

HANDBOOK ON

**SPECIAL ECONOMIC
ZONE AND EXPORT
ORIENTED UNITS
IN INDIA**



**THE INSTITUTE OF
COST ACCOUNTANTS OF INDIA**
(Statutory body under an Act of Parliament)

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"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

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SEZ

HANDBOOK ON SPECIAL ECONOMIC ZONES AND EXPORT ORIENTED UNITS, IN INDIA



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President's Message

It makes me immensely happy that the Tax Research Department has come up with this revised publication on “**Special Economic Zone and Export Oriented Units in India**”. I am sure that this handbook would be appreciated as its previous version and would serve as a ready knowledge resource and would be beneficial for the professionals, industry and stakeholders in dealing with provisions under SEZ and EOUs.

A Special Economic Zone (SEZ) which is a specified duty-free zone deemed to be a foreign territory within the country for the purpose of tariff and trade is set up with the objectives of promotion of goods and services leading to enhanced economic activities, investment promotion, development of infrastructure, creation of employment opportunities etc. SEZ's could be multiple product SEZ's, sector specific, IT sector, free trade and warehousing, gem and jewellery sector, biotechnology etc. SEZ's enjoy a host of fiscal and tax benefits.

To put in the government's own words, the main objectives of the SEZs are: (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.

I am delighted that this handbook is comprehensive and will serve the stakeholders with very good knowledge and information. I hope that the Tax Research Department of the Institute will continue to bring out such valuable documents for the capacity building of the members and stakeholders.

Biswarup Basu

CMA Biswarup Basu
President

Date 01.07.2021



Vice President's Message

The Export Oriented Units (EOUs) scheme was introduced in early 1981 and it is complementary to the SEZ scheme. It adopts the same production regime but offers a wide option in locations with reference to factors like source of raw materials, ports of export, hinterland facilities, availability of technological skills, existence of an industrial base and the need for a larger area of land for the project.

SEZ and EOUs are definitely important for the development of our economy and CMAs can surely contribute positively in this field. Cost Accountants have various genres of contributions that they can make in this field and this is also a booming sector in the present economy. A few examples may be cited as below:

- (i) Department of Commerce, Ministry of Commerce and Industry vide notification dated 7.3.2019 issued Special Economic Zones (2nd Amendment) Rules, 2019 and consider Cost Accountants at par with Chartered Accountants for certification of Form-I Annual Performance Report for Units under Rule 22 of Special Economic Zones Rules, 2006.
- (ii) Ministry Of Commerce and Industry vide notification dated 19th September 2018 amended the Special Economic Zones Rules, 2006, Cost Accountants are authorized to certify the half-yearly certificate for the period ending 31st March and 30th September of every financial year regarding utilization of goods and services submitted by developer under sub- rule (7) of Rule 12.

I am glad that the Tax Research Department has published this handbook for the benefit for all. I would like to thank the resource pool of the Institute for their valuable contribution. Their knowledge and dedication has made this publication lucid and simple for understanding of the stakeholders and learners.

CMA P Raju Iyer

Vice President

Date 01.07.2021



Chairman's Message

We all know about SEZ and EOU, but it is important to know the difference between them because of the special status enjoyed by an SEZ unit. The operations of the SEZ Developer and the SEZ unit are governed by a separate Act, that is to say the Special Economic Zone Act 2005 and the rules framed there under; whereas EOU features as a part of the Foreign Trade Policy. SEZ Units are located in a specially designated zone with large infrastructure as compared to an EOU which can be located anywhere and is essentially a standalone unit.

Supplies made to EOU by supplier are considered as 'deemed exports' and the supplier is entitled to benefits of 'deemed export' as laid down in the Foreign Trade Policy while supplies to SEZ are considered as 'exports' with all export benefits.

Again, in case of custom clearance, Fast Track Clearance Scheme (FTCS) for clearances of imported consignments is available for EOUs. In case of SEZ units, customs clearance for export and import are obtained within the zone itself. General infrastructure available to SEZ unit are much better as available to EOUs.

This handbook is meant to address the critical issues in SEZ and EOUs which has been done quite lucidly.

I have always been appreciative of the efforts that are put in by the Tax Research Department for the benefit of the members and stakeholders. The resource pool of the department has always been supportive in all their endeavours.

I wish them all the luck.

A handwritten signature in blue ink, appearing to read 'CMA Chittaranjan Chattopadhyay', with a stylized flourish at the end.

CMA Chittaranjan Chattopadhyay

Chairman – Indirect Taxation Committee

Date 01.07.2021



Chairman's Message

Today, I would like to speak about SEZ Online systems. SEZ Online System is an e-governance initiative of Ministry of Commerce and Industry for setting up a nationwide uniform platform for carrying out Administrative and Customs requests of the SEZ Units / Developers under the purview of SEZ Act and Rules with SEZ (Special Economic Zones) Authorities. The objective is to bring in transparency, efficiency, reduce paper, ensure authenticity of information, adherence to applicable compliances and business rules and provide a robust system for storage and reporting of data.

SEZ units which are already approved i.e. those which have received Letter of Approval/Permission from respective Development Commissioner's office can use Unit Regularization Module to get registered in SEZ Online System.

This new online platform has been initiated to boost exports. But it should be remembered, although both EOUs and SEZs, were initiated to boost exports, there are differences between the two. An EOU can be set up anywhere in the country, provided it meets the scheme's criteria. On the other hand, an SEZ is a specially demarcated enclave that is deemed to be outside the Customs jurisdiction and therefore, a foreign territory. Thus, any sale made from within an SEZ to DTA is considered export while any sale made by an EOU to DTA is regarded as deemed exports. Sale from SEZs to DTAs is more common, compared to sales from EOUs to DTAs.

I am optimistic that this handbook would address all the issues relating to SEZ and EOUs. My heartfelt thanks and best regards to all the resource contributors and Team TRD for their sincere efforts.

Jai Hind.

(Rakesh Bhalla)

CMA Rakesh Bhalla

Chairman – Direct Taxation Committee

Date 01.07.2021

Preface

Special Economic Zones and 100% Export Oriented Units Schemes are playing a crucial role in the employment generation, increasing manufacturing activity in the country and encouraging exports. Significant changes have been brought out in the EOU and SEZ Schemes in the recent past due to implementation of GST in the Country.

Although both EOUs and SEZs, were initiated to boost exports, there are differences between the two. An EOU can be set up anywhere in the country, provided it meets the scheme's criteria. On the other hand, an SEZ is a specially demarcated enclave that is deemed to be outside the Customs jurisdiction and therefore, a foreign territory. Thus, any sale made from within an SEZ to DTA is considered export while any sale made by an EOU to DTA is regarded as deemed exports. Sale from SEZs to DTAs are more common, compared to sales from EOUs to DTAs.

We would also like to thank and acknowledge the immense contributions of **Advocate Ramesh Jena** without whose selfless contribution and guidance the handbook could have never acquired its shape. The department is indebted to him for his immense contributions.

Thank You.

Tax Research Department

Date 01.07.2021

CONTENTS

Part - A

Chapter	SPECIAL ECONOMIC ZONE	Page No.
Chapter-1	Introduction to SEZ Definition of SEZ Unique features Procedure for making proposal to establish SEZ Statutory laws of SEZ Administrative set up Constitution of Board of Approval Duties, powers and functions of Board Development Commissioner Functions of Development Commissioner Constitution of Approval Committee Powers and functions of Approval Committee Setting up of unit Cancellation of LoA to entrepreneur Setting up and operation of Offshore Banking Unit Setting up International Financial Services Centre Single application form Single enforcement officer Investigation, inspection, search or seizure Designated Courts to try suits and notified offences Appeal to High Court Offences by companies Fiscal provisions for SEZ unit / Developer Provisions of Income –tax Act Duration of goods or services Transfer of ownership and removal of goods Domestic clearance by Units	1 - 22
Chapter-2	Constitution of Authority Officers of Authority and other staff: Special provision for transfer of officers or other employees to Authority Functions of Authority Grants and loans by Central Government Constitution of Fund and its application	23 - 40

	<p>Accounts and audit</p> <p>Returns and reports</p> <p>Reference of dispute</p> <p>Power of the State Government to grant exemption</p> <p>SEZ Act to have overriding effect</p> <p>SEZ to be ports, airports, inland containers depots, land Stations</p> <p>Power to make rules</p> <p>Power to remove difficulties</p>	
Chapter-3	<p>Definition</p> <p>Proposal for setting up of SEZ unit</p> <p>Proposal for approval as Co-developer</p> <p>Forwarding of proposal to Board</p> <p>Minimum Area</p> <p>Exemption, Concession and facilities</p> <p>Letter of Approval to a SEZ Unit</p> <p>Power of Central Government to review letter of approval</p> <p>Declaration of SEZ area</p> <p>Notification of SEZ</p> <p>Grant of Approval for Authorised operations</p> <p>Permission for procurement of items</p> <p>Processing and non-processing Zone</p> <p>Bifurcation of Non-processing Zone</p> <p>Import and procurement of goods by the Developer</p> <p>Movement of Capital goods</p> <p>Procedure applicable on import</p> <p>Monitoring</p> <p>Proposal for approval of Unit</p> <p>Consideration of proposals for setting up of Unit</p>	41 - 62
	<p>Letter of Approval to a Unit</p> <p>Execution of Bond-Cum-Legal undertaking</p> <p>Eligible exports benefits</p> <p>The procedure for grant of drawback claims and DEPB credit</p> <p>Failure to utilised goods for authorised operations</p>	

Chapter-4	Meaning of import General Condition of Import & Export Import and Procurement Direct import into SEZ Direct delivery into SEZ Procedure for procurements from the DTA Admission of goods Utilisation of goods Co-relation of import consignment with corresponding export consignment Duration of goods in a Special Economic Zone Filing of documents Destruction of goods	63 - 82
Chapter-5	Meaning of Sub-contracting Provision of Sub-contracting Procedure for sub-contracting Sub-contracting for DTA area unit for export Contract farming Sales in DTA area Procedure for sales in DTA Area Domestic Tariff Area removals Temporary removals to DTA	83 - 100
Chapter-6	Meaning of export Refund on zero-rated Supplies Eligible exporter to execute LUT Execution of LUT Validity of LUT Form of LUT Documents for LUT Time for acceptance of LUT Requirement of Bond Running Bond Acceptance of LUT / Bond by Jurisdictional authority Refund procedures for export of goods on payment of IGST Pre-conditions for filing a refund application Documents required for filing Refund Claim	101 - 114

	Acknowledgement Grant of provisional refund Credit of the amount of rejected refund claim Order sanctioning interest on delayed refunds	
Chapter-7	Definition of export Procedure for export NFE Earnings Procedure for calculation of NFE Monitoring performance of SEZ Failure to achieve positive NFE Extension of period of NFE Non-fulfillment of NFE	115 - 132
Chapter-8	Appellate Authority Form of Appeal Appeal to BOA Condonation of delay Payment of fees Contents of Appeal Accompany form Filing of affidavits Rights of appellant to appear before the Boar Authorisation to be filed Procedures filing Appeal Furnishing of information and documents Hearing of Appeal Orders of the BOA Order communicated to party Exit of units Transfer of assets by SEZ Self Declaration Withdrawal all benefits E-filing Audit in SEZ Non-fulfillment of NFE	133 - 144
Case Laws	On Special Economic Zones.	145 - 164
FAQs	Frequently Asked Questions	165 - 196

Part - B

Chapter	EXPORT ORIENTED UNITS IN INDIA	Page No.
Chapter-9	Introduction to EOUs Objectives Incentives & Facilities available to EOUs Leasing of Capital goods Statutory provisions for working EOUs Investment criteria Procedure for submission of Application Setting up of EOU Legal undertaking Net Foreign Exchange Earnings Monitoring of NFE Maintenance of Record	197 - 208
Chapter-10	Administrative Control of EOUs Unit Approval Committee for EOUs Powers & Functions of Unit approval Committee Development Commissioner Powers & Functions of Development Commissioner Time bound disposal of Applications Board of Approval Powers of the Board of Approval Sale of Surplus Power by EOU Execution of Bond Bond Register Bonded warehouse for EOUs	209 - 220
Chapter-11	DTA Sale Other supplies No DTA sale for certain units Levy of duty on DTA sale Payment of duty from CENVAT / ITC on DTA sale Inter unit transfer Sub-contracting procedures Contract farming Repair of capital goods in DTA / in abroad Clearance of Capital Goods in DTA Depreciation Norms	221 - 238

	<p>Temporary removals in DTA Removal of capital goods into DTA for repair Removal of Samples Sale of Unutilized Material Reconditioning/Repair and Re-engineering Replacement / Repair of Imported / Indigenous-Goods</p>	
Chapter-12	<p>Exemption Notification for DTA Import or procure of goods from DTA List of goods permitted to import Procure from domestically Import of restricted items Conditions of import Procedure for import of goods Re-warehousing certificate Fast track Scheme for EOU Self-Assessment Scheme for clearance of import Execution B-17 Bond Examination of import consignment Port registration for import Documents for clearance of import consignment Import through Courier Import through Electronic Communications Link</p>	239 - 254
Chapter-13	<p>Export of Restricted / Prohibited Goods Export procedures Treatment of Exports under GST Export of Goods and Services to Nepal and Bhutan Factory Stuffing of Export Goods Sealing of containers Shipping Bill Examination export consignment at Port of export Export through other exporters Conversion of EOUs Revival of sick unit Exit from EOU Scheme De-bonding procedure of EOUs Conversion from EOUs to DTA</p>	255 - 272
Case Laws	On Export Oriented Units.	273 - 284
FAQs	Frequently Asked Questions	285 - 306

PART - A

SPECIAL ECONOMIC ZONE

Introduction:

Special Economic Zone (SEZ) scheme is one of the export promotion Schemes. SEZ scheme was introduced by the Ministry of Commerce & industry, Government of India with effect from 1st April'2000 with objectives to provide an internationally competitive and hassle-free environment for earning of foreign exchange, attracting Foreign Direct Investment (FDI), generation of employment and facilitate transfer of technology, boost exports of goods & services and creating skilled man-power in India.

Definition of SEZ : As per section 2(za) - "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

"SEZ" means Special Economic Zone deemed to be a territory outside the customs territory of India for the purpose of undertaking the authorised operations in terms of section 53 (1) of the Special Economic Zone Act, 2005.

Unique feature:

SEZ Scheme is a specifically considered to be a foreign territory and duty free enclave for the purposes of trade operations and duties and tariffs. Supplies of goods & services into SEZ from Domestic Tariff Area (DTA) are treated as exports and goods & services coming from SEZ into DTA are to be treated as if these are being imported.



Special Economic Zones Act, 2005

Section 2 - Definitions. - In this Act, unless the context otherwise requires, -

- (a) “appointed day” with reference to a Special Economic Zone means the date on which the Special Economic Zone is notified by the Central Government under sub-section (1) of section 4;
- (b) “Approval Committee” means an Approval Committee constituted under sub-section (1) of section 13;
- (c) “authorised operations” means operations which may be authorised under sub-section (2) of section 4 and sub-section (9) of section 15;
- (d) “Authority” means a Special Economic Zone Authority constituted under sub-section (1) of section 31;
- (e) “Board” means the Board of Approval constituted under sub-section (1) of section 8;
- (f) “Co-Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of section 3;
- (g) “Developer” means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a Co-Developer;
- (h) “Development Commissioner” means the Development Commissioner appointed for one or more Special Economic Zones under sub-section (1) of section 11;
- (i) “Domestic Tariff Area” means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones;
- (j) “entrepreneur” means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section 15;
- (k) “existing Special Economic Zone” means every Special



Economic Zone which is in existence on or before the commencement of this Act;

- (l) “existing Unit” means every Unit which has been set up on or before the commencement of this Act in an existing Special Economic Zone;
- (m) “export” means -
 - (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
 - (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
 - (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;
- (n) “Free Trade and Warehousing Zone” means a Special Economic Zone wherein mainly trading and warehousing and other activities related thereto are carried on;
- (o) “import” means -
 - (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
 - (ii) receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;
- (p) “infrastructure facilities” means industrial, commercial or social infrastructure or other facilities necessary for the development of a Special Economic Zone or such other facilities which may be prescribed;
- (q) “International Financial Services Centre” means an International Financial Services Centre which has been approved by the Central Government under sub-section (1) of section 18;



- (r) “manufacture” means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining;
- (s) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;
- (t) “notified offences” means the offences specified as such under sub-section (1) of section 21;
- (u) “Offshore Banking Unit” means a branch of a bank located in a Special Economic Zone and which has obtained the permission under clause (a) of sub-section (1) of section 23 of the Banking Regulation Act, 1949 (10 of 1949);
- (v) “person” includes an individual, whether resident in India or outside India, a Hindu undivided family, co-operative society, a company, whether incorporated in India or outside India, a firm, proprietary concern, or an association of persons or body of individuals, whether incorporated or not, local authority [, trust or any entity as may be notified by the Central Government] and any agency, office or branch owned or controlled by such individual, Hindu undivided family, co-operative, association, body, [authority, company, trust or entity];
- (w) “prescribed” means prescribed by the rules made by the Central Government under this Act;
- (x) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (y) “Schedule” means Schedules to this Act;
- (z) “services” means such tradable services which, -



- (i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994;
 - (ii) may be prescribed by the Central Government for the purposes of this Act; and
 - (iii) earn foreign exchange;
- (za) “Special Economic Zone” means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;
- (zb) “State Government” means a State Government of the State in which a Special Economic Zone is established or proposed to be established;
- (zc) “Unit” means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after the commencement of this Act;
- (zd) all other words and expressions used and not defined in this Act but defined in the Central Excise Act, 1944 (1 of 1944), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Income-tax Act, 1961 (43 of 1961), the Customs Act, 1962 (52 of 1962) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) shall have the meanings respectively assigned to them in those Acts.

Procedure for making proposal to establish Special Economic Zone (Section-3):

A Special Economic Zone unit may be established by any private, public, joint sector or severally by the Central Government, the State Governments or any person for manufacture of goods or rendering services or for both. A Developer of SEZ also permitted to establish for development, operation and maintenance of SEZ.



After the appointed day, the Board may, authorise the Developer to undertake in a Special Economic Zone, such operations which the Central Government may authorise.

Statutory provisions for functioning of SEZ:

Initially SEZ units / Developer was governed by the provisions of Customs Act, 1962, erstwhile Central Excise Act, 1944, Finance Act, 1994 and Rules made thereunder. The Government of India in the Ministry of Commerce & Industries enacted the Special Economic Zone Act, 2005 and Special Economic Zone Rules, 2006. Both SEZ Act and SEZ Rules were operationalized with effect from 10-2-2006. Thus, as on date, SEZs are governed by the provisions of the SEZ Act, 2005 and the SEZ Rules, 2006.

Exemption from taxes, duties or cess: (Section 7)

Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,-

- (i) a Unit in a Special Economic Zone; or
- (ii) a Developer,

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in First Schedule.

Administrative set up for SEZ / Developer:

There are three main layers of authorities to control SEZ functioning in India, viz: Board of Approval, Development Commissioner and Approval Committee.

Constitution of Board of Approval (Section-8):

Section 8 of the SEZ Act, provides that the Central Government by notification constitute a Board to be called the Board of Approval and the Board of Approval shall consist of – (2)

- (a) an officer not below the rank of an Additional Secretary to the Government of India in the Ministry or Department of the Central Government dealing with Commerce - Chairperson, ex officio;



- (b) two officers, not below the rank of a Joint Secretary to the Government of India, to be nominated by the Central Government to represent the Ministry or Department of the Central Govt. dealing with revenue – Members, ex officio;
- (c) one officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government the Ministry or Department of the Central Government dealing with economic affairs (financial services) – Members, ex officio;
- (d) such number of officers, not exceeding ten, not below the rank of the Joint Secretary to the Government of India, to be nominated by the Central Government to represent the Ministries or Departments of the Central Government dealing with commerce, industrial policy and promotion, science and technology, small scale industries and agro and rural industries, home affairs, defence, environment and forests, law, overseas Indian affairs and urban development - Members, ex officio;
- (e) a nominee of the State Government concerned - Member, ex officio;
- (f) the Director General of Foreign Trade or his nominee - Member, ex officio;
- (g) the Development Commissioner concerned - Member, ex officio;
- (h) a Professor in the Indian Institute of Management, being a society registered under the Societies Registration Act, 1860 or the Indian Institute of Foreign Trade, being a society registered under the Societies Registration Act, 1860, as may be, nominated by the Central Government - Member, ex officio;
- (i) an officer not below the rank of Deputy Secretary to the Government of India dealing with the Special Economic Zones in the Ministry or Department of the Central Government, dealing with commerce to be nominated by the Central Government - Member-Secretary, ex officio:



Provided that the member, being the Joint Secretary nominated under clauses (b) to (d) of this sub-section, may, if he is unable to attend the meeting of the Board, authorise any other officer to attend the meeting of the Board on his behalf.

- (3) The term of office of an ex officio Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.
- (4) For the purpose of performing its functions, the Board may co-opt as members such number of persons as it deems fit who have special knowledge of, and practical experience in, matters relating to, or relevant to activity connected with the Special Economic Zones.
- (5) The Board shall meet at such times and places as may be appointed by it and shall have the power to regulate its own procedure.
- (6) One third of the total Members of the Board shall form a quorum, and all the acts of the Board shall be decided by a general consensus of the Members present.
- (7) No act or proceeding of the Board shall be called in question on the ground merely of existence of any vacancy in, or any defect in the constitution of, the Board.
- (8) All orders and decisions of the Board and all other instruments issued by it shall be authenticated by the signature of the Member-Secretary, or any other Member as may be authorised by the Board in this behalf.

Duties, powers and functions of Board (Section-9):

Section 9 of the SEZ Act, provides duties, powers and functions of Board shall include:- (2)

- (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;



- (b) granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;
 - (c) granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments, (including investments by a person resident outside India), in the Special Economic Zone for its development, operation and maintenance;
 - (d) granting of approval or rejecting of proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
 - (e) granting, notwithstanding anything contained in the Industries (Development and Regulation) Act, 1951, a licence to an industrial undertaking referred to in clause (d) of section 3 of that Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;
 - (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator under subsection (1) of section 10;
 - (g) disposing of appeals preferred under sub-section (4) of section 15;
 - (h) disposing of appeals preferred under sub-section (4) of section 16;
 - (i) performing such other functions as may be assigned to it by the Central Government.
- (3) The Board may if so required for purposes of this Act or any other law for the time being in force relating to Special Economic Zones, by notification, decide as to whether a particular activity constitutes manufacture as defined in clause (r) of clause 2 and such decision of the Board shall be binding on all Ministries and Departments of the Central Government.



- (4) The Board may delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board
- (5) Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on the questions of policy as the Central Government may give in writing to it from time to time.
- (6) The decision of the Central Government whether a question is one of policy or not shall be final.

Other powers (Section-10):

Section 10 of the SEZ Act, empowers the Board for suspension of letter of approval on certain cases. In case the Board suspends a letter of approval, shall serve a notice of suspension upon Developer and fix a date on which suspension shall take effect. The Board shall invite application for transferring the letter of approval of the Developer. Upon selection of person, the Board may by notice in writing require the Developer to transfer his letter of approval in a SEZ. The Board may in order to promote exports or to protect the interest of Units or in the public interest, issue such directions or formulate such scheme as it may consider necessary for operation of the Special Economic Zone.

Development Commissioner (Section-11):

Section 11 of the SEZ Act, provides the Central Government may appoint any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of one or more Special Economic Zones.

The Central Government may appoint such officers and other employees as it considers necessary to assist the Development Commissioner in the performance of his functions in the Special Economic Zones established by a Developer (other than Central Government) under this Act on such terms and conditions as it deems fit.



Every Development Commissioner, officers and other employees shall be entitled to such salary and allowances and subject to such terms and conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, be specified by the Central Government.

Functions of Development Commissioner (Section-12):

Section 12(1) of the SEZ Act, empowers Development Commissioner to take all steps in order to discharge his functions to ensure speedy development of SEZ and promotion of exports. Section 12(2) of the SEZ Act, prescribes Development Commissioner shall –

- (a) guide the entrepreneurs for setting up of Units in the Special Economic Zone;
 - (b) ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
 - (c) ensure proper co-ordination with the Central Govt. or State Government Departments concerned or agencies with respect to, or for the purposes, of clauses (a) and (b);
 - (d) monitor the performance of the Developer and the Units in a Special Economic Zone ;
 - (e) discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and
 - (f) discharge such other functions as may be delegated to him by the Board
- (3) Every Development Commissioner shall be overall in charge of the Special Economic Zone and shall exercise administrative control and supervision over the officers and employees appointed under sub-section (2) of section 11 (including the officials deputed to such Special Economic Zone) to discharge any of the functions under this Act.
- (4) Without prejudice to the provisions of sub-section (1) to (3), every Development Commissioner shall discharge such functions and exercise such powers as may be delegated to



him by a general or special order by the Central Government or the State Government concerned, as the case may be.

- (6) The Development Commissioner, may, delegate any or all of his powers or functions to any of the officers employed under him

Constitution of Approval Committee (Section-13):

Section 13 (1) of the SEZ Act, provides that the Central Government shall constitute a Committee for every Special Economic Zone, to be called the Approval Committee, (2) Every Approval Committee shall consist of –

- (a) the Development Commissioner - Chairperson, ex officio;
- (b) two officers of the Central Government to be nominated by the Central Government - Members, ex officio;
- (c) two officers of the Central Government to represent the Ministry or Department dealing with revenue – Members, ex officio;
- (d) one officer of the Central Government to be nominated by that Government to represent the Ministry or Department dealing with the economic affairs (financial services) – Members, ex officio;
- (e) two officers of the State Government concerned to be nominated by that Stated Government – Member, ex officio;
- (f) a representative of the Developer concerned – Special invitee.

Every Approval Committee shall meet at such times and places as it considers necessary and shall have the power to regulate its own procedure.

One half of the total Members of the Approval Committee shall form a quorum, and all the acts of the Approval Committee shall be decided by a general consensus of the Members present.

Provided that in case the Approval Committee is unable to decide any matter by a general consensus, such matter shall stand referred to the Board of Approval.



The term of office of an ex officio Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

Powers and functions of Approval Committee (Section-14):

Section 14 (1) of the SEZ Act, provides that every Approval Committee may discharge the functions and exercise the powers in respect of the following matters, namely :-

- (a) approve the import or procurement of goods from the Domestic Tariff Area, in the Special Economic Zone for carrying on the authorised operations by a Developer;
- (b) approve the providing of services by a service provider, from outside India, or from the Domestic Tariff Area, for carrying on the authorised operations by the Developer, in the Special Economic Zone;
- (c) monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone;
- (d) approve, modify or reject proposals for setting up Units for manufacturing or rendering services or warehousing or trading in the Special Economic Zone [other than the grant of licence under clause (e) of sub-section (2) of section 9] in accordance with the provisions of sub-section (8) of section 15;

Provided that where the Approval Committee is unable to decide whether a particular process constitutes manufacture or not, it shall refer the same to the Board of Approval for a decision.

- (e) allow, on receipt of approval under clause (c) of subsection (2) of section 9, foreign collaborations and foreign direct investments (including investments by a person outside India) for setting up a Unit;
- (f) monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, has been granted to the Developer or entrepreneur; and
- (g) perform such other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.



The Approval Committee shall not discharge such functions and exercise such powers in relation to a Developer, being the Central Government, as may be specified by notification by the Central Government.

Provided that till such time, the Approval Committee is constituted, the concerned Development Commissioner shall discharge all functions and exercise all powers of the Approval Committee.

Setting up of Unit (Section-15):

Section 15 (1) of the SEZ Act, provides that , any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned in such form and manner containing such particulars as may be prescribed:

Provided that an existing Unit shall be deemed to have been set up in accordance with the provisions of this Act and such Units shall not require approval under this Act.

(2) On receipt of the proposal under sub-section (1), the Development Commissioner shall submit the same to the Approval Committee for its approval.

(3) The Approval Committee may, either approve the proposal without modification, or approve the proposal with modifications subject to such terms and conditions as it may deem fit to impose, or reject the proposal in accordance with the provisions of sub-section (8)

Provided that in case of modification or rejection of a proposal, the Approval Committee shall afford a reasonable opportunity of being heard to the person concerned and after recording the reasons, either modify or reject the proposal.

(4) Any person aggrieved, by an order of the Approval Committee, made under sub-section (3), may prefer an appeal to the Board within such time as may be prescribed.

(5) No appeal shall be admitted if it is preferred after the expiry of the time prescribed therefor:



Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within the prescribed time.

- (6) Every appeal made under sub-section (4) shall be in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.
- (7) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Cancellation of letter of Approval to entrepreneur (Section-16):

Section 16(1) of the SEZ Act, provides that the Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval:

Provided that no such letter of approval shall be cancelled unless the entrepreneur has been afforded a reasonable opportunity of being heard.

- (2) Where the letter of approval has been cancelled under subsection (1), the Unit shall not from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it, being a Unit, under this Act.
- (3) Without prejudice to the provisions of this Act, the entrepreneur whose letter of approval has been cancelled under sub-section (1), shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilized raw materials relating to his Unit, in such manner as may be prescribed.
- (4) Any person aggrieved by an order of the Approval Committee made under sub-section (1), may prefer an appeal to the Board within such time as may be prescribed.



- (5) No appeal shall be admitted if it is preferred after the expiry of the time prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Board that he had sufficient cause for not preferring the appeal within the prescribed time

- (6) Every appeal made under sub-section (4) shall be in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.
- (7) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

Setting up and operation of Offshore Banking Unit (Section-17):

Section 17 of the SEZ Act, provides for setting up and operation of Offshore Banking Unit:

- (1) An application for setting up and operation of an Offshore Banking Unit in a Special Economic Zone may be made to the Reserve Bank in such form and manner as may be prescribed
- (2) On receipt of an application under sub-section (1), the Reserve Bank shall, if it is satisfied that the applicant fulfills all the conditions specified under sub-section (3), grant permission to such applicant for setting up and operation of an Off-shore Banking Unit.
- (3) The Reserve Bank may, by notification, specify the terms and conditions subject to which an Offshore Banking Unit may be set up and operated in the Special Economic Zone.

Setting up International Financial Services Centre (Section-18):

Section 18 of the SEZ Act, provides that the Central Government may approve the setting up of an International Financial Services Centre in a Special Economic Zone.



Provided that the Central Government shall approve only one International Financial Services Centre in a Special Economic Zone.

The Central Government may, subject to such guidelines as may be framed by the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and such other concerned authorities, as it deems fit, prescribe the requirements for setting up and the terms and conditions of the operation of Units in an International Financial Services Centre.

Single application form, return, etc. (Section-19):

Section 19 of the SEZ Act, provides that the Central Government may, if required,-

- (a) prescribe a single application form for obtaining any licence, permission or registration or approval by a Developer, or an entrepreneur under one or more Central Acts;
- (b) authorise the Board, the Development Commissioner or Approval Committee, to exercise the powers of the Central Government on matters relating to the development of a Special Economic Zone; or setting up and operation of units;
- (c) prescribe a single form for furnishing returns or information by a Developer or an entrepreneur under one or more Central Acts.

Agency to inspect (Section-20):

Section 20 of the SEZ Act, provides that the Central Government may, by notification, specify any officer or agency to carry out surveys or inspections for securing of compliance with the provisions of any Central Act by a Developer or an entrepreneur, as the case may be.

Single enforcement officer (Section-21):

(1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.



(2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

(3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

Investigation, inspection, search or seizure (Section-22):

Section 22 of the SEZ Act, provides that the agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation or search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or subsection of section 21 without prior approval of the Development Commissioner concerned.

Provided further that any officer of agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

Designated Courts to try suits and notified offences (Section-23):

Section 23 (1) of the SEZ Act, provides that the State Government, in which the Special Economic Zone is situated, may, with the concurrence of the Chief Justice of the High Court of that State, designate one or more courts- (a) to try all suits of a civil nature arising in the Special Economic Zone; and (b) to try notified offences committed in the Special Economic Zone

(2) No court, other than the court designated under subsection (1), shall try any suit or conduct the trial of any notified offence referred to in that sub-section.



Provided that the courts, in which any suit of a civil nature in a Special Economic Zone had been filed before the commencement of this Act, shall continue to try such suit after such commencement :

Provided further that the courts, in which any trial of any notified offence is being conducted before the commencement of this Act, shall continue to conduct the trial of such offence after the commencement of this Act :

Provided also that the courts competent to try any notified offence, before the commencement of this Act, shall conduct the trial in respect of such offence after the commencement of this Act until the courts have been designated under sub-section (1) and all such cases relating to such trials shall thereafter be transferred to such courts so designated which shall conduct the trial from the stage at which such cases were so transferred.

Appeal to High Court (Section 24):

Section 24 of the SEZ Act, provides that any person aggrieved by any decision or order of the court designated under section 23(1), may file an appeal to the High Court within sixty days from the date of Communication of the decision or order of the courts so designated to him on any question of fact or law arising out of such orders.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation. - In section 23 and this section "High Court" means the High Court of the State in which the Special Economic Zone is situated.

Offences by companies (Section 25):

Section 25 of the SEZ Act provides Offences by companies:

- (1) Where an offence has been committed by a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct



of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided for the offence, if he has proved that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence

- (2) Notwithstanding anything contained in sub-section (1), where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

Special Fiscal Provisions for SEZ units / Developer of SEZ:

Section 26 & Section 27 of the SEZ Act, 2005 contains provisions relating to fiscal exemptions, drawbacks and concessions, namely-

- (a) exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;
- (b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;
- (c) duty free procurement of goods from DTA for its authorised operations, in terms of section 26(1) (c) of SEZ Act read with rule 27 of the SEZ Rules, 2006;



- (d) drawback, concession or other benefits such as claim of rebate/ discharge of export obligation of the DTA supplier with reference to section 26(d) of SEZ Act, which are generally given for export of goods out of India , are available in case of supplies of goods from DTA to SEZ;
- (e) any goods or services exported out of , or imported into, or procured from Domestic Tariff Area by a unit in a SEZ or a Developer shall be exempted from payment of taxes, duties or cess in terms of Section 7 of the SEZ Act, 2005;
- (f) exemption from the State Goods and Services Tax , levies and duties, including stamp duty and taxes levied by local bodies as per sub-rule(ii) 5(a) of rule 5 of SEZ Rules, 2006;
- (g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 (74 of 1956) if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

Provisions of Income-tax Act (Section-27):

Section 27 of the SEZ Act, provides the provisions of the Income-tax Act, 1961, as in force for the time being, shall apply to, or in relation to, the Developer or entrepreneur for carrying on the authorised operations in a Special Economic Zone or Unit subject to the modifications specified in the Second Schedule.

Duration of goods or services (Section-28):

Section 28 of the SEZ Unit prescribes the Central Government may prescribe the period during which any goods brought into, or services provided in, any Unit or Special Economic Zone without payment of taxes, duties or cess shall remain or continue to be provided in such Unit or Special Economic Zone.



Transfer of ownership and removal of goods (Section-29):

Section 29 of the SEZ Act, prescribes The transfer of ownership in any goods brought into, or produced or manufactured in, any Unit or Special Economic Zone or removal thereof from such Unit or Zone shall be allowed, subject to such terms and conditions as the Central Government may prescribe.

Domestic clearance by Units (Section-30):

Section 30 of the SEZ Act, provides subject to the conditions specified in the rules made by the Central Government in this behalf-

- (a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported; and
- (b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

Special Economic Zone Authority

Section 31. Constitution Authority:

Section 31 of the SEZ Act, prescribes procedure that the Central Government shall by notification constitute for every Special Economic Zone an Authority for SEZ within six months from the date of commencement of this Act. The head office of every Authority shall be at New Delhi and the Central Government establishes branch offices at other places in India.

Provided that in respect of existing Special Economic Zone established by the Central Government, such Authority shall be constituted by the Central Government within six months from the date of commencement of this Act:

Provided further that until such Authority is constituted, the person or the authority (including the Development Commissioner) exercising control over such existing Special Economic Zones shall continue to exercise such control over the Special Economic Zones till the Authority is constituted.

- (2) Every Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with a power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue and be sued.
- (3) The head office of every Authority shall be at such place as the Central Government may specify in the notification referred to in sub-section (1).
- (4) Any Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.



Section 31(5) Every Authority shall consist of -

- (a) the Development Commissioner of the Special Economic Zone over which the Authority exercises its jurisdiction - Chairperson, ex officio;
- (b) two officers of the Central Government to be nominated by that Government having knowledge of, or experience in, dealing with matters relating to Special Economic Zones - Members, ex officio;
- (c) an officer of the Government of India in the Ministry or Department dealing with Commerce on matters relating to Special Economic Zone - Member, ex officio;
- (d) not more than two persons being entrepreneurs or their nominee, to be nominated by the Central Government - Members, ex officio;.

Section 31(6) the term of office of the Members of an Authority (other than ex officio Members) and the manner of filling of vacancies shall be such as may be prescribed.

Section 31 (7) An Authority may associate with itself in such manner, subject to such conditions and for such purposes as may be prescribed, any person whose assistance or advice it requires in discharging its functions effectively and that person shall be entitled to receive such allowances or fees as may be fixed by the Authority.

Section 31 (8) One third of the total Members of the Authority shall form a quorum, and all the acts of the Authority shall be decided by a majority of the Members present.

Section 31 (9) No act or proceeding of an Authority shall be invalidated merely by reason of-

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person acting as a Member of the Authority; or



- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

Section 31(10) Every Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be prescribed.

Officers of Authority and other staff (Section-32):

Section 32 of the SEZ Act prescribes the officers of Authority and staff. The details of officers of Authority and other staff.

- (1) Every Development Commissioner of the Special Economic Zone for which he is appointed as such shall be the chief executive of the Authority concerned and exercise such powers and perform such functions as may be prescribed.
- (2) Every Authority may, in addition to the officers and employees transferred to it under section 33, appoint such other officers and employees, as it considers necessary for the efficient discharge of its functions under this Act.
- (3) The method of appointment, the conditions of service and the scales of pay and allowances of such other officers and employees appointed under sub-section (2) shall be such as may be prescribed.

Special provision for transfer of officers or other employees to Authority (Section-33):

Section 33 of the SEZ Act, prescribes Special provision for transfer as under:

- (1) It shall be lawful for the Central Government to transfer to each Authority, by order, and with effect from such date or



dates, as may be specified in the order, any officer or other employee holding office as such (except officers or other employees on deputation) in the existing Special Economic Zone concerned:

Provided that the scale of pay of the post to which such officer or other employee is transferred shall not be lower than the scale of pay of the post which he was holding immediately before such transfer and the other terms and conditions of service (including pension, leave, provident fund and medical benefits) of the post to which he is transferred shall not be less favorable than the terms and conditions of service in relation to the post held by him immediately before such transfer:

Provided further that if, immediately before the date of his transfer, any such officer or other employee is officiating in a higher post under the Central Government either in a leave vacancy or in any vacancy of a specified duration, his pay and other allowances, if any, on transfer, shall be protected for the unexpired period of such vacancy and thereafter he shall be entitled to the scale of pay applicable to the post under the Central Government to which he would have reverted but for his transfer to the Authority.

- (2) If any question arises as to whether the prescribed terms and conditions of service in respect of any matter, including remuneration, pension, leave, provident fund and medical benefits, are less favourable than those attached to the post held by an officer or other employee immediately before his transfer to the Authority, the decision of the Central Government in the matter shall be final.

Functions of Authority (Section-34):

Section 34 of the Act, prescribes the various functions of Authority



as under:

- (1) Subject to the provisions of this Act, it shall be the duty of each Authority to undertake such measures as it thinks fit for the development, operation and management of the Special Economic Zone for which it is constituted.
- (2) Without prejudice to the generality of the provisions of subsection (1), the measures referred to therein may provide for -
 - (a) the development of infrastructure in the Special Economic Zone;
 - (b) promoting exports from the Special Economic Zone;
 - (c) reviewing the functioning and performance of the Special Economic Zone;
 - (d) levy user or service charges or fees or rent for the use of properties of the Authority;
 - (e) performing such other functions as may be.

Grants and loans by the Central Government (Section-35):

Section 35 of the Act prescribes The Central Government may, after due appropriation made by Parliament by law in this behalf, make to every Authority by way of grants and loans such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Constitution of Fund and its application (Section-36):

Section 36 of the Act prescribes that there shall be establishment by every Authority a Fund there shall be credited there to all sums of money, which central Government may after due appropriation made by parliament by the law in this behalf, provide to the Authority.



The Fund shall be applied for meeting the salaries, allowances and other remuneration of the members, officers and other employees of the Authority and other administrative expenses of the Authority.

- (a) all sums of money, which the Central Government may, after due appropriation made by Parliament by law in this behalf, provide to the Authority;
- (b) all grants or loans that may be made to the Authority under this Act;
- (c) all sums received on account of user or service charges or fees or rent for the use of properties belonging to the Authority;
- (d) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting -

- (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Authority;
- (b) the expenses of the Authority in the discharge of its functions under section 34;
- (c) repayment of any loan;
- (d) the expenses on objects and for purposes authorised by this Act;
- (e) any other administrative expenses of the Authority.

Accounts and Audit (Section-37):

Section 37 of the Act, prescribes every Authority shall maintain proper accounts and other relevant records and prepare annual statement of accounts and subject audit of the Comptroller and Audit –General of India.

(2) The accounts of every Authority shall be audited by the



Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

- (3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.
- (4) The accounts of every Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

Directions by Central Government (Section-38):

Every Authority shall be bound to carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

Returns and reports:

Section 39 of the Act prescribes every Authority shall furnish to the Central Government at such time and in such form, statement and manner as may be prescribed by the Central Government from time to time.

- (2) Without prejudice to the provisions of sub-section (1), every Authority shall, as soon as possible, after the end of each



financial year, submit to the Central Government a report in such form and before such date, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

- (3) A copy of every report received under sub-section (2) shall be laid, as soon as may be, after it is received, before each House of Parliament.

Powers to supersede Authority (Section-40):

(1) If at any time the Central Government is of the opinion that an Authority is unable to perform, or has persistently made default in the performance of the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 38, the Central Government may, by notification, supersede that Authority for such period not exceeding six months, as may be specified in the notification :

Provided that before issuing a notification under this sub-section, the Central Government shall give reasonable time to that Authority to make representation against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (7) superseding the Authority, -

- (a) the Chairperson and other Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct;



- (c) all property vested in the Authority shall, during the period of supersession, vest in the Central Government.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may -
- (a) extend the period of supersession for such further period not exceeding six months; or
- (b) reconstitute the Authority in the manner provided in section 31.

SECTION 41. Members, officers and other employees of Authority to be public servants. - All Members, officers and other employees of every Authority, shall, when acting or purporting to act in pursuance of any of the provisions of this Act or the rules made thereunder, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Reference of dispute (Section-42):

Section 42 of the Act prescribes any dispute of civil nature arises among two or more entrepreneurs or two or more Developers or between an entrepreneur and a Developer in the SEZ and the court or the courts such dispute shall be referred to arbitration.

SECTION 43. Limitation. - (1) The period of limitation in the case of any dispute which is required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute was a suit and the arbitrator is civil court.

(2) Notwithstanding anything contained in sub-section (1), the arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period.



SECTION 44. Applicability of provisions of this Act to existing Special Economic Zones. - All the provisions of this Act (except sections 3 and 4) shall, as far as may be, apply to every existing Special Economic Zones.

SECTION 45. Person to whom a communication may be sent under this Act. - A communication by any competent authority or person under this Act may be sent to the person who has the ultimate control over the affairs of the Special Economic Zone or Unit or where the said affairs are entrusted to a manager, director, chairperson, or managing director, or to any other officer, by whatever name called, such communication may be sent to such manager, director, chairperson, or managing director, or any other officer.

SECTION 46. Identity Card. - Every person, whether employed or residing or required to be present in a Special Economic Zone, shall be provided an identity card by every Development Commissioner of such Special Economic Zone, in such form and containing such particulars as may be prescribed.

SECTION 47. Authorities responsible for administration. - Any authority which has been conferred upon any power, or, is, required to discharge any function under any Central or State Act, may, subject to the provisions of this Act, exercise such powers or discharge such function in any Special Economic Zone under that Act.

SECTION 48. Protection of action taken in good faith. - No suit, prosecution or other legal proceeding shall lie against the Central Government or any Chairperson, Member, officer or other employee of the Board or the Approval Committee or the Authority or Development Commissioner for anything done or intended to be done in good faith under this Act.

SECTION 49. Power to modify provisions of this Act or other enactments in relation to Special Economic Zones. - (1) The Central Government may, by notification, direct that any of the



provision of this Act (other than sections 54 and 56) or any other Central Act or any rules or regulations made thereunder or any notification or order issued or direction given thereunder (other than the provisions relating to making of the rules or regulations) specified in the notification -

- (a) shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or
- (b) shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modification and adaptation, as may be specified in the notification :

Provided that nothing contained in this section shall apply to any modifications of any Central Act or any rule or regulation made thereunder or any notification or order issued or direction given or scheme made thereunder so far as such modification, rule, regulation, notification, order or direction or scheme relates to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones.

- (2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.



Power of the State Government to grant exemption (Section-50):

Section 50 of the SEZ Act, provides that the State Government may, for the purposes of giving effect to the provisions of this Act, notify policies for Developers and Units and take suitable steps for enactment of any law:-

- (a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;
- (b) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.

SEZ Act to have overriding effect (Section-51):

Section 51 of the SEZ Act, provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Certain provisions not to apply(Section-52) - (1) The provision contained in the Chapter X-A of the Customs Act, 1962 (52 of 1962) and the Special Economic Zones Rules, 2003 and the Special Economic Zones (Customs Procedure) Regulations, 2003 made thereunder shall not, with effect from such date as the Central Government by notification appoint, apply to the Special Economic Zones.

- (2) Notwithstanding anything contained in sub-section (1), all offences committed, before the commencement of this Act, under any provisions of Customs Act, 1962 (52 of 1962) and the Special Economic Zones Rules, 2003 and the Special Economic Zones (Customs Procedure) Regulations, 2003 made thereunder, shall continue to be governed by the said Act or rules, as the case may be.
- (3) Anything done or any action taken or purported to have been done or taken including any rule, notification,



inspection, order or notice made or issued or any permission, authorisation or exemption granted or any document or instrument executed under the said provisions of the Act, rules and regulations referred to in sub-section (1) shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been done or taken or made or issued or granted under the corresponding provisions of the Act or rules or regulations referred to in that sub-section.

SEZ to be ports, airports, inland containers depots, land stations, etc. (Section-53):

Section 53 (1) of the SEZ Act, provides a Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

(2) A Special Economic Zone shall, with effect from such date as Central Government may notify, be deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962:

Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones

Power to make rules (Section-55):

Section 55 of the SEZ Act, provides the Central Government may, by notification, makes rules for carrying out the development of the SEZ and the power and the functions of every Development Commissioner.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the infrastructure facilities necessary for the development of the Special Economic Zones under clause (p) and services in the Special Economic Zones under clause (z) of section 2;



- (b) the period within which the person concerned shall obtain the concurrence of the State Government under sub-section (3) of section 3;
- (c) the form and the manner in which a proposal may be made and the particulars to be contained therein under sub-section (5) of section 3;
- (d) the period within which the State Government may forward the proposal together with its recommendation under sub-section (6) of section 3;
- (e) the requirements subject to which the Board may approve, modify or reject the proposal under sub-section (8) of section 3;
- (f) the period within which the grant of letter of approval shall be communicated to the State Government or Developer or entrepreneur under sub-section (10) of section 3;
- (g) the other requirements for notifying the specifically identified area in a State as a Special Economic Zone under sub-section (1) of section 4;
- (h) the terms, conditions and limitations subject to which the goods or services exported out of, or imported into, or procured from the Domestic Tariff Area to, a Special Economic Zone, be exempt from payment of taxes, duties or cess under section 7;
- (i) the procedure for transfer of letter of approval in case of suspension of letter of approval of a Developer under clause (a) of sub-section (9) of section 10;
- (j) the form and the manner in which a proposal may be submitted and the particulars to be contained therein under sub-section (1) of section 15;
- (k) the time within which a person aggrieved by the order of the Approval Committee may prefer an appeal under sub-section (4) of section 15;



- (l) the form in which the appeal shall be made and the fees for making such appeal under sub-section (6) of section 15;
- (m) the procedure for disposing of an appeal under sub-section (7) of section 15;
- (n) the requirements (including the period for which a unit may be set up) subject to which the proposal may be approved, modified or rejected under clause (a) of sub-section (8) of section 15;
- (o) the terms and conditions, for the Unit subject to which it shall undertake authorised operations under clause (b) of sub-section (8) of section 15 and the obligations and entitlements of the Unit;
- (p) the time within which a person aggrieved by the order of the Approval Committee may prefer an appeal under sub-section (4) of section 16;
- (q) the form in which the appeal shall be made and the fees for making such appeal under sub-section (6) of section 16;
- (r) the procedure for disposing of an appeal under sub-section (7) of section 16;
- (s) the form and the manner in which an application may be made for setting up of an Offshore Banking Unit in a Special Economic Zone under sub-section (1) of section 17;
- (t) the requirements for setting up and operation of an International Financial Services Centre in a Special Economic Zone under sub-section (1) of section 18;
- (u) the requirements and terms and conditions subject to which a Unit in the International Financial Services Centre may be set up and operated in Special Economic Zone under sub-section (2) of section 18;
- (v) the form of single application for obtaining any licence, permission or registration or approval under clause (a) of section 19;



- (w) the form of single return or information to be furnished by an entrepreneur or Developer under clause (c) of section 19;
- (x) the manner in which and the terms and the conditions subject to which the exemptions, concessions, draw back or other benefits shall be granted to every Developer and entrepreneur under sub-section (2) of section 26;
- (y) the period during which any goods brought into, or services provided in, any Special Economic Zone shall remain or continue to be provided in such Unit or Special Economic Zone under section 28;
- (z) the terms and conditions subject to which transfer of ownership in any goods brought into, or produced or manufactured in, any Unit or Special Economic Zone, or removal thereof from such Unit or the Zone, shall be allowed under section 29;
- (za) the conditions subject to which the Units shall be entitled to sell the goods manufactured in a Special Economic Zone to the Domestic Tariff Area under section 30;
- (zb) the term of office of the Members, other than ex officio Members, of every Authority and the manner of filling of vacancies under sub-section (6) of section 31;
- (zc) the manner in which and the conditions subject to which and the purposes for which any person may be associated under sub-section (7) of section 31;
- (zd) the times and the places of meetings and the procedure to be followed in the transaction of business meeting under sub-section (10) of section 31;
- (ze) the powers and the functions of every Development Commissioner under sub-section (1) of section 32;
- (zf) the method of appointment of officers and other employees of every Authority, conditions of their service and the scale of pay and allowances under sub-section (3) of section 32;



- (zg) the other functions to be performed by the Authority under clause (e) of sub-section (2) of section 34;
- (zh) the form in which the accounts and other relevant records of every Authority shall be maintained and annual statement of accounts shall be prepared under sub-section (1) of section 37;
- (zi) the form and the manner in which and the time at which every Authority shall furnish returns and statements and other particulars to the Central Government under sub-section (1) of section 39;
- (zj) the form in which and the date before which every Authority shall furnish to the Central Government the report of its activities, policy and programmes under sub-section (2) of section 39;
- (zk) the form in which and the particulars to be contained in the identity cards under section 46;
- (zl) any other matter which, is to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

Power to remove difficulties (Section-56):

Section 56 of the SEZ Act, provides that any If any difficulty arises in giving effect to the provisions of this Act, the Central



Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made under this section after the expiration of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Amendment of certain enactments (Section-57). - With effect from such date as the Central Government may by notification appoint, the enactments specified in the Third Schedule shall be amended in the manner specified therein:

Provided that different dates may be appointed on which the amendments specified in the Third Schedule shall apply to a particular Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones.

