2013 (4) ECS (11) (Bom - HC)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL (L) NO.13 OF 2013

**M/s. Oil & Natural Gas Corporation Ltd. : Appellant**

**V/s.**

**The Commissioner of Central Excise,**
**Service Tax & Customs, Raigad. : Respondent**

Mr. V. Sridharan, Senior Advocate, with Mr.Prakash Shah, Mr.Jas Sanghavi, Mr. A. Dash and Mr. Ashish Philip i/b.PDS Legal for the Appellant.

Mr.Pradeep S. Jetly for the Respondent.

CORAM :

**DR.D.Y.CHANDRACHUD &**
**A.A. SAYED, JJ.**

DATE : 01 MARCH 2013.

**"In order to be an input service under clause (ii), the following requirements must be satisfied. Firstly, the expression requires the utilisation of "any service"; secondly, the service must be used by the manufacturer; and thirdly, the service may be used, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal. The expression "directly or indirectly" has a wide import. The service, in other words, need not be a service which is directly used by the manufacturer in the manufacture of a final product." [Para 13]**

**"The definition of "input service" comprehends within its sweep a service which is used by the manufacturer even indirectly, and in or in relation to the manufacture of a final product. Where the legislature or its delegate uses the expression "in or in relation to", its object and purpose is to widen the scope and purview of the entitlement. When the words "directly or indirectly" and "in or in relation to the manufacture of final products" are**

**used in conjunction that is indicative of the comprehensive sweep and ambit of the statutory provision." [Para 13]**

**"ONGC admittedly also produces dutiable final products. The production of those dutiable products is possible only on the continuous supply of crude oil. We, however, clarify that as a manufacturer of both dutiable and exempted goods, the Appellant would be required to comply with the discipline and rigour of rule 6 and would be entitled to take Cenvat credit only on that quantity of input service which is used in the manufacture of the ultimate dutiable product." [Para 17]**

P.C. :

1. This Appeal by the assessee arises from an order of the CESTAT dated 29 November 2012 in an appeal arising from an order of adjudication of the Commissioner of Central Excise.

2. The Appellant, Oil and Natural Gas Corporation Limited, operates a large number of oil wells and ten process platforms which are situated in different oil fields at Mumbai Offshore. Petroleum oil in the belly of the earth is a mixture of hydrocarbons ranging from methane to larger hydrocarbon molecules. Under extremely high pressures obtaining in the reservoirs beneath the ocean floor, the lighter hydrocarbons remain dissolved in the oil, comprising of a mixture of heavier hydrocarbons. During the process of extraction of hydrocarbon from the reservoirs, the hydrocarbon mix rises through pipes which are sunk into the reservoirs, due to the high pressure therein. As the hydrocarbon mix rises upwards, the pressure progressively decreases resulting in the lighter hydrocarbons hitherto dissolved in the liquid hydrocarbons separating out rapidly. Simultaneously, such hydrocarbons as are gaseous at ambient temperature and pressure but remain in liquid form in the reservoir due to high pressure, also turn into a gaseous state and separate out from the liquid phase. In this stage, the crude oil is vigorously effervescent and is not fit for storage or transportation. The gas-oil mix rising through the pipes needs to be brought to a stable state, that is, a stage when no more gases separate from it at the atmospheric pressure and ambient temperature. A stabilised mix of hydrocarbons is known in the industry as crude oil which comprises of hydrocarbons which are in a liquid state at atmospheric pressure and ambient temperature.

3. The gas oil mix which is extracted through each oil well of ONGC is transported to one of the process platforms through sub-sea high pressure pipelines. Each process platform stabilises the gas-oil mix in different stages. The first stage of

the stabilisation process is carried out in the first separator which is operated at a pressure of 5 kg/sq.cm. At this pressure, volatile hydrocarbons escape. In the second stage, semi-stabilised crude from the first separator is taken to the second separator which operates at a pressure of about 3 kg./sq. cm. when more of lighter hydrocarbons escape. During the initial years of ONGC's operation, the third stage of separation was carried out inside the third separator and oil tankers docked at the process platforms where the remaining hydrocarbons evaporated off, resulting in fully stabilised crude oil. Such stabilised crude oil was transported to the terminals of the oil refineries and delivered in their shore tanks. The production of stabilised crude oil in the above manner resulted in loss of the lighter hydrocarbons which in themselves have a substantial economic value. Besides, the hydrocarbons released into the atmosphere or flared off presented an environmental hazard.

