

## *Special Economic Zones Act, 2005*

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 shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Goods and services going into the SEZ area from Domestic Tariff Area treated as exports and goods coming from the SEZ area into DTA treated as if these are being imported.

SEZ units may be set up for manufacture of goods and rendering of services. The Government of India had announced a Special Economic Zone scheme in April, 2000 with a view to provide an internationally competitive environment for exports. To instil confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime thereby generating greater economic activity and employment through the establishment of SEZs, the Special Economic Zones Act, 2005, was passed by Parliament in 2005.

**Preamble** - *SEZ Act, 2005 to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.*

*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.

### ***Definitions***

Section 2 of the Act contains definitions of the terms used in the Act.

***"Co-Developer"*** means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of Section 3. [Section 2(f)]

***"Developer"*** means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of Section 3 and includes an Authority and a Co- Developer. [Section 2(g)]

***"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. [Section 2(m)]

**"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. [Section 2(o)]

**"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. [Section 2(p)]

**"International Financial Services Centre"** means an International Financial Services Centre which has been approved by the Central Government under sub-section (1) of Section 18. [Section 2(q)]

**"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. [Section 2(r)]

**"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 2(u)]

**"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 and
- any agency, office or branch owned or controlled by such individual, Hindu undivided family, co-operative, association, body, authority or company. [Section 2(v)]

**"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.[Section 2(z)]

**"Unit"** means a Unit set up by an entrepreneur

- in a Special Economic Zone and
- includes an existing Unit,
- an Offshore Banking Unit and
- a Unit in an International Financial Services Centre whether established before or established after the commencement of this Act; .[Section 2(c)]

### ***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.*

### ***Procedure for making proposal to establish Special Economic Zone – Section 3***

(1) **Eligible Persons to establish SEZ** - A Special Economic Zone may be established under this Act, either jointly or severally by the Central Government, State Government, or any person for manufacture of goods or rendering services or for both or as a Free Trade and Warehousing Zone.

(2) **Proposal to SG** - 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 purpose of setting up the Special Economic Zone.

(3) **Option to make proposal directly to the Board** - Any person, who intends to set up a Special Economic Zone, may, after identifying the area, at his option, make a proposal directly to the Board for the purpose of setting up the Special Economic Zone:

However, where such a proposal has been received directly from a person, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the period, as may be prescribed.

(4) **Proposal by SG to Board to set up SEZ** - In case a State Government intends to set up a Special Economic Zone, it may after identifying the area, forward the proposal directly to the Board for the purpose of setting up the Special Economic Zone:

**Setting up of SEZ by CG** - Central Government may:-

- a) after consulting the **State Government** concerned;
- b) **without referring** the proposal for setting up the Special Economic Zone to the **Board**; and
- c) after identifying the area;

suo moto set up and notify the Special Economic Zone

(5) **Form and Manner of Proposal** - Every proposal under sub-sections (2) to (4) shall be made in such form and manner containing such particulars as may be prescribed.

(6) **Forwarding of Proposal by SG to BOA** - The State Government may, on receipt of the proposal made under sub-section (2), forward the same together with its recommendations to the Board within such period as may be prescribed.

(7) **Decision of BOA** - Board may **approve** the proposal subject to such terms and conditions as it may deem fit to impose, or **modify** or **reject** the proposal.

(8) **Prescribed Requirements to set up SEZ** - The Central Government may prescribe the following requirement for establishment of a Special Economic Zone, namely:-

- a) the minimum area of land and other terms and conditions subject to which the Board shall approve, modify or reject any proposal received by it ; and
- b) the terms and conditions, subject to which the Developer shall undertake the authorised operations and his obligations and entitlements.

Different minimum area of land and other terms and conditions referred to in clause (a) may be prescribed by the Central Government for a class or classes of Special Economic Zones.

(9) If the Board,-

- a) **approves without any modification**, the proposal received, it shall **communicate** the same **to the Central Government**;
- b) **approves with modifications** the proposal received, it shall, **communicate** such modifications **to the person or the State Government concerned** and if such modifications have been accepted by such person or the State Government, the Board shall communicate the approval to the Central Government;

c) **rejects** the proposal received, it shall record the reasons therefor and **communicate the rejection to the Central Government** which shall intimate to the State Government or the person concerned.

