REPORTABLE

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**Civil Appeal No. 5554 of 2009**
(Arising out of S.L.P. (C) No.3826 of 2009)

**M/s. Maruti Suzuki Ltd.** **… Appellant (s)**

**Versus**

**Commissioner of Central Excise, Delhi-III** **… Respondent(s)**

**WITH**

**Civil Appeal No. 5555 of 2009** -
(Arising out of S.L.P. (C) No.5362 of 2009)

**J U D G M E N T**

**S. H. KAPADIA, J.**

1. Leave granted.

**FACTS IN THE LEAD MATTER**

2. The issue in the present civil appeal is : whether the Department is right in reversing proportionate CENVAT credit to the extent of power wheeled out by the appellant to its sister units, vendors, joint ventures. Basically, in both the civil appeals we are

required to construe the word "input" as defined in Rule 2(g) of CENVAT Credit Rules, 2002.

3. M/s. Maruti Suzuki Ltd. (appellant) is engaged in the business of manufacturing motor vehicles falling under Chapter 87 of Central Excise Tariff Act, 1985. These motor vehicles are cleared on payment of duty. Assessee claimed CENVAT credit on "input" in accordance with CENVAT Credit Rules, 2002 (for short, "2002 Rules"). Assessee has installed three gas turbines in their factory for generation of electricity. All the three turbines have capacity to generate electricity of 20 MW each. Till June 2002, assessee was using natural gas as fuel for running the three gas turbines. No excise duty was leviable on natural gas and, therefore, there was no question of availing CENVAT credit on natural gas. During July 2002 to December 2002, assessee started using diesel as fuel to run the three turbines. In view of the said Rules barring availment of credit on diesel, the assessee did not avail any CENVAT Credit on diesel procured by them. From January 2003 onwards, assessee are using naphtha as fuel to run the gas turbines and they are availing CENVAT Credit on naphtha used for generation of electricity in gas turbines. Assessee also uses diesel generating set

(DG set) for generation of electricity with the use of diesel for which they had not availed any credit. In their factory, assessee has a common distribution point for electricity generated in turbines as well as DG set and the entire electricity which is generated in the turbines and DG set(s), placed in the factory, is distributed through common distribution point.

4. During the disputed period assessee cleared a part of electricity generated in the factory to its joint ventures, vendors etc. In addition, assessee met its electricity requirements by electricity captively generated by the assessee in their turbines. During the said period, assessee generated 1,44,469.80 KWH of electricity out of which 18,838.49 KWH of electricity stood wheeled out (approximately 13% of total net power generation). This electricity stood cleared at the different rates for the entire period varying from Rs.4.65/KWH to Rs.9.72/KWH. It may be noted that even the joint ventures, vendors etc. to whom excess electricity is wheeled out in turn manufacture final products.

**ARGUMENTS**

5. At the outset it may be noted that the civil appeals in question concern the period January 2003 to October 2003 and November 2003 to March 2004 during which period CENVAT Credit Rules, 2002 was amended by Notification No.13/2003-CE(NT) dated 1.3.2003. Accordingly we are confining the arguments advanced by learned counsel on both sides to the said Rules.

6. Mr. V. Lakshmi Kumaran, learned counsel appearing on behalf of the appellant, submitted as follows. So long as naphtha is used as fuel for generation of electricity, appellant is entitled to take credit of duty paid on it and there is no need to reverse proportionate credit to the extent of power wheeled out to joint ventures, vendors etc. According to learned counsel, Rule 2(g) of the said 2002 Rules which defined "input", was in two parts. The first part was the specific part which was followed by the inclusive part. In the inclusive part several items stood included such as lubricating oils, greases, cutting oils, coolants, accessories, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production. There is no dispute that the appellant had used naphtha as fuel for generation of electricity, hence, the said item fell within the inclusive part of the definition. According to learned counsel, there was a condition in the specific part of the said Rule, namely, "that the goods must be used in or in relation to the manufacture of final product", however, that condition did not apply to goods falling under the inclusive part of the definition of "input". Therefore,

