

Law relating to Special Economic Zones

Lesson 5

KEY CONCEPTS

■ Special Economic Zone (SEZ) ■ Offshore Banking Unit ■ Developer ■ International Financial Services Centre (IFSC)

Learning Objectives

To understand:

- Establishment of Special Economic Zones
- Approval and Authorization to Operate SEZ
- Setting up of Unit
- Domestic Tariff Area
- Special Economic Zone Authority

Lesson Outline

- Objective of SEZ Act, 2005
- Salient Features of the SEZ Act, 2005
- Developers – Infrastructure Facilities
- International Financial Service Centre
- Establishment of SEZ
- Guidelines for notifying SEZ
- Board of Approval
- Development Commissioner
- Setting of Unit
- Offshore Banking Unit
- SEZ Authority
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Special Economic Zones Act, 2005.
- Special Economic Zones Rules, 2006.

What is Special Economic Zone?

Special Economic Zone (SEZ) is a specifically delineated duty free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.

INTRODUCTION

While the policy relating to the Special Economic Zones is contained in the Foreign Trade Policy, incentives and other facilities offered to the Special Economic Zone developer and units are implemented through various notifications and circulars issued by the concerned Ministries/Departments. The system, therefore, did not lend enough confidence for investors to commit substantial funds for development of infrastructure and for setting up of the units in the Zones for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, the Government enacted Special Economic Zones Act, 2005.

The salient features of the Act are as under:—

- (i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;
- (ii) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- (iii) the fiscal regime for developers of Special Economic Zones and units set up therein;
- (iv) single window clearance mechanism at the Zone level;
- (v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- (vi) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

ESTABLISHMENT OF SPECIAL ECONOMIC ZONE

Who can set up SEZs?

Any private/public/joint sector or State Government or its agencies can set up Special Economic Zone (SEZ).

Section 3 of the Act provides that the Central Government, State Government, or any other person, jointly or severally, may establish a Special Economic Zone. Any person who, intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purposes of setting up a Special Economic Zone.

It also allows a person, at his option to make a proposal directly to the Board for the purpose of setting up Special Economic Zone. In cases where such proposal has been received directly from a person, the Board may grant approval and after receipt of such approval, the person concerned, is required to obtain the concurrence of the State Government within prescribed time.

In case a State Government intends to set up the Special Economic Zone, it may after identifying the area, forward the proposal directly to the Board of Approval for setting up of Special Economic Zone.

Central Government has been empowered to set up and notify the Special Economic Zone without consulting the State Government concerned; without referring the proposal to the Board.

The State Government may, on receipt of the proposal for setting up a Special Economic Zone forward the proposal together with its recommendations to the Board of Approval within the specified time.

The Board of Approval may, after receipt of the proposal for setting up a Special Economic Zone either approve the proposal or, approve the proposal subject to such terms and conditions as it may deem fit to impose. It can also modify or reject the proposal for setting up a Special Economic Zone.

The Central Government has been empowered to specify the minimum area of land for setting up a Special Economic Zone and other terms and conditions subject to which the Board may approve, modify or reject any such proposal received by it.

If the Board approves the proposal without any modification, it shall communicate the same to the Central Government. If it approves the proposal with modification, it shall, communicate the same to the person or the State Government concerned if the modifications are accepted by the person or State Government, the Board of Approval shall communicate the approval to the Central Government, If it rejects the proposal, it shall record the reasons therefor and communicate the rejection to the person or the State Government concerned.

Central Government to grant on receipt of communication from the Board of Approval, a letter of approval on such terms and conditions and obligations and entitlements, as approved by Board of Approval, to the person or the State Government concerned. However the Central Government may, on the basis of approval of the Board, approve more than one developer in one Special Economic Zone in cases where one Developer does not have in his possession the minimum area of contiguous land, as may be prescribed, for setting up a Special Economic Zone. In all such cases, each Developer is considered as a Developer in respect of the land in his possession.

Any person or a State Government, who intends to provide any infrastructure facilities in the identified area or undertaken any authorised operations may, after entering into an agreement with the Developer, make a proposal for the same to the Board of Approval, for its approval.