Savings (Section-58). - All rules made or purporting to have been made or all notifications issued or purporting to have been issued under any Central Act relating to the Special Economic Zone shall, in so far as they relate to matters for which provision is made in this Act or rules made or notification issued thereunder and are not inconsistent therewith, be deemed to have been made or issued under this Act as if this Act had been in force on the date on which such rules were made or notifications were issued and shall continue to be in force unless and until they are superseded by any rules made or notifications issued under this Act.

The Special Economic Zone Act, 2005 along with Special Economic Zone Rules, 2006 have become operative w.e.f. 10th February, 2006. All the activities relating to the SEZ scheme is governed by the provisions contained in the Special Economic Zone Act, 2005 and Special Economic Zone Rules, 2006. As per Section 51 (1) of the SEZ Act, provides that SEZ Act and the SEZ Rules will have overriding effect over the provisions contained in any other Act.

Special Economic Zones Rules, 2006

Definitions (Rule-2):

- (1) In these rules, unless the context otherwise requires, -
- (a) “Act” means the Special Economic Zones Act, 2005 (28 of 2005);
 - (b) “Advance Licence” means Advance Licence issued under the Duty Exemption and Remission Scheme of the Foreign Trade Policy and includes advance authorization;
 - (c) “Authorised Officer” means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer to discharge any of his functions under these rules;
 - (d) “Bio Technology Park unit” means a unit approved under the Bio-Technology Park Scheme of the Foreign Trade Policy;
 - (e) “capital goods” means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, or for development of Special Economic Zone,



including those required for construction, replacement, modernization, technological upgradation or expansion and also include material handling equipment, packaging machinery and equipments, refractories for initial lining, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control system, for use in manufacturing, construction, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture, and in the services sector;

- (f) “component” means one of the parts of a sub-assembly or assembly of which a manufactured product is made up and into which it may be resolved and includes an accessory or attachment to the component;
- (g) “consumable” means any item, (including fuels, high speed diesel oil, light diesel oil and other such petroleum products) which is required for a manufacturing process, which may or may not be substantially or totally consumed during a manufacturing process but does not necessarily form part of the end product;
- (h) “custodian” means any person referred to in section 45 of the Customs Act, 1962;
- (i) “Customs Act” means the Customs Act, 1962 (52 of 1962);
- (j) “drawback” means drawback referred to in the Customs Act, 1962;
- (m) “Electronic Hardware Technology Park unit” means a unit approved in accordance with the Electronic Hardware Technology Park Scheme framed under the Foreign Trade Policy;
- (n) “Export Oriented Unit” means a unit approved in accordance with the Export Oriented Unit scheme framed under the Foreign Trade Policy;



- (o) “Foreign Trade Policy” means the Foreign Trade Policy notified from time to time by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act 1992 (22 of 1992);
- (p) “Form” means the form appended to these rules;
- (q) “Handbook” means the Handbook of Procedures framed under the Foreign Trade Policy;
- (r) “Import Trade Control (Harmonized System) Classifications of Export and Import Items” means the items notified from time to time by the Central Government under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
- (s) “infrastructure” means facilities needed for development, operation and maintenance of a Special Economic Zone and includes industrial, business and social amenities like development of land, roads, buildings, sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and interconnecting pipelines for liquids and gases, Inland Container Depot or Container Freight Station, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, residential and business complex, water supply, including desalination plant, sanitation facility;
- (t) “Nominated Agency” means :-
 - (a) the MMTC Ltd, being a company registered under the Companies Act, 1956 (1 of 1956);
 - (b) the Handicraft and Handloom Export Corporation Limited, being the company registered under the Companies Act, 1956 (1 of 1956);



- (c) the State Trading Corporation of India Limited, being the company registered under the Companies Act, 1956 (1 of 1956);
- (d) the Projects and Equipment Corporation of India Limited being the company registered under the Companies Act, 1956 (1 of 1956); and
- (e) any other agency authorized by the Reserve Bank of India;
- (u) “raw material” means :-
 - (a) basic materials which are needed for the manufacture of goods, but which are still in a raw, natural, unrefined or un-manufactured state; and
 - (b) any materials or goods which are required for the manufacturing process (including, catalysts for initial charge), packing material, whether they have actually been previously manufactured or are processed or are still in a raw or natural state;
- (v) “Replenishment Licence” means the Replenishment Licence issued under the Foreign Trade Policy;
- (w) “section” means the section of the Act;
- (x) “Sector” means one or more products or one or more services falling under a category such as engineering, textiles and garments, pharmaceuticals and chemicals, handicrafts, gem and jewellery, electronics hardware and software, including information technology enabled services and bio-technology :

Provided that various categories comprising their respective products or services, similar or compatible with each other, including related ancillary services and Research and Development services of the sector and additional combination of products and services of a similar or compatible nature as approved by the Board of Approval shall constitute a single sector;



- (y) “Software Technology Park unit” means a unit approved under the Software Technology Parks Scheme of the Foreign Trade Policy;
 - (z) “spares” means a part or a sub-assembly or assembly for substitution, that is ready to replace an identical or similar part or sub-assembly or assembly and includes a component or an accessory;
 - (zd) “Specified Officer” in relation to a Special Economic Zone means Joint or Deputy or Assistant Commissioner of Customs for the time being posted in the Special Economic Zone;
 - (ze) “status holder” means an exporter recognized under the Foreign Trade Policy;
 - (zf) “Vacant Land” means the land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.
 - (zg) “Registration-cum-Membership Certificate” means the membership certificate issued by Export Promotion Council for Export Oriented Units and Special Economic Zones.
- (2) All other words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

Proposal for setting up of SEZ (Rule-3): Every proposal for setting of SEZ, shall be submitted to the concerned Development Commissioner in Form A, within a period of fifteen days, shall forward it to the Board with his inspection report, State Government’s recommendation, recommendation for National Security Clearance as per guidelines issued by the Ministry of Home Affairs and other details as per rule 3 of SEZ Rules.

Proposal for approval as Co-developer (Rule-3A): The proposal under sub-section (11) of section 3 for providing infrastructural



facilities in the Special Economic Zone shall be made in Form A1 to the concerned Development Commissioner, as specified in Annexure-III, who, within a period of fifteen days, shall forward it to the Board with his recommendations as per rule 3A of SEZ Rules.

Forwarding of proposal to Board (Rule-4): The State Government shall forward the proposals received to the Board of Approval (Deputy Secretary, Ministry of Commerce and Industry, Department of Commerce, Udyog Bhavan, New Delhi through the jurisdictional Development Commissioner concerned along with its recommendations, within forty-five days of receipt of such proposal as per rule 4 of SEZ Rules.

Provided that where the Board approves a proposal received under sub-section (3) of section 3, the person shall obtain concurrence of the State Government within six months from the date of such approval.

(2) While forwarding a proposal under sub-rule (1), the State Government shall ensure that the requirements under rule 5 have been complied with and shall attach copies of relevant notifications issued by it in this regard.

Minimum area: There shall be no minimum area requirement for setting up a Special Economic Zone for Information Technology or Information Technology Enabled Services, Bio-technology and Health Sector (excluding hospitals),” but a minimum built-up processing area requirement shall be applicable as per rule 5(2) (b) (ii) of SEZ Rules.

SEZ Rule 5 (5) - Exemption, Concession and facilities:

Before recommending any proposal for setting up of a Special Economic Zone, the State Government shall endeavour that the following are made available in the State to the proposed Special Economic Zone Units and Developer, namely: –

- (a) exemption from the State and local taxes, levies and duties, including stamp duty, and taxes levied by local bodies on goods



required for authorized operations by a Unit or Developer, and the goods sold by a Unit in the Domestic Tariff Area except the goods procured from domestic tariff area and sold as it is;

- (b) exemption from electricity duty or taxes on sale, of self-generated or purchased electric power for use in the processing area of a Special Economic Zone;
- (c) allow generation, transmission and distribution of power within a Special Economic Zone;
- (d) providing water, electricity and such other services, as may be required by the developer be provider or caused to be provided;
- (e) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No. 14 of 1947) and other related Acts in relation to the Unit;
- (f) delegation of power to the Development Commissioner under the Industrial Disputes Act, 1947 (No. 14 of 1947) in relation to the workmen employed by the Developer;
- (g) declaration of the Special Economic Zone as a Public Utility Service under the Industrial Disputes Act, 1947 (No. 14 of 1947);
- (h) providing single point clearance system to the Developer and unit under the State Acts and rules.

SEZ Rule.6- Letter of Approval to the Developer:

The Central Government shall, within a period of thirty days of the communication received by it under clause (a) or clause (b) of sub-section (9) of Section 3 of the Act grant following approvals:-

- (a) formal approval in the cases where land is in possession of the developer in Form-B to the person or the State Government concerned or in Form-C, if the approval is for providing infrastructural facilities in the Special Economic Zone, incorporating additional conditions, if any, specified by the Board while approving the proposal;



(b) in-principle approval in other cases in Form-B 1 to the person or the State Government concerned, incorporating additional conditions, if any specified by the Board while approving the proposal.

(2) “(a) The letter of approval of a Developer granted under clause (a) of sub-rule (1) shall be valid for a period of three years within which time at least one unit has commenced production and the Special Economic Zone become operational from the date of commencement of such production:

Provided that the Board may, on an application by the developer or the co-developer, as the case may be, for reasons to be recorded in writing extend the validity period:

(2) (aa) where the Special Economic Zone becomes operational, the letter of approval granted under clause (a) shall be valid till the period of validity of notification of such Special Economic Zone.

(b) The letter of approval of a Developer granted under clause (b) of sub-rule (1) shall be valid for a period of one year within which time, the Developer shall submit suitable proposal for formal approval in Form “A” as prescribed under the provisions of rule 3 :

Provided that the Board may, on an application by the developer, for reasons to be recorded in writing, extend the validity period:

Provided further that the Developer shall submit the application in Form C2 to the concerned Development Commissioner, as specified in Annexure III, who, within a period of fifteen days, shall forward it to the Board with his recommendations.

SEZ Rule 6A- Power of Central Government to review letter of approval:

The Central Government may review the letter of approval granted under sub-rule (1) of rule 6 on the recommendation of the Board in the following circumstances, namely-

(i) the Developer submits application in Form C3 for change of the sector to the concerned Development Commissioner, as specified in Annexure III, who, within a period of fifteen days shall forward it to the Board with his recommendations;



- (ii) the Developer submits application in Form C4 for increase in the area to the concerned Development Commissioner, as specified in Annexure-III, who, within a period of fifteen days, shall forward it to the Board with his recommendations;
- (iii) the Developer submits application in Form C5 for decrease in the area to the concerned Development Commissioner, as specified in Annexure III, who, within a period of fifteen days, shall forward it to the Board with his recommendations.

SEZ Rule 7- Details to be furnished for issue of notification for declaration of an area as SEZ:

The developer shall furnish to the Central Government particulars of identified area with a certificate from the concerned State Government or its agency stating that the developer(s) have legal possession and irrevocable rights develop the said area as SEZ and that the said area is free from all encumbrance.

Provided that where the Developer has leasehold rights over the identified area, the lease shall be for a period not less than twenty years.

SEZ Rule.8 - Notification of SEZ:

After the submission of details as required under rule 7 and other details, if any, required by the Central Government and on acceptance of the conditions specified in the Letter of Approval, the Central Government shall notify the identified area as a Special Economic Zone.

Provided that the Central Government may, on the recommendation of the Board on the application made by the Developer, if it is satisfied, modify, withdraw or rescind the notification of a Special Economic Zone issued under this rule:

Provided further that the Developer shall submit his application for withdrawal of notification in Form C6 to the concerned Development Commissioner, as specified in Annexure III, who, within a period of fifteen days, shall forward it to the Board with his recommendations.



SEZ Rule 9- Grant of Approval for Authorised operations:

The Developer shall submit in Form C7 to the Development Commissioner who within a period of fifteen days, shall forward it to the Board with his recommendations, the details of operations proposed to be undertaken in the Special Economic Zone for obtaining authorization under sub- section (2) of section 4 at the time of seeking approval for setting up of Special Economic Zone or thereafter:

Provided that exemptions, drawbacks and concessions shall be available for the authorized operations as per the procedure specified in rule 12 after the Special Economic Zone had been notified under rule 8 :

Provided further that the Developer of an existing Special Economic Zone shall submit to the Board the details of operations proposed to be undertaken in the Special Economic Zone for the purpose of availing exemptions, drawbacks and concessions.

(Rule 9A)- The Developer shall ensure sufficient and adequate space, as per the applicable Central Public Works Department norms, for the Office of Development Commissioner and Customs Officers posted in the Special Economic Zone.

SEZ Rule 10- Permission for procurement of items:

The Approval Committee may permit goods and services to carry on the operations authorised under rule 9.

Provided that for the Special Economic Zone set up by the Central Government, the goods and services required for the authorized operations may be approved by the Board:

Provided further that exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer, as the case may be, shall also be available to the contractors including sub-contractors appointed by such Developer or Co-developer, and all the documents in such cases shall bear the name of the Developer or Co-developer along with the contractor or sub-contractor and these shall be filed jointly in the name of the Developer or Co-developer and the contractor or sub-contractor, as the case may be :



Provided also that the Developer or Co-developer, as the case may be, or the Special Economic Zone Unit shall be responsible and liable for proper utilisation of such goods in all cases.

SEZ Rule 11- Processing and non-processing area:

(1) The Development Commissioner shall demarcate the area and issue demarcation order under the provision of section 6, specifying the survey numbers and boundaries of area of the Special Economic Zone as specified in the notification issued under rule 8.

(2) The processing area and Free Trade and warehousing Zone shall have specified entry and exit points and be fully secured by taking such measures as approved by the Approval Committee.

Provided that in case of a Special Economic Zone for information technology or information technology enabled services or electronic hardware or biotechnology, the Development Commissioner shall approve such measures and inform the Approval Committee accordingly:

Provided further that in case the developer proposes to create two hundred and forty centimeter high wall with top sixty centimeter being barbed wire fencing and single entry and exit point, no separate approval shall be required under this sub-rule.

(3) The Development Commissioner shall ensure compliance of the requirements of sub-rule (2).

(4) The persons authorized by the Development Commissioner shall only be allowed to enter the processing area of a Special Economic Zone.

(5) The land or built up space in the processing area or Free Trade and Warehousing Zone shall be given on lease only to the entrepreneurs holding a valid Letter of Approval issued under rule 19 and the lease period shall not be less than five years but notwithstanding any other condition in the lease deed, the lease rights would cease to exist in case of the expiry or cancellation of the Letter of Approval:]

Provided that the Developer may, with the prior approval of the Approval Committee, grant on lease land or built up space, for



creating facilities such as canteen, public telephone booths, first aid centres, creche and such other facilities as may be required for the exclusive use of the Unit.

- (6) The Developer holding land on lease basis shall assign leasehold right to the entrepreneur holding valid Letter of Approval.
- (7) Any transfer by way of sub-lease or any other mode by the Developer shall be valid only if the same is made to a person holding a valid Letter of Approval issued by the Development Commissioner.
- (8) The Developer may allot land in the processing area on lease basis to a person desiring to create infrastructure facilities for use by the prospective Units.
- (9) The Developer shall not sell the land in a Special Economic Zone.
- (9A) The Developer shall ensure sufficient and adequate space, as per the applicable Central Public Works Department norms, for the Office of Development Commissioner and Customs Officers posted in the Special Economic Zone.
- (10) No vacant land in the non-processing area shall be leased for business and social purposes such as educational institutions, hospitals, hotels, recreation and entertainment facilities, residential and business complexes, to any person except a co-developer approved by the Board:

Provided that the developer or co-developer may lease the completed infrastructure along with the vacant land appurtenant thereto for such purposes :

Provided also that the Developer or Co-Developer shall strive to provide adequate housing facilities not only for the management and office staff but also for the workers of the Special Economic Zones Units:

Provided that infrastructure for business or social purposes in the Special Economic Zone, as may be approved by the Board, shall be eligible for exemptions, concessions and drawback.



(11) The Special Economic Zone shall be deemed to be a port, airport, inland container depot, land customs station under section 7 of the Customs Act in accordance with the provisions of section 53 from the date notified in this behalf:

Provided that Specified Officer may designate any area or area(s) in the Special Economic Zone as an area for loading and unloading of import or export cargo :

Provided further that in case the said port, airport, inland container depot, land customs station area is to be used for loading and unloading of import or export cargo meant for Domestic Tariff Area importers and exporters also, storage for such cargo shall be in a separate enclosure and deliveries for such cargo shall be allowed by the Authorized Officer of the Special Economic Zone based on Bill of Entry, assessed by the Assistant or Deputy Commissioner of Customs having jurisdiction over the said Customs Station :

Provided also that addition or inclusion of any land to an existing Special Economic Zone, where such land contains a port, manufacturing unit, or structures in which no commercial, industrial or economic activity is in progress, then such Special Economic Zone shall not be eligible for any duty benefits in respect of the pre-existing structures but any additions or up-gradations to such existing ports, manufacturing units, or structures after their addition or inclusion in a Special Economic Zone shall be eligible for the fiscal incentives as applicable for a new infrastructure in a Special Economic Zone and also the authorised operations being carried on in such infrastructure shall be eligible for benefits as provided for under the Special Economic Zone Act and rules.

(12) The Central Government may lay down guidelines for development, operation and maintenance of Special Economic Zones.

SEZ Rule 11A- Bifurcation of non-processing area:

The non-processing area can be bifurcated into two parts, namely:-

(i) Where the social or commercial infrastructure and other facilities are permitted to be used by both the Special Economic



Zone and Domestic Tariff Area entities: No exemptions, concessions or drawback shall be admissible for creation of such infrastructure.

- (ii) Where the social or commercial infrastructure and other facilities are permitted to be used only by Special Economic Zone entities: This portion shall be bonded and physically segregated from the Domestic Tariff Area, non-processing area, specified at (I) above and the processing area of the Special Economic Zone. The infrastructure, as may be approved by the Board, for this part of non-processing area shall be eligible for exemptions, concessions and drawback.

SEZ Rule 12- Import and procurement of goods by the Developer:

- (1) The Developer may import or procure goods and services from the Domestic Tariff Area, without payment of duty, taxes and cess for the authorized operations, subject to the provisions contained in the sub-rules (2) to (8).
- (2) The Developer shall make an application, after obtaining approval for the authorized operation under rule 9, to the Development Commissioner, along with the list of goods and services, including machinery, equipments and construction materials required for the authorized operations, duly certified by a Chartered Engineer for approval by the Approval Committee.
- (3) The Developer shall declare the place of storage of goods within the Special Economic Zone to the Specified Officer:

Provided that in case the storage is outside the processing area but within the Special Economic Zone, such storage shall comply with such safeguards as may be necessary for the purpose and approved by the Specified Officer.

- (4) The goods imported or procured from the Domestic Tariff Area by the Developer for authorized operations shall be kept in a clearly demarcated area for inspection by the authorized officer before such goods are brought into use.



- (5) The Developer shall execute a Bond-cum-Legal Undertaking in Form D, jointly with the Development Commissioner and Specified Officer, with regard to proper accountal and utilization of goods for the authorized operations within a period of one year or such period, as may be extended by the Specified Officer.
- (6) The Developer shall maintain a proper account of the import or procurement, consumption and utilization of goods and submit quarterly and half-yearly returns to the Development Commissioner in Form E for placing the same before the Approval Committee for consideration.
- (7) The Developer shall submit a half-yearly certificate for the period ending 31st March and 30th September of every financial year regarding utilization of goods and services from an independent Chartered Engineer or independent Chartered Accountant or Cost Accountant.
- (8) The Developer shall not remove goods from the Special Economic Zone to the Domestic Tariff Area except with the permission of the Specified Officer and on payment of duty applicable on such goods.

SEZ Ruler 13- Movement of Capital goods:

A Developer may export or transfer capital goods and spares including construction equipment that have become obsolete or surplus to another Developer, or Unit after obtaining the approval of the Specified Officer.

SEZ Rule 14- Procedure applicable on import or procurement of goods and services:

The procedures applicable to Units on import or procurement of goods and services, their admission, clearance of goods, shall apply, mutatis-mutandis, to the Developer, except that in case of a Developer, goods imported or procured from Domestic Tariff Area shall be allowed to be moved or utilized for the purposes of authorized operations in the non-processing area of Special Economic Zone as well.



SEZ Rule 15- Monitoring:

The utilization of the goods imported or procured from the Domestic Tariff Area by the Developer shall be monitored by the Approval Committee.

SEZ RULE 16- Transfer of Letter of Approval of Developer:

The relevant provisions of section 3, and these rules, as far as may be, apply for transfer of Letter of Approval of a Developer under clause (a) of sub-section (9) of section 10.

SEZ Rule 17- Proposal for approval of Unit:

A consolidated application seeking permission for setting up of a Unit and other permission for construction activities, power connection, water connection, clearances of pollution control shall be made to the Development Commissioner in Form F, in five copies, with a copy to the Developer.

The Development Commissioner shall get the proposal scrutinized and get it placed before the Approval Committee for its consideration.

(2A) The Approval Committee shall meet once in every fortnight on a fixed pre-determined day.

(3) The proposals received under clauses (c) and (e) of sub-section (2) of section 9 shall be placed before the Board by the Development Commissioner for its consideration.

SEZ Rule 18- Consideration of proposals for setting up of Unit in a SEZ:

The Approval Committee may approve or approve with modification or reject a proposal placed before it within 15 days.

The Board shall approve or approve with modification or reject such proposal within 45 days of its receipt.

No proposal shall be considered for recycling of plastic scrap or waste, reprocessing of garments or used clothing or secondary textiles materials, import of other used goods for recycling, export of special chemicals, organics, materials etc.,



SEZ Rule 19- Letter of Approval to a Unit:

On approval of a proposal, Development Commissioner shall issue a Letter of Approval in Form G, for setting up of the Unit. The Letter of Approval shall specify the items of manufacture or particulars of service activity, including trading or warehousing, projected annual export and Net Foreign Exchange Earnings for the first five years of operations, limitations, if any on Domestic Tariff Area sale of finished goods, by-products and rejects and other terms and conditions, if any, stipulated by the Board or Approval Committee:

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:

Provided that upon a request by the entrepreneur, further extension may be granted by the Development Commissioner for valid reasons to be recorded in writing for a further period not exceeding two years:

Provided further that 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

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, at a time.

The Units which intend to renew the validity of Letter of Approval shall submit, before two months from the date of expiry of the Letter of Approval, the completed application in form F1 along with requisite document, to the Development Commissioner, duly signed by the proprietor or managing partner or if it is a company, by the Managing Director or the Director(s) or any person who has



or have been duly authorised for this purpose by a resolution of the Board of Approval of Directors of the Company.

Provided that in case an application is not submitted before the said period of two months, such application shall be placed before the Approval Committee and the said Committee, if it is satisfied that there was sufficient cause for not filing the same before the said period, may direct for entertainment of such application.

In case of non-compliance of the procedures specified in clause (1), the Letter of Approval shall not be considered for renewal.

The Development Commissioner may renew the Letter of Approval for a period of five years or for a shorter period in Form F2 based on the evaluation of the Unit as per sub-rule (6B).

SEZ Rule 20- Administrative Control of SEZ units:

Every Special Economic Zone shall be under the administrative control of a Development Commissioner appointed under sub-section (1) of section 11.

SEZ Rule 21- Offshore Banking Unit:

- (1) The application for setting up and operation of Offshore Banking Unit in Special Economic Zone shall be made to the Reserve Bank of India in the Form VI prescribed under Banking Regulation (Companies) Rules, 1949 under section 23 of the Banking Regulation Act, 1949.
- (2) The terms and conditions subject to which an Offshore Banking Unit may be set up and operated in a Special Economic Zone shall be as specified in the Notification number FEMA 71/2002-RB dated 7th September, 2002 by the Reserve Bank of India, as amended from time to time.

SEZ Rule 22- Execution of Bond-cum-Legal Undertaking:

- (1) To grant of exemptions, drawbacks and concessions to every Developer and entrepreneur for authorised operations subject to the following conditions, namely –



- (i) the unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning;
- (ii) the Developer and Co-developer shall execute the Bond-cum- Legal Undertaking in Form D with regard to their obligations regarding proper utilization and accountal of goods, including goods procured or imported by a contractor duly authorized by the Developer or Co-developer, as the case may be;
- (iii) the Bond-cum-Legal Undertaking shall be jointly accepted by Development Commissioner and by the Specified Officer: Provided Bond-cum-Undertaking shall cover the movement of goods for import / export, temporary removal goods and re-import of export goods.
- (iv) The procedure for execution of Bond –cum-Undertaking shall be as under-
 - (a) The Bond-cum-undertaking shall be executed by the Managing Director of he Company with affix seal of the company, in case of proprietorship concern shall be executed by the proprietor.
 - (b) the value of the Bond-cum-Legal Undertaking shall be equal to the amount of effective duties leviable on import or procurement from the Domestic Tariff Area of the projected requirement of capital goods, raw materials, spares, consumables, intermediates, components, parts, packing materials for three months as applicable but which will not be levied on account of admission of such goods into the Unit or the amount of effective duties leviable on import or procurement from Domestic Tariff Area of the projected requirements of goods for the authorized operation by the Developer but will not be levied on account of admission of such goods into the Special Economic Zone;



- (c) Where the value of Bond is executed falls short of requirement of additional goods, the Unit or the Developer shall submit additional Bond.
- (d) there shall be no debit and credit, the Bond-cum-Legal Undertaking amount shall be monitored quarterly or yearly on the basis of Quarterly Progress Report or Annual Progress Report submitted by the Developer or Unit, as the case may be, and in case of any shortfall in the Bond- cum-Legal Undertaking amount, a fresh or additional Bond- cum-Legal Undertaking shall be furnished;
- (e) the original of Bond-cum-Legal Undertaking shall be maintained by the office of Development Commissioner and certified copies shall be given to the Specified Officer and Unit or Developer;
- (f) the value of the Bond-cum-Legal Undertaking in respect of gems and jewellery units shall be calculated on rates as notified by the Central Government, from time to time;
- (g) duly completed Bond-cum-Legal Undertaking executed by the Unit or Developer, in accordance with the rules above, as the case may be, shall be deemed to have been accepted, if no communication is received within seven working days from the date of its submission.

The Unit or the developer including co-developer shall obtain a Registration-cum-Membership Certificate for availing exemptions, drawbacks and concessions.

- (2) Every Unit and Developer shall maintain proper accounts, financial year wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock.



Provided that Unit and Developer shall maintain such records for a period of seven years from the end of relevant financial year.

Provided further that the Unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing activities.

- (3) The Unit shall submit Annual Performance Reports in the Form I, to the Development Commissioner and the Development Commissioner shall place the same before the Approval Committee for consideration.
- (4) The Developer shall submit Quarterly Report on import and procurement of goods from the Domestic Tariff Area, utilization of the same and the stock in hand, in Form E to the Development Commissioner and the Specified Officer and the Development Commissioner shall place the same before the Approval Committee.

SEZ Rule 23- Eligible exports benefits:

Supplies from the Domestic Tariff Area to a Unit or Developer for their authorized operations shall be eligible for export benefits as admissible under the Foreign Trade Policy.

SEZ Rule 24- The procedure for grant of drawback claims and DEPB credit: (1) The procedure for grant of drawback claims and Duty Entitlement Pass Book credit to a Developer or Unit shall be as under:—

- (a) Customs and Central Excise Duties Drawback Rules, 2017.
- (b) Duty Entitlement Pass Book Credit- omitted
- (2) Where a Bill of Export has been filed under a claim of drawback or any other similar scheme laid down under the Customs and Central Excise Duties Drawback Rules, 2017, as amended from time to time, the Unit or Developer shall claim the same from the Specified Officer and in case the Unit or Developer does not intend to claim such benefit, a disclaimer to this effect shall



be given to the Domestic Tariff Area supplier for claiming such benefits:

Provided that the aforesaid benefits may be claimed by Domestic Tariff Area supplier from their jurisdictional Goods and Services Tax or Central Excise Commissioner, as the case may be.

- (3) Drawback or any other similar benefit under the Customs and Central Excise Duties Drawback Rules, 2017, as amended from time to time, against supply of goods by Domestic Tariff Area supplier shall be admissible where payments for the supply are made from the Foreign Currency Account of the Unit.

Provided that the reimbursement of duty in lieu of drawback any other similar benefit scheme against supply of goods by Domestic Tariff Area supplier to Special Economic Zone developers shall be admissible even if payment is made in Indian Rupees and reimbursement of duty in lieu of drawback or any other benefits.

SEZ Rule 25- Failure to utilised goods for authorised operations:

Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Goods and Services Tax Act, 2017, the Foreign Trade (Development and Regulation) Act, as the case may be:

Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

Definition of import : Section 2 (o) of the SEZ Act, 2005 defines “import” means- (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or (ii) receiving goods, or services by, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone.

SEZ Rule 26- General Conditions of Import and Export:

A Unit may export goods and services, including agro-products, partly processed goods, sub- assemblies, components, by-products, rejects, waste or scrap except prohibited items of exports indicated in the Import Trade Control (Harmonized System) Classifications of Export and Import Items.

Provided that export of Special Chemicals, Organisms, Materials, Equipment and Technologies shall be subject to fulfillment of the conditions indicated in the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

Provided further that if any permission is required for import under any other law, the same shall be allowed with the approval of the Board of Approval:

Provided also that the Foreign Trade Policy restrictions on State Trading Enterprises shall not apply to Special Economic Zone manufacturing Units:

Provided also that export of iron-ore shall be subject to the conditions as imposed by the Central Government.

Provided also that Special Economic Zone Units shall be permitted to export prohibited items, if they import raw-material for the same, but each such case shall be placed before Board of Approval for approval:



Provided also that items which are prohibited for import, Special Economic Zone Units shall be permitted to import the same if they export goods made out of the same but each such case shall be placed before Board of Approval of Approval for approval:

SEZ Rule 27- Import and Procurement:

- (1) A Unit or 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, all 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) Classifications of Export and Import Items:

Provided further that the unit shall be responsible and liable for proper utilization of such goods and services in all cases.

Provided also that items prohibited for import can be procured by a Special Economic Zone unit or Developer from a place outside India to the Special Economic Zone with the prior approval of Board of Approval.

Provided also that for supply of Restricted Items by a Domestic Tariff Area Unit to Special Economic Zone Developer or Unit, the Domestic Tariff Area Unit may supply such items to a Special Economic Zone Developer or Unit for setting up infrastructure facility or for setting up of a Unit and it may also supply raw material to Special Economic Zone Unit for undertaking a manufacturing operation except refrigeration, cutting, polishing and blending, subject to the prior approval of Board of Approval :

Provided also that supplies from Domestic Tariff Area to Special Economic Zones shall attract export duty, in case, export duty is leviable on items attracting export duty.



- (2) In case of any doubt as to whether any goods or services are required by a Unit or Developer for authorized operations or not, it shall be decided by the Development Commissioner.
- (3) The import of duty-free material for setting up educational institutions, hospitals, hotels, residential and/or business complex, leisure and entertainment facilities or any other facilities in the non-processing area of the Special Economic Zone shall be as approved by the Board and import of no duty-free material shall be permitted for operation and maintenance of such facilities.

Provided further that any goods for the personal use of, or consumption by officials, workmen, staff, owners or any other person in relation to a Unit or Developer, shall not be eligible for exemptions, drawback and concessions or any other benefit in accordance with the provisions of section 7 or 26.

- (4) A Unit or Developer may also source capital goods, without payment of duty, taxes or cess from a domestic or foreign leasing company, under a valid lease agreement and in such cases the Unit or Developer and the domestic or foreign leasing company shall jointly file documents for import or domestic procurement, as the case may be.
- (5) A Unit may import or procure from Domestic Tariff Area, all types of goods and services, without payment of duty, taxes or cess for creating a central facility for use by Units in Special Economic Zone and where such facility is created for software development, the same may also be accessed by software exporters of Domestic Tariff Area.
- (6) A gem and jewellery Unit may also source on outright purchase basis or loan basis, gold or silver or platinum through the Nominated Agencies and where such sourcing is on loan basis, the same shall be subjected to the conditions applicable to such transactions under the provisions of the Foreign Trade Policy in force:



Provided that the conditions applicable to loan transaction shall not apply where the Unit converts such loan into outright purchase by paying the outstanding loan amount and interest within the period for export prescribed under the Foreign Trade Policy applicable to the loan transaction.

- (7) The goods already imported or shipped or arrived before the issue of Letter of Approval shall be eligible for duty-free clearance provided customs duty has not been paid and goods have not been cleared from Customs or cleared and placed in the Bonded Warehouses.
- (8) No import or export of rough diamonds shall be permitted unless the shipment parcel is accompanied by Kimberley Process Certificate issued by the Development Commissioner.
- (9) Where goods or parts thereof, imported or procured from Domestic Tariff Area are found to be defective or otherwise unfit for use or which have been damaged or become defective after such import or procurement, may be sent outside the Special Economic Zone without payment of duty for repairs or replacement, to the supplier or his authorized dealer or be destroyed.

Provided that where overseas supplier or the Domestic Tariff Area supplier of goods does not insist for re-export or for supply back to the Domestic Tariff Area of goods, the same shall not be insisted upon and such goods shall be destroyed with the permission of the Specified Officer:

Provided further that the goods which are sent outside the Special Economic Zone for repairs are returned to the Special Economic Zone, within 180 days from the date of removal from Special Economic Zone, under intimation to the specified officer. In case goods are sent out for replacement then on replaced goods, no duty drawback or other export incentives shall be claimed for this purpose.

Provided further that destruction shall not be permitted in case of precious and semi-precious stones and precious metals:



Provided also that in case of return of goods procured from the Domestic Tariff Area, the same shall be allowed on refund of the export entitlements which have been received or availed or claimed by the Domestic Tariff Area supplier or the Unit or the Developer, as the case may be.

- (10) The assessment of imports and domestic procurement by a Developer or a Unit, shall be on the basis of self-declaration and shall not be subjected to routine examination except in case of procurement from the Domestic Tariff Area under the claim of export entitlements:

Provided that where based on a prior intelligence the examination becomes necessary the same shall be carried out by the Authorised Officer(s) after obtaining written permission from the Development Commissioner or the Specified Officer.

- (11) If examination of any import or export of goods or goods procured from the Domestic Tariff Area is required, the same shall be carried out at the Special Economic Zone gate or if the same is not possible, in an area so notified by the Specified Officer for this purpose, and no examination shall be carried out in the premises of the Unit unless requested by the Unit and specifically permitted in writing by the Specified Officer.

SEZ Rule 28-Direct import into SEZ unit or Developer:

A Unit or Developer may import goods directly into the Special Economic Zone or through any other—

- (a) ports or airports;
- (b) land customs stations;
- (c) inland container depots;
- (d) foreign post offices;
- (e) authorized couriers; or
- (f) through personal baggage of passengers authorized by the Special Economic Zone Unit; or



- (g) via Satellite data communication such as internet or any other telecommunication link.
- (2) Goods imported through ports or airports, land customs stations, or inland container depots shall be allowed to be transferred in full cargo load or less than container load cargo by direct transfer from such port or airport or inland container depot or land customs station to the Special Economic Zone.
- (3) The import of Information Technology enabled services, including software, shall also be allowed through data communication link, internet, e-mail or any other electronic mode.
- (4) The Unit or Developer may also procure goods required for the authorized operations, without payment of duty, from International Exhibitions held in India or from bonded warehouses set up under the Foreign Trade Policy and under the Customs Act in the Domestic Tariff Area.
- (5) The goods imported by the Unit or Developer shall be allowed to be transferred from the port or airport to the Special Economic Zone without examination by the Customs Authorities at the port or airport, as the case may be.

PROVIDED that the goods may be examined with the prior permission of the Assistant or Deputy Commissioner of Customs in writing in case there is specific adverse information or intelligence.

- (6) The goods imported by a Developer or Unit shall be transhipped by the carrier or its agent directly to the Special Economic Zone.
- (7) Where import cargo destination is the Special Economic Zone, delivery shall be allowed at the destination port or airport on the strength of Bill of Entry assessed by Special Economic Zone Customs without any Transshipment Bond:

Provided that in case of high value goods imported through the airport, the goods may be transferred to the Custodian who shall transfer the same to a designated Customs Area located inside the



Processing Area designated by the Specified Officer for further delivery to the Unit or Developer:

Provided further that the high value cargo imported through the airport may also be transferred under the Customs escort at the option of the Unit or the Developer.

SEZ Rule 29- Direct delivery into SEZ unit or Developer:

- (1) Direct delivery shall be permitted at the place of import for clearance of goods imported by Units and Developer from ports or airports or land customs stations or inland container depots as is being done in the case of import of perishable or life saving drugs.
- (2) The Unit or Developer, hereinafter referred to as the Special Economic Zone Importer, shall follow the following procedure for imports, namely:—
 - (a) the Special Economic Zone Importer shall file Bill of Entry for home consumption in quintuplicate giving therein, description with specially stamped endorsement as “Special Economic Zone Cargo” along with Bill of Lading or Airway Bill and invoice and packing list with the Authorized Officer who shall register and assign a running annual serial number and assess the Bill of Entry, on the basis of transaction value, which shall not require any counter signature of the Specified Officer:

Provided that where the Bill of Entry is not assessed on the date of filing itself, the goods shall be allowed to be transferred to Special Economic Zone Importer on the basis of the registered Bill of Entry, if an endorsement to this effect has been made by the Authorized Officer:

Provided further that where the goods including Capital Goods are supplied free of cost or on loan or lease basis, the Bill of Entry shall be filed jointly in the name of the Special Economic Zone importer, and the supplier:



Provided also that where the goods including Capital Goods are supplied on loan or lease basis by a domestic supplier, the Bill of Entry shall be filed jointly in the name of the Special Economic Zone importer and domestic supplier

- (b) the registered or assessed Bill of Entry shall be submitted to the Customs Officer at the place of import and the same shall be treated as permission for transfer of goods to the Special Economic Zone Importer;
- (c) in case of sealed full container load, the goods shall be transferred to Special Economic Zone on the basis of registered or assessed Bill of Entry after verification of the seal, without customs escort;
- (d) in case of other cargo, goods shall be allowed to be transferred to Special Economic Zone on the basis of registered or assessed Bill of Entry either under customs escort or under transshipment procedure, at the option of Special Economic Zone Importer:

Provided that no separate documents or transshipment bond shall be required to be filed and the transshipment permission shall be stamped on the fifth copy of the Bill of Entry.

- (e) on arrival of goods as full container load cargo or sealed truck, seal on the container or the truck, as the case may be, shall be verified by the authorized officer, at the Special Economic Zone gate of entry;
- (f) on arrival of goods in less than container load cargo, verification of marks and numbers shall be carried out at random by the authorized officer at the Special Economic Zone gate of entry:

Provided that where verification of marks and numbers of less than container load cargo cannot be undertaken at Special Economic Zone gate of entry, the goods shall be allowed to be taken directly to the premises of the Special Economic Zone Importer or to the premises of the custodian, as the case may be, and verification undertaken there.



- (g) the Special Economic Zone Importer shall submit fifth copy of Bill of Entry bearing endorsement of the authorized officer that the goods have been received in Special Economic Zone, to the Customs Officer in charge of the airport or port or inland container depot or land customs station or post office or public or private bonded warehouses, as the case may be, within forty-five days from the date of clearance of goods from such airport or port or inland container depot or land customs station or post office or public or private bonded warehouse, as the case may be, failing which the officer in charge of such airport or port or inland container depot or land customs station or post office or public or private bonded warehouse, as the case may be, shall write to the Specified Officer for raising demand of applicable duty from the Special Economic Zone importer.
- (h) endorsement regarding verification of marks and numbers in case of less than container load cargo or inspection of seal in the case of full container load cargo or sealed truck by the authorised officer and the receipt of the goods by the Special Economic Zone importer shall be deemed to be the completion of the customs procedure for out of charge of the goods.
- (i) where goods are imported through courier—
 - (a) the authorized officer shall assess the goods;
 - (b) the courier shall deliver the goods under customs escort or to the custodian for delivery of goods to Special Economic Zone Importer;
 - (c) in case the Special Economic Zone is located away from the station where the goods have been imported by the courier, the goods shall be transhipped to Special Economic Zone Importer under transshipment procedure:

Provided that no separate documents or transshipment bond shall be required to be filed and the transshipment permission shall be stamped on the fifth copy of the Bill of Entry:



Provided further that if the Special Economic Zone Importer is not able to get the courier parcels duty free, the duty paid by the said Importer on such eligible goods shall be refunded by the Specified Officer as if the imported goods have been exported to the Special Economic Zone and such refund shall be in accordance with the provisions of section 74 of the Customs Act, 1962.

(3) The procedure for delivery through the Port, Inland Container Depot, Custodian's designated customs area, in case of high value parcels imported by gem and jewellery Units, located in Special Economic Zone shall be as under:—

- (i) where goods are consigned to an Inland Container Depot located in a Special Economic Zone, transfer of goods shall be by the carrier appointed for the purpose and the goods shall be delivered to the Inland Container Depot in the Special Economic Zone by the container line or custodian;
- (ii) after receipt of goods in the Special Economic Zone Inland Container Depot, delivery of goods shall be made by the custodian of the Inland Container Depot after verification of marks and number of packages of less than container load cargo and verification of seal of full container load cargo, in the premises of the custodian on the basis of assessed Bill of Entry;
- (iii) filing of advance Bill of Entry may not be required before arrival of the goods in the Special Economic Zone and the Special Economic Zone Importer may, at his option, file the Bill of Entry before or after arrival of goods:

Provided that where verification cannot be undertaken in the premises of the custodian or if the Special Economic Zone Importer so requests, goods shall be allowed to be taken to the premises of the Special Economic Zone Importer, by the Specified Officer and thereafter the goods may be verified there;

- (iv) there shall be no examination of the goods and the goods shall be deemed to be out of charge on the day of handling over of the goods to the Special Economic Zone Importer



- (4) Procedure for Import by Post: Where goods are imported by post, the Special Economic Zone Importer shall follow the procedure specified in sub-rule (2) and shall file the Bill of Entry with the authorized officer with clear marking as “Postal Imports” and subject to following conditions, namely:—
- (i) the post-office registration number as indicated in the intimation letter issued by the post office shall be taken as the import general manifest and item number of the Bill of Entry;
 - (ii) the copy of intimation letter received from the post office shall be pasted on the reverse side of the original Bill of Entry;
 - (iii) where Special Economic Zone is situated away from the foreign post office, goods shall be moved to Special Economic Zone under customs escort or shall be handed over to the custodian of Special Economic Zone or delivered to the Unit or its authorized representative after sealing of the parcel.
- (5) The units may import goods including precious goods namely gold or silver or platinum or gem and jewellery as personal baggage through an authorized passenger subject to the following procedure, namely:
- (i) the authorized passenger bringing the precious goods shall declare the goods with the customs authorities at the airport in the arrival hall in the declaration form as specified by Commissioner of Customs in charge of the airport along with a duly acknowledged copy of intimation submitted to the authorized officer;
 - (ii) the authorized passenger shall hand over the goods duly packed indicating name and address of the consignee Unit and accompanied by invoice and packing list to the customs authorities at the airport for detention in the warehouse under a detention receipt;
 - (iii) the customs officer of the airport shall detain the goods and issue detention receipt



- (iv) the Unit shall file Bill of Entry in quintuplicate along with a copy of invoice, packing list and declaration with the authorized officer and the detention receipt number issued by the Customs Officer at the airport shall be treated as Import General Manifest and item number;
 - (v) after assessment of Bill of Entry, original Bill of Entry shall be retained by the authorized officer and the remaining copies shall be handed over to the authorized representative of the Unit for presenting at the airport detention counter where goods shall be allowed clearance after receiving the original detention receipt along with the authorization from the Unit, by making entries in the warehouse register and detention receipt register;
 - (vi) after release, the goods shall either be moved to the Unit under the customs escort or shall be delivered to the Custodian or authorized representative of the Unit after sealing;
 - (vii) the goods shall be allowed to be taken to the Unit after verification of marks and number of packages by the Authorized Officer at the gate of entry of the Special Economic Zone.
- (6) For the import of computer software or services through data communication or telecommunication links, the Unit shall file consolidated Bill of Entry for a month within three working days of the closure of the month along with the invoice and other relevant documents and shall obtain notional 'out of charge' from the Authorized Officer, subject to the following conditions, namely:—
- (i) import documents shall be routed through banks or advance payments for imports could be routed through Foreign Currency Account;
 - (ii) instructions, if any, issued by the Reserve Bank of India, from time to time, in this behalf shall be complied with.



- (7) A Unit may import the goods exported by it which are either found to be defective or damaged by the overseas buyer or have not been taken delivery of by the overseas buyer or when the payment is not forthcoming from the buyer as per agreed schedule after having taken delivery of goods or when buyers return goods due to change of fashion and other market factors by following the procedure under sub-rule (2) and subject to the following conditions, namely:—
- (i) the identity of the goods is established at the time of re-import; and
 - (ii) the goods are re-imported within the warranty period or the validity of the maintenance contract or a period of one year from the date of export, whichever is later.
- (8) Replacement of goods imported but found defective shall be allowed admission in Special Economic Zone by way of import or replacement through authorized dealer of the overseas supplier in India.

SEZ Rule 30- Procedure for procurements from the Domestic Tariff Area:

- (1) The Domestic Tariff Area supplier supplying goods or services to a Unit or Developer shall clear the goods or services, as in the case of zero-rated supply as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) either under bond or legal undertaking or under any other refund procedure permitted under Goods and Services Tax laws or Central Excise law, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by a manufacturer or supplier.
- (2) Goods procured by a Unit or Developer, on which Central Excise Duty exemption has been availed but without any availment of export entitlements, shall be allowed admission into the Special Economic Zone on the basis of ARE-1.



- (3) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of ARE-1 and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods:

Provided that if the goods arrive before a Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by the Specified Officer and shall be released to the Unit or Developer only after completion of the assessment of the Bill of Export.

- (4) A copy of the document referred to in sub-rule(1) or copy of Bill of Export, as the case may be, with an endorsement by the authorised officer that goods have been admitted in full into the Special Economic Zone shall be treated as proof of export and a copy with such endorsement shall also be forwarded by the unit or Developer to the Goods and Services Tax or Central Excise Officer having jurisdiction over the Domestic Tariff Area supplier within forty-five days failing which the Goods and Services Tax or Central Excise Officer, as the case may be, shall raise demand of tax or duty against the Domestic Tariff Area supplier.
- (5) **(Omitted)**
- (6) The Bill of Export shall be assessed in accordance with the instructions and procedures, including examination norms, laid down by the Department of Revenue as applicable to export goods:

Provided that at the time of assessment, it shall be specifically examined whether the goods are required for the authorized operations by the Unit or Developer, with reference to the Letter of Approval or the list of goods approved by the Approval Committee for the Developer.

- (7) On arrival of the goods procured from the Domestic Tariff Area at the Special Economic Zone gate, the Authorized Officer



shall examine the goods in respect of description, quantity, marks and other relevant particulars given in the invoice, Bill of Export of packing list and also as per the examination norms laid down in respect of export goods in cases where the goods are being procured under claim of an export entitlement.

- (8) (Omitted)
- (9) (Omitted)
- (10) Where the goods are to be procured by a Unit or Developer from a Domestic Tariff Area supplier who is not registered with the Central Excise authorities, or is a trader or merchant exporter, the procedure under sub rules (1) and (2) above shall apply, *mutatis mutandis*, except that the goods shall be brought to the Special Economic Zone under the cover of an invoice and the ARE-1 shall not be required.
- (11) The Unit or Developer may also procure goods from Domestic Tariff Area without availing exemptions, drawbacks and concessions on the basis of invoice or transport documents, issued by the supplier:

Provided that such invoices or transport documents shall be endorsed to the effect that no exemptions, drawbacks and concessions have been availed on the said supplies.

- (12) Procedure for procurement from warehouse shall be as under:—
 - (a) where goods are to be procured from warehouse, a Unit or Developer shall file a Bill of Entry with the Specified Officer;
 - (b) the Unit or Developer shall submit Bill of Entry assessed by the Authorized Officer to the Customs Officer in charge of the warehouse from where the Special Economic Zone Unit or Developer intends to procure the goods;
 - (c) the Customs Officer in charge of the warehouse shall allow clearance of the goods from the warehouse for supply to the Unit or Developer without payment of duty on the cover of



ex-bond Shipping Bill and on the basis of Bill of Entry duly assessed by the Authorized Officer;

- (d) where the re-warehousing certificate by way of endorsement by the Authorized Officer on the copy of ex-bond Shipping Bill is not received by the Customs Officer in charge of warehouse within forty-five days from the date of clearance of the goods from the warehouse, the Customs Officer in charge of the warehouse shall proceed to demand applicable duty from the supplier:

Provided that for procurement of goods from Nominated Agency located in Special Economic Zone, the procedure as specified by Specified Officer shall be followed and there shall be no requirement of assessment of Bill of Entry or transfer of the goods under the cover of ex-bond Shipping Bill.

