

No. F.2/4/2018-SEZ
Government of India
Ministry of Commerce and Industry
Department of Commerce
(SEZ Section)

Udyog Bhawan, New Delhi
Dated the October, 2018

OFFICE MEMORANDUM

Subject: Follow-up meeting of the Board of Approval for Special Economic Zones (SEZs) to discuss the deferred cases of 84th meeting – Reg.

Please find enclosed herewith Minutes of the Follow-up meeting held on 5th October, 2018 of the Board of Approval for Special Economic Zones (SEZs) to discuss the deferred cases of 84th meeting under the Chairpersonship of Commerce Secretary, Department of Commerce for information and necessary action



(Senthil Nathan S)
Deputy Secretary to the Government of India

Tel: 2306 3268

Email: senthil.nathan@gov.in

To

1. Central Board of Excise and Customs, Member (Customs), Department of Revenue, North Block, New Delhi. (Fax: 23092628).
2. Central Board of Direct Taxes, Member (IT), Department of Revenue, North Block, New Delhi. (Telefax: 23092107).
3. Joint Secretary, Ministry of Finance, Department of Financial Services, Banking Division, Jeevan Deep Building, New Delhi (Fax: 23344462/23366797).
4. Joint Secretary, Department of Industrial Policy and Promotion, Udyog Bhawan, New Delhi.
5. Joint Secretary, Ministry of Shipping, Transport Bhawan, New Delhi.
6. Joint Secretary (E), Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi
7. Joint Secretary, Ministry of Agriculture, Plant Protection, Krishi Bhawan, New Delhi.
8. Ministry of Science and Technology, Sc 'G' & Head (TDT), Technology Bhavan, Mehrauli Road, New Delhi. (Telefax: 26862512)
9. Joint Secretary, Department of Biotechnology, Ministry of Science and Technology, 7th Floor, Block 2, CGO Complex, Lodhi Road, New Delhi - 110 003.
10. Additional Secretary and Development Commissioner (Micro, Small and Medium Enterprises Scale Industry), Room No. 701, Nirman Bhavan, New Delhi (Fax: 23062315).
11. Secretary, Department of Electronics & Information Technology, Electronics Niketan, 6, CGO Complex, New Delhi. (Fax: 24363101)
12. Joint Secretary (IS-I), Ministry of Home Affairs, North Block, New Delhi (Fax: 23092569)

