

Agenda for the 1st Meeting of Board of Approvals on Export Oriented Units (EOUs) for 2014, to be held on 10 March, 2014 at 03:00 PM at Udyog Bhavan, New Delhi

Part 1

Confirmation of Minutes of the previous (i.e. 5th) BoA on EOU for 2013 held on 8th November, 2013 (**Annexure –1**).

Part 2

Fresh Proposals

2.1 Proposal of M/s Tara Aerospace Systems Ltd., 100% EOU at Adibatla Village, Rangareddy District, Andhra Pradesh, under DC VSEZ for incorporation of services in their LOP dated 25th July, 2011.

The above mentioned EOU unit was granted LOP on 25th July, 2011 for manufacture and export of “Helicopter Cabin Kits”& Parts and Accessories for Aircraft. The unit commenced its operations on 29th August, 2012 and as of Nov., 2013 has earned foreign exchange of USD 116.4 lakhs.

The unit has now requested to incorporate services viz., Machining / Sheet metal pressing work/Tube shopping / welding / Heat treatment / Brazing / special process / NDT / Inspection / Stores and Sub assembly services in its LOP considering the fact that they are planning to go for business expansion and are looking to work on several ongoing business opportunities in the domain viz. manufacturing / services and export of Helicopter cabin Kits / Parts and accessories for Aircraft and services ie Machining / Sheet metal pressing work / Tube shopping / welding / Heat treatment / Brazing / Special process / NDT / Inspection / Stores and Sub assembly services.

DC VSEZ has forwarded the request of the unit for its consideration by BoA.

The request is accordingly placed below BoA for its consideration.

2.2 Proposal from M/s Satvayur Extracts Limited, a 100% EOU at Bangalore under DC CSEZ for extension of its EOU status (which lapsed on 14th March, 2013) beyond 5 years for continuation in 100% EOU scheme.

The above mentioned EOU unit was granted LOP by DC CSEZ on 8th Dec, 1997 for manufacture and export of Spice Oil & Oleoresins, Herbal extracts and Nutraceuticals. LOP was further extended for a period of 5 years vide letter dated 10th April, 2008. The unit commenced production w.e.f. 15th March, 2003 and was granted extension of five more years upto 14th March, 2013. The unit is NFE negative of Rs.363.04 lakh at end of its 5 years of operations ended on 14.03.2013. (Separate action has been taken to penalise the unit for not achieving export obligation).

The unit has now sought permission for extension of EOU status for the 2nd block of 5 years form 15.03.2013 after a lapse almost 8 months. (06.11.2013) on the grounds

that three of the Directors are stationed outside Bangalore while the fourth Director was abroad from February to October 2013 and that the decision to seek extension of EOU status was taken up after his return from abroad.

DC CSEZ has noted that the unit was positive NFE at the end of its first 5 year block period ended on 14.03.2008. However, at the end of 2nd block period of 5 years ending on 14.03.2013 the unit is NFE negative to the extent of Rs.363.04 lakh. The unit has explained the reason for non-achievement of +NFE due to disruption in production due to change of premises and problems relating to installation of plant and machinery. For the next five years of extended period, the unit has projected NFE of Rs. 422 lakh. SCN dated 17.12.2013 has been issued for non-fulfillment of export obligation.

As per Para 6.2.9 of HBP "Where units give their option to continue after expiry of six months, DC will grant extension after obtaining approval of BOA".

DC CSEZ has further noted that the unit had to change its premises from Whitefield, Bangalore, to Chikkaballapur, Karnataka and in the process encountered issues relating to safety parameters and upgradation of software and hardware, which has resulted in disruption of production. The unit is now ready to re-start production. Taking into consideration the circumstances explained by the unit and considering the unit's past performance and also their projections for the next five years, DC CSEZ has stated that BoA may consider granting extension of EOU status to the unit for the next five years w.e.f. 15.3.2013.

The request of the unit is accordingly placed before BoA for its consideration.

2.3 Proposal of M/s Servocontrols Aerospace India Private Limited, a 100% EOU at Belgaum, Karnataka under DC CSEZ for permission to procure imported material "IPN core cold store panels".

