

## **Handbook for Procedure 2002-2007**

### **Chapter 7 Special Economic Zone**

#### **7.1 Policy**

(a)

The Policy pertaining to Special Economic Zones (SEZs) is given in Chapter 7 of the Policy.

(b)

Software units may undertake exports using data communication links or in the form of physical exports (which may be through courier service also), including export of professional services.

#### **7.2 Export and Import of Goods**

(a)

At the time of export of jewellery, the shipping bill and the invoice presented to the Customs authorities shall contain the description of the items, its weight, purity of gold/ silver/platinum, type of Gem & Jewellery stone (diamond, ruby, sapphire, cubic zircon etc.) used for studding and studding weight in carats, FOB price rate of the jewellery item, quantity in pieces and total value.

(b)

SEZ unit may import goods in terms of paragraph 7.2 of the Policy. In case of doubt as to whether the item is required by the unit for its activities or in connection therewith, the decision of the concerned Development Commissioner shall be final.

(c)

The import shall be subject to the following conditions:

(i)

The goods shall be imported into the premises of the unit.

(ii)

The normal procedure as prescribed under Customs/ Excise rules for SEZ will be followed and general bond executed with Customs/Excise authority

(iii)

Import of prohibited items in the ITC(HS) shall not be allowed;

(iv)

The goods, except capital goods and spares, shall be utilised within the approval period of 5 years.

(v)

Goods already imported/shipped/arrived before the issue of Letter of Permission (LOP)/Letter of Indent (LOI) are also eligible for duty free clearance under the SEZ scheme provided customs duty has not been paid and the goods have not been cleared from Customs.

(d)

SEZ units obtaining gold/silver/platinum from the nominated agencies on loan basis shall export gold/silver/platinum jewellery within the stipulated period from the date of release. This shall not however apply to the outright purchase of precious metal from the nominated agencies.

(e)

The SEZ unit shall be permitted to export the jewellery on the basis of a notional rate certificate to be issued by the nominated agency. This rate will be based on the prevailing Gold/USD rate and the USD/INR rate on the date of the Shipment.

(f)

The exporter shall have the flexibility to fix the price and repay the gold loan within 180 days from the date of export. The price shall be communicated to the nominated agencies who will issue a certificate showing the final confirmation of the rate to the bank negotiating the document, to ensure export proceeds are realized at this rate.

### **7.3 Leasing of Capital Goods**

(a)

Capital goods procured from indigenous sources on the basis of lease agreement between the leasing company and the SEZ unit will be eligible for Central Excise exemption.

(b)

The value of imported capital goods financed through leasing companies or obtained free of cost and/or loan basis shall also be taken into account for the purpose of calculation of Net Foreign exchange Earning (NFE).

### **7.4 Net Foreign exchange Earning (NFE)**

NFE under SEZ scheme shall be calculated according to the following formula:

Positive Net Foreign exchange Earning (NFE) =  $A - B > 0$

Where

is the FOB value of exports by the SEZ unit; and

is the sum total of the CIF value of all imported inputs, the CIF value of all imported capital goods, and the value of all payments made in foreign exchange by way of commission, royalty, fees, dividends, interest on external borrowings during the first five year period or any other charges. "Inputs" mean raw materials, intermediates, components, consumables, parts and packing materials

*Note:*

(i)

If any goods are obtained from another SEZ/EOU/EPZ/ EHTP/ STP unit or procured from an international exhibitions held in India **or precious metals procured from nominated agencies (PN 17 dtd 5.6.02)** the value of such goods shall be included under B.

(ii)

If any capital goods imported duty free is leased from a leasing company, received free of cost and/or on loan basis or transfer, the CIF value of the capital goods shall be included or excluded, as the case may be, pro-rata, under B for the period it remains with each unit.

(iii)

For annual calculation of NFE, the value of imported capital goods and lumpsum payment of foreign technical know-how fee shall be amortized as under;

1<sup>st</sup> -2nd Year : 5% each year

3<sup>rd</sup>-5th Year : 10 % each year

6<sup>th</sup> -8<sup>th</sup> Year : 20% each year

## **7.5 Maintenance of accounts and monitoring of units**

SEZ unit shall maintain proper account, in format convenient to it including computerized account, financial year-wise and make available on-line to the Development Commissioner/ Customs information in the format prescribed at

Appendix 14-D and till such time on-line connectivity is established submit the same quarterly to the Development Commissioner/ Customs

Failure to ensure positive NFE or to abide by any of the terms and conditions of the LOP/LOI/IL shall render the unit liable to penal action under the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and the Rules and Orders made thereunder without prejudice to action under any other law/rules and cancellation or revocation of LOP/LOI/IL.

