

No.14/5/2015-EOU
Government of India
Ministry of Commerce & Industry
Department of Commerce

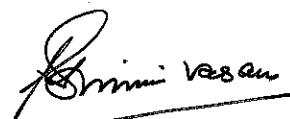
Udyog Bhawan, New Delhi
Dated 17 December, 2015

OFFICE MEMORANDUM

Subject: 5th Meeting (2015 series) of the Board of Approval (BOA) for EOU Scheme scheduled to be held on **30th December, 2015** – forwarding Agenda reg.

The undersigned is directed to forward here with a copy of Agenda Items for the 3rd Meeting (2015 series) of the Board of Approval for EOU Scheme scheduled to be held on **30th December, 2015 at 03:00 P.M. in Room No. 47** Udyog Bhawan, New Delhi under the Chairmanship of Commerce Secretary.

2. May kindly make it convenient to attend the Meeting.



(G. Srinivasan)

Under Secretary to the Government of India

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1. D/o Industrial Policy & Promotion.
2. CBEC [Member (Customs)], M/o Finance.
3. CBDT [Member (Income Tax)], M/o Finance.
4. DG, DGFT.
5. The Joint Secretary, M/o Environment & Forest.
6. The Joint Secretary, M/o Science & Technology.
7. M/o Micro, Small and Medium Enterprises.
8. All DCs.

Copy to: PPS to CS/PS to JS(GPM)/PA to DS (TVR)

AGENDA FOR THE 5th BOA MEETING (2015 SERIES) FOR EOU SCHEME TO BE HELD ON 30.12.2015 AT 03.00 P.M.

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5.1 (15) Confirmation of Minutes of the 4th BOA (2015 Series) meeting held on 09.10.2015.

5.2 (15) M/s Abhishek Exports, an EOU in Jamnagar under KASEZ - Proposal for Extension/Renewal of LoP.

The unit was granted LoP in 2004 for manufacture and export of Brass Parts for Electrical & Electronic Apparatus for switching, making connections, protecting electrical circuits like switches, plug, sockets, junction box, Ingots/Billets/Granules – Casted/Rods/Pipes/ Profiles of Zinc, Table Kitchen or other household articles, etc. with annual capacity of 2500 MT. The unit commenced production on 02.04.2005 and their LOP was valid upto 01.04.2010.

The unit vide letter dated 01.09.2009 applied for debonding but the unit neither completed the debonding process nor applied for extension of LoP within the prescribed time limits.

After lapse of more than 4 years of expiry of their LOP, the unit vide letter dated 07.05.2014 applied for renewal of their LOP. The proposal for extension of LoP for two 5 year blocks i.e from 02.04.2010 to 01.04.2015 and 02.04.2015 to 01.04.2020 was forwarded by DC, KASEZ for consideration by BoA. The BoA in its 2nd Meeting (2015 series) held on 19.05.2015 considered the case and decided to remand the case back to DC, KASEZ and directed to re-examine the case and take necessary action against the unit as per provisions of FT(D&R) Act, 1992 and adjudicate the proceedings accordingly.

Accordingly, DC, KASEZ issued SCN dated 18.06.2015 for non-fulfilment of stipulated NFE for the second 5 year block period i.e from 2010-11 to 2014-15. The case was adjudicated vide DC's order dated 20.08.2015 imposing penalty of Rs. 10,000/- which the unit paid on 30.09.2015. Now, the unit has requested for renewal of their LoP so that they can re-establish their business and earn valuable Foreign Exchange.

Relevant provision of FTP: As per provision contained in Para 6.01 (i) of HBP:

“...Where units give their option to continue after expiry of six months as stipulated above, DC will grant extension after obtaining approval of BoA”.

DC's Recommendation: DC has submitted request for renewal of unit's LoP for the third block period i.e from 02.04.2015 to 01.04.2020 in terms of Para 6.01 (i) of HBP 2015-20.

