

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

Appeal No.: ST/41078/2018

[Arising out of Order-in-Appeal No. CMB-CEX-000-APP-018-18
dated 17.01.2018 passed by the Commissioner of G.S.T. &
Central Excise (Appeals), Coimbatore]

M/s. Gavin Resources, **: Appellant**
C/o M/s. N.C.Rajagopal and Co.,
Chartered Accountants,
199, Agraharam Street,
Erode – 638 001

Versus

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

Appearance:-

Shri. M. Saravanan, Consultant
for the Appellant
Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:

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

Date of Hearing: 17.12.2018

Date of Pronouncement: 20.12.2018

Final Order No. 43133 / 2018

By this appeal, the assessee has challenged the denial of CENVAT Credit by the Revenue.

2. The Original Authority vide Order-in-Original dated 31.03.2017 denied the CENVAT Credit on the ground that the invoices raised by the appellant were in the name/address of the

premises which was not a registered premises, which was a requirement for availing substantive benefits such as utilization of input service tax Credit. This came to be upheld by the Ld. Commissioner of G.S.T. & Central Excise (Appeals), Coimbatore vide impugned Order-in-Appeal No. 18/2018 dated 17.01.2018 against which the present appeal has been filed.

3. Today when the matter came up for hearing, Ld. Consultant Shri. M. Saravanan appearing for the assessee-appellant placed reliance on the decision of the Hon'ble Madras High Court in the case of *Commissioner of Service Tax-III, Chennai Vs. CESTAT, Chennai & Anor in C.M.A. No. 860/2017 dated 10.04.2017*.

4. *Per contra*, Ld. AC (AR) Shri. L. Nandakumar appearing for the Revenue supported the findings of the lower authorities.

5. I have heard the rival contentions, perused the documents placed on record and have also gone through the judgement of the Hon'ble High Court of Madras (*supra*) relied upon by the Ld. Consultant. I note that the requirement of registration is therefore not a condition precedent for claiming or availing the CENVAT Credit, as interpreted by the lower authorities herein. The relevant portion of the observations of the Hon'ble High Court reads as under :

“11. For the sake of convenience, the relevant observations made in *mPortal India Wireless Solutions (P) Ltd. Vs. Commissioner of Service Tax, Bangalore* are extracted hereafter:

6. The assessee is a 100% export oriented unit. The export of software at the relevant point of time was not a taxable service. However, the assessee had paid input tax on various services. According to the assessee a sum of Rs. 4,36,985/- is accumulated Cenvat credit. The Tribunal has categorically held that even though the export of software is not a taxable service but still the assessee cannot be denied the Cenvat credit. The assessee is entitled to the refund of Cenvat credit. Similarly insofar as refund of Cenvat credit is concerned, the limitation under Section 11B does not apply for refund a accumulated Cenvat credit. Therefore, bar of limitation cannot be a ground to refuse Cenvat credit to the assessee.

7. Insofar as requirement of registration with the department as a condition precedent for claiming Cenvat credit is concerned, learned counsel appearing for both parties were unable to point out any provision in the Cenvat Credit Rules which impose such restriction. In the absence of a statutory provision which prescribes that registration is mandatory and that if such a registration is not made the assessee is not entitled to the benefit of refund, the three authorities committed a serious error in rejecting the claim for refund on the ground which is not existence in law. Therefore, said finding recorded by the Tribunal as well as by the lower authorities cannot be sustained. Accordingly, it is set aside.”

6. Following the *ratio decidendi*, I am of the view that the impugned Order is unsustainable for which reason the same is set aside.

7. The appeal is allowed with consequential benefits, if any, as per law.

(Pronounced in open court on 20.12.2018)

(P. Dinesha)
Member (Judicial)

Sdd