(10) **Grant of Letter of Approval by CG to SG/Person concerned** - The Central Government shall, on receipt of communication under clause (a) i.e approval or clause (b) of sub-section (9), grant, within such time as may be prescribed, a **letter of approval** on such terms and conditions and obligations and entitlements as may be approved by the Board, to the Developer, being the person or the State Government concerned:

**Approval of more than one developer in SEZ by CG** - Central Government may, on the basis of approval of the Board, approve more than one Developer in a 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 and in such cases, *each Developer shall be considered as a Developer in respect of the land in his possession.*

(11) **Proposal and approval to set up *infrastructure facilities or authorised operation*** - Any person who, or a State Government which, intends to provide any infrastructure facilities in the identified area, or undertake any authorised operation may, after entering into an agreement with the Developer, make a proposal for the same to the Board for its approval and the provisions of sub-section (5) and sub-sections (7) to (10) shall, as far as may be, apply to the said proposal made by such person or State Government.

(12) **Co-Developer** - Every person or a State Government referred to in sub-section (11), 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 as a Co-Developer of the Special Economic Zone.

(13) **Allocation of area to approved units** - Subject to the provisions of this section and the letter of approval granted to a Developer, the Developer may allocate space or built up area or provide infrastructure services to the *approved units* in accordance with the agreement entered into by him with the entrepreneurs of such Units.

#### ***Establishment, Approval and Authorization to Operate Special Economic Zone –Section 4***

(1) **Notification of specifically identified area as SEZ by CG** - The Developer shall, after the grant of letter of approval under sub-section (10) of section 3, **submit the exact particulars of the identified area**, to the **Central Government** and thereupon that Government

may, after satisfying that the requirements, under sub-section (8) of section 3 and other requirements, as may be prescribed, are fulfilled, notify the specifically identified area in the State as a Special Economic Zone:

**Inclusion of additional area as part of SEZ** - Central Government may, after notifying the Special Economic Zone, if it considers appropriate, notify subsequently any additional area to be included as a part of that Special Economic Zone.

(2) **Authorisation of Authorised operations by Board** - After the appointed day, the Board may, authorise the Developer to undertake in a Special Economic Zone, such operations which the Central Government may authorize.

### ***Guidelines for notifying Special Economic Zone – Section 5***

(1) The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under

this Act, shall be guided by the following, namely:-

- 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***

The areas falling within the Special Economic Zones may be demarcated by the Central Government or any authority specified by it as-

- a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or
- b) the area exclusively for trading or warehousing purposes; or
- c) the non-processing areas for activities other than those specified under clause (a) or clause (b).

### ***Exemption from taxes, duties or cess - Section 7***

Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -

- (i) a Unit in a Special Economic Zone; or

(ii) a Developer; shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

### ***Constitution of Board of Approval- Section 8***

Central Government has been empowered to constitute, by notification, the Board of Approval within 15 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***

- 1) Board shall have the duty to promote and ensure orderly development of the Special Economic Zones.
- 2) 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.
- 3) **Delegation of Powers and Functions by Board to DC** - Board of Approval may 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.

- 4) **Limitation of Board** - Board in exercise of its powers and performance of its functions shall 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***

(1) **Suspension of Letter of approval** - If, at any time, the Board is of the opinion that a **Developer**—

- (a) is **unable to discharge the functions or perform the duties** imposed on him by or under the provisions of this Act or rules made thereunder; or
- (b) has **persistently defaulted in complying with any direction** given by the Board under this Act; or
- (c) has **violated** the terms and conditions of the letter of approval; or
- (d) whose **financial position** is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by the letter of approval, and

the circumstances exist which render it necessary for it in public interest so to do, the Board may, on application, or with the consent of the Developer, or otherwise, for reasons to be recorded in writing, 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 1 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.

(2) **Management of SEZ during suspension** - Consequent upon appointment of an **Administrator**, the management of the Special Economic Zone of the Developer shall vest in the Administrator.

(3) **SCN by Board to Developer** - No letter of approval shall be suspended under sub-section (1) unless the Board has given to the Developer not less than 3 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.

(4) **Alternative option to Suspension** - 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, and any further terms or conditions so imposed shall be binding upon and be complied with by the Developer and shall be of like force and effect as if they were contained in the letter of approval.

