

# EXPORT PROMOTION COUNCIL FOR EOUs AND SEZs

Ministry of Commerce, Government of India  
8G, Hansalaya Building, 15, Barakhamba Road, New Delhi-110001  
Tel: 23329766-69 Fax No.011-23329770, Email : epces@epces.in

AnandGiri  
Dy. Director General

EPC/SEZ/AM-19/F-14  
March 11, 2019

## **EPCES CIRCULAR NO. 323**

### **Sub : Amendment to SEZ Rules 2019 [Gazette Notification GSR 200(E) dated 7.3.2019]**

Department of Commerce, Ministry of Commerce & Industry, Government of India has issued Gazette Notification GSR 200(E) dated 7.3.2019. In this notification certain amendments were made in the SEZ Rules 2016.

Some of the major amendments are as under:-

**1) Amendment in Rule 53:**

- A) Rule 53(a):** As per this rule (amended in 2018) only manufactured goods in SEZ (excluding traded goods) for considered for calculation of NFE. This rule has created anomaly since procurement from DTA was considered for outflow purpose and any export of such goods was not eligible to be counted as inflow for calculation of NFE.

E.g. A power unit in SEZ get purchases power from DTA (from the electricity companies), such procurement as added in their outflow, further supply of power to SEZ units, was not added in inflow (being traded goods) hence it was impossible for SEZ power units set up by developers in complying with Rule 53.

Now the condition of manufactured goods is removed. All goods exported by SEZ unit will be considered for calculation of NFE. This is welcome change.

- B) Amendment in Rule 53(d):**As per SEZ Rules (amendment- 2018),supply of goods to any project or for any purpose in respect of which the Ministry of Finance notifies from time to time, permitting import of such goods at zero customs duty subject to conditions specified in the above said notification provided the supply is made under procedure of International Competitive Bidding;

There are various SEZ units supplying goods to defence project on the basis of zero Customs duty under Make in India scheme of the Government. Such supply is made under nomination basis instead of international competitive bidding. Due to this conditions imposed in SEZ Rule 2018, they were finding extremely difficult to comply with the NFE requirement. After amendment of this rule, they can do the compliance of Rule 53. It is a very welcome change.

- C) Change in Rule 53(h):** The supply of service by a SEZ service unit to DTA against payment in convertible foreign exchange will be considered for calculation of NFE. This is also welcome change.

2) **Amendment no 4B Related to renewal of LOA Rule 19:** Earlier there is a condition to review the SEZ unit performance along-with the projection given. Since performance against the projection may vary due to change in business conditions e.g., US has proposed to levy the duty on steel import from India and this is not in the control of SEZ unit hence this is a welcome change and if a SEZ unit is NFE positive, it can get the approval of LOA renewal.

3) **Amendment in Rule 43 related to work from Home for the employees of IT Companies:**

There is amendment in Rule 43 to allow regular employees of IT/ITes Companies to work from home. Earlier it was limited to permanently in-capacitated employees and employees travelling. This is also a welcome move for the IT/ITes Companies.

Some of the other amendments are related to correction of drafting error of amendment done in 2018. We appreciate the industry friendly initiative of the Ministry of Commerce for bringing these change for the removal of the difficulties.

A copy of the Gazette Notification GSR No. 200(E) dated 7.3.2019 is attached for kind perusal and information.

---

(Department of Commerce)

NOTIFICATION

New Delhi, the, 7th March, 2019

G.S.R. 200(E).—In exercise of the powers conferred by section 55 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government hereby makes the following rules further to amend the Special Economic Zones Rules, 2006, namely:-

1. Short title and commencement.—(1) These rules may be called the Special Economic Zones (2nd Amendment) Rules, 2019.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Special Economic Zones Rules, 2006 (hereinafter referred as the said rules), in rule 3, after the words 'National Security Clearance', the words ' , wherever necessary,' shall be inserted.

3. In the said rules, in rule 18, in sub-rule (2), for clause (i) the following clause shall be substituted, namely: -

'(i) the proposal meets with the positive net foreign exchange earning requirement. In addition, prescribed value addition earning requirement, as the case may be, shall apply.