Every such person or State Government, whose proposal has been approved by the Board and who, or which, has been granted letter of approval by the Central Government, shall be considered a Co-Developer of the Special Economic Zone.

It may be noted that person includes an individual, whether resident in India or outside India, a Hindu undivided family, co-operative society, a company, whether incorporated in India or outside India, a firm, proprietary concern, or an association of persons or body of individuals, whether incorporated or not, local authority, trust or any entity as may be notified by the Central Government and any agency, office or branch owned or controlled by such individual, Hindu undivided family, co-operative, association, body, authority, company, trust or entity.

What is Infrastructure Facilities?

Infrastructure facilities means industrial, commercial or social infrastructure or other facilities necessary for the development of a Special Economic Zone or such other facilities which may be prescribed.

Establishment, Approval and Authorization to Operate Special Economic Zone

Section 4 of the SEZ Act requires the Developer to submit, after the grant of letter of approval, the exact particulars of the identified area to the Central Government which after satisfying that the specified requirements are fulfilled, notify the specifically identified area in the State as a Special Economic Zone. However, the Central Government has been empowered to notify any additional area as a part of a Special Economic Zone. This section empowers the Central Government to authorise the Developer to undertake such operations in a Special Economic Zone, as it may prescribe.

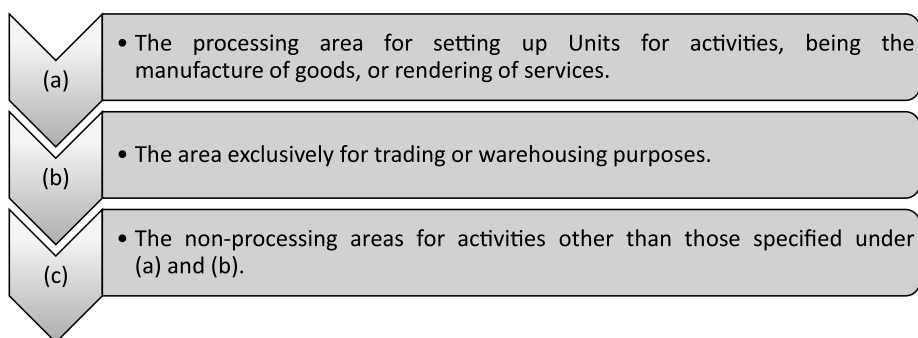
Guidelines for notifying Special Economic Zone

Section 5 stipulates broader guidelines to be considered by the Central Government, while notifying any area as a Special Economic Zone or an area to be included in the SEZ and in discharging its functions under the Act. These include:

- (a) generation of additional economic activity;
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities; and
- (f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

The Processing and Non-Processing areas

Section 6 empowers the Central Government or any specified authority to demarcate the areas falling within the Special Economic Zones as –



Exemption from taxes, duties or cess

Section 7 exempts all goods or services exported out of, or imported into, or procured from the Domestic Tariff Area, by a Unit or Developer in a Special Economic Zone from the payment of taxes, duties or cess under all enactments specified in the First Schedule. The enactments specified in the First Schedule generally relate to levy and payment of cess.

It may be noted that:

“Export” means—

- (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
- (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone.

“Import” means—

- (i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
- (ii) receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone.

“Services” means such tradable services which.—

- (i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakesh on the 15th day of April, 1994;
- (ii) may be prescribed by the Central Government for the purposes of this Act; and
- (iii) earn foreign exchange.

Constitution of Board of Approval

Section 8 empowers the Central Government to constitute, by notification, the Board of Approval within fifteen days of the commencement of the Act. This section also provides for composition of Board, term of office of Members, co-option of certain persons as Members of the Board, its meetings and quorum, etc.

Duties, powers and functions of Board of Approval

Section 9 casts upon the Board the duty to promote and ensure orderly development of the Special Economic Zones.

The powers and functions of the Board, inter alia, include:

- (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;
- (b) granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;

- (c) granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments (including investments by a person resident outside India) in the Special Economic Zone for its development, operation and maintenance;
- (d) granting of approval or rejecting proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
- (e) granting, a licence to an industrial undertaking referred to in section 3(d) of IDR Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;
- (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator under Section 10(1) of the Act;
- (g) disposing of appeals preferred under Section 15(4) and Section 16(4) of the Act;
- (h) performing such other functions as may be assigned to it by the Central Government.

