Rule 2(l) of Cenvat Credit Rules, 2004. [para 3]"

40. In respect of cleaning services, CESTAT vide Order No. 50992/2014, dated 12-3-2014 in their own case has allowed credit. The following judgments have also allowed credit in respect of house keeping/cleaning services :

(i) *Balkrishna Industries Ltd.* v. *CCE* - 2010 (254) E.L.T. 301 (Tri.) = 2010 (18) S.T.R. 600 (T)

(ii) *Rotork Control (India) P. Ltd.* v. *CCE* - 2010 (20) S.T.R. 684 (Tri.)

(iii) *CCE, Salem* v. *ITC Ltd.* - 2011-TIOL-780-CESTAT-MAD = 2011 (268) E.L.T. 89 (Tri.-Chennai) = 2012 (26) S.T.R. 92 (Tri.-Chennai)

(iv) *NTF (India) Ltd.* v. *CCE* - 2013 (30) S.T.R. 575 (Tri.-Del.)

(v) *Paper Products Ltd.* v. *CCE* - 2013 (30) S.T.R. 310 (Tri. - Mum.)

41. Further, CESTAT, Principal Bench, New Delhi, in the case of M/s. Suzuki Powertrain India Ltd., in its decision reported in 2013 (30) S.T.R. 205 (Tri. - Del.), has held as under:

Stay/Dispensation of pre-deposit - Cleaning/House-Keeping services in factory - Under Section 11 of Factory Act, 1948, factory owner is duty bound to maintain cleanliness in factory - Hence, prima facie such services are incidental to manufacture, and input service on which assessee is entitled to take credit of Service Tax paid - Rule 2(l) of Cenvat Credit Rules, 2002 - Sections 65(24b) and 65(105)(zzzd) of Finance Act, 1994 - Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. [para 5]

42. Following the ratio of the above decisions, I hold that the Cenvat Credit of Cleaning services is admissible to the assessee. I concur with the view taken by my predecessor adjudicating authority and allow the Cenvat Credit amounting to Rs.6,34,248/-.

J: REAL ESTATE AGENT SERVICE:

43. The demand was raised vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs.2673/-, availed on Real Estate Agent Services.

44. The assessee submitted that they had availed the service of Real Estate Agent service to arrange for accommodation to employees in Ahmedabad. However I find that real estate agent service has no nexus with the manufacture or clearance of final products from the factory. The services of Real Estate Agent are used only for searching of accommodation, which is no nexus with manufacturing activity. Providing accommodation is only welfare activity

and has no connection with the manufacturing activity, whatsoever. Therefore the Cenvat Credit of Rs.2673/- availed on real estate agent service is disallowed.

K: CENVAT CREDIT AVAILED ON THE BASIS OF PHOTO COPIES OF INVOICES:

45. The demand was raised vide SCN No. V.84/15-63/OA/2012, Dtd. 18.12.13, denying the Cenvat Credit amounting to Rs.47,85,079/-, availed on the basis of photo copies of invoices.

46. The assessee had availed Cenvat Credit of Rs.47,85,079/- on the basis of photo copy of invoices in the name of Bangalore office address and also on proportionate basis for the services provided by M/s. AKTEIBOLAGET SKF, situated abroad and M/s. Mphasis Ltd. The assessee is also having another manufacturing unit at Bangalore. Bangalore unit had not issued any invoices under Rule 4 A of the Service Tax Rules, 1994. Under Rule 9(1) of the Cenvat Credit Rules, 2004, certain documents are prescribed for availment of Cenvat Credit. As per the provisions of law, it appears that Cenvat Credit is eligible on the basis of invoices of manufacturer, registered dealer or service provider or an Input Service Distributor. Photo copy of invoice is not a valid document for availing Cenvat Credit.

47. The assessee has produced the photo copies of the invoices pertaining to availment of Cenvat Credit amounting to Rs.47,65,079/-. On scrutiny of the documents, the same observations were made **as elaborated in Para 33.1 above.** The analogy of the discussion on such invoices, applies in this case also. From the perusal of the documents prescribed under Rule 9(1) of CCR 2004, it is evident that Cenvat Credit is eligible on the basis of invoices of manufacturer, registered dealer or service provider or an input service distributor. Photo copy of invoice is not a valid document for availing cenvat credit. In respect of common services received at other locations of assessee, cenvat credit can be taken only on the basis of invoice issued by an input service distributor under Rule 4A of Service Tax Rules, 1994. Bangalore Unit of the assessee has not issued any invoice under Rule 4A of Service Tax Rules, 1994 and hence the assessee is not eligible for avail cenvat credit on the basis of invoices in the name of their Bangalore Unit and availed on the basis of photo copies.