The unit shall be able to account for the 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/EPZ/EHTP/STP units and balance in stock. However, at no point of time the units shall be required to co-relate every import consignment with its exports, transfer to other SEZ/ EOU/ EPZ/EHTP/STP units, sales in the DTA and balance in stock. Any matter for clarification as to whether goods are homogenous or not shall be decided by the Committee as provided for in paragraph 7.5 of the Policy

## **7.6 Legal Undertaking**

The approved SEZ unit shall be required to execute a legal undertaking with the Development Commissioner concerned in the form given in Appendix-14 D of the Handbook (Vol.I).

## **7.7 Approvals and Applications including LOP/LOI. Renewal of Approval**

For setting up a unit in an SEZ, three copies of the application in the form given in Appendix-14 A of the Handbook (Vol. I) may be submitted to the Development Commissioner (DC) of the SEZ concerned.

Proposals for setting up units in SEZ other than those requiring industrial licence may be granted approval by the Development Commissioner within 15 days as per the procedure indicated in Appendix 14 B

Proposals for setting up units in SEZ requiring industrial licence and conversion of EOU into SEZ unit may be granted approval by the Development Commissioner after clearance of the proposal by the SEZ Board of Approval and Department of Industrial Policy and Promotion within 45 days

Letter of Permission (LOP)/Letter of Intent (LOI) issued to SEZ units by the Development Commissioner shall be valid for a period of 3 years only and would be construed as a licence for all purposes, including for procurement of raw material and consumables either directly or through state trading enterprises.

Each LOP/LOI shall have separate ear-marked premises and shall specify the items of manufacture/service activity, annual capacity, projected annual export for the first five years in dollar terms, Net Foreign Exchange Earnings (NFE), limitations, if any, regarding sale of finished goods, by-products and rejects in the DTA and such other matter as may be necessary and also impose such conditions as may be required

In case of any change in approved activity or undertaking any new activity by SEZ units, the Development Commissioner shall issue amended LOP within six days on receiving intimation from the unit.

Standard format for LOP/LOI for SEZ units is given in Appendix 14 C of the Handbook (Vol.I).

### **7.8. DTA Sale**

- (a) SEZ units may sell goods including by products and services in the DTA on payment of applicable duties.
- (b) ITA-I items cleared in the DTA shall undergo tariff change at four digit level. Only the value added products which have undergone the process of manufacture would be allowed to be cleared in the DTA. [\(PN 17 dtd 5.6.02\)](#). Non ITA-I items that may be sold in DTA in terms of paragraph 7.8 (vii) of the Exim Policy are given in Appendix 14 B. [\( Pn 59 dtd 15.01.03\)](#)**

### **7.9 Entitlement for supplies from the DTA**

An application for reimbursement of Central Sale Tax (CST) and grant of entitlements in terms of paragraph 7.9 of the Policy may be made to the DC of the SEZ concerned. The procedure to be followed and the form of the application for reimbursement of CST is given in Appendix 14-G of the Handbook (Vol. I).

The procedure for submission of application for grant of Replenishment Licence for cut and polished diamonds, precious and semi-precious stones, synthetic stones and processed pearls as contained in chapter 4 of the Handbook (Vol.I) shall be applicable. However, the application shall be made to the Development Commissioner of the SEZ concerned. Such supplies to SEZ are not treated as deemed exports for the purpose of any of the deemed export benefits.

For reimbursement of Central Excise Duty paid on bulk tea procured from licenced auction centres in terms of para 6.12(a)(iii) the unit shall submit documentary evidence showing that the tea was procured from licenced auction centres along with the claim.

