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

APPEAL NO: E/1225/2011

[Arising out of Order-in-Original No: 54/MI/2010 dated 19th August 2010 passed by the Commissioner of Central Excise, Mumbai – I.]

Pinkesh Jain …***Appellant***

versus

Commissioner of Central Excise
Mumbai – I …***Respondent***

<u>*Appearance*</u>*:*

None for appellant

Shri N N Prabhudesai, Superintendent (AR) for respondent

CORAM:

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

Date of hearing: 27/07/2017
Date of decision: 27/07/2017

ORDER NO: A/92321 / 2017

Shri Pinkesh Jain is in appeal against order-in-original no. 54/MI/2010 dated 19th August 2010 of Commissioner of Central Excise, Mumbai – I which has imposed a penalty of ₹ 20 lakhs under rule 26 of Central Excise Rules, 2001/2002. The dispute pertains to the availment of CENVAT credit against fake invoices without any evidence of payment of duty on goods cleared against such invoices. During investigation, the role of the appellant was examined and show cause notice issued to him for having enabled availment of ineligible credit.

2. None appeared for appellant. Heard Learned Authorised Representative.

3. It is seen from the show cause notice that the appellant had, in his statement dated 24th February 2005, admitted to collection of few cheques from the recipient of the goods. However, it is seen that he has denied any linkage with the returning of these goods to the supplier. It is also seen that the adjudicating authority had proceeded with the determination of duty liability and penalty without hearing the appellant who had not participated in the proceedings. On a perusal of the grounds of appeal it is seen that the address at which the notice of hearing was served did not correspond to his place of residence and the failure to participate in the proceedings was attributed to non-serving of the notice. Furthermore, it is seen from the impugned order that the adjudicating authority has failed to render a cogent finding of the involvement of the appellant. This is apparent from the following:

> ‘*49. I find Shri Pinkesh Jain (notice No.4) has neither made*

any written evidence submission nor did he appear for personal hearing. From the evidence available on record and mentioned in the show cause notice it is clearly established that Shri Pinkesh Jain was fully aware of the dubious nature of the companies and in fact he willingly assisted Shri Santosh Kumar Gupta in every way, right from the beginning, i.e., from obtaining registration. I therefore hold Shri Pinkesh Jain liable to penalty.'

4. In view of the peremptory disposal of the appeal, it is appropriate that the matter be considered afresh after giving due opportunity to the appellant to defend the allegations. For this purpose the impugned order is set aside and the appeal is allowed by way of remand.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*