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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.421 of 2012

(Arising out of OIA-CS/17/SURAT-II/2012 dated 22/02/2012 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-II)

Euphoric Pharmaceuticals (p) Ltd **........Appellant**
A1/173, Gidc Estate, Ankleshwar,
Bharuch, Gujarat

VERSUS

C.C.E. & S.T.-Surat-ii **.......Respondent**
NEW C.Ex BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

With

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APPEARANCE:
None appeared for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
Final Order No. A/ 11017-11018 /2022

DATE OF HEARING: 23.08.2022
DATE OF DECISION : 23.08.2022

RAMESH NAIR

The issue involved in the present case is that whether the appellant is required to pay an amount as prescribed under Rule 6 of Cenvat Credit Rules, 2004 in a case where the appellant have used the common inputs and input service in the manufacture of dutiable as well as exempted goods.

02. When the matter was called out, none appeared on behalf of the appellants. This matter has been listed on number of occasions earlier. It

appears that the appellant is not interested to pursue their case therefore, I am taking up the appeals for disposal on merit.

03. Shri Ghanshyam Soni, learned Joint Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He further submits that as regard the reversal of proportionate credit and payment of interest thereon, the appellant have not given any calculation either to the original authority or to the Commissioner (Appeals) therefore, the matter should be remitted back to the adjudicating authority. He placed reliance on the following judgments:-

- UNIMED TECHNOLOGIES LTD.- 2018 (17) G.S.T.L. 181 (Guj.)
- MODERN INSULATORS LTD.- 2018 (16) G.S.T.L. 257 (Raj.)
- NICHOLAS PIRAMAL (INDIA) LTD.- 2009 (244) E.L.T. 321 (Bom.)
- LALLY AUTOMOBILES PVT. LTD.- 2018 (17) G.S.T.L. 422 (Del.)

04. I have carefully considered the submission made by learned AR and perused the records. I find that during the EA-2000 audit, it was noticed that the appellant have availed the cenvat credit in respect of common inputs and input service and the same were used in the manufacture of exempted and dutiable goods. On the basis of the audit observation, the appellant paid the proportionate credit attributed to the exempted goods and also paid the interest. I am of the prima facie view that, in this position the appellant could not have been issued show cause notice for demand under Rule 6 of Cenvat Credit Rules, 2004 however, the reversal of proportionate credit and calculation thereof has not been verified by both the lower authorities.

05. In this position, the matter should be remitted back to the adjudicating authority to ascertain the correctness of calculation of proportionate cenvat credit attributed to the exempted goods thereafter to pass a fresh order. Hence, the impugned orders are set aside. Appeals are allowed by way of remand to the adjudicating authority.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Mehul