

No.14/4/2016-EOU
Government of India
Ministry of Commerce & Industry
Department of Commerce

Udyog Bhawan, New Delhi
Dated 5th August, 2016

OFFICE MEMORANDUM

Subject: 4th Meeting (2016 series) of the Board of Approval (BOA) for EOU Scheme scheduled to be held on **12th August, 2016** – forwarding Agenda reg.

The undersigned is directed to forward herewith a copy of Agenda Items for the 4th Meeting (2016 series) of the Board of Approval for EOU Scheme scheduled to be held on **12th August, 2016 at 11:00 A.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.



(Aditya Narayan)
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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 AS (AVC)/PA to Dir (TVR)

**AGENDA FOR THE 4th BOA MEETING (2016 SERIES) FOR EOU SCHEME TO BE
HELD ON 12.08.2016 AT 11.00 A.M.**

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4.1 (16) Confirmation of Minutes of the 3rd BOA (2016 Series) meeting held on 22.06.2016.

4.2 (16) M/s. Best Value Chem Pvt. Ltd., Vadodara - Conversion of existing DTA unit into 100% EOU under KASEZ

M/s. Best Value Chem Pvt. Ltd., Vadodara have applied for conversion of their existing DTA unit situated at Survey No. 306, Sankarda Bhadarwa Road, At & PO: Moxi, Taluka Savli, Dist. Vadodara. The company is presently engaged in **manufacturing of speciality perfumery chemicals which finds extensive use in flavours and fragrance**. The company is having two manufacturing units – 1) at Village Karakhadi, Taluka Padra, Dist. Vadodara, Gujarat and 2) at Village Moxi, Taluka Savli, Dist. Vadodara. The company wants to convert the proposed unit viz. Unit-2 at Survey No. 306, Sankarda Bhadarwa Road, At & PO: Moxi, Taluka Savli, Dist. Vadodara into EOU wherein manufacturing activities have been taking place since 2012.

FOB value of exports during 2015-16 from Unit-II was Rs. 7431.45 lakhs which is now proposed to be converted into an EOU. The existing Investment in P&M is Rs. 261.54 lakhs. Projected NFE for next 5 years is Rs. 21876.00 lakhs

The unit has obtained Advance Authorization for import of raw materials and the same are pending as submitted by company. The company has to comply with the procedure defined in Appendix 6M of Appendices and ANFs of FTP, 2015-2020 for carry forward of pending export obligation period into EOU.

The premises of the unit viz. Survey No. 306, Sankarda Bhadarwa Road, At & PO: Moxi, Taluka Savli, Dist. Vadodara has been got verified by Shri Rakesh Chauhan, Specified Officer of ASPEN SEZ, Vadodara and as per his report the unit is already functional as a DTA unit in the said premises. As per records maintained by the unit it is registered under Central Excise since 2007 for manufacturing of excisable goods i.e. aroma/flavor chemical with various name under 29 CTH and that they have sufficient space for storage of finished goods/raw materials. Further they have plant, machinery and equipment installed for manufacturing of declared goods and that it has sufficient orders.

Relevant provision of FTP:

Para 6.07 (d) of FTP, 2015-2020 provides that applications for conversion into an EOU/EHTP/STP/BTP unit from existing DTA units, having in **investment of Rs. 50 crores and above in plant and machinery or exporting Rs. 50 crores and above annually**, shall be placed before BOA for a decision.

4.3 (16) M/s. Dream Plast India Pvt. Ltd., Pune- Proposal for Conversion of Existing DTA Unit into an EOU under SEEPZ

M/s. Dream Plast India Pvt. Ltd. has submitted the application for conversion of Existing DTA Unit into an EOU for **manufacture and export of items of Plastic Promotional Toys** at Building No. B4-B/C, Gat No. 428, Indospace Rohan Industrial Park, Off Chakan Talegaon Road, Village Mhalunge Ingale, Taluka Khed, District Pune – 410 501.

The Assistant Commissioner of Central Excise, Pune IV Division vide their letter dated 12.05.2016 has submitted the Inspection Report of the proposed factory premises and informed that the proposed location is on lease basis for a period of 10 years from 2014. The proposed plan of premises/building is suitable for necessary permission under Section 58 & 65 to be issued by Central Excise and Customs Authority.

The export turnover of the unit for 2015-16 is Rs. 69.79 crores and existing investment in Plant and machinery is Rs. 24.50 crores. Projected NFE for the next 5 years 210.57 crores.

