

Chapter 24

Special Economic Zones

1. Introduction:

- 1.1 Special Economic Zone (SEZ) scheme was announced in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth.
- 1.2 Earlier, the policy relating to the Special Economic Zones was contained in the Foreign Trade Policy and incentives and other facilities offered to the Special Economic Zone developer/co-developer and units were implemented through various notifications and circulars issued by the concerned Ministries/Department. However, in order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones was found to be necessary. Accordingly, the SEZ Act, 2005 was enacted, which was given effect to from 10-2-2006. Thus, activities of SEZs and its units are governed by the provisions of the SEZ Act, 2005 and the rules issued there under viz. SEZ Rules, 2006. SEZ Scheme is administered by the Department of Commerce under Ministry of Commerce & Industry.
- 1.3 The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, is to be guided by the following criteria, namely:
- (a) Generation of additional economic activity;
 - (b) Promotion of exports of goods and services;
 - (c) Promotion of investment from domestic and foreign sources;
 - (d) Creation of employment opportunities;
 - (e) Development of infrastructure facilities.
- 1.4 SEZs may be set up for manufacturing of goods or rendering services or both and may be multi-product, sector specific, or Free Trade and Warehousing Zone. In terms of Section 53 of the SEZ Act, SEZs are deemed to be a territory outside the Customs territory of India for the purpose of undertaking the authorised operations and goods/ services entering it (from DTA) are treated as exports.
- 1.5 19 SEZs were established / notified before the enactment of the SEZ Act, 2005. Of which, seven SEZs were established by Central Government and rest by State Governments and private sector, which are as follows:
- (a) **Central Government SEZs:** Kandla SEZ (Gujarat), SEEPZ-SEZ (Maharashtra), Noida SEZ (U.P.), Madras SEZ (Tamil Nadu), Cochin SEZ (Kerala), Falta SEZ (West Bengal), Visakhapatnam (AP).

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- (b) **State Government & Private Sector SEZs:** Surat SEZ (Gujarat), Jaipur SEZ (Rajasthan), Indore SEZ (Madhya Pradesh), Jodhpur SEZ(Rajasthan), Moradabad SEZ, Manikanchan SEZ (West Bengal), Mahindra City (Chennai Tamil Nadu), Mahindra City (Chennai, Tamil Nadu), Mahindra City (Chennai, Tamil Nadu), Salt Lake Electronic City (Kolkata), Surat Apparel SEZ, Nokia SEZ (Chennai).

2. Board of Approvals:

- 2.1 As per Section 8 of the SEZ Act, the Board of Approval (BOA) is to be chaired by an officer not below the rank of Additional Secretary in the Department of Commerce and includes Member (Customs), CBEC as its member. Presently, the BOA meetings are chaired by Commerce Secretary. The BOA approves proposals for establishing SEZs and providing infrastructure facilities. Its functions include approving authorized operations of Developer/ Co-developer.

3. Unit Approval Committee:

- 3.1 As per Section 13 of the SEZ Act, a Unit Approval Committee is to be notified for each SEZ, within six months from the date of establishment of such Special Economic Zone. Development Commissioner has administrative control over the SEZ and chairs the Unit Approval Committee.
- 3.2 The Unit Approval Committees are, inter-alia, expected to accord approval to the procurement of goods and services by SEZ units indigenously or through imports. The Committees is also required to monitor and supervise compliance of conditions subject to which the letter of Approval (LOA) has been issued. Commissioner of Customs or his nominee not below the rank of a joint Commissioner is designated as an ex-officio member of the UAC. However, meetings of the Approval Committee must be attended by the Jurisdictional Commissioner of Customs or Central Excise and never go unrepresented as decisions taken in such meeting have serious revenue implications. It should also be ensured that the view point of revenue is conveyed effectively in each such meeting and that such views are duly reflected in the minutes of these meetings.
- 3.3 The decisions of the Approval Committee are by a 'general consensus' implying thereby that in the absence of a consensus amongst all the Members present in the meeting, the proposal cannot be carried forward and shall stand referred to the Board of Approval.

[Refer Instruction F. No. 305/155/2005-FTT, dated
2-8-2005 and F.No. DGEP/SEZ/473/2006, dated
4-7-2007]

4. Establishment of SEZs:

- 4.1 The SEZs can be set up either jointly or severally by the Central Government, State Government, or any person as per Section 3 of the SEZ Act. Such person or body or authority is termed as developer/co-developer of the SEZ in terms of Section 2(g) of the SEZ Act. A Co-developer is a person who is allowed to provide any infrastructure facility in the SEZ in accordance with an agreement with the developer and as approved by the Board of Approval. The State Government is required to forward the proposals received under section 3 of SEZ Act for setting up of a SEZ to the Board of Approval alongwith its recommendations, within forty-five days of receipt of such proposal and where the

Board approves a proposal received directly under Section 3(3) of the SEZ Act, the person is required to obtain concurrence of State Government within 6 months from the date of approval.

