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**(2014) 02 MAD CK 0062**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal (MD) No. 62 of 2010

Commissioner of C. Ex.

APPELLANT

Vs

Strategic Engineering (P) Ltd.

RESPONDENT

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**Date of Decision :** 10-02-2014

**Acts Referred:**

**Citation :** (2014) 310 ELT 509

**Hon'ble Judges :** G. Chockalingam, J;A. Selvam, J

**Bench :** Division Bench

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## **Judgement**

A. Selvam, J.—The present Civil Miscellaneous Appeal has been directed against the Final Order passed in Final Order No. 808 of 2009, dated 3-7-2009 by the CESTAT. The respondent herein is the manufacturer of fibre glass and some other products and entitled to utilise CENVAT credit facilities. During the relevant period, the respondent has taken CENVAT credit facilities erroneously and the same has been reversed. Under the said circumstances, the respondent is bound to pay interest and penalty and for the purpose of claiming the same, show cause, notice dated 6-1-2005 has been issued. The demand made in the show cause notice has been upheld in Order-in-Original No. 37 of 2005. The Order-in-Original has been challenged before the Commissioner of Appeals. The Commissioner of Appeals has partly set aside penalty and reduced it from Rs. 1,20,000/- to Rs. 10,000/- and subsequently an appeal has been preferred before the CESTAT.

2. The CESTAT, after considering the rival contentions put forth on either side has allowed the appeal and thereby set aside the entire claim of the Department. Against the order passed by the CESTAT, the present Civil Miscellaneous Appeal has been filed at the instance of the Department as appellant.

3. At the time of admitting the present Civil Miscellaneous Appeal, the following substantial questions of law have been settled for consideration:--

"1. Whether interest is recoverable or not from the manufacturer in terms of Rule

12 of erstwhile CCR, 2002, and Rule 14 of CCR, 2004 when the CENVAT credit has been taken wrongly by the manufacturer but kept unutilized, when the said Rules specifically state that 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?

2. Whether penalty is imposable or not on the manufacturer in terms of Rule 13 of erstwhile CCR, 2002 and Rule 15 of CCR, 2004 when the CENVAT credit has been taken wrongly, when the said rules specifically states that in any person, takes CENVAT credit in respect of input or capital goods, wrongly or contravenes any of the provisions of these rules in respect of any input or capital goods, 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 inspect of which any contravention has been committed, or ten thousand rupees (as it stood at the material time), whichever is greater?"

4. The short point involved in the present Civil Miscellaneous Appeal is as to whether a mere taken of CENVAT credit facilities without actually using it, would carry interest as well as penalty?

5. The Appellate Tribunal has come to a definite conclusion to the effect that in the instant case the assessed has merely taken CENVAT credit facilities and before utilising the same, the Department has reversed it and therefore, the assessee is not liable to pay interest and penalty.

6. The learned counsel appearing for the appellant has contended elaborately that the reasoning given by the Appellate Authority for setting aside the order passed by the Authority is totally baseless and also against law. Under the said circumstances, the order passed by the Appellate Authority is liable to be set aside.

7. The entire argument put forth on the side of the appellant/Department is based upon the decision reported in Union of India (UOI) and Others Vs. Ind-Swift Laboratories Ltd., , wherein the Apex Court has given a finding to the effect that in Rule 14 of Cenvat Credit Rules, 2004 it has been clearly mentioned three stages, known as taken or utilization or erroneous refund. In the instant case, the first limb of Rule 14 of the said Rules is applicable and therefore, the assessee is bound to pay interest as well as penalty. The Honourable Apex Court has dealt with Rule 14 of the said Rules and subsequently on the basis of facts available in that case has given a finding to the effect that assessee therein is liable to pay interest as well as penalty.

8. The learned counsel appearing for the respondent has contended that the decision reported in Union of India (UOI) and Others Vs. Ind-Swift Laboratories Ltd., has been elaborately dealt with in the decision reported in The Commissioner of Central Excise and Service Tax Vs. Bill Forge Pvt. Ltd., .

9. In fact, this Court has perused the entire decision reported in The

Commissioner of Central Excise and Service Tax Vs. Bill Forge Pvt. Ltd., and ultimately found that mere taken of CENVAT credit facilities is not at all sufficient for claiming of interest as well as penalty.

10. It is an admitted fact that Rule 14 of the Cenvat Credit Rules as 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. In fine, this Civil Miscellaneous Appeal deserves dismissal and accordingly is dismissed without costs and the order passed in Final Order No. E/920/2006, dated 3-7-2009 is confirmed.