48. The assessee has tried to establish that only proportionate Cenvat Credit has been availed by Ahmedabad unit in terms of the services provided to Ahmedabad Unit only. However, they have failed to produce any evidence to prove that no service tax credit has been taken/availed at the place/address, viz. Bangalore,, shown in the invoices. Therefore, the possibility of availing Cenvat Credit at both Bangalore unit and Ahmedabad unit, cannot be ruled out, as Bangalore also has a manufacturing unit.

49. In view of the above, I disallow Cenvat Credit of **Rs.47,85,079/-** availed on the photocopy of invoices.

L: CENVAT CREDIT AVAILED FOR WHICH THE ASSESSEE DID NOT HAVE VALID DOCUMENTS IN THEIR NAME:

50. The demand was raised vide SCN No. V.84/15-63/OA/2012, dtd.18.12.13, denying the Cenvat Credit amounting to Rs.1,01,671/-, availed for which the assessee did not have valid documents in their name.The assessee had availed Cenvat Credit on the basis of invoices, which were not in the name of the assessee. The invoices were either in the name of Bangalore unit, Pune Unit, Mumbai address, Kolkatta address, Gurgaon address etc.

51. The assessee has in their submissions following denovo proceedings, has submitted that the Cenvat Credit of Rs.1,01,671/- pertains to Ahmedabad unit itself and the same pertained to services used in Ahmedabad unit. However, on going through the sample copies of invoices submitted on the invoices, it cannot be proved that the services were availed in Ahmedabad Unit. For example, the invoices no.4418, dated 20.01.2008 and 3244, dated 11.06.2008, both were raised for Rent-a- cab services in Pune. Even though the assessee claims that the services were used for their employees, it cannot be said the services were used in Ahmedabad unit, as the service was not rendered to Ahmedabad unit. From the

records of the case, it appears that most of the Cenvat Credit availed by the assessee pertains to such services, which were not availed in Ahmedabad.

52. The analogy of discussion in the preceding para regarding Rule 9 of the Cenvat Credit Rules, 2004, applies here also.In this regard I find that the invoices were either in the name of Bangalore unit or Pune office or Mumbai address or Kolkatta address or Gurgaon addresses etc. The assessee was given ample time to submit evidence to prove that these services had been used at Ahmedabad plant and payment for these had also been made by Ahmedabad plant only. But the assessee has not produced any evidence to prove the same. Further,there are all the possibilities of availing Cenvat credit at both the ends, which the assessee failed to explain or ensure otherwise. Thus the case-laws relied upon by the assessee are not relevant to the issue. Therefore I disallow Cenvat Credit of Rs.1,01,671/- on such invoices.

M: CENVAT CREDIT AVAILED WITHOUT ANY DOCUMENT:

53. The demand was raised vide SCN No. V.84/15-63/OA/2012, dtd.18.12.13, denying the Cenvat Credit amounting to Rs.5,41,188/-, availed for which the assessee did not have valid documents in their name.

54. In this regard, the assessee vide their submission dated 25.02.2019, has submitted copies of Challan/Debit Notes with respect to the Cenvat Credit of Rs.4,45,439/-. **However, the assessee has not produced valid invoices in the name of M/s. SKF Technologies (India) P.Ltd., Bavla, where the credit has been availed.**

54.1 Further, from the records of the case, it is also observed that in some cases the Cenvat Credit also pertains to Business Support Service, wherein the GAR 7 challan pertains to Bangalore unit. In another case, they have also taken the Credit of VAT paid. The Cenvat Credit of these entries are ineligible for availing Cenvat Credit, in light of the discussion in the preceding paras.These are just examples, to show that without scrutinizing all the invoices, it is not possible to ascertain the eligibility of the Cenvat Credit availed.