4. In the said rules, in rule 19-

(A) in sub-rule (6A), in clause (1), -

(i) for the words "Board of Approval" the word "Board" shall be substituted.

(ii) for the proviso the following proviso shall be substituted, namely: -

'Provided that in case an application is submitted after the said period of two months, reasonableness of the delay shall be examined on the merits and circumstances of the case and the request for renewal of Letter of Approval shall be decided by the Development Commissioner.'

(B) for sub rule (6B), the following sub-rule shall be substituted, namely:-

"(6B) The process of renewal of Letter of Approval shall take into account the efforts made and the results achieved or status 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.

5. In the said rules, in rule 43, for the proviso occurring after clause (d), the following proviso shall be substituted, namely: -

"Provided that, -

(i) Employees of Information Technology and Information Technology enabled Services Special Economic Zone units and Information Technology and Information Technology enabled Services units registered as Other Service Provider with Department of Telecommunications, employees temporarily in-capacitated, employees travelling and offsite employees of Special Economic Zones may be permitted to work from home or from a place outside the Special Economic Zone subject to the following conditions, namely:-

(a) A regular employee of the Special Economic Zone unit, who has been issued identity card as per sub-rule (2) of rule 70 shall be authorised by the Special Economic Zone unit to undertake the work pertaining to that unit.

(b) The work to be performed by the employee permitted to work from home shall be as per the services approved for the Special Economic Zone unit, and the work is related to a project of the Special Economic Zone unit.

(c) For the purpose of work from home, Special Economic Zone unit shall provide laptop or desktop and secured connectivity (for e.g Virtual Private network, Virtual Desktop Infrastructure) to establish a connection between the employee and work related to the project of the Special Economic Zone unit.

(d) Special Economic Zone unit shall ensure export revenue of the resultant products or services to be accounted for by the Special Economic Zone unit to which the employee is tagged and at no given point shall work from home involve the export of services from outside the Special Economic Zone unit.

(e) Once the employee ceases to be part of the project of Special Economic Zone unit, the employee shall be untagged from the respective Special Economic Zone unit and the unit shall surrender the I-Card to Specified Officer as per sub-rule (2) of rule 70.

(ii) Information Technology and Information Technology enabled Services Units in Domestic Tariff Area shall carry out their job-work in a Special Economic Zone Unit by following the procedure as laid down in (i) above.

(iii) For Special Economic Zone units registered as Other Service Providers with Department of Telecommunications and availing the benefit of Work from Home, the laid down Other Service Provider guidelines issued by Department of Telecommunications and amended from time to time, shall be followed by Special Economic Zone units. ”.

6. In the said rules, in rule 46, in sub-rule (1), in clause (c), after the words ‘Central Board of Indirect Taxes and Customs’, the words ‘for the scheme’ shall be inserted.

7. In the said rules, for rule 53, the following rule shall be substituted, namely:

“53. Net Foreign Exchange Earnings. — The Unit shall achieve Positive Net Foreign Exchange to be calculated cumulatively for a period of five years from the commencement of production according to the following formula, namely:—

Positive Net Foreign Exchange =  $A - B > 0$

Where, — A : is Free on Board value of exports, including exports to Nepal and Bhutan against freely convertible currency, by the Unit and the value of following supplies of their products, namely:—

a. supply of goods against Advance Authorisation or Advance Authorisation for annual requirement or Duty Free Import Authorisation under the Duty Exemption or Remission scheme under the Foreign Trade Policy;

b. supply of capital goods to holders of licence under the Export Promotion Capital Goods Scheme under the Foreign Trade Policy;

c. supply of goods to projects financed by multilateral or bilateral agencies or funds as notified by the Department of Economic Affairs, Ministry of Finance, from time to time, under International Competitive Bidding in accordance with the procedures of those agencies or funds, where the legal agreements provide for tender evaluation without including the customs duty;

d. supply of goods to any project or for any purpose in respect of which the Ministry of Finance notifies from time to time, permitting import of such goods at zero customs duty;

