

No. K-43022/26/2025-SEZ  
Government of India  
Ministry of Commerce and Industry  
Department of Commerce  
(SEZ Section)  
\*\*\*\*\*

Vanijya Bhawan, New Delhi  
Dated the 25<sup>th</sup> March, 2025

**OFFICE MEMORANDUM**

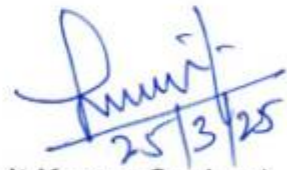
**Subject: 2<sup>nd</sup> meeting (2025 Series) of the Board of Approval for Export Oriented Units and 127<sup>th</sup> Meeting of the Board of Approval (BoA) for Special Economic Zones (SEZs) scheduled to be held on 4<sup>th</sup> April, 2025 (Tentative)- Reg.**

The undersigned is directed to refer to this Department's O.M. of even numbers dated 24<sup>th</sup> February, 2025 and 3<sup>rd</sup> March, 2025 on the subject cited above and to inform that the 2<sup>nd</sup> meeting (2025 Series) of the Board of Approval for Export Oriented Units and 127<sup>th</sup> meeting of the BoA for SEZs which was earlier scheduled to be held on 7<sup>th</sup> March, 2025 is **re-scheduled for 4<sup>th</sup> April, 2025 (Tentative)** under the Chairmanship of Commerce Secretary, Department of Commerce in Hybrid Mode.

2. **The Supplementary Agenda for the 127<sup>th</sup> meeting of the BoA for SEZs is enclosed herewith.** The same has also been hosted on the website: [www.sezindia.gov.in](http://www.sezindia.gov.in).

3. All the addresses are requested to kindly make it convenient to attend the meeting.

4. The venue and meeting link of the aforesaid meeting will be shared shortly in due course.



**(Sumit Kumar Sachan)**

Under Secretary to the Government of India

Tel: 23039829

Email: [sumit.sachan@nic.in](mailto:sumit.sachan@nic.in)

To

1. Central Board of Excise and Customs, Member (Customs), Department of Revenue, North Block, New Delhi. (Fax: 23092628).
2. Central Board of Direct Taxes, Member (IT), Department of Revenue, North Block, New Delhi. (Telefax: 23092107)
3. Joint Secretary, Ministry of Finance, Department of Financial Services, Banking Division, Jeevan Deep Building, New Delhi (Fax: 23344462/23366797).

4. Shri Sanjiv, Joint Secretary, Department of Promotion of Industry and Internal Trade (DPIIT), Udyog Bhawan, New Delhi.
5. Joint Secretary, Ministry of Shipping, Transport Bhawan, New Delhi.
6. Joint Secretary (E), Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi
7. Joint Secretary, Ministry of Agriculture, Plant Protection, Krishi Bhawan, New Delhi.
8. Ministry of Science and Technology, Sc 'G' & Head (TDT), Technology Bhavan, Mehrauli Road, New Delhi. (Telefax: 26862512)
9. Joint Secretary, Department of Biotechnology, Ministry of Science and Technology, 7<sup>th</sup> Floor, Block 2, CGO Complex, Lodhi Road, New Delhi - 110 003.
10. Additional Secretary and Development Commissioner (Micro, Small and Medium Enterprises Scale Industry), Room No. 701, Nirman Bhavan, New Delhi (Fax: 23062315).
11. Secretary, Department of Electronics & Information Technology, Electronics Niketan, 6, CGO Complex, New Delhi. (Fax: 24363101)
12. Joint Secretary (IS-I), Ministry of Home Affairs, North Block, New Delhi (Fax: 23092569)
13. Joint Secretary (C&W), Ministry of Defence, Fax: 23015444, South Block, New Delhi.
14. Joint Secretary, Ministry of Environment and Forests, Pariyavaran Bhavan, CGO Complex, New Delhi - 110003 (Fax: 24363577)
15. Joint Secretary & Legislative Counsel, Legislative Department, M/o Law & Justice, A-Wing, Shastri Bhavan, New Delhi. (Tel: 23387095).
16. Department of Legal Affairs (Shri Hemant Kumar, Assistant Legal Adviser), M/o Law & Justice, New Delhi.
17. Secretary, Department of Chemicals & Petrochemicals, Shastri Bhawan, New Delhi
18. Joint Secretary, Ministry of Overseas Indian Affairs, Akbar Bhawan, Chanakyapuri, New Delhi. (Fax: 24674140)
19. Chief Planner, Department of Urban Affairs, Town Country Planning Organisation, Vikas Bhavan (E-Block), I.P. Estate, New Delhi. (Fax: 23073678/23379197)
20. Director General, Director General of Foreign Trade, Department of Commerce, Udyog Bhavan, New Delhi.
21. Director General, Export Promotion Council for EOUs/SEZs, 8G, 8<sup>th</sup> Floor, Hansalaya Building, 15, Barakhamba Road, New Delhi - 110 001 (Fax: 223329770)
22. Dr. Rupa Chanda, Professor, Indian Institute of Management, Bangalore, Bennerghata Road, Bangalore, Karnataka
23. Development Commissioner, Noida Special Economic Zone, Noida.
24. Development Commissioner, Kandla Special Economic Zone, Gandhidham.
25. Development Commissioner, Falta Special Economic Zone, Kolkata.
26. Development Commissioner, SEEPZ Special Economic Zone, Mumbai.
27. Development Commissioner, Madras Special Economic Zone, Chennai
28. Development Commissioner, Visakhapatnam Special Economic Zone, Visakhapatnam
29. Development Commissioner, Cochin Special Economic Zone, Cochin.
30. Development Commissioner, Indore Special Economic Zone, Indore.



31. Development Commissioner, Mundra Special Economic Zone, 4<sup>th</sup> Floor, C Wing, Port Users Building, Mundra (Kutch) Gujarat.
32. Development Commissioner, Dahej Special Economic Zone, Fadia Chambers, Ashram Road, Ahmedabad, Gujarat
33. Development Commissioner, Navi Mumbai Special Economic Zone, SEEPZ Service Center, Central Road, Andheri (East), Mumbai – 400 096
34. Development Commissioner, Sterling Special Economic Zone, Sandesara Estate, Atladra Padra Road, Vadodara - 390012
35. Development Commissioner, Andhra Pradesh Special Economic Zone, Udyog Bhawan, 9<sup>th</sup> Floor, Siripuram, Visakhapatnam – 3
36. Development Commissioner, Reliance Jamnagar Special Economic Zone, Jamnagar, Gujarat
37. Development Commissioner, Surat Special Economic Zone, Surat, Gujarat
38. Development Commissioner, Mihan Special Economic Zone, Nagpur, Maharashtra
39. Development Commissioner, Sricity Special Economic Zone, Andhra Pradesh.
40. Development Commissioner, Mangalore Special Economic Zone, Mangalore.
41. Development Commissioner, GIFT SEZ, Gujarat
42. Commerce Department, A.P. Secretariat, Hyderabad – 500022. (Fax: 040-23452895).
43. Government of Telangana, Special Chief Secretary, Industries and Commerce Department, Telangana Secretariat Khairatabad, Hyderabad, Telangana.
44. Government of Karnataka, Principal Secretary, Commerce and Industry Department, Vikas Saudha, Bangalore – 560001. (Fax: 080-22259870)
45. Government of Maharashtra, Principal Secretary (Industries), Energy and Labour Department, Mumbai – 400 032.
46. Government of Gujarat, Principal Secretary, Industries and Mines Department Sardar Patel Bhawan, Block No. 5, 3rd Floor, Gandhinagar – 382010 (Fax: 079-23250844).
47. Government of West Bengal, Principal Secretary, (Commerce and Industry), IP Branch (4<sup>th</sup> Floor), SEZ Section, 4, Abanindranath Tagore Sarani (Camac Street) Kolkata – 700 016
48. Government of Tamil Nadu, Principal Secretary (Industries), Fort St. George, Chennai – 600009 (Fax: 044-25370822).
49. Government of Kerala, Principal Secretary (Industries), Government Secretariat, Trivandrum – 695001 (Fax: 0471-2333017).
50. Government of Haryana, Financial Commissioner and Principal Secretary), Department of Industries, Haryana Civil Secretariat, Chandigarh (Fax: 0172-2740526).
51. Government of Rajasthan, Principal Secretary (Industries), Secretariat Campus, Bhagwan Das Road, Jaipur – 302005 (0141-2227788).
52. Government of Uttar Pradesh, Principal Secretary, (Industries), Lal Bahadur Shastri Bhawan, Lucknow – 226001 (Fax: 0522-2238255).
53. Government of Punjab, Principal Secretary Department of Industry & Commerce Udyog Bhawan), Sector -17, Chandigarh- 160017.
54. Government of Puducherry, Secretary, Department of Industries, Chief Secretariat, Puducherry.
55. Government of Odisha, Principal Secretary (Industries), Odisha Secretariat, Bhubaneshwar – 751001 (Fax: 0671-536819/2406299).

56. Government of Madhya Pradesh, Chief Secretary, (Commerce and Industry), Vallabh Bhavan, Bhopal (Fax: 0755-2559974)
57. Government of Uttarakhand, Principal Secretary, (Industries), No. 4, Subhash Road, Secretariat, Dehradun, Uttarakhand
58. Government of Jharkhand (Secretary), Department of Industries Nepal House, Doranda, Ranchi – 834002.
59. Union Territory of Daman and Diu and Dadra Nagar Haveli, Secretary (Industries), Department of Industries, Secretariat, Moti Daman – 396220 (Fax: 0260-2230775).
60. Government of Nagaland, Principal Secretary, Department of Industries and Commerce), Kohima, Nagaland.
61. Government of Chattishgarh, Commissioner-cum-Secretary Industries, Directorate of Industries, LIC Building Campus, 2<sup>nd</sup> Floor, Pandri, Raipur, Chhattisgarh (Fax: 0771-2583651).

Copy to: PPS to CS / PPS to AS (LSS) / PPS to JS (VA)/ PPS to Dir (GP).



**Supplementary Agenda for the 127<sup>th</sup> meeting of the Board of Approval  
for Special Economic Zones (SEZs)**

**Agenda item no. 127.9:**

**Request for extension of LoA of SEZ Unit [2 proposals – 127.9(i)-127.9(ii)]**

**Relevant Rule position:**

- As per Rule 18(1) of the SEZ Rules, the *Approval Committee may approve or reject a proposal for setting up of Unit in a Special Economic Zone.*
- Cases for consideration of extension of Letter of Approval i.r.o. units in SEZs are governed by Rule 19(4) of SEZ Rules.
- Rule 19(4) states that LoA shall be valid for one year. First Proviso grants power to DCs for extending the LoA for a period not exceeding 2 years. Second Proviso grants further power to DCs for extending the LoA for one more year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete and a Chartered Engineer's certificate to this effect is submitted by the entrepreneur.
- Extensions beyond 3<sup>rd</sup> year (or beyond 2<sup>nd</sup> year in cases where two-third activities are not complete) and onwards are granted by BoA.
- BoA can extend the validity for a period of one year at a time.
- There is no time limit up to which the Board can extend the validity.

**127.9(i) Request of M/s. Nutana Aviation Capital IFSC Pvt. Ltd. in the GIFT-SEZ for extension of Letter of Approval beyond 3 years i.e. upto 10.08.2025.**

**Jurisdictional SEZ – GIFT SEZ / GM, IFSCA**

**Facts of the case:**

LoA issued on (date)	:	11.08.2021
Nature of business of the unit	:	Aircraft Leasing activities as per Circular F.No. 172/IFSCA/Finance Company Regulations/2022-23/01 dtd. 18.05.2022
Number of extensions	:	1 (total extension given for 2 years) 1 <sup>st</sup> extension upto 10.08.2024 by DC, GIFT SEZ
LoA valid up	:	10.08.2024
Request	:	For further extension for 1 year i.e. upto 10.08.2025

**Present Progress:**

a. Details of Business plan:

S. No	Type of Cost	Proposed Investment (Rs. In Crores)	Total investment made so Far (Rs. In Crores)
1	Cost of project	<b>200 Crores</b>	18 crores (Investment Amount includes the Security Deposit amt, Inspection charges of Aircraft, Due Diligence Charges, etc. in respect of ongoing Hawker aircrafts)

b. Incremental Investment made so far and incremental investment since the last extension:

S. No	Type of Cost	Total investment made so Far (In Rs.)	Incremental investment since the last extension (In Rs.)
1	Incorporation expenses and rent and consultancy fees.	40,00,000/-	15,00,000/-
2	Fees/stamp duty of increase in Authorized Capital	0	0



c. Details of physical progress till date:

Sl. No	Activity	% Completion	% Completion during last one year	Deadline for completion of balance work
1	IEC of the Unit has been obtained	100	100	Not Applicable
2	GST of the Unit	100	100	Not Applicable
3	Bond Cum Legal Undertaking for the IFSC Unit	100	100	Not Applicable
4	Lease Deed for the IFSC Unit	0	0	Not Executed

d. Details of operational progress under IFSCA Regulations till date:

Sl. No	Activity	% Completion	% Completion during last one year	Deadline for completion of balance work
1	Identification of aircraft to be acquired	100	100	NA
2	Execution of agreement for acquisition of aircraft	0	0	NA
3	Execution of agreement (or) LOI for leasing-out the acquired aircraft	0	0	NA
4	Sourcing of credit/ finance for acquisition of aircraft	0	0	NA
5	Security Deposit Paid for the Aircraft (Already paid 1 Lakhs USD, in respect purchase of aircrafts)	100	100	31.12.2025
5	Details of appointment of Principal Officer and Designated Director in the IFSC unit	The Unit has informed that Mr. Sanjay Natvarlal Mandavia, Director of the Company is acting as the Principal Officer and Designated Director of the Unit. <b>However as per the IFSCA guidelines, the Designated Director and the Principal Officer has to be a different person</b>		

### **Reasons for the delay as per the Unit:**

1. The Unit has submitted that they have made significant progress towards commencing their business operations and that they have already signed the agreement for acquiring the necessary aircrafts and paid the security deposit money to them for such agreed aircrafts.
2. Furthermore, they were in the process of starting operations by leasing a propeller blade to Big Charter Private Limited. However, there was some confusion regarding the transaction and whether it should be considered under the commencement of operations. As a result, they decided to reverse the transaction to avoid any potential issues.
3. From the facts on records, it can be seen that the Unit has made statutory compliances (as narrated in the para 4 above) mandated for a IFSCA Unit.
4. Further the unit has submitted, they have already made an investment of Rs. 18 Crores (Investment Amount includes the Security Deposit amt, Inspection charges of Aircraft, Due Diligence charges, etc. in respect of ongoing Hawker aircrafts.) in their project till now. They have also invested Rs. 40 lacs towards incorporation expenses and rent and consultancy fees and USD 1 lac as security deposit towards purchase of Aircraft.

### **Findings Noted in the Unit:**

Some non-compliances also observed on the part of the Unit are as below:

1. The Unit has not executed the lease deed for the premises on which they were issued the initial Letter of Approval by the DC, GIFT SEZ.
2. The Co-Developer therefore has cancelled the PLOA of the premises issued to the Unit at the time of application for setting up of the Unit. The Co-developer has informed that the said premises has been re-allotted to another Unit. Thus, at present, the Unit has no allotted space to operate in the SEZ.
3. The Unit has also not made the payment of IFSCA fees for the year 2024-25. The annual fees for the year 2024-25 alongwith late payment charges and interest, is outstanding from the Unit.
4. Mr. Sanjay Natvarlal Mandavia, Director of the Company is acting as the Principal Officer and Designated Director of the Unit. But as per the IFSCA guidelines, the Designated Director and the Principal Officer has to be different persons.

### **Recommendation by DC, GIFT SEZ:**

DC, GIFT SEZ has **proposed** that the request for extension of LOA for the period upto 10.08.2025 may be placed for the consideration of the BOA taking all the facts into account.



127.9(ii) Request of M/s. Wockhardt Ltd. Unit 2, located at Plot No. 6 A, in Wockhardt Infrastructure Development Ltd.-SEZ, Shendre, Aurangabad, Maharashtra, for extension of Letter of Permission (LoP) dated 25.02.2013, beyond 11<sup>th</sup> year, for the period of one year, from 01.03.2025 up to 28.02.2026.

#### Jurisdictional SEZ – SEEPZ SEZ

#### Facts of the case:

LoA Issued on (date)	:	25.02.2013
Nature of business of the unit	:	Manufacturing of Nasal and Inhaler Dosage Form for Human usage, Human Insulin and Insulin Glargine.
No. of Extensions	:	11 extensions granted – 3 by DC and 8 by BoA
LoA Valid upto (date)	:	28.02.2025
Request	:	For further extension for one year, up to 28.02.2026

#### Present Progress:

##### A. Details of Business plan:

Sr. No.	Type of cost	Proposed Investment (Rs. in Cr.)
1	Plant & Machinery	85.80
2	Buildings	1.56
3	R & D Labs Equipments	1.21
4	Computers-Office Equipments	0.33
	<b>Total Capital Investment</b>	<b>88.90</b>

##### B. Position of capital investment by Wockhardt Ltd.

Sr. No.	Particulars.	Total investment made so far (Rs. in Crores)
1	Up to December 2023 (i.e. upto Last extension)	88.90
2	After January 2024(till 31 <sup>st</sup> December 2024)	NIL (Increment)
3	<b>Total capital investment (till 31<sup>st</sup> December 2024)</b>	<b>88.90</b>
4	% wise increase	—

### C. Details of physical progress till date:

- i. The Unit has submitted that there is no change with regards to physical progress as the construction activities of the Unit have already been completed and the plant and machinery has been fully installed to its capacity.
- ii. The Unit has not commenced operation as they are awaiting approval from regulatory bodies.
- iii. However, M/s. Wockhardt Ltd is committed to make the unit operational and therefore they had taken broad banding permission for including additional products i.e Human insulin and Insulin Glarine in their LOA with the approval of UAC.