The Existing Capacity is 240000000 Nos. **The DTA unit is under the obligation of Advance License under EPCG Scheme.** The company has to comply with the procedure defined in Appendix 6M of Appendices and ANFs of FTP, 2015-2020 for outstanding export obligation under EPCG Scheme.

Provisions of FTP/HBP: In terms of Para 6.7 (d) of Foreign Trade Policy 2015-2020,

“Applications for conversion into an EOU/EHTP/STP/BTP unit from existing DTA units, having an investment of 50 crores and above in plant and machinery or exporting 50 crores and above annually, shall be placed before BOA for decision”.

DC's Recommendation: DC has recommended the proposal of unit since it fulfills the provisions as stipulated for setting up of an EOU.

4.4 (16) M/s Venture Metal Products (P) Ltd., an EOU under MEPZ – Proposal for Renewal of LoP

M/s Venture Metal Products P. Ltd, was issued LOP on 19.5.2004 for setting up a 100% EOU for **manufacture and export of Tabled Kitchen, Coffee Machine and other Household Articles made of stainless steel.** The company commenced commercial production on 10/8/2004. Since the unit decided to exit from EOU Scheme, the performance of the company for the second five year period from 11.8.2009 to 30.09.2013 (Block year period 2009-10 to 2013-14) was reviewed and the unit was imposed a penalty of Rs. 50,000/- for non-achievement of positive NFE during the said period vide Order-in Original dated 13.1.2014. The unit paid the penalty vide challan dated 14/2/2014.

Since the validity of the LOP issued to the company expired on 10.8.2014 and the unit did not apply for renewal, Central Excise Office was asked to inform the dues pending from the company and given No Due Certificate in order to issue exit order to the company. Central

Excise, in their reply dated 28/1/2016 informed that the unit M/s Venture Metal Products Pvt. Ltd., has been defunct since 2010 and the unit has been asked to furnish the details of imported raw material, to arrive at exact quantum of scrap. Since the details were not provided by the company, they were not in a position to issue "No Due Certificate".

The company's representation for modification of wastage norms for the product viz Coffee/Tea Filter with Kettle Pot – Capacity 2 cups, 4 cups and 8 cups was fixed as 48.12% by the Norms Committee in their meeting No. 22/81 dated 9/2/2016.

The company has now requested to continue under EOU scheme since the wastage norms of 48.12% is viable for their export market. They have stated that they have another EOU unit namely M/s Atlas Metal Processors Pvt. Ltd., they were exporting from the EOU for the last ten years. As a part of reviving operation, they have now submitted FE Balance sheet for the five years from 2014-15 to 2018-19. (FE inflow/out figures are nil for years 2014-15 and 2015-16 (actual) and have projected for the years from 2016-17 to 2018-19). The projections are as follows:-

Rs. In Lakhs

1.	FOB value of exports	4965
2.	Import of machinery	240
3.	Import of raw materials and components	2679
4.	Import of spares and consumables	53
5.	Foreign Travel	37
6.	Total FE outflow (sum of 2 to 5)	3309
7.	Net Foreign Exchange Earnings (1-6)	1656

The LOP issued to the company has expired on 10.8.2014.

Relevant provision of FTP/HBP:

As per para 6.01(i) of HBP 2015-20, where units give their option to continue after six month of completion of approval period, DC will grant extension after approval of BOA.

DC's recommendation: Dc has recommended the proposal of renewal of LoP for the third 5 year period from **11.08.2014 to 10.08.2019.**

4.5 (16) M/s Karthik Granites Pvt. Ltd., an EOU under MEPZ – Proposal for Renewal of LoP.

M/s Karthik Granites Private Limited, an 100% EOU, was issued a LOP on 14.12.1988 for **manufacture and export of cut and polished granite and other material.** Their LOP was finally renewed up to 31.03.2010. The unit had applied for renewal of LOP on 30.01.2014 after expiry of LOP for more than 3 years and 10 months. MEPZ sought certain documents and the unit furnished the documents on 26.02.2014.

A reference was made to Central Excise by MEPZ and the Joint Commissioner of Central Excise vide his letter dated 19.06.2015 reported the following:

- i. M/s Karthik Granites was continuing to make exports during the period from 2010 to 2015 to the tune of Rs. 996.09 Lakh without valid LOP.
- ii. The unit's customs private bonded warehouse licence was renewed up to 31.12.2014, and hence the unit was not permitted to export without payment of duty. The unit has filed ER2 returns till Feb. 2015.
- iii. That the unit has not made any DTA sales and their B-17 bond was valid up to 25.04.2016.

