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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F NO. 195/132/17-RA/3485 Date of Issue: 02.05.23

ORDER NO. 297 /2023-CEX (WZ)/ASRA/MUMBAI  
DATED 28.04. 2023 OF THE GOVERNMENT OF INDIA PASSED BY  
SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO  
ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER  
SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. G Coral Graphics Pvt. Ltd.

Respondent : The Pr. Commissioner of CGST & CX, Indore.

Subject : Revision Application filed, under section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. BHO-  
Excus-001-App-488-16-17 dated 07.12.2016 passed by the  
Commissioner (Appeals), Zone-II, Bhopal(M.P.).

**ORDER**

This Revision Application has been filed by M/s. G Coral Graphics Pvt. Ltd.(hereinafter referred to as "Applicant") against the Order-in-Appeal No. BHO-Excus-001-App-488-16-17 dated 07.12.2016 passed by the Commissioner (Appeals),Zone-II,Bhopal(M.P.).

2. The facts of the case are that the Applicant has cleared their final products for domestic as well as for export by way of clearances to SEZ and 100% EOUs and Export Sales against Form H during the period 2013-14. It was alleged that the applicant had not submitted proof of export relating to part of the export clearances. It was the departments contention that such proof had not been submitted in respect of exports valued at Rs 18,75,741 /- but proof of export had been submitted by the applicant for exports valued at Rs.8,68,383/-. By virtue of this statutory failure i.e. non submission of proof of export even after stipulated period, the Applicant appears to have contravened the provisions of Notification No. 42/2001-CE(N.T) dated 26/6/2001 issued under rule 19 of Central Excise Rules, 2002 as amended read with the provisions under Chapter 7 of CBEC's Excise Manual of supplementary instructions 2005 to deal with the different categories of EXPORT WITHOUT PAYMENT OF DUTY. Since, the Applicant have not opted for the procedure as prescribed under aforesaid Notification no.42/2001CE(NT) dated 26.6.2001 issued under Rule-19 of CCR, hence, the clearances appears to be counted under the domestic clearances and accordingly, the value of clearances of impugned export are required to be included in the turnover for calculating the aggregate value of clearances of Rs. 1.50 Crore for allowing exemption as provided under notification no.08/2003 CE as amended. Therefore, SCN was issued to the Applicant which was adjudicated vide OIO No. 15/AC/Demand/15-16 dated 21.05.2015 vide which demand of Rs. 1,82,019/- was confirmed along with penalty and interest. Since, the Applicant failed to file the desired proof of export in respect of clearances made to SEZ or 100% EOU, thus the duty involved in these clearances is liable to be considered under domestic clearances & duty after allowing SSI exemption is required to be recovered

from them in Terms of Section-11A(4) of the Central Excise Act, 1944 invoking extended period. Amount of interest is also liable to be recoverable from them under Section 11-AA of the Central Excise Act, 1944. Aggrieved by the OIO, the Applicant filed appeal with the Commissioner (Appeals), Zone-II, Bhopal(M.P.), who vide Order-in-Appeal No. BHO-Excus-001-App-488-16-17 dated 07.12.2016 modified the OIO to the extent of recalculating the correct demand to Rs. 66,471/- instead of Rs. 1,82,019/-.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. They have submitted proof of exports vide letter dated 05.04.2014.
- ii. In case of SEZ, they have submitted endorsed copy of Invoice and certificate of SEZ Authority.
- iii. The substantial benefit under any notification can not be denied just on the basis of procedural lapses.
- iv. In case of EOU, they have submitted the CT-3 certificate and re-warehousing certificate duly endorsed by the excise authority of EOU units.
- v. They have submitted form 'H' as proof of export, in respect of the goods exported in capacity of Merchant Exporter.
- vi. Without prejudice to above, they submitted that the demand is time barred as the demand is related to year 2013-14 while SCN is issued on 30.09.2014. They have submitted the exempted clearance in their ER-1 return and hence extended period of limitation could not be invoked.
- vii. Penalty is not correctly imposed.
- viii. Applicant has placed reliance on various case laws.
- ix. Applicant requested to set aside the impugned OIA.

4. Personal hearing in the matter was fixed on 30.11.2022, Harkesh Meena, AC appeared online on behalf of the Respondent and submitted that

export claimed by the applicant should suffer duty as no procedure for export was followed. He requested to maintain Comm(A) order.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. On perusal of the records, Government finds that the point of contention in the present case is that the Applicant claimed to have submitted the proof of export against all the exports made while the Department claimed otherwise. Therefore, issue to be decided in the present case is whether the proof of export adduced by the Applicant are suffice to support their claim.