Section 9(3) empowers the Board of Approval to delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board. Section 9(5) stipulates that the Board in exercise of its powers and performance of its functions be bound by such directions on questions of policy, as the Central Government may give in writing to it from time to time.

Suspension of letter of approval and transfer of Special Economic Zone in certain cases

Section 10 empowers the Board to suspend the letter of approval granted to the Developer for a whole or part of his area established as Special Economic Zone for a period not exceeding one year and appoint an Administrator to discharge the functions of the developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly. The suspension may be ordered by the Board, if in its opinion following circumstances exist:



The developer is unable to discharge the functions for perform the duties imposed on him
The developer has persistently defaulted in complying with the directions of the Board
The financial position of the developer is such that he is unable fully and efficiently discharge the duties and obligations imposed on him by the letter of approval

However, no letter of approval can be suspended unless the Board has given to the Developer not less than three months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension.

It has been further provided that the Board may, instead of suspending the letter of approval permit it to remain

in force subject to such further terms and conditions as it thinks fit to impose. Section 10(4) makes any further terms or conditions so imposed binding upon the Developer. These terms and conditions have the force and effect as if they were contained in the letter of approval.

In case the Board suspends a letter of approval, it has been put under obligation to serve a notice of suspension upon the Developer and fix a date for suspension to take effect. Upon suspension of the letter of approval, the Special Economic Zone of the Developer vests in the Administrator for a period not exceeding one year or up to the date on which the letter of approval for such Special Economic Zone is transferred, whichever is earlier. This section also contains provisions for transfer of the Special Economic Zone of a Developer whose licence has been suspended and take other actions consequent upon the suspension of the letter of approval. The Board of Approval has been empowered to issue such directions or formulate such scheme as it may consider necessary for operation of such Special Economic Zone.

Development Commissioner

Section 11 empowers the Central Government to appoint the Development Commissioner for one or more Special Economic Zones and such Officers and other employees as it considers necessary to assist every Development Commissioner. It also contains provisions for salary and allowances and other terms and conditions of service in respect of leave, pension, provident fund and other matters of the Development Commissioner, officers and other employees.

Functions of the Development Commissioner

Section 12 dealing with the functions of the Development Commissioner requires every Development Commissioner to take steps in order to discharge his functions to ensure speedy development of the Special Economic Zone and promotion of exports therefrom.

The functions of the Development Commissioner include :

- (a) guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- (b) ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- (c) ensure proper coordination with the Central Government or State Government Departments concerned or agencies with respect to, or for above purposes;
- (d) monitor the performance of the Developer and the Units in SEZ;
- (e) discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and
- (f) any other functions as may be delegated to him by the Board of approval.

This section entitles the Development Commissioner to be overall in charge of the Special Economic Zone and to exercise administrative control and supervision over the officers and employees. Every Development Commissioner is also required to discharge such functions and exercise such powers as may be delegated to him by a general or special order by the Central Government or the State Government concerned, as the case may be. The section further empowers the Development Commissioner to call for such information from a Developer or Unit from time to time as may be necessary to monitor the performance of the Developer and the Unit. The Development Commissioner has been authorised to delegate any or all of his powers or functions to any of the officers employed under him.

Constitution of Approval Committee

Section 13 empowers the Central Government to constitute by notification, a Committee for every Special Economic Zone, to be called the Approval Committee to exercise the powers and perform the functions as specified. In the case of existing Special Economic Zones, the Approval Committee is required to be constituted within six months from the date of commencement of the Act and in case of other Special Economic Zones established after the commencement of the Act within six months from the date of establishment of such Special Economic Zone. This section also contains provisions relating to composition of meetings and its quorum and requires all orders and decisions and instructions of the Approval Committee to be authenticated by the signature of the Chairperson or any other Member as may be authorised by the Approval Committee.

