File No. K-22019/3/2022-EOU
Ministry of Commerce & Industry
Department of Commerce
EOU Section
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Udyog Bhawan, New Delhi
Dated: 20th May, 2022

MEETING NOTICE

Subject: 3rd Meeting (2022 series) of Board of Approval (BOA) for EOU Scheme scheduled to be held on 26.05.2022 in Room No.141 - forwarding of Agenda reg.

The undersigned is directed to enclose herewith the Agenda for the 3rd Meeting of Board of Approval (2022 series) for EOU scheme scheduled to be held on 26.05.2022 at 11:00 A.M. in Room No. 141, Udyog Bhawan, New Delhi under the Chairmanship of Commerce Secretary, for information and necessary action. The agenda has also been hosted on the website www.sezindia.gov.in

2. The local addressees are requested to kindly make it convenient to attend the Meeting at the said venue and time and other participants may attend through Video Conferencing. A weblink for the same shall be shared by this Department shortly.

Encl: As Above

Vijay 20/05/2022
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1. Department for Promotion of Industry and Internal Trade (DPIIT).
2. CBIC [Member (Customs)], M/o Finance.
3. CBDT [Member (Income Tax)], M/o Finance.
4. DG, DGFT.
5. The Joint Secretary, M/o Environment & Forest.
6. The Joint Secretary, M/o Science & Technology
7. M/o Micro, Small and Medium Enterprises.
8. All DCs.

Copy to: PSO to CS/PPS to AS (AY)/PPS to JS(VB)/PPS to Dir (SNS).

AGENDA FOR THE 3rd BOA MEETING (2022 SERIES) FOR EOU SCHEME TO BE HELD ON 26.05.2022.

3.1(22) Confirmation of Minutes of the 2nd BOA (2022 Series) meeting held on 31.03.2022.

3.2(22) Proposal for splitting LoP of their existing EOU unit into two LoPs - M/s Keva Fragrance Pvt. Ltd., EOU under SEEPZ SEZ.

M/s. Keva Fragrances Pvt. Ltd was granted LOP dated 27.12.1984 as amended for manufacture and export of Flavouring Essence Perfumery Compounds, Aroma Chemicals and Resinoids and Essential Oils- reg. etc. M/s Keva Fragrance Pvt. Ltd. has two units i.e. Unit-I (manufacturing Fragrance Products) and Unit-II (manufacturing Flavour Products) located on separate plots in Mumbai under same LoP dated 27.12.1984. Both the units have separate entry and exit. The said LoP is valid upto 31.03.2025.

M/s Keva Fragrance Pvt. Ltd. intends to transfer their Unit-II which is engaged in manufacturing Flavour products to M/s Keva Flavours Pvt. Ltd. without debonding their unit-II from EOU Scheme. In this regard, the unit want to split their LOP dated 27.12.1984 and envisages a separate LOP for Unit-II in the name of M/s Keva Flavours Pvt. Ltd. The Directors of both the proposed EOUs are common.

It may be noted that there is no provision available for spitting/transfer of LOP of an EOU in <u>FTP 2015-20</u> read with HBP 2015-20. Subsequently, the matter was referred to DGFT.

In this regard, DGFT informed that they had taken up the matter with DoR and SEEPZ SEZ. DGFT has submitted that Jurisdictional Customs Authorities and the Principal Commissioner of Customs, Preventive (Mumbai), vide their letter dated 12.02.2022 has recommended the proposal for a one-time relaxation subject to the following conditions:

i. M/s. Keva Fragrances Pvt. Ltd. may be asked to discharge/nullify their Bond, executed for Unit –II (Flavours Divisions).
ii. For inter-unit transfer of goods from existing Unit-II to newly formed Unit, may be done after evaluation by Chartered Engineer and following the provisions of Para 6.13 of FTP.
iii. Certain common Capital Goods "fixed to earth' involved and duty component thereof need be secured. Therefore, the "Capital Goods of Raw Material/Manufactured goods' to be transferred will be compared under provisions of Para 6.13 of FTP, which explicitly provides the duty discharging arrangements pertaining to such Inter Unit Transfer. And the conditions emphasized under Para 6.13, stipulates that,

a. The inter-unit transfer from one EOU Unit to another is allowed on payment of applicable GST and compensation cess with due and prior intimation to the Development Commissioner as well as Customs Authorities. In other words, every time when goods are to be transferred between Unit-I & II, the applicable GST and compensation cess shall be worked out and be discharged without fail.