4. In or about 1987 the ONGC set up a plant at Uran, to make full economic use of the crude oil and associated natural gas extracted from the oil wells. The process platforms at Mumbai Offshore were integrated with the Uran plant through a network of Oil Trunk Pipelines. These pipelines are designed for transportation of gases and liquids at high pressures. Following the setting up of the Uran plant, oil-gas mix (raw crude oil) rising from the sub-sea reservoirs through the oil well-head to the process platform for stage 1 and stage 2 stabilisation moved forward to the Uran plant where the semi-stabilised crude oil was fully stabilised to produce what is commercially regarded as crude oil. In addition, lighter hydrocarbons which emerge during the third stage stabilisation as well as natural gas transported from the process platform to the Uran plant were fractionated to produce down-stream products.

5. Presently, ONGC operates a large number of well platforms located in different oil fields in Mumbai Offshore which are connected with ten processing platforms in the Exclusive Economic Zone of India. The well platforms are connected to the process platforms through a network of pipelines. Raw crude oil along with associated gases and other impurities obtained from the oil wells is transferred to well platforms and then to the process platforms for initial processing. At the process platforms, the raw crude oil received from well platforms is stabilized by getting rid of lighter hydrocarbons through a process of gradual decompression carried out in two stages. The first stage is to bring down the pressure to around 5 kg/sq.cm. in the first separator while the second stage is to bring it to around 3 kg/sq.cm., in the second separator. The semi- stabilised crude at this point is still effervescent and is transported to the Uran plant through dedicated high pressure process pipelines. The gas separating out from the raw crude is collected and transported to the Uran plant through similar dedicated pipelines, after de-moisturisation so as to protect it against corrosion by hydrogen sulphide. At the Uran plant, the process of stabilisation of crude oil is completed.

Alongside, the lighter hydrocarbon mix collected during the process of stabilisation at the Uran plant is put through the process of fractionation, yielding excisable downstream products such as C2C3, LPG (C3C4), Naphtha and Residual Gas (CNG).

6. ONGC manufactures both dutiable and exempted goods. Crude oil is exempted from payment of the duty of excise. ONGC, it is an admitted position, transfers the semi-stabilised crude oil from its process platforms at Mumbai Offshore to the Uran plant. At the Uran plant, the further process of fractionation results inter alia in various down-stream products including Naphtha, Ethane- Propane, LPG and residual gas which are excisable goods. ONGC also supplies crude oil to its purchasers, chiefly refineries, directly from the process platforms at Mumbai Offshore. Services are availed of at the area of operation, viz., at the well-heads, well platforms, process platforms, pipelines, vessels, at the Uran plant and at the administrative offices at Mumbai. ONGC availed of Cenvat credit inter alia in respect of service tax paid on the input services and distributed by the Input Service Distributors in terms of the facility extended to manufacturers of excisable goods under the provisions of the Cenvat Credit Rules. Since ONGC is a manufacturer of both dutiable and exempted goods, it takes credit of all input services specified under rule 6(5) of the Cenvat Credit Rules, 2004 which are inputs in the manufacture of dutiable and exempted goods.

7. A notice to show cause was issued to ONGC on 8th April 2010 alleging contravention of the Cenvat Credit Rules, 2004 during 2008-09 to 2009-10 upto the month of November. The notice proposed to deny Cenvat credit to the extent of Rs.40.57 crores availed of by ONGC on the basis of invoices issued by the Input Service Distributors (ISD). It was alleged that the Cenvat credit distributed by the Input Service Distributors (ISD) pertains to input services availed of and used exclusively at the oil fields of Mumbai Offshore. Since crude oil and natural gas are exempted from excise duty, it was alleged that Cenvat credit of services used at Mumbai Offshore was not admissible. In addition, it was also alleged that the I.S.D. was required to take registration within 30 days from the date of commencement of business. As the ISDs of the Appellant have obtained registration in the first quarter of 2009, the credit availed on tax paid prior to registration as ISD was alleged to be inadmissible under rule 3(1). Moreover, it was alleged that units of ONGC were located at separate locations and are in separate jurisdictions and it could not be held that services used at one unit would constitute input services for the other. The notice alleged suppression by ONGC of the fact that clearances of crude oil are directly dispatched from the oilfields of Mumbai High to other refineries.