A show cause notice was issued under FTDR for exporting without a valid LOP and the case was adjudicated vide Order dated 5.11.2015 imposing a settlement amount of Rs. 12,000/-. The unit paid the amount.

The unit continued to file APRs through online and also submitted CA certified copies during the period from 2010 to 2015 despite expiry of LOP. The unit achieved positive NFE of Rs. 912.15 lakh in the block period from 1.4.2010 to 31.3.2015 and projected FFE of Rs. 1575.00 lakh for the 5th block period viz. 1.4.2015 to 31.03.2020.

Relevant provision of FTP/HBP:

As per para 6.01(i) of HBP 2015-20, where units give their option to continue after six month of completion of approval period, DC will grant extension after approval of BOA.

DC's recommendation: The request of the unit for renewal of LOP for the 4th Block period of 5 years viz. 2010-15 and 5th block period of 5 years 2015-2020 is recommended by DC, MEPZ.

4.6 (16) M/s BeeHyv Software Solutions Pvt. Ltd., an EOU under VSEZ – Proposal for extension of validity of LoP for further 5 years.

M/s BeeHyv Software Solutions Pvt. Ltd. was granted LOP on 26.11.2007 for setting up 100% EOU for **export of Software Development** at Secunderabad. The unit commenced operations on 24.12.2007. **The validity LOP expired on 23.12.2012.**

A Show Cause Notice was issued for not seeking extension of their LOP dated 26.11.2007 and non-submission of APRs in the prescribed format from 2007-08 to till date as per Annexure-IV of Legal Undertaking duly certified by a Chartered Accountant. The unit vide its letter dated 19.08.2015 stated that they had filed all the relevant papers and documents on 31.03.2011 and later they had planned to exit the registration. Subsequently, they changed their stand and wanted to continue with the registration and as such are willing to submit and file all the documents and papers as required. They submitted that the delay in submission is purely unintentional. The day to day pressure of office work along with the shortage of manpower at their office and change in the Accounts team on the whole caused this delay.

They further assure that going forward they shall be fully cooperating with this office by filing all the papers called for and will not delay the future filings.

M/s BeeHyv Software Solutions Pvt. Ltd. has requested to condone the lapses and delays caused by them and to renew their LOP. In this regard, the unit vide its letter dated 11.7.2016 has enclosed DD for Rs. 1,00,000/- without getting into any sort of protracted litigation.

The unit's performance was monitored for the block period 2007-08 to 2014-15 and found to be NFE positive.

Relevant provision of FTP/HBP:

As per para 6.01(i) of HBP 2015-20, where units give their option to continue after six month of completion of approval period, DC will grant extension after approval of BOA.

DC's Recommendation: As the Unit's performance has been good and the unit wants to continue under the 100% EOU Scheme and the unit made decent projections for the next block of five years, DC has recommended the request of the unit for extension of their LOP for next block of 5 years from 24.12.2012 to 23.12.2017.

4.7 (16) M/s. Unimin India Ltd., an EOU under SEEPZ – Proposal for renewal of LOP for further five years

M/s. Unimin India Ltd., Daman were issued LOP on 10.07.1996 as amended for manufacture and export of Non Woven Spun bonded Polymer Fabrics and products thereof, PP Non Woven Fabrics, PP Non Woven coated fabrics, etc.

The BIFR vide order dated 21.02.2007 declared the company as a **sick industrial company**. Further, the BIFR vide order dated 05.03.2012 directed to consider the unit's application for extension of the validity of the LOP and Green card for a period of five years. Upon the direction of BIFR the proposal of the unit for extension of validity of LOP was placed before the BOA. The BOA in its meeting held on 14.09.2012 considered the application. The decision of the BOA is as follows :-

*"The BOA had considered the request of the Unit, which is registered under BIFR, for renewal of LOP in its meeting dated 13.03.2012, where in it had been decided to approve the extension of LOP of the Unit beyond March, 2010 for another five years with the view to facilitate (and subject to) a revival package being announced by the BIFR. The Board observed that the revival package by BIFR is under process and considered the request from the unit to allow extension of LOP and issue of green card so that they may be able to restart their operations by way of job work for another EOU immediately. DC, SEEPZ recommended the proposal on the condition that the unit may not be permitted any further imports of any raw material or goods. **The Board accordingly approved the proposal to grant extension of validity of LOP of the unit and issue of Green Card immediately subject to the condition that no imports will be allowed to the unit till such time that it meets the NFE positive criteria**".*

Accordingly extension of validity of LOP was granted to the unit on 19.10.2012 for a period of five years w.e.f. 01.04.2010.