- 4.2 The BOA may approve as such or modify and approve a proposal for establishment of a Special Economic Zone, in accordance with the provisions of Section 3(8) of the SEZ Act subject to the requirements of minimum area of land and other terms and conditions indicated in Rule 5(2) of the SEZ Rules.

5. Setting up of SEZ unit:

- 5.1 As per Section 15 of the SEZ Act, any person, who intends to set up a Unit for manufacture of goods or rendering services in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned. On receipt of the proposal, the Development Commissioner is required to submit the same to the Approval Committee for its approval. The Approval Committee may approve or approve with modification or reject a proposal placed before it within fifteen days of its receipt as per conditions prescribes in Rule 18 of SEZ Rules.

- 5.2 As per Rule 19 of the SEZ Rules, the Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner. On receipt of a request from the entrepreneur, further extension can be granted by the Development Commissioner for a further period not exceeding two years. The Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete. If the Unit has not commenced production or service activity within the validity period or the extended validity period, the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired. The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a licence for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years.

6. Monitoring of activities of SEZ units:

- 6.1 As per Rules 15 and 54 of the SEZ Rules, the performance of the Unit is to be monitored by the Approval Committee. If Approval Committee comes to the conclusion that a Unit has not achieved positive Net Foreign Exchange Earning or failed to abide by any of the terms and conditions of the Letter of Approval or Bond-cum-Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said Unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

7. Net Foreign Exchange Earnings:

- 7.1 SEZ units shall achieve positive Net Foreign Exchange Earnings (NFE), which is calculated cumulatively for a period of 5 years from the commencement of production, subject to conditions prescribed in terms of Rule 53 of the SEZ Rules.

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8. Import and procurement:

- 8.1 A SEZ unit or Developer/co-developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, various types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) and subject to condition prescribed under Rule 26 of the SEZ Rules.
- 8.2 As per Rule 30 of the SEZ Rules, the movement of goods from the place of manufacture to the SEZ is to be (i) on the basis of ARE1 (in cases where export entitlements are not availed); (ii) on the basis of ARE 1 and Bill of Export (in cases where export entitlements are availed). In the event of non-receipt of the proof of export in the form of endorsement, regarding admittance of goods in full into the Special Economic Zone, by the Authorized Officer of Customs posted in the SEZ, on ARE-1 and / or Bill of Export, as the case may be, within a period of 45 days, the duty should be demanded from DTA supplier by the jurisdictional Central Excise Officer.

[Refer Circular No.29 /2006-Cus, dated 27-10-2006]

9. Exports:

- 9.1 As per Rule 45 of the SEZ Rules, a unit may export goods or services as per the terms and conditions of Letter of Approval including agro-products, partly processed goods, sub-assemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export by-products, rejects, waste scrap arising out of the manufacturing process.

10. Sub-contracting:

- 10.1 As per rule 41 of the SEZ Rules, a unit may sub-contract a part of its production or any production process, to a unit in the Domestic Tariff Area or in a Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-technology Park unit with prior permission of the Specified Officer to be given on an annual basis. No permission is necessary if sub- contracting is done through units in same SEZ but both the supplying and receiving units should maintain proper account of goods involved in the sub-contracting. A Developer/co-developer/on their behalf their contractor, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to a place in the Domestic Tariff Area or a unit in the same or another Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee.

11. Sub-contracting for DTA unit for export:

- 11.1 A Unit may on the basis of annual permission from the Specified Officer undertake sub-

contracting for export on behalf of a Domestic Tariff Area exporter subject to conditions prescribed in Rule 43 of the SEZ Rules.

- 11.2. As per Rule 47(2) of the SEZ Rules, scrap or dust or sweepings of gold or silver or platinum may be sent to Government of India Mint or Private Mint from a Unit and returned in standard bars in accordance with the procedure specified by Customs authorities or may be sold in the Domestic Tariff Area on payment of duty on the gold or silver or platinum content in the said scrap.

12. DTA sale:

- 12.1 A Unit may sell goods and services including rejects, wastes, scraps, remnants, broken diamonds, by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of applicable Customs Duties in terms of Section 30 of the SEZ Act and subject to fulfillment of condition laid down in the SEZ Rules.

13. Valuation of goods cleared into DTA:

- 13.1 As per Rule 48 of the SEZ Rules, valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India. If goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India.