Powers and Functions of Approval Committee

Section 14 empowers every Approval Committee to discharge the functions and exercise the powers in respect of the following matters:

- (a) approve, the import or procurement of goods from the Domestic Tariff Area, for carrying on the authorised operations by a Developer in the Special Economic Zone;
- (b) approve providing of services by a service provider from outside India or from the Domestic Tariff Area for carrying on the authorised operations by the Developer, in the Special Economic Zone;
- (c) monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone;
- (d) approve, modify or reject proposals for setting up Units for manufacturing or rendering of services or warehousing or trading in SEZ in accordance with the provisions of Section 15(8) of the Act;
- (e) allow on receipt of approval foreign collaborations and foreign direct investments, including investments by a person outside India for setting up a Unit;
- (f) monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, is granted to the Developer or entrepreneur; and
- (g) perform any other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

In case the developer is Central Government, the approval committee has been empowered to exercise all powers of the approval committee, until the constitution of Approval Committee.

Setting up of Unit

Section 15 entitles any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, to submit a proposal to the Development Commissioner concerned. The Development Commissioner in turn place the proposal before the Approval Committee for its approval. The Approval Committee may, approve the proposal with or without modification, and subject to such terms and conditions as it may deem fit, or reject the same. In case of modification or rejection of a proposal, the Approval Committee has been put under obligation to afford a reasonable opportunity of being heard to the person concerned and after recording the reasons therefor, either modify or reject the proposal. Sub-section (4) entitles a person aggrieved by an order of the Approval Committee, to make an appeal to the Board of Approvals, within the prescribed time and specified manner. Sub-section (8) empowers the Central Government to prescribe the requirements (including the period for which a unit may be set up) subject to which the Approval Committee may approve, modify or reject the proposal. The Development Commissioner may, after the approval of the proposal, grant a letter of approval to the person concerned to set up a Unit and undertake in the Unit such operations which the Development Commissioner may authorise and every such operation so authorised is mentioned in the letter of approval.

Cancellation of letter of approval granted to entrepreneur

Section 16 empowers the Approval Committee to cancel the letter of approval of an entrepreneur after reasonable opportunity of being heard has been afforded to the entrepreneur. The Approval Committee may, at any time, cancel the letter of approval if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligation subject to which the letter of approval was granted to the entrepreneur. It further provides that where the letter of approval has been cancelled, the Unit shall not, from the date of such cancellation, be entitled to any exemption, concession, benefit or deduction available to it as such and such Unit shall remit the exemption, concession, drawback and any other benefit availed by the entrepreneur in respect of the capital goods, finished goods lying in the stock and unutilised raw materials in the prescribed manner. Sub-section (4) entitles any person aggrieved from an order of the Approval Committee to make an appeal to the Board of Approval within the prescribed time.

Setting up and operation of Offshore Banking Unit

What do you mean by Offshore Banking Unit?

“Offshore Banking Unit” means a branch of a bank located in a Special Economic Zone and which has obtained the permission under clause (a) of sub-section (1) of Section 23 of the Banking Regulation Act, 1949.

Section 17 dealing with setting up and operation of offshore Banking Unit provides that an application for setting up and operation of an Offshore Banking Unit in a Special Economic Zone may be made to the Reserve Bank, in the prescribed form and manner. The Reserve Bank of India may, on being satisfied that the applicant fulfills all the specified conditions, grant permission to such applicant for setting up and operation of an Offshore Banking Unit in a Special Economic Zone. Sub-section (3) empowers the Reserve Bank to specify, by notification, the terms and conditions subject to which an Offshore Banking Unit may be set up and operated in the Special Economic Zone.

Setting up of International Financial Services Centre

What is International Financial Services Centre?

“International Financial Services Centre” means an International Financial Services Centre which has been approved by the Central Government under Section 18(1).

Section 18 empowers the Central Government to approve setting up of an International Financial Services Centre in a Special Economic Zone and to specify requirements for setting up the operation of such Centre. However, the Central Government may approve only one international Financial Services Centre in a Special Economic Zone. The Central Government may subject to the guidelines as may be framed by the Reserve Bank, the Security and Exchange Board of India, the Insurance Regulatory and Development Authority and such other authority as it may deem fit, prescribe the requirement for setting up and terms and conditions of the operation of International Financial Services Center.