once the fuel stood admittedly used in the factory for generation of electricity, it came within the definition of the word "input". Learned counsel next urged that the expression "within the factory of production" did not qualify goods used as fuel. In this connection, it is urged, that, naphtha used as fuel for generation of electricity came under two alternative provisions, namely, "input used as fuel" or "input used for generation of electricity" and, therefore, it was open to the appellant to contend that naphtha used as fuel for generation of electricity stood covered within the expression "goods used as fuel". According to learned counsel, when the case of the appellant stood covered by two alternative provisions it is open to the appellant to contend that he is covered by one of them. It was urged that the expression "within the factory of production" stands attached only to one category of goods in the inclusive part of the definition, namely, "goods used for generation of electricity or steam" and that the said expression "within the factory of production" was not attached to any previous items, mentioned in the inclusive part of the definition and, therefore, the said expression "within the factory of production" was not applicable to input "naphtha" used as fuel. Consequently, according to learned counsel, so long as naphtha received in the appellant's factory was used as fuel, the same stood covered by the definition of "input" irrespective of the fact that some portion of electricity generated by use of naphtha stood cleared outside. In the alternative, it was urged, that, even assuming for the sake of argument that the expression "within the factory of production" stood attached

to the expression "goods used for generation of electricity" it would only mean that goods used for generation of electricity should be used within the factory of production of final product(s). In other words, according to learned counsel, the said expression "within the factory of production" would apply to items used for generation of electricity and not to electricity as such and since in the present case naphtha stood used within the factory of production of the final product, it fell within the definition of "input". Consequently, the appellant was entitled to the credit of duty paid on the entire quantity of naphtha used as fuel. It was next urged on behalf of the appellant that once naphtha came to be used in generation of electricity which was partly used for captive consumption and partly in other units of the appellant it was not open to the Department to deny credit on the ground that part of the electricity was cleared outside the factory to the joint ventures, vendors etc. In this connection, it was submitted that under the said Rules, a manufacturer of final product was allowed to take credit of specified duty paid on any input received in the factory after 1.4.2002. There was no condition attached to it. Hence, it was not open to the Department to deny credit on the ground that part of the electricity stood cleared outside the factory to its joint ventures, vendors etc. According to learned counsel, Rule 3(1) of the said 2002 Rules permitted credit to be taken on inputs received in the factory whereas Rule 3(4) required credit to be surrendered on removal of input as such, therefore, when the goods received in the factory were used as fuel and the said goods were not

removed from the factory, credit of duty paid on fuel became undeniable. Learned counsel next contended that under Rule 6(1) when input was used in the manufacture of exempted goods, credit was not admissible. However, Rule 6(1) was not attracted to the facts of the present cases as naphtha was "used as fuel" in generation of electricity which is not an excisable item. According to learned counsel, since electricity was neither exempted nor chargeable to 'nil' rate of duty, Rule 6(1) was not applicable in the case of naphtha used in the generation of electricity or steam and, therefore, the appellant was entitled to avail full credit on naphtha as the restriction under Rule 6(1) was not applicable. Therefore, wheeling out a part of electricity generated in the factory of the appellant to its joint ventures or vendors could not have deprived the appellant of the credit of duty paid on naphtha used as fuel in their factory.

7. Mr. Gourab Banerji, learned Addl. Solicitor General, appearing for the Department submitted that the basic idea of CENVAT credit is that it is admissible so long as the inputs are used in or in relation to the manufacture of final products, whether directly or indirectly and, therefore, the CENVAT scheme was not designed to grant windfall benefits by way of credit to inputs not used ultimately in or in relation to manufacture of the final products but are used in or in relation to the production of electricity which is not even excisable. According to learned counsel, the definition of the word "input" in Rule 2(g) of the CENVAT Credit Rules, 2002 was required to be read as a whole and not in a disjunctive manner as

suggested on behalf of the appellant. According to learned counsel, the specific part of Rule 2(g) covered all inputs as long as they were used in or in relation to the manufacture of final product(s), directly or indirectly. In this connection, learned counsel submitted that the scope of the inclusive part was merely to illustrate certain inputs in respect of which a possible doubt existed as to whether or not they stood used in or in relation to the manufacture of final product(s) and further the inclusive part stood qualified by the fact that all the items mentioned therein had to be used within the factory of production. Therefore, according to learned counsel, the inclusive part of the definition restricted the benefit to specified items which were required to be used within the factory of production. In this connection, learned counsel gave examples of specific items, mentioned in Rule 2(g) of the 2002 Rules, like lubricating oils, greases, cutting oils and coolants which also fell within the definition "if used within the factory of production". In fact, according to learned counsel, the said items stood specifically included to clarify doubt as to whether the said items could be used within the factory of production. In the alternative, it was submitted that the appellant has used naphtha in the generation of electricity, part of which has been consumed outside the factory or production; that the said input has not been used as fuel *per se* but it has been used for the specific purpose of generation of electricity consumed outside the factory of production and consequently the said naphtha would not fall within the definition under Rule 2(g). Coming to the interpretation of Rule 6 of