The above mentioned unit was granted LOP by DC CSEZ on 31st Jan., 2013 for export of Actuator Motor and Encoder, Motors and Encoder, etc. The unit commenced commercial production with effect from 04.04.2013.

The proposal submitted by the unit is for approval for import of "IPN core cold store panels". These panels will help in maintaining temperature of the building which is prescribed for the machineries, as the production has to be carried out at controlled temperature.

DC CSEZ has informed that the unit commenced commercial production in April, 2013 and has exported goods valued as Rs. 8.65 lakhs in 7 months period (April to October, 2013).

Para 6.5.1 (b) (ii) of the Handbook of Procedures, gives an inclusive definition of CG to be imported. "**Cold Store Panels**" which are required by the unit for maintaining temperature of the building, is not included. As per Para 6.5.1 (f), approval of BoA is required for procurement of items not listed in clauses (a) to (e) of Para 6.5.1.

Taking in to consideration the fact that the unit requires the item for maintaining the building temperature as prescribed for machineries and production has to be carried out in controlled temperature, DC CSEZ has recommended that the request for

import of cold store panels costing (appros.) Rs. 36,18,44/- (USD 58,362/-) is recommended for approval.

The request of the unit is accordingly placed before BOA for its consideration.

2.4 Proposal of M/s Intergated Technologies Ltd., an EOU for extension of validity of their Letter of Permission by a minimum of 3 years

The unit is an EOU set up in 1992, and started production in 1999 and the plant was shut down in Jan, 2003. The unit became sick and was registered with BIFR on 26.07.2006.

Subsequent to rehabilitation package by the BIFR to allow revival of operation of the unit, the BOA in its 3rd meeting (2008 series) approved extension of the LOP of the unit for five years with the condition that if the company is unable to fulfill the necessary export obligations even during this extended period of five (5) years, the company would be required to pay the "import duty" in respect of "Duty Free Imports" earlier made by them and / or in respect of shortfall of exports obligation during the next five (5) years.

The unit was unable to fulfill positive NFE even during the extended period and the unit applied for in-principle exit from EOU scheme in 2012. It agreed to pay only the import duty Rs. 52 lakhs approx in respect of duty free imports to the extent of short fall of export obligation, in terms of FTP 2009-14. It termed the additional interest of Rs. 2 Crores levied on the said duty amount as unjustified according to Custom Notification No- 132/2004 (**Annexure-2**).

The governing notifications, in this regard, are Notification No. 52/2003- customs and Notifications No. 22/2003- CE both dated 31.03.2003 as per which:

"in case of failure to achieve positive Net Foreign Exchange Earning, the duty equal in proportion of the duty leviable on the said goods but for the exemption contained in this notification and the duty so payable shall bear the same proportion as the unachieved portion of Net Foreign Exchange Earning bears to the positive Net Foreign Exchange Earning to be achieved along with interest at the rate of as specified in the notification of the Government of India, Ministry of Finance, Department of Revenue issued under section 11 AB of the Central Excise Act, 1944, from the date of procurement of the said goods till the payment of such duty".

The Unit, thereafter, sought to withdraw its application for debonding and requested for extension of block year by one year for calculation of NFE. However, the unit's request for extension was turned down by NSEZ on the following grounds:

- The company has not been in operation for more than 3 years.
- The case is governed by para 4(i) of monitoring guidelines (Appendix 14-I-G) under HBP).
- Initially the condition of achieving positive NFE was imposed by BoA, failing which duty was to be paid. Therefore, the case of relaxation has also to be considered by BoA.

Now, the unit has made below mentioned requests:

- Withdrawal of Application for PREMATURE De-bonding/exit of the unit from the 100% EOU Scheme.
- Extension of LOP period by a minimum of 3 (three) years, which it has applied for well within its validity period ending 18th Sept, 2013 to enable the company to achieve positive NFE.

The request of the unit is accordingly placed before BoA for its consideration.

