

Utv Software Communications Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-29-2007

Reported in : (2007)(116)ECC544

Judge : V T M.

Appellant : Utv Software Communications Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. This is an appeal against the Order of the Commissioner (Appeals) bearing No. BR/(91)30/STC/2006 dated 20.04.2006 by which their appeal has been dismissed as time barred.
2. Heard both sides. The Commissioner has rejected the appeal holding that there was delay of 35 days beyond the period of 60 days in terms of Section 35 of the Central Excise Act, 1944.
3. The learned Advocate appearing for the appellants submits that they have received the order in original only on 13.6.05 and they thought that they have filed the appeal within the period of three months from the date of receipt of the order under Section 85(3) of the Finance Act, 1994 which is the relevant Section governing time limit for filing appeal in Service Tax matters.
4. The learned DR submits that there is an error in applying the time limit in prescribed in 35 of the Central Excise Act towards Service Tax matter.

5. The learned Advocate agrees to retain the Deposit as per CESTAT Order No. S/823/C-IV/SMB/WZB/2006 dated 30.8.2006 during the pendency of the appeal.
6. After considering the submissions from both sides, I set aside the order of the Commissioner (A) with the direction to re-hear the appeal on merits treating the delay, if any, as condoned. The Commissioner should pass order afresh after giving an opportunity of hearing to the appellant.

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