Sr. No.	Activity	Total Area	Deadline for completion of work
1	Approved area	3900.90 Sq. Mtrs.	The construction activity of project is already completed.
2	Area constructed so far	3900.90 Sq. Mtrs.	
3	Incremental area since last extension	Nil	
4	% wise progress since last extension	Nil	

### Detailed reasons for delay:

- i. The Specified Officer vide inspection report dated 30.01.2025, reported that the construction activities along with installation of necessary plant and machineries required for smooth operation has been completed by the Unit and the progress of the work done by the unit is found satisfactory.
- ii. Since the unit will be manufacturing Nasal and Inhaler Dosage only for export for which approvals from the regulatory authorities of countries to which the products will be exported has to be obtained, they have been regularly applying to USFDA for inspection and paying fee for the same.
- iii. They have applied to USFDA for product approval for the current year also valid upto 31.12.2025.
- iv. They have further stated that as a substantial step in order to make their unit operational, they had taken broad banding permission for additional product i.e Human Insulin in their LOA.
- v. The unit has submitted an installation certificate dated 30.12.2024 issued by Mrs. Swapna Khandekar, Chartered Engineer along with Asset verification, annexure showing the list of equipments certifying that the machinery and equipments have been installed in the said unit.
- vi. The unit has stated that the broad banding of Insulin line is in process and they are hopeful that post transferring of line and obtaining statutory and regulatory approval they shall be able to make their unit operational within 16 to 18 months.



**Details from CE's Certificate:**

The Unit has submitted Chartered Engineer's Certificate (Mrs. Swapna Khandekar, registration No. CA/2001/28101) dated 30.12.2024. The details mentioned in the CE's Certificate are as follows:

- Approved area as per approved plan: 3900.90 sq. mtrs.
- Constructed area so far: 3900.90 sq. mtrs.
- Incremental area since last LOA approval: NIL
- Area of difference in % - NIL (Construction completed in last extension of LOA)
- Material used are of approved quality
- All structural work including brick walls, roofing, plastering, etc. are being implemented to satisfaction.
- Capital Equipments, Instrument, Machineries & Utilities are installed in the unit II (OSD) facility.

**Recommendation by DC, SEEPZ SEZ:**

DC SEEPZ-SEZ has recommended the request for extension of LoP for a period of one year up to 28.02.2026 as per Rule 19(4) of SEZ Rules, 2006 to BoA for its consideration.

**Agenda Item No. 127.10:**

**Request for Co-Developer status [ 3 proposals- 127.10(i) - 127.10(iii)]**

**Relevant provision:** In terms of sub-section (11) under Section 3 of the SEZ Act, 2005, *Any person who or a State Government which, intends to provide any infrastructure facilities in the identified area or undertake any authorized operation after entering into an agreement with the Developer, make a proposal for the same to the Board for its approval.*



**127.10(i) Request of M/s. FocusR Consultancy and Technologies (P) Ltd., Co-Developer status in M/s. ELCOT, Salem-Tamil Nadu-MEPZ**

**Jurisdictional SEZ – MEPZ SEZ**

**Facts of the case:**

1.	Name of the Developer & Location	Electronics Corporation of Tamil Nadu Limited, Jagirammalayam, (IT-SEZ), Salem, Tamil Nadu-636 302.
2.	Date of LoA to Developer	F. 1/57/2007-SEZ dated 26 July,2007
3.	Sector of the SEZ	Specific Sector-IT/ITES
4.	Date of Notification	30.04.2008
5.	Total notified area (in Hectares)	21.5819 (Hectares)
6.	Whether the SEZ is operational or not	Operational
	(i). If operational, date of operationalization	1 April, 2019
	(ii). No. of Units	Nineteen (19 Numbers)
	(iii). Total Exports & Imports for the last 3 years (Rs. in Cr.)	Total Exports: INR 359.69 Total Imports: INR 45.51
	(iv). Total Employment (In Nos.)	1700 numbers
7.	Name of the proposed Co-developer	M/s. FocusR Consultancy and Technologies (P) Limited, ELCOT, Salem.
8.	Details of Infrastructure facilities / authorized operations to be undertaken by the co-developer	To build office space For setting up Services including Cafeteria, recreation area.
9.	Total area (in Hectares) on which activities will be performed by the co-developer	0.40 (Hectares)
10.	Proposed investment by the Co-developer (Rs. in Cr.)	INR 15.00 Cr.
11.	Net worth of the Co-developer (Rs. in Cr.)	INR 21 Cr.
12.	Date of the Co-developer agreement	14.02.2025

**Recommendation by DC, MEPZ:**

The proposal of M/s. FocusR Consultancy and Technologies (P) Ltd, Plot No. 13, Electronics Corporation of Tamil Nadu Limited, Jagirammalayam, Salem-636 302, for grant of Co-Developer status in M/s. ELCOT-SEZ, Salem has been recommended by the Development Commissioner, MEPZ SEZ for consideration in the BOA meeting.

**127.10(ii) Request of M/s. Clothesline and Colours Apparels Private Limited., Co-Developer status in M/s. Mahindra World City Developers Limited, Plot 7, Anjur Village, Chengalpet District**

**Jurisdictional SEZ – MEPZ SEZ**

**Facts of the case:**

1.	Name of the Developer & Location	Mahindra World City Developers Limited, 17/18, Mahindra Towers, Pattullous Road, Chennai, Tamilnadu, India – 600 002
2.	Date of LoA to Developer	2(5)/2004-EPZ-08/09/2024
3.	Sector of the SEZ	Multi sector SEZ
4.	Date of Notification	26.10.2004
5.	Total notified area (in Hectares)	246.333 Ha
6.	Whether the SEZ is operational or not	Operational
	(i). If operational, date of operationalization	08.01.2005
	(ii). No. of Units	35
	(iii). Total Exports & Imports for the last 5 years (Rs. in Cr.)	Exports (In Cr.) - Imports (In Cr.) -
	(iv). Total Employment (In Nos.)	12446
7.	Name of the proposed Co-developer	M/s. Clothesline and Colours Apparels Private Limited
8.	Details of Infrastructure facilities / authorized operations to be undertaken by the co-developer	The Co-Developer seeks approval to develop a Free Trade Warehousing Zone (FTWZ) within Mahindra World City SEZ, Chengalpattu, on a land area of 1.01171 hectares (2.50 acres)., in accordance with the No Objection Certificate (NOC) issued by the Developer.
9.	Total area (in Hectares) on which activities will be performed by the Co-Developer	1.01171 Ha
10.	Proposed investment by the Codeveloper (Rs. in Cr.)	₹ 18.43 Crore
11.	Net worth of the Co-developer (Rs. in Cr.)	₹ 156.93 crore
12.	Date of the Co-developer agreement	10.01.2025

**Recommendation by DC, MEPZ:**

The proposal of M/s. Clothesline and Colours Apparels Private Limited, Plot No. AP 6, Anjur Village, Chengalpet Taluk - 603002 for grant of Co-Developer status in Mahindra World City SEZ has been recommended by the Development Commissioner, MEPZ SEZ for consideration in the BOA meeting.



**127.10(iii) Request of M/s. Intimex Fashions Private Limited, Co-Developer status in M/s. Mahindra World City Developers Limited, Plot 7, Anjur Village, Chengalpet District**

**Jurisdictional SEZ – MEPZ SEZ**

**Facts of the case:**

1.	Name of the Developer & Location	Mahindra World City Developers Limited, 17/18, Mahindra Towers, Pattullous Road, Chennai, Tamilnadu, India – 600 002
2.	Date of LoA to Developer	2(5)/2004-EPZ-08/09/2024
3.	Sector of the SEZ	Multi sector SEZ
4.	Date of Notification	26.10.2004
5.	Total notified area (in Hectares)	246.333 Ha
6.	Whether the SEZ is operational or not	Operational
	(i). If operational, date of operationalization	08.01.2005
	(ii). No. of Units	35
	(iii). Total Exports & Imports for the last 5 years (Rs. in Cr.)	Exports (In Cr.) - Imports (In Cr.) -
	(iv). Total Employment (In Nos.)	12446
7.	Name of the proposed Co-developer	M/s. Intimex Fashions Private Limited
8.	Details of Infrastructure facilities / authorized operations to be undertaken by the co-developer	The Co-Developer seeks approval to develop a Free Trade Warehousing Zone (FTWZ) within Mahindra World City SEZ, Chengalpattu, on a land area of 1.01171 hectares (2.50 acres), in accordance with the No Objection Certificate (NOC) issued by the Developer.
9.	Total area (in Hectares) on which activities will be performed by the Co-Developer	1.01171 Ha
10.	Proposed investment by the Codeveloper (Rs. in Cr.)	₹ 18.43 Crore
11.	Net worth of the Co-developer (Rs. in Cr.)	₹ 156.93 crore
12.	Date of the Co-developer agreement	10.01.2025

**Recommendation by DC, MEPZ SEZ:**

The proposal of M/S. Intimex Fashions Private Limited, Plot No. AP 6, Anjur Village, Chengalpet Taluk - 603002 for grant of Co-Developer status in Mahindra World City SEZ has been recommended by the Development Commissioner, MEPZ SEZ for consideration in the BOA meeting.

## **Agenda Item No. 127.11:**

### **Request for Cancellation of Co-Developer status [ 1 proposal-127.11(i)]**

**127.11(i) Request for Cancellation of Co-Developer status of M/s. Berggruen Properties (Nagpur) private Limited for M/s. KGISL SEZ.**

### **Jurisdictional SEZ – MEPZ SEZ**

#### **Facts of the Case:**

1. M/s. Berggruen Properties (Nagpur) Private Limited (KGISL) was allotted 30.42 acres (0.91.0 Ha) of land Vide Ministry letter No.F.2/110/2005-EPZ dated 07.10.2008 and subsequently decreased the area to 2.25 acres vide Ministry letter dated 27.12.2011.
2. M/s. Berggruen Properties (Nagpur) Private Limited has now requested for cancellation of their Co-Developer Status.

#### **Reasons for cancellation of Co-Developer status:**

The Co-developer has stated that since they did not have business opportunities, followed by slowdown in real estate sector and hence they have been forced to Exit from the Co-Developer status.

#### **NOC from the Developer:**

The Developer M/S. KGISL Infrastructures Private Ltd., has submitted the Consent for cancellation of Co-developer status vide letter dated 05.02.2025

#### **Any other information:**

1. In accordance with the request of the Developer (KGISL-SEZ) has confirmed the Lease agreement shall stand cancelled Vide document No. 1050 of 2025 in the registered Office of the Sub-Registrar, Peiyanaickenpalayam, Coimbatore District, Tamil Nadu.
2. Authorised officer from the respective SEZ had submitted a letter dated 25.02.2025 through countersigned by DCC stating there is no dues pending's since all the taxes and duties have been collected from the Co-Developer (M/S. Berggruen Properties (Nagpur) Private Limited).

#### **Rule Position:**

- Section 2 (g) of the SEZ Act 2005, defines Developer as, "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 10 of the said Act provides for Suspension of Letter of Approval and sub-section (3) stipulates that no letter of approval shall be suspended under sub-section (1) 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.

Since the Co-Developer is covered under the definition of Developer, the suspension of LoA of Co-Developer shall also be governed by Section 10 of the SEZ Act. There is no specific provision for cancellation of LoA, however, on the recommendation of the Development Commissioner for such cancellation on the ground of Co-Developer not fulfilling the necessary requirements/ obligations in terms of SEZ Act/ Rules or on the request by the Co-Developer, such cancellation has been considered by the BoA in the earlier cases.

**Recommendation by DC, MEPZ:**

The Development Commissioner has recommended the request of the Developer (KGISL SEZ) for cancellation of Co-Developer status of M/s. Berggruen Properties (Nagpur) Private Limited for consideration by Board of Approval.

**Agenda Item No. 127.12:**

**Request for conversion of Processing Area into Non-Processing Area under Rule 11(B) [ 5 proposals – 127.12(i)-127.12(v)]**

**Rule position:**

- **In terms of the Rule 5(2) regarding requirements of minimum area of land for an IT/ITES SEZ: -**

(b) There shall be no minimum land area requirement for setting up a Special Economic Zone for Information Technology or Information Technology enabled Services, Biotech or Health (other than hospital) service, but a minimum built up processing area requirement shall be applicable, based on the category of cities, as specified in the following Table, namely: –

TABLE

Sl. No.	Categories of cities as per Annexure IV-A	Minimum built-up processing Area
(1)	(2)	(3)
1.	Category 'A' 50,000 square meters	50,000 square meters
2.	Category 'B' 25,000 square meters	25,000 square meters
3.	Category 'C' 15,000 square meters	15,000 square meters

(c) The minimum processing area in any Special Economic Zone cannot be less than fifty per cent. of the total area of the Special Economic Zone.

- **In terms of the Rule 11 B regarding Non-processing areas for IT/ITES SEZ:**

(1) Notwithstanding anything contained in rules, 5,11,11A or any other rule, the Board of Approval, on request of a Developer of an Information Technology or Information Technology Enabled Services Special Economic Zones, may, permit demarcation of a portion of the built-up area of an Information Technology or Information Technology Enabled Services Special Economic Zone as a non-processing area of the Information Technology or Information Technology Enabled Services Special Economic Zone to be called a non-processing area.

(2) A Non-processing area may be used for setting up and operation of businesses engaged in Information Technology or Information Technology Enabled services, and at such terms and conditions as may be specified by the Board of Approval under sub-rule (1),

(3) A Non-processing area shall consist of complete floor and part of a floor shall not be demarcated as a non-processing area.

(4) There shall be appropriate access control mechanisms for Special Economic Zone Unit and businesses engaged in Information Technology or Information Technology Enabled Services in non-processing areas of Information Technology or Information Technology Enabled Services Special Economic Zones, to ensure adequate screening of movement of persons as well as goods in and out of their premises.



(5) Board of Approval shall permit demarcation of a non-processing area for a business engaged in Information Technology or Information Technology Enabled Services Special Economic Zone, only after repayment, without interest, by the Developer, –

(i) tax benefits attributable to the non-processing area, calculated as the benefits provided for the processing area of the Special Economic Zone, in proportion of the built up area of the non-processing area to the total built up area of the processing area of the Information Technology or Information Technology Enabled Services Special Economic Zone, as specified by the Central Government.

(ii) tax benefits already availed for creation of social or commercial infrastructure and other facilities if proposed to be used by both the Information Technology or Information Technology Enabled Services Special Economic Zone Units and business engaged in Information Technology or Information Technology Enabled Services in non-processing area.

(6) The amount to be repaid by Developer under sub-rule (5) shall be based on a certificate issued by a Chartered Engineer.

(7) Demarcation of a non-processing area shall not be allowed if it results in decreasing the processing area to less than fifty per cent of the total area or less than the area specified in column (3) of the table below:

TABLE		
Sl. No. (1)	Categories of cities as per Annexure IV-A (2)	Minimum built-up processing Area (3)
1.	Category 'A' 50,000 square meters	50,000 square meters
2.	Category 'B' 25,000 square meters	25,000 square meters
3.	Category 'C' 15,000 square meters	15,000 square meters

(8) The businesses engaged in Information Technology or Information Technology Enabled Services Special Economic Zone in a non-processing area shall not avail any rights or facilities available to Special Economic Zone Units.

(9) No tax benefits shall be available on operation and maintenance of common infrastructure and facilities of such an Information Technology or Information Technology Enabled Services Special Economic Zone.

(10) The businesses engaged in Information Technology or Information Technology Enabled Services Special Economic Zone in a non-processing area shall be subject to provisions of all Central Acts and rules and orders made thereunder, as are applicable to any other entity operating in domestic tariff area.

- Consequent upon insertion of Rule 11 B in the SEZ Rules, 2006, Department of Commerce in consultation with Department of Revenue has issued Instruction No. 115 dated 09.04.2024 clarifying concerns/queries raised from stakeholders regarding Rule 11B.
- Further, as per the directions of the BoA in its 120<sup>th</sup> meeting held on 18.06.2024, there shall be a clear certification of Specified Office and the Development Commissioner that the Developer has refunded the duty as per the provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated



09<sup>th</sup> April, 2024 issued by DoC. Accordingly, DoC vide letter dated 27.06.2024 has issued one such Certificate to be provided by Specified Officer and Countersigned by Development Commissioner.

- Moreover, in the 122<sup>nd</sup> meeting of the BoA held on 30<sup>th</sup> August, 2024, the Board directed all DCs to ensure the implementation of the checklist (formulated by DoC and DoR) for all the cases including the past cases.

**127.12(i) Request of M/s Gateway Office Parks Pvt. Ltd., Developer, for demarcation of SEZ Processing Built-up area (8278 sq.mtr. including Ground Floor Lobby) as Non-Processing Area in terms of Rule 11 B of SEZ (Fifth Amendment) Rules, 2023**

**Jurisdictional SEZ – MEPZ SEZ**

**Fact of the Case:**

Particulars	Details		
Name of Developer	M/s. Gateway Office Parks Pvt. Ltd		
Address of SEZ	No. 16, G.S.T Road, Perungalathur Village, Chennai, Tamilnadu		
Sector	IT/ITES		
Formal Approval	F.2/92/2006-EPZ dated 16.06.2006		
Total Notified land area (in Hectares)	10.1368 Ha		
Total Built-up area in Processing Area (in Square meters), as informed by the developer.	2,86,777.96		
Building	Config	Total Built up area (In sq. mtrs)	
		Basement/Parking Area	Tower Built up Area
1(A1)	2B+G+08	81,656.01	34,385.42
2(A6)	2B+G+08		35,373.51
3(B3)	2B+G+05		14,217.76
4 (B2)	2B+G+05		15,429.16
5 (B4 & B5)	2B+G+05		33,792.49
6 (B1 & B6)	2B+G+05		35,853.68
25 (A2)	2B+G+11	18,732.13	39,449.27
26 (A3)	2B + G + 11	11,313.34	39,449.27
27 (A4)	2B+G+11	11,091.78	38,827.40
	Total	122,793.26	286,777.96
Total Number of Building constructed in processing area	9 Buildings		
Total area to be demarcated as Non-Processing Area (NPA) out of Built-up area (in Square meter)	10th Floor and 11 <sup>th</sup> Floor of Building 26 (A3) as below along with Ground floor lobby area:		
	Floors	Net BUA (Sq. Mtrs)	
	10th Floor	3,673	
	11 <sup>th</sup> Floor	3,925	
	Ground Floor Lobby	680	
	<b>Total</b>	<b>8278</b>	

Balance Built-up Processing Area after demarcation.	2,78,499.96 sq. Mtrs
Whether minimum built-up processing area norms fulfilled after demarcation?	Yes
List of common Utilities, Infrastructure, Facilities which will remain common after demarcation	<ol style="list-style-type: none"> <li>1. DG set</li> <li>2. Chillers</li> <li>3. HVAC Equipments</li> <li>4. Elevators / Lifts</li> <li>5. Parking Area</li> <li>6. Ground floor Lobby</li> <li>7. Canteen, ATM area</li> <li>8. Other common peripheral area</li> </ol>
Whether any SEZ Unit operating on the area proposed to be demarcated as Non-Processing Area under Rule 11B. If yes, what is the future plan for such SEZ units?	The Developer has confirmed that the building proposed for demarcation as a non-processing area is vacant and no SEZ unit is operational as on date in the said proposed non-processing area.
Status of refund of applicable tax / duty benefits availed on the area proposed for demarcation as Non-Processing Area.	<p>As per Chartered Engineer Certificate and financial statements Minus the financial cost, the Developer has refunded duties/tax liability of Rs. <b>22,52,18,870/-</b> towards Built up NPA area of 8278 Sq Mtrs as well as common infrastructure/facilities of park admeasuring to 70,223.90 Sq. mtrs.</p> <p>No Objection Certificate has been issued by Specified Officer dated: <b>15.02.2025</b>. Checklist and Certificate for refund of duty as per Rule 11B signed by Specified officer and countersigned by Development Commissioner.</p>
Access Control Mechanism for movement of employees & good for IT/ITES Business to be engaged in the area proposed to be demarcated Non-Processing Area.	The developer has mentioned that they shall follow appropriate access control mechanisms for SEZ Unit and of business in Information Technology or Information Technology Enabled Services in non-processing area of Information Technology or Information Technology Enabled Services in special Economic Zones, to ensure adequate screening of movement of persons as well as goods in and out of their premises.



