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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/966 /2006-967 /2006 – SM[BR] Date 16/07/2009

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

To :
CCE,JAIPUR-I
NCRB,STATUE CIRCLE,C SCHEME,JAIPUR

CCE,JAIPUR-I Appellant
Vs
M/S BRAWN MEDICAMENT P LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 702 -703 / 2009 –SM[BR] dated 24.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   1. M/S BRAWN MEDICAMENT P LTD.
   2. M/S BRAWN MEDICAMENT[P]LTD.
   F-442,PHASE-I9II,RIICO INDL AREA,BHIWADI(RAJ)
2. Adv. / Consult SHRI BIPIN GARG ADV.
   B-1/1289-A, VASANT KUNJ NEW DELHI

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066,
PRINCIPAL BENCH, COURT NO.IV

Excise Appeal Nos. 966 - 967 of 2006 –SM (Br.)

[Arising out of Order-in-Appeal No. 460-461(MPM) CE/JPR-I/2005 dated 23.12.2005 passed by the Commissioner (Appeals-I) Central Excise, Jaipur]

Date of Hearing/Decision: 24.06.2009

For approval and signature:

Hon'ble Shri 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 should 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, Jaipur-I Appellant
Rep. by Mr. R. K. Saini, DR for the Appellant

Vs.

M/s Brawn Medicament Pvt. Limited Respondent
Rep. by Mr. Atul Gupta, C.S. for the Respondent

Coram: Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final **ORDER** - 702-703/2009 SM(Br)

Per Rakesh Kumar:

These two appeals have been filed by the Revenue against the order in appeal No. 460-461(MPM) CE/JPR-I/2005 dated 23.12.2005 passed by the Commissioner (Appeals-I) Central Excise, Jaipur, by which the orders-in-original No. 136/98 dated 4.12.98 and No. 23/99 dated 1.4.99 passed by the Deputy

Commissioner of Central Excise, Jaipur were set aside. The facts leading to these appeals by the Revenue are, in brief, as under:-

1.1 The Respondent in their factory at Bhiwadi are engaged in the manufacture of M.S. Ingots. During the period of dispute, as per the records of the Respondent, they received certain quantity of scrap from M/s Tara Re-rolling Mills, Tedesara in respect of which they have taken cenvat credit amounting to Rs. 1,32,975/-. During the same period as per the Respondent's records they have also received H.B.I. (Hot Beriqueted Iron) from M/s Nova Udyog Ltd., Haldwani under their invoices on the basis of which cenvat credit amounting to Rs. 6,94,445/- have been taken.

1.2. The Central Excise Officers of Raipur Commissionerate conducted the investigation in respect of M/s Tara Re-rolling Mills and it was found that they have no power connection and as such there was no manufacturing activity and that they have issued fabricated /Invoices showing transportation of scrap to the Respondent. The registration nos. of the vehicle mentioned in some of the invoices issued by M/s Tara Re-rolling Mills to the Respondent were found to be of two wheelers/ cars/buses etc., and in some cases where the registration numbers of the vehicles mentioned in the invoices were genuine, the owners of the vehicles denied having transported any such consignments from the factory of M/s Tara Re-rolling Mills. From this it appeared that the invoices issued by M/s Tara Re-rolling Mills to the Respondent were fake invoices and as such there was no sale of any material. Similar investigation was conducted by the officers of Central Excise Commissioinerate, Meerut in respect of M/s Nova Udyog Limited. On enquiry by the Commissionerate Officers it was found that vehicle numbers mentioned in some of the invoices were of two wheelers, three wheelers buses, car etc. which could not carry the HBI weighing 15-20 MT, in some consignments the vehicle numbers mentioned in the invoice were belonging to Govt. departments and by no stretch of imagination such vehicles could have been used for transporting of goods from the premises of M/s Nova Udyog Limited and the registration number mentioned in some of the invoices were found to be bogus as per the records of the transport authority as no such vehicle number has been allotted. Wherever the vehicle registration numbers were found genuine, on enquiry it was revealed that no material was transported from the premises of M/s Nova Udyog Limited.

1.3. It is on this basis that the department was of the view that the cenvat credit taken on the basis of invoices of M/s Nova Udyog Limited and M/s Tara Re-rolling Mills cannot be allowed, as under these invoices no material has been received. After issue of show cause notice in both the cases the jurisdictional Deputy Commissioner confirmed the cenvat credit demand alongwith interest and imposed penalty on the Respondent under Rule 173Q. The Respondent filed appeals against these two orders before the Commissioner (Appeals) on the ground that only some of the registration numbers were found to be bogus or of vehicles like two wheelers, three wheelers, buses, cars etc. and that in all the cases payment had been made by the Respondents through banking channels. The CCE (Appeals), allowed the Respondent's appeals vide the impugned under dated 23.12.2005. It is against this order that the Revenue has come in appeal before this Tribunal.