- (13) A Special Economic Zone Unit or Developer may also procure goods from international exhibitions held in India following the procedures under sub-rule (12).
- (14) A Unit or Developer may also procure goods or services, without payment of duty from an Export Oriented Unit or Software Technology Park Unit or Bio-Technology Park Unit, by following procedures under sub-rule (12).
- (15) A Unit or Developer may procure goods and services from another Unit located in the same or any other Special Economic Zone as goods imported from abroad procedures to be followed subject to the following conditions, namely:-
- (i) the receiving Unit or Developer shall file Bill of Entry for home consumption with the Authorized Officer, in quintuplicate, giving description of the goods along with an invoice and packing list for assessment;
 - (ii) on the basis of such assessed Bill of Entry, the goods shall be allowed to be transferred to the receiving Unit or Developer under transshipment permit;



- (iii) there shall be no requirement to file any additional documents or bond(s) for the purpose of transshipment of goods and the transshipment permission shall be stamped on the Bill of Entry itself;
 - (iv) the supplying Unit shall submit the re-warehousing certificate to the Specified Officer having jurisdiction over the supplying unit within forty five days, failing which the Specified Officer of the supplying Unit shall write to the Specified Officer having jurisdiction over the receiving Unit or Developer for demand of duty from the receiving Unit or Developer;
 - (v) where the supplying and receiving Units or Developer are located in the same Special Economic Zone, the provisions of sub-rules (i) to (iv) shall not apply and the movement of goods shall be allowed and such transactions shall be recorded in the regular books of accounts of the receiving Unit or Developer and the supplying Unit and no Bill of Entry shall be required to be filed.
- (16) **Procurement of cut and polished diamonds and precious and semi precious stones from Domestic Tariff Area.** — A gem and jewellery Unit may procure cut and polished diamonds and precious and semi precious stones from the Domestic Tariff Area, as per the following procedure, namely :-
- (i) the parcel shall be brought into the Zone in a sealed condition by the authorized representative of the Domestic Tariff Area supplier or Customs House Agent, who shall present the invoice clearly marked original, duplicate and triplicate to the Authorized Officer at the gate;
 - (ii) the Authorized Officer shall register the invoice at the gate of the Special Economic Zone and endorsing the registration number on the original and duplicate copies of the Invoice and the parcel shall be allowed to be taken into the premises of the Unit and such goods shall be separately accounted for by the Unit;



- (iii) the duplicate copy of the invoice with the endorsement of the Authorized officer shall be forwarded to the supplier in the Domestic Tariff Area for claiming Replenishment Licence from the Development Commissioner of the Special Economic Zone.

SEZ Rule 31- (Omitted)

SEZ Rule 32- (Omitted)

SEZ Rule 33- Admission of goods:

Any goods imported or procured from Domestic Tariff Area, required for authorized operations, shall be admitted into the Special Economic Zone subject to the following conditions, namely:—

- (i) the goods imported or procured from Domestic Tariff Area shall be brought into the premises of Unit;
- (ii) the goods, which require frequent entry into and exit from the Zone and which are not required for carrying out authorized operations shall be allowed into or out of the Special Economic Zone on the basis of general permission of the Specified Officer, who shall record the reasons for such permission;
- (iii) hazardous goods may be admitted into specially designated area or installation of Special Economic Zone subject to such safeguards as may be specified by Specified Officer.

SEZ Rule 34- Utilization of goods:

The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption.

Provided that in case a Unit is unable to utilise the goods or services imported or procured from Domestic Tariff Area, it may,-



- (i) export the goods; or
- (ii) sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park or software Technology Park or Bio Technology Park, without payment of duty;
- (iii) sell to an Export Oriented Unit or Electronic Hardware Technology Park or software Technology Park-
 - (a) on payment of Integrated Goods and Services Tax Act, 2017(13 of 2017); and
 - (b) without payment of duty customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Act and such sale shall also be made without payment of integrated tax and compensation cess leviable thereon under sub-sections(7) and (9) of section 3 of the said Act as per notification issued by the Department of Revenue and such exemptions, as applicable;
- (iv) dispose of the same in the Domestic Tariff Area on payment of applicable duties or taxes on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable.

SEZ Rules 35- Co-relation of import consignment with corresponding export consignment: The Unit shall account for the entire quantity of goods imported or procured duty free, by way of export, sales or supplies in Domestic Tariff Area or transfer to other Special Economic Zone Unit or Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park Unit or Bio-technology Park Unit or bonded warehouses and the balance held in stock.

SEZ Rule 36- Filing of documents for admission and removal: All documents for admission of goods into and out of Special Economic Zone shall be filed before the Authorized Officer of Customs.



SEZ Rules 37- Duration of goods in a Special Economic Zone:- (1)

The goods admitted to a Special Economic Zone shall be utilized, exported or disposed off in accordance with the Act and rules within the validity period of the Letter of Approval issued to the Unit or in the case of a Developer within a period of one year or such extended period as may be allowed by the Specific Officer under sub-rule (5) of rule 12.

- (2) On failure to utilize or dispose off goods as provided such goods shall be liable for payment of duty as if the goods have been removed to Domestic Tariff Area on the date of expiry of the said validity period under sub-rule (1).

SEZ Rule 39- Destruction of goods:

- (1) After advance intimation of not less than seven days 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 or produced by the Unit including rejects or waste or scrap or remnants within the Special Economic Zone:

Provided that obtaining environmental clearance if any required for such destruction shall be the responsibility of the Unit.

- (2) Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods under sub-rule (1) shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer:

Provided that destruction of precious and semi-precious stones and precious metals shall not be allowed.

- (3) The Unit shall be required to pay back the drawback availed in of case destruction of goods procured from Domestic Tariff Area.

Meaning of Sub-contracting: Sub-contracting means job working. SEZ unit is allowed to carry out job work of its semi-finished goods, semi-processed goods, including finished goods requiring further processing or part of its production processing in the Domestic Tariff Area (DTA) or in a SEZ unit or in EOU unit or in abroad as per the provisions of EXIM Policy and as per procedures issued vide Board Circular No. 65/2002-Cus., dated 21.11.2002 as amended.

SEZ Rule 40- Movement of goods to and from non-processing area:

The movement of goods to and from non-processing area to a processing area and from one processing area of Special Economic Zone to a different processing area of the same Special Economic Zone shall be under serially numbered challans pre-authenticated by the owner or Managing Director or working partner or the company secretary or by any person duly authorised in this behalf by the unit or developer, as the case may be, and the challans shall contain complete description of goods.

SEZ Rule 41- provisions of Sub-contracting:

- (1) A Unit may sub-contract a part of its production or any production process, to a unit(s) 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 and subject to following conditions, namely:—
 - (a) the finished goods requiring further processing or semi-finished goods including studded jewellery, taken outside



the Special Economic Zone for sub-contracting shall be brought back into Unit within one hundred and twenty days or within such period as may be extended by the Specified Officer for reasons to be recorded in writing for grant of such extension;

- (b) cut and polished diamonds and precious and semi-precious stones (except rough diamonds, precious or semi-precious stones having zero duty) shall not be allowed to be taken outside the Special Economic Zone for sub-contracting;
- (c) a gem and jewellery Unit may receive plain gold or silver or platinum jewellery from the Domestic Tariff Area or from an Export Oriented Unit or from a Unit in the same or another Special Economic Zone in exchange of equivalent content of gold or silver or platinum contained in the said jewellery after adjusting permissible wastage or manufacturing loss allowed under the provisions of the Foreign Trade Policy read with the Handbook of Procedures;
- (d) in sub-contracting or exchange, wastage shall be permitted as per the wastage norms admissible under the Foreign Trade Policy read with the Handbook of Procedures:

Provided that the total wastage of the Unit, including the wastage of the sub-contractor or the supplier of jewellery on exchange basis, shall not in any case exceed the wastage permissible under the Foreign Trade Policy read with the Handbook of Procedures;

- (e) the Domestic Tariff Area Unit undertaking sub-contracting or supplying jewellery against exchange of gold or silver or platinum shall not be entitled to export entitlements;
- (f) the value of the sub-contracted production of a Unit in any financial year shall not exceed the value of goods produced by the Unit within its own premises in the immediately preceding financial year:



Provided that a Unit, sub-contracting part of the production or production process to other Unit in the same Special Economic Zone shall not require the permission of the Specified Officer provided that both the supplying and receiving Units shall maintain proper account of the goods involved in the sub-contracting.

Explanation: For removal of doubts it is clarified that the expression “sub-contracting” of a part of its production under this rule shall mean sub-contracting all the production processes for conversion of raw material into finished products but only for a part of the quantity of the finished products exported during the year or in the first year of production, the value of the goods sub-contracted shall not exceed the value of goods produced by the unit in its own premises during the first year of production.

- (g) a Unit engaged in trading or warehousing shall not be allowed the facility of sub-contracting of production or production process in the domestic tariff area;
 - (h) a Unit may remove, with the permission of Specified Officer, moulds or jigs or tools or fixtures or tackles or instruments or hangers and patterns and drawings to the premises of sub- contractor(s), subject to the condition that these shall be brought back to the premises of the Unit immediately on expiry of such sub-contracting arrangement and submission of a quarterly verification report from the Central Excise Officer having jurisdiction over the sub-contractor that such goods are lying in the sub-contractor’s premises and are being used for production of goods on account of the Unit;
 - (i) raw materials, components and consumables excluding fuel may be sent along with these goods, or separately
- (2) The Development Commissioner may also permit sub-contracting of part of the production process abroad and in such



cases, the goods may be exported from the sub-contractor's premises abroad subject to following conditions, namely:—

- (a) sub-contracting charges shall be declared in the export declaration forms and invoices and other related documents;
 - (b) the export proceeds shall be fully repatriated in favour of the Unit.
- (3) A Developer or a co-developer or on their behalf their contractor, as the case may be, 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.

SEZ Rule 42 - Procedure for sub-contracting: A Unit may take goods, including finished goods requiring further processing or semi-finished or semi-processed goods, including studded jewellery or inputs to the sub-contractor's premises—

- (i) for sub-contracting any production process; or
- (ii) part of the production, without payment of duty, subject to following conditions, namely:—
 - (a) the Unit shall wherever possible apply for the permission at the time of project approval itself and based on such initial approval, the Specified Officer shall permit sub-contracting of part of production process(es) or part of the production;
 - (b) where the permission has not been taken at the time of project approval or a new permission is sought, the unit shall file an application containing the name and address of



the sub- contractor(s), Central Excise registration number in the case of the Domestic Tariff Area sub-contractor, if registered, and details of the processes to be carried out or quantum of production sought to be carried out at the sub-contractor's premises and self-certified input-output ratio for the said processes;

- (c) after examination of details under sub-clause (b), the Specified Officer may grant annual permission for sub-contracting any production process or sub-contracting part of the production, as the case may be;
- (d) the Unit, removing raw materials, consumables excluding fuel and components, imported or domestically procured without any processing, for sub-contracting into the Domestic Tariff Area, shall furnish bank guarantee to Specified Officer to cover the duty foregone on such materials being taken out for sub- contracting:

Provided that bank guarantee shall not be required by a unit whose turnover is rupees one crore or above or where the unit is in the Special Economic Zone for more than a period of two years with an unblemished track record;

- (e) the Specified Officer or the Authorized Officer may make random checks either at the job worker's premises or after receipt of goods from the job worker at the Special Economic Zone gate for the purpose of verification of goods which were sent and received:

Provided that where the precious metal in bullion form, having marking of fineness or purity or make or serial number is taken out of the Special Economic Zone for sub-contracting, appraisalment of precious metals shall not be mandatory;

- (f) a Unit shall remove the goods under serial numbered challans pre-authenticated by the owner or Managing Director or working partner or the company secretary or by any person duly authorized in this behalf by the



company or firm, as the case may be, and complete description of goods shall be provided on the challan;

- (g) the authorized officer at the Special Economic Zone gate shall note down the identification marks of the goods for verification of the goods when received back after sub-contracting;

Provided that where sensitive items are sent out for sub-contracting, based on the risk profile or past performance of the unit, sample may be drawn and retained by the Specified Officer, if required:

Provided further that for gem and jewellery Units, there shall be no requirement for drawal of samples;

- (h) the goods sent out for sub-contracting shall be returned to the Unit within one hundred and twenty days from the date of removal or within such period as may be extended by the Specified Officer for reasons to be recorded in writing for granting such extension;
- (i) in case of failure by the Unit to bring back the goods after sub-contracting within the period under sub-clause (h), action shall be taken by the Specified Officer to recover the duty on the goods taken out for sub-contracting.

- (2) The Specified Officer may permit the Unit to export the finished goods directly from the sub-contractor's premises subject to following conditions, namely:—

- (i) the sub-contractor is an Export Oriented Unit or an Electronic Hardware Technology Park Unit or Biotechnology Park Unit or a Special Economic Zone Unit or a Domestic Tariff Area Unit which is registered with the Central Excise Department;
- (ii) export of finished goods from the sub-contractor's premises shall be allowed only by way of direct export and not through third party;



- (iii) sample of goods exported from the sub-contractor's premises shall be sent by the sub-contractor in sealed condition, to the Specified Officer for establishing identity of the goods exported with the sample drawn at the time of taking out of the goods to the sub-contractor;
- (iv) Shipping Bill for duty free goods shall be processed at the port of export as in the case of normal export and shipping bill shall be filed in the name of the Unit and sub-contractor;
- (v) goods for such export shall be removed from the sub-contractor's premises under bond:

Provided that in case of sub-contracting abroad, the goods shall either be returned to the Unit or may be sold to buyers in that country or any third country

- (3) Waste, scrap or remnants generated during process at the sub-contractor's premises may either be returned to the Unit or may be cleared on payment of duty as if the said waste or scrap or remnants have been cleared by the Unit or may be destroyed at the sub-contractor's premises in the presence of jurisdictional Central Excise Officer if the sub-contractor is a GST registrant:

Provided that in case of clearance of waste or scrap at sub-contractor's premises on payment of duty or destruction thereof the same shall be in accordance with the Standard Input Output Norms notified for the Duty Exemption Entitlement Scheme under the Foreign Trade Policy or as fixed by Approval Committee:

Provided further that where the sub-contractor's premises are located abroad, the scrap, waste or remnants generated at the sub-contractor's premises may either be returned to the Unit or may be disposed off abroad.



- (4) A Unit may sub-contract a part of production or production process in another Unit within the same Special Economic Zone subject to the following conditions, namely:—
- (i) the movement of goods shall be under serially numbered challans and record of such movement of goods shall be maintained by the Unit;
 - (ii) raw material imported or procured by the Unit for manufacture of capital goods may be transferred to another unit for the purpose of manufacture or fabrication of capital goods for use by the Unit which had imported or procured the raw materials.
- (5) The Developer or a co-developer or on their behalf their contractor, as the case may be, shall follow the same procedure for sub- contracting in Domestic Tariff area or in a Unit in other Special Economic Zones or in an Export Oriented Unit or in an Electronic Hardware Technology Park Unit or a Software Technology Park Unit as prescribed for sub-contracting by SEZ Units in sub-rule (1) above:

Provided that the Bank Guarantee to cover the duty foregone on the materials being sent for sub-contracting shall apply only in case of temporary removal of goods by the contractor.]

SEZ Rule 43- Sub-contracting for DTA Area unit for export:

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 following conditions, namely:—

- (a) all the raw materials including semi-finished goods and consumables including fuel shall be supplied by Domestic Tariff Area exporter;
- (b) finished goods shall be exported directly by the Unit on behalf of the Domestic Tariff Area exporter:



Provided that in case of sub-contracting on behalf of an Export Oriented Unit or an Electronic Hardware Technology Park unit or a Software Technology Park unit or Bio-technology Park unit, the finished goods may be exported either from the Unit or from the Export Oriented Unit or Electronic Hardware Technology Pak unit or Software Technology Park unit or Bio-technology Park unit;

- (c) export document shall be jointly in the name of Domestic Tariff Area exporter and the Unit;
- (d) the Domestic Tariff Area exporter shall be eligible for refund of duty paid on the inputs by way of brand rate of duty drawback

Provided that,-

- (i) only employees temporarily in-capacitated, employees travelling and off-site employees of Special Economic Zones may be permitted to work from home or from place outside the Special Economic Zone subject to the following conditions, namely-
 - (a) the person shall be an employee of the Special Economic Zone Unit;
 - (b) the person shall carry out the work related to a project of the Special Economic Zone Unit;
 - (c) the Unit shall ensure export revenue of the resultant products or services to be accounted for by the Special Economic Zone Unit to which the employee is tagged and in no case the export of services , involving work from home, shall be made from outside the special Economic Zone Unit.
- (ii) Information Technology and Information Technology enabled Services Units in Domestic Tariff Area shall carry out their job-work in a special Economic Zone Unit by following the procedure as laid down in item (i)



- (iii) For the purpose of work from home, Special Economic Zone Unit shall provide laptop or desktop and secured connectively viz., VPN, VDI etc. to establish a connection between the employee and the work related to the project of the Special Economic Zone Unit.
- (iv) Once the employees' ceases to be part of the project of Special Economic Zone Unit, the employee shall be untagged from the respective Special Economic Zone Unit and the Unit shall surrender the permanent Identity-Card issued in Form K to the Specified Officer as per sub-rule (2) of rule 70.
- (v) For Special Economic Zone Units registered as Other Service Providers with Department of Telecommunication and availing the benefit of work from home, the laid down Other Service providers guidelines issued by that Department as amended from time to time, shall be followed by the Special Economic Zone Units.

SEZ Rule 44- Contract Farming:

A Unit engaged in production or processing of agriculture or horticulture products, may, on the basis of annual permission from the Specified Officer, remove to a farm in the Domestic Tariff Area, inputs, namely, seeds, fertilizers and chemicals for pre and post harvest treatment, micro nutrients, plant and growth regulators and other organic and inorganic substances used for plant nutrition, insecticides, fungicides, weedicides, herbicides and the following equipments, namely:—

- (a) Filters;
- (b) Dripliers, Driplines and Drip-fittings;
- (c) Micro sprinklers and misters;
- (d) Agriculture sprinklers;
- (e) Fertilizer tanks;
- (f) Valves;
- (g) Fertilizer pumps and chemical injections;



- (h) Crates, drums and preservation media (such as acetic acid and vinegar);
- (i) Grading tables;
- (j) Green House equipment, accessories, heated rooting tables, propagation trays, seeding machines;
- (k) Plants or parts thereof, seeds, saplings, tubers, bulbs, rhizomes, root cuttings, all types of grafts, tissue culture material and other vegetatively propagated material utilized for sowing or planting;
- (l) Growing media such as Peat Moss (including peat litres whether or not agglomerated), Pearlite/ vermiculate, rockwool, coca peat, hydrocorn, foam based medium and other cultivation medium:

Provided that the removal of such items shall be subject to following conditions, namely:—

- (i) supply of inputs by Unit to the contract farm(s) shall be subject to the input-output norms as may be approved by the Board;
- (ii) there shall contract farming agreement between the Unit and the Domestic Tariff Area farmer(s);
- (iii) the Unit has been in existence for at least two years and is engaged in export of agriculture or horticulture products:

Provided that bank guarantee equivalent to the duty foregone on the capital goods or inputs proposed to be taken out shall be furnished to the Specified Officer if the Unit has not been in existence for two years.

SEZ Rule-45 & 46- Exports has been discussed in the separate chapter:

SEZ Rule 47- Sales in Domestic Tariff Area:

- (1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs



duties under section 30, subject to the following conditions, namely:—

- (a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:

Provided that goods imported or procured from the Domestic Tariff Area and sold as such without being subjected to any manufacturing process shall be subject to the provisions of the Foreign Trade Policy as applicable to import of similar goods into India;

- (b) Domestic Tariff Area sale under sub-rule (1) of rejects or scrap or waste or remnants arising during the manufacturing process or in connection therewith by the Unit shall not be subject to the provisions of the Import Trade Control (Harmonized System) of Classification of Export and Import Items:

Provided that the Central Government may notify restrictions, as it deems fit on all or any class of such goods mentioned under this clause.

- (1) Scrap or dust or sweeping 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:

Provided that the value of samples of gold or silver or platinum sweepings or scrap or dust taken at the time of clearance and sent to the Government Mint or Private Mint for assaying and assessment shall be finalized on the basis of reports received from the Government Mint or Private Mint, as the case may be.

- (3) Surplus power generated in a Special Economic Zone's Developer's Power Plant in the SEZ or Unit's captive power plant or diesel generating set may be transferred to Domestic Tariff Area on payment of duty on consumables and raw



materials used for generation of power subject to the following conditions, namely:—

- (a) proposal for sale of surplus power received by the Development Commissioner shall be examined in consultation with the State Electricity Board, wherever considered necessary:

Provided that consultation with State Electricity Board shall not be required for sale of power within the same Special Economic Zone;

- (b) norms for production of a unit of power shall be approved by the Approval Committee;
- (c) sale of surplus power to other Unit or Developer in the same or other Special Economic Zone or to Export Oriented Unit or to Electronic Hardware Technology Park Unit or to Software Technology Park Unit or Bio-technology Park Unit, shall be without payment of duty;
- (d) for sale of surplus power in Domestic Tariff Area, the Unit shall obtain permission from the Specified Officer and the State Government authority concerned;
- (e) duty on sale of surplus power to the Domestic Tariff Area shall be as provided for in this rule.

SEZ Rule 48- Procedure for sales in DTA Area:

The Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

- (1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or service namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:

Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.



- (2) 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
- (3) Where 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:

Provided that in the case where such goods are supplied back to the Domestic Tariff Area, as it is, and where the import duty on such goods is "Nil" and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back such goods to Domestic Tariff Area on the basis of invoice only and filing of Bill of Entry in such cases shall not be required.

SEZ Rule 49- Domestic Tariff Area removals:

- (1) A Unit may remove capital goods to Domestic Tariff Area after use in Special Economic Zone on payment of duty [or Integrated Goods and Services Tax] as under :-
 - (a) duty shall be levied on such goods on the depreciated value thereof and at the rate in force on the date of removal of the goods;
 - (b) depreciation in value shall be allowed for the period from the date of commencement of production or where such capital goods have been received in the Unit after such commencement of production from the date such goods have been put to use for production till the date of presentation of Bill of Entry for home consumption;
 - (c) depreciation shall be allowed in straight line method as specified below, namely -
 - (i) for computer and computer peripherals for every quarter in the first year at the rate of ten per cent. for every quarter in the second year at the rate of eight per cent. for every



quarter in the third year at the rate of five per cent. for every quarter in the fourth and fifth year at the rate of one per cent.;

- (ii) for capital goods other than computer and computer peripherals for every quarter in the first year at the rate of four per cent. for every quarter in the second year at the rate of three per cent. for every quarter in the third year at the rate of three per cent. for every quarter in the fourth and fifth year at the rate of two and half per cent. and thereafter for every quarter at the rate of two per cent.
- (2) Goods supplied by a Unit to Domestic Tariff Area on payment of duty may be brought back to the Unit for the purpose of repair within a period of six months from the date of clearance, or within such period as may be extended by the Specified Officer or within the warranty period whichever is later, on payment of duty on the value of repairs subject to the condition that the identity of goods is established to the satisfaction of the Specified Officer;
- (3) Goods on which any export entitlements were availed at the time of procurement of goods may be supplied back to the Domestic Tariff Area on payment of duty equivalent to the export entitlements availed subject to the condition that the identity of goods being supplied back to the Domestic Tariff Area is established to the satisfaction of the Specified Officer.
- Provided** that where no export entitlements are availed, such goods may be supplied back to the Domestic Tariff Area without payment of duty.
- (4) A Unit may remove imported goods, packing materials, computer peripherals etc., from the Special Economic Zone to Domestic Tariff Area without payment of duty after 2 years of admission and used in a unit.

SEZ Rule 50-Temporary Removals to DTA:

- (1) The Unit may temporarily remove following goods to Domestic Tariff Area without payment of duty, namely:—
- (a) capital goods and parts thereof for repairs and return thereof;



- (b) goods for display, export promotion, exhibition and return thereof;
 - (c) goods for job work, test, repair, refining and calibration and return thereof
 - (d) laptop or notebook computers or video projection systems for use by authorized employees of a Unit or Developer;
 - (e) any other goods with the prior approval of the Authorized Officer.
- (2) A Unit may transfer goods to Domestic Tariff Area or abroad for repair or replacement or testing or calibration, quality testing and research and development purposes under intimation to the Specified Officer and on maintenance of records for movement of such goods.
- (3) A Unit may transfer goods for quality testing or research and development purposes, to any recognized laboratory or institution, without payment of duty, on giving an undertaking to the authorized officer for the return of such goods:
- Provided that if such goods have been consumed or destroyed in the process of testing or at the time of research and development, a certificate from the laboratory or institution to that effect shall be furnished to the Specified Officer by the Unit.

SEZ Rule-51 - Procedure for temporary removals in DTA area:

- (1) Removal of goods for the activities covered under sub-rules (1) to (3) of rule 50 shall be undertaken by the Unit on the cover of serially numbered pre-authenticated challans, authenticated by the Managing Director or owner or working partner or the Company Secretary or by any person duly authorized in this behalf by the company or owner or working partner.
- (2) Before making use of pre-authenticated serial numbered challans, the serial numbers of the same shall be intimated to Authorized Officer.
- (3) Identification marks, namely, make and model and serial number and specification of the goods received back after such



test or repair or calibration or re-engineering or re-conditioning should match with those mentioned in the pre-authenticated challan issued by the authorized representative of the Unit and signed by the Authorized Officer at the time of taking out such goods into Domestic Tariff Area.

- (4) The goods shall be brought back to the Special Economic Zone within one hundred and twenty days from the date of taking the goods out of the Special Economic Zone or within such extended period as may be permitted by the Specified Officer.
- (5) If a Unit fails to bring back the goods into Special Economic Zone within the period specified in sub-rule (4), the duty applicable on such goods shall be paid by the Unit.
- (6) Subject to the provisions in sub-rule (1), the Unit may remove goods, including capital goods, to another Unit in the same or in another Special Economic Zone, or to Export Oriented Unit or to Electronic Hardware Technology Park Unit or to Software Technology Park Unit or Bio- technology Park Unit or to a Domestic Tariff Area Unit for test or repairs or calibration or re-engineering or re-conditioning and return:

Provided that transfer of goods within the same Special Economic Zone shall be undertaken on maintenance of records by the supplying and receiving units.

- (7) A Unit may take out laptop computers and video projection system(s) out of the Special Economic Zone temporarily for use by the authorized employees of such unit subject to following procedure, namely: –
 - (a) Unit shall account for the laptop computers or video projection system(s);
 - (b) Unit shall issue a certificate authorizing the employee by name and giving the full specification, namely, serial number and model number and make of the laptop computer and video projection system intended to be taken outside the processing area temporarily and a copy of the certificate shall be endorsed to Specified Officer and acknowledgement received by the Unit;



- (c) Unit shall maintain a record of such certificate of authorization issued under clause (b) for temporary removal of laptop computer or video projection system.

SEZ Rule 52- Other Entitlements:

- (1) Supplier of precious and semi-precious stones and synthetic stones and processed pearls from Domestic Tariff Area to Units shall be eligible for grant of Replenishment Licence as provided under the Foreign Trade Policy and Handbook:

Provided that the application for the Replenishment Licence shall be made to the Development Commissioner.

- (2) Free on Board value of export of the Unit can be clubbed with Free on Board value of export of entrepreneur in the Domestic Tariff Area or vice versa for the purpose of according status holder certificate.
- (3) A Unit may retain hundred per cent. of their export proceeds in their Foreign Currency account.
- (4) Software units may be allowed to use the computer system for training purpose (including commercial training) subject to the condition that no computer terminal shall be installed outside the Special Economic Zone premises for this purpose.
- (5) A Unit may install one fax machine imported or procured duty free at a place of its choice, outside the Special Economic Zone, subject to intimation of its location to the Specified Officer.
- (6) The Unit may install personal computers not exceeding two in number imported or procured duty free in the registered or administrative office and the Unit may also install equipments like modem etc. required for the purpose of electronic connectivity.
- (7) For information technology and information technology enabled services, persons authorized by the software units may access the facility installed in the Unit through communication links.

Meaning of export:

The supplies to a SEZ Unit or to a developer of a SEZ are governed under IGST Act, 2017 in the GST regime. Any supply of goods or services or both to a SEZ Unit or Developer of a SEZ by a registered person is treated as an export. Supplies from DTA to a SEZ Unit/ Developer of SEZ qualify for zero-rated supply in terms of section 16 of the IGST Act, 2017. According to this provision zero-rated supply means goods or services or both supplying to a SEZ Unit or Developer of SEZ.

Government has allowed two options for supplying goods or services to SEZ, either pay tax or supply without payment of tax under Bond/ LUT. So the supply to SEZ is leviable under GST but registered person has the option to opt for.

“Export goods” means any goods which are to be taken out of India to a place outside India in terms of section 2 (19) of the Customs Act, 1962 and Section 2(5) of the IGST Act, 2017 defines “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

In terms of Section 2(6) of the IGST Act, 2017 defines “Export of Services “means the supply of any services when,-

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange ; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.



(In case of export of services particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per* RBI regulations. Accordingly, Section 2(6) (iv) of the IGST Act in this regard amended).

Definition of export under section 2(m) of SEZ Act, 2005

Section 2(m): “export” means–

- (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;

In light of the above definitions, supplies of goods or services or both to SEZ Unit/ Developer of SEZ are considered as export and will be treated as zero-rated supplies”. Accordingly, while no tax would be payable on such supplies, the registered person in DTA/ the exporter will be eligible to claim the corresponding Input Tax Credits. It is relevant to note that the Input Tax Credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

The registered person in DTA or the exporter may utilize such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

Refund on zero-rated Supplies:

A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

- (a) he may supply goods or services or both under bond or Letter of Undertaking, without payment of integrated tax and claim refund of unutilized input tax credit; or



- (b) he may supply goods or services or both, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder”.

Thus, Supplies of goods and services or both from DTA to SEZ unit/ Developer of SEZ to be treated as Zero-rated or export. Therefore, a registered person in DTA has to choose one of the above cited two options as per the convenience.

For the first option a registered person has to execute LUT / Bond for supplies of goods and services to SEZ Unit without payment taxes.

The registered person exporting goods and services without payment of integrated tax is required to furnish bond or a letter of Undertaking (LUT) in FORM GST RFD-11 on the common portal online to the jurisdictional Deputy Commissioner/Assistant Commissioner as per power has been delegated vide Circular No. 2/2/2017-GST, dated 4.7.2017.

The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 and not satisfy conditions prescribed vide Notification No.16/2017-Central Tax dated 01-07-2017.

Eligible exporter to execute LUT:

The category of exporters who are eligible to export under LUT has been specified along with the conditions and safeguards vide Notification No.16/2017-Central Tax dated 01-07-2017. The following conditions for a registered person to be eligible for submission of Letter of Undertaking in place of a bond.

- (a) any registered person who has received a minimum foreign inward remittance of 10% of export turnover in the preceding



financial year is eligible for availing the facility of LUT provided that the amount received as foreign inward remittance is not less than Rs. one crore. This means that only such exporters are eligible to LUT facilities who have received a remittance of Rs. one crore or 10% of export turnover, whichever is a higher amount, in the previous financial year.

- (b) a status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020; or
- (c) Further, the registered person has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the erstwhile laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. However, the above requirement has been relaxed with effect from 04th October, 2017 vide Notification No. 37/2017 – Central Tax dated 04.10.2017 has extended the facility of Letter of Undertaking to all registered tax payers.

Execution of LUT:

LUT to shall be submitted on portal by exporters in FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-Central Tax, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ab initio. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT. (Circular No. 40/14/2018-GST dated 06.04.2018)

Validity of LUT:

LUT is valid for the whole financial year in which it is tendered and get expire on 2020. Hence, exporter has to furnish fresh LUT in begins of the each financial year on common portal. Exporter is



required to apply for LUT prior to export of goods and services hence LUT should be applied on common portal before 31st of March for the subsequent financial year.

However, in case the goods are not exported within the time specified in sub-rule (1) of Rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable Integrated Tax or under bond with bank guarantee.

It is clarified that LUT shall be valid for twelve months. If the exporters fails to comply with the conditions of the LUT he may be asked to furnish a bond. The exporters follow the procedure of option (a), shall file refund claim of unutilized input tax credit by an application electronically through Common portal with all supporting documents as prescribed in the said rules.

Form of LUT:

Till the time FORM GST RFD-11 is available on the common portal, the registered person (exporters) may download the FORM GST RFD-11 from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, induplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the Proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.



Documents for LUT:

Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017-C.T., dated 4th October, 2017. Verification, if any, may be *post-facto* basis.

Time for acceptance of LUT:

As LUT is a prior requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT should be processed on top most priority. Thus, in exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, 2017, it is hereby stated that the acceptance of the Bond/Letter of Undertaking required to be furnished by the exporter under rule 96A of the said rules shall be done by the jurisdictional Deputy/Assistant Commissioner vide Circular No.2/2/2017-GST dated 4th July, 2020. It is clarified that LUT should be accepted within a period of three working days of its receipt along with the self-declaration as stated in para 2(d) above by the exporter. If the LUT is not accepted within a period of three working days from the date of submission, it shall be deemed to be accepted.

Requirement of Bond:

All exporters, are not covered by the notification no. 16/2017-Central Tax, dated 07-07-2017, would execute bond to clear export of goods and services without payment of tax.

The procedure for submission and acceptance of bond has been prescribed vide circular No.2/2/2017-GST dated 4th July, 2017. The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished. It is further clarified vide Circular No.4/4/2017-GST dated 7.07.2017 that the exporters shall furnish a one-time bond (a running bond). In case the bond amount is insufficient to cover the tax liability in yet



to be completed exports, the exporters shall furnish a fresh bond to cover such liability.

The Bond/LUT shall be accepted by the jurisdictional Deputy/ Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, if in a State, the Commissioner of State Tax so directs, by general instruction, to exporter, the Bond/LUT in all cases be accepted by Central tax officer till such time the said administrative mechanism is implemented. Central Tax officers are directed to take every step to facilitate the exporters.

Further, the Board vide Circular No.4/4/2017-GST dated 07.07.2017 has clarified the following additional points as per request of the exporters and filed formations due to difficulties are being faced in complying with the procedure prescribed for making exports of goods and services without payment of IGST.

With regard to furnishing of bank guarantee with bond in terms of rule 96A of the CGST Rules, 2017, it is directed that the Jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporters. If Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount. It is expected that this provision would be implemented liberally. Some of the instances of liberal interpretation are as follows:

- (i) an exporter registered with recognized Export Promotion Council can be allowed to submit bond without bank guarantee on submission of a self-attested copy of the proof of registration with a recognized Export Promotion Council
- (ii) In the GST regime, registration is State-wise which means that the expression 'registered person' used in the said notification may mean different registered persons (distinct persons in



terms of sub-section (1) of section 25 of the Act) if a person having one Permanent Account Number is registered in more than one State. It may so happen that a registered person may not satisfy the condition regarding foreign inward remittances in respect of one particular registration, because of splitting and accountal of receipts and turnover across different registered person with the same PAN. But the total amount of inward foreign remittances received by all the registered persons, having one Permanent Account Number, maybe Rs. 1 crore or more and it also maybe 10% or more of total export turnover. In such cases, the registered person can be allowed to submit bond without bank guarantee

Running Bond: The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit/credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

Acceptance of LUT / Bond by Jurisdictional authority:

LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Once LUT is executed a registered person in DTA can resume supplies goods and services to a SEZ Unit without payment of IGST by self-certification export procedure and under cover of export invoice / Bill of export and packing list of goods.



For the second option a registered person in DTA has to follow the procedure of export on payment of IGST and registered person has to go for the refund of such taxes i.e. IGST shall be refunded by the jurisdictional office as per the following procedure.

Refund procedures for export of goods on payment of IGST:

Section 54 of the CGST Act and read with rule 89 (1) of the CGST Rules, provides refund of IGST in respect of export of goods or services on payment of tax by a registered person or in respect of supplies to a Special Economic Zone unit or a SEZ developer, the application for refund shall be filed by the -

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorized operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone;

Pre-conditions for filing a refund application:

With effect from 1.7.2019 as per Master circular dated 18.11.2019, wherein fully electronic refund process through FORM GST RFD-01 instead of FORM GST RFD-01A have been implemented. The claimant shall have to file Form RFD-01 to claim refund on account of supplies made to SEZ Unit / SEZ developer (with payment of tax) and must be meet the following conditions for being eligible.

- (1) The taxpayer is registered with GST Portal and holds an active GSTIN during the period for which refund is being applied for.
- (2) Form GSTR-1 and a valid GSTR-3B Return must have been filed for the relevant tax period.
- (3) In Table 6B of the GSTR-1 filed for the relevant period, the details of supplies made to SEZ units or SEZ developer should have been mentioned by the taxpayer.



- (4) It is to be declared by the refund claimant that the SEZ Unit/ Developer has not availed input tax credit of the tax paid, which has been claimed as refund.
- (5) It is to be declared by refund claimant that such goods have been admitted in full in the SEZ for authorised operations/ services has been received by SEZ for authorised operations.

Documents required for filing Refund Claim:

Once Application Reference Number (ARN) is generated, copy of the same with print of Application shall be submitted to the jurisdictional GST officer along with other following relied upon documents as required under RFD-01.

- (1) a statement containing the number and date of invoices as prescribed in rule Invoice and along with the evidence regarding endorsement in case of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;
- (2) a statement containing the number and date of invoices, the evidence regarding endorsement and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer;
- (3) Copy of FORM GST RFD-01 filed on common portal and acknowledgement generated;
- (4) Copy of filed GSTR-1;
- (5) Copy of filed GSTR-3B;
- (6) Copy of Export Invoices;
- (7) Copy of BRC or FIRC for export of services;
- (8) Undertaking / declaration to the effect that SEZ Unit or the SEZ developer has not availed the Input Tax Credit of the tax paid by the supplier of goods or services or both;
- (9) Cancelled Cheque.



Acknowledgement

- (1) An acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the Common Portal electronically.
- (2) The application for refund, other than from electronic mode, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the Common Portal electronically within 15 days duly verified by the proper officer.
- (3) In case any deficiencies, the proper officer shall communicate the same to the applicant in **FORM GST RFD-03** through the Common Portal electronically.
- (4) The deficiencies have to be communicated under the CGST Rules/ SGST Rules, separately for compliance.

Grant of provisional refund

- (1) The provisional refund shall be granted subject to the following conditions:
 - (a) the claimant has no dispute or prosecution under any offence, during any period of 5 years immediately preceding the tax period or under an existing law where the amount of tax evaded exceeds Rs.250 lakh.
 - (b) the GST compliance rating, where available, of the applicant is not less than five on a scale of ten;
 - (c) no proceedings of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.
- (2) The proper officer, after due scrutiny of the claim, shall make an order in **FORM GST RFD-04**, sanctioning the 90% amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of acknowledgement of **RFD-02**.



- (3) The proper officer shall issue a payment advice in **FORM GST RFD-05** for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant.

Order sanctioning refund:

- (1) Where, upon examination of the application, the proper officer is satisfied that a refund due and payable to the applicant, he shall make an order in **FORM GST RFD-06**, sanctioning the amount of refund to which the applicant is entitled.

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment may be issued in **FORM GST RFD-07**.

- (2) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply *in FORM GST RFD-09* within 15 days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06**, sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically. Provided that no application for refund shall be rejected without giving the applicant a reasonable opportunity of being heard.
- (3) Where the proper officer is satisfied that the amount refundable or is payable to the applicant under sub-section (8) of section 48, he shall make an order in **FORM GST RFD-06** and issue a payment advice in **FORM GST RFD-05**, for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.



- (4) Where the proper officer is satisfied that the amount not refundable, for the amount of refund to be credited to the Consumer Welfare Fund.

Credit of the amount of rejected refund claim:

- (1) Where any deficiencies have been communicated under sub-rule (3) of rule 2, the amount debited under sub-rule (3) of rule 1 shall be re-credited to the electronic credit ledger.
- (2) Where any amount claimed as refund is rejected under rule 4, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST PMT-03**.

Order sanctioning interest on delayed refunds:

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in **FORM GST RFD-05**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable% @6 if the **FORM GST RFD-06** has not been received within 60 days from the date of receipt of **FORM GST RFD-01** and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

SEZ provisions amended–(Export provisions) vide Finance Act’ 2021:

Section 16 of the IGST Act is being amended so as to:

- (i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations;
- (ii) restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and



- (iii) link the foreign exchange remittance in case of export of goods with refund.

By this amendment specified that only supplies to SEZ or developer of SEZ qualify as zero-rated, which are used for the authorised operations. Further, it is restricted the zero-rated supply on payment of IGST only to a notified class of taxpayers or notified supplies of goods or services and link non realisation of export sales proceeds of goods exported liable for refund so received along with interest after expiry of prescribed time under Foreign Exchange Management Act, 1999.

The Suppliers of zero rated supplies (other than the notified class or categories) shall now have to mandatorily make supplies without payment of IGST (under LUT or Bond) and then, claim refund of unutilised ITC of inputs and input services as per Rule 89(4) of the CGST Rules.

Now, the notified class of taxpayer of goods/services eligible to export on payment of IGST and claiming refund unlike all persons under Rule 96(10) of the CGST Rules and other option left to claim refund of the accumulated ITC under Section 54 of the CGST Act and Rules made thereunder.

SEZ Rule-45 & SEZ Rule-46 (EXPORT & PROCEDURE OF EXPORT)

Definition of export:

Section 2 (m) of the SEZ Act, 2005 defines “export” means - (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different SEZ.

SEZ Rule 45- Exports:

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.

Provided that a unit may export prohibited items to a place outside India with prior approval of Board of Approval.

Provided further that such prohibited items cannot be procured from Domestic Tariff Area.

- (1) A Unit, other than a trading or Free Trade and Warehousing or service Unit, may export to Russian Federation in Indian Rupees against repayment of State Credit or Escrow Rupee Account of the buyers, subject to clearance from the Reserve Bank of India, required if any.
- (2) A Unit engaged in development of computer software may undertake export, including export of professional services,



using data communication links or do physical exports, including through courier service.

- (3) The Foreign Trade Policy restrictions on State Trading Enterprises shall not apply to Special Economic Zone manufacturing Units:

Provided that export of iron ore shall be subject to conditions as may be laid down by the Central Government from time to time.

- (4) Minimum export price and requirements of export in consumer pack as provided for in the Foreign Trade Policy shall apply in case the raw materials are procured indigenously and exported without further processing or manufacturing activities.
- (6) The export of textile items shall be governed by bilateral agreements, if any.
- (7) A Unit may export free samples without any limit, including samples made in wax moulds or silver mould or non-precious metal alloy or rubber moulds through all permissible modes of export.

SEZ Rule 46- Procedure for Export:

The procedure for export from Special Economic Zone through seaports or airports or Inland Container Depot or Container Freight Station or Land Customs Station or by Post or by Courier or by Personal Carriage, as the case may be, shall be as under:—

- (a) the Unit shall file Shipping Bill, in quadruplicate, with the Authorized Officer of Customs in the Special Economic Zone together with relevant documents, namely, invoice, packing list and Currency Declaration Form (GR) (in duplicate):

Provided that there shall be exemption from declaration in the forms, GR or SDF or PP or SOFTEX as referred in the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 notified vide Reserve Bank of India Notification No. FEMA 23/2000-RB dated 3rd May, 2000 as



amended from time to time in respect of export value up to US \$ twenty-five thousand or for export value as may be notified by the Reserve Bank of India, from time to time;

- (b) the Shipping Bill shall be registered, assigned a running serial number and assessed by the Authorized Officer in the manner and procedure as is followed in case of exports under free shipping bill without any requirement of the counter signature;
- (c) the goods shall not be subjected to routine examination and 'Let Export Order' shall be given on the basis of self certification by the Unit:

PROVIDED that goods may be sealed after examination, as per the norms prescribed for free shipping bills, at the option of the Unit, by the Authorized Officer:

Provided further that if services are exported in non-physical form, the export value is to be furnished by the Unit on self certification basis as per the instructions of the Reserve Bank of India.

Explanation: "Self certification" means the certification regarding sealing of container or package of goods under export given by the Unit and includes the certificate regarding contents and sealing of the container or package given by the owner or the working partner or the Managing Director or the Company Secretary of the said Unit or any person authorized in this behalf by the owner or company or working partner, as the case may be, on the copies of Shipping Bill stating that the package or container in respect of goods under export have been sealed in his presence;

- (d) the goods may be examined at the port, airport, Inland Container Depot or Container Freight Station or Land Customs Station only in case of specific intelligence or information after obtaining the written permission of Deputy or Assistant Commissioner of Customs having jurisdiction over the said port, airport, Inland Container Depot or Container Freight Station or Land Customs Station, as the case may be, in writing;



- (e) the Unit may export through Inland Container Depot located in the Special Economic Zone, or through any port or airport or Inland Container Depot:

Provided that in case of export of large quantities of cargo where it may not be possible to ship the cargo from the Special Economic Zone in one consignment, the Specified Officer may allow the export of such cargo on execution of a Bond for the duty involved subject to the condition that the Unit shall submit the proof of export within ninety days of removal of such cargo under Bond, failing which applicable duty on the goods not exported shall be payable in terms of the Bond;

- (2) The procedure for export of gems and jewellery shall be as under:—

- (i) the shipping bill and the invoice along with packing list presented to the authorized officer shall contain the following:—

- (a) description of the items;
- (b) weight and purity of gold or silver or platinum and the type of gems stone, such as, diamond, ruby, sapphire, cubic zircon and the like which has been used for studding and its weight in carats; and
- (c) free on board price rate of the jewellery item and quantity in pieces and the total value;

- (ii) the Unit may export jewellery on the basis of a notional rate certificate issued by the Nominated Agency and this rate will be based on the prevailing Gold or US Dollar rate and the US Dollar or Indian Rupees rate given in the notional rate certificate:

Provided that the certificate issued by the Nominated Agency shall not precede the date of shipment by more than three working days or as may be notified by Central Government;



- (iii) the Unit obtaining gold or silver or platinum from the Nominated Agency on loan basis shall export gold or silver or platinum jewellery within the period prescribed for the same under the Foreign Trade Policy:

Provided that the Unit can convert such loan into outright purchase by paying the outstanding loan amount plus interest, provided they exercise this option within the period prescribed under the Foreign Trade Policy;

- (iv) in the case of export of jewellery on the basis of notional rate certificate issued by the Nominated Agency, the Unit may fix the price and repay the gold loan within the prescribed period for export as may be notified by the Central Government from time to time:

Provided that the price shall be communicated to the Nominated Agency for issue of a certificate showing the final confirmation of the rate to the bank negotiating the document.

(3) Procedure for export of software shall be as under:—

- (i) a Unit may export software or processed data, including call center services via data link or internet or e-mail or through other electronic mode and the Software Export Declaration Form for such exports duly certified by Development Commissioner under the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, shall be submitted to the authorized dealer within the period specified under the Foreign Exchange Management Act, 1999 (42 of 1999);
- (ii) a Unit may provide consultancy services “on site” abroad subject to submission of details of the contract or purchase order and foreign exchange remitted and the persons deputed abroad to the Authorised Officer;
- (iii) the consideration received by the Unit for providing on site consultancy services in convertible foreign exchange



shall be counted for the purpose of calculating positive Net Foreign Exchange Earning under rule 53.

- (4) The Unit may export goods by post subject to the procedure applicable to export through Foreign Post Office.
- (5) Export through couriers shall be allowed only if the courier is an authorised courier, being registered with the Commissioner of Customs having jurisdiction over the gateway airport and the procedure specified in the Courier Export and Import (Clearance) Regulations, 1998 shall be followed:

Provided that goods shall be allowed to be handed over to the courier by the custodian as per the procedure specified by the Specified Officer.

- (6) A Unit may export goods to be carried by foreign bound passengers authorized by the Unit in this behalf as personal baggage, subject to the following conditions, namely:—
 - (i) the Unit shall submit the shipping bill, invoice and Currency Declaration Form (GR) with the authorised officer;
 - (ii) the shipping bill shall be assessed by the Authorised Officer in the same manner as is done in the case of exports under free shipping bill;
 - (iii) the goods shall be transferred from the Special Economic Zone to the airport under the cover of assessed shipping bill by the authorized agency approved by the Specified Officer or under escort of Authorized Officer;
 - (iv) the goods shall be deposited with the warehouse at the airport against a “detention receipt” issued by the Customs authorities at the airport;
 - (v) the consignment shall be handed over to the authorized passenger at the time of departure on submission of original detention receipt;
 - (vi) the Unit shall submit to the Specified Officer, the proof



- of export issued by the Customs authority at the airport within a period of fifteen days from the date of removal of the goods from the Special Economic Zone;
- (vii) where the facility of custodian is available in the Special Economic Zone and the airport, goods shall be transferred and delivered to the authorized passenger at the airport by the custodian;
 - (viii) personal carriage of spare parts by foreign bound passenger shall be allowed in case the spare parts are required for repairs of exported goods at customer site and following documents shall be submitted as proof of export, namely:—
 - (a) permission letter from the authorised officer for exports; and
 - (b) invoice with value;
 - (ix) personal carriage of any goods for exports by authorized passenger on Document Against Acceptance or Cash On Delivery basis may be allowed provided the Unit submits following documents, namely:—
 - (a) copy of shipping bill; and
 - (b) the bank Certificate for realization of proceeds shall be submitted within thirty days of delivery of the goods;
 - (x) personal carriage of gems and jewellery items of the value not exceeding US \$ two millions or other goods not exceeding rupees five lakhs in value, for holding or participating in overseas exhibitions shall be permitted with the approval of the Development Commissioner and subject to the following conditions, namely:—
 - (i) the Unit shall declare personal carriage of such goods to the Customs authorities at the airport while leaving the country and obtain necessary endorsement;



- (ii) Unit shall bring back goods or repatriate the sale proceeds within forty-five days from the date of closure of exhibition through normal banking channels or within such days as may be notified by the Central Government; and
 - (iii) for personal carriage of goods by foreign bound passenger, the following documents shall be submitted by a Unit as proof of exports, namely:—
 - (a) copy of shipping bill filed by the Unit;
 - (b) copy of the Currency Declaration Form filed by the Foreign buyer with the Customs at the time of his arrival;
 - (c) foreign exchange realization or encashment certificate from the Bank.
- (7) A Unit may display the goods in the show rooms set up at departure lounge in international Airports in India for sale to passengers leaving India subject to the conditions and procedures laid down by the Commissioner of Customs having jurisdiction of the Airport:
- Provided that the items remaining unsold within a period of forty- five days shall be exported or returned to the Unit.
- (8) A Unit may export goods, including gems and jewellery, for display or sale in the permitted shops set up abroad or in the show rooms of their distributors or agents:
- Provided that the items not sold abroad may be re-imported within a period of three hundred and sixty five days from the date of their export.
- (9) A Unit may export goods, including gems and jewellery for display or participation in exhibitions abroad subject to following conditions, namely:—
- (i) the Unit shall give advance intimation to the Development Commissioner to participate in the exhibition abroad or for taking goods abroad for display and sale;



- (ii) shipping bill along with relevant documents shall be filed with the authorized officer in the same manner and following the same procedure as applicable to free shipping bill;
 - (iii) Photographs of the items being taken out for exhibition, attested by the Unit, shall be furnished in case of gems and jewellery;
 - (iv) goods unsold in the exhibition or display tour shall be imported within forty-five days from the completion of the exhibition or within such days as may be notified by the Central Government;
 - (v) the Unit shall file Bill of Entry for import of unsold goods as required in case of imports and it shall be assessed in the same manner and subject to same procedure as applicable to imported goods;
 - (vi) the goods so imported shall be allowed admission into the Unit free of duty, subject to establishment of identity of the goods with reference to export documents:
Provided that the examination of goods in such cases shall be restricted to ten per cent. of the consignments at random;
 - (vii) the Unit shall submit proof of inward remittance in respect of goods sold in the exhibition.
- (10) A Unit may export goods and services, through another Unit or merchant exporter or status holder or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit subject to following conditions, namely:—
- (i) goods or services shall be manufactured or developed in the Unit concerned;
 - (ii) requirements of positive Net Foreign Exchange Earning or any other conditions relating to authorized operations



shall continue to be discharged by the Unit;

- (iii) export orders so procured shall be executed within the provisions of these rules and the goods shall be directly transferred from the Unit to the airport or port of shipment;
- (iv) fulfillment of positive Net Foreign Exchange Earning by the Unit shall be reckoned on the basis of the price at which the goods or services were supplied by the Unit to the status holder or merchant exporter or other Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit:

Provided that such export shall be counted towards fulfillment of obligations of the Unit only.