**The following requisite documents have been submitted:**

- i. Duly filled application in the format prescribed vide Instruction No. 115 dated 09.04.2024, for demarcation of proposed built-up Processing Area into Non-Processing Area and recommendation of DC, MEPZ SEZ.
- ii. Chartered Engineer Certificate dated 14.02.2025 issued by Shri Vijay Dattatray Khamkar, Chartered Engineer, Reg. No. F25651, towards calculation of taxes / duty to be refunded by the developer.
- iii. 'No Dues Certificate' issued by Specified Officer vide letter F.No. MEPZ-MSM03(3)/1/2025-SEZ Chennai dated 15.02.2025.
- iv. Certificate of Specified Officer in prescribed format, confirming refund of duty as per provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated 09.04.2024 duly countersignature of DC, MEPZ SEZ.
- v. Checklist for demarcation of NPA, in the format prescribed vide DoC letter dated 09.09.2024 duly signed by Specified Officer and DC, MEPZ SEZ.
- vi. An Undertaking from the Developer to the effect that they shall pay the differential short paid / unpaid duty / tax benefits if any so determined at the later date on being demanded by the department or any statutory authority without any demur or protest w.e.t. repayment of taxes and benefits availed in respect of 8,278 sq. mtr. of built-up area proposed to be demarcated as per Rule 11B of SEZ Rule (fifth Amendment), 2023.

**Recommendation by DC, MEPZ SEZ:**

The proposal of M/s. Gateway Office Parks Pvt. Ltd, the Developer for demarcation of 8278 sq. mtr. including Ground Floor Lobby as well as common infrastructure/facilities of park admeasuring to 70,223.90 Sq. mtrs as Non-Processing Area in terms of Rule 11 B of SEZ (Fifth Amendment) Rules 2023, is recommended and forwarded for consideration of BoA.

**127.12(ii) Request of M/s DLF Info City Chennai Limited, Developer, for demarcation of SEZ Processing Built-up area (18527.18 sq.mtr.) as Non-Processing Area in terms of Rule 11 B of SEZ Rules, amended in 2023.**

**Jurisdictional SEZ – MEPZ SEZ**

**Fact of the Case:**

Particulars	Details		
Name of Developer	DLF Info City Chennai Limited		
Address of SEZ	1/1 24, Shivaji Gardens, Ramapuram, Chennai – 600089, Tamil Nadu		
Sector	IT/ITES		
Formal Approval	F.2/124/2005-EPZ/ DATED 22.06.2006		
Total Notified land area (in Hectares)	15.6508 Ha		
Total Built-up area in Processing Area (in Square meters), as informed by the developer.	9,08,740 Sq.mtr		
Total Built-up area	Building/Tower I Block/Plot No.	No. of floors	Total built-up area ins .mt.
	Block-IA		32,552.02
	Block-I B		31 786.86
	Block-IC		40413.13
	Basements		501525.62
	LT Panel Rm		732.80
	Block-7		41 299.12
	Block-5		57 916.31
	Block-10		66,299.78
	Block-9		1 05 643.87
	Block-4		24 858.07
	Block-3		1 0222344
	Basements		1 77,413.79
	Block-8		34 991 .93
	Basements		10t705.27
	Block-2		38t826.89
	Basements		16 498.80
	Sub -st Block		1989.45
	Block-15		3 642.63
	Block-12		26 1 16.31
	Block 12 Basement		12,996.00
	Block 6 - GKS		31308.00

	Total BUA of the SEZ		9,08,740.00
Total area to be demarcated as Non-Processing Area (NPA) out of Built-up area (in Square meter)	Building [Tower / Block/ Plot No.	No. of floors	Total built-up area (in Sq.mt.)
	Block-IC	2 Floor	4845.10
	Block-I C	3 <sup>rd</sup> Floor	4889.26
	Block- 9A & 9B	Ground Floor	8795.82
	TOTAL		18527.18
Balance Built-up Processing Area after demarcation.	8,56,312 Sq.mtrs.		
Whether minimum built-up processing area norms fulfilled after demarcation?	Yes		
Details of social or commercial infrastructure and other facilities proposed to be used by IT/ITES business engaged in proposed NPA.	The Developer has informed, that the common and commercial infrastructure in the proposed building / blocks, includes car parking, Atrium, ATM, Net Working services, Lifts, stairs, basement, building services control rooms, food court, security access control mechanisms etc.,		
Whether any SEZ Unit operating on the area proposed to be demarcated as Non-Processing Area under Rule 11B. If yes, what is the future plan for such SEZ units?	The Developer has confirmed that the building proposed for demarcation as a non-processing area is vacant and no SEZ unit is operational as on date in the said proposed non-processing area.		
Status of refund of applicable tax / duty benefits availed on the area proposed for demarcation as Non-Processing Area.	As per Chartered Engineer Certificate, the Developer has paid their duties Rs.5,52,01,251/- on 06.12.2024 & left over dues along with appropriate interest paid Rs. 45,75,437/-. No Due Certificate has been issued by Specified Officer on 22.02.2025.		



Access Mechanism of movement of employees & good for IT/ITES Business to be engaged in the area proposed to be demarcated as Non-Processing Area.	Control	The Developer / Co-developer has mentioned that they will maintain the appropriate access control of mechanisms to ensure adequate screening of movement of persons as well as goods in SEZ premises for the SEZ units and business engaged IT/ITES services in the proposed Non processing area.
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**The following requisite documents have been submitted:**

- i. Duly filled application in the format prescribed vide Instruction No. 115 dated 09.04.2024, for demarcation of proposed built-up Processing Area into Non-Processing Area and recommendation of DC, MEPZ SEZ.
- ii. Chartered Engineer Certificate dated 04.12.2024 issued by Shri Chaitanya Jee Srivastava, Chartered Engineer, Id: M-163947-6, towards calculation of taxes / duty to be refunded by the developer.
- iii. 'No Dues Certificate' issued by Specified Officer vide letter F.No. MEPZ-MSM021/65/2024-SEZ Chennai dated 22.02.2025.
- iv. Certificate of Specified Officer in prescribed format, confirming refund of duty as per provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated 09.04.2024 duly countersignature of DC, MEPZ SEZ.
- v. Checklist for demarcation of NPA, in the format prescribed vide DoC letter dated 09.09.2024 duly signed by Specified Officer and DC, MEPZ SEZ.
- vi. An Undertaking from the Developer to the effect that they shall pay the differential short paid / unpaid duty / tax benefits if any so determined at the later date on being demanded by the department or any statutory authority without any demur or protest w.e.t. repayment of taxes and benefits availed in respect of 8,278 sq. mtr. of built-up area proposed to be demarcated as per Rule 11B of SEZ Rule (fifth Amendment), 2023.

**Recommendation by DC, MEPZ:**

The proposal of M/S DLF Info City Chennai Limited, the Developer for demarcation of processing area of 18,527.18 sq.mtr. built-up area as Non-Processing Area in terms of Rule 11 B of SEZ Rules.2006 (amended), is recommended by the Development Commissioner and forwarded for consideration of BOA.

**127.12(iii) Application of M/s. Gigaplex Estate Pvt. Ltd. for Demarcation of Built up Floors as Non Processing Area of a notified IT/ITES SEZ.**

**Jurisdictional SEZ – SEEPZ SEZ**

**Fact of the Case:**

1	Name & Address of the SEZ	M /s. Gigaplex Estate Private Limited, Plot No. IT-5, TTC MIDC Industrial Area, Airoli Knowledge Park, Airoli (W), Navi Mumbai-400708			
2	Letter of Approval No. and date	F.1/5/2011-SEZ dated 06.01.2012			
3	Date of Notification	11 <sup>th</sup> June 2013			
4	Name of the Sector of SEZ for which approval has been given	IT/ITES			
5	Total Notified Area of SEZ	8.04 Hectare Area			
6	Total Area of notified by MoC&I-	8.04 Hectare Area  Nil			
	i. Processing Area- ii. Non Processing Area-				
7	<b>Details of Built-up Area:</b>	<b>Sr. No.</b>	<b>Bldg No. / Tower Nos.</b>	<b>Total No. of floors</b>	<b>BUA as per Approved plan sq mtrs</b>
	i. No. of towers with built-up area of each tower (in sq mtrs)- Total No. of Tower 5 (five) in the SEZ, BUA as per following table	1	2	Basement + Stilt + 2 Parking + 11 office floors	88,156.74
		2	3	Basement + Stilt + 2 Parking + 11 Office floors	93,152.83
		3	4	Basement + Stilt + 2 Parking + 13 Office floors	1,06,301.25
		4	5	Basement + Stilt + 8 Office floors	37,352.16
		5	6	Basement + Stilt + 8 Office floors	42,382.52
				<b>Total</b>	<b>3,67,345.50</b>
	<b>Details of Built up Area already demarcated as NPA is as below:</b>				

		<p>(i) Bldg No.02- total built up area - 9,121.10 sq mtrs demarcated in the 120<sup>th</sup> meeting of the Board of Approval held on 18.06.2024.</p> <p>(ii) Bldg No. 04- total Built up area - 24,883.94 sq mtrs demarcated in the 120<sup>th</sup> and 122<sup>nd</sup> meetings of the Board of Approval held on 18.06.2024 &amp; 30.08.2024 respectively.</p> <p>(iii) Bldg No. 03 &amp; 06- Total Built up area - 21,415.85 sq mtrs &amp; 7,527.02 sq mtrs demarcated in the 122<sup>nd</sup> meeting of the Board of Approval held on 30.08.2024.</p> <p>(iv) Bldg No. 05-total built up area - 37,352.16 sq mtrs demarcated in the 118<sup>th</sup> meeting of Board of Approval held on 06.02.2024</p>		
8	<b>Total Built up Area</b>	<p>i. Processing Area = 2,63,912.66 sq mtrs of total 3,67,345.50 sq mtrs</p> <p>ii. Non Processing Area = 1,00,300.07 sq mtrs</p>		
9	Total number of floors in Bldg wherein demarcation of NPA is proposed :	<b>Sr. No.</b>	<b>Bldg No. and Area</b>	
		1	Bldg No. 6 – 6 <sup>th</sup> Office Floor (Total BUA of Bldg No. 6 is 42,382.52 sq mtrs wherein the area of 7,527.02 sq. mtrs. had already been approved for NPA demarcation by BOA )	
10	Total number of floors proposed for demarcation of NPA for setting up of Non SEZ IT/ITES units.	<b>Sr. No.</b>	<b>Building No.</b>	<b>No. of floors</b>
		1	Bldg No. 06	6 <sup>th</sup> Office floor (3,132.77 sq mtrs)
11	Total Built up area proposed for demarcation of NPA for setting up of Non-SEZ IT/ITES units	<b>Sr. No.</b>	<b>Building No.</b>	<b>Area (in sq mtrs)</b>
		1	Bldg No. 06	3,132.77 square meters
12	Total Built up area already applied / approved for demarcation of NPA for setting up of Non SEZ IT/ITES Units in the IT/ITES SEZ	<p>Bldg No.02 (2 office floors) = 9,121.10 sq mtrs demarcated in the 120<sup>th</sup> meeting of the Board of Approval held on 18.06.2024.</p> <p>Bldg No. 04 (6 office floors) = 24,883.94 sq mtrs demarcated in the 120<sup>th</sup> and 122<sup>nd</sup> meetings of the Board of Approval held on 18.06.2024 &amp; 30.08.2024 respectively.</p> <p>Bldg No. 03 &amp; 06 (5 + 2 Office floors) = 21,415.85 sq mtrs &amp; 7,527.02 sq mtrs demarcated in the 122<sup>nd</sup> meeting of the Board of Approval held on 30.08.2024.</p> <p>Bldg No. 05 (full building) = 37,352.16 sq mtrs demarcated in the 118<sup>th</sup> meeting of Board of Approval held on 06.02.2024</p> <p><b>Total area demarcated as NPA- 1, 00,300.07 sq. mtrs.</b></p>		
13	Total duty benefits and tax exemption availed on the built up area proposed to	Rs. 27,68,602.17 /-		



	be demarcated as NPA, as per Chartered Engineers Certificate (in INR)																						
14	Whether duty benefits and tax exemptions availed has been refunded and NOC from The Specified Officer has been obtained? (Please enclose NOC from The Specified Officer)	Yes, as per NDC received from SO, Gigaplex, total exemptions and benefits availed and refunded is Rs. 52, 06,465.95. Annexure received along with NDC is attached for reference. ** Bldg No. 6 total exemption and benefit availed is Rs. 52, 06,465.95/-																					
15	Reasons for demarcation of NPA	The Office Floor under consideration is vacant due to the decreased demand for SEZ spaces. Given there is demand for Built up Spaces from Non SEZ IT/ITES Clients, NPA demarcation shall help leasing these spaces.																					
16	Total remaining built up area	<table> <tr> <th>Sr. No.</th><th>Building No.</th><th>Area (in sq mtrs)</th></tr> <tr> <td>1</td><td>Bldg No. 2</td><td>79,035.64</td></tr> <tr> <td>2</td><td>Bldg No. 3</td><td>71,736.98</td></tr> <tr> <td>3</td><td>Bldg No. 4</td><td>81,417.31</td></tr> <tr> <td>4</td><td>Bldg No. 5</td><td>Fully demarcated as NPA</td></tr> <tr> <td>5</td><td>Bldg No. 6</td><td>31,722.73</td></tr> <tr> <td></td><td><b>Total</b></td><td><b>2,63,912.66</b></td></tr> </table>	Sr. No.	Building No.	Area (in sq mtrs)	1	Bldg No. 2	79,035.64	2	Bldg No. 3	71,736.98	3	Bldg No. 4	81,417.31	4	Bldg No. 5	Fully demarcated as NPA	5	Bldg No. 6	31,722.73		<b>Total</b>	<b>2,63,912.66</b>
Sr. No.	Building No.	Area (in sq mtrs)																					
1	Bldg No. 2	79,035.64																					
2	Bldg No. 3	71,736.98																					
3	Bldg No. 4	81,417.31																					
4	Bldg No. 5	Fully demarcated as NPA																					
5	Bldg No. 6	31,722.73																					
	<b>Total</b>	<b>2,63,912.66</b>																					
17	Whether total remaining built up area fulfils the minimum built up area requirement as per rule 5 of SEZ Rules 2006?	Yes																					
18	Purpose and usage of such demarcation of NPA	For leasing to Non-SEZ IT/ ITES Clients																					

**The following requisite documents have been submitted:**

- Duly filled application in the format prescribed vide Instruction No. 115 dated 09.04.2024, for demarcation of proposed built-up Processing Area into Non-Processing Area and recommendation of DC, SEEPZ SEZ.
- Chartered Engineer Certificate dated 25.11.2024 issued by Shri S.K. Singh & Associates, Chartered Engineer, Reg. No. M/118968/3, towards calculation of taxes / duty to be refunded by the developer.
- 'No Dues Certificate' issued by Specified Officer vide letter F.No. SEZ1-15/7/2024-CUSTOM-SEEPZ-MUMBAI/00467 dated 09.01.2025.
- Certificate of Specified Officer in prescribed format, confirming refund of duty as per provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated 09.04.2024 duly countersignature of DC, SEEPZ SEZ.
- Checklist for demarcation of NPA, in the format prescribed vide DoC letter dated 09.09.2024 duly signed by Specified Officer and DC, SEEPZ SEZ.
- An Undertaking from the Developer to the effect that they shall pay the differential short paid / unpaid duty / tax benefits if any so determined at the

later date on being demanded by the department or any statutory authority without any demur or protest w.e.t. repayment of taxes and benefits availed in respect of 3132.77 sqmtr. of built-up area proposed to be demarcated as per Rule 11B of SEZ Rule (fifth Amendment), 2023.

### **Key Findings:**

- i. The Developer has repaid Rs. 27,68,605.00/- for Built up Area (i.e. 3132.77 Sq Mtrs) proposed for demarcation as NPA. Rs. 9,251.00/- was refunded as IGST for the period from 01.04.2024 to 31.08.2024.
- ii. Rs. 24,28,613.00/- has been paid for the fit outs (capital goods & consumables) obtained from the SEZ unit i.e. M /s. Accenture Solutions Pvt. Ltd. However, Developer had paid this duty amount on fit outs (Capital Goods & Consumables) obtained from the SEZ-Unit i.e. M /s. Accenture Solutions Pvt. Ltd. on depreciated value. Accordingly, a letter had been issued by the Specified Officer, Gigaplex-SEZ to the Developer to pay the duty of the consumables on un-depreciated value. In this respect, the Developer vide mail dated 12.03.2025 replied to SO that they are in process of calculating the differential duty to be paid and undertake to pay the same within couple of days.
- iii. Also, the Developer has refunded Rs. 2,33,14,289.23/- for common built up area like parking, podium garden, food courts, refuge area, staircases, lift lobbies, etc including capital goods like elevators, HVAC System, chillers power back up systems etc. at the time of earlier NPA proposal of office floors i.e. 7th & 8th of Building No. 06. Further, the Developer has also refunded Rs. 10,31,11,421.82/- for General Development- Boundary wall, Roads, Footpath, Street Light, Storm Water Drainage, Cable Trenches, Gardens, Power Distribution Systems and Network, Gates, Water Supply etc. Hence, the total amount of Rs. 12,64,25,711.05 (Rs. 2,33,14,289.23 + Rs. 10,31,11,421.82) has been refunded for Common BUA of Bldg No. 06 and General Development of SEZ.

