CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Service Tax Appeal No. 87065 OF 2017

(Arising out of Order-in-Original No. 56/ST/COmmr/2017 dated 28.02.2017 passed by the Commissioner of Central Excise & Customs, Aurangabad)

Skoda Auto Volkswagen India Pvt. Ltd. **.....Appellant**
Plot no. A 1/1, 5 Star MIDC Area Shendra, Jalna Road, Aurangabad

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad **.....Respondent**
N-5, Town Centre, CIDCO, Aurangabad

APPEARANCE:

Shri Anay Banhatti, Advocate a/w Ms Deepshe Kagra, Advocates for the appellant
Shri Manish Mohan, Commissioner (AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No: 85935/2026

DATE OF HEARING : 01.04.2026
DATE OF DECISION : 28.07.2026

Per: AJAY SHARMA

The present appeal assails the Order-in-Original dated 28.02.2017 passed by the Commissioner, Central Excise, Customs & Service Tax, Aurangabad whereby the learned Commissioner confirmed a demand of Service Tax amounting to

Rs.2,31,03,922/- u/s. 73(a) of the Finance Act, 1994 r/w Section 11 of the Central Excise Act, 1944, along with interest and penalties under various provisions of the Finance Act, 1994. The period involved herein is from 2001-02 to 2003-04.

2. Brief facts, as culled out from the record, are that the Appellant is engaged in the business of assembly and manufacture of passenger cars in India. *M/s. Skoda Auto A.S., Czech Republic* (hereinafter referred to as *'Skoda Czech'*) possessed technology, technical information, and know-how relating to the manufacture and assembly of passenger cars and components thereof. In order to avail such technology and trademarks, the Appellant entered into an agreement dated 01.10.2001 with Skoda Czech by which Skoda Czech granted the appellant a non-exclusive, non-divisible, non-transferable and non-assignable right to use it pre-existing Technology and Know-How, for the purpose of manufacturing, assembling and selling passenger cars, parts and components thereof in India, and for the use of the *'Skoda'* trademark. The consideration comprised a lump sum amount of USD 45 million, payable in six installments, and a running royalty of 5% on domestic sales and 8% on exports.

3. The Revenue proceeded on the premise that the services rendered by Skoda Czech to the Appellant under the said agreement were in the nature of *'advice, consultancy or technical assistance'* in one or more disciplines of engineering,

and thus constituted *'Consulting Engineer Services'* as defined under Section 65 of the Finance Act, 1994 for which Skoda Czech is liable to pay service tax but since they did not have any office in India therefore the appellant, an Indian recipient, was liable to pay service tax on its behalf. Accordingly, a Show Cause Notice dated 14.05.2004 was issued to the Appellant proposing to demand service tax under the reverse charge mechanism to show cause as to why:-

(i) the Service Tax amount of Rs.2,31,03,922/- payable by and recoverable from the assessee should not be recovered from them under the provisions of Section 68 of the Finance Act, 1994; under the provisions of Section 73(a) of the Act read with Section 11 of the Central Excise Act, 1944.

(ii) Penalty should not be imposed upon them under the provisions of Section 75A, 76 and 77 of the Finance Act, 1994 for the contravention of the provisions of Section 69, 68 and 70 of the Finance Act, 1994 as amended;

(iii) Interest as leviable under the provisions of Section 75 of the Finance Act, 1994 should not be recovered from them on the amount of Service Tax recoverable.

(iv) Penalty under Section 78 of the Act should not be imposed on assessee for suppressing their activity from department.

4. The said Show Cause Notice culminated in the impugned Order-in-Original dated 28.02.2017, confirming the aforesaid demand of Service Tax by holding that as per Section 65 ibid the *'taxable service'* in respect of *'Consulting Engineer'* means any service provided to a client, by a Consulting Engineer in relation

to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering and since M/s. Skoda Czech have provided taxable services viz. Services of Technical assistance, supply of technical know-how etc. to the appellant, they are covered under the definition of *'Consulting Engineering'* and are liable to pay Service tax on such service. The services of technical information and assistance provided by M/s. Skoda Czech are taxable services under Section 65 ibid and hence though M/s. Skoda Czech is liable to pay Service tax but since they did not have any office in India therefore the appellant is liable to pay the same on their behalf.