- (11) The procedure for export through a merchant exporter or status holder shall be the following, —
 - (i) goods shall be exported directly from the Special Economic Zone or through any other port where the merchant exporter files his shipping bill, in which case the goods shall move directly from the Special Economic Zone to the said port of export on the basis of pink shipping bill as if these were movement of goods from one warehouse to another;
 - (ii) export document shall contain the name of the merchant exporter or the status holder and the Unit;
 - (iii) merchant exporter or status holder, as the case may be, shall export goods under a free Shipping Bill and submit a disclaimer that no Drawback or fulfillment of export obligation under any export promotion scheme under the Foreign Trade Policy shall be availed by him on the goods so exported
- (12) A Unit may transfer goods, including goods imported or procured from Domestic Tariff Area, to another Unit or Export Oriented Unit or Electronic Hardware Technology Park Unit



or Software Technology Park Unit or Bio-technology Park Unit, subject to the following procedures, namely:—

- (i) the receiving Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio- technology Park Unit shall file Bill of Entry for warehousing, in quintuplicate along with invoice, procurement certificate issued by the Customs Officer in charge of the receiving Export Oriented Unit or Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-technology Park unit and packing list with the Authorised Officer along with copy of the Letter of Approval and bonding licence:

Provided that in case the receiving Unit is a Special Economic Zone unit, Bill of Entry for home consumption shall be filed in place of Bill of Entry for warehousing;

- (ii) on the basis of such Bill of Entry assessed by the Authorised Officer, goods shall be allowed to be cleared to receiving Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or to a Unit in another Special Economic Zone;
- (iii) the receiving Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio- technology Park Unit or Special Economic Zone Unit shall submit the re-warehousing certificate to the Authorised Officer having jurisdiction over the supplying Unit within forty-five days, failing which the Authorised Officer shall communicate this fact to the Officer of Customs or Excise having jurisdiction over the Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or to the Specified Officer for demand of applicable duty from the receiving Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio- technology Park Unit or



Unit in another Special Economic Zone, as the case may be;

- (iv) where supplying and receiving Units are located in the same Special Economic Zone, movement of goods including raw materials shall be allowed subject to maintenance of accounts by both receiving and supplying Units and no Bill of Entry shall be required to be filed.
- (13) The Authorised Officer may permit a Unit to transfer goods to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or to a bonded warehouse, without payment of duty subject to following conditions, namely:—
- (i) the Unit shall transfer the goods against Procurement Certificate issued by the Central Excise or Customs Officer in charge of receiving Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio- technology Park Unit;
 - (ii) a warehousing Bill of Entry shall be filed by the Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit or by the supplying Special Economic Zone Unit on behalf of the receiving Export Oriented Unit or Software Technology Park Unit or Bio- technology Park Unit, as the case may be, with the Authorised Officer;
 - (iii) Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit shall submit re-warehousing certificate duly signed by the Central Excise or Customs Officer having jurisdiction over the receiving Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio- technology Park Unit within a period forty-five days from the date of clearance of the goods to the Authorised Officer;



- (iv) where the Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio- technology Park Unit fails to submit the re-warehousing certificate within the period of forty-five days of clearance of goods, the Authorised Officer shall take up the matter with the Central Excise or Customs Officer of the receiving Unit to initiate recovery proceeding against such Export Oriented Unit or Software Technology Park Unit or Bio-technology Park Unit, as the case may be;
- (v) where goods admitted into a Unit from Domestic Tariff Area on which entitlement under Duty Exemption Pass Book Scheme had been availed are removed as such or after subjecting it to a process not amounting to manufacture to an Export Oriented Unit or Electronic Hardware Technology park Unit or Software Technology Park Unit or Bio-technology Park Unit directly or through a Unit in the same Special Economic Zone or another Special Economic Zone, the customs duty equal to entitlement availed under the

SEZ Rule 53- Net Foreign Exchange Earnings:

The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production according to the following formula, namely:-

$$\text{Positive Net Foreign Exchange} = A - B > 0$$

Where,-

A: is Free on Board Approval value of exports, including exports to Nepal and Bhutan against freely convertible currency, by the Unit and the value of following supplies of their products, manufactured in the Special Economic Zone and the value of the services (excluding traded goods), namely-

- (a) supply of goods against Advance Authorisation or Advance Authorisation for annual requirement or Duty Free Import Authorisation under the Duty Exemption or Remission scheme under the Foreign Trade Policy;



- (b) supply of capital goods to holders of licence under Export Promotion Capital Goods Scheme under the Foreign Trade Policy ;
- (c) supply of goods to projects financed by multilateral or bilateral agencies or funds as notified by the Department of Economic Affairs, Ministry of Finance, from time to time, under international Competitive Bidding in accordance with the procedures of those agencies or funds where the legal agreements provide for tender evaluation without including the Customs duty;
- (d) supply of goods to any project or for any purpose in respect of which the Ministry of Finance notifies from time to time, permitting import of such goods at zero customs duty subject to conditions specified in the above said notification provided the supply is made under procedure of International Competitive Bidding;
- (e) supply of goods to United Nations or International Organisations for their official use or supplied to the projects financed by the said United Nations or an International Organisations approved by Government of India and the list of such organizations and conditions applicable to such supplies is notified by Ministry of Finance from time to time;
- (f) supply of goods to United Nations or International Organisations for their official use or supplied to the projects financed by the said United Nations or an International Organisations approved by Government of India and the list of such organizations and conditions applicable to such supplies is notified by Ministry of Finance from time to time;
- (g) supply of goods to nuclear power projects provided they are as per the conditions stipulated in Foreign Trade policy;
- (h) supply against special entitlements of duty free import of goods under the Foreign Trade policy;
- (i) export of services by services Units including services rendered within Special Economic Zone or such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by the Reserve Bank of India;



- (j) supply of Information Technology Agreement items and notified zero duty telecom or electronic items, namely, Colour Display Tubes for monitors and Deflection components for colour monitors or any other items as may be notified by the Central Government;
- (k) supply to other Units and Developers in the same or other Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit provided that such goods and services are permissible for import or procurement by such Units and Developers;
- (l) supply of goods against free foreign exchange by a Free Trade and Warehousing Zone Unit.

B: Consists of sum of the following-

- (a) sum total of the Cost Insurance and Freight value of all imported or indigenous inputs used for authorised operations during the relevant period and the Cost Insurance and Freight value of all imported capital goods including goods purchased on high seas basis even though paid for in Indian Rupees and the value of all payments made in foreign exchange by way of export commission, royalty, fees, dividends, interest on external commercial borrowings during the first five year period or any other charges;
- (b) value of goods obtained from other Unit or Export Oriented Unit or Electronic Hardware Technology Park or software Technology Park Unit or Bio-technology park Unit or from bonded warehouses or procured from international exhibitions held in India or precious metals procured from nominated agencies;
- (c) the cost Insurance Freight value of the Goods and services, including pro-rata Cost Insurance Freight of capital goods, imported duty free or leased from a leasing company or received free of cost or on loan basis or on transfer for the period they remain with the Unit.



(d) for annual calculation of Net Foreign Exchange , value of imported capital goods and lump sum payment of foreign technical know-how fee shall be amortized at the rate of ten per cent, every year from the first year to the tenth year;

C: Gems and Jewellery Units shall achieve minimum Value Addition as laid down in prevailing Foreign Trade Policy or Hand Book of Procedures:

D: For Gem and Jewellery, the minimum Value Addition shall be in terms of prevailing Foreign Trade Policy or Hand Book of Procedures and it shall be calculated as under:-

$$VA = A-B \times 100/B$$

Where, -

A = Free on Board value of the export realized or Freight on Road and Rails value of supply received;

B = Value of inputs(including domestically procured) such as gold or silver or platinum content in export product plus admissible wastage along with value of other items, such as gemstone etc. wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplies”

Provided that where a Unit is unable to achieve Net Foreign Exchange due to adverse market conditions or any ground of genuine hardship having adverse impact on functioning of the Unit, the five years block period for calculation of Net Foreign Exchange earnings may be extended by the Board of Approval for a further period of upto one year, on a case to case basis.

Exemption: (SEZ Rule 53A):

Nothing contained in rule 53 shall apply,-

(a) to a Unit in an International Financial Service Centre set up as Alternate Investment Fund or Mutual Fund to the extent of any inflow of investible funds from investors, any investments made from such investible funds and returns on them inclusive of principal return and any return paid to investors from such investments including the original investment :



Provided that the net foreign exchange of a Unit in an International Financial Service Centre set up as Alternate Investment Fund or Mutual Fund shall be determined in combination with the net foreign exchange of the Fund Manager entity to the extent the investible funds of the Alternate Investment Fund or Mutual Fund is being managed by such Fund Manager entity.

- (b) to a Unit in an International Financial Service Centre set up as an International Financial Service Centre Insurance Office to the extent of the portion of premium income over and above the amount retained for management expenses within the maximum rate stipulated for expenses of management by the Insurance Regulatory and Development Authority under the Insurance Regulatory and Development Authority of India {Registration and Operations of International Financial Service Centre Insurance Offices (IIO)} Guidelines, 2017, Investment made from the said portion of premium income and returns on them, inclusive of principal return and any amount paid towards insurance or reinsurance claims.

SEZ Rule 54- Monitoring of performance:

- (1) Performance of the Unit shall be monitored by the Approval Committee as per the guidelines given in Annexure appended to these rules.
- (2) In case the 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.

Failure to achieve positive NFE:

As per FT, for failure to achieve positive NFE, after completion of one year from the date of commencement of production, a cautionary letter may be issued; at the end of 5th or subsequent year, show



cause notice will be issued if positive NFE is not achieved; after completion of block period as per FT, Development Commissioner would initiate penal action under the FT (D&R) Act, 1992.

Extension NFE period:

Where a unit is unable to achieve NFE due to adverse market conditions or any other genuine hardship in the functioning of the Unit, the 5 years block period for calculation of NEF earnings may be extended by the Board of Approval for a further period of up to 1 year, on a case to case basis.

A unit which has been declared sick by the appropriate authority shall submit a revival package through Development Commissioner to Board for consideration and the Board shall consider the extension in the period for fulfilment of Positive NFE for a further period up to a maximum of 5 years at the prevalent norms. On extension of the period, unutilized raw material and imported or domestically procured capital goods is allowed to be carried forward at their original value and the Bond-cum-Legal Undertaking executed by the unit shall be revised accordingly. In case a new entity is willing to takeover all the assets and liabilities of a sick unit, transfer of such assets and liabilities shall be considered by the Board.

Where a unit is granted extension of period for fulfilment of Positive NFE, the space would continue to be in its possession. Where a unit is taken over by another unit, the liability shall pass on to the new unit which is taking over the sick unit.

The unit shall execute a legal undertaking with the Development Commissioner concerned and in the event of failure to achieve positive foreign exchange earning it shall be liable to penalty in terms of the legal undertaking or under any other law for the time being in force.

SEZ Rule 80- Non-fulfillment of NFE:

If a Special Economic Zone Unit, in case of bona fide default, fails to achieve the minimum specified Net Foreign Exchange or Specified value addition, then such shortfall may be regularized after the Unit deposits an amount equal to one per cent of shortfall in Free on Board of Approval Value.

Appellate Authority:

Special Economic Zone Act, and Special Economic Zone Rule, provides Appellate remedy to a SEZ unit or Developer of SEZ. SEZ unit can prefer an appeal against orders passed by the Approval Committee in case of modification of the proposal or rejection of the proposal on the basis of reasons recorded in writing and giving an opportunity of being heard to the person concerned.

SEZ Rule 55- Form of Appeal:

Any person aggrieved by an order passed by the Approval Committee under section 15 relating to modification of proposal or rejection of proposal or against cancellation of letter of Approval under section 16, may prefer an appeal to the Board of Approval in Form J.

SEZ Rule 56- Appeal to Board of Approval:

An appeal shall be preferred by the aggrieved person within a period of thirty days from the date of receipt of the order of the Approval Committee under Rule 18 of SEZ Rules, 2003. The Appeal is to be filed in Form J in duplicate and to be accompanied by two copies (at least one of which shall be certified copy) of the order of the Approval Committee appealed against.

SEZ Rule 56(2) - Condonation of Delay:

In cases where appeal is preferred after expiry of the period of 30 days, it shall be accompanied by an application of Condonation supported by an affidavit setting forth the facts on which the appellant relies to satisfy the BOA that he has sufficient cause for not preferring the appeal within the said period of 30 days:



Provided that if the Board is satisfied that the appellant had sufficient cause for not preferring the appeal within the aforesaid period, it may for reasons to be recorded in writing, admit the appeal after the expiry of the aforesaid period but before the expiry of forty-five days from the date of communication to him of the order of the Approval Committee.

SEZ Rule 57- Payment of fees:

- (1) Every appeal shall be accompanied by a fee of rupees two thousand and five hundred.
- (2) The amount of fees shall be deposited by way of a Demand Draft, drawn in favour of Pay and Accounts Officer, Department of Commerce, New Delhi.

SEZ Rule 58- Contents of Appeal:

Every appeal filed under rule 55 shall be written in English or Hindi and shall set forth concisely under distinct heads the grounds of appeal and such grounds shall be numbered consecutively.

SEZ Rule 59- Accompany form:

Every appeal shall be filed in the Form J in duplicate and shall be accompanied by two copies (at least one of which shall be certified copy) of the order of the Approval Committee appealed against and other documents to support the grounds of objection mentioned in the appeal.

Explanation: For the purpose of this rule “certified copy” includes the copy which was originally supplied to the appellant as well as a photostat copy thereof duly authenticated by the appellant or his authorised representative as a true copy.

SEZ Rule 60- Filing of affidavits:

Where a fact which cannot be borne out by, or is contrary to, the record is alleged, it shall be stated clearly and concisely and supported by a duly sworn affidavit.



SEZ Rule 61- Rights of appellant to appear before the Board:

Every appellant may appear before the Board in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Board.

Explanation: for the purpose of this rule,—

- (a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice

SEZ Rule 62- Authorisation to be filed:

An authorised representative appearing for the appellant at the hearing of an appeal shall file an authorization from the appellant to the Board before the commencement of the hearing.

SEZ Rule 63- Procedure for filing appeal:

- (1) An appeal shall be preferred by the appellant or his authorised representative and be sent to the Board of Approval (Deputy Secretary, Ministry of Commerce and Industry, Department of Commerce, Udyog Bhavan, New Delhi-110011);



- (2) An appeal sent by post under sub-rule (1) shall be deemed to have been preferred to the Board on the day on which it is received in the office of the Member Secretary to the Board at Delhi.

SEZ Rule 64- Furnishing of information and documents:

- (1) The Board may, before considering the appeal, require the appellant or the Approval Committee or both to furnish such further information and documents, as it considers necessary.
- (2) Parties concerned shall furnish such information and documents within thirty days of such order.

SEZ Rule 65- Date and place of hearing of appeal to be communicated:

The Board shall communicate, before considering the appeal, to the appellant the date and place of the hearing of the appeal.

SEZ Rule 66- Hearing of appeal:

- (1) On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Board shall, then, if necessary, hear the Approval Committee or its authorised representative against the appeal and in such case the appellant shall be entitled to reply.
- (2) In case the appellant does not appear in person or through an authorised representative when the appeal is called for hearing, the Board may dispose of the appeal on merits:

Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Board that there was sufficient cause for his non-appearance, when the appeal was called for hearing, the Board shall make an order setting aside the ex parte order and restore the appeal



SEZ Rule 67- Orders by the Board:

The BOA is required to follow the principles of natural justice and give opportunity of personal hearing under Rule 66. After considering the appeal preferred to it under SEZ Rule 55 and after considering further documentary evidence referred to in Rule 64 and pass such orders or give such directions as may be necessary or expedient to give effect to, or in relation to, its orders. The decision of BOA Order in writing which shall be binding upon the appellant.

SEZ Rule 68- Order to be signed and dated:

The Order of the Board shall be in writing and shall be signed and dated.

SEZ Rule 69- Order to be communicated to the party:

The Board shall, after the order is signed, cause it to be communicated to the appellant and to the Approval Committee.

Miscellaneous Provisions:

SEZ Rule 70- Identity Cards: (SEZ Rule 70)

- (1) The entry of persons to the processing area of the Special Economic Zone shall be regulated by the Development Commissioner through issue of identity cards.
- (2) The identity card shall be valid upto a period of five years and shall be issued, in the format given in Form K, to the entrepreneurs and regular employees of the Units:

Provided that when the Unit ceases to hold a valid Letter of Approval, all identity cards issued to the Entrepreneurs and employees of such Unit shall be deemed to be invalid and shall be surrendered forthwith.

The identity card shall be valid upto a period of five years and shall be issued, in the format given in Form K, to the entrepreneurs and regular employees of the Units:



Provided that when any employee who has been issued an identity card ceases to be in employment of the Unit or Developer, the said identity card shall be surrendered forthwith and shall be deemed to be invalid from such date:

Provided further that when the Unit ceases to hold a valid Letter of Approval, all identity cards issued to the Entrepreneurs and employees of such Unit shall be deemed to be invalid and shall be surrendered forthwith.

- (3) Temporary identity card may be issued by the Development Commissioner to the casual visitors and contractors and a proper record of such entries shall be maintained at the Special Economic Zone Gate

SEZ Rule 71- Foreign Exchange Remittances:

Export value of goods, software and services may be realized and repatriated as per instructions of the Reserve Bank of India issued from time to time.

SEZ Rule 72- Revival of sick units:

- (1) A unit which has been declared sick by the appropriate authority shall submit a revival package through Development Commissioner to Board for consideration and the Board shall consider the extension in the period for fulfillment of Positive Net Foreign Exchange for a further period up to a maximum of five years at the prevalent norms.
- (2) On extension of the period, unutilized raw material are imported or domestically procured capital goods shall be allowed to be carried forward at their original value and the Bond-cum-Legal Undertaking executed by the unit shall be revised accordingly.
- (3) In case a new entity is willing to take over all the assets and liabilities of a sick Unit, transfer of such assets and liabilities as provided under sub-rule (1) shall be considered by the Board.



- (4) Where a Unit is granted extension of period for fulfillment of Positive Net Foreign Exchange Earning under sub-rule (1), the space would continue to be in its possession.
- (5) Where a Unit is taken over by another unit, the liability shall pass on to the new unit which is taking over the sick unit.

SEZ Rule 73- Arrangement of Specified Officer:

For the period when the Specified Officer is not posted in a Special Economic Zone, an officer of customs, not below the rank of a Gazetted Officer of Customs, authorized by Development Commissioner shall discharge duties and functions of the Specified Officer.

SEZ Rule 74- Exit of Units:

- (1) 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 applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock:

Provided that 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.

- (2) The following conditions shall apply on the exit of the Unit, namely:—
 - (i) Penalty imposed by the competent authority would be paid and in case an appeal against an order imposing penalty is pending, exit shall be considered if the unit has obtained a stay order from competent authority and has furnished a Bank Guarantee for the penalty adjudicated by the appropriate authority unless the appellate authority makes a specific order exempting the Unit from this requirement;



- (ii) In case the Unit has failed to fulfill the terms and conditions of the Letter of Approval and penal proceedings are to be taken up or are in process, a legal undertaking for payment of penalties, that may be imposed, shall be executed with the Development Commissioner;
- (iii) The Unit shall continue to be treated a unit till the date of final exit
- (3) 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 shall be handed over to an agency nominated by the Central Government at a price to be determined by that agency.
- (4) Development Commissioner may 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.
- (5) Depreciation norms for capital goods shall be as given in sub-rule (1) of rule 49.
- (6) The Unit opting out from Special Economic Zone shall execute a legal undertaking in Form-L.

SEZ Rule 74A- Transfer of Assets by Special Economic Zone Units upon their exit:

The Unit may opt out of Special Economic Zone by transferring its assets and liabilities to another person by way of transfer of ownership including sale of Special Economic Zone units subject to the following conditions:-

- (i) the Unit has held a valid Letter of Approval as well as lease of land for not less than a period of five years on the date of transfer;
- (ii) the Unit has been operational for a minimum period of two years after the commencement of production as on the date of transfer;



- (iii) such sale or transfer transactions shall be subject to the approval of the Approval Committee;
- (iv) the transfer fulfils all eligibility criteria applicable to a Unit; and
- (v) the applicable duties and liabilities, if any, as calculated under rule 74 as well as export obligations of the transferor Unit, if any, shall stand transferred to the transferee Unit which shall be under obligation to discharge the same on the same terms and conditions as the transferor Unit.

SEZ Rule 75- Self-Declaration:

Unless otherwise specified in these rules all inward or outward movement of goods into or from the Zone by the Unit or Developer shall be based on self-declaration made and no routine examination of these goods shall be made unless specific orders of the Development Commissioner or the Specified Officer are obtained.

Provided that all the consignments of Special Economic Zone shall be subject to a risk management system.

SEZ Rule 76- The “services” for the purposes of [1] [clause] (z) of section 2 shall be the following, namely: Trading, warehousing, research and development services, computer software services, including information enabled services such as back-office operations, call centres, content development or animation, data processing, engineering and design, graphic information system services, human resources services, insurance claim processing, legal data bases, medical transcription, payroll, remote maintenance, revenue accounting, support centres and web-site services, off-shore banking services, professional services (excluding legal services and accounting) rental/leasing services without operators, other business services, courier services, audio-visual services, construction and related services, distribution services (excluding retail services), educational services, environmental services, financial services, hospital services, other human health services,



tourism and travel related services, recreational, cultural and sporting services, entertainment services, transport services, services auxiliary to all modes of transport, pipelines transport.

Explanation: The expression “trading”, for the purposes of the Second Schedule of the Act, shall mean import for the purposes of re- export.

SEZ Rule 77- Procedures for withdrawal or cancellation of exemption, concessions, drawbacks or any other benefits to a Unit:

- (1) Where the Letter of Approval has been cancelled under section 16, the Unit shall furnish to the Development Commissioner, within thirty days of the cancellation of the Letter of Approval, the details of the exemptions, drawbacks, concessions, and any other benefit in respect of the Central Goods, finished goods, raw materials and consumables lying in stock, relating to the Unit and the Development Commissioner shall direct the Specified Officer to determine the amount to be remitted to the Government by the Unit in the form of Customs Duty.
- (2) The Specified Officer shall, based on the details provided by the Unit shall assess and communicate the quantum of amount to be remitted by the unit for clearing the said goods in the Domestic Tariff Area, which shall be remitted within a period of three months from the date of communication:

Provided, however, that this period of three months may be extended for a further period not exceeding three months, by the Development Commissioner for valid reasons to be recorded in writing:

Provided further that the amount to be remitted shall not exceed the exemptions drawbacks and concessions availed of by the Unit on such goods and/or the Customs Duty payable on such finished goods when imported into India.

- (3) Notwithstanding the provisions of sub-rules (1) and (2), the



Unit shall export or transfer the said goods, against duty-free licence, without remitting the exemptions, drawbacks, concessions or any other benefits availed in respect of such goods:

Provided that in respect of Capital Goods, transferred against Export Promotion Capital Goods Scheme licence, the Unit shall remit the duties as may be applicable under the provisions of the Export Promotion Capital Goods Scheme

- (4) Where in the case of an entrepreneur whose Letter of Approval has been cancelled and who fails to comply with the conditions of removal of all goods within the prescribed period as provided in sub-rule (2), the Development Commissioner shall take over possession of such goods excluding hypothecated goods and dispose off the same through public auction subject to the condition that the sale proceeds of such auction shall be deposited in a designated account and apportionment of such proceeds shall take place in the manner as approved by the Central Government.
- (5) An entrepreneur whose Letter of Approval has been cancelled and has failed to meet positive net foreign exchange earning as required under rule 52, it shall be liable for payment of penalty as may be imposed by the adjudicating authority in accordance with the provisions of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992):

Provided that raw materials, components, consumables and spares procured from Domestic Tariff Area held in stock at the time of cancellation of Letter of Approval, on which any export entitlements were availed, shall be removed to the Domestic Tariff Area on payment of additional duty equivalent to the export entitlements availed.

Provided further that goods on which no export entitlements or duty exemption were availed on their procurement from Domestic Tariff Area, shall be removed to Domestic Tariff Area, without payment of duty.



SEZ Rule 78- E-filing: Every developer and unit shall file applications and returns electronically on the Special Economic Zone online system, within a period of one month of the system being commissioned.

SEZ Rule 79- Audit in Special Economic Zones for indirect taxes:

All the authorised operations under Special Economic Zones Act, 2005 and transactions relating thereto in Special Economic Zones and Units in the Special Economic Zones shall be audited by the Customs officers from a panel drawn by the Jurisdictional Development Commissioner in consultation with the Jurisdictional Chief Commissioner of Customs and Central Excise.

SEZ Rule 80- Non-fulfillment of NFE:

If an Special Economic Zone Unit, in case of bona fide default, fails to achieve the minimum specified Net Foreign Exchange or Specified value addition, then such shortfall may be regularized after the Unit deposits an amount equal to one per cent of shortfall in Free on Board of Approval Value.

CASE LAWS ON SEZ:

- (1) The Hon'ble Tribunal Mumbai in the case of **Wardha Power Company Limited vs. Commissioner of Central excise, Nagpur reported at 2013 (30) S.T.R.5 20 (Tri-Mumbai)**, it was held that SEZ unit entitled to claim refund so long as service rendered in respect of authorised operations irrespective of place of rendering service i.e. whether inside or outside unit, C.B.E & C, Circular dated 19.1.2010 provides for submission of Chartered Accountant's certificate certifying co-relation and nexus between inputs / input services and export . The Services rendered to SEZ units / SEZ developer is "Export" as defined in SEZ Act, 2005 and therefore, any service rendered to a SEZ unit in an export and therefore, the procedure prescribed by the Board in Circular dated 19.01.2010 in respect of exports can be reasonably applied. The appellant cannot be faulted for following the procedure directed by refund sanctioning authority". The Tribunal allowed the appeal of the appellant with consequential relief and rejected revenue's contentions to with held substantial Service Tax refund claim.
- (2) The Hon'ble Tribunal Mumbai in the case of **Tata Consultancy Services Ltd. vs. Commissioner of Central Excise & ST.(LTU), Mumbai , reported at 2013 (29) S.T.R. 393 (Tri-Mumbai)**, it was held that the Approval Committee which has examined this issue a specific to the appellant indicating the various services received by the appellant and justification for use of such services in relation to authorised operations. The jurisdictional Commissioner of Central Excise is also a member of this



Approval Committee. Once the Approval Committee has given the nexus and the justification, it was totally unwarranted on the part of the adjudicating authority and the appellant authority to go into this question and come to their own findings in the matter. Therefore, rejection by the lower authorities of the refund claims of the service tax paid on various services on this ground is bad in law and accordingly set aside.

- (3) The Hon'ble Tribunal of Ahmadabad in the case of *Reliance Ports and Terminals Ltd. vs. Commissioner of Central Excise & Service Tax. Rajkot reported at 2015 (40) S.T.R.200 (Tri-Ahmd.)*, it was held that the provisions contained in Section 26(1)(e) of the SEZ Act, read with Rule 30(10) of the SEZ Rules, 2006, it can be seen that no Service Tax is payable on the services provided by a service provider to a SEZ unit. Further, Section 51 of the SEZ Act also makes an over-riding provisions that SEZ Act shall have effect even if there is anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any other law. It is accordingly held that Notification No. 9/2009-ST. and amended Notification No.15/2009-ST. have been only issued to operationalised the exemption / immunity available to SEZ unit under Section 26(1) (e) of the SEZ Act, 2005. The department against this order filed an appeal before the *Hon'ble High Court of Gujarat, which was admitted reported in 2015 (40) S.T.R.J55 (Guj.)*

The cited case laws are in the favour of SEZ units, but higher judicial forum had delivered justice to SEZ units / developers of SEZ to avail legitimate benefit of Service Tax exemption by way refund claim in the earlier Tax regime.

Case Law under GST:

The GST, has clarified that Supplies of goods or services or both to SEZ unit or developer is Zero rated, in other words such supplies shall be considered as exempted supply. Further, it is stated that in



case of any supplier supplies goods or services or both on payment of integrated tax to SEZ or developer in that case the supplier is eligible to claim refund of such tax as per the provisions of section 54 of the CGST Act, 2017. In this connection an Advance Ruling on SEZ as under:

Order of Authority of Advance Ruling: Karnataka:

In the case of the applicant M/s *GOGTE Infrastructure Development Corporation Limited*, Ruling No.KAR ADRG 2/ 2018, dated 21-3-2018- reported in 2018 (13) G.S.T.L. 114 (A.A.R. - GST).

Question of law – “ Whether the Hotel accommodation & restaurant services rendered to the employees of SEZ units within premises of Hotel, to employees & guests of SEZ units , be treated as supply of goods and services to SEZ units in Karnataka or not ?”

According to AAR, on reading Section 16(1) (b) of IGST Act, 2017 and Rule 46 of CGST Rules, 2017 together, it is clearly evident that supplies of goods or services or both towards authorized operations only shall be treated as supplies to SEZ Developer / unit. The place of supply of services by way of lodging, accommodation by a hotel, shall be location at which the immovable property i.e. hotel as per Section 12(3) (b) of IGST Act, 2017, Also the place of supply in case of restaurant and catering services is the location where services are actually performed in terms of Section 12(4) of IGST Act,2017;

In the instant case, admittedly, the applicant is located outside the SEZ. Therefore the services rendered by the applicant are neither the part of authorized operations nor consumed inside SEZ unit. Since place of provision of services in case of Hotel is ‘location of the Hotel’ the rendition of services of restaurant, short term accommodation and Banqueting / conferencing cannot be said to have been ‘imported or procured’ into SEZ unit / developer. Consequently, the Hotel accommodation and restaurant services being provided by the applicant, within the premises of the Hotel, to the employees and guests of SEZ units, cannot be treated as



supply of goods and services to SEZ units in Karnataka and hence the intra- State supply and are taxable accordingly.

The above cited Order of Authority of Advance Ruling of Karnataka has categorically held that the benefit of Service Tax exemption on account of supplies to SEZ unit or as export Zero Rated is not available to Service providers if the said Services have not been consumed for the authorised operation and not consumed inside the premises of SEZ unit / developer and these Services taxable under GST in terms of Section 12(3) (b), 12(4) and 16(1) (b) of IGST Act, 2017.

The order of advance Ruling Authority is contradictory to statutory provisions of CGST Act, SEZ Act and SEZ Rule, may be challengeable and arguable before the Higher Court of Law. It is pertinent to mention that Section 16 of the IGST Act or Section 54 of the CGST Act does not put any restriction that supplies of goods or services only used for authorised operations of SEZ unit or developer to be treated as zero-rated or inter-Sate otherwise it will be treated as intra-State supplies and not entitle to any claim of refund of such tax paid on goods or services or both. The said order of AAR is purely based on limited observations and impractical interpretation of law / statues, which is injustice to SEZ unit / developer.

The order of Advance Ruling Authority has travelled beyond the intention of the legislation and overrides the statutory provisions as provided under section 26 of SEZ Acts, 2005 and Rule 31 of SEZ Rules, 2006. Further, the "Accommodation Services" has specified at Sl.No.66 of the list of services for authorised operations of SEZ issued vide. F.NO.D.12/19/2013-SEZ dated 2nd January, 2018 by the under Secretary to the Government of India to all the Development Commissioners, SEZ for implementation. It seems that AAR has not analyzed the practical aspects of SEZ unit along with the existing statutory provisions and not gone into details of case.

In view of the AAR order, CBIC has issued clarificatory circular to overcome the illegal discrepancy has been created vide the said



order of Karnataka AAR. The relevant portion of CBIC, Circular No.48/22/2018-GST, dated 14.6.2018 - 2018[(13) G.S.T.L.153 (C58)] is reproduced as below:

Sl. No.	Issue	Clarification
1	Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?	<p>1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organizing any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.</p> <p>1.2 It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.</p> <p>1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.</p> <p>1.4 It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.</p>



2	<p>Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?</p>	<p>2.1 As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/ LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the: (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone; (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.</p> <p>2.2 A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone. 2.3 Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.</p>
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The above cited circular of CBIC, is very clear and has clarified that Services of short-term accommodation, conferencing, banqueting, etc., provided to a SEZ developer or a SEZ unit shall be treated as an **inter-State supply**. If event management services, hotel, accommodation services, consumables, etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to the supplier.

It is rightly mention that CBIC, Circular is contradictory to what the Authority of Advance Ruling has passed order in case of *GOGTE Infrastructure Development Corporation Ltd*, But this AAR order only applicable to the said party. Therefore, CBIC circular will help to other SEZ units to avail the benefit in respect of services supplies from the outside premises to SEZ unit / developer of SEZ, which can be rightly treated as inter-State supply and Zero-rated supply as per section 16 of the IGST Act. 2017.

Advance Ruling:

- (1) The Appellate Authority under GST, Andhrapradesh, In Re: IN RE: Vaachi International Pvt. Ltd., reported in 2020 (36) G.S.T.L. 538 (A.A.R-GST).

Refund of unutilized input tax credit - Zero-rated supplies made to SEZ - SEZ unit/developers not eligible to claim refund against ITC involved in supplies received by them from non-SEZ suppliers, eligibility for refund claim being available to suppliers who made zero-rated supplies to SEZ units/Developers with payment of tax. It was held that "Thus, a conjoint reading of all the above provisions undoubtedly point towards a conclusion that SEZ unit/developers shall not claim any refund against the ITC involved in supplies received by them from non SEZ suppliers. The Act facilitates eligibility for refund claim to the suppliers who made supplies to SEZ unit/developers with payment of tax. The AA has rightly adhered to these provisions and rejected the refund claim in legitimate manner. In addition to this, it is to be observed that the



appellant contentions of their eligibility regarding refund against the zero-rated supplies received by them, is found to be not tenable. Accordingly, refund claim filed by appellant-SEZ rejected - Section 54(3) of Central Goods and Services Tax Act, 2017 read with Rules 89(1) and 89(2)(f) of Central Goods and Services Tax Rules, 2017.

(2) The Authority for Advance Ruling Under GST, Karnataka, IN RE: Poppy Dorothy Noel, reported in 2019 (30) G.S.T.L. 129 (A.A.R. - GST)

Accommodation services - Services to SEZ units but rendered outside SEZ Zone - Provisions in Section 7(5)(b) of Integrated Goods and Services Tax Act, 2017 overrides provisions in Section 12(3)(c) ibid - Transaction an inter-State supply of services, provided that supply of services made to SEZ unit was an authorized operation under Special Economic Zones Act, 2005 - In terms of Circular No. 2/2014, dated 25-7-2014 issued by Development Commissioner, Office of Zonal Development Commissioner, Kerala and Karnataka Special Economic Zones accommodation services added to list of services to enable SEZ units to avail Service Tax benefits for their authorized operation - If authorized operations, then it is covered under "zero-rated supplies" and if not authorised operations, then it would be not covered under "zero-rated supplies" and liable to tax at 18% IGST with place of supply being provision of such services - Sections 7(5)(b) and 16(1) of Integrated Goods and Services Tax Act, 2017. [Paras 5.6, 5.7, 5.8, 5.9, 7]

(3) The Authority for Advance Ruling, Gujarat, IN RE: Saphtagiri Hospitality Pvt.Ltd, reported in 2018 (18) G.S.T.L. 91 (A.A.R. - GST), held that As per Section 7(5)(b) of IGST Act, 2017, observed that" As per Section 7(5)(b) of IGST Act, 2017 supply of goods and services or both to or by a SEZ developer or SEZ unit would be treated to be a supply in the course of inter-State trade or commerce. As per Section 8 of the IGST Act, supply of goods or services to or by SEZ developer or unit would not be considered as intra-State supply. Hence the provisions of



Section 7 and Section 8 of IGST Act, 2017 read with the definition of SEZ developer given at Section 2(20) of IGST Act, mandate that all the supply of goods or services made by or to SEZ Co-developer would be considered as inter-State supply and the levy of IGST is attracted at the applicable rate. But the IGST law allows the benefit of zero rating to supplies made to a SEZ unit. As per Section 16(1) of IGST Act 'zero rated supply' means any of the following supply of goods or services or both namely (a) export of goods or services or both; or (b) supply of goods or services or both to a SEZ developer or SEZ Unit. Section 2(m) (iii) of SEZ Act, 2005 defines export means supplying goods, or providing services, from one unit to another unit or developer, in the same or different special economic zone. A combined reading of Section 16(1) of IGST Act and Section 2(m) (iii) of SEZ Act indicate that supply of services made by the applicant to other units or developers of SEZ would be zero rated supply. Rendering of services from SEZ to DTA does not qualify as zero rated supply in terms of Section 16 of IGST Act, 2017. Therefore, SEZ Unit/developer making inter-State supply to DTA would be liable to pay IGST under IGST Act. Therefore, supply of services by the SEZ unit or Developer from SEZ to DTA would be covered under the normal course of supply. Accordingly the applicant will be liable to pay GST at the prescribed rates for supplies made to the clients located outside the territory of SEZ.

Ruling:

- (i) The supplies made by M/s. Sapthagiri Hospitality Private Limited, 17-18, Sapthagiri Complex, Opp. The Gateway Hotel, Near Akota Garden, Akota, Vadodara - 390 002 (GSTIN 24AAMCS8870KIZN), a SEZ Co-developer, from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located in Special Economic Zone for authorized operations will be treated as zero rated supplies



under the provisions of Section 16(1) of Integrated Goods and Services Tax Act, 2017 read with Section 2(m) of SEZ Act, 2005

(ii) The applicant is liable to pay GST on the services from their hotel located in non-processing zone of Dahez Special Economic Zone to the clients located outside the territory of Special Economic Zone under the provisions of Section 5(1) of Integrated Goods and Services Tax Act, 2017.

(4) In the High Court of Kerala, in the case of Lalitha Muraleedharan v. Range Forest Officer, reported in 2020(34) G.S.T.L.102 (Ker.)

SEZ - Supply to SEZ - Deemed export - Zero-rated supply - Exporter of sandalwood products in Tamil Nadu purchasing sandalwood in e-auction from Forest Department in Kerala - GST being destination based tax, therefore, tax finally payable where goods and services are consumed - Petitioner upon completion of other sale conditions although receives the sandalwood logs at Marayoor Forest Department depot, Kerala, acknowledgment of goods there not results in termination of movement of goods but results in further movement of goods at the hands of recipient to SEZ - Accordingly, actual place of supply by plain interpretation of Section 10(1) of Integrated Goods and Services Tax Act, 2017 within SEZ in Madras, State of Tamil Nadu, but not in State of Kerala - Subject supply comes as inter-State movement of goods to SEZ outside the State of Kerala and subject transaction to be treated as a 'Zero-rated supply' in terms of Section 16(1)(b) *ibid* and at par with physical export - IGST not payable. [*paras 14, 19, 21, 24, 25*]

(5) In the High Court of Calcutta, in the case of Kariwala Industries Ltd, v. Development Commissioner, reported in 2018 (9) G.S.T.L. 153 (Cal.), held that "It is clear from the records that there is no dispute with regard to the writ petitioner having procured duty paid raw materials from the Domestic Tariff Area into FSEZ or used such raw materials in the manufacture of goods within the zone. It is also the admitted fact that the finished goods were exported from the zone and export proceeds were



realized in foreign currency. As such, the writ petitioner's claim for drawback ought to have been granted treating payment for goods procured from Domestic Tariff Area in foreign currency from the current account to which the foreign currency export proceeds to Unit-III were credited, considering the same to be substantial compliance of Rule 30(8) of the said Rules.

In such circumstances as stated above, the writ petition is allowed upon setting aside the Revisional order dated 28th May, 2013 with a direction upon the concerned respondent authorities to allow the drawback claim of the writ petitioner - as applicable - preferably within a period of six weeks but not later than eight weeks from the date of communication of a Photostat certified copy of this judgment and order."

- (6) The Appellate Authority for Advance Ruling, Karnataka, IN RE: BIOCON LTD, reported in 2020 (43) G.S.T.L. 281 (App. A.A.R. - GST - Kar.) vide Order No. KAR/AAAR-06/2020-21, dated 21-10-2020

The Appellant is registered as a public company under the Companies Act, 1956. The Appellant has GST registrations for its SEZ unit bearing GSTIN 29AAGCB0811M2ZM for its office situated at Plot No. 2 and 3, Phase IV BIA, Bommasandra Industrial Area, Jigani Link Road, Bangalore-560100 (hereinafter referred to as "Biocon SEZ" or "SEZ unit"). Further, the Appellant has a separate registration for its unit in the DTA bearing GSTIN 29AAACB7461R1ZZ located at 20th KM, Hosur Road, Electronic City, Bengaluru, Karnataka 560100 (hereinafter referred to as "Biocon DTA" or "DTA unit").

The Appellant is engaged in manufacturing of generic Active Pharmaceutical Ingredients (APIs), novel biologics, biosimilar insulins and antibodies. In the present case, the SEZ unit of the Appellant manufactures "Micafungin Sodium" and sells the same as bulk drug to third party DTA units, who in turn use it for injections. Entry No. 180 of Schedule-I of Rate Notification provides that Drugs or medicines covered under List 1 appended to the



said schedule is leviable to GST at the rate of 5% (2.5% SGST and 2.5% CGST). Accordingly, the Appellant is discharging IGST at the rate of 5% on clearance of Micafungin Sodium from its SEZ unit. Thereafter, the said product is sold by the Appellant's DTA unit by charging GST at 5%, which is used by the Appellant's customers for injection.

It was decided by the Karnataka Advance Ruling Authority vide Ruling No. KAR/ADRG 31/2020, dated 4th May, 2020 that the sale of Micafungin sodium by the DTA unit of the applicant is not covered under Serial No. 114 of Entry No. 180 of the Notification No. 1/2017-Central Tax (Rate), dated June 28, 2017, and therefore, is not entitled for concessional rate of GST at the rate of 5%".

AAAR- ORDER

We set aside the Ruling No. NO. KAR ADRG 31/2020, dated 4th May, 2020 passed by the Advance Ruling Authority and answer the question of the Appellant as follows :

“The sale of Micafunign Sodium by the DTA unit of the Appellant is covered under Serial No. 114 of Entry No. 180 of the Rate Notification No. 1/2017-I.T. (R)/C.T. (R) and therefore, is leviable to GST at the rate of 5%”.

(7) The Hon'ble Tribunal Kolkata in the case of VEDANTA LTD vs. COMMISSIONER OF CGST & C. EX., ROURKELA, reported in 2021 (44) G.S.T.L. 99 (Tri. - Kolkata) held that Refund of Service Tax - SEZ Unit - Mere technical discrepancy in the invoices cannot be the ground for denying substantive benefit of refund available to SEZ unit when it is the policy of the Government to exempt or refund the input tax incurred by the SEZ unit - The fact that appellant is SEZ unit is not disputed and receipt of the services is also not disputed as also the payment of Service Tax to the service provider - Regarding re-conciliation of Service Tax payment with evidence of challans, the same was produced and found to be satisfactory - Hence appellant is entitled to refund of Service Tax paid by the service provider - Sections 7 and 51 of Special Economic Zones Act, 2005 - Notification No. 40/2012-S.T., dated 20-6-2012.



- (8) The Hon'ble High Court of Gujarat in the case of **BRITANNIA INDUSTRIES LIMITED vs. UNION OF INDIA**, reported in 2020 (42) G.S.T.L. 3 (Guj.) held that Refund of unutilized credit to SEZ - IGST credit lying in Electronic Credit Ledger - Petitioner being a SEZ making zero rated supplies, unable to utilize the credit of Input Tax Credit of IGST from its Input Service Distributor (ISD) - Input Tax Credit being distributed by ISD, there is no specific supplier of goods and services to file a refund application to claim the refund of Input Tax Credit distributed by ISD - Therefore, petitioner is entitled to claim refund of IGST lying in Electronic Credit Ledger - Respondents directed to process the claim of refund made by petitioner for unutilized IGST credit lying in Electronic Credit Ledger under Section 54 of Central Goods and Services Tax Act, 2017 - Section 16 of Integrated Goods and Services Tax Act, 2017 - Rule 89 of Central Goods and Services Tax Rules, 2017.
- (9) The Hon'ble High Court of Karnataka in the case of **LALITHA MURALEEDHARAN vs. RANGE FOREST OFFICER, IDUKKI**, reported in 2020 (34) G.S.T.L. 102 (Ker.)- SEZ - Supply to SEZ - Deemed export - Zero-rated supply - Exporter of sandalwood products in Tamil Nadu purchasing sandalwood in e-auction from Forest Department in Kerala - GST being destination based tax, therefore, tax finally payable where goods and services are consumed - Petitioner upon completion of other sale conditions although receives the sandalwood logs at Marayoor Forest Department depot, Kerala, acknowledgment of goods there not results in termination of movement of goods but results in further movement of goods at the hands of recipient to SEZ - Accordingly, actual place of supply by plain interpretation of Section 10(1) of Integrated Goods and Services Tax Act, 2017 within SEZ in Madras, State of Tamil Nadu, but not in State of Kerala - Subject supply comes as inter-State movement of goods to SEZ outside the State of Kerala and subject transaction to be treated as a 'Zero-rated supply' in terms of Section 16(1) (b) *ibid* and at par with physical export - IGST not payable.



IMPORTANT CIRCULARS

System Notice – SEZ Online System

No. : NDML/SEZ Online/2019/1 Date: 27th August, 2019

User Group: All SEZ Units and Developers registered in SEZ Online system for required action. DC Offices for information.

Subject: Updation of Bond cum Legal Undertaking details in SEZ Online System SEZ Online System vide Release v2.68 dated 16th June 19 introduced an important control to check validity date of LUT recorded in the system. A New module called “LUT Details Submission” was also introduced to facilitate recording of LUT details (if any LUTs were submitted offline). The system would check the LUT Validity date and allow transactions if the date is valid i.e. not yet expired.

As this was a new control implemented in the system and updated LUT date was not available in the system for many units, a window of 60 days was provided to all Units to review their LUT status in the system and update the same. It is observed that large number and percentage of Units have updated their details in the system and the same have been approved by DC offices. This period is further extended by 15 days up to 31st August 19 for units to complete LUT updation. However, it is observed that many units have still not updated the LUT details. Please note that in case of non updation by August 31st, 2019 access to transaction filing will get restricted.

All units are hereby requested to ensure updation of Bond cum Legal Undertaking in SEZ Online System and get the same approved by DC office by August 31st, 2019. Further, LUT details need to be maintained updated in the system and therefore on every occasion of LOA Renewal, Units should ensure to submit LUT through the system.

For further details: Units are requested to refer Release Note v2.68 available at https://www.sezonline-ndml.co.in/User/SEZ_Online_Release_Notes_V2_68.pdf.



System Notice – SEZ Online System

No.: NDML/SEZ Online/2020/13 Date: 12th March 2020

User Group: All SEZ Units, Developers, Co-developers & EOUs
Subject: Mandatory EPCES RCMC Registration.

As you are aware, membership with EPCES is now compulsory for all the SEZ units, developers, Co-Developers and EOUs as per the below instructions of the Government of India:-

- (i) Gazette Notification G.S.R. (771-E) dated 5.8.2016 which provides that “RCMC means membership certificate issued by Export Promotion Council for EOUs & SEZs and that “The Unit or the developer including co-developer shall obtain a Registration-cum-Membership Certificate for availing exemptions, drawbacks and concessions”.
- (ii) Public Notice 27/2015-2020 dated 26.8.2019 which authorizes EPCES to issue RCMC to Export Oriented Units (EOUs). In view of this all SEZ Units / Developers / Co-developers & EOUs are advised to ensure that RCMC Registration is completed at the earliest.

In view of this all SEZ Units / Developers / Co-developers & EOUs are advised to ensure that RCMC Registration is completed at the earliest.

For the new enrolments and renewals, Units/Developers/Co-Developers can successfully apply for membership of EPCES through online membership software following the below mentioned steps.

Please find below the steps to be followed for obtaining RCMC Certificate:

Login to https://ntrade.in/EPCES_LIVE/NewLogin/asp

(I) Registration Process i.e.

- (a) A login screen appears where members/exporters have to enter their IEC number and the first three letters of the Company Name and Click



- (b) A Digital Signature Certificate (DSC) dialog box will appear. Exporters have to attach their respective DSC token on their machine to login to the system.
- (c) The Digital Signatures Certificate (DSC) will be mapped with exporter login and the member/exporter have to attach the same token while login into the system every time. (In case you face PKI Component error please install the PKI as per below procedure.

Step 1: Download the component from the link:- http://www.ntrade.in/EPCES_LIVE/ComponentError.htm You can download the 32bit component or 64 bit according to your computer settings

Step 2: Run “nCodePKIComponent_Setup_32_bit_java.exe” from the folder

Step 3: If it shows that you do not have JAVA in your system then Install “jre-8u181-windows-i586.exe” from the folder and again install “nCodePKIComponent_Setup_32_bit_java.exe”.

Step 4: Login in Trade and you can view the certificate d) Once successfully logged in, the exporter will be prompted to enter any one option out of the three: i. Add New Member ii. Renewal of Member iii. Renew for same old unit/factory

- (e) After filling in the above information and clicking on “Continue” button the system will take the member/exporter to proceed further to enter the required information.

After entering the complete details of your unit and uploading the required documents, the same will be verified and approved by EPCES and thereafter you will receive an email alert that your membership certificate is ready and you may download it.

This will help in timely submission of your claims for exemption, concessions and duty drawback from the Government.

We hope that you enjoy accessing the new membership software support.



To further help to register your company's data and making the payment for renewal of membership, please visit EPCES website: www.epces.in

In case you need any information or assistance, kindly contact EPCES Head office Telephone: 011-23329766-69 E-mail: membership@epces.in

System Notice – SEZ Online System

No.: NDML/SEZ Online/2020/18 Date: 29 th May 2020

User Group: All SEZ Units

Subject: EGM details Mandatory in Shipping Bills for claiming MEIS

As per the Trade Notice No. 51 issued by DGFT on 29th March 2019, SEZ Online is sending the details of SEZ Shipping Bills to DGFT so as to facilitate online claim of MEIS / SEIS applications. DGFT has now indicated that to ensure completeness, SEZ Shipping Bills may be sent to DGFT only after EGM details are recorded in Shipping Bill data.

Therefore, Units intending to claim MEIS / SEIS benefits from DGFT are particularly requested to ensure that EGM details are updated in SEZ Online system and same are verified by SEZ Customs.

