IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/50141/2015-CU[DB]

(Arising out of Order-in-Appeal No. 132-ST/APPL/LKO/2014 dated 03/09/2014 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s G R Movers **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Vineet Kumar Singh, Advocate for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 27/09/2018
Date of Decision : 27/09/2018

FINAL ORDER NO-**72330 / 2018**

Per: Archana Wadhwa

After hearing both the sides, we find that the Commissioner (Appeals) has rejected the appeal as barred by limitation by observing that though there was a delay in filing the appeal before him but no COD application was filed by the assessee.

2. We note that the order impugned before the Commissioner (Appeals) was received by the appellant on 02.04.2013 and their appeal was filed on 03.06.2013. As such, it seems that there was a delay of one day in filing the appeal. Inasmuch as, the delay is only of one day in filing the appeal, we condone the same and as the

disputed issue stands decided by the Tribunal in numbers of cases, including the appellants own case for the earlier period, is upheld by the Hon'ble Allahabad High Court also, we proceed to decide the appeal itself.

3. The issue relates to appellants liability to pay service tax in respect of the sale of SIM Cards belonging to M/s BSNL. Tribunal in the assessee's own case for the earlier period vide its Final Order reported at M/s G.R. Movers Vs Commissioner reported at 2013 (30) STR 634 (Tri.-Del.) has held that as BSNL has paid the service tax on the same value of the SIM Cards, no further liability would arise on the distributers/dealers of the same. It is also noted that the said decision of Tribunal was appealed against by revenue before the Hon'ble Allahabad High Court, rejected the appeal reported as Commissioner Vs G.R. Movers 2015 (37) STR J132 (All).

4. In view of the above, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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