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

Appeal No. E/85610/2017
E/CO/91069/2017
(Arising out of Order-in-Original No.30/NVK/COMMR/RGD/2016-17 dt. 30.12.2016 passed by the Commissioner of Central Excise, Raigad)

M/s. JSW Steel Ltd. : **Appellant**

VS

Commissioner of Central Excise, Raigad : **Respondent**

Appearance

Shri A. Asheerazi, Advocate for Appellant

Shri Deepak S. Chavan, Supdt. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 15/12/2017
Date of decision: 15/12/2017

ORDER NO. A/92285/2017

The facts of the case is that against Order-in-Original No. 25/Commr/02-03 dated 31-3-2003 whereby demand of Cenvat credit amount of Rs. 66,00,257/- was confirmed. The appellant had filed an appeal before CESTAT which was disposed of by CESTAT order No. A/153/2010/EB/C-II dated 27-4-2010 wherein this Tribunal partly allowed modvat credit however in respect of modvat credit amounting to Rs. 23 lacs the case was remanded to the Commissioner for deciding the issue in relation to limitation and penalty a fresh. In denovo adjudication vide impugned order No. 30/NVK/COMMR/RJD-2016-17 dated 30-12-2016 confirmed the demand of Rs. 23 lacs imposed penalty of Rs. 23 lacs and also demanded the interest therefore present appeal.

2. Shri. A. Sheerazi Ld. Counsel for the appellant submits that against earlier Tribunal's remand order, Revenue filed appeal before Hon'ble High Court which is pending.

3. On the other hand, Shri Deepak Chauhan, Ld. Asstt. Commissioner(A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of submissions made by both sides and perusal of record I find that genesis of the case is show cause notice dated 16-9-1999 which was converted into adjudication order No. 25/COMMR/2002-03 dated 31-3-2003 against which this Tribunal passed order dated 27-4-2010 which was partly in favour of the appellant and for the part it was remanded. This very order dated 27-4-2000 has been appealed against by the Revenue before the Hon'ble High Court of Bombay, the same is pending as Central Excise appeal No. 146/10. In this position, any decision taken by this Tribunal will be of no purpose as the final outcome is based on the High court appeal which is pending. Therefore demand of justice is that matter should go back to the adjudicating authority. Accordingly, appeal is allowed by way of remand to the adjudicating authority to decide the matter only after decision of Hon'ble High Court in Revenue's appeal No. 146/10. CO also stands disposed of.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

SM.