कार्यालय आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX
प्लाट न. ६७-७६ / बी-१ "सिद्धि सदन" बिल्डिंग
PLOT NO. 67-76/B-1, "SIDDHI SADAN" BUILDING,
नारायणभाई उपाध्याय मार्ग, भावनगर - ३६४ - ००१
NARAYAN UPADHYAY MARG, BHAVNAGAR-364 001.

फ़ोन : **(0278) 2523627** फैक्स : **0278-2513086**

रजिस्टर्ड डाक पावती द्वारा
By Regd. Post A. D.

फ़ाइल् स. - V/15-11/Adj/DGCEI/HQ/2012-13 आदेश की तारीख : 31.07.2014.
F. No. - V/15-11/Adj/DGCEI/HQ/2012-13 Date of Order : 31.07.2014.

जारी करने की तारीख : 11.08.2014.
Date of Issue : 11.08.2014

पारितकर्ता,

श्री नवनीत गोयल.

आयुक्त केंद्रीय उत्पाद शुल्क एवं सेवाकर, भावनगर
Passed by,
SHRI NAVNEET GOEL
Commissioner, Central Excise and Service Tax, Bhavnagar.

मूल आदेश स.: **BHV-EXCUS-000-COM-003-14-15 DT 31-07-2014**
Order-in-Original No.: BHV-EXCUS-000-COM-003-14-15 DT 31-07-2014

1. This copy of order is granted free of charges for private use of the person(s) to whom it is issued and sent.

2. Any person(s) deeming himself aggrieved by this Order may appeal against this order to The Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad, O-20, Meghani Nagar, New Mental Hospital Compound, Ahmedabad, in terms of the provision of Section 35B(1)(a) of the Central Excise Act, 1944. If the case covered under the category specified in Section 35B(1) (Proviso) (a) to (d), i.e. Loss, Rebate, Export under Bond, duty credit cases, the Revision application shall lies to the Joint Secretary to the Government of India, Department of Revenue, Ministry of Finance, New Delhi.

3. The Appeal should be filed in form EA.-3. It shall be signed by the person as specified in Rule 3(2) of the Central Excise (Appeals) Rules, 2001.

4. The appeal should be filed within three months from the date of communication of this order. (Section 35B of the Central Excise Act, 1944).

5. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (One of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the Register or sent by Registered Post addressed to the Registrar. But the date of receipt in office of the said Registrar in time or otherwise will be the relevant date for the purposes of limitation of time.

6. The Fee is required to be paid as under through a cross Bank Draft in favour of the Assistant Registrar of Bench of the Tribunal on a branch of any Nationalized Bank located at the place where the Bench is situated and it shall be attached to the form of appeal.

(a) Where the amount of duty and interest demanded and penalty is levied is more than ₹50,00,000/- (Rupees Fifty Lakhs), ₹ 10,000/- (Rupees Ten Thousand);

(b) Where the amount of duty and interest demanded and penalty levied is more than ₹5,00,000/- (Rupees Five Lakhs) but not exceeding ₹ 50,00,000/- (Rupees Fifty Lakhs), ₹ 5,000/-(Rupees Five Thousand);

(c) Where the amount of duty and interest demanded and penalty levied is ₹ 5,00,000/- (Rupees Five Lakhs) or less, ₹ 1,000/-(Rupees One Thousand);

7. The Copy of this order attached therein should bear a Court fee stamp of 50 paise as prescribed under schedule 1 of Article 6 of the Court fee stamp Act, 1970.

8. Proof of payment of duty, penalty etc. should also be attached in original to the form of appeal.

9. Appeal should bear a Court Fee Stamp ₹ 5/-.

10. Please refer to the Central Excise (Appeals) Rules, 2001 and the CEGAT, Procedure Rules, 1982 for complete details.

To,

M/s. Ultratech Cement Ltd. (Unit – Gujarat Cement Works),
Kovaya, Tal.-Rajula, Dist.-Amreli,
Gujarat-365 541.

Subject: Show Cause Notice F. No. DGCEI/MZU/I&IS'C'/30-68/12 dated 22.11.2012.

BRIEF FACTS THE CASE :

M/s. Ultratech Cement Ltd., Gujarat Cement Works, Post. Kovaya, Dist Amreli, GUJRAT-365541 (herein after referred to as UTCL(GCW)) were engaged in the manufacture of Clinker, Ordinary Portland Cement and Pozzelano Portland Cement falling under Chapter heading 2523 of the First Schedule to the Central Excise Tariff Act, 1985. They were holding Central Excise registration No. AAACL6442LXM007 and paid Central Excise duty on the Clinker and Cement cleared by them. They were availing cenvat credit on various inputs and input services under Cenvat Credit Rule, 2004.

2. The issue involved in the show cause notice was M/s Ultratech Cement ltd., Amreli, Gujarat had installed a Power plant for generation of 'Electricity', the majority of electricity generated was consumed in the manufacture of their finished goods i.e. Cement and Clinker captively. Due to technical problem of storage, the surplus electricity generated was wheeled out to their sister concern units at Magdalla as well as Jafrabad and partly sold to M/s Indian Energy Exchange. The electricity generated was classified under the Central Excise Tariff, however, no central excise duty had been defined against it. Thus it appeared that 'Electricity' generated covered under the definition of 'Exempted goods' under Rule 2(d) of the Cenvat Credit Rules, 2004. UTCL (GCW) had availed Cenvat credit on inputs and input services consumed in generation of Electricity and also used in the manufacture of their finished goods. However, as UTCL (GCW) had manufactured both dutiable and exempted goods viz. Clinker, Ordinary Portland Cement and Pozzelano Portland Cement and electricity, they were required to follow the procedure as provided under the Rules 6(2) and 6(3) of Cenvat Credit Rules, 2004. M/s. UTCL (GCW), instead of following the provisions of above rules of Cenvat Credit Rules, opted for reversal of cenvat credit availed on the inputs and input services used in generation of Electricity which was wheeled out to their sister concern units. Therefore, it appeared that The UTCL (GCW) had violated the provisions of Cenvat Credit Rules, 2004 and accordingly the present show cause notice was issued.

3. As a group, M/s Ultratech Cement Limited were engaged in the manufacture of Cement and Ready Mix Concrete (hereinafter referred to as RMC). They were having plants and units located at various places all over India. M/s Ultratech Cement Limited were having Corporate office at Ahura Centre, Ist Floor, Near Mahakali Caves Road, Opposite MIDC Office, Andheri (East), Mumbai-400093. For Administrative and commercial convenience, cement business of M/s UltraTech was divided into five Zones - North, East, West, South Zone-A and South Zone-B. The Cement manufacturing plants were controlled by the Zonal Cement Marketing Offices, which in turn were controlled by the Head / Corporate office. M/s.UTCL (GCW) fell under their West Zonal Cement Marketing office.