the 2002 Rules, learned counsel submitted, that where electricity stood generated but sold outside the factory to third party, the said rule was not applicable. According to learned counsel, electricity generated as a final product was neither exempted nor chargeable to 'nil' rate of duty hence in such cases Rules 6 was not applicable. According to learned counsel, Rule 6 was applicable to cases where the final product was either exempted or charged to 'nil' rate of duty and since electricity was not excisable commodity the said rule was not applicable. Learned counsel also emphasized on Rule 6(1) in support of his contention that CENVAT credit was not admissible on such quantity of inputs which were used in the manufacture of exempted goods. The said bar, according to learned counsel, was consistent with the basic idea of CENVAT scheme. On interpretation of Rule 6(2) it was urged that on proper analysis of the said sub-rule it is clear that the said sub-rule had imposed an obligation on the manufacturer when he manufactured both dutiable and exempted goods and in discharge of that obligation he had an option either to maintain separate accounts on inputs used in the manufacture of dutiable and exempted goods or he had to pay specified percentage of the price of the exempted goods. According to learned counsel, in respect of "goods used as fuel", it was physically impossible to maintain separate account(s) of fuel used in the manufacture of dutiable and exempted goods and, therefore, the Legislature thought it fit not to give the said option of maintaining separate accounts of goods used as fuel and in such cases the only option available was to pay a specified

amount. In any event, according to learned counsel, on facts since naphtha was used as fuel in the generation of electricity/steam, Rule 6(2) became applicable.

**ANALYSIS OF THE RULES**

8. We hereinbelow reproduce relevant rules of the CENVAT Credit Rules 2002 and CENVAT Credit Rules 2004 which read as follow :

"The CENVAT Credit Rules, 2002

Rule 2. Definitions.- In these rules, unless the context otherwise requires,-

**(d) "exempted goods"** means goods which are exempt from the whole of the duty of excise leviable thereon, and includes goods which are chargeable to "Nil" rate of duty;

**(g) "input"** means all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

**Explanation 1.-** The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

**Explanation 2.-** Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

RULE 3. CENVAT credit.-

1. A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -
   i. the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

ii. the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

iii. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 ( 40 of 1978);

iv. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ( 58 of 1957);

v. the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by clause 161 of the Finance Bill, 2003, which clause has, by virtue of the declaration made in the said Finance Bill Under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law;

vi. the additional duty leviable under Section 3 of the Customs Tariff Act, equivalent to the excise specified under clauses (i), (ii), (iii), (iv) and (v) above; and

vii. the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003),

paid on any inputs or capital goods received in the factory on or after the first day of March, 2002, including the said duties paid on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of March, 2002.

Explanation.- For the removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 98.01 of the First Schedule to the Customs Tariff Act.

**2.** Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods or any goods become excisable.

**3.** The CENVAT credit may be utilized for payment of –

(a) any duty of excise on any final products; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such of after being partially processed; of

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub-rule (2) of Rule 16 of Central Excise Rules, 2000.

Provided that while paying duty, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month for payment of duty relating to the month.

Provided further that the CENVAT credit of the duty paid on the inputs used in the manufacture of final products cleared after availing of the exemption under the notification numbers 32/99-Central Excise, dated the 8th July, 1999 [G.S.R.508(E) dated the 8th July, 1999] and 33/99-Central Excise dated the 8th July, 1999 [G.S.R.509 (E) dated 8th July, 1999], shall be utilized only for payment of duty on final products cleared after availing of the exemption under the said notification numbers 32/99-Central Excise, dated 8th July, 1999 and 33/99-Central Excise, dated the 8th July, 1999.]

