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

APPEAL NO: E/87482/2015

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/264/15-16 dated 5th August 2015 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Nagpur.]

Champshi M Shah …*Appellant*

versus

Commissioner of Central Excise & Customs
Nashik ***…Respondent***

Appearance:

None for appellant

Ms Trupti Chauhan, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 17/11/2017
Date of decision: 17/11/2017

ORDER NO: ____________________________

The issue involved in this appeal of Shri Champshi Shah pertains to order-in-appeal no. NGP/EXCUS/000/APPL/264/15-16 dated 5th August 2015 of Commissioner of Central Excise & Customs, Nagpur which has upheld the penalty of ₹1,00,000 imposed on him by the original authority.

2. None appeared for the appellant. Learned Authorized Representative makes submissions supporting the impugned order.

3. Consequent upon the order of the original authority, appeal was filed by the Assistant Commissioner of Central Excise & Customs seeking imposition of penalty under rule 15 of CENVAT Credit Rules, 2004, the revocation of option of reduced penalty, confiscation of goods and for-imposition of penalty on M/s Devkinandan J Gupta.

4. Though penalty was imposed on the appellant by the original authority for his role in transacting with M/s Devkinandan J Gupta to avail CENVAT credit by recourse to fraudulent invoices, no appeal had been filed by the appellant before the first appellate authority; neither was he a respondent therein.

5. For the Tribunal to be conferred with jurisdiction, there must be an order passed either by the Commissioner, as original authority, or by Commissioner (Appeals) against an order of a lower authority. In the present instance, the order impugned is that of the first appellate authority and that authority is conferred the jurisdiction only to the extent of appeals filed before it. The first appellate authority, therefore, had no jurisdiction in the matter of penalty imposed on Shri Champshi Shah. Mere reiteration of the order of penalty imposed by

the original authority, who had jurisdiction, by the first appellate authority, who lacked jurisdiction, does not cause grievance to the appellant at that stage.

6. In view of the above, the appeal is without merit and is dismissed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*