



Recent developments in Special Economic Zones

The Government has recently come out with amendments to the SEZ Rules and some administrative instructions issued to the SEZ authorities with a view to ensure smooth functioning of the SEZs.

Certain amendments have been introduced in the Special Economic Zones (SEZ) Rules, 2006 through Notification No. S.O.1293(E), dated 20-5-2009. These rules shall be called as Special Economic Zones (Second Amendment) Rules, 2009. The amendments will come into operation from the date of its publication in the gazette.

Key amendments to the SEZ rules are as under:

- For setting up of an SEZ, it is required that the land be contiguous and vacant. However, there was confusion as to what constitutes vacant land. Now, with a view to address this issue, the definition of the term 'vacant land' has been inserted.

As per the inserted definition, 'vacant land' means the land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.

This clarification will help the developers in acquiring and developing land having existing structures with no economic activity being carried out therefrom. This will also help reduce time and costs involved in SEZ developmental activity.

- The SEZ Rules have placed an upper cap on the area of a Multi-product SEZs at 5,000 hectares. However, as per the recent amendment, considering the business needs of various SEZ developers, the Central Government may relax such higher cap on the size of the SEZs in case of clubbing of two or more SEZs, subject to conditions that such clubbed SEZ maintains contiguity of land.

- The Approval Committee can now also consider the SEZ Units' proposals for broad-banding, diversification, enhancement of capacity of production, change in the items of manufacture or service activity, if it meets the requirements of Rule 18. This aspect was not covered by the erstwhile Rules and hence, in case any Unit undertaking any of these activities had to approach the Board of Approvals for such matters, which made the process cumbersome. This amendment will assist the SEZ Units in smooth and quick approval process.

Further, the SEZ division in Department of Commerce, Government of India has issued administrative instructions to the Development Commissioners providing clarifications on day-to-day activities of SEZs. This will help in smooth and quick operations in the SEZs.

Key points emerging out of these instructions are summarized hereunder:

Instruction no. 10 dated 25 May 2009

- A clarification was sought by the Development Commissioners as to whether clause (b) of sub rule (4) of Rule 49 which covers rules governing SEZ Units for removing goods (specially used packing materials except metal containers) from the SEZ to Domestic Tariff Area (DTA) without payment of duty would also be applicable to SEZ Developers?

By way of this instruction, the Government has clarified that considering the applicability of Rule 14 the procedure applicable for clearance of goods by the SEZ Units shall equally apply to the SEZ Developers.

Instruction no. 11 dated 27 May 2009

- This instruction provides the procedure to procure used capital goods from DTA by SEZ Units. Accordingly, it lays down the following procedure:
 - Prior approval from the Development Commissioner will be required to bring in second hand capital goods from the DTA to the SEZ
 - Such second hand capital goods shall be allowed to be brought in to SEZ only on fulfilment of conditions prescribed under Section 10AA (4) of the Income tax Act, 1961 ('the Act') – these conditions are summarized hereunder:
 - Such machinery or plant was not previously used in India;
 - Such machinery or plant is imported into India from any country outside India; and

- No deduction on account of depreciation in respect of such machinery or plant has been allowed or allowable under the Act in India at any time prior to such installation by the assessee.
- While computing the value of such used capital goods, the depreciation rates as prescribed under the provisions of the Income-tax Act and Rules made there under will be applicable.
- The prescribed details would need to be provided in the specified annexure. Also, it would be required to be reported in the Annual Performance Report. It has also been provided that the value of used capital goods shall not exceed 20 percent of the total value of installed capital goods at any given point of time.
- For the purposes of claiming Income-tax benefits, the SEZ Unit shall not be allowed to bring in used capital goods more than 20 per cent of the total value of its capital goods.
- However, such cap would not be applicable to goods temporarily removed to the DTA as per Rule 50 of the SEZ Rules and brought back into the SEZ.

It is also clarified that the SEZ Units can bring in more than 20 per cent of used capital goods also however; in this case, they will not be entitled to claim the Income-tax benefits.

Our Comments

These amendments will provide much needed clarity on manner of the practical procedure of using the second hand capital goods in the SEZ Unit. However, it is not clarified whether only machinery and plant are covered by the definition of 'capital goods' as provided above. This is so because SEZ regulations cover the concept of capital goods whereas the referred Income tax provisions cover only machinery and plant. This needs to be promptly addressed to avoid any confusion at operational levels.

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