Sr. No	Cr Entry No.	Cr Entry Date	Party Name	Invoice No	JEAMT Ser Tax @10% as Per Actual	JEAMT ED.CESS @2% as Per Actual	JEAMT S & H.S.CESS @1% as Per Actual	Ser Category
1	347	31-08-10	SKF INDUSTRIES S.P.A	JMDE17525 DT 14	7 816	234	0	BUSINESS SUPPORT SERVICE - Only GAR 7 available and i.e. of Bangalore address.
2	163	30-11-10	SKF INDUSTRIES S.P.A	JMDE18169 DT 09	8 218	247	0	BUSINESS SUPPORT SERVICE - Only GAR 7 available and i.e. of Banglore address.
3	534	31-12-10	SKF INDUSTRIES S.P.A	JMDE18991 DT 14	8 666		0	BUSINESS SUPPORT SERVICE - Only GAR 7 available and i.e. of Banglore address.
4	351	31-08-10	Import of Services	LSB SER TAX ON GRP SER Q1 TRAN	4 08 018	12 241	0	BUSINESS SUPPORT SERVICE - Only GAR 7 available and i.e. of Banglore address.
5	558	31-12-10	ARTH AIR TECHNOLOGIES PVT	472		2 259	0	VAT Credit

55. The last date of audit was 05.10.2011 and even after a lapse of such a long period, the assessee failed to produce the invoices on which the credit availed. I also apply the analogy of prescribed documents as per Rule 9 (1) of the Cenvat Credit Rules, as discussed in the above paras. I conclude that the assessee has not produced any documents, to my satisfaction to

prove that that they are eligible for availing the said Cenvat Credit. Therefore, I disallow the Cenvat Credit of Rs.5,41,188/-, availed without any documents.

N: CENVAT CREDIT AVAILED ON CUSTOM HOUSE AGENT SERVICE:

56. Cenvat Credit amounting to Rs.19,44,214/-, availed on Custom House Agent Service have been disallowed, for the period from April 2008 to June 2017, under the following Show Cause Notices.

CENVAT CREDIT AVAILED ON CUSTOM HOUSE AGENT SERVICE

Sr.No.	SCN No/Date	Period of SCN	CHA
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013	721815
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oc 2013 to March 2014	326226
3	V.84/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14	246105
4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015	223932
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15	318530
6	III.DSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016	107606
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016	234058
8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017	301759
9	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	April 2017 to June 2017	1228197
		TOTAL	3708228

57. I find that the Custom House Agent Service was availed by the assessee after clearing the goods from the factory and the period involved is from April 2008 to June 2017.

58. The definition of input service defined under Rule 2(*l*) Cenvat Credit Rules, 2004 is reproduced under:-

"input Service' means any service:-

(i) used by a provider of taxable service for providing an output service; or

(ii) used by the manufacturer, whether, directly or indirectly, in or relation to the manufacturer of final products and clearances of final product upto the place of removal.

and includes services used in relation to setting up, modernization, renovation or repairs of a factory premises of provider of output service or an office relating to such factory premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal.

59. The phrase **'clearance of final products from the place of removal'** was substituted by phrase **'clearance of final products upto place of removal'** w.e.f. 01.04.2008. From above, it appears that the inclusive part of definition of 'input service' covers the various services, which are used upto the place of removal, and includes outward transportation upto the place of removal, which are allowed for availing Service Tax credit as input service.

60. The term "place of removal" is defined in section 4(3) (c) of Central Excise Act, 1944 which reads as under:-

(c) "place of removal" means –

(i) a factory or any other place or premises of production or manufacture of the excisable goods;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed;

61. The definition of Input Service was amended with effect from 1.4.2008, consequent of which the words "clearance of final product from the place of removal" was substituted with the words "clearance of final products upto the place of removal", implying no credit of input services would be available beyond the place of removal. The Cenvat Credit availed on Custom House Agent Service has been denied on the grounds that the said services have been availed after clearing the goods from the factory. Considering the factory gate as the place of removal, the services of "Custom House Agent" availed beyond the place of removal, does not fall under the definition of "Input Service" under Rule 2(l) of the Cenvat Credit Rules, 2004 after 1.4.2008.

