

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),

M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **QUERIST:**

M/s.Rialto Enterprises Pvt. Ltd., Chennai on behalf of M/s.Gillette Diversified Operations Pvt. Ltd. (GDOPL).

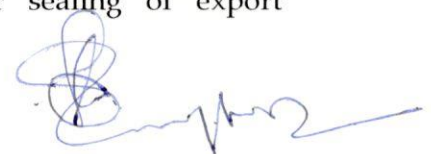
2. **FACTS:**

2.1 GDOPL is a merchant exporter and is exporting, among other things, tooth brushes under their brand name Oral-B. Querist is the manufacturer and supplier of tooth brushes to GDOPL. In respect of orders placed by GDOPL on the querist for supply of tooth brushes, the querist also gets the goods manufactured and supplied by M/s.Breech Oralcare Pvt. Ltd. located in Gorwa, Vadodara. In turn, the querist supplies them to GDOPL. It is reported that certain models of tooth brushes are outsourced from Breech Oralcare Pvt. Ltd. in the above manner.

2.2 By taking into account the above background, GDOPL proposes to have export transactions as described below:

- GDOPL shall place an order on Rialto, Chennai.
- Rialto places an order on BOC Gujarat.
- BOC manufactures and supplies the tooth brush under Bill to Ship basis viz. Bill to Rialto and Ship to GDOPL office at Vadodara and issues Invoice with GST.
- Rialto Chennai shall raise an Invoice with GST on GDOPL Vadodara for the tooth brushes directly supplied by BOC under Bill to Ship from basis.
- GDOPL Vadodara shall export the tooth brushes from the State of Gujarat under LUT without payment of GST.

Stuffing of goods into containers for export shall happen at the factory of the manufacturer BOC. GDOPL have rented an office within the premises of BOC to carry out the exports viz. sealing of export containers under self-sealing procedure for which necessary endorsement have been made on GSTIN by inclusion of additional place of business. BOC has provided GDOPL letter of consent for carrying out business within their premises especially for sealing of export



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containers under self-sealing procedure. Necessary commercial rent agreement have been executed between GDOPL and BOC to start commencement of export shipments.

3. QUERY:

Based on the above facts, the querist would like to know whether GDOPL can get self-sealing permission in the leased premises of Breech Oralcare Pvt. Ltd. from the customs authorities without any hassles.

4. OPINION:

4.1 Self-sealing procedure for the purpose of export by manufacturer-exporters from their factories or merchant exporters from their warehouses has been streamlined by CBIC by issue of circulars in 2017. In particular, two Circulars 26/2017-Customs dated 01.07.2017 and 36/2017-Customs dated 28.08.2017 prescribe in detail the procedures to be followed for self-sealing of export cargo and the conditions to be complied with in that connection. Copies of these circulars are attached as **Annexures-I and II** to this opinion.

4.2 It is also to be noted that even after introduction of GST law, the concept of Bill to Ship to transactions is recognised and it will be possible for the querist to place orders on Breech Oralcare Pvt. Ltd. for supply of tooth brushes for export by GDOPL from Gujarat itself. It is reported that GDOPL will place an order on the querist. In turn, the querist will place an order on Breech Oralcare Pvt. Ltd. After manufacture, Breech Oralcare Pvt. Ltd. can raise invoice /e-way bill with billing address as "Rialto Enterprises" and consignee's address as GDOPL at their warehouse. The querist can raise an invoice on GDOPL by showing shipment from Breech Oralcare Pvt. Ltd.'s factory premises to GDOPL's warehouse.

4.3 It is reported that GDOPL has a lease agreement with Breech Oralcare Pvt. Ltd. for leasing a warehouse in their premises. However, a perusal of the lease agreement shows that hardly 150 sq.ft. is given on lease as a warehouse. Whether this space will be sufficient to be used as a warehouse for movement of export goods is a point to be looked into by GDOPL. It is reported that GDOPL has also obtained IEC amendment showing this space as an additional place of business. As per Section 2(85) of CGST Act 2017, place of business includes,

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a



taxable person stores his goods, supplies or receives goods or services or both; or

- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called."

4.4 Thus, the premises taken on lease cannot be a premises only for name sake. It should be a place where GDOPL carries on its business in the normal course, there should be space for storage of goods, books of account and space for staff to sit and work etc. The shipping documents to be filed by GDOPL for export of the tooth brushes will be in their capacity as merchant exporter, which means, that the goods are moved from their warehouse. The movement of goods from Breech Oralcare Pvt. Ltd. to the GDOPL warehouse is to be recorded properly and documents also are to be kept for that purpose. Apart from this, the relevant shipping records need to be maintained in the above warehouse, which is reportedly taken on lease. The address given in the lease agreement does not specify the plot number or door number and it is also not clear whether the warehouse is a standalone warehouse having separate access to the public roads. This aspect has to be looked into. If the warehouse as well as factory of Breech Oralcare Pvt. Ltd. are within the same "compound", that can create difficulties and legal hurdles in recognising them as separate places of business of two legal entities and movement by way of e-way bill from the factory of BOC to the warehouse of GDOPL. While the lease agreement is silent on this, the querist's note suggests that both may be in the same premises. This aspect also needs to be examined by GDOPL. In such a case, GDOPL can consider hiring of a warehouse outside the manufacturer's premises and then moving the goods to that warehouse and from there export the goods under LUT. This will avoid legal hitches and obtaining self-sealing permission also will be hassle free.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.