5.3 (15) M/s Rawmin Mining and Industries Pvt. Ltd., an EOU in Jamnagar under KASEZ – Proposal for extension/renewal of LoP for limited/specific purpose to export the closing stock prior to Exit from EOU scheme.

The unit was issued LoP on 30.07.2001 for manufacturing and export of mechanically crushed and screened beneficiated Bauxite produced from Bauxite Ore at Okha Port Area, Okha, Jamnagar.

The validity of LoP was extended by DC, KASEZ upto 05.11.2013 keeping in view the NFE achievement. The unit vide letter dated 02.09.2013 requested DC, KASEZ to exit from EOU Scheme but failed to provide necessary documents required for exit.

The unit, vide letters dated 11.08.2014 and 19.10.2015 has requested for extension of their LoP for the limited purpose only to export the closing stock prior to exit from EOU Scheme. The unit has sought for 90 days extension (from the date they are intimated about such extension). The jurisdictional Central Excise Authority have issued NoC if the LoP is extended for the very specific purpose to export the closing stock prior to exit from EOU Scheme.

Relevant provision of FTP: As per provision contained in Para 6.01 (i) of HBP:

“...Where units give their option to continue after expiry of six months as stipulated above, DC will grant extension after obtaining approval of BoA”.

DC's Recommendation: DC has proposed to grant extension of LoP from 06.11.2013 to 31.03.2016.

5.4 (15) M/s Diamond Bio Life Pvt. Ltd., an EOU in Thane under SEEPZ – Proposal for extension of validity of LoP beyond 6th year.

The unit was issued LoP on 20.02.2009 for manufacture and export of injectables: liquid :- ampoules, vials:- Amikacin Injection 100 mg/2ml, 250 mg/2ml etc, and Injectables: Dry Powder : Vials/Ampoules.

The unit submitted application for renewal of LoP on 16.02.2015 to DC, SEEPZ informing that due to delay in supply of critical machinery, financial problem and over run, they could not commence their commercial production within the stipulated time i.e within 3 years. The LoP was extended by DC, SEEPZ as follows:

| Extension | Date of Permission | Valid upto | Period of validity |
|-------------|--------------------|------------|--------------------|
| LoP granted | 20.02.2009 | 19.02.2012 | 3 years |

| | | | |
|---------------------------|------------|------------|--------|
| 1 st Extension | 03.02.2012 | 20.02.2013 | 1 year |
| 2 nd Extension | 20.05.2013 | 20.02.2014 | 1 year |
| 3 rd Extension | 17.04.2014 | 19.02.2015 | 1 year |

The unit also informed that they have started trial production on 10.01.2014, however before starting commercial production, they have to offer their plant for validation and get necessary operational approvals which are mandatory requirements by FDI and WHO standards. Thus, the unit has requested to grant them extension of LoP by one year i.e upto 19.02.2016.

The Assistant Commissioner of Central Excise, Thane-II vide letter dated 08.06.2015 informed SEEPZ that machinery for production is installed in the factory premises and the unit has claimed that trial run was completed on 14.01.2014 and samples were supplied to M/s Socomed Pharma Pvt. Ltd. on 24.01.2015 and M/s Abacus Pharma (Africa Ld.) on 18.01.2015 (through M/s Hemis Trading Co. Andheri (E))

Total procurement of indigenous capital goods till 2015 is Rs. 836.60 lakhs.

Relevant provision of FTP: Since the unit has been granted LoP extension of 3 years by DC in addition to initial validity of 3 years as per Para 6.6.1(a) of FTP 2009-14, further extension of LoP may be granted by BoA as per Para 6.05 (a) of FTP 2015-20.

DC's Recommendation: DC has recommended the proposal for extension of LoP of the unit.

5.5 (15) M/s Asian Timber Estates, an EOU under VSEZ – Proposal for extension of validity of LoP.

The unit was issued LoP on 17.7.2007 for manufacture and export cutting, planing, finger jointing and moulding wood at Medak District, Telangana. The unit commenced production on 19.11.2007 and LoP expired on 18.11.2012.