It may be noted that SEZ Online is already sending the Shipping Bills to ICEGATE system and both the systems are designed for automated receipt of EGM from ICEGATE. However, it is observed that the practice of recording of cargo receipt at the port against electronic Shipping Bill data is not being followed and hence EGM is not received from ICEGATE in most of the cases.

System Notice – SEZ Online System

No.: NDML/SEZ Online/2020/23 Date: 30th September 2020

User Group: All SEZ Units, Developers, Co-developers

Subject: Mandatory EPCES RCMC Registration



As you are aware, membership with EPCES is compulsory for all the SEZ units, developers, Co-Developers and EOUs as per the below instructions of the Government of India:-

- (i) Gazette Notification G.S.R. (771-E) dated 5.8.2016 which provides that Unit or the developer including co-developer shall obtain a Registration-cumMembership Certificate for availing exemptions, drawbacks and concessions”.

In view of this all SEZ Units / Developers / Co-developers are required to ensure that RCMC Registration is completed at the earliest.

In this regard EPCES has provided the latest RCMC status and the same is mapped with SEZ Unit LOA status. This is accessible on SEZ Online website for reference. RCMC availability status as “No” indicates no “Active” RCMC exists. Kindly refer the attached sheet and validate your status, apply / renew RCMC if it is still pending to avoid any inconvenience. SEZ Online will shortly raise alerts at transaction level if RCMC is not available.

Units/Developers/Co-Developers can apply for membership of EPCES through online membership software following the below link:

Login to http://ntrade.in/EPCES_LIVE/NewLogin/asp

To further help to register your company’s data and making the payment for renewal of membership, please visit EPCES website: www.epces.in

In case you need any information or assistance, kindly contact EPCES Head office Telephone: 011-23329766-69 E-mail: membership@epces.in

System Notice – SEZ Online System

No.: NDML/SEZ Online/2021/27 Date: January 4th, 2021

User Group: All SEZ Units, Developers, Co-developers

Subject: Auto-Population of IGST paid amount for SEZ DTA Sale BoE in GSTR2A



SEZ Online System has been sharing the details of supplies made by SEZ Units to DTA Units under Bill of Entry with GSTN through ICEGATE since July 2017. ICEGATE has completed its arrangements with GSTN to auto-populate the same in GSTR of DTA Buyer (Importer) for BoE information shared by SEZ Online System. Data of BoE transactions from April 20, in which IGST is paid and Out of Charge is marked by SEZ Customs will be autopopulated in GSTR 2A of DTA Buyer.

Ministry of Finance has issued attached Press Release which confirms that SEZ – DTA BoE will be reflecting in GSTR. Subsequent to this press release, we have been in touch with officers in GST Policy Wing as well as ICEGATE and recently they have informed that processing of BoE has commenced at their end.

In view of this SEZ Units / Developers / Co-developers are requested to inform their respective DTA buyers to check their returns. We understand that reflection is happening in sequential order starting with April 2020.

In case of any queries pertaining to non-availability of data in returns, you may write to ICEGATE helpdesk at icegatehelpdesk@icegate.gov.in & report it to GSTN through <https://selfservice.gstsystem.in/ReportIssue.aspx>. You are requested to mark a copy to sezinfo@nsdl.co.in

System Notice – SEZ Online System

No.: NDML/SEZ Online/2021/28 Date: January 15th, 2021

User Group: All SEZ Units, Developers, Co-developers

Subject: SEZOnline RoDTEP Provision Attention of SEZ units is sought towards Press Release dated (31st December 20) regarding commencement of RoDTEP scheme effect from 1st January 2021 subject to exclusions, conditions. At this stage, it is not clear if this scheme is applicable to SEZ exports or not and reference has been made to the competent authority in this regard. While confirmation is awaited, kindly follow below steps for indicating



intent of claim of scheme benefit At item level select: • Scheme Name as : Remission of Duties and Taxes on Exported Products • Reward Scheme Request as YES In remarks section of Shipping Bill , capture “Shipping Bill filed under RoDTEP scheme if applicable to SEZ units & subject to such conditions as prescribed including the product coverage”

Kindly note that selection of above option is subject to confirmation on applicability of RoDTEP scheme to SEZ exports. In case SEZ exports come under ineligible category, above selection will be treated as null & void. In case it is allowed, provision would be made for providing data of such Shipping Bills with concerned system for further claim processes.

System Notice – SEZ Online System

No. NDML/SEZOnline/2021/39 Date: 28th April 2021

User Group: All SEZ Units, Developers, Co-developers

Subject: Resuming of Online duty payment option As per information received from ICEGATE team, technical exception between connectivity of ICEGATE & RBI Systems which lead to payment reversal or payment not getting updated on ICEGATE portal has been resolved. You may proceed with online payment accordingly.

Kindly note that for the payments made up to 20th April 21 which are still shown as pending on ICEGATE portal enquiry screen and payment has not yet reversed to account, you are requested to write to gstcellmumbai@rbi.org.in & padmumbai@rbi.org.in keeping sezinfo@nsdl.co.in in CC.

FAQs

FREQUENTLY ASKED QUESTIONS

Introduction:

1) What is SEZ online System?

SEZ Online System is an e-governance initiative of Ministry of Commerce and Industry for setting up a nationwide uniform platform for carrying out Administrative and Customs requests of the SEZ Units / Developers under the purview of SEZ Act and Rules with SEZ (Special Economic Zones) Authorities. The objective is to bring in transparency, efficiency, reduce paper, ensure authenticity of information, adherence to applicable compliances and business rules and provide a robust system for storage and reporting of data.

2) From where can I access the SEZ online System?

SEZ Online System is a centralized web-based system for all SEZs in the country and can be accessed from any machine where internet access with sufficient bandwidth is available. The web address for the SEZ Online system is <https://www.sezonline-ndml.com/>.

3) What are the hardware requirements of SEZ Online System?

Hardware: User needs to have a Computer and internet connection for accessing SEZ Online system and a printer to take copies of administrative and customs documents viz. application form "F", softex form, bill of entry etc.

Software: Transaction processing is enabled through Internet Explorer Version 7 and above and Operating system should be Windows XP and above.



4) How safe are my requests/transactions on SEZ online System?

SEZ Online is a secure information processing system. Security of the system is based on the various levels of authorization and authentication for allowing access to information as well as technical features used to ensure safety. State of art internet security features are enabled in SEZ Online System which ensures authenticated access to system and adherence of security and confidentiality of information.

Units are registered and given access to the system only after review and approval by DC Office. Only authorised users of the Unit/ Developer can submit transactions to the DC office. All transactions are Digitally Signed by the authorised user. All data transmission between the website and the client browser is encrypted. Best known security policies and practices are adopted to ensure system security.

Strong Password Management policy including password complexity structure, password expiry, password history etc. is implemented. Change of password every 45 days and non-allowance of repetition of previous three passwords are very important password protection measures enabled in system.

Registration:

1) Why do we need to register details in SEZ Online system when we are an existing SEZ Unit/developer/co-developer approved by DC Office/MOCI ?

In Special Economic Zone every entity (i.e. unit, developer, co-developer) is differentiated by distinct Letter of approval/ permission number and PAN and IEC number and SEZ under which it is authorized to carry out operations. All performance monitoring and reporting is distinguished on basis of this unique combination. With this view System mandates one time registration for existing entities to ensure uniqueness based on their LOA Number, IEC, PAN and applicable SEZ under which they have been assigned approved by respective DC offices. Various



administrative applications and customs transactions require information of entities verified by DC offices viz. LOA Number, LOA expiry date, IEC number, PAN number, items authorized for export as per LOA. Entire information is validated in SEZ Online System through registration module where information furnished by company is scrutinized and digitally approved by respective DC offices.

2) As a SEZ Unit how do we register and use SEZ Online system?

SEZ units which are already approved i.e. those which have received Letter of Approval/Permission from respective Development Commissioner's office can use Unit Regularization Module to get registered in SEZ Online System. Units need to send scanned copy of Letter of approval/permission and Annexure A (available on SEZ Online Website homepage) to sezinfo@nsdl.co.in. NDML will incorporate the LOA details in the system and give confirmation to user for proceeding with registration. At the time of Unit Regularization, user needs to enter LOA no as provided to NDML and the same will be validated by system for creation of user ID. Detailed usage manual of this module is available at :

New applicant companies which are applying to set up a new unit to applicable DC offices have to use New Unit Application module where system generates form "F" as stipulated in SEZ act/rules. Print of this form "F" can be submitted to DC office along with supporting documents on completion of online submission

3) How do I create user ID and password in SEZ Online System?

User has to create user ID and set password of his choice at the start of registration process For existing unit/developer/co-developer regularization in system, link: **Existing Unit / Developer / Co-Developer Registration** and for new application link: **New Unit / Developer / Co-Developer Registration** needs to be used

On clicking on applicable links, user ID creation form will be displayed where users will have to enter user ID and password along with other details viz. phone no, email id. On creation of user



ID, user needs to login with the set credentials for proceeding with capturing of the registration details.

It is important to maintain these User login credentials safely as these would be needed for accessing the system, replying to queries received to your application for registration and creating functional users in the system after completion of registration for filing customs transactions.

4) What is LOA reference No.?

LOA reference No. is a reference number of Letter of Approval issued by the DC Office to the Unit. This field will accept only numeric data. E.g. if LOA number is DJ/SEEPZ/2008-

09/91, user is required to capture 91 as the LOA reference number.

5) What does it mean by SEZ unit short code?

Unit may capture code of their own choice in this field.

6) Does Creation of user ID mean registration is complete?

No, user ID creation is the first step for proceeding with registration. On creation of user ID, user needs to click on the User Login link available on the website and update the registration details viz. unit name/ address, registered company name/address, IE Code, PAN, list of items authorized for export and finally submit the application to DC office for approval. Registration will get completed after review and approval of the details by the DC Office. Do review the status of your application regularly as DC Office might raise certain queries which need to be replied at your end. You will also receive an auto-generated email when discrepancy is raised or registration request is approved by DC office. (Note: Ensure that valid email ID is capture to ensure receipt of email notifications)

7) Do I require Digital Signature Certificate (DSC) for submission of Registration request?

No, Digital Signature Certificate is not required for submission of registration request.



8) While creating user id, I am entering unit's LOA number, but when I submit it, the system shows "invalid LOA". What do I do?

System shows this message when incorrect LOA number is captured by user at the time of creation of user ID while proceeding with regularization. Please make sure whether format of LOA i.e. space, characters and symbols entered are exactly as mentioned in LOA issued. We recommend to capture LOA number exactly as mentioned in the confirmation received from SEZ online helpdesk which says you can proceed with registration.

9) How can a unit check LOA expiry date captured in system?

Unit has two options to check LOA expiry date captured and validated in system.

1. Login with approver user ID: Open the request through search request link available by capturing request ID, open the request. Expiry date is available in top right corner.
2. Login with maker/approver user ID: Click on entity details link to view the expiry date

10) How to check the status of registration application?

A unique identification number will be generated on creation of request (saving the information on registration page), which is called Request ID. Please take note of the same. You can also check the status of the request using search functionality. From the home page, user shall click on **Search Request** link. With the help of this request id, you will be able to track the application status. We request users to quote this request ID for any queries, correspondence pertaining to request submitted.

11) How can I resolve the discrepancy raised by DC Office in the registration request?

If deficiency is raised by the DC office, you will get an email notification on your email id provided during the registration. The request will be available in your SEZ Online Inbox to review



the deficiency, make correction / provide necessary documents (as requested) and submit the request again. The details of the deficiency raised by DC office can be viewed by clicking the Remarks History link.

12) We have got multiple units approved for our company across different SEZs, can we make common registration for all?

Each SEZ Unit is required to be registered separately with unique LOA/LOP number. Each of these requests is reviewed independently by the respective DC Offices.

13) Is it mandatory to capture date of commencement of production in unit regularization?

This date needs to be captured only when unit has commenced their operation which also means unit has sent a letter to DC office indicating start date of export transactions.

14) What does it mean by Does unit use LUT facility?

If unit has already furnished bond cum legal undertaking and has been already approved, yes needs to be selected and bond details need to be captured. No, needs to be selected if bond is yet to be submitted to DC office.

Payment Procedures:

1) When should unit/developer/co-developer make the payment?

Once registration is approved by DC office/MOCI (in case of developers/co-developers) , an email notification will be received by email ID recorded at the time of registration. Upon receipt of this email, payment can be made and details should be captured in SEZ Online System.

2) What is SEZ Online Fee structure?

Fee structure is available on <https://www.sezonline-ndml.com/fee-structure.htm>



In order to facilitate the Units to pay their transaction charges, SEZ Online system enables the Units to maintain a Top-up Deposit for using it at the time of submission of customs transactions. Based on the expected system usage fee, Units can make deposit payments and as and when Units submit chargeable transactions the system debits the transaction fee from this amount. Users can set threshold limit for top-up balance where an alert is sent to user to replenish top-up balance when balance reaches set amount.

Further information regarding payment module is available on SEZ Online System Home

Page >> Downloads>>General >> Payment Manual V2.0.

3) Though I have made payment, credit is not received in SEZ Online System?

Users need to ensure that correct payment entry is made in system when they make the payment by Cheque, Demand Draft or NEFT transaction. If correct entry is not made, credit for the realized amount cannot be provided.

4) I am getting an alert for making AMC payment, what do I do?

Annual maintenance fee is applicable every year and system sends an email alert as well as shows a notification on login page when AMC is about to expire. You need to make applicable AMC payment and capture AMC details in system to stay active in system.

5) How can I check the current top up balance/transaction history for my unit?

Please log in with Approver ID and click on SEZ Online Payments >> Account Deposit link to view the balance amount. User can also view transaction history, which indicates date wise debit and credit entries for all the transactions with payment category viz. Registration, AMC, Top-up & Customs transactions.

6) Where can I get NDML account information for the payment?

Link is available on log in page which contains all the payment modes viz. Cheque, DD, NEFT and relevant account information.



We recommended NEFT transfers for faster realization and credit. Kindly note that Cash payments are not accepted.

7) How can I get receipt for registration / AMC / Customs transactions?

You need to go to Transaction History report under SEZ Online Payment link

First fetch the report for desired period (Maximum period allowed is 30 days). Report will provide for field called Transaction ID in hyperlink. When you click on it, a receipt will be generated

User Management:

1) Which are different types of users in system?

Creation of admin and operational Users:

There are four types of users in system:

- A) Applicant user: User ID created for initiating registration request.
- B) Unit/developer/co-developer admin user: Upon approval of registration and authorization of fee payment, user needs to click on create admin user link where system prompts user to create new admin user or make applicant user as admin user. This means user created for registration can be made admin user.

Using admin user, maker, approver and CHA users can be created for creation and submission of various administrative and customs transactions.

- C) Unit/developer/co-developer maker user: User for creation of administrative and customs transactions
- D) Unit/developer/co-developer approver user: User for review of transactions created by maker/CHA and onward submission to DC office using digital signature certificate.
- E) CHA user: User for creation of customs transactions.



2) When can I create users in SEZ Online System for processing transactions?

User creation is enabled in system once registration and AMC payment process is completed.

How do I proceed with creation of user IDs in system?

On authorization of registration+ AMC payment by NDML, login with user ID through which registration request was submitted. You will see a link "Create Admin". Click on it. You will get two options a. Make me admin b. Create new admin

- Select Make me admin if you want to keep existing user ID as your admin ID
- Select create new admin if you want to create a new ID to work as admin ID (Note that existing ID will get disabled on creation of new ID)

Once admin ID is created, you can create following three categories of user IDs for transaction processing using **Administration >> Maintain users** link available to admin ID:

- Unit Maker (User ID for unit officials for creation of administrative and customs transactions)
- Unit Approver (User ID for authorized signatory of unit for submission of transactions to DC office using Digital Signature Certificate)
- CHA (User ID for officials of your CHA company for creation of customs transactions). CHA user will neither have access to administrative transactions nor will have access to transactions created by other users under the same unit. CHA Users can prepare the Customs transaction but cannot submit the same to DC Office. Approval of the transactions is to be done by Unit Approver.

Please ensure to register correct details including Email IDs of the Users. SEZ Online System / DC Offices will need these details for communicating with you.



3) How can admin User create and assign roles and functionalities?

Admin user can assign role and functionalities to maker, approver, CHA user on user ID creation page firstly by selecting appropriate role and then assigning relevant functionalities available by selecting check boxes against functionality names. Please refer to User Management manual at <https://www.sezonline-ndml.com/pdf/User-Management-manual-version-2-0.pdf>

4) Can I create multiple maker/approver and CHAs users IDs?

Yes, multiple maker, approver and CHA user IDs can be created using admin ID of unit, developer, co-developer

5) Can multiple functionalities be assigned to a user ID?

Yes, multiple functionalities can be assigned based on company structure, department and individual roles carried out by an official for whom user ID is getting created?

6) Can I assign multiple roles to same user ID?

No. Separate user IDs need to be created for maker and approver role.

7) How can I log in if I have forgotten my password?

You need to reset the password in case you have forgotten it by below guidelines:

1. Click on “Forgot Password” Link available below login section
2. Enter user ID and click on Submit
3. System will ask you for the answer of hint question which you had set at the time of creation of user ID.
4. If your answer is correct, system will prompt you to set new password.

8) What shall I do when I cannot recollect my user ID?

If you do not remember your admin user ID password, you need



to send an email to (sezinfo@nsdl.co.in) with your unit name, LOA number and SEZ name.

If you are a maker, approver or CHA user, kindly contact your administrative official possessing admin user ID to provide you user ID and password.

9) I am getting the message “This User ID is Locked.Please contact your Administrator“ while login, What shall I do?

Reasons for your user ID getting locked are as below:

- If you enter wrong password for 5 consecutive times
- Unit admin user purposely locks your user ID

If your admin ID is locked, send an email to Sezinfo@nsdl.co.in requesting for unlocking of user ID

10) What are the measures I can take to ensure greater security?

- I. You should log-out from the SEZ online system when not using the application or being away from your computer.
- II. Always change your password on periodic basis, choose “strong” 8 to 18 digit passwords (alphanumeric) and change them regularly; avoid obvious passwords (names of family members, pets, favorite musician etc), and avoid sharing of your passwords.
- III. You should not write passwords on paper which may be easily accessible to others.
- IV. Secure your machine with a power-on password and network access password.
- V. Have a screensaver password so that when you are away from your workstation nobody else can access it.
- VI. If you think someone knows your password go online and change it immediately.
- VII. If you are using the Internet in a public place (e.g. a Cyber



Cafe) do not leave the PC unattended, and ensure that no-one is watching what you type.

VIII. Enable password for use of Digital Signature Certificate (DSC) so that nobody can use your DSC.

IX. Do not save your passwords in your internet browser cache.

Note: A detailed User management manual is available on SEZ Online System Home Page in downloads section Downloads>>General >>User Management Manual V2.0

Installation of Digital Signature Certificate and browser Settings:

1) What is a Digital Signature Certificate and why is it required for signing the online transactions?

A Digital Signature is an electronic signature used to authenticate the identity of the sender of a message or the signer of a document and to ensure the original content of the message or document that has been sent is unchanged. In SEZ Online System transaction submission using Digital Signature Certificate has been implemented to ensure that the document is signed by deputed authorized signatories of the company and has been approved by Authorised Officers of DC Office.

2) How do I get a Digital Signature Certificate?

The Office of Controller of Certifying Authorities (CCA) has stipulated list of authorized Certifying Authorities, who can issue Digital Signature Certificate to you. You can approach any one of the these CAs for getting Digital Signature Certificate. The website addresses of few of these agencies (as are issuing DSC to general public users) are given below:

- a. Tata Consultancy Services (www.tcs-ca.tcs.co.in)
- b. Safes crypt (www.safescrypt.com)

The detailed procedure to procure the DSC with charges is available on their respective websites.



3) What are the different classes of Digital Signature Certificates and which one I should procure to process transaction on SEZ Online System?

There are following four widely used DSC classes available:

Class 0 Certificate: This certificate shall be issued only for demonstration/test purposes.

Class 1 Certificate: Class 1 certificates shall be issued to individuals/private subscribers. These certificates will confirm that user's name (or alias) and E-mail address are unique within the Certifying Authorities database.

Class 2 Certificate: These certificates will be issued for both business personnel and private individuals use. These certificates will confirm that the information in the application provided by the subscriber does not conflict with the information in the Certifying Authorities database.

Class 3 Certificate: This certificate will be issued to individuals as well as organizations. These are high assurance certificates, primarily intended for e-commerce applications.

Note: You should procure either **Class 2** or **Class 3** Digital Signature Certificates.

Note: [A detailed DSC manual is available on SEZ Online System HomePage in downloads section: Downloads>> General >> DSC Manual V2.0](#)

Admin Modules Which admin transactions can be processed through SEZ Online system?

Administrative Modules	Purpose
Unit/Developer/Co-Developer Regularization	Regularization of existing SEZ entities
New Unit / Developer Application	Application by unit/developer to DC office/MOCI to setup unit/SEZ respectively
LOA Extension Request	Application to DC office for extension of LOA validity date



LOA Renewal Request	When LOA period of five years is about to expire, unit needs to apply for LOA Renewal.
Submission of Annual Performance Report to DC Office	Performance report which needs to be submitted to DC office annually
New LUT Request	First Bond cum Legal Undertaking (after approval of unit by DC office) needs to be submitted using this module
Update LUT	Fresh Bond cum Legal Undertaking (Fresh LUT to cover further imports/ procurements) needs to be submitted using this module.
Free Form	Application to be made / permissions to be sought from DC office which do not have notified format
Monthly details of Investment, Employment	Furnishing of monthly details of Investment, employment & software exports made (for IT / ITeS Units) in ₹ Crores.

Customs Modules:

Which are all the Customs modules available in the system?

Customs Modules	Purpose
Bill of Entry	Filing online Bill of entry and submission to customs. System facilitates Online Assessment and Out of Charge.
Shipping Bill	Filing online shipping bill for physical exports System facilitates Online Assessment and Let Export Orders.
DTA Sale	Filing online Bill of entry for sale to Domestic Tariff Area unit. System facilitates Online Assessment, recording & verifying of duty payment and Out of Charge. The module also facilitates sale of goods to EOUE, STPI, BTP, EHTP clients and for clearances to Bonded Warehouse, Other NFE Supplies.



DTA Procurement	To procure goods form the DTA Unit under invoice/ ARE-1 but with no claim for export benefits.
DTA Procurement with Export Benefit	Filing online bill of export for procuring goodsfrom domestic suppliers under claim of export benefits. viz. advance authorization, drawback
Temporary Removal	To send the material/ goods on temporary basis. (SEZ Rule 50 & 51)
Sub-Contracting	To send material/goods for job work (Rule 41 & 42)
Zone to Zone Transfer Form	To procure goods from the unit/developer/ co-developer belonging to other SEZ
Intra SEZ Transfer	To transfer goods from one unit to another unit within same SEZ
Gist of Contract	To submit summary of softex contract with a client for providing software / services
Softex	For submission of RBI specified declaration for details of software exports
Free Form	This module can be used for submitting request to DC Office for online amendment and cancellation of customs transactions for already assessed requests

Detailed manual for all the modules is available at the link: <https://www.sezonline-ndml.com/downloads.htm>>> Manual and file format:

Transaction Filing and Processing:

1) Who can create transaction in SEZ Online System?

Unit/developer/co-developer Maker/CHA user can create transaction (based on the role assigned by Admin user ID) for the respective modules. Unit Approver can submit the transaction to DC office with Digital Signature Certificate.

2) Do entity maker / CHA users require Digital Signature Certificate (DSC) for transaction submission?



No, maker and CHA users do not require digital signature for submission of requests to approver.

3) What are the ways in which data of various customs transactions can be entered in the system.

SEZ Online system enables users to capture customs transaction in three ways:

- Field wise manual data entry where entire information needs to be captured manually after logging in.
- Using item upload facility where items applicable under an invoice can be uploaded using excel based macro tool available. Uploaded item details can be edited for correction from user interface.
- Using back office file upload facility where you can use your in-house or vendor developed transaction generation tool to generate a flat file in file format specified by NDML. Such files can be directly uploaded in SEZ Online System which negates need for manual field wise data entry. On upload system generated unique request ID in which entire information stays editable for correction if required by user. File formats are available at link: <https://www.sezonline-ndml.com/downloads.htm>>> Manual and file format:

4) Can I upload items in a customs transaction in SEZ Online System?

Item upload facility is available for below modules:

Bill of Entry, Shipping Bill, DTA Sale, DTA Procurement, Sub Contracting and Zone to Zone Transfer.

If there are many items within an invoice, it may be a time consuming exercise for the user to enter the details of each and every item using the screens of SEZ Online system. A facility has been provided to upload multiple items in an invoice using excel based macro which saves a lot of time and efforts. On upload of items users can add, delete, and edit details of uploaded data by going to user interface.



Macro can be downloaded from link <http://www.sezonline-ndml.com/downloads.htm>

5) What is back office file upload and how to use it?

In SEZ Online System back office file upload facility has been provided which enables users to upload complete transaction in system. This facility negates need for creation of transaction by keying in all fields in individual requests. This facility can be used by companies which have their in-house transaction generation software or vendor tool for creation of transactions. IT teams of respective companies can use file formats made available on SEZ Online Website homepage for making necessary development to generate output file from their tool compatible with SEZ Online Formats. The upload format can be downloaded from this link <http://www.sezonline-ndml.com/downloads.htm>.

6) Is it possible to attach supporting documents along with customs transactions which are being created?

While creating customs transactions, supporting documents viz. invoice, packing list, certificates, if any can be attached. These documents should be in excel or pdf only. It is an optional feature where along with field level information, supporting information can be attached which would facilitate customs while assessment of request.

7) When does noting number get generated in Customs transactions?

Noting number gets generated when you submit the transaction using Digital Signature

Certificate and it gets validated on server.

8) When Can I take print?

Print can be taken from SEZ Online system once transaction is submitted by entity approver. i.e. On successful verification of DSC on Server.



9) How can I take the print out?

Print out needs to be taken using search link available to you.

You need to capture request ID of submitted request or select desired request type and click on search to get the request. Open the request to get print button option.

Note: Request submission date should fall between date range set as input criteria to retrieve the request for print.

10) Which users can take the print out?

Print out can be taken from maker/CHA user ID who creates the transaction and approver who digitally signs it using search request function. Kindly note that print is enabled only when transaction is submitted by approver using digital signature certificate.

Bill of Entry:

How does the SEZ Online Module for filing Import Declaration (Bill of Entry) works and what are the facilities available in the system (other than General facilities covered in General facilities module).

1) If I am importing from bonded warehouse, which transaction should I file?

You should file Bill of Entry transaction and in the BOE details tab you should select “Bonded Warehouse” from the drop down for the “Source of Import” field. Bill of Entry module needs to be used for imports/procurements from following sources:

- a. Abroad
- b. EOU
- c. STPI
- d. BTP
- e. EHTP
- f. International Exhibition in India



- g. Sub-Contracting/Temporary Removal Abroad
- h. Unsold goods returned from exhibition abroad
- i. Unsold goods returned from showrooms in international airports in India
- j. Unsold goods returned from showrooms abroad
- k. DTA Unit – Load/Lease basis

2) Can I edit Bill of Entry after submission of the request to Customs?

There are following two scenarios:

Scenario 1: If the request is not approved

You can approach Authorised Officer and request him / her to raise a query for the request. The request will come back to approver ID and you can make the desired corrections and submit the request to customs again.

Scenario 2: If the request is approved

You may file an amendment request through “Free Form” and explain the reasons / submit necessary documents for amendment. DC Office will review the request and effect necessary amendments, if found appropriate.

3) I am getting the message “Invoice value does not match with the corresponding sum of Item Value”. What should I do?

This alert will be shown to you when sum of value of all item/ captured by you does not match with invoice value entered in invoice section.

4) Currency for my transaction is Indonesian Rupiah, I do not find this currency in currencies available in invoice section, how do I file the transaction?

User will be able to find all the standard currencies in the Invoice tab. In case user is dealing in non-standard currencies, a facility is available in SEZ Online System where non-standard currency can



be added. A checkbox is available in BOE tab which says “Add non-standard currency for filing BOE”. You need to select checkbox and add nonstandard currency details viz. desired currency name from dropdown, currency code, exchange rate and other relevant details, exchange certificate number. Upon saving this information, required currency will be available in currency dropdown of invoice section.

5) What should I do if (Port of Origin) is not there in the list?

The port of origin can be selected using the Search facility provided. If the port name is not present in the search window, then tick the checkbox of ‘Mark the box “if port of origin is not available in search”’. Then, the ‘Port of origin’ field becomes editable and the port name can be entered manually.

6) How do I mention if Re-import or Previous import is applicable?

The relevant checkbox available in the Item details tab has to be ticked; if applicable. As the checkbox is ticked, the relevant fields will be displayed wherein the details of re- import or previous import can be entered.

7) Can I complete Re-warehousing for multiple requests at one time?

Yes. You can click on Re-warehousing completion link available to entity approver, specify the date range and click on search. All the requests from selected date range where re-warehousing completion is applicable will be available to the user. You can select all/multiple requests together and click on “Re-warehousing completed” button. You will get the message “details saved successfully” post closure of Re- warehousing of the selected requests.

8) How can I see the status history of the request for any transaction submitted to DC office?

You can search the request through the Search screen, open the request for which you want to view the history, the “View Status



History” link is available at the bottom across all the tabs. This feature will show statuses through which request has passed , the date and the user who marked the status.

DTA Sale:

1) When do I use DTA Sale module?

When your SEZ entity is selling goods to below category of end users, DTA Sale module needs to be used

- DTA
- EOU
- STPI
- BTP
- EHTP
- Bonded Warehouse
- Other NFE supplies

2) When do I pay the duty and capture the same in system?

When your bill of entry is approved by customs and they instruct you to pay the duty, duty needs to be paid in bank authorized to collect duty and capture the details of TR-6 challan in system and submit it to customs for verification of duty payment and clearance of goods.

Zone to Zone Transfer:

1) Which module I need to use when I am procuring goods from a unit/developer/co- develop perform some other SEZ?

When SEZ entity wants to procure goods from another entity belonging to different SEZ then Bill of entry needs to be filed using module Zone to Zone Transfer module. Here user needs to select SEZ of selling entity in place of origin field in shipment details tab.



On selection of correct SEZ, user will get list of entities under SEZ in invoice details tab under supplier details.

Shipping Bill:

1) What is AD code?

The full form of AD code is “Authorised dealer “code which is allotted by RBI to bank branches in order to identify the branch in which export remittance is received/going to be received. While filing shipping bill user needs to capture AD code of bank branch where company account is held and where export remittances are about to be received.

2) I am exporting on behalf of a third party? How do I file shipping bill document?

If you are exporting the goods on behalf of and in the name of a third party, the details of such party needs to be provided in the shipping Bill. In this case you should select the

‘Type of Shipment’ as Third Party Export in the system and mention the Name, Address

& IE Code of such third party. The name and address of the third party will get printed in the column called as ‘Exporter’ on the Shipping Bill & GR Form generated from SEZ Online System & the name of the SEZ Unit will get printed at the bottom of the Shipping Bill (above the declaration).

3) I have additional information to be printed on shipping bill. How can I do that?

You can enter additional information in Remarks to be printed on the document option provided in General Details Tab. This field has been provided to enable the unit to enter any other information which needs to be printed on the face of the document. The contents of this field are printed on the document. The length of this field is 400 characters.



4) Is EDF Form generated by SEZ Online system? What is the procedure to get it?

User needs to generate the EDF Form numbers from RBI website, a quick to the same is provided on the User Login page..EDF number generated has to be captured while filing shipping bill through SEZ Online System,

5) I am exporting the goods which were imported earlier from abroad, how do I specify these details in the system.

In such kind of transactions, Re-export check box available in Itemdetails tab has to be selected (if any goods brought into the SEZ and to be sent back because of some reason such as Repair/Defective piece sent back). The checkbox has to be ticked, if applicable. As the checkbox is ticked, the relevant fields will be displayed wherein the details can be entered.

DTA Procurement:

1) Which transaction I should file when I am procuring goods from domestic tariff area/local market?

When any SEZ entity is procuring goods from Domestic Tariff Area unit on basis of ARE-

1or invoice only, DTA Procurement module needs to be used.

2) Can multiple ARE-1 documents be filed in same transactions?

A separate transaction needs to be filed for every ARE-1

3) Does system generate ARE-1?

No. User needs to get it from Central Excise and update the details in system while filing transaction.

DTA Procurement with Export Benefit:

1) When should I file DTA Procurement with Export Benefit transaction?



This module needs to be used when SEZ entity is procuring goods from domestic Tariff Area unit where DTA unit is selling goods to SEZ unit by claiming export benefits i.e. against a license viz. Advance License, EPCG, issued to them by DGFT or for claiming drawback benefits.

2) Where can I select export benefit scheme in system?

In general details tab, “type of scheme” field is available. You need to select scheme from dropdown options available.

3) Where can I capture license/drawback details?

Facility for capturing license/drawback details is available in item details tab and these details have to be captured at item level.

Based on scheme selected, appropriate fields will be displayed at item level.

4) How do I take print of bill of export in a format as applicable by license?

At the time of creation of bill, you need to select print type format in which you desire to present print to customs. Following types are available:

- I. Drawback
- II. Dutiable
- III. Duty free Goods
- IV. DEPB

Note: Once request is saved, you will not be able to change the format.

5) I have selected, wrong scheme and need to correct it, how do I do that?

Scheme once selected and saved, cannot be changed and an alert is also provided on selecting scheme name to ensure selection of



correct scheme. User needs to cancel incorrect bill and create a new bill by clicking on DTAP-Ex link.

Temporary Removal:

1) Is module for temporary removal available in the system?

Yes, As per SEZ Rules 50 & 51, temporary removal module is designed which enables SEZ

units to take good out of SEZ on temporary basis for purposes authorized by SEZ rules.

A necessary workflow and intelligence is set for partial, complete entry of goods sent out as well as facility for seeking extensions beyond 120 days and facility of capturing duty details in case of default in bringing goods back within 120 days is made available.

2) I have sent goods out however they will return in parts and not in single lot, how to make such entries?

When user submits request, customs will provide pass out to request upon which request will come back to unit for partial closure, complete closure or seeking extension of return period.

You need to go to item re-entry tab, select option as partial and capture quantity of items returning and submit again by selecting option request re-entry.

3) I have sent 100 items out, however only 70 are returning, rest have damaged in transit and destroyed thereof. How do I close my request?

You need to select option Complete in Request re-entry tab. However, on capturing quantity lesser than what was sent out, system will ask you for reason for shortfall. User needs to capture it and submit request by selecting option close request.

4) How would I track closure of my request?

An alert is set in system which reminds user to bring goods back



within 120 days. Alert e-mail is sent 30,15 and 7 days prior to date when 120 days are going to get complete from the day when customs provided pass out. A status report is also available for tracking status of temporary removal requests.

Sub-Contracting:

1) Can I file Sub-contracting requests in SEZ Online System?

As per SEZ rules 41 & 42, a sub-contracting module has been designed in SEZ Online System which enables units to file transactions where SEZ entities are sending goods out for job work.

2) When goods being received are same as per the declaration, do I need to re-enter the details and does it require re-approval from customs?

When goods being received are same as per the declaration, there is no need to re- enter the goods details again, you can select the check-box that goods received is same as per the declaration in the item details tab and the items will be populated based on the declaration.

3) “Goods in” details declared at the time of goods being sent out of SEZ for subcontracting may differ from actual goods received after subcontracting. Is there any provision for handling this scenario?

Yes, when goods in details declared while sending the goods out and actual goods returned are different, you may specify the changed details once goods are returned after sub-contracting. In all such cases the transaction will move to assessing officer’s inbox for his approval out and returning goods are different, you may not select the check box goods received is same as per the declaration and you will be allowed to enter the goods-in details, in all such cases the transaction will move to assessing officer’s inbox for his approval.



4) How would I track closure of my request?

An alert is set in system which reminds user to bring goods back within 120 days. Alert e-mail is sent 30,15 and 7 days prior to date when 120 days are going to get complete from the day when customs provided pass out. A status report is also available for tracking status of temporary removal requests.

Intra SEZ Transfer:

1) What is Intra SEZ transfer and what is its relevance?

Intra SEZ Transfer is the process of transferring/selling goods by one SEZ Unit to another SEZ Unit within the same SEZ. In an Intra SEZ transfer transaction, the unit who is sending the goods to the other unit (called as the supplying unit here after) has to initiate an Intra SEZ Transfer transaction in SEZ Online system & the other unit who is receiving the goods (called as the receiving unit here after) has to accept the request to close it or raise query in case of mismatch found after receipt of the goods

2) What kind of transaction can be carried out through Intra SEZ?

Transfer of goods for the following kind/ nature of transactions can be recorded through this Module of SEZ Online System:

- I. Purchase/Sale
- II. Subcontracting
- III. Temporary Removal
- IV. Transfer of ownership of goods
- V. Purchase of precious metals from Nominated Agency

Softex & Gist of Contract:

1) How to create a softex form as notified by circular No. 43 dated 13th September 13 by Reserve Bank of India?

SEZ Online system enables users to file softex in revised format as per stated circular. User needs to login with maker ID and



access softex form link to create it (Ensure that softex functionality is assigned to both maker and approver by admin user). On clicking on softex link, softex form will be displayed where details pertaining to period within which invoices dates lie and for which softex form is getting filed, Authorized dealer details need to be captured manually.

An excel macro has been made available at below link which enables user to upload invoice details.

<https://www.sezonline-ndml.com/downloads.htm>

2) What is difference between single and bulk softex?

Single softex needs to be selected when softex is getting filed for invoices raised for same client and same currency.

Bulk softex enables you to file softex forms for multiple invoices which are raised for multiple invoices having multiple clients and currencies.

3) What is gist of contract?

SEZ Online system enables SEZ units to capture summary i.e. gist of softex contract with foreign buyer.

4) AD code available with me is 14 digit number but SEZ Online system shows 7 digit codes only. How do I know AD code of my bank?

Kindly note that first 7 digits of 14 digit code available with you need to be searched and selected for AD code.

System Security:

1) Can I login with same user ID on multiple sessions simultaneously?



No, simultaneous log-in sessions using same user ID from various machines is not a good security practice and should be avoided. SEZ Online has been designed to allow only one live session per User ID.

2) Why does my password get expired every month?

As a recommended internet security practice, system is designed for mandatory password reset every 45 days. Hence you get password expiry alert every 45 days to ensure change of password.

3) How do I change password purposely before such period ends?

You need to login and click on Change password link under preference section on login page. System will allow you to change and set password of your choice provide it meets set criteria.

4) What combination of characters I need to choose for setting passwords?

Yes, you can't put any password. It should be at least eight character long and should contain at least one alphabet in uppercase, once special character (e.g. \$,%) and once numeric digit unless you ensure these checks system will not allow you to set or change the password.

5) Why does my session gets expired if it remains unattended?

SEZ Online System is built to allow idle time of 30 minutes per session per login without session expiry. Session expiry is extremely crucial aspect to avoid third party access to your session in case it remains unattended.

6) Why do I as an approver need to digitally sign the documents?

Digital Signature Certificate authenticates submission and identity of user who submits the transaction in electronic format.



Trade Data:

1) What is Trade Data?

A facility is provided to the users to fetch the details of the transactions which are assessed through the system. This feature provides records of up to previous day. This facility is available with a link as “Trade Data”.

This functionality will enable user to search the trade details which comprise of request id, request status, source of import, request submission/ assessment date, item description, Mode of transport, Invoice type, Quantity, CIF/Assessable value at invoice level for the request. The user can search any request for the specific module, for the assessment date range at entity/SEZ/SEZs under DC level as per the entitlement. User can search on Thoka or request id directly. The option to search based on country of destination/consignment, CTH and source of import is also available.

Users will be able to access the trade data reports through the link Reports - Trade Data.

Miscellaneous Links Available in system and its meaning:

1) View Status History

User will be able to check the date wise status of the request through this link. User id of the user who has processed the request will also be available.

2) View Remarks History

Remarks captured by all the users in a process of submission of a request will be available through this link.

3) Internal and External Remarks

While submitting a request, user will have an option to enter



internal & external remarks. These remarks can be viewed through the Remarks History link. The External Remarks can be viewed by all the users i.e., Unit and Customs. But the internal remarks entered by Unit users will not be visible to Customs users and vice-versa.

4) Show Calculations

Using this link user can view the assessable value and duty calculation done by the SEZ online system. On this page, the user can view all the calculation details item wise. If there is more than one item in a request, a list of all the items is displayed at the top most section of the page. The user can select any item to view the assessable value of the item and various duty amounts associated.

5) Upload template file

Users have an option to upload invoice in .xls and .pdf format through this link. User can upload maximum up to 10 files for a particular request and the maximum size of file that can be uploaded should be up to 2 MB.

6) Upload template file Upload template file Upload template file Items

SEZ Online application provides a provision to the user where the user can upload large number of items through an excel file and then can create a text file from excel. This text file can be uploaded across a particular invoice to which these items shall belong.

7) Confirmation Screen

User will have following 3 options on the confirmation page:

- I. CONFIRM: The request gets submitted & it will go to the Entity Approver. The message “Request submitted successfully” is displayed to the user.



II. **CANCEL:** Confirmation is cancelled and request remains with the Entity maker.

The Entity maker can make the necessary changes and submit it later.

8) PRINT TRIAL: The user also has the option to print a trial copy of the Shipping bill before submission.

PART - B

EXPORT ORIENTED UNITS, IN INDIA

Introduction:

The Government of India has introduced the 100% Export Oriented Unit Scheme in the year 1981. The EOU scheme is formulated by the Government of India in the Ministry of Commerce & Industry and is contained under Chapter 6 of Foreign Trade Policy. There are several export promotion schemes in India including EOUs/ EHTPs/STPs/BPTs. These Units / undertaking to export their entire production of goods and services (except permissible sales in DTA).

As per Foreign Trade Policy, Units may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.

Objectives:

The main aims and objectives of EOU Scheme are summarized under:

- (a) Promote exports,
- (b) Enhance foreign exchange earnings,
- (c) Attract foreign investment for export production,
- (d) Generation of employment,
- (e) Backward and forward linkage by way of sourcing of raw material from and supply of finished goods to DTA,
- (f) Attracting latest technology into the country,



- (g) Upgrading the skill and creating source of skilled man-power,
- (h) Development of backward area.

Incentives/Facilities available to EOUs:

- (a) An EOU / EHTP / STP / BTP unit may export all kinds of goods and services except items that are prohibited in ITC (HS). However export of gold jewellery, including partly processed jewellery, whether plain or studded, and articles, containing gold of 8 carats and above upto a maximum limit of 22 carats only shall be permitted.
- (b) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of the conditions indicated in ITC (HS). In respect of an EOU, permission to export a prohibited item may be considered, by BOA, on a case to case basis, provided such raw materials are imported and there is no procurement of such raw material from DTA.
- (c) Procurement and supply of export promotion material like brochure / literature, pamphlets, hoardings, catalogues, posters etc., up to a maximum value limit of 1.5% of FOB value of previous year's exports shall also be allowed.
- (d) An EOU / EHTP/ STP/ BTP unit may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India, all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS) subject to conditions given at para (ii) & (iii) below. Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.
- (e) The imports and/ or procurement from bonded warehouse in DTA or from international exhibition held in India shall be without payment of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and



additional duty, if any, leviable thereon under Section 3(1), 3(3) and 3(5) of the said Customs Tariff Act. Such imports and/ or procurements shall be made without payment of integrated tax and compensation cess leviable thereon under section 3(7) and 3(9) of the Customs Tariff Act, 1975 as per notification issued by the Department of Revenue. (Notification No. 15/2017-IGST (Rate), dated 30-06-2017 and 18/2017-IGST (Rate), dated 05-07-2017)

- (f) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under. EOUs can also procure excisable goods falling under the Fourth Schedule of Central Excise Act, 1944 from DTA without payment of applicable duty of excise.
- (g) State Trading regime shall not apply to EOU manufacturing units. However, in respect of Chrome Ore/Chrome concentrate, State Trading Regime as stipulated in export policy of these items will be applicable to EOUs.
- (h) EOU/EHTP/STP/BTP units may import/procure from DTA, with or without payment of duties/taxes as provided under FTP, certain specified goods for creating a central facility. Software EOU/ DTA units may use such facility for export of software.
- (i) An EOU engaged in agriculture, animal husbandry, aquaculture, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may be permitted to remove specified goods in connection with its activities for use outside the premises of the unit.
- (j) Gems and jewellery EOUs may source gold / silver / platinum through nominated agencies on loan / outright purchase basis. Units obtaining gold / silver / platinum from nominated agencies, either on loan basis or outright purchase basis shall export gold / silver / platinum within 90 days from date of release.



- (k) EOU / EHTP / STP / BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance, if any.
- (l) Procurement and export of spares / components, upto 5% of FOB value of exports, may be allowed to same consignee / buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.
- (m) BOA may allow, on a case to case basis, requests of EOU / EHTP / STP/ BTP units in sectors other than Gems & Jewellery, for consolidation of goods related to manufactured articles and export thereof along with manufactured article. Such goods may be allowed to be imported / procured from DTA by EOU with or without payment of duty and/or taxes as provided under FTP, as the case may be to the extent of 5% FOB value of such manufactured articles exported by the unit in preceding financial year. Details of procured / imported goods and articles manufactured by the EOU will be listed separately in the export documents. In such cases, value of procured / imported goods will not be taken into account for calculation of NFE and DTA sale entitlement. Such procured / imported goods shall not be allowed to be sold in DTA. BOA may also specify any other conditions.
- (n) Supplies by DTA manufacturer are eligible for deemed export benefits under Chapter 7 of Foreign Trade Policy, which include drawback and advance authorization and terminal excise duty.
- (o) DTA Sale is permitted unlimited quantity on payment of full duty.
- (p) Duty free goods (except capital goods) to be utilised over a period of 3 years.
- (q) Export proceeds to be realized within a period of 12 months. Retention allowed upto 100% of export earnings in EEFC account.
- (r) Goods allowed to be supplied duty free in DTA against Advance Licence / DFRC issued by DGFT.



- (s) Supplies made in DTA under Paragraph 6.9 of Foreign Trade Policy & Supplies to other exporting units / Bonded warehouses are counted for the purpose of fulfillment of positive NFE.
- (t) Job work / sub-contracting for & from DTA permitted subject to fulfillment of certain conditions.
- (u) FDI upto 100% permitted as per guidelines of Department of Industrial Policy and Promotion.
- (v) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector.
- (w) Software Units allowed to use computer systems for training purposes (including commercial training).
- (x) EOUs allowed to install one fax machine and two computers outside the bonded area of the unit.
- (y) Deprivation up to 100% permissible on capital goods. On deboning, the duty to be paid on the depreciated value of the capital goods.

Second Hand Capital Goods:

Second hand capital goods, without any age limit, may also be imported with or without payment of duty/ taxes as provided under FTP.

Leasing of Capital Goods:

- (a) An EOU/EHTP/STP/BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic/ foreign leasing company with or without payment of duties/taxes as provided under FTP, as the case may be in such a case, EOU/ EHTP /STP / BTP unit and domestic/ foreign leasing company shall jointly file documents to enable import/ procurement of capital goods.
- (b) An EOU/EHTP/BTP/STP unit may sell capital goods and lease back the same from a Non-Banking Financial Company (NBFC), subject to the following conditions:
 - (i) The unit should obtain permission from the jurisdictional Deputy /Assistant Commissioner of Customs for entering



- into transaction of 'Sale and Lease Back of Assets', and submit full details of the goods to be sold and leased back and the details of NBFC;
- (ii) The goods sold and leased back shall not be removed from the unit's premises;
 - (iii) The unit should be NFE positive at the time when it enters into sale and lease back transaction with NBFC;
 - (iv) A joint undertaking by the unit and NBFC should be given to pay duty on goods in case of violation or contravention of any provision of the notification under which these goods were imported or procured, read with Customs Act, 1962 or Central Excise Act, 1944, and that the lien on the goods shall remain with the Customs Department, which will have first charge over the said goods for recovery of sum due from the unit to Government under provision of Section 142(b) of the Customs Act, 1962 read with the Customs (Attachment of Property of Defaulters for Recovery of Govt. Dues) Rules, 1995.

Statutory provisions for working EOUs:

The mandatory Customs bonding warehousing requirement under section 65 of the Customs Act, 1962 for EOUs has already been removed vide Board circular No. 35/2016-Customs, dated 29th July, 2016. But EOU scheme envisages important role for Customs & Central Excise, GST department. Corresponding enabling notifications have been issued by Government of India in the Ministry of Finance, through the Central Board of Indirect Taxes under Customs Act, 1962, Central Excise Act, 1944 and Goods and Services Tax Act, 2017. Similarly other agencies like Reserve Bank of India (RBI), Central Board of Direct Taxes (CBDT), Directorate General of Foreign Trade (DGFT) etc. have issued notifications/circulars for proper implementation of the scheme and prescribing procedures thereof.

Investment Criteria:

Only projects having a minimum investment of ₹ 1 Crore in plant & machinery shall be considered for establishment as EOUs.



However, this shall not apply to existing units, units in EHTP/STP/BTP, and EOUs in Handicrafts /Agriculture/ Floriculture/ Aquaculture / Animal Husbandry / Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criteria.

Procedure for submission of Application to the Development Commissioner:

For setting up a manufacturing or service EOU , application in the format prescribed in Appendix 14-IA of the Handbook of Procedure with three copies are required to be submitted to the jurisdictional Development Commissioner for consideration in the Unit Approval Committee.

The application is required to be submitted along with the following details/documents:-

- A crossed demand draft of Indian Rupees 5000/- drawn in favour of the pay & Accounts Officer, Ministry of Commerce & Industry, Department of Commerce at Central Bank of India, Udyog Bhavan, New Delhi.
- A copy of certificate of incorporation along with Articles of Association and Memorandum in case of companies and partnership deed in case of partnership firm.
- Residence proof may be respect of proprietor / partners / directors, as the case may be (Certified copy of passport / ration card / driving licence / voter's identity card or any other proof to the satisfaction of Development Commissioner).
- Income- Tax returns of all the promoters and firm / company for the last three years.
- A brief project report giving experience of the promoters/ marketing tie-ups / source of financing etc.
- Permanent e-mail address of the applicant.
- In case of conversion of existing DTA unit into EOU, fact sheet as per Annexure given along with Application Form 14-IA.

All the cases received for setting up of an EOU are required to be placed before the next meeting of the Unit Approval Committee



under the Chairpersonship of the Development Commissioner and are required to be approved or rejected by the Unit Approval Committee within a period of 15 days of receipt of the application.

