

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI  
[COURT : Single Member 3 B3]**

**Appeal No.: E/42234/2018**

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[Arising out of Order-in-Appeal No. 268/2018 (CTA-II)  
dated 26.06.2018 passed by the Commissioner of G.S.T. &  
Central Excise (Appeals-II), Chennai.]

**M/s. Sundram Fasteners Ltd.,** : **Appellant**  
(Autolec – Plant IV),  
F-22, SIPCOT Industrial Complex,  
Gummidipoondi – 601 201

**Versus**

**The Commissioner of G.S.T & Central Excise,** : **Respondent**  
Chennai Outer Commissionerate

Appearance:-

Shri. M. Kannan, Advocate

for the Appellant

Shri. L. Nandakumar, AC (AR)

for the Respondent

**CORAM:**

**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing: 30.11.2018

**Final Order No. 43047 / 2018**

This appeal has been filed by the assessee being aggrieved by the Order-in-Appeal No. 268/2018 (CTA-II) dated 26.06.2018 passed by the Commissioner of G.S.T. & Central Excise (Appeals-II), Chennai.

2. Brief facts are that the appellant holds Central Excise Registration and is engaged in the manufacture of Water Pumps & Oil Pumps used in Automotive and IC Engines falling under CETH 84133030, 84133020 and 84099949 of the Central Excise Tariff Act, 1985. They have availed CENVAT Credit of service tax paid on Cab Operator Services during the period from September 2015 to June 2017.

3. The Department issued a Statement of Demand (SOD) dated 29.09.2017 alleging that the appellants were ineligible to avail Credit on the above service and thereby proposed to recover the same under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act along with applicable interest and penalty. Despite the detailed reply dated 10.10.2017 filed by the appellant in response to the above SOD, the above proposals were confirmed vide Order-in-Original dated 28.03.2018, however granting relief to the extent of reducing the penalty to 25% of the imposed value. Aggrieved, the appellant preferred an appeal before the first appellate authority, whereafter the Commissioner (Appeals) rejected the appellant's claim vide Order impugned herein. Hence, the appellants have filed the present appeal before this forum.

4. Today when the matter came up for hearing, Ld. Advocate Shri. M. Kannan appeared on behalf of the assessee/appellant while LD. AC (AR) Shri. L. Nandakumar appeared on behalf of the Revenue/respondent.

5. During the course of hearing, Ld. Advocate for the assessee *inter alia* submitted that the authorities below had nowhere rendered a finding that the Cab Service had been used for the personal benefit of the employees, but however, he is not contesting the issue on merits as per assessee's instructions and hence, he submits that he is confining to penalty alone. Further, the entire issue related to interpretation of statutory law, he prays for waiver of penalty. He also relied on the decision of this Bench of the Tribunal in the *assessee's own case for an earlier period in Final Order Nos. 41979-41983/2018* dated 28.06.2018 wherein after considering the rival contentions this Bench had waived the penalty imposed therein.

6. *Per contra*, Ld. AR supported the findings of the lower authorities. He argued that Rule 2(l) of the CENVAT Credit Rules, 2004 , as amended with effect from 01.04.2011 specifically excluded Rent-a-Cab Service from the definition of "input

service”; that the disallowance of Credit on Cab service was just and proper.

7. I have heard the rival contentions and perused the materials placed on record.

8. In view of Ld. Counsel’s submission regarding merits as noted above, I do not propose to go into the issue and therefore, the disallowance is sustained.

9. With regard to penalties, however, I note that on an identical set of facts in the assessee’s own case (*supra*), this Bench had set aside the penalty. Following the ratio laid down in the above case as also the same being an interpretational one, I am of the opinion that the penalty imposed is required to be set aside, which I hereby do.

10. The appeal is partly allowed on the above terms.

*(Operative part of the order was pronounced in open court)*

**(P. Dinesha)**  
Member (Judicial)

Sdd