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

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निबन्धित पावती डाक द्वारा / By REGISTERED POST AD

फा .सं/. STC/15-39/OA/2016

आदेश की तारीख़ / Date of Order : 28.02.2020

जारी करने की तारीख़ / Date of Issue : 04.03.2020

द्वारा पारित/Passed by -

डॉ. बलबीर सिंह / Dr. BALBIR SINGH

आयुक्त / COMMISSIONER

मूल आदेश संख्या /

ORDER-IN-ORIGINAL No. AHM-EXCUS-002-COMMR–28-31/2019-20

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 हैंचार प्रतियों में दाखिल , उसकी भी उतनी ही ,की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उनमें से कम से क) प्रतियाँ संलगन 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 following Show-Cause-Notices F.No. M/s SKF Technologies (India) Pvt. Ltd. Milestone-Kandla 333, village Kerala, Taluka- Bavla, Ahmedabad-Rajkot Highway, Gujarat-382220.

Sr.No	SCN No and date
1	V.84/15-39/OA/2016, dated 19.04.2016
2	V.84/15-27/OA/2017, dated 24.10.2017
3	V.84/15-05/OA/2018, dated 19.03.2018
4	V.84/15-53/OA/2018, dated 05.10.2018

BRIEF FACTS OF THE CASE:

M/s SKF Technologies (India) Pvt. Ltd. situated at Milestone-Kandla 333, village Kerala, Taluka- Bavla, Ahmedabad-Rajkot Highway, Gujarat-382220, (hereinafter referred to as "SKF Technologies" for the sake of brevity) 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, holding Central Excise Registration No.AAACC4393DXM002. They are availing Cenvat Credit facility under Cenvat Credit Rules, 2004.

2. During the audit of the records undertaken by the Departmental officers, it was noticed that M/s SKF Technologies was selling their entire production for home consumption to M/s SKF India Ltd, a distribution center situated at Safexpress Logistic Park, Changodar, Ahmedabad, (hereinafter referred to as 'SKF India' for the sake of brevity). 'SKF India' in turn sold the same to ultimate buyer at a price higher than the value on which the Central Excise duty was paid by SKF Technologies.

3. It appeared that goods manufactured and sold by SKF Technologies to SKF India were at lower price, so as to enable SKF India sell the same in the market at a much higher price and in such a manner SKF Technologies was evading the Central Excise duty. The difference in valuation of goods was huge, For e.g. as per the extract of the RG 23 D register of SKF India, 2 nos. of "Bearings" valued at Rs. 42060/- (were) sold by SKF Technologies under Central Excise Invoice No.583 dated 28.04.2011 on payment of duty of Rs.4206/-, which was subsequently sold by SKF India sold for Rs. 94010/-. From the margin of pricing of M/s. SKF India, it appeared that the method of valuation and costing being adopted by SKF Technologies in selling its entire production for home consumption to SKF India was not proper. Since entire production for home consumption was sold to SKF India and was exclusively manufactured for them and was not sold to any other unrelated customer directly from the factory premises of SKF Technologies, comparable prices were not available for these products.

4. To ascertain the factual position and verify the same in detail, the premises of SKF Technologies was searched by the officers of Central Excise Preventive, Ahmedabad–II on 06.02.12 and 23.12.2013, in the presence of two independent witnesses and Shri Prashant Sharma, Controller of SKF Technologies under regular panchnamas. A statement of Shri Prashant Sharma, working as Controller with SKF Technologies, was recorded on 06.02.2012 under Section 14 of the Central Excise Act 1944, wherein he, inter alia, stated that he being a Chartered Accountant was handling Accounts/Central Excise and other commercial related matters. He further stated that SKF Technologies did not sell any goods manufactured directly to the customers and also did not receive any orders directly from the customers; that as per the policy of SKF group, all orders were received from SKF India and the "Bearings" were manufactured as per the specifications detailed in the order received from them; that all the goods manufactured were removed to SKF India, who in turn sold the same to the ultimate customers; that they interacted directly with the customers whenever necessary; that customers like Indian Railways undertook inspection of the goods at their premises, though they were billed directly by SKF India; that they received payment from SKF India.

4.1 In his further statement recorded on 09.02.2012, he stated that Shri R. Rajan, Business Development Manager with SKF Technologies, received inquiries from SKF India and drew up the forecasting of manufacture and subsequent tentative delivery schedule; that Mr R.Rajan also contacted purchase department for availability of the raw material ; that Shri Dhananjay Kulkarni,Manager, Demand Chain, placed orders on vendors approved by SKF India on the basis of the standards set regarding the quality of the raw material and specifications etc.; that Shri Anil Babuta,Manager Production, supervised the production and scheduling the same in the factory; that quality control of both, input and finished goods was handled by Shri Milind Bhosekar. On being asked about issue of invoices and about fixation of the rates at which the "Bearings" were sold to SKF India, he stated that the same were as per the orders received from SKF India; that all orders were fed online into the system by SKF India, mentioning the part number, quantity etc. and the same was accessed by SKF Technologies and thereafter invoices were generated. He further stated that they were manufacturing large sized "Bearings" mainly used by Railway, Off Highway Equipments, Electricity Generators etc. He had further stated that all the invoices were issued to M/s SKF India., showing SKF India was shown as both, buyer and the consignee. He stated that, if needed, they could identify the end customers on the basis of the codes put in by SKF India at the time of placing purchase orders.

5. To verify the same in detail, the premises of SKF India was also searched by the team of Central Excise Preventive wing Ahmedabad–II on 06.02.12 and 23.12.2013, in the presence of two witnesses. Statement of Shri Amar Kumar Bhatt, authorised signatory of M/s SKF India Ltd, Changodar, Ahmedabad, was also recorded on 06.02.2012 under Section 14 of the Central Excise Act 1944, wherein he stated that SKF India was a registered dealer registered with Central Excise department. He had further stated that they received the goods from various companies of SKF group under stock transfer/purchase basis and sold to ultimate customer.

6. A statement of Shri Anil Raskar, Manager Excise and Service Tax with SKF India, Pune was recorded on 23.04.2012. He had stated that he handled all matters related to Central Excise and Service Tax for the whole of India pertaining to SKF India, which included all companies of SKF in India, including SKF Technologies. He had stated that he was based at Pune registered office of SKF India and on the payrolls of SKF India. On being asked, he had stated that SKF Technologies and SKF India were both subsidiaries of AB SKF, Sweden and under the management of AB SKF, Sweden; that SKF India did not own or control the functioning of SKF Technologies, in any way. He had further stated that as per Cost Sharing Agreement dtd.06.04.2010 between SKF India and SKF Technologies, they had common personnel and all other resources were shared by both the firms as per the terms and conditions stipulated in the said agreement on payment of agreed fees; that Mr. Jean Pierre was a project expert who used to visit SKF Technologies and offered professional services and SKF Technologies had been billed for his services by SKF China, on whose pay rolls he was. On being asked, he stated that SKF India did not exercise control over SKF Technologies; that as regards finalizing the vendors, he stated that major raw material vendors of SKF Technologies were approved by AB SKF, Sweden; that there was no agreement between SKF India and SKF Technologies but all goods were sold to SKF India only; that on being asked about the fixation of price, he stated that as per the E-mail communication shown to him, it appeared that the prices of the goods sold by SKF Technologies to SKF India were fixed by the personnel based at SKF India, since they were common as per the cost sharing agreement; that there were no common Directors between SKF India and SKF Technologies and submitted a list of Directors of both the firms; that there were common personnel of SKF group on the payroll of SKF India and also based at the premises of SKF Technologies and as per the cost sharing agreement, all the identified personnel of SKF Technologies and SKF India worked collectively in the functioning of SKF Technologies; that SKF Technologies did not have any independent sales/ marketing team; that all the products manufactured by SKF Technologies were sold to SKF India for onward distribution to the customers. He further stated that had a common umbrella ERP package for all the units of SKF in India, developed by AB SKF, Sweden, for eg. I.T. cost was shared and paid independently by both the units i.e. SKF India and SKF Technologies to AB SKF Sweden; that the function of the ERP package was to help in communicating the orders received by SKF India to SKF Technologies, where SKF Technologies scheduled the products and dispatches to SKF India at the agreed contract price; that as per the agreed contract, the goods for Indian Railways, was to be charged 8 % less than the quotes accepted by SKF India., for the wind and renewal energy customers, it would be 15% less than the quotes accepted by the SKF India and for other customers, the price charged were 100+25% margin to the cost of SKF Technologies. On being further asked that the personnel of SKF group who were on the payroll of SKF India, and had exercised direct or indirect control on the functioning of SKF Technologies, he stated that all the actions and directions undertaken by the SKF India and SKF Technologies were within the purview of the cost sharing agreement. On being asked whether Mr Chandramowli was one of the Directors of SKF Technologies and also CFO of SKF India, and was hence in a position to influence the pricing of the products sold by SKF Technologies, he stated that Mr. Chandramowli did not have absolute discretionary powers to fix the rates of the products sold by SKF Technologies.

7. Further statement of Shri Prashant Sharma was recorded on 27.08.2014; wherein he was shown the Annexure A to E and Annexure-"F" submitted by SKF India vide letter dtd.27.08.2014. He had further stated that there was no change in share holding pattern, "Inter-Connected undertakings", "Related Party Transactions i.e SKF India", the terms and condition in Cost Sharing/Service Agreement between SKF Technologies and SKF India, and Foreign Collaboration and Technical Assistance Agreement till date.

8. Statement of Shri Vrijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai was also recorded on 4th Sept.,2014 under Section 14 of the CEA,1944. He had stated that his work profile included handling tax matters pertaining to Income Tax, Central Excise, Service Tax & VAT & CST Laws; that he also supported SKF Technologies in respect of the above mentioned areas of taxes; that there was total clearance to SKF India by SKF Technologies and there was no agreement for sale between SKF India & SKF Technologies; that as SKF Technologies did not have a sales unit and hence the entire sale was through SKF India; that the sales team of SKF India, who were aware of products manufactured by SKF Technologies, negotiated the order with the customer; that on successful negotiation and release of Purchase Order by the customer on SKF India, the company placed order on SKF Technologies for manufacturing of the "Bearings" meant for Wind Customers & Indian Railways. SKF Technologies sold the above product to SKF India, which in turn sold to Wind Customers and Indian Railway; that in wind segment generally SKF Technologies, sold the goods at a price 8% to 15% less than SKF India sales price; that SKF Technologies was aware of the end selling price of SKF India at the time of invoicing; that in this support he submitted two sets of documents containing, end use certificate from the customer, PO issued by the Customer on SKF India, Invoice issued by SKF Technologies on SKF India & Invoice issued by SKF India on the customer; that for Indian Railways the price at which goods sold by SKF Technologies

depended up on the end customer price of SKF India; that in Indian Railways segment generally SKF Technologies sold the goods at a price 8% less than SKF India sales price; that SKF Technologies was aware of the end selling price of SKF India at the time of invoicing; that in this support he submitted two sets of documents containing, PO issued by the Customer on SKF India, Invoice issued by SKF Technologies on SKF India & Invoice issued by SKF India on the customer; that there was bare minimum margin left with SKF India after deducting Sales & Administration Expense and hence there was no scope of further negotiation of price between the two entities and never countered by SKF Technologies. On being asked who decided the price difference i.e. between 8% to 15 % at the time of invoicing of Windmill Bearing, by SKF Technologies, he had stated that he was not aware about the same. On being asked he had further stated that SKF India had substantial manpower in area of Communication, Business Excellence, Communication, H.R., Finance, Legal, Purchases etc. and SKF Technologies availed above named services from SKF India. He had further stated that there were no common directors on board between both the company's, however Mr. Chandramowli Srinivasan – Director Finance being employee of SKF India was also Chairman & Director in SKF Technologies & Mr. Shrikant Savangikar – Director Business Excellence Quality & Sustainability being employee of SKF India was also director in SKF Technologies. On being asked that in the Audited Balance Sheet for the year 2010-11 of SKF Technologies, in clause 17.17 forming part of Notes to Accounts pertaining to "related party disclosures" it mentioned SKF India under the heading "parties under common control", he had stated that AB SKF Sweden was the ultimate holding company for both these two companies viz. SKF India & SKF Technologies and hence transactions between these two companies were reported under the related party disclosure of the balance sheet for the year ended 31st March 2011. Such disclosure was a statutory requirement and had been reflected in audited financials of each year; that in the Audited Balance Sheet for the year 2010-11 of SKF Technologies, in clause 17.17 (2) under the head of "particulars of related party transactions"- in revenue from operation- they had reported transaction with SKF India totaling to Rs.45,10,25,518/- as the above disclosure forms part of Related party disclosure in audited accounts the reporting which was statutory requirement; that it represented income from operations earned by SKF Technologies from SKF India, which was arising primarily from sales made to SKF India. Such disclosure was reflected in audited financials of each year. He had further stated the share holding pattern of SKF India & SKF Technologies, was as under:-

SKF India Limited (As of 31st March 2014)

Sr.No	Name of the Share holder	No of Shares held	%
1	Aktiebolaget SKF, Sweden	2,46,39,048	46.70
2	SKF UK Limited	34,02,000	6.50
3	SKF Forvaltning AB, Sweden	2,13,520	0.40
4.	Others	2,44,77,970	46.40
	Total	5,27,32,538	100.00

In case of SKF India Ltd, there had been no change in the share holding pattern in shares held by holding company and their subsidiaries.

SKF Technologies India Pvt. Ltd (As of 31st March 2014)

Sr.No	Name of the Shareholder	No of Shares held	%
1	SKF Forvaltning AB, Sweden	17,34,99,899	7.11
2	Aktiebolaget SKF, Sweden	226,65,00,101	92.89
	Total	244,00,00,000	100.00

9. A statement of Shri Chandramowli Srinivasan - Chairman & Director in SKF Technologies and Chief Finance Officer in SKF India Ltd was also recorded on 5th Sept., 2014 under Section 14 of CEA, 1944. He had stated that he worked as CFO for SKF India Limited based at the Office of the Company at Pune; that his work profile included handling Finance, Accounting, Treasury, Taxation, pertaining to SKF India Ltd; that he was also Chairman and Director of SKF Technologies (I) Pvt. Ltd. and other directors were Shri Arun Shivaram, Shri Shrikant Savangikar and Shri Sanjeebit Choudhury. On being asked he had stated that there was no written agreement between both the parties but as per mutual understanding SKF Technologies in Ahmedabad was selling their whole domestic product through SKF India. He had stated that some of the orders were placed by SKF India on the basis of firm customer orders received and some orders were placed based on forecast or tentative customer schedules or forecasts. On being asked as to how prices were fixed of different types of "Bearings", he stated that the prices at which the goods sold by SKF Technologies to SKF India depended upon the segment in which such goods were sold by SKF India to the end customer. He further stated that so far wind "Bearings" were concerned, generally SKF Technologies, Ahmedabad unit sold the goods at a price 8% to 15% less than SKF India sales price; that SKF Technologies was aware of the end selling price of SKF India at the time of invoicing; that so far

"Bearings" to Indian Railways were concerned the price at which goods sold by SKF Technologies depended up on the end customer price of SKF India 8% less than SKF India sales price. On being asked what the criteria for variations were of prices 8-15%. as detailed above, he had stated that generally it depended within the product range of wind mill "Bearings". In Slewing Bearing it was generally 8%, Main Shaft Bearing 10-15%; that they were manufacturing those two broad types of bearing for the wind mill customers. On being further asked he had stated that there were no common directors on board between both the companies. However Mr. Chandramowli Srinivasan – CFO being employee of SKF India was also Chairman & Director in SKF Technologies & Mr. Shrikant Savangikar – Director Business Excellence Quality & Sustainability being employee of SKF India was also director in SKF Technologies.

10. Whereas the valuation of any excisable goods is governed by Section 4 of the Central Excise Act, 1944 (hereinafter referred to as 'the Act'). Section 4 (1) (a) of the Act stipulates that when the duty was chargeable on any excisable goods with reference to their value, then the transaction value of the goods sold by the assessee for delivery at the time and place of removal will be value on which the duty should be charged provided that the assessee and the buyer of the goods were not related and the price was the sole consideration for the sale.

11. Further, Section 4(1)(b) stipulates that when the sale was not at arms length, or where the assessee and the buyer were related or where the price was not the sole consideration for the sale, then the value of the said goods was to be determined in terms of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000 (hereinafter called 'the Valuation Rules'). 11.Thus, it appeared that, the value of the goods cannot be ascertained in terms of Section 4(1)(a) of the Act, when the assessee and the buyer were related and the price was not the sole consideration of the sale. The term 'related' is defined under section 4(3)(b) of the Act which reads as under:

(b) persons shall be deemed to be "related" if –

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

Explanation.- In this clause –

(i) "inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969); and
(ii) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act, 1956 (1 of 1956);"

12. The definition of term '*inter connected undertaking' is* given under clause (g) of section 2 of the MRTP Act,1969 (54 of 1069), which reads as under;

(g) "inter-connected undertakings" means two or more undertakings which were inter-connected with each other in any of the following manner, namely :-

(i) if one owns or controls the other.

(ii) where the undertakings were owned by firms, if such firms have one or more common partners.

(iii) where the undertakings were owned by bodies corporate, -

(a) if one body corporate manages the other body corporate, or
(b) if one body corporate was a subsidiary of the other body corporate, or
(c) if the bodies corporate were under the same management, or
(d) if one body corporate exercises control over the other body corporate in any other manner;

(iv) where one undertaking was owned by a body corporate and the other was owned by a firm, if one or more partners of the firm, -

(a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or

(b) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate,

(v) if one was owned by a body corporate and the other was owned by a firm having bodies corporate as its partners, if such bodies corporate were under the same management,

(vi) if the undertakings were owned or controlled by the same person or by the same group,

(vii) if one was connected with the other either directly or through any number of undertakings which were inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses.

Explanation I : For the purposes of this Act, two bodies corporate, shall be deemed to be under the same management, -

(i) if one such body corporate exercises control over the other or both were under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate was the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-fourth of the equity shares in the other or controls the composition of not less than one-fourth of the total membership of the board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate were under the same management, constituted (whether independently or together with relatives of such directors or the employees of the first mentioned body corporate) one-fourth of the director of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-fourth of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or

(vii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate was exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-fourth of the total voting power in relation to each of the two bodies corporate was exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) if the directors of the one such body corporate were accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate were accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II : If a group exercises control over a body corporate, that body corporate and every other body corporate, which was a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III : If two or more bodies corporate under the same management hold, in the aggregate, not less than one-fourth equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV : In determining whether or not two or more bodies corporate were under the same management, the shares held by financial institutions in such bodies corporate shall not be taken into account.

13. It thus appeared that SKF Technologies and SKF India were inter-connected undertakings and have mutual interest in each other's business on the basis of following findings:

13.1 Both the companies i.e SKF India and SKF Technologies were working under the umbrella of holding company i.e AB SKF Sweden as AB SKF Sweden were holding more than 50% shareholding in SKF India and SKF Technologies. Therefore, both the companies have interest in the business of each other.

13.2 As per the Accounting Standard AS 18, parties were considered to be related, "if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions" and Related party transactions means "a transfer of resources or obligation between related parties, regardless of whether or not a price was charged". Hence it appeared in the instant case both the parties were related parties as they were influencing the decisions of each other in a significant manner.