Provided also that the CEENVAT credit of the duty paid on the inputs used in the manufacture of final products cleared after availing of the exemption under the notifications No.39/2001-Central Excise, dated the 31st July, 2001 [G.S.R.565(E), dated the 31st July, 2001], No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002], No.57/2002-Central Excise, dated 14th November, 2002 [G.S.R.765(E), dated the 14th November, 2002] and No.56/2003-Central Excise, dated the 25th June, 2003 [G.S.R.513 (E), dated the 25th June, 2003] shall respectively be utilized only for payment of duty on final products, in respect of which exemption under the said notifications No.39/2001-Central Excise, dated the 31st July, 2001, No.56/2002-Central Excise, dated the 14th November, 2002, No.57/2002-Central Excise, dated 14th November, 2002 and No.56/2003-Central Excise, dated the 25th June, 2003, is availed.

**4.** When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 7.

4A. Notwithstanding anything contained in these rules,-

(a) a first or second stage dealer, dealing exclusively in goods falling under Chapter 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 or 63 of the First Schedule to the Tariff Act, may, at his option, remove such goods, whether or not after undertaking activities such as packing, repacking, on payment of an amount equal to the duty of excise, which is leviable on such goods at the rate applicable on the date of removal and on the value determined for such goods under sub-section (2) of Section 3 or Section 4 of the Act, as the case may be. The provisions of the Central Excise Rules, 2002, in so far they relate to removal of goods on invoice, maintenance of accounts, filing of return, manner of payment or failure to pay such amount shall apply, as if such amount is a duty of excise liable to be paid by an assessee:

Provided that such option once exercised by the said dealer, shall not be withdrawn during the remaining part of the financial year;

(b) the first or second stage dealer of goods referred to in clause (a), who avails of the option referred to in said clause, may take credit of duties referred to in sub-rule (1) of Rule 3, paid on such goods for utilizing the same for payment of such amount, as referred to in clause (a);

(c) the amount paid under clause (a) shall be eligible as CENVAT credit as if it were a duty paid by a person who removes such goods under sub-rule(4A).

**5.** The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (4).

**6.** Notwithstanding anything contained in sub-rule (1),-

i. CENVAT credit in respect of inputs or capital goods produced or manufactured,-
   i. in a free trade zone or by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or Software Technology Park (other than a unit which pays excise duty under section 3 of the Act read with notification No. 8/97- Central Excise, dated the 1st March, 1997, number G.S.R 114 (E), dated the 1st March, 1997 or No. 20/2002-Central Excise, dated the 1st March, 2002) and used in the manufacture of the final products in any other place in India, in case the unit pays excise duty under section 3 of the Act read with notification No. 2/95-Central Excise, dated the 4th January, 1995, number G.S.R. 189 (E), dated the 4th January, 1995, shall be admissible equivalent to the amount calculated in the following manner, namely:-
   Fifty per cent. of [ X multiplied by{( 1+ BCD/100) multiplied by ( CVD/100)}], where BCD and CVD denote ad valorem

rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value.

ii. in a Special Economic Zone, and used in the manufacture of the final products in any other place in India, shall be admissible equivalent to the amount calculated in the following manner, namely:-

X multiplied by {( 1+ BCD/100) multiplied by ( CVD/100)}, where BCD and CVD denote ad valorem rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value.

ii. CENVAT credit in respect of

i. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

ii. the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by clause 161 of the Finance Bill, 2003, which clause has, by virtue of the declaration made in the said Finance Bill Under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law; and

iii. the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i) and (ii) above,

shall be utilised only towards payment of duty of excise leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, or the National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001 as amended by clause 161 of the Finance Bill, 2003, which clause has, by virtue of the declaration made in the said Finance Bill Under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law; respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed.

*Explanation.*- For removal of doubts, it is clarified that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), may be utilized towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise Tariff Act, 1985 (5 of 1986).

iii. the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles

falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Tariff Act shall be allowed to the extent of thirty rupees per square metre;

iv. ***.

Explanation.- Where the provisions of any other rule or notification provide for grant of partial or full exemption on condition of non-availability of credit of duty paid on any input or capital goods, the provisions of such other rule or notification shall prevail over the provisions of these rules.

**Rule 6. Obligation of manufacturer of dutiable and exempted goods.-**

**1**The CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in sub-rule (2).

Provided the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12B of the Central Excise Rules, 2002 on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

**2**Where a manufacturer avails of CENVAT credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures such final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods and take CENVAT credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods.