(5) **Notice of suspension to Developer** - In case the Board suspends a letter of approval under this section, it shall serve a notice of suspension upon the Developer and fix a date on which the suspension shall take effect.

(6) **Tenure of administration** - Upon suspension of the letter of approval, the Special Economic Zone of the Developer shall vest 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.

(7) **Transfer of Letter of Approval to any other person by Developer** - Where the Board has given notice for suspension of letter of approval, the **Developer** may after prior approval of the Board, transfer his letter of approval to any person who is found eligible by the Board for grant of such approval.

(8) **Re-vesting of SEZ in Developer** - If at any time, it appears to the Board that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Board may cancel the order and thereupon the Administrator shall be divested of the management of the Special Economic Zone which shall, unless otherwise directed by the Board, again vest in the person, being the Developer in whom it was vested immediately prior to the date of appointment of the Administrator.

(9) **Directions of formulation of scheme by Board** - The Board may, in order to promote export or to protect the interest of units or in the public interest, issue such directions or formulate such scheme as it may consider necessary for operation of the Special Economic Zone.

### ***Development Commissioner – Section 11***

(1) **Appointment of DC** - The Central Government may appoint any of its officers not below the rank of Deputy Secretary to the Government of India as the Development Commissioner of one or more Special Economic Zones.

(2) **Appointment of officers and other employees** - The **Central Government** may appoint such officers and other employees as it considers necessary to assist the Development Commissioner in the performance of his functions in the Special Economic Zones established by a Developer (other than the Central Government) under this Act on such terms and conditions as it deems fit.

(3) **Salary, allowances etc. to be fixed by CG** - Every Development Commissioner, officer and other employee shall be entitled to such salary and allowances and subject to such terms and conditions of service in respect of leave, pension, provident fund and other matters as may, from time to time, **be specified by the Central Government.**

***Functions of the Development Commissioner – Section 12***

- (1) **All necessary steps for development of SEZ and promotion of export** - Every Development Commissioner shall take all steps in order to discharge his functions under this Act to ensure speedy development of the Special Economic Zone and promotion of exports therefrom.
- (2) **Routine functions of DC** - Development Commissioner shall—
- (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 co-ordination** with the Central Government or State Government Departments concerned or agencies with respect to, or for the purposes, of clauses (a) and (b);
  - (d) **monitor the performance** of the Developer and the Units in a Special Economic Zone;
  - (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) discharge such other functions as may be delegated to him by the Board.
- (3) **DC to be overall in-charge of SEZ**- Every Development Commissioner shall be overall in-charge of the Special Economic Zone and shall exercise administrative control and supervision over the officers and employees appointed under sub-section (2) of section 11 (including the officials deputed to such Special Economic Zone) to discharge any of the functions under this Act.
- (4) **Functions delegated to him by CG or SG** - Every Development Commissioner shall 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.
- (5) **Power to Call for information** - Every Development Commissioner may call for such information from a Developer or Unit from time to time as may be necessary to monitor the performance of the Developer or the Unit, as the case may be.
- (6) **Delegation of Powers to officer** - The Development Commissioner may delegate any or all of his powers or functions to any of the officers employed under him.

***Constitution of Approval Committee – Section 13***

- Central Government shall 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.
- 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***

(1) Every Approval Committee may discharge the functions and exercise the powers in respect of the following matters, namely :—

- a) approve the **import or procurement of goods** from the Domestic Tariff Area, in the Special Economic Zone for carrying on the authorised operations by a Developer;
- b) approve the **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 services or warehousing or trading in the Special Economic Zone:  
However, where the Approval Committee is unable to decide whether a particular process constitutes manufacture or not it shall refer the same to the Board of Approval for decision;
- e) allow **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, has been granted to the Developer or entrepreneur;  
and
- g) perform such other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

(2) The Approval Committee shall not discharge such functions and exercise such powers referred to in sub-section (1) in relation to a Developer, being the Central Government, as may be specified, by notification, by the Central Government :

**Provided** that till such time, the Approval Committee is constituted, the concerned Development Commissioner shall discharge all functions and exercise all powers of the Approval Committee.