Single application form, return, etc.

Section 19 empowers the Central Government to prescribe single application form for obtaining any licence, permission or registration or approval by a Developer or an entrepreneur under one or more Central Acts. Section 19(b) empowers the Central Government to authorise the Board, the Development Commissioner and the approval Committee to exercise its powers on matters relating to the development of SEZ or setting up or operation of units. Section 19(c) empowers the Central Government to prescribe single form for furnishing returns or information by a developer or an entrepreneur under one or more Central Acts.

Agency to inspect

Section 20 empowers the Central Government to specify, by notification, any officer or agency for carrying out surveys or inspections for securing the compliance with the provisions of any Central Act by a Developer or an entrepreneur, as the case may be, and such officer or agency is required to submit verification or compliance report, in such manner and within such time as may be specified in the said notification.

Single enforcement officer or agency for notified offences

Section 21 empowers the Central Government to specify by notification, any act or omission made punishable under any Central Act, as notified offence for purposes of the proposed legislation. It further empowers the Central Government to authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence committed in a Special Economic Zone. Every officer or agency so authorised has been granted all the corresponding powers of investigation, inspection, search or seizure as provided under the relevant Central Act in respect of the notified offences.

Investigation, Inspection, Search or Seizure

Section 22 empowers the agency or officer, with prior intimation to the Development Commissioner concerned to carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reason to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone. However, no investigation, inspection, search or seizure is allowed to be carried out in a SEZ by any agency or officer other than those referred to in Section 21(2) or (3), without prior intimation or approval of the concerned Development Commissioner. It is further provided that an officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

Designated Courts to try suits and notified offences

Section 23 empowers the concerned State Government, in which SEZ is situated, to designate, with the concurrence of the Chief Justice of the High Court of that State, one or more Courts to try all suits of a civil nature arising out of offences committed in the Special Economic Zone. Section 23(2) provides that no court, other than the designated court shall try any suit or conduct the trial of any notified offence.

Appeal to High Court

Section 24 entitles any person aggrieved by any decision or order of the designated Court to file an appeal to the High Court within sixty days from the date of communication of the decision or order of the said court to him on any question of fact or law arising out of such orders. However the High Court can, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the prescribed period of sixty days allow it to be filed within a further period not exceeding sixty days.

Offences by Companies

Section 25 dealing with offences by companies provides that where an offence has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However such person shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Section 25(2) provides that where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall, also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Exemptions, drawbacks and concessions to every Developer and entrepreneur

Section 26 contains provisions relating to exemptions, drawbacks and concessions to Developer and entrepreneur from any duty of customs under the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, exemption from the service tax under Chapter V of the Finance Act, 1994 and exemption from levy of taxes on sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carrying on authorised operations by the developer or entrepreneur. The developer or entrepreneur has also been entitled to drawback or such other benefits as may be admissible from time to time on goods brought or services provided from DTA into SEZ or unit or services provided in SEZ or unit by service providers located outside India to carry on the authorised operations by the Developer or entrepreneur. The Central Government has also been empowered to specify the manner in which and the terms and conditions subject to which, the exemptions, concessions, drawbacks or other benefits are to be granted to developer or entrepreneur.

Application of the provisions of the Income Tax Act, 1961 with certain modifications in relation to Developers and entrepreneurs

Section 27 provides for application of the provisions of the Income Tax Act, 1961 to the Developer and entrepreneur for carrying on the authorised operations in the Special Economic Zones or Unit subject to modifications specified in the second schedule.

Duration of goods & services in Special Economic Zones

Section 28 empowers the Central Government to specify, the period during which any goods brought into, or services provided in, any Unit or Special Economic Zone without payment of taxes, duties, levies or cess, shall remain or continue to be provided in such Unit or Special Economic Zone.

Transfer of ownership and removal of goods

Section 29 allows the transfer of ownership in any goods brought into, or produced or manufactured in, any Unit or Special Economic Zone or removal thereof from such Unit or Zone, subject to such terms and conditions as specified by the Central Government.

It may be noted that Manufacture means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.

