

# **EXPORT PROMOTION COUNCIL FOR EOUs & SEZs**

**Ministry of Commerce & Industry, Government of India**

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**AnandGiri**  
**Deputy Director**

**EPCES CIRCULAR NO. 225 DATED 17-2-2016**

## **Subject : Guidelines for power general, transmission and distribution in SEZs – Issued by Department of Commerce and Department of Revenue**

Power Guidelines for power General, Transmission and Distribution in Special Economic Zones (SEZs) were issued on 27th February, 2009 and subsequently replaced by the guidelines issued on 21st March, 2012. These guidelines were further reviewed and guidelines dated 21st March, 2012 were withdrawn vide letter dated 6th April, 2015.

EPCES has raised this issue and submitted that this is not at all correct, as the power plants set up by the developers/co-developers in an SEZ, as part of infrastructure facility approved by the Board of Approvals as authorized operation, would be supplying power to the units operating within the SEZ. Power is an essential infrastructure support required by any unit manufacturing goods or providing services. Hence, it is imperative that such power plants should be allowed in the processing area and operation and maintenance benefits should be allowed to such power plants. Therefore, fresh guidelines may be issued.

This issue was taken up by EPCES at various fora and through various representations to Department of Commerce. This issue was also discussed in the Ministry of Commerce & Industry and Ministry of Finance as well. Accordingly, fresh guidelines for power generation, transmission and distribution in SEZs have been issued by Ministry of Finance and Ministry of Commerce and Industry.

As per the DoC guidelines:-

- (i) A power plant, including non-conventional energy power plant, to be set up by developers/co-developers in an SEZ as part of infrastructure facility will be in Non-Processing Area of SEZ only, 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. There will be no obligation to achieve positive Net Foreign Exchange (NFE) for such power plants. Such a power plant can supply power to DTA after meeting the power requirement of the SEZ subject to payment of customs duty as determined by DoR keeping in view the duty foregone on initial setting up of the power plant.
- (ii) Henceforth, no single stand-alone power plant will be permitted to be set up in an SEZ in which there would be no other units.
- (iii) Henceforth, setting up of captive power plant, including non-conventional energy power plant, can be permitted in Processing Area as a unit, and it would be subject to NFEF obligations. 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 import of raw materials and consumables for the generation of the power. They can sell power to DTA on payment of customs duty as determined by DoR keeping in view the duty foregone on installation, as well as O&M, and including service tax exemption.
- (iv) With respect to the IT/ITES SEZs, which require continuous quality power, wherever generation of power has been approved by the BoA, as authorized operation, to the Developer/Co-developer within the processing area, and in respect of which there is a statutory requirement on developer/co-developer to supply 24 hours uninterrupted quality power supply at stable frequency in the Zone, in terms of Rule 5A of SEZ Rules, 2006; in such cases generation of power will be carried out as a unit within the processing area, and such a power plant including non-conventional energy 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 import of raw materials and consumables for the generation of the power. Such duty free imports of capital goods, raw material and consumables etc., would be counted towards the NFE obligations of the unit.

This facility will also be extended to R&D facilities, Fabless Semi-Conductor Industry, EMS Electronic Manufacturing Services and such other sectors as may be decided by the Central Government, from the date of incorporations of these sectors in Rule 5A of the SEZ Rules, 2006.

They can sell power to DTA on payment of customs duty as determined by DoR keeping in view the duty foregone on installation as well as O&M including service tax exemption.

- (v) SEZs which are connected to State/National Grid, will be allowed to create a back-up power facility. Such power back-up facility, if it is in the NPA, only duty benefits on capital expenditure for setting up will be available. If the facility is in processing area, then, duty benefits for setting up as well as O&M will be available, subject to the condition that the facility shall be NFE positive – either stand-alone or along with the unit with which it is attached. For DTA sale, customs duty would be charged in both the situations i.e. a power back up utility in NPA or PA at the rate prescribed for each situation/location.
- (vi) Those Power Plants in SEZs which were approved prior to 27.02.2009, and subject to issue of Power Guidelines and provisions of SEZ Act & Rules, either as an infrastructure facility by Developer/Co-developer or as a unit in the Processing Area, will be permitted to operate. It is relevant that during period of installation of such plants, duty benefits on capital investment of mega power plants were available under the then prevalent policy guidelines even in the DTA area.

Henceforth, such power plants will be allowed O&M benefits only with regard to the average monthly power supplied to entities within the same SEZ during the preceding year. Henceforth, no O&M benefits including service tax exemption will be allowed for power supplied to DTA/other SEZs/EOUs from such power plants. The surplus power generated in such power plants may be transferred to DTA, without payment of duty, keeping in consideration of the fact that no duty free benefits on raw materials, consumables, etc., have been availed for generation of such power. However, those power plants not having the capacity of the mega power plant, as given in DoR Notification No. 21/2002-Customs dated 1.03.2002, will be required to pay duty for sale in DTA, on account of duty free import of capital goods, as determined by DoR.

A copy of guidelines issued by Ministry of Commerce & Industry, SEZ Division, vide its communication dated 16.2.2016 and Department of Revenue Notification No. 9/2016-Customs dated 16.2.2016 are attached along with for kind information of members.

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No. P.6/3/2006-SEZ(vol.III)  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(SEZ Division)  
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UdyogBhawan, New Delhi  
Dated 16<sup>th</sup> February, 2016

Subject :Guidelines for power Generation, Transmission and Distribution in Special Economic Zones (SEZs) –  
Regarding

Power Guidelines for power General, Transmission and Distribution in Special Economic Zones (SEZs) were issued on 27<sup>th</sup> February, 2009 and subsequently replaced by the guidelines issued on 21<sup>st</sup> March, 2012. These guidelines were further reviewed and guidelines dated 21<sup>st</sup> March, 2012 were withdrawn vide letter dated 6<sup>th</sup> April, 2015. Representations have been received in the Department for restoring the O&M benefits to Developers operating power plants in SEZs. The matter has been examined and in suppression of all previous guidelines issued by Ministry, the following guidelines are hereby prescribed for generation, transmission and distribution of power in Special Economic Zones:-

- (vii) A power plant, including non-conventional energy power plant, to be set up by developers/co-developers in an SEZ as part of infrastructure facility will be in Non-Processing Area of SEZ only, 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. There will be no obligation to achieve positive Net Foreign Exchange (NFE) for such power plants. Such a power plant can supply power to DTA after meeting the power requirement of the SEZ subject to payment of customs duty as determined by DoR keeping in view the duty foregone on initial setting up of the power plant.

- (viii) Henceforth, no single stand-alone power plant will be permitted to be set up in an SEZ in which there would be no other units.
- (ix) Henceforth, setting up of captive power plant, including non-conventional energy power plant, can be permitted in Processing Area as a unit, and it would be subject to NFEF obligations. 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 import of raw materials and consumables for the generation of the power. They can sell power to DTA on payment of customs duty as determined by DoR keeping in view the duty foregone on installation, as well as O&M, and including service tax exemption.
- (x) With respect to the IT/ITES SEZs, which require continuous quality power, wherever generation of power has been approved by the BoA, as authorized operation, to the Developer/Co-developer within the processing area, and in respect of which there is a statutory requirement on developer/co-developer to supply 24 hours uninterrupted quality power supply at stable frequency in the Zone, in terms of Rule 5A of SEZ Rules, 2006; in such cases generation of power will be carried out as a unit within the processing area, and such a power plant including non-conventional energy 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 import of raw materials and consumables for the generation of the power. Such duty free imports of capital goods, raw material and consumables etc., would be counted towards the NFE obligations of the unit.

This facility will also be extended to R&D facilities, Fabless Semi-Conductor Industry, EMS Electronic Manufacturing Services and such other sectors as may be decided by the Central Government, from the date of incorporations of these sectors in Rule 5A of the SEZ Rules, 2006.

They can sell power to DTA on payment of customs duty as determined by DoR keeping in view the duty foregone on installation as well as O&M including service tax exemption.

- (xi) SEZs which are connected to State/National Grid, will be allowed to create a back-up power facility. Such power back-up facility, if it is in the NPA, only duty benefits on capital expenditure for setting up will be available. If the facility is in processing area, then, duty benefits for setting up as well as O&M will be available, subject to the condition that the facility shall be NFE positive – either stand-alone or along with the unit with which it is attached. For DTA sale, customs duty would be charged in both the situations i.e. a power back up utility in NPA or PA at the rate prescribed for each situation/location.
- (xii) Those Power Plants in SEZs which were approved prior to 27.02.2009, and subject to issue of Power Guidelines and provisions of SEZ Act & Rules, either as an infrastructure facility by Developer/Co-developer or as a unit in the Processing Area, will be permitted to operate. It is relevant that during period of installation of such plants, duty benefits on capital investment of mega power plants were available under the then prevalent policy guidelines even in the DTA area.

