

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT MUMBAI  
COURT NO.**

**APPEAL No.E/933/2010**

(Arising out of Order-in-Original No.03-04/KLG/Th-II/10 dated 05/02/2010 passed by the Commissioner of Central Excise, Thane-II )

**Commissioner of Central Excise,  
Thane-II** : **Appellant**

**VS**

**Lavino Kapur Cotton Pvt. Ltd.** : **Respondent**

**Appearance**

Shri.D.S.Chavan, Supdt. (AR) for Appellant  
Shri.Girish Kalla, Advocate (A.R) for respondent

**CORAM:**

**Hon'ble Shri S K Mohanty, Member (Judicial)**  
**Hon'ble Shri P Anjani Kumar, Member (Technical)**

**Date of hearing : 21/08/2018**  
**Date of decision : 21/08/2018**

**ORDER NO. A/87494/2018**

***Per : Shri S K Mohanty***

1. Heard both sides and perused the records.
2. Revenue has assailed the impugned order dated 22.01.2010 on the ground that imposition of lesser amount of penalty under Rule 15(3) of the Cenvat Credit Rules, 2004 is not legal and proper. According to the Revenue, since the provisions of sub-rule (3) of Rule 15 of the Rules, 2004, had been invoked in the SCN, the adjudicating

authority has no option, but to impose mandatory penalty, which is equivalent to amount of disallowance of the Cenvat Credit.

3. On perusal of the case records, we find that against the adjudication order dated 22.01.2010, the respondent herein had also preferred appeal before the Tribunal. The appeal filed by the respondent was disposed of by the Tribunal vide order dated 24/01/2013, in setting aside the said original order passed by the adjudicating authority. Since the order dated 22.01.2010 has already been set aside by this Tribunal and the appeal filed by the present respondent (appellant therein) was allowed by the Tribunal, the appeal filed by the Revenue on the ground of imposition of lesser amount of penalty, cannot be sustained in the eyes of law in as much as the said adjudication order is not in existence and merged with the order dated 24.01.2013 of the Tribunal. Therefore, the appeal filed by the Revenue is dismissed.

(Pronounced and dictated in court )

**(P Anjani Kumar)**  
**Member (Technical)**

**(S K Mohanty)**  
**Member (Judicial)**

**PJ**