13. Joint Secretary (C&W), Ministry of Defence, Fax: 23015444, South Block, New Delhi.
14. Joint Secretary, Ministry of Environment and Forests, Pariyavaran Bhavan, CGO Complex, New Delhi – 110003 (Fax: 24363577)
15. Joint Secretary & Legislative Counsel, Legislative Department, M/o Law & Justice, A-Wing, Shastri Bhavan, New Delhi. (Tel: 23387095).
16. Joint Secretary, (Justice-I), Department of Legal Affairs, M/o Law & Justice, New Delhi (Tel: 2338 3037).
17. Secretary, Department of Chemicals & Petrochemicals, Shastri Bhawan, New Delhi
18. Joint Secretary, Ministry of Overseas Indian Affairs, Akbar Bhawan, Chanakyapuri, New Delhi. (Fax: 24674140)
19. Chief Planner, Department of Urban Affairs, Town Country Planning Organisation, Vikas Bhavan (E-Block), I.P. Estate, New Delhi. (Fax: 23073678/23379197)
20. Director General, Director General of Foreign Trade, Department of Commerce, Udyog Bhavan, New Delhi.
21. Director General, Export Promotion Council for EOUs/SEZs, 8G, 8th Floor, Hansalaya Building, 15, Barakhamba Road, New Delhi – 110 001 (Fax: 223329770)
22. Dr. Rupa Chanda, Professor, Indian Institute of Management, Bangalore, Bennerghata Road, Bangalore, Karnataka
23. Development Commissioner, Noida Special Economic Zone, Noida.
24. Development Commissioner, Kandla Special Economic Zone, Gandhidham.
25. Development Commissioner, Falta Special Economic Zone, Kolkata.
26. Development Commissioner, SEEPZ Special Economic Zone, Mumbai.
27. Development Commissioner, Madras Special Economic Zone, Chennai
28. Development Commissioner, Visakhapatnam Special Economic Zone, Visakhapatnam
29. Development Commissioner, Cochin Special Economic Zone, Cochin.
30. Development Commissioner, Indore Special Economic Zone, Indore.
31. Development Commissioner, Mundra Special Economic Zone, 4th Floor, C Wing, Port Users Building, Mundra (Kutch) Gujarat.
32. Development Commissioner, Dahej Special Economic Zone, Fadia Chambers, Ashram Road, Ahmedabad, Gujarat
33. Development Commissioner, Navi Mumbai Special Economic Zone, SEEPZ Service Center, Central Road, Andheri (East), Mumbai – 400 096
34. Development Commissioner, Sterling Special Economic Zone, Sandesara Estate, Atladra Padra Road, Vadodara - 390012
35. Development Commissioner, Andhra Pradesh Special Economic Zone, Udyog Bhawan, 9th Floor, Siripuram, Visakhapatnam – 3
36. Development Commissioner, Reliance Jamnagar Special Economic Zone, Jamnagar, Gujarat
37. Development Commissioner, Surat Special Economic Zone, Surat, Gujarat
38. Development Commissioner, Mihan Special Economic Zone, Nagpur, Maharashtra
39. Development Commissioner, Sricity Special Economic Zone, Andhra Pradesh.
40. Development Commissioner, Mangalore Special Economic Zone, Mangalore.
41. Government of Andhra Pradesh, Principal Secretary and CIP, Industries and Commerce Department, A.P. Secretariat, Hyderabad – 500022. (Fax: 040-23452895).
42. Government of Telangana, Special Chief Secretary, Industries and Commerce Department, Telangana Secretariat Khairatabad, Hyderabad, Telangana.
43. Government of Karnataka, Principal Secretary, Commerce and Industry Department, Vikas Saudha, Bangalore – 560001. (Fax: 080-22259870)
44. Government of Maharashtra, Principal Secretary (Industries), Energy and Labour Department, Mumbai – 400 032.

45. Government of Gujarat, Principal Secretary, Industries and Mines Department Sardar Patel Bhawan, Block No. 5, 3rd Floor, Gandhinagar – 382010 (Fax: 079-23250844).
46. Government of West Bengal, Principal Secretary, (Commerce and Industry), IP Branch (4th Floor), SEZ Section, 4, Abanindranath Tagore Sarani (Camac Street) Kolkata – 700 016
47. Government of Tamil Nadu, Principal Secretary (Industries), Fort St. George, Chennai – 600009 (Fax: 044-25370822).
48. Government of Kerala, Principal Secretary (Industries), Government Secretariat, Trivandrum – 695001 (Fax: 0471-2333017).
49. Government of Haryana, Financial Commissioner and Principal Secretary), Department of Industries, Haryana Civil Secretariat, Chandigarh (Fax: 0172-2740526).
50. Government of Rajasthan, Principal Secretary (Industries), Secretariat Campus, Bhagwan Das Road, Jaipur – 302005 (0141-2227788).
51. Government of Uttar Pradesh, Principal Secretary, (Industries), Lal Bahadur Shastri Bhawan, Lucknow – 226001 (Fax: 0522-2238255).
52. Government of Punjab, Principal Secretary Department of Industry & Commerce Udyog Bhawan), Sector -17, Chandigarh- 160017.
53. Government of Puducherry, Secretary, Department of Industries, Chief Secretariat, Puducherry.
54. Government of Odisha, Principal Secretary (Industries), Odisha Secretariat, Bhubaneswar – 751001 (Fax: 0671-536819/2406299).
55. Government of Madhya Pradesh, Chief Secretary, (Commerce and Industry), Vallabh Bhavan, Bhopal (Fax: 0755-2559974)
56. Government of Uttarakhand, Principal Secretary, (Industries), No. 4, Subhash Road, Secretariat, Dehradun, Uttarakhand
57. Government of Jharkhand (Secretary), Department of Industries Nepal House, Doranda, Ranchi – 834002.
58. Union Territory of Daman and Diu and Dadra Nagar Haveli, Secretary (Industries), Department of Industries, Secretariat, Moti Daman – 396220 (Fax: 0260-2230775).
59. Government of Nagaland, Principal Secretary, Department of Industries and Commerce), Kohima, Nagaland.
60. Government of Chattishgarh, Commissioner-cum-Secretary Industries, Directorate of Industries, LIC Building Campus, 2nd Floor, Pandri, Raipur, Chhattisgarh (Fax: 0771-2583651).