14. Temporary removal of goods into the DTA:

- 14.1 As per Rule 50 of the SEZ Rules, the SEZ units can remove the goods from the Zone into the DTA temporarily without payment of duty for the purpose of inter-alia display, export promotion, exhibition job work, test, repair, refining, calibration or subject to conditions as prescribed. If a unit fails to bring back the goods into SEZ within the prescribed period, the unit is liable to pay applicable duty on such goods.

15. Duty remission on destruction of goods:

- 15.1 As per Rule 39 of the SEZ Rules, after advance intimation to the Specified Officer, a Unit may destroy, without payment of duty, goods including capital goods, procured from Domestic Tariff Area or goods imported or goods manufactured/produced by the Unit including rejects, waste, scrap subject to prior environmental clearance if any required for such destruction. Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer. However, destruction of precious metals, diamond, precious stones and semi-precious stones is not allowed. The officers supervising destruction are required to ensure that goods are destroyed fully rendering them unfit for further use and give certificate to that effect. The Unit shall be required to pay back the drawback and Duty Exemption Pass Book credit availed in of case goods procured from Domestic Tariff Area are destroyed due to natural calamities.

16. Exit of units:

- 16.1 As per Rule 74 of the SEZ rules, the Unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of

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applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock and if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation) Act, 1992.

- 16.2 In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery is required to be handed over to an agency nominated by the Central Government at a price to be determined by that agency.
- 16.3 Development Commissioner can permit a Unit, as one time option to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

17. Drawback on supplies made to SEZs:

- 17.1 Section 26(d) of the SEZ Act provides that every Developer and entrepreneur is entitled to Drawback of duties on goods brought from the DTA into an SEZ. The triplicate copy of the assessed Bill of Export is to be treated as the Drawback claim and processed in the Customs section (Specified Officer) of the Special Economic Zone. Dy./Asstt. Commissioner of Customs posted on deputation at the SEZ being the Dy./ Asstt. Commissioner of Customs at the Customs Station of export could sanction such Drawback claims. Thus, Drawback claim in respect of such supplies are not to be processed or sanctioned by the Customs and Central Excise formations.
- 17.2 Drawback can also be claimed by the DTA supplier on the basis of the disclaimer issued by the SEZ Unit/Developer. In such cases, the Commissionerate of Customs and Central Excise having jurisdiction over the DTA unit would sanction the Drawback. The jurisdictional Commissioner of Customs in consultation with the Pay and Accounts Officer shall make arrangements for issue of authorization and drawback cheque books.

[Refer Circulars No.6/2005-Cus, dated 3-2-2005 and No. 43/2007-Cus, dated 5-12-2007]

- 17.3 The office of Principal CCA has issued instructions regarding banking arrangements for payment of refund / Drawback cheques and accounting procedure to be followed in that regard. Accordingly, the PAOs are issuing cheque books to each Central Excise division for payment of refund / Drawback claims and the same cheque book can be used for making refunds and payment of Drawback. The cheque issuing officer is required to submit separate list of payment for Central Excise (0038) and Customs (0037) to their jurisdictional PAO.

[Refer Circular No.39/2010-Cus, dated 15-10-2010]

18. Other administrative guidelines:

- 18.1 The Customs/Central Excise Officers nominated to the Approval Committee of SEZs should ensure that the decisions taken at the Committee are within the provisions of law and should be made keeping in mind the revenue implications of such decisions.
- 18.2 The Customs/Central Excise Officers are advised to conduct verification of credentials of the entrepreneurs proposing to set-up SEZ units and provide inputs on past history to the Committee for taking appropriate decision.

- (i) While granting assent to the approval, the representatives of DOR should ensure whether the particular process to be carried out by the unit constitutes manufacture or not in terms of Section 2 (r) of the SEZ Act.
- (ii) The Committee approves the import or procurement of goods from the DTA in the SEZ for carrying on the authorized operations by a developer. It should be ensured that the authorized operations are covered under the provisions of SEZ Act and Rules. Activities like Housing, etc, should only be allowed in phases of 20% of approval at a time and commensurate with the needs of SEZs. In case of activities like setting up of hospitals, hotels and other such social infrastructure, no duty free material is permitted for operation and maintenance of such facilities.
- (iii) Any activity outside the SEZ cannot be allowed as Authorized Operation.
- (iv) No tax benefits would be available for measures taken to establish contiguity.
- (v) Field formations (Range/Divisions) should follow the specified procedure laid down for movement of goods from SEZ to DTA and from DTA to SEZ.
- (vi) No unit should be allowed to start functioning till the walls and specified entry/exit points and the offices of the Development Commissioner (including the Customs officers posted under him) are in place. Only one entry/exit gate should be permitted in view of security and revenue loss concerns.

[Refer Circular No. 29/2006-Cus, dated 27-10-2006 and Instruction F.No.DGEP/SEZ/473/2006, dated 3-4-2008]
