

No. K-43022/44/2023-SEZ
Government of India
Ministry of Commerce and Industry
Department of Commerce
(SEZ Section)

Vanijya Bhawan, New Delhi
Dated the 09th June, 2023

OFFICE MEMORANDUM

Subject: 3rd meeting (2023 Series) of the Board of Approval for Export Oriented Units and 115th Meeting of the Board of Approval (BoA) for Special Economic Zones (SEZs) scheduled to be held on 17th June, 2023 – Reg.

In continuation of this Department's OM of even no. dated 30.05.2023 and 06.06.2023, the undersigned is directed to forward herewith Supplementary Agenda for the 115th meeting of the BoA for SEZs.

2. It is further informed that the aforesaid meeting will be **held on 17th June, 2023 at MEPZ-SEZ, Chennai** instead of Pune as communicated earlier.

3. The Venue and meeting link of the aforesaid meeting will be shared shortly.

Encl: As above


(Sumit Kumar Sachan)

Under Secretary to the Government of India

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To

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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 Sanjiv, Joint 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 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)
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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, Bhubaneshwar – 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 (LSS) / PPS to JS (VB) / PPS to Dir (SNS).

Supplementary Agenda for the 115th meeting of the Board of Approval for Special Economic Zones to be held on 17th June, 2023

115.11: Request for extension of LoA of unit (1 proposal)

115.11(i) Request of M/s. Trendesign Technical Center Pvt. Ltd., a Unit in Mahindra World City (Jaipur) Limited, Multi-Product SEZ at village Kalwara, Tehsil-Sanganer, Jaipur (Rajasthan) for extension of Letter of Approval from 20.12.2020 upto 19.12.2023.

Name of Unit: : M/s. Trendesign Technical Center Pvt. Ltd.
 LOA issued on: : 20.12.2017
 Nature of Business of the unit: Manufacturing and Assembly of Bicycles
 No. of Extensions: : Unit had been granted two extensions by the O/o DC, NSEZ
 LOA valid upto: : 19.12.2020
 Request: : Unit has requested for extension from 20.12.2020 upto 19.12.2023.

Present Progress:

(a) Details of business plan: -

S. No.	Type of Cost	Proposed Investment (Rs.)
1	Land Cost	1,63,51,400
2	Construction Cost	82,73,000
3	Plant & Machinery	55,66,000
	Total:	3,01,90,400

(b) Investment made so far & incremental investment since last extension:

S. No.	Type of Cost	Total Investment made so far (Rs.)	Incremental investment since last extension (Rs.)
1	Land Cost	1,63,51,400	-
2	Material Procurement	82,73,000	-
3	Machinery	55,66,000	-
	Total:	3,01,90,400	-

(c) Details of Physical progress till date: -

S. No.	Authorised activity	% completion as on date	% completion during last one	Deadline for completion of

			year	balance work
1	Land taken on lease and registration	Done	Done	-
2	Appointment of architect	Done	Done	
3	Submission and approval drawings	Done	Done	
4	Appointment of construction agency	Done	Done	
5	Completion of construction	2/3 rd of construction activity related to the building wherein the foundations, erection of the engineering, building, flooring and roof casting has been achieved, as per standards, have been done, as certified by the Architect.	67%	Within 5 years of date of issue of sanction by Gr. Noida, dt. 03.01.2019.
6	Installation of Machineries	The project building is under construction.	The project building is under construction.	
7	Trial Production			
8	Commercial Production & export			
9	Export orders			

Project Implementation schedule

<ul style="list-style-type: none"> The aforesaid project has achieved 2/3rd of the construction activity;
<ul style="list-style-type: none"> The foundations, erection of the engineering building completed.
<ul style="list-style-type: none"> Flooring and roof casting has been achieved, as per standards.
<ul style="list-style-type: none"> Water Tank construction, Earth filling has been done.
<ul style="list-style-type: none"> Front facia, Entry Doors and Shutters are activities which are remaining.
<ul style="list-style-type: none"> Services area, comprising of electrical HT/LT, urinals, guard room are remaining based on the approved plan.
<ul style="list-style-type: none"> Likely commercial production March' 2024
<ul style="list-style-type: none"> Likely export orders March' 2024

Detailed reasons for delay: -

- The LOA was expired on 19.12.2020. The Unit has stated that due to the Covid-19 pandemic, an unpredictable business situation and health issues within their family, they could not apply for further extension of validity of LOA
- The Unit also stated that they have continued the work at site until the expiry of the LOA. During the process, there were multiple pandemic waves. Their old business orders were cancelled and foreign travel for generating new enquiries was restricted. Hence, the project was delayed.