**3**The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:-

a. if the exempted goods are-
   i. goods falling within heading No. 22.04 of the First Schedule to the Tariff Act;
   ii. Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;
   iii. Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;
   iv. Omitted.
   v. newsprint, in rolls or sheets, falling within heading No.48.01 of the said First Schedule;

vi. final products falling within Chapters 50 to 63 of the said First Schedule,

vii. Naptha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity;

viii. Goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), namely:-

(1) No.70/92-Central Excise, dated the 17th June, 1992, G.S.R.595 (E), dated the 17th June, 1992;

(2) No.62/95-Central Excise, dated the 16th March, 1995, G.S.R.254 (E), dated the 16th March, 1995;

(3) No.63/95-Central Excise, dated the 16th March, 1995, G.S.R.255 (E), dated the 16th March, 1995;

(4) No.64/95-Central Excise, dated the 16th March, 1995, G.S.R.256(E), dated the 16th March, 1995;

the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

b. if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to eight per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

Explanation I.- The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer by debiting the CENVAT credit or otherwise.

Explanation II.- If the manufacturer fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 12, for recovery of CENVAT credit wrongly taken.

**4**No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any

notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

**5**The provisions of sub- rule (1), sub-rule (2), sub-rule (3) and sub-rule (4) shall not be applicable in case the exempted goods are either-

a. cleared to a unit in a free trade zone; or
b. cleared to a unit in a special economic zone; or
c. cleared to a hundred per cent. export-oriented undertaking; or
d. cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
e. supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or
f. cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.
g. Gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting."

(emphasis supplied by us)

## "CENVAT Credit Rules, 2004

**RULE 2. Definitions.-** In these rules, unless the context otherwise requires,-

**(k) "input" means-**

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

**Explanation 1.-** The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

**Explanation 2.-** Input include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer;

**RULE 3**. **CENVAT credit**.-

**(1)** A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;

(ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act;

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 ( 40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ( 58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);

(vi) the Education Cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);

(vii) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v) and (vi);

(viii) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);

(ix) the service tax leviable under section 66 of the Finance Act; and

(x) the Education Cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004),

paid on-

(i) any input or capital goods received in the factory of manufacture of final product or premises of the provider of output service on or after the 10th day of September, 2004; and

(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-

Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004.

**Explanation**.- For the removal of doubts it is clarified that the manufacturer of the final products and the provider of output service shall be allowed CENVAT credit of additional duty leviable under section 3 of the Customs Tariff Act on goods falling under heading 9801 of the First Schedule to the Customs Tariff Act.

**(2)** Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable.

**(3)** Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the output service shall be allowed to take CENVAT credit of the duty paid on the inputs received on and after the 10th day of September, 2004 and lying in stock on the date on which any service ceases to be an exempted service and used for providing such service.

**(4)** The CENVAT credit may be utilized for payment of –

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount under sub rule (2) of rule 16 of Central Excise Rules, 2002; or

(e) service tax on any output service:

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be:

Provided further that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the

following notifications of Government of India in the Ministry of Finance (Department of Revenue),-

(i) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(ii) No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];

(iii) No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];

(iv) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) No. 57/2002-Central Excise, dated 14th November, 2002 [G.S.R.. 765(E), dated the 14th November, 2002];

(vi) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003]; and

(vii) No. 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003],

shall, respectively, be utilized only for payment of duty on final products, in respect of which exemption under the said respective notifications is availed of:

**(5)** When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9:

Provided that such payment shall not be required to be made where any inputs are removed outside the premises of the provider of output service for providing the output service:

Provided further that such payment shall not be required to be made when any capital goods are removed outside the premises of the provider of output service for providing the output service and the capital goods are brought back to the premises within 180 days, or such extended period not exceeding 180 days as may be permitted by the jurisdictional Deputy Commissioner of Central Excise, or Assistant Commissioner of Central Excise, as the case may be, of their removal.

**(6)** The amount paid under sub-rule (5) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub-rule (5).

**(7)** Notwithstanding anything contained in sub-rule (1) and sub-rule (4), -

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured, by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section 3 of the Excise Act read with serial numbers 3,5, 6 and 7 of notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003] and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Excise Act read with serial number 2 of the notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely:-

> Fifty per cent. of [X multiplied by {(1+BCD/100) multiplied by (CVD/100)}], where BCD and CVD denote ad valorem rates, in per cent., of basic customs duty and additional duty of customs leviable on the inputs or the capital goods respectively and X denotes the assessable value.

