IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Service Tax Appeal No.1 of 2015 (O&M)
Date of Decision: 20.01.2015

M/s Delta Information Service Ltd., Chandigarh
.....Appellant

Versus

The Commissioner of Central Excise, Chandigarh.
....Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Surjeet Bhadu, Advocate
for the appellant.

Mr. Sunish Bindlish, Advocate for the respondent.

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RAJIVE BHALLA, J (ORAL)

The appellant is before us challenging order dated 10.06.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”) whereby his appeal has been dismissed for failure to comply with order of pre-deposit within the time granted by the Tribunal.

Counsel for the appellant submits that though it is true that the amount as directed by the Tribunal was deposited after a delay of 13 days and the appellant may be remiss in his duty to file an application for extension of time, but the error committed by the appellant may be condoned particularly after taking into consideration extenuating circumstances brought to the notice of the Tribunal and pleaded in the present appeal.

Counsel for the appellant further submits that copy of order dated 29.04.2014 was prepared by the registry of the Tribunal on 22.05.2014 and received by the appellant by post on 27.05.2014 i.e. the last date for depositing the amount as directed by the Tribunal. The appellant deposited the amount within two weeks from 27.05.2014. The conduct of the appellant is, therefore, neither culpable nor negligent and, therefore, the appeal may be allowed.

Counsel for the revenue submits that as adequate time was granted to the appellant, in the presence of his counsel, it was not necessary for the appellant to wait for a certified copy of the order. The delay in forwarding the copy to the appellant is a mere excuse and as admittedly there is a delay in complying with the order of pre-deposit, the appeal may be dismissed.

We have heard counsel for the parties and perused the impugned order.

A perusal of the facts reveals that the Tribunal has dismissed the appeal for failure to deposit the amount of pre-deposit within the time granted by the Tribunal. The Tribunal, vide order dated 29.04.2014 directed the appellant to pre-deposit a sum of Rs.40,000/- within four weeks. A certified copy of the order was prepared on 22.05.2014 and received by the appellant on 27.05.2014. The last date for complying with the order of pre-deposit was 27.05.2014. The appellant deposited Rs.40,000/- after a delay of 13 days.

The appellant obviously could not have complied with the order of pre-deposit but should have, in the fitness of things at least approached the Tribunal for extension of time. Be that as it may, the appellant was not at fault as copy of order dated 29.04.2014 was received on 27.05.2014 i.e. on the last date for pre-deposit. The only fault that can be found with the appellant was failure to file an application for extension of time. This, however, cannot deprive the appellant of his right to seek adjudication of his appeal on merits as he has deposited the amount demanded by the Tribunal. The appeal is, therefore, allowed, the impugned order dated 10.06.2014 is set aside and the appeal is restored to the Tribunal for adjudication afresh in accordance with law.

Parties are directed to appear before the Tribunal on 26.02.2015.

[RAJIVE BHALLA]
JUDGE

20.01.2015
Vinay

[B.S. WALIA]
JUDGE