5. The issues that arise for consideration before us are:

(i) Whether the services*, relating to Technical Assistance and Supply of technical know-how,* rendered by M/s. Skoda Czech to the Appellant qualify as *'Consulting Engineering Services'* u/s. 65 of the Finance Act, 1994, so as to render the said services liable for Service Tax?

(ii) If the answer to the issue No.(i) is in affirmative, Whether the levy of Service Tax on the Appellant-a service recipient is legally sustainable for the period 2001-02 to 2003-04, prior to the insertion of relevant provision i.e. Section 66A in the Finance Act, 1994 w.e.f. 18.4.2006 that made the service recipient liable to pay service tax?

6. Learned counsel for the appellant submits that under the agreement, the appellant have been given the right to use the Skoda's technology, technical information and know-how in order to manufacture, assemble and sell passenger cars, parts and components thereof. The said technical know-how provided by Skoda Czech by granting a non-exclusive, non-divisible right to use Technical Documentation for the aforesaid purposes. He further submits that the Technical Documentation is the proprietary knowledge of Skoda Czech on the assembly/manufacture of the automobiles and parts and is essentially in the nature of know-how which Skoda will license for use to appellant. According to him Skoda Czech is not rendering any service to develop or make that know how specific to the needs of the appellant as they have not requested for development of the knowledge inherent in the Technical documentation for the assembly/manufacture of automobiles or parts in India. He also submits that the agreement provides for granting appellant a non-exclusive, non-divisible, non-transferable and non-assignable right to use, apply or affix the Trademarks in connection with production/supply and promotional activities and hence therefore the agreement only relates to the transfer of the right to use Skoda's trademark. According to learned counsel, the Technical Documentation received by the appellant is and shall remain the intellectual property of Skoda Czech and is an intangible property and ownership of the same vests in Skoda Czech only. Learned

counsel also raised the issue that the provision for levy of service tax on service recipient under reverse charge basis came into operation w.e.f. 18.4.2006 after introduction of Section 66A ibid whereas the period involved herein is *2001-02 to 2003-04* therefore charging of service tax from the appellant under reverse charge basis has no legal sanctity. Per contra, learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of the appeal.

7. We have heard the learned counsel for the Appellant and the learned Authorized Representative for the Revenue at length, and have carefully perused the written submissions, case records, agreements, and the decisions placed on record.

8. At the threshold, it is necessary to examine the true nature and character of the agreement dated 01.10.2001. A plain and purposive reading of the agreement reveals that its core object is the grant of a license by Skoda Czech to the Appellant, enabling the Appellant to use the pre-existing technology, technical documentation, know-how and trademarks of Skoda Czech for manufacturing and assembling passenger cars in India. '*Technical Documentation*' is defined under Article 1 of the agreement as *'any documents, such as drawings, photographs, diagrams, tapes, magnetic tapes, video tapes, information systems, etc. pertaining to deliveries, assembly /manufacture, testing and quality assurance developed by Skoda and*

concerning the Contractual Products, including regular continuous engineering and year model alterations.'

9. It is an admitted position on record that the *'Technical Documentation'* constitutes the pre-existing, proprietary intellectual property of Skoda Czech that was developed entirely at its own initiative and expense, without any reference to or instruction from the Appellant. The Appellant did not commission *Skoda Czech* to develop, design, or engineer any product, process, or solution specific to the Appellant's requirements. The Appellant merely sought a license to use what *Skoda Czech* had already independently developed. This foundational distinction is of decisive legal significance.

