

Utv Software Communications Ltd. Vs. Commissioner of C. Ex.

Utv Software Communications Ltd. Vs. Commissioner of C. Ex.

SooperKanoon Citation : sooperkanoon.com/43543

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-30-2006

Judge : R Abichandani

Appellant : Utv Software Communications Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The appellant has challenged the order of the Commissioner (Appeals) made on 20-4-2006 dismissing the appeal as time-barred by thirty-five days.

2. The Order-in-Original was made on 27-4-2005. The appeal was required to be preferred within three months from the date of receipt of the said order under Section 85(3) of Chapter V of the Finance Act, 1994.

Since the appeal was filed on 12-9-2005, against the order issued on 27-4-2005, the Commissioner (Appeals), rejecting the stand of the appellant that the order was received on 13-6-2005 dismissed the appeal, which was filed on 12-9-2005 as time-barred.

3. It appears from the record that the letter was addressed to the Commissioner (Appeals) on 21-3-2006, pointing out the provisions of Section 85 of the Finance Act, 1994, which provided the period of limitation of three months for preferring the appeal. The Commissioner (Appeals) appears to have dismissed the appeal on the ground that it was filed after the statutory period of thirty days and there was a

delay of thirty-five days in filing this appeal which could not be condoned under Section 35 of the Central Excise Act, 1944. The Commissioner (Appeals) appears to have overlooked the proviso to Sub-section (1) of Section 85 of the Finance Act, 1944 under which the Commissioner (Appeals) was empowered to condone the delay of a further period of three months on being satisfied about the sufficient cause.

The applicant has, therefore, made out an arguable case. However, this is not a fit case for total waiver of pre-deposit. It is stated that the tax amount of Rs. 2,04,406/- has already been paid. However, penalty of Rs. 6,14,406/- is required to be paid under the impugned order. Having regard to the facts and circumstances of the case, it is directed that there shall be stay of the impugned order to the extent that it is challenged, on the applicant's depositing Rs. 2,00,000/- (Rupees two lacs only) within eight weeks from today, failing which the appeal shall stand dismissed. On the amount being so deposited, there shall be stay of the impugned order, to the extent it is challenged of the rest of the amount and the waiver of such pre-deposit during the pendency of the appeal. This application stands disposed of accordingly. Post the matter for compliance report on 30-10-2006.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com