Presently the unit is in operation on job work basis for EOU company and it has already produced approx 2202 MT production of non woven fabric from 14.11.2012 till date and the said EOU company is exporting the finished products.

The unit has also submitted the Techno Economic Viability Report prepared by M/s. Atishya Technologies Pvt. Ltd. and stated that the report clearly indicated the past performance and future viability of the company.

The unit has also informed that the company's scheme has already been examined by State Bank of India (SBI) (OA) and submitted to BFIR, wherein, recommendation of Techno Economic Viability Study has been made and the same has already been submitted to SBI (OA) to the best of their knowledge. The DRS is in advanced stage of circulation. Hence, the company is already on revival path.

The unit has further stated that the LOP and Green Card was issued to them on 09.10.2012 at the direction of BIFR order dated 05.03.2012 for period of 5 years (Validity dated 01.04.2010 to 31.03.2015) however they could avail it for 2 ½ years.

As per Para 6.39 of HBP, "Revival of Sick Units – Subject to a unit being declared sick by appropriate authority, proposals for revival of unit or its take over may be considered by BOA. Guidelines on revival of sick units are given in Appendix 6 L of Appendices & ANFs".

Further as Per Appendix – 6L Para 1 "Revival of Operations (i) A unit which has been declared sick by the appropriate authority shall submit a revival package through the Development Commissioner concerned to the Board of Approval for consideration and approval.

The Board shall consider the following:-

- (a) Extension in the period for fulfillment of NFE for a further period up to a maximum of 5 years at the prevalent norms of the EOU Scheme.*
- (b) On extension of the period, unutilized raw material and imported/domestically procured capital goods shall be allowed to be carried forward at their original value.*
- (c) On grant of extension, the LUT executed by the unit shall be suitably revised".*

The revival package has not yet been submitted to SEEPZ by the unit. Therefore, DC, SEEPZ informed the unit on 06.10.2015 that their request for continuation of EOU status cannot be considered at this stage.

Aggrieved by the decision of this office the unit filed MISC Application No. 399/2015 before Board for Industrial & Financial Reconstruction (BIFR). The BIFR in its hearing held on 01.06.2016 issued the following directions:-

- a) The Board is empowered as per Section 33 of SICA to punish with simple imprisonment for a term which may extend to three years and shall also be liable to fine. Since this offence is committed by the Development Commissioner, SEEPZ the in-charge shall be deemed to be a guilty of the offence and shall be liable to be punished accordingly. Show Cause Notice is hereby issued as to explain, returnable by 15 days, why the proceedings u/s 33 read with section 34 of SICA 1985 shall not be initiated.
- b) Company to again serve a copy of MA No. 399/2015 to the Development Commissioner, SEEPZ within a period of one week and submit proof of service to the Board.
- c) The Development Commissioner, SEEPZ to file reply to the MA within a further period of two weeks with a copy to the company.

This office filed Affidavit before the BIFR and attended the hearing on 30.06.2016 before BIFR. It was informed to BIFR that the BOA has considered the request of the company for renewal of LOP in its meeting dated 13.03.2012, wherein it had been decided to approve the extension of LOP of the company beyond March 2010 for another five years with the view to facilitate a revival package being announced by BIFR. The company was granted the permission for extension of validity of LOP and green card for the period of 5 years w.e.f. 01.04.2010 to 31.03.2015. Subsequently, the company has requested for extension of LOP and Green Card, which was rejected stating that the BOA granted extension of LOP beyond March 2010 for another 5 years with a view to facilitate revival package being announced by BIFR. This period is over and DRS is yet to be finalized. The renewal of the validity of LOP has to be in continuity. There cannot be the gap between two block periods in terms of Para 6.6 (a) of the Policy. It is also submitted that the extension of LOP and Green Card granted to the company for the period from 2010 to 2015 in accordance with the policy and the same cannot be said to be the non-compliance of the directions of the BIFR vide its order dated 05.03.2012.

The BIFR has disposed off MA No. 399/2015 and issued the following directions:-

- a) Development Commissioner, SEEPZ to consider the company's application for extension of validity of the Letter of Permission and Green Card for the block period 2015-2020.
- b) The Show Cause Notice dated 01.06.2016 issued to SEEPZ is dropped.
- c) Board's office to examine the DRS submitted by SBI (OA) for early circulation.

NFE for the block period 2010-11 to 2014-15 is Rs. 292 lakhs and projected NFE for 2015-16 to 2019-20 is Rs. 3426 lakhs.