2.5 Proposal of M/s.Sireena Rocks Pvt.Ltd., 100% EOU for extension of validity of their Letter of Permission beyond 6 years

M/s. Sireena Rocks Pvt. Ltd., an EOU, was issued LoP on 18.10.2006 for manufacture and export of Polished Granite Slabs/Tiles, Dimensional blocks in Chittoor District of AP. The unit has not declared commencement of production and is under implementation stage. The initial validity of 3 years was extended by DC upto 17.10.2011 i.e., upto 5 years period and the unit completed 6th year under implementation stage by 17.10.2012.

The unit did not seek extension of the validity of LoP during the 6th year. However, it has now sought extension of the validity of the LoP on 28.12.2012 i.e. during the 7th year.

The unit has not started its production due to non-extension of LoP, However, as reported by Customs & Central Excise dept., the unit has undertaken civil works and imported second hand capital goods. DC has stated that the unit may commence production if the LoP is extended.

As per para 6.6.1(a) of FTP, 2009-14, it is stated that:

LOP of a unit shall have an initial validity of 3 years, by which time it should have commenced production. Its validity may be extended further upto 3 years by competent authority. However, proposals for extension beyond six years shall be considered in exceptional circumstances, on a case –to –case basis by BoA.

DC, VSEZ has recommended the case for extension of the LOP period for a period of 3 years i.e. upto 17.11.2014.

The request of the unit is accordingly placed before BOA for its consideration.

2.6 Proposal of M/s Attero Recycling Pvt. Ltd. – for setting up of used electronics refurbishing and recycling plant

M/s Attero Recycling Pvt. Ltd. has submitted an application for setting up of used electronics refurbishing and recycling plant. The unit proposes to process WEEE (Waste Electrical and Electronic Equipment) such as PCs and its peripherals,

laptops, servers, printers, TFT, cell phones HDD, and network devices, refurbish and export.

The projected NFE for five years is Rs. 11816.55 Lakh

Other Parameters:

| | |
|-----------------|---------------|
| Exports: | 13459.80 Lakh |
| Investment: | 107.20 Lakh |
| Foreign equity: | 4733.81 Lakh |

The unit basically proposes to collect used electronic equipments from bonded premises, dismantle for refurbishing, refurbish, test the refurbished units/equipment and export the refurbishing units. Since the term manufacture means to include refurbishing as per para 9.36 of FTP. The activity proposed to be carried out by the company qualifies for consideration under the EOU scheme.

Para 6.16 of FTP states as under:

“EOU/EHTP/STP/BTP units may be set up with approval of BOA to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, up-gradation of technology and re-engineering activities for export in foreign currency. Provisions of paragraph 6.8, 6.9, 6.10, 6.13, 6.14 of FTP and para 6.28 of HBP v1 shall not, however, apply to such activities”.

DC, CSEZ has stated that taking due consideration of the NFE projections furnished and also taking into account that the WEEE are mainly sourced indigenously, BOA may consider the proposal for approval.

The request of the unit is accordingly placed before BOA for its consideration.

2.7 Proposal of M/s Akzo Nobel India Limited. – Inclusion of Supplementary activity in existing LOP

M/s Akzo Nobel India Limited has submitted an application for “Supplementary activity” (Calibrations testing/Certification/Re-certification service involving import of new/used lab equipment on FOC basis) to their current activity of M/s Akzo Nobel India Ltd. The unit was granted LoP in 2003 for Services-Research, Innovation & Development of Products, Colour Development.

The unit has now requested for inclusion of Supplementary activity: Calibrations testing/Certification/Re-certification service involving import of new/used lab equipment on FOC basis. This activity was hitherto being done by the unit's global headquarters at Netherlands. Since the billing is done on man hour basis, the unit will be generating additional employment. There would not be any foreign exchange outflow.

The unit was positive NFE of Rs. 3137 lakh at the end of 1st five year block period (3.11.2008) and Rs. 8127.70 lakh at the end of 2nd five year block period (30.11.2013).

However as per para 6.16 of FTP, such activities can be allowed with the approval of BoA subject to certain conditions.

DC, CSEZ has stated that taking this into account and since the proposed activity of Calibrations Testing/Certification/Re-certification service, can be considered for operation under EOU scheme, the request of the unit is recommended for approval by BOA.

The request of the unit is accordingly placed before BOA for its consideration.