### ***Setting up of Unit – Section 15***

(1) **Proposal to DC** - Any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned in such form and manner containing such particulars as may be prescribed .

(2) **DC to submit proposal to Approval Committee** - On receipt of the such proposal, the Development Commissioner shall submit the same to the Approval Committee for its approval.

(3) **Decision of Approval Committee** - The Approval Committee may, either approve the proposal without modification, or approve the proposal with modifications subject to such terms and conditions as it may deem fit to impose, or reject the proposal in accordance with the provisions of sub-section (8) :

**Provided** that in case of modification or rejection of a proposal, the Approval Committee shall afford a reasonable opportunity of being heard to the person concerned and after recording the reasons, either modify or reject the proposal.

(4) **Appeal to Board** - Any person aggrieved by an order of the Approval Committee may prefer an appeal to the Board within such time as may be prescribed.

(5) **Powers of CG** - The Central Government may prescribe,—

(a) the requirements (including the period for which a Unit may be set up) subject to which the Approval Committee shall approve, modify or reject any proposal;

(b) the terms and conditions, subject to which the Unit shall undertake the authorised operations and its obligations and entitlements.

(6) **Grant of Letter of Approval** - The **Development Commissioner** may, **after approval of the proposal, grant a letter of approval** to the person concerned to set up a unit and undertake such operations which the Development Commissioner may authorise and every such operation so authorised shall be mentioned in the letter of approval.

***Cancellation of letter of approval to entrepreneur – Section 16***

(1) **Power to cancel LOA** - The Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval :

However, no such letter of approval shall be cancelled unless the entrepreneur has been afforded a reasonable opportunity of being heard.

(2) **Cessation of Exemption, concession etc. on Cancellation** - 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, being a unit, under this Act.

(3) **Entrepreneur to remit all benefits availed** - Entrepreneur whose letter of approval has been cancelled, shall remit, the exemption, concession, drawback and any other benefit availed by him in respect of the capital goods, finished goods lying in stock and unutilised raw materials relating to his unit.

(4) **Appeal to Board** - Any person aggrieved by an order of the Approval Committee, may prefer an appeal to the Board within such time as may be prescribed.

Before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

***Setting up and operation of Offshore Banking Unit – Section 17***

1) **Application to RBI** - 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 such form and manner as may be prescribed.

2) **Grant of Permission by RBI** - On receipt of an application, the Reserve Bank shall, if it is satisfied that the applicant fulfils all the conditions specified, grant permission to such applicant for setting up and operation of an Offshore Banking Unit.

3) **T & C** - The Reserve Bank may, by notification, specify 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 – Section 18***

1) **CG's power to approve IFS** - The Central Government may approve the setting up of an International Financial Services Centre in a Special Economic Zone and prescribe the requirements for setting up and operation of such Centre :

However, Central Government shall approve only one International Financial Services Centre in a Special Economic Zone.

2) **CG to prescribed requirements and T & C** - The Central Government may, subject to such guidelines as may be framed by the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and such other concerned

authorities, as it deems fit, prescribe the requirements for setting up and the terms and conditions of the operation of units in an International Financial Services Centre.

### **Single application form, return, etc. - Section 19**

Central Government may, if required,—

- (a) prescribe a single application form for obtaining any licence, permission or registration or approval by a Developer, or an entrepreneur under one or more Central Acts;
- (b) authorise the Board, the Development Commissioner or Approval Committee, to exercise the powers of the Central Government on matters relating to the development of a Special Economic Zone or setting up and operation of Units;
- (c) prescribe a single form for furnishing returns or information by a Developer or an entrepreneur under one or more Central Acts.

### **Agency to inspect – Section 20**

Central Government may 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**

- 1) The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.
- 2) The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.
- 3) Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

### **Investigation, Inspection, Search or Seizure – Section 22**

Agency or officer may, 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.

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***

- 1) The State Government, in which the Special Economic Zone is situated, may, with the concurrence of the Chief Justice of the High Court of that State, designate one or more courts—
  - a) to try all suits of a civil nature arising in the Special Economic Zone; and
  - b) to try notified offences committed in the Special Economic Zone.
- 2) No court, other than the court so designated, shall try any suit or conduct the trial of any notified offence referred to in that sub-section :

### ***Appeal to High Court – Section 24***

**Time Limit** - Any person aggrieved by any decision or order of the designated Court to file an appeal to the High Court within 60 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.

**Extension of Time** - 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 60 days.

### ***Offences by Companies – Section 25***

(1) 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, no such person shall be liable to any punishment provided for the offence, if he has proved that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) 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.

*Explanation.*—For the purposes of this section,—

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

***Exemptions, drawbacks and concessions to every Developer and entrepreneur – Section 26***

(1) Every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely :—

- (a) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or Entrepreneur;
- (b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India;
- (c) exemption from any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorised operations by the Developer or entrepreneur;
- (d) drawback or such other benefits as may be admissible from time to time on goods brought or services provided from the Domestic Tariff Area into a Special Economic Zone or Unit or services provided in a Special Economic Zone or Unit by the service providers located outside India to carry on the authorised operations by the Developer or entrepreneur;
- (e) exemption from service tax under Chapter V of the Finance Act, 1994 on taxable services provided to a Developer or Unit to carry on the authorised operations in a Special Economic Zone;
- (f) exemption from the securities transaction tax leviable under section 98 of the Finance Act, 2004 in case the taxable securities transactions are entered into by a non-resident through the International Financial Services Centre;
- (g) exemption from the levy of taxes on the sale or purchase of goods other than newspapers under the Central Sales Tax Act, 1956 if such goods are meant to carry on the authorised operations by the Developer or entrepreneur.

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or other benefits shall be granted to the 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***

The Central Government may prescribe the period during which any goods brought into, or services provided in, any Unit or Special Economic Zone without payment of taxes, duties 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***

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 shall be allowed, subject to such terms and conditions as specified by the Central Government.

***Domestic clearance by Units – Section 30***

Subject to the conditions specified in the rules made by the Central Government in this behalf,—

- (a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall 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; and
- (b) **Rate of duty and tariff valuation** - 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.

***Special Economic Zone Authority – Section 31***

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.

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.

Every such 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.

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***

Authority shall be entitled to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone. Such authority can take the 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.

***Returns and reports by the Authority – Section 39***

- 1) Every Authority shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, 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 the Central Government may, from time to time, require.
- 2) Without prejudice to the provisions of sub-section (1), every Authority shall, as soon as possible, after the end of each financial year, submit to the Central Government a report in such form and before such date, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.
- 3) A copy of every report received under sub-section (2) shall be laid, as soon as may be, after it is received, before each House of Parliament.

***Power of the Central Government to Supersede Authority – Section 40***

(1) If at any time the Central Government 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 by or under this Act or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by the Central Government under section 38, the Central Government may, by notification, supersede that Authority for such period not exceeding six months, as may be specified in the notification:

**Provided** that before issuing a notification under this sub-section, the Central Government shall give reasonable time to that Authority to make representation against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

- (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 this 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.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—
- (a) extend the period of supersession for such further period not exceeding six months; or
- (b) reconstitute the Authority in the manner provided in section 31.

### ***Reference of dispute – Section 42***

- (1) Notwithstanding anything contained in any other law for the time being in force, if—
- a) any dispute of civil nature arises among two or more entrepreneurs or two or more Developers or between an entrepreneur and a Developer in the Special Economic Zone; and
- b) the court or the courts to try suits in respect of such dispute had not been designated under sub-section (1) of section 23,

such dispute shall be referred to arbitration:

However, no dispute shall be referred to the arbitration on or after the date of the designation of the court or courts under sub-section (1) of section 23.

(2) 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.

(3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitration under this Act as if the proceedings for arbitration were referred in settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

### ***Limitation – Section 43***

- 1) 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.
- 2) Arbitrator may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the arbitrator that he had sufficient cause for not referring the dispute within such period.

### ***Person to whom a communication to be sent – Section 45***

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***

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 of such Special Economic Zone, in such form and containing such particulars as may be prescribed.

### ***Power of State Government to grant exemption – Section 50***

State Government may 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;
- b) 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***

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***

- 1) A Special Economic Zone shall be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.
- 2) A Special Economic Zone shall be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be under section 7 of the Customs Act, 1962:

**Provided** that for the purposes of this section, the Central Government may 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.

*(By Jagdeep Arora (B.Com, CA, CS & CMA))*