4. An intelligence was received in the Directorate General of Central Excise Intelligence, Regional Unit, Pune that M/s.Ultratech Cement Ltd., were evading payment of Central Excise duty by non-reversal of cenvat credits pertained to inputs used in manufacture of exempted goods (Electricity) in contravention of Rule 6(3) of the Cenvat Credit Rules, 2004, under valuation of Cement cleared to their own Ready Mix Concrete units situated at various locations in the country, wrong availment of cenvat credits available on inputs and input services, and non payment / short payment of service tax under the category of Service "Supply of Tangible goods for use" etc. In pursuance of this intelligence, some of their cement manufacturing plants located at Hotgi, Hirmi, Awarpur and Head office of M/s Ultra Tech Cement Ltd. at Andheri were searched by the Officers of DGCEI, Pune on 6.1.2011 and the proceeding were recorded under Panchanama dated 6.1.2011. The officers also drew Panchanama dated 7.1.2011 for the search proceeding at RMC Division Office, Mumbai and resumed various documents required for further inquiry.

4.1 M/s UTCL(GCW) being one of the manufacturing units of M/s UTCL, investigations were initiated against it by issuance of summons dated 18th February,2011. Under the said summons M/s GCW was asked to furnish the year wise details of the Power projects commissioned at its factory premises, cenvat credits of central excise duty and service tax availed thereon, the details of Electricity/Power manufactured and captively consumed/sold

there-from along with representative copies of challans/ invoices issued for the same. Vide letter dated 08.03.2011, M/s UTCL(GCW) furnished the information and such details called for, viz

a. Installation certificate for power projects commissioned
b. Statement of cenvat credit of central Excise duty on Inputs for period 2006-07 to 31.12.2010
c. Statement of cenvat credit availed on Service Tax for the period 2006-07 to 31.12.2010
d. Details of electricity /power manufactured and captively consumed /sold there from for the period 2008-09 to 31.12.2010 along with the sample copies of Invoices / Challan issued for the same.

4.2 Further, during the course of investigation, a statement of Shri Satish Jain, (Manager Finance and Accounts) of M/s GCW was recorded on 14-03-2011, under Section 14 of the Central Excise Act,1944 **(RUD-4), wherein** he, *inter alia*, stated that their Unit was an integrated cement manufacturing plant also having captive power plant of capacity (4X 23) 92 MW; that the existing Power plant was commissioned in F.Y 2008-09 and that the power generated by them was captively used for manufacture of cement, which was a dutiable final product; that they wheeled power to their sister units, M/s Ultra Tech Cement Ltd, Jafrabad Cement Works and M/s Ultra Tech Cement Ltd, Magdalla Cement Works, and also sold to Indian Energy Exchange, through agent M/s. MF Global Commodities India Pvt Ltd; that cenvat credit of Excise Duty paid on inputs, capital goods and Input services used in power plant was availed; that they were also procuring electricity from State Electricity Board; that they were reversing proportionate Service tax Cenvat credit on power wheeled out to sister units like Jafrabad Cement Works and Magdalla Cement Works, sold outside to M/s Indian Energy Exchange, on the ratio of total power generated v/s total Service Tax cenvat credit availed for the month related to Power generation on monthly basis, with due intimation to Range Superintendent.

4.3 Vide letter dated 02.09.2011, M/s UTCL(GCW) with reference to statement dated 14.03.2011 of Shri Satish Jain, was asked to confirm the reversal of proportionate Cenvat Credit of input / input services going in for the manufacture of electricity (exempted from payment of Central Excise Duty)which was further sold to State Electricity Board and supply the Documentary proof for such reversal for period 2008-09, 2009-10, 2010-11 and 2011-12(till August). In response to the said letter M/s UTCL(GCW) vide their letter dated 10.09.2011**(RUD-5)** communicated that they were reversing the proportionate Cenvat Credit of Input and Input Services going in for manufacture of electricity which was further sold and wheeled out on regular basis and at Annexure-II to the said letter attached the reversal details of such Inputs going in electricity sold /wheeled out for the period 2008-09 to August - 2011. In the said Annexure-II, it was confirmed by them that they had reversed the said Cenvat Credit on Inputs for the period 2008-09 to March-2011 onwards in the Month of May-2011. The amount so reversed was found to be Rs 3,28,87,779/- and the Interest for such delayed reversal paid was seen Rs 45,53,407/- The entire amount along with the Interest of Rs 3,74,41,186/- was paid by M/s UTCL(GCW) vide challan no. 125 dated 12.05.2011.

4.4 Further, during the course of investigation as M/s UTCL(GCW) had carried out proportionate reversal of input credit so availed going in the electricity wheeled out and sold, therefore vide summons dated 21.09.2011 certain information was called from them. M/s UTCL(GCW) vide letter dated 07.10.2011 submitted the point wise reply to the said summons, which was as under:

a. M/s UTCL (GCW) had installed captive power plant for generation of power for use of manufacturing of the final product cement and clinker, which were excisable product and during the course of power generation some power excess than their captive usage cannot be stored as per technical constraints so they had wheeled /sold the excess power. The electricity was not Excisable goods even though it may be goods, therefore the same cannot be covered by the definition of exempted goods, hence provision of Rule-6(3) of Cenvat Credit Rules,2004 (exercising of option under Rule 6(3) of Cenvat Credit Rules,2004) are not applicable.

b. In view of the reply at Sr no.(a) above the filing of declaration in terms of Rule 6[3] of Cenvat Credit Rules, 2004 was not applicable. They submitted the worksheet of quantification showing details of cenvat credit reversal made in lump sum in May,2011 for the period 2008-09, 2009-10 and 2010-11 along with Interest, totally worked out to Rs. 3,74,41,186/-.

c. They submitted the extract of PLA debit entry showing the entry of reversal of such Cenvat Credit along with the interest, totally worked out to Rs.3,74,41,186/-. M/s. UTCL(GCW) have reversed the cenvat credit on proportionate basis of inputs used in their Thermal Power Plant [TPP] in proportion of the sale / wheeling of excess power.

d. That M/s UTCL(GCW) have rightly paid the Interest at appropriate rates (@13% and @18% as the case may be) and Interest @ 24 % per annum is not applicable to them as Rule 6[3A] of Cenvat Credit Rules,2004 was not applicable to them for the reasons mentioned at Sr No. (a) above.