2.8 Proposal of M/s Combitic Global Caplet Pvt. Ltd. – Consolidation of Export Shipments from different companies within the same group

M/s Combitic Global Caplet Pvt. Ltd. has been issued LOP in 2012 for manufacture & export of P&P Medicines and drugs. The unit has a NFE of Rs. 4106.82 Lakhs.

To meet out some specific export orders related to their finished goods, the unit intends to procure from DTA or by import some P&P medicines and organic chemicals for exportation of same (on as it is condition) along with the goods manufactured by them. The details of such procured/imported goods and the goods manufactured by the unit would be separately listed in the export documents by the unit.

As a special case, BOA has power to allow consolidation of goods which are related to manufactured article vide para 6.2 (i) of the FTP. This provision was essentially to facilitate exporter to consolidate such goods, which are part of the manufactured article and to make the manufactured goods marketable.

Para 6.2 (i) of FTP is reproduced as under:

“BOA may allow, on a case to case basis, requests of EOU/EHTP/STP/BTP units in sectors other than Gems & Jewellery, for consolidation of goods related to manufactured articles and export thereof along with manufactured article. Such goods may be allowed to be imported/ procured form DTA by EOU without payment of duty, to the extent of 5% FOB value of such manufactured articles exported by the unit in preceding financial year. Details of procured/imported goods and article manufactured by the EOU will be listed separately in the export documents. In such case value of procured/imported goods will not be taken into account for calculation of NFE, DTA sale entitlement & profits accruing out of such procured/imported goods will not be eligible for income tax benefits. Such procured/imported goods shall not be allowed to be sold in DTA. BOA may also specify any other conditions”.

DC, NSEZ has recommended the case for its consideration by BoA.

The request of the unit is accordingly placed before BOA for its consideration.

2.9 Proposal of M/s Taurus Agile Technology Corporation Pvt. Ltd. – extension of LoP

M/s Taurus Agile Technology Corporation Pvt. Ltd., an 100% EOU at Mohali, Punjab was granted LoP in 2007 for manufacture and export of Turbine Components,

machine components, Industrial Equipment, Automotive components. The unit commenced production in 2008 and completed five years block on 26.12.2013.

The unit has requested for the renewal of the LoP for next 5 years. The performance of the unit over a period of five years is as under:

| | | |
|---------------|---|-----------------------|
| Total Exports | : | Rs. 963.49 lakhs |
| Total Imports | : | Rs 4746.68 lakhs |
| NFE | : | Rs. (-) 3783.19 lakhs |

As the unit had a negative NFE, DC, NSEZ has forwarded the representation to this department for its consideration.

The unit has based its request for renewal of its LoP despite negative NFE on the following grounds that:

- i. Activities performed by it have a longer gestation period.
- ii. It has managed to procure significant orders offlate and is hopeful of achieving positive NFE.

DC, NSEZ has stated that as the unit has negative NFE, it does not have the power to consider the request of renewal.

In terms of Para 6.5 of FTP 2009-14, whenever a unit is unable to export due to prohibition / restriction imposed on export of any product mentioned in LoP, the five year block period for calculation of NFE earnings may be suitably extended by BoA.

The request of the unit is accordingly placed before BOA for its consideration.

2.10 Proposal of M/s Uma Exports Ltd., an EOU at Howrah, West Bengal under FSEZ for allowing to resume processing and export of Pulses.

M/s Uma Exports was issued LoP on 23.07.2009 for setting up a 100% EOU at Howrah for manufacture and export of pulses by DC, FSEZ. The unit reported that its consignment of export of pulses had been seized by the Custom authorities on the grounds that export of pulses is prohibited under FTP. The ex-post facto approval granted by CIM was not considered by the Custom Authorities.

Vide DGFT Notification dated 14.11.2013 (**Annexure-3**), amendment has been incorporated in the FTP for allowing of export of prohibited items w.r.t EOU units provided no raw material shall be procured from DTA. Amended para 6.2 (a)(i) is stated as under:

*“An EOU/EHTP/STP/BTP unit may export all kind of goods and services except items that are prohibited in ITC (HS). Export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) shall be subject to fulfilment of conditions indicated in ITC (HS). **In respect of an EOU, permission to export a prohibited item may be considered, by BoA, provided such raw materials are imported and there is no procurement of such raw material from DTA.**”*

It has been further mentioned in the notification that as regards the effect of this notification certain items which are prohibited for export may be allowed for export under advance authorization scheme, subject to stipulated conditions. BoA can consider requests for export of a prohibited item from an EOU.

