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

Appeal No. ST/357 /2006 - CU[DB] Date 22/01/2009

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

To :
M/S MAHENDRA MARBLE (P) LTD
HARMARA ROAD, INDUSTRIAL AREA,
KISHANGARH
305801

M/S MAHENDRA MARBLE (P) LTD Appellant

Vs

C.C.E. JAIPUR I - Respondent

I am directed to transmit herewith a certified copy of **Final order No.** ST/43/09 **CU[DB]** dated 14.01.09

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   C.C.E. JAIPUR I I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.ATUL GUPTA, CS
   B-1/1289-A, VASANT KUNJ NEW DELHI 110 070
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-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

COURT-III

Date of hearing/decision:14.1.2009

Service Tax Appeal No.357 of 2006

Arising out of the Review Order No.54- 150/JP-II/2005 dated 27.10.05 passed by the Commissioner, Central Excise, Japur II.

For Approval and Signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	NA
	Whether their Lordships wish to see the fair copy of the Order?	Seen
	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant — Respondent

M/s Mahendra Marbles (P) Ltd. vs. C.C.E., Jaipur II

Appearance:

Shri Atul Gupta, Company Secretary for the appellant
Shri A.K. Madan, Authorized Departmental Representative (Jt.CDR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. ST/43/09

Per P.K. Das:

Heard both sides and perused record.

2. The issue involved in this case is as to whether the Revenue may issue show cause notice dated 11.7.2002 under Section 73 of the Finance Act, 1994 for demanding duty not paid during the period 16.11.97 to 1.6.98 in respect of Goods Transport Operator Service.

3. After hearing both sides and on perusal of the record, we find that Commissioner in review proceeding disposed of 97 cases by the impugned order. The learned Counsel placed a Final Order No.126-221/2007-ST dated 18.4.07 passed by the Tribunal in the case of M/s Pratik Marbles (P) Ltd. vs. C.C.E., Jaipur whereby 96 appeals were disposed of in favour of the appellants. The relevant portions of the said order are reproduced below:

> ***"5. We find that the Hon'ble Supreme Court had considered the effect of the amended legal position, in the appeal filed by the Revenue against the judgment of this Tribunal in this case of L.H. Sugar Ltd. [2006 (3) S.T.R. 715 (S.C.) = 2005 (187) E.L.T. 5 (S.C.)] and had ruled as under :-***
>
> > ***'We have heard counsel for the parties.***
> >
> > ***2. Learned Counsel for the parties have drawn our notice to the relevant provisions of the Finance Act as it stood in the year 1994 and thereafter as it stood after the various amendments to the Act in subsequent years. Having considered the relevant provisions of the Act, the Tribunal has, inter alia, recorded the following conclusion.***
> >
> > ***"The above would show that even the amended Section 73 takes in only the case of assessees who are liable to file return under Section 70. Admittedly, the liability to file return is cast on the appellants only under Section 71A. The class of persons who come under Section 71A is not brought under the net of Section 73. The above being the position show cause notices issued to the appellants invoking Section 73 are not maintainable.***
> >
> > ***3. We entirely agree with the conclusion arrived at by the Tribunal. We find no merit in these appeals and the same are accordingly dismissed. No order as to costs.'***
>
> ***6. A perusal of the above judgment brings out that a notice under Section 73 could not have been resorted to by the Revenue for the purpose of recovery of tax not paid during the material period. This decision is directly on the dispute arising in these appeals and has to be followed by all the subordinate courts and tribunals."***

4. In view of the above decision, we find that the Tribunal by Final Order dated 18.4.07 allowed the appeals of 96 Co-noticees except the present appellant. As such, respectfully following the Tribunal decision

in the case of Pratik Marbles (P) Ltd. (supra), we allow the present appeal with consequential relief.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/ 3