(b) CENVAT credit in respect of -
(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
(ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
(iii) the education cess on excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);
(iv) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under items (i), (ii) and (iii) above;
(v) the additional duty of excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
(vi) the education cess on taxable services leviable under section 91 read with section 95 of the Finance (No.2) Act, 2004 (23 of 2004);

shall be utilized only towards payment of duty of excise or as the case may be, of service tax leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 or the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), or the education cess on

excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004, respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed or on any output service.

Provided that the credit of the education cess on excisable goods and education cess on taxable services can be utilised, either for payment of the education cess on excisable goods or for the payment of the education cess on taxable services.

**Explanation.**-For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilized towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act.

(c) the CENVAT credit, in respect of additional duty leviable under section 3 of the Customs Tariff Act, paid on marble slabs or tiles falling under sub-heading No. 2504.21 or 2504.31 respectively of the First Schedule to the Excise Tariff Act shall be allowed to the extent of thirty rupees per square meter;

**Explanation.-** Where the provisions of any other rule or notification provide for grant of whole or part exemption on condition of non-availability of credit of duty paid on any input or capital goods, or of service tax paid on input service, the provisions of such other rule or notification shall prevail over the provisions of these rules.

**RULE 6. Obligation of manufacturer of dutiable and exempted goods and provider of taxable and exempted services.-**

**(1)** The CENVAT credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or exempted services, except in the circumstances mentioned in sub-rule (2).

**(2)** Where a manufacturer or provider of output service avails of CENVAT credit in respect of any inputs or input services, except inputs intended to be used as fuel, and manufactures such final products or provides such output service which are chargeable to duty or tax as well as exempted goods or services, then, the manufacturer or provider of output service shall maintain separate accounts for receipt, consumption and inventory of input and input service meant for use in the manufacture of dutiable final products or in providing output service and the quantity of input meant for use in the manufacture of exempted goods or services and take CENVAT credit only on that quantity of input or input service which

is intended for use in the manufacture of dutiable goods or in providing output service on which service tax is payable.

**(3)** Notwithstanding anything contained in sub-rules (1) and (2), the manufacturer or the provider of output service, opting not to maintain separate accounts, shall follow either of the following conditions, as applicable to him, namely:-

(a) if the exempted goods are-

(i) goods falling within heading No. 22.04 of the First Schedule to the Excise Tariff Act (hereinafter in this rule referred to as the said First Schedule);

(ii) Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;

(iii) Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;

(iv) Naptha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity;

(v) newsprint, in rolls or sheets, falling within heading No.48.01 of the said First Schedule;

(vi) final products falling within Chapters 50 to 63 of the said First Schedule,

(vii) goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), namely:-

(1) No. 70/92-Central Excise, dated the 17th June, 1992, G.S.R. 595 (E), dated the 17th June, 1992;

(2) No. 62/95-Central Excise, dated the 16th March, 1995, G.S.R. 254 (E), dated the 16th March, 1995;

(3) No. 63/95-Central Excise, dated the 16th March, 1995, G.S.R. 255 (E), dated the 16th March, 1995;

(4) No. 64/95-Central Excise, dated the 16th March, 1995, G.S.R. 256 (E), dated the 16th March, 1995,

the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to ten per cent. of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory;

(c) the provider of output service shall utilize credit only to extent of an amount not exceeding twenty per cent. of the amount of service tax payable on taxable output service.

**Explanation I.-** The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer or provider of output service by debiting the CENVAT credit or otherwise.
**Explanation II.-** If the manufacturer or provider of output service fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in rule 14, for recovery of CENVAT credit wrongly taken.

**(4)** No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

**(5)** Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zzd), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of section 65 of the Finance Act shall be allowed unless such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services.

**(6)** The provisions of sub-rules (1), (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either-

(i) cleared to a unit in a special economic zone; or
(ii) cleared to a hundred per cent. export-oriented undertaking; or
(iii)cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or
(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or
(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002; or
(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.".