### **Recommendation by DC, SEEPZ SEZ:**

The Development Commissioner, SEEPZ SEZ has recommended the proposal of M /s. Gigaplex Estate Private Limited for demarcation of Built up Floors of Building No. 06- 6<sup>th</sup> Office Floor as Non Processing Area of a notified IT/ITES SEZ in terms of Notification No. CG-DL-E-07122023-250457 No. 698 dated 06.12.2023 and Instruction No. 115 dated 09.04.2024 of Ministry of Commerce & Industry to the Board of Approval for consideration.



127.12(iv) M/s. Golden Tower Infratech Private Limited, Developer of IT/ITES SEZ at Plot No. 8, Sector-144, Noida (Uttar Pradesh) – Proposal for demarcation of built-up Processing Area admeasuring '17921.485 Sqmt. at 3<sup>rd</sup>, 7<sup>th</sup> & 8<sup>th</sup> floor, Building No. B-2' into Non-Processing Area under Rule 11B of SEZ Rules, 2006 read with Instruction No. 115 dated 09.04.2024.

### Jurisdictional SEZ – Noida SEZ

#### Fact of the Case:

S. No.	Particulars	Details		
1.	Name and address of the Developer	M/s. Golden Tower Infratech Private Limited Plot No. 8, Sector-144, Noida (Uttar Pradesh)		
2.	Letter of Approval No. and date.	LOA No. F.1/237/2007-SEZ dated 03.09.2008		
3.	Date of Notification	18.12.2008		
4.	Name of the sector of SEZ for which approval has been given.	IT/ITES		
5.	Total Notified land area (in Hectares)	10 hectare		
6.	Total land area of SEZ: (i). Processing Area (ii). Non-Processing Area	8.13 Hectare 1.87 Hectare		
7.	Details of Built-up area in Processing Area:  (i). No. of towers with built-up area in each tower (in Square meter)	<b>Building / Tower / Block No.</b>	<b>No. of floors</b>	<b>Total built-up area (in Sqmt.)</b>
		Building No. B-1	Ground to 8 <sup>th</sup> floor, upper & lower basement area, Meter & Panel Room, Common Area	66099.07
		Building No. B-2	Ground to 8 <sup>th</sup> floor, upper & lower B2 basement area, Service Area	94669.27
		<b>Total:</b>		<b>160768.34</b>
	(ii). Total Built up area :	160768.34 Sqmt.		



	(iii) Area already demarcated as NPA:	17921.485 Sqmt.													
	(iv) Remaining Built-up area:	1,42,846.855 Sqmt.													
8.	Total Built-up area in Sqmt.:	Processing Area: 142846.855 Sqmt. Non-Processing Area: 17921.485 Sqmt. (as demarcated under Rule 11B)													
9.	Total number of floors in the building wherein demarcation of NPA is proposed:	Ground + 8 Floors & 2 Basements													
10.	Total Built-up area proposed to be demarcation of NPA for setting up of Non SEZ IT/ITES Units:	<p>17921.485 Sqmt.</p> <p><u>Common Built-up Area related to above mentioned area proposed for demarcation:</u></p> <ul style="list-style-type: none"> <li>Lower Basement- Partial 7677.470 Sqmt.</li> <li>Area proposed for expansion of Cafeteria 827.030 Sqmt.</li> <li>Cafeteria Washrooms 68.460 Sqmt.</li> <li>Cafeteria Entrance Corridor 46.720 Sqmt.</li> <li>Service Lift Lobby (1) 19.210 Sqmt.</li> <li>Shuttle Lift Lobby (1) 24.840 Sqmt.</li> <li>Shuttle Lift Lobby (2) 24.840 Sqmt.</li> </ul> <p><b>8688.570 Sqmt.</b></p>													
11.	How many floors area proposed for demarcation of NPA for setting up of Non SEZ IT/ITES Units:	<p>3 floors (3<sup>rd</sup>, 7<sup>th</sup> &amp; 8<sup>th</sup> floor, Building No. B-2), as per details given below:</p> <table border="1"> <thead> <tr> <th>Building / Tower / Block No.</th><th>Floor no. to be demarcated as NPA</th><th>Total built-up area (in Sqmt.)</th></tr> </thead> <tbody> <tr> <td rowspan="3">Building No. B-2</td><td>3<sup>rd</sup> floor</td><td>6126.853</td></tr> <tr> <td>7<sup>th</sup> floor</td><td>5667.779</td></tr> <tr> <td>8<sup>th</sup> floor</td><td>6126.853</td></tr> <tr> <td colspan="2"><b>Total:</b></td><td><b>17921.485</b></td></tr> </tbody> </table>	Building / Tower / Block No.	Floor no. to be demarcated as NPA	Total built-up area (in Sqmt.)	Building No. B-2	3 <sup>rd</sup> floor	6126.853	7 <sup>th</sup> floor	5667.779	8 <sup>th</sup> floor	6126.853	<b>Total:</b>		<b>17921.485</b>
Building / Tower / Block No.	Floor no. to be demarcated as NPA	Total built-up area (in Sqmt.)													
Building No. B-2	3 <sup>rd</sup> floor	6126.853													
	7 <sup>th</sup> floor	5667.779													
	8 <sup>th</sup> floor	6126.853													
<b>Total:</b>		<b>17921.485</b>													
12.	Whether copy of Chartered Engineer Certificate has been submitted?	Yes. Chartered Engineer Certificate dated 31.01.2025 of Shri Chaitanya Jee Srivastava, Chartered Engineer Membership No. M-163947-6.													

13.	Total duty benefits and tax exemption availed on the built-up area proposed to be demarcated as NPA, as per Chartered Engineer Certificate:	Rs.8,50,58,671/- (Rupees eight crore fifty lakhs fifty eight thousand six hundred seventy one only)
14.	Whether duty benefits and tax exemption availed have been refunded and NOC from Specified Officer has been obtained?	Yes, Specified Officer vide letter No. GTIPL-SEZ/CUS/Non-Processing Area/01/114 dated 04.03.2025 has issued certificate that Developer has refunded the duty as per the provision of Rule 11 (B) of SEZ Rules, 2006. Authorized Officer has also issued 'No Dues Certificate' C.No. GTIPL-SEZ/Non-Processing Area/01/111 dated 04.03.2025. The Authorized Officer has mentioned that the Developer has paid total duty / tax amounting to Rs.8,50,58,671/- through TR-6 Challan/ DRC-03.
15.	Reasons for demarcation of NPA	To give Non-Processing Area on lease to domestic IT/ITES units who does not wish to setup as SEZ unit.
16.	Whether any SEZ Unit operating on the area proposed to be demarcated as Non-Processing Area under Rule 11B.	-
17.	Remaining Built-up Processing Area after instant proposed demarcation:	1,24,925.37 Sqmtrs.
18.	Whether remaining built-up area fulfils the minimum built-up area requirement as per Rule 5 of SEZ Rules, 2006.	Yes.
19.	Whether application in the format prescribed vide Instruction No. 115 dated 09.04.2024, has been submitted.	Yes.
20.	Whether Certificate of Specified Officer in prescribed format, confirming refund of duty as per provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated 09.04.2024, has been submitted?	Yes
21.	Whether Checklist for demarcation of NPA, in the	Yes



	format prescribed vide DoC letter dated 09.09.2024, duly signed by Specified Officer, has been received.	
22.	Whether required Undertaking has been submitted:	Yes
23.	Access Control Mechanism for movement of employees & good for IT/ITES Business to be engaged in the area proposed to be demarcated as Non-Processing Area.	In checklist, the Specified Officer has mentioned that the Developer has already deployed security personnel for round the clock security with digital smart check facility at SEZ main gate and at each tower level. Further, the Developer has undertaken to issue different colour gate passes and car sticker for both Processing Area and Non-Processing Area.
24.	Purpose and usage of such demarcation of NPA.	To rent out built up space to Non-SEZ IT/ITES Units

**The following requisite documents have been submitted:**

- Duly filled application in the format prescribed vide Instruction No. 115 dated 09.04.2024, for demarcation of proposed built-up Processing Area into Non-Processing Area and recommendation of DC, Noida SEZ.
- Chartered Engineer Certificate dated 31.01.2025 of Shri Chaitanya Jee Srivastava, Chartered Engineer Membership No. M-163947-6, towards calculation of taxes / duty to be refunded by the Developer.
- 'No Dues Certificate' issued by Specified Officer vide C. No. GTIPL-SEZ/CUS/Non-Processing Area/01/10 dated 04.03.2025.
- Certificate of Specified Officer in prescribed format, confirming refund of duty as per provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated 09.04.2024 duly countersignature of DC, NSEZ.
- Checklist for demarcation of NPA, in the format prescribed vide DoC letter dated 09.09.2024 duly signed by Specified Officer and DC, Noida SEZ.
- An Undertaking from the Developer to the effect that they shall pay the differential short paid / unpaid duty / tax benefits if any so determined at the later date on being demanded by the department or any statutory authority without any demur or protest w.r.t. repayment of taxes and benefits availed in respect of built-up area at (3<sup>rd</sup>, 7<sup>th</sup> & 8<sup>th</sup> floor, - Area 17921.485 Sqmt.) of Building No. B-2 of their IT/ITES SEZ at Plot No.8, Sector-144, Noida (U.P.) proposed to be demarcated as per Rule 11B of SEZ Rule (fifth Amendment), 2023.

**Recommendation by DC, NSEZ:**

The Development Commissioner, Noida SEZ has recommended the proposal of M/s. Golden Tower Infratech Private Limited, Developer for demarcation of 17921.485 Sqmt. at 3<sup>rd</sup>, 7<sup>th</sup> & 8<sup>th</sup> floor, Building No. B-2 of the IT/ITES SEZ at Plot No.8, Sector-144, Noida (Uttar Pradesh), into Non-Processing Area, for consideration by the Board of Approval, in terms of Rule 11B of SEZ Rules, 2006, read with Instruction No. 115 dated 09.04.2024.



**127.12(v) Proposal of M/s APIIC Limited, IT/ITES SEZ at Hill No. 3, Madhurwada, Visakhapatnam for demarcation of the built-up area as Non-processing area under Rule – 11(B) of SEZ Rule 2006**

**Jurisdictional SEZ – Visakhapatnam SEZ (VSEZ)**

**Fact of the Case:**

Sr. No	Particulars	Details		
1	Name and address of the Developer:	M/s. Andhra Pradesh Infrastructure Corporation Limited (APIIC) Millennium Towers, IT Hill No. 3, IT SEZ, Madhurwada, Visakhapatnam		
2	Letter of Approval No. and date	Formal Approval No. F.2/61/2006-SEZ Dated 07.04.2006		
3	Date of Notification	Dated 28.12.2006 – 36.00 Ha (notified area) Dated 16.12.2015-29.63 ha (6.37 Ha de-notified) Dated 20.06.2018-32.25 Ha (1.62 Ha additional area)		
4	Name of the sector of SEZ for which approval has been given	IT Sector		
5	Total Notified Area of Special Economic Zone(in Hectare)	36 Hectares		
6	Total Area of i. Processing Area ii. Non processing Area	i. 31.25 Ha ii. 0		
7	Details of Built up area i. No. of towers with built-up area of each tower (in square meter)	1	Xenosoft Technologies India Private Limited	14818.84
		2	Cyient Ltd.	7711.00
		3	Precistat IT Solutions Pvt. Ltd.	10633.00
		4	Infinite Computers Solutions	13275.63
		5	Worldtech Software Solutions Pvt. Ltd.	958.71
		6	E Centric Solutions Pvt. Ltd.	7713.93
		7	IIC Technologies Pvt. Ltd.	16188.00
		8	Trigeo Technologies Pvt. Ltd.	4120.12
		9	Millinneum Tower A	32180.75
		10	Millinneum Tower B	11650.06

8	Total Built up area i. Processing Area -sq. mtrs ii. Non-Processing area – sq. mtrs	i. 119250.04 sq. mts. ii. 0																																																																																				
9	Total No. of Floors in the Building wherein demarcation of NPA is proposed	Tower – A-G+7 floors Tower-B-G+7 floors																																																																																				
10	Total Built up area Proposed for demarcation of NPA for setting up of Non SEZ IT/ITES units	<table><tr><th colspan="3">Millenium tower-A</th><th colspan="3">Millenium tower-B</th></tr><tr><th>Floors</th><th>Built-up</th><th>REMARKS</th><th>Floors</th><th>Built-up</th><th>REMARKS</th></tr><tr><td></td><td>Sqm</td><td></td><td></td><td>Sqm</td><td></td></tr><tr><td>B-2</td><td>6960.07</td><td>Demarcation from PA to NPA</td><td>B-2</td><td>0</td><td></td></tr><tr><td>B-1</td><td>5331.61</td><td>Demarcation from PA to NPA</td><td>B-1</td><td>0</td><td></td></tr><tr><td>Sub total 1</td><td>12291.68</td><td></td><td></td><td></td><td></td></tr><tr><td>Ground</td><td>2710.10</td><td>Demarcation from PA to NPA</td><td>Ground</td><td>1584.05</td><td>Demarcation from PA to NPA</td></tr><tr><td>Sub total 2</td><td>2710.10</td><td></td><td></td><td></td><td></td></tr><tr><td>4</td><td>2509.24</td><td>Demarcation from PA to NPA</td><td>1</td><td>1460.56</td><td>Demarcation from PA to NPA</td></tr><tr><td>5</td><td>2509.24</td><td>Demarcation from PA to NPA</td><td>2</td><td>1511.62</td><td>Demarcation from PA to NPA</td></tr><tr><td>6</td><td>2099.97</td><td>Demarcation from PA to NPA</td><td>3</td><td>1584.05</td><td>Demarcation from PA to NPA</td></tr><tr><td>7</td><td>2099.97</td><td>Demarcation from PA to NPA</td><td>4</td><td>1511.62</td><td>Demarcation from PA to NPA</td></tr><tr><td>Sub total 3</td><td>9218.42</td><td></td><td>5</td><td>1511.62</td><td>Demarcation from PA to NPA</td></tr><tr><td></td><td></td><td></td><td>6</td><td>1243.27</td><td>Demarcation from PA to NPA</td></tr></table>	Millenium tower-A			Millenium tower-B			Floors	Built-up	REMARKS	Floors	Built-up	REMARKS		Sqm			Sqm		B-2	6960.07	Demarcation from PA to NPA	B-2	0		B-1	5331.61	Demarcation from PA to NPA	B-1	0		Sub total 1	12291.68					Ground	2710.10	Demarcation from PA to NPA	Ground	1584.05	Demarcation from PA to NPA	Sub total 2	2710.10					4	2509.24	Demarcation from PA to NPA	1	1460.56	Demarcation from PA to NPA	5	2509.24	Demarcation from PA to NPA	2	1511.62	Demarcation from PA to NPA	6	2099.97	Demarcation from PA to NPA	3	1584.05	Demarcation from PA to NPA	7	2099.97	Demarcation from PA to NPA	4	1511.62	Demarcation from PA to NPA	Sub total 3	9218.42		5	1511.62	Demarcation from PA to NPA				6	1243.27	Demarcation from PA to NPA
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				7	1243.27	Demarcation from PA to NPA
		<b>Grand Total Tower A</b>	<b>24220.20</b>		<b>Grand Total Tower B</b>	<b>11650.06</b>
11	How many floors are proposed for demarcation of NP A for setting up of NON SEZ IT/ITES Units	Tower-A-B-1,2,G. F ,4 <sup>th</sup> to 7 <sup>th</sup> floors Tower-B-G. F to 7 floors				
12	Total Duty benefits and Tax exemption availed on the built area proposed to be demarcated as NPA, as per Chartered Engineers Certificate(In Rupees Crore)	Rs.7,79,61,171/- (Rupees Seven Crore Seventy Nine Lakh Sixty One Thousand One Hundred and Seventy One only)				
13	Whether duty benefits and tax exemptions availed has been refunded and NOC from specified officer has been obtained	Yes				
14	Reasons for demarcation of NPA	<ol style="list-style-type: none"> <li>1. Due to non-achievement of positive Net Foreign Exchange (NFE)</li> <li>2. Due to vacant since construction of building it is proposed to demarcate for further allotment to IT/ITES</li> <li>3. The Government of AP have allotted 2,08,280/- SFT of built up Area at Millennium Towers A&amp;B to TCS for creation of more employment in IT Sector</li> </ol>				
15	Total remaining built up area ..... (in sq. mt.)	83379.38 sq mts				
16	Whether remaining built up area fulfills the minimum built up area requirement as per Rule	Yes				



	5 of SEZ Rules, 2006	
7	Purpose and usage of such demarcation of NPA	IT and ITES

**The following requisite documents have been submitted:**

- i. Duly filled application in the format prescribed vide Instruction No. 115 dated 09.04.2024, for demarcation of proposed built-up Processing Area into Non-Processing Area and recommendation of DC, Visakhapatnam SEZ.
- ii. Chartered Engineer Certificate dated 03.02.2025 issued by Shri Mythri Raviteja, Chartered Engineer, Reg. No. AM181420-9, towards calculation of taxes / duty to be refunded by the developer.
- iii. 'No Dues Certificate' issued by Specified Officer vide letter F.No. 16(6)/2024-SEZ dated 11.02.2025
- iv. Certificate of Specified Officer in prescribed format, confirming refund of duty as per provisions of Rule 11B of SEZ Rules, 2006 and Instruction No. 115 dated 09.04.2024 duly countersigned of DC, VSEZ.
- v. Checklist for demarcation of NPA, in the format prescribed vide DoC letter dated 09.09.2024 duly signed by Specified Officer and DC, VSEZ.
- vi. An Undertaking from the Developer to the effect that they shall pay the differential short paid / unpaid duty / tax benefits if any so determined at the later date on being demanded by the department or any statutory authority without any demur or protest w.e.t. repayment of taxes and benefits availed in respect of 35,870.26 sq. mtr. of built-up area proposed to be demarcated as per Rule 11B of SEZ Rule (fifth Amendment), 2023.

