

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

REGIONAL BENCH

Service Tax Early Hearing Application No. 85090 of 2024

(On behalf of Appellant)

In

Service Tax Appeal No. 85346 of 2024

(Arising out of Order-in-Appeal No. SK/392/Appeals-II/MC/2023-24 dated 14.11.2023 passed by the Commissioner of CGST & Central Excise (Appeals-II), Mumbai.)

M/s. Anlage Infotech (India) Pvt. Ltd.

.....Appellant

**5th Floor, Electric Mansion,
Appasaheb Marathe Marg,
Prabhadevi, Mumbai – 400 025**

VERSUS

**Commissioner of CGST & Central Excise,Respondent
Mumbai Central**

**4th Floor, Central Excise Building,
Churchgate, Mumbai – 400 020**

APPEARANCE:

Shri Deep Chheda, C.A. for the Appellant

Shri S.B.P. Sinha, Superintendent, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NO. 85608/2024

Date of Hearing: 07.06.2024

Date of Decision: 07.06.2024

PER: DR. SUVENDU KUMAR PATI

We have heard on the early-hearing application and with consent of parties we have also heard on the merit of the appeal. Both are taken up together for detail order.

2. Learned Counsel for the Appellant, in referring to decision of this Bench passed on 16.04.2024 in the case of *M/s. Reelabs Pvt.*

Ltd. Vs. Commissioner of CGST, Mumbai South vide Final Order No. 85414/2024, argued that disregarding provision contained in Section 35(A)(4) of the Central Excise Act, equally applicable to Service Tax matters and after conclusion of hearing, learned Commissioner (Appeals) had dismissed the appeal on the ground that authorised signatory who filed the appeal, on behalf of M/s. Anlage Infotech (India) Pvt. Ltd. i.e. Appellant Company, had not produced the Board Resolution copy and authorisation letter before him to file the appeal and therefore, the order is unsustainable in law, since no observation is made on the merit of the appeal for which they seek early hearing of the appeal before this Tribunal to ensure natural justice and to comply with provision contained in Section 35(A)(4) of the Central Excise Act by directing the Commissioner (Appeals) to rehear and decide the matter. The matter is, therefore, required to be remanded back to the Commissioner (Appeals) and Appellant had already suffered long years of its valuable time in pursuing the judicial process that commenced with issue of show-cause notice way back in 2021 for the period 2016 onwards, for which out of turn hearing may be granted.

2. Learned Authorised Representative is present. He confirms that appeal was dismissed by the Commissioner (Appeals) for non-production of Company's Board Resolution authorising a person to file appeal on its behalf.

3. We have perused the case record and observed that referring to CESTAT, Delhi's order passed in the case of *Prakash Industries*

Ltd. Vs. CCE, Raipur as reported in 2010 (250) ELT 65 (Tri-Del.) that deals with interpretation of "Principal Officer" as mentioned under Rule, 8(3) of CESTAT (Procedure) Rules 1982, learned Commissioner (Appeals) had dismissed the appeal. Needless to mention here that the said Rule, 8(3) prescribes the content of memorandum of appeal that is required to be filed before the Tribunal and not before the Commissioner (Appeals), apart from the fact that memorandum of appeal can also be signed and verified by any Appellant/Applicant or a Respondent and Rule, 22 even prescribes for substitution of them by their successor in interest but what is required to be seen in the enabling provision contained in Section 85 of the Finance Act, 1994 that prescribes filing of appeal to the Commissioner of Central Excise (Appeals) by "any person aggrieved by any decision or order of an Adjudicating Authority ...". Therefore, Appellant being a private limited company, who must have obtained registration from the Registrar of Companies by providing the name and designation of person who can sue or be sued for or on behalf of the Company, need not necessarily require a Board Resolution to represent the company every time the Company as a "legal person" and, therefore, the observation of the Commissioner (Appeals) with reference to Rule, 3(2)(C) of the Central Excise Appeals Rules, 2001 that prescribes for verification to be made by "Principal Officer" filing the appeal can't be said to have made it obligatory for the "Principal Officer" to submit Board Resolution alongwith his/her signature. Be that as it may, as could be revealed from appeal memo, learned Commissioner (Appeals) had never sought copy of such Board Resolution though, it had

specifically asked the Appellant to submit notarised affidavit of the synopsis of appeal and notarised letter of authority, which Appellant stated to have filed as per attachment no. 6 & 7 respectively.

4. This being the facts on record and having regard to the fact that Section 35(A)(4) dictates that the order of the Commissioner disposing of the appeal shall state the points for determination, the decision thereon and the reason for such decision and the same provision being equally applicable to service tax matters would also be applied to this case, we find it a fit case to allow the early hearing application and taking consent of both the sides we consider it proper to remand the matter back to the commissioner to decide the appeal on merit as per provision contained in Section 35(A)(4) of Central Excise Act, applicable to the service tax matters, in view of Sub-Section 5 of section 85 of the Finance Act, 1994.

5. Early Hearing application and the appeal both are allowed with the above direction. Order of the Commissioner of CGST & Central Excise (Appeals-II), Mumbai *vide* Order-in-Appeal No. SK/392/ Appeals-II/MC/2023-24 dated 14.11.2023 is accordingly set aside.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)