The CENVAT Credit Rules, 2004

In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), and in supersession of the CENVAT Credit Rules, 2002 and Service Tax Credit Rules, 2002, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

Rule 1. Short title, extent and commencement.-
(1) These rules may be called the CENVAT Credit Rules, 2004.
(2) They extend to the whole of India:

Provided that nothing contained in these rules relating to availment and utilization of credit of service tax shall apply to the State of Jammu and Kashmir

(3) They shall come into force on the -------------.

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

(a) "Act" means the Central Excise Act, 1944 (1 of 1944);

(b) "capital goods" means,-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act;

(ii) pollution control equipment

(iii) components, spares and accessories of the goods specified at (i) and (ii) above;

(iv) moulds and dies;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used-

(a) in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office; or

(b) for providing output service;

(c) "Customs Tariff Act" means the Customs Tariff Act, 1975 (51 of 1975);

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

(d1) “exempted services” means taxable services which are exempt from the whole of the service tax leviable thereon, and includes services on which no service tax is leviable under the Service Tax Act;
(d2) “export of services” shall have the meaning assigned to it in Service Tax Rules, 1994;
(e) “final products” means excisable goods manufactured or produced from inputs;
(f) “first stage dealer” means a dealer who purchases the goods directly from,-

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

(g) “input” means-

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

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

(iii) motor vehicles for providing output service as specified in sub-clauses (f), (n), (o) and (zzp) of clause (105) of section 65 of the Service Tax Act;

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

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

(g1) “input service” means any service

(i) received and consumed by a service provider in relation to providing an output service; or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,;

Explanation.- Input service includes services used in relation to setting up a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, procurement of inputs, activities relating to management of business, such as accounting, auditing, financing, recruitment and quality control.

(i) "notification" means the notification published in the Official Gazette;
(i1) "output service" means any taxable service rendered by the service provider to a customer, client, subscriber, policy holder or any other person, as the case may be;
(i2) "input service distributor" means an office managing the business of manufacturer or producer of final products or provider of output service, which receives invoices issued under the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or challan for the purposes of distributing the credit of service tax paid on the said services to such manufacturer or producer or provider, as the case may be;
(i3) "Service Tax Chapters" means Chapter V and Chapter VA of the Finance Act, 1994 (32 of 1994);
(j) "Tariff Act" means the Central Excise Tariff Act, 1985 (5 of 1986);
(k) "second stage dealer" means a dealer who purchases the goods from a first stage dealer;
(l) words and expressions used in these rules and not defined but defined in the Act or the Service Tax Chapters shall have the meanings respectively assigned to them in the Act or the Service Tax Chapters, as the case may be.

Rule 3. CENVAT credit.-
(1) A manufacturer or producer of final products and a provider of output service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;
(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;
(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act,1978 (40 of 1978);

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

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004);

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

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

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

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

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

paid on-

(i) any inputs or capital goods received in the factory or premises of the provider of output service or input service distributor on or after the------------2004; and

(ii) any input service received on or after------2004,

including the said duties, or tax, paid on any inputs or input services, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86- Central Excise, dated the 25th March, 1986, published *vide* number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the---------2004.

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

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

(2a) Notwithstanding anything contained in sub-rule (1), in relation to a service which ceases to be an exempted service, the provider of the said service shall be allowed to take CENVAT credit of the duty paid on the inputs received on or after the date on which the said service ceases to be an exempted service.

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

a. any duty of excise on any final product; or

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

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

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

e. service tax on any output service:

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

Provided further that the CENVAT credit of the duty, or service tax, paid on the inputs, or input services, used in the manufacture of final products cleared after availing of the exemption under the notification of Government of India in the Ministry of Finance (Department of Revenue) numbers

(i) 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated 8th July, 1999];

(ii) 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated 8th July, 1999];

(iii) 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001];

(iv) 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated the 14th November, 2002];

(v) 57/2002-Central Excise, dated 14th November, 2002 [G.S.R. 765(E), dated the 14th November, 2002];

(vi) 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003]; and

(vii) 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717 (E), dated the 9th September, 2003],

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

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

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

Provided further that such payment shall not be required to be made when any capital goods are removed outside the premises of the premises of the provider of output service for providing the output service and the capital goods are brought back to the premises within 90 days of their removal.