**Recommendation by DC, VSEZ:**

The Development Commissioner has recommended the proposal of M/s. APIIC Limited, IT/ITES SEZ, Hill No. 3, Madhurwada, Visakhapatnam for demarcation of an area of 35,870.26 sq. mts. (2422.20 sq. mtrs. in tower A and 11,650.06 sq. mtrs. in tower-B) as non-processing area for placing the same before the BoA for consideration.

**Agenda Item No. 127.13:****Request for approval of Restricted/Prohibited items [2 proposals-127.13(i)-127.13(ii)]**

**127.13(i) Proposal of M/s. HCL Technologies Limited, Developer for approval of 'Restricted' item to carry on authorized operations in the IT/ITES SEZ at Plot No. 3A, 3B & 2C, Sector-126, Noida (Uttar Pradesh)**

**Jurisdictional SEZ – Noida SEZ**

M/S. HCL Technologies Limited, Developer vide its letter dated 16.01.2025 has submitted a proposal for approval of duty free procurement of 'Refrigerant HFC236FA (Clean Agent Gas)' from DTA under the following authorized operation in the IT/ITES SEZ at Plot No. 3A, 3B & 2C, Sector126, Noida (Uttar Pradesh):

S. No.	Authorized operation /item description	Sl. No. at default list of Autho. Opr. as per Inst. No. 50 & 54	Estimated Cost (Rs. in lakhs)
1	Fire Protection system with sprinklers, Fire and smoke Detectors. i. Refrigerant-HFC236FA (Clean Agent Gas).	21	2.50

The developer has informed that they need to procure this refrigerant HFC236FA (Clean Agent Gas) from DTA supplier for refilling of Clean Agent Fire Extinguishers, which can be used eventually to extinguish the fire without leaving any residual products thus protecting the critical components of Data Centers/Server Rooms and various critical equipment across different Units of their SEZ Campus, in case any fire breaks outs.

**Relevant Provisions:**

- As per Notification No.62/2015-2020 dated 23.03.2022 issued by DGFT, HS Codes 29034600 is 'Restricted' for Export.
- As per Section 2(m)(ii) of the SEZs Act, 2005, supplying goods, or providing services, from the Domestic Tariff Area (DTA) to a Unit or Developer shall be treated as 'Export'.
- Further, as per proviso to Rule 27(1) of SEZ Rules, 2006, 'Supply of Restricted items by a Domestic Tariff Area Unit to Special Economic Zone Developer or Unit, the Domestic Tariff Area Unit may supply such items to a Special Economic Zone Developer or Unit for setting up infrastructure facility or for setting up of a Unit and it may also supply raw materials to Special Economic Zone Unit for undertaking a manufacturing operation except refrigeration, cutting, polishing and blending, subject to the prior approval of Board of Approval.'
- Further, maintenance is included in "infrastructure" vide Rule2(1)(s) of SEZ Rules, 2006.

**Recommendation by DC, NSEZ:**

In view of above, the proposal of M/s. HCL Technologies Limited, Developer for duty free procurement of 'Restricted' items- Refrigerant-HFC236FA (Clean Agent Gas) under HS Codes '29034600' from DTA, to carry on authorized operation in the IT/ITES SEZ at Plot No. 3A, 3B & 2C, Sector-126, Noida (U.P.) is duly recommended by DC, NSEZ to BoA for its consideration, in terms of proviso to Rule 27(1) of SEZ Rules, 2006.



**127.13(ii) Request of M/s Anjum Aromatics, Indore SEZ for import of Raw (unprocessed) Sandalwood (logs/roots) and export of Processed Sandalwood products i.e. Sandalwood Heartwood logs, Sandalwood Heartwood roots, Sandalwood Sapwood and Sandalwood spent dust (de-oiled/refused powder).**

**Jurisdictional SEZ – Indore SEZ (ISEZ)**

**Facts of the case:**

M/s Anjum Aromatics is holding LoA dated 05.02.2016 for manufacturing and export of sandalwood products viz., Sandalwood oil, Sandalwood powder, gully chips, chillan savings, Essential oils, Perfume Compounds, Bakhoor etc. The unit is operational at plot No. F-16, Indore SEZ Phase I and the LoA of the unit is valid up to 31.05.2028.

**Proposal of the Unit:**

- i. Import of Restricted item: The unit has requested for approval to import the following product as per second proviso to Rule 26 of SEZ Rules (if any Permission is required for import under any other law, the same shall be allowed with the approval of Board of Approval): -

S. No.	Item description	HS Code	Annual Requirement	Import	Nature of restriction
1.	Raw (unprocessed) Sandalwood (logs/roots)	44039922	750 Tons	Restricted	Import subject to Import Policy of ITC(HS), policy Condition No.2 of the Chapter 44 of FTP

- ii. Export of Prohibited item: The unit has requested for export of following products which are Prohibited / Restricted in Nature (Approval of BoA is required under fifth proviso to Rule 26 of SEZ Rules): -

S. No.	Item description	Annual Capacity	HS Code	Export	Nature of restriction
1.	Processed Sandalwood Heartwood logs	150 Tons	44039922	Prohibited	Not permitted to be exported (Notification No. 37/2015-20 dated 27.01.2017)
2.	Processed Sandalwood Heartwood roots	100 Tons	44039922	Prohibited	Not permitted to be exported (Notification No. 37/2015-20 dated 27.01.2017)

3.	Sandalwood Sapwood Products viz. Sticks, Shavings, Chips, Powder etc.	350 Tons	12119051	Prohibited	Not permitted to be exported (Notification No. 37/2015-20 dated 27.01.2017)
4.	Sandalwood spent dust (de- oiled)	140 Tons	12119051	Restricted	Export permitted under licence subject to conditionalities as may be notified by the DGFT from time to time (Notification No. 37/2015-20 dated 27.01.2017). As per DoC Instruction No. 47 dated 04.03.2010 export of restricted items is permitted for SEZ units.

### **Relevant Rule position:**

#### **Rule 18 - Consideration of proposals of Unit in an SEZ:-**

(3) The proposal shall also fulfil the following sector specific requirements, namely: -

(a) export of the goods from Special Economic Zones shall be subject to export policy in force, as provided in Schedule 2 to the Indian Trade Classification (Harmonised System) of Export and Import Items, 2017;

#### **Rule 26 - General conditions of Import and Export:-**

A Unit may export goods and services, including agro-products, partly processed goods, sub-assemblies, components, by-products, rejects, waste or scrap except prohibited items of exports indicated in the Import Trade Control (Harmonized System) Classifications of Export and Import items:

Provided further that if any permission is required for import under any other law, the same shall be allowed with the approval of the Board of Approval:

Provided also that Special Economic Zone Units shall be permitted to export prohibited items, if they import raw-material for the same, but each such case shall be placed before Board of Approval for approval:

*Provided also that items which are prohibited for import, Special Economic Zone Units shall be permitted to import the same if they export goods made out of the same but each such case shall be placed before Board of Approval of Approval for approval.*

**Rule 45 – Exports:-**

*(1) A Unit may export goods or services as per the terms and conditions of Letter of Approval including agro-products, partly processed goods, sub-assemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export byproducts, rejects, waste scrap arising out of the manufacturing process.*

*Provided that a unit may export prohibited items to a place outside India with prior approval of Board of Approval: Provided further that such prohibited items cannot be procured from Domestic Tariff Area.*

- In view of the above stated SEZ Rule provisions:

i) **For import of Raw (unprocessed) Sandalwood** (which is under restricted category), permission of Board of Approval is required in terms of second proviso to Rule 26 of the SEZ Rules, 2006, as per details in Table above.

*“If any permission is required for import under any other law, the same shall be allowed with the approval of the Board of Approval”.*

- As import of Sandalwood is restricted as per Import Policy of ITC (HS) Code No. 4403 9922, and import of Sandalwood (santalum album) is subject to Policy Condition 2 of the said Chapter, import proposal shall be placed before BOA for approval.

ii) **For Export of Processed Sandalwood heartwood logs, Sandalwood heartwood roots, Sandalwood sapwood and Sandalwood spent dust (de-oiled)** (which is under prohibited / restricted category), permission of Board of Approval is required in terms of 5<sup>th</sup> Proviso to Rule 26 of SEZ Rules, as per details mentioned in Table -2 above.

*“Provided also that Special Economic Zone Units shall be permitted to export prohibited items, if they import raw material for the same, but each such case shall be placed before the Board of Approval for approval”*

- As export of Processed Sandalwood heartwood logs Sandalwood heartwood roots, Sandalwood sapwood and Sandalwood spent dust (de-oiled) is under prohibited category, and export may be permitted, if they import raw material for the same, but each such case shall be placed before the Board of Approval for approval.



### **Recommendation by DC, Indore SEZ:-**

- In view of the above, the request of M/s Anjum Aromatics may be considered by the BoA for:
  - i. Import of Raw (unprocessed) Sandalwood (logs and roots) falling under HSN code 44039922 which is restricted as per policy Condition No. 2 of Chapter 44 of FTP; and
  - ii. Export of Processed Sandalwood heartwood logs Sandalwood heartwood roots, Sandalwood sapwood and Sandalwood spent dust (de-oiled) which is prohibited / restricted in terms of Rule 26 and 45 of SEZ Rules, 2006
- Board of Approval in its 116<sup>th</sup> meeting held on 05.09.2023, 122<sup>nd</sup> meeting held on 30.08.2024 and 123<sup>rd</sup> meeting held on 04.10.2024 has already allowed import of restricted items and export of prohibited items in the matter of M/s Global Export House, Noida SEZ, M/s Aurascent Essence Pvt. Ltd., Khed City Industrial Park SEZ, Pune and M/s V.M. Maniyar Exports, Surat SEZ, respectively.

Accordingly, the proposal of the unit is duly recommended by DC, Indore SEZ to the BoA for its consideration.

**Agenda item no. 127.14:**

**Proposal for co-developer additional activities [ 1 proposal - 127.14(i)]**

**127.14(i) Request of M/s Indian Strategic Petroleum Reserves Limited, Co-Developer in Mangalore SEZ for inclusion of additional activities in the existing Letter of Approval under broad-banding**

**Jurisdictional SEZ – Cochin SEZ (CSEZ)**

**Facts of the case:**

1.	Name of the Developer & Location	M/s Mangalore Special Economic Zone Limited, Baikampady, Near Mangalore, Dakshin Kannada District, Karnataka State									
2.	Date of LOA to Developer	No.F.2/120/2006-EPZ dated 30 <sup>th</sup> July 2007									
3.	Sector of the SEZ	Multi-product SEZ									
4.	Date of Notification	06.11.2007, 28.06.2011, 18.08.2011, 08.09.2014, 13.11.2017 & 09.02.2022									
5.	Total notified area (in Hectares)	570.708									
6.	Whether the SEZ is operational or not	Operational									
	(i) If operational, date of operationalization	13.01.2014									
	(ii) No. of Units	10									
	(iii) Total Exports & Imports for the last 5 years in crore) -										
		2019-2020		2020-2021		2021-2022		2022-2023		2023-2024	
		Export	Import	Export	Import	Export	Import	Export	Import	Export	Import
		4901.88	244.03	3820.26	1507.79	6066.39	242.41	6817.75	2371.41	7789.78	245.13
	(iv). Total Employment (in Nos)	1650									
7.	Name of the Co-Developer sought approval for Co-Developer status (Existing)	M/s. Indian Strategic Petroleum Reserves Limited, Mangalore Site									
8.	Details of Infrastructure facilities / authorized operations to be undertaken by the co-developer	<b>Existing:</b> Underground strategic crude oil storage in unlined rock caverns (involving creation of underground rock caverns and setting up of above ground process facilities) <b>Proposed additions:</b> <b>Development of FTWZ,</b> <b>Operations &amp; Management of FTWZ.</b>									

9.	Total area (in Hectares) on which activities will be performed by the Co-Developer (Existing)	100.02 Acres
10.	Proposed/carried out investment by the Co-developer (Rs. in crores)	1205.78
11.	Networth of the Co-Developer (Rs. in crore)	3069.67 (as on 31.03.2024)
12.	Date of the Co-Developer agreement	18 <sup>th</sup> November 2009

### Proposal Highlights:

1. M/s. Indian Strategic Petroleum Reserves Limited is a Special Purpose Vehicle (SPV) created by Government of India under Ministry of Petroleum & Natural Gas to secure energy needs of the country.
2. M/s ISPRL was granted Co-Developer status in Mangalore SEZ vide approval No. F.2/120/2006-SEZ dated 12.08.2010.
3. M/s ISPRL submitted the application for inclusion of additional activities in the existing LoA under broad-banding.
4. In this connection, the Co-Developer submits that Ministry of Petroleum & Natural Gas vide letter No.1-22011/7/2018 IC-II dated 14th July 2021 has conveyed that the Cabinet Secretariat in its meeting held on 8th July 2021 has approved the following:
  - Commercialization of ISPRL by allowing ISPRL to undertake following commercial activities with the crude stored in caverns under Phase I of SPR programme i.e.,
    - i. Leasing /Renting of 30% of overall oil storage capacity of caverns to Indian or foreign companies with the condition that in case of any exigency, the GOI will have the first right on the entire crude oil stored in the Caverns
    - ii. Sale/purchase of 200% of overall oil storage capacity of caverns to Indian companies.
5. Based on the approval of the Gol, M/s ISPRL intends to lease/rent the Caverns set up in Mangalore SEZ to Indian and foreign companies.
6. The present approved authorized activities of the co-Developer do not permit them to undertake the leasing/renting of the caverns to the companies as envisaged in the Cabinet Secretariat decision as given above.
7. Hence, the Co- Developer submitted application for inclusion of additional activities of "Development of FTWZ, operations & Management of FTWZ" in the existing Letter of Approval under broad-banding.
8. The Co-Developer has proposed an additional investment of Rs. 1205.78 crore. The network of the company is Rs 3069.67 crore.



**Rule Provision:**

**As per Rule 5(2)(a) of SEZ Rules,** A Special Economic Zone or Free Trade Warehousing Zone other than a Special Economic Zone for Information Technology or Information Technology enabled Services, Biotech or Health (other than hospital) service, shall have a contiguous land area of fifty hectares or more.

**Recommendation by DC, CSEZ:**

The Development Commissioner, Cochin SEZ has recommended the request of M/s Indian Strategic Petroleum Reserves Limited (ISPRL), Co-Developer of Mangalore Special Economic Zone for inclusion of additional activities of "Development of FTWZ, operations & Management of FTWZ" in the existing Letter of Approval under broad-banding and forwarded for consideration of the BoA.

**Agenda Item No. 127.15:**

**Request for notification or partial/full de-notification [3 proposals – 127.15(i)-127.15(iii)]**

**Procedural guidelines on de-notification of SEZ:**

- In terms of first proviso to rule 8 of the SEZ Rules, 2006, *the Central Government may, on the recommendation of the Board (Board of Approval) on the application made by the Developer, if it is satisfied, modify, withdraw or rescind the notification of a SEZ issued under this rule.*
- In the 60<sup>th</sup> meeting of the Board of Approval held on 08.11.2013, while considering a proposal of de-notification, the Board after deliberations decided that henceforth all cases of partial or complete de-notification of SEZs will be processed on file by DoC, subject to the conditions that:
  - (a) DC to furnish a certificate in the prescribed format certifying inter-alia that;
    - the Developer has either not availed or has refunded all the tax/duty benefits availed under SEZ Act/Rules in respect of the area to be de-notified.
    - there are either no units in the SEZ or the same have been de-bonded.
  - (b) The State Govt. has no objection to the de-notification proposal and
  - (c) Subject to stipulations communicated vide DoC's letter No. D.12/45/2009-SEZ dated 13.09.2013.

**Procedural guidelines on additional area notification of SEZs:**

- In terms of section 4 of the SEZ Act, 2005, the Central 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.
- In terms of the second proviso to section 4, the Central Government may, after notifying the Special Economic Zone, if it considers it appropriate, notify subsequently any additional area to be included as a part of that Special Economic Zone.
- In the 40<sup>th</sup> meeting of the BoA held on 08.06.2010, the **Board directed that the proposals for an increase in area up to 10% of the notified area of the SEZ need not be brought before the Board**(refer to the minutes). Consequently, the proposals for an increase in the area up to 10% to the existing notified area are being processed on file and the proposals beyond 10% to the existing notified area are placed before the BoA for its approval and subsequently, processed on file for notification.
- The powers of Hon'ble CIM with regard to proposals for an increase in area (up to and beyond 10%) were delegated to CS on 28.12.2018 and the same was later reaffirmed by Hon'ble CIM on 27.08.2019.

**127.15(i) Proposal of M/s. Dahej SEZ Limited (DSL) for partial de-notification of 529-45-86 Ha out of 1682-40-31 Ha of their multi product SEZ at Dahej, Gujarat**

**Jurisdictional SEZ – Dahej SEZ**

**Facts of the case:**

M/s DSL has requested for decrease in the SEZ area by de-notifying the area on which M/s OPaL is located.

Name of Developer	: M/s. Dahej SEZ Limited (DSL)
Location	: Dahej, Gujarat
LoA issued on (date)	: 21.09.2005 (Formal Approval)
Sector	: Multi Product
Operational or not operational	: Operational
Notified Area (in Hectares)	: 1682-40-31 Ha.
Area proposed for de-notification (in Hectares)	: 529-94-45 Ha.