Henceforth, such power plants will be allowed O&M benefits only with regard to the average monthly power supplied to entities within the same SEZ during the preceding year. Henceforth, no O&M benefits including service tax exemption will be allowed for power supplied to DTA/other SEZs/EOWs from such power plants. The surplus power generated in such power plants may be transferred to DTA, without payment of duty, keeping in consideration of the fact that no duty free benefits on raw materials, consumables, etc., have been availed for generation of such power. However, those power plants not having the capacity of the mega power plant, as given in DoR Notification No. 21/2002-Customs dated 1.03.2002, will be required to pay duty for sale in DTA, on account of duty free import of capital goods, as determined by DoR.

2. These guidelines would be effective with effect from 16<sup>th</sup> February, 2016.
3. This has the approval of Hon'ble Commerce & Industry Minister.

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 (CBD/CBEC), Govt. of India
5. DG, EPCES

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

**NOTIFICATION**

**No. 9 /2016-Customs**

New Delhi, the 16<sup>th</sup> February, 2016

G.S.R. (E). – In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 12/2012-Customs, dated the 17<sup>th</sup> March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185(E), dated the 17<sup>th</sup> March, 2012, namely:-

In the said notification,-

(a) in the Table, for S. Nos. 145 and 146 and the entries relating thereto, the following S. Nos. and entries shall be substituted, namely:-

S. No.	Chapter or Heading or Sub-Heading or tariff Item	Description of goods	Standard rate (paise per KWh)	Additional duty	Condition no.
(1)	(2)	(3)	(4)	(5)	(6)
“ 145A.	27160000	All goods except those falling under S. Nos. 145B, 146A, 146B, 146C(i) and 146C(ii).	100	-	-
145B.	27160000	Electrical energy originating from Nepal and Bhutan	Nil	-	-
146A.	27160000	Electrical energy – supplied from Processing Area of SEZ to Domestic Tariff Area (DTA), generated using-			
		(a) imported coal as fuel	40	-	-
		(b ) domestic coal as fuel	65	-	-
		(c ) mix of domestic gas/RLNG (Regasified Liquefied Natural Gas) as fuel	59	-	-
		(d) RLNG as fuel	89	-	-
146B.	27160000	Electrical energy – supplied from Non-Processing Area of SEZ to Domestic Tariff Area, generated using-			

S. No.	Chapter or Heading or Sub-Heading or tariff Item	Description of goods	Standard rate (paise per KWh)	Additional duty	Condition no.
(1)	(2)	(3)	(4)	(5)	(6)
		a. imported coal as fuel	24	-	-
		(b ) domestic coal as fuel	24	-	-
		(c ) mix of domestic gas/RLNG as fuel	18	-	-
		(d) RLNG as fuel	21	-	-
146C (i)	27160000	Electrical energy supplied to DTA by power plants of 1000MW or above, and granted formal approval for setting up in SEZ prior to 27 <sup>th</sup> February, 2009.	Nil	-	103
146C (ii)	27160000	Electrical energy supplied to DTA from power plants of less than 1000MW, and granted formal approval for setting up in SEZ prior to 27 <sup>th</sup> February, 2009-			
		(a) imported coal as fuel	24	-	103
		(b ) domestic coal as fuel	24	-	103
		(c ) mix of domestic gas/RLNG as fuel	18	-	103
		(d) RLNG as fuel	21	-	103” ;

(b) in the Annexure, after condition No. 102 and the entries relating thereto, following shall be inserted, namely: –

Condition No.	Conditions
“ 103	The power producer shall produce a certificate from the jurisdictional Development Commissioner in the Department of Commerce, Ministry of Commerce and Industry, that no benefit of customs duty and excise duty, as well as fuel-transportation related service tax has been availed by the said power producer towards raw materials and consumables used in operation and maintenance of the power plant.” .

2. This notification shall come into effect on 16<sup>th</sup> February, 2016.

[F.No. DGEP/SEZ/3/2016]

-sd/-

( TheodoreTigga)

Under Secretary to the Government of India

**Note:-** The principal notification No. 12/2012-Customs, dated the 17<sup>th</sup> March, 2012 was published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185(E), dated the 17<sup>th</sup> March, 2012 and last amended by notification No 07/2016-Customs dated the 2<sup>nd</sup> February 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 135(E), dated 2<sup>nd</sup> February, 2016.