4.5 Further, statement of Shri Satish Jain, (Manager Finance and Accounts) of M/s GCW was recorded on 10th October,2011 under Section 14 of the Central Excise Act, 1944. In his said statement he, *inter-alia*, submitted that M/s GCW had supplied the information about Electricity produced and captively consumed and sold or wheeled there from, along-with representative copies of Invoices/Challan issued vide letter dated 8.3.2011, enclosing therein the desired Information; that they availed credit of Input service like Manpower Supply, Repair maintenance, Technical Consultancy Service etc; that they also availed cenvat credit on Inputs like Pet coke, Paint, Welding Electrodes and Chemicals; that they were taking cenvat credit on Input Services used in their thermal power plant right from-2006 and on Inputs from May-2008 (i.e. from the day when power plant was commissioned); that Electricity produced in their Thermal Power Plant was mainly consumed in their cement plant and surplus power if any was sold / wheeled to their sister plants located at Jaffarabad and Magdalla and Indian Energy Exchange (IEEX) through M/s M.F. Global Commodities (I) Pvt. Ltd ; that the details of such sale /wheeling of electricity from April 2009 to Feb-2011 had been provided by them vide letter dated 8.3.2011 and now he was supplying the details of electricity sold/wheeled from April-2008 to March-2011 along with the calculation of proportionate reversal of Cenvat Credit; that M/s GCW procured Pet Coke mainly from M/s Reliance and used it in their cement plant apart from being used in Thermal Plant; that he had already stated in his statement dated 14.3.2011 that the proportionate cenvat credit on Input Services was reversed in the ratio of Power Wheeled out / Sold to total power generated in the thermal power plant and it was done as electricity wheeled/sold out to their sister plants and IEEX, as it was not used in or in relation to cement plant; that they were under the impression that they were using around 80% of non excisable goods for generation of electricity and only approximately 18% to 20% of the total electricity generated was sold out/wheeled outside and therefore they had not reversed proportionate input CENVAT credit at that time; that he was fully aware about Cenvat Credit Rules, 2004, which do not prescribe any such percentage; that he had no explanations for non-reversing proportionate CENVAT credit on inputs even though M/s GCW have been reversing proportionate CENVAT credit on input services (in ratio of electricity sold/wheeled to total electricity generated) especially when Cenvat Credit Rules, 2004 govern both the types of cenvat credit; that at the time of recording of his statement on 14.03.2011, he knew that M/s GCW had not reversed proportionate cenvat credit on inputs but he admittedly not informed the factual position to the investigating officer about the same; that he had also not intimated/ informed the Audit officers of the Central Excise Commissionerate, Bhavnagar, who had audited there after the records of M/s GCW during 21st to 25th March,2011 and on 25th May.2011 and issued the Audit Report No.5/2011-12, that the said issue had already been taken up by the DGCEI, Pune and was being inquired by them; that as per their calculation the Proportionate Cenvat Credit involved in electricity wheeled out for the period was Rs. 3,31,40,570/- and detailed working was submitted therewith; that they had paid such wrong availed credit of Rs. 3,31,40,570/- along with Interest of Rs 43,95,265/- vide challan No. 00125 dated 12.5.2011 and 00250 dated 30.6.2011; that the Rule 6(3A)/6(3) of Cenvat Credit Rules are not applicable as per his knowledge as electricity was not excisable goods even though it were goods and these provisions were applicable for exempted Excisable goods only and therefore they had not exercised the option under Rule 6(3) of Cenvat Credit Rules nor had they filed

declaration in this regards; that as Rule 6 (3A) was not applicable in their case, therefore interest calculation is not to be done by @ 24%.

4.6 Further vide letter dated 14.10.2011, the Commissionerate office of Bhavnagar confirmed that M/s UTCL(GCW) had not filed declaration under Rule-6(3) of Cenvat Credit Rules, 2004 and enclosed Audit Report No.05/201112 dated 10.08.2011 in respect of M/s UTCL(GCW).

4.7 As undertaken by Shri Satish Jain during recording of statement on 10.10.2011, he submitted further details vide letter dated 17.10.2011. At Sr. No. 5 of the said letter in regards of applicability of Provision of Rule 6(3) of Cenvat Credit Rules,2004 on electricity sold out and wheeled out, M/s UTCL (GCW) explained that they were not manufacturing exempt goods, that the electricity was not subject to duty of excise and hence not exempted goods and therefore the provisions of Rule-6 or Rule 6(3) were not applicable; that M/s UTCL(GCW) had reversed the proportionate cenvat credit on inputs in respect of goods used in generation of electricity wheeled out to the their Jafrabad works and their Magdalla works colony and to others as the same was not available to them in terms of Cenvat Credit Rules; that M/s UTCL(GCW) had properly reversed the Cenvat Credit on proportionate basis therefore the reversal @ 8% or 5% as the case may be of the sale price of exempted goods was not applicable; that the provision of Rule 6(3A) and 6(3) were not applicable.

4.8 Further, the information of month-wise, number of units of electricity sold/wheeled out to their Jafrabad works and their Magdalla works and its value for the period 2008-09, 2009-10, 2010-11 and 2011-12 (till October 2011) was called for and M/s UTCL(GCW) submitted the said information vide letter dated 03.12.2011. In addition to above vide letter dated 09.04.2012, certain clarification and information were called from M/s UTCL(GCW). M/s UTCL(GCW) vide, letter dated 25.04.2012 furnished the information and clarification so called for, which were as under :

A. **Value of Exempted and dutiable goods :-** That they were only manufacturing the excisable goods viz. clinker and cement and submitted the value of such dutiable goods produced and cleared.; they were not manufacturing any exempted goods; that electricity so generated was neither exempted nor dutiable; that the year-wise value of electricity so generated and cleared was as under :-

(in Rs.)

Year	Value of Electricity produced	Value of Electricity cleared.
2009-10	190,64,21,474	37,95,89,011
2010-11	257,90,26,060	44,59,71,667
2011-12	270,67,73,408	55,03,13,325

B. **List of taxable services *and* service tax credit availed:-** That they had availed cenvat credit on following services in relation to manufacture of excisable goods viz. cement, clinker, electricity:

	Name of Cenvatable services *on* which ST credits availed
1	Adverting Agency Services
2	Annual Maintenance Contract
3	Air Travel Agents Service
4	Banking and Other Financial Services
5	Business Auxiliary Service
6	Cab Operator
7	Cargo Handling Services and Customs Clearing Service
8	Chartered Accountant's Services
9	Clearing and Forwarding Agents Services
10	Commissioning and Installation Services
11	Consulting Engineer Services
12	Construction Services
13	Courier Services
14	*Erection, Installation and Repairing*

15	Excavation Services
16	Goods Transport Service
17	Maintenance and Repairs Services
18	Manpower Recruitment Agency Services
19	Mining Services
20	Outdoor Caterer's Services
21	Packaging Services
22	Port/ Pilotage/ Warfage Charges Services
23	Site formation and Clearances Excavation and Earthmoving and Demolition Services
24	Security Agency Services
25	Survey and Map Making Services
26	Technical Testing and Analysis Services
27	Telephone Services
28	Testing and Inspection Certification Services
29	Tour Operator Services
30.	Insurance Auxiliary Services

; that year-wise cenvat credit so availed on these input services were as under :

(in Rs.)

