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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/2557/2006-2558/2006-SM[BR]

Date 01/09/2008

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I — Appellant

Vs

GLOBEL STONES PVT.LTD. — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1228 – 1229 /2008 –SM[BR] dated 8.8.2008 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   1. GLOBEL STONES PVT.LTD.
   2. M/S GLOBAL STORES [P] LTD.
   E-40 TO E-42, AND G-43 TO G-47, RIICO INDL. AREA, EXTN. BAGRU, JAIPUR, RAJASTHAN
2. Adv. / Consult
   MR.SANJEEV KUMAR MISHRA
   166, BLOCK A, MODI NAGAR, AJMER ROAD, PURANEE, CHUNGEE, JAIPUR-302019
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 Delhi -
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 60017
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 - 15
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH NEW DELHI

In Excise Appeals Nos.2557 & 2558 of 2006-SM (BR)

[Arising out of common Order-in-Appeal No.136-137(MPM)CE/JPR-I/2006 dated 21.4.2006 passed by the Commissioner of Central Excise, (Appeals-I), Jaipur]

Date of Hearing/ Decision:8.08.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? :

N

CCE, Jaipur ...Appellants
[Rep. by Shri Sansar Chand, DR]

Vs.

M/s. Global Stores (P) Ltd. & Ors. ....Respondent
[Rep. by Shri S. Kumar Mishra, C.A.]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 1228-29/08-SM(BR)/Dated:8.8.2008

<u>Per P.K. Das</u>:

Both the appeals are arising out of a common order and, therefore, both are taken up together for disposal.

2. The relevant facts of the case are that the Adjudicating Authority sanctioned rebate claim of Rs.5,12,121/-. However, the said amount was adjusted/appropriated against the dues of M/s. Grapco Industries Ltd. Commissioner (Appeals) set aside Adjudication Order. Hence, Revenue filed this appeal.

3. After hearing both the sides and on perusal of the records, it transpires from the impugned order that the Appellants purchased the units under public auction from Debt Recovery Tribunal, Kolkata and purchased only the assets of the unit and they have not taken over M/s. Grapco Industries Ltd. The Adjudicating Authority appropriated the amount on the ground that notice under Section 142 of the Customs Act/Section 11 of the Central Excise Act, 1944 was issued to the Appellants for recovery of the said amount pending on M/s. Grapco Industries Ltd. The Commissioner (Appeals) observed that the Appellants had not taken over the property of M/s. Grapco Industries Ltd. and, therefore, they are not liable to pay the dues.

4. On a query of the Bench, the ld. Advocate on behalf of the Respondent placed the copy of the Notice dated 5.11.2004 issued to the Appellants for recovery of the instant amount of Government dues. The Respondent challenged the Notice before the Hon'ble High Court of Rajasthan and Jaipur Bench being Writ Petition NO.2583/2005. By Order dated 22.7.2005, the Hon'ble High Court directed that if the matter is not heard finally within the reasonable period, for any reason, the petitioner

shall be at liberty to get stay application listed for appropriate order. Ld. Advocate on behalf of the Respondent failed to produce any Stay Order from the Hon'ble High court. So, the Adjudicating Authority rightly appropriated the amount against refund claim in terms of the Notice dated 5.11.2004 issued under Section 142 of the Customs Act, 1942.

5. In view of the above discussions, the impugned orders of the Commissioner (Appeals) are not sustainable. The orders of the Adjudicating Authority are restored. The appeals filed by the Revenue are allowed.

Order dictated & pronounced in open court on 8.8.2008.

(P.K. Das)
Member (Judicial)

Ckp.