

No. F .5/1/2006-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce
(SEZ Section)

Udyog Bhavan, New Delhi
Dated the 3rd August 2006

To

The Development Commissioners (All Zones),
The Chief Commissioners Customs (All Chief Commissioners in the Country),
The Chief Commissioners Central Excise (All Chief Commissioners in the Country)

Subject : Implementation of the provisions of the SEZ Act, 2005 & SEZ Rules, 2006

Sir/Madam,

As you are aware the Government of India has enacted the Special Economic Zone Act, 2005 which has come into force from 10th February 2006. In exercise of the powers conferred by Section 55 of the SEZ Act, 2005, Ministry of Commerce & Industry has notified the SEZ Rules, 2006 on 10th February, 2006.

2. However, this Department has been receiving representations that certain provisions of the SEZ Rules are not being implemented by Customs/Central Excise authorities in the field. 3. Specific representations have been received regarding non implementation of Rule 30 of the SEZ Rules, 2006, which provides the procedure for procurement of goods by the SEZ units from the Domestic Tariff Area without payment of the Central excise Duty. In this context position is clarified as follows:-

- i) The SEZ Act has been enacted by the Parliament and has received the assent of the President on 23rd June 2005. The SEZ Rules have already been notified. The SEZ Act along with SEZ Rules have become operative w.e.f. 10th February, 2006. The SEZ Act, 2005 contains provisions relating to fiscal exemptions in Section 26 & Section 27. **Now all the activities relating to the SEZ shall be guided by the provisions contained in the SEZ Act, 2005 and the SEZ Rules, 2006.**
- ii) Section 51 of the SEZ Act provides as follows:-

“51 (1) 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.”

Hence, by virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act and the Rules will have overriding effect over the provisions contained in any other Act.

(iii) Ministry of Commerce & Industry vide a notification issued on 10th of February, 2006 has made operative Section 51 as well as Section 52 of the SEZ Act. Accordingly, Chapter X-A of the Customs Act, 1962, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 have become in operative w.e.f. 10th February, 2006.

(iv) In view of the above stated facts it is clarified that w.e.f. 10th February, 2006 the activities relating to SEZs are guided by the provisions contained in the SEZ Act, 2005 and the SEZ Rules, 2006. Chapter X-A of the Customs Act, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulations, 2003 are not in operation.

Accordingly the clearances of excisable goods to SEZ shall now be in terms of Rule 30 of the SEZ Rules, 2006.

4. In the context of operationalisation of the provisions of the SEZ Act, 2005 & SEZ Rules, 2006, it is further clarified that:

(i) The provisions of Sections 20, 21 and 22 of the SEZ Act relating to Single Agency, Single Enforcement Officer and inspection, search and seizure have not yet been operationalised. Hence, so long as these Sections are not operationalised, different agencies and officers, as empowered under the relevant Acts before enactment of the SEZ Act, will continue to operate till such time these provisions of the SEZ Act take effect.

(ii) The size of social infrastructure like residential complexes, hotels, hospitals, Schools and other similar facilities shall be decided by the Approval Committees based on the guidelines to be issued by the Board of Approval. The guidelines are under preparation and will be issued shortly. Any infrastructure created in excess thereof shall not be eligible for any duty and tax concessions to the developer or co - developer as provided in Section 26 and Section 27 of the Special Economic Zones Act, 2005.

(iii) At the time of import of goods into the SEZ, the assessment of bill of entry shall be on the basis of the value declared by the SEZ units. However, when the goods are cleared in the domestic market, then the assessment of the goods will be as is being done in the case of import of goods for home consumption.

(iv) Rule 11(11) of the SEZ Rules, 2006 provides that in case of import of goods by DTA importers through port, airport, ICD etc. located in a SEZ, the assessment shall be carried out by the Jurisdictional Customs Authorities and not by the SEZ Customs. SEZ Customs shall be responsible only for examination and delivery of goods.

(v) It has been provided in the SEZ Act and the Rules that processing area, nonprocessing area demarcation shall be carried out by the Development Commissioner. The concerned Development Commissioner shall ensure that for each such demarcation order is issued specifying the survey numbers and boundaries in the same manner as being specified in the SEZ notification.

(vi) It has been provided in Rule 25 of the SEZ Rules, 2006 that in case of improper accountal or non-utilization of goods and services for authorized operations an amount equal to the benefits to exemption, drawback, cess, and concession availed on such goods shall be liable to be refunded to the

Government. Besides the refund other provisions of the relevant statutes shall also apply for such misuse.

(vii) The service providing units shall be eligible for export benefits for services provided outside India. However, if any such service are re-imported into the domestic tariff area duties are applicable for normal import of similar services shall be leviable.

(viii) Rule 73 provides for authorization of a Gazetted Officer of Customs by the Development Commissioner as Specified Officer. In cases when a Specific Officer not posted in a SEZ. Since such situation would ordinarily arise in all newly notified SEZs the jurisdictional Development Commissioners may issue such authorizations for officials to be identified in consultation with the jurisdictional Commissioner Customs or Commissioner Central Excise, as the case may be.

5. These instructions may be communicated to all officers dealing with SEZ in your jurisdiction for compliance.

Yours faithfully,

(Yogendra Garg)
Director to the Government of India

Copy to :

1. Chairman, CBEC
2. Member (Customs)
3. Member (Central Excise)
4. DG (Export Promotion), Department of Revenue
5. DG, EPC for EOUs & SEZ Units
6. SEZ website

Copy for information to: PPS to SS (GKP)/JS(AM)