62. In the present case, the place of removal is the Port. Thus the entire issue is centered around the question whether the Port can be considered the place of removal. In normal practice, the manufacturers export goods on FOB basis i.e. Free on Board basis. In such cases, ownership of such export goods belongs to the manufacturer-exporter until such manufacturer-exporter hand over documents related to such export good to the shipping lines. In other words, it can be said that ownership of export goods get transferred to the foreign customer upon transfer of documents of title to shipping lines at Port and thus, "Port" is the place from where export goods are to be sold. In the case of the assessee, the same practice has been followed.

63. As seen in the definition of the "place of removal", the third point of the definition clearly says that "place of removal" is any place from where the excisable goods are to be sold after their clearance from the factory and thus, it is clear that in case of export of manufactured goods, "Port" is the "place of removal". Thus, it can be implied that CHA service availed for export of goods is included in the definition of "input service".

64. The Board, vide Circular No. 97/8/2007, the 23rd August, 2007, has clarified as under:

8.2 In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that,-

"place of removal" means-

(i) a factory or any other place or premises of production or manufacture of the excisable goods ;

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;

(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

from where such goods are removed."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

64.1 Para no. 8.2 of the above Circular clarified that CENVAT credit of service tax paid on the transportation of goods upto such place of sale would be admissible if it is established that sale has actually taken place at the place of customer. In case of export goods, ownership of

such goods remained with the manufacturer-exporter till port area and it gets transferred at the Port, only after handing over of the documents for export the goods.

65. Vide Circular No. 999/6/2015-CX F. No. 267/13/2015 – CX.8, dated 28.2.2015, CBEC has given clarification regarding the place of removal as under:

"Attention is invited to Circular No. 988/12/2014-CX dated 20.10.2014 issued from F. No. 267/49/2013-CX.8 on the above subject wherein it was clarified that the place of removal needs to be ascertained in terms of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930 and that payment of transport, payment of insurance etc are not the relevant considerations to ascertain the place of removal. The place where sale takes place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

2. In this regard, a demand has been raised by the trade that it may be clarified that in the case of exports, for purposes of CENVAT credit of input services, the place of removal is the port or the airport from where the goods are finally exported.

3. The matter has been examined. It is seen that section 23 of the Sale of Goods Act, 1930 provides that where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract, and therefore, in view of the provisions of the Section 23 (1) of the Sale of Goods Act, 1930, the property in the goods would thereupon pass to the buyer. Similarly, section 39 of the Sale of Goods Act, 1930 provides that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not for the purpose of transmission to the 2 buyer, or delivery of the goods to a wharfinger for safe custody, is prima facie deemed to be a delivery of the goods to the buyer.

4. In most of the cases, therefore, it would appear that handing over of the goods to the carrier/transporter for further delivery of the goods to the buyer, with the seller not reserving the right of disposal of the goods, would lead to passing on of the property in goods from the seller to the buyer and it is the factory gate or the warehouse or the depot of the manufacturer which would be the place of removal since it is here that the goods are handed over to the transporter for the purpose of transmission to the buyer. It is in this backdrop that the eligibility to Cenvat Credit on related input services has to determined.

5. Clearance of goods for exports from a factory can be of two types. The goods may be exported by the manufacturer directly to his foreign buyer or the goods may be cleared from the factory for export by a merchant exporter. 6. In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS. Needless to say, eligibility to CENVAT Credit shall be determined accordingly. 7. In the case of export through merchant exporters."

66. CESTAT, Ahmedabad, in the case of M/s. Fine Care Biosystems, in its decision reported in 2010 (17) S.T.R. 168 (Tri. - Ahmd.), has held as under:

"Cenvat credit of Service tax - Input service - Custom House Agent service availed at port of export of goods - Tribunal Larger Bench in case of ABB Ltd. [2009 (15) S.T.R. 23 (Tribunal - LB)] held that expression "activities relating to business" in definition of input services, has wide import and includes both essential and auxiliary activities of business - Services received for outward of transportation from place of removal held to be input service - No infirmity in order of Commissioner (Appeals) allowing credit of tax paid on Custom House Agent service availed at port for export of goods - Rule 2(l) of Cenvat Credit Rules, 2004."