Setting up of EOU:

- (a) For setting up an EOU, three copies of application as in ANF 6 A of Appendices & ANFs may be submitted to DC.
- (b) Applications for setting up units under EOU scheme shall be approved or rejected by Units Approval Committee within 15 days, as per criteria indicated in Appendix 6 A of Appendices & ANFs and sector specific conditions relating to approval as in Appendix 6 B of Appendices & ANFs. In other cases, approval may be granted by DC after clearance by BOA.
- (c) Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be. Unit Approval Committee, which is headed by the jurisdictional Development Commissioner and consists of SEZ officers, officers of the State Government and a nominee of the Zone Developer as members.
- (d) Applications for setting up units under EOU scheme shall be approved or rejected by Units Approval Committee within 15 days, as per criteria indicated in Appendix 6A of Appendices & ANFs and sector specific conditions relating to approval as in Appendix 6 B of Appendices & ANFs. In other cases, approval may be granted by DC after clearance by BOA.
- (e) In case of units under EHTP / STP schemes, necessary approval/ permission under relevant paras of this Chapter shall be granted by officer designated by Ministry of Communication and Information Technology, Department of Electronics & Information Technology, instead of DC, and by Inter-Ministerial Standing Committee (IMSC) instead of BOA.
- (f) Bio-Technology Parks (BTP) would be notified by DGFT on recommendations of Department of Biotechnology. In case of units in BTP, necessary approval / permission under relevant provisions of this chapter will be granted by designated officer of Department of Biotechnology.



- (g) Proposals for setting up EOU requiring industrial licence may be granted approval by DC after clearance of proposal by BOA (as per Appendix 6 C of Appendices & ANFs) and Department of Industrial Policy and Promotion within 45 days on merits.
- (h) STP / EHTP complexes can be set up by Central Government, State Government, Public or Private Sector Undertakings or any combination thereof, duly approved by Inter-Ministerial Standing Committee (IMSC) in Ministry of Communication and Information Technology (Department of Electronics & Information Technology - DeitY). Application for setting up EHTP / STP unit shall be in format prescribed by DeitY and shall be submitted to officer designated by DeitY.
- (i) BTP can be set up by Central Government, State Government, Public or Private Sector Undertakings or any combination thereof. Application for setting up of BTP shall be submitted to Department of Bio-Technology (DoBT) and such applications which meet guidelines prescribed by DoBT will be approved and recommended to DGFT for notification. Application for setting up of BTP unit shall be submitted to officer designated by DoBT.
- (j) On approval, a Letter of Permission (LoP) / Letter of Intent (LoI) shall be issued by DC / designated officer to EOU / EHTP/ STP/ BTP unit. The validity of LoP/LoI shall be given in the Hand Book of Procedures.
- (k) LoP / LoI shall specify item(s) of manufacture / service activity, annual capacity, projected annual export for first five years in dollar terms, Net Foreign Exchange (NFE) earnings, limitations, if any, regarding sale of finished goods, by-products and rejects in DTA and such other matter as may be necessary and also impose such conditions as may be required.
- (l) LoP/LoI issued to EOU / EHTP / STP / BTP units by concerned authority would be construed as an authorization for all purposes. Standard format for LoP for EOU is given in Appendix 6 D of Appendices & ANFs.
- (m) LoP / LoI issued to EOU / EHTP / STP / BTP units by concerned authority, subject to compliance of provision in Para 6.01, would be construed as an Authorisation for all purposes.



- (n) Unit shall execute an LUT with DC concerned. Failure to ensure positive NFE or to abide by any of the terms and conditions of LoP / LoI / IL / LUT shall render the unit liable to penal action under provisions of the FT (D&R) Act, as amended, and Rules and Orders made there under, without prejudice to action under any other law / rules and cancellation or revocation of LoP / LoI / IL.
- (o) EOUs shall have separate earmarked premises for separate LoP. Similarly, EOUs may be approved on leased premises provided lease has been obtained from Government Department / Undertaking / Agency. However, in case lease is obtained from private parties, it shall have a validity period of five years from date of LUT and DC shall satisfy himself of genuine nature of lease.
- (p) On completion of approval period as provided for in Paragraph 6.05 of FTP, it shall be open to unit to continue under scheme or opt out of scheme. Where unit opts to continue, DC will extend approval period. If no intimation in this regard is received from unit within a period of six months of expiry of approval period, DC will take action, suo motu, to cancel approval under EOU scheme and take further action in this regard. Where units give their option to continue after expiry of six months as stipulated above, DC will grant extension after obtaining approval of BOA.

Legal Undertaking (LUT):

- (a) Approved EOU / EHTP / STP / BTP unit shall execute an LUT with DC / Designated Officer concerned as in Appendix 6 E of Appendices & ANFs.
- (b) All EOU / EHTP / STP / BTP units should have permanent e-mail address. No LUT for new units shall be executed unless unit has its permanent e-mail address and digital signature on said e-mail ID. In event of an EOU not having permanent e-mail address and digital signature, further imports and DTA sale shall not be permitted by DC.



Net Foreign Exchange Earnings:

EOU/HTP/STP/BTP unit shall be a positive net foreign exchange earner. In addition sector specific provision of Appendix 6 B of Appendices & ANFs, where a higher value addition and other conditions are given, shall be required to be followed. NFE Earnings shall be calculated cumulatively in blocks of five years, starting from commencement of production. Whenever a unit is unable to achieve NFE due to prohibition / restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA. Further, wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the five year block period for calculation of NFE earnings may be extended by BOA for a period of upto one year, on a case to case basis. The method of calculation of NFE in Para 6.10 of Handbook of Procedures 2015-20 as under:

- (a) EOU / EHTP / STP / BTP unit shall be a positive net foreign exchange earner. NFE earnings shall be calculated cumulatively in the block period as per Paragraph 6.04 of FTP, according to the formula given below. Items of manufacture for export specified in LoP / LoI alone shall be taken into account for calculation of NFE.

Positive NFE = A – B > 0 Where

‘NFE’ is Net Foreign Exchange;

‘A’ is FOB value of exports by EOU / EHTP / STP / BTP unit;

‘B’ is sum total of CIF value of all imported inputs and CIF value of all imported capital goods, and value of all payments made in foreign exchange by way of commission, royalty, fees, dividends, interest on external borrowings / high sea sales during first five year period or any other charges. It will also include payment made in Indian Rupees on high sea sales.

“Inputs” mean raw materials, intermediates, components, consumables, parts and packing materials.

- (b) If any goods are obtained from another EOU/EHTP/STP/BTP/SEZ unit, or procured from an international exhibition held in India, or bonded warehouses or precious metals procured from nominated agencies, value of such goods shall be included under ‘B’.



- (c) If any capital goods are imported duty free or leased from a leasing company, received free of cost and / or on loan basis or transfer, CIF value of capital goods shall be included pro-rata, under 'B' for period it remains with units.
- (d) For annual calculation of NFE, value of imported capital goods and lump sum payment of foreign technical know-how fee shall be amortized as under:

1st – 10th year: 10%.

Provided that above amortization rates would be applicable only if an undertaking is given by a unit that it will not exit to DTA in the first 10 years. For existing units, proportionate Customs and excise duty must be paid where NFE is less than depreciation already claimed, before exit.

Monitoring of NFE:

Performance of EOUs shall be monitored by Units Approval Committee as per guidelines given in Appendix 6 F of Appendices & ANFs. Performance of EHTP / STP / BTP shall be monitored by DeitY / DoBT jointly with jurisdictional GST, Central Excise / Customs authority

Maintenance of Accounts:

- (a) EOU / EHTP / STP / BTP unit shall maintain proper account, and shall file digitally signed quarterly and annual report as prescribed in Annexure to Appendix 6 E of Appendices & ANFs to DC / Designated Officer in DeitY / DoBT and Customs and Central Excise authorities.
- (b) Unit shall be able to account for entire quantity of each category of homogenous goods imported / procured duty free, by way of exports, sales/supplies in DTA or transfer to other SEZ / EOU/ EHTP/STP/BTP units and balance in stock. However, at no point of time, units shall be required to correlate every import consignment with its exports, transfer to other SEZ/EOU/ EHTP/STP/BTP units, sales in DTA and balance in stock. Any matter for clarification as to whether goods are homogenous or not shall be decided by Units Approval Committee.

Administrative control of EOUs:

The administrative control of EOUs are governed by the provisions of Customs Act, CGST Act, & Central Excise Act, which in turn are managed by the officers / staffs of GST, Customs & Central Excise Commissionerate under the Government of India in the Ministry of Finance (Department of Revenue) through Central Board of Indirect Taxes and Customs (CBIC), who issued notifications / circulars for the functioning of EOU scheme and prescribing procedures thereof.

C.B.E&C, vide circular No. 31/2003-Customs, dated 7-4-2003 as amended from time to time & Instruction issued vide F. No. 305 / 75/2000-FTT, dated 31-3-2005 clarified the administrative control of EOUs as under:

The EOUs / EHTP/STP units situated/located within the municipal limits of the port cities are under the administrative control of jurisdictional Commissioner of Customs and in other cases, under administrative control of jurisdictional Commissioner of Central Excise. The administrative control over all the EOUs including EHTP and STP units falling within the territorial jurisdiction of Commissioner of Customs shall be with the Commissioner of Customs. At other places, the administrative control over EOU/ EHTP/STP units shall be with jurisdictional Commissioner of Central Excise. The only exception will be in respect of Bangalore Customs. The Commissioner of Customs, Bangalore will continue to have administrative control over all such units within his territorial jurisdiction. In case of units located in Andaman & Nicobar Island, which is a port city, for the purpose of convenience of jurisdictional Commissioner of Central Excise.

Further, considering the fact that the Customs Division under the jurisdiction of Bangalore Commissionerate caters only to the EOU/EHTP/STP located in districts of Bangalore Urban, Bangalore



Rural, Tumkur and Kolar, the Board has decided that henceforth, the Commissioner of Customs, Bangalore, will have administrative control over EOUs/EHTP/STP units located only in the district of Bangalore Urban, Bangalore Rural, Tumkur and Kolar. The EOUs/EHTP/STP units located in any other places other than the above mentioned districts within the territorial jurisdiction of Commissioner of Customs, Bangalore, would be administered by the jurisdictional Commissioner of Central Excise.

Further, Board has also reviewed the matter regarding collection of cost recovery charges from EOU/EHTP/STP units. It has been decided as a measure of trade facilitation, that EOUs and EHTP/STP units will be given an option of either using the services of Customs/Central Excise Officers on payment of cost recovery charges or on payment of Merchant Over time (MOT). The existing units should indicate their intention to opt out of the scheme of cost recovery charges by 31-6-2003. Once they opt out of the cost recovery charges Scheme, such units shall be required to pay MOT for Customs/Central Excise related work even during office working hours.

In case of a unit opting out of the cost recovery Scheme, the Customs/Central Excise officers already promoted against the cost recovery post will not be reverted back, but will continue to function in the higher cost recovery post till these officers get promotion against a permanent post in their own cadre. Till such time these cost recovery posts continue, the concerned existing units that are presently availing services of cost recovery officer (s) will have to continue to bear the cost recovery charges.

All the work relating to EOUs/EHTP/STP units is handled by the respective jurisdictional Commissioners under whose administrative control the unit is located. It has been clarified by CBEC that in all cases of short levy or evasion of either Customs or Central Excise duties, or both, it is the Commissioner of Customs or Central Excise, as the case may be, who has administrative control over the EOU/EHTP/STP unit, is the proper officer for investigation, issue of show cause notice, adjudication and recovery.



In case of any difficulty being faced by EOUs/EHTP/HTP units in respect of administrative control, it would be settled by concerned Chief Commissioner, where there is more than one Chief Commissioner and where jurisdiction are concurrent, in such cases the issue would be settled locally by both the Chief Commissioners.

Unit Approval Committee for EOUs:

Composition of Unit Approval Committee shall be as under:

Development Commissioner	: Chair person
Jurisdictional Commissioner of	: Member (GST, Central Excise & Customs or nominee)
Joint DGFT or nominee	: Member
Joint / Deputy Development Commissioner of the Zone	: Member

Any other nominee of any Department / Agency as special invitee

Powers and functions of Unit Approval Committee of EOUs shall be as under:

- (i) To consider applications for setting up EOUs (except software and IT services). Items of manufacture requiring industrial licence under Industrial (Development & Regulation) Act, 1951 shall be considered by BOA;
- (ii) to consider and permit conversion of units in SEZ to EOU;
- (iii) to monitor performance of EOU units;
- (iv) to supervise and monitor permission, clearances, licences granted to units and take appropriate action in accordance with law;
- (v) to call for information required to monitor performance of unit under permission, clearances, licenses granted to it;
- (vi) to perform any other function delegated by Central Government / State Govt. or its agencies;



- (vii) to perform any other function as may be delegated by State Governments or its agencies; and
- (viii) to grant all approvals and clearances for establishment and operation of EOUs.

Development Commissioner:

The Central Government may appoint any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of SEZ and appoint such officers/employee as it considers necessary to assist the Development Commissioner in the performance of his functions.

Powers and functions of Development Commissioner:

Development Commissioner / Designated Officer shall have following powers in respect to units. Jurisdiction of DC is given in Appendix 6 J of Appendices & ANFs.

- (1) Conversion of sick / closed DTA unit into EOU;
- (2) Conversion of EOU to STP / EHTP / BTP and vice-versa as per prescribed procedure;
- (3) To allow increase in value of capital goods in terms of Indian Rupees, on account of foreign exchange rate fluctuations;
- (4) To permit capacity enhancement without any limit in case of delicensed industries only;
- (5) Permit broad-banding for similar goods and activities mentioned in LoP or to provide for backward or forward linkages to existing line of manufacture;
- (6) Authorize change in name of company or implementing agency and change from a company to another provided new implementing agency / company undertakes to take over assets and liabilities of existing unit;
- (7) Permit change of location from place mentioned in LoP to another and / or include additional location provided that no change in other terms and conditions of approval is envisaged



and that new location is within territorial jurisdiction of DC / Designated Officer;

- (8) Extend validity period of LoP beyond initial validity period of LoP (except in case where there is a restriction on initial period of approval, like setting up of oil refinery projects) as per Paragraph 6.05 (a) of FTP;
- (9) Cancel LoP wherever warranted;
- (10) Permit merger of two or more units into one unit provided units fall within jurisdiction of same DC / Designated Officer subject to condition that activities are covered under provision of broad banding;
- (11) Exercise powers of adjudication under Section 13 read with Section 11 of FT (D&R) Act, in respect of EOUs as mentioned in Gazette Notification No. SO. 194(E) dated 6.3.2000;
- (12) Do valuation of exports declared on SOFTEX form by EOUs as per RBI A.D. (M.A Series) Circular AP (DIR series Circular No.9 dated 25.10.2001);
- (13) Issue eligibility certificates for grant of employment visa to low level foreign technicians to be engaged by EOUs as per Ministry of Home Affairs letter No. 25022 / 7 / 99- F.1 dated 20.9.1999;
- (14) Registration - cum - Membership Certificate: Function as a Registering authority for EOU / EHTP / STP / BTP unit. A separate Registration – cum – Membership Certificate shall not be required in their cases as provided for in Paragraph 2.44 of FTP except in case of spices. In case of spices, it would be mandatory for units to get themselves registered with Spices Board also;
- (15) Importer Exporter Code No: Allot Importer - Exporter Code number for EOUs, if same has already not been allotted to entity;
- (16) Green Card : Issue of Green Card automatically after execution of Legal Undertaking;



- (17) Grant / renewal of Status Certificate in respect of EOUs provided it does not involve clubbing of FOB value of exports of its parent company in DTA;
- (18) Publicity of EOU / EHTP / STP / BTP Scheme under their jurisdiction.

Time Bound Disposal of Applications:

Development Commissioner shall dispose off applications expeditiously. Following time schedule shall normally be followed to dispose off applications provided application is complete in all respects and is accompanied with prescribed documents.

Sr. No.	Category of Application	Time limit for disposal (days)
1	Issue of LoP / LoI	15
2	Conversion of LoP / LoI	15
3	Acceptance of LUT	3
4	Renewal of LUT	3
5	Permission for broad banding / diversification	3
6	Permission for change in locations	7
7	Permission for Advance DTA sale	2
8	Permission for merger of units	7
9	Permission for enhancement of production capacity	3
10	Cancellation of LoP	3
11	Permission for debonding / exit	7
12	Permission for DTA sale	2
13	Eligibility certificate for employment visa for lower level technicians	2
14	Issue of Green Card	2
15	Renewal of Green Card	Same day
16	Permission to lease CG	1
17	Permission for disposal of scrap / waste	2
18	Permission for change in name	2



19	Inter Unit Transfer	2
20	Wastage Norms, ad-hoc	2
21	Permission for re-import	Same day
22	Permission for re-export	Same day
23	Permission for replacement / repair of goods	Same day
24	Allotment of I.E. Code	1
25	Authorization of softex form	1
26	Reimbursement of CST claims	7
27	Issue of GSP Certificate	Same day
28	Permission for conversion of EOU to STPI, EPCG	5
29	Permission of final exit of EOU	5
30	Permission of extension of EOU	2
31	Permission to allow increase in value of CG	2
32	Permission for export through exhibition / tour	2
33	Reimbursement of Duty Drawback / TED	7

Board of Approval:

The Central Government by notification constitutes a Board to be called the Board of Approval and the Board of Approval shall consist of – (2)

- (a) an officer not below the rank of an Additional Secretary to the Government of India in the Ministry or Department of the Central Government dealing with Commerce - Chairperson, ex officio;
- (b) two officers, not below the rank of a Joint Secretary to the Government of India, to be nominated by the Central Government to represent the Ministry or Department of the Central Govt. dealing with revenue – Members, ex officio;
- (c) one officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government the Ministry or Department of the Central Government dealing with economic affairs (financial services) – Members, ex officio;



- (d) such number of officers, not exceeding ten, not below the rank of the Joint Secretary to the Government of India, to be nominated by the Central Government to represent the Ministries or Departments of the Central Government dealing with commerce, industrial policy and promotion, science and technology, small scale industries and agro and rural industries, home affairs, defence, environment and forests, law, overseas Indian affairs and urban development - Members, ex officio;
- (e) a nominee of the State Government concerned - Member, ex officio;
- (f) the Director General of Foreign Trade or his nominee - Member, ex officio;
- (g) the Development Commissioner concerned - Member, ex officio;
- (h) a Professor in the Indian Institute of Management, being a society registered under the Societies Registration Act, 1860 or the Indian Institute of Foreign Trade, being a society registered under the Societies Registration Act, 1860, as may be, nominated by the Central Government - Member, ex officio;
- (i) an officer not below the rank of Deputy Secretary to the Government of India dealing with the Special Economic Zones in the Ministry or Department of the Central Government, dealing with commerce to be nominated by the Central Government - Member-Secretary, ex officio:

Provided that the member, being the Joint Secretary nominated under clauses (b) to (d) of this sub-section, may, if he is unable to attend the meeting of the Board, authorise any other officer to attend the meeting of the Board on his behalf.

Powers of the Board of Approval:

- (1) The Board of Approval may allow establishment of EOUs with a lower investment criteria.
- (2) Application for setting up an EOU shall be considered by Unit Approval Committee (UAC)/ Board of Approval (BoA) as the case may be.



- (3) On certain cases EOUs approval may be granted by DC after clearance by BOA.
- (4) Proposals for setting up EOU requiring industrial licence may be granted approval by DC after clearance of proposal by BOA.
- (5) BOA may consider change of location of EOU / EHTP / STP/ BTP unit from place mentioned in LoP to another and / or to include additional location outside territorial jurisdiction of original DC / Designated Officer, subject to such conditions as BOA may decide.
- (6) BOA may allow, on a case to case basis, requests of EOU / EHTP / STP/ BTP units in sectors other than Gems & Jewellery, for consolidation of goods related to manufactured articles and export thereof along with manufactured article. Such goods may be allowed to be imported / procured from DTA by EOU with or without payment of duty and/or taxes.
- (7) Subject to a unit being declared sick by appropriate authority, proposals for revival of unit or its takeover may be considered by BOA. Guidelines on revival of sick units are given in Appendix 6 L of Appendices & ANFs.
- (8) Wherever a unit is unable to achieve NFE due to adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, the five year block period for calculation of NFE earnings may be extended by BOA for a period of upto one year, on a case to case basis.
- (9) The Board may delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board

Sale of Surplus Power by EOU:

The following procedure is required to be followed in regard to sale of surplus power by EOU:-

- (i) Whenever the Development Commissioner receives proposal for sale of surplus power, it would be examined in consultation with the State Government including State Electricity Board.



This shall, however, not apply to sale of power within the SEZ. The Development Commissioner will report the norms of raw materials and consumables required for generation of a unit of power of consideration and approval by the Board of Approval.

- (ii) No duty shall be required to be paid on sale of surplus power from an EOU unit to another EOU unit. Development Commissioner of SEZ concerned would be informed in writing of such supply and proper account of the consumption of raw material would be maintained by the supplying unit. The value of imported inputs and consumables shall be taken into account for NFE calculations of the supplying unit.
- (iii) The unit will obtain permission of the Assistant Commissioner of Customs / GST for sale of surplus power in the DTA, after obtaining permission from the SEZs under the relevant statute. Duty on sale of power to the DTA shall be as per the notification of the Department of Revenue in this regard.
- (iv) Due care shall be taken by the Development Commissioner / Board of Approval while approving the power plants by EOU units vis-à-vis their actual requirement.

Execution of Bond:

A single Bond often referred to as 'Mother Bond' in Form B-17 (Gen. Surety / Security) is required to be executed for duty free import, domestic procurement, provisional assessment, for export without payment of duty, sub-contracting or movement of goods for Job work and return, temporary clearances, for due accountal / disposal of dutiable goods. This B-17 was notified vide Notification No. 6/98-Central Excise (N.T.) dated 2-3-1998 under the erstwhile Central Excise Rules, 1944. A revised B-17 (General Surety / Security) bond updated with reference to GTIN, present FTP provisions and Notification No. 52/2003-Customs, dated 31-3-2003 etc., has been notified under the present Rules 7,9,21 and 22 of the Central Excise Rules, 2017. This new bond will be applicable to the new EOUs. The existing EOUs shall continue with the earlier B-17 bond already executed by them so that there is no disruption in their working. Also, all relevant instructions applicable for the



old B-17 bond will be mutatis mutandis applicable to the new B-17 bond. The revised B-17 bond has been notified vide Notification No. 1/2018-Central Excise (N.T.), dated 5-12-2018.

Bond Amount:

The bond amount is equal to (A+B), where A is 25% of the duty leviable on the sanctioned requirement of the imposed and indigenous Capital Goods, B is duty foregone on the raw material, consumables etc. to be held in stock for 3 months. As and when bond amount is not sufficient to cover the duty foregone, addition/ revised bond can be executed.

Execution of Bond:

The bond is required to be executed on non-judicial stamp paper (say Rs.300/-, however, value of non-judicial stamp paper may vary from state to state) by the Managing Director or the Director of the company who have been duty authorised for this purpose by a resolution of Board of Directors. Same procedure is followed for Company or person standing as surety provided they are solvent to the extent of Bond amount, otherwise Bank Guarantee @5% of bond amount is to be given. It is to be mentioned that exemption was granted for 100% EOU from furnishing bank guarantee or Surety along with B-17 bond in case of import or Job work in DTA under certain conditions as prescribed vide Board Circular No. 36/2011-Cus, dated 12-08-2011.

Acceptance of the Bond:

Bond complete in all respects, is to be executed before the jurisdictional Assistant Commissioner / Deputy Commissioner of Customs / GST, as the case may be.

Bond Register:

The B-17 Bond is a running bond, bond values to be mentioned in the bond register for the purpose of debit / credit of duty foregone on the goods imported / procured duty free or Job works. The bond in respect of capital goods shall not be discharged on arrival of the capital goods within the unit. Monitoring of Bond is to be done by AC/DC Customs.



Bonded Warehousing for EOUs:

EOUs are Private Bonded Warehouse licensed under section 58 of the Customs Act and are permitted under section 65 of the Customs Act, 1962 to manufacture within bonded premises. One of the basic conditions for setting up of unit under EOU scheme is that manufacturing operation should be carried out in physically bonded premises. Except where otherwise provided the operations of an EOU are to be carried out in a Customs Bonded area i.e. a licence under section 58 of Customs Act, 1962 is required to be obtained by EOU. As per CBEC instruction, the validity period of Private Bonded warehouse licence is to be co-terminus with the validity period of LOP issued by the Development Commissioner.

C.B.E. &C, Circular No. 88/98-Cus- has been issued regarding liberalization of bonding procedure. The control over the issue and return of the imported goods would be with EOU however the warehousing of imported and domestically procured goods would be issued by the bond officer only after physical verification of goods and physical control over EOU/EHTP/STP/BTP unit has been replaced with the record based control. In other words, the system of physical control was abolished and physical presence of the bond officer in the EOU was dispensed with.

Section 65 of the Customs Act, 1962 provides that Assistant Commissioner of Customs may permit manufacture in bond. Therefore, the EOUs and units in EHPT/ STP are required to take permission for manufacture of goods in bond.

However, C.B.I & C, vide its Circular No. 35/2015-Customs, dated 29th July, 2016 , has removed the mandatory warehousing requirements for EOUs, STPIs, EHTPs etc. Further, the said Circular clarified that all these units shall stand delicensed as warehouses under Customs Act, 1962, with effect from 13th August, 2016.

Therefore, section 65 of the Customs Act, is no longer applicable to EOUs, STPIs, EHTPs etc. Further, in view of the same, the circular No.132/95-Customs, dated 22-12-1995 in respect of in-bond manufacture – warehousing facility under section 65 of the Customs Act, 1962 is rescinded to avoid any misinterpretation.

The goods manufactured by EOU / EHTP/ STP/ BTP units may either be exported or disposed of in DTA in terms of the provisions contained under the Foreign Trade Policy. Initially under the EOU scheme, no DTA sale was permitted and there was no mechanism with the units to tide over export uncertainties and no export orders in hand. The Government allowed these units to sell goods in Domestic Tariff Area.

DTA Sale of Finished Products, Rejects, Waste & Scrap, Remnants and By-products as per 6.8 of the FTP:

Entire production of EOU/EHTP/STP/BTP units shall be exported. However, the following are allowed as exceptions subject to the conditions specified:

- (a) (i) Units, other than gems and jewellery units may sell finished goods manufactured by them as specified in LoP (including byproducts, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) which are freely importable under FTP in DTA, subject to fulfillment of positive NFE, on payment of excise duty, if applicable, and/ or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods). No DTA sale shall be permissible in respect of, pepper & pepper products, marble and such other items as may be notified from time to time.



- (ii) Such DTA sale shall also not be permissible to units engaged in activities of packaging / labeling / segregation / refrigeration / compacting / micronisation / pulverization / granulation / conversion of monohydrate form of chemical to anhydrous form or vice-versa.
- (iii) (a) Sales made to a unit in SEZ shall also be taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Currency Account of SEZ unit.
(b) Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs).
- (iv) An amount equal to Anti-Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.
- (v) The DTA sale by EOU/EHTP/STP/BTP units shall be subject to payment of excise duty, if applicable, and/ or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods). This reversal of Customs Duty would be as per prevailing SION norms or norms fixed by Norms Committee (where no SION norms are fixed).
- (vi) Such DTA sale shall also be subject to refund of any benefits under Chapter 7 of FTP availed by the EOU/ supplier as per FTP, on the goods used for manufacture of the goods cleared into the DTA.
(b) For services, including software units, sale in DTA in any mode, including on line data communication,



shall also be permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.

- (c) Gems and jewellery units may sell upto 10% of FOB value of exports of the preceding year in DTA, subject to fulfillment of positive NFE. The unit shall pay applicable GST and compensation cess along with reversal of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed as exemption, on inputs used in such jewellery.
- (d) Unless specifically prohibited in LoP, rejects may be sold in DTA on payment of excise duty, if applicable, and/or payment of GST and compensation cess along with reversal of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed as exemption on inputs on prior intimation to Customs authorities. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.
- (e) Scrap / waste / remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess. Such sales of scrap / waste / remnants shall not be subject to achievement of positive NFE. In respect of items not covered by norms, DC may fix ad- hoc norms for a period of six months and within this period, norms should be fixed by Norms Committee. Ad-hoc norms will continue till such time norms are fixed by Norms Committee. Scrap / waste / remnants may also be exported.
- (f) There shall be no duties/taxes on scrap/waste/remnants, in case same are destroyed with permission



of Customs authorities. The expression “no duties/taxes” shall not include applicable taxes and cess under the GST laws.

- (g) By-products included in LoP may also be sold in DTA subject to achievement of positive NFE, on payment of excise duty, if applicable, and/or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975, if availed on inputs.

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- (h) In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.
- (i) Procurement of spares / components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. The same can be cleared in DTA on payment of applicable GST and compensation cess along with reversal of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed as exemption, if any.

Other Supplies – 6.09 of FTP:

Following supplies effected from EOU / EHTP / STP / BTP units will be counted for fulfillment of positive NFE. Such supplies shall not include “marble”, except if such supply of marble is an inter unit supply as provided at Sub - Para(c) below:

- (a) Supplies effected in DTA to holders of Advance Authorisation/ Advance Authorisation for annual requirement / DFIA under duty exemption / remission scheme / EPCG scheme. However, printing sector EOUs (or any other sector that may



be notified in HBP), can't supply goods, where basic customs duty and CVD is nil or exempted otherwise, to holders of Advance Authorisation / Advance Authorisation for annual requirement.

- (b) Supplies effected in DTA against foreign exchange remittance received from overseas.
- (c) Supplies to other EOU / EHTP / STP / BTP / SEZ units, provided that such goods are permissible for procurement in terms of Para 6.01 of FTP.
- (d) Supplies made to bonded warehouses set up under FTP and / or under section 65 of Customs Act and free trade and warehousing zones, where payment is received in foreign exchange.
- (e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF, as may be provided in HBP.
- (f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom / electronics items.
- (g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.
- (h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, as notified by the Ministry of Petroleum and Natural Gas vide notification no. E20029/18/2001-PP dated 28.01.2003 (hereinafter referred to as PDS Scheme) subject to the following conditions:-
 - (i) Only supply of such quantity of LPG would be eligible for which Ministry of Petroleum and Natural Gas declines permission for export and requires the LPG to be cleared in DTA; and



- (ii) The Ministry of Finance by a notification has permitted duty free imports of LPG for supply under the aforesaid PDS Scheme.

No DTA sale for certain units:

EOU / EHTP/STP/BTP units are allowed to be set up for the activity of repair, reconditioning, re-engineering, remaking, testing, calibration, quality improvement, up-gradation of technology for the purpose of exports in foreign currency. However, such units, no goods are allowed to be cleared into DTA under paragraphs 6.8 and 6.9 of the Foreign Trade Policy.

Levy of duty on DTA sale:

The goods manufactured in EOU/EHTP/STP/BTP Schemes when cleared into DTA are chargeable to excise duty if applicable, GST and compensation cess and Customs duty, duly supported by the relevant Customs and Central Excise notifications. These notifications have now been amended in order to align them with the present FTP ,2015-2020, as amended , as well as to remove redundancies that had crept in over the time on account of changes/suppression of certain other notifications mentioned therein and legal development as the introduction of GST and clarified vide Circular No.50/2018-Cus, dated 6-12-2018. The relevant portion is reproduced as under:

Notification no. 23/2003-Central Excise, dated 31-3-2003 amended by Notification No. 23/2018-Central Excise, dated 5-12-2018

The Notification No. 23/2003-Central Excise, dated 31-3-2003 prescribes effective duties leviable on the DTA clearance of excisable goods by EOUs. The main amendments are as follows:-

- (a) removal of reference to non-existing entries at Sr. Nos. 5, 5A, 6 and 7A of the Table which have been omitted by Notification No. 16/2017-Central Excise, dated 30-6-2017.
- (b) removal of the reference to Duty Free Replenishment Certificate (DFRC), which has been replaced by Duty Free Import Authorization (DFIA).



- (c) removal of the condition that the goods cleared to the DTA must be “similar” to those exported and also removal of the cap of 50% on DTA sale in line with the present FTP, 2015-2020.
- (d) replacing the references to the old FTP, 2004-2009 with the new FTP, 2015-2020.

Notification No. 24/2003-Central Excise, dated 31-3-2003 amended by Notification No. 23/2018-Central Excise, dated 5-12-2018

The Notification No. 24/2003-Central Excise, dated 31-3-2003 provides for exemption from duties of Excise on the goods manufactured by a EOU provided these are not brought to any place in India. Post GST, the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978) are no more in existence. Therefore, suitable amendment has been made to remove reference to these Acts.

Payment of duty from CENVAT / Input Tax Credit on DTA sale:

With effect from 6-9-2004, EOU/EHTP/STP units are allowed to function under Cenvat Credit Scheme. The units may procure goods on payment of duty and take Cenvat Credit of such duties. The EOU/EHTP/STP may adjust such credit against payment of duty in respect of DTA sale of goods in terms of Cenvat Credit Rules, 2004. With the introduction GST also the same provision of procure of goods and services , the availment of Input Tax Credit is available to EOUs in terms of Section 16 of the CGST Act,2017 and adjustment of Input Tax Credit also permitted in terms of Section 49(4) of the CGST Act,2017.

Inter Unit Transfer:

- (a) Transfer of manufactured goods from one EOU/ EHTP/STP/ BTP unit to another EOU / EHTP/ STP/ BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the



transferor and transferee units as well as concerned Customs authorities, as per following procedure for movement of goods:

- (i) The supplier EOU shall endorse on usual commercial documents, such as, tax invoice and delivery challan, the amount of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption on inputs used in the manufacture of such finished goods (including byproducts, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) supplied to another EOU. The recipient EOU shall pay such endorsed Customs duty besides his own liability of reversal of Customs duty as provided in Para 6.08 above, before clearance of such finished goods in DTA and as provided under DoR notifications/circulars/ guidelines in this regard.
 - (ii) Upon receipt of goods, the recipient EOU shall submit endorsed copies of tax invoice to their jurisdictional Customs authority as well as to the jurisdictional Customs authorities of the supplier EOU.
- (b) Capital goods may be transferred or given on loan to other EOU / EHTP / STP / BTP / SEZ units, with prior intimation to concerned DC and Customs authorities on payment of applicable GST and compensation cess. Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason on payment of applicable GST and compensation cess.
- (c) Goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be on payment of applicable GST and compensation cess as per following procedure for movement of goods:
- (i) The supplier EOU shall endorse on usual commercial documents, such as, tax invoice and delivery challan, the amount of duties of Customs leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption on



such goods supplied to another EOU. The recipient EOU shall pay such endorsed Customs duty and applicable GST and compensation cess before clearance of such goods or finished goods manufactured or produced from such goods in DTA.

- (ii) Upon receipt of goods, the recipient EOU shall submit endorsed copies of tax invoice to their jurisdictional Customs authority as well as to the jurisdictional Customs authorities of the supplier EOU.
- (d) In respect of a group of EOUs / EHTPs / STPs / BTP Units which source inputs centrally in order to obtain bulk discount and / or reduce cost of transportation and other logistics cost and / or to maintain effective supply chain, inter unit transfer of goods and services may be permitted on a case-to-case basis by the Unit Approval Committee. In case inputs so sourced are imported and then transferred to another unit, then value of the goods so transferred shall be taken as inflow for the unit transferring these goods and as outflow for the unit receiving these goods, for the purpose of calculation of NFE.

Sub-contracting by EOUs:

EOU/STP/EHTP/BTP units have been allowed the facility to sub-contract part of the production process or complete production process to be carried out by DTA unit. Further, they have also been allowed to send the in-process goods abroad for carrying out certain processes on these goods and import thereafter. EOUs are allowed to undertake job work activities on behalf of DTA unit for the purpose of export. CBEC vide Circular No. 65/2002-Customs, dated 21.11.2002 has prescribed detailed procedure required to be followed by EOUs for sending raw materials / in-process goods in DTA for job work. Similarly, EOUs units have been permitted to sub-contract part of their production process abroad with approval of Board of Approval in terms of CBEC Circular No. 31 /2001-Customs, dated 24-5-2001 as amended.



Para 6.14 of the Foreign Trade Policy also provides for sub-contracting as per the following aspects:

- (a) (i) EOU/EHTP/STP /BTP units, including gems and jewellery units, may on the basis of annual permission from Customs authorities, sub - contract production processes to DTA through job work which may also involve change of form or nature of goods, through job work by units in DTA.
- (ii) These units may sub – contract upto 50% of overall production of previous year in value terms in DTA with permission of Customs authorities.
- (b) (i) EOU may, with annual permission from Customs authorities, under take job work for export, on behalf of DTA exporter, provided that goods are exported directly from EOU and export document shall jointly be in name of DTA/ EOU. For such exports, DTA units will be entitled for refund of duty paid on inputs by way of brand rate of duty drawback. However, such brand rate of drawback shall be as per Customs and Central Excise Duties Drawback Rules, 2017 and shall be limited to Customs duties and Central Excise Duties (in respect of eligible items covered under Schedule IV of Central Excise Act, 1944).
- (ii) Import of goods for execution of export order placed on EOU by foreign supplier on job work basis, would be allowed with or without payment of duties and/or taxes as provided under Para 6.01(d)(ii) above subject to condition that no DTA clearance shall be allowed.
- (iii) Sub - contracting of both production and production processes may also be under taken without any limit through other EOU/EHTP/ STP/ BTP units, on the basis of records maintained in unit.
- (iv) EOU/EHTP/STP/BTP units may sub - contract part of production process abroad and send intermediate



products abroad as mentioned in LoP. No permission would be required when goods are sought to be exported from sub - contractor premises abroad. When goods are sought to be brought back, prior intimation to concerned DC and Customs authorities shall be given.

- (c) Scrap/waste/remnants generated through job work may either be cleared from job worker's premises on payment of applicable duty and/or taxes, as provided under Para 6.08 above on transaction value or destroyed in presence of Customs authority or returned to unit. Destruction shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.
- (d) Sub-contracting/ exchange by gem sand jewellery EOUs through other EOUs or SEZ units or units in DTA, shall be as per procedure indicated in HBP.

Sub-contracting Procedures:

- (a) Sub - contracting by EOU gems and jewellery units through other EOUs, or SEZ Units, or units in DTA shall be subject to following conditions:-
 - (i) Goods, finished or semi-finished, including studded jewellery, taken out for sub - contracting shall be brought back to unit within 90 days.
 - (ii) No cut and polished diamonds, precious and semiprecious stones (except precious, semi- precious and synthetic stones having zero duty) shall be allowed to be taken out for sub - contracting.
 - (iii) Receive plain gold / silver / platinum jewellery from DTA/ EOU/ SEZ units in exchange of equivalent quantity of gold / silver / platinum, as the case may be, contained in said jewellery.
 - (iv) EOUs shall be eligible for wastage as applicable as per Paragraph 4 A.2 of HBP for sub - contracting and against exchange.



- (v) DTA unit undertaking job work or supplying jewellery against exchange of gold / silver / platinum shall not be entitled to deemed export benefits.
- (b) Facility of getting job work done from DTA unit will be available even when job worker is not registered with GST authority, subject to condition that goods are brought back to premises of unit on completion of job work.
- (c) Export of finished goods from job worker's premises may be permitted, provided such premises are registered with GST authorities. Where job worker is SEZ / EOU / EHTP / STP / BTP unit, no such excise registration is required and export may be effected either from job worker's premises or from premises of unit. Export of such products from job worker's premises shall not be allowed through third parties as provided in FTP.
- (d) EOUs may be permitted to remove moulds, jigs, tools, fixtures, tackles, instruments, hangers and patterns and drawings to premises of sub - contractors, subject to condition that these shall be brought back to premises of units on completion of job work within a stipulated period. Raw materials may or may not be sent along with these goods.
- (e) In case of sub - contracting of production process abroad, goods may be exported from sub - contractor premises subject to conditions that at the time of clearance of goods, the EOU/ EHTP / BTP / STP unit shall declare (i) the transaction value of the finished goods to be cleared from the sub - contractor's premises abroad; (ii) job work charges to be paid to the sub - contractor abroad; and (iii) value of intermediate goods; supported with documents like (a) sale price contract / or invoice for the finished goods, (b) job work contract and (c) the basis of arriving at the value of intermediate goods. The EOU / EHTP / BTP / STP unit shall also ensure full repatriation of foreign exchange declared as the transaction value of the finished goods cleared from the sub - contractor's premises abroad.



Contract Farming:

EOUs engaged in production/processing of agriculture/horticulture/aquaculture products may, on basis of annual permission from Customs authorities, take out inputs and equipments (specified in Appendix 6 I of Appendices & ANFs) to DTA farm subject to following conditions:

- (a) Supply of inputs by EOUs to contract farm(s) shall be subject to input-output norms approved by DGFT / BOA.
- (b) There shall be contract farming agreement between EOU and DTA farmer(s).
- (c) Unit has been in existence for at least two years and engaged in export of agriculture / horticulture / aquaculture products; otherwise it shall furnish bank guarantee equivalent to duty foregone on capital goods / inputs proposed to be taken out, to Deputy / Assistant Commissioner of Customs / GST, till unit completes two years.

CBEC, vide Circular No. 17-2006-Customs, dated 1-6-2006 prescribed procedures of contract farming by EOUs engaged in production / processing of agricultural products.

Repair of capital goods in DTA / in abroad:

- (a) Units may send capital goods abroad for repair with permission of Customs authorities. Any foreign exchange payment for this purpose will also be allowed. However, no permission will be required for sending capital goods for repair within country.
- (b) EOU / EHTP / STP / BTP units may, on basis of records maintained by them and prior intimation to Customs authorities:
 - (i) Transfer goods to DTA / abroad for repair / replacement, testing or calibration and return.
 - (ii) Transfer goods for quality testing / R&D purpose to any recognised laboratory / institution upto ₹5 lakh per annum



without payment of duty, on giving suitable undertaking to Customs for return of goods. However, if goods have been consumed / destroyed in process of testing etc. a certificate from laboratory / institution to this effect be furnished to Customs.

Clearance of Capital Goods in DTA:

Clearance of capital goods, including second hand, in DTA shall be allowed as per FTP on payment of applicable duty and import policy in force on date of such clearance.

Depreciation Norms:

Depreciation up to 100% is permissible for Computers and Computer peripherals in 5 years and 10 years in case of other items.

(a) Depreciation Norms for Computers and Computer Peripherals:

Depreciation for computers and computer peripherals shall be as follows.

10% for every quarter in first year;

8% for every quarter in second year;

5% for every quarter in third year;

1% for every quarter in fourth and fifth year.

(b) Depreciation Norms for Other Capital Goods:

For capital goods, other than above, depreciation rate would be as follows:

4% for every quarter in first year; 3% for every quarter in second and third year;

2.5% for every quarter in fourth and fifth year;

2% for every quarter thereafter.



Temporary Removals in DTA:

EOUs units are allowed to remove goods into DTA temporarily without payment of duty for the purposes of repair/ replacement/ testing / calibration, quality testing and research and development purpose.

Removal of capital goods into DTA for repair:

The EOU / EHTP / STP units are allowed to remove the capital goods for the purpose of repair into DTA under permission of the jurisdictional Superintendent of Customs / Central Excise till 2005, the units had to take permission of the Assistant Commissioner for temporary removal of capital goods for repair. However, in 2006, vide Circular No.17/2006-Customs, dated 1-6-2006, the CBEC further liberalized this dispensation and allowed all the EOU/ EHTP/ STP units irrespective of status to take out capital goods out of the bonded premises within the country for the purpose of test, repair, calibration and refining on the basis of prior intimation to the proper officer i.e. jurisdictional Assistant Commissioner of Customs / Central Excise.

Removal of Samples:

- (a) EOU / EHTP / STP / BTP units may on basis of records maintained by them, and on prior intimation to Customs authority, supply or sell samples in DTA for display / market promotion on payment of applicable duties.
- (b) Remove samples without payment of duty, on furnishing a suitable undertaking to Customs authorities for bringing back samples within a stipulated period.
- (c) An EOU may export free samples, without any limit, including samples made in wax moulds, silver mould and rubber moulds through all permissible mode of export including through courier agencies / post. For statutory requirement of Stability & Retention sample with manufacturer, an EOU / EHTP / BTP/ STP unit may re- import without payment of duty, those



samples, which were exported by it, under intimation to Custom Authorities, and FOB value of such samples shall not be counted for NFE purpose and other export benefits, if any.

- (d) An EOU, on basis of records maintained by them and on prior intimation to Customs authorities, may send samples to other EOUs for display on returnable basis within a period of 30 days.

Clearance of Samples from EOU/EHTP/STP units for sending to DTA and for export had prescribed vide CBEC Circular No. 22 / 98-Customs, dated 27.3.1998 and further CBEC Circular No.52/99-Customs, dated 20.08.1999 had prescribed clearance of samples from EOU/EHPT/STP units to sell in DTA, samples of goods produced by them for display / market promotion.

Sale of Unutilized Material:

- (a) In case an EOU / EHTP/ STP/BTP unit is unable to utilize goods and services, imported or procured from DTA, it maybe:
- (i) Transferred to another EOU / EHTP / STP / BTP / SEZ unit; or
 - (ii) Disposed of in DTA with intimation to Customs authorities on payment of applicable duties and/ or taxes and compensation cess. In addition, exemption of duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975 availed, if any on the goods , at the time of import will also be payable and submission of import Authorisation; or
 - (iii) Exported.

Such transfer from EOU/EHTP/ STP/ BTP unit to another such unit would be treated as import for receiving unit.

- (b) Capital goods and spares that have become obsolete/ surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess or disposed of in DTA on payment of



applicable GST and compensation cess and duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975. Benefit of depreciation will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed. No duty shall be payable other than the applicable taxes under GST laws in case capital goods, raw material consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/ remnants /rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities. Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semiprecious stones.

- (c) In case of textile sector, disposal of left over material/ fabrics upto 2% of CIF value or quantity of import, whichever is lower, on payment of duty on transaction value, may be allowed, subject to certification of Central Excise/Customs officers that these are left over items.
- (d) Disposal of used packing material will be allowed on payment of duty on transaction value.

Reconditioning/Repair and Re - engineering:

- (a) EOUs shall be set up with approval of UAC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency. Provisions of paragraphs 6.08, 6.09, 6.10, 6.13, 6.14 of FTP and Para 6.29(a), (b), (c) and (d) of HBP shall not, however, apply to such activities.
- (b) EHTP/STP/BTP units shall be set up with approval of IMSC to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, upgradation of technology and re-engineering activities for export in foreign currency.



Provisions of paragraphs 6.08, 6.09, 6.10, 6.13, 6.14 of FTP and Para 6.29(a), (b), (c) and (d) of HBP shall not, however, apply to such activities.

Replacement, Repair of Imported, Indigenous Goods:

- (a) General provisions of FTP relating to export /import of replacement/repair of goods would also apply equally to EOU/ EHTP/STP/BTP units. Cases not covered by these provisions shall be considered on merits by DC.
- (b) Goods sold in DTA and not accepted for any reasons, maybe brought back for repair/replacement, under intimation to concerned jurisdictional customs authorities.
- (c) Goods or parts thereof, on being imported / indigenously procured and found defective or otherwise unfit for use or which have been damaged or become defective subsequently, may be returned and replacement obtained or destroyed. In the event of replacement, goods may be brought back from foreign suppliers or their authorized agents in India or indigenous suppliers. The unit can take free of cost replacement (duty paid) from the authorized agents in India of foreign suppliers, provided the defective part is re – exported or destroyed. However, destruction shall not apply to precious and semi-precious stones and precious metals.

The procedures Re-import of goods exported but found defective or unfit for consumption and in getting replacement of goods imported and re-export of such goods, had prescribed vide Circular No. 60/99-Customs, dated 10-9-1999. Similarly, the provisions for replacement of imported goods by foreign suppliers or by their authorised agents in India had prescribed vide CBEC Circular No. 12/2008, Customs, dated 24-7-2008.

Import or procure of goods from DTA:

The paragraph 6.4 of Foreign Trade Policy, 2015-2020 provides that EOUs and units operating under EHTP/ STP/ BTP scheme may import and / or procure from DTA or bonded warehouses in the DTA all goods except prohibited goods without payment of duty for the purpose of approved activities and goods can be imported by EOU/EHTP/ STP/BTP Units on the basis of self-certification regardless of value and quantity.

Exemption Notification:

To enable EOU/EHTP/STP/BTP units to import goods duty free, the CBEC has issued Customs Duty exemption notification No. 52/ 2003-Customs, dated 31.3.2003 for the purpose of carrying out approved activities subject to fulfillment of conditions as envisaged in the exemption notification. In general, the goods such as raw material, consumables, capital goods i.e. all goods required for the purpose of manufacture or production of export goods / services except prohibited goods are permitted to be imported by EOU/ EHTP/STP/BTP units as per exemption notification No.52/2003-Customs, dated 31-3-2003. Due to changes in the present Foreign Trade Policy -2015-2020 and implementation of GST the said Notification has been amended as under:

Notification No. 52/2003-Customs, dated 31-3-2003 amended by Notification No. 79/2018-Customs, dated 5-12-2018 as amended by Notification No.19/2021-Cus., dated 30-03-2021. Exemption of IGST and Compensation Cess to EOUs on imports till 31-3-2022.

The Notification No. 52/2003-Customs, dated 31-3-2003 provides for exemption from Basic Custom Duty, Additional Duties of



Customs, IGST and Compensation Cess on various goods listed therein, when imported by the EOUs for specified purposes. This notification has been amended to provide that:-

- (a) imported goods could be temporarily cleared without payment of all Customs duties, IGST and Compensation Cess not paid at the time of their import. However, the applicability of GST on supply of such goods shall be independently governed by GST laws.
- (b) when duty has to be paid on the imported goods such as when these are cleared from the EOU, the same would be the duty/tax for which exemption was availed at the time of their import. However, in the case of capital goods, depreciation would be allowed as provided in para 4 of the Notification No. 52/2003-Customs, dated 31-3-2003. Further, for leftover textile fabric or textile material, such payment of duty would be based on the transaction value as per existing provisions.
- (c) removal / modification / updation of the redundant / old notifications/provisions of the FTP etc., as follows:-
 - (i) providing that a job worker would need registration under GST Act/Rules to enable the EOUs to export of GST goods directly from its premises.
 - (ii) replacing the reference to Notification No. 62/2004-Customs, dated 12-5-2004 with presently valid Notification No. 50/2017-Customs, dated 30-6-2017 for payment of duty by Gem & Jewellery EOUs on the gold or silver content in the scrap, dust or sweeping cleared to DTA or for payment of duty by nominated agencies in case of failure of export in specified time frame.
 - (iii) removing the reference to old DGFT Policy Circular No. 77(RE)2003-2004/9, dated 31-3-2009.
 - (iv) prescribing that wastage norms for manufacture of jewellery of gold/silver/platinum would be directly



governed by the provisions of the FTP and Handbook of Procedures.

