IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. E/371/2011

(Arising out Order-in-Original No. 02/BR-02/Thane-I/2011 dated 10.01.2011 passed by the Commissioner of Central Excise, Thane I)

For approval and signature:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Dr. Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. JSW Steel Ltd. Appellant

Vs.

Commissioner of Central Excise, Thane I Respondent

Appearance:

Shri Sachin Chitnis, Advocate for the appellant
Shri Anil Chaudhary, AC (AR) for the respondent

CORAM:
Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 24-01-2019
Date of decision : 24-01-2019

O R D E R No: **A/85237 / 2019**

Per: C J Mathew

M/s JSW Steel Ltd is in appeal against order-in-original no. 02/BR-02/Thane-I/2011 dated 10th January 2011 of Commissioner of Central Excise, Thane I in which availment of CENVAT credit of tax paid between September 2009 and September 2010 on freight for transport of goods to depots or port of export was held as unauthorised. The credit so denied, and ordered for recovery, under rule 14 of CENVAT Credit Rules, 2004, read with section 11A of Central Excise Act, 1944, is ₹82,77,179/-; in addition, recovery of interest under section 11AB of Central Excise Act, 1944 has been ordered and penalty imposed under section 11AC of Central Excise Act, 1944 read with rule 25 of Central Excise Rules, 2002 and rule 15 of CENVAT Credit Rules, 2004. It is seen that the credit has been ordered to be recovered as irregularly availed in the absence of any document evidencing that sale was through a depot or that the goods were exported.

2. Learned Counsel relies upon the decision of the Hon'ble Supreme Court in *Commissioner of Customs, Central Excise & Service Tax, Guntur v. Andhra Sugar Ltd [2018 (10) GSTL 12 (SC)]* and of the Larger Bench of the Tribunal in *Honest Bio-Vet Pvt Ltd v. Commissioner of*

Central Excise, Ahmedabad-I [2014 (310) ELT 526 (Tri-LB)], on the issue of freight to depots and that, for export goods, place of removal is the port of export, to claim entitlement for CENVAT credit.

3. We have heard Learned Authorised Representative, who, reiterating the finding in the order-in-original, submits that the issue has been examined in depth and even in the absence of any supporting evidence furnished by the appellant.

4. Considering the decision cited by the Learned Counsel and the decision of the Tribunal to remand the dispute for the earlier period, between May 2008 and August 2009, to the original authority, we set aside the impugned order and remand the matter back for a decision in conformity with the directions pertaining to the earlier period.

(Operative part pronounced in Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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