Year	Total Service Tax credit availed
2009-10	22,32,52,376
2010-11	17,39,41,065
2011-12	21,12;74,896

C. Appropriate evidence in support of separate accounts for input and input service in terms of Rule 6(2) of Cenvat Credit Rules, 2004 :- That they were not manufacturing any exempted goods and hence Rule 6(2) of Cenvat Credit Rules, 2004 was not applicable to them; that they had separately maintained the consumption of imported and indigenous fuels used in their TPP in SAP system; that figures from the extract of the trial balance for the financial year 2011-12 with reference to separate maintenance of imported and indigenous fuels in SAP system were as below:

(in Rs.)

Account No.	Description	Amount
704404	TPP-Consumption Fuel Indigenous	90,98,91,928.38
704405	TPP Consumption fuel Imported	11,57,02,690.47

; that they were also keeping the details of service tax cenvat credit availed and utilized in their TPP for generation of electricity, the figures of such availment were as below:

(in Rs.)

Year	Service Tax credit availed for TPP
2009-10	1,55,70,590.00
2010-11	1,14,68,602.00
2011-12	1,06,97,735.00

D. Provision of Rule 6(3) not applicable on Input Cenvat Credit reversal on Power Wheeled / sale:- That they were not manufacturing exempt goods as electricity was not subjected to duty of Excise therefore the provision of Rule-6 or Rule 6(3) of Cenvat Credit Rules,2004 were not applicable; that they had rightly reversed the proportionate credit on inputs and input services on electricity which was cleared outside as the electricity was not subjected to duty of Excise; that the year wise input cenvat credit and input service tax credit reversed(during investigations) to proportion of power wheeled /sold was as under :

(in Rs.)

Year	Proportionate Input Credit Reversed	Proportionate Input Service Tax credit reversed
2009-10	99,98,326	19,40,201
2010-11	2,31,42,117	22,47,597
2011-12	30,67,293	26,84,283

M/s UTCL(GCW) also provided the calculation /statement for service tax cenvat credit to be reversed if the provision of Rule 6(3)(ii) were applicable as called for in the letter. The said statement was reproduced below after considering the net value of dutiable goods as arrived by deducting from it the value of clinker captively used which was in fact in-built in the value of cement manufactured there from but appeared to have been added again in the value of dutiable goods inadvertently. :-

Year	Total value of Exempted goods manufactured and removed i.e. Electricity *-say (M)*	Total value of both dutiable goods (cement, clinker, etc.) + exempted goods (electricity) mnfd. and removed. – *say (N)* *(Excluding capacity consumed clinker)*	Total value of cenvat credit of service tax taken during the year *– say (P)*	Total Cenvat credit of service tax to be reversed as per Rule 6 (3) (ii) read with Rule 6 (3A) i.e. *(M/N)*P* ***
2009-10	37,95,89,011	1039,20,81,017	22,32,52,376	81,54,685
2010-11	44,59,71,667	939,14,54,782	17,39,41,065	82,59,933
2011-12	55,03,13,325	1233,10,33,986	21,12,74,896	94,28,843
TOTAL				2,58,43,461

****As per Rule 6 (3A) (c) (iii) of the Cenvat credit Rules, 2004 the amount attributable to input services used in or in relation to manufacture of exempted goods [and their clearance up to the place of removal] or provision of exempted services = (M/N) multiplied by P, where [M] denotes total value of exempted services provided plus the total value of exempted goods manufactured and removed during the financial year, [1][N] denotes total value of taxable and exempted services provided, and total value of dutiable and exempted goods manufactured and removed, during the financial year, and '[P] denotes total CENVAT credit taken on input services during the financial year. It is to be noted that M/s UTCL(GCW) are not engaged in providing of any dutiable and exempted services and hence value of services provided is taken as "NIL "for the said calculation of cenvat credit reversal.*

4.10. Also in the said letter dated 25.04.2012, M/s UTCL(GCW) clarified that Rule 6 was applicable only when dutiable as well as exempted products were manufactured and if no exempted products are manufactured, Rule-6 was not applicable at all; that Electricity was neither exempted nor chargeable to NIL rate of duty, hence it was not an exempted product therefore Rule 6 was not applicable; that Maruti Suzuki case which was reported in ELT 2009(204)ELT641(SC), the proportionate duty was to be reversed on inputs to the extent of it being used in generation of electricity sold and hence whatever reversal caused by them was in accordance of law; that the contention of the department about non applicability of the said case-law in the case of M/s UTCL(GCW) as the said case law was for the period 2002-03 when `inputs intended to be used as fuel' was specifically excluded in the Rule 6(2), cannot be accepted as Rule 6 was always not applicable in the case of M/s UTCL(GCW) as they manufacture dutiable goods (cement Clinker and etc) and non excisable goods (electricity); that when a part of the power generated by using goods on which the credit was taken was wheeled out from the factory, the said goods which were used for generation of such power wheeled out will not be covered by the definition of term `Input' under Rule 2(k) of the Cenvat Credit Rules; that once the goods were not covered by the definition of the term 'input', then credit on such input was not available at the threshold stage itself and when the electricity was wheeled out and not captively used, the goods

used for generation of such electricity wheeled out would not be covered by the terms 'input'; that therefore the credit availed on the same had to be reversed and hence provisions of Rule 6 of Cenvat Credit will not be applicable; that the provisions of Rule 6 would be applicable when the inputs were used in the manufacture of exempted goods; that the term exempted goods had been defined under Rule 2 (d) of the Cenvat Credit Rules which reads "exempted goods means excisable goods which were exempt from the whole of the duty of Excise leviable thereon and includes goods which were chargeable to 'NIL' rate of duty (and goods in respect of which the benefit of an exemption under Notification No. 1/2011-CE dated 01.03.2011 was availed"; that the exempted goods should be excisable goods and should be wholly exempted from payment of Excise duty; that the electricity was not excisable goods since it was not specified in the First Schedule or Second Schedule as being subject to a duty of Excise therefore the same cannot be covered by the definition of 'exempted goods'. Also vide the said letter dated 25.04.2012, M/s UTCL(GCW) enclosed the detailed technical write up on production of Clinker, Cement and Power as called for.

4.11 Further vide letter dated 10.05.2012, M/s UTCL(GCW) submitted the details of units and value of electricity cleared to sister units and sold to outside parties, which were as under :

Year	**Electricity wheeled out to sister units(their Magdalla works and Jafrabad works)**			**Electricity sold to outside parties**		
	Units in (MWH)	Value (in Rs.)	Average Value per MWH (Rs.)	Units in (MWH)	Value (in Rs.)	Average Value per MWH (Rs.)
2009-10	63425.48	18,92,33,377	2984/-	33766.22	19,03,55,634	5637/-
2010-11	98120.68	38,77,58,174	3952/-	10562.22	5,82,13,493	5511/-
2011-12	124085.18	50,96,58,829	4107/-	8445.62	4,06,54,496	4814/-

Also vide their letter dated 10.05.2012,M/s UTCL (GCW) also communicated that input cenvat credit pertaining to the power wheeled out to their sister units had not been reversed in the year 2011-12, the same had been done in lieu of the notification no.3/2011 dated 01.03.2011, which substituted the old definition of input with a new one, whereby a specific inclusion was given to all goods used for the generation of electricity for captive use, under clause (iii) of Rule 2(k).