Copy to: PPS to CS / PPS to AS (BBS) / PA to DS (SNS).

Minutes of follow-up meeting held on 5th October, 2018 for 14 deferred cases of the
84th BoA meeting held on 12th September, 2018

Agenda Item No. 84.7(vii) Request of M/s. Anita Exports, a unit in Kandla SEZ for renewal of LoA for extension of recycling of plastic waste and scrap.

The Board noted that this case came up for reconsideration consequent upon decision of the Hon'ble Gujarat High Court dated 08.05.2018 in SCA No.19048 of 2017.

The Board noted that number of plastic waste and scrap recycling units were set up in EPZs during 1995-98. At the time of formulation of SEZ Rules, 2006, it was noticed from the past performance of these units that they did not adhere to environmental norms and had no export potential. The issue of continuation of these units in SEZs was also considered by the Export Promotion Board under the Chairmanship of Cabinet Secretary in 1998 and it was decided that no new units of plastic waste and scrap recycling will be allowed to be set up in EPZs.

Accordingly, only those plastic scrap recycling units which existed prior to the inception of SEZ Rules, 2006, were allowed to continue and it was decided that no new unit of plastic waste and scrap recycling will be allowed in SEZs. The intention of the policy was to phase out these units of plastic waste and scrap recycling which could have negative impact on the environment. Further, as per Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, the import of solid plastic waste i.e. the raw material used by the plastic recycling units has been banned in Domestic Tariff Area. These units being in SEZ are exempted. However, the business model of these units have adverse effect on environment.

The Board noted that the past trend of operations of these units indicates that they used the provisions of SEZ Rules, 2006 to clear goods to DTA to a large extent to show positive NFE which is not in consonance with the overall aims of SEZ policy that seeks to boost actual exports. Moreover, certain norms prescribed by the Department of Commerce for exports have not been followed by the unit over the years. Thus these units carry out an activity that is prohibited in the DTA, and function in the SEZ, that for without an adequate nexus to exports, which is the paramount rationale of the SEZs.

The Board noted that considering the overall policy of phasing out such units in the interest of environment, there should not be any further repetition of the decisions which have been taken on the earlier referred cases, contrary to the above reality and the objectives of the policy.

If the renewal of this case of extension of LoA is considered, this again would become precedent for such cases in future and consequently the larger policy intent of phasing out such units would remain unachievable. In view of the above discussions, the Board was not inclined to consider the proposal for present renewal favourably. The unit has been closed for 7 years, and the balance of convenience lies in maintaining that position.

Accordingly, BoA decided not to accede to the request of M/s. Anita Exports, for renewal of LoA for extension of recycling of plastic waste and scrap.

Item no. 84.8 : Appeals before BoA

Item No. 84.8(i) Appeal dated 18.05.2018 of M/s. Coastal Energy Limited a unit in FSEZ against order dated 13.04.2018 passed by UAC, FSEZ for imposition of penalty of Rs. 45.21 lakhs (1% of the non-achieved positive NFE to the tune of Rs. 45.21 crores) U/S 13 of the Foreign Trade Development & Regulation Act, 1992 and Section 11 of the said Act.

