**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH AT CHENNAI**

**Appeal No. E/00303/2010**

(Arising out of Order-in-Appeal No. 26/2010 dated 25.02.2010 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli)

M/s. Shree Ambika Sugars Ltd. : Appellant

Vs.

Commissioner of C.E. & S.T., LTU, Chennai : Respondent

Appearance:-

Shri. M. N. Bharathi, Advocate
for the Appellant

Shri. R. Subramaniyan, AC (AR)
for the Respondent

**CORAM:**

**Hon'ble Shri P Dinesha, Member (Judicial)**

Date of Hearing/Decision:**29.06.2018**

**Final Order No. 42074 / 2018**

The assessee is aggrieved by the findings of the Ld. Commissioner of Customs and Central Excise (Appeals), Tiruchirappalli, dt. 25.02.2010 whereby the Ld. Commissioner (Appeals) has upheld the levy of penalty and interest on the appellant on the credit availed wrongly on capital goods. The

Original Authority vide order dt. 07.10.2008 had demanded Rs. 8,01,826/- being excess credit taken on capital goods and had ordered appropriation of the same. Also, in the same order, the adjudicating authority has recorded a finding that by December 2007, the assessee had reversed the excess credit availed which was before the issuance of Show Cause Notice dt. 06.05.2008.

2. Heard Shri. M. N. Bharathi, Advocate for the appellant and Shri. R. Subramaniyan, learned Department Representative for the Revenue.

3. During the course of hearing, Ld. Advocate submits that the assessee has not filed any appeal against the order on merits, but they are only contesting the levy of penalty and interest. He further submits that on identical facts, this Bench of the Tribunal has decided an identical issue wherein it has been decided in favour of the assessee, by following the decision of jurisdictional High Court.

*4. Per contra*, Ld. DR supports the findings of the lower authorities.

5. I have considered the rival contentions and have gone through the orders placed on record. I find that this Bench in the case of *M/s. Lenovo India Pvt. Ltd. Vs. C.C.E. Puducherry in Final Order No.*

*41114/2018 dated 13.04.2018* has considered a similar issue and has ruled as under :

> *"5. The issue is whether the CENVAT credit availed wrongly and reversed subsequently without actually using it would attract interest or not. The said issue has been decided by the jurisdictional High Court in the case relied by the ld. counsel for the appellant wherein the Hon'ble High Court has observed that mere taking itself would not compel the assessee to pay interest as well as penalty. The relevant portion of the order is reproduced as under:-*
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> > *'11. It is an admitted fact that Rule 14 of the Cenvat Credit Rules has been subsequently amended, wherein it has been clearly stated as "taken and utilised". Therefore, it is quite clear that mere taking itself would not compel the assessee to pay interest as well as penalty. Further, as pointed out earlier, the subsequent amendment has given befitting answer to all doubts existed earlier. Since, the subsequent amendment has cleared all doubts existed earlier in respect of Rule 14 of the said Rules, it is needless to say that the argument advanced by the learned counsel appearing for the appellant/Department is erroneous, whereas the argument advanced on the side of the respondent is really having merit and the substantial questions of law settled in the present Civil Miscellaneous Appeal are not having substance and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.'*
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> *6. Respectfully following the decision of the Hon'ble High Court of Madras, we hold that the appellant is not liable to pay interest or penalty. The impugned order is set aside and the appeal is allowed with consequential relief, if any."*

6. By following the above order of this Bench, I set aside the penalty and interest confirmed by the Ld. Commissioner (Appeals). The appeal is, therefore, allowed.

(Operative part of the order was
pronounced in open Court)

**(P Dinesha)**
Member (Judicial)

Sdd