4.12. Further vide letter dated 23.05.2012, M/s UTCL(GCW) submitted the information called for the period 2008-09 and from the information it was seen that M/s UTCL had not wheeled out any power to sister units and not sold the electricity but during the period 2008-09 some part of electricity was used in the residential colony. During the period 2008-09 also they had availed cenvat credit on Input services as mentioned in Para -4.8(b) above and not maintained separate account in respect of input services utilized in electricity captively used and used / cleared in the residential colony. Also M/s UTCL(GCW) had not reversed any cenvat credit in respect of Input services so utilized in respect of electricity cleared and used in the colony. In the said letter they also submitted the information, month-wise of the electricity wheeled out / sold and used in residential colony.

4.13. A statement of Shri S. N. Jajoo, CMO of M/s. UTCL was recorded on 16.01.2012 under Section 14 of the Central Excise Act,1944. Shri Jajoo was shown the Statement of Shri Satish Jain recorded on 10.10.2011, wherein he had accepted that the availment of credit on common inputs and input services utilized for manufacture of cement and Electricity wheeled out without filing of Intimation under Rule-6 (3)(A) of Cenvat Credit Rules and without maintenance of separate inventory of inputs and receipt and use of input services going in Exempted goods and dutiable goods and therefore he was accordingly informed that as per Rule 6 (3) (i) of Cenvat credit Rules an amount equal to 5% or 8% of Exempted goods i.e. wheeled out / sold was required to be discharged. In this regard, Shri Jajoo stated that he had seen the statement shown to him but as he was not aware of the facts, he cannot offer any comments. Vide letter dated

13.01.2012, Shri Jajoo clarified that electricity was not an exempted goods and hence provisions of Rule-6(3)(i) were not applicable; that they were regularly reversing the proportionate cenvat credit availed on inputs (but factually false and misleading information) and input services used for the generation of electricity sold/wheeled out, hence such goods / services were not be covered by the definition of Input /Input Services as had been held by the Hon'ble Supreme Court in Maruti Suzuki's case.

5.1 From the facts narrated above, it appeared that the M/s UTCL (GCW) were engaged in the manufacture of clinker and cement. For the manufacture of clinker and cement, the inputs required are Limestone, Iron Ore, Bauxite, Sweetner and Pet coke for heating the kiln and etc. M/s UTCL(GCW) being integrated plant were also having captive Thermal Power Plant of capacity (4 X 23) 92 MW which were commissioned in the year 2008-09. The raw material required for the generation of electricity was mainly Pet Coke and other demineralization chemicals etc. M/s UTCL (GCW) availed cenvat credit on Pet Coke which was used for manufacture of both clinker / cement and generation of electricity. The receipt, consumption/ utilization and closing balances of Pet coke were maintained by M/s UTCL(GCW) in SAP account. In SAP account, M/s UTCL(GCW) also maintained the Pet coke account for TPP under the description - TPP Consumption Fuel Indigenous and TPP Consumption Fuel Imported. After receipt of the Pet coke in the factory of M/s UTCL(GCW), they availed the Cenvat Credit on the entire quantity of pet coke so received. Also for the manufacture of the cement, clinker and electricity, M/s UTCL(GCW) had also availed Cenvat Credit on various common Input Services under Cenvat Credit Rules – 2004 as enlisted in Para – 4.9(b) above. These inputs services were utilized for manufacture of clinker/ cement and for generation of electricity. The cement and Clinker were cleared on payment of Central Excise Duty. The electricity generated was either consumed in house in their plant in production of Clinker and Cement or wheeled to their sister units i.e. Jafrabad works and Magdalla works and surplus Electricity was also sold to Indian Energy Exchange through MFCGPL. The electricity so wheeled out to sister units or sold were cleared on Invoices and without payment of Central Excise duty as no duty had been prescribed on it for the time being.

5.2. M/s UTCL(GCW) had not maintained separate records of receipt, consumption and inventory of inputs and input services used in or in relation to the manufacture of exempted and dutiable final products. Vide letter dated 09.4.2012, they were given an opportunity for evidencing in support of separate accounts if kept any, in respect of each and every such inputs and input services in terms of Rule 6(2) of Cenvat Credit Rules,2004 but vide letter dated 25.04.2012 M/s UTCL(GCW) replied that said Rules were not applicable to them.

5.3. During the inquiry by DGCEI, M/s UTCL(GCW) calculated the proportionate cenvat credit on Inputs and Input services so involved in the electricity wheeled out and sold and paid the same pertaining to the period 2008- 2011.The Cenvat credit so paid /reversed is **Rs. 3,47,15,664/-** and also paid the Interest @ 13% and 18% as the case may be which totally amounting to Rs. **Rs. 47,75,194/.** Also M/s UTCL(GCW) during the period 2011-12 did not reverse the Input cenvat credit pertaining to the power wheeled out to sister units i.e. Jafrabad works and Magdalla works wrongly treating the inputs so used for generation of electricity for captive use under newly inserted clause at (iii) of Rule-2(k) of Cenvat Credit Rules vide Notification no. 3/2011 dated 01.03.2011.

5.4 From the above it appeared that M/s UTCL(GCW) had availed the cenvat credit on total quantity of inputs and input services utilized/ going in for dutiable finished goods (cement/ clinker) and electricity wheeled out /sold without payment of duty and latter on being pointed out during the enquiry, they reversed certain amount of cenvat credit on input and input services so going in the electricity wheeled out/sold. Also during the period 2011-12, M/s UTCL(GCW) had not reversed any amount of cenvat credit on Inputs so utilized and going in the electricity wheeled out to their Magdalla works and Jafrabad works. Also M/s UTCL(GCW) had not maintained separate inventory in respect of input and input services going in the dutiable goods and exempted products.