13.3 **Further, Sr.No.17.17 of notes to the accounts of Balance Sheet of SKF Technologies for the year ended 31st March, 2011, under Related Parties (Party under common control) and particulars of related party transactions, the name of SKF India is mentioned, and this practice has been continued in their future Balance Sheets also,** which clearly establishes that both the units were related. Likewise transactions worth Rs.45.10 crores were mentioned against SKF India in the "Particulars of Related Party Transaction", which was mandatory to be disclosed as per the Indian Accounting standards. Therefore it appeared that SKF India and SKF Technologies were "Related" in terms of Section 4 of the Central Excise Act,1944. The same practice has been continued in other Balance Sheets too.

13.4 Further, as per clause (d) of the agreement Cost Sharing and Service Agreement dated 6th April 2010 between SKF Technologies and SKF India, both the parties were pooling and combining their respective manpower and other resources for the purpose. The types of services rendered and availed were specifically mentioned in their annexure, which was summarized here below;

Type of service rendered by different function of business units	Parameters to be used for charging the services on pro rata basis
Corporate, marketing, Business Excellence, Finance Director, Legal and Secretarial, HR Director	a.. 1/3 Net sales b... 1/3 Capital Employed c... 1/3 Employee cost
Business development	On ratio of total sales
Central Finance	Sales and production value
Taxation	Sales and production value
Centre for learning (CFL) Talent management recruitment	No. of management staff employed
Business application support	Equally amongst all operating units
Company purchase	Value of direct material consumption

13.5 The services mentioned in the above table clearly showed that almost all the activities of SKF technologies were controlled or governed by SKF India, though the same has been projected in the guise of Cost Sharing Agreement. There was no clear mechanism to share the actual cost between both the parties. This clearly showed and established that *they were so associated that they have interest, directly or indirectly, in the business of each other.*

13.6 A detailed chart showed Mr. Chandramowli Srinivasan as Director Finance in SKF India and at the same time he was also a Chairman and Director of SKF Technologies. As per the chart, he was involved in providing all the crucial services such as Tax Accounting, Manufacturing Controlling, Sales Controlling, Legal and Secretariat etc. Apart from this, from the chart of January 2014, it appeared that Mr. Shrikant Savangikar, who was Director Business Excellence in SKF India and was also Director in SKF Technologies, was providing services such as Business Excellence and Six Sigma etc. Both were holding senior positions in both the units can influence almost all decisions making including price fixation by SKF Technologies, which was apparent from the difference in price i.e. on which SKF Technologies paid the

Central Excise duty and the price charged by SKF India. This clearly showed and established that they were so associated that they had interest, directly or indirectly, in the business of each other.

13.7 From the statements above it appeared that sale prices of SKF Technologies was controlled by SKF India. Hence, SKF Technologies had no control over its sale price. The sale price of main products i.e windmill "Bearings" and "Bearings" meant for railway supplies, were fixed by SKF India and by backward calculation method SKF Technologies have to supply windmill "Bearings" at a price 8% to 15% less than what was the Quoted price of SKF India. And in the case of "Bearings" to be supplied to Indian Railways, SKF Technologies have to charge price 8% less than the quoted price of SKF India. Even when specifically asked to both Shri Vrijendra Patwari and Shri Chandramowli Srinivasan who worked for both the entities, they could not tell as what exactly was the basis of fixing the margin i.e difference in prices of both the entities. They also could not clarify as to how the difference of 8% to 15% as detailed above, was given effect in each invoice. Even, from the sample copy of purchase order with regard to railway tender produced by Shri Vrijendra Patwari working as General Manager, the same could not be substantiated. The above confirmation that in the case of Railway supply, SKF India gets 8%, after giving backward calculation to SKF Technologies, was found to be wrong. Further Mr. Chandramowli Srinivasan – CFO being employee of SKF India was also Chairman & Director in SKF Technologies & Mr. Shrikant Savangikar – Director Business Excellence Quality & Sustainability being employee of SKF India was also director in SKF Technologies were in a position to influence the prices. All this cannot take place unless and until there was of mutuality of interest in each other business. It appeared that though both the entities were subsidiaries of holding company and holding company holds 100% shareholding in SKF Technologies and more than 50 % shareholding in SKF India, the holding company was in a position to influence working of both the companies and may not allow them to work independently and would interfere in such a manner so that both the companies were benefitted. Hence, it appeared that both the companies were related to each other and they were *so associated that they have interest, directly or indirectly, in the business of each other.*

13.8 Similarly SKF Technologies does not have any separate marketing/sales department as it was controlled by SKF India only and key person in both the companies were same. Therefore it appeared that both the companies were related to each other and they were so associated that they have interest, directly or indirectly, in the business of each other.

13.9 It further appeared **that SKF India has given huge amount of loan of Rs. 240 crore to the SKF Technologies (As per Balance sheet as at 31st March,2013-Annexure-15) of SKF Technologies) and further as per Supplementary agreement the terms of payment kept on changing, giving relief to SKF Technologies in repayment schedule. It clearly established the relationship between SKF India and SKF Technologies as "related Party".** It appeared that both the companies were related to each other and they were so associated that they have interest, directly or indirectly, in the business of each other.

13.10 It appeared that, both M/s SKF Technologies and M/s SKF India were related was also apparent from the fact that in their Form No. 3CB, filed, by M/s SKF India for the financial years 2010-11, 2011-12, 2012-13 under Rule 6G(1)(b) of the Income Tax Rules, 1962, the payments made to M/s SKF Technologies, towards the purchase of the said excisable goods, were shown to have been made to person specified under section 40A(2)(b) of the Income Tax Act, 1961. Section 40A (1) and (2) of the Income Tax Act, 1961, reads as under;

"Section 40 A. *EXPENSES OR PAYMENTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES.*

(1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(2) (a) Where the assessee incurs any expenditure in respect of which payment has been or was to be made to any person referred to in clause (b) of this sub-section, and the Assessing Officer was of opinion that such expenditure was excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment was made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him there from, so much of the expenditure as was so considered by him to be excessive or unreasonable shall not be allowed as a deduction;

(b) The persons referred to in clause (a) were the following, namely :-

(i) Where the assessee was an any relative of the assessee; individual

(ii) Where the assessee was a any director of the company, company, firm, association partner of the firm, or member of persons or Hindu undivided the association or family, or any family relative of such director, partner or member;

(iii) Any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) A company, firm, association of persons or Hindu undivided family having substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) A company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) Any person who carries on a business or profession, - (A) Where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(B) Where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner, or member, has a substantial interest in the business or profession of that person.

Explanation : For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if -

(a) In a case where the business or profession was carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(b) In any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the profits of such business or profession."

13.11 From the depositions of Shri Anil Raskar of SKF India and Shri Prashant Sharma Controller of SKF Technologies, and their letter dated 06.03.2012 and also from the statement of Shri Vrijendra Patwari and Shri Chandramowli Srinivasan, declaring that *"the transaction between SKF Technologies and SKF India being at arms length and on principal to principal basis was not affected by virtue (of) any relationship and being similar to the transactions between two un related persons in an uncontrolled atmosphere*", appeared to be contradictory with an attempt to misrepresent the actual facts. It was apparent that both the units – SKF Technologies and SKF India worked in co-ordination as regards sharing of manpower and other resources, influencing the prices of goods manufactured and sold, and imposing/accepting restrictions on carrying forward core business activities of marketing/purchases/scheduling production/invoicing etc.

14. Thus, in view of the provisions of law and discussion in above paras, it appeared that M/s SKF India, the sole distributor of M/s SKF Technologies and SKF Technologies were 'related' in terms of Section 4 (1)(b) (3) of the Central Excise Act, 1944. With a view to the above facts, it further appeared that both M/s SKF Technologies and M/s SKF India had interest, directly or indirectly, in the business of each other.

15. In view of the foregoing paras, it appeared that the value of the said excisable goods cleared by M/s SKF Technologies to M/s SKF INDIA was required to be determined in terms of the Section 4 (1)(b)(3) read with the provisions of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (hereinafter referred to as "Valuation Rules"). Rule 3 of the Valuation Rules state that the value for the purpose of clause (b) of sub section (1) of Section 4 of the Act shall be determined in accordance with these rules. Rule 4 of the Valuation Rules, deals with valuation in cases of the delivery of excisable goods was to be made at any other time other than the time of removal. Rule 5 provides for the valuation where delivery of goods was to be effected at a place other than the place of removal; Rule 6 was for valuation of excisable goods in a transaction between unrelated persons where price was not the sole consideration for sale; Rule 7 provides for valuation of excisable goods where sale was effected from a depot or a consignment agent and, Rule 8 provides for valuation of excisable goods captively consumed. Since none of the above situations apply to this case, recourse has to be

taken to Rule 9 of the Valuation Rules which provides for determination of value of the excisable goods when the excisable goods were sold by him through a person who was related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of the Act, only. Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 reads that;

> *"RULE 9. When the assessee so arranges that the excisable goods were not sold by an assessee except to or through a person who was related in the manner specified in either of sub-clauses (ii), (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act, the value of the goods shall be the normal transaction value at which these were sold by the related person at the time of removal, to buyers (not being related person); or where such goods were not sold to such buyers, to buyers (being related person), who sells such goods in retail :*
>
> *Provided that in a case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of articles, the value shall be determined in the manner specified in rule 8."*

RULE 10. *When the assessee so arranges that the excisable goods were not sold by him except to or through an inter-connected undertaking, the value of goods shall be determined in the following manner, namely :-*

(a) If the undertakings were so connected that they were also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of section 4 of the Act or the buyer was a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9.
Explanation. - In this clause "holding company" and "subsidiary company" shall have the same meanings as in the Companies Act, 1956 (1 of 1956).

(b) in any other case, the value shall be determined as if they were not related persons for the purpose of sub-section (1) of section 4.

Thus it is evident that SKF Technologies were required to pay Central Excise duty on the value of the goods at which such goods were sold by SKF India at the time of removal, to buyers (not being related person); or where such goods were not sold to such buyers, to buyers (being related person), who sells such goods in retail.

16. In view of the above, M/s SKF Technologies and M/s SKF India were issued summons dtd.02.04.2014 to submit the details of clearances made by SKF India of the goods received from SKF Technologies. SKF India submitted a letter dtd.27.08.2014 alongwith Annexure A to E. These annexure showed the details of domestic clearances made by SKF Technologies to SKF India and further clearances of these goods by SKF India during the year 2009-10 to 2013-14.These annexures showed the clearances of "Bearings" of Windmill and other than Windmill. These Annexures also showed invoice wise clearances, quantity, value and duty thereon, of both SKF Technologies and SKF India. On the basis of these Annexure A to E, abstract was provided by SKF India i.e Annexure "F" showing year wise difference in sale value between SKF India and SKF Technologies and duty amount thereon. Accordingly, differential duty on differential value charged by SKF India i.e related party, on the goods, other than windmill "Bearings", comes to Rs.1,40,56,374/- including cess. The same appeared to be recoverable from SKF Technologies considering SKF India a related person as discussed in above paras.

17. It appeared that M/s SKF Technologies were aware that the goods cleared by them were liable to be assessed under the provisions of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 read with Rule 10 of the same Rules, in as much as the differential value charged by SKF India as mentioned in Annexure A to E and Abstract Annexure-"F" has not been considered for payment of duty. It further appeared that the above mentioned facts were never intimated to the Central Excise authorities by M/s SKF Technologies. M/s SKF Technologies had cleared Goods by suppressing the actual assessable value as detailed in the worksheet appended with this Show cause notice as Annexure-A to E by paying duty on the basis of value as appearing on the Company's invoices and not on the basis of the value at which the said goods were sold by their related sole distributor M/s SKF India i.e related party and thereby evaded the payment of proper Central Excise duty amounting to Rs.1,40,56,374/- on the differential value as shown in Annexure A to E and Annexure "F" i.e abstract of Annexure A to E. The actual assessable value was determined as per the principle of price-cum-duty, as stipulated in explanation to Section 4 of the Central Excise Act, 1944.

18. In view of the above, it appeared that M/s SKF Technologies, has contravened the provisions of;

i. Rule 6 of Central Excise Rules, 2002 in as much as they failed to determine the actual duty liability and assess the duty correctly on the said excisable goods cleared;

ii. Rule 8 of Central Excise Rules, 2002 read with Rule 4 of the Central Excise Rules, 2002, in as much as they failed to pay the appropriate Central Excise Duty on the goods cleared;

iii. Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 of the same Rules read with Section 4 (1)(b) of the Central Excise Act, 1944 in as much as they failed to determine the value of their goods for payment of duty under the said provisions, despite being aware that their sole distributor was also 'related' in terms of definition provided under the provisions of section 4(3)(b) of the Central Excise Act, 1944 having interest in each other's business.

19. Further, during the same audit, it was also observed that they cleared "Bearings" to SKF India Ltd. a distribution centre based at Safexpress Logistic Park, Changodar, Ahmedabad, claiming exemption under Noti. No. 6/2006 dated 01.03.2006, without payment of duty on Invoices issued under Rule 11 of the Central Excise Rules 2002. It could not be ascertained from the invoices issued, or from the packing whether the goods cleared under exemption notification were actually parts/components of Wind Operated Electricity Generator (WOEG) and whether the same could be used for any other purpose.

20. To verify the same, the premises of SKF Technologies was searched by the team of Central Excise Preventive wing Ahmedabad – II on 06.02.2012 and 23.12.2013 in the presence of two witnesses and Shri Prashant Sharma, Controller in SKF Technologies under panchnama proceeding. Simultaneous searches were also carried out at M/s SKF India Distribution Centre, Safexpress logistic park, Changodar, Ahmedabad on 06.02.2012 and 23.12.2013 by the team of Central Excise Preventive wing Ahmedabad–II in the presence of two witnesses and authorized signatory of SKF India.

21. The relevant extract of Notification No. 6/2006-CE Dated 1/3/2006 is reproduced below.

"'Effective rate of duty - G.S.R. (E)- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it was necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table given below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or subheading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as were given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as was in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and condition number of which was referred to in the corresponding entry in column (5) of the Table aforesaid:

[Provided that nothing contained in this notification shall apply to the–

(a) goods specified against S. No. 10 of the said Table before the 27th day of February, 2010 and after the 31st day of March, 2011; and

(b) goods specified against S. No. 35A of the said Table after the 31st day of March, 2013]

Explanation.-For the purposes of this notification, the rates specified in columns (4) of the said Table were ad valorem rates, unless otherwise specified.

TABLE

S.No.	*Chap or head or subhead or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition No.*
(1)	*(2)*	*(3)*	*(4)*	*(5)*

1.	*84*	*The Coir processing machinery specified in List 1, supplied under Integrated Coir Development Project being implemented by the Government of Kerala*	*Nil*	—
2.	*84*	*Spinnerettes made, inter alia , of Gold, Platinum and Rhodium or any one or more of these metals, when cleared in exchange of worn-out or damaged spinnerettes*	*[10%]*	*1*
...				
83.	*Any Chapter*	*Goods required for,– (a) the substitution of ozone depleting substances (ODS); (b) the setting up of new projects with non-ozone depleting substances (non-ODS) technologies. Explanation.- "Goods" for the purposes of this exemption means goods which were designed exclusively for non-ozone depleting substances (non-ODS) technology.*	*Nil*	*15*
84.	*Any Chapter*	*Non-conventional energy devices/ systems specified in List 5*	*Nil*	*--*
85.	*32,38,39, 44 or 70*	*Goods specified in List 6, for the manufacture of rotor blades for wind operated electricity generators*	*Nil*	*16*
86.	*Any Chapter*	*Parts used within the factory of production or in any other factory of the same manufacturer in the manufacture of goods falling under headings 8601 to 8606 (except Railway track machines falling under tariff item 8604 00 00)*	*Nil*	*2*

LIST 5

 # New [(See S. No.84 of the Table)]

(1) ....

(13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller

(14) ....

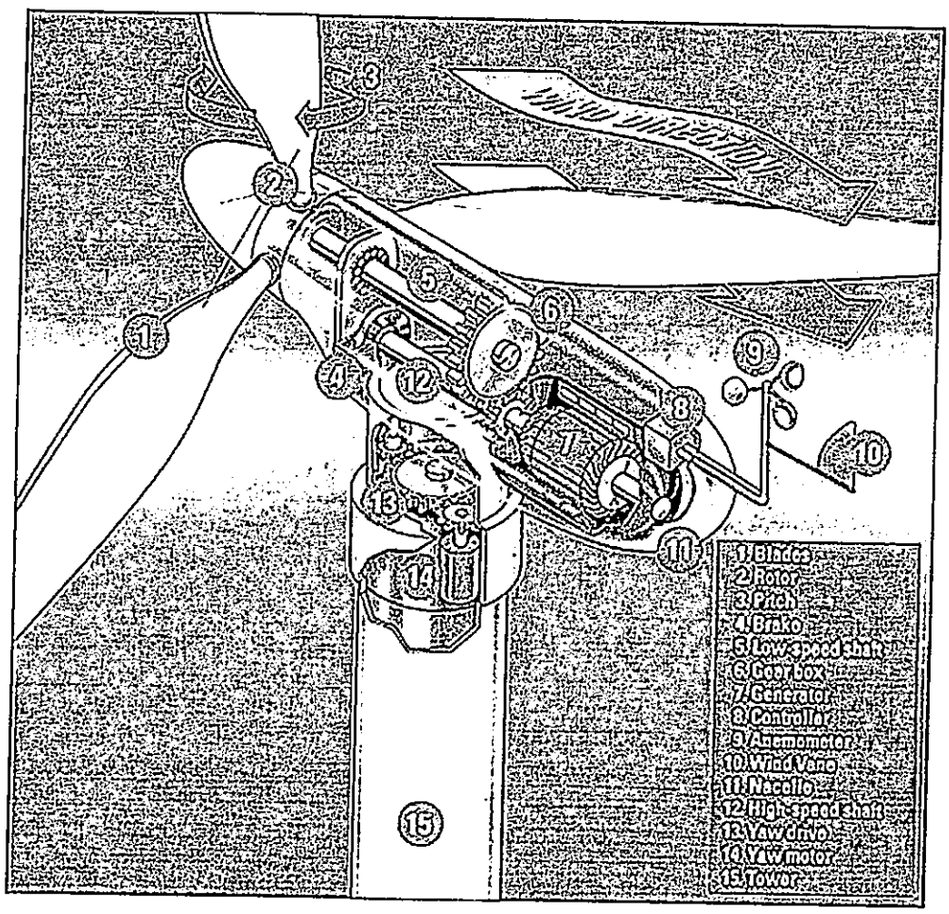
21.1 The above notification was amended by Notification No. 12/2012 dtd.17.03.2012 wherein the list no 5 was renumbered as List 8 and the contents in Sr.No. 84 were renumbered as 332. This notification was further amended by Notification No. 12/2014-CE dated 11.7.2014 vide which "after serial number 332 and the entries relating thereto, the following serial number and the entries shall be inserted, namely :-

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
"332A	Any Chapter	Parts consumed within the factory of production for the manufacture of goods specified in LIST 8	Nil	2";

Condition No.	Conditions
1.	-------
2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.
3.	----------

21.2 Sl. No. 84 to Notification No. 6/2006-CE Dated 1.3.2006 as amended vide Notification No. 12/2012 dtd.17.03.2012, specifies the exemption to goods classifiable under any chapter of Non-conventional energy devices/ systems specified in List 5. Serial no (13) of the said List 5 mentions Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller. From a plain reading of the above definition it was clear that the entry at Serial No. (13) of List 5 covers only the generator and its parts and its scope cannot be

expanded to include wind operated electricity generating systems or plants and parts thereof. The "Bearings" were used in various places of the wind mill i.e nacelle part of the wind mill i.e rotor shaft, gearbox (step-up gear), generator, yaw gearbox (reduction), yaw slewing table, blade pitch revolving seat and hydraulic pump. It was not forthcoming from any records such as invoices or ER1 returns that whether the "Bearings" cleared have actually been used in the generator only or not. The picture of wind mill is reproduced below:



21.3 From the above picture it was clear that generator was a part of windmill i.e sr. no 7 and parts used in generator were only eligible for exemption. Hence "Bearings" relating to serial No. 7 i.e generator were eligible for exemption.