8. The Commissioner of Central Excise, Customs and Service Tax, Raigad, by an order dated 6 May 2011 confirmed the demand of duty and disallowed Cenvat

credit amounting to Rs.40.57 crores. An equivalent penalty was imposed together with interest.

9. In appeal, the CESTAT by an order dated 29 November 2012 partly allowed the appeal preferred by ONGC as well as the appeals filed by the Input Service Distributors by deleting the penalty which was imposed by the adjudicating authority, save and except for a penalty of Rs.2,000/- that was imposed on the Appellant. The Tribunal upheld the order of adjudication, confirming the demand of Rs.40.57 crores under rule 14 of the Cenvat Credit Rules, 2004 read with section 11A of the Act and allowed interest inter alia under rule 14 read with section 11AB.

10. The Tribunal has held that crude oil manufactured at Mumbai Offshore is a saleable commodity which is sold by ONGC to its buyers and, that as a matter of fact, before the Uran plant came into existence, the entire crude oil manufactured at Mumbai Offshore was sold. In the circumstances, the Tribunal came to the conclusion that the crude oil used at the Uran plant to manufacture other value added final products cannot be termed as semi-stabilised/semi- finished goods. Having come to the conclusion that the crude oil manufactured at Mumbai Offshore is a saleable commodity and is being sold partly at Mumbai Offshore, the Tribunal held that under rule 6(1) of the Cenvat Credit Rules, Cenvat credit shall not be allowed on such quantity of input or input service which is used in the manufacture of exempted goods except in the circumstances specified in rule 6(2). Under rule 6(2) where a manufacturer manufactures both exempted goods and dutiable goods and maintains a separate record of input services which have gone into dutiable goods and exempted goods, credit in respect of input services which have gone into dutiable goods is admissible. However, in this case, the Tribunal held that input services are entirely used in crude oil/natural gas which is exempted from duty and hence Cenvat credit was not admissible. In this view of the matter, the Tribunal has not gone into the second question which related to the admissibility of credit after the date of registration of the Input Service Distributors.

11. At the hearing, on the request of the learned Senior Counsel appearing on behalf of the Appellant, we have permitted the Appellant to amend the questions of law as framed in the Memo of Appeal so as to correctly elucidate the nature of the controversy. The substantial questions of law as re-framed are as follows:-

(a) Whether in the facts and circumstances of the case the Appellate Tribunal was right in holding that the Appellants are not eligible to CENVAT Credit of service tax paid on input services received by the Appellants even on a prorata basis for payment of CENVAT duty on dutiable final products solely on the finding that the crude

oil and natural gas are exempted, but saleable/marketable in themselves;

(b) Whether in the facts and circumstances of the case the Appellate Tribunal was right in not deciding the question whether the Appellants were entitled to CENVAT credit of service tax paid on the input services received by the Appellants prior to the registration as Input Service Distributor but distributed post the registration; and

(c) In any case, whether the Appellate Tribunal, in the facts of the case, was right in sustaining a penalty of Rs.2,000.00 on the Appellants under Rule 15 of the CENVAT Credit Rules, 2004.

The appeal is admitted on the substantial questions of law set out in (a) and (c ) above. With the consent of Counsel for the Appellant and the Respondent, the appeal has been taken up for hearing and final disposal.

12. The learned Senior Counsel appearing on behalf of the Appellant submits that: (i) Under Rule 3(1) of the Cenvat Credit Rules, 2004, a manufacturer or producer of final products or a provider of taxable service is allowed to take credit inter alia of the duty of excise specified in the First and Second Schedules to the Excise Tariff Act, paid on inter alia "any input service received by the manufacturer of final product or by the provider of output services"; (ii) The expression "final products" as defined in rule 2(h) means excisable goods manufactured or produced from inputs or using input service; (iii) The expression "input service" is defined in rule 2(l) to mean inter alia any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products; (iv) The expressions "whether directly or indirectly" and "in or in relation to the manufacture of final products" are expressions of a wide import. The intent of the legislature and its delegate in framing the subordinate legislation is to allow the manufacturer or producer of a final product to utilise Cenvat credit inter alia of any service used whether directly or indirectly or in or in relation to the manufacture of a final product; (v) ONGC is a manufacturer of dutiable as well as of exempted goods. Crude oil and natural gas are exempted from the duty of excise. Hence, under Rule 6(1), no Cenvat credit can be allowed on such quantity of inputs or input services which are used in the manufacture of exempted goods. However, where a manufacturer manufactures both dutiable and exempted goods, he is required by rule 6(2) to maintain separate accounts and is entitled to take Cenvat credit only on that quantity of input service which is intended for use in the manufacture of dutiable goods; and (vi) In the present case, the Tribunal has clearly erred in coming to the conclusion that the Appellant would be dis-entitled to the benefit of Cenvat credit on the ground that