#### **7.10 Export through status holder/ Merchant exporter or other EOU/ EPZ/ EHTP/ STP unit**

Permission to export goods through status holder/merchant exporter or other SEZ/EOU/EPZ/ SEZ/ EHTP/STP units in terms of paragraph 7.10 of the Policy extends only to the marketing of the goods by the status holder/merchant exporter or other SEZ/ EOU/ EPZ/ EHTP/STP unit. The manufacture of the goods shall be done in the SEZ unit concerned. Achievement of positive NFE and any other conditions relating to the imports and exports as prescribed shall continue to be discharged by the SEZ unit concerned. Such export shall fulfill the following conditions:

a)

The export orders so procured shall be executed within the parameters of SEZ Scheme and the goods shall be directly transferred from the Customs bonded unit to the port of shipment.

b)

Fulfillment of positive NFE by SEZ unit in regard to such exports shall be reckoned on the basis of the price at which the goods are supplied by SEZ units to the status holder/merchant exporter or other EOU/ EPZ/SEZ/ EHTP/ STP unit.

c)

All export entitlements, including recognition as status holder would accrue to the exporter in whose name foreign exchange earnings are realized.

### **7.11 Other Entitlements**

(a)

Units set up in SEZs will be charged rent for lease of industrial plots and standard design factory buildings/ sheds as per rates fixed from time to time.

(b)

Corporate tax: SEZ units engaged in manufacturing and services will be eligible for entitlements in respect of payment of income tax as per the provisions of Income Tax Act.

(c)

FOB Value of export of an SEZ unit can be clubbed with FOB value of export of its parent company in the DTA, or vice versa, for the purpose of according Export House, Trading House, Star Trading House or Super Star Trading House status ;

(d)

Foreign Investment: Foreign Equity up to 100% is permissible for all manufacturing activities in Special Economic Zones (SEZs), except for the following activities:

i)

arms and ammunition, explosives and allied items of defence equipment, defence aircraft and warships;

ii)

atomic substances;

iii)

narcotics and psychotropic substances and hazardous chemicals;

iv)

distillation and brewing of alcoholic drinks; and

v)

cigarettes/cigars and manufactured tobacco substitutes.

(e)

Sectoral norms as notified by the Government shall apply to foreign investment in services and trading activities.

(f)

SEZ units may retain 100% of their export proceeds in their EEFC account.

(g)

Export value of goods and software by SEZ units may be realized and repatriated to India within 12 months from the date of export or within the time extended by Reserve Bank of India.

(h)

Software units may, in addition, also 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 Zone premises for the purpose.

(i)

Procurement of raw materials and export of finished products shall be exempt from Central levies.

(j)

Exemption from industrial licensing for manufacture of items reserved for SSI sector.

(k)

State Trading Enterprises Policy shall not apply to SEZ manufacturing units. Export of iron ore shall however be subject to the decision of the Government from time to time. Requirements of other conditions like minimum export price/export in consumer pack as per Exim Policy shall apply in case the raw materials are indigenous. Export of textile items shall be covered by bilateral agreements, if any. Wood based units shall comply with the direction of Hon'ble Supreme Court contained in its order dated 12.12.1996 in Writ (civil) No, 202 of 1995- T.N.Godavarman Thirrumulkpad v/s Union of India and others with WP(Civil) no 171 of 1996 in regard to use of timber/other wood.

(l)

SEZ unit may install one fax machine at a place of its choice, outside the Zone, subject to intimation of its location to the concerned Customs/Central Excise authorities.

(m)

SEZ units may, temporarily take out of the Zone duty free laptop computers and video projection systems for working upon by persons authorised by unit.

(n)

SEZ units may install personal computers not exceeding two in number imported/procured duty free in the registered/administrative office subject to the guidelines issued by Department of Revenue in this behalf.

(o)

For IT and IT enabled services, persons authorized by the software units may access the facility installed in the SEZ unit through communication links.

### **7.12 Sub Contracting**

a)

**Export of finished from the job worker's premises may be permitted provided such premises are registered with the Central Excise authorities. Export of such products from the job worker's premises shall not be allowed through third parties as provided for under paragraph 7.10 of the Policy.**

b)

**In case of SEZ units undertaking job work for export on behalf of DTA unit in terms paragraph 7.12 of the Policy, the finished goods shall be exported directly from the SEZ unit and export documents shall be in the name of DTA unit.**

c)

**SEZ units may be permitted to remove moulds, jigs, tools, fixtures, tackles, instruments, hangers and patterns and drawings to the premises of sub-contractors subject to the conditions that these shall be brought back to the bonded premises of SEZ units on completion of the job work within a stipulated period. [\(PN 21 dtd 1.7.02\)](#)**