21.4 Further, from the above mentioned notification, it was apparent that wherever it was intended that a device alone should be granted the benefit of exemption it has been so stated; on the other hand where it was intended that the system as a whole needs to be exempted, it has been clearly described as such.

21.5 Further, in his statement dated 05.09.2014 (Annexure-12-refer) Shri Chandramowli Srinivasan -Chairman & Director in SKF Technologies And Chief Finance Officer in SKF India Ltd. had accepted and stated that they were generally manufacturing slewing Bearing and main shaft Bearing for the wind mill customers. It appeared that both types of "Bearings", however, part of wind mill, but not a part of wind generator as mentioned above.

21.6. From the records maintained and periodic returns filed by SKF Technologies and the invoices issued by them it was not forthcoming that the "Bearings" manufactured and cleared by them were parts of "WOEG". Therefore it appeared that M/s SKF Technologies does not clear parts of WOEG, its components and parts thereof including rotor and wind turbine controller" but cleared "Bearings" classifying them under Chap sub head : 84825013 / 84823000 or 84822013.

21.7. It also appeared that SKF Technologies being the manufacturer of "Bearings" has been clearing all of their manufactured goods directly to SKF India, who was not a manufacturer but a dealer, having no manufacturing facilities, cleared without payment of appropriate Central Excise duty. Even the core business activity of SKF has been outsourced to M/s Safe Express Cargo, therefore it was a postulated fact that the "Bearings" sold by SKF Technologies to SKF India were not used or put to use in further manufacture of Wind operated Electricity Generators by SKF India. Since the fact remains that SKF India cannot use or put to use the "Bearings" in further manufacturer, they were not entitled for receipt of duty free goods, which were specifically to be used in the manufacture of non-conventional energy generation machines. Likewise, taking the same yardstick, SKF Technologies could not clear the goods without payment of duty claiming the benefit of Noti. No. 6/2006 (CE) dated 01/03/06 to any person or firm who was not a manufacturer and had no facilities or intentions of manufacturing WOEGs.

Thus it appeared that SKF Technologies had wrongly availed the benefit of exemption Notification No. 6/2006 (CE) dated 01/03/06 as amended.

22. In view of the above, M/s SKF Technologies and M/s SKF India were issued summons dtd.02.04.2014 to submit the details of clearances made by SKF India of the goods received from SKF Technologies. M/s SKF India submitted a letter dtd.27.08.2014 alongwith details marked as Annexure A to E. These annexure showed the details of domestic clearances made by SKF Technologies to SKF India and further clearances of these goods by SKF India for the year **2009-10 to 2013-14**. These annexure also show clearances to Windmill and other than Windmill. These annexure show invoice wise clearances, quantity, value and duty thereon, of both SKF Technologies and SKF India. On the basis of these Annexure A to E, abstract has also been prepared i.e. Annexure "G" showing year wise clearance value and duty liable to be paid by SKF Technologies in their invoices, on windmill Bearing which have been cleared under exemption notification. This Annexure also showed difference in sale value between SKF India and SKF Technologies considering them as Related Party as discussed above and accordingly duty amount thereon. Accordingly, total duty liability on the windmill "Bearings" cleared at NIL rate of duty under exemption notification as detailed above has been worked out to Rs. 7,54,59,281/-. The same appeared liable to be recovered from SKF Technologies by disallowing the benefit of exemption notification and also considering SKF India a related person as discussed in above paras.

23. Thus even though SKF Technologies had prior knowledge of the customers of SKF India, who had purchased "Bearings" cleared without payment of duty by claiming exemption under Noti. No. 6/2006 (CE) dated 01.03.2006, SKF Technologies wilfully did not sell the "Bearings" directly to the customers, but to SKF India. It was also forthcoming that even though they were thoroughly sure of the fact the "Bearings" cleared by them to SKF India were not parts or components of WOEG, they cleared the same deliberately without payment of duty by wrongly claiming the benefit of Notification No. 6/2006-CE dated 01.03.2006, and by arbitrarily mentioning (Sl. No. 84. List No. 5 & Item No. 13) – as amended vide Notification No.12/2012 dtd.17.03.2012 (Sl. No. 332. List No. 8 & Item No. 13) showing the goods in the invoices as components & parts of WOEG falling under Tariff Sub Head No 8482. According SKF Technologies had also filed false and misleading ER-1 returns for the said period. SKF Technologies vide their letter dated 20.8.2012 had enclosed copies of the invoices issued by them on which they had claimed the benefit of Notification No. 6/2006-CE dated 01.03.2006. It was forthcoming that they had changed their invoicing pattern from 17.2.2012 by mentioning the buyer name SKF India, and by showing the names and details of the actual consignee (customer) in "Dispatched to" column and not that of SKF India as done earlier. However the fact remained that the goods cleared under the said notification was still classified under chapter 8482 as "Bearing" and were not parts of Wind operated Electricity generators.

24. Thus, for the reasons mentioned above, it appeared that SKF Technologies had failed to determine, assess and discharge the correct Central Excise duty totally amounting to Rs. 8,95,15,655/- (including cess) on the finished goods by wrongly declaring that " *the transaction between SKF Technologies and SKF India to be at arms length and on principal to principal basis not affected by virtue (of) any relationship and being similar between two unrelated persons in an uncontrolled atmosphere*", it appeared that M/s SKF Technologies had, knowingly and with intention to evade the payment of duty at the correct rate, had sold their excisable goods to their sole distributor who was 'related' (as defined under Section 4(3)(b) of the Central Excise Act, 1944), at a rate much lesser than the rate at which the said sole distributor had further sold the said goods to their buyer. Further, SKF Technologies appeared to have indulged and involved in wrongful availment of the benefits of Notification No. 6/2006 CE dated 01.03.2006 as amended vide Notification No.12/2012 dtd.17.03.2012, and have thus contravened the provisions of Rule 4 of the Central Excise Rules 2002 (hereinafter referred to as the "said Rules") inasmuch as they failed to pay duty on the removal of dutiable goods from their factory; Rule 5 of the said Rules, inasmuch as they failed to determine duty of excise at the applicable rate on the said goods; Rule 6 of the said Rules, inasmuch as they failed to assess the excisable goods cleared from their factory; Rule 8 of the said Rules, inasmuch as they failed to pay duty on the prescribed dates; Rule 10 of the said Rules, inasmuch as they failed to maintain true and correct Daily Stock Account of the goods manufactured and cleared; Rule 11 of the said Rules, in as much as they failed to correctly issue Central Excise Invoices on clearance of the goods from their factory; and Rule 12 of the said Rules, inasmuch as they failed to correctly file the prescribed periodical Central Excise returns. All these acts of contraventions on the part of the said unit appeared to have been committed by way of willful misstatement, suppression of facts deliberately contravening the provisions of Central Excise Rules with intent to evade payment of Central Excise duty as discussed in foregoing paragraphs. These contraventions have also made them liable for payment of duty invoking the extended period of five years and, therefore, the duty involved in the said clearances were to be demanded and recovered from them under the proviso to Section 11 A (1) /11A(4) of the Central Excise Act, 1944 together with interest at the applicable under section 11AB/11AA of the Central Excise Act, 1944. All these acts of contravention appear to constitute offence of the

nature and type as described in sub-rule (1) of Rule 25 of Central Excise Rules 2002. Therefore the goods, cleared in willful defiance of Notification No.6/2006 CE dated 01.03.06 and the rules of Central Excise as discussed above, appeared to be liable for confiscation under rule 25 of the Central Excise Rules 2002, however the goods were not available for confiscation. They have also rendered themselves liable for penalty under the provisions of Section 11AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002.

25. SKF India on their part, being a dealer, registered with Central Excise, and being aware of the fact that they were receiving goods illicitly cleared by SKF Technologies who did not pay appropriate Central Excise Duties by wrongly claiming that their transactions were at arm's length and SKF India was not a related person and also the benefits of the said notification 6/2006 dated 01.03.2006, and by arbitrarily mentioning (Sl. No. 84. List No 5 & Item no 13 – as amended vide Notification No.12/2012 dtd.17.03.2012, as being components & parts of Wind Operated Electricity Generator. By showing SKF as both the consignee and addressee of the invoice, and by classifying the said goods as "Bearings" and not parts of Wind operated Electrical generators, SKF India have proved themselves to be aiding and abetting SKF Technologies in the evasion of Central Excise duties of such magnitude. By appointing M/s Safe Express Cargo at Sarkhej Bavla Road, Changodar, Ahmedabad to handle their logistics, however being entirely managed by SKF India regarding the pattern of invoicing, transportation, and entering the rates in the invoices issued of their customers, it appeared that SKF India, C/o Safexpress DC, Changodar Ahmedabad, had knowledge about the entire functioning of SKF Technologies and their Distribution Centre, and remained active in the peripheries to enable SKF Technologies in evasion of Central Excise duties.

26. It also appeared that M/s SKF India., a dealer, did impose certain restrictions on, and were fully conversant in the functioning of SKF Technologies to enable them to remove the goods without payment of Central Excise duty. Thus SKF India, a dealer, were fully concerned in transporting and removing of excisable goods which they knew or had reasons to believe, that such goods were liable to confiscation under sub rule (1)(b) & (1)(d) of Rule 25 of the Central Excise Rules, 2002 and Rules made there under. Therefore, they were liable for penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002.

27. It appeared that Shri Chandramowli Srinivasan as Director Finance in SKF India and at the same time as Chairman and Director of SKF Technologies was involved in providing all the crucial services such as Tax Accounting, Manufacturing Controlling, Sales Controlling, Legal and Secretariat etc. It appeared that he was holding such a senior position in both the units can influence almost all decisions making including price fixation etc of SKF Technologies, which was apparent from the difference in price i.e on which SKF Technologies paid the Central Excise duty and the price charged by SKF India. This clearly showed and establishes that he was so associated that knew or had reasons to believe that the goods, so cleared in contravention of the Notification and rules of Central Excise as discussed above, were liable for confiscation. Therefore he was liable for penal action under rule 26 of the Central Excise Rules 2002.

28 Therefore, Show Cause Notice Bearing F. No. V.81/15-81/OA/2012 dated 19.09.2014 issued to M/s. SKF Technologies (India) Private Ltd., based at Milestone - Kandla 333, Village Kerala, Taluka Bavla, Ahmedabad – Rajkot Highway, Gujarat – 382 220 asking as to why -

a) The assessable value, declared by M/s SKF Technologies in their invoices, should not be rejected and the assessable value of the said excisable goods should not be determined under the provisions of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 of the same Rules read with Section 4 (1)(b) of the Central Excise Act, 1944;

b) Central Excise duty amounting to Rs.1,40,56,374/- (Including Cess) on illicit clearance of finished goods, which ought to have been paid in terms of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 of the same Rules read with Section 4 (1)(b) of the Central Excise Act, 1944 but not paid during the period 2009-10 to 2013-14 as mentioned in Annexure A to E and summarized in Annexure-"F"(other than windmill "Bearings"), should not be demanded / recovered under the proviso to Section 11A(1)/11A(4) of the Central Excise Act, 1944 of the Central Excise Rules, 2002, by invoking extended period of limitation.

c) Central Excise duty amounting to Rs. 7,54,59,281 (Including Cess) on illicit clearance of the finished goods – "Bearings", which ought to have been paid, but not paid by availing wrong exemption of Notification No. 6/2006 (CE) dated 01.03.06 (as amended) during the period from 2010-11 to 2013-14 and also which ought to have been paid in terms of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 of the

same Rules read with Section 4 (1)(b) of the Central Excise Act, 1944 as mentioned in Annexure A to E and summarized in Annexure-"G" to this notice, should not be demanded / recovered under the proviso to Section 11A(1)/11A(4) of the Central Excise Act, 1944 of the Central Excise Rules, 2002, by invoking extended period of limitation.

d) Penalty in terms of the provisions of Section 11AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 should not be imposed on them.

e) Interest at the prescribed rate should not be recovered from them under Section 11AB/11AA of C. Ex. Act 1944.

f) The impugned goods cleared by them, should not be confiscated under sub rule (1) of Rule 25 of the Central Excise Rules, 2002.

28.1. SKF India Ltd., Safexpress logistic park, Changodar, Ahmedabad were also required to show cause as to why penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002 should not be imposed upon them.

28.2 Shri Chandramowli Srinivasan, Chairman and Director of SKF Technologies was called upon to show cause as to why penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002 should not be imposed upon them.

29. The above referred Show Cause Notice was adjudicated by Commissioner, Central Excise, Ahmedabad vide **O.I.O. No.AHM-EXCUS-002-COMMR-22-14-I5 dated 05/03/2015** by confirming the demand of Central Excise duty amounting to Rs 1,40,56,374/- and Rs 7,54,59,281/- along with along with other consequences as discussed in the said Order- in-Original.

30. On the basis of verification carried out by the jurisdictional Range officers, it was observed that M/s SKF Technologies had continued with the impugned method of valuation of their goods for payment of Central Excise duty and also continued to avail wrong exemption of Notification No.6/2006 CE dated 01.03.06 as amended. Therefore, two more Show Cause Notices, on similar grounds, bearing F.No V.84/15-40/OA/2015 and V.84/15-99/OA/2015 were issued to them in terms of Section 11A (7A) of Central Excise Act, 1944 involving total demand of duty to the tune of Rs 2,58,16,387/- for the period April, 2014 to March, 2015. These two Show Cause Notices were adjudicated by the Commissioner, Central Excise, Ahmedabad II, vide Order-In-Original No **AHM-EXCUS-002-COMMR- 15-I6-2015-16, dated 18/02/2016** by confirming the above mentioned demands along with other consequences in the same manner as discussed above.

SCN FOR SUBSEQUENT PERIOD COVERED IN THE PRESENT ORDER:

31. The assessee continued with the same practice of assessment of the goods cleared to SKF India, without paying duty on the clearance value of M/s SKF India and also continued to wrongly avail exemption on bearings used in Windmills under Notification 12/2012-CE, dated 17.3.2012, as amended, the clearance details and its value was called for by the Jurisdictional Range Superintendent for the further periods also. Accordingly the following Show cause notices were issued to SKF Technologies:

Sr.No	SCN No and date	Period covered	Duty demanded
1	V.84/15-39/OA/2016 dated 19.04.2016	April,2015 to September,2015	Rs 2,63,44,198/-
2.	V.84/15-27/OA/2017 dated 24.10.2017	October,2015 to March, 2016	Rs 3,98,80,277/-
3.	V.84/15-05/OA/2018 dated 19.03.2018	April 2016 to September 2016	Rs. 5,40,04,874/-
4.	V.84/15-53/OA/2018 dated 05.10.2018	Oct-16 to June 2017	Rs. 7,83,35,212/-

32. Vide the above mentioned Show Cause Notices it has been proposed to reject the value declared by SKF Technologies in their invoices and the value has been proposed to be determined in terms of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 ibid read with Section 4 (1) (b) of Central Excise Act, 1944 and also deny exemption benefit under Notification No.6/2006-CE dated 01.03.06 as amended. The consequent differential duty for the corresponding period as shown in the above table has been demanded under Section 11(A)(1) of Central Excise Act, 1944 along with interest under Section 11AB /Section 11AA of Central Excise Act, 1944 in both the

notices. Further, penalty has been proposed to be imposed on M/s SKF Technologies under Section 11AC of Central Excise Act, 1944, read with Rule 25 of Central Excise Rules, 2002. The confiscation of impugned goods under Sub Rule (1) of Rule 25 of Central Excise Rules, 2002 is also proposed in the above Show Cause Notices.

32.1 Penalty has been proposed on M/s SKF India Ltd, Safexpress Logistic Park, Changodar and Shri Chandramowli Srinivasan, Chairman and Director of M/s SKF Technologies under Rule 26(1) of Central Excise Rules, 2002

DEFENCE REPLY:

33. A common written reply dated 30.11.2017 in respect of Show Cause Notices dated 19.04.2016 and 24.10.2017, was submitted by the assessee. Further the assessee has filed their reply to the Show Cause Notices dated 19.03.3018 and 05.10.2018, on 16.12.2019. Vide the above written submissions, the assessee has interalia, stated as under:

A) Valuation of Clearances made to M/s SKF India Ltd (As related Party)

- **SKF India Ltd and SKF Technologies (India) Pvt. Ltd. are not related person** as per the various explanation in the definition of 'related' given in section 4(3)(b) which gives the definition of 'inter-connected undertakings'.
- the present show cause notice has been issued in terms of section 11A(7A) of Central Excise Act 1944 by relying on the old show cause notice dated 19.09.2014 which had reproduced the definition of 'inter-connected undertaking' but it did not provide the exact clause which is applicable to the present facts to consider the two units i.e. SKF India Ltd and SKF Technologies (India) Pvt. Ltd. as inter-connected undertaking and therefore requested to provide the exact clause which is applicable in the present facts to substantiate the allegation that they are inter-connected to SKF India Ltd and that till then this reply shall be considered as interim reply and reserve their right to make further submission as and when the same is informed to them.
- They do not have mutual interest in the business of each other and therefore, it is submitted that rule 9 of Valuation Rules 2000 will not apply in the present case. They relied upon the decision made in the following judgment:

(a) The Hon. Supreme Court in the case of Union of India & Others v. Atic Industries Ltd., 1984 (17) ELT 323 (SC)

(b) Para 13 of Hon. Bombay High Court in the case of S.M. Chemicals & Electronics and Another v. R. Parthasarathy and Others, 1980 ELT 197 (Bom)

- There is no allegation that SKF Technologies (India) Pvt. Ltd. promote the business of SKF India Ltd. Para 13 of the old show cause notice gives basis for considering SKF Technologies (India) Pvt. Ltd. and SKF India Ltd has mutuality of interest in each other. However none of the sub paras in Para 13 even allege that SKF India Ltd promotes the business of SKF Technologies (India) Pvt. Ltd. and SKF Technologies (India) Pvt. Ltd. promote the business of SKF India Ltd.
- It is admitted position that SKF India Ltd. procures orders and the goods are supplied by SKF Technologies (India) Pvt. Ltd. SKF India Ltd. in turn supplies the goods to the final customers. SKF Technologies (India) Pvt. Ltd. does not carry out any activity for SKF India Ltd except selling of goods at agreed price. Thus it is submitted that applying the ratio laid down by the **Bombay High Court in the case of S.M. Chemicals (supra)**, both the companies viz. SKF Technologies (India) Pvt. Ltd. and SKF India Ltd cannot be considered as mutually interested in the business of each other.
- Person cannot be considered as related person because bulk sales are made to him or entire quantity is sold to him as held by The Hon. Bombay High Court in the case of New India Industries Ltd v. UOI 1988 (37) ELT 547 (Bom)
- Assuming without admitting the relationship, yet the price at which goods have been sold by them to M/s SKF India is not influenced by the relationship **as they are decided on mutual interest basis.**
- Mr.Chandramowli Srinivasan, in his statement recorded on 05.09.2014, has explained the manner of determining the price at which the goods are sold. The price is decided by applying backward calculation method, reducing 8% or 15% from the ultimate sale price to determine the price at which the goods are sold by them which is the reasonable method to decide the price and therefore the price at which they sold goods to SKF India Ltd. is not influenced by the relationship.
- Mere existence of special relationship does not mean favoured treatment unless established with extreme low price is charged as held by Hon. Delhi High Court in the case of **Hind Lamps Ltd 1981 (8) ELT 11 (Del)** .This case has also been upheld by the Hon'ble Supreme Court as reported in 1998 (98) ELT A208.
- Flow of extra commercial consideration must be established to reject the transaction value and adopt different value for the purpose of payment of duty as held that in the

case of **Nagpal Petro Chem Ltd v. Assistant Collector of Central Excise, 1979 (4) ELT (J 117) (Mad) .**