67. CESTAT, Bangalore, in the case of M/s. J.K. Tyre, its decision reported in 2010 (18) S.T.R. 637 (Tri. - Bang.), has held as under:

"Cenvat credit of Service tax - Input service - Custom House Agent service - Credit denied on CHA service relating to export of goods - Place of removal clarified by C.B.E. & C. in circular dated 23-8-2007 as place at which ownership of goods transferred - Ownership of goods stated as transferred to buyers at destination - Assessee undertaking to satisfy authorities that credit on CHA service available upto place of removal - Matter remanded to original authority - Assessee to establish transfer of ownership at destination and exports on FOR destination basis - Rules 2(l) and 14 of Cenvat Credit Rules, 2004. [paras 1, 4, 5]"

Para 5 of the said order reads as under:

5. I find in the clarification issued by the Board, place of removal is clarified to be place at which the assessee transferred ownership of the goods. In the instant case, the assessees' claim is that the ownership of all the consignments involved were transferred to their buyers at the place of destination. The authorized representative submitted that given an opportunity, the assessee will be in a position to satisfy the authorities that the CHA services involved were available up to the place of removal...."

68. CESTAT, Bangalore in the case of M/s. MTR Foods Ltd, reported in 2011 (22) S.T.R. 342 (Tri. - Bang.), has held as under:

"Cenvat credit of Service tax - Input service - Service tax paid on services of CHA engaged by assessee for export of their products - Credit of tax paid on such services is admissible to assessees, as held by Tribunal in the case of Rolex Rings (P) Ltd. [2008 (230) E.L.T. 569 (Tribunal)] - Rule 2(l) of Cenvat Credit Rules, 2004. *[para 6]*"

69. CESTAT, Bangalore in the case of M/s. Pokarna Ltd, in its decision reported in 2013 (30) S.T.R. 379 (Tri. - Bang.), has held as under:

"Cenvat credit - 'Input services' - CHA/GTA services - Application of expression 'place of removal' in Section 4(3) of Central Excise Act, 1944 to CHA/GTA services used for clearance of excisable goods - No separate definition of 'place of removal' under Cenvat Credit Rules, 2004 - Expression 'place of removal' used in Rule 2(l) of Cenvat Credit Rules, 2004 not applicable only to Valuation as decided in 2011 (23) S.T.R. 97 (Kar.) - Words and expressions not defined in Rules shall have the meanings assigned to them in Central Excise Act, 1944 - Harmonious construction of definition of 'place of removal' as given in Section 4(3) of Central Excise Act, 1944 and Section 5 of Central Sales Tax Act, 1956 should be taken in view of decision in Kuntal Granites Ltd. [2007 (215) E.L.T. 515 (Tri.-Bang.)] - 'Place of removal' in respect of excisable goods cleared from factory and subsequently shipped for export, has been held to be the port of export in Kunal Granites case - Decision not yet stayed, so can be considered valid precedent - Accordingly, CHA/GTA Services used for clearance of excisable goods are 'input services' under Rule 2(l) of Cenvat Credit Rules, 2004."

70. The Hon'ble High Court of Gujarat, in the case of M/s. Dynamic Industries Ltd.,in its judgment reported in 2014 (35) S.T.R. 674 (Guj.), has held as under:

*Cenvat credit - Input services - Customs House Agent, Shipping Agents and Container Services - Used for export of finished goods by manufacturer thereof - HELD : **Where exports are on FOB basis, place of removal is port and not factory gate** - Impugned services were utilised for purpose of export of final products and exporters could not do business without them - Hence, Service Tax paid on these services availed till goods reached port, was admissible - Input service cannot be given restrictive meaning in view of "means.... and includes" used in definition in Rule 2(l) of Cenvat Credit Rules, 2004. [paras 6, 7, 8, 10]*

71. Reliance is also placed on the below decisions of the Hon'ble Tribunal wherein it is held that in case of export of manufactured goods, port is the place of removal and therefore, CENVAT credit of service tax paid on CHA service is admissible:

a) CCE, Hyderabad-IV v/s Pokarna Ltd. – 2013 (292) E.L.T. 316 (Tri. – Bang.)

b) CCE, Rajkot v. Rolex Rings P. Ltd. – 2008 (230) E.L.T. 569 (Tri.-Ahmd.)

c) Adani Pharmachem (P.) Ltd. v. CCE, 2008 (232) ELT 804 (Tri. – Ahmd.)

d) Meghachem Industries v/s CCE, Ahmedabad – 2011 (23) S.T.R. 472 (Tri. – Ahmd.)

e) JK Tyre & Industries LTD. v/s CCE, Mysore – 2010 (18) S.T.R. 637 (Tri. – Bang.)