7. Government notes that Applicant has cleared goods for domestic as well as for export. Applicant claimed the benefit of SSI exemption as per Notification 8/2003 dated 01.03.2003 issued by the Central Board of Excise and Customs (CBEC) under the Central Excise Act, 1944. This notification provides exemption to small-scale industries (SSI) from payment of excise duty on goods manufactured by them up to a certain limit. In the present case, Applicant claimed that they have not crossed the turnover requiring for the availment of benefit under the said notification. However, it is alleged that applicant has not submitted the proof of export and those clearances would be considered as domestic clearance, that would exceed the prescribed turnover of 1.5cr. Thus, demand of Rs. 66,471/- is raised on the amount which is over and above the exempted turnover. Applicant submitted that export clearances in the present case involved clearances to SEZ, clearances to EOU Unit and as a merchant exporter against form H. Applicant claimed that proof of export against clearances to EOU have been submitted and acknowledged by the Department and not in dispute. Further, Applicant claimed to have submitted the proof of exports vide letter dated 05.04.2014 in respect of the all the exports made. While, Appellate Authority observed that the Applicant did not submit LUT and ARE-1 along with the self attested copies of Bill of Lading, Shipping Bills etc. and therefore, failed to follow the substantive procedures as prescribed under

Notification No. 42/2001 dated 26.06.2001. In this regard, Government finds that the units availing SSI based exemption can follow the simplified procedure of export prescribed under part-III of chapter 7 of CBEC Manual, relevant portion of which is reproduced as:

*" Part-III*

***SIMPLIFIED EXPORT PROCEDURE FOR EXEMPTED UNITS***

***Introduction***

*1.1 Units, which are fully exempted from payment of duty by a notification granting exemption based on value of clearances for home consumption, may be exempted from filing ARE.I and Bond till they remain within the full exemption limit. The following simplified export procedure shall be followed in this regard by such units: -*

....

***Documentation***

*3.1 The clearance document will be, as follows:*

*Such manufacturers are permitted to use invoices or other similar documents bearing printed Serial Numbers beginning from 1st day of a financial year for the purpose of clearances for home consumption as well as for exports. (The printing of Serial Numbers can be done by use of franking machine). The invoices meant for use during a month shall be pre-authenticated by the owner or partner or Director/Managing Director of a Company or other authorised person.*

*The declarant's Code Number should be mentioned on all clearance document.*

*Such clearance document should contain particulars of the description of goods, name and address of the buyer, destination, value, [progressive total of total value of excisable goods cleared for home consumption since beginning of the financial year], vehicle number, date and time of the removal of the goods.*

*The clearance document will be signed by the manufacturer or his authorised agent at the time of clearance.*

*In case of export through merchant exporters, the manufacturer will also mention on the top "EXPORT THROUGH MERCHANT EXPORTERS" and will mention the Export-Import Code No. of such merchant exporters.*

*In case of direct export by the manufacturer-exporters, he will mention on the top "FOR EXPORT" and his own Export - Import Code No., if any.*

***3.2 Records***

*3.2.1 Such units shall maintain a simple record of quantity and value of production and clearance. Entries in production record should either be allowed to be made at the close of the day or before the commencement of the production on the following day. Entries need not be made on days when there is no production or clearance of goods.*

### *3.3 Statement*

*3.3.1 Such units shall file a prescribed quarterly statement to the Jurisdictional Range Superintendent containing various particulars. (Annexure-20)*

#### *Proof of Export*

*4.1 Following documents shall be accepted as proof of export :*

*4.1.1 In the case of direct export by the Manufacture- exporter*

*Duly attested photocopy of shipping bill (Export Promotion Copy) bearing the particulars and date of clearance document under which the goods are cleared from the factory of production, having endorsement on its reverse by the Customs of the particulars of mate's receipt no. (wherever applicable), name of the ship/ flight no., of the aircraft, vehicle no. - by which the goods were exported out, date of export, and EGM Number/ Airway Bill Number (wherever applicable);*

