

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

J. RAGINI, B.A., B.L.

M. POOJA, B.A., M.A., LL.B.

R. HARI SHUDHARJANAA, B.B.A., LL.B., (HONS.)

CONSULTANTS:

GST, CUSTOMS,

FOREIGN TRADE LAWS,

FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

I. QUERIST:

M/s.Rialto Enterprises Pvt. Ltd.,
Survey No.100/2, Vandalur Kelambakkam Road,
Melakottaiyur,
Chennai – 600 127.

II. FACTS:

1. The querist is having its factory at Survey No.100/2, Vandalur Kelambakkam Road, Melakottaiyur, Chennai – 600 127. They manufacture toothbrush under the brand name Oral-B, under third party manufacturing arrangement and supplies the same to Gillette Diversified Operations Pvt Ltd (hereinafter referred to GDOPL) for exports.
 - GDOPL avails exemptions under Chapter 4 of Exim Policy.
 - GDOPL is holding Two-Star Export House Status.
 - GDOPL registered as AEO and obtained Certificate in Dec 22.
 - The querist is a Supporting Manufacturer and Co- Licensee to GDOPL
2. GDOPL exports toothbrushes manufactured by the querist and the sealing of containers happens from the factory of the querist under self-sealing procedure based on the permission granted by the Assistant Commissioner Customs.
3. GDOPL is falling under the jurisdiction of the Assistant Commissioner of Customs, Cuddalore, Tiruchirapalli Commissionerate.
4. After introduction of GST, based on Facilitation Circular No.4/2017 dated 30th September 2017 issued by the Office of the Commissioner of Customs (Preventive) Tiruchirapalli, GDOPL have filed an application with relevant annexures as prescribed, before the Assistant Commissioner, Cuddalore for grant of self-sealing permission to seal the export containers.
5. GDOPL have clearly stated in their application that, GDOPL is merchant exporter, exporting toothbrush manufactured by supporting manufacturer (Querist). Stuffing of goods into the container and sealing of the container happens from the factory of manufacture.



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6. Based on the application submitted by GDOPL, Customs Authorities from Cuddalore have visited the Office of GDOPL and supporting manufacturer premises and forwarded their recommendations to their Commissioner at Tiruchirapalli.
7. The Assistant Commissioner of Customs, Cuddalore has granted permission to carryout self-sealing of export containers from the factory of supporting manufacturer (querist) vide letter dated 25th January 2018.
8. The self-sealing permission is amended from time to time based on the change in authorised signatories.
9. On 17th August, Superintendent of Customs, Cuddalore have visited GDOPL Office for inspection and informed GDOPL that the self-sealing permission is eligible only to the manufacturer exporter and not to merchant exporters as per the Facilitation Circular No.4 and GDOPL is not eligible to carryout self-sealing of export containers.
10. Commissioner of Customs Chennai IV, has issued Facility Circular No. 15/2023 dated 21st July 2023 calling up on the assesseees registered under other jurisdictions to register at Chennai Ports for self-sealing permission. The exporters who have granted permission without specifying the time limit in the past shall submit for letter for extension within 3 months from the date of issue of this circular. As per circular, the permission is valid only for two years in the case merchant exports and renewal thereafter.
11. The querist has made available the following documents.
 - Letter dated 21st September, 2018 filed with the Assistant Commissioner of Customs.
 - Letter dated 28th September 2018 filed with the Assistant Commissioner of Customs.
 - Facilitation Circular No.4/2017 dated 30.08.2017 issued by the Commissioner of Customs, Tiruchirapalli.
 - Circular No.26/2017 dated 1st July 2017 issued by CBEC Board.
 - Circular No.15/2023 dated 21st July 2023.



III. QUERY:

In the above context, the querist needs clarifications on the following.

- (1) Whether GDOPL is eligible to carry out self-sealing of export container as merchant exporter as per facilitation circular?
- (2) Whether the procedure followed by GDOPL and the querist are in order?
- (3) Whether GDOPL need to register with Chennai Customs for self-sealing permission?

IV. OPINION:

1. From the information provided, it is clear that,
 - 1.1 the querist is a supporting manufacturer for GDOPL
 - 1.2 the goods are manufactured and stuffed in containers in the supporting manufacturer's premises
 - 1.3 the supporting manufacturer's place is not one of the premises incorporated in the IEC of GDOPL
 - 1.4 the GDOPL is the exporter
2. In the above background, the GDOPL will come under the category of a merchant exporter. Permission is given to the exporter for carrying out self-sealing in their factory premises or warehouse as per the above circulars. Thus, prima facie it does not appear that the place, where the goods are produced for subsequent exports by a merchant exporter can be recognized for the purpose of self-sealing of export containers.
3. Various circulars issued and the forms attached to the circulars clearly suggest that self-sealing permission is for the factory premises or warehouse of the exporter.
4. Permission given earlier by the Trichy Commissionerate does not appear to be in conformity with the instructions on this subject.



5. GDOPL can apply for any permission only in its capacity as merchant exporter and not as manufacturer exporter. Though the board circulars do not refer to self-sealing of export containers by a merchant exporter, the facility circular dated 21st July 2023 issued by Customs Chennai indicates that the self-sealing permission can be given to manufacturer exporters for five years and for merchant exporters for one year. It is not clear as to how the category of merchant exporters has been included in the facility circular without any corresponding instructions from the Board. In any case it is also to be noted that if permission is granted to GDOPL as merchant exporter in accordance with the latest facility circular of Chennai Customs, it will be for their premises and not for the premises of the querist where manufacturing is undertaken.



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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.