DC, FSEZ has recommended to place this case before BoA for its consideration and stated that the matter has been discussed with Commissioner of Customs several times but they have opined verbally that in the absence of any notification this will not be permissible.

The request of the unit is accordingly placed before BOA for its consideration.

Part 3

Approval granted by Development Commissioner under delegated powers for Ratification of BOA as per Press Note No. 3 of 1995

| S.No | Approvals granted under delegated powers for the period | No. of Cases | Zone | Annexure |
|------|---|--------------|-------|----------|
| 1 | Sept 2013 – Jan 2014 | 4 | VSEZ | 4 |
| 2 | Sept 2013 – Nov 2013 | 10 | MEPZ | 5 |
| 3 | July 2013 – Nov 2013 | 8 | KASEZ | 6 |
| 4 | Nil | 0 | FSEZ | 7 |
| 5 | Nil | 0 | ISEZ | 8 |
| 6 | Oct 2013 – Nov 2013 | 9 | CSEZ | 9 |
| 7 | Sept 2013 – Dec 2013 | 3 | SEEPZ | 10 |
| 8 | Apr 2007 – Mar 2010 | 59 | NSEZ | 11 |

Part 4

Case of appeal for personal hearing:

4.1 Appeal filed by M/s Permashwar Creations Pvt. Ltd. 100% EOU at Phase II, Noida against the order passed by DC, NSEZ

M/s Permashwar Creations Pvt. Ltd. has been granted LOP on 31.03.2006 for manufacture and export of readymade garments, furnishing and accessories. The unit sought extension of LoP for one year which was considered until 31.03.2010. The unit sought further extension of two years on 29.03.2011 and stated to have applied for Custom bonding on 23.01.2010. Since the unit had not given any intimation for implementation of the project under Custom bonding and not submitted any QPR/APR, further extension of LoP was not considered and LoP was cancelled by DC, NSEZ. The unit appealed against this cancellation before BoA. The BoA in its meeting held on 12.06.2013 posted appeal for a personal hearing. However, no representative from the unit appeared for the personal hearing. The BoA passed the order stating that **DC, NSEZ is directed to give a fresh personal hearing to the unit, consider all issued related to the matter and pass a speaking order within one month. The unit may approach BoA if the unit is not satisfied with the order of DC.**

In pursuance of aforesaid BoA direction, a personal hearing was accorded to the unit on 9.07.2013 which was not attended by the unit and another personal hearing was given on 17.07.2013. Two representatives from the unit appeared for the personal hearing but did not submit the balance sheets for the year 2005–06 to 2011–12 which are inevitably required for the decision on the operation of EOU and validity of LoP.

The factual position regarding non submission of balance-sheet was informed to BoA in its 4th meeting held on 30.08.2013. The BoA directed the DC, NSEZ to accord the personal hearing to the unit and pass a speaking order.

DC NSEZ issued a speaking order on 04.10.2013 i.r.o. of the above case. The zone has given personal hearing to the appellant and on the basis of perusal of records found that the unit did not implement the provisions and procedures of establishing a EOU. In its final order it has held as under:

- (i) That the unit's LOP is not renewed and therefore stands cancelled.
- (ii) That the unit's IEC (imp/exp license) has been suspended for a period of 6 months. This was followed by a suspension order dated 30.10.2013 passed by NSEZ.
- (iii) That a penalty of Rs. 75 lakhs has been imposed upon the unit.
- (iv) That the duty drawback against the exports as well as DTA clearances should be looked into by the appropriate jurisdictional authorities.

The unit has now filed an appeal (**Annexure-12**) against the above mentioned speaking order (**Annexure-13**) basically challenging the suspension of its IEC code (**Annexure-14**) and imposition of Rs. 75 lakhs penalty.

The appeal is placed before board for its consideration.