10. During the relevant period, the term *'Consulting Engineer'* as defined under Section 65(31) of the Finance Act, 1994 means *<u>'any professionally qualified engineer or</u> <u>an engineering firm</u> who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering.*'[emphasis supplied]. The word 'a*n engineering firm'* was later substituted by the words '*any body corporate or any other firm'* by Finance Act, 2006 dtd. 18.4.2006 w.e.f. 1.5.2006. *'Taxable service'* in relation to 'Consulting Engineer', has been defined u/s 65(105)(g) ibid as quoted in the impugned order, means *'any service provided to a client, by a consulting engineer in relation to advice, consultancy*

or technical assistance in any manner in one or more disciplines of engineering'.

11. The essential legislative intent behind the levy on *'Consulting Engineer Services'* is to tax services rendered in the form of professional engineering advice, expert guidance or technical assistance that is customised or directed towards solving a client's specific engineering problem, need, or project. The commercial and professional understanding of the term *'consulting engineer'* means a qualified engineer or a qualified engineering firm who is engaged and retained to provide engineering expertise for the benefit and the needs of the client. The hallmark of such a service is that it involves the rendering of professional skill and judgment by the service provider at the instance of the client, in the course of which the service provider uses their engineering expertise to address matters specific to the client. During the relevant period, for the applicability of the term 'Consulting Engineer' the threshold condition was that the service provider must be either a professionally qualified engineer or an engineering firm. This requirement is foundational and is not dispensable.

12. Skoda Czech is, and was at all material times, a manufacturer and assembler of passenger cars. It is neither a professionally qualified engineer nor an engineering firm as contemplated by Section 65(31). No material has been placed on record and none was cited in the impugned order to establish

that Skoda Czech operates as an entity that renders engineering advice or consultancy as its *raison d'être*. The mere fact that a manufacturer possesses and licences engineering know-how does not transform it into a consulting engineer. *Skoda Czech* was not retained or approached by the Appellant to provide any engineering advice, consultation, or technical assistance. They simply licensed access to its already-developed technical knowledge base. There is not a shred of evidence on record to suggest that Skoda Czech, at any point, applied its engineering expertise to advise the Appellant on how to solve an engineering problem or undertook any assignment at the instance of the Appellant to render advisory or consultancy services tailored to the Appellant's requirements in India. The mere fact that the subject matter of the license, *technical documentation, drawings, diagrams, etc.*, belongs to the domain of engineering, does not, in and of itself, transform the transaction into a *'consulting engineering service'*. The character of the transaction must govern its classification, not merely its subject matter. The correct legal characterisation is that of a licence or transfer of the right to use intellectual property specifically pre-existing know-how and trademark as opposed to the rendering of a service. Section 66 ibid is a charging section and once we have held that the services received by the appellant are not *consulting engineering service*, the said section has no application. On this ground alone, the demand is unsustainable.

13. Cl. 3.7 of the agreement expressly recognises that the Technical Documentation *'is and shall remain the intellectual property of Skoda Czech*.' Skoda Czech had independently created the said intellectual property, prior to and without reference to any requirement of the appellant. The Appellant was granted only a 'non-exclusive, non-divisible, non-transferable and non-assignable right' to use the same. Similarly, with respect to trademarks, the Appellant was granted a right to use the *'Skoda'* trademark in connection with its production, supply, and promotional activities in India.

14. The correct legal characterisation of such a transaction is either a license or transfer of the right to use intellectual property, specifically know-how and a trademark, as opposed to rendering of a service. In law, there is a well recognised and substantive difference between selling/ licensing a product/asset (including intangible property such as know-how) and rendering a service. A transaction that involves the making available of existing intellectual property for use by the transferee, against consideration in the form of royalty or lump sum fees, is in the nature of a 'transfer of the right to use' or 'license', and not a service rendered by the transferor to the transferee. This distinction is critical because under the Finance Act, 1994, service tax is levied on services and not on the transfer of goods or intellectual property rights, which are subject to a different taxing regime altogether.