b. The supplier EOU shall endorse on usual commercial documents, such as, tax invoice and delivery challan, the amount of duties of Customs leviable &availed as exemption on such goods supplied to another EOU. The recipient EOU shall pay such endorsed Customs duty and applicable GST and compensation cess before clearance of such goods or finished goods manufactured or produced from such goods in DTA, and
c. Upon receipt of goods, the recipient EOU shall submit endorsed copies of tax invoice to their jurisdictional Customs authority as well as to the jurisdictional Customs authorities of the supplier EOU. In the instant case the jurisdictional Customs authority for both the units (after split) would be common.

iv. Undertaking/Declaration may be sought, confirming that, if at any stage, any duty liability arises in future against the existing Unit-II (Flavours Division), and same shall be discharged immediately along with applicable interest and penalty.

Further, DGFT has stated that they have examined the matter in terms of the extant provisions of Chapter 6 of the FTP and HBP and submitted the following points:

(i) The para 6.34(6) of HBP 2015-20 empowers the Development Commissioner to *"authorize change in the name of company or implementing agency and change from a company to another provided new implementing agency/company undertakes to take over assets and liabilities of existing unit"*. Such requests are permitted by DC by granting transfer of LoP in the name of new company/implementing agency on compliance of aforesaid provision.

(ii) However, in the instant case, if LoP is transferred, both units of applicant will get transferred whereas they require only partial transfer i.e. transfer of Unit-II (since Unit-I manufacturing fragrance products need to continue under the existing 100% subsidiary specialized in Fragrance products).

(iii) As there would be no physical movement goods/disruption of export production and the transfer is only in the books of accounts, Keva Flavour Pvt. Ltd, on granting new LOP in its name, will be executing a Legal Undertaking (LUT). Till the date of execution of LUT, the goods in the premises of Unit-II will continue to be covered by the existing LUT, to ensure seamless continuation of obligations of applicant as an EOU.

(iv) The applicant has submitted the export and NFE figures for the period from 2013-14 to 2018-19, approved projections for the existing 5 years block and the proposed revised projections after restructuring.

(v) The following observations appear to be relevant to arriving at a decision in the matter:

- The proposal would have no revenue implication since M/s Keva Fragrance Pvt. Ltd. are not exiting form the EOU scheme.
- The proposal does not envisage physical movement of goods or disruption of export production. The EOU needs the transfer of Unit-II only in the books of accounts.
- Since the Unit-I and Unit-II are located on separate plots, therefore issue of separate LoP for Unit-II is feasible.

- The proposed transfer is from one 100% subsidiary to another 100% subsidiary of the same parent company.
- The proposal envisages a 15% increase in annual exports and 15% increase in direct employment from Unit-II.
- EOU has stated that proposed re-structuring enables them consolidation of operation
- The Directors of 100% subsidiary under which both the units have been operating since inception (Keva Fragrance Private Ltd.) and of the 100% subsidiary of the same parent company to which Unit-II is proposed to be transferred (Keva Flavours Private Ltd.) are common.
- The parent company would remain the same after proposed transfer as transfer is within the group only
- The transfer can be implemented by granting a separate LoP to Unit-II.

Further, in light of the above observation, DGFT stated that the proposal of the subject unit for splitting of LOP may be considered for a decision by BoA.

DC's recommendation: In the light of comments served by jurisdictional Customs Authorities, DGFT and considering that the EOU is not exiting from the EOU scheme and re-structuring envisages 15% increase in annual exports NFE and employment , one time relaxation of the Policy may be considered to grant separate LOP to Unit-II without physical movement of goods on in this case in the name M/s Keva Flavours Pvt. Ltd subject to demarcation of the plot with separate entry and exit and maintaining separate books of accounts.