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

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

(a) CENVAT credit in respect of inputs or capital goods produced or manufactured,-

(i) by a hundred per cent. export-oriented undertaking or by a unit in an Electronic Hardware Technology Park or in a Software Technology Park other than a unit which pays excise duty levied under section3 of the Act read with serial numbers 3,5, 6 and 7 of notification No. 23/2003-Central Excise, dated the 31st March, 2003, {G.S.R. 266(E), dated the 31st March, 2003}and used in the manufacture of the final products or in providing an output service, in any other place in India, in case the unit pays excise duty under section 3 of the Act read with serial number 2 of the notification No. 23/2003-Central Excise, dated the 31st March, 2003, [G.S.R. 266(E), dated the 31st March, 2003], shall be admissible equivalent to the amount calculated in the following manner, namely:-

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

(ii) in a Special Economic Zone, and used in the manufacture of the final products or in providing an output service, in any other place in India, shall be admissible equivalent to the amount calculated in the following manner, namely:-

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

(b) CENVAT credit in respect of

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

(ii) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004);

(iii) the Education Cess on excisable goods leviable under section ----- read with section----of the Finance (No.2) Act, 2004 (---of 2004) ;

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

(v) the additional duty of excise leviable under Section 157 of the Finance Act, 2003 (32 of 2003);and

(vi) the Education Cess on taxable services leviable under section ----- read with section----of the Finance (No.2) Act, 2004 (---of 2004),

shall be utilised only towards payment of duty of excise leviable under the said Additional Duties of Excise (Textiles and Textile Articles) Act, or the the National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001, as amended by Section 169 of the Finance Act, 2003 which was amended by Section 3 of the Finance Act, 2004, or the Education Cess on excisable goods leviable under section----read with section----of the Finance (No.2)Act, 2004, , the Education Cess on taxable services leviable under section-----read with section----of Finance (No.2) Act, 2004 (----of 2004), respectively, on any final products manufactured by the manufacturer or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed or any output service.

Explanation.- For removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule of the Central Excise tariff Act Act, 1985 (5 of 1986);

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

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

Rule 4. Conditions for allowing CENVAT credit.-

(1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer or in the premises of the provider of output service or input service distributor :

(2) (a) The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service or input service distributor at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent. of the duty paid on such capital goods in the same financial year:

Provided that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if the said capital goods are cleared as such in the same financial year.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, or in the premises of the provider of output service or input service distributor, if the capital goods, other than components, spares and accessories, refractories and refractory materials, moulds and dies and goods falling under heading No. 68.02 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act, are in the possession of the manufacturer of final products or provider of output service in such subsequent years.

Illustration.- A manufacturer received machinery on April 16, 2002 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit upto a maximum of one lakh rupees in the financial year 2002-2003, and the balance in subsequent years.

(3) The CENVAT credit in respect of the capital goods shall be allowed to a manufacturer or provider of output service or input service distributor even if the capital goods are acquired by him on lease, hire purchase or loan agreement, from a financing company.
(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer or provider of output service or input service distributor claims as depreciation under section 32 of the Income-tax Act, 1961(43 of 1961).

(4a) The CENVAT credit in respect of input service shall not be allowed in respect of that part of the value of input service which represents the amount of service tax on such input services, which the manufacturer or provider of output service or input service distributor claims as deduction under the relevant provisions of the Income-tax Act, 1961(43 of 1961).
(5) (a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service or input service distributor taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or provider of output service or input service distributor shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service or input service distributor can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the output service provider or input service distributor.
(b) The CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications.
(6) The Commissioner of Central Excise having jurisdiction over the factory of the manufacturer of the final products who has sent the inputs or partially processed inputs outside his factory to a job-worker may, by an order, which shall be valid for a financial year, in respect of removal of such inputs or partially processed inputs, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow final products to be cleared from the premises of the job-worker.

(7) The CENVAT credit in respect of input services shall be allowed, on or after the day on which payment is made of the value of input service and the service tax paid or payable as indicated in invoice or bill or challan referred to in rule 7.

Rule 5. Refund of CENVAT credit.- Where any inputs or input services are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, or used in providing output services which are exported, the CENVAT credit in respect of the inputs or input services so used shall be allowed to be utilized by the manufacturer towards payment of ,

(i) duty of excise on any final products cleared for home consumption or for export on payment of duty; or
(ii) service tax on output service

and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification:

Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002 or of service tax under Service Tax Rules, 1994, in respect of such duty or tax.

Rule 6. Obligation of manufacturer of dutiable and exempted goods.-
(1) The CENVAT credit shall not be allowed on such quantity of inputs or input services which is used in the manufacture of exempted goods or exempted services.