The Board heard the appellant. It was noted that the appeal against UAC order dated 13.04.2018 imposing penalty of Rs. 45.21 lakhs i.e. 1% of non achieved NFE lies before Appellate Authority of DGFT and the BoA is not the right forum for such appeal. However, the appellant informed BoA that the NFE proceedings against the unit has been adjudicated and final order has been passed on 13.04.2018. A penalty of Rs. 45.21 lakhs was paid by the unit on 20.04.2018.

The Board, decided that the matter has attained finality and no further consideration is required by the BoA.

Item No. 84. 8 (ii) Appeal dated 28.06.2018 of Shri Brijesh Kumar Thakur, Director, Coastal Energy Ltd. with the prayer for extension/revalidation of the LoA cancelled by the UAC vide their order dated 02.03.2012.

The Board heard the appellant. It was noted that the appeal against UAC order dated 02.03.2012 for cancellation of LoA is time barred. The appellant requested that consequent upon payment of the penalty by the unit the case for extension of the unit may be considered by the BoA and sought condonation of delay in filing the appeal.

The Board directed DC, FSEZ to ask the unit to give their revised business plan and accordingly, he may forward the same for consideration of this Department on file. As regards delay in filing of the appeal, a relaxation may be sought from Hon'ble CIM.

Item No. 84. 8 (iii) Appeal of M/s. Flawless Jewels requesting to set aside impugned orders dated 01.05.2018 and 21.05.2018 passed by SEEPZ SEZ for cancellation of LoA for Gala No. 102 & 104, SDF-VIII, SEEPZ SEZ.

Item No. 84. 8 (iv) Appeal of M/s. Malhar Jewels requesting to set aside impugned orders dated 01.05.2018 and 21.05.2018 passed by SEEPZ SEZ for cancellation of LoA for Gala No. 301, SDF-VIII, SEEPZ SEZ.

Item No. 84. 8 (v) Appeal of M/s. Pure Gold Jewellers & Diamonds (India) Pvt. Ltd. requesting to set aside impugned orders dated 01.05.2018 and 21.05.2018 passed by SEEPZ SEZ for cancellation of LoA for Gala No. 401, 402, 403 & 404, SDF-VIII, SEEPZ SEZ.

Item No. 84. 8 (vi) Appeal of M/s. Vijay Exports requesting to set aside impugned orders dated 01.05.2018 and 21.05.2018 passed by SEEPZ SEZ for cancellation of LoA for Gala No. 202 & 204, SDF-VIII, SEEPZ SEZ.

Item No. 84. 8 (vii) Appeal of M/s. Limited Jewellery requesting to set aside impugned order dated 01.05.2018 and minutes of UAC meeting dated 02.05.2018 regarding decision for cancellation of LoA for Gala No. 02, SDF-VIII, SEEPZ SEZ.

The Board heard the representatives of the units. The matter was deliberated and it was observed that:-

(i) The conditions of provisional allotment clearly indicates that final allotment and possession will be granted on approval of the project by the UAC and on receipt of BCC/OC from MIDC. Since the feasibility report did not find the building appropriate for the G&J units, the provisional LoAs were cancelled.

(ii) That CRA (Customs Receipt Audit), in their audit had opined that earlier UAC dated 11.07.2017 did not scrutinise all mandatory norms in depth and issued the provisional LoA in hasty way.

(iii) As regards the allotment of SEEPZ Tower 1 & 2 constructed for locating Electronics initially and subsequently allotted to G&J units without any structural change, those SDF buildings were constructed by MIDC on RCC structure and hence, were found suitable for G&J units. However, the pre-fabricated engineering design constructed for SDF VIII building is not meant for G&J units.