Rule Position: In terms of 3rd proviso to Rule 19(4) of SEZ Rules, 2006, "Board of approval may, upon a request in writing by the entrepreneur, and after being satisfied that it is necessary and expedient so to do grant further extension for a further period not exceeding one year, at a time."

Recommendation by DC, Noida SEZ:

DC, NSEZ has recommended the extension of validity of LoA upto 19.12.2023 by regularization of the intervening period from 20.12.2020.

115.12: Request for addition area approval of co-developer (2 proposals)

115.12(i) Request of M/s. Shilp Infraprojects LLP for amendment in area by addition of space in Co-Developer Approval of Residential Building in the dual use non-processing Area in GIFT-Multi Services SEZ at Ratanpur, District Gandhinagar, Gujarat, developed by M/s. GIFT SEZ Limited.

1.	Name of the Developer & Location	M/s. GIFT SEZ Limited, Gandhinagar, Gujarat.
2.	Date of LoA to Developer	07-01-2008
3.	Sector of the SEZ	Multi-services-SEZ
4.	Date of Notification	18-08-2011
5.	Total notified area (in Hectares)	105.4386 Hectares
6.	Whether the SEZ is operational or not	SEZ operational
	(i) If operational, date of operationalization	21-04-2012
	(ii) No. of Units	Functional – 232 units Under implementation – 302 units
	(iii) Total Exports & Imports for the last 5 years (Rs. in Cr.)	Exports – 26291.62 Imports - 783.17
	(iv) Total Employment (In Nos.)	4792
7.	Name of the proposed Co-developer	M/s. Shilp Infraprojects LLP, GIFT-Multi-Services-SEZ, Gandhinagar (LoA dated 15.06.2022 for

		Development of Residential Building in the dual use Non-processing Area)
8.	Details of Infrastructure facilities / authorized operations to be undertaken by the co-developer	Development of a Residential Building on building footprint No. 25B & 25C, Block 25 in the dual use Non-Processing Area of GIFT SEZ (Residential Sub-Project).
9.	Total area (in Hectares) on which activities will be performed by the co-developer	6918 square meters (approved 6551 square meters + addition of 367 square meters) and 1146 square meters Appurtenant land. Allotment of additional basement extent admeasuring 367 square meters, for fire driveway at grade level and parking at below grade level ("Additional Basement Extent"). Revised additional appurtenant land below grade level beyond basement extent admeasuring 1146 square meters ("Additional Land").
10.	Proposed investment by the Co-developer (Rs. in Cr.)	Rs. 150.00 crores
11.	Net worth of the Co-developer (Rs. in Cr.)	Rs. 217.52 crores
12.	Date of the Co-developer agreement	07.06.2023

Recommendation by DC, GIFT SEZ: -

DC, GIFT has recommended the proposal of M/s. Shilp Infraprojects LLP, Co-Developer, GIFT-multi-services-SEZ, Gandhinagar, for addition/increase of land area of 367 square meters and 1146 square meters to accommodate drive-way for fire tender and parking area for the residential project on No.25B & 25C, Block 25 within the dual use Non-Processing Area of GIFT SEZ within the dual use Non-Processing Area of GIFT SEZ.

115.11(ii) Request of M/s. Shilp Infraprojects LLP for amendment in area by addition of space in Co-Developer Approval for development of incubation structure in processing Area in GIFT-Multi Services SEZ at Ratanpur, District Gandhinagar, Gujarat, developed by M/s. GIFT SEZ Limited