- The old and present Show-cause notice have merely made allegations without proving that due to the relationship, the price has been influenced and that they and SKF India Ltd. are related and therefore have under-valued the goods sold to SKF India Ltd. It is the onus of the department to prove that the price is influenced due to the relationship as held In the case in the case of **POWERTECH INTERNATIONAL 2001 (131) E.L.T. 461 (Tri. - Mumbai)** and similar observation of Bangalore CESTAT in the case of **M/s Christo George 2008 (227) ELT 410.**
- The show cause notice has not alleged any flow back of money from the buyer in any other manner. There is no dispute that they have not received any other consideration from the buyer (i.e. SKF India Ltd.). Hence, price is the sole consideration & the transaction value must not be rejected.
- They further relied on following judgments wherein it has been held that unless financial flow-back has been established, it cannot be treated that price of the goods has been reduced.
  (i) Rumi Herbals Pvt. Ltd. 2008 (222) ELT 518
  (ii) Jeypore Sugars Co. Ltd. 2000 (124) ELT 845
- There are no common directors on board of both the companies & both are separately registered under various laws and this shows that the companies are not related.
- It can be seen from the statement of Shri Chandramowli Srinivasan, Chairman & Director of M/s SKF Technologies and CFO in SKF India Ltd. & Shri Vrijendra Patwari, General Manager Taxation of SKF India Ltd. that none of the directors on board are common between both the companies. This fact is not disputed even by the department in the old and present show cause notice. Further, both the companies are separately registered under various laws.
- Assessee is a private ltd. company & SKF India Ltd. is a public ltd. company
- There are no common directors on board of both the companies
- The assessee or SKF India Ltd. do not hold shares in each other's company
- Both the companies are separately registered under various laws, namely company law, income tax, sales tax etc.
- They rely on the decision of Hon'ble Kolkata CESTAT in the case of **M/s Eastern Bakeries Pvt. Ltd** and hence, they cannot be treated as 'related' & hence the demand must be set aside.
- Mere allegation without any evidence has been made in Para 13.1 to 13.5 of show cause notice to allege mutuality of interest without establishing that SKF Technologies (India) Pvt. Ltd. is promoting the business of SKF India Ltd or SKF India Ltd is promoting the business of SKF Technologies (India) Pvt. Ltd and relied on the decision of the Hon. Bombay High Court in the case of SM Chemicals. The basis that AB SKF Sweden holds more than 50% share holding in SKF India Ltd and SKF Technologies (India) Pvt. Ltd does not mean that SKF India Ltd promote the business of SKF Technologies (India) Pvt. Ltd. and vice versa. Therefore the criteria laid down by Hon. Bombay High Court to establish the mutuality of interest is not substantiated by these factors.
  Both SKF India Ltd and SKF Technologies (India) Pvt. Ltd. have independent Board of Directors and all the decisions in respect of operations of the company are taken by the Board of Directors and further relied on following judgments in this regard:

  (i) **M/s Indian Oil Corporation 1990 (48) ELT 80**
  (ii) **M/s International Computers India Manufacturing Company Limited 1989 (41) ELT-287**

- Accounting Standard AS18 has been notified by Institute of Chartered Accountants of India for the purpose of reporting related party transactions. Even assuming that SKF India Ltd is able to control SKF Technologies (India) Pvt. Ltd. even then, it does not establish mutuality of interest.SKF India Ltd is not shareholder of SKF Technologies (India) Pvt. Ltd. Further, no evidence has been given to substantiate that SKF India Ltd has in any way controlled the operations of SKF Technologies (India) Pvt. Ltd.
- Cost sharing agreement for charging on the basis of turnover is very common wherein group companies are involved. Most of the groups have management company which advice the group companies on various matters like raising of finance, quality, production, marketing etc. Cost of such management company is distributed to group companies. For example, in one of the cases of RPG Enterprise Ltd., which is the management company of RPG Group; it has recovered cost from group companies. The department has demanded service tax from RPG Enterprise on the cost recovered (case reported as 2008 (11) STR 488). Similarly, in Essel Group, the company known as Essel Corporate Services Pvt. Ltd is the management company. Therefore, it is submitted that the arrangements are very common and merely because certain post manufacturing services are provided, it cannot be inferred that the company is controlled by the service provider. Further, SKF India Ltd is charging SKF Technologies (India) Pvt. Ltd. for

various services provided and has been paying service tax on the same. This in any way does not establish that SKF India Ltd is exercising control over SKF Technologies (India) Pvt. Ltd. They have been paying service tax under the category of Business Support Service and not under Management Consultancy. This also establishes that they are providing separate service to SKF Technologies (India) Pvt. Ltd. and not managing the business of SKF Technologies (India) Pvt. Ltd.

- It can be seen from the agreement dated 06/04/2010 that both the parties have agreed to share common personnel in order to achieve maximum synergistic benefits, to save cost and to avoid duplication of cost. The Clause 3 of the said agreement specifies the mechanism of allocation of cost which is based on 'weighted average method' using combination of parameters for each different type of services rendered.
- They have attached Summary of Common Expenses and the percentage of allocation as **Annexure 5** to this submission along with the sample invoices raised for the month of **Aug15 &Oct 15**as **Annexure 6** and from the perusal of the invoice raised by SKF India, the common expense have been charged to the company as under:-

Allocation Table: Aug 15

Unit Code	Unit Name	INR
S722	SKF Tech- Sales Unit	3,58,258/-
M722	SKF Tech- Mysore	7,91,638/-
722L	SKF Tech – Ahmedabad	13,60,786/-
	Total	**25,10,682/-**

Allocation Table: Oct 15

Unit Code	Unit Name	INR
S722	SKF Tech- Sales Unit	2,72,246/-
M722	SKF Tech- Mysore	7,15,149/-
722L	SKF Tech – Ahmedabad	12,64,245/-
	Total	**22,51,640/-**

- The old show cause notice fails to establish as to how the sharing of cost incurred towards services provided by a third party can result into having interest in the business of each other. The old show cause notice alleges that there is no clear mechanism to share the actual cost between both the parties. It can be seen from the agreement as well as the examples explained above that the share of cost has been done on pro-rata basis applying 'weighted average method'. It is a very common amongst companies to share manpower and cost, to get the benefit of synergies and save cost. The agreement entered between them and M/s SKF India Ltd is a normal cost sharing agreement. Such agreement cannot be the basis to establish that companies have interest in the business of each other.
- Shri Chandramowli Srinivasan, Chairman & Director in SKF Technologies (India) Pvt. Ltd. and Chief Finance Officer in SKF India Ltd has explained that there was no written agreement between both the parties but as per mutual understanding SKF Technologies (India) Pvt. Ltd. in Ahmedabad was selling their whole domestic product through SKF India Ltd. He stated that some of the orders were placed by SKF India Ltd. on the basis of customer orders received and some orders were placed based on forecast or tentative customer schedules or forecasts. On being asked as to how prices were fixed of different type of bearings, he stated that the prices at which the goods sold by SKF Technologies (India) Pvt. Ltd. to SKF India Ltd depended upon the segment in which such goods were sold by SKF India Ltd. to the end customer. He further stated that so far wind bearing were concerned, generally SKF Technologies (India) Pvt. Ltd. Ahmedabad unit sold the goods at a price 15% less than SKF India Ltd sales price; that SKF Technologies (India) Pvt. Ltd. was aware of the end selling price of SKF India Ltd at the time of invoicing; that so far bearings to Indian Railways were concerned the price at which goods sold by SKF Technologies (India) Pvt. Ltd. depends upon the end customer price of SKF India Ltd and were sold at 8% less than SKF India Ltd sales price. On being asked what the criteria for variation was of prices 8-15% as detailed above, he stated that generally it depended within the product range of wind mill bearings. In slewing bearing it was generally 8%, main shaft bearing 10-15%; that they were manufacturing those two broad types of bearing for the wind mill customers. Therefore, it is submitted that the transaction value shall be accepted and the provisions of rule 9 and 10 should not be invoked to re-determine the value. Sales price from SKF Technologies (India) Pvt. Ltd. to SKF India Ltd depends on the final price.

- They further relied upon the judgment in the case of M/s Simpson & Co. Ltd. 2006 (206) ELT 769, Hon'ble CESTAT to prove that their transaction cannot be brought under the definition of "related person" in terms of Section 4(4)(c) of the Act.
- The present show cause notice has been issued by relying on the old show cause notice dated 19.09.2014. wherein vide Para 13.6 of the old show cause notice it has been alleged that Mr Chandramowli Srinivasan , Director (Finance) in SKF India Ltd. and Chairman & Director of M/s SKF Technologies (India) Pvt. Ltd. and Mr. Shrikant Savangikar, Director (Business Excellence) and Director in M/s SKF Technologies (India) Pvt. Ltd can influence price fixation of M/s SKF Technologies (India) Pvt. Ltd and vice versa. As submitted earlier, there are no common Directors on board in both the Companies. Further, it has been clarified earlier that the price of goods sold by M/s SKF Technologies (India) Pvt. Ltd. to M/s SKF India Ltd is fixed at 8 % to 15 % less than the price fixed by M/s SKF India Ltd in case of M/s Indian Railways and in case of wind customers respectively. Further in case of other customers, the price has been fixed at cost + 25 % margin. Mr. Anil Raskar, Manager (Excise & Service Tax) of SKF India Ltd. Pune, in his statement dt. 23.04.2012, has also stated that Mr Chandramowli Srinivasan does not have any discretionary power to fix the rate of products sold by M/s SKF Technologies (India) Pvt. Ltd.
- It has been consistently held by Tribunal and various Courts that even in case of common Directors, companies cannot be treated to have interest in each other's business. Hence, the conclusion drawn by the department that Mr. Chandramowli Srinivasan & Mr. Shrikant Savangikar can influence pricing of M/s SKF Technologies (India) Pvt. Ltd. is incorrect and also relied on following judgments:
  - **Rumi Herbals Pvt. Ltd. 2008 (222) ELT 518**
  - **Utkal Alloys Pvt. Ltd. 2005 (188) ELT 56**
- Vide Para 13.7 of the old show cause notice the Department has alleged that bearings are supplied by M/s SKF Technologies (India) Pvt. Ltd. at 8 % to 15 % less than the price of M/s SKF India Ltd and therefore they have interest in business of each other. However the difference of 8 % – 15 % has been fixed in such a way that SKF India Ltd. makes only arms length margin on an overall basis. The sample sale transaction between M/s SKF Technologies (India) Pvt. Ltd. & M/s SKF India Ltd are as follows:-

F. No. V. 84/15-39/OA/2016 dated 19-04-2016 for the period Apr-15 to Sep-15

SKF Tech's Inv No.	Inv. Date	Components	QTY	Rate	SKF INDIA Excise Inv No.	Qty Sold	Rate	Diff. in Rate
00011ALWVB	03-04-15	NU 318 ECP/C3	1	4561	722419	1	4978	417
00077ALWVB	14-04-15	NU 317 EP/C3	6	4238	730363	6	3874	-364
00083ALWVB	16-04-15	NU 319 ECJ	3	6124	732012	3	6863	739
00219ALWVB	07-05-15	NU 224 ECM	1	10138	752764	1	10630	492
00234ALWVB	08-05-15	NU 317 ECP	2	4225	753435	2	4973	748
00281ALWVB	13-05-15	NU 322 ECP	2	7132	761649	2	8550	1418
00298ALWVB	16-05-15	NU 318 ECP	11	4538	760346	11	4700	162
00362ALWVB	27-05-15	NU 316 EP	8	3871	771209	8	3380	-491
00390ALWVB	01-06-15	23152 CCK/W33	2	59791	776984	2	49015	-10776
00397ALWVB	02-06-15	NU 317 ECM/C3	2	6396	777510	2	7766	1370
00440ALWVB	11-06-15	NU 319 ECP	1	5073	785156	1	5704	631
00469ALWVB	13-06-15	NU 315 EP	4	3235	787153	4	3055	-180
00496ALWVB	20-06-15	NU 2215 ECML/C3	9	3760	794097	9	4726	966
00516ALWVB	25-06-15	23060 CC/W33	10	53294	799810	10	36446	-16848
00578ALWVB	29-06-15	HJ 324 EC/VA301/45	9	887	804961	9	1090	203
00616ALWVB	30-06-15	NU 315 ECP	6	2638	806678	6	3316	678
00686ALWVB	08-07-15	23148 CCK/W33	2	41172	813224	2	41173	1
00700ALWVB	15-07-15	23048 CC/W33	4	39106	817391	4	27282	-11824
00742ALWVB	17-07-15	NU 319 ECP/C3	8	5075	823579	8	4200	-875
00849ALWVB	18-07-15	23148 CC/C3W33	2	41237	820968	2	34168	-7069
01297ALWVB	24-08-15	22232 CCK/W33	2	15866	857071	2	15867	1

01425ALWVB	07-09-15	23992 CA	1	181862	871612	1	169131	12731
01574ALWVB	18-09-15	23064 CC/W33	8	64477	881511	8	50929	13548
01650ALWVB	25-09-15	23244 CCK/W33	2	50280	889832	2	42169	-8111

F. No. V. 84/15-27/OA/2017 dated 24-10-2017 for the period Oct-15 to Mar-16

Inv. No.	Inv. Date	Components	qty	Rate	SKF INDIA Commr Inv	Qty Sold	Rate	Diff. in Rate
01747ALWVB	05-10-15	NU 1096 MA/C3	4	340190	1044923	1	211668	128522
01790ALWVB	08-10-15	NU 324 ECP	1	9841	902127	1	7161	-2680
01796ALWVB	09-10-15	NH 320 EMRD/C4VA301	18	6297	0	18	0	-6297
01797ALWVB	09-10-15	NU 330 EMRD/C4VA301	18	12021	0	18	0	-12021
01802ALWVB	09-10-15	22326 CCJA/W33VA405	8	20592	902786	8	20061	-531
01812ALWVB	13-10-15	NU 315 ECP/C3	16	2712	905575	16	2625	-87
01818ALWVB	14-10-15	NU 2215 ECP	2	1522	907540	2	1940	418
01818ALWVB	14-10-15	NU 318 ECM/C3	2	6922	921773	2	4873	-2049
02246ALWVB	27-11-15	22326 CCJA/W33VA405	8	20592	948697	8	17320	-3272
02255ALWVB	28-11-15	NJ 2332 EMA/C3	2	25218	952697	2	33618	8400
02256ALWVB	28-11-15	NJ 2324 ECML/C4	50	22560	953109	50	17600	-4960
02377ALWVB	15-12-15	NU 315 EP	2	3235	966005	2	4026	791
02378ALWVB	15-12-15	NJ 315 EP	16	3249	966031	16	2133	-1116
02379ALWVB	15-12-15	NU 316 ECP	2	3497	989164	1	4457	960
02465ALWVB	25-12-15	NU 316 ECP	1	3497	1011490	1	4457	961
02466ALWVB	25-12-15	NU 315 ECP	2	2638	977885	2	3363	725
02582ALWVB	16-01-16	23148 CCK/W33	2	41172	999606	2	38000	-3172
02583ALWVB	16-01-16	23148 CC/C3W33	1	41237	998086	1	56933	15696
02584ALWVB	16-01-16	24030 CCK30/C3W33	12	13779	998292	12	18238	4459
02585ALWVB	16-01-16	22244 CC/W33	2	37724	999605	2	35600	-2124
03007ALWVB	29-02-16	BT2-8131 B	1	1385960	1040928	1	979855	-406105
03008ALWVB	29-02-16	NU 326 EM	2	10227	1042598	2	13893	3666
03009ALWNB	29-02-16	230/750 CA/W33RE10	3	573750	1041840	3	675000	101250
03015ALWVB	29-02-16	NJ 2324 ECML/C4	50	22560	1042633	50	17600	-4960
03336ALWVB	28-03-16	NU 317 ECP	1	4225	1070949	1	3460	-765
03444ALWVB	29-03-16	NU 319 EP/C3	5	4862	1072726	5	4200	-662
03444ALWVB	29-03-16	NU 318 EP/C3	10	4483	1072725	10	3836	-647

SKF India Ltd. during the period 2009-10 to 2013-14 has made a margin of only Rs. 2 min approx.) as explained below:-

Particulars	INR (in Millions)
Total assessable value (sale value) of goods sold from SKF Technologies (India) Pvt. Ltd. to SKF India Ltd	1214
Assessable Value of goods (i.e purchase value for SKF India Ltd) - Goods sold 1165 MINR	1165
Assessable value of goods (i.e purchase value for SKF India Ltd) - In Stock	49
Excise duty paid on above sales of Rs. 1214 MINR	72
Excise duty paid on goods sold (Remaining portion of3 MINR in stock)	69
Sales value of SKF India Ltd to its customers (including excise - part of sales price)	1344

Profit & Loss of SKF India Ltd	INR (in Millions)
Sales	1344
Less: Cost of Goods sold	(1165)
Less: Excise duty on purchases above	(69)
Less: Selling & admin cost (8% as conservative cost)	(108)
Margin	2

- It can be seen that the price at which M/s SKF Technologies (India) Pvt. Ltd. is selling goods to SKF India Ltd. does not give room to SKF India Ltd. to make huge profit. This itself substantiates that the goods are sold at arm's length price and there is no undervaluation done by the assessee.
- The allegation in Para 13.8 of the old show cause notice alleges that key persons in both the companies are same and therefore both the companies have interest in business of each other is incorrect as explained above. Hence, the allegations made in the old show cause notice are incorrect and without any evidence. They relied on the decision in the case of M/s International Computer India Mfg. Co. Ltd. 1989 (41) ELT 287, CESTAT.
- Allegations in Para 13.9 of the old show cause notice that SKF India Ltd. & M/s SKF Technologies (India) Pvt. Ltd. have interest in business of each other as the former has given loan to the latter is also not correct since this loan has been given on an interest rate which is an average of deposit & borrowing rate. Thus, it can be seen that the same is higher than what SKF India Ltd. gets by investing money into the bank. They relied on the following judgments wherein it was held that when one company gives loan to other company, it is merely a commercial contract and it does not lead to conclusion that both the companies have interest in business of each other.
  - (i) **M/s Automotive Axles Ltd. 2000 (142) ELT 706**
  - (ii) **M/s International Computer India Mfg. Co. Ltd. 1989 (41) ELT 287**
- Para 13.10 of the old show cause notice alleges that under form 3CB filed by M/s SKF India Ltd., transactions with M/s SKF Technologies (India) Pvt. Ltd. has been disclosed & therefore both the companies have interest in the business of each other. Transactions with related parties are to be disclosed as per section 40A(2)(b) of Income Tax Act 1961. The copies of form 3CB along with the tax audit report (Form 3CD) for the year 2014-15 are attached as **Annexure 7.** It can be seen that transactions with M/s SKF Technologies (India) Pvt. Ltd. are not appearing as related persons in this table but is appearing as "Fellow Subsidiary". The old show cause notice is factually incorrect to this extent & hence the allegations that they & SKF India Ltd. have interest in business of each other are without any evidence. Accordingly, the demand must be set aside.

