**(2010) 03 AHC CK 0081**

**In the Allahabad High Court**

Commissioner of Cus. and C. Ex. APPELLANT

Vs

Rana Sugar Ltd. RESPONDENT

**Date of Decision :** 29-03-2010

**Acts Referred:**

**Citation :** (2010) 253 ELT 366

**Hon'ble Judges :** Rajes Kumar, J;Pankaj Mithal, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. This is an appeal at the instance of the Revenue challenging the order of the Customs, Excise & Service Tax Appellate Tribunal, New Delhi dated 7-9-2009 in Excise Appeal No. 2085 of 2009 [2010 (249) E.L.T. 247 (Tri. -Del.)] raising following question:

Whether the interest is not recoverable under Rule 14 of the CENVAT Credit Rules, 2004 and penalty not imposable under Rule 15(1) of the CENVAT Credit Rules, 2004, if the inadmissible credit has been reversed before utilization?

2. We have gone through the order of the Tribunal. We do not find any error.

3. In the present case, the manufacturer has taken CENVAT Credit on the capital goods received for installation of their plant and machinery for the period from January, 2007 to February, 2007 for Rs. 89,41,540/-. Later on, it came to know that the Credit has been wrongly taken and, therefore, the manufacturer reversed the entry of the Credit and has not utilized such Credit for the payment of excise duty. However, the Central Excise Authority demanded the interest and also levied the penalty of Rs. 10 lacs on the allegation that CENVAT Credit has been wrongly taken. The matter came up for consideration before the Tribunal in appeal. The Tribunal has set aside the demand of the interest and the penalty on the ground that CENVAT Credit taken wrongly has been reversed and the same has not been utilized. Therefore, there is no question of any interest and penalty.

 

4. We do not find any error in the order of the Tribunal. The finding of the Tribunal is finding of fact and no question of law arises from the order of the Tribunal. Once before the issue of any show cause notice, the CENVAT Credit has been reversed and the same has not been utilized for the payment of excise duty, we are of the opinion that there is no question of demanding any interest and levying any penalty.

5. The appeal is devoid of merit and is accordingly dismissed.