
Amendments in SEZ Rules notified

September 30, 2018

In brief

In order to align the Special Economic Zone Rules, 2006 (SEZ Rules) with GST and to address specific issues of the industry and rationalise the provisions of SEZ Rules, a Committee was constituted in 2017 by Ministry of Commerce to review the SEZ Rules and make suitable recommendations.

The recommendations of the Committee were examined and notified as amendment by the Ministry of Commerce on 19 September 2018 in the form of Special Economic Zones (Amendment) Rules, 2018.

The amendments *inter alia* can be divided into:

- Alignment of provisions with the present provisions of GST and Foreign Trade Policy (FTP)
- Procedural relaxations with closer monitoring
- Operational flexibility

The key highlights of the amendments is summarised below.

In detail

Relating to establishment of SEZ

- Proposal for establishment of SEZ to include recommendation for National Security clearance as per guidelines issued by the Ministry of Home Affairs in addition to recommendation from the State and development commissioner.
- State Governments to forward the proposal for establishment of SEZ through jurisdictional development commissioner with his recommendation for consideration by Board of Approval (BoA).
- Minimum area requirement for establishment of SEZ in biotechnology and health sector (excluding hospitals)

dispensed with. Earlier, this relaxation was limited to IT/ ITeS SEZ only. However, compliance with specific minimum built up processing area requirement based on location of SEZ will be required.

Relating to units in SEZ

- For establishment of SEZ unit, requirement to file only one copy of application instead of present requirement of five copies.
- Merger of SEZ units of the same company within a SEZ under a single Letter of Approval (LoA) permitted. The net foreign exchange (NFE) and income-tax exemption of the merged units to be considered from the date from which first unit commenced operation.

- Format for renewal of LoA prescribed. Application to be filed before expiry of two months of LoA. Relaxation in timeline subject to approval of approval committee. However, non-compliance with the timelines can result in denial of renewal.
- LoA could be renewed for five years or shorter period basis the evaluation of specified criteria such as actual exports performance and employment generation *vis-à-vis* projections, cases of violation or default etc. The decision of development commissioner/ approval committee to be final and binding except where appeal is preferred before BoA.
- Benefit from duty/ taxes on

goods required for establishment of unit to be extended to sub-contractor as well (currently, limited to contractors).

NFE earning computation

- NFE computation now to be based on export and supplies of goods manufactured in SEZ or services (except traded goods).
- Supplies of goods in domestic tariff area (DTA) to be counted towards NFE reduced from present 15 categories to 11 categories.
- The excluded category *interalia* include:
 - Supply of services in DT against foreign exchange.
 - Supply of goods to DTA against payment in foreign exchange from exchange earners foreign currency account or receipt of foreign exchange received from overseas to be removed.
 - Supply of goods to power projects, fertilizer plants, bonded warehouses, etc.

- For the purpose of computation of NFE, value of domestically procured inputs also to be taken into account.
- Gems and jewellery units required to achieve prescribed value addition instead of NFE.
- In case a unit is unable to achieve NFE due to adverse market conditions or due to genuine hardship, the five year block for computation of NFE can be extended by BoA by one year basis the merits of the case.
- In case of *bona fide* default in achieving NFE or prescribed value addition, the shortfall to be regularised on deposit of an amount equal to one percent of shortfall in free on board value.

Miscellaneous

- Units exiting from SEZ needs to execute a legal undertaking in prescribed format for payment of dues, penalties, duties/ taxes, etc. payable as determined by the authorities.
- Work for home policy incorporated in the SEZ Rules. IT/ ITeS units in DTA can also

undertake job work in SEZ by following the guidelines for work for home guidelines prescribed for SEZ units.

- Supply of restricted items by DTA to SEZ for setting up infrastructure facility or unit including for manufacturing operation (except refrigeration, cutting, polishing and blending) permitted on approval from BoA.
- Supply from DTA to SEZ to attract export duty in case same is leviable on such goods.

The takeaways

The proposed amendments seems to be in line with the objective of trade facilitation, ease of doing business and dispute redressal of the Government. Alignment of the regulations with GST, FTP and instructions issued periodically will hopefully provide procedural and compliance ease to SEZs.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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