REGISTERED / AD

FAX : 011-26108426

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Dated: **01/11/2012**

To

1. Appellant as per address in table below

2. Respondent as per address in table below

Final Order No. **A/1290-1291/2012-EX|DB|** dated **19/10/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

S.No	Application	Appeal	Name and Address of Appellant	Name and Address of Respondent
1.		E/2743/2005, E/2744/2005	**EASTERN MEDIKIT LTD.** 292,PHASE-II, UDYOG VIHAR,GURGAON	**C.C.E. DELHI III** Udyog Minar, Udyog Vihar, Vanijya Nikunj, Phase V, Gurgaon - 122016 (Haryana)

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2. Other Appellants and Respondents as per Annexure

Copy To
1. **Advocate(s) / Consultant(s):** SH. R.C. CHOUDHARY, ADV, 1616/11, U.E. GURGAON

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2. C.D.R 3. Office Copy 4. Guard File

5. Bar Association, CESTAT, Delhi 6. Director Publications, Customs, Excise. I.P. Estate, Delhi

7. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

11. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12. TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038

Assistant Registrar
EXCISE Appeal Branch

14. **EASTERN MRDIKIT LTD.**
195,196,205&206, PHASE-I,UDYOG
VIHAR, GURGAON

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi
COURT-I

Date of hearing/decision: 19.10.2012

Central Excise Appeal No.2743, 2744 of 2005

Arising out of the order in appeal No240-241/AKG/GGN/2005 dated 13/17.5.2005 passed by the Commissioner , Central Excise (Appeals), Delhi III.

For Approval and Signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Eastern Medikit Ltd. .. Appellant

Vs.

C.C.E., Delhi III .. Respondent

Present for the appellant : Shri R.C. Choudhary, Advocate
Present for the respondent : Shri R.K. Verma, A.R.

FINAL Order No. A/1290-1291/2012-Ex(BR)

Per Mr. Justice Ajit Bharihoke (oral):

These two appeals involving similar question of law and facts are directed against the impugned order-in-appeal dated 13.5.2005 whereby the Commissioner (Appeals) dismissed the appeals filed against the order in original confirming cenvat credit demand of Rs.13,59,728/- and Rs.3,04,478/- along with interest and penalty on the appellant.

2. Briefly stated relevant facts for disposal of appeals are that the appellant is engaged in the manufacture of disposable IV Cannule of different types failing under Chapter Heading No.9018.00 of the Central Excise Tariff Act, 1985.

3. The appellant was availing benefit of Notification No.10/2002-CE dated 1.3.2002 and paying central excise duty @ 4% on the value of their final product without availing benefit of cenvat credit till 28.2.2003. Under that Notification an assessee was allowed to clear his final product @ 4% ad valorem provided no cenvat credit in respect of inputs gone in the manufacture of final product is availed. This benefit was however withdrawn with effect from 1.3.2003 vide Notification No.10/2003-CE dated 1.3.2003.

4. The appellant availed cenvat credit in respect of the Inputs, semi-processed Inputs and Inputs contained in the final products lying the stock as on 1.3.2003.

5. Department was of the view that the appellant was not entitled to avail cenvat credit on the unused stock as per Rule 3(2) of Cenvat Credit Rules, 2002 which stipulates that manufacturer or producer of the final product shall be allowed cenvat credit of duty paid on inputs lying in stock or in process or contained in the final product on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or become excisable goods. Accordingly, show cause notices proposing to disallow cenvat credit availed and recovering the same raising cenvat credit demands of Rs.13,59,728/- and Rs.3,04,478/- were issued to the appellant. Show cause notices also proposed to recover interest on the wrongly availed cenvat credit and imposing penalties on the appellant.

6. Show cause notices ~~was~~ were adjudicated by the jurisdictional Additional Commissioner vide separate orders in original dated 19.10.2004 and the demands raised vide the show cause notices ~~was~~ were confirmed along with interest and penalties of Rs.5 lakhs and Rs.1 lakh respectively were imposed.

7. Being aggrieved of the impugned orders in original confirming ~~duty~~ cenvat credit demands, the appellant filed appeals before Commissioner (Appeals), who after hearing the parties dismissed the appeals by a common order dated 13.5.2005 and confirmed the demands. It is against this order of Commissioner (Appeals) the appellant has preferred these appeals.

8. Shri R.C. Choudhary, ld. Advocate for the appellant, has contended that the impugned order in appeal is not sustainable as it has been passed in total disregard of the erstwhile Cenvat Credit Rules, 2002. Expanding on the argument, ld. Counsel for the appellant submitted that the cenvat credit has been denied to the appellant on incorrect reading of Rule 3(2) of Cenvat Credit Rules, 2002 ignoring the fact that admittedly, the stock of inputs available with the appellant including in process inputs and the inputs contained in the final product lying in stock as on 1.3.2003 was duty paid, and those inputs were eligible for cenvat credit under Rule 3(1) of the erstwhile Cenvat Credit Rules, 2002. Ld. Counsel further contended that even as per Rule 3(2), the appellant is entitled to cenvat credit in respect of duty paid inputs available in the stock or in process or inputs contained in the final product lying in stock as on 1.3.2003.

9. Shri R.K. Verma, ld. A.R. for Revenue on the contrary has argued in support of the impugned order. He has contended that ld. Counsel has rightly disallowed the cenvat credit to the appellant in view of Rule 3(2) of Cenvat Credit Rules 2002 because the inputs lying in stock or in process or contained in the final product lying in stock as on 1.3.2003 did not relate to the goods which ceased to be exempted or non-excisable goods. Thus he has urged us to dismiss the appeals.

