CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Appeal No. E/652/2012 -[DB]

(Arising out of Order-in-Original No. 16/Commr/PKL/2011 dated 15.12.2011 passed by the Commissioner, Panchkula)

M/s Modern Dairies Ltd. (Unit-II) **......Appellant**
(136, KM. G.T. Road, Karnal Haryana)

VERSUS

Commissioner of Central Excise & S.T. Panchkula **......Respondent**
(SCO No. 407 and 408, Sector 8, Panchkula, (Haryana) 134119)

<u>APPEARANCE:</u>

Ms. Krati Somani, Advocate for the Appellant

Shri Vijay Gupta, Authorised Representative for the Respondent

<u>CORAM:</u> **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**
HON'BLE MR. BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60697 of 2019

DATE OF HEARING: 21.05.2019
DATE OF DECISION: 21.05.2019

PER ASHOK JINDAL:

This appeal was disposed off vide Final Order No. 62636/2018 dated 05.07.2018 on merits allowing the Cenvat credit allowed to the appellants. While deciding the appeal, this Tribunal failed to decide the issue of demand of interest and penalty for denial of Cenvat credit of Rs. 17,67,816/- therefore, vide Miscellaneous Order No.60155/2019 dated 01.04.2019, this Tribunal allowed the application for rectification of mistake with regard to the issue whether interest and penalty can be remanded on the appellant for denial of Rs. 17,67,816/- is to be decided by this Tribunal today.

2. Heard the parties.

3. Considering the fact that the appellant were having sufficient balance during the intervening period, therefore, they are not liable to pay interest for the intervening period in the light of the decision of the Hon'ble High Court of Karnataka in the case of ***Commissioner of C.Ex & S.T. Bangalore Vs. Bill Forge Pvt. Ltd. reported in 2012 (26) S.T.R. 204 (Kar.).***

4. We take note of the fact that initially the appellant availed Cenvat credit of Rs. 17,67,816/- as input as well as capital goods but on pointing out they have reversed the Cenvat credit excessly taken by them and were maintaining sufficient balance in their Cenvat credit account. In that circumstances, mala fides cannot be alleged against the appellant, therefore, no penalty is imposable on the appellant.

5. With these terms, the appeal is disposed of.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

kailash