the input service is used entirely in crude oil or as the case may be, natural gas. Senior Counsel stated before the Court that the Appellant would be entitled to the benefit of Cenvat credit only on that quantity of input service which is intended for use in the manufacture of final products but in terms of the provisions of Rule 6(1) and Rule 6(2), the Appellant would not be dis-entitled to claim Cenvat credit in respect of such quantity of input service, which is used in the manufacture of dutiable goods. This, it has been submitted, is subject to such credit to which the Appellant would be entitled in view of the provisions of Rule 6(5).

13. The Appeal before the Court raises a question of construction of the Cenvat Credit Rules, 2004. Under Rule 3(1), a manufacturer or producer of final products or a provider of taxable service is allowed to take Cenvat credit inter alia of the duty of excise specified in the First and Second Schedules to the Central Excise Tariff Act, paid on the following:-

> "(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."
>
> (emphasis supplied)

In the present case, it is clause (ii) which is of relevance. Hence, in order to enable a manufacturer to avail of Cenvat credit, the requirement is that the duty of excise ought to have been paid on any input service received by the manufacturer of a final product. The expression "input service" is defined in rule 2(l) as follows:-

> "(l) "input service" means any service, -
>
> (i) used by a provider of taxable service for providing an output service, or
>
> (i) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,
>
> and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales

promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal."

(emphasis supplied)

Here again, clause (ii) is of relevance. Under clause (ii) of rule 2(l), the expression "input service" is defined in broad terms. In order to be an input service under clause (ii), the following requirements must be satisfied. Firstly, the expression requires the utilisation of "any service"; secondly, the service must be used by the manufacturer; and thirdly, the service may be used, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal. The expression "directly or indirectly" has a wide import. The service, in other words, need not be a service which is directly used by the manufacturer in the manufacture of a final product. The definition of "input service" comprehends within its sweep a service which is used by the manufacturer even indirectly, and in or in relation to the manufacture of a final product. Where the legislature or its delegate uses the expression "in or in relation to", its object and purpose is to widen the scope and purview of the entitlement. When the words "directly or indirectly" and "in or in relation to the manufacture of final products" are used in conjunction that is indicative of the comprehensive sweep and ambit of the statutory provision. Rule 6(1) stipulates that no Cenvat credit shall be allowed on such quantity of input or input service which is used in the manufacture of exempted goods or for provision of exempted services, save in the circumstances which are mentioned in Rule 6(2). Rule 6(2) deals with a situation where inter alia a manufacturer manufactures both dutiable final products as well as exempted goods. In such a situation, in order to avail of Cenvat credit, the manufacturer is required to maintain separate accounts for the receipt, consumption and inventory of inputs and input services meant for use in the manufacture of dutiable final products and the quantity of inputs meant for use in the manufacture of exempted goods. Rule 6(2) stipulates that a manufacturer can take Cenvat credit only on that quantity of input service which is intended for use in the manufacture of dutiable goods. In other words, Cenvat credit is not admissible on that quantity of input or input service which is not intended for use and is not used in the manufacture of dutiable goods. Rule 6(5) confers an option to follow one of two courses of action to a manufacturer not opting to maintain separate accounts. Under Rule 6(5), which has a non obstante provision over-riding sub-rules (1), (2) and (3) credit of the whole of the service tax paid on taxable services of a specified description is allowable unless such a service is used exclusively in or in relation to the manufacture of

exempted goods or provision of exempted services. In other words, where a service is of the description which is specified in Rule 6(5), the manufacturer is entitled to credit of the whole of the service tax unless the service is used exclusively, that is to say solely in or in relation to the manufacture of exempted goods or any provision of exempted services.