- (v) replacing the references to old FTP, 2004-2009 by the new FTP, 2015-2020 and its Appendix.
 - (vi) replacing the reference to outdated Notification No. 106/58-Customs, dated 29-3-1958 by the presently applicable Notification No. 36/2017-Customs, dated 30-6-2017.
 - (vii) removing the references to Commissioner of Central Excise/ Central Excise officer as the Customs work relating to the EOUs is now handled by the jurisdictional Customs officers.
- (d) For promoting indigenization and export of electronics, Ministry of Electronics & Information Technology (MeitY) had recommended that the period of three years allowed for re-import of goods manufactured and exported by EOUs for the purposes of repair and reconditioning may be extended to seven years for specified goods. This was justified on the ground that overseas customers were otherwise constrained to prematurely scrap the repairable goods which are more than three years old. Accordingly, Sr. No. 14 of the Annexure-I of the notification has been amended to list specific goods manufactured and exported by EOUs that can be re-imported within seven years. These goods are required to be re-exported within one year of the date of re-importation.

Similarly, Notification No. 22/2003-Central Excise, dated 31-3-2003 prescribed for procurement from DTA without payment duties by EOUs has been amended as under:

Notification No. 22/2003-Central Excise, dated 31-3-2003 amended by Notification No. 23/2018-Central Excise, dated 5-12-2018

The Notification No. 22/2003-Central Excise, dated 31-3-2003 provides for exemption from various duties of Excise on the



goods listed therein when procured indigenously by the EOUs for specified purposes. This notification has been amended to provide for:-

- (a) deletion of reference to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978) these Acts are not in existence post-GST.
- (b) modification of clauses (a) to (e) of the opening para of the said notification to allow procurement of excisable goods falling under the Fourth Schedule to the Central Excise Act, 1944 (1 of 1944). Also, Annexures I, II, IV and V of the said notification which listed various excisable goods that were allowed to be procured indigenously without payment of Excise duties have been removed as post GST, most of the goods now fall under GST.
- (c) continuation of the facility extended to the EOUs engaged in processing or manufacture of articles of granite, processing of agricultural products and production or manufacture or packaging of goods in horticulture, agriculture and animal husbandry sector to temporarily remove specified goods procured prior to 30-6-2017 without payment of Excise duty to granite quarries and to the fields and farms.
- (d) clearance of capital goods and goods other than packaging material unsuitable for repeated use which were procured without payment of Excise duty prior to 30-6-2017, on payment of Excise duty availed as exemption. Further, allowing the depreciation on capital goods, as provided, and charging duty on leftover textile fabric or textile material on the transaction value as at present.
- (e) changes on account of redundant references to old/superseded notifications/FTP etc., as follows :-
 - (i) replacement of the reference to old Rule 20 of the Central Excise Rules, 2002 with the present Rule 16 of the Central Excise Rules, 2017.



- (ii) replacement of the reference to outdated Notification No. 106/58-Customs, dated 29-3-1958 with presently applicable Notification No. 36/2017-Customs, dated 30-6-2017.
- (iii) replacement of the references to old FTP, 2004-2009 with the new FTP, 2015-2020 and its Appendix.

Import / Domestic Procurement of Goods:

An EOU/EHTP/ STP unit may import / procure from DTA shall include the following:

- (a) Raw materials, components, consumables, intermediates, spares and packing materials.
- (b) Capital goods, whether new or second-hand, including inter-alia following and their spares:
 - (i) DG sets, captive power plants, transformers and accessories for all above.
 - (ii) Pollution control equipment.
 - (iii) Quality assurance equipment.
 - (iv) Material handling equipment, like fork lifts and overhead cranes, mobile cranes, crawler cranes, hoists and stackers.
 - (v) Un-interrupted Power Supply System (UPS), Special racks for storage, storage systems, modular furniture, computer furniture, anti- static carpet, teleconference equipment, Servo Control System, Air-conditioners / Air conditioning system, panel for electricals and special data transmission cable.
 - (vi) Security Systems.
 - (vii) Tools, jigs, fixtures, gauges, moulds, dyes, instruments and accessories.
- (c) Raw materials for making capital goods for use within unit.
- (d) Others including:



- (1) Prototypes and technical samples for existing product(s) and product diversification development or evaluation.
 - (2) Drawings, blue prints, charts, microfilms and technical data.
 - (3) Office equipment, including PABX, Fax machines, projection system, Computers, Laptop and Server.
- (e) Spares and consumables for above items.
- (f) Any other items not mentioned above with approval of BOA.
- (g) An EOU / EHTP/ STP/ BTP unit may import and / or procure, from DTA or bonded warehouses in DTA / international exhibition held in India, all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS) subject to conditions. Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.
- (h) The imports and/ or procurement from bonded warehouse in DTA or from international exhibition held in India shall be without payment of duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and additional duty, if any, leviable thereon under Section 3(1), 3(3) and 3(5) of the said Customs Tariff Act. Such imports and/ or procurements shall be made without payment of integrated tax and compensation cess leviable thereon under section 3(7) and 3(9) of the Customs Tariff Act, 1975 as per notification issued by the Department of Revenue.
- (i) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA



to EOU would be available to the supplier subject to such conditions and documentations as specified under GST rules and notifications issued there under. EOUs can also procure excisable goods falling under the Fourth Schedule of Central Excise Act, 1944 from DTA without payment of applicable duty of excise.

- (j) EOU/EHTP/STP/BTP units may import/procure from DTA, with or without payment of duties/taxes as provided at Para 6.01 (d)(ii) and 6.01(d)(iii) above, certain specified goods for creating a central facility. Software EOU/ DTA units may use such facility for export of software.
- (k) Gems and jewellery EOUs may source gold / silver / platinum through nominated agencies on loan / outright purchase basis. Units obtaining gold / silver / platinum from nominated agencies, either on loan basis or outright purchase basis shall export gold / silver / platinum within 90 days from date of release.

Import of restricted items:

With reference to the Foreign Trade Policy, Letter of Permission (LOP) issued to the EOU/STP/EHTP/BTP can be constructed as a license for all purposes, meaning thereby that if import of any goods, which require issuance of import license by DGFT, the same shall not be required in case of EOU/EHTP/STP/BTP units. However, any prohibition on import / export goods as provided in the ITC (HS), EOU/EHPT/STP/BTP units are not allowed to import/export prohibited goods.

Conditions of import:

Import of goods by EOU / EHTP / STP / BTP units shall be subject to following conditions:

- (a) Goods shall be imported into EOU / EHTP / STP / BTP premises. However, agriculture and allied sectors and granite sector units in EOU may supply / transfer capital goods and inputs in farm / fields / quarries with prior intimation to jurisdictional



Customs / Central Excise authorities, provided ownership of goods rests with EOUs. Granite sector would also be allowed to take spares upto 5% of value of Capital Goods to quarry site.

- (b) Procedure as prescribed under Customs / Central Excise rules for EOUs and units in EHTP / STP / BTP will be followed and appropriate bond executed with Customs / Central Excise authorities.
- (c) (i) The period of utilisation of goods, including capital goods, shall be co-terminus with the validity of LoP.
- (ii) However, imported tea shall be utilized within a period of 6 months from date of import. Similarly, export obligation against import of items {covered by Chapter 9 of ITC(HS)} and coconut oil shall be fulfilled within a period of 90 days from the date on which first import consignment is cleared by Customs Authorities.
- (iii) Further, in case of import of spices for VA purpose like crushing / grinding / sterilization or for manufacture of oils and oleoresins ofpepper, cardamom and chillies (and not for simple cleaning, grading, re-packing etc.), EO shall be fulfilled within 120 days from the date of importation of first consignment. In case of import of spices (other than pepper, cardamom and chillies) for manufacture of spice oils and oleoresins, EO shall be fulfilled within 12 months.
- (iv) Goods already imported / shipped / arrived before issue of LoP / LoI are also eligible for duty free clearance under EOU / EHTP / STP / BTP scheme, provided customs duty has not been paid and goods have not been cleared from Customs.

Procedure for Import of Goods:

The EOUs are allowed to import goods through airport / port and through courier. The EOUs intending to import goods without payment of duty are required to obtain a procurement certificate



from the jurisdictional Range Officer / Superintendent of Customs / Central Excise in the format as provided in the CBEC Circular No. 14/98-Cus. dated 10-03-1998. The Into-bond Bill of Entry (yellow Bill of Entry) is filed and assessed at the port of Import. On the strength of this procurement certificate, Assistant Commissioner of Customs in Charge of the port of import allow clearance of goods without payment of duty under the exemption notification no.52/2003 subject to the condition that unit would submit re-warehousing certificate at the port of import within a period of 90 days of issue of procurement certificate. The said procurement certificate may also be used for procuring goods from the private bonded warehouse or international exhibition held in India.

Re-warehousing Certificate:

CBEC vide Circular No. 7/2006-Customs, dated 13-01-2006 prescribed that the filed formations should issue re-warehousing certificates in respect of imported / indigenously procured goods only carrying physical verification of receipt of such goods. It is the responsibility of bond officer to ensure that duty free goods are received in the premises of EOU/EHTP/STP units and duly accounted for.

Fast track Scheme for EOUs for import of goods:

EOUs having a status holder certificate under the Foreign Trade Policy shall be eligible for the Fast Track Clearance Procedure under para 6.39 of Hand Book of Procedure (HBP). To give effect to the provisions under para 6.39.3 of HBP, the Board has decided to extend the facility of importing goods without payment of duty on the basis of pre-authenticated procurement certificate to the units having physical export turnover of Rs. 15 crores and above in the preceding financial year and having a clean track record. The request to issue pre-authenticated procurement certificate will be submitted to the jurisdictional Asstt. /Dy. Commissioner of Customs/Central Excise. After examination of the request, the Asstt. /Dy. Commissioner of Customs/Central Excise may issue direction to the jurisdictional Superintendent to issue the pre-authenticated



procurement certificate to the unit in a booklet form with running serial number calendar year wise. The unit shall ensure that the consignment under clearance under such pre-authenticated procurement certificate is covered by the Bond amount under B-17 Bond. The procedure of in-bond movement, examination, bonding and issue of re-warehousing certificate will be followed as usual. (Board Circular No. 17/2006-Customs, dated 1-6-2006.)

Self-assessment scheme for clearance of import:

To bring customs clearance procedures at par with best international practices, CBEC issued Circular No. 20/2003-Customs, dated 4-4-2003 for implementation of Self-assessment for accelerated clearance of import / export cargo. By this scheme importer himself / herself will determine the classification of goods, including claim for any exemption benefit and system will calculate the duty based on the declaration. The importer would declare the correct value as reflected in the invoice and the EDI system will calculate the duty. There is no physical examination of goods.

Execution of B-17 Bond:

The B-17 bond is required to be executed before the jurisdictional Assistant Commissioner of Customs/Central Excise in charge of unit and the jurisdictional Assistant Commissioner will issue certificate which will indicate only description and classification of goods and on the strength of such certificate, clearance under exemption notification will be allowed to the EOU/EPZ/STP/EHTP units at the port of import. The value and quantity of goods to be imported and the bond amount shall be monitored by jurisdictional Assistant Commissioner of Customs or Central Excise. Hence, it is clarified that no other certificate other than the certificate annexed to Circular No.14/98, dated 10-3-1998, is required to be produced at port of import by EOU/EPZ/STP/EHTP units. It is further clarified that the monitoring at the port of import shall be limited to the extent of ensuring that the goods imported by the units are warehoused in the units within the prescribed time limit and re-warehousing certificate is submitted to the Assistant Commissioner



of Customs at the port of import within the prescribed time limit. For this purpose, no separate bond along with surety or security should be asked from the EOU/EPZ/STP/EHTP units at the port of import.

- (ii) As already clarified, the B-17 bond is an all-purpose bond. The supply/transfer of samples as provided under para 9.12 of the Exim Policy is covered by para 9 of the Central Excise Notification 6/98 (NT). Exports and Imports includes re-export and re-imports, and therefore, the later-category is also covered under the said Bond. For replacement of indigenous goods procured duty free and found to be defective/damaged or otherwise unfit for use, no separate bonds other than B-17 bond, would be required.
- (iii) The question of accepting B-17 at ICD/Airports etc. does not arise. As stated above, the bond is to be executed before the jurisdictional Asstt. Commissioner of Customs or Central Excise and clearance will be allowed at port of import on the strength of the certificate issued by the jurisdictional Assistant Commissioner Officer in charge of EOU/EPZ/STP/EHTP unit.
- (iv) It is clarified that there is no need for asking end-use certificate from the unit at the time of fresh imports. The units will have to submit only re-warehousing certificate to the Assistant Commissioner in charge of the port of import within 90 days of issue of certificate by jurisdictional Assistant Commissioner. In case such re-warehousing certificate is not furnished within the specified period, the Assistant Commissioner in charge of the port of import shall intimate the Assistant Commissioner of Customs or Central Excise in charge of the units for issuing a demand notice to recover the duty/penalty etc. (Board Circular No.50/2000-Customs, dated 24-5-2000.)

Further, the matter has been examined by the Board. The procurement certificates (for imported goods) and CT-3 (for domestic goods) are issued from such Units under the strength of a general B-17 Bond. The B-17 Bond is executed before the officer having jurisdiction over the unit. In case of any contravention the B-17 Bond can be



invoked for recovery of duty. Attention in this regard is also invited to Board's Circular No. 76/99-Cus., dated 17-11-99 [1999 (114) E.L.T. T52] wherein it was clarified, in para 5(iv), that if the Assistant Commissioner in-charge of the port of import does not receive the re-warehousing certificate, the Assistant Commissioner in-charge of the port of import shall inform the Asstt. Commissioner Customs or Central excise, as a case may be, in-charge of the Unit, for issuing a demand notice to recover the duty/penalty etc. (Board Circular No. 16/2004-Customs, dated 16-2-2004.)

Examination of import consignment:

The import consignment meant for EOUs are not subjected to detailed examination at the port of imports. The goods are superficially examined so as to verify the marks, numbers, gross weight, etc. by the customs staff at the port of import for the purpose of completion of assessment. The imported consignments are examined in full at the bonded premises of the unit.

Port registration for import:

The EOUs units are required to register themselves at the port of import for clearance of consignments. The simplified procedure for registration of EOU/EHTP/STPs for clearance of import goods has been prescribed vide Board Circular No. 51/2005-Customs, dated 9-12-2005, In order to obviate the problems of the EOU/EHTP/STP, the Board has considered to put in place a simplified procedure for registration. The EOU/EHTP/STP units after setting up of EOU/EHTP/STP unit, may get themselves registered at the port of Import (ICD/Airport/CFS etc.) where from the unit expects to import goods duty free. Every unit would be required to furnish the following documents along with the application for registration with the Assistant Commissioner/Deputy Commissioner in -charge of the port of import:

- (a) Copy of LOP,
- (b) Copy of Private Bonded Warehousing License issued under Section 58 of the Customs Act,



- (c) Bank attested signatures of authorized signatories of the EOU/ EHTP/STP unit,
- (d) Passport size photograph of Director/Proprietor/signatories,
- (e) Copy of IEC No.,
- (f) Copy of green card.

The application for registration may be made in plain paper in the form of letter to the Assistant Commissioner of Customs/Deputy Commissioner of Customs in-charge of the port of import enclosing the above stated documents.

On receipt of the above documents along with the application for registration, the Customs Authorities shall grant registration to the EOU/ EHTP/STP unit within 5 working days of the receipt of application for registration. The Customs Authorities in charge of the port may verify the authenticity of the copy of the Private Bonded warehousing license or any other relevant particulars from the jurisdictional Assistant Commissioner. A letter by registered post may also be subsequently sent for confirming the authenticity of the copy of the Private Bonded warehousing license issued by the Customs/Central Excise Authority. However, this verification should not be a cause of delay in issuance of registration certificate. In case the verification report is not received from the jurisdictional Assistant Commissioner in charge of the unit within 5 working days, the registration may be granted to the unit. The Assistant Commissioner/Deputy Commissioner of Port of Import would issue the unit a certificate stating that the unit has been registered.

Once an EOU/EHTP/STP unit is registered at one port of import, it would not be required to get itself registered subsequently in any other port of import for clearance of goods duty free. The import consignments would be allowed clearance on the basis of registration issued at any port of Import. However, the authenticity of the registration certificate shall be verified by the concerned Custom House from port of registration.



Documents for clearance of import consignment:

The EOUs units are required to submit the following documents for Customs clearances of imported goods:

- (i) Into- Bond Bill of Entry (in quadruplicate),
- (ii) Invoice , Packing list and declaration,
- (iii) Purchase Order issued by the importer,
- (iv) Technical write up of items imported,
- (v) Certificate of Origin,
- (vi) Procurement certificate issued by jurisdictional Customs / Central Excise in-charge of EOUs,
- (vii) Attested copy of legal undertaking executed with Development Commissioner,
- (viii) Attested copy of Private Bonded Warehouse License,
- (ix) Copy of the Green Card and valid LOP.

The Into-bond Bill of Entry is assessed at the port of import. The goods then move under the cover of Into-bond Bill of Entry. The original copy of the Bill of Entry is retained at the customs station of import and three copies of bill of entry accompany the consignment. The officer in charge of the unit shall record the re-warehousing and examination report on the duplicate and triplicate and return the duplicate copy to the Assistant Commissioner (Bond) of customs station / port/ Airport of import. In case of any discrepancy in goods found during the course of examination, the same is required to be brought to the notice of the customs station of import for the purpose of updating the original Bill of Entry and connected records and for initiating action, if any.

The clearance of goods at the port of import is to be allowed without payment of duty on the basis of registration certificate and procurement certificate issued by the jurisdictional Customs /



Central Excise in charge of the EOUs. If a re-warehousing certificate is not received within the period of 90 days from the date of filing of Bill of Entry, the Assistant Commissioner / Deputy Commissioner in charge of the port is required to write to the jurisdictional Customs/ Central Excise Authorities in charge of the EOUs for raising demand of duty.

When the goods imported are required to be sent at the place for away from the port of import, transshipment of such goods is allowed under the normal transshipment procedure. The unit is required to furnish a transit bond with the Assistant Commissioner in charge of the port of import. However, in such case a transit bond and insurance policy equivalent to value cum duty on the goods is required to be furnished.

Import through Courier:

The courier service ensure door-to-door delivery of goods in a short period of time and the use of these services is inevitable for any manufacturing / service unit. EOU / EHTP/STP/BTP units may also import goods through courier. In case of import through courier, the courier manifest is required to show the goods meant for EOUs separately. The goods are required to be examined at the place of import i.e. airports. In case of imported goods being jewellery parcels, the same is required to be examined by the jewellery expert. After examination and clearance from the airport, the courier delivers the same to the units. However, in case of import through courier, the same is allowed subject to the provisions of Courier Export / Import Regulations, 1998. The other requirement such as procurement certificate / furnishing of re-warehousing certificate at the Gateway airport etc. are required to be fulfilled.

Import through Electronic Communications Link:

The EOUs units engaged in development and export of software has been allowed the facility of import through Data Communication and Telecommunication link. Since such imports are not in physical



form, the units are required to file a bill of entry within 24 hours of receipt of imports for notional out of charge. However, payment for import of such software would be remitted only through normal banking channel as required for imports. For which the CBEC has clarified vide Circular No. 50/2000-Customs, dated 12-5-2000.

It may be mentioned here that in case of import of software through Data Communication and Telecommunication link by any unit located in DTA, no such procedure has been laid down. There is need for prescribing such procedure for DTA units as well.

The principal objective of the EOU/EHTP/STP/BTP Schemes is to promote export of manufactured goods and to earn foreign exchange for the country. For which exemption from duties and taxes have been provided by the Government to EOU/ STP/ EHTP/ BTP units as manufactured / produced by these units. Export Oriented Undertaking are permitted to export their entire production of goods and services (except permissible sales in DTA) and trading units are not covered under these schemes.

Export of Restricted / Prohibited Goods:

Letter of permission (LOP) issued to the EOU/STP/EHTP/BTP is considered as a license for all purposes and there is no need to take separate license from DGFT. However, if there is requirement of any permission from any other statutory authorities / department etc., then these units will be required to obtain such permission / permit / license from such authorities / department etc. It is to be mentioned that any prohibition on export of goods as provided in the ITC (HS) is also applicable to goods exported by EOU/STP/ EHTP/BTP as they are applicable to exports by DTA units. It means EOUs units are not allowed to export prohibited goods.

An EOU / EHTP / STP / BTP unit may export all kinds of goods and services except items that are prohibited in ITC (HS). However export of gold jewellery, including partly processed jewellery, whether plain or studded, and articles, containing gold of 8 carats and above upto a maximum limit of 22 carats only shall be permitted.

Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of the conditions indicated in ITC (HS). In respect of an EOU, permission



to export a prohibited item may be considered, by BOA, on a case to case basis, provided such raw materials are imported and there is no procurement of such raw material from DTA.

Procurement and supply of export promotion material like brochure / literature, pamphlets, hoardings, catalogues, posters etc. up to a maximum value limit of 1.5% of FOB value of previous years exports shall also be allowed.

EOU / EHTP / STP / BTP units, other than service units, may export to Russian Federation in Indian Rupees against repayment of State Credit/ Escrow Rupee Account of buyer subject to RBI clearance, if any.

Procurement and export of spares / components, upto 5% of FOB value of exports, may be allowed to same consignee / buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.

BOA may allow, on a case to case basis, requests of EOU / EHTP / STP / BTP units in sectors other than Gems & Jewellery, for consolidation of goods related to manufactured articles and export thereof along with manufactured article. Such goods may be allowed to be imported / procured from DTA by EOU with or without payment of duty and/or taxes as provided at Para 6.01 (d) (ii) and (iii) above, as the case may be to the extent of 5% FOB value of such manufactured articles exported by the unit in preceding financial year. Details of procured / imported goods and articles manufactured by the EOU will be listed separately in the export documents. In such cases, value of procured / imported goods will not be taken into account for calculation of NFE and DTA sale entitlement. Such procured / imported goods shall not be allowed to be sold in DTA. BOA may also specify any other conditions.

Payment of Export Duty / Cess:

There are number of goods which are subjected to export duties under the Customs Tariff Act, 1975 (Schedule 2). If any goods, which is subjected to export duty under the Customs Tariff Act, is



exported by the EOU/EHTP/STP/BTP units, then EOU/EHTP/STP/BTP unit will be required to pay export duty. There is no exemption EOU/EHTP/STP/BTP units from payment of export duty. Similarly, certain goods are subjected to collection of cess at the time of export, unless specifically exempted for EOUs, the EOUs shall be required to pay such cess.

Export Procedure:

No separate procedure for export of goods by EOU/EHTP/STP has been prescribed. The procedures as stipulated in CGST Rules, 2017 also apply to EOU/EHTP/STP/BTP units, as they are applicable to exports by any DTA unit.

Treatment of Exports under GST:

In the GST regime, as per the provisions of IGST Act, 2017 supplies of goods and services for exports are to be treated as “Zero rated supplies” implying that registered taxable person exporting goods and services shall follow the procedure of export under bond or letter of undertaking without payment of Integrated Tax and claim refund of unutilized input tax credit or on payment of integrated tax and claim refund of the tax so paid on goods and services exported.

C.B.E&C. has issued Circular No. 26/2017-Cus., dated 1st July, 2017 and Notification No.16/2017-C.T., dated 1st July, 2017 read with Circular 4/4/2017-GST, dated 7th July, 2017 regarding export procedure and sealing of containers in the GST regime and same is applicable to EOUs.

Any person making zero-rated supply (i.e. any exporter) shall be eligible to claim refund under either of the following options, namely:-

- (a) he may supply goods or services or both under bond or letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of Integrated Tax and claim refund of unutilized input tax credit; or



- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of Integrated Tax and claim refund of such tax paid on goods or services or both supplied, in accordance

EOUs are not required to execute separate Bond for export and B-17 General Bond executed by EOUs are to be considered for export without payment of IGST.

Export of Goods and Services to Nepal and Bhutan:

Export of goods to Nepal or Bhutan fulfills the condition of GST Law regarding taking goods out of India as per Section 2(5) of the IGST Act, 2017. Hence, export of goods to Nepal and Bhutan will be treated as zero-rated and consequently will also qualify for all the benefits available to zero-rated supplies under the GST regime irrespective of the fact that export realization is received in Indian Currency. However, the definition of 'export of services' in terms of Section 2(6)(iv) of the IGST Act, 2017 requires that the payment for such services should have been received by the supplier of services in convertible foreign exchange. Hence, the payment received in India rupee shall not qualify for the export of services.

Section 54 has now been amended so that the supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI with compliance to para 2.52 of the Foreign Trade Policy 2015-2020, wherein it is clarified that exports proceeds from Nepal and Bhutan can be realized in Indian rupees.

The Central Government vide Notification No. 42/2017-I.T. (Rate), dated 27th October, 2017 made the amendment in the Notification No. 9/2017-I.T. (Rate), dated 28th June, 2017 whereby a new entry have been inserted in the exemption notification, namely, Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

In case of export of goods or services by EOU /STP/EHTP/BTP Units to Nepal and Bhutan, the payment may be either in Indian Rupees or in freely convertible Foreign Currency. When such exports



are against payment in freely convertible foreign currency, then EOU/EHTP/BTP units can remove such goods from the place of manufacture without payment of duty as in case of physical export to countries other than Nepal and Bhutan and such exports are eligible for being counted towards achievement of NFE. However, if payments for export of goods to Nepal and Bhutan are to be received in Indian Rupees, then EOU/EHTP/STP/BTP is required to pay duty on such goods. It may be noted that duty in such case is equal to the Customs duties leviable on such goods, if imported.

Factory Stuffing of Export Goods:

The EOUs are allowed facility of in-house stuffing of containers. The container can be brought to the factory for stuffing with the permission of the jurisdictional officer of Customs at ICD and thereafter, the stuffing of the container can be undertaken under the supervision of Bond officer and subsequent CBEC vide Circular No.736/52/2003-CX relating to self-certification / self-sealing of export consignment made applicable to EOUs. Therefore, the EOU/STP/EHTP/BTP units may seal the containers themselves on their own responsibility.

Sealing of containers under GST regime:

Board has in past issued various circulars both on the Excise and Customs side on the issue of sealing of containers. At present, there are three categories of containers which arrive at the port/ICD;

- (a) Containers stuffed at factory premises or warehouse under self-sealing procedure.
- (b) Containers stuffed/sealed at factory premises or warehouse under supervision of central excise officer.
- (c) Containers stuffed and sealed at Container Freight Stations/ Inland Containers Depot.

For the sake of uniformity and ease of doing business, Board has decided to simplify the procedure for stuffing and sealing of



export goods in containers. Accordingly, Board has decided to do away with the sealing of containers with export goods by C.B.E. & C. officials; instead, self-sealing procedure vide CBEC Circular No.26/2017-Cus, dated 1-7-2017 shall be followed subject to the following:

- (i) The exporter shall be under an obligation to inform the details of the premises where a factory or warehouse or any other place where container stuffing is to be carried out, to the jurisdictional customs officer.
- (ii) The exporter should be registered under the GST laws and should be filing **GSTR-1** and **GSTR-2**. In case if exporter is not registered under the GST laws, in that case he shall bring the export goods to a CFS/ICD for stuffing and sealing of container. However, in certain situations, an exporter may follow the self-sealing procedure even if he is not required to be registered under GST laws. Such an exception is available to the Status Holders recognized by DGFT under a valid status holder certificate issued in this regard.
- (iii) Any exporter desirous to avail the facility of self-sealing of export goods, before 15 days of export he has to submit an intimation to the jurisdiction Customs officer and the intimation shall clearly contains the place/address of the approved premises, description of export goods and the details of incentive is being claimed. The jurisdiction Customs officer shall inspect the premises of exporter and submit a report to the Jurisdiction A.C/D.C within 48 hrs. The Jurisdiction A/C/D.C shall forward the proposal of exporter to the Principal Commissioner of Customs for approval of self-sealing in the approved premises. On receipt of self-sealing permission the exporter can start self-sealing of exports goods under intimation to jurisdictional Superintend or customs officer.
- (iv) Where the inspection report of jurisdictional customs officer is not favourable and premises is not viable with regard to stuffing/sealing in the factory premises of containers, in that



case exporter bring the export goods to the CFS/ICD/Port of export for sealing purposes.

- (v) Once the permission for self-sealing has given by the Principal Commissioner of Customs shall be valid for export at all the customs stations. The customs officer shall circulate the permission along with GSTIN of the exporter to all Customs Houses/Station concerned.
- (vi) The movement of sealed containers to the port of export shall be under cover of transport document as prescribed under GST laws. In the case of an exporter who is not a GST registrant, way bill or transport challan or lorry receipt shall be the transport document.
- (vii) The exporter shall seal the container with the tamper proof electronic-seal of standard specification. Before sealing the container, the exporter shall feed the data such as name of the exporter, IEC code, GSTIN number, description of the goods, tax invoice, name of the authorize signatory and shipping Bill number in the electronic seal. Thereafter, container shall be sealed with the same electronic seal before leaving the premises.
- (viii) The exporter intending to clear export goods on self-clearances (without employing a Customs Broker) shall file the shipping Bill under digital signature.
- (ix) All consignments in self-sealed containers shall be subject to risk based criteria and intelligence, if any, for examination/inspection at the port of export. At the port/ICD as the case may be, the customs officer would verify the integrity of the electronic seals to check for tampering if any enroute. However, random or intelligence based selection of such containers for examination/scanning would continue till RMS system is revamped.



Shipping Bill:

Apart from Export Invoice, another important document for export is Shipping Bill in the earlier provision of export procedure. In order to ensure smooth transition from the earlier export procedure to the procedure laid down for export goods under the GST regime, the existing shipping Bill formats (both manual/electronic), have been modified to make them complaint with the IGST law. New formats of the Shipping Bill have already been made applicable. ARE-1 procedure which was being followed is dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable.

The EOUs units are required to present Shipping Bill (free Shipping Bill for duty free goods) to the Customs authority at port of export. The following documents are to be submitted along with the Shipping Bill:-

- (i) Invoice & Packing list,
- (ii) G.R. form (in duplicate),
- (iii) Seal cover containg samples of export goods if factory stuffing/ examination has been supervised by bond officer,
- (iv) Copy of contract letter with foreign buyer,
- (v) Copy of Insurance cover of export consignment,
- (vi) Value addition sheet for Gem and Jewellery units,
- (vii) Declaration regarding sameness of inputs in cases where goods are exported after job work.

Examination of export consignment at port of export:

Where the export consignment have been removed from the factories on the basis of self-certification and self-sealing by the EOU, then the export goods are to be examined at the port of export on the basis of examination norms prescribed vide CBEC Circular No. 6/2002-Cus, dated 23-1-2002 as amended to be followed. However, if the export consignments of EOUs have been sealed by the Customs/



bond officer then the examination of export consignment at port of export is not required.

Export through Courier:

The EOUs can also affect their exports of similar consignments through authorised couriers. The procedure and limitation, as laid down under “Courier Export/Import Regulation, 1998” as amended, are applicable to EOU/STP/EHTP/BTP units. The procedure for presentation of shipping bill, assessment and examination is same as in the case of usual export by DTA exporter. In view of door-to-door delivery facility by the courier, this mode of export is fast and convenient.

Export from the Job worker’s premises:

The EOUs can export goods directly from the job worker’s premises provided the job worker is registered with jurisdictional GST authorities and have GST registration. The export of finished goods in such cases is not allowed through third party. Further, to ensure that the goods removed from EOU has been further processed and then being exported, it is required to draw a sample of the goods exported from the job worker’s premises and send the same to the jurisdictional Customs/ GST authority (of the EOUs) so as to enable verification that goods supplied by the EOU has been utilised in the export product or otherwise.

Export of software through Electronic Media:

The EOUs engaged in development and export of software and units in STP are allowed to export goods through data communication links. The EOU/STP units are required to use SOFTEX from in place of shipping bill and GR form. The declaration in Form SOFTEX shall be submitted in triplicate to the Director / Designated Officer of STPI. After certifying all the three copies of SOFTEX form, the designated authority / Director STPI forward the Original to the nearest office of the RBI and return the duplicate to the exporter.



The triplicate copy is retained by the designated authority / Director STPI. On realization of the export proceeds, the authorised dealer after due certification, submit the duplicate of SOFTEX form to the RBI for payment.

Export through othersexporters (Merchant Exporter):

An EOU/ EHTP/ STP/BTP unit may export goods manufactured/ software developed by it through another exporter or any other EOU/EHTP/STP/SEZ unit subject to conditions mentioned in Para 6.19 of HBP as under:

- (a) Goods shall be produced in EOU / EHTP / STP / BTP unit concerned.
- (b) Level of NFE or any other conditions relating to imports and exports as prescribed shall continue to be discharged by EOU/ EHTP / STP / BTP unit concerned.
- (c) The export orders so procured shall be executed within parameters of EOU / EHTP / STP / BTP schemes and goods shall be directly transferred from unit to port of shipment.
- (d) Fulfillment of NFE by EOU / EHTP / STP / BTP units in regard to such exports shall be reckoned on basis of price at which goods are supplied by EOUs to other exporter or other EOU / EHTP / STP / BTP / SEZ unit.
- (e) All export entitlements, including recognition as Status Holder would accrue to exporter in whose name foreign exchange earnings are realized. However, such export shall be counted towards fulfilment of obligation under EOU / EHTP / STP / BTP scheme only.

Others Entitlements:

- (a) FOB value of export of an EOU / EHTP / STP / BTP unit can be clubbed with FOB value of exports of its parent company in DTA or vice versa for the purpose of according Export House and Trading House status.
- (b) Sectoral norms as notified by Government shall apply to FDI in service activities.



- (c) STP Units / EHTP Units / Software EOUs may also use all duty free equipment / goods for training purpose (including commercial training), subject to condition that no duty free equipment / goods shall be installed outside bonded premises for this purpose.
- (d) Export of iron ore shall be subject to decision of Government. Requirements of other conditions of exports like minimum export price / export in consumer pack etc. as per ITC (HS) shall apply in case raw materials are sourced from DTA and exported without further processing / manufacturing by EOU. Export of textile items shall be covered by bilateral agreements. Wood based units shall comply with direction of Supreme Court contained in its order dated 12.12.1996 in Writ (civil) No 202 of 1995- T.N.Godavarman Thirrumulppad v/s Union of India and others with WP (Civil) No 171 of 1996 in regard to use of timber / other wood.

Export through Exhibitions / Export Promotion Tour:

EOU / EHTP / STP / BTP units may export goods for holding / participating in exhibitions abroad, with permission of DC, subject to following conditions:

- (a) Unit shall produce to Customs authorities letter in original, or its certified copy containing approval of DC. For gems and jewellery items, a self-certified photograph of products shall also be submitted.
- (b) In case of re - import, such items, on arrival shall be verified along with export documents before clearance
- (c) Items not sold abroad shall be re - imported within 60 days of close of exhibition. However, in case exporter is participating in more than one exhibition within 45 days of close of first exhibition, then 60 days shall be counted from date of close of last exhibition. In case of exhibition in USA, the time period shall be 90 days instead of 60 days mentioned above.



- (d) In case of personal carriage of goods and for holding / participating in overseas exhibitions, value of such gems and jewellery shall not exceed US \$ 5 million.

Personal Carriage of Gems and Jewellery for Export Promotion Tours:

Personal carriage of gold / silver / platinum jewellery, cut and polished diamonds, precious, semi-precious stones, beads and articles as samples upto US \$ 1 million for export promotion tours, and temporary display / sale abroad by EOUs, is also permitted with approval of DC subject to following conditions:

- (a) EOU shall bring back goods or repatriate sale proceeds within 45 days from date of departure through normal banking channel.
- (b) Unit shall declare personal carriage of such samples to Customs while leaving country and obtain necessary endorsement.

Export through Show-rooms abroad / Duty free shops:

Export of goods is also permitted for display / sale in permitted shops set up abroad or in showrooms of their distributors / agents. Items not sold abroad within 180 days shall be re-imported within 45 days.

Sale through Showrooms / Retail outlets at International Airports:

EOUs may set up showrooms / retail outlets at International Airports for sale of goods in accordance with procedure laid down by Customs authorities. Items remaining unsold after a period of 60 days shall be exported or returned to respective EOUs.

Export Parcels including through Foreign Bound Passengers:

- (a) For Personal carriage of jewellery by foreign bound passenger, following documents shall be submitted by EOUs as proof of exports:
- (i) Copy of shipping bill filed by EOUs;
- (ii) A copy of Currency Declaration Form filed by Foreign buyer with Customs at time of his arrival; and



- (iii) Foreign Exchange Realisation / Encashment Certificate from Bank.
- (b) In addition to this, Personal Carriage by foreign bound passenger on Document Against Acceptance (DA) / Cash On Delivery (COD) basis is also allowed. EOUs will have to furnish following documents as proof of exports:-
 - (i) Copy of Shipping Bill;
 - (ii) Bank Certificate of Export and Realisation.

Export through Exhibitions / Export Promotion Tours/ Showrooms Abroad /Duty Free Shops

EOU / EHTP/STP/BTP are permitted to:

- (i) Export goods for holding/participating in Exhibitions abroad with permission of DC.
- (ii) Personal carriage of gold / silver / platinum jewellery, precious, semi-precious stones, beads and articles.
- (iii) Export goods for display / sale in permitted shops set up abroad.
- (iv) Display / sell in permitted shops set up abroad, or in showrooms of their distributors / agents.
- (v) Set up showrooms / retail outlets at International Airports

Personal Carriage of Import/Export Parcels including through Foreign Bound Passengers

Import/ export through personal carriage of gems and jewellery items may be undertaken as per Customs procedure. However, export proceeds shall be realized through normal banking channel. Import/ export through personal carriage by units, other than gems and jewellery units, shall be allowed provided goods are not in commercial quantity. An authorized person of Gems & Jewellery EOU may also import gold in primary form upto 10 Kgs in a financial year through personal carriage, as per guidelines prescribed by RBI and DoR.



Conversion of EOUs:

- (a) Existing DTA units, may also apply for conversion into an EOU /EHTP / STP / BTP unit, but no concession in duties and taxes would be available under scheme for plant, machinery and equipment already installed. For this purpose, DTA unit may apply to DC / Designated Officer concerned in same manner as applicable to new units. In case there is an outstanding export commitment under EPCG scheme /Advance Authorization Scheme, it will follow the procedure laid down in Appendix 6 M of Appendices & ANFs.
- (b) Existing EHTP / STP / BTP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will continue to avail permissible exemption in duties and taxes as applicable under relevant scheme. EHTP/ STP/ BTP units desiring conversion as an EOU may apply to DC concerned through Officer designated by DeitY / DoBT in same manner as applicable to new units. Likewise, EOU desiring conversion into EHTP /STP / BTP may apply to officer designated by DeitY / DoBT through DC concerned.
- (c) An EOU may be shifted to SEZ with approval of DC provided EOU has achieved pro-rata obligation under EOU scheme.

Revival of Sick Units:

Subject to a unit being declared sick by appropriate authority, proposals for revival of unit or its take over may be considered by BOA. Guidelines on revival of sick units are given in Appendix 6 L of Appendices & ANFs.

Exit from EOU Scheme:

EOU/EHTP/STP/BTP units are licensed to manufacture under physically bonded premises and are licensed under section 58 of the Customs Act, 1962. EOUs units are issued letter of permission by the Development Commissioner for operating a period of five



years or extended for another five years. Before such unit starts operating / procuring goods duty free, these units are required to execute B-17 bond with the jurisdictional Customs / Central Excise & GST Authorities.

- (a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.
- (b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.
- (c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.
- (d) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit from the scheme at any time on payment of applicable duties and taxes and compensation cess on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfillment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.

However, if at any point of time, EOU/EHTP/STP/BTP units want to stop functioning as EOU/EHTP/STP/BTP units and exit out of the said scheme, it is allowed to do so after complying with the procedure is called as 'debonding procedure'.

Debonding Procedure:

The unit intending to exit out of the EOU/EHTP/STP/BTP Scheme is required to intimate the Development Commissioner in case of EOU or Director STPI / designated officer in case of STP/EHTP units and jurisdictional Customs and GST & Central Excise authorities in writing. The units are required to assess the duty liabilities arising



out of such debonding of its own and submit such assessment to the jurisdictional Customs / GST & Central Excise authorities. The Customs and GST & Central Excise authorities are required to confirm the duty liabilities on priority within 15 working days. After clearance of all dues, the unit obtain “No Objection” from the Customs / GST & Central Excise authorities.

If the unit has not achieved the obligations under the scheme, exit from the scheme, shall also be subject to penalty as may be imposed by the competent authority.

Unit proposing to exit out of EOU scheme shall intimate DC and Customs authorities in writing. Unit shall assess duty liability arising out of exit and submit details of such assessment to Customs authorities. Customs authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain “No Dues Certificate” from Customs authorities. On the basis of “No Dues Certificate” so issued by the Customs authorities, unit shall apply to DC for final exit. In case there is no proceeding pending under FT (D&R) Act, as amended, DC shall issue final exit order within a period of 7 working days. Between “No Dues Certificate” issued by Customs authorities and final exit order by DC, unit shall not be entitled to claim any exemption for procurement of capital goods or inputs. However, unit can claim Advance Authorisation / DFIA / Duty Drawback. Since the duty calculations and dues are disputed and take a long time, a BG / Bond / Installment processes backed by BG shall be provided for expediting the exit process.

In cases where a unit is initially established as DTA unit with machines procured from abroad after payment of applicable import duty, or from domestic market after payment of excise duty/GST, and unit is subsequently converted to EOU, in such cases removal of such capital goods to DTA after exit would be without payment of duty. Similarly, in cases where a DTA unit imported capital goods under EPCG Scheme and after completely fulfilling export obligation gets converted into EOU, unit would not be charged



customs duty on capital goods at the time of removal of such capital goods in DTA when exit.

An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit under Advance Authorisation as one time option. This will be subject to fulfillment of positive NFE criteria.

A simplified procedure may be provided to fast track the De-bonding/ Exit of the STP / EHTP Unit which has not availed any duty benefit on procurement of raw material, capital goods etc.

In the event of a gem and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by the Ministry of Commerce and industry (Department of Commerce) at the price to be determined by that agency.

An EOU / EHTP/STP unit may also be permitted by the Development Commissioner, as a one-time option, to exit from the scheme on payment of duty on capital goods under the prevailing EPCG Scheme, subject to the unit satisfying the eligibility criteria under that Scheme and standard conditions, as per Appendix 14-IL FTP.

Clearance of capital goods imported as second hand shall be allowed as per the Policy under EPCG scheme. In case of second hand capital goods which are" less than 10 years old on the date of import, clearance may be allowed on payment of duty after 2 years from date of import. In addition where the second hand capital goods are more than 10 years old, clearance in DTA may be allowed only against an import licence and payment of applicable duties.

The depreciation upto 100% is permissible for capital goods in 5 years in case of IT items and 10 years in case of other items or duty is to be worked out on transaction value, whichever is higher as per the norms notified by the Department of Revenue.

The units in respect of capital goods are allowed to pay Customs/ GST/ Central Excise duty on depreciated value. Depreciation for computers and computer peripherals for all types of electronic units and for capital goods, other than the computer items, depreciation



rate would be permissible to EOU/EHTP/STP as prescribed under para 6.37 (a) (b) of the Foreign Trade Policy-2015-2020.

On the basis of “ No Dues “ Certificate , issued by the Customs / GST & Central Excise authorities, that unit apply for final debonding to the Development Commissioner (Director STPI / designated officer in case of STP/ EHTP units). In case, no proceedings are pending under Foreign Trade (Development & Regulation) Act, 1992, the Development Commissioner (Director STPI / designated officer in case of STP/EHTP units) is required to issue the final debonding order within a period of 7 working days.

Conversion from DTA to EOUs

Existing DTA units may also apply for conversion into an EOU / EHTP / STP / BTP unit.

- (a) Existing EHTP / STP units may also apply for conversion / merger to EOU unit and vice-versa. In such cases, units will avail exemptions in duties and taxes as applicable.
- (b) Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, having an investment of Rs. 50 crores and above in plant and machinery or exporting Rs. 50 crores and above annually, shall be placed before BOA for a decision.

Export / Import by Post / Courier

Goods including free samples, may be exported/imported by air freight or through foreign post office or through courier, as per Customs procedure.

Administration of EOUs / Powers of DC

Details of administration of EOUs and power of DC is given in HBP.

EOUs provisions are amended vide Notification No.55/2015-20 dated 23.03.2018 and Notification No.10/2015-20 dated 7.06.2018

CASE LAWS

- (1) The Hon'ble High Court of Madras in the case of the Commissioner of GST & C.EX, v. Intimate Fashions India (P) Ltd, reported in 2019 (31) G.S.T.L. 22 (Mad.), held that " Having heard the Learned Counsel for the parties, we are of the clear opinion that the Learned Tribunal has taken a correct view of the matter and has rightly found that the foreign agents of the assessee in question were rendering the services not only post-sales or post-export by the assessee but, were engaged in the activities of exploring the market, advising the designs for manufacture and supplies to specific orders procured by them and assisting the clearance of the garments in question and export the same to the foreign countries and earn foreign currency in terms of their obligations as 100% EOU and therefore, the service tax paid on commission to foreign agents could not denied the benefit of Cenvat credit under Cenvat Credit Rules, 2004." (Para 6) – Appeal dismissed.
- (2) The Hon'ble High court of Rajasthan in the case of the Commissioner of C.EX, v. National Engineering India Ltd, reported 2018 (16) G.S.T.L. 271 (Raj.), Cenvat credit - Utilization of - Goods Transport Agency (GTA) - Service Tax liability can be discharged by availing Cenvat credit taken on inputs/input services/capital goods utilized to, even if not used for providing taxable services - Section 68(2) of Finance Act, 1994 read with Rule 6(2) of Service Tax Rules, 1994 and Rule 3(4) of Cenvat Credit Rules, 2004. [Paras 4, 7]."- Appeal dismissed.
- (3) The Hon'ble Bombay high Court decision in the case of the Commissioner of C. Ex, v. Kumar Housing Corporation Ltd, reported in 2018 (360) E.L.T. 581 (Bom.), observed at para 7 & 8 -



7. The tribunal noted the rival contentions and all that it did in para 5.3 was to invite the attention of the Revenue to certain notifications, Central Board of Excise and Customs Circulars right from 1994, which, in the opinion of the tribunal, allow depreciation of capital goods at the time of debonding. It gave illustration as to how the notifications were applied and in the cases of 100% EOU as well as that scheme operates. Finally, the tribunal referred to the two notifications. Beyond all this and which had missed the attention of the adjudicating authority, the tribunal did not render any definite or final opinion. It is in these circumstances that the tribunal directed a remand on the second occasion. That is because the Revenue argued, according to the tribunal's opinion and *prima facie* contrary to its own circulars and notifications issued from time to time.
 8. That is why the assessee was also mandated to follow the prescribed procedure. If that has been fulfilled, then, the duty liability in terms of the Revenue scheme had to be worked out. We do not see how such an order, by which the tribunal did not allow the appeal of the assessee but remanded the matter to the adjudicating authority, results in a substantial question and arising for our consideration. This is an order imminently possible in the facts and circumstances of the case. Once we have clarified that no definite opinion other than inviting the attention of the Revenue to its own scheme was rendered by the tribunal, then, all the more we are disinclined to entertain this appeal. It is dismissed, but without any order as to costs." – Appeal dismissed.
- (4) The High Court of Madras in the Case of *Orchid Health Care, v. Union of India*, reported in 2017 (49) S.T.R. 496 (Mad.) held that At this stage of the hearing of the writ petition the learned counsel appearing on behalf of the petitioner had submitted that it would not be of any use to the petitioner if the respondents are keeping the rebate amount in credit, as the petitioner does



not make any local sales and therefore, no excise duty would be payable by the petitioner. Therefore, the second respondent is bound to pay the rebate amount to the petitioner, in cash, if necessary, subject to certain safeguards and conditions, as may be specified by the Central Government, by notification. Therefore, it has been prayed that this Court may be pleased to quash the impugned order of the first respondent, dated 28-12-2011 and to consequently, direct the second respondent to grant the rebate claim made by the petitioner, in respect of the exports made by it, as per Rule 5 of the CENVAT Credit Rules, 2004.

In view of the averments made on behalf of the petitioner, as well as the respondents, and on a perusal of the records available and in view of the decisions cited supra, this Court finds it appropriate to conclude, without going into the other issues relating to the matter, that the second respondent is bound to refund the rebate payable to the petitioner, in cash, subject to certain conditions to safeguard the interests of the respondent Department. In view of the fact that the petitioner had paid the excise duty on the goods exported by it, and as it may not be of use to the petitioner if the respondent Department keeps the amount of rebate claim in credit, as the petitioner does not have local sales, the respondent department is directed to refund the duty paid by the petitioner, on the goods exported by it, as expeditiously as possible, subject to certain conditions, which may be necessary to safeguard the interests of the respondent Department. The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed. (Para 17 & 18).

- (5) The Supreme Court of India in the case of Union of India, v. Hanil Era Textiles Ltd reported in 2017 (52) S.T.R. 3 (S.C.) it is not in dispute nor it can be disputed by the Revenue that before passing the review order the Development Commissioner had not issued a show cause notice to the assessee(s) *inter alia* asking it to show cause as to why the order passed earlier should



not be reviewed. In our view, the omission on the part of the Development Commissioner would go to the fundamentals in the sense that no order could be passed against a person without issuing a show cause notice to him/it. This would be in violation of the principles of natural justice and also infringe Article 14 of the Constitution of India. *Audi Alteram Partem*, as the basic principle of natural justice ensures an opportunity of fair hearing to the parties. Issuance of a show cause notice is a part and parcel of the aforesaid principle which provides that the parties are in a position to defend themselves adequately; after being aware of the exactness of the allegation against them. The concept of natural justice cannot be put into a strait-jacket formula. The only essential point is that in the given facts of a case, if the person concerned has reasonable opportunity of presenting his case and if the administrative authority have acted fairly, impartially and reasonably. In the instant case, no show cause notice has been issued to the respondent before the review order was passed by the Development Commissioner which had put the Respondent No. 1 at a disadvantage by not allowing them to defend themselves. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice and therefore, this doctrine is the most paramount doctrine that goes to the root of all laws and to the concept of justice. The order passed by the Development Commissioner is in contravention to the principles of natural justice and is therefore cannot be sustained. In that view of the matter, we set aside the order passed by the Appellant No. 2, dated 4-6-2003. (Para 10)

- (6) The Hon'ble Tribunal bench Mumbai, in the case of *Thermax Ltd. v. Commissioner Central Excise*, reported in 2016 (338) E.L.T. 158 (Tri. - Mumbai), held that " Certificate of re-warehousing not sent by consignee within the period of 90 days - With regard to same consignee, the Asstt. Commissioner of Customs issued a letter to M/s. CFC India Services P. Ltd. demanding the duty and interest for violation of the conditions of Notification No. 22/2003-C.E. and appellants customer



has paid the entire duty of Excise along with interest to the department and thereafter with regard to same consignment the department cannot ask the appellant to pay the duty as the department cannot recover the duty twice for the same consignment and moreover as per sub-rule (3) of Rule 20 of Central Excise Rules, 2002 it is the responsibility of the buyer - Appellant not liable to pay duty.