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

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

(a) if the exempted goods are-

(i) goods falling within heading No. 22.04 of the First Schedule to the Tariff Act;

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

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

(iv) Omitted.

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

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

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

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

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

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

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

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

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

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

(c) the provider of output service shall pay an amount equal to five per cent. of the gross amount charged for the exempted services.

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

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

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

(4a) Notwithstanding anything contained in sub-rules (1), (2) or (3), credit of the whole of service tax paid on following input services shall be allowed, except when these are used exclusively in or in relation to the manufacture of exempted goods or providing exempted services, namely, taxable services as specified in sub-clauses (g), (p), (q), (r), (v), (zzd), (zzh), (zzi), (zzq) and (zzr) of clause (105) of section 65 of the Service Tax Chapters.

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

(i) cleared to a unit in a free trade zone; or

(ii) cleared to a unit in a special economic zone; or

(iii) cleared to a hundred per cent. export-oriented undertaking; or cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995, number G. S R. 602 (E), dated the 28th August, 1995; or

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.

(vii) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.

6A. Storage of inputs outside the factory of the manufacturer: The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer of the final products may, in exceptional circumstances having regard to the nature of the goods and shortage of storage space at the premises of such manufacturer, by an order, permit such manufacturer to store the inputs in respect of which CENVAT credit has been taken, outside such factory, subject to such limitations and conditions as he may specify:

Provided that where such inputs are not used in the manner prescribed in these rules for any reason whatsoever, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs.

Rule 7. Documents and accounts.- (1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, in terms of the provisions of Central Excise Rules, 2002;

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty of customs leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Act or of the Customs Act, 1962 or the rules made thereunder with intent to evade payment of duty.

Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include Challan or any other similar document

evidencing payment of additional amount of additional duty of customs leviable under section 3 of the Customs Tariff Act;
(c) a bill of entry;
(d) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office.
(f) a challan, referred to in rule 8A.
(g) an invoice or bill or challan issued by a provider of input service on or after the ---th --- day of ---- 2004.
(h) an invoice issued by a input service distributor;
(1A) CENVAT credit under rule 3 shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty or service tax, description of the goods or taxable service, assessable value, name and address of the factory or warehouse or provider of input service:

Provided that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of a manufacturer or provider of output service or input service distributor intending to take CENVAT credit is satisfied that duty or service tax due on the inputs or input services has been paid and such inputs or input services have actually been used or are to be used in the manufacture of final products or provision of output services, and such Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall record the reasons for not denying the credit in each case.

(2) The manufacturer or producer or provider of output service or input service distributor taking CENVAT credit on inputs or capital goods or input services shall take all reasonable steps to ensure that the inputs or capital goods or input services in respect of which he has taken the CENVAT credit are goods or services on which the appropriate duty of excise or service tax as indicated in the documents accompanying the goods or relating to input services, has been paid.
Explanation.- The manufacturer or producer or provider of output service or input service distributor taking CENVAT credit on inputs or capital goods or input services received by him shall be deemed to have taken reasonable steps if he satisfies himself about the identity and address of the manufacturer or supplier or provider of input service, as the case may be, issuing the documents specified in rule 7, evidencing the payment of excise duty or the additional duty of customs or service tax, as the case may be, either-

(a) from his personal knowledge; or

(b) on the strength of a certificate given by a person with whose handwriting or signature he is familiar; or

(c) on the strength of a certificate issued to the manufacturer or the supplier, as the case may be, by the Superintendent of Central Excise within whose jurisdiction such manufacturer has his factory or the supplier has his place of business,

and where the identity and address of the manufacturer or the supplier or the provider of input service is satisfied on the strength of a certificate, the manufacturer or producer or provider of output service or input service distributor taking CENVAT credit shall retain such certificate for production before the Central Excise Officer on demand.

(3) The CENVAT credit in respect of inputs or capital goods purchased from a first stage or second stage dealer shall be allowed only if such dealer has maintained records indicating the fact that the inputs or capital goods were supplied from the stock on which duty was paid by the producer of such inputs or capital goods and only an amount of such duty on pro rata basis has been indicated in the invoice issued by him.

(3a) The CENVAT credit in respect of input services received from a input service distributor shall be allowed only if such distributor has maintained records indicating the fact that the service tax credit distributed does not exceed the credit of service tax availed by him.

(4) The manufacturer of final products or the provider of output service shall maintain proper records for the receipt, disposal, consumption and inventory of the inputs and capital goods in which the relevant information regarding the value, duty paid, the person from whom the inputs or capital goods have been procured is recorded and the burden of proof regarding the admissibility of the CENVAT credit shall lie upon the manufacturer or provider of output service taking such credit.