(emphasis supplied by us)

**Finding:**

9. Coming to the statutory definition of the word "input" in Rule 2(g) in the CENVAT Credit Rules, 2002, it may be noted that the said definition of the word "input" can be divided into three parts, namely:

(i) specific part
(ii) inclusive part
(iii) place of use

10. Coming to the specific part, one finds that the word "input" is defined to mean all goods, except light diesel oil, high speed diesel oil and petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. The crucial requirement, therefore, is that all goods "used in or in relation to the manufacture" of final products qualify as "input". This presupposes that the element of "manufacture" must be present.

11. In the case of **J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. S.T.O.** reported in 1965 (16) STC 563 this Court held that the expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting

raw material into finished goods. It was further held that where any particular process (generation of electricity) is so integrally connected with the ultimate production of goods, that, but for such process, manufacture of goods would be inexpedient, then goods required in such process would fall within the expression "in the manufacture of goods".

12. In the case of **Union Carbide India Ltd. v. Collector of Central Excise, Calcutta-I** reported in 1996 (86) ELT 613 (Tri) a larger Bench of CEGAT observed that a wide impact of the expression "used in relation to manufacture" must be allowed its natural play. Inputs (raw materials) used in the entire process of conversion into finished products or any other process (like electricity generation) which is integrally connected with the ultimate production of final product has to fall within the above expression. It was observed that the purpose was to widen the scope, ambit and content of "inputs". According to the Special Bench of CEGAT, the purpose behind the above expression is to widen the ambit of the definition so as to attract all goods, which do not enter directly or indirectly into the finished product, but are

used in any activity concerned with or pertaining to the manufacture of the finished product.

13. Electricity generation is a separate and distinct activity. It is an independent activity. It has its own economics. It does not form part of the process in which "inputs" are transformed into separate identifiable commodity, though it may stand connected to such processes. It may not have any concern with the manufacture of the finished product. However, it is an ancillary activity. It is an activity which is anterior to the process of manufacture of the final product. It is on account of the use of the above expression "used in relation to manufacture" that such an activity of electricity generation comes within the ambit of the definition because it is integrally connected with the manufacture of the final product.

14. In the case of **Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd.** reported in (1989) 4 SCC 566 the difference between the expression "used in the manufacture" and "used as input (raw material)" was highlighted. In that judgment, it was held that undoubtedly the said two expressions are distinct and separate, but, when an ancillary process (like electricity generation) aids the making of an end product, then, the ancillary

process gets integrally connected to the end product. In the said judgment, this Court applied what is called as “the dependence test”. It may, however, be noted that in the definition of “input” the expression “used in or in relation to the manufacture of final product” is not a standalone item. It has to be read in entirety and when so read it reads as “used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final product or not”. These words “whether directly or indirectly” and “whether contained in the final product or not” indicates the intention of the legislature. What the legislature intends to say is that even if the use of input (like electricity) in the manufacturing process is not direct but indirect still such an item would stand covered by the definition of “input”. In the past, there was a controversy as to what is the meaning of the word “input”, conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of “input”, the Legislature has clarified that even if an item is not contained in the final product still it would be classifiable as an “input” under the above definition. In other words, it has been

clarified by the definition of "input" that the following considerations will not be relevant:

(a) use of input in the manufacturing process be it direct or indirect;

(b) even if the input is not contained in the final product, it would still be covered by the definition.

These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final product" which, as stated above, is the crucial requirement of the definition of "input". Moreover, the said expression, viz, "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such contingency the Legislature has incorporated the inclusive part after the substantive part qualified by the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in

the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the Legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

15. Coming to the analysis of the inclusive part of the definition one finds that it covers:

(a) Lubricating oils, greases, cutting oils and coolants;

(b) Accessories;

(c) Paints;

(d) Packing materials;

(e) Input used as fuel;

(f) Input used for generation of steam or electricity.

16. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input

used for generation of electricity or steam, input used as an accessory and input used as paint are *per se* also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition. In each case it has to be established that inputs mentioned in the inclusive part is "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" have many shades and would cover various situations based on the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product. Hydrogen gas used in the manufacture of sodium cyanide is an eligible input, since it has a significant role to play in the manufacturing process and since the final product cannot emerge without the use of gas. Similarly, Heat Transfer Oil used as a heating medium in the manufacture of LAB is an eligible input

since it has a persuasive role in the manufacturing process and without its use it is impossible to manufacture the final product. Therefore, none of the categories in the inclusive part of the definition would constitute relevant consideration per se. They become relevant only when the above crucial requirement of being "used in or in relation to the manufacture" stands complied with. In our view, one has to therefore read the definition in its entirety.