6.1 M/s UTCL(GCW), in various letters as narrated above, mentioned that the Rule-6 of Cenvat Credit Rules,2004 were not applicable as the electricity could not be viewed as exempted

excisable goods and Rule-6 is applicable when the both dutiable excisable goods and exempted excisable goods were manufactured. Whereas, the commodity "Electricity" clearly fell under the definition of exempted goods given in provision Rule 2 (d) of Cenvat Credit Rules,2004. The definition of exempted goods was that - "Exempted goods means excisable goods which were exempt from the whole of the duty of Excise leviable thereon, and includes the goods chargeable to `NIL' rate of duty." The electricity satisfied the conditions for calling them as goods in as much as;

i) The Electricity was movable from one place to another, as M/s.UTCL(GCW) clears the same to various customers and wheels out to sister units viz. their Magdalla woks and Jafrabad works.

ii) The electricity was marketable as it is fetching good commercial value in the instant case.

iii) The electricity was saleable commodity as in the instant case sale bills/ Invoices are raised.

iv) The electricity was classifiable under CSH 27160000 of Central Excise Tariff Act,1985 as Electrical Energy and unit of measurement as 1000KWh with no central Excise Duty Rate prescribed therein which means wholly exempt from central excise levy for the time being.

v) The Electricity was chargeable to duty of Excise at rate of 2 paise per KWH under item No. 11-E of the erstwhile CET.

vi) The Electrical energy also find the entry in Customs Tariff details as mentioned below :

CUSTOMS TARIFF Chapter Sr. no.	Tariff Description of Goods	Unit of Measurement	Tariff Applicable	Preferential Tariffs
2716.00.00	Electrical Energy	. MWH	Free	CCCT, LDCT, GPT, UST, MT, MUST, CIAT, CT, CRT, IT, NT, SLT, PT,COLT: Free

6.2 The Supreme Court also has held `Electricity' as goods, in case of Commissioner of Sales Tax, Madhya Pradesh, Indore versus Madhya Pradesh Electricity Board, Jabalpur reported in (1969) 1 SCC 200, on the question whether electricity was goods for the purpose of imposition of sales tax under the Madhya Pradesh General Sales Tax Act,1959. It was noted that the definition of the term `goods' meant all kind of `movable property' and included `all material, articles and commodities' and the electrical energy can be transmitted, transferred, delivered, stored, possessed etc in the same way as any other movable goods / property. Also it was held as the electrical energy can be sold and purchased like any other movable objects, therefore it is to be treated as goods. Also Constitutional Bench of the Supreme Court in state of AP etc V National Thermal Power Corporation Limited and Ors etc(2002-TIOL-107-SC-CT) held that electricity though an intangible object was `goods' covered by the Entry 54 of List-II of Schedule VII to the Constitution of India. The CEGAT Bench 'D' (New Delhi) in M.P Electricity Board reported in 1991(52)E.L.T.618, confirmed the levy of Excise duty on electricity when electricity was chargeable to Excise at rate of 2 paise per KWH under item No. 11-E of CET and under Section 3 of Central Excise and Salt Act, 1944. Similarly in the case TAT YODOGAWA LTD. Versus UNION OF INDIA AND OTHERS reported in ELT - 1986 (25) E.L.T. 644 (Patna) determined

Electricity as manufactured goods and was rightly covered under item 11E of Central Excise Tariff Act, 1944.

6.3 In view of this, the "Electricity" was an excisable goods & the process of generation of electricity was manufacturing process & rightly qualify in the definition of manufacture, as defined under Sec-2(f) of the Central Excise Act. Further, as no Central Excise Duty was levied on the same (i.e. wholly exempted), it fits into the definition of "Exempted goods" given under Rule 2(d) of Cenvat Credit Rules, 2004.

7.1 From above discussion it appeared that Electricity, during the material time, was to be treated as `Exempted Excisable Goods'. Therefore, it appeared that M/s UTCL(GCW) manufactured both the dutiable excisable goods (Clinker / Cement) and Exempted goods (Electricity) and also availed Cenvat Credit on input and input services utilized for manufacture of both dutiable and exempted goods. In case of manufacturer manufacturing both exempt and dutiable goods and the inputs and input services were used partly for manufacture of dutiable goods and partly for exempted goods, then provisions of Rule-6 of Cenvat Credit Rules,2004 were applicable. As per Rule -6 of Cenvat Credit Rules,2004 manufacturer has following option as mentioned below:

a. Maintain separate inventory and accounts of receipt and use of input and input services used for dutiable and exempted goods - **Rule 6(2) of Cenvat Credit Rules.**

b. Pay amount equal to 5% / 8% of value of exempted goods - **Rule 6(3)(i) of Cenvat Credit Rules.**

c. Pay an amount equal to proportionate Cenvat Credit attributable to exempted goods subject to condition and procedures specified in sub-rule 6 (3A) -**Rule 6(3)(ii) of Cenvat Credit Rules**

d. Maintain separate accounts for inputs and pay `amount' as determined under Rule 6(3A) in respect of input services -**Rule 6(3)(iii) of Cenvat Credit Rules.**

The option (d) was inserted w.e.f 01.04.2011 and all other options i.e. a, b & c as mentioned above are applicable from 01.4.2008.

7.2 Further vide Circular No. 868/6/2008-CX dated 9th May,2008, Board had clarified in regards of amendments in the Cenvat Credit Rules,2004 w.e.f 01.04.2009.The clarification read as under :

"In the budget 2008-09, certain amendments have been carried out in the CENVAT Credit Rules, 2004. Rule 6 of CENVAT Credit Rules, 2004 pertains to an assessee who manufactures dutiable and exempted goods and provision of taxable and exempted services. As a general principle, CENVAT credit is not allowed on input or input service used for the manufacture of exempted goods or provision of exempted services [refer Rule 6(1)]. Exception to Rule 6(1) is contained in rules 6(3), 6(5) and 6(6).

Rule 6(2) :Provides facility to an assessee to maintain separate Cenvat credit account for dutiable and exempted goods or services (hereinafter referred to as outputs) and take credit only on inputs and input services meant for use in dutiable outputs.

Rule 6(3): Pertains to an assessee opting not to maintain separate Cenvat credit accounts for dutiable and exempted outputs. Such assessee has to opt for one of the following two options:

(i) Pay an amount equal to 10% of the value of the exempted goods or 8% of the value of the exempted services. Exempted service includes non-taxable service also.

OR

(ii) Pay an amount equivalent to the CENVAT credit attributable to inputs and input services used in or in relation to manufacture of exempted goods or for provision of exempted services. Rule 6(3A) prescribes the conditions and procedure to determine the amount of CENVAT credit attributable to exempted outputs. Schemes under rule 6(3) are optional and each individual scheme is comprehensive and self-contained. An assessee can exercise the option in relation to all his activities as an assessee and the option was not available only in relation to a part of his activity and the option once exercised cannot be withdrawn during the said financial year.