**Reasons for de-notification proposal:**

M/s. OPaL is exiting from the SEZ, for ensuring viability/ profitability of OPaL due to following reasons:

- *Over the years, the demand for petrochemical products has increased in the domestic market.*
- *Consequently, OPaL has started marketing majority of its products in the domestic Tariff Area (DTA) to meet the needs of the customers in India.*
- *However, all such domestic sales bear customs duty.*
- *The additional expenditure on account of these sales in the DTA is estimated to be between Rs 400- 800 Cr per annum, which is one of the factors contributing to OPaL's losses.*
- *The viability/profitability of OPaL largely depends on its exit from the SEZ. Thus, even the CCEA (Cabinet Committee on Economic Affairs) had noted the relevance of OPaL's exit from SEZ for ensuring its viability.*



### Requisite documents for considering de-notification proposal:

As per DoC's O.M. dated 14.07.2016 regarding required documents for partial de-notification and the status thereof is as below:

S. No.	Documents/Details Required	Status
(i)	Form-C5 for decrease in area along with DC's recommendation	Yes, provided
(ii)	DC's certificate in prescribed format	Yes, (Refer Note:1 Below)
(iii)	Developer's Certificate countersigned by DC	Yes, provided
(iv)	Land details of the area to be de-notified countersigned by DC	Yes, provided
(v)	Colored Map of the SEZ clearly indicating area to be de-notified and left-over area duly countersigned by DC	Yes, provided
(vi)	"No Objection Certificate" from the State Government w.r.t. instructions issued by DoC vide its instruction No D.12/45/2009-SEZ dated 13.09.2013 for partial de-notification shall be complied with	Yes (Refer Note:2 Below)
(vii)	'No Dues Certificate' from specified officer	Yes, provided

**Note:1** DC has provided the conditional certificate.

**Note:2** As per Para 5 of DoC's instructions dated 13.09.2013, in order to prevent any possible misuse of such de-notified parcels of land by the Developers, Department of Commerce will consider only such applications which fulfil the following criteria:

- All such proposal must have an unambiguous 'No Objection Certificate' from State Government concerned.
- State governments may also ensure that such de-notified parcels would be utilised toward creation of infrastructure which would sub-serve the objective of the SEZ as originally envisaged.
- Such land parcels after denotification will conform to Land Use guidelines/master plans of the respective State Governments.

In view of the Point 5(i): The State Government of Gujarat vide letter dated 22.06.2022 has conveyed their No-objection to the proposal and requested to process the application of partial de-notification of an area of 529-45-86 Hectares subject to final judgement of SCA No. 4148 of 2022 and conditions as below:

- M/s. DSL has to fulfil the conditions specified in MOCI letter dated 13.09.2013.
- M/s. DSL has to pay dues of state taxes, duties, levies etc, if any

**However, in relation to Point 5(ii) and 5(iii) of Para 5 of DoC's instructions dated 13.09.2013: The State Government of Gujarat has not provided any clarification.**

## Key Findings in the Proposal:

### 1. DC, Dahej Certification:

- b. The provisional assessment complies with Rule 74 of the SEZ Rules, 2006. Duties have been paid based on this, and the firm has submitted a Bank Guarantee/Bond and an undertaking to cover any duty difference during the final assessment. The UAC approved the Final Exit Order, effective from 08.03.2025.
- c. The Developer availed the following tax/duty benefits under SEZ Act/Rules:
  - i. Customs Duty: Rs. 61,06,334
  - ii. State Tax: Rs. 58,94,800
  - iii. Stamp Duty: Rs. 7,60,50,376

- 2. **Refund and Security:** The Developer has refunded all tax/duty benefits, and submitted a bond of Rs. 1,73,36,260.20 and a Bank Guarantee of Rs. 61,06,335.77.
- 3. **NOC for De-notification:** With regard to NOC from the State Government for de-notification, it has been stated that The Additional Commissioner of State Tax, vide letter dated 05.10.2021 has informed the Office of the Industries Commissioner that M/s. Dahej SEZ Ltd has paid back the benefit of commercial TAX/VAT/GST that it has availed, however, M/s. OPAL (unit situated in proposed de-notified area of the SEZ) has not paid back the benefits of tax and hence, opined to not to give NOC of State Government for denotification. However, the Hon'ble High Court of Gujarat vide oral order dated 16.06.2022 (in SCA File No.4148 of 2022) has instructed the State Government for issue of NOC on the basis of undertaking which shall be filed by OPAL. Accordingly, OPAL has filed an undertaking and accordingly Additional Commissioner of State Tax has given their consent to issue NOC for de-notification of the proposed area vide letter dated 21.06.2022.
- 4. **UAC's Approval:** The UAC confirmed that all issues regarding the unit's exit from SEZ have been addressed, and pending court matters will be complied with as per judicial decisions. Further, the final exit order was approved for 08.03.2025, with the firm transitioning to a DTA unit, losing SEZ exemptions and benefits.
- 5. **Inspection of Partial De-notification Area:** A physical inspection of the partial de-notification area (529.91 Hectares) was conducted on 20.12.2024, with representatives from various departments.
- 6. **Contiguity of Dahej SEZ:** After the de-notification of 529.91 Hectares, Dahej SEZ will retain 1152.4925 Hectares, maintaining the required minimum land area for the SEZ.

**Recommendation by DC, Dahej SEZ:**

The Development Commissioner, Dahej SEZ has recommended the request of Developer i.e M/s Dahej SEZ Limited, for partial de-notification of 529.4586 Hectares from the existing notified area of 1682.4031 Hectares and forwarded for consideration of the BoA.



**127.15(ii) Proposal of M/s. Electronics Corporation of Tamil Nadu Ltd. (ELCOT) for partial de-notification of 13.297 Ha out of 152.66 Ha of their IT/ITES SEZ at Sholinganallur, Chennai, Tamil Nadu.**

**Jurisdictional SEZ – MEPZ SEZ**

**Facts of the case:**

M/s ELCOT IT/ITES, Developer of ELCOT, Sholinganallur, Chennai, Tamil Nadu is seeking decrease in area/ partial de-notification of 13.297 hectares (32.86 acres) area in the SEZ out of the existing total notified area of 152.66 Hectares (377.08 acres) of SEZ.

Name of Developer	: M/s. Electronics Corporation of Tamil Nadu Ltd. (ELCOT)
Location	: Sholinganallur, Chennai, Tamil Nadu
LoA issued on (date)	: 30.05.2006 (Formal Approval)
Sector	: IT/ITES
Operational or not operational	: Operational with 60 units and 29,905 employments (in Nos.)
Notified Area (in Hectares)	: 152.66 Ha.
Area proposed for de-notification (in Hectares)	: 13.297 Ha.

**Reasons for de-notification proposal:**

M/s ELCOT has received requests from reputed Non IT Companies for allocation of land for establishing their operations which come under Non SEZ.

**Requisite documents for considering de-notification proposal:**

- As per DoC's O.M. dated 14.07.2016 regarding required documents for partial de-notification and the status thereof is as below:

S. No.	Documents/Details Required	Status
(i)	Form-C5 for decrease in area along with DC's recommendation	Yes, provided
(ii)	DC's certificate in prescribed format	Yes, provided
(iii)	Developer's Certificate countersigned by DC	Yes, provided
(iv)	Land details of the area to be de-notified countersigned by DC	Yes, provided (Refer Note 1 Below)
(v)	Colored Map of the SEZ clearly indicating area to be de-notified and left-over area duly countersigned by DC	Yes, provided
(vi)	"No Objection Certificate" from the State Government w.r.t. instructions issued by DoC vide its instruction No. D.12/45/2009-SEZ dated 13.09.2013 for partial de-notification shall be complied with	Yes, provided
(vii)	'No Dues Certificate' from specified officer	Yes, provided

**Note 1:** Land details with the plot no. are mentioned with colored map. However, Survey nos. with corresponding to the land details are not stated.

## Key Findings in the Proposal:

### 1. DC, MEPZ SEZ Certification:

- a. There are no units in the area proposed for partial de-notification.
- b. The Developer has availed the following tax/ duty benefits under the SEZ Act/Rules:
  - All the Tax/duty benefit indicated above have been refunded by the developer to his satisfaction
- c. The SEZ shall remain contiguous even after de-notification of the area 13.297 Ha (32.86 acres) and shall meet the minimum land requirement prescribed for the SEZ, which is 139.90 (344.22 acres).
- d. The land details for the partial de-notification and a coloured map of the SEZ showing the area being de-notified, duly countersigned by DC.
- e. The State Government has given its 'No objection' regarding partial de-notification of entire area allotted to the company in the said SEZ.

**2. NOC for De-notification:** The State Government of Tamil Nadu vide letter dated 06.03.2025 has been considered and accordingly, NOC of the State Government for partial de-notification of 13.297 hectares (32.86 acres) of land out of 152.66 hectares (377.08 acres) at the IT/ITES ELCOT SEZ at Sholinganallur Village, Sholinganallur taluk, Chennai District is issued to the Department of Commerce & Industry subject to the following conditions:-

- i. After de-notification, the contiguity should not be affected.
- ii. ELCOT will have to refund all the duties & tax concessions availed in respect of land, buildings and machinery in respect of the area proposed for de-notification including road area.
- iii. Such de-notified parcels of land would be utilized toward creation of infrastructure which would sub-serve the objective of the SEZ as originally envisaged.
- iv. Such land parcels after de-notification will conform to land use guidelines/master plans of the Government of Tamil Nadu.

**3. Inspection of Partial De-notification Area:** In compliance of Instruction No.102 dated 18.11.2019 issued by the Department of Commerce, New Delhi, the proposed De-Notification in respect of the SEZ area/site of M/s. ELCOT SEZ, Developer of IT/ITES SEZ located at No.138, Old Mahabalipuram Road, Sholinganallur, Kancheepuram Distt, Chennai Tamil Nadu was inspected on 28.07.2023 by the undersigned in the presence of following official from the Revenue Department, Government of Tamil Nadu, was present during the inspection: -

S.No	Name of the official	Position
1	S.Sivakumar	Tashildar
2	M.Mohana	Revenue Inspector
3	Selvendran.L	Electrical Engineer
4	Vijay Anand.K	ADC-MEPZ-SEZ
5	K.Arun Kumar	Sub Inspector of Surveyor
6	C.Kousalya	AO Customs Officer, MEPZ

**4. Contiguity of SEZ:** The area of land proposed for de-notification in the processing area of the SEZ is 13.297 hectares (32.86 acres ) out of the total area 152.66 hectare (377.08 acres), after de-notification of the area of 13.297 Hectares, the balance area available in the total area of the SEZ is 139.30 hectares 344.22 (acres). After de-notification of the above area, the Developer of the SEZ fulfils the contiguity condition stipulated under Rule 5(read with 7) of SEZ Rules 2006.

**Recommendation by DC, MEPZ SEZ:**

DC, MEPZ SEZ has recommended the proposal of M/s. Electronics Corporation of Tamil Nadu Ltd. (ELCOT) for partial de-notification of 13.297 Ha out of 152.66 Ha of their IT/ITES SEZ at Sholinganallur, Chennai, Tamil Nadu for consideration of BoA.



**127.15(iii) Proposal of M/s. Reliance Industries Limited for an additional area of 88.02 Ha (less than 10%) to their existing Multi Product SEZ at Jamnagar, Gujarat notified over 1289.4422 Ha.**

### **Jurisdictional SEZ – Jamnagar SEZ**

#### **Brief background of the SEZ:**

- i. M/s. Reliance Jamnagar SEZ, Jamnagar, a multi-product SEZ is developed by M/s. Reliance Industries Limited (RIL) and is holding LOA No. F.2/41/2005-EPZ dated 31.03.2006.
- ii. Details of the Land Area Approvals, Enhancements, and De-notifications for SEZ Development is given below:

<b>Date</b>	<b>Notification No.</b>	<b>Action Taken</b>	<b>Details of Action</b>	<b>Land Area Affected (Hectares)</b>	<b>Total Land Area (Hectares)</b>
19.04.2006	S.O.568 (E)	Initial Land Area Approval	Approval for the development of an SEZ	440.08	440.08
04.06.2007	S.O.873 (E)	Enhancement of Land Area	Application for land area enhancement	784.02	1224.1
29.08.2007	S.O.1478 (E)	Further Enhancement of Land Area	Additional enhancement of the land area	540.04	1764.14
24.07.2013	S.O.2295 (E)	Further Enhancement of Land Area	Another land area enhancement application	153.71	1917.85
04.10.2013	S.O.3059 (E)	Partial De-notification of Land	De-notification of 708.1307 hectares of land	-708.1307	1209.72
22.01.2015	S.O.223 (E)	Further Enhancement of Land Area	Application for further enhancement of land	79.73	1289.4422

**Additional area proposal:** DC, Jamnagar SEZ vide letter dated 17.03.2025 has forwarded the proposal of the Developer for an increase in area of 88.02 Ha (less than 10%) to their existing notified area of 1289.4422 Ha.

**Reasons for the increase:** The Developer has mentioned that area increase is needed for streamlining of manufacturing operations.

**Requisite documents for considering additional area proposal:**

As per DoC's O.M. dated 14.07.2016 the documents required for additional area notification and the status thereof in the instant case are as below: -

S. No.	Documents/Details Required	Status
(i)	Certificate from the concerned State Government or its authorized agency stating that the developer has irrevocable rights to the said area as SEZ.	Yes, provided
(ii)	Form-C4 along with DC's recommendation	Yes, provided
(iii)	Inspection Report in the prescribed format	Yes, provided
(iv)	Developer's Certificate Countersigned by DC	Yes, provided
(v)	Legal Possession Certificate from Revenue Authorities	Yes, provided
(vi)	Non-Encumbrance Certificate from Revenue Authorities	Yes, provided
(vii)	Land details of the area (with clearly specified survey numbers) to be notified duly certified by revenue authorities	Yes, provided
(ix)	Colored Map clearly indicating Survey numbers and duly certified by revenue authorities	Yes, provided
(x)	Copy of Registered Lease/Sale deed	Yes, provided

**Inspection of Additional Area:**

In compliance with DoC's Instruction No.102 dated 18.11.2019 regarding physical inspection and contiguity condition, an Inspection report has been provided. As per the report, Physical Inspection was conducted on 11.03.2024 by Specified Officer posted at SEZ along with Officers from Revenue/Land Authority of Government of Gujarat. The additional identified area of 88.02 Hectares for which the notification is now sought for is found to be contiguous to the already notified area of 1289.44 Hectares. The proposed additional land area was found to be vacant.

**Recommendation by DC, Jamnagar SEZ:**

The Development Commissioner, Reliance Jamnagar SEZ has recommended the proposal of the Developer i.e M/s. Reliance Industries Limited for increasing in SEZ area of 88.02 Hectares of additional land which is less than 10% of the presently notified area i.e. 1289.44 Hectares of SEZ for consideration of BoA.

**Agenda Item No.127.16:**

**Appeal [3 cases: 127.16(i) to 127.16(iii)]**

**Rule position:** - In terms of the rule 55 of the SEZ Rules, 2006, any person aggrieved by an order passed by the Approval Committee under section 15 or against cancellation of Letter of Approval under section 16, may prefer an appeal to the Board in the Form J.

Further, in terms of rule 56, an appeal shall be preferred by the aggrieved person within a period of thirty days from the date of receipt of the order of the Approval Committee under rule 18. Furthermore, if the Board is satisfied that the appellant had sufficient cause for not preferring the appeal within the aforesaid period, it may for reasons to be recorded in writing, admit the appeal after the expiry of the aforesaid period but before the expiry of forty-five days from the date of communication to him of the order of the Approval Committee.



**127.16(i) Appeal filed by M/s. VJP Shipping India Pvt. Ltd. against the Order-in-Original dated 18.11.2024 passed by DC, MEPZ SEZ regarding cancellation of license to operate the FTWZ at NDR Infrastructure Pvt Ltd.**

**127.16(ii) Appeal filed by M/s. VJP Shipping India Pvt. Ltd. against the Order-in-Original dated 18.11.2024 passed by DC, MEPZ SEZ regarding cancellation of request to set up a SEZ unit in New Chennai Township Pvt. Ltd.**

### **Jurisdictional SEZ – MEPZ SEZ**

#### **Brief Facts of the case:**

1. M/s. V.J.P. Shipping India Pvt Ltd. is a private company based in Chennai, engaged in import/export services as a licensed customs broker under the Customs Broker Licensing Regulations, holding a CB license granted by the Principal Commissioner of Customs (General) Chennai.
2. The appellant had applied to set up a unit in the MEPZ Special Economic Zone (SEZ) at Nandiyambakkam Village in Tamil Nadu for providing warehousing and logistics services. And, the sanction was granted with a Letter of Permission (LOP) vide letter dated 03.05.2021. The appellant also entered into a Bond-cum-Legal Undertaking as required under the SEZ Rules.
3. the Directorate of Revenue Intelligence (DRI) investigated imports made by other importers whose goods were stored at the appellant's FTWZ warehouse. The investigation implicated the appellant because the imports were made using Importer Exporter Codes (IECs) lent by others for a fee, and the appellant facilitated these imports as a customs broker. There was no evidence that the appellant had knowledge of any mis-declarations related to these goods.
4. As a result of the investigation, show cause notices were issued to the appellant and its directors. In addition, the Principal Commissioner of Customs and the Licensing Authority initiated proceedings to revoke the appellant's customs broker (CB) license twice. In the first set of proceedings, the appellant was fined Rs. 50,000 but no revocation occurred. The appellant is considering filing an appeal against this penalty. In the second set of proceedings, the Licensing Authority suspended the appellant's CB license beyond the allowed period, which also affected one of the appellant's sister companies, K.Y.P. Logistics India Pvt. Ltd., despite that company not being involved in the disputed imports. The appellant appealed this decision to the CESTAT (Chennai), which ruled in the appellant's favor. The CESTAT set aside the suspension order issued by the Principal Commissioner of Customs, declaring it invalid in law as per its final order dated December 9, 2024.
5. The appellant claims that penalties were unjustly imposed on them and their employees under the Customs Act, despite not being involved in the importation or ownership of the goods. They have filed statutory appeals under Section 128 of the Customs Act, challenging the orders, which are still pending and have not reached a final decision.
6. The appellant's client, Samyga International, imported goods declared as printer accessories, which were investigated by the DRI. This led to a show cause notice being issued to the importer and the appellant, proposing penalties for mis-declaration. The Development Commissioner (DC) noted the

- suspension of the appellant's CB license and issued a show cause notice on August 8, 2024, questioning why their LOA should not be canceled under the SEZ Act, alleging violations of SEZ Rules. The appellant argues that no specific violations of the LOA or BLUT were cited.
7. The appellant filed objections to the show cause notice, arguing that the notice was invalid as the alleged violations under the Customs Act or Customs Brokers Licensing Regulations had not been finalized. They emphasized that they were only providing warehousing services and did not violate SEZ rules. The appellant attended a hearing on 16.10.2024 and submitted written submissions on 24.10.2024, seeking to have both their reply and written submission included in their appeal.
  8. The appellant contends that the Development Commissioner (DC) did not properly consider their submissions and showed bias in the decision-making process and issued an order on 11.11.2024, recommending cancellation of the appellant's LOA and imposing a penalty of Rs. 10,000, despite the fact that the provisions cited were not applicable to their case.
  9. The UAC meeting minutes from 18.11.2024 confirmed approval of the DC's proposal to cancel the LOA, and the appellant received the final order on 26.11.2024. The appellant filed an appeal with the Appellate Committee under the FTDR Act on 11.12.2024 but has not received acknowledgment of the appeal.
  10. The appellant was informed that they could also appeal the cancellation of the LOP under Rule 55 of the SEZ Rules to the Hon'ble Board of Approval, and they wish to avail this option in addition to the appeal under the FTDR Act. The appellant's appeal under Rule 55 was due by 25.12.2024, but they seek the condonation of a 13-day delay, supported by an affidavit, as the revocation of their FTWZ license has significantly impacted their livelihood and employees.
  11. The appellant also alleged that on 13th June 2024, they applied for setting up another SEZ unit in New Chennai Township Pvt. Ltd., for warehousing and logistics, after obtaining provisional land allotment. On 8th July 2024, their request to set up the new SEZ unit was rejected due to alleged submission of false information in an affidavit (concerning the antecedents). However, the appellant's Bond-cum-legal undertaking was later accepted without issue on 2nd August 2024 for their NDR FTWZ unit. The appellant mentioned that the revocation of the FTWZ license has affected the appellant's business, depriving them of their livelihood and impacting the employment of around 20 employees.