*Duly Custom's attested copy of Bill of lading; and*

*Foreign Exchange Remittance Certificates.*

*4.1.2 In the case of export through Merchant-exporter the document prescribed by Sales Tax Department will be accepted as the proof of export. Sales made by manufacturer of the goods' to the merchant exporter which ultimately are exported are exempt from Central Sales Tax. The Sales Tax Department issues booklet to the merchant exporters containing serially numbered H-Forms/ST-XXII form or equivalent Sales Tax form. After the goods have been exported by the merchant exporters, the latter issues these forms to the manufacturers of the goods. The merchant exporters in turn have to account all these serially numbered forms to the sales Tax Department by furnishing a proof that the goods have been exported out. These proofs are in the form of presentation of the Shipping Bill duly completed by the customs, bill of lading, foreign exchange remittance certificates etc. The liability of the manufacturers to the Central Sales Tax gets discharged only when they submit these forms to the Sales Tax Department. It is, therefore, seen that indirectly exports get accounted for through the issue of H-form or ST-XXII Form. Thus, photocopy of H-form or ST-XXII Form or any other equivalent Sales Tax form duly attested and stamped by the manufacturer or his authorised agent will be accepted for purpose of proof of export.*

*4.2 Submission of proof of export and processing thereof*

*4.2.1 The proof of export should be submitted to the Range Officer within a period of 6 months from the date of clearance of goods from the factory of production.*

*4.2.2 If Range Superintendent finds that the clearances for home consumption, and the clearances for export where proof of exports have not been furnished within 6 months, when taken together, are likely to exceed the exemption limit (which is presently Rs. 100 lakhs for home consumption), he should issue show cause notices for safeguarding revenue. These show cause notices, however, should be kept pending for another three months by which time proof of exports are expected to be received.*

*4.2.3 The Range Superintendent will maintain manufacturer wise record on the basis of the quarterly return and the proof of exports submitted by the manufacturer from time to time in order to ascertain that the clearances for exports and the proofs of exports are duly accounted for and in case of failure on the part of exporter to submit proof of export, necessary action can be initiated promptly on the lines already mentioned in the above para.*

*4.3 In case clearances of such manufacturers for home consumption plus clearance for export where proof of export were not furnished within 6 months, exceed the exemption limit, they should take Central Excise Registration and follow the regular A.R.E.1 procedure.*

*4.4 This procedure will also be applicable to exports of ready-made garments.”*

From the above, following points are clear:

- i) Units, which are fully exempted from payment of duty by a notification granting exemption based on value of clearances for home consumption, may be exempted from filing ARE.1 and Bond till they remain within the full exemption limit.
- ii) Such manufacturers are permitted to use invoices or other similar documents bearing printed Serial Numbers beginning from 1st day of a financial year for the purpose of clearances for home consumption as well as for exports.
- iii) Proof of Exports :
  - a. In case of Manufacture Exporter :- Shipping Bill, Duly Custom's attested copy of Bill of lading; and Foreign Exchange Remittance Certificates.
  - b. In case of Merchant Exporter :- Photocopy of H-form or ST-XXII Form or any other equivalent Sales Tax form duly attested and stamped by the manufacturer or his authorized agent.

7.1 Government notes that as discussed supra, the Applicant may be exempted from filing ARE 1 and Bond till they remain within the full exemption limit. In the instant case, the Applicant falls within the exemption limit and therefore Bond and ARE-1 are not required. Government finds that except Bond and ARE-1, Applicant has submitted invoices, CT-3 certificate

duly signed and endorsed by the custom/Excise authorities, form 'H', Bill of Lading and Certificate of SEZ Authority. Therefore, it is not proper to demand the duty when Applicant is in possession of the aforesaid documents which establishes the export of goods.

8. Government holds that since the Applicant have submitted proof of exports as required under the law, turnover remains within the limit as required for the availment of SSI exemption. Therefore, Government sets aside the impugned Order-in-Appeal No. BHO-Excus-001-App-488-16-17 dated 07.12.2016 passed by the Commissioner (Appeals), Zone-II, Bhopal(M.P.) and allows the revision Application.

  
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 247 /2023-CEX (WZ) /ASRA/Mumbai Dated 28.04.23

To,

1. M/s. G Coral Graphics Pvt. Ltd., Plot No. 59-A, Sector-I, Pithampur(MP).
2. The Pr. Commissioner of Customs, 3<sup>rd</sup> Floor, 12/2/7 & 12/2/8, B-Zone Business Space Building, Gram Pipliya Kumar, Nipania, Indore(M.P.)- 452010.

Copy to:

1. The Commissioner (Appeals), CGST&CX, Manik Bagh Palace, Post Box No. 10, Indore(MP)-452001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file.