- e. supply of goods to United Nations or International Organisations for their official use or supplied to the projects financed by the said United Nations or an International Organisation approved by Government of India and the list of such organisations and conditions applicable to such supplies is notified by Ministry of Finance from time to time;
- f. supply of goods to nuclear power projects provided they are as per the conditions stipulated in Foreign Trade Policy;
- g. supply against special entitlements of duty free import of goods under the Foreign Trade Policy;
- h. export of services by services units including services rendered within Special Economic Zone or services rendered in the Domestic Tariff Area and paid for in free foreign exchange or such services rendered in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange by the Reserve Bank of India;
- i. supply of Information Technology Agreement items and notified zero duty telecom or electronic items, namely, Colour Display Tubes for monitors and Deflection components for colour monitors or any other items as may be notified by the Central Government;
- j. supply to other Units and Developers in the same or other Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit provided that such goods and services are permissible for import or procurement by such Units and Developers;
- k. supply of goods against free foreign exchange by a Free Trade and Warehousing Zone Unit.

Explanation. - For removal of doubts, it is hereby clarified that the supplies under clause (j) shall be against procurement certificate, as applicable and the supplies under clauses (d) to (g) shall be as per the terms and conditions of the respective duty exemption as notified by the Central Government, in the Ministry of Finance.

B : consists of sum of the following—

- (a) sum total of the Cost Insurance and Freight value of all imported inputs used for authorised operations during the relevant period and the Cost Insurance and Freight value of all imported capital goods including goods purchased on high seas basis even though paid for in Indian Rupees and the value of all payments made in foreign exchange by way of export commission, royalty, fees, dividends, interest on external commercial borrowings during the first five year period or any other charges;
- (b) value of goods obtained from other Unit or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Unit or Bio-technology Park Unit or from bonded warehouses or procured from international exhibitions held in India or precious metals procured from nominated agencies;
- (c) the Cost Insurance Freight value of the goods and services, including pro-rata Cost Insurance Freight of capital goods, imported duty free or leased from a leasing company or received free of cost or on loan basis or on transfer for the period they remain with the Unit; Explanation. - For the purposes of clause (a), the expression “inputs” mean raw materials, intermediates, components, consumables, parts and packing materials;
- (d) for annual calculation of Net Foreign Exchange, value of imported capital goods and lump sum payment of foreign technical know-how fee shall be amortised at the rate of ten per cent. every year from the first year to the tenth year; C: Gems and Jewellery units shall achieve minimum Value Addition as laid down in prevailing Foreign Trade Policy or Hand Book of Procedures: Provided that the

Nominated agencies working as a service unit for precious metals supply within Special Economic Zone shall be subjected to the requirement of positive Net Foreign Exchange only; and

D: For Gems and Jewellery, the minimum Value Addition shall be in terms of prevailing Foreign Trade Policy or Hand Book of Procedures and it shall be calculated as under:-

$$VA = \frac{A-B}{B} \times 100$$

Where, - A = Free on Board value of the export realised or Freight on Road and Rails value of supply received;

B = Value of inputs such as gold or silver or platinum content in export product plus admissible wastage along with value of other items, such as gemstone etc. wherever gold has been obtained on loan basis, value shall also include interest paid in free foreign exchange to foreign supplies:

Provided that where a Unit is unable to achieve Net Foreign Exchange due to adverse market conditions or any ground of genuine hardship having adverse impact on functioning of the Unit, the five years block period for calculation of Net Foreign Exchange earnings may be extended by the Board of Approval for a further period of upto one year, on a case to case basis.”.

8. In the said rules, in rule 80, the words “of Approval” shall be omitted.

9. In the said rules, for Form I, the following Form shall be substituted, namely:-

**“Form-I**

ANNUAL PERFORMANCE REPORT FOR UNITS

Period-----

(See rule 22)

PERIOD OF REPORTING: ANNUAL (APRIL-MARCH)

ID of online APR filed: \_\_\_\_\_

1.
  - a) Name and factory address of the Unit
  - b) LOA No. and Date
  - c) Date of commencement of Production
  - d) Permanent email ID
2. Item of manufacture/ service activity  
Services approved other than default services
3. EXPORT (INFLOW) (Rs. In Lakhs)
  - a) FOB value of exports for the Year (indicate items of exports)
  - b) Value of supplies made under Rule 53A ('a' to 'k')
  - c) Total value of exports for the year under report (a+b)
  - d) Cumulative value of exports for the five year period
  - e) Countries of exports

