

BY SPL. MESSENGER/SPEED POST

No.14/3/2015-EOU
Government of India
Ministry of Commerce & Industry
Department of Commerce

Udyog Bhawan, New Delhi
Dated the 25th August, 2015

OFFICE MEMORANDUM

Subject : 3rd Meeting (2015 series) of the Board of Approval (BOA) for EOU Scheme scheduled to be held on 27th August, 2015 – Forwarding of supplementary agenda regarding.

The undersigned is directed to refer to this Ministry's Office Memorandum of even number dated 11th August, 2015 forwarding the agenda for the 3rd Meeting (2015 Series) of the Board of Approval for EOU Scheme.

An additional agenda namely the case of M/s. Jain Grani Marmo Pvt. Ltd. and cases of ratification pertaining to MEPZ are also forwarded to be discussed in this meeting.

Encl.: As above.


(S.S.Kumar)

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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)/PS to Dir (MV)

**SUPPLEMENTARY AGENDA FOR THE 3rd BOA MEETING (2015 SERIES) FOR EOU
SCHEME TO BE HELD ON 27.08.2015 AT 10.30 A.M.**

**3.8(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). As per Para 6.8 (a) of FTP, it is stated that:

"No DTA sale at concessional duty shall be permissible in respect of motor cars, alcoholic liquors, books, tea (except instant tea), pepper & pepper products, marble and such other items as may be notified from time to time".

As per para 6.8 (h), it is stated that:

"EOU / EHTP / STP / BTP units may sell finished products, except pepper and pepper products and marble, which are freely importable under FTP in DTA, under intimation to DC, against payment of full duties, provided they have achieved positive NFE".

However, sale of rejects is governed by Para 6.8(d) of FTP which states that:

"Rejects, unless specifically prohibited in LoP, may be sold in DTA within an overall limit of 50%, on payment of duties as applicable to sale under sub-para 6.8(a) on prior intimation to Customs Authorities. Such sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE."

Para 6.8 (e) of FTP provides that:

"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 concessional duties as applicable, within overall ceiling of 50% of FOB value of exports. 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. Sale of waste / scrap / remnants by units not entitled to DTA sale, or sales beyond DTA sale entitlement, shall be on payment of full duties. Scrap / waste / remnants may also be exported".

Ad-hoc wastage norms were fixed vide NSEZ's letter dated 24.06.2004 for six months in terms of para 12.1 (d) of Appendix 14-I of HBP 2002-2007 subject to the condition that since the matter being referred to BoA for fixation of regular wastage norms, the decision of BoA shall be binding on the unit. DC fixed as hoc norms for wastage in production from

imported blocks to the extent of 8.92% and wastage to the extent of 27.56% from indigenous blocks.

BoA in its meeting on 23.11.2012, after deliberations, decided that disposal of such marble waste/scrap may be made in provisions of para 6.8(d) and 6.8(e) of FTP, subject to prescribed SION of the item. In the absence of SION, such disposal is restricted upto 2% of input quantity subject to verification by joint team from the DC, SEZ and concerned Commissioner of Customs and Central Excise. Accordingly, DC, NSEZ vide letter dated 01.03.2013, released the permission for disposal of rejects/waste upto 2% of input quantity.

The unit vide its letter dated 25.02.2014 requested DoC to grant the permission to the extent of 7.5% inputs used instead of 2% under para 6.8 (d) and (e). Vide Department's O.M dated 03.04.2014, the matter was referred to DGFT. Vide letter dated 28.05.2014, DGFT requested the unit to represent their case before BoA for enhancing the percentage of input quantity of marble rejects/waste since the unit's request is for change in the criteria for disposal as decided by BoA.

The matter was considered in BoA meeting held on 18.09.2014 for enhancement in level of disposal of rejects/waste/scrap into DTA and after deliberations, the Board decided that the request of the unit cannot be acceded to and the same was communicated to the unit by DC, NSEZ vide letter dated 01.10.2014.

Being aggrieved by the decision of BoA, the unit filed W.P No. 8928/2014. The order of Hon'ble High Court has been communicated to NSEZ by Asst. Solicitor General of India. It is informed that the above W.P was decided on 05.08.2015 and it was directed that the matter to be placed before BoA for EOUs to decide the matter afresh keeping in view the clause 6.8(d) and 6.8(e) of FTP and direction is given that the Board will take a decision on the said matter within a period of one month of receipt of copy of judgement. The Hon'ble Court observed that the restriction of permitting only 2% of disposal is unjust and arbitrary in nature and does not stand any test of reasoning and therefore the impugned decisions taken on 23.11.2012 and 18.09.2014 are hereby set aside.

In view of Hon'ble Court's order, the matter is placed before BoA for consideration.

Comments of DC: DC has opined that BoA may direct the unit to furnish requisite details to the Norms committee of DGFT and the Norms committee may decide the matter in time bound manner.

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 April, 2015 to May, 2015	MEPZ
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