1.	Name of the Developer & Location	M/s. GIFT SEZ Limited, Gandhinagar, Gujarat.
2.	Date of LoA to Developer	07-01-2008

3.	Sector of the SEZ	Multi-services-SEZ
4.	Date of Notification	18-08-2011
5.	Total notified area (in Hectares)	105.4386 Hectares
6.	Whether the SEZ is operational or not	SEZ operational
	(i) If operational, date of operationalization	21-04-2012
	(ii) No. of Units	Functional – 232 units Under implementation – 302 units
	(iii) Total Exports & Imports for the last 5 years (Rs. in Cr.)	Exports – 26291.62 Imports - 783.17
	(iv) Total Employment (In Nos.)	4792
7.	Name of the proposed Co-developer	M/s. Shilp Infraprojects LLP, GIFT-Multi-Services-SEZ, Gandhinagar (LoA dated 01.05.2023 for development of temporary structure in the Processing Area)
8.	Details of Infrastructure facilities / authorized operations to be undertaken by the co-developer	Development of temporary structure at Plot Nos. 11T3 & 11T5, Block 11 in the Processing Area of GIFT SEZ.
9.	Total area (in Hectares) on which activities will be performed by the co-developer	Additional area of 2330 square meters [totalling 4830 (2500+2330) square meters] for temporary structure at Plot Nos. 11T3 & 11T5, Block 11 in the Processing Area of GIFT SEZ.
10.	Proposed investment by the Co-developer (Rs. in Cr.)	Rs. 3.60 crores
11.	Net worth of the Co-developer (Rs. in Cr.)	Rs. 237.96 crores
12.	Date of the Co-developer agreement	08-05-2023

Recommendation by DC, GIFT SEZ: -

DC, GIFT has recommended the proposal of M/s. Shilp Infraprojects LLP, Co-Developer, GIFT-multi-services-SEZ, Gandhinagar, for total of land area of 4830 square meters for development of temporary structure on Plot Nos. 11T3 & 11T5, Block 25 in the Processing Area of GIFT SEZ.

115.12: Appeal (2 cases)

Rule position: - In terms of the rule 55 of the SEZ Rules, 2006, *Any person aggrieved by an order passed by the Approval Committee under section 15 or against cancellation of Letter of Approval under section 16, may prefer an appeal to the Board in the Form J.*

115.12(i) Appeal filed by M/s. Sehar Overseas against the UAC decision regarding rejection of application for inclusion of additional items in their LoA without mentioning sufficient and appropriate reasons.

Brief facts of the case: M/s. Sehar Overseas was granted LoA dated 29.09.2017 for setting up of a Unit in Moradabad SEZ for Manufacturing & Export of Handicrafts items made Leather, Wooden, Aluminium, Iron, Brass and Copper Artware. The unit commenced commercial production w.e.f. 24.09.2018 and the LoA is valid upto 23.09.2023.

The unit vide letter dated 29.06.2022 requested for inclusion of additional authorised operations (viz. Manufacturing & Export of Arica Nuts Powder, Arica Nuts Flavored Supari, Mouth Freshener, Mix Dry and Fruits Gond) in their LOA. The proposal was placed before the Unit Approval Committee, Noida SEZ in its meeting dated 25.04.2023. The proposal was rejected by the Approval Committee and the decision was conveyed to the Unit by ADC, Muradabad SEZ's letter dated 09.05.2023.

Contentions of the Appellant: The Unit has stated that their proposal has been rejected by the Approval Committee without mentioning any sufficient and appropriate reasons. The said letter dated 09.05.2023 is not a speaking order clearly mentioning on what grounds their application was rejected. This is against the natural way of justice.

Observations of DC, Noida SEZ: On scrutiny of the proposal of the Unit for additional authorised operations, it was observed that the performance of the Unit stands at export of Rs. 1.02 Lakhs in 4.5 years of production. Further, the proposed additional project of the Unit does not seem feasible since the projected exports are mentioned as Rs. 5396.04 Lakhs and cost of raw-materials is Rs. 5296.42 Lakhs. This given only a margin of Rs. 99.62 Lakhs which would include Plant & Machinery of Rs. 35.00 Lakhs, Labour costs for 41 persons, electricity, maintenance and other infrastructure charges. Considering this, the proposal of the Unit was rejected.

The appeal is placed before the BoA for its consideration.

115.12(ii) Appeal filed by M/s. Plastic Processors & Exporter Pvt. Ltd. against the Order dated 21.04.2023 issued by DDC, Noida SEZ regarding non-renewal of their LoA.

