

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 12326 of 2019- DB

(Arising out of OIA-VAD-EXCUS-001-APP-116-2019-20 dated 11/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Magnam Netlink Private Ltd

809-812, Sanket Heights, Near Kalali Bridge, Atladra
Vadodara , Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Vadodara-I

1st Floor...Central Excise Building,
Race Course Circle, Vadodara, Gujarat - 390007

.....Respondent

APPEARANCE:

Shri. Saurabh Dixit, Advocate for the Appellant

Shri Rajesh Nathan, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR**

Final Order No. A/ 11388 /2023

DATE OF HEARING: 15.06.2023

DATE OF DECISION: 28.06.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is liable to pay an amount equal to 6%/7% of the value of exempted services viz. "Trading" as per Rule 6 (3) of Cenvat Credit Rules, 2004 for not maintaining separate records nor reversing the cenvat credit @ 6%/7% of the value of exempted services. It is the case of the department that the appellant did not follow the procedures for reversal of cenvat credit as laid down under Rule 6 (3) but on being pointed out by department, reversed the credit on proportionate basis.

2. Shri Saurabh Dixit, Learned counsel appearing on behalf of the Appellant submits that the appellant have taken common credit which is very negligible, and availed by the them during the period April, 2013 to June, 2017. This issue was raised in the EA 2000 audit however, on pointing out by the auditor paid the entire amount of credited along with interest which is recorded in audit report no. 151/2018-19. In this position, the demand of 6%/7% of the value of exempted services will not sustain. He placed reliance on the following decision of this Tribunal:-

- M/s. Aims Industries Ltd – Final Order No. A/10716/2022 dated 22.06.2022 and A/11258/2022 dated 14.10.2022

3. Shri Rajesh Nathan, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that even though the appellant had initially availed the cenvat credit on the common input services partly of which was attributed to the exempted services i.e. trading activity. However, on pointing out by the audit officer during EA 2000 Audit, the entire credit related to the common input services was reversed along with interest. We are of the view that once the assessee reversed the cenvat credit on the input services attributed to the exempted services, the demand under Rule 6 (3) is not sustainable. This issue has been considered by this Tribunal in various judgments including the judgment of M/s. Aims Industries Ltd (Supra) cited by the learned counsel.

4.1 We also find that since in the show cause notice demand was raised @ of 6% /7% and not considered the reversal of cenvat credit, the matter needs to re-considered only for the limited purpose of quantification and correctness of reversal of cenvat credit along with payment of interest.

5. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after considering the above observation. Appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 28.06.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)