

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE**

Appeal(s) Involved:

ST/86/2009-DB

[Arising out of Order-in-Appeal No. 342/2008 dated 24/12/2008
passed by the Commissioner of Central Excise (Appeals-II),
Bangalore.]

**M/s. SAN ENGINEERING &
LOCOMOTIVE CO LTD**

P.B.NO.4802, MAHADEVAPURA P.O.,
WHITEFIELD ROAD,
BANGALORE – 560 048.

Appellant(s)

Versus

**Commissioner of Service Tax
BANGALORE SERVICE TAX- I**

1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS
STAND,DOMLUR
BANGALORE, - 560071
KARNATAKA

Respondent(s)

Appearance:

Mr. B.N GURURAJ, Advocate

22.2, 3 RD MAIN ROAD CHAMARAJ PET,
BANGALORE - 560018
KARNATAKA

For the Appellant

Dr. J. Harish, AR

For the Respondent

Date of Hearing: 24/07/2018

Date of Decision: 24/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20993 / 2018

Per : P. ANJANI KUMAR

The appellants, M/s. San Engineering & Locomotive Co.
Ltd., have been served with show-cause notice by the

Department following audit objection that the abatement claimed by them in terms of Notification No.32/2004-ST dated 3.12.2004 was not declared with the Department and are not eligible for the abatement as the appellants could not produce any proof of non-availment of credit of capital goods by the providers of "MRS and GTA". The original authority has confirmed the demand of Rs.1,23,214/- vide Order-in-Original No.24/2007 dated 19.7.2007. On an appeal by the appellants, the Commissioner (A) vide Order-in-Appeal No.93/2007 dated 21.11.2007 has remanded the case back to the original authority. The original authority vide Order-in-Original No.94/2007 dated 27/28.12.2007 has reconfirmed the demand which was again upheld by the Commissioner (A). Hence, this appeal.

2. The counsel for the appellants has submitted that the issue is squarely covered in their favour by the decisions of the Tribunal in the following cases:

- ***CCE vs. Advance Diesel Engineering (P) Ltd.: 2008 (10) STR 201 (Tri.-Ahmd.)***
- ***Ganesh Cement Pvt. Ltd. vs. CCE: 2018 (12) GSTL 92 (Tri.-All.)***
- ***CCE vs. Sangam Structurals Ltd.: 2015 (39) STR 1034 (Tri.-Del.)***
- ***Lykes Line Ltd. vs. CST: 2017 (50) STR 51***

Wherein it was held that a general certificate/declaration by GTA indicating that no credit was availed by them is enough and there is no merit in the contention that a certificate should be produced in respect of each and every consignment note.

3. The learned AR for the Revenue has fairly conceded that the issue is covered in favour of the assessee.

4. Heard both sides and perused the records. We find that the issue is covered by the cases cited by the appellants. We also find that this Bench has already decided the similar issue vide Final Order NO.20778/2018 dated 30.5.2018 in the case of M/s. Pragathi Automation Pvt. Ltd. Therefore, we find that nothing survives in the case and appeal needs to be allowed with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **24/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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