15. The agreement herein, is a licensing arrangement, not a consulting arrangement. Revenue cannot re-characterise the substance of a transaction by focusing selectively on certain words in a document while ignoring the intent of the arrangement.

16. A *'Consulting Engineer Service'* to qualify as a *'taxable* service' under the Finance Act, 1994, must satisfy the following cumulative conditions: (i) the service provider must be a consulting engineer; (ii) the service must be provided to a client; and (iii) the service must be in relation to advice, consultancy, or technical assistance in one or more disciplines of engineering. All three elements must coexist.

17. The word *'consulting'* is crucial. Black's Law Dictionary defines *'consultant'* as *'a professional who provides specialized expertise or expert knowledge to another party in exchange for a fee'*. The Oxford English Dictionary defines *'consulting'* as *'engaged in giving advice on a particular subject, often in a professional capacity'*. The underlying concept is one of engagement. The consultant is engaged by the client to bring their expertise to bear upon the client's problem or project. Skoda Czech was never engaged by the Appellant as a consultant. The Appellant only asked for a license to use Skoda Czech's ready-made technology. There was no assignment of any engineering task to Skoda Czech by the Appellant, no

problem was posed to Skoda Czech for solution, and no advice was sought on any specific engineering challenge.

18. We find considerable merit in the submission of the learned counsel that Skoda Czech did not, at any point, act as a Consulting Engineer. The word 'consulting' does not appear anywhere in the agreement dated 01.10.2001. No engineering task was assigned to Skoda Czech by the Appellant. It merely made available, by way of licence, its pre-existing intellectual property. There is not a shred of evidence on record nor was any identified in the impugned Order to show that Skoda Czech, at any stage, applied its engineering expertise to advise the Appellant on a specific engineering problem, or undertook any customised advisory role tailored to the Appellant's requirements or advised, guided, or assisted the Appellant in resolving an engineering issue specific to the Appellant's manufacturing operations in India.

19. Therefore the issue No.(i) is decided in favour of the Appellant.

20. Even if, for the sake of argument, the services of Skoda Czech were to be treated as 'consulting engineer services' *(which, for the reasons set out above, they are not)*, the levy of service tax on the Appellant under the reverse charge mechanism is legally unsustainable. The statutory provision i.e. Section 66A ibid enabling levy of service tax on the recipient of services under the reverse charge mechanism, was introduced

with effect from 18.04.2006 by the Finance Act, 2006. The period under dispute in the present case is from 2001-02 to 2003-04, a period entirely preceding the insertion of Section 66A ibid.

21. Though Rule 2(d) of Service Tax Rules, 1994 has been applied by the learned Commissioner for justifying the demand from the service recipient i.e. the appellant on reverse charge basis but the same has not been invoked in the show cause notice. Therefore the learned Commissioner has travelled beyond the show cause notice. It is a fundamental principle of natural justice and of the adjudicatory framework, particularly in the indirect tax law, that an order cannot travel beyond the show cause notice. Hence the impugned order is liable to be set aside on this ground also.

22. The Hon'ble Bombay High Court in *Indian National Shipowners' Association vs. Union of India; [2009(13) STR 235 (Bom.)]* after taking into consideration various provisions of Finance Act, 1994 has held that service recipient in India is liable to Service tax for service received from abroad only from 18.4.2006 after enactment of Section 66A of Finance Act, 1994 and prior to that date the authorities got no legal authority to levy service tax on the recipients of the taxable service and the said rule has been declared invalid by the Hon'ble High Court.