3.3(22) Proposal for renewal of LoPs of the Plastic Recycling EOU units under KASEZ.

The following four plastic recycling units under jurisdiction of KASEZ has applied for renewal of LoP:

Name of the unit	LoP Expiry date
M/s Prime Exporters	26.07.2022
M/s Aasu Plastic Pvt. Ltd.	
M/s Aaacorp Exim India Pvt. Ltd.	
M/s PMS Exports Pvt. Ltd.	

It may be noted that the policy for plastic recycling units in SEZs & EoUs was formulated in consultation with all concerned stakeholders and issued on 27.05.2021. The policy stipulates that extension/renewal of LOA of existing units would be considered by the BoA for a period of 18 months as per notification dated 27.01.2021 issued by MoEF&CC as well as the conditions as laid down by the MoEF&CC. The above condition that the present permission to import the raw material is only for 18 months would be declared upfront so that the existing units may seek extension/renewal factoring in this condition into their business proposal. Such renewal shall also be subject to the condition that the units shall comply with obligations under other legislations as well as compliance with payment of penalty, if any imposed by competent authority under any statute.

The Board of Approval in its 3rd meeting held on 28.05.2021, decided to extend the validity of LoP of the plastic recycling units upto 26.07.2022 i.e. 18 months from the date of notification of the Hazardous and Other Waste (Management and Transboundary Movement) Amendment Rules, 2021 vide G.S.R. 47(E) dated 27.01.2021 by the MoEF&CC. The Board further directed that the concerned Development Commissioners shall ensure that:

i. The units fulfill all other criteria and there is no violation of FTP 2015-20 read with HBP 2015-20.
ii. The units shall comply with obligation under any other legislation as well as compliance with payment of all the Government dues including rent and penalties, if any, imposed by competent authority under any statute before granting formal orders and renewal.
iii. The policy conditions are strictly adhered to.

Later, in connection to various representations for extending the validity of LoA granted to plastic recycling units in SEZs and EoUs for a term of 5 years in place of 18 months and subsequent stakeholders consultations, the Board of Approval in its 109^{th} meeting held on 31.03.2022 noted that MoEF&CC, vide their notification dated 27.01.2021, had allowed import of 'post industrial or pre-consumer polyethylene wastes' and 'polymethyl methacrylate' by the SEZ units and EOUs only. It was also noted that the import of these items are not permissible to the DTA.

Further, the representative from the MoEF&CC confirmed that import of 'post industrial or pre-consumer polyethylene wastes' and 'polymethyl methacrylate' by the SEZ units and EOUs would not be affected after 18 months from the date of notification. However, the percentage of export obligation may only be decided after review / audit to be undertaken by MoEF&CC / CPCB in accordance with the said notification.

The Board, after deliberations agreed to recommend that DoC may propose policy amendment enabling extension of LoA of such plastic recycling units for 5 years' subject to fulfilment of restrictions / prohibitions / any other rules / regulations imposed by MoEF&CC from time to time on import of plastic waste / scrap by SEZ units / EoUs. Accordingly, DoC may revise policy on the matter issued on 27.05.2021 with the approval of competent authority. The Board further directed that the audit / review of such units may be undertaken by MoEF&CC / CPCB as the case may be immediately on completion of 18 months duration stipulated in MoEF&CC notification dated 27.01.2021.

In the meantime, DoC vide circular dated 05.05.2022 has revised the policy dated 27.05.2021 to the effect that *the LoA of the Plastic Recycling units in SEZs and EoUs may be extended for 5 years by the Board of Approval subject to fulfilment of other conditions/norms. Other conditions of the policy guidelines dated 27.05.2021 in respect of plastic recycling units will remain unchanged.*

In light of the above revised guidelines, the plastic recycling units has applied for renewal of their LOPs for five years.

DC's Recommendation: DC-KASEZ has recommended the proposal for consideration in terms of Appendix 6B of Appendices and Aayat Niryat Forms of FTP 2015-20, extended upto 30.09.2022.