

No. K-43022/73/2022-SEZ
Government of India
Ministry of Commerce and Industry
Department of Commerce
(SEZ Section)

Vanijya Bhawan, New Delhi
Dated the 31st January, 2023

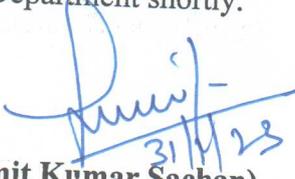
OFFICE MEMORANDUM

Subject: 113th meeting of the Board of Approval (BoA) for Special Economic Zones (SEZs) Supplementary Agenda II - regarding.

In continuation to this Department's O.M. of even number dated 27th January, 2023 on the above mentioned subject, the undersigned is directed to enclose herewith the Supplementary Agenda II for the 113th meeting of the BoA for SEZs scheduled to be held on 2nd February 2023 at 2.30 P.M., Conference Room No. 427, Vanijya Bhawan, New Delhi. The Supplementary Agenda II for the meeting has also been hosted on the website: www.sezindia.gov.in.

2. The time and weblink for the said meeting will be shared by this Department shortly.

Encl : As above


(Sumit Kumar Sachan)

Under Secretary to the Government of India

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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. Shri Anil Agarwal, Additional Secretary, Department of Promotion of Industry and Internal Trade (DPIIT), 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 Bhawan, 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. Department of Legal Affairs (Shri Hemant Kumar, Assistant Legal Adviser), M/o Law & Justice, New Delhi.
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 Chattisgarh, 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 (LSS) / PPS to JS (VB) / PPS to Dir (SNS).

**Supplementary agenda II for the 113th meeting of the Board of Approval
for Special Economic Zones to be held on 02nd February, 2023**

113.13: Miscellaneous (one case)

113.13(i) Clarification on instruction no. 95 allowing SEZ unit to set up cafeteria, crèche, gymnasium and similar facilities.

It may be noted that the Instruction no. 95 dated 11.06.2019 was issued by Department of Commerce for allowing SEZ units to set up cafeteria, crèche, gymnasium and similar facilities in the premises of a unit for the exclusive use of such units under the proviso to Rule 11(5) of the SEZ Rules, 2006 subject to the condition that the unit shall not be eligible for any exemptions, drawbacks, concessions or any other benefits available under Section 7 or Section 26 of the SEZ Act for creating or operating such facilities.

In this connection, Department of Commerce received various representations for withdrawal/modification of instruction no. 95 to the extent it restricts the exemptions/ concessions and other benefits to SEZ units for setting up and operating cafeteria, crèche, gymnasium etc. Further, it also came into light that the Specified Officers were issuing notices for curtailing GST zero-rating benefit on lease rental services provided by developer to SEZ units on such portion of space which are utilised for creating such employee welfare facilities.

The matter was examined by DoC in consultation with DGEP and GST Policy Wing. DGEP has drawn reference to Section 16 (1) of IGST Act, 2017 that provides that supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit are to be treated as zero rated supply. Further, second proviso to Rule 89(1) of CGST Rules, 2017 requires endorsement by the specified officer that the service has been received by the SEZ unit/ SEZ developer for authorized operations.

With regard to the denial of GST zero rating benefit on lease rental for the space utilised for creation of such employee welfare facilities, DGEP has opined that any view on the same is to be taken by the Board of Approval/ Development Commissioner. The instant issue appears to stem out of Instruction No. 95 dated 11.06.2019 issued by the SEZ Division, Department of Commerce. Para 3(b) of the same reads as follows:

"b. The units shall not be eligible for any exemptions, drawback, concessions or any other benefit available under Section 7 or Section 26 of the SEZ Act, for creating or operating such facilities."

Section 7 of SEZ Act pertains to Exemption from taxes, duties or cess and Section 26 of SEZ Act pertains to Exemptions, drawbacks and concessions to every Developer and entrepreneur. Further, it appears that it is prerogative of the Board of Approval/Development Commissioner to decide what services are meant for authorized operations. Also, exemptions, drawbacks and concessions under section 7 or 26 of the SEZ Act for creating or operating such facilities, has been barred by the Department of Commerce itself vide Instruction No. 95 dated 11.06.2019.

GST Policy Wing, CBIC vide their O.M no. CBEC-20/16/16/2018-GST(Vol.II) dated 03rd January, 2023 has informed that the reply of DGEP dated 08.07.2022 incorporates the views of GST Policy Wing, CBIC.

DoC is of the view that denial of benefits of zero rating on lease / other charges collected by the Developer from the units was never the intention of the said instruction. Accordingly, DoC is proposing to issue a clarification stating that the zero rating benefit continues to be available for lease rental / other charges collected by Developer from units for the space utilised for creation of employee welfare facilities exclusively for the employees of SEZ units.

The matter is placed before the BoA for a suitable clarification in this regard.