The Board was of the view that SEZ units are envisaged to undertake their business with full functionality. Partial functionality of units due to restrictions of the structure of the building, cannot be allowed. Accordingly, the Board rejected the appeals.

Item No. 84.8 (xi) Appeal dated 22.06.2018 of M/s. Guruji International a unit in KASEZ against the decision of the 129th UAC meeting dated 17.05.2018 for rejection of proposal for setting up of a unit for manufacturing of plastic pre-processed crushing/granules from Pet Bottles wastes.

The Board after deliberations dismissed the appeal on default as appellant did not appear for the hearing despite being given two opportunities.

Item No. 84.8 (xii) Appeal dated 16.07.2018 of M/s. MRA Fragrances Private Limited a unit in NSEZ against the order dated 14.06.2018 of the UAC for rejection of proposal for setting up of new unit to undertaking manufacturing and export of (i) Filter Tobacco (ii) Hooka Tobacco paste (jurak) (iii) Flavoured Hooka Tobacco (Mossel) (iv) Readymade Khaini (v) Zafrani Zarda (vi) Spit Tobacco (vii) Mouth Freshener (viii) Essential & Carrier Oils (ix) India Attar & Fragrances and (x) Various kinds of Areca Nut under HS Code 2403.

The Board heard the appellant. It was noted that the unit gave misleading information regarding financial standing, residential/official addresses etc. as part of the verification process. Further, it was observed that the unit intend to broad band dissimilar products which is in contravention of the instructions/guidelines issued by Department of Commerce from time to time.

Accordingly, the BoA rejected the appeal.

Item No. 84. 8 (xiii) Appeal dated 03.08.2018 of M/s. TRIL Infopark Ltd. against the decision of the DC, MEPZ order dated 28.06.2018 for rejection of request for allowing advertisement activities in Ramanujan IT City Campus.

The Board heard the appellant. It was noted that the appeal is not against UAC order. However, the Board has been approached by the unit against the DC, MEPZ order dated 28.06.2018 in terms of Section 9 (2) (b) &(g) of SEZ Act, 2005.

The Board, after hearing the appellant, rejected the appeal on the ground that the activity proposed by the developer does not come under the ambit of present SEZ Act/Rules. However, it was desired by the Board that a separate Committee may be set up to examine inclusion of such activities as authorized operations for the developer.

Item No. 84. 8 (xiv) Appeal dated 02.08.2018 of M/s. Rain CII Carbon (Vizag) Ltd. against the decision of the UAC order dated 23.07.2018 for rejection of request for amendment of LoA to include manufacture of additional products under broad-banding.

The Board heard the appellant, and deliberated the matter. It was brought before the BoA that LoA of the unit had expired on 13.09.2018 and proposal for further extension of the LoA was sent to Department of Commerce considering the recent DGFT Notification No.25 dated 07.08.2018 making 'Petroleum coke' a 'Prohibited item' for import.

Accordingly, BoA decided that the matter may be considered on file in consultation with DGFT, if necessary.

Item No. 84.13 Miscellaneous cases (one proposal)

Item No. 84.13 (i) Restoration of LoA of M/s. Sarthak Warehousing & Trading Co. (SWTC), Gandhidham

The Board, took note of the feasibility report submitted by the DC as directed by the BoA in its 82nd meeting held on 04.04.2018 and decided that the request of the unit for restoration of LoA cannot be acceded to.

Item No. 84.14 Appeals before BoA

Item No. 84. 14 (i) Appeal dated 22.08.2018 of M/s. Accenture Solutions Private Ltd. against the decision of the UAC order dated 06.08.2018 for rejection of proposal of cafeteria measuring 9500 square feet of the application dated 26.06.2018 out of approved additional area of 79, 241 sq. ft.

The Board, after deliberations, upheld the appeal subject to all necessary approvals from the concerned Departments viz. Fire, Health, etc and prior approval of the UAC.