### **7.13 Debonding and Depreciation norms for Capital goods**

a)

Broad conditions governing debonding of SEZ units are indicated at Appendix-14-J of the Handbook (Vol. I).

b)

The depreciation norms for capital goods, including computers, computer peripherals and electronics, shall be subject to an overall limit of 90% as notified by the Department of Revenue.

c)

Depreciation for computers and computer peripherals for all SEZ units and for capitals goods of IT hardware/electronic units shall be as follows:

10 % for every quarter in the first year,

8 % for every quarter in the 2nd year,

7 % for every quarter in the 3rd year,

d)

**Depreciation norms for capital goods of units, including electronics, would be subject to an overall limit of 90% as notified by the Department of Revenue.**

**(i) Depreciation for computers and computer peripherals for all types of electronic units would be as follows:**

**10% for every quarter in the first year**

**8% for every quarter in the second year**

**7% for every quarter in the third year**

**(ii) For capital goods , other than the above, the depreciation rate would be as follows:**

**4% for every quarter in the first year**

**3% for every quarter in the second and third year; and**

**2.5% for every quarter in the fourth year and thereafter. [\(PN 17 dtd 5.6.02\)](#)**

e)

**Debonding of capital goods imported as second hand shall not be allowed under EPCG Scheme. In respect of second hand capital goods which are less than 10 years old on date of import, debonding may be allowed, on payment of applicable duties, after 2 years from the date of import . In addition , where the second hand capital goods are more than 10 years old, debonding may be allowed only against an import licence and payment of applicable duties. [\(PN 17 dtd 5.6.02\)](#)**

**7.14 Export through Exhibitions /Export Promotion Tours /Export of Branded Jewellery/ sale through Show rooms abroad/ International airports.**

(a)

SEZ unit shall produce to the Customs authorities the letter in original or its certified copy containing approval of the Development Commissioner for holding exhibitions/export promotion tour. For Gems and jewellery exhibition/export of branded jewelery, a self certified photograph of the products shall also be submitted. In case of re-import, such items, on arrival shall be verified along with the export documents before clearance.

(b)

The exports through exhibitions/export promotion tours/export of branded jewellery shall be subject to the conditions that items not sold abroad shall be re-imported within 60 days of the close of the exhibition. However, in case the exporter is participating in more than one exhibition within 45 days of close of the first exhibition, then the 60 days shall be counted from the date of close of the last exhibition. In case of personal carriage of gems and jewellery for holding/participating in overseas exhibitions, the value of such gems and jewellery shall not exceed US \$ 2 million.

(c)

Personal carriage of gold/silver/platinum jewellery, precious, semi-precious stones, beads and articles as samples upto US \$ 1,00,000 for export promotion tours and temporary display/sale abroad is also permitted with the approval of Development Commissioner subject to the condition that the SEZ unit shall bring back the jewellery/goods or repatriate the sale proceeds within 45 days from the date of departure through normal banking channel. In case of personal carriage for export promotion tours, the unit shall declare personal carriage of such samples to the Customs while leaving the country and obtain necessary endorsement on the Export Certificate issued by the Customs.

(d)

In case of export of jewellery through permitted shops set up abroad or in the showrooms of their distributors/agents items not sold abroad within 180 days shall be re-imported within 45 days

(e)

In case of sale of jewellery to foreign tourists through permitted showrooms/retails outlets at the International Airports in accordance with the procedure laid down by the Customs authorities, jewellery items unsold after a period of 60 days be exported or returned to the respective SEZ units

### **7.15 Personal carriage of gems and jewellery Export / Import Parcels**

(a)

(a) The procedure for personal carriage of exports parcels shall be as prescribed by Customs. The export proceeds shall, however, be realised through normal banking channel.

(b)

(b) In case of Personal carriage of jewellery by foreign bound passenger, the following documents shall be submitted by SEZ units as proof of exports

(i)

Copy of the shipping bill filed by the SEZ units ;

(ii)

A copy of the Currency Declaration Form filed by the Foreign buyer with the Customs at the time of his arrival; and

(iii)

Foreign Exchange Realisation/ Encashment Certificate from the Bank

(c)

In addition to this, Personal Carriage by foreign bound passenger on Document Against Acceptance (DA)/Cash On Delivery (COD) basis is also allowed. The SEZ units will have to furnish the following documents as proof of export.

