IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPLICATION NO: ST/ROA-85186/18
IN
APPEAL NO: ST/89656/13

Arising out of: Order-in-Original No. NSK-EXCUS-000-APP-261-13-14 dated 11/09/2013

Passed by: Commissioner (Appeals), of Central Excise & Custom, Gadkari Chowk, Nashik.

Arihant Telecommunication

Appellants – Represented by:
Mr. Rajesh Chand (C.A)

Versus

Commissioner, Central Excise & Custom , Nashik

Respondent – Represented by:
Mr. Dilip Shinde, AC (AR)

Date of hearing	**20/04/2018**
Date of pronouncement	**20/04/2018**

CORAM

Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

ORDER NO: M/85602/2018

Per: S K Mohanty

Heard both sides and perused the records.

2. The applicant has filed the present miscellaneous application for restoration of appeal, which was dismissed by the Tribunal vide order No. A/90541/17/STD dated 24.10.2017. The applicant contended that the submission made in the statement of facts/grounds of appeal have not been considered in proper prospective and the

appeal was dismissed by the Tribunal, holding that the activities undertaken by the appellant showed fall under business auxiliary service. In support of submissions regarding restoration of appeal, the applicant has relied on various judgements delivered by the Hon'ble apex court and different High Courts.

3. On perusal of the order dated 24.10.2017, we find that the appeal was disposed of by the Tribunal on the basis of available records and also considering the submissions made by the Ld. DR for the revenue. It is not the case of the applicant that its appeal was dismissed exparte. Since the appeal was decided on merits, we are of the view that the present miscellaneous application filed by the applicant cannot be considered for restoration of the appeal. The judgements relied on by the applicant in the miscellaneous applications are in context with rectification of mistake in the appellate order and not in relation to the restoration of the appeal, when the appeal was disposed of, considering the merits of the case. Accordingly, the judgements are distinguishable from the facts of the present case.

4. Therefore, we do not find any merits in the application filed for restoration of the appeal. Accordingly, the same is dismissed.

(Operative portion pronounced in Court)

(C J Mathew)
Member (Technical)

(S K Mohanty)
Member (Judicial)

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