72 I hereby rely on the above mentioned decisions of Tribunal and the judgment passed by Hon'ble High Court of Gujarat on the issue. Reliance is also placed on the Ciruclar issued by the Board on the issue of place of removal for exports, which is binding to the Department. In view

of the above, I hold that the Cenvat Credit pertaining to Service Tax availed on Custom House Agent Service, is admissible to the assessee. I, thereby, allow the Cenvat Credit amounting to **Rs.37,08,228** /-, availed on Custom House Agent Service, for the period from April 2008 to June 2017.

O: BUSINESS SUPPORT SERVICE.

73. Cenvat Credit amounting to Rs. 1,63,49,705/- availed on Business Support Service have been disallowed, for the period from April 2008 to June 2017, under the following Show Cause Notices.

Business Support Service			
Sr.No.	**SCN No./Date**	**Period of SCN**	**Cenvat Credit availed**
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013	5540420
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oct 2013 to March 2014	925906
3	V.84/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14	2052813
4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015	1336144
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15	1009892
6	III.DSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016	948259
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016	1028077
8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017	1664093
9	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	April 2017 to June 2017	1844101
		TOTAL	16349705

74 Definition and scope of service:

"Support Services of Business or Commerce" *means services provided in relation to business or commerce and includes evaluation of prospective customers, telemarketing, processing of purchase orders and fulfilment services, information and tracking of delivery schedules, managing distribution and logistics, customer relationship management services, accounting and processing of transactions, operational assistance for marketing, formulation of customer service and pricing policies, infrastructural support services and other transaction processing.*

Explanation *-For the purposes of this clause, the expression "infrastructural support services" includes providing office along with office utilities, lounge, reception with competent personnel to handle messages, secretarial services, internet and telecom facilities, pantry and security;*

(Section 65(104c) of the Finance Act, 1994)

"Taxable Service" *means any service provided or to be provided to any person, by any other person, in relation to support services of business or commerce, in any manner;*

(Section 65 (105) (zzzq) of the Finance Act, 1994)

75. The assessee & M/s SKF India are both subsidiaries of AB SKF Sweden. The assessee & SKF India have agreed to pool & combine their respective manpower & other resources for the purpose of achieving maximum synergetic benefits. Some of the services which were decided to be shared include corporate marketing, business development, taxation etc. The assessee has entered into an agreement with M/s SKF India in this regard. M/s SKF India raises an invoice on the assessee towards such sharing of cost along with service tax.

75.1 The assessee submitted that that they had entered into an agreement with M/s. SKF India to pool & combine their respective manpower & other resources for achieving maximum synergetic benefits. From the perusal of the agreement submitted by the assessee, I find that there is nothing to suggest availment of any service by the assessee from M/s SKF India.

75.2 The relevant paras of the said agreement is reproduced below:

f) *The Parties are desirous of pooling and combining their respective manpower and other recourses for the purpose and with an objection to achieve maximum synergistic benefits, cost saving so as to avoid duplication of cost which will in turn assist the Parties in sharing and allocation of cost in equal proportion for costs incurred towards inter alia manpower, managerial resources and all other resources of the parties which are otherwise being incurred independently:*

g) *SKF Tech has approached SKF India to avail various types of services from SKF India through its resource as described in annexure in order to reduce cost and achieve maximum synergic benefit.*

2.3 *The common personnel shall at all times remain the employees of the respective parties. The Party employing the manpower and /or the managerial personnel, shall have the sole liability, statutory or otherwise towards such personnel for the purpose including but not limited to payments of salary, perquisites, benefits, amenities or other compensation or otherwise and the other Party shall not be liable in any manner whatsoever.*

3.1 *The fee payable by each party for services received shall be the as follows:*

c) *Each party will bear the expenses, charges and all other related cost incurred by other party against the service received which shall be determined in accordance with generally accepted accounting principles. These charges shall also include cost of resources, salary costs and travel expenses of the personnel engaged in the performance of the work described in the Agreement.*

d) *The fees payable by each party will be determined on pro rata basis according to allocation key as a portion of the total actual service costs incurred by respective parties. The allocation Key will be based on a weight average method using combination of parameter for each different type of service rendered.*