The unit vide letter dated 10.3.2015 requested for condonation of delay in seeking extension of validity of LoP and informed that they were unable to apply for LoP due to lack of knowledge and information. Now, the unit would like to continue as an EOU and have export orders.

SCN dated 15.09.2015 was issued to the unit as the unit contravened the provisions of FTP/LoP/LUT for delay in submission of statutory reports and not seeking LoP extension in time. The SCN was adjudicated on 13.10.2015 and unit deposited the penalty of Rs. 40,000 on 16.10.2015 imposed in the said SCN.

Relevant provision of FTP: As per provision contained in Para 6.01 (i) of HBP:

"...Where units give their option to continue after expiry of six months as stipulated above, DC will grant extension after obtaining approval of BoA".

DC's Recommendation: DC has recommended the proposal for extension of LoP of the unit from 19.11.2012 to 18.11.2017 since it achieved positive NFE for the 1st block period of 5 years from 19.11.2007 to 18.11.2012.

5.6 (15) M/s Ravechi Floritech Pvt. Ltd., an EOU in Raigad under SEEPZ – Proposal for renewal of LoP.

The unit was issued LoP on 29.01.1998 for setting up of an EOU at Raigad for manufacture and export of cut flowers, roses, vegetables and fruits. The unit commenced production on 24.01.2004. The proposal of extension for 2nd block period 2009-10 to 2013-14 of the unit was considered by BoA in its meeting held on 14.09.2012 due to late submission of application. The deliberation of BoA is as follows:

"The request of the unit was considered by BoA. In the light of the submissions made by the DC that the hindrances faced by the units in export of its products has since been sorted out and that the unit has assured of positive outcome, the BoA approved the renewal of LoP for a period of five years w.e.f 01.04.2009 on the condition that no further import will be allowed to the unit till such time that it meets the NFE positive criteria".

The unit vide letter dated 24.01.2014 submitted application for continuation of LoP for further five year period with revision of projection for the period 2014-15 to 2018-19.

The Commissioner of Central Excise, Raigad, vide order dated 29.07.2010 confirmed demand of duty of Rs. 3,37,20,021/- and imposed equal penalty.

However, on appeal filed by the unit, The Hon'ble CESTAT, Mumbai, vide order dated 26.03.2013, remanded the said case to Commissioner, C. Ex., Raigad for de-novo adjudication on the ground that period of LoP was extended till 2013-14. Further, during the de-novo proceedings, the unit plead that as their request for extension of LoP is pending, the de-novo proceedings may be kept pending till final decision on extension of LoP is taken by SEEPZ.

The proposal of the unit was considered by Unit Approval Committee in its meeting held on 09.01.2015, 08.07.2015, however, the proposal was deferred in both the meetings and unit was directed to submit the projection details and flow chart.

The proposal was placed before UAC in its meeting held on 27.10.2015. The members of Committee noted the below points:

- i. Though the LoP of the unit has been expired, the unit is still exporting the product. They have exported approx. Rs. 24-26 lakhs from 01.04.2015.

| Year | Export (In US \$) |
|--------------|-------------------|
| 2013-14 | 942.50 |
| 2014-15 | 1,500.70 |
| 2015-16 | 14,829.00 |
| Total | 17,272.20 |

The unit has also submitted the list of 10 prospective buyers which include buyers from Australia, Italy, UAE, Singapore, Germany, Japan, UK, The Netherlands.