B) **Submissions with respect to exemption claimed on bearings as parts of Wind Operated Electricity Generator:**

- They have claimed exemption under notification no. 12/2002-CE dated 17.03.12 on bearings cleared by them which are used by companies namely M/s Suzlon Energy Ltd, M/s Wind World India etc. in their wind operated electricity generator.
- Exemption has been granted to "Wind operated electricity generator, its components & parts thereof". In para 21.1 of the old show cause notice, a picture of wind operated electricity generator is reproduced. Sr. No. 7 of the picture refers to a 'generator' which is a part of the "wind operated electricity generator". The old show cause notice alleges that the above mentioned exemption is available only to the generator referred in Sr. No. 7 of the said picture and since the bearings have been used in other places, it does not qualify for exemption.

The bearings have been used as follows:

Main Shaft bearing	Sr. No. 5 of picture in Para 21.2 above.
Pitch bearing	Sr. No. 3 of picture in Para 21.2 above.
Yaw drive bearing	Sr. No. 13 of picture in Para 21.2 above.
Gearbox bearing	Sr. No. 6 of picture in Para 21.2 above.

- The interpretation of the department that exemption is available only if the bearings are used as parts of generator (Sr. No. 7 of picture) is erroneous & the exemption is rightly available to them since the exemption has been granted to a 'wind operated' – electricity generator. Therefore it refers to equipment which generates electricity through wind. In the present case, the bearings are used in various places in such "wind operated electricity generator." However, as per the department, the exemption is available only to the generator which is a part of the entire "wind operated electricity generator". Such an argument cannot be accepted because the generator referred in Sr. No. 7 cannot alone generate electricity through wind.

- The nature of this exemption can be interpreted by understating the functioning of a "wind operated electricity generator" which is as follows:
  - ✓ Wind farms are built in geographical areas that are conducive to consistent prevailing winds. A wind turbine tower is built for the same. (Sr. No. 15 of the picture)

- ✓ The process of wind-produced electrical generation begins when the force of the wind pushes against the turbines' blades, causing them to rotate, creating mechanical energy. (Sr. No. 1 of the picture)
- ✓ The spinning blades, attached to a hub and a low-speed shaft, turn along with the blades. (Sr. No. 5 of the picture)
- ✓ The rotating low-speed shaft is connected to a gearbox that connects to a high-speed shaft on the opposite side of the gearbox. (Sr. No. 6 of the picture)
- ✓ This high-speed shaft connects to an electrical generator that converts the mechanical energy from the rotation of the blades into electric energy. (Sr. No. 7 and 12 of the picture)
- ✓ Spinning between 11 and 20 times per minute, each turbine can generate a maximum 1.5 megawatts of electricity.

It can be seen from above process, that various parts namely blades, gearbox, low-speed shaft etc. are collectively used to generate electricity. The generator (Sr. No. 7) situated inside the turbine itself cannot produce electricity through wind. Hence, the entire unit is collectively known as "wind operated electricity generator" as it generates electricity through wind. Its parts and components include Pitch bearing, Yaw drive bearing, Shaft bearing and Gearbox bearing. Hence, the exemption has rightly been claimed by them.

- They relied on the following decisions:

a) The Hon'ble Mumbai CESTAT in the case of **M/s Hyundai Unitech Electrical Transmission Ltd. 2005 (187) ELT 312** . Appeal filed against the above judgment has been dismissed by the **Hon'ble Supreme Court as reported in 2015 (323) ELT 220 (SC)**. The Supreme Court has held that windmill doors or tower doors is the safety device which is used as security for high voltage equipments fitted inside the tower, preventing unauthorized access and preventing entries of reptiles, insects, etc., inside the tower & this would be sufficient to make it part of the electricity generator. Hence, even the door frame of the windmill has been considered as a part of the generator & the benefit of exemption notification has been allowed.

b) The said entry has been clarified by CBEC vide **Circular No. 1008/15/2015-CX dated 20.10.2015** that Tower, Nacelle, Rotor and Wind turbine controller, nacelle controller and control cables are parts of Wind Operated Electricity Generators.

c) Hon'ble Mumbai CESTAT in the case of M/s Gemini InstratechPvt. Ltd. 2014 300 ELT 446, has held that the windmill tower door specifically designed to be used for Wind Operated Electrical Generator is eligible for exemption from payment of excise duty. It is to be noted that if the tower door can be construed to be within the ambit of the exemption granted then the bearings which are used in Shafts, Yaw drive and gearbox (Nacelle and Rotor) must also be eligible for exemption.

d) Further, in the case of **M/s Pushpam Forgings 2006 (193) ELT 334**, the Hon'ble Mumbai CESTAT held that even MS flanges , which is a part of the tower (part number 15 of picture) on which the blade / blade like structures are mounted is a part of "Wind Operated Electricity Generator".

- In view of the above the bearings cleared by them are eligible for exemption under notification no. 12/2012-CE dated 17.03.12& hence the demand raised must be set aside.
- The intention of the legislature is to give exemption to Non-Conventional energy devices to promote the use of Non-Conventional Sources of Energy because the sources which they use for generating energy are inexhaustible and do not cause environmental pollution.
- The narrow interpretation given by the department to item no. 13 is erroneous and unjust as it does not match with the exemption given to other items in the said list. The generator referred to Sr. No. 7 of the picture (para 21.1 of the old show cause notice) is a simple generator which is not alone capable of generating electricity through wind. The intention of the legislature is not to grant exemption to such generator but it is to grant exemption to the entire wind turbine – i.e. Wind Operated Electricity Generator. Hence, the exemption claimed on bearings cleared to wind customers must be granted to the assessee.
- The entry no. 13 of the list of exemption notification specifically includes "rotor and wind turbine controller". It can be seen from the picture shown in Para 21.1 of the old show cause notice that rotor (part number 2) and controller (part number 8) are completely separate from "generator" (part number 7). If the entry no. 13 covered only generator, then it cannot include "rotor and wind turbine controller". This itself shows that the intention of legislature was to include the entire wind turbine i.e. Wind Operated Electricity Generator.

C. **Common Submissions**

- Without prejudice to anything mentioned above, the demand has been raised under**"proviso to section 11A(1)"** which is not an existing provision.

- **Hon'ble Chennai CESTAT** in the case of **M/s Tiger Security Services 2009-TIOL-607** has held the demand is unsustainable when there is a fundamental flaw in the initiation of the proceedings in the show cause notice. Further **Hon'ble New Delhi CESTAT** in the case of **Federation of Indian Chambers Of Commerce and Industry 2014 – TIOL – 701** has held that as and when the period of dispute mentioned under show cause notice involves period prior to amendment and post amendment, the show cause notice for the period post amendment should allege the demand based on the consequent amendments carried out by the relevant Finance Act. The show cause notice should refer to amended provisions as in force and should give assessee an opportunity to respond to liability arising on account of amendments carried out.

Penalty

Without prejudice to anything mentioned above, even if the demand is upheld, penalty cannot be levied in the present case due to the following reasons:

a) Penalty under section 11AC cannot be levied due to the following:

- They were under a bonafide belief that merely because AB SKF Sweden is common holding company for them & SKF India Ltd., they cannot be treated as 'related' in terms of section 4(3)(b) of Central Excise Act 1944. They were also under a bonafide belief that goods supplied to wind customers are eligible for exemption as per notification no. 12/2012-CE dated 17.03.12. There was no malafide intention on their part or any intention to evade duty.
- They relied on the following judgments:
  (i) Cosmic Dye Chemical Vs. Collector of Central Excise , Bombay 1995 (75) ELT 721 (SC).
  (ii) CCE Vs. Chemphar Drug and Liniments 1989(40) ELT 276 (SC).
  (iii) Pushpam Pharmaceuticals company VS. CCE Bombay 1995 (78) ELT 401 (SC)
- Para 21.5 of the old show cause alleges and Para 2 of the present show cause notice that they have "wrongly" claimed the exemption & therefore there was no malafide intention .
- They relied on the following judgments:
  (i) **M/s P. S. Auto Pvt. Ltd. 2014 (303) ELT 551**
  (ii) **M/s NRB Bearing Ltd. 2014-TIOL-31-CESTAT-MUM**
- It can be seen from the present show cause notice that demand has been raised earlier for the period 2009-10 to 2013-14 vide F. No. V.81/15-81/OA/2012 dated 19.09.2014. The present show cause notice has been raised on the basis of demand raised in the previous show cause notice in terms of Section 11A(7) of Central Excise Act, 1944. Thus, it is a periodical show cause notice. The department was well aware of the facts of the case when they issued the earlier show cause notices. Thus, suppression of facts cannot be alleged in the present case.
- They relied on the judgment of Supreme Court in the case of **Nizam Sugar Factory 2008 (9) STR 314 (SC)** wherein it has been observed that when subsequent show cause notices are issued on similar facts, suppression of facts cannot be alleged. Further The demand has been raised in the normal period & hence suppression cannot be alleged. Hence, penalty under rule 25 read with section 11AC must not be levied.

b) Penalty under rule 25 of Central Excise Rules 2002

Rule 25 of Central Excise Rules 2002 have 2 sub-clauses. Sub-clause (1) has 4 further sub-clauses wherein penalty for different types of contravention has been specified. The old as well as present show cause notice fails to specify the sub-clause under which the assessee's contravention (as alleged) falls.

c) Interpretation of the statute:

The matter relates to interpretation of the terms 'related' appearing u/s 4(3)(b) and the term 'wind operated electricity generator' appearing under notification no. 12/2012-CE dated 17.03.12. The Hon. Tribunal has consistently held that the penalty should not be imposed where the question of interpretation of any statutory provision are involved and relied upon the following judgments for the above proposition.

i) Uniflex Cables Ltd. 2011 (271) ELT 161 (SC)

ii) Sonar Wires Pvt ltd. 1996 (87) ELT 439 (T)

iii) Synthetics & Chemicals Ltd. 1997 (89) ELT 793 (T)

iv) Man Industries Corporation 1996 (88) ELT 178 (T)

Goods cannot be confiscated as they are not available

- In the present case, the goods have already been cleared to various customers &have been consumed by them. The goods are not available for confiscation. In such case, confiscation of goods cannot be proposed under rule 25(1) and relied upon the judgment of Larger bench of CESTAT in the case of M/s Shiv Kripalspat Ltd. 2009 (235) ELT 623 and of Ahmedabad CESTAT in the case of M/s **Bil Metal Industries Ltd** 2013**TIOL 1303.**
- They crave leave to add, amend, alter, vary any or all the above submissions and wish to be heard in person.

D: Further, vide their letter dated 07.01.2020, the assessee has filed their additional submissions, vide which they have interalia stated as under:

1. The [periodical] Show Cause Notices have been issued in terms of Section 11A(7 A) of Central Excise Act, 1944 and have been issued by relying on the previous Show Cause Notice F. No. V.84/15-81/OA/2012 dated 19-09-2014 which was issued **for the period 2009 to 2014**.

2. In the Show Cause Notice dated 19.9.2014, there was no allegation with respect to any violation of entry No. 332A. In fact, the said entry i.e. 332A has been introduced only **with effect from 11-07-2014**. As stated above, the present Show Cause Notice has also been issued on the same allegation as earlier Show Cause Notice in terms of section 11A(7 A) of Central Excise Act, 1944.

3. The Show Cause Notice being foundation for raising demand, the allegations cannot go beyond Show Cause Notice during adjudication stage. We rely on the judgement in the case of **M/s Bank of Baroda Vs Commissioner of Central Excise, Jaipur-I 2014-TIOL-560-CESTAT-DEL** wherein it has been held that the defect at primary level cannot be rectified at the adjudication level. Relevant portion of the judgment is reproduced as follows:

> "10. *Counsel for the appellant however contends that the fee charged by the appellant for fore-closure of loans would not fall within the ambit of lending, since fee was charged not for lending/loan but for fore-closure of a loan. We are not required in this appeal to record a conclusion as to whether the transaction under issue fall within the ambit of lending and therefore within the scope of Banking and other Financial Services. This is so since neither the Show Cause Notice, the primary adjudication order nor even the appellate adjudication order have either alleged or recorded a conclusion that the services provided by the appellant/customer fall within the ambit of Banking and other Financial Services. At any rate, the Show Cause Notice clearly specified that the appellant had provided only business auxiliary service. There was not even a whisper of an allegation that alternatively the services provided by the appellant may be classifiable as Banking and other Financial Services.*
>
> 12. *Principles of law are too well established to warrant an idle parade of familiar authority, that a Show Cause Notice must set out succinct statement of the relevant facts and circumstances; a clear attribution of the charge and the appropriate provision of law under which the alleged liability of an assessee, is alleged to have arisen. These to fundamental attributes and non-derogable indicia of a valid Show Cause Notice.* ***The law is also well settled that failure of natural justice at the primary level cannot be cured by affording due process at the appellate stage.*** *Since the Show Cause Notice dated 23.10.2009 has clearly and unambiguously alleged the appellant provided only business auxiliary service (in paragraph 2 and 3), no conclusion could be recorded either at the primary or the appellate proceedings, that the transactions in issue are classifiable as Banking or other Financial Services.* ***In fact neither the primary nor the appellate Commissioner have concluded that the appellant had provided the other classified service. In fact both the authorities have failed to record a finding as to the taxable service provided."***

4. Further, in the case of **M/s BRINDAVAN BEVERAGES (P) LTD 2007 (213) E.L.T. 487 (S.C.),** Supreme Court has held that the show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the assessee was not given proper opportunity to meet the allegations indicated in the show cause notice and therefore liable to be set aside. The relevant extract is as follows:

*"10, is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. **The show cause notice is the foundation on which the department has to build up its case.** If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by the CECA T cannot be faulted."*

5. In view of the above, there was no allegation of non-fulfillment of condition under entry no. 332A of notification no. 12/2012-CE dated 17.03.2012 in the show cause notice, therefore, the demand cannot be confirmed on the said ground.

6. The goods were cleared by the assessee are eligible for exemption under entry No. 332 of notification no. 12/2012.

7. That Entry no. 332A is additional entry inserted with effect from 11-07-2014 for giving additional benefit of exemption. **There is no change in entry no. 332 even after insertion of entry no. 332A.**

8. The goods cleared by assessee are being used as parts in wind operated electricity generator (WOEG). They relied on following judgments wherein parts of WOEG has also been held to be eligible for exemption under Serial No. 332 of notification No. 12/2012 dated 17-03-2012.

- M/s Rakhoh Enterprises 2016 (338) ELT 449 (Tri-LB)
- M/s Hyundai Unitech Electrical Transmission Ltd. 2005 (187) ELT 312 (Tri-Mum)
- M/s Hyundai Unitech Electrical Transmission Ltd. 2015 (323) ELT 220 (SC)
- M/s Fag Bearings India Ltd. 2019 (1) TMI 247
- Circular no. 1008/15/2015-CX dated 20.10.2015

9. The assessee is entitled to choose benefit between two separate exemptions which are available.

10. In the present case the assessee has claimed exemption under entry No. 332 of Notification No. 12/2012-CE dated 17-03-2012. There is no dispute regarding the same even in the Show Cause Notice.

11. Now at the adjudication stage, conditions to be fulfilled with respect to exemption under entry no. 332A have been pointed out.

12. The assessee can choose the exemption if the goods are eligible for exemption under two different heads. There is unconditional exemption under entry no. 332, whereas under entry No. 332A, there are certain conditions which are to be fulfilled for claiming for exemption. The assessee in the present case is claiming the exemption under entry No. 332 and cannot be forced upon to claim exemption under entry No. 332A. They rely on the judgment of Hon'ble Supreme Court in the case of M/s Share Medical Care 2007(209) ELT 321- SC wherein Hon'ble Court has held that the appellant is entitled to choose the benefit available under two different notifications or under two different heads of the same notification and it is duty of authorities to grant the benefit as claimed by the appellant. The relevant portion of the observation made by Supreme Court is as follows:

*16. In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. **On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit.** Therefore, non-consideration on the part of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper.* The *prayer ought to have been considered and decided on*

merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down there under have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside.

13. Entry no. 332A is as follows:

Sl. No.	*Chapter or heading or sub heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
"332A	*Any Chapter*	*Parts consumed within the [factory of production for the manufacture of goods specified in LIST 8*	*Nil*	2

13.1. The said entry gives exemption to parts consumed within the factory for manufacture of goods specified in list 8. Under list 8, there are various goods - for example solar pump is specified at serial No. 9, wind operated electricity generator, its components and parts thereof are given in serial No. 13. **The entry No. 332 provided exemption only to items which were specified in list 8 whereas entry No. 332A provides the exemption to parts used for manufacture of items specified in list No. 8.** Thus, it can be seen that Sr. No. 332A provides exemption in addition to items specified in Sr. No. 332 i.e. parts used for manufacture of items specified in list 8.

14. In the present case, the assessee has chosen the benefit available under entry No. 332 *which* can also be seen from the invoices raised.

15. There is no requirement to fulfill the condition No. 2 as specified in Notification No. 12/2012.

16. As per entry No. 332A, exemption is available on fulfillment of condition No. 2. The said condition is as follows:

Condition No.	Conditions
2.	Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed

17. During the hearing, a query was raised that since goods are sold to M/s SKF India Ltd., whether it can be evidenced that the same has been directly sent to wind customer. The assessee has submitted one sample copy of invoice for all customers during period of dispute. It can be seen from the invoices that "SKF India Ltd" is appearing under the heading "buyer" and under heading "Dispatch to" the name of customer is appearing. In the present case, although goods are sold to M.s SKF India Ltd., the delivery has been made directly to the customers namely M/s Pioneer Wincon Pvt. Ltd, M/s ReGen Powertech Pvt. Ltd, etc. Hence, the assessee has fulfilled the requirement under entry No. 332A as well.

PERSONAL HEARING:

34. Personal hearing in the matter of the Show Cause Notices dated 19.4.2016,24,10.2017,05.10.2018 and 19.03.2018, was held on 16.12.2019, wherein Shri Mehul Jivani, C.A., appeared before me on behalf of the assessee. During the course of the hearing, the C.A., reiterated the submissions made in their letter dated 30.11.2017.He submitted a compilation of various case laws in support of the contention of the assessee. He further submitted that penalty should not be imposed on M/s. SKF India Ltd., as well as Shri Chandramowli Srinivasan, Chairman and Director of SKF Technologies, as they were under the bonafide belief that goods were properly valued and not liable for confiscation.

DISCUSSION & FINDINGS

35. I have carefully gone through the records of the case as well as written submissions and

the submissions made by M/s SKF Technologies in their defence at the time of personal hearing.

34. The following Show cause notices issued to SKF Technologies P. Ltd., have been taken up for adjudication:

Sr.No	SCN No and date	Period covered	Duty demanded
1	V.84/15-39/OA/2016 dated 19.04.2016	April,2015 to September,2015	Rs 2,63,44,198/-
2.	V.84/15-27/OA/2017 dated 24.10.2017	October,2015 to March, 2016	Rs 3,98,80,277/-
3.	V.84/15-05/OA/2018 dated 19.03.2018	April 2016 to September 2016	Rs. 5,40,04,874/-
4.	V.84/15-53/OA/2018 dated 05.10.2018	Oct-16 to June 2017	Rs. 7,83,35,212/-

35. Vide the above Show Cause Notices it has been proposed to reject the value declared by SKF Technologies in their invoices and the value has been proposed to be determined in terms of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 ibid read with Section 4 (1) (b) of Central Excise Act, 1944 and also deny exemption benefit under Notification No.12/2012-CE, dated 17.3.2012. The consequent differential duty for the corresponding period as shown in the above table has been demanded under Section 11(A)(1) of Central Excise Act, 1944 along with interest under Section 11AB / Section 11AA of Central Excise Act, 1944 in both the notices. Further, penalty has been proposed to be imposed on M/s SKF Technologies under Section 11AC of Central Excise Act, 1944, read with Rule 25 of Central Excise Rules, 2002. The confiscation of impugned goods under Sub Rule (1) of Rule 25 of Central Excise Rules, 2002 is also proposed in the above Show Cause Notices.