2. Requests have been received from various trade and industry associations seeking clarifications on certain doubts relating to these amendments. Similar references have also been received from field formations. For the sake of uniformity in practice and removal of doubts, following clarifications are issued in respect of queries received in this regard:

	Question	*Answer*
1.	*Whether an assessee availing option (i) or option (ii) under rule 6(3) is allowed to take CENVAT Credit of duty paid on inputs and input services which are used for both dutiable and exempted goods or services.*	*Yes, credit on such inputs and input services is allowed. However, an assessee following option (i) or (ii) under rule 6(3) shall not be allowed to take CENVAT credit of duty paid on those inputs and input services which are used exclusively for the manufacture of exempted goods or provision of exempted services [refer Explanation II of rule 6(3)].* *For the purpose of the calculation of amount under formula given under rule 6(3A), the total CENVAT credit taken on inputs and input services does not include excise duty paid on inputs or service tax paid on input services which are used exclusively for the manufacture of exempted goods or provision of exempted services.*
2.	*Whether an assessee availing option (i) in respect of certain exempted goods/services can also avail option (ii) in respect of other exempted goods or services simultaneously?*	*An assessee opting for either of the option is required to avail the said option for all the exempted goods manufactured by him and all the exempted services provided by him and the option once exercised during a financial year (F.Y.) cannot be withdrawn during the remaining part of the FY. Therefore, the same assessee cannot avail both option (i) and option (ii) simultaneously during a financial year. [Explanation I to Rule 6(3)].*
3.	*Assessee opting for option (i) is required to pay an amount equivalent to 10% of value of exempted goods or 8% of value of exempted services. What is the scope of term "value" for the said purpose*	*Value of the exempted goods is the transaction value as determined in terms of section 4 of the Central Excise Act, 1944 or value determined under section 4A. However, in case of goods chargeable to specific rate of duty, the value, shall be the transaction value to be determined under section 4. Value of the exempted service is the gross amount charged for providing the exempted service [without abatement].*

From the said circular as narrated above it appeared as under :

a. Maintain separate inventory and accounts of receipt and use of input and input services used for dutiable and exempted goods - **Rule 6(2) of Cenvat Credit Rules.**

b. Pay amount equal to 8% /5% of value of exempted goods - Rule 6(3)(i) of Cenvat Credit Rules.

c. Pay an amount equal to proportionate Cenvat Credit attributable to exempted goods subject to condition and procedures specified in sub-rule 6 (3A) – **Rule 6(3)(ii) of Cenvat Credit Rules.**

d. The value of exempted excisable goods is to be determined under Section 4 /Section 4 A for calculation of an amount under Rule 6(3) (i) of Cenvat Credit Rules,2004.

7.3 From the facts of the case as narrated above it appeared that M/s UTCL(GCW) had not maintained separate account of receipt consumption and inventory of inputs and receipt and use of input services used for exempted and dutiable goods as required under Rule 6(2) of Cenvat Credit Rules,2004. Also M/s UTCL(GCW) had not filed any option under Rule 6(3A) of Cenvat Credit Rules and not followed the condition and procedures as mentioned in Rule 6(3A) of Cenvat Credit Rules, therefore M/s UTCL(GCW) were ineligible to make the payment of an amount proportionate to Cenvat Credit attributable in exempted goods as per Rule 6(3)(ii) of Cenvat Credit Rules,2004. The proportionate reversal of Inputs of Rs. 3,31,40,570 so carried out for the period 2009-10 & 2010-11 were after initiation of the enquiry by the DGCEI officers and without following the procedure so laid under Rule 6(3A) of Cenvat Credit Rules. Also as per the formula given under Rule 6(3A) read with Rule 6(3)(ii) of Cenvat Credit Rules in regards of proportionate cenvat credit reversal of input services to be reversed it appeared that M/s UTCI(GCW) had actually reversed less amount of proportionate Cenvat Credit on Input Services so availed in relation to exempted goods i.e. electricity. The details were given at Para 4.9 (d) above. The amount of actual reversal and amount reversible so calculated as per Rule 6(3)(ii) read with 6(3A) was as under:

Year	Amount of proportionate Cenvat Credit of Input services actually reversed by M / s UTCL(GCW)	Proportionate Cenvat Credit of Input Services so calculated after taking into Consideration formula given in Rule-6(3A)read with Rule 6(3)(ii), required to be reversed	Difference/ short I reversal on input services in terms of Rule 6(3)(ii) of CCR
2009-10	19,40,201	81,54,685	62,14,484
2010-11	22,47,597	82,59,933	60,12,336
2011-12	26,84,283	94,28,843	67,44,560
TOTAL	68,72,081	2,58,43,461	**1,89,71,380**

7.4 Further during the period 2011-12, M/s UTCL(GCW) **had not** reversed the proportionate cenvat credit availed on inputs in respect of electricity so wheeled out to sister units viz,their Jafrabad works and Magdalla works but they had reversed the input and input service credits proportionate to electricity sold to Indian Energy Exchange alone. During this period M/s UTCL(GCW) appeared to have claimed wrongly that electricity wheeled out to sister units by them and its consumption by the sister units was also covered under the category of captive use of electricity generated by it (as if consumed Within the factory of its generation) on the grounds of definition of inputs (Rule 2(K) of Cenvat Credit Rules, 2004) inserted by notification No. 3/2011

w.e.f. 01.04.2011. It was settled law that captive use means consumption within the factory of production for manufacture of final product. Therefore, the assessee was entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which they were using the produced electricity within their factory (for captive consumption).The important point to be noted was that in the present case excess electricity had been cleared by the assessee to their sister units located at Jafrabad and Magdalla at the agreed rate during the material time. They were not entitled to *CENVAT* credit to the extent of the excess electricity cleared/wheeled/sold including to sister units which were not located in the same premises and separately registered with the central excise authorities for carrying their manufacturing activities. It therefore appeared that during the period 2011-12 as well they had neither opted and maintained separate accounts as prescribed under Rule 6 (2) of the cenvat credit Rules nor followed the procedure laid down under Rule 6(3)of the said Rules. However, not only did they avail the credits but also utilized the same in discharging the central excise duty leviable on their finished excisable goods and where as they had failed to reverse/pay the credit availed on inputs and input services either prior to or at the time of clearance of exempted goods i.e. electricity or even at the end of each month on regular basis, and therefore the amount payable under sub-rule (3)or (3A) of Rule 6 of the CCR,2004 shall be recovered in the manner provided in Rule 14, for recovery of CENVAT credit wrongly taken.

