CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 87147 of 2024

(Arising out of Order-in-Appeal No. SK-342-APPEALS-II-ME-2023-24 dated 27.10.2023 passed by the Assistant Commissioner of CGST & Central Excise, Division – VI, Mumbai East.)

M/s Virtual Info Systems Pvt. Ltd. .... **Appellant**
Techno It Park, New Link Road, Next to Eskay Resort,
Eksar, Borivali (W), Mumbai – 400 091.

Versus

Commissioner of CGST & Central Excise,
Mumbai East .... **Respondent**
3rd Floor, Utpad Shulk Bhavan, Plot No. C-24,
Sector-E, BKC, Bandra (E), Mumbai – 400 051.

Appearance:

Shri Suresh N. Nivatkar, Consultant for the Appellant
Shri S. B. P. Sinha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85938/2024

Date of Hearing: 12.09.2024
Date of Decision: 12.09.2024

Per: S.K. MOHANTY

Heard both sides and peruse the records.

2. This appeal is directed against the impugned order dated 25.10.2023 passed by the learned Commissioner (Appeals-II), CGST and Central Excise, Mumbai. Vide the impugned order, the learned Commissioner (Appeals) has rejected the appeal filed by the appellant on the ground that condition prescribed under sub-rule 2(3) of Central Excise (Appeals) Rules, 2001 has not been complied with and that the appellant did not appear for personal hearing scheduled on 22.09.2023.

3. On perusal of the case records, more particularly the impugned order passed by the learned Commissioner (Appeals), we find that

the merits of the case have not been discussed and the appeal was dismissed purely on the technical ground. Insofar as the defect noticed in the appeal filed before the Commissioner (Appeals) is concerned, appeal number should not have been assigned by the office of the Commissioner (Appeals) before rectification of such defect. Since the number was allotted to the appeal filed by the appellant, it was incumbent on part of the learned Commissioner (Appeals) to discuss merits of the case and decide the appeal on the basis of documents available before him. He cannot dismiss the appeal on the ground that the appellant did not appear for personal hearing on the date fixed by him or the appeal paper is not signed by authorized person.

4. Therefore, we do not find any merits in the impugned order insofar as it has disposed of the appeal without considering the merits of the case. Accordingly, the impugned order is set aside and the appeal is allowed by way of remand to the learned Commissioner (Appeals) for decision on merits. Needless to say that opportunity of personal hearing should be granted to the appellant before deciding the issue(s) afresh.

5. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha