

EXPORT PROMOTION COUNCIL FOR EOUs & SEZs

Ministry of Commerce & Industry, Government of India

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AnandGiri

Deputy Director

EPCES CIRCULAR NO. 202 DATED 06-04-2015

Sub : Guidelines for power generation in SEZs – reg

Ministry of Commerce & Industry, vide its letter No. P.6/3/2006-SEZ dated 6/4/2015, addressed to all Chief Secretaries of all states/UTs, all Development Commissioners of SEZs, Ministry of Power, Department of Revenue and DG EPCES, informed that guidelines for power generation, transmission and distribution in SEZs issued vide Ministry of Commerce letter No. P.6/3/2006-SEZ dated 21-3-2012 stand withdrawn with immediate effect i.e. 1st April, 2015.

This letter further informed that guidelines for power generation, transmission and distribution in SEZs issued vide Department of Commerce letter No. P.6/3/2006-SEZ dated 27th February, 2009 are hereby restored and will, henceforth, be the basis for relevant policy and operational decisions.

Copies of following letters are enclosed for ready reference:-

- i) No. P.6/3/2006-SEZ dated 6th April, 2015
- ii) No. P.6/3/2006-SEZ dated 21-3-2012 and
- iii) No. P.6/3/2006-SEZ dated 27th February, 2009

Effect :As per the revised guidelines, power plants can be set up by developer/co-developer in an SEZ only in the Non Processing Area of SEZ and will be entitled to fiscal benefits only for its initial setting up and no fiscal benefit would be admissible for its operation and maintenance in terms of Rule 27(3) of the SEZ Rules.

This is for kind information of the members.

No. P.6/3/2006-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce
(SEZ Division)

UdyogBhawan, New Delhi

Dated : 6th April, 2015

Subject : Guidelines for Power Generation in Special Economic Zones – regarding

The undersigned is directed to say that guidelines for power generation, transmission and distribution in Special Economic Zones issued vide this Ministry's letter of even number dated 21st March, 2012 stand withdrawn with immediate effect i.e. 1st April, 2015.

2. The guidelines for Power Generation, Transmission and Distribution in Special Economic Zones issued vide this Department's letter of even number 27th February, 2009 are hereby restored and will, henceforth, be the basis for relevant policy and operational decisions.

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(KabirajSabar)

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1. Chief Secretaries of all States/UTs
2. All Development Commissioners of SEZs
3. Ministry of Power, Govt. of India, Shram Shakti Bhawan, Rafi Marg, New Delhi
4. Department of Revenue (CBDT/CBEC), Govt. of India
5. DG, EPCES

No.P.6/3/2006-SEZ
Government of India
Ministry of Commerce & Industry
Department of Commerce
(SEZ Division)

UdyogBhawan, New Delhi
Dated 21st March, 2012

Subject : Guidelines for Power Generation in Special Economic Zones

In supersession of this Ministry's letter of even number dated 27th February, 2009 laying down guidelines for power generation, transmission and distribution in Special Economic Zone, the following guidelines are hereby prescribed:-

1. Generation of Power in SEZ

- (i) A power plant can be set up by developer(s)/co-developer(s) in a SEZ, as part of infrastructure facility in the processing area or non-processing area of SEZ. Such a power plant set up in the processing area will be entitled to all benefits available to developers/co-developers, including fiscal benefits under Section 26 of the SEZ Act, 2005 including benefits for initial setting up, duty free import of raw materials, components and consumables for operation and maintenance of power plant and generation of power. Similarly all obligations and responsibilities of a developer/co-developer under the Act and rules etc shall be applicable. There will be no obligation to achieve positive Net Foreign Exchange Earning (NFE) for such power plants. However, a power plant to be set up by developer/co-developer in an SEZ as part of infrastructure facility in the non processing area of SEZ will be entitled to fiscal benefits only for its initial setting up and no fiscal benefit would be admissible for its operation and maintenance in terms of Rule 27(3) of the SEZ Rules. There will be no obligation to achieve positive Net Foreign Exchange Earning (NFE) for such power plants.

(ii) As a unit set up within the SEZ

- (a) A unit can be set up within the SEZ to generate power as a product or have a captive power plant and will be located in the processing area. Such a power plant will be entitled to all benefits available to unit, including the fiscal benefits covered under Section 26 of the SEZ Act including the benefits for initial setting up, maintenance and the duty free imports of raw materials and consumables for the generation of the power in such plants.
- (b) The duty free import of capital goods, raw material and consumable etc., would be counted toward the NFE obligations of the unit as applicable to such units under Rule 53 of the SEZ Rules, 2006.
- (c) All obligations and responsibilities of a unit under the Act and Rules etc., shall be applicable.

(iii) A single power plant in an SEZ

- (a) A single stand alone power plant can be set up in an SEZ in which there would be no other units. Such a power plant will be treated as a unit in the processing area and will be entitled to all benefits available to a unit, including the fiscal benefits covered under Section 26 of the SEZ Act including benefits for initial setting up, maintenance and the duty free imports of raw material and consumables for generation of power in such a plant.
- (b) The duty free import of capital goods, raw material and consumables etc., would be counted towards the NFE obligation of the unit as applicable to such units under rule 53 of the SEZ Rules, 2006.
- (c) All obligations and responsibilities of a unit under the Act and Rules etc., shall be applicable.

2. Transfer of surplus power to DTA etc.

The developer/co-developer/SEZ unit as the case may be, can transfer the surplus of the power generated in their power generating plants stand alone or captive plants, in excess of the requirement of the SEZ, to DTA. However, such a developer/co-developer/SEZ unit power plant shall have to make an application for sale of surplus power to DTA to the Development Commissioner and will have to pay duty as applicable on import of such power. The Development Commissioner concerned may examine the request for sale of surplus power to DTA in consultation with the appropriate agencies as may be required under the Electricity Act, 2003 and rules made there under wherever considered necessary.

3. Constituents to whom power may be supplied:

Such a power generation infrastructure facility/unit can supply power to:

- (a) SEZ Units located in the processing area of the same SEZ.
- (b) SEZ units located in the processing are of other SEZs,
- (c) Facilities located in the non processing area of the same SEZ
- (d) Facilities located in the non processing area of other SEZs.
- (e) Facilities located n the processing area of the same SEZ
- (f) Facilities located in the processing area of other SEZs and
- (g) Domestic Tariff Area.

4. Distribution of Power

3.1 While a generating station may be established, operated and maintained without obtaining a license under Electricity Act, 2003 subject to compliance of the technical standards as specified in the said Act and conforming to the definition of the generating company under the provisions of the said Act, distribution of power is a licensed activity except as otherwise specified in Section 14 (read with Section 13) of the Electricity Act, 2003.

3.2 In terms of S.O. 528(E) dated 3rd March, 2010, the Developer of a Special Economic Zone notified under Sec 4(1) of the SEZ Act, 2005 shall be deemed to be a licensee for the purpose of clause (b) of Sec 14 of the Electricity Act, 2003 i.e. to distribute electricity as a distribution licensee.

5. Supply of Power and duties thereon:

In respect of power supplied from processing area to constituents in non processing area or from processing area/non processing area to DTA, it should be at such a price as agreed to between the relevant regulator and the power supplier (developer/co-developer/unit). For such clearance, the quantum of duty shall be leviable at such rate as may be notified as customs tariff by the Department of Revenue in consultation with the Ministry of Power/prescribed in Section 30 of SEZ Act, 2005. Such power plants would ensure maintenance of a separate meter for supply of power from processing area to constituents in non processing area or from processing area/non processing area to DTA and details of power so supplied should be submitted to the Development Commissioner on a quarterly basis.

6. Applicability of Electricity Act 2003 and Electricity Rules made thereunder

All provisions of the Electricity Act, 2003 and Electricity Rules, 2005, as amended from time to time by the Ministry of Power along with various power resolutions issued by Ministry of Power will be applicable to generation, transmission and distribution of power whether stand alone or captive power.

This has the approval of Hon'ble CITM.

Sd/-
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To,

1. Chief Secretaries of all States/UTs
2. All Development Commissioners of SEZs.
3. Ministry of Power, Govt. of India, Shram Shakti Bhawan, Rafi Marg, New Delhi
4. Department of Revenue (CBDT/CBEC), Govt. of India
5. DG, EPCES

Ministry of Commerce & Industry
Deptt.of Commerce
(SEZ Section)

UdyogBhawan, New Delhi
27th February, 2009

Subject: Guidelines for Power Generation, Transmission and Distribution in Special Economic Zones (SEZs).

The undersigned is directed to say that various issues relating to setting up of power units and power distribution facilities in SEZs have been under examination of this Department in consultation with Ministry of Power/Department of Revenue and Ministry of Law. After due consideration of the comments/views received from these Ministries, following guidelines are hereby laid down:

Generation, transmission and distribution of power in SEZs

i) Power plant set up by developer/co-developer

A power plant to be set up by developer/co-developer in an SEZ as part of infrastructure facility will be in the non processing area of SEZ and will be entitled to fiscal benefits only for its initial setting up and no fiscal benefit would be admissible for its operations and maintenance in terms of Rule 27(3) of the SEZ Rules. There will be no obligation to achieve positive Net Foreign Exchange Earning (NFE) for such power plants.

Constituents to whom it can supply power

Such a power plant can supply power to other facilities located in the non processing area of the same SEZ/facilities located in the non processing area of other SEZs, SEZ units located in the processing area of the same SEZ/SEZ units located in the processing area in other SEZs, facilities located in the processing area of the same SEZ/facilities located in the processing area of other SEZs and also Domestic Tariff Area (DTA).

ii) A unit set up within the SEZ

A unit can be set up within the SEZ to generate power as a product or have a captive power plant and will be located in the processing area. Such a power plant will be entitled to all the fiscal benefits covered under Section 26 of the SEZ Act including the benefits for initial setting up, maintenance and the duty free imports of raw materials and consumables for the generation of the power in such plants.

With respect to SEZs in sectors such a IT/ITES, Gem and Jewellery, Biotech, etc. where a minimum build up area is stipulated under the SEZ Rules an in respect of which generation of power has been approved by the Board of Approval as authorized operation to the Developer/Co-developer within the processing area, in such cases generation of power will be carried out as a unit without any separate demarcation of the area for that purpose. However, such unit will maintain separate accounts as a power generating unit.

These units will enjoy duty free import of capital goods, raw materials and consumables for the generation of power and such duty free imports of capital goods, raw material and consumables etc. would be counted towards the NFE obligations of the unit.

Constituents to whom it can supply power

Such a unit can supply power to other SEZ units located in the processing area of the same SEZ/SEZ units located in the processing area of other SEZs, facilities located in the non processing area of the same SEZ/facilities located in the non processing area of other SEZs, facilities located in the processing area of the same SEZ/facilities located in the processing area of other SEZs and DTA.

iii) A single power plant in an SEZ

A single stand alone power plant can be set up in an SEZ in which there would be no other units. Such a power plant will be treated as a unit in the processing area and will be entitled to all fiscal benefits covered under Section 26 of the SEZ Act including benefits for initial setting up, maintenance and the duty free imports of raw material and consumables for generation of power in such a plant.

The duty free imports of capital goods, raw material and consumables etc. would be counted towards the NFE obligation of the unit as applicable under Rule 53 of the SEZ Rules 2006.

Constituents to whom it can supply power

Such a power plant can supply power to the facilities in the non processing area of the same SEZ/facilities in the non processing area of other SEZs, SEZ units located in other SEZs and DTA.

Requirement of License

While a generating company may establish, operate and maintain a generating station without obtaining a license under Electricity Act 2003 subject to compliance of the technical standards as specified in the said Act and conforming to the definition of generating company under the provisions of the said Act, distribution of power is a licensed activity as specified in Section 14 of the Electricity Act 2003 except the situation specified in the 8th proviso to the said section.

Determination of tariff

Tariff of the electricity for any sales within SEZs shall be determined in accordance with the provisions of the Electricity Act, 2003/Rules made thereunder.

Creation of separate entities

Separate entities can be created for generation/transmission and distribution of power.

DTA clearance/clearance from processing area to non processing area and duties thereon

In respect of power supplied from processing area to constituents in non processing area or from processing area to DTA, it should be at such a prices as agreed by the regulator and the unit. For such clearance, the quantity of duty shall be leviable at such rate as may be notified as customs tariff by the Department of Revenue on the advise of the Ministry of Power and the Ministry of Commerce, read with Section 30 of SEZ Act, 2005. such power plants would ensure maintenance of separate meter for supply of power from processing area to constituents in non processing area or from processing area to DTA and amount of power so supplied should be submitted to the Unit Approval Committee for every quarter.

Distribution Licence

In case a power generating plant covered under categories (i) to (iii) as stated above wishes to obtain distribution license, it may make such an application to the State Govt. concerned and upon the recommendation of the State Govt., Deptt. of Commerce will issue necessary Notification under Section 49 of the SEZ Act in consultation with the Ministry of Power.

Provided that any State Government can recommend to the Deptt.of Commerce that any power distribution facility coming up in any SEZ in that State can be granted distribution license by the Deptt. of Commerce in consultation with the Ministry of Power. Deptt.of Commerce will issue necessary notification under Section 49 of SEZ Act.

All the provisions of the Electricity Act 2003 and Electricity Rules 2005 as amended from time to time by the Ministry of Power along with various power resolutions issued by the Ministry of Power will be applicable wherever warranted to power generating units, whether stand alone or captive power generating units, transmission facilities and power distribution facilities in the SEZs.

(Dr. R.K. Mitra)
Director

To
All State Governments/All Development Commissioner/ Ministry of
Power/Department of Revenue.