- ii. The addl. Commissioner, C. EX., Raigad opined that the unit has been granted LoP in 1998 and till today there is negligible value of export which appears to be very poor performance. The unit does not have viable project and they will not be able achieve positive NFE. SCN cum Demand Notice has been issued by them and revenue of Rs. 3.37 cr is locked up. Since, the unit does not have viable project, the extension of LoP to the unit should not be granted.
- iii. The members of the Committee held the view that the unit may be granted approval for continuation of LoP so that they can continue their export activity and fulfil the condition of FTP/HBP subject to the condition that they should not be allowed import of CG/RM.
- iv. The Committee noted that as per SEZ Act, "in case the Approval Committee is unable to decide any matter by general consensus, such matter shall stand referred to the BoA for its decision". As there was no consensus on grant of renewal of LoP, the Committee applied the same principle as stipulated in SEZ Act and decided that the proposal may be forwarded to BoA for consideration.
- v. It is also stated that the product of the unit is a nascent which is totally dependent upon the circumstances such as climate etc. Therefore, the viability of the project cannot be determined. Further, non-extension of LoP will also not be feasible for recovery of dues also. Granting extension will not only ensure NFE but also strengthen the financial condition of the unit and payment of revenue dues also. However, no further import benefit during the extended LoP period will be considered.

Relevant provision of FTP: As per provision contained in Para 6.05 (a) of FTP 2015-20, once the unit commences production, LoP/Lol issued shall be valid for a period of 5 years for its activities. This period may be extended further by DC for a period of 5 years at a time.

DC's Recommendation: DC has recommended the proposal of the unit for renewal of LoP from 01.04.2014 to 31.03.2019 for consideration by BoA.

5.7(15) M/s Aishwarya Plast Exports Pvt. Ltd., an EOU situated at Vadodra with M/s San Polyplast Exim Pvt. Ltd., an EOU situated at Vadodra – Proposal for merger of two plastic recycling EOUs.

M/s Aishwarya Plast Exports Pvt. Ltd. and M/s San Polyplast Exim Pvt. Ltd. are engaged in manufacture of plastic waste/scrap and their LoP have been extended by BoA for further period of 5 years i.e upto 31.12.2019 and 01.10.2019 respectively. These units have requested for merger.

As per Para 6.34 (10) of HBP, 2015-20, DC may permit merger of two or more units into one unit provided units fall within jurisdiction of same DC subject to condition that activities are covered under provision of broad-banding.

As both these units are in the same line of manufacture, DC is empowered to permit merger of these two EOUs under para 6.34 (10) of HBP 2015-20, however, as the units are importing plastic waste/scrap and their LoPs have been extended by BoA, the request of the units for merger is forwarded by KASEZ to DoC/BoA for consideration.

DC, KASEZ mentioned in the proposal that in this case, there will be no addition in the overall plant capacity the two units hold as per their existing LoPs. M/s San Polyplast has not taken up any physical export activity from 01.10.2014 till this time for the want of permission for merger. M/s Aishwarya Polyplast will have to achieve condition of 80% physical export in the first year, as per their LoP.

5.8 (15) M/s Bodygear International Pvt. Ltd., Chennai- Proposal for setting up an 100% EOU under MEPZ for manufacture and export of Plush Toys of animals, insects, bags, pillows and creatures.

The unit has applied for setting up a 100% EOU at Vanagaram Village, Chennai for manufacture and export of plush toys of animals, insects, bags, pillows and creatures with annual capacity of 750000 pcs.

The unit is a subsidiary of the US based toy company K&M International Inc of USA and have existing factories in Kochi, Kerala, and Coimbatore. The unit has an existing EOU in Coimbatore for manufacture and export of plush toys vide LoP dated 07.02.2003 and have exported to the tune of Rs. 474.77 lakhs during the year 2014-15.

The estimated investment in plant and machinery is Rs. 70 lakhs and proposed NFE for first five years is Rs. 955.08 lakhs.

Relevant provision of FTP: As per provision contained in Para 6.06 of FTP, BoA may allow establishment of EOUs with investment criteria less than Rs. 1 crore.

DC's Recommendation: DC has forwarded the proposal for consideration by BoA.

5.9 (15) M/s Jain Grani Marmo (P) Ltd., an EOU at Udaipur under NSEZ-Permission for disposal of rejects and waste/scrap into DTA.