17. As stated, the definition is in three parts, namely, specific part, inclusive part and place of use. All the three parts are required to be satisfied before an input becomes an eligible input.

18. It may be noted from the CENVAT Credit Rules of 2004 vis-à-vis CENVAT Credit Rules of 2002 that the word "for" in the inclusive part after the words "steam used" is substituted by the words "used in or in relation to the manufacture of final products". In other words, the crucial requirement of the definition clause is restated by the Legislature. We may note that the CENVAT Credit Rules of 2004 came in force in September, 2004. In some of the cases in batch before us the show cause notice goes right up to January 2005, hence, CENVAT Credit Rules, 2004 also apply to those cases. In short, an item would fall within the category of

"inputs" as defined only on compliance with all the three parts of the definition clause.

19. The question which still remains to be answered is: whether an assessee would be entitled to claim CENVAT credit in cases where it sells electricity outside the factory to the joint ventures, vendors or gives it to the grid for distribution? In the case of **Collector of Central Excise v. Rajasthan State Chemical Works** reported in 1991 (55) ELT 444 (SC) the test laid down by this Court is whether the process and the use are integrally connected. As stated above, electricity generation is more of a process having its own economics. Applying the said test, we hold that when the electricity generation is a captive arrangement and the requirement is for carrying out the manufacturing activity, the electricity generation also forms part of the manufacturing activity and the "input" used in that electricity generation is an "input used in the manufacture" of final product. However, to the extent the excess electricity is cleared to the grid for distribution or to the joint ventures, vendors, and that too for a price (sale) the "process and the use test" fails. In such a case, the nexus between the process and the use gets disconnected. In such a case, it cannot be said

that electricity generated is "used in or in relation to the manufacture of final product, within the factory". Therefore, to the extent of the clearance of excess electricity outside the factory to the joint ventures, vendors, grid etc. would not be admissible for CENVAT credit as such wheeled out electricity, cleared for a price, would not fall within the definition of "input" in Rule 2(g) of the CENVAT Credit Rules, 2002. This view is also expressed in para 9 of the judgment of this Court in the case of **Collector of Central Excise v. Solaris Chemtech Limited – (2007) 214 ELT 481 (SC)**. Further, our view is supported by the observations of this Court in the case of **Vikram Cement v. Commnr. Of Central Excise, Indore –** 2006 (194) ELT 3 (SC) which is quoted below:-

> "It appears to us on a plain reading of the clause that the phrase "within the factory of production" means only such generation of electricity or steam which is used within the factory would qualify as an immediate product. The utilization of inputs in the generation of steam or electricity not being qualified by the phrase "within the factory of production" could be outside the factory. Therefore, whatever goes into generation of electricity or steam which is used within the factory would be an input for the purposes of obtaining credit on the duty payable thereon."

20. To sum up, we hold that the definition of "input" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or steam is used within the factory of

production for manufacture of final products or for any other purpose. The important point to be noted is that, in the present case, excess electricity has been cleared by the assessee at the agreed rate from time to time in favour of its joint ventures, vendors etc. for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assessee was not entitled to CENVAT credit. In short, assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they are using the produced electricity within their factory (for captive consumption). They are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which is sold at a price.

21. Before concluding, it may be clarified that on account of repeated amendments in the CENVAT Credit Rules, huge litigation in the country stands generated. In the circumstances, we are of the view that penalty is not leviable on appellant/assessee, particularly when in large number of other cases, on account of conflict of views expressed by various Tribunals/High Court, the assessees have also succeeded. Hence, although **M/s. Maruti**

**Suzuki Ltd. (**appellant) has failed in their civil appeals the Department will not impose penalty.

22. For the aforestated reasons, we dismiss **Civil Appeal No. of 2009 –** (arising out of S.L.P. (C) No.3826 of 2009) - **M/s. Maruti Suzuki Ltd. v. Commissioner of Central Excise, Delhi-III** and **Civil Appeal No. of 2009 -** (Arising out of S.L.P. (C) No.5362 of 2009) with no order as to costs.

**.....J.**
**(S.H. KAPADIA)**

**.....J.**
**(AFTAB ALAM)**

**New Delhi;**
**August 17, 2009.**