### **Grounds of the Appeals:**

1. The impugned order passed by the learned respondent herein and as approved by the UAC is totally unjust, unfair, unreasonable, weight of evidence contrary to law and therefore ex-facie illegal besides being violative of the principles of natural justice and hence not sustainable and liable to be vacated in the interest of justice
2. The impugned order passed by the learned respondent and approved by the UAC suffers from gross violations to the principles of natural justice as the said respondent did not at all consider any of the subtle grounds canvassed by them both in their reply and in the written submission filed by them which warrant his order to be vacated in limini



3. The learned respondent further ought to have considered that when the notice issued to them had only alleged that they had contravened the provisions of invoked rule 18 [51 of the SEZ Rules and the instructions issued in the year 2010 which provisions only authorised and permitted them to hold the goods in their licensed unit on account of the foreign or the DTA suppliers for dispatches as per the owner's instructions and for trading, making- its invocation possible read with the LOA and the Bond cum undertaking if they had unreasonably refused to hold the goods on behalf of any foreign or DTA suppliers, or undertook any unauthorised operations relating to the said goods in their warehouse or not achieving the norms prescribed which alone . could be said to be contrary to the LOA or the bond cum undertaking furnished by them whereas the impugned order finding no answer to the said ground and in fact admitting to the said position of law in para 18 of the impugned order unreasonably and as an afterthought had citing violation of condition no. 1 of the bond cum legal undertaking and condition x of the LOA without even being aware that the stipulation therein is a general clause binding them to observe the SEZ Act and the rules framed thereunder in respect of the goods for the authorised operation and which by no stretch of imagination could attract the facts relied in support of the notice namely the so-called investigation carried out by the DRI that too concerning their performance as a customs broker as the sole reason for the draconian action against them depriving them and their employees of their livelihood believing the version of the DRI as gospel truth for the sole reason of which alone the impugned order merits to be set aside in limini
4. The learned respondent also erred in not correctly appreciating the express provisions contained in Sec. 16 of the SEZ Act invoked by . him which uses the terms persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted making it amply and unambiguously, clear that his power to cancel the LOA could be exercised only when it is shown that they have not fulfilled the obligation undertaken in terms of the LOA namely achievement of the value addition and that too repeatedly and not for a single violation and therefore also the impugned order passed by the respondent being beyond the statutory mandate as provided under Sec. 16 of the SEZ Act cannot be sustained on account of total abuse of powers conferred on the said authority under the Act and exceeding his authority, for the reason of which also the impugned order merit to be set aside
5. The learned respondent also failed to recognize that the various provisions of the SEZ Act and the rules made thereunder invoked by him namely Sec. 16, 21, or 25 of the SEZ Act and rules 18 [5] or 54 [21 of the SEZ Rules which only concerned either certain general provision for administration of the Act, more particularly for monitoring, and enforcing the obligation to achieve value addition , undertaken by a unit in the SEZ [refer rule 54] and never provided for any violations with regard to either the customs Act or the FTDR Act the order passed based on facts not relating to the said obligation to achieve specified value addition undertaken by them renders the impugned proceedings void ab-initio and redundant for want of jurisdiction
6. The learned respondent further Committed total injustice to them by passing the impugned order depriving the appellant and their employees of their livelihood resulting gross violation to their fundamental right guaranteed under Art. 19 [1] [g] of the Constitution of India to carry on any trade or profession in as much as the reasons recorded in the impugned order and



- approved by the UAC is totally improper unreasonable biased and therefore unjustified.
7. The learned respondent before invoking notification no. S.O. 77 [E] ,dated 13.01.2010 and notification S.O. No. 2665 [E] dated 05.08.2016 which are notifications issued in exercise of the powers conferred under Sec 21 of the SEZ for notifying single enforcement officer or agency for taking action against notified offences and that too by observing that their contention that violations committed under the rules are not sustainable under the SEZ Act which was never their contention whereas their contention was that the offences alleged against them invoking the customs provisions for which the notice has been issued to them by the customs authority in respect of the goods imported by their customer Samyga International cannot result in making the specific allegation of violation of rule 18 [5] of the SEZ rules read with the instruction issued in 2010 and which by no stretch of imagination could be got over by citing the above notifications issued for the purpose of notifying the specified offences and the single enforcing agency only and not as assumed and recorded by the learned respondent in the impugned order
  8. The learned respondent further committed gross judicial impropriety in traversing beyond the show cause notice issued to them so as to record certain self-serving incorrect and extraneous findings to sustain the impugned order against them which per-se renders the order totally devoid of merits and unsustainable
  9. The action of the learned respondent in accepting the bond cum undertaking from them executed on 08.07.2024 and accepting it on 02.08.2024 by which time he was well aware of the rejection of their application for setting up the FTWZ unit at New Chennai Township Pvt Ltd., IT-ITES, the issue of the notice to them within 6 days when no new facts have emerged exposed the total bias and prejudice of the learned Development commissioner which require the impugned order passed by him and approved by the UAC to be set aside in the interest of justice and fair play
  10. The impugned order passed placing reliance on the only fact of alleged misuse of the IEC provision, even without invoking or showing the specific provision under the FTDR or the rules providing for any contravention relating to the use of others IEC and by totally overlooking the judgment of the Hon'ble Kerala High Court by recording the frivolous and extraneous finding on a totally assumed basis that the IEC was misused by the appellant who is supposed to hold the imported goods on behalf of his client even when the true fact is that they only acted as the CB for the IEC Samyga International with his consent and approval and never were concerned with the subject goods in any manner which render his finding totally incorrect and therefore unsustainable
  11. The learned respondent without prejudice to any of the foregoing submissions also committed gross impropriety in traversing beyond the show cause notice to record the findings in paras 15 to 19 of the impugned order which are not only excessive but also contrary to the true facts as the observations made therein against the appellant as if they had imported the goods into India which is totally denied as false and, untrue on account of which the impugned order passed by the learned respondent and approved by the UAC require to be vacated in the interest of justice
  12. The learned Development Commissioner ought to have been oblivious of the fact that when the notice under customs Act had already been issued to them on the investigation carried out by DRI the jurisdiction to deal with such issue



squarely lies with the customs and the development commissioner is not authorised to conduct parallel proceedings by citing the aforementioned notifications issued with a specific purpose to notify a single enforcement agency for dealing with certain specified offences and if the said proceedings are permitted to be approved then it would amount to double jeopardy attracting the bar as provided under Art. 20 [2] of the Constitution of India

13. The learned respondent also ought to have appreciated and accepted that when only a show cause notice had been issued to them by the Customs it only remained as allegations yet to be proved as per law and yet to attain finality he ought not to have initiated the proceedings against them resulting in the draconian punishment of losing their entire business whereas he ought to have awaited the final outcome of the notice even if had the legal authority to proceed against them instead of rushing to hold the appellant guilty which is highly improper and arbitrary and which only expose not only his bias and prejudice but also predetermination
14. The learned respondent's further finding recorded in para 20 as if the IEC holder during the course of the investigation stated that he had not imported the goods and no KYC authorisation has been given by him to the appellant herein to file the BE and to handle his goods is denied as totally incorrect and untrue not borne out of the records and in any case even if it were so the IEC holder ought to have filed necessary complaint either with the police or with the DGFT authorities which is not the case
15. The learned respondent exposed his highhandedness and bias by recording the finding in para 21 of the impugned order as if the used parts and accessories of Multi-function devices invoking para 2.31 of the FTP even without considering their plea that the even used MFD machines itself are not restricted in terms of the judgments of the Supreme Court/ High Court and Tribunal when the subject import is admitted to be only parts and the machines which render his order totally bad and unsustainable
16. The finding recorded by the learned respondent in para 15 of the impugned order that the investigation had brought out the fact that the FTWZ unit has imported the goods without knowledge or consent of the actual IEC holder is totally untrue and incorrect as they only acted as the CB for the said importer and IEC holder for the act of which only they were proposed for the imposition of the penalties under the Customs Act and their CB license suspended a fact relied in support in the impugned order
17. The reliance placed by the learned respondent on the fact of their CB license being kept under continued suspension by the licensing authority under the customs no more survives in view of the recent orders passed by the Hon'ble Customs Excise Service Tax Tribunal Chennai vacating the said order vindicates their stand
18. The learned respondent in any case ought to have known that the CB license held by them being governed by a totally separate legislation namely Customs Brokers Licensing Regulations, 2018 question of invoking the alleged contravention for cancellation of their LOA issued in terms of the SEZ Act and the rules made thereunder is highly improper and incorrect more particularly when the Hon'ble Madras High Court had categorically held that the violation if any by a customs broker in terms of the regulation cannot result in invocation of any penal provisions under the Customs Act
19. The appellant submits that the recent circular issued by the CBIC instructing officers not to indiscriminately proceed against any Customs Broker unless

- there is an allegation of abetment against them made in the show cause notice issued under the Customs Act also squarely support the case of the appellant .
20. The findings recorded by the learned respondent in para 24 of the impugned order clearly evidence to the fact that he was acting in terms of the suggestions issued by the Ministry of Commerce purely concerning the verification of antecedents for approving new units and monitoring existing units and that too for the reason of the recent growing trend of DTA supplies and increased in the import of risky consignments involving mis-declaration of description and value by unscrupulous CHA's and their clients thus only sounding a caution to carry out proper antecedent verification whereas the learned respondent had beyond the said suggestion to rely upon certain cases registered against their clients leading to issue of the show cause notice to the said clients and to them in their capacity as their Customs Broker even when the proceedings initiated against them under the CBLR relied upon in support of the issue of the impugned order \_ stood set aside making the said order totally devoid of any merits

#### **PRAYER:**

The appellant prayed for the following:

4. The learned appellate authorities may be pleased to consider their submissions judiciously and sympathetically.
5. The learned appellate authorities may be pleased to set aside the impugned order and restore their license to operate the FTWZ at NDR Infrastructure Pvt Ltd.
6. The learned appellate authorities may also direct the respondent to grant them the permission to run the FTWZ unit at New Chennai Township Pvt Ltd., IT-ITES as per their application dated 13.06.2024 and render justice

#### **INPUTS RECEIVED FROM DC, MEPZ SEZ:**

1. M/s VJP Shipping India Pvt Ltd operates as an FTWZ unit in the NDR Free Trade Warehouse Zone (FTWZ) in Tamil Nadu, with a Letter of Approval (LoA) dated 03.05.2021 from the Development Commissioner, MEPZ-SEZ, for trading and warehousing services.
2. A consignment from M/s Samyga International, Chennai, declared as "Printer Accessories," was investigated by the Directorate of Revenue Intelligence (DRI) in 2022.
3. The investigation revealed violations of the Customs Act, including misdeclaration and misuse of the Importer Exporter Code (IEC), resulting in the issuance of a Show Cause Notice (SCN) to M/s VJP Shipping, its employees, and directors.
4. Further, M/s VJP Shipping's Customs Broker License was suspended due to irregularities in various import transactions, with the suspension continued by an order dated 21.05.2024.
5. Meanwhile on 13.06.2024, M/s VJP Shipping applied for approval to set up a **new FTWZ unit at New Chennai Townships Pvt Ltd SEZ in Kancheepuram.** The said proposal was placed before the Unit Approval Committee (UAC) on 08.07.2024. UAC had found that M/s VJP Shipping had



- submitted false information regarding their antecedents and issued SCNs. As a result, the UAC rejected the proposal on 08.07.2024.
6. Later on 08.08.2024, M/s VJP Shipping was issued a Show Cause Notice regarding the cancellation of their LoA, of their unit in the NDR Free Trade Warehouse Zone (FTWZ) in Tamil Nadu, due to violations of SEZ Act provisions. M/s VJP Shipping responded, denying any contraventions and reiterated their position in written submissions on 24.10.2024.
  7. Subsequently, the Development Commissioner issued an order on 11.11.2024, finding that M/s VJP Shipping violated LoA conditions and Bond cum Legal Undertaking (BLUT). Accordingly, a penalty of ₹10,000 was imposed, and the cancellation of the LoA was recommended to the UAC. Based on the recommendation of Development commissioner, the UAC approved the cancellation of the LoA of their unit in the NDR Free Trade Warehouse Zone (FTWZ) on 18.11.2024 and also rejected the proposal for a new FTWZ unit at New Chennai Townships Pvt Ltd SEZ.
  8. M/s VJP Shipping has filed an instant appeal before the Board of Approval (BOA) against the Development Commissioner's decision to cancel the LoA issued to their NDR SEZ unit. The appellant prays for the restoration of the license to operate their FTWZ at NDR SEZ. The appellant also seeks the reversal of the UAC's decision to reject the proposal to set up the FTWZ unit at New Chennai Township Pvt Ltd SEZ.
  9. M/s VJP Shipping is claiming that they did not contravene any conditions or obligations under the SEZ Act and asserts that the Show Cause Notice and the subsequent orders are unwarranted. They also argue that the false information regarding antecedents was unintentional or had no material impact on the application process.

**Para-wise comments:**

Para No.	Ground of the Appeal	Comments of the zone
1	The impugned order passed by the learned respondent herein and as approved by the UAC is totally unjust, unfair, unreasonable, weight of evidence contrary to law and therefore ex-facie illegal besides being violative of the principles of natural justice and hence not sustainable and liable to be vacated in the interest of justice	The impugned order passed by the Development commissioner is based on the facts and circumstances of the case and as per the law.
2	The impugned order passed by the learned respondent and approved by the UAC suffers from gross violations to the principles of natural justice as the said respondent did not at all consider any of the subtle grounds canvassed by them both in their reply and in the written submission filed by	The appellant was issued with a show cause notice and given sufficient time and opportunity to reply to the SCN and was offered with an opportunity to contest his case before the adjudicating authority through personal hearing. Further all their contention raised in their written as well as oral submissions are discussed and negated in the facts

	them which warrant his order to be vacated in limini	and evidence of the case and the impugned order is a speaking order.
3	<p>The learned respondent further ought to have considered that when the notice issued to them had only alleged that they had contravened the provisions of invoked rule 18 [51 of SEZ Rules and the instructions issued in the year 2010 which provisions only authorised and permitted them to hold the goods in their licensed unit on account of the foreign or the DTA suppliers for dispatches as per the owner's instructions and for trading, making- its invocation possible read with the LOA and the Bond cum undertaking if they had unreasonably refused to hold the goods on behalf of any foreign or D TA suppliers, or undertook any unauthorised operations relating to the said goods in their warehouse or not achieving the norms prescribed which alone could be said to be contrary to the LOA or the bond cum undertaking furnished by them whereas the impugned order finding no answer to the said ground and in fact admitting to the said position of law in para 18 of the impugned order unreasonably and as an afterthought had citing violation of condition no. 1 of the bond cum legal undertaking and condition x of the LOA without even being aware that the stipulation therein is a general clause binding them to observe the SEZ Act and the rules framed thereunder in respect of the goods for the authorised operation and which by no stretch of imagination could attract the facts relied in support of the notice namely the so-called investigation carried out by the DRI that too concerning their performance as a customs broker as the sole reason for the draconian action against them depriving them and their employees of their livelihood believing the version of the DRI as gospel truth for the sole</p>	<p>Rule 18(5) of SEZ Rules read with Instruction 60/2010 clearly provides for holding goods by the Unit holder, on behalf of Foreign supplier &amp; buyer and DTA supplier &amp; buyer. Whereas, the appellant in respect of subject goods, did not do so. The said goods were disowned by M/s. Samyga International who is shown as importer of the goods as per the Tokha No. No. 1003244 dated 11.10.2022 filed by the appellant. Further it is observed from statement recorded from the actual IEC holder Shri Mydeen Gane during the investigation by DRI that he has not imported any of those consignment, and that no payment to any of the supplier had been made from the account of the IEC holder and the IEC holder has also not given the KYC or authorisation to the noticee to act as his agent and to hold his goods in the unit. Further this fact has not at all been denied by the appellant either before the adjudicating authority or in the present appeal. Hence, the fact of holding of goods, which was not pertaining to the alleged importer/buyer - viz., M/s. Samygya, by the appellant is undisputed. Thereby they have clearly violated Rule 18(5) of SEZ Rules read with Instruction 60/2010.</p>