14. Now, in the present case, ONGC is a manufacturer both of dutiable and exempted products. Crude oil as well as natural gases are exempted products. The Tribunal has held against the Appellant in regard to its entitlement to avail of input service on the ground that crude oil at Mumbai Offshore is in itself a saleable commodity since it is transferred or sold in part to other purchasers at Mumbai Offshore. According to the Tribunal, the input services are entirely being used in the manufacture of crude oil/natural gas both of which are exempted from duty and that in consequence the Appellant is not entitled to Cenvat credit. The Appellant, as a manufacturer of exempted products would not be entitled to Cenvat credit on such quantity of input service which is used in the manufacture of exempted goods, this being the plain stipulation contained in rule 6(1). This is subject to Rule 6(5) which has an over-riding provision which allows the availment of Cenvat credit in respect of certain specified taxable services unless they are used exclusively in or in relation to the manufacture of exempted goods. But the point to note is that merely because the Appellant manufactures exempted goods, that would be no justification to disallow to it the benefit of availing of Cenvat credit on that quantity of input service which is utilised in or in relation to the manufacture of dutiable final products. As we have noted earlier, the definition of the expression "input service" is cast in broad terms. The expression "input service" means any service used by the manufacturer, whether directly or indirectly or in or in relation to the manufacture of final products. It is impossible to accept the hypothesis that would assert, that input services that are utilized by the Appellant in or in relation to the process of manufacture that takes place at Mumbai Offshore is not a service that is used by the manufacturer in or in relation to the manufacture of dutiable final products. The dutiable final products that are manufactured by the Appellant at its Uran plant are fundamentally premised upon the manufacturing process which commences at Mumbai Offshore. There can be no manner of doubt that the input services which go into the process of production at Mumbai Offshore meet the description of services that are utilised by the manufacturer directly or indirectly in or in relation to the manufacture of dutiable final products. The manufacture of the dutiable final products cannot take place without the process in question. To accept the contention of the Revenue would be to completely ignore the implication of the words "used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products." Such a construction as proposed by the Revenue is impermissible. These words used in the subordinate legislation fulfill the statutory object and purpose of presenting a cascading effect and burden of

duty. They must be given their plain and natural meaning. At the same time, it would be necessary to clarify that Cenvat credit can be availed of only on that quantity of input service which is used in the manufacture of dutiable goods.

15. In arriving at this conclusion, we have placed reliance on two judgments of the Supreme Court. The first judgment is a judgment in Escorts Ltd. v. Commissioner of Central Excise, Delhi 1. In Escorts's case, the Appellant manufactured tractors and availed of Modvat credit in respect of duties paid on inputs which were used in the manufacture of parts. The parts were cleared to another factory of the Appellant, without payment of duty, by claiming the benefit of an exemption Notification. The parts were used in the manufacture of tractors on which duty was paid. Modvat credit was denied on the ground that the parts constituted final goods in themselves which were cleared without the payment of duty. The Appellant claimed that the final products were not the parts but tractors and that since duty was paid on tractors, Modvat credit was allowable. The Tribunal affirmed the view that was taken in the course of adjudication proceedings that since no duty was paid on the parts, Modvat credit could not be availed of. This view was set aside in appeal by the Supreme Court. Before the Supreme Court, it was conceded that where parts were cleared for sale in the open market or in cases where the parts are used for manufacture of small tractors, on which no duty is paid, the Appellant could not claim Modvat credit and did not do so. The Supreme Court held that the purpose of the exemption Notification and of Rule 57C of the then Central Excise Rules, 1944 was to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. The Supreme Court held that Rule 57D(2) indicates that an intermediate product may also come into existence in the manufacture of a final product and even though no duty is paid on the intermediate product as it is exempted from whole of the duty, credit would still be allowed so long as duty is paid on the final product. Finally, it was held that the mere fact that the parts were cleared from one factory to another factory belonging to the Appellant would not disentitle the Appellant from claiming the benefit of Modvat credit. That was, therefore, a case where at the intermediate stage, the parts which constituted an input in the manufacture of tractors were exempted from excise duty. The final product, the tractor, was dutiable. The test which was laid down by the Supreme Court was that so long as the final product was dutiable, the assessee would be entitled to the benefit of Modvat credit.