35.1 Penalty has been proposed on M/s SKF India Ltd, Safexpress Logistic Park, Changodar and Shri Chandramowli Srinivasan, Chairman and Director of M/s SKF Technologies under Rule 26(1) of Central Excise Rules, 2002

36. I find that the two issues to be decided are as under:

i) Whether the goods cleared by M/s SKF Technologies are to be valued in terms of Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 ibid read with Section 4 (1) (b) of Central Excise Act, 1944

ii) Whether Bearings used in windmill falls under exempted category – *"Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller"*:

36.1 I find that the demand for Central Excise duty in above mentioned Show Cause Notices have been raised on the following grounds :

(i) The clearance of manufactured goods by M/s SKF Technologies (India) Pvt Ltd to SKF India Ltd. merits valuation in terms of the provisions of Rule 10 of the Central Excise Valuation (Determination of price of Excisable goods) Rules, 2000 (the valuation Rules in short) read with section 4 (1) (b) of the Central Excise Act, 1944, inasmuch as that the assessee and M/s. SKF India Ltd are related persons. That SKF Technologies were required to pay Central Excise duty on the value of the goods at which such goods were sold by SKF India at the time of removal, to buyers (not being related person).The wrong valuation method adopted by M/s SKF Technologies has given rise to short-payment of duty that is proposed to be recovered under provisions of Section 11A(1) along with interest under Section 11AA ibid and penalty under Section 11AC of CEA, 1944 read with Rule 25 of CER, 2002.

(ii) M/s SKF Technologies have wrongly availed exemption benefit under Notification No.12/2012-CE,dated 17.2.2012, resulting in non-payment of Central Excise duty that is proposed to be recovered from them under the provisions of Section 11A(1) along with interest under Section 11AA ibid and penalty Section 11 AC of CEA, 1944 read with Rule 25 of CER, 2002.

ISSUE 1: "Whether the goods manufactured and cleared by M/s SKF Technologies entirely to M/s SKF India Ltd in the domestic market is required to be valued in terms of

Rule 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 ibid read with Section 4 (1) (b) of Central Excise Act, 1944

37. I hereby take up the first issue for consideration before me i.e. "Whether the goods manufactured and cleared by M/s SKF Technologies entirely to M/s SKF India Ltd in the domestic market is required to be valued in terms of Rule 10 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, treating M/s SKF Technologies and SKF India Ltd. as related, or otherwise.

38. In this regard, the relevant portion of Rule 10 of the Valuation rules is reproduced as follows:

"Where whole or part of (the excisable goods are sold by the assessee to or through an inter-connected undertaking, then value of such goods shall he determined in the following manner, namely :-

(a) If the undertakings are so connected that they are also related in terms of sub-clause (ii) or (iii) or (iv) of clause (b) of subsection (3) of section 4 of the Act or the buyer is a holding company or subsidiary company of the assessee, then the value shall be determined in the manner prescribed in rule 9."

38.1 From the above it is clear that an important condition for the purpose of application of Rule 10 of the Valuation Rules is that it has to be established that the units are related in terms of sub clause (ii) or (iii) or (iv) of clause (b) of sub-section (3) of Section 4 of CEA, 1944.

38.2 Further, as per sub-clause (iv) of clause (b) of sub-section (3) of section 4 of CEA, 1944:

"persons shall be deemed to be "related" (if)-
(i) ___
(ii) ---------
(iii) ---------
(iv) they are so associated that they have interest, directly or indirectly, in the business of each other "

38.3 It is thus evident from the above that for two units to be related it is necessary that there should be mutuality of interest, directly or indirectly, in the business of each other.

38.4 The grounds adduced in the present Show Cause Notices to establish mutuality of interest between M/s SKF Technologies and M/s SKF India Ltd, are as under:

a) The manufacturing unit i.e. M/s SKF Technologies (India) Pvt. Ltd. (SKF Technologies) as well as M/s SKF India Ltd, the marketing unit were owned by M/s AB SKF, Sweden. This holding company i.e M/s AB SKF, Sweden was holding 92.89% of the shares of M/s SKF Technologies (India) Pvt. Ltd. and 46.7% shares of SKF India Ltd. M/s SKF Technologies was the manufacturing arm of M/s AB SKF, Sweden and SKF India Ltd. was their marketing arm in India.

b) Mr. Chandramowli Srinivasan, Chief Finance Officer (CFO) of SKF India was also Chairman and Director in SKF Technologies. A CFO is a corporate officer primarily responsible for managing the financial risks of the corporation. Such an officer is also responsible for financial planning and record-keeping, as well as financial reporting to higher management. This title is equivalent to Finance Director. In a nutshell, a CFO is an influential person in the corporate body who is capable of directly influencing the business policies of a corporate. Here the same person was also the Chairman & Director of M/s SKF Technologies, again a very significant post capable of influencing their business policy. Thus Mr Chandramowli Srinivasan was holding key positions in both the units and was capable of influencing business strategies of both the firms.

c) M/s SKF Technologies was not at a liberty to decide the price of their goods in a normal manner as per cost valuation / cost of manufacture basis. The price of the goods manufactured by SKF Technologies and cleared 100% to SKF India Ltd. in the domestic market, was determined by applying the backward calculation method of reducing the rate by 8% to 15% of the order rate accepted by M/s SKF India from the ultimate buyer. Thus the invoice price for SKF Technologies in the capacity of a manufacturer was directly dependent, on the purchase order issued by the ultimate customer to SKF India Ltd. That the invoice price of SKF Technologies was directly influenced by the Purchase Orders received by SKF India Ltd. indicated that M/s SKF-

the domestic market by SKF Technologies.

d) The admitted fact in this case is that SKF Technologies was the manufacturing unit and did not have any marketing infrastructure available with them. The entire quantity of goods manufactured by them and cleared in the domestic market was exclusively sold to M/s SKF India Ltd, who possessed the infrastructure for marketing activities. Likewise, SKF India Ltd. did not have any manufacturing facilities. Thus the business of manufacturing of SKF Technologies was entirely dependent on the marketing infrastructure of SKF India Ltd. and conversely, the business of SKF India Ltd. was dependant on the manufacturing infrastructure of SKF Technologies. This arrangement between SKF Technologies and SKF India Ltd. clearly pointed to the fact that both the units were inter-dependant so far as their business activities were concerned. Both the units supplemented each other in as much as one unit manufactured the products and the other unit marketed those products. Thus, there was a clear mutuality of interest on part of SKF Technologies and M/s SKF India Ltd.in the business of each other in respect of the goods manufactured and cleared in the domestic market by SKF Technologies.

e) SKF India Ltd. had extended a substantial loan amount of Rs 240 Crores to SKF Technologies on flexible terms of re-payment agreed upon as per mutual convenience. The relief extended by SKF India Ltd. to SKF Technologies in the re-payment schedule was indicative of the fact there was mutuality of interest.

39. On considering the defence submissions made by SKF Technologies it is seen that they have mainly argued that they had no mutuality of interest in the business of SKF India Ltd and in absence of such mutuality they cannot be said to be related persons. They have placed reliance on the case laws of M/s Atic Ind. Ltd. reported at 1984 (17) ELT 323 (SC) and M/s S M Chemicals & Electronics reported at 1980 (6) ELT 197 (Bom).

40. In the case of M/s Atic Ind. Ltd.relied upon by the assessee, it was held by Hon'ble Supreme Court that merely because one company held the shares of another company it cannot be said that they were related persons. To be treated as related person, both the companies must be so associated that they have interest, directly or indirectly, in the business of each other. In the present case as discussed supra, SKF India Ltd. had interest in the business of manufacture of SKF Technologies and SKF Technologies had interest in the business of SKF India Ltd. Therefore, the said case law does not support the contention of SKF Technologies in the present case.

41. In the case of M/s S M Chemicals & Electronics, which has been relied upon by the assessee, it was held by Hon'ble High Court of Bombay that merely because the buyers effected after-sales service during warranty period it does not bring them within the ambit of 'related person'. This case law is also not helping the cause of SKF Technologies because, in the present case the ground for invoking the 'related person' clause is not concerning after sales but it is based on mutuality of interest in-as- much as SKF Technologies was entirely dependent on SKF India Ltd. for marketing of the goods manufactured and cleared in the domestic market whereas SKF India Ltd. was totally dependent on SKF Technologies for manufacture of goods.

42. M/s. SKF Technologies have contended that that there is no allegation in the notices that SKF India Ltd. promoted the business of SKF Technologies and in absence of such allegation they cannot, be termed as related persons. In this regard, I find that promotion of business activity for SKF Technologies by SKF India Ltd. has been clearly brought out in the present Show Cause Notices. As far as the goods manufactured for domestic clearance is concerned, SKF Technologies had manufactured and cleared only such goods for which SKF India Ltd. had procured purchase orders from the customers. Even the sale price for such purchase order were negotiated and agreed upon with the buyers by SKF India Ltd. Therefore during the impugned periods covered under the present SCNs, the entire business of manufacture and clearance of goods in the domestic market by SKF Technologies was only and only on the basis of the marketing infrastructure of SKF India Ltd. Further, the stipulated condition is that both the parties must be having mutual interest in the business of each other. It is reiterated that SKF India Ltd. had direct interest in the business of SKF Technologies as they were procuring orders and selling the goods manufactured by SKF Technologies and SKF Technologies had interest in the business of SKF India Ltd. as they were manufacturing and clearing only such goods in the domestic market for which orders were procured by M/s SKF India Ltd at such reduced prices varying from 8% to 15% of the prices negotiated with the customers by M/s SKF India Ltd.

43. It has been further contended by SKF Technologies that two entities cannot be termed as related merely because bulk sales or entire quantity was sold to a single person as held in the case of M/s New India Ind Ltd. reported at 1988 (37) ELT 547 (Bom). I have gone through the said case law and I find that the issue under contention was the relation between a distributor and a manufacturer. In this backdrop it was observed that the term 'distributor' does

not cover all the distributors but would apply only to distributors who are relatives of the manufacturer. The instant case before me is not pertaining to a relationship between a distributor and a manufacturer. Rather, the two entities being examined are both working under the umbrella of their controlling entity viz. M/s Aktiebolaget SKF, Sweden. Further, the arrangement between these two entities reveals the fact that neither of the individual entity would be in a position to run their business in their own capacity as already discussed above. Thus, I find that the reliance on the case law of M/s New India Ind Ltd. *supra* by SKF Technologies is misplaced.

44. It was also submitted by SKF Technologies that assuming without admitting the relationship, the price at which the goods have been sold by them to SKF India is not influenced by the relationship and were decided on mutual interest basis and that by applying the backward calculation method reducing 8 to 15% from the ultimate sale price to determine the price at which the goods are sold by them is the reasonable method to decide the price. In this regard as already discussed above, I find that in this submission SKF Technologies is factually incorrect.

45. SKF Technologies have in their defence relied upon the decision of Hon Delhi High Court in the case of M/s Hind lamps Ltd 1981(8)ELT 11 (Del), Nagpal Petro Chem Ltd V Assistant Collector of Central Excise, 1979 (4) ELT (J 117) (Mad); Powertech International 2001 (131) ELT 461 (Tri. Mum) respectively. Reliance was also placed on the decisions in the case of M/s Christo George 2008)227) ELT410, Rumi Herbals Pvt Ltd. 2008(222) ELT 518 and Jeypore Sugars Co. Ltd 2000(124) ELT 845. In this regard, I find that the decision of Hon Delhi High Court in the case of M/s Hind lamps Ltd 1981(8) ELT 11 (Del) was on a different issue all together. In their case, the manufacturer had no other option but to sell glass tubes and florescence tubes to manufacturer. However, in the present case, the bearings being manufactured by SKF Technologies have varied uses and therefore the ratio the decision relied upon by SKF Technologies cannot be made applicable in the instant case.

46. The difference in valuation of goods in the present case was huge e.g. as per the extract of the RG 23 D register of SKF India. 2 "Bearings" valued at Rs. 42060/- (were) sold by SKF Technologies under Central Excise Invoice No.583 dated 28.04.2011 on payment of duty of Rs.4206/-which was subsequently sold by SKF India sold for Rs. 94010/-. Thus there was an extra commercial consideration to reject the transaction value of SKF Technologies, accordingly, the ratio of decision in case of Nagpal Petro Chem Ltd V Assistant Collector of Central Excise, Powertech International and M/s Christo George cannot be made applicable to this case.

47. Finally, it has been contended by SKF Technologies that there were no common Directors and both the companies were separately registered under various laws. They have laid stress on the fact that share holding of M/s Aktiebolaget SKF, Sweden in both the companies would not imply that the entities under dispute were related persons. It was further argued that the related persons were mentioned in the Accounting Standard AS 18 of the balance sheet keeping in view the requirements of the Income Tax Act and the same had no bearing in terms of the Central Excise law. While arguing these facts, SKF Technologies has placed reliance on the case laws of M/s Eastern Bakeries P Ltd, M/s Indian Oil Corporation - 1990 (48) ELT 80, M/s International Computers Mfg. Co. I td. 1989 (41) ELT 287, M/s RPG Enterprise Ltd. - 2008 (11) STR 488, M/s Simpson & Co. Ltd. 2006 (206) ELT 769, M/s Rumi Herbals P Ltd, 2008 (222) ELT 518, M/s Utkal Alloys P ELT. 2005 (188) ELT 56 and M/s International Computer India Mfg Co Ltd.1989 (41) ELT 287.

48. At this juncture, I find it apt to evaluate the above arguments keeping in view the legal provisions pertaining to the definition of the term 'related person' so as to arrive at a proper conclusion. The term 'related person' has been defined under section 4(3)(b) of the CEA, 1944 as under:

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

1 *they were inter-connected undertakings:*

2 *they were relatives;*

3 *amongst them the buyer was a relative and a distributor of the assessee, or a sub-distributor of such distributor: or*

4 *they were so associated that they have interest, directly or indirectly, in the business of each other.*

Explanation.-

a. *"inter-connected undertakings" shall have the meaning assigned to it in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act. 1969(54 of 1969): and*

b. *"relative" shall have the meaning assigned to it in clause (41) of section 2 of the Companies Act 1956(1of1956):"*

48.1 2 & 3 above are not applicable to the facts of the present case and as such I restrict my discussions in respect of clause 1 & 4 above. The above definition implies that two persons are deemed to be related if they are so associated that they have interest, directly or indirectly, in the business of each other. The discussions already made in the above paragraphs amply demonstrate the fact that both, SKF India Ltd. and SKF Technologies are inter-dependent for their business interests. Accordingly, I find that they **directly have an interest in the business of each other** and as such would be covered under the category of 'related persons' in view of the above definition (Clause 4).

48.2 Now, I come to clause 1 of the above definition which stipulates that persons shall be deemed to be related if they are interconnected undertakings. The term 'inter-connected undertakings' has been defined under explanation to the clause and the same stipulates that the inter-connected undertaking shall have the meaning as assigned in clause (g) of Section 2 of the MRTP Act, 1969 (54 of 1969). Thus, it becomes imperative that the definition given under clause (g) of section 2 of the MRTP Act, 1969 (54 of 1069) has to be looked into. For ease of reference the text of the said clause is reproduced as under:

"(g) 'inter-connected undertakings" means two or more undertakings which were inter-connected with each other in any of the following manner, namely :-

(i)_____ if one owns or controls the other.

(ii) _____

(iii) where the undertakings were owned by bodies corporate, -
(a) if one body corporate manages the other body corporate. or
(b) if one body corporate was a subsidiary of the other body corporate, or
(c) if the bodies corporate were under the same management,or
(d) if one body corporate excercises control over the other body corporate in any other manner,

(vi) if the undertakings were owned or controlled by the same person or by the same group,

(vii) if one was connected with the other either directly or through any number of undertakings which were inter-connected undertakings within the meaning of one or more of the foregoing sub clauses."

Explanation 1: For the purposes of this Act, two bodies corporate, shall he deemed to be under the same management- 6

(i) if one such body corporate exercises control over the other or both were under the control of the same group or any of the constituents of the same group; or

(ii)_____

(vi) if the same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares in one body corporate, also hold not less than one-fourth of the equity shares in the other; or"

48.3 With effect from 28-05-2012, the above definition was incorporated in the CEA, 1944 itself as Explanation to Section 4(3)(b) and the MRTP ACT has since been repealed.

48.4. In the instant case, I find that for the purpose of considering two entities as inter-connected undertakings, one or more of the conditions as stipulated under clause (g) of section 2 of the MRTP Act, 1969 (54 of 1069) is required to be fulfilled. In this regard, I find that sub-clause (iii) of the said clause stipulates that:

(iii) where the undertakings were owned by bodies corporate. -
(a) if one body corporate manages the other body corporate, or
(b) if one body corporate was a subsidiary of the other body corporate, or
(c) if the bodies corporate were under the same management, or
(d) if one body corporate exercises control over the other body corporate in any other manner.

49. As discussed above, M/s AB SKF, Sweden, owned both the firms viz. SKF India Ltd. and M/s SKF Technologies (India) Pvt. Ltd. M/s AB SKF, Sweden was holding 92.89% of the shares of M/s SKF Technologies (India) Pvt. Ltd. and 46.7% shares of SKF India Ltd. Further, SKF India Ltd. and SKF Technologies were under the same management in view of clause (i) & (vi) of Explanation I of clause (g) of section 2 of the MRTP Act, 1969 (54 of 1969). SKF Technologies was not at liberty to decide the price of the goods manufactured by them as per cost valuation /cost of manufacture basis. Rather, the price was decided by applying the backward calculation method of reducing 8% to 15% of the order rate accepted by SKF India Ltd. from the ultimate buyer. The invoice raised by SKF Technologies on M/s SKF India Ltd was on the basis of the purchase order issued by the ultimate Customer to SKF India Ltd. Thus, I find that M/s SKF India exercised control over M/s SKF Technologies and as such the condition at sub-clause (iii)(d) supra is fulfilled.

50. Further, sub-clause (vi) of clause (g) of section 2 of the MRTP Act, 1969 (Act No 54 of 1969) stipulates that the units can be called interconnected undertakings if the undertakings are owned or controlled by the same group. In this regard, as discussed supra, both the firms viz. M/s SKF Technologies and M/s SKF Technologies (India) Pvt. Ltd. were controlled by M/s AB SKF, Sweden. Thus, the condition at sub-clause (vi) of clause (g) of section 2 of the MRTP Act, 1969 (Act No 54 of 1969) stands fulfilled. As M/s SKF Technologies was connected with M/s SKF India through M/s AB SKF, Sweden the condition at sub-clause (vii) of clause (g) of section 2 of the MRTP Act, 1969 (Act No 54 of 1969) also stands fulfilled.