Domestic clearance by Units

Section 30 provides that any goods removed from a Special Economic Zone to the Domestic Tariff Area be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as leviable on such goods when imported. This section further provides that the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty. This section empowers the Central Government to make rules specifying conditions in this regard.

Special Economic Zone Authority

Section 31 dealing with the Constitution of Authority empowers the Central Government to constitute by notification in the Official Gazette, an Authority for every SEZ to exercise powers conferred on and discharge the functions assigned to it.

In the case of an existing SEZ established by the Central Government the Central Government has been empowered to establish such authority within six months from the date of commencement of the Act. It is further provided that the person or authority (including Development Commissioner) which is exercising control over an existing SEZ, shall continue to do so till the authority is constituted. Section 31(2) provides that every authority shall be a body corporate by name as assigned, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall sue and be sued. Section 31(9) stipulates that no act or proceedings of an authority shall be invalidated merely by reason of:

- (a) any vacancy in or any defect;
- (b) any defect in the appointment of a person as its member; or
- (c) any irregularity in the procedure of the authority not affecting the merits of the case.

Functions of Authority

Section 34 casts upon the Authority a duty to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone. Section 34(2) provides for following measures :

- (a) the development of infrastructure in the Special Economic Zone;
- (b) promoting exports from the Special Economic Zone;
- (c) reviewing the functioning and performance of the Special Economic Zone;
- (d) levy user or service charges or fees or rent for the use of properties belonging to the Authority;
- (e) performing such other functions as may be prescribed.

Directions by the Central Government

Section 38 empowers the Central Government to give directions to the authority and makes it binding for every Authority of the Special Economic Zone to carry out the directions issued from time to time in this regard.

Returns and reports by the Authority

Section 39 casts upon every Authority of the Special Economic Zone a duty to furnish to the Central Government such returns and statements and such particulars in regard to the promotion and development of exports and the operation and maintenance of the Special Economic Zone and Units as it may require from time to time. This section further requires every authority to submit to the Central Government after the end of each financial year a report in form and before specified date, giving a true and full account of its activities, policy and programmes during the previous financial year. Section 39(3) requires a copy of every such report to be laid before each House of Parliament, soon after its receipt.

Power of the Central Government to Supersede Authority

Section 40 empowers the Central Government to supersede an Authority for a maximum period of six months if at any time, it is of the opinion that an Authority is unable to perform, or has persistently made

default in the performance of the duty imposed on it or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by it. However, before issuing a notification superseding an authority, the Central Government is required to give reasonable time to that Authority to make representation against the proposed suppression and consider the representations, if any, of the Authority. Section 40(2) dealing with the consequences of publication of the notification superseding the Authority, provides that,

- (a) the Chairperson and other Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of the Act, be exercised or discharged by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct;
- (c) all property vested in the Authority shall, during the period of supersession, vest in the Central Government.

Section 40(3) also provides that on the expiration of the period of supersession specified in the notification, the Central Government may extend the period of supersession for such further period not exceeding six months or reconstitute the Authority in the prescribed manner.

Reference of Dispute and Limitation

Section 42 requires any dispute of civil nature arising among two or more entrepreneurs or two or more Developers or between the entrepreneur and Developer in the Special Economic Zone to be referred to arbitration provided, the court or the courts to try suits in respect of such dispute had not been designated. However no dispute should be referred to the arbitration on or after the date of the designation of court or courts under section 23(1). It further provides that where a dispute has been referred to arbitration, the same shall be settled or decided by the arbitrator to be appointed by the Central Government and the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitrations.

Section 43 stipulates that the period of limitation in the case of any dispute which is required to be referred to arbitration shall be regulated by the provisions of the Limitation Act, 1963, as if the dispute was a suit and the arbitrator is civil court. Section 43(2), however, empowers the arbitrator to admit, a dispute after the expiry of the period of limitation, if the arbitrator is satisfied that the applicant had sufficient cause for not referring the dispute within specified period.

Person to whom a communication to be sent

Section 45 provides that a communication by any competent authority or person may be sent to the person who has the ultimate control over the affairs of the Special Economic Zone or Unit or where the said affairs are entrusted to a manager, director, chairperson, or managing director, or to any other officer, by whatever name called, such communication may be sent to such manager, director, chairperson, or managing director or any other officer.