16. The second decision of the Supreme Court to which a reference must also be made is that in Collector of Central Excise v. Solaris Chemtech Limited. The explanation to Rule 57A defined "input" inter alia to include inputs used as fuel, this clause being brought into existence on 1 March 1994. In that case, Low Sulphur Heavy Stock (LSHS) was used by the assessee as fuel for generating

electricity which was in turn captively consumed for the production of caustic soda and cement. The Revenue contended that LSHS generates electricity, but that process did not result into the manufacture of cement and caustic soda and, therefore, Modvat credit was not admissible for the duty paid on LSHS. Electricity, as the Supreme Court noted, is not an excisable item. The Supreme Court held that without the utilisation of LSHS, it was not possible to manufacture cement or caustic soda and, therefore, LSHS fell within the ambit of the expression used "in or in relation to manufacture of final products". The wide ambit of the expression "used in or in relation to the manufacture of the final product" has been emphasised by the Supreme Court in the following observations:-

> "Lastly, we may point out that in order to appreciate the arguments advanced on behalf of the Department one needs to interpret the expression "in or in relation to the manufacture of final products". The expression "in the manufacture of goods" indicates the use of the input in the manufacture of the final product. The said expression normally covers the entire process of converting raw-materials into finished goods such as caustic soda, cement etc. However, the matter does not end with the said expression. The expression also covers inputs "used in relation to the manufacture of final products". It is interesting to note that the said expression, namely, "in relation to" also finds place in the extended definition of the word "manufacture" in Section 2(f) of the Central Excise and Salt Act, 1944 (for short, `the said Act'). It is for this reason that this Court has repeatedly held that the expression "in relation to" must be given a wide connotation. The Explanation to Rule 57A shows an inclusive definition of the word "inputs". Therefore, that is a dichotomy between inputs used in the manufacture of the final product and inputs used in relation to the manufacture of final products. The Department gave a narrow meaning to the word, "used" in Rule 57A. The Department would have been right in saying that the input must be raw-material consumed in the manufacture of final product, however, in the present case, as stated above, the expression "used" in Rule 57A uses the words "in relation to the manufacture of final products". The words "in relation to" which find place in Section 2(f) of the said Act has been interpreted by this Court to cover processes generating intermediate products and it is in this context that it has been repeatedly held by this Court that if manufacture of final product cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words "in relation to the manufacture" have been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract goods which do not enter into finished goods. In the case of M/s. J.K.Cotton Spinning and Weaving Mills, Co.

Ltd. v. The Sales Tax Officer, Kanpur and another - AIR 1965 S.C. 1310, this Court has held that Rule 57A refers to inputs which are not only goods used in the manufacture of final products but also goods used in relation to the manufacture of final products. Where raw-material is used in the manufacture of final product it is an input used in the manufacture of final product. However, the doubt may arise only in regard to use of some articles not in the mainstream of manufacturing process but something which is used for rendering final product marketable or something used otherwise in assisting the process of manufacture. This doubt is set at rest by use of the words "used in relation to manufacture". In the present case, the LSHS is used to generate electricity which is captively consumed. Without continuous supply of such electricity generated in the plant it is not possible to manufacture cement, caustic soda etc. Without such supply the process of electrolysis was not possible. Therefore, keeping in mind the expression "used in relation to the manufacture" in Rule 57A we are of the view that the assessees were entitled to MODVAT credit on LSHS. In our opinion, the present case falls in clause (c), therefore, the assessees were entitled to MODVAT credit under Explanatory clause (c ) even before 16-3-95. Inputs used for generation of electricity will qualify for MODVAT credit only if they are used in or in relation to the manufacture of the final product, such as cement, caustic soda etc. Therefore, it is not correct to state that inputs used as fuel for generation of electricity captively consumed will not be covered as inputs under Rule 57A."

We are fortified in the conclusion which we have drawn from these binding principles which have been enunciated in the judgments of the Supreme Court.

17. For these reasons, we have come to the conclusion that the Tribunal was in error in coming to the conclusion that the Appellant was dis-entitled to the benefit of Cenvat credit in respect of the input services used in or in relation to the manufacture of dutiable final products on the ground, as the Tribunal held, that crude oil which is subject to a further process of manufacture at the Uran plant for the production of dutiable final products is exempted from central excise duty. ONGC admittedly also produces dutiable final products. The production of those dutiable products is possible only on the continuous supply of crude oil. We, however, clarify that as a manufacturer of both dutiable and exempted goods, the Appellant would be required to comply with the discipline and rigour of rule 6 and would be entitled to take Cenvat credit only on that quantity of input service which is used in the manufacture of the ultimate dutiable product. We accordingly answer question (a) in the negative.

18. As regards question (b), the Tribunal has not expressed any opinion in view of its finding on the first question. In view of our answer to question (a), we restore the appeal to the file of the Tribunal for the disposal of question (b). In view of the decision on question (a) and in the facts and circumstances of the case, we answer question (c) in the negative.

19. The Appeal shall accordingly stand disposed of in the above terms. There shall be no order as to costs.