CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 12849 of 2019

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-APP-294-2019-20 dated 30.08.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

AIMS INDUSTRIES LTD .... **Appellant**
Beside Geb Sub Station,Padra-Jambusar Road,
Gavasad, Tal: Padra, Vadodara, Gujarat

VERSUS

Commissioner of Central Excise & ST, Vadodara .... **Respondent**
1st Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE :

Shri Saurabh Dixit, Advocate for the Appellant
Shri Prakash Kumar Singh, AR for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: 22.06.2022

FINAL ORDER NO. A/10716 / 2022

RAMESH NAIR :

The appellant is engaged in manufacturing of Industrial Oxygen gas as well as Medical grade Oxygen gas. In respect of medical Oxygen, they are claiming exemption. The case of the department is that appellant availed Cenvat credit on common input services attributable to the dutiable as well as exempted goods, therefore the appellant is liable to pay 6% value of the exempted goods, in terms of Rule 6(3) of Cenvat Credit Rules, 2004.

2. Shri Saurabh Dixit, learned Counsel appearing on behalf of the appellant submits that this issue has been raised during the audit and as per audit objection, the appellant have paid proportion of the amount of

Cenvat credit, interest and 15% of penalty and the audit Para is settled therefore, the demand is not sustainable.

3. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submissions made by both the sides and perused the record. I find that the demand was raised equal to 6% of value of the exempted goods on the ground that appellant have availed Cenvat credit on common input services which were used for both exempted as well as dutiable goods. I find that the very same issue has been raised by the audit and the appellant as per audit objection paid proportionate credit along with interest and penalty and the audit Para has been settled. It is noticed that this fact has not been considered while issuing the show cause notice. Since the appellant have already reversed the proportionate credit along with interest and penalty, the situation is as the appellant have not availed the credit from the beginning therefore, Rule 6(3) is not applicable. Accordingly, the impugned order is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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