Brief facts of the case: M/s. Plastic Processors & Exporter Pvt. Ltd. was granted LoA dated 05.11.1997 for setting up of a Unit at Noida SEZ. The LoA of the Unit was valid upto 26.08.2022. The unit vide letter dated 19.05.2022 requested DC, Noida SEZ for renewal of their LoA. The representation of the Unit along with facts was later submitted by DC, NSEZ to DoC for its consideration.

As per decision taken by the BoA during its meeting held on 29.10.2022, the reports (including above representation) regarding renewal of LoAs of plastic recycling units in SEZ,

submitted by DCs, Kandla SEZ, Falta SEZ and Noida SEZ were placed before the Board. The Board directed that the concerned DC shall take necessary action in the light of decision taken by BoA in its earlier meeting held on 29.10.2022 with respect to rejection of extension of those units which failed fulfil the conditions stipulated by the Board.

Subsequently, DDC, NSEZ vide letter dated 21.04.2023 has informed the Unit that their LoA has not been renewed beyond the date of expiry.

Contentions of the Appellant: The following are the detailed submissions of the Unit as to why the said decision of the NSEZ needs to be reviewed: -

- They had been fulfilling all the main objectives of SEZ like generation of additional economic activities, promotion of investment, creation of employment opportunities and development of infrastructure. They are contributing significantly to the exchequer of state and central govt by way of Indirect Taxes. Their unit was employing about 350 unskilled labourers, most of whom were women and indirectly they were providing employment to over 1000 people in ancillary activities.
- Frequent and drastic changes in policies relating to our industry since 2013 severely affected the operations of their units over the years as they were constrained to make long term agreements with both buyers and suppliers. Many units were forced to stop operations due to unavailability of raw materials. The orders for finished goods also dwindled due to lack of stability and clarity. The units have suffered huge financial losses during this period.
- In July 2019, a devastating accidental fire razed their manufacturing facility to the ground and they were forced to stop all commercial operations.
- Extensive plans to rebuild and reopen their unit were stalled when the COVID-19 pandemic induced a global economic standstill, halting all activities including their efforts to start rebuilding our unit.
- They had not closed operations at their unit on their own volition. That due to an unforeseen accident, which razed their manufacturing unit to the ground, they suffered huge financial loss and that to invest substantially and reopen their unit again, they had to ensure long term stability, which the Board, has now finally allowed to operational units.
- The condition laid down by the BoA, in its 112th meeting, was apparently with a view that the units which had ceased manufacturing activities on their own volition would not be inclined to comply with the strict compliances, however, in their case, they did not stop production on their own volition but for the accidental devastating fire incident discussed above. They submit that they are very keen on resuming operations and fulfilling all statutory obligations with long term stability and growth.
- Policy or notification which is ultra vires to the parent Act cannot survive. As the delegated legislation in the present matter i.e., mandatory condition of physical export outside country and not permitting the SEZ to SEZ export for compliance of export obligation is in conflict with the parent Act, hence the same is invalid.
- The spotless record of the Said Unit has not been considered as mandated by law under Rule 19 (6B) before sending the non-renewal letter to the Said Unit.
- Consideration of 18 months for renewal purposes of the said unit is arbitrary and contrary to the scheme of the Act. The legislation's intention regarding the term of license is for five years and it has been specified under Rule 19(6b) clearly that renewal of Letter of Approval should be considered on the basis of export performance of the Unit in the last block of five years.

- Recourse of penalty has not been taken in the present matter, despite having the provision regarding the same under SEZ rules, ultimately violating the principles of natural justice.
- The SEZ rule 54 regarding monitoring of performance stipulates that;

(1) Performance of the Unit shall be monitored by the Approval Committee as per the guidelines given in Annexure appended to these rules.

(2) In case the Approval Committee come to the conclusion that a Unit has not achieved positive Net Foreign Exchange Earning for stipulated Value Addition as specified in rule 531 or failed to abide by any of the terms and conditions of the Letter of Approval or Bond cum-Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said Unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

Through this aforesaid rule a power is given to the Approval committee, wherein, if any unit is not abiding by any of the stipulated terms and conditions, the committee can impose penalty on the Said Unit. It is brought to their notice that the quantum of the penalty may be decided on fact-to-fact basis. In this regard, it is humbly submitted that when a lesser punishment to rectify the situation was available then in such circumstances, such a grave punishment was not warranted.

- Short term renewals of LOP granted to their Unit along with other circumstances affected the business to a great extent, the same should have been taken into consideration by the Authority. Even otherwise, the decision of the Commissioner is bad in law and liable to be set aside.

