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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/1082/2011 – SM[BR] **Date 30/11/2011**

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

To :
M/S MITTAL ENTERPRISES

E-81(A), INDRAPRASTHA INDUSTRIAL AREA, KOTA

M/S MITTAL ENTERPRISES Appellant

Vs

C.C.E. JAIPUR I Respondent

I am directed to transmit herewith a certified copy of **Final order No. 848 /2011-SM[BR]** dated 17.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult **SHRI VIJAI KUMAR ADV.**
C-2/2329, VASANT KUNJ NEW DELHI-70.

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV
Excise Appeal No. 1082 of 2011 (SM)

[Arising out of the Order-in-Appeal No. 517 (DKV) CE/JPR-I/2010 dated 07/12/2010 passed by The Commissioner (Appeals – I), Customs & Central Excise, Jaipur.]

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 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 Department Authorities?	:

M/s Mittal Enterprises — Appellant

Versus

CCE, Jaipur – I — Respondent

Appearance

Shri Vijai Kumar, Advocate – for the appellant.

Shri P.K. Sharma, Authorized Representative (DR) – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 17/11/2011.

Final Order No. 848/2011 SM (BR) Dated : ____________

Per. Rakesh Kumar :-

The appellant a manufacturer of Calcium Stearates export their goods under bond under the provisions of Rule 19 of the Central Excise Rules, 2002. The clearances of exports are made under ARE-1. For export under bond under Rule 19, the Central Government has issued Notification No. 42/2001-CE (NT) dated 26/6/01 prescribing the conditions and also the procedure to be followed. As per the procedure prescribed in this Notification, the sealing of the export consignments can be done either by the Jurisdictional Central Excise officers or it can be done by the designated officials of the exporter under self-sealing and self-certification procedure. In this case, the appellant had opted for self-sealing and self-certification of the export consignments cleared under ARE-1. The objection of the department is that in terms of

Notification No. 42/2001-CE (NT), the Appellant clearing their export consignment under self-sealing and self-certification procedure must have intimated the Jurisdictional Central Excise Officers 24 hours in advance and since this was not done and instead the appellant have only sent the intimation regarding the clearances under self-sealing and self-certification procedure, according to the department, the provisions of the Notification No. 42/2001-CE issued under Rule 19 have been contravened and thereby attracting the penal provisions of Rule 27 of the Central Excise Rules. On this basis, the Jurisdictional Assistant Commissioner imposed penalty of Rs. 5,000/- on the appellant under Rule 27, which was upheld by the Commissioner (Appeals) vide order-in-appeal dated 7/12/2010. Against this order of the Commissioner (Appeals), the present appeal has been filed.

2. Heard both the sides.

3. I have gone through the Notification No. 42/2001-CE (NT) dated 26/6/01 issued under Rule 19 of the Central Excise Rules, which prescribes the conditions for export

under bond and also the procedure to be followed in this regard. Para 2 (iii) of the Notification provides for dispatch of the goods self-sealing and self-certification, which is reproduced below :-

"(iii) **Despatch of goods by self-sealing and self-certification.** - (a) Where the exporter desires self-sealing and self-certification for removal of goods from the factory, warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorised by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory, warehouse, any such approved premises within twenty four hours of removal of the goods;

(b) the Superintendent or Inspector of Central Excise shall, after verifying the particulars of the bond or letter of undertaking and endorsing the correctness or otherwise, of the particulars on the application, send to the officer to whom the bond or letter of undertaking has been furnished either by post or by handing over to the exporter in a tamper proof sealed cover after recording the particulars in the official records;

(c) The exporter may prepare quintuplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application;

(d) In case of export by parcel post after the goods intended for export has been sealed, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package to which it refers, to the postmaster at the office of booking."

4. From the perusal of para 2 (iii) it is seen that there is no provision that the intimation regarding clearance under self-sealing and self-certification procedure must be sent to the Jurisdictional Central Excise officers in advance. All which is required is that the designated official of the exporter company self-certify on all the copies of the ARE-1, that the goods has been sealed in their presence and send the original and duplicate copies of the ARE-1 to the Jurisdictional Superintendent within 24 hours of the removal of the goods. In view of this, the impugned order imposing penalty on the appellant for contravention of the provisions of notification

issued under Rule 19 is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in open court.)

(Rakesh Kumar)
Member (Technical)

PK