(4a) The manufacturer of final products or the provider of output service or input service distributor availing CENVAT credit on input services shall maintain proper records in which the relevant information regarding the Sl. No. and date of document on which CENVAT credit is availed, service tax registration No. and name of the input service provider, description and value of input service, service tax credit availed, service tax credit utilized for payment of service tax on output service or utilized for distributing such credit shall be recorded. The burden of proof regarding the admissibility of CENVAT credit shall lie upon the person taking such credit.

(5) The manufacturer of final products shall submit within ten days from the close of each month to the Superintendent of Central Excise, a monthly return in the form specified, by notification, by the Board:

Provided that where a manufacturer is availing exemption under a notification based on the value or quantity of clearances in a financial year, he shall file a quarterly return in the form specified by notification by the Board within twenty days after the close of the quarter to which the return relates.

(6) A first stage or a second stage dealer, as the case may be, shall submit within fifteen days from the close of each quarter of a year to the Superintendent of Central Excise, a return in the form specified by notification by the Board.

(6a) The output service provider or input service distributor, as the case may be, availing CENVAT credit, shall submit within fifteen days from the close of each half-year to the Superintendent of Central Excise, a return in form specified by notification by the Board.

Rule 8. Transfer of CENVAT credit.- (1) If a manufacturer of the final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then, the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated factory.

(1a) If a provider of output service shifts or transfers his business on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the provider of output service shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, leased or amalgamated business.

(2) The transfer of the CENVAT credit under sub-rule (1) shall be allowed only if the stock of inputs as such or in process, or the capital goods is also transferred alongwith the factory or business to the new site or ownership and the inputs, or capital goods, on which credit has been availed of are duly accounted for to the satisfaction of the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be.

Rule 9. Transitional provision.-

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2002, as they existed prior to the ----day of ---2004 or by a provider of output service under the Service Tax Credit Rules, 2002, as they existed prior to the ----day of ---2004, and remaining unutilised on that day shall be allowable as CENVAT credit to such

manufacturer or provider of output service under these rules, and be allowed to be utilised in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or input services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

RULE 10. **Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim-** Notwithstanding anything contained in these rules, where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99- Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99- Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs No.56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002]or notification No.57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513 (E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R.717 (E), dated the 9th September, 2003, the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.

Rule 11. Power of Central Government to notify goods for deemed CENVAT credit.- Notwithstanding anything contained in rule 3, the Central Government may, by notification declare the inputs or inout services on which the duties of excise, or additional duty of customs or service tax paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow CENVAT credit of such duty or tax deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if, in the case of inputs, the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products.

12. Recovery of CENVAT credit wrongly taken or erroneously refunded.- Where the CENVAT credit has been taken or utilised wrongly or has been erroneously refunded, the same along with interest shall be recovered from the manufacturer and the provisions of sections 11A and 11AB of the Act and sections 73 and 75 of the Service Tax Act, shall apply *mutatis mutandis* for effecting such recoveries.

Rule 13. Confiscation and penalty.-(1) If any person, takes CENVAT credit in respect of inputs or capital goods or input services, wrongly or without taking reasonable steps to ensure that appropriate duty on the said inputs or capital goods or appropriate service tax on the said input services has been paid as indicated in the document accompanying the inputs or capital goods or input services specified in rule 7, or contravenes any of the provisions of these rules in respect of any inputs or capital goods or input services, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention has been committed, or ten thousand rupees, whichever is greater.

(2) In a case, where the CENVAT credit has been taken or utilized wrongly on account of

(i) fraud,

(ii) willful mis-statement,

(iii) collusion or

(iv) suppression of facts, or

(v) contravention of any of the provisions of the Act or the rules made thereunder with intention to evade payment of duty,

then, the manufacturer and provider of output service shall also be liable to pay penalty in terms of the provisions of section 11AC of the Act and section 78 of the Service Tax Act, respectively.

(3) Any order under sub-rule (1) or sub-rule (2) shall be issued by the Central Excise Officer following the principles of natural justice.

Rule 14. Supplementary provision.- Any notification, circular, instruction, standing order, trade notice or other order issued under the CENVAT Credit Rules, 2002 or Service Tax Credit Rules, 2002, by the

Board, the Chief Commissioner or the Commissioner of Central Excise, and in force as on----day of --- 2004, shall, to the extent it is relevant and consistent with these rules, be deemed to be valid and issued under the corresponding provisions of these rules.