Observations of DC, Noida SEZ: The Unit was granted Personal hearing by the DC, NSEZ on 15.12.2022 and thereafter the representation submitted by the Unit was forwarded to DoC for re-consideration of the request of the Unit. Further, the BoA in its 112th meeting dated 29.10.2022 had decided to extend the validity of LoA on temporary basis of only those units which fulfil the following conditions:

- Units should have been functional and carried out atleast some production during the stipulated period of 18 months (i.e. 27th January, 2021 to 26th July, 2022).*
- Units should have made at least some exports during the stipulated period of 18 months (i.e. 27th January, 2021 to 26th July, 2022).*
- Units shall undertake not to carry out any DTA sales till they fulfil the shortfall of NFE and export obligations for the period upto their period of expiry of validity i.e. 26th August 2022. On fulfilment of shortfall in NFE and other export obligations as stipulated above which shall be confirmed by the jurisdictional DC, and the DC may allow DTA sale to units subject to fulfilling of policy dated 27.05.2021.*
- The extension would be granted for a further period upto five years from 27th August, 2022 onwards to align the validity with other units. Such extension shall be on temporary basis only, which will be reviewed by Development Commissioner concerned from time to time.*

The said decision for renewal of LoA for 18 months beyond 27.01.2021 was taken by the Board in light of Notification of the Hazardous and Other Waste (Management and Transboundary Movement) Amendment Rules, 2021 issued by MoEF&CC.

Further, in terms of Rule 19(6b) of the SEZ Rules, 2006, the renewal of LoA shall be based on the evaluation of the following criteria, namely: -

- i. *Export performance of the Unit in the last block.*
- ii. *Employment generated.*
- iii. *Instance of violation of applicable statutes related to the functioning of the Unit.*
- iv. *Cases of default, if any, of statutory payments.*
- v. *Undertaking of any activity not sanctioned or approved by the Development Commissioner.*
- vi. *The decision of the Development Commissioner or Approval Committee in this regard shall be final and binding on the Unit except in cases where the Unit prefers an appeal before the Board of Approval, in accordance with rule 55.*

In this case, the Unit was lying non-functional since 2020-21. Although, it may be noted that the Unit stood non-operational due to accidental fire in 2019 as represented by the Unit and the same was conveyed to DoC.

However, as the Unit did not fulfil the criteria set by the BoA, the LoA of the Unit was not renewed. The decision of non-renewal of LoA was purely on the basis of decision & criteria set by the BoA. Further, with regard to alternative resources like imposition of penalty, there is no provision in the SEZ Rules for imposition of penalty in such cases.

Other findings: The Unit filed a Writ Petition (No. 15583/2023) before the Hon'ble High Court of Allahabad praying for filing an appeal under the Rule 55 of the SEZ Rules, 2006 challenging the impugned Order dated 21.04.2023 passed by the DC, Noida SEZ.

The Hon'ble High Court vide its Order dated 09.05.2023 has dismissed the Writ Petition on the ground of alternative remedy of appeal. Further, the Hon'ble High Court directed that in the event, the petitioner files an appeal before the appellate authority under Rule 55 of the Special Economic Zones Rules, 2006 within three weeks from 09.05.2023 along with a certified copy of this order, the same shall be decided by the appellate authority in accordance with law expeditiously without raising any objection regarding limitation.

Rule position: As regards time limit of the appeal, the rule 56 stipulates that;

(1) An appeal shall be preferred by the aggrieved person within a period of thirty days from the date of receipt of the order of the Approval Committee under rule 18.

(2) When the appeal is preferred after the expiry of the period of thirty days specified in sub-rule (1), it shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the Board that he has sufficient cause for not preferring the appeal within the said period of thirty days:

Provided that if the Board is satisfied that the appellant had sufficient cause for not preferring the appeal within the aforesaid period, it may for reasons to be recorded in writing, admit the appeal after the expiry of the aforesaid period but before the expiry

of forty-five days from the date of communication to him of the order of the Approval Committee.

In this case, the instant has been filed by the Unit in Form-J dated 25.05.2023 against the DC, NSEZ's decision communicated vide letter dated 21.04.2023.

The appeal is placed before the BoA for its consideration.