51. The grounds on which it is established that SKF Technologies and SKF India Ltd. had mutuality of interest in the business of each other are summarized as follows;

a. M/s Aktiebolaget SKF, Sweden held 92.89% of the shares of M/s SKF Technologies (India) Pvt. Ltd. and 46.7% shares of M/s SKF India. Thus, it is evident that M/s AB SKF, Sweden had control over both the body corporate viz. M/s SKF technologies (India) Pvt. Ltd. and SKF India Ltd. This fact leads to the inevitable conclusion that both, M/s SKF Technologies and M/s SKF India are under the same management.

b. The fact that M/s AB SKF, Sweden was holding company for both M/s SKF Technologies (India) Pvt. Ltd. and M/s. SKF India Ltd. is an admitted fact by SKF Technologies in their written reply submitted during the course of personal hearing wherein they have submitted that Cost sharing agreement for charging on the basis of turnover is very common where group companies are involved. Moreover, Shri Anil Raskar, Manager Excise and Service tax with SKF India, Pune, who was responsible for handling all matters related to Central Excise and Service Tax for whole of India pertaining to SKF India, including SKF Technologies, had also categorically stated in his statement dated 23.04.2012 that all the actions and directions undertaken by SKF India and SKF Technologies were, within the purview of the cost sharing agreement. Further, they had a common umbrella ERP package for all the units of SKF in India, developed by AB SKF, Sweden, for e.g. IT. cost was shared and paid independently by both the units to AB SKF Sweden.

c. The Audited Balance Sheet for the year 2010-11 of SKF Technologies mentions M/s SKF India as "parties under common control" at clause 17.17 forming part of Notes to Accounts pertaining to "related party disclosures", this fact has also been admitted by Shri Vrijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai, in his statement dated 04-09-2014 and he had also deposed that AB SKF Sweden was the ultimate holding company of both the companies viz. SKF India Ltd. and SKF Technologies (India) Pvt. Ltd. and hence transactions between these two companies were reported under the related party disclosure of the balance sheet.

d. The Audited Balance Sheet, for the year 2010-11 of SKF Technologies reported transaction with SKF India totaling to Rs 45,10,25,518/- under the head of "particulars of related party transactions" at clause 17.17(2) - in Revenue from Operation. This fact was admitted by Shri Vrijendra Patwari, General Manager, Taxation, with SKF India Limited, Mumbai in his statement dated 04-09-2014. In their defence it has also been mentioned that Sr no 23 of Form 3CD of M/s SKF India for the year 2014-15 shows the transactions with M/s SKF Technologies as "Fellow Subsidiary" and not related persons. This argument is absolutely incorrect because "Fellow Subsidiary" are 'related parties' as per the Accounting Standard 18 (AS18).

e. Shri Vrijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai, in his statement dated 04-09-2014 had also deposed that the major raw

material vendors of SKF Technologies (India) Pvt. Ltd. were approved by M/s AB SKF, Sweden.

f. The details of common Directors and personnel in the two companies were as follows:

(i) Shri Anil Raskar held the designation of Manager Excise and Service tax with SKF India, Pune. However, as per his statement, he handled all matters related to Central Excise and Service Tax for the whole of India in respect of all companies of SKF India Ltd. as well as SKF Technologies (India) Pvt. Ltd. in India.

(ii) Shri Vrijendra Patwari, General Manager Taxation with SKF India Limited, Mumbai, whose work profile included handling of tax matters pertaining to Income Tax, Central Excise, Service Tax & VAT & CST Laws had also supported SKF Technologies (India) Pvt. Ltd. in respect of the above mentioned areas of taxation.

(iii) Mr. Chandramowli Srinivasan, Director Finance of SKF India Ltd. was also Chairman & Director in SKF Technologies (India) Ltd.

(iv) Mr. Shrikant Savangikar, Director, Business Excellence Quality & sustainability of SKF India Ltd. was also Director in SKF Technologies (India) Ltd.

The above facts stand admitted by Shri Anil Raskar and Shri Vrijendra Patwari in their statements dated 23.04.2012 and 04.09.2014 respectively.

g. In the instant case, M/s SKF Technologies (India) Ltd. did not have any backup for selling goods in market and they utilized the manpower, know-how and proficiency of SKF India Ltd. for getting orders for manufacture of their products. Likewise, SKF India Ltd. did not have any manufacturing facility and they were solely engaged in marketing of the products manufactured by SKF Technologies (India) Ltd. Thus the entire business of SKF Technologies (India) Ltd. and SKF India Ltd. was inter-dependant in as much as SKF Technologies (India) Ltd. was entirely dependent on SKF India Ltd. for marketing of the Bearings manufactured by them and cleared in the domestic market and M/s SKF India was entirely dependent on the supply of bearings manufactured by SKF Technologies (India) Ltd. for its marketing activity.

h. M/s SKF Technologies (India) Ltd. had manufactured goods under the technical guidance of SKF India Ltd. and had sold the entire quantity to be cleared in the domestic market to SKF India Ltd. By this arrangement M/s SKF Technologies got a steady market for their manufactured products and M/s SKF India could secure their technical know-how by not having to share it with a manufacturer outside their group.

i. M/s SKF Technologies (India) Ltd. was not at a liberty to decide the price of their manufactured goods as per cost valuation /cost of manufacture basis. Rather, the price was decided by applying the backward calculation method of reduction by 8% to 15% of the order rate accepted by SKF India Ltd. from the ultimate buyer. Thus the purchase order issued by the ultimate Customer to SKF India Ltd. formed the basis of the Invoice price raised by SKF Technologies (India) Ltd. for the goods manufactured and cleared in the domestic market by them.

j. In the present case M/s SKF Technologies (India) Ltd. had sold their entire goods exclusively to or through related person namely M/s SKF India Ltd.

k. A substantial loan amount of Rs 240 Crores had been extended to M/s SKF Technologies (India) Pvt. Ltd. by M/s SKF India. The re-payment terms were as per the convenience of both the parties. The supplementary agreement indicated that the terms of re-payment kept on changing whereby relief was extended to SKF Technologies (India) Ltd. in repayment schedule.

l. As per clause (d) of the agreement for Cost Sharing and Service Agreement dated 6th April 2010 between SKF Technologies (India) Ltd. and SKF India Ltd., both the parties were pooling and combining their respective manpower and other resources for the purpose. The types of services rendered and availed clearly showed that almost all the activities of SKF Technologies (India) Ltd. were controlled or governed by SKF India Ltd., though the same had been projected in the guise of Cost Sharing Agreement. There was no clear mechanism to share

the actual cost between both the parties.

52. In view of the above discussions, I find that SKF India Ltd. and SKF Technologies (India) Pvt. Ltd. were inter-connected units in terms of the provisions of Section 4(3)(b)(i) of the CEA, 1944. Further, I also find that both the said firms were so associated that they had interest, directly or indirectly, in the business of each other in terms of the provisions of Sec. 4(3)(b)(iv) of the CEA, 1944. Therefore, the provisions of Rule 10 of the Valuation Rules were correctly applicable in the present case to the goods manufactured by SKF Technologies and cleared in the domestic market to SKF India Ltd. The wrong valuation method adopted by M/s SKF Technologies for clearing the impugned goods had resulted in short payment of Central Excise duty amounting to Rs 60,98,037/- during the period April-2015 to September 2015, short-payment of Rs 67,47,704/- during the period October-2015 to March-2016, short-payment of Rs 1,50,19,462/- during the period April 2016 to September 2016 and short-payment of Rs 2,01,07,579/- during the period October-2015 to March-2016, which are liable to be recovered under the provisions of Section 11A(I) of CEA, 1944.

53. In view of the above, the confirm the demand of Rs.4,79,72,782/-, under the provisions of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 of the same Rules read with Section 4 (I)(b) of the Central Excise Act, 1944, as per Table-A below:

TABLE-A

Sr.No	SCN No and date	Period covered	Valuation in terms of Rule 10 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000 (Related person)
1	V.84/15-39/OA/2016 dated 19.04.2016	April,2015 to September,2015	6098037
2	V.84/15-27/OA/2017 dated 24.10.2017	October,2015 to March, 2016	6747704
3	V.84/15-05/OA/2018 dated 19.03.2018	April 2016 to Sept 2016	15019462
4	V.84/15-53/OA/2018 dated 05.10.2018	Oct-16 to June 2017	20107579
TOTAL.....			**4,79,72,782**

ISSUE 2: Exemption under Notification No.12/2012–CE dated 17.3.2012

54.. Now I take up the issue of exemption under Notification No.06/2006-CE dated 01/03/2006, amended by Notification No.12/2012–CE dated 17.3.2012, which was allegedly wrongly availed by M/s SKF Technologies for clearance of bearings to M/s SKF India Ltd, which were subsequently sold to Wind Operated Electricity Generator (WOEG) customers in the domestic market.

55. The period under dispute i.e April, 2015 to June 2017, in the present case before me is governed under the provisions of Notification 12/2012 CE dt. 17.3.2012 as amended. As per the said Serial No. 332 of Notification 12/2012 CE dated 17-03-2012, Non-conventional energy devices/systems specified in List 8 falling under "Any Chapter" of the said First Schedule were exempted from the whole of the duty leviable thereon without any condition. Serial No. (13) of List 8 in respect, of the said entry reads as follows :

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

56. The relevant extract of exemption Notification 12/2012-CE, dated 17.3.2012, reads as under:

Effective rate of duty - G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 3/2005-Central Excise, dated the 24th February,2005 , published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 95(E), dated the 24th February,2005,(ii) notification No. 3/2006- Central Excise, dated the1st March,2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 93 (E), dated the 1st March,2006,(iii) notification No. 4/2006-Central Excise, dated the 1 st March,2006 , published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 94 (E) dated the 1 st March,2006,(iv) notification No. 5/2006-Central Excise, dated the1st March,2006 , published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i), vide number G.S.R 95 (E) dated the1st March,2006,(v) notification No. 6/2006-Central Excise, dated the 1 st

March, 2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 96 (E) dated the1st March,2006, and (vi) notification No. 10/2006-Central Excise, dated the1st March,2006, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 100 (E) dated the 1 st March,2006, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid:

Provided that nothing contained in this notification shall apply to the goods specified against serial number 296 and 297 of the said Table after the 31st day of March, 2013.

Explanation 1.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified. Explanation 2.- --------

TABLE

S.No.	*Chapter or heading or sub-heading or tariff item of the First Schedule*	*Description of excisable goods*	*Rate*	*Condition No.*
332	Any Chapter	Non conventional energy devices or systems specified in List 8	Nil	-

LIST 8

.....

(13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller

.....

57. Sr.No.332 of the above referred Notification exempts goods viz. "Non-conventional energy devices / systems specified in List 8 falling under "Any Chapter" from the whole of the duty leviable thereon without any condition. Serial No. (13) of List 8 in respect of the said entry reads as follows :

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

58. I find that in the matter before me, exemption under Notification No.12/2012–CE dated 17.3.2012, availed for clearance of bearings to Wind Operated Electricity Generator (WOEG) customers in the domestic market, has been denied to the assessee on the ground that the said exemption is available only on goods cleared for parts of the WOEG, viz. *Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller* only and not for clearing the same for being used in the entire windmill and parts thereof. I find that the bearings have been used in many parts of the Windmill, other than the generator as depicted in the diagram in **Para 21.2,** above. In the demands raised against the assessee for wrong availment of exemption, I find that the interpretation of the Notification No. 12/2012,17.3.2012 has been strictly limited to the bearings used in the "generator" and parts thereof instead of the bearings used in the entire windmill. *It is the case of the department that what is exempted is not windmill system in its entirety but only wind operated electricity generator and its components and parts including rotor and wind turbine controller.*

59. The language employed in the notification indicates that the exemption is not extended to each and every non-conventional energy device or system. It appears that scope of exemption has been restricted only to such devices or systems which have been specified in List 8. Further, while some entries in List 8 above refer to individual items or devices, some other entries include systems as a whole or a combination of equipment and the corresponding system. Therefore, it appeared that wherever it is intended that a device alone should be granted the benefit of exemption it has been so stated; on the other hand where it is intended that the system as a whole needs to be exempted, it has been clearly described as such. In this background, it appeared that each of the entries in List 8 would have to be construed strictly as per the text of the entry itself without expanding the scope merely because group heading in Entry 332 of the Table refers to systems i.e. ***Non-conventional energy devices / "systems"***

specified in List 8 falling under "Any Chapter"

60. The above fact indicated that the intention of the legislature while amending previous exemption was to restrict the exemption to the parts of wind operated electricity generator instead of allowing exemption to entire windmill and parts thereof. Thus it was construed that the entry at Serial No (13) of List 8 covers only the generator and its parts and its scope cannot be expanded to include the entire windmill and parts thereof.

61. Further, I also find support from the judgement given by the Authority For Advance Rullings, New Delhi in the case of M/s ENERCON (INDIA) LTD reported at 2011 (270) E.L.T. 132 (A.A.R.). whereby it was held as under:

"*Transformers - Specially designed for wind operated electricity generators - Exemption - Mounted on tower structure and connected to system by wires and cables - HELD : Though transformer was part of whole wind operated electricity generating system, it was not part of generator - It was more so as no technical evidence was produced in that regard, and website of collaborator of manufacturer showed transformer as separate item of electrical machinery - In that view, it could not be held to be covered under Item No. 13 of list 5 to Notification No. 6/2006-C.E., and not entitled to benefit under Serial No. 84 thereof - It was immaterial that Item No. 13 of list 5 also specifically covered rotor and wind turbine controller, which were parts of generating system.*"

62. The issue is no more *res integra* in view of the judgment in the case of Nicco Corporation Ltd. v. Commissioner of Central Excise, Calcutta *(2006-TIOL-163-SC-CX)* whereby Hon'ble Supreme Court has held that insulated electrical cables designed for use in wind mills would not be eligible for exemption under Notification No. 205/88 as amended reasoning insulated cables are not parts of wind mill which is complete in itself without electric cables, although wind mill may not be able to function without these cables, and, as such benefit of exemption would not be available to the assessee. The ratio of the said judgment is squarely applicable to the facts of the present case

63. The assessee have contended that the said exemption is available to them in light of the decision of M/s Hyundai Unitech Electrical Transmission Ltd. reported at 2005 (187) ELT 312, M/s Gemini Instratech P Ltd. reported at 2014 (300) ELT 446 and M/s Pushpam Forgings reported at 2006 (193) ELT 334. In this regard, I find that the dispute in the case of M/s Pushpam Forgings and M/s Hyundai Unitech Electrical Transmission Ltd. was pertaining to exemption Notn. No. 6/2000 CE dated 1.3.2000 and in the case of M/s Gemini Instratech P Ltd. the dispute was pertaining to exemption under Notn. No. 6/2002 CE dt. 1.3.02. However, the facts before me in the instant case involve examination of the exemption under Notn. No. 6/2006 CE dated 1.3.2006. As discussed at para 49, the language employed in the relevant exemption notifications has undergone a drastic change from the year 1999 to 2006. Thus, the said case laws would no longer hold good while interpreting the provisions of Notn. No. 12/2012- CE and accordingly the ratio of the same cannot be made applicable to the facts of the present case. Further, I find that the case of M/s Gemini Instratech P Ltd. has not attained finality in as much as the appeal has been admitted by the Supreme Court as reported at (315) E.L.T. A81 (S.C.).

64. Further, I find that the burden of proof lies on the claimant claiming the benefit of exemption notification as held by the Supreme Court in the case of M/s *Novopan India Ltd.* v. *CCE, Hyderabad* - 1994 (73) E.L.T. 769 (S.C.) wherein it was held that:

"A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision - In case of doubt or ambiguity, benefit of it must go to the State.

The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

64.1 It is a well settled principle of law that a notification is to be interpreted in light of the language employed in the said notification and no addition or deletion from the same is to be made. Such a view has been expressed by the Apex Court in a plethora of cases of which a few are listed below:

(1) *Commissioner of C.Ex., Jaipur* v. *Mewar Bartan Nirman Udyog* - 2008 (231) E.L.T. 27 (S.C.)
(2) *Commissioner of C.Ex. & Cus., Indore* v. *Parenteral Drugs (I) Ltd.* - 2009 (236) E.L.T. 625 (S.C.)
(3) *Hotel Leela Venture Ltd.* v. *Commissioner of Customs (Gen.), Mumbai* - 2009 (234) E.L.T. 389 (S.C.)
(4) *Mihir Textiles Ltd.* v. *Collector of Customs, Bombay* - 1997 (92) E.L.T. 9 (S.C.)
(5) *Orient Traders* v. *Commercial Tax Officer, Triupati* - 2009 (237) E.L.T. 447 (S.C.)

65. Bearing is not a part of a wind operated electricity generator and as per the principles of construction of a notification as discussed above, I am inclined to hold that the "Bearings" manufactured by M/s SKF Technologies does not fit in the wordings as deployed in exemption notification "the parts of wind operated electricity generator".

66. Further, I find that in the present case, M/s SKF Technologies manufactures Bearings for wind mill. As per the diagram/picture given in SCN, the generator is a part of windmill and exemption is available to parts of generator. The "Bearings" manufactured by SKFT were used in various places of the wind mill i.e nacelle part of the wind mill i.e rotor shaft, gearbox (step-up gear), generator, yaw gearbox (reduction), yaw slewing table, blade pitch revolving seat and hydraulic pump. Further, form any records such as invoices or ER1 returns it is not imminent that the "Bearings" cleared by the M/s SKF Technologies have actually been used in the generator or in any other part.

67. Further, Shri Chandramowli Srinivasan, Chairman & Director in SKF Technologies And Chief Finance Officer in SKF India Ltd. in his statement dated 05.09.2014 deposed and acknowledged that they were generally manufacturing slewing Bearing and main shaft Bearing for the wind mill customers.

68. Further, the SKF Technologies being the manufacturer of "Bearings" has been cleared entire goods manufactured directly to M/s SKF India (without payment of appropriate Central Excise duties), who is a dealer, having no manufacturing facilities. Even the core business activity of M/s SKF India has been outsourced to M/s Safe Express Cargo, therefore it was a postulated fact that the "Bearings" sold by SKF Technologies to SKF India were not used or put to use in further manufacture of Wind operated Electricity Generators by SKF India. Since the fact remains that SKF India cannot use or put to use the "Bearings" in further manufacturer, they were not entitled for receipt of duty free goods, which were specifically to be used in the manufacture of non-conventional energy generation machines. Likewise, taking the same yardstick, SKF Technologies cannot clear the goods without payment of duty claiming the benefit of Noti. No. 12/2012 (CE) dated 17/03/2012 as amended to any person or firm who was not a manufacturer and who has no facilities or intentions of manufacturing wind operated electricity generators.

69 SKF Technologies had prior knowledge of the customers of SKF India, who had purchased "Bearings" and also thoroughly sure of the fact that the "Bearings" cleared by them to SKF India were not parts or components of Wind operated Electricity generator, they cleared "Bearings" without payment of duty by claiming exemption under Noti. No. 12/2012 (CE) dated 17.03.2012. Further, they cleared the same deliberately without payment of duty by wrongly claiming the benefit of Notification 12/2012 dated 17.03.2012, and by arbitrarily mentioning as components & parts of Wind Operated Electricity Generator in the invoices, and cleared under Tariff Sub Head No 8482. SKF Technologies has also filed false and misleading ER-1 returns during the relevant period.

70. In view of the above discussion I find that "Bearings" cleared by M/s SKF Technologies to M/s SKF India are not components & parts of Wind Operated Electricity Generator as envisaged under item No. 13 of list 8 to Sl. No. 332 of Notification 12/2012-CE, dated 17.03.2012. Accordingly, I find that the assessee have contravened provisions of Rule 4 of the Central Excise Rules 2002 inasmuch as they failed to assess and discharge the proper central excise duty liability on the removal of dutiable goods from their factory. This resulted in to non duty payment of Central Excise duty amounting to Rs. 15,05,91,779/- as shown in **Table-B** below, which is required to be recovered from them in terms of the provisions of section 11 A (1) / 11A (4) of the Central Excise Act, 1944.