76. From the definitions above, it is apparent that there needs to be a service provider and a service receiver providing services as described in the definition of Business Support Service, in return of a consideration. From the agreement, it only appears that M/s. SKF India and the assessee simply agreed to share some common expenditures. Mere fact that service tax has been paid on the amount transferred from one unit to another, does not make any transaction an input service. As discussed in foregoing paragraph, to qualify as an input service, the activity must have nexus with the business of the assessee. The nearest conclusion that can be construed from the activities is that "Salary" and other reimbursements have been made to the employees, which even otherwise, ought to have been paid by either of the two parties. There is no evidence of provision of any service, in as much as no invoices have been raised by the "Service provider". M/s. SKF India is the Head Office and it cannot be said that the Head office is providing taxable services to its sister unit by sending employees to work for the assessee.This applies to Pune unit also.

77. The assessee has not adduced any evidence to prove that they had availed any particular service in relation to their manufacturing activity. I concur with the decision of my predecessor adjudicating authority that the agreement is only of cost sharing and there is no provision of service. I reiterate that mere fact that service tax has been paid on the amount transferred from one unit to another does not make any transaction an input service. Therefore the Cenvat Credit of Rs. 1,63,49,705/-, availed on Business Support Service, for the period from April 2008 to June 2017, is disllowed.

78. I hereby summarise the Cenvat Credit allowed and disallowed in respect of all the Show Cause Notices, for the period from April 2008 to June 2017, as under:

SUMMARY OF DEMAND

Sr.No.	SCN no. & Date	Period of SCN	Guest House Service	CHA	Event Management Service	Cenvat Credit availed on the basis of photocopy of invoices	Other than Bavla address	Cenvat Credit availed without any document	Outdoor Catering Service	Technical Inspection Certification	Interior Decoration Service	Management Or Repair Service	Comm. Or Indus Constr. Service	Management Consultancy Service	Business Support Service	Cleaning Service	Real Estate Agent	TOTAL	Cenvat Credit disallowed	Cenvat Credit allowed
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013	230757	721815	197306	4785079	101671	541188	58278	307474	182596	1251258	373006	9324634	5540420	634248	2673	24252403	18304861	5947542
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oc 2013 to March 2014		326226	2837		0	0	0				0	22514	925906		0	1277483	925906	351577
3	V.84/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14		246105	52385		0	0	0				0	1385027	2052813		0	3736330	3391936	344394
4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015		223932	0		0	0	0				0	200704	1336144		0	1760780	1504094	256686
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15		318530	0		0	0	0				0	3560	1009892		0	1331982	1009892	322090
6	III.OSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016		107606	0		0	0	0				0	28373	948259		0	1084238	948259	135979
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016		234058										62653	1028077			1324788	1028077	296711
8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017		301759										222652	1664093			2188504	1852833	335671
9	V/15-13/SKF/OBA/2018-19, Dtd. 2.4.19	April 2017 to June 2017		1228197										629695	1844101			3701993	2466728	1235265
		TOTAL	230757	3708228	252528	4785079	101671	541188	58278	307474	182596	1251258	373006	11879812	16349705	634248	2673	40658501	31432586	9225915
		CONFIRMED	230757		197306	4785079	101671	541188	58278				22590	9143339	16349705		2673	31432586		
		DROPPED		3708228	55222	0				307474	182596	1251258	350416	2736473	0	634248		9225915		

79. Regarding the contention of the assessee that extended period cannot be invoked in the present case, I find that even though the assessee had filed ER-1 returns regularly there is nothing in the ER-1 returns disclosing the name of services on which cenvat credit has been availed. In the ER-1 return, the assessee had disclosed only the total amount of cenvat credit availed on inputs, capital goods and input services and there is no requirement of filing the copies of invoices on which credit availed along with the returns. The departmental officers can know about the nature of services on which service tax credit availed only when their records are audited by the department. I also do not agree with the contention of the assessee that the issue involved was related to interpretation of statute. The definition of input service before and after 1.4.2011 is unambiguous and as per Rule 9(6) of CCR 2004, the burden of proof regarding admissibility of cenvat credit lies upon the manufacturer taking credit. In the present case assessee failed to prove the nexus of such services with the manufacture or finished goods and clearance upto the place of removal. It is also noteworthy that the assessee has gone to such extent that they have availed cenvat credit without any valid documents also. Even after lapse of a considerable period of time, the assessee was not able to produce certain documents on which they have availed cenvat credit. Therefore I hold that the demand is sustainable on the ground of limitation also. Moreover as per Section 11A(5) of the Central Excise Act, 1944 where during the course of any audit it is found that duty has been levied or short paid by fraud or collusion or any willful misstatement or suppression of facts or contravention of any provisions with intent to evade duty, then the notice can be served within five years. In view of the above, the demand is sustainable on the ground of limitation also.