Advance Rulings:

The Authority for Advance Ruling under GST, Goa, In Re: Syngenta Bioscience Pvt. Ltd, reported in 2019 (31) G.S.T.L. 120 (A.A.R. - GST), held that "In the instant case, the goods on which technical testing is carried out are made available to the applicant in India and are not exported back to the recipient. Hence the exclusionary clause under Section 13(3)(a) is not applicable to the instant case. The activity of technical testing on goods is carried out in Goa, India. Hence the place of supply of service is rightly determined as per Section 13(3) of the IGST Act, 2017 which is the location of the supplier of the service i.e. Goa, India. Since the place of supply of service is in India, condition (iii) under Section 2(6) of the IGST Act, 2017 is not fulfilled. Hence the service provided by the applicant doesn't falls within the definition of export of service as defined under Section 2(6) of the IGST Act, 2017. Since the case laws quoted by the applicant belong to Pre-GST Service Tax regime, those can't be made applicable to the instant case.

Ruling:

1. The service provided by the applicant doesn't falls within the definition of export of service as defined under Section 2(6) of the IGST Act, 2017.
2. The applicant is liable to pay CGST and SGST on the aforesaid supply of service.
- (7) The Hon'ble High Court of Delhi in the case of JINDAL DYECHEM INDUSTRIES (P) LTD vs. UNION OF INDIA, reported in 2018 (17) G.S.T.L. 222 (Del.) held that It is apparent



from these facts that the imports which are the subject matter of the present writ petition were in fact made after the introduction of GST Regime. The petitioner is the beneficiary of an advance license issued on 17-7-2017. At that point of time, the exemption notifications (issued on 29-6-2017) were not in existence. The exemption of IGST, was not in force, on that date; the customs notification (of 29-6-2017) was amended only on 13-10-2017. In these circumstances, this Court is of the opinion that since the benefit of exemption in fact existed at that point of time, the most appropriate course would be for the respondent authorities to verify whether as a matter of fact the petitioner in fact fulfilled the export obligations pursuant to the advance license of 18-7-2017. If it did, there is no need for any further action. However, if it did not, then the appropriate and necessary assessment in accordance with law may be resorted to. The respondent shall ensure that further proceedings towards verification and any consequential order shall be completed within four months from today with advance notice and proper opportunity to the petitioner.

- (8) The Hon'ble Gujarat High Court in the case of YANGIR PROPERTIES AND TRADING LTD .vs. UNION OF INDIA, reported in 2019 (368) E.L.T. 412 (Guj.) held that "it is manifestly clear that the authorities kept the show cause notice in call book for 14 years and thereafter, resurrected and the impugned orders dated 28-7-2017, and 24-1-2018, confirmed the demand came to be passed without considering the written submissions of the petitioners. In our considered view, the action on the part of the authorities to keep the show cause notice for long period and thereafter, reviving it to confirm the order of demand as has been held in various decisions resulted in infraction of the principles of natural justice rendering the show cause notice as well as consequent order vitiated.

For the foregoing reasons, the impugned notice dated 30-9-2003, and order dated 28-7-2017, passed in Order in Original No. 07/ADJ/DEM/JC-VVP/17-18, and order passed in Order in



Appeal No.VAD-EXCUS-002-APP-834-835/2017-18, dated 24-1-2018, are hereby quashed and set aside. Rule is made absolute. The parties are left to bear their own costs.” (Para 11 & 12).

- (9) The Hon’ble High Court of Gujarat in the case of RELIANCE INDUSTRIES LIMITED vs. UNION OF INDIA, reported in 2019 (365) E.L.T. 257 (Guj.) EXIM - Foreign Trade Policy - Export oriented unit (EOU) - Raw materials purchased from Domestic Tariff Area (DTA) used in manufacture of goods sold in DTA - Reimbursement of Central Sales Tax (CST) paid thereon - Admissibility of - In terms of Para 6.11(c)(i) of Foreign Trade Policy, 2004-2009 EOU entitled to reimbursement of CST on its purchases made from DTA units - Provision makes no distinction between consumption of goods purchased from DTA for production of goods meant for export or for domestic clearances - Procedure prescribed in Handbook of Procedures being contrary to Para 6.11(c) of Foreign Trade Policy, 2004-2009 cannot be relied on - Also belated action initiated by Department cannot be sustained.
- (10) The Hon’ble Revisionary Authority, IN RE: TORRENT PHARMACEUTICALS LTD, reported in 2018 (364) E.L.T. 1161 (G.O.I.) Export Oriented Units - Rebate of duty - Benefit under Notification No. 21/2004-C.E. (N.T.) - Partly denied on ground that rebate of duty in respect of basic Customs duty not admissible - Lower authorities confused Central Excise duty paid by EOU as Customs duty as levy of Central Excise duty on goods manufactured by 100% EOU was equivalent to aggregate of Customs duty - Excise duty leviable on such goods could not be misconstrued as Customs duty - Duty levied under Section 3 of Central Excise Act, 1944 was Central Excise only - Splitting of Central Excise duty into basic Customs duty and Additional Duty of Customs (CVD) unwarranted - Government’s policy enshrined in Rule 18 of Central Excise Rules, 2002 and said notification was that no tax should be exported along with goods - Disallowance of part claim erroneous.



- (11) The Appellate Authority for Advance Ruling, HARYANA, IN RE: KEYSIGHT TECHNOLOGIES INTERNATIONAL INDIA PVT. LTD, reported in 2020 (32) G.S.T.L. 126 (A.A.R. - GST – Haryana), held as under:

Supply of electricity - Supply through grid as well as DG sets
- Supply of electricity through grid is 'goods' and not service and classifiable under Entry No. 104 of Notification No. 2/2017-C.T. (Rate), Tariff Item 2716 00 00 of Customs Tariff Act, 1975
- However, provision of electricity supply/power back-up via DG sets by lessee is in the form of a service, DG sets being owned and maintained by lessee - Accordingly, electrical supply to the extent supplied through DG set, is liable to GST @ 18%.

Input Tax Credit - Electricity supply - Input Tax Credit in case of electricity supply restricted to the supply made through DG sets, supply through grid being exempt from GST - Sections 2(62) and 16(1) of Central Goods and Services Tax Act, 2017.

Important Circulars

Circular No. 10/2018-Customs, dated 24th April' 2018

Subject: Import by EOU / EHTP/STP/BTP without payment of duty by following Rule-5 of Customs (import of Goods at Concessional Rate of Duty) Rules, 2017- clarification-Regarding.

Representation have been received from EOUs regarding difficulties faced on imports due to requirement of submitting information to the DC / AC of Customs at the Custom Station of importation by way of forwarding a copy of such information by the Jurisdiction DC/AC of Customs under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It is further represented that due to recent reorganization of Customs formations and associated administrative constraints, EOUs are not able to get approved / signed copy of said information from the Jurisdictional DC / AC of Customs in time, for submitting the said copy to the DC / AC of Customs at the Custom Station of importation for scheduled imports.



2. In order to clarify the issue, it is pertinent to broadly recall the procedure required to be followed by the EOUs as well as Custom officers under Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The EOUs are required to provide information in duplicate regarding estimated quantity and value of goods to be imported to Jurisdictional DC / AC of Customs. EOU is also required to submit one set of the said information to DC/AC of Customs at the Custom Station of importation who shall allow the benefit of exemption notification to the importer on the basis of said information provided to him. Thus, the Rule 5 of said rules, nowhere prescribes that information provided by EOU under sub-rule(1) (a) of said Rule 5 is required to be approved by Jurisdictional DC / AC of Customs on prior basis for imports. It appears that the misconception is arising out of wrong interpretation of sub-rule(3) of Rule 5 of the said rules wherein it has been prescribed that the Jurisdictional DC/ AC of Customs shall forward one copy of said information received from importer to DC/AC of Customs at the Custom Station of importation. However, this sub-rule nowhere makes this forwarded copy by Jurisdiction DC/AC of Customs a prerequisite for allowing duty free import by the DC/AC of Customs at the Custom Station of importation. Further sub-rule(4)of Rule 5 clearly mentions that DC/AC of Customs at the Custom Station of importation shall allow the benefit of exemption notification on receipt of copy of information from the importer under clause (b) of sub-rule(1) of said rule 5.
3. In view of above, it is again clarified that the importer of EOU need not get prior approval of the information submitted under sub-rule(1)(a) of Rule 5 of Customs (import of Goods at Concessional Rate of Duty) Rules,2017 from Jurisdictional DC/ AC of Customs for duty free import at the Custom Station of importation. Information submitted to the DC/AC of Customs at the Custom Station of importation by EOU is sufficient for importing goods without payment of duty under exemption notification No.52/2003-Customs dated 31-3-2003.



4. The Board further prescribes that Jurisdictional DC/AC of Customs of EOU/EHTP/ STP/BPT shall ensure that the intimation received under sub-rule (1)(a) of Rule 5 of the said rules are properly scrutinized so that only eligible goods as prescribed under notification No. 52/2003-Customs dated 31-3-2003 as well as those eligible as per Letter of Permission (LOP) granted by Jurisdictional Development Commissioner are imported duty free by the EOUs. After prompt scrutiny, one copy of such information shall be forwarded to DC/AC of Customs at the Custom Station of importation as prescribed under sub-rule (3) of the Rule 5 of the said rules. The DC/AC of Customs at Custom Station of importation would reconcile the Bill of Entry against which goods were imported duty free by EOU on receipt of such information from Jurisdictional DC/AC of Customs. In case of any discrepancies noticed, the DC/AC of Customs at Custom Station of importation would inform the Jurisdictional DC/AC of Customs for taking necessary steps to protect revenue.

Circular No. 03/2021-Customs., dated 3rd February' 2021

Subject: Systemic improvements regarding modification in the Bond (B-17) Execution process—regarding

In case of EOU/EHTP/STP, a single all-purpose bond was notified vide notification no. 06/98-C.E.(N.T.), dated 02.03.1998. This bond is called B-17(General Surety/Security). Various instructions through circulars were issued regarding execution of said B-17 bond. Post GST, revised new B-17 bond was notified vide notification no. 01/2018-C.E.(N.T.), dated 05.12.2018. It was also clarified vide circular no. 50/2018-Customs dated 06.12.2018 that all relevant instructions applicable for the old B-17 bond will be applicable, mutatis mutandis, to the new B-17 bond.

2. Circular no. 14/98 – Customs dated 10.03.1998 clarified that although the bond is devised to be executed as surety or security bond, it has also been decided that only surety bond



has to be taken from such units. Subsequently, circular no. 42/98-Customs dated 19.06.1998 acknowledging the fact that some units were not able to organise prescribed individual/corporate surety equivalent to the bond amount, allowed such units to execute the bond coupled with a security amount.

3. CBIC vide circular no. 66/98-Customs dated 15.09.1998 further directed that the solvency of sureties may also be certified by a Chartered Accountant or the Bankers of the surety. And, since in the law, a limited company is distinct legal entity and the Members of the Company, including the Directors are distinct from the company, there should be no objection to allow the Directors of the EOU, which are Limited Companies to stand as surety in their personal capacity for the said companies. In addition, other corporate bodies including Limited Companies may also stand as surety for the units.
4. Recently, it has come to notice that the B-17 bond executed by the Proprietor of EOU was issued in violation of the Circular no. 66/98-Customs dated 15.09.1998. The surety was given by the Proprietor himself though the same was required to be given by some independent legal entity other than the EOU firm. This resulted in improper execution of B-17 Bond resulting in loss of Government revenue.
5. Matter has been examined in the Board. "Surety" is a person/individual who undertakes an obligation to pay a sum of money or to perform some duty or promise for another in the event that person (obligor) fails to act. A sole Proprietorship firm is not a legal entity distinct from its proprietor. Hence, question of Proprietor himself standing as surety for his own Proprietorship firm does not arise. Even the clarification vide above referred circular no. 66/98-Customs dated 15.09.1998 clarified this fact that individuals (Directors) standing as surety in their personal capacity are distinct legal entities from the limited companies (EOUs) thereby allowing such Directors of EOU to stand as surety in their personal capacity for said EOU companies. This clarification nowhere recognizes a Proprietor



standing as surety for his/her own Proprietorship EOU firm. Therefore, there seems to be no ambiguity with regard to the requirement of surety to be given by some independent legal entity other than EOU itself irrespective of the constitution of the EOU firm. However, it is hereby clarified that in case of B-17 bond executed by EOU/STP/EHTPs in capacity of Proprietorship or partnership firm, surety cannot be given by Proprietor/ partner himself. Such sureties must be given by an independent legal entity other than the Proprietor/ Partner of the concerned Proprietorship/ Partnership EOU firm.

6. All B-17 bonds executed in your jurisdiction may be reviewed in view of the above clarification.

FREQUENTLY ASKED QUESTIONS

1. Whether the EOU scheme will continue to be in operation in the GST regime and whether EOU is required to take registration under the GST law?

EOU is like any other supplier under GST and all the provisions of the GST Law will apply. However, the benefit of Basic Customs Duty exemption on imports will continue.

2. What tax benefits will be available to EOU scheme in GST regime?

The duty free imports under GST regime will be restricted to Basic Custom duty. Exemption from the additional duties of Customs, if any under Section 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 and exemption from Central Excise duty will be available for goods specified under the Fourth Schedule to the Central Excise Act. IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible, like any other registered person, to take Input Tax Credit of the said GST paid by its suppliers.

3. Whether supplies to or from EOU will be exempted from GST?

No.

Under the GST law, IGST or CGST plus SGST will be payable by the suppliers who make supplies to the EOU. The EOU will be eligible to take Input Tax Credit of the said GST paid by its suppliers.

The supplies from EOU will not be exempted from GST, except in the case of zero rated supplies defined under section 16 of the IGST Act, i.e. Supplies made by EOU in the form of physical export or supplies to a SEZ unit or SEZ Developer for authorized operations.



4. What procedure will be followed by EOU to import goods without payment of Customs duty in the GST regime?

To avail such import benefits, EOUs will have to follow the procedure under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

5. Whether an EOU can clear goods to another EOU (Inter-unit transfer)? And whether an EOU can send goods for carrying out job work on such goods? IN such situations, how will the tax liability be discharged?

Supply of goods from one EOU to another EOU will be treated as any other supply under GST Law. An EOU can send goods for job work as per section 143 of the CGST Act, 2017 and rule 45 of the CGST Rules, 2017 and the tax liability shall be discharged accordingly.

6. Supplier should pay tax on a forward charge basis by collecting from the recipient, then why should the recipient allow the supplier to claim refund?

The supplier can claim refund only in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

7. What are the documents that I need to submit with my refund application for a deemed export supplier?

You must upload any documents that are needed to be filed with Form RFD-01, as well as any other documents that the refund sanctioning authority can request, as notified under CGST Rules or Circulars issued in the matter. Statement 5B must be uploaded with the details of the documents for which a refund is being sought.

8. Is it possible to submit a refund claim for multiple tax periods from two separate fiscal years?

Yes, you can file a refund claim for several tax periods from two separate fiscal years.



9. When and how will the RFD-01 refund be processed?

When a refund application is filed in Form RFD-01 and an ARN is created, the refund application, along with any documents attached at the time of filing, is assigned to a Refund Processing Officer for processing. The monitor status feature allows the taxpayer to keep track of the status of their refund application. After reviewing the submission, the Jurisdictional Authority may process it and issue a refund.

Difference between EOU and SEZ

Although both EOUs and SEZs were initiated to boost exports, there are differences between the two. An EOU can be set up anywhere in the country, provided it meets the scheme's criteria. On the other hand, an SEZ is a specially demarcated enclave that is deemed to be outside the Customs jurisdiction and therefore, a foreign territory. Thus, any sale made from within an SEZ to DTA is considered export while any sale made by an EOU to DTA is regarded as deemed exports. Sale from SEZs to DTAs are more common, compared to sales from EOUs to DTAs.

Being a clearly demarcated area, there is substantial control over the physical movement of goods to and from SEZs, but the same cannot be said about EOUs. In terms of taxability, an SEZ based establishment is not required to pay tax, while an EOU has to pay tax which it can claim as a refund later.

GST in Export Oriented Units

A supplier must charge GST on goods supplied to the EOU. For its part, the EOU can either apply for an input tax credit on the GST paid while providing supplies to the DTA or claim a refund of the GST. EOUs are required to pay GST on admissible sales made to DTAs, except if it is the sale of zero-rated supplies which are exempt from GST. It must be noted that GST is applicable even in case of sales from one EOU to another; as such a transaction is considered a regular sale for the purpose of the GST law. Notably, primary customs duty is exempted for an EOU in case of imports



Impact of EOUs on Exports

The positive effect of the EOU scheme was prominent in the first two decades of its existence until the floating of the SEZ scheme. Fast forward another decade, and its share in overall exports dipped, turning negative. This was in 2011-12, around the time the tax benefits under the Income Tax Act was withdrawn. EOUs gave exporters the freedom of setting up an export business in places of their choice, unlike Free Trade Zones and Export Processing Zones, which had specific locational restrictions. It has also given exporters a wide range of industrial sectors to choose from while setting up their export-oriented units.

Bangalore Customs: SOP issued for various issues concerning EOUs/STPIs /EHTP.

Bangalore City Customs Commissionerate vide *Public Notice No. 25/2021 dated May 27, 2021* issued Standard Operating Procedure (“SOP”) regarding various issues concerning EOUs/STPIs/EHTP.

Recognizing the potential role of EOU/STPI/EHTP units (hereinafter referred to as EOUs) in the Make-in-India initiative and as a measure of improving the ease of doing business, the need to comply with warehousing provisions as well as ‘bonding’ and ‘de-bonding’ by these units has been done away with effect from 13.8.2016. As a consequence, EOUs units were delicensed as warehouses under Customs Act, 1962. Additional changes regarding procedures were brought into existence on implementation of GST with effect from 01.07.2017. However, these Units were required to continue to adhere to the provisions of Notification 52/2003-Customs dated 31.3.2003, Foreign Trade Policy (FTP), Handbook of Procedures (HBP) and other applicable notifications.

Further, considering the lockdown due to the outbreak of Covid-19 and its related precautions enforced by the Government, trade facilitation measures have been notified in Public Notice No. 11/2020 dated 26.03.2020 issued by Commissioner of Customs, Bengaluru City Customs Commissionerate. To maintain the ‘social distancing’, requirement of submission of hard copies in respect



of approval of Annexure III for import of goods, permission for re-export/re-import, intimation of daily export/imports, etc. have been dismantled and Importers were requested to send all such documents in designated government mail ids of Export Promotion Cells.

The said PN facilitated 1) faster processing of intimations 2) fostered greater trade facilitation by doing away with the requirement of importer/ CHA to physically visit the EPCs and 3) enhanced transparency by bringing in faceless processing of EOU requests. Subsequently, Internal processes of EPCs were streamlined to suit the changed mode of functioning through implementation of e-office, data management and scrutiny through new electronic means and by. devising standard checks that suits e-processing of files. This will aid easier and better integration to ICEGATE/ ICES once the module for EOUs is devised. The applications of Importers have been processed in mail on time bound manner without any hassle or difficulties to Importers. The prescriptive timelines and the documents required to be submitted are listed in Annexure-V enclosed to this Public Notice.

Upon review of the functioning of EOUs by the Commissionerate, instances have come to the notice that some of these Units are not adhering to the provisions of the relevant notifications, FTP /HBP. Some of such instances are:

- (a) Clearance of finished goods in Domestic tariff area (DTA) without reversing the Customs duty foregone on the imported raw materials used in the manufacture,
- (b) clearance of finished goods in DTA without achieving positive Net Foreign Exchange earnings (NFE),
- (c) payment of Customs duty through ITC credit in GST returns instead of proper TR6 challan,
- (d) suppression of facts about DTA clearance of finished goods,
- (e) Non-payment (reversal) of Customs duties on scrap beyond SION Norms,



- (f) Not following the procedure for Inter-unit Transfer, Third Party Exports and job-work,
- (g) Debiting only 25% of duty forgone amount in B.17 Bond in respect of imported raw materials, etc.

Apprehensions have also been expressed by the Trade regarding the procedures to be followed post GST. To resolve all such difficulties being faced by the EOUs, for better trade facilitation and also to have a standard operating procedure for various issues concerning these Units, it has become expedient to issue this Public Notice for information, guidance and strict compliance by trade and Custom House agents associated with the EOU's. Further reference is also invited to **Circular No.10/2021- Customs dated 17.05.2021**. Wherever IGCRD provisions are applicable to EOU s, the revised provisions as per Circular No.10 / 2021 may be referred to for compliance, along with Public Notice. The Public notice might not have touched upon provisions regarding specific category of industries in Notification 52/2003 Cus. and FTP and hence for the said specific provisions, the above notification and FTP may only be referred for compliance.

Procedures for import of goods

EOUs/EHTPs/STPs are entitled to import all types of goods including capital goods, raw materials, components, packing materials, consumables, spares and various other specified categories of equipment including material handling equipment, required for export production / service or in connection therewith, without payment of customs duty leviable thereon under the first schedule to the Customs Tariff Act, 1975 (51 of 1975), additional duty, if any leviable thereon under sub - sections (1),(3) and (5) of section 3 of the said Customs Tariff Act (herein after referred to as 'custom duty') and IGST in terms Notification No. 52/2003- Customs dated 31.3.2003, as amended. The EOUs intending to import the goods without payment of customs duty and IGST, shall require to follow the procedures prescribed under Rule 5 of Customs (IGCRD) Rules, 2017. The clarification brought in by Circular No.10/2021- Customs



dated 17.05.2021 may also be referred to in this regard. Regarding the applicability of health cess exemption provided by notification No. 8/2020- Cus dated 02.02.2020, the same will be clarified from DGEP and communicated to trade in due course.

B-17 Bond and surety/ security

EOUs execute a general-purpose 8-17 bond along with surety or security covering the duty foregone on imported goods. This bond is prescribed under Notification No. 1/2018 CE (N.T.) dated 5.12.2018. This bond also takes care of the interest of revenue against risks arising out of goods lost in transit, goods taken into DTA for job work/ repair/ display etc.

Basically the 8-17 bond is an 'all purpose' bond covering liabilities of the EOU under Customs/Central Excise/GST Acts. The 8-17 bond is executed with the jurisdictional Assistant/Deputy Commissioner of Customs (EPC). Surety or security equivalent to 5% of the bond amount in the form of bank guarantee or cash deposit or any other mode of security recognized by the Government is required to be given by the EOUs. The BG should have 'auto renewal' clause invariably. In the case of surety, a letter from the person standing surety duly certified by a Chartered Accountant for solvency is also required to be submitted.

As regards the Surety by Proprietorship or partnership firm, CBIC vide Circular No. 3/2021 Cus dated 03.02.2021 has clarified that in case of 8-17 bond executed by EOU/STP/EHTPs in capacity of Proprietorship or partnership firm, surety cannot be given by Proprietor/ partner himself. Such sureties must be given by an independent legal entity other than the Proprietor/ Partner of the concerned Proprietorship/ Partnership EOU firm.

Units which have achieved positive NFE and are in existence for the last three years with unblemished track record having export turnover of Rs. 5 Crores or above and have not been issued a show cause notice or a confirmed demand, during the preceding 3 years on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the



Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act; 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / willful mis-statement/ suppression of facts or contravention of any of the provisions thereunder, are exempted from furnishing Bank Guarantee etc. or Surety along with B-1 7 bond. The importers who are Authorized Economic Operators and Status Holders are also exempted from furnishing the BG, subject to provisions in Foreign Trade Policy.

(Reference: Notification No. 1/2018 CE (N.T.) dated 5.12.2018, Circular No. 27/18 -Customs dated 14.8.2018, 54/2004 -Cus dated 13.10.2004 and 36/2011 Cus dated 12.08.2011, Circular No. 03/2021-Customs dated 03.02.2021)

Import of goods

The EOUs are entitled to import the goods without payment of duty in terms of Notification No. 52/2003 Cus dated 31.3.2003 as amended, by following the procedures contained in Customs (IGCRD) Rules, 2017. The EOUs that intend to import the goods need to give intimation to the officers of EPC as required under Rule 5 of Customs (IGCRD) Rules, 2017 about the estimated quantity and value of the goods to be imported for a period not exceeding one year. The Units are also required to mention the duty foregone on such imports and the debit particulars in B.17 Bond.

The Units also file the **Annexure** for the individual consignments. Further, for the sake of convenience, both at the end of the department and the Importer, it is clarified that the Importer along with the **Annexure III** application are required to enclose the statement which contains the details, such as opening balance of bond amount, credit taken, debit against the **Annexure** and closing balance of Bond amount. In case if any amendments that are required to be made to **Annexure III/Annexure I** already submitted to the department, on account of change in the value of the goods due to exchange rates, revision in the price of the goods vis-a-vis duty foregone amount etc., the Importer in writing shall



bring the said facts to notice of the DC/ AC of EPC and concerned port officers. The Amendments may be serially numbered for identification, in case of multiple amendments. It is clarified that in case of import of inputs, the unit need to debit an amount equal to duty foregone on such imports and 25% of duty foregone amount in case of capital goods. After the clearance of goods from the port, the EOUs need to give an intimation about the procurement of goods along with the copies of Bill of Entries and Invoices to the Assistant Commissioner/Deputy Commissioner of EPC within 2 days from the date of receipt of the imported goods in EOU unit premises.

It is observed “that some of the EOUs are importing the goods on regular basis and may find difficulties for furnishing the intimations along with the copies of all the documents within 2 days from the date of receipt of the imported goods in EOU (or Job work) unit premises. Considering the difficulties faced by such big Importers, it is decided to do away with the requirement of submitting the import documents, on a case-to-case basis based on one time approval from Assistant Commissioner/ Deputy Commissioner of EPC. However, those units are required to maintain all such documents in digital file and furnish as and when the officers ask to produce the same for verification.

(Reference: Customs (IGCRD) Rules, 2017, Circular No. 29/2017 Cus dated 17.7.2017)

Procurement of indigenous goods

For the indigenous procurement of goods covered under GST, the EOU will not get ab-initio exemptions. Such supplies would be on payment of CGST /SGST /UTGST /IGST. The taxes so paid will be neutralized by ITC or refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies. For the indigenous procurement of goods covered under Fourth Schedule, the EOU will continue to get ab-initio exemptions from central excise duty. The Procedure regarding procurement of supplies of goods from OTA by EOU/EHTP/STP/BTP Unit for deemed exports benefits in terms of section 14 7 of CGST Act, 2017 has been



prescribed vide Circular No. 14/ 14/2017-GST dated 6.11.2017. The detailed procedures to be followed by EOUs are prescribed in the above referred Circular.

(Reference: CBIC Circular No. 14/14/2017-GST dated the 6.11.2017)

Time limit for utilization of imported capital goods and inputs

The period of utilization of goods, including capital goods, procured/imported by EOU shall be co-terminus with the validity of LOP, subject to the exceptions provided in FTP and 52/2003.

(Reference: Notification No. 34/2015 Cus dated 25.5.2015)

Domestic Tariff Area (DTA) sale

The EOUs are entitled to sell finished goods (subject to restrictions in FTP) in OTA subject to reversal of customs duty, availed as concession at the time of imports along with the payment of IGST. The duties and cess to be reversed will be those as provided in para 6.08 of FTP. The reversal of customs duty is based on the duty foregone on inputs that have gone into the production of such finished goods. DTA sale shall be subject to fulfillment of the following main four conditions:

- I. Net Foreign Exchange fulfillment
- II. Payment of applicable GST on product under DTA sale
- III. Reversal of the BCD exemption
- IV. Refund of any benefits taken (including those mentioned in Para 6)

The Importer who has cleared the goods in DTA is required to give an intimation to AC/DC of EPC in the format enclosed to this PN (In addition, Permissions if required from various authorities, including from customs, for DTA sales as per FTP 2015-20, HBP and relevant APPENDIX may be obtained). The reversal of customs duty shall be remitted under TR6 Challans duly counter signed by the Superintendent/Inspector at the jurisdictional export promotion cell. However, on a case-to-case basis, subject



to requirements of banks regarding process of manual challan, Assistant Commissioner/Deputy Commissioner may allow importers, intimation by way of, sending the scanned copies of TR6 Challans (with bank seal) along with the copies of Demand Draft/Cheque by mail. The data in the intimations, to be submitted before the submission of **Form-A** for the relevant month, will have to be reconciled with the **Form-A** figures and in case of discrepancies, the customs authorities may call for documents to verify the same and units should be able to produce documents that will enable the department to reconcile three-way bills generated and DTA sales. All DTA sales transactions are to be invariably reported in the monthly return in **Form A** along with duty paid particulars.

EOUs which are facing difficulties to make the duty payment (reversal on account of DTA Sales) on consignment basis may also consider depositing the duty amount in advance based on estimate of DTA sales for a certain period. The advance amount may be utilized for DTA sales by debiting the amount out of the advance amount deposited. The units which intend to deposit the amount in advance are required to record the entries in simple statement, to be submitted to EPC, which consists of date of making the payment, amount of advance amount, date/invoice of the DTA sales, amount of duty adjusted against the DTA invoice and balance amount.

(Reference: Para 6.08 of FTP 2015-20 read with Notification No. 52/2003 Cus dated 31.03.2003, as amended)

Inter-unit transfer

Inter-unit transfer of manufactured and capital goods from one EOU unit to another EOU / SEZ unit is permitted in terms of Para 6.13 of the FTP. Sale of unutilized goods is also allowed from one EOU to another EOU / SEZ unit in terms of Para 6.15 of FTP. The inter unit transfer can also be under the cover of a tax invoice or delivery challan along with payment of GST as applicable. However, such transfer would be without payment of custom duty. The supplier unit will endorse on such documents the amount of custom duty, availed as exemption, if any, on the goods intended to



be transferred. The recipient unit would be responsible for paying such basic customs duty, as is obligated under Notification no. 52/2003-Cus dated 31-3-2003, when the finished goods made out of such goods or such goods are cleared in DTA. The Units making inter-unit transfer or supplier are required to furnish the prior intimations to the jurisdictional EPC.

(Reference: Circular No.29/2017 Customs date 17.7.2017 & 35/2016 Cus dated 29.7.2016)

Clearance of by-products/rejects/waste/scrap, etc.

Scrap/ waste/ remnants arising out of production process or in connection therewith are allowed to be sold in DTA, as per SION notified by Directorate General of Foreign Trade. In respect of items not covered by SION norms, Development Commissioner may fix ad-hoc norms for a period of six months and within this period, norm should be fixed by Norms Committee and ad-hoc norms will continue till such time. As per Notification No. 52/2003 Cus dated 31.3.2003 as amended, where SION norms are not fixed, scrap clearance up to 2% of the input quantity is allowed. Sale of waste/ scrap/ remnants by units beyond the above said norms or beyond 2% of the input quantity (in applicable cases), shall be on payment of full duties and subject to restrictions in Para 6.08 FTP. However, no duties/ taxes on scrap/ waste/ remnants are charged, in case same are destroyed with permission of Customs authorities (subject to clarification in 6.15(b) of FTP). The EOUs shall give intimation for clearance of waste/scrap to the customs officer by furnishing the quantum of waste generated, duty foregone on such scrap along with the letter of approval given by the CSEZ/STPI.

(Reference: Para 6.08 (v) of FTP, 2015-20, Para 6.15 (b) of FTP, 2015-20)

Procedure for Re-export

The goods or parts thereof, on being imported / indigenously procured and found defective or otherwise unfit for use or which have been damaged or become defective subsequently, may be



returned and replacement obtained or destroyed. In the event of replacement, goods may be brought back from foreign suppliers or their authorized agents in India or indigenous suppliers. In case the supplier of such goods does not insist for re-exportation, such goods are required to be either destroyed or cleared into DTA on payment of full Customs duty. In all the cases of re-export, the Units shall take a prior approval from the jurisdictional EPCs. The Importer seeking the permission shall require submitting the application in the enclosed format Annexure III along with documents mentioned in Annexure V.

(Reference: para 6.17 of FTP, 2015-20)

Sub-contracting

As per para 6.14 of FTP read with Notification No.52/2003 Cus, dated 31.3.2003, the Units may sub-contract the part of their production process to DTA (subject to restrictions in FTP) through job work based on annual permission from Customs authorities. The annual permission for sub-contract may be granted by the DC/ AC of EPC subject to observance of the conditions as enumerated in para 6.14 of FTP and Notification No.52/2003 Customs dated 31.3.2003, as amended. The units are also allowed to sub-contract part of the production process abroad and export from there. The intermediate goods so removed to sub-contractor abroad shall be allowed to be cleared under export documents.

The importer can send the imported goods (subject to exceptions in FTP) for job work, for manufacture of goods, subject to giving due intimation in duplicate to the DC/ AC of EPC. The Format of intimation should be as per the **Annexure IV**. The data in the intimations, to be submitted before the submission of **Form-A** for the relevant month, will have to be reconciled with the **Form-A** figures and in case of discrepancies, the customs authorities may call for documents to verify the same. The provisions as per 6.21 of HBP, 2015-2020 are to be strictly adhered to by the units. Circulars No 65/2002 Cus and No.26/2003 Cus may also be referred to for clarity on timelines regarding return of goods. Further the unit is required



to follow the procedures as per Section 143 of CGST Act, 2017 read with Rule 45 of CGST Rules, 2017 and Circular No. 38/ 12/2018 dated 26.3.2018 for Job work. it is advised to endorse the copy of the intimation/return, required to be filed, under the above said statutes with the GST Authorities, to Export Promotion Cells also in mail. The said condition can be waived on case to case basis by Assistant Commissioner/ Deputy Commissioner, EPC based on the track record of the units. Trade has raised concern regarding alignment of return timelines of inputs sent for job work between the FTP and GST procedures. The same will be clarified from DGEPI and communicated to trade in due course.

(Reference: para 6.14 of FTP, Circular No. 12/2008-Cus., dated 24-7-2008, Circular No.50/2018 customs dated 6.12.2018, No. 65/2002 Cus dated 07-10-2002, No. 26/2003 Cus dated 1-4-2003 and 9/2021 Cus (N. T) dated 1.2.2021)

De-bonding of capital goods

An EOU can clear any capital goods to any other place in India or debond in accordance with FTP with the permission of the Development Commissioner and on payment of duty on the value and the rate prevailing at the time of imports on the depreciated value. Clearance/ debonding of capital goods on the depreciated value proportionate to the NFE achieved by the unit which is arrived at after taking into consideration the rate of depreciation allowable on such capital goods is allowed. In case the unit has not achieved positive NFE in the above manner, the duty foregone at the time of import shall be paid on such value of goods in proportion to the non achieved portion of NFE. The depreciation of computers and capital goods shall be allowed as per Para 6.37 of HBP and Notification No: 52/2003-Cus as amended. The Importer seeking the permission for de-bonding the capital goods should submit the request with AC/DC of EPC along with the documents mentioned in.

(Reference: para 6.15(b) of FTP, Circular No. 12/2008- Cus., dated 24-7-2008, Circular No.50/2018 customs dated 6.12.2018 and 9/2021 Cus (N. TJ dated 1.2.2021)



Re credit

Since the B-1 7 Bond is a running Bond Account, the Units may seek re-credit of the amount debited at the time of import of goods. The EOUs after consumption of the imported raw materials and clearance/ export of resultant products, shall give an information regarding the amount of recredit subject to the condition that the Unit shall furnish the consumption statement of raw materials along with the export/ clearance duly certified by the Chartered Accountant. The consumption statement must be in excel sheet and consist of details such as Bill of Entry no/date, description of the goods imported, Opening Balance, Quantity Imported, Value in INR, Total Quantity, Consumption Quantity, Quantity Exported, Quantity Re-exported, Quantity Cleared to Domestic Market, Closing Balance and Goods manufactured during the Quarter. The correlation of BOEs and Clearances, even if not reproduced in the consumption statement, should be maintained in Digital format and should be submitted to the department, as and when asked for.

The Units can also seek re-credit on account of disposal of capital goods, permanent re-export of capital goods, destruction of capital goods subject to condition that the Units must furnish the copy of necessary permission obtained from the Development Commissioner or STPI authorities along with proof of disposal/ destruction/ re-export on permanent basis.

Replacement/repair of imported /indigenous goods

EOUs may send capital goods abroad for repair with permission of Customs authorities. However, no permission will be required for sending capital goods for repair within the country. Removal of capital goods by all units irrespective of status within the country for the purpose of test, repair, calibration and refining on the basis of prior intimation to the proper officer subject to maintenance of proper accounts of removal and receipts of goods is also allowed.

(Reference: para 6.17 of FTP & 6.28 of HBP 2015-20)



Third Party Exports

As per Para 9.60 and 2.42 of FTP, 2015-20, 'third party exports' means exports made by an exporter or manufacturer on behalf of another person. In such cases, export documents such as shipping bills shall indicate the names of both manufacturer and third-party exporter. The BRC, Self-Declaration Form, export orders and Invoice should be in the name of third-party exporter. 16.2. EOUs are entitled to export the goods through other exporter (third party exporter) subject to certain conditions as prescribed under Para 6.19 of HBP, 2015-20. If the EOUs fail to fulfill the conditions as stated above, such exports shall be treated as DTA sales, accordingly Units need to reverse the customs duty involved in the manufacture of such finished goods.

(Reference: Para 9. 60, 2.42 of FTP, 2015-20 and 6.19 of HBP,2015-20)

Records and returns

In view of the condition of warehousing having been dispensed with respect to the units, the warehoused goods register (warehousing bond register) shall not be required to be maintained w.e.f 13th August 2016. However, to maintain records of receipts, storage, processing and removal of goods, imported by the units, the Board has prescribed that the units shall maintain records of imported goods, in digital form, based upon data elements contained in Form A. A digital copy of Form A, containing transactions for the month, shall be provided to the proper officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the unit. The return submission is strictly monitored by EPCs under this jurisdiction and it is informed that penal action will be initiated for non-submission of the same within the due date. The EOUs should also submit the Quarterly Performance Report and Annual Performance Reports as mandated by DGFT Public Notice no. 36/2015-2020 dated 04.09.2018.

(Reference: Circular No 7/2021 Cus dated 22.2.2021 and 35/2016-Customs dated 29.07.2016)



Exit from the Scheme

The EOUs shall pay the GST and reverse the customs duty on the raw materials, semi-finished and finished goods lying in stock at the time of debonding. The capital goods shall also be de-bonded on payment applicable duties on the depreciated value thereof. The depreciation would be allowed subject to achievement of positive NFE. The Unit seeking exit from the scheme is required to file a legal undertaking to the effect that all duties of Customs including GST has been fully paid by them on the semi-finished goods, raw materials in stock, capital goods etc., and in the event of any dues that may accrue in future on account of audit, verification etc., the same will be remitted to the Govt. account.

The EOU units can Exit from EOU Scheme subject to approval of the Development Commissioner. The detailed guidelines for exiting out of EOU.EHTP/STP Scheme are given in the para 6.18(e) of FTP and Appendix 14-1-L of HBP, 2015-20. The Development Commissioner first gives permission for 'in-principle' de-bonding, and then the unit is required to pay all pending Customs/ Central Excise duties/Service Tax/GST to obtain no-dues certificate from Central Tax & Customs authorities. In cases where a demand is still pending, the unit may be asked to submit the undertaking and BG as prescribed in Circular No. 8/2004 Cus dated 28.1.2004. Thereafter the Development Commissioner permits final debonding.

(Reference: Para 6.18 of FTP, 2015-20 and Circular No. 8/2004 Cus dated 28.1.2004)

Strict compliance to the provisions of Customs Act and Rules

All the EOU/STPI/EHTP Units working under the jurisdiction of Bengaluru City Customs Commissionerate shall adhere to the instructions given in this Public Notice, scrupulously, failing which appropriate penal action will be initiated under the Customs Act, 1962 and the Rules made thereunder, for violation/contravention. A provisional period of three months is given for all the stake holders to submit a declaration about compliance to this Public Notice particularly regarding the payment of customs



duty on DTA clearances for the period July 2017 onwards in the enclosed **form Annexure I**, failing which their import authorization **Annexures** will not be taken on record. Utmost care should be taken while submitting the declaration keeping in mind the fact that the department has access to the e-way bill data and Customs authorities may audit/inspect the premises at any time. Any mis-declaration noticed during such verification will attract penal provision under Customs Act, 1962. The contents of this Public Notice are not exhaustive and therefore, for any specific issues, the stake holders are required to refer to the relevant Notifications, FTP, HBP and Circulars issued in this regard. All intimations and declarations mentioned in this PN are to be sent to the following designated official e-mail ids

SI No.	Name of the Formation	e-mail Id
1.	Export Promotion Cell (Central)	e12ccentral-citycus@gov.in
2.	Export Promotion Cell (East)	e12ceast-citycus@gov.in
3.	Export Promotion Cell (South)	e12csouth-citycus@gov.in
4.	Export Promotion Cell (Chitradurga)	e12c-chitradurga@gov.in
5.	Export Promotion Cell (Mysore)	e12c-mysore@gov.in

All communications to the EPCs may be sent only to the above designated mail ids and not to any other mail id.

All members of the Regional Advisory Committee, Trade Associations and Chamber of Commerce in the State of Karnataka are requested to circulate this Public Notice among their constituent members for wide dissemination. Difficulties faced or suggestions, if any, may be brought to notice.

EXPORT REFUND FOR EOUs

Taxes should not be exported. The commerce and finance ministry have applied this principle consistently over the decades to ensure that the products manufactured in India and the services exported from India are competitive in the global market. The export



incentive schemes of drawback or refund or rebate have been designed with the objective to return the taxes suffered on inputs, input services and capital goods to the manufacturer or the service provider who are engaged in export of goods or services. While an incentive policy is easy to draft, implementation of the policy and prevention of misuse of the incentive is a Herculean task for the tax authorities.

Just like its predecessors, GST legislation also offers various schemes of refund for exporters. In this article we shall specifically examine the eligibility for refund of output IGST wherein the export is made by the EOU/STPI unit upon payment of IGST.

Section 54(3) of the **CGST Act, 2017** ('Act') provides that, a registered person may claim refund of unutilised input tax credit (ITC) at the end of any tax period, provided he has made zero rated supplies (export of goods or services) without payment of taxes. This refund of ITC is available both to a Domestic Tariff Area (DTA) unit and an EOU/STPI unit engaged in export of goods and/or services without payment of taxes.

Section 16(3) of the IGST Act, 2017 ('IGST Act') provides that, a registered person making zero rated supplies shall be eligible to claim refund under the following options:

1. Supply of goods or services or both without payment of IGST and claim refund of unutilised ITC; or
2. Supply of goods or services or both with payment of IGST and claim refund of such IGST paid on export of goods or services or both

Till now it appears good. However, in relation to refund of output IGST paid on exports under Section 16(3)(b) of the IGST Act, the EOU/STPI units have to navigate through a series of amendments made to Rule 96 of the **CGST Rules, 2017** ('Rules') to figure out whether they are eligible for the output IGST refund. Let us examine these amendments and find out where does it lead to.

Rule 96 of the **CGST Rules, 2017** ('Rules') contains the provisions on procedures to be followed for the purpose of refund claim



of input or output GST. Rule 96(9) of the Rules provided that persons claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit of **Notification No. 48/2017-CT dated 18.10.2017 (deemed exports) or Notification No. 40/2017-CT(R) 23.10.2017 or Notification No. 41/2017 – IT(R) dated 23.10.2017** (merchant exports). So, an exporter was not eligible for refund of output IGST if he had received supplies from the supplier who had claimed the duty benefits on deemed exports and from merchant export suppliers who availed concessional rate of GST on the supplies made to the exporter.

Rule 96 was amendment vide **Notification No. 3/2018 dated 23.01.2018**. A new sub-rule Rule 96 (10) was introduced which in addition to the three non-qualifying notifications mentioned above, added two more notifications on which if the supplier had availed the benefit, the exporter would not be eligible for refund of the output IGST – **Notification No. 78/2017-Customs dated 13.10.2017** (BCD and IGST exemption for EOU/STPI units) and **Notification No. 79/2017-Customs dated 13.10.2017** (duty benefit on procurement of goods through Advance Authorization/EPCG scheme). Here, the EOU/STPI unit would not be eligible for refund of IGST paid on exports if the supplier of goods was availing the exemption of BCD and IGST on his imported goods in terms of exemption provided under **Notification No. 78/2017-Customs**.

These amendments vide **Notification No. 03/2018 dated 23.01.2018** created lots of confusion and generated many questions:

1. Whether the EOU/STPI would be ineligible for the refund of output IGST if the supplier to the EOU/STPI availed exemption on his inputs or does the ineligibility arise because the EOU/STPI unit itself availed the benefit of exemption on goods it imported duty free under **Notification No.78/2017-Customs**?
2. Should the condition of not availing the benefit under **Notification No. 78/2017-Customs** be applied at an EOU unit level or at the level of each supplier to the EOU unit (given that Rule 96 (10)



said that if the supplier has availed the benefit then the EOU unit would not be eligible for output IGST refund)?

3. Does even a single duty-free import under **Notification No. 78/2017-Customs** by the EOU/STPI unit disqualify it from the output IGST refund for the entire period?

Further, the connection was not clear as to why the EOU/STPI unit would not be eligible for benefit of output GST refund if the supplier had availed certain duty-free inputs for his business. There were no clear answers to the above questions and many more such questions in the closet. However, there were definitely more amendments in the line.

Rule 96 (10) was again amended vide **Notification No. 39/2018 dated 04.09.2018**. The rule was now amended to read as *'the person claiming the refund of IGST paid on exports should not have received the supplies'* instead of the earlier provision of *'the person claiming refund of IGST paid on export of goods or services should not have received supplies on which the supplier has availed the benefit'*. So now, the onus of not having availed the benefit shifted from the supplier of goods to the EOU/STPI unit to the EOU/STPI unit itself. Per this amendment, any EOU unit which had availed the benefit of duty under the notifications mentioned above on input goods would not be eligible for output IGST refund.

The harassed Rule 96(10) was again amended vide **Notification No. 53/2018-CT dated 09.10.2018**. In this bizarre amendment, the onus of not having availed the benefit of certain notifications was again shifted back from the EOU/STPI unit to the supplier of goods to the EOU/STPI unit. Through this amendment, Rule 96(10) now wanted the supplier of goods to not have availed the benefit of **Notifications Nos. 48/2017, 40/2017, 41/2017, 78/2017 and 79/2017** for the EOU/STPI to qualify for output GST refund. This notification seems to be a mistake as another amendment was released on the same day.

On the same day, 09.10.2018, Rule 96(10) was again amended vide **Notification No. 54/2018-CT**. Pity the Rule 96(10). Vide this amendment; the onus of not having availed the benefit of certain



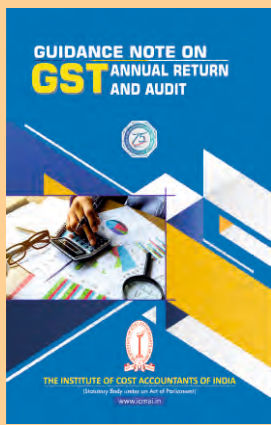
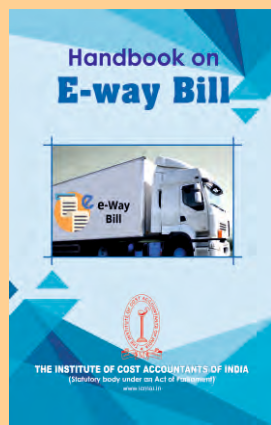
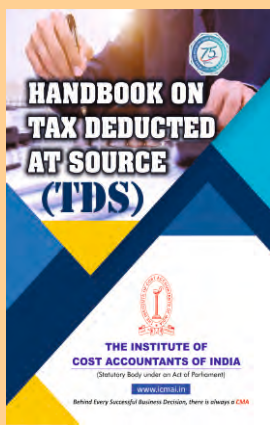
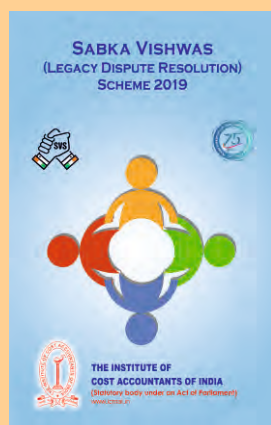
notifications was re-shifted back to the EOU/STPI unit. Further, an exception was carved out that if the exporter has availed duty-free benefit on import of capital goods against Export Promotion Capital Goods Scheme (EPCG) then he would still be eligible for refund of output IGST. This amendment primarily gave relief to the DTA exporters who would be availing the EPCG scheme benefits. The DTA exporter would now be able to claim refund of output IGST even if he has procured capital goods duty free under the EPCG scheme. This discriminates between the EOU scheme vs. the EPCG scheme and EPCG scheme would become more beneficial in as much as it relates to refund of output IGST on exports.

So, where do EOU/STPI units stand today on refund of output IGST paid on exports?

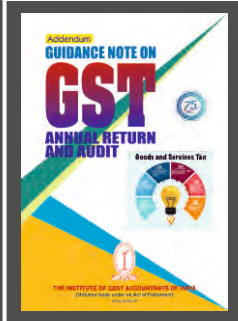
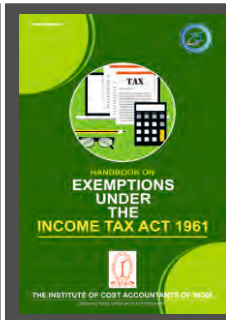
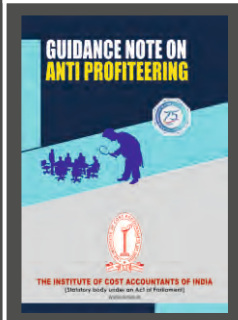
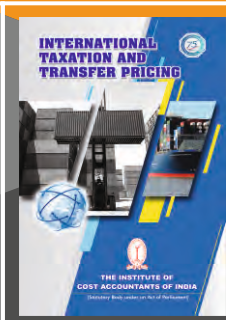
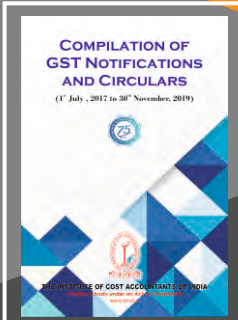
As per the existing provision of Rule 96(10), after all the above amendments, an EOU/STPI unit would not be eligible for refund of output GST if the unit has procured duty-free goods under **Notification No. 78/2017-Customs** or has availed benefits under other notifications discussed above, as may be applicable. However, it is not clear as to how to apply (input goods period based, refund claim period based, fiscal year based, etc.) **Notification No. 78/2017-Customs** to determine whether the EOU/STPI is eligible for output GST refund. For the time being, Rule 96(10) is open to a variety of interpretations.

Another nagging unanswered question is, why should the EOU/STPI unit be denied the benefit of refund of output IGST paid on exports if it has made duty-free procurement of imported goods? In such a constrained scenario, the EOU/STPI units would be forced to go only for refund of unutilized input GST credit. Further, in the absence of refund for input GST credit on capital goods and ineligibility to go for refund of output IGST, the EOU/STPI units can be forever trapped in irrecoverable.

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