#### 4. IMPORT (OUTFLOW) (Rs. in Lakhs)

##### A. Raw material and other inputs utilised

- (a) Opening balance of imported raw material, consumables, components, packing material, services etc.,
- (b) CIF value of raw material, consumables, components, packing material, services etc. imported during the year
- (c) Cumulative value of raw materials, consumables, components, packing materials, services etc.
- (d) Value of imported raw material, consumables, components, packing material etc. or finished goods/ services received from other units in SEZs/EOUs/EHTPs/STPs during the year
- (e) Total (c+d)
- (f) Value of imported raw material, consumables, components, packing material etc. or finished goods/services transferred to other units in SEZs/EOUs/EHTP/STP during the year
- (g) Closing balance of imported raw material, consumables, components, packing material, services etc.
- (h) Value of imported raw material, consumables, components, packing material, services etc. actually consumed during the year { (e)-[f+g] }

Gems and jewellery unit to specify the amount of gold, silver, platinum and other precious commodities in weight (kilograms) as on 31st March of the relevant financial year.

##### B. Capital goods

- (i) Year-wise CIF value of capital goods imports and spares till end of the year under report.
- (ii) Value of imported Capitals goods received from other units in SEZ/EOU/EHTP/STP during the year
- (iii) Total (i) + (ii)
- (iv) Values of imported Capital goods, and spares transferred to other units in SEZ/EOU/EHTP/ STP during the year
- (v) Total value of imported capital goods and spares during the year (iii) – (iv)
- (vi) Proportionate amortized value of imported capital goods taken for NFE calculations as per rule \_\_\_\_\_ of Special Economic Zones Rules, 2006

5. Other outflow of Foreign Exchange (Royalty, technical knowhow fee, repatriation of Dividend/ Profits, Payment of Sales Commission, Interest on overseas borrowings, etc.) during the year

6. Total outflow [4.A.(h) + 4.B.(vi) + 5]

7. Net Foreign Exchange Earning for the year [3.(c)-6]

8. Net Foreign Exchange Earning position at the end of previous year

9. Cumulative Net Foreign Exchange Earning for the year period [7 + 8] Note: For details of calculation of NFE, please refer to Rule 53

10. Value Addition Achievement during the year (applicable for Gem & Jewellery Units) (For calculation of Value Addition, please refer to Rule 53)

(Please attach a separate Value Addition Calculation sheet, if required, duly certified by Chartered Accountant or Cost Accountant.)

#### Part-II

1. DTA SALES                      Value (Rs. in lakhs)

(a) Sale of finished goods/services :

(b) Sale of rejects :

(c) Sale of by product :

(d) Sale of Waste/Scrap/Remnant :

(e) Total :

2. Capital structure of the enterprise

A. i) Authorised capital :

ii) Paid up capital :

B. Overseas investments:-              FDI              NRI

a) Approved

b) Actual Inflow during the year

c) Cumulative actual investment for 5 years

3. Employment                      Male              Female

4. Investment in the Zone (SINCE INCEPTION) (Rs. In lakhs)

a) Building \_\_\_\_\_

b) Plant and Machinery

(i) Indigenous \_\_\_\_\_

(ii) Import CIF value \_\_\_\_\_

(iii) Total (i) + (ii) \_\_\_\_\_



5. OTHER INFORMATION:

(1) External commercial borrowing

External commercial borrowing pending at the end of last year

(a) Less than three years Amount in \$

(b) More than three years -do-

(2) Cases pending for foreign exchange realization,

including those of previous years, if any.

Date of export

Name of importer Address Amount

(SIGNATURE)  
with Seal of Company

**Note** : The information given in the formats for Annual Performance Reports should be authenticated by the authorised signatory of the unit and certified by a Chartered Accountant or Cost Accountant.”.

[F. No. C-2/2/2018-SEZ]

B. B. SWAIN,  
Addl. Secy.

**Note** : The principal rules were published in the Gazette of India, Extraordinary Part-II, Section 3, Sub-section (i), vide number G.S.R. 54(E), dated the 10th February, 2006 and last amended vide number G.S.R. 95(E), dated the 31st January, 2019.