10. We have considered the rival contentions and perused the record. On perusal of the order-in-original as also the order-in-appeal we find that ~~revenue~~ the authorities below have denied cenvat credit to the appellant on the ground that earlier to coming into force of Notification No. 10/2003-CE dated 01.03.2003 the final product of the appellant company was neither exempted goods nor non-excisable, and since the final product of the appellant did not cease to be exempted goods or became excisable w.e.f. 01.03.2003 Rule 3(2) of Cenvat Credit Rules, 2002 was of no avail to the appellant as such he was not entitled to the cenvat credit on the inputs lying in stock, or in process or inputs contained in the final product lying in stock as on 01.03.2003.

11. We find it difficult to agree with the aforesaid conclusion of the authorities below. Perusal of Notification No. 10/2002-CE dated 01.03.2002 would show that it starts with the following language:-

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table (hereinafter referred to as the said goods), from so much of the duty of excise leviable thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table, subject to the following conditions, namely:-

(i) no credit of the duty paid on

(a) inputs; or

(b) Capital goods exclusively,

Used in the manufacture of these goods has been taken under rule 3 or rule 11 of the CENVAT Credit Rules, 2002; and

(ii) the duty is paid in cash or through account current.

Explanation I.- For the removal of doubts, it is clarified that a manufacturer who has availed of full exemption under notification No. 8/2001-Cenral Excise, dated the 1st March, 2001 or notification No. 8/2002-Central Excise, dated the 1st March, 2002, as the case may be, in any financial year, is permitted to avail this exemption in the same financial year.

Explanation II.- For the purposes of this notification the "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consume and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

Explanation III.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified."

12. On bare reading of the above, it is evident that this notification is an exemption notification whereby the excise duty on the final product i.e. IV Cannule ~~of the appellant~~ has been exempted to the extent of duty of excise leviable on the final product of the appellant under the first schedule of Central Excise Act as in excess of 4% advalorem specified in the corresponding entry in the notification in respect of the medical equipment and other goods specified in list-I annexed to the notification which also specifies disposable and non-disposable Cannule. From the notification No. 10/2002-CE it is also clear that aforesaid exemption was made available to the assessee subject to the condition that he would not get credit of the duty paid on inputs.

13. We find that vide Notification No. 10/2003-CE dated 01.03.2003 the above referred exemption in the form of reduction in excise duty to the extent of 4% was partially taken away by increasing the rate of the excise duty payable from 4% to 8% advalorem and the condition of non-availament of cenvat credit by the assessee was done away with. Cumulative reading of the above referred two notifications clearly indicate that w.e.f. 01.03.2003 the exemption from excise duty on its final product available to the appellant prior to 01.03.2003 was partially withdrawn to the extent of 4% advalorem by increasing the excise duty from 4% to 8%. Thus, in our view to that extent the final product of the appellant cease to be exempted from excise duty. As such the case of the appellant is squarely covered under Rule 3(2) of the Cenvat Credit Rules, 2002 which is reproduced below:-

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods manufactured by the said manufacturer or producer cease to be exempted goods or any goods become excisable."

14. Otherwise also the case of the appellant is squarely covered under Rule 3(1) of Cenvat Credit Rules, 2002 which provides that a manufacturer or producer of final product shall be allowed to take cenvat credit of the excise duty paid on the inputs received in the factory on or after 01.03.2002 provided such inputs are used in the manufacture of the final product subject to excise duty. It is not the case of the revenue that the inputs in question are not duty paid or that those were received in the factory of the appellant prior to 01.03.2002. It is also not the case of the revenue that the relevant duty paid inputs were not used for or any manufacture of the excisable final product of the appellant. Therefore, in our view even as per Rule 3(1) of the Cenvat Credit Rules, 2002 the appellant is entitle to cenvat credit on the inputs in question which were either available in stock or in process or were contained in the final product lying in stock as on 01.03.2003. Thus, viewing the problem from any angle the appellant is entitled to claim cenvat credit under Rule 3 of the Cenvat Credit Rules, 2002.

15. In view of the above discussion, we accept the appeals and set aside the impugned order of the Commissioner (Appeals) denying cenvat credit of the inputs lying in stock or in process or in inputs contained in the final products lying in stock as on 01.03.2003.

16. On perusal of the impugned order we find that the appellant has been denied cenvat credit on duty paid inputs on the ground that his case is not covered by Rule 3(2) of erstwhile Cenvat Credit Rules, 2002. We find it difficult to accept the conclusion of the Commissioner (Appeals). On bare reading of Rule 3(2) of Cenvat Credit Rules, 2002 it is apparent that this rule has been provided to take care of the cenvat credit right of the assessee in respect of the inputs lying in stock or in process or inputs contained in the final product lying in stock as on date in which the exempted or non-excisable final product cease to be exempted or non-excisable. In the instant case, admittedly, the final product of the appellant under Notification No.10/2002-CE was excisable. Earlier to 1st March 2003, the appellant was paying 4% duty without availing cenvat credit of duty

paid on inputs and with effect from 1.3.2003 the duty liability of the appellant became 8% and the rider of non-availing of cenvat credit was removed. Thus at no stage, those final product of the appellant was either exempt or non-excisable product. Thus in our view, the Rule 3(2) is not applicable in this case and as discussed above, the appellant is eligible for cenvat credit on the stock of inputs under Rule 3(1) of Cenvat Credit Rules, 2002.

17. In view of the above, the appeals are accepted and the impugned order of Commissioner (Appeals) denying cenvat credit is set aside.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/