3. Heard both the sides.

4. Shri R.K. Saini, DR has challenged the impugned order pleading that while in case of M/s Tara Re-rolling Mills the investigation revealed that there was absolutely no manufacturing activity in their factory and the vehicle registration number mentioned on the invoices were either of two wheelers, three wheelers etc. or where the vehicle number mentioned in those invoices were genuine, the vehicle owners denied having transported any material from the factory of M/s Tara Re-rolling Mills. As regards invoices of GP-Is M/s Nova Udyog Limited has emphasized that investigation indicated that the vehicle registration numbers were either bogus or of two/three wheelers, buses or of Govt. vehicles, none of which could have been used for transportation of the material mentioned in the respective invoices. He, therefore, pleaded that in

view of this, the only conclusion which can be drawn is that invoices on the basis of which, the cenvat credit has been taken, were fake. Therefore, the cenvat credit has been rightly denied by the Deputy Commissioner and penalty has been rightly imposed on the Respondent. He cited the judgement of Ranjeev Alloys Limited vs. CCE, Chandigarh reported in 2009 (236) ELT 124 (Tri.-Del.), wherein it was held that when the registration number of the vehicle mentioned in the invoices under which the goods. have been sold, are found to be bogus or of vehicles not capable of transporting the goods covered under the invoices and cenvat credit has been taken on the basis of such invoices, the burden of proving that the goods have actually been received would be on the assessee who has taken cenvat credit on the basis of such invoices and in this case the burden of proof has not been discharged by the Respondent. In view of this, he pleaded that the impugned order is not correct.

5. Shri Atul Gupta, Company Secretary for the respondent defended the impugned order and pleaded that just because the vehicle number of two wheelers, three wheelers, buses, cars etc. or of Govt. vehicles is mentioned on some of the invoices, it cannot presumed that the goods covered under those invoices have not been received. He also pleaded that the goods covered under the invoices, in question, are huge and there is no dispute that the finished goods have been manufactured. In view of this receipt of the inputs cannot be doubted. He further pleaded that all these invoices had been submitted to the Range Officer alongwith ER-I returns. He cited the judgement of the Tribunal in the case of CCE, Jaipur vs. Saco Alloys Pvt. Ltd., reported in 2008 (228) ELT 457 (Tri.-Del.) wherein in similar situation the Tribunal upheld the Commissioner's order allowing the cenvat credit on the ground that no verification of the stock was conducted at the end of the recipient to shown the shortage of the raw material.

6. I have carefully considered the submissions made from both the sides and perused the records. The cenvat credit of Rs. 1,32,975/- has been taken on the basis of the invoices issued by M/s Tara Re-rolling Mills. In their case the enquiry by the jurisdictional Central Excise Officer revealed that not only the

factory was not functional and there was no manufacturing activity, the invoices issued by M/s Tara Re-rolling Mills were either having the registration number of two/three wheelers/buses which could not have transported the material or the vehicle owners denied having transported any material. Therefore, I am convinced that so far as M/s Tara Re-rolling Mills is concerned, the invoices are fake and bogus and have been issued only to pass on the cenvat credit without supplying the material and as such the Commissioner's (Appeals)'s orders permitting the cenvat credit in respect of such invoices is not correct. As regards the invoices issued by M/s Nova Udyog Limited, I find that here also on enquiry by the jurisdictional Central Excise Officer, Meerut Commissionerate, it was found that either the registration numbers of the vehicle mentioned on the invoices were fake, in the sense that as per the records of the road transport authority, either the same had not been issued or the same were of two/three wheelers, cars, buses or Govt. vehicles which could not have transported the material covered under the respective vehicles.. This Tribunal in the case of Ranjeev Alloys Limited (supra) has held that when the registration number of the vehicle mentioned in the invoices under which the goods have been sold are of two wheelers, three wheelers, buses, cars etc. not capable of transporting such quantity of goods, the burden of proving that the material has actually been received its on the assessee who has taken cenvat credit on the basis of such invoices. Applying the ratio of this judgement to this case the burden of proving that the material covered under the invoices issued by M/s Tara Re-rolling Mills and M/s Nova Udyog Limited had been received is on the respondents, but this burden of proof has not been discharged. In view of this, I hold that the Commissioner (Appeals)'s order is not correct. The impugned order is, therefore, set aside. The appeals of the Revenue are allowed.

[Dictated and pronounced in the open Court]

[Rakesh Kumar]
Member (Technical)

[Pant]