80. Regarding the question of imposing penalty and charging interest, I find that interest and penalty are statutory liability following every short-payment or non-payment of duty and wrong availment or wrong utilization of Cenvat Credit. Therefore there is no escape from the liability envisaged under statute for the assessee. Accordingly I hold that the assessee is liable for 100 % penalty, for the period under Rule 15 of CCR 2004 and interest is chargeable under Rule 14 read with Section 11AA/11AB of Central Excise Act, 1944. However in respect of the demand after 8.4.2011 the penalty would be 50% of duty in view of amended provisions of Section 11AC(1)(b) as the demand has been made invoking the provisions of Section 11A(5).Further, from the period after 14.5.2015, the penalty would be 100% of duty in view of amended provisions

81. Accordingly I pass the following order.

ORDER

(i) I confirm the demand of Cenvat credit of Rs.3,14,32,586/- (Rupees Three Crores, Fourteen Lakhs, Thirty-two Thousand Five Hundred and Eight-six only) under Rule 14 of CCR 2004 read with Sections 11A(5) and Section 11 A of Central Excise Act, 1944, as summarised in para 78 above.

(ii) I Impose penalty equal to the Cenvat Credit wrongly availed for the period from April 2008 to 7.4.2011, 50 % penalty of the Cenvat Credit wrongly availed for the period from 8.4.2011 to 14.5.2015, and 100% penalty of the Cenvat Credit wrongly availed for the period 14.5.2015 to June 2017, under Rule 15(1)/15(2) (erstwhile Rule: 15(3)) of the CCR 2004 read with Section 11AC of Central Excise Act, 1944.

(iii) In terms of proviso to Section 11AC, the penalty shall be reduced to 25% of the confirmed demand if the duty, interest and penalty are paid within 30 days from the date of communication of the order.

(iv) I order to charge interest under Rule 14 of the CCR 2004 read with Section 11AA (erstwhile Section 11 AB for the relevant period] of Central Excise Act, 1944.

82. The following Show Cause Notices are hereby disposed off.

Sr.No.	SCN no. & Date	Period of SCN
1	V.84/15-63/OA/2012, Dtd. 18.12.13	April 2008 to Sept 2013
2	V.84/15-106/OA/2014, Dtd. 21.10.2014	Oct 2013 to March 2014
3	V.84/15-39/OA/2015, Dtd. 21.4.2015	April 14 Sept 14
4	V.84/15-104/OA/2015, Dtd. 19.10.2015	Oct-14 to Mar-2015
5	V.84/15-21/OA/2016, dtd. 18.4.2016	April 15 to Sept 15
6	III.DSCN/SKF Technologies/94/ 16-17, dtd.22.11.2016	Oct 15 to March 2016
7	V/15-05/SKF-Tech/P/2017-18, Dtd. 2.2.2018	April 2016 to Sept 2016
8	V/15-08/SKF-Tech/P/2017-18, Dtd. 26.3.2018	Oct 2016 to March 2017
9	V/15-13/SKF/O&A/2018-19, Dtd. 2.4.19	April 2017 to June 2017

(Dr. BALBIR SINGH)
COMMISSIONER
CENTRAL GST & C.EX.
AHMEDABAD NORTH.

F. No.V.84/15-63/ OA/2012 Date: 29.11.2019

To
M/s. SKF Technologies (I) Pvt. Ltd.,
Sarkhej- Bavala Highway,
Bavla, Dist- Ahmedabad
Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Deputy/Assistant Commissioner,Division-V, C.G.S.T, Ahmedabad(North)
3. The Superintendent of Central Excise, AR-V, Division-V, C.G.S.T, Ahmedabad(North)
4. Guard File