Identity card

Section 46 requires that every person whether employed or residing or required to be present in a Special Economic Zone be provided an identity card by every Development Commissioner in prescribed form and containing specified particulars.

Power of the Central Government to modify provisions of the Act or other enactments in relation to Special Economic Zones

Section 49 empowers the Central Government to direct, by notification in the Official Gazette, that any of the provision of the Act or any other Central Act, any rules or regulations made thereunder or any notification or order issued or direction given thereunder specified in the notification shall not apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones; or shall apply to a Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones only with such exceptions, modification and adaptation, as may be specified in the notification. Sub section (2) requires a copy of every notification proposed to be issued to be laid in draft before each House of Parliament. The notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament.

Power of State Government to grant exemption

Section 50 empowers the State Government to notify policies for Developers and Units and to take suitable steps for enactment of any law -

- (a) granting exemption from the State taxes, levies and duties to the Developer or the entrepreneur;
- (a) delegating the powers conferred upon any person or authority under any State Act to the Development Commissioner in relation to the Developer or the entrepreneur.

SEZ Act to have overriding effect

Section 51 giving overriding effect to this Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Special Economic Zones to be ports, airports inland container depots, land stations etc. in certain cases

Section 53 provides that a Special Economic Zone, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations. This section further provides that a Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations under section 7 of the Customs Act, 1962. The Central Government has been empowered to notify different dates for different Special Economic Zones.

SPECIAL ECONOMIC ZONES RULES, 2006

Section 55 empowers the Central Government to make rules in respect of specified matters and requires that the same be published in the Official Gazette and be laid before each House of Parliament. In this context, the Central Government has notified the Special Economic Zones Rules, 2006 on February 10, 2006.

Rights of Appellant to Appear before the Board

According to Rules 61 of the Special Economic Zones Rules, 2006 every appellant may appear before the Board in person or authorize one or more Chartered Accountants or **Company Secretaries** or Cost Accountants or legal practitioners or any of his or its officers to present his or its case before the Board.

It may be noted that company secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

LESSON ROUND-UP

- Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment. The SEZs require special fiscal and regulatory regime in order to impart a hassle free operational regime encompassing the state of the art infrastructure and support services.
- Special Economic Zone (SEZ) is a specifically delineated duty free enclave and is deemed to be foreign territory for the purposes of trade operations and duties and tariffs.
- SEZ units are governed by Special Economic Zones Act, 2005.
- Central Government, State Government, or any other person, jointly or severally, may establish a Special Economic Zone. Any person who, intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purposes of setting up a Special Economic Zone.
- Board of Approval granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones.
- Every Development Commissioner to take steps in order to discharge his functions to ensure speedy development of the Special Economic Zone and promotion of exports there from.
- The Central Government to constitute by notification, a Committee for every Special Economic Zone to be called the Approval Committee to exercise the powers and perform the functions as specified.
- Any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, to submit a proposal to the Development Commissioner concerned.
- An application for setting up and operation of an Offshore Banking Unit in a Special Economic Zone may be made to the Reserve Bank of India.
- SEZ Act casts upon the SEZ Authority a duty to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone.
- Every person whether employed or residing or required to be present in a Special Economic Zone shall be provided an identity card by every Development Commissioner in prescribed form and containing specified particulars.
- Provisions of the SEZ Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- Any person aggrieved by any decision or order of the designated Court may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the said court to him on any question of fact or law arising out of such orders.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Special Economic Zones are growth engines. Discuss.
2. Discuss in detail the salient features of SEZ Act, 2005.
3. Explain the procedure for establishment of SEZ.

4. Briefly discuss the duties, powers and functions of Board of Approval in respect of Special Economic Zones.
5. What are the functions of Approval Committee under SEZ Act, 2005?

LIST OF FURTHER READINGS

- Bare Act - Special Economic Zones Act, 2005 and rules made thereunder.
- Law & Practice Relating to Special Economic Zones – Taxmann Publications Private Limited

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- <http://sezindia.nic.in/>
- https://www.indiacode.nic.in/handle/123456789/2042?sam_handle=123456789/1362