The unit is a 100% EOU for the manufacture of Marble Slabs, tiles and dressed marble blocks at Udaipur. As per provisions of FTP 2009-14, sale of marble in DTA is prohibited as per para 6.8 (a) and (h). The unit filed W.P against the rejection of their request for enhancement in level of disposal of rejects and waste in DTA by BoA. The Hon'ble High Court at Jodhpur gave its verdict dated 05.08.2015 on the Writ Petition No. 8928/14 filed, setting aside the order of the Board of approval dated 23.11.2012 and 18.09.2014. The operative part of the judgement is as below:

"The writ petition is partly allowed and matter to be placed before Board of Approval for Export Oriented Units and decide the matter afresh keeping in view the clause 6.8 (d) and 6.8 (e) of Foreign Trade Policy. It is expected that the Board will take a decision on the said matter within a period of one month of receipt of copy of this judgement".

As directed by the Hon'ble Court, unit's proposal for enhancement of level of disposal of rejects and waste/scrap into DTA was placed before BoA in its 3rd meeting (2015 series) for EOUs held on 27.08.2015. Decision of BoA is reproduced as below:

"The Board considered the proposal of M/s Jain Grani Marmo (P) Ltd., an EOU at Udaipur for enhancement of level of disposal of rejects and waste/scrap into DTA and after deliberations, the Board decided to refer the proposal to the Norms Committee of DGFT to fix the wastage norms".

Accordingly in respect of Para 6.8(d) of FTP 2015-20, the matter was referred to DGFT vide DoC letter dated 11.09.2015 for its comments as the DGFT is the competent authority for issuing clarification on the FTP 2015-20. DGFT vide O.M dated 28.09.2015 replied that there is no provision for sale of rejects of marble in DTA. It was also stated that:

"...DTA sale made even under Para 6.8(d) visibly falls under the ambit of DTA sales stated at Para 6.8(a) of the Policy, which itself does not permit DTA sale of "marble". Sale of rejects under 6.8(d) is allowed to only those units which are entitled to sell goods in DTA under 6.8(a), and that since DTA sale of marble is prohibited under 6.8(a), sale of marble rejects also cannot be sold in DTA under Para 6.8(d)."

With regards to the fixation of wastage norms, the matter was referred to the Norms Committee, DGFT on 02.09.2015. The Norms committee considered the issue in its meeting held on 30.09.2015 and conveyed its minutes to DoC vide email dated 04.11.2015. The Committee, after considering the Central Excise data provided by the firm and the written recommendations provided by the Department of Industrial Policy and Promotion (DIPP), decided to accept the recommendation of DIPP and fixed the below norms for the process of wastage alone (and not for rejects or any other material):

| Sl.No. | Input | Output | Wastage Recommended |
|--------|---|-----------------------------|---------------------|
| 1. | Indigenous Blocks (Irregular, uneven shape) | Rough Marble Slabs | 34% |
| 2. | Imported blocks (Regular shape) | Rough Marble Slabs | 10% |
| 3. | Rough Marble Slabs | Polished Marble Slabs/Tiles | 2% |
| 4. | Rough Granite Tiles | Polished Granite Tiles | 3% |

This Department is in agreement with the views of the DGFT on the DTA sale of rejects, communicated vide O.M dated 28.09.2015 as well as with the wastage norms fixed by the Norms Committee, communicated vide email dated 04.11.2015.

As the matter was having urgency and to avoid Contempt of Court, the above position was conveyed to DC, NSEZ with the approval of Commerce Secretary as the Chairperson of BoA. The NSEZ has conveyed this position to the unit vide letter dated 16.11.2015.

The matter is placed before BoA for ratification of the above decision.

PART II

**Approval granted by Development Commissioner Under Delegated Powers for
RATIFICATION OF BOA as per Press Note No. 3 of 1995**

| | | |
|---|--|-------|
| A | Approvals granted under delegated powers for the period July, 2015 to September, 2015 | KASEZ |
| B | Approvals granted under delegated powers for the period October, 2015 to November, 2015 is NIL | FSEZ |
| C | Approvals granted under delegated powers for the month of September, 2015 to November, 2015 | VSEZ |
| D | Approvals granted under delegated powers for the month of September, 2015 to October, 2015 | MEPZ |