7.5 In the instant case M/s UTCL(GCW), their Jafrabad works and Magdalla works even though belonging to same group company M/s UTCL as a whole but each of the said companies were located in distant different places, each having separate Central Excise Registration and for Central Excise purpose it cannot be treated as same factory and therefore the clearances /wheeling of electricity to their Jafrabad works and their Magdalla works cannot be treated as captive use. All the said explanation conclude that M/s UTCL(GCW) had not followed the procedures mentioned in Rule 6(3)(ii) of Cenvat Credit Rules,2004. Also as no separate accounts in respect of inputs and input services utilized for manufacture of dutiable and exempted products were maintained and proportionate cenvat credit on input services was not calculated and reversed as mentioned under Rule 6(3A) of Cenvat Credit Rules,2004,so the provisions of Rules 6(3) (iii) of Cenvat Credit Rules,2004 were not applicable to M/s UTCL(GCW). From the above explanation it could be concluded that M/s UTCL(GCW) had not followed the procedures and conditions laid down so making them debarred from the applicability of Rule 6(3)(ii) and 6(3)(iii) of Cenvat Credit Rules,2004.In view of the above discussion it appears that **M/s UTCL(GCW) were required to pay an amount equal to @8% (for period 01.04.2008 to 07.07.2009) and @5%(for period 07.07.2009 to 31.03.2012) of value of exempted goods (electricity) in terms of Rule - 6(3)(i) of Cenvat Credit Rules,2004.**

7.6 Vide letter dated 03.12.2011, 25.04.2012,1 0.05.2012 and 23.05.2012, M/s Utcl(GCW) supplied the information about number of units of electricity wheeled out and sold and value thereof. The value for the wheeled out units as mentioned in the said letter was cost of production. The Explanation -I to the Rule 6 of Cenvat Credit Rules, 2004 which reads as under :-

> *"Value for the purpose of sub rules(3) and (3A), unless specified otherwise, shall have meaning assigned to it under Section 67 of Finance Act, 1944 read with Rules made there under or, as the case may be, the value determined under section -4 or 4A of Central Excise Act, 1944 read with rules made there under."* As per the said Explanation, the valuation of electricity wheeled out is required to be carried out in terms of Section-4 of Central Excise Act, 1944 and Rules made there under. The electricity wheeled out is cleared to the sister units i.e their Jafrabad works, their Magdalla works and for use in the Colony of M/s UTCL (GCW), which belong to the M/s Ultratech Cement Limited group and therefore related to M/s UTCL(GCW). As M/s UTCL(GCW) have cleared the electricity to related person the valuation of such electricity is required to be done in terms of Rule -4 of Central Excise Valuation (Determination of Price of Excisable Goods Rules,2000 i.e. on basis of comparable value of such goods sold to independent buyer at the time nearest of the time of removal to related person. Therefore, the rate at which the electricity was sold during the month is taken into consideration for the calculation of the value of electricity wheeled out to sister unit i.e. their Jafrabad works, their Magdalla works and for power cleared and consumed in the colony of M/s UTCL(GCW). After considering the said rate as determined as per Explanation -I to Rule 6 of Cenvat Credit Rules,2004 and value of electricity so sold, wheeled out and utilized in the colony of M/s UTCL(GCW) is determined and the amount @ 8 %/ 5 % so payable by M/s UTCL (

GCW) for the period **April-2008 to March2012** is calculated in terms of Rule-6(3)(i) of Cenvat Credit Rules,2004 as **detailed in Annexure-I** enclosed to the show cause notice. from the said **Annexure-I** it is seen that as per Rule-6(3)(i),for the period April-2008 to March-2012,M/s UTCL(GCW) were required to pay an amount equal to **Rs.8,60,82,289/-.** Against the said liability as discussed above as per general practice, M / s UTCL(GCW) had paid / reversed the following cenvat credit so availed:

Year	Proportionate Input Credit Reversed	Proportionate Input Service credit reversed	TOTAL
2009-10	9998326	1940201	11938527
2010-11	23142117	2247597	25389714
2011-12	3067293	2684283	5751576
TOTAL	36207736	6872081	**43079817**

Out of the above reversal of Rs 4,30,79,817, the reversal of Input credit of Rs 3,28,87,779/- and Rs 2,52,791/- (totaling to Rs. 3,31,40,570/-) and Input Service Tax credit of Rs 15,72,094/- (GTA), so made in May,2011 was in a lump sum for the period 2009-10 & 2010-11 as mentioned above and was only after initiation of inquiry by the DGCEI officers. Also in respect of delayed reversal/s UTCL (GCW) had paid an interest of Rs. 45,53,407/- and Rs. 2,21,787/-(total Rs. 47,75,194/-). They have made such payments towards admitted liability and interest thereon vide e-payment challans dated 03-05-2011,12-05-2011,13-05-2011 and 30-6-2011. Also while making the interest payment in respect of such delayed payments, it was seen that interest was calculated @ 13% and @ 18% as the case may be which appeared to be incorrect in as much as the statutorily prescribed rate of interest in case of proportionate reversal of Input/input-service credit is @24% as per the provisions of Rule 6 (3A) of Cenvat Credit Rules, 2004 and the interest amount so required to be paid by M/s.UTCL (GCW) on such delayed reversal **@24% would have been Rs. 84,66,418/-**. However, as far as input credits alone was concerned, even though the proportionate credit amount as reversed by the assessee for the period 2009-10 and 2010-11 and calculation and reversal amount as may be worked out in terms of Rule 6(3A) of the CCR,2004 were on par as yet, there was **short payment of interest of Rs. 39,13,011/-** (i.e. Rs. 84,66,418/- - Rs. 45,53,407), which was otherwise recoverable but for the subject investigation and issuance of this Show cause cum demand Notice.

7.7 Further, as per the decision reported in ELT -1996 (81) E.L.T. 3 (S.C.) in case of CHANDRAPUR MAGNET WIRES (P) LTD. Versus COLLECTOR OF C. EXCISE, NAGPUR, with respect to the similar provisions of Rule 57 CC then in existence, it has been interpreted there in that - in case, if the credit was availed on common inputs, the credit to the extent of inputs utilized for the manufacture of exempted goods should be reversed before removal of the exempted goods and not after removal of goods from the factory. To clarify the decision & to bring in to force the interpretation of the said decision, and for reversal of such credits availed or utilized in exempted goods, the board had issued Circular No- 232/66/96 dated 25/7/1996 and laid down the procedure of reversal of Credit to be followed & of furnishing of the Statement/ Return in this regard. If the rules were read with the decision, it appeared to be clear that reversal of Cenvat Credit availed on goods utilized for the manufacture of exempted goods was required to be made before or at the time of clearances of the said goods. The said procedure also was not followed by M/s UTCL(GCW) as proportionate credit on input and input services was reversed years after the removal of electricity and that too after initiation of enquiry by the DGCEI officers.

8. From the facts narrated above, there appeared to be a violation of provisions and conditions of Rule 6(2) & Rule 6(3) of CENVAT Credit Rules, 2004 due to which there had been non-payment of an amount equal to 8% / 5% of the price of Exempted goods as per Rule 6(3)(i) of Cenvat Credit Rules, 2004, which was calculated and detailed at **Annexure-I** and was worked out to **Rs. 8,60,82,289/-**. The said amount of **Rs. 8,60,82,289/-** was recoverable as per Rule-14 of Cenvat Credit Rules, 2004 read with Section 11 A(4) of the Central Excise Act, 1944.

9. The investigations further revealed that Shri Satish Jain, (noticee No.2) Manager Finance and Accounts of M/s UTCL(GCW), appeared to be the person responsible for availment and utilization of the subject inadmissible credits. He was one of the Authorized signatory of the