

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

**Appeal No.: ST/41079/2018**

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[Arising out of Order-in-Appeal No. CMB-CEX-000-APP-027-18  
dated 19.01.2018 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. 43134 / 2018**

By this appeal, the assessee is disputing the service tax liability levied by the adjudicating authority as upheld by the Commissioner of G.S.T. & Central Excise (Appeals), Coimbatore, vide impugned Order-in-Appeal No. 27/2018 dated 19.01.2018. The period of dispute relates to 2012-13 and 2013-14 (up to June 2014).

2.1 The assessee was Show Caused vide Notice dated 31.05.2016 *inter alia* alleging that its taxable turnover for the year 2012-13 being less than Rs. 50,00,000/- was liable to pay service tax on or before the due date as per Rule 6 of the Service Tax Rules ('STR' for short), 1994 on receipt basis; that the assessee had crossed the exemption limit of Rs. 50,00,000/- in the month of July 2013, but had not paid service tax on accrual/billing basis; that even though invoices were issued after the threshold limit of Rs. 50,00,000/- had been crossed, but the assessee had not remitted the service tax; that in view of the above, there was non-payment of service tax to the extent of Rs. 4,06,181/- up to June 2014 and that therefore, why the above service tax should not be demanded, along with applicable interests and penalties.

2.2 The appellant vide its reply dated 07.11.2016 *inter alia* submitted that it had paid service tax on receipt basis; that the Internal Audit party informed them that their taxable income exceeded Rs. 50,00,000/- and only then they came to know about that condition; that there was excess service tax demanded of Rs. 1,10,992/-; that the service tax liability as per the invoices was Rs. 30,14,334/- as against the one determined by the Revenue of Rs. 31,55,875/- as per Rule 6 of STR, 1994; that the actual service tax payable as determined by them based on the invoices raised is Rs.

30,44,883/-; that they failed to understand how the liability was taken at Rs. 31,55,875/-; that the Revenue had also considered service tax for the cancelled invoices to the extent of Rs. 71,672/- on the Manpower Supply Services against which no payment was received; that the appellant had voluntarily paid service tax to the extent of Rs. 12,286/- for the quarter January 2013 to March 2013 which was not considered; that the Revenue had not considered the service tax paid after June 2014 to the extent of Rs. 1,11,125/-,etc.

2.3 The adjudicating authority vide Order-in-Original dated 31.03.2017 determined the service tax liability at Rs. 4,06,181/-. After considering the contentions of the assessee and also after giving due credit wherever legally permitted, demanded service tax of Rs. 2,89,198/- along with appropriate interest on this amount apart from penalty under Sections 77 and 78 of the Finance Act, 1994. The assessee's prayer having been rejected by the first appellate authority, the assessee has filed this appeal.

3. Today when the matter came up for hearing, Ld. Consultant Shri. M. Saravanan appeared on behalf of the assessee-appellant while Ld. AC (AR) Shri. L. Nandakumar appeared on behalf of the Revenue-respondent.

4. I have heard the rival contentions, perused the documents as also the Orders of the lower authorities placed on record.

5. The assessing Officer has apparently worked out the demand after considering the provisions of Rule 6 *ibid* and also after going through the pleadings/contentions of the appellant. Rule 6 of STR prescribes the date for payment of service tax when the aggregate value of taxable services from one or more premises is Rs. 50,00,000/- or less in the previous year; certain class of assesseees including partnership firms shall have the option to pay service tax up to a total of Rs. 50,00,000/- in the current financial year within the due dates specified thereunder i.e., fifth or sixth day of the month as the case may be. With effect from 01.04.2011 i.e., after the introduction of Point of Taxation Rules, service tax is payable by the service provider on "accrual basis" which means the liability to remit service tax is fastened the moment an invoice is raised. However, the adjudicating authority apparently has not given the working as to how the Revenue determined the service tax liability as per Rule 6 *ibid* of Rs. 31,53,875/- whereby an additional demand of Rs. 1,10,992/- was raised. So also there is no proper finding on the demand raised in considering the CENVAT Credit amount of Rs. 93,114/-.

6. Ld. Consultant has relied on the Order of this Bench of the Tribunal in the case of *M/s. Deva Knitwears, Tirupur Vs. Commissioner of G.S.T. & Central Excise, Coimbatore vide Final*

*Order No. 42514/2018 dated 01.10.2018* to contend that this case supports his contentions. Ld. Consultant has also contended that as against the cancelled invoices, service tax on three invoices amounting to Rs. 25,307/- was payable on receipt basis as the services were rendered prior to July 2013 which requires verification. With regard to service tax paid after 2014 also, the adjudicating authority shall verify the same and if found correct and permissible, shall give due credit.

7. On an overall consideration of the discussions made above and also considering the plea of the assessee, I am of the considered view that the matter requires *de novo* adjudication by the adjudicating authority. The adjudicating authority shall pass a *de novo* Order after considering the pleas of the appellant keeping in mind the requirements of law and also after affording sufficient opportunities to the assessee. All the contentions are left open.

8. The appeal is allowed for statistical purposes by way of remand.

*(Pronounced in open court on 20.12.2018)*

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

Sdd