DC's Recommendation: In view of the circumstances explained above, the proposal of the unit for **continuation of LOP for further block period of 2015-2020 is recommended** for consideration of BOA.

4.8 (16) M/s Indo Solar Ltd., an EOU under NSEZ – Proposal for relaxation in NFE calculation period from first block of five years to block of 10 years.

The unit was granted LOP by DC NSEZ on 15th Oct, 2008 for **manufacture and export of Solar Photovoltaic cells & modules**. The unit commenced production w.e.f. 16.7.2009. The unit was NFE negative by Rs.110.20 crore at the end of its 5 years of operations. Therefore, SCN was issued vide letter dated 17.06.2014. **BOA, in its meeting held on 21.4.2014 approved the extension of LOP for 5 years beyond 15.7.2014 subject to payment of duties and penalties in accordance with Notification No.52/2003-cus dated 31.3.2003 and subject to the condition that the extension of LOP shall not have adverse bearing on the recovery proceedings of Central Excise Authorities.**

NSEZ issued SCN for non-fulfillment of EO in the first block period, the matter was adjudicated and a penalty of Rs. 1 lakh was imposed. The unit did not appeal against the order and paid the penalty. LOP of the unit has been extended to second block.

Now, the unit has sought extension of block period by 5 years by BOA for fulfilment of NFE. They have quoted as per para 1.i.a of Appendix 6L, as per which Board shall consider “extension in the period for fulfillment of NFE for a further period up to a maximum of 5 years at the prevalent norms of the EOU Scheme”, in support of their request. However, Appendix 6L is applicable only for those units which have been declared sick. Although the unit had filed reference under section 15(1) of SICA, 1985 to BIFR, **the unit's application was declined by BIFR** vide letter dated 3.3.2015 as “Items manufactured by the company ‘Solar photovoltaic cell’ as given in Form-A, does not feature in the 1st schedule of Industries Development and Regulation Act, 1951.”

Export Performance of the unit:

Year	Turnover (crores)
2009-10	112.52
2010-11	543.40
2011-12	81.34
2012-13	53.13
2013-14	15.39
2014-15	288.33
2015-16	258.84

Precedent: In the case of M/s Integrated Technology, BOA acceded to similar modification. BOA Minutes of the meeting held on 3rd June 2008, in this case, prior to modification was as under:

"2.27(8) M/s Integrated Technologies Ltd.-regarding revival of sick unit governed by BIFR:

The Board decided to extend the period for fulfillment of NFE for a further period of five years subject to following:

- (i) *Before effecting any such extension the unit will pay the duties and interest thereon the said duty from the date of duty free import/procurement of raw material, components, spares and consumables till the date of payment of such duty, which were consumed by them.*
- (ii) *On extension of the period, unutilized raw material and imported/domestically procured capital goods shall be allowed to be carried forward at their original value.*

The Board also approved advance DTA sale of Rs. 2.00 crore and directed DC, NSEZ for renewal of all licenses etc."

This was modified by BOA in its meeting dated 29.08.2008, as under when the unit represented against the conditions imposed:

"3.24(08) M/s Integrated Technologies Ltd.- Revival of sick unit governed by BIFR

The Board decided to approve the unit's request subject to the condition that if the company is unable to fulfill the necessary export obligations even during this extended period of five (05) 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 export obligation during the next five (05) years" in terms of BIFR order No. 165/2004 dated 26.08.2008.

DC's recommendation: Dc has recommended that BoA may, in consultation with DGFT and DGEF consider modifying the condition imposed by it in its meeting held on 21.04.2014 regarding payment of duties/penalties in accordance with Notification No. 52/2003-Cus dated 31.03.2003. **Board may consider withdrawing the above condition and impose a new condition that if the unit is unable to achieve NFE in the second block of 5 years also, the unit would be liable to pay the duties and penalties in accordance with Notification No. 52/2003-Cus dated 31.03.2003 in respect of "duty free imports made by them during the first five year block period as well as second block of five year period in respect of shortfall during the block period."** Unit does not meet the condition of Appendix 6 L as it has not been declared sick. But reasons for the same are explained BIFR vide letter dated 03.03.2015, as given above. In view of this, NSEZ recommends this proposal. This may require relaxation of provisions given in Appendix 6 L.

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, 2016 to June, 2016	KASEZ
B	Approvals granted under delegated powers for the period June, 2016 to July, 2016	VSEZ
C	Approvals granted under delegated powers for the month of June 2016 - NIL	FSEZ
D	Approvals granted under delegated powers for the month of March, 2016 to April, 2016 - NIL	MEPZ