CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 79 of 2011

(Arising out of Order-in-Original No. 69/MI/2010 dated 30.09.2010 passed by the Commissioner of Central Excise, Mumbai I)

M/s. Ashirwad Fashions **…..Appellant**
E-2300-2301, 1st Floor, Radha Krishna Mkt
Ring Road,
Surat

Vs.

Commissioner of Central Excise, Mumbai I **…..Respondent**
Kendriya Utpad Shulk Bhavan,
115, Maharshi Karve Road,
Churchgate (E), Mumbai

Excise Appeal No. 80 of 2011

(Arising out of Order-in-Original No. 69/MI/2010 dated 30.09.2010 passed by the Commissioner of Central Excise, Mumbai I)

M/s. Karishma Overseas **…..Appellant**
412-A, Turning Point Complex
Ghod Dod Road,
Surat

Vs.

Commissioner of Central Excise, Mumbai I **…..Respondent**
Kendriya Utpad Shulk Bhavan,
115, Maharshi Karve Road,
Churchgate (E), Mumbai

APPEARANCE:

Shri Raj K. Vyas, Advocate for the appellant
Shri Anil Choudhary, Dy. Comm(AR) for the respondent

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

FINAL ORDER No: A/85974-85975/2019

DATE OF HEARING : 17.05.2019
DATE OF DECISION : 17.05.2019

PER: C J MATHEW

These two appeals arise from order-in-original no. 69/MI/2010 dated 30th September 2010 of Commissioner of Central Excise, Mumbai I, in which the proceedings initiated against a number of merchant-manufacturers, including M/s Metro Industries had been disposed off with finding that these merchant-manufacturers and were fictitious, the benefits availed by various manufacturing entities that claimed to have obtained goods against the fictitious central excise invoices and ARE-1s were denied and penalties imposed under rule 26, read with rule 27, of Central Excise Rules, 2002. M/s Ashirwad Fashions was thus imposed penalty of ₹7,57,122/- and M/s Karishma Overseas with ₹2,16,332/-. We dispose off both appeals by this common order.

2. The principal ground of appeal is that the proceedings were initiated and completed without their being served with notice and that their consequent non-participation in the personal hearing held on 13th July 2010 was erroneously assessed to be wilful. It is on record that though section 35A of Central Excise Act, 1944 mandates grant of

three opportunities to be heard, none of the intimation were received by them. Other grounds of appeal deal with the findings on merit.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. In view of the submissions, and the absence of any record of defence by the appellants, it would be appropriate for the matter to be adjudicated again after giving the appellants herein efficient opportunity of being heard.

5. Accordingly, impugned order is set aside in so far as these appellants are concerned and the matter remanded back to the original authority.

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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