(i)

Copy of Shipping Bill.

(ii)

## Bank Certificate of Export and Realisation

(d)

The procedure for personal carriage of import parcels will be the same as for import of goods by airfreight except that the parcels shall be brought to the Customs by the SEZ unit/ foreign national for examination and release.

Instructions issued by the Customs authorities in this regard should be followed mutatis mutandis.

### **7.16 Export by Post/ Courier**

In case of export through Foreign Post Office or by courier, at the time of exports, the SEZ unit shall submit the following documents:

(i)

Shipping Bill or invoice presented at the Foreign Post Office.

(ii)

Three copies of invoice.

### **7.17 Disposal of Scrap/ waste**

Scrap/dust/sweeping of gold/silver/platinum may be sent to the Government of India Mint/Private Mint from the SEZ units and returned to them in standard bars in accordance with the procedure prescribed by the Customs authorities or may be permitted to be sold in the DTA on payment of applicable Customs duty, on the basis of gold/silver/platinum content, as may be notified by Customs authorities.

## **7.18 Replacement and Repair of goods**

(a)

The units may re-import, after repairs abroad, machinery/equipment exported by them for specific purpose on the basis of maintenance of records. Any foreign exchange payment for this purpose will also be allowed.

(b)

SEZ units may, on the basis of records maintained by them and on prior intimation to Customs Authorities:

(i)

Transfer goods to DTA for repair/replacement, testing or calibration and return.

(ii)

Transfer goods for quality testing/R & D purpose to any recognised laboratory/institution up to a maximum of Rs. 2 lakhs per annum for items appearing in the negative list of imports and Rs.5 lakhs per annum for other items, without payment of duty, on giving suitable undertaking to the customs for return of the goods.

However, if the goods have been consumed/destroyed in the process of testing etc. a certificate from the laboratory/institution to this effect shall be furnished to the Customs.

## **7.19 Management of SEZ/ Power of DC**

(a)

Registering authority for SEZ units, shall be the Development Commissioner of the SEZ concerned. A separate Registration-cum-Membership Certificate shall not be required in their cases as provided for in paragraph 2.44 of the Policy.

(b)

Importer-Exporter code number for SEZ units shall be allotted by the Development Commissioner concerned

If an industrial enterprise is operating both as a domestic unit as well as an SEZ unit, it shall have two distinct identities with separate accounts, including separate bank accounts. It is, however, not necessary for it to be a separate legal entity, but it should be possible to distinguish the imports and exports or supplies effected by the SEZ units from those made by the other units of the enterprise.

(c)

Apart from the original power delegated under the policy and the Handbook of Procedure (Vol. I), the Development Commissioners of SEZ have been delegated with the following powers in respect of SEZ units.

(i)

Approve all matters relating to post approval operation of the unit including import/procurement of additional capital goods, increase in value of capital goods on account of foreign exchange rate fluctuations, enhancement of production capacity, broad banding/diversification, change in name of the company or the implementing agency and change from a company to another provided the new implementing agency /company undertakes to take over the assets and **liabilities** of the existing unit and merger of two or more SEZ units. [\(PN 17 dtd 5.6.02\)](#)

(ii)

Exercising of powers of adjudication under Section 13 read with Section 11 of Foreign Trade (Development & Regulation) Act, 1992 in respect of SEZ units.

(iii)

Get the premises vacated under the Public Premises Eviction Act in case the rent on the plot/built up premises allotted to the units is in arrears or if the plot/shed is not utilised for the purpose for which the same has been allotted.

(iv)

Valuation of exports declared on SOFTEX form by the units located in Special Economic Zones.

(v)

Issuing eligibility certificates for grant of employment visa to low level foreign technicians to be engaged by SEZ units.

(vi)

Approve applications for setting up of units in SEZ other than proposals for setting up of unit in the services sector (except software and IT enabled services, trading or any other service activity as may be delegated by the BOA), provided that the item of manufacture does not require an industrial licence under the Industries (Development & Regulation) Act, 1951.

(vii)

Green Card will be issued by the DC concerned to SEZ units automatically after execution of Legal Undertaking.

## **7.20 Setting up of SEZ in Private/ Joint/ State Sector**

Guidelines for setting up of Special Economic Zones in the public/ private/ joint Sector or by the State Government is given in Appendix- 14 - I of Handbook Vol-(I).