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

Appeal No. E/440 /2007 – SM [BR] Date 01/01/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. ALLHABAD
38, M.G. MARG, CIVIL LINES, ALLAHABAD

C.C.E. ALLHABAD Appellant
Vs
M/S BURNET PHARMACEUTICAL PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1622 / 2008- **SM[BR]** dated 11.12.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S BURNET PHARMACEUTICAL PVT. LTD.
GIDA, SECTOR 13, GORAKHPUR (U.P.)
2. Adv. / Consult
NONE;------------------

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No. 440 of 2007-SM

(Arising out of Order-in-Appeal No. 126-CE/ALLD/2006 dated 23.11.2006 passed by the Commissioner (Appeals), Central Excise, Allahabad)

For approval and signature

HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

1.	**Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?**	
2.	**Whether it would be released under Rule 27 of the 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.**	

CCE, Allahabad — Appellant

Vs.

M/s Burnet Pharmaceutical Pvt. Ltd. — Respondent

Appearance:
Shri A.K. Rastogi, DR - For appellant
None - For respondent

CORAM:
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 11.12.2008

Final Order No. 1622/08-SM(BR) dated 11-12-08

Per Rakesh Kumar :

This is Revenue's appeal against the order-in-appeal dated 23.11.2006 passed by the Commissioner of Central Excise (Appeals), Allahabad. None appeared for the respondent. The respondent, however, vide letter dated 13.9.2008 has requested for decision of the appeal on merits.

2. Heard ld. DR. He reiterating the grounds of appeal pleaded that since the bottles which were broken during the process of filling of medicines were not as used in the manufacture of finished goods, Cenvat credit in respect of the same has been correctly denied.

3. I have carefully considered the submissions of ld. DR and have perused the grounds of appeal and other records. The point of dispute is in this case is as to whether Cenvat credit of duty paid on the glass bottles, which got broken in course of packing of medicines in those bottles, would be available to the respondents. From the facts narrated in the order-in-original and also in order-in-appeal passed by the Commissioner of Central Excise (Appeals), it is clear that the bottles were broken in course of manufacturing process in the process of filling of medicines in the bottles and, therefore, it cannot be said that broken bottles were not used in or in relation to the manufacture of medicines. In view of this, I find no infirmity in the impugned order. The Revenue's appeal is dismissed.

(Dictated & pronounced in open Court)

(RAKESH KUMAR)
TECHNICAL MEMBER

RM