23. So far as reliance on Rule 6 ibid in the show cause notice is concerned, in order to make the appellant liable to pay service

tax, no finding has been recorded by the learned commissioner in the impugned order. In the show cause notice the following has been recorded:-

> *"5. Under Rule 6 of the Service Tax Rules, 1994, it is provided that in case of person is a non-resident or is from outside India, does not have any office in India and is liable to pay service tax on the taxable services provided in India, the service tax thereon shall be paid by such person or on his behalf by any other person authorised by him. In the instant case M/s. SKODA Auto, Tr. Vaclava Klementa 86929360,Mlada Boleslav, Czech Republic is from outside the India and do not have any office in India, and is liable to pay service tax on his taxable services provided by him to M/s. SKODA Auto India Pvt. Ltd., E-76, MIDC Waluj, Aurangabad in India."*

24. Neither in the show cause notice nor anywhere in the impugned order any material has been produced to establish that the appellant has been authorised by the Skoda Czech to pay service tax on their behalf. Therefore Rule 6 ibid cannot be applied to make the appellant liable to pay service tax on behalf of Skoda Czech. On the contrary, learned counsel for the appellant produced before us clause 14.1 of the Agreement which is as follows :-

> *"14.1 The Agreement shall not be deemed to constitute either party as the agent or legal representative of the other party for any purpose. Neither party shall have any right or authority to assume, create or incur any liability or obligation of any kind, in the name or on behalf of the other party except in accordance with the provisions of this Agreement."*

25. Though we have already held that Rule 6 has no application herein, but otherwise also the said provision u/r. 6 which made the service recipient liable to pay service tax, has also been omitted w.e.f. 16.8.2002 therefore in any case for the period from 16.8.2002 onwards it has no application.

26. Section 94 of Finance Act, 1994 gives the Central Government power to make rules. These rules are to be made for carrying out the provisions of the chapter. The Hon'ble Supreme Court in *Laghu Udyog Bharati vs. Union of India; 2006 (2) S.T.R. 276 (S.C.)* while discussing the provisions of Finance Act, 1994 in a challenge to Rules 2(xii) and (xvii) of the Service Tax Rules, 1994 as amended in 1997, has laid down that the imposition of the service tax is on the persons rendering the services and merely by making a provision in the Rules, levy of tax cannot be shifted to the recipients of the services and the Rule framed which brought about this situation has been declared as ultra vires the Act itself and were quashed by the Hon'ble Supreme Court. It is a settled proposition of law that a taxing statute must contain express and clear authority for a levy. There can be no levy of tax by implication, inference, or analogy.

27. We have been informed that as per the Circular dated 10.8.2005 the case file before the learned Commissioner was transferred to *Call book* in view of pendency of Revenue's Appeal being Appeal No.589/2005 before the Hon'ble Bombay High

Court against the decision of this Tribunal, on a similar issue, reported in *2006(3) STR 411 (Tri.-Mumbai) Bajaj Auto Ltd. vs. Commr. of Central Excise & Customs, Aurangabad* wherein while allowing the appeal filed by the assessee the Tribunal has held that service recipient is not liable to pay service tax for the service provider outside India who has no office in India. It has also been held therein that the right to use trade mark is a transaction in property and not consultancy or advice and no consultancy or advice is involved in lease or sale of trade mark as it is a transaction in intangible property. The Tribunal accordingly held that right to use trade mark/ trade name doesn’t amount to consultancy or advice. The aforesaid Appeal of the Department was held to be not maintainable u/s. 35G of Central Excise Act, 1944 before the Hon’ble High Court vide order dated 24.6.2015 as reported in *2016(41) STR 384 (Bom.)* and liberty was granted to the department to prosecute the appeal, if it so desire, u/s. 35L ibid before the Hon’ble Supreme Court. We have also been informed that the department accepted the decision and did not pursue any appeal before the Hon’ble Supreme Court against the order of the Tribunal as mentioned hereinbove. Therefore the said decision of Tribunal attained finality.

28. In such a scenario, following the principles of judicial discipline and consistency, the ratio laid down by this Tribunal in *Bajaj Auto Ltd. (supra)* is required to be followed. Accordingly,

by following the said decision also, the demand is liable to be set aside.

29. In view of the discussions made hereinabove both the issues are decided in favour of the appellant. Accordingly, the impugned Order-in-Original is unsustainable and is hereby set aside. The appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in open Court on 28.07.2026)

(Ajay Sharma)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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