TABLE-B

Sr.No	SCN No and date	Period covered	Demand against Wrong availment of exemption benefit under Notification No.12/2012-CE dated 17/03/2012 (in Rs.)
1	V.84/15-39/OA/2016 dated 19.04.2016	April,2015 to September,2015	20246161

2	V.84/15-27/OA/2017 dated 24.10.2017	October,2015 to March, 2016	33132573
3	V.84/15-05/OA/2018 dated 19.03.2018	April 2016 to Sept 2016	38985412
4	V.84/15-53/OA/2018 dated 05.10.2018	Oct-16 to June 2017	58227633
TOTAL.....			**150591779**

71. In the above context of availability of exemption to Bearings under Notification 12/2012 dated 17.03.2012 as amended, the assessee contended that various parts namely blades, gearbox, low-speed shaft etc. are collectively used to generate electricity. The generator situated inside the turbine itself cannot produce electricity through wind. Hence, the entire unit is collectively known as "wind operated electricity generator". I am not in agreement of the views as the intention of the legislature is very clear to extend exemption to "wind operated electricity generator" an isolated unit of generator used in wind mill as discussed in foregoing paras. Further, they have relied upon various judgments, where Honorable Courts have allowed the various parts of Wind Mill considering Parts of "wind operated electricity generator". They relied upon following verdicts given by various CESTATs viz. (1) M/s Hyundai Unitech Electrical Transmission Ltd. 2005 (187) ELT 312, (2) M/s Gemini Instratech Pvt. Ltd. 2014 300 ELT 446, (3) M/s Pushpam Forgings 2006 (193) ELT 334. In all the three cases Hon'ble CESTAT has decided the issue in favour of the noticee as the parts /components were "specially designed" for Wind mill, where as in the instant case M/s SKF Technologies have never claimed or declared that the "Bearings " cleared by them were for specially designed for wind mill. Hence I find these judgments, relied by M/s SKF Technologies, do not hold true in the case of the assessee.

72 In view of the above discussions I find that all the charges leveled against the assessee in the show cause notice stand proved. M/s SKF Technologies has cleared their goods to a related person without following the procedures as prescribed under the Central Excise Act, 1944 and the Rules made thereunder, and without payment of duty of excise by way of doing willful misinterpretation of exemption notification in their favour and under suppression of the facts with intent to evade payment of Central Excise duty leviable thereon.

73. I also find that none of the statements recorded under Section 14 of the Central Excise Act 1944 has been retracted. Hon'ble Supreme Court in the case of *SURJEET SINGH CHHABRA vs UNION OF INDIA - 1997 (89) E.L.T. 646 (S.C.)* held that confessional statement made before Superintendent of Customs, even if retracted within six days has got evidentiary value.

74. In light of the above discussion and relying on the judgments passed by the Courts and decisions of the Tribunals, I find that SKF Technologies failed to determine, assess and discharge the correct Central Excise duty total amounting to **Rs. 4,79,72,782/-** on the clearance of finished goods by wrongly declaring *"the transaction between SKF Technologies and SKF India being at arms length and on principal to principal basis not affected by virtue (of) any relationship and being similar to the transactions between two unrelated persons in an uncontrolled atmosphere*". M/s SKF Technologies were very much aware of their relation with M/s SKF India and they were well aware of the relation of the two units. Despite having such knowledge, they chose to value their excisable goods on 'transaction value' basis with the sole intention to evade the payment of duty at appropriate rates. Further, I find that the language employed in No0ification No.12/2012 dtd.17.03.2012 is unambiguous and yet the assessee chose to avail of the benefits which were not available to them and thereby evaded payment of Central Excise duty amounting to **Rs. 15,05,91,779/-**. At this juncture, it would not be out of context to mention that the assessee are no novice to Central Excise law and rules and the above omissions have been committed with the sole intention of evading payment of Central Excise duty. The above discussion logically leads to the inference that the assessee have contravened the provisions of Rule 4 of the Central Excise Rules 2002 (hereinafter referred to as the "said Rules") inasmuch as they failed to pay duty on the removal of dutiable goods from their factory; Rule 5 of the said Rules, inasmuch as they failed to determine duty of excise at the applicable rate on the said goods; Rule 6 of the said Rules, inasmuch as they failed to properly assess the excisable goods cleared from their factory; Rule 8 of the said Rules, inasmuch as they failed to pay duty within the stipulated time frame; Rule 11 of the said Rules, in as much as they failed to show the proper value in the Central Excise Invoices; and Rule 12 of the said Rules, inasmuch as they failed to declare the proper details such as value and rate of duty in the periodical returns filed by them. All these acts of contraventions on the part of the said unit have been committed by way of willful misstatement, suppression of facts deliberately contravening the provisions of Central Excise Rules with intent to evade payment of Central Excise duty as discussed in foregoing paragraphs and as such the extended period of limitation

of duty in the periodical returns filed by them. All these acts of contraventions on the part of the said unit have been committed by way of willful misstatement, suppression of facts deliberately contravening the provisions of Central Excise Rules with intent to evade payment of Central Excise duty as discussed in foregoing paragraphs and as such the extended period of limitation under the proviso to Section 11 A (1) /11A(4) of the Central Excise Act, 1944 will be applicable. Further, interest at the applicable rate under section 11AB/11AA of the Central Excise Act, 1944 is also liable to be charged and recovered. Moreover, the assessee have also rendered themselves liable to penalty in terms of the provisions of Section 11AC of Central Excise Act, 1944, read with Rule 25 of the Central Excise Rules, 2002 as well as the impugned goods liable to confiscation under rule 25 of the Central Excise Rules 2002, however the goods are not available for confiscation.

75. From the fact of the issue and the investigation, I also find that in the manner discussed in foregoing paras, the full facts were revealed during the Internal Audit and consequent investigation by the Central Excise Preventive wing of Ahmedabad-II only. I find that they have knowingly suppressed the facts involved in the present case and also wilfully mis-stated the facts and tried to mislead the department by way of misinterpreting the relevant provisions of the Act just to escape from the payment of Central Excise duty with intention to evade payment of Central Excise duty. I further find that M/s SKF Technologies has never disclosed the facts of their relationship with M/s SKF India and facts that "Bearing" are not part of Wind operated electricity generator at any point of time. Thus, I find that the assessee's contentions on limitation are not sustainable and the extended period of limitation is applicable to the facts of the present case.

76 The assessee have contended that there was no suppression of facts or willful misstatement on their part and as such extended period cannot be invoked in their case and they relied on the case laws of M/s P. S. Auto Pvt. Ltd. 2014 (303) ELT 551 and M/s NRB Bearing Ltd. 2014-TIOL-31-CESTAT-MUM

77. In this regard I find that the burden of proof lies on the claimant claiming the benefit of exemption as held by the Apex Court in the case of M/s *Novopan India Ltd.* v. *CCE, Hyderabad* - 1994 (73) E.L.T. 769 (S.C.) Hon'ble. The relevant text of the same is reproduced as under:

"A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision - In case of doubt or ambiguity, benefit of it must go to the State.

The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

78. In a similar case of MAHUSUDAN RAYONS PVT. LTD. vs COMMISSIONER OF CENTRAL EXCISE, SURAT – 2010 (253) ELT 65 (TRI.AHMD.) pertaining to incorrect valuation it has been held that in view of the fact that the appellant had failed to make the correct assessment of the value and that they had not discussed any doubts with the department, there was no ground to consider the lapse on their part to be bona fide. I reproduce the relevant extracts of this decision as follows:

8. Last contention was that no suppression could have been invoked in this case. The submission was that there is no requirement of law to intimate the sales through consignment agent. Further, it was also argued very vehemently that the observations of the Commissioner that invoices were being received by the Company from the consignment agent, was a wrong finding. We find that this is so. However, the fact remains that the appellants were getting regular monthly returns from the consignment agent giving the details of all the sales effected by them and the appellants had a system of recording the same in the computer. Therefore, the appellants were definitely aware that the goods were being sold at a higher price. With the definition of place of removal being amended from 1996 to 2003 thrice and also amendments of the Section 4 itself, on 2-3 occasions during 1996 to 2003, the appellants considering their turnover, could not have been unaware of the provisions of Section 4. The amendment of place of removal made it clear that the price at which the goods are sold at the place of removal would be the price for valuation. It has to be remembered that earlier when the sales took place from depot, the transportation cost for transporting the goods from factory gate to the depot was excluded. In view of the

changes made from time to time, it was an obligation cast on the appellant to assess the goods correctly themselves or if they had entertained any doubt, seek clarification from the Department. It is very difficult to accept the claim that the appellants had a bona fide belief that whatever was the duty they were paying at the factory gate in respect of the goods sold by the consignment agent, when the price of the factory gate was lower than the price charged by the consignment agent was totally without any intention to evade duty. Nevertheless, in the absence of any action on the part of the appellant, on their own, to understand the law and its implication, and also their action in continuing to pay the duty as per earlier practice, irrespective of changes in law, we come to conclusion that the Department has invoked extended period correctly."

78.1 The ratio of the above cited decision is squarely applicable to the facts of the present case where the noticee had failed to make the correct assessment of the value of goods cleared to related person and not clarified any doubt that they may have had with the department. The noticee had suppressed the facts that the impugned goods

79 In backdrop of the above decision I find that the claim of M/s SKF Technologies is baseless and act of M/s SKF Technologies is to be considered as suppression of facts and willful misstatement with an intend to evade payment of duty there on. Therefore, M/s SKF Technologies ' claim that it is a *bona fide* mistake or *bona fide* belief and interpretation of statute, hence extended period cannot be invoked is fallacious. Therefore I hold that the demand is sustainable on the ground of limitation also

80 As regard to their contentions regarding non imposing penalty Section 11AC of the Act read with rule 25 of CER, 2002, I have already held that the demand for recovery of Central Excise duty proposed under the notice is recoverable by invoking extended period of time under Section 11 A of the Act, mandates levy of interest on recovery of Central Excise duty not levied or not paid or short-levied or short-paid, therefore, the demand is recoverable along with interest under the said Section. I further find that where any Central Excise duty not levied or not paid or short-levied or short-paid by the reason of suppression of facts or fraud or collusion or wilful mis-statement or contravention of any of the Act or the Rules made there under with intent to evade payment Central Excise duty under section 11AC of the CEA, 1944. It is settled law that penalty is imposable on the basis of law operating on the date on which the wrongful act is committed, and it is levied on the totality of facts and circumstances of each case under the relevant provisions. In view of the findings given in foregoing paragraphs, the extended period of time for demand under provision to Section 11A(1) of the Act is invokable in the present case and also find that interest and penalty are statutory liability following every short-payment or non-payment of duty. Therefore there is no escape from the liability envisaged under statute for M/s SKF Technologies .

81. Coming to the question of confiscation, of the goods already cleared, under rule 25 of the Central Excise Rules, 2002, I find that in the case of *M/s Shiv Kripa Ispat Pvt. Ltd. – 2009 (235) elt.623 (Tri-LB)* hon'ble Tribunal relied upon paras 12 & 13 of the decision of Hon'ble High Court of Punjab & Haryana in the case *Raja Impex – 2008 (229) ELT.185 (P &H)* held that for confiscation the condition precedent is that the goods should have been seized and released provisionally on execution of bond. In the present case the goods were neither seized nor are available for seizure. Hon'ble Bombay High Court in the case of *Finesse Creation Inc – 2009 (248) ELT.122 (Bom)* and *Sudarshan Cargo Pvt. Ltd-2010 (258) ELT.197 (Bom)* has upheld the decisions of Tribunal to the effect that fine in lieu of confiscation was not imposable when goods were not available. Hon'ble Tribunal in the case of *CCE, Surat v/s Blue Sky Synthetics 2014(300)ELT95 (Tri. Ahmd)* held that confiscation and imposition of redemption fine not imposable when goods not available for confiscation. I find that the excisable goods in question are liable for confiscation, however, since the goods are not available for confiscation I refrain from imposition of redemption fine.

82. Further, I find that SKF India being a dealer, registered with Central Excise, and aware of the fact that they were receiving goods illicitly cleared by SKF Technologies who did not pay appropriate Central Excise Duties by wrongly claiming that their transactions were at arm's length, meaning that the buyer and seller were acting independently without one party influencing the other and that SKF India was not a related person to the assessee. They were also aware that the assessee was wrongly claiming the benefit of the said Notification 12/2012, dated 17.3.2012,by arbitrarily mentioning the goods as being components & parts of Wind Operated Electricity Generator. By showing SKF as both the consignee and addressee of the invoice, and by classifying the said goods as "Bearings" and not parts of Wind operated Electrical generators, SKF India have proved themselves to be aiding and abetting SKF Technologies in the evasion of huge amount of Central Excise duty. M/s Safe Express Cargo at Sarkhej Bavla Road, Changodar, Ahmedabad was appointed to handle their logistics, the pattern of invoicing, transportation, and entering the rates in the invoices issued of their customers, which was being entirely managed by SKF India, C/o Safexpress DC, Changodar

83. Therefore I find that M/s SKF India., were fully conversant in the functioning of SKF Technologies and enabled them to remove the goods without payment of appropriate Central Excise duty. Thus SKF India were concerned in transporting and removing of excisable goods which they knew or had reasons to believe, that such goods were liable to confiscation under sub rule (1)(b) & (1)(d) of Rule 25 of the Central Excise Rules, 2002 and Rules made there under. Therefore, they were liable for penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002.

84. The contention of M/s SKF India is that there was no reason to believe on the part of assessee that goods are liable to confiscation as they were under belief that M/s. SKF Tech and the assessee themselves are not contravening any of the provisions of the Central Excise Rules, 2002 or the Central Excise Act, 1944. Further, they referred to the reply submitted by M/s. SKF Tech is dated 4.12.2014 and submitted that in such reply M/s SKF Tech has made a case wherein they have stated that M/s. SKF Tech and assessee are not related party and they have correctly availed the exemption granted in Notification No. 12/2012-CE dated 17.03.2012. Further, they relied on the grounds made by M/s. SKF Tech that penalty under Rule 26(1) of Central Excise Rules, 2002 cannot be levied. I do not agree with the contention of M/s SKF India in backdrop of the in-depth discussion done over both the issues in foregoing paras for M/s SKF Technologies. M/s SKF India is a other side of coin and discussion is *mutatis mutandis* applicable to them also. Further, M/s SKF India is Limited concern and as being such corporate company they should aware of their legal liabilities arising out of the existing provisions of laws. They cannot escape from their legal responsibilities, especially when the government has burdened them with more accountability by awarding them the facility of self –assessment. Therefore, I find that SKF India, a dealer, was fully concerned in transporting and removing of excisable goods which they knew or had reasons to believe, that such goods were liable to confiscation under sub rule (1)(b) & (1)(d) of Rule 25 of the Central Excise Rules, 2002 and Rules made there under. Therefore, they were liable for penalty under the provisions of Rule 26(1) of Central Excise Rules, 2002.

85. Further, I find that Shri Chandramowli Srinivasan as Chief Finance Officer in SKF India and at the same time as Chairman and Director of SKF Technologies was involved in providing all the crucial services such as Tax Accounting, Manufacturing Controlling, Sales Controlling, Legal and Secretarial etc. Further, he was holding such a senior position in both the units can influence almost all decisions making including price fixation etc of SKF Technologies, which was apparent from the difference in price i.e on which SKF Technologies paid the Central Excise duty and the price charged by SKF India. This clearly showed and establishes that he was so associated and had reasons to believe that the goods, so cleared in contravention of the Notification and rules of Central Excise as discussed above, were liable for confiscation. Therefore, I find that Shri Chandramowli Srinivasan, Director Finance in SKF India and Chairman and Director of SKF Technologies is liable for penal action under rule 26 of the Central Excise Rules 2002.

86. In view of the above discussions, I pass the following order.

ORDER

i) I reject the assessable value, declared by M/s SKF Technologies (India) Pvt. Ltd. in their invoices and order to determine the assessable value of the said excisable goods under the provisions of Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 and Rule 10 of the same Rules read with Section 4 (I)(b) of the Central Excise Act, 1944.

ii) I confirm the demand of Central Excise duty amounting to **Rs 4,79,72,782/- (Rupees Four Crores, Seventy Nine lakhs, Seventy two Thousand Seven hundred and Eighty two only)** and order that same should be recoverd from them under Section 11 A(I)/11A(4) of the Central Excise Act, 1944, as detailed in **Table A** above.

iii) I hold that the assessee is not eligible for exemption under Notification 12/2012-CE,dated 17.3.2012 and therefore I order that the demand of Central Excise duty amounting to **Rs. 15,05,91,779/- (Rupees Fifteen Crores, Five Lakhs, Ninety one thousand Seven Hundred and Seventy Nine only)** should be recovered from them under Section 11A(1)/11A(4) of the Central Excise Act, 1944., as detailed in **Table B** above.

iv) I impose Penalty of Rs.19,85,64,561/- (Rupees Nineteen Crores, Eighty Five lakhs, Sixty four Thousand Five Hundred and Sixty one only) on M/s SKF Technologies (India) Pvt. Ltd. under proviso to Section 11AC(1)(a) of the Central Excise Act, 1944 read with Rule 25(d) of the Central Excise Rules, 2002. However in view of the proviso (b) of this Section where duty as determined in (ii) above is paid with interest under section 11AA within thirty days of the date of communication of this order, the amount of penalty liable

to be paid by such person shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified;

v) I confirm the levy of interest under Section 11AA of the Central Excise Act, 1944 to be paid at the appropriate rates by M/s SKF Technologies (India) Pvt. Ltd. on the amount of Central Excise duty confirmed in (ii) above.

vi) I hold that the excisable goods cleared by way of under valuation are liable for confiscation in terms of sub rule (1) of Rule 25 of the Central Excise Rules, 2002. However, I refrain from imposition of redemption fine since the same are not available for confiscation.

vii) I impose Penalty of **Rs.2,00,00,000/-** (Rupees Two Crores only) on SKF India Ltd., Safexpress logistic park, Changodar, Ahmedabad under the provisions of Rule 26(1) of Central Excise Rules, 2002.

viii) I impose Penalty of **Rs.1,00,00,000/-** (Rupees One Crore only) on Shri Chandramowli Srinivasan, Chairman and Director of SKF Technologies under the provisions of Rule 26(1) of Central Excise Rules, 2002.

86. The following Show Cause Notices are hereby disposed off in the above terms.

Sr.No	SCN No and date
1	V.84/15-39/OA/2016, dated 19.04.2016
2	V.84/15-27/OA/2017, dated 24.10.2017
3	V.84/15-05/OA/2018, dated 19.03.2018
4	V.84/15-53/OA/2018, dated 05.10.2018

(Dr. Balbir Singh)
Commissioner
C.G.S.T & Central Excise,
Ahmedabad North

F. No. V.84/15-39/OA/2016

Date: 28/02/2020

By Regd. Post AD./Hand Delivery

To

(1) M/s SKF Technologies (India) Pvt. Ltd.
Milestone-Kandla 333, village Kerala,
Taluka- Bavla, Ahmedabad-Rajkot Highway,
Gujarat-382220.

(2) SKF India Ltd.,
Safexpress logistic park,
Changodar, Ahmedabad.

(3) Shri Chandramowli Srinivasan,
Chairman and Director of SKF Technologies,
Milestone-Kandla 333, village Kerala, Taluka- Bavla,
Ahmedabad-Rajkot Highway,
Gujarat-382220.

Copy to:

1. The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone.
2. The Assistant Commissioner(RRA), CGST, Ahmedabad North
3. The Deputy Commissioner, CGST, Division- V. CGST, Ahmedabad North
4. The Superintendent, CGST, AR-V , Division- V. CGST, Ahmedabad North
5. Guard File.