	reason of which alone the impugned order merits to be set aside in limini	
4	<p>The learned respondent also erred in not correctly appreciating the express provisions contained in Sec. 16 of the SEZ Act invoked by him which uses the terms persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted making it amply and unambiguously, clear that his power to cancel the LOA could be exercised only when it is shown that they have not fulfilled the obligation undertaken in terms of the LOA namely achievement of the value addition and that too repeatedly and not for a single violation and therefore also the impugned order passed by the respondent being beyond the statutory mandate as provided under Sec. 16 of the SEZ Act cannot be sustained on account of total abuse of powers conferred on the said authority under the Act and exceeding his authority, for the reason of which also the impugned order merit to be set aside</p>	<p>The appellant has been a habitual violator of law as seen from the facts given in table A of para 11 of the impugned Order No in F.No. 8/208/2021/NDR FTWZ dated 11.11.2024. Further, even in respect of M/s. Samyga International, Chennai, the appellant had handled two consignments, one on 25.07.2024 and another on 30.09.2024. Hence it is obvious that the appellant persistently held and cleared goods in the name of M/s. Samyga International without their (IEC holder's) involvement, consent and ownership. The appellant, using an unconnected/ unauthorised IEC operated, imported and cleared their (appellant's) own goods and thus supply of the goods to the Domestic Tariff Area have been made in violation of the provisions of the Instruction 60 dated 06.07.2010 read with Rule 18(5) of SEZ Rules.</p>
5	<p>The learned respondent also failed to recognize that the various provisions of the SEZ Act and the rules made thereunder invoked by him namely Sec. 16, 21, or 25 of the SEZ Act and rules 18 [5] or 54 [21] of the SEZ Rules which only concerned either certain general provision for administration of the Act, more particularly for monitoring, and enforcing the obligation to achieve value addition undertaken by a unit in the SEZ [refer rule 54] and never provided for any violations with regard to either the customs Act or the FTDR Act the order passed based on facts not relating to the said obligation to achieve specified value addition undertaken by them renders the impugned proceedings void ab-initio and redundant for want of jurisdiction</p>	<p>Section 16, 21 and 25 of SEZ Act and Rule 18(5) of SEZ Rules are not just administrative provisions; they are enforceable provisions. Any provision of law is for compliance and violation of them obviously warrants action by the authority. If it is not done so then the law becomes infructuous. Further it is stated that SEZ Act and Rules not only aims at monitoring and enforcing the obligations to achieve value addition but also provides to check for violations under " notified offences" in terms of Rule 21 of SEZ Rules. As seen from Notification issued by the Department of Commerce vide S.O. No.77 (E) dated 13.01.2010 and S.O.No.2665(E) dated 05.08.2016, it is clear that the offences punishable/ covered under FT (DR) Act, 1992 and Customs Act 1962 are notified as offenses under SEZ Act, 2005 and violation committed under customs Act</p>



		and FT(D&R) Act are very much sustainable under SEZ Act. Hence commission of notified offences is also inextricably linked to violation of terms of conditions under which LOA is issued. Thus it can be said that the order passed for violation of notified offense is legally tenable.
6	<p>The learned respondent further Committed total injustice to them by passing the impugned order depriving the appellant and their employees of their livelihood resulting gross violation to their fundamental right guaranteed under Art. 19 [1] [g] of the Constitution of India to carry on any trade or profession in as much as the reasons recorded in the impugned order and approved by the UAC is totally improper unreasonable biased and therefore unjustified</p>	<p>Article 19(1)(g) states: "All citizens of India have the right to practice any profession, or to carry on any occupation, trade or business."</p> <p>However, this right is not absolute and is subject to reasonable restrictions imposed by the state. The Supreme Court has consistently held that the right to carry on business under Article 19(1)(g) is not unfettered and must be exercised in a lawful manner. In other words, the right to carry on business cannot be used to justify or cover up unlawful activities, such as tax evasion, money laundering, or other illegal practices. To sum up, the right to carry on business cannot be used to justify an unlawful act and hence SEZ Unit's contention is not tenable.</p> <p>As already stated, it is clearly established by the investigation that the appellant had handled their own goods in the name of M/s. Samyga International, who (M/s. Samyga) had categorically stated under Section 108 of Customs Act, 1962 that they have not imported subject goods and also not authorised the appellant to use their IEC. Further the appellant has manipulated and forged the signature of Shri. Gane, the proprietor of M/s. Samyga International. It is well settled law that fraudsters cannot claim rights under law.</p>
7	The learned respondent before invoking notification no. S.O. 77 [E] dated 13.01.2010 and notification S.O. No. 2665 [E] dated 05.08.2016 which are notifications issued in exercise of the powers conferred	Once the goods are attempted to be cleared into DTA, all the provisions of Customs Act are applicable to the goods and to the Unit holder and the violations committed in the subject case by the Unit Holder falls under the notified

	<p>under Sec 21 of the SEZ for notifying single enforcement officer or agency for taking action against notified offences and that too by observing that their contention that violations committed under the rules are not sustainable under the SEZ Act which was never their contention whereas their contention was that the offences alleged against them invoking the customs provisions for which the notice has been issued to them by the customs authority in respect of the goods imported by their customer Samyga International cannot result in making the specific allegation of violation of rule 18 [5] of the SEZ rules read with the instruction issued in 2010 and which by no stretch of imagination could be got over by citing the above notifications issued for the purpose of notifying the specified offences and the single enforcing agency only and not as assumed and recorded by the learned respondent in the impugned order</p>	<p>offences of SEZ Act and hence violation committed under FT(D&amp;R) Act and Customs Act is punishable (sustainable) under SEZ Act.</p>
8	<p>The learned respondent further committed gross judicial impropriety in traversing beyond the show cause notice issued to them so as to record certain self-serving incorrect and extraneous findings to sustain the impugned order against them which per-se renders the order totally devoid of merits and unsustainable</p>	<p>This is a general ground devoid of any specific instance and evidences and hence warrants no comments.</p>
9	<p>The fact that the learned respondent and his committee have now given up their objection on non-furnishing of the correct information with regard to their KYC and have only placed reliance on the fact of cancellation of their LOA granted to them for operating at the NDR FTWZ Nandhiyambakkam Village Minjur Panchayat Ponneri Taluk Tiruvallur District in the state of Tamil Nadu as the reason for rejecting their application to set up the new FTWZ unit at the New Chennai Township</p>	<p>As discussed above, the cancellation of LOA granted to M/s VJP shipping at NDR is legal and proper and there is nothing wrong to reject the application of VJP Shipping to set up the FTWZ Unit at New Chennai Township Pvt Ltd on the ground of cancellation of LOA at NDR-SEZ.</p> <p>When a Letter of Approval (LoA) of an SEZ unit is cancelled, it typically nullifies the unit's privileges and benefits under the SEZ scheme. As a consequence, the cancellation of the</p>



	<p>Pvt Ltd., IT-ITES is also not proper or sustainable more so because the cancellation of the LOA is not proper or correct</p>	<p>LoA would also impact the unit's ability to set up another unit in a different SEZ.</p> <p>It is pertinent to note that the Ministry of Commerce has taken various initiatives to streamline the functioning FTWZs and has suggested the field formations to exercise due diligence and caution while approving new Units and monitoring existing warehousing units in SEZs. The Ministry has suggested various measures which inter-alia includes verification of applicant credentials (CHAs, clients, etc.) jointly with UAC members from Customs, GST, and Income Tax, conducting thorough examinations of track records, Monitoring goods movement from FTWZ units to prevent irregularities and strengthening the internal controls and streamline FTWZ functioning.</p> <p>In the light of the above, the decision taken in rejecting the application of VJP unit to set up a new Unit on the ground of LOA cancellation at NDR SEZ is legal and proper.</p>
10	<p>The action of the learned respondent in accepting the bond cum undertaking from them executed on 08.07.2024 and accepting it on 02.08.2024 by which time he was well aware of the rejection of their application for setting up the FTWZ unit at New Chennai Township Pvt Ltd., IT-ITES, the issue of the notice to them within 6 days when no new facts have emerged exposed the total bias and prejudice of the learned Development commissioner which require the impugned order passed by him and approved by the UAC to be set aside in the interest of justice and fair play</p>	<p>When additional BLUT was executed by VJP Shipping, the same was accepted on 02.08.2024 in view of the fact that the FTWZ unit at NDR Zone was operational on that date. The contention of the Appellant that the issuance of SCN is borne out of prejudice lacks any basis as the SCN has been issued in view of the violations committed by the FTWZ Unit (Appellant).</p>



11	<p>The impugned order passed placing reliance on the only fact of alleged misuse of the IEC provision, even without invoking or showing the specific provision under the FTDR or the rules providing for any contravention relating to the use of others IEC and by totally overlooking the judgment of the Hon'ble Kerala High Court by recording the frivolous and extraneous finding on a totally assumed basis that the IEC was misused by the appellant who is supposed to hold the imported goods on behalf of his client even when the true fact is that they only acted as the CB for the IEC Samyga International with his consent and approval and never were concerned with the subject goods in any manner which render his finding totally incorrect and therefore unsustainable</p>	<p>The subject LoA cancellation order stems from the irregularities in the import transactions of the importer M/s Samyga International by way of misdeclaration of description/ value and various acts of omission and commissions by the FTWZ unit M/s VJP Shipping India Pvt Ltd by way of misuse of IEC of the importer. It is observed from statement recorded from the actual IEC holder Shri Mydeen Gane (Prop. Of M/s Samyga international) during the investigation by DRI that he has not imported any of those consignment, and that no payment to any of the supplier had gone from the account of the IEC holder and the IEC holder has also not given the KYC or authorisation to the Appellant to act as his agent and to hold his goods in the unit. From the DRI investigations , it was clear that Smt R Jothi (w/o KY Prasad) of M/s VJP Shipping India Pvt Ltd (as per the instructions of Shri KY Prasad) obtained IEC in the name of M/s Samyga International using the credentials of Shri Sardar Mydeen Gane and that Shri KY Prasad and M/s VJP Shipping India Pvt Ltd mis-used the IEC of M/s Samyga International for various imports in their name for which monetary consideration was paid to Shri Sardar Mydeen Gane. Further it was revealed in the investigations of DRI that Shri Sardar Mydeen Gane lent his IEC and banking credentials to Shri KY Prasad and Smt Jothi and allowed his bank account to be used for making money transactions with regard to the imports made in the name of M/s Samyga International, for monetary consideration;</p> <p>Further it is pertinent to observe that as per rule 18(5) of SEZ Rules read with instruction 60 / 2010 dated 6/7/2010, a unit holder shall hold goods on behalf of supplier or buyer or DTA supplier or buyer However, it is seen from the DRI investigation that the Appellant , instead of merely holding the goods on</p>
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	<p>behalf of the importer, he has stepped into the shoes of the importer by way of misusing third party IEC for import of restricted goods viz., used parts and accessories of multi- functional device, MFD) under concealment in the name of M/s Samyga International , without the consent/ authorisation signature of actual importer and KYC. Further it was evident from the statement of actual IEC holder Shri Mydeen Gane, the actual IEC holder of M/s Samyga International that the goods were not purchased or imported by M/s Samyga International .Therefore, it is clear that the Appellant had actually acted in a malafide way to clear the undervalued and restricted goods and the same is corroborated by the statements of actual IEC holder Shri Mydeen Gane of Samyga International,</p> <p>Thus misuse of IEC by the FTWZ Unit has been clearly proved in the investigation and charges against the Appellant have been confirmed by the Adjudicating Authority vide order no 110493 dated 27.11.2024 wherein the imported goods have been held to be liable for confiscation and penalties have been imposed on Appellant M/S VJP Shipping as well as the employees/Directors of the Appellant.</p> <p>Hence the contention of the Appellant that he has not misused the IEC is not correct. Further the case law cited by the Noticee is not applicable to the mis-use of IEC code by the FTWZ unit, who is supposed to hold the imported goods on behalf of his clients.</p>
12	<p>The learned respondent without prejudice to any of the foregoing submissions also committed gross impropriety in traversing beyond the show cause notice to record the findings in paras 15 to .19 of the impugned order which are not only excessive but also contrary to the true facts as the observations made therein against the appellant as if they had</p> <p>The Development Commissioner has passed the order taking into consideration the findings of the DRI investigation. Further it is stated that the charges against the Appellant about the misuse have been confirmed by the Adjudicating authority vide order no 110493 dated 27.11.2024 wherein it is interalia held that Shri KY Prasad of M/s VJP Shipping is the beneficial owner of</p>



	imported the goods into India which is totally denied as false and, untrue on account of which the impugned order passed by the learned respondent and approved by the UAC require to be vacated in the interest of justice	the impugned imported goods vide bill of entry number 1003244 dated 11.10.2022 under Section 2(3A) of the Customs Act 1962.  Hence the contention of the Appellant is not sustainable.
13	The learned Development Commissioner ought to have been oblivious of the fact that when the notice under customs Act had already been issued to them on the investigation carried out by DRI the jurisdiction to deal with such issue squarely lies with the customs and the development commissioner is not authorised to conduct parallel proceedings by citing the aforementioned notifications issued with a specific purpose to notify a single enforcement agency for dealing with certain specified offences and if the said proceedings are permitted to be approved then it would amount to double jeopardy attracting the bar as provided under Art. 20 [2] of the Constitution of India	The contention of the Appellant that the Development commissioner is conducting the parallel proceedings in respect of the notified offences is not correct. It is to be noted that the jurisdictional Customs Authority is the competent authority to conduct the proceedings arising out of the notified offences.  In the subject case, it is seen in terms of Bond cum legal undertaking, the Appellant has undertaken to abide by the Act and Rules. As per Rule 18 (5) of SEZ Rules read with instruction no 60 dated 6/7/2010, the Appellant unit holder has to hold goods only on behalf of the importer or buyer, Whereas in the subject case, the buyer(importer) has categorically stated that the goods were not imported by them, and hence the Appellant has clearly violated Rule 18 (5) of the said Rules and the said circular. Therefore, it is clear that the violations under FTDR Act, Customs Act and rules made thereunder have resulted in the violation of provisions of SEZ Act and Rules made thereunder, <b>and hence the action was taken by the Development commissioner against the Appellant in view of violations committed under SEZ Act/Rules and the same is well within the law.</b>
14	The learned respondent also ought to have appreciated and accepted that when only a show cause notice had been issued to them by the Customs it only remained as allegations yet to be proved as per law and yet to attain finality he ought not to have initiated the proceedings against them resulting in the draconian punishment	In the subject case, the Appellant has been found to be the habitual offender who has involved in the various irregularities in respect of various import transactions effected in Chennai Customs Jurisdiction for which the Appellant/their Directors/Employees have been imposed penalties under Customs Act. Having coming to know



	of losing their entire business whereas the Appellant's antecedents, it was he ought to have awaited the final considered very much necessary to put outcome of the notice even if had the an end to unethical business practices of legal authority to proceed against the Appellant as the same cannot be them instead of rushing to hold the allowed to be perpetuated. Hence the appellant guilty which is highly action taken by the Development improper and arbitrary and which commissioner in recommending for only expose not only his bias and LoA cancellation and UAC's decision in prejudice but also predetermination cancelling the LoA is legal and proper .
15	<p>The learned respondent's further finding recorded in para 20 as if the IEC holder during the course of the investigation stated that he had not imported the goods and no KYC authorisation has been given by him to the appellant herein to file the BE and to handle his goods is denied as totally incorrect and untrue not borne out of the records and in any case even if it were so the IEC holder ought to have filed necessary complaint either with the police or with the DGFT authorities which is not the case</p> <p>The DRI investigation clearly revealed that the Appellant has used the credentials of actual importer and happens to be the beneficial owner of the imported goods and the same has been confirmed by the Adjudicating authority. Further it was proved that the actual owner of M/s Samyga International (importer) has lent their IEC for the monetary consideration to be used by the Appellant.</p> <p>Hence the findings by the Development Commissioner wrt role played by the Appellant in the import transaction is based the results of DRI investigations only.</p>
16	<p>The learned respondent exposed his highhandedness and bias by recording the finding in para 21 of the impugned order as if the used parts and accessories of Multi-function devices invoking para 2.31 of the FTP even without considering their plea that the even used MFD machines itself are not restricted in terms of the judgments of the Supreme Court/ High Court and Tribunal when the subject import is admitted to be only parts and the machines which render his order totally bad and unsustainable</p> <p>It is stated that the goods imported in this case are <b>"Used Parts and Accessories of Multi- Functional Device"</b> as against declared <b>"Printer accessories"</b> fall under the restricted category under Para 2.31 of Foreign Trade Policy 2015-20 and these policy restrictions will apply for these goods at the time of DTA clearance.</p> <p>Irrespective of restrictive or free nature of goods, it is a fact that the Appellant has committed violations under SEZ Act/Rules</p>
17	<p>The finding recorded by the learned respondent in para 15 of the impugned order that the investigation had brought out the fact that the FTWZ unit has imported the goods without knowledge or consent of the actual IEC holder is totally untrue and in correct as they only acted as the CB for the said importer and IEC holder for the act of which only they were</p> <p><b>From 17 - 21</b></p> <p>As already discussed in above paras, the charges against the Appellant wrt misuse of IEC by the Appellant (in his capacity as FTWZ Unit) has been clearly proved. Further the irregularities committed by the Appellant (in his capacity as Customs Broker) lend credence to his bad antecedents and the</p>

	proposed for the imposition of the penalties under the Customs Act and their CB license suspended a fact relied in support in the impugned order	same necessitated the Development commissioner to take pro-active action against the Appellant in line with DoC's instructions to streamline the working of FTWZ and preserve the integrity of the SEZ eco System.
18	The reliance placed by the learned respondent on the fact of their CB license being kept under continued suspension by the licensing authority under the customs no more survives in view of the recent orders passed by the Hon'ble Customs Excise Service Tax Tribunal Chennai vacating the said order vindicates their stand	Hence the order passed by the Development commissioner is legal and proper
19	The learned respondent in any case ought to have known that the CB license held by them being governed by a totally separate legislation namely Customs Brokers Licensing Regulations, 2018 question of invoking the alleged contravention for cancellation of their LOA issued in terms of the SEZ Act and the rules made thereunder is highly improper and incorrect more particularly when the Hon'ble Madras High Court had categorically held that the violation if any by a customs broker in terms of the regulation cannot result in invocation of any penal provisions under the Customs Act	
20	The appellant submits that the recent circular issued by the CBIC instructing officers not to indiscriminately proceed against any Customs Broker unless there is an allegation of abetment against them made in the show cause notice issued under the Customs Act also squarely support the case of the appellant	
21	The findings recorded by the learned respondent in para 24 of the impugned order clearly evidence to the fact that he was acting in terms of the suggestions issued by the Ministry of Commerce purely concerning the verification of antecedents for approving new units and monitoring existing units and that too for the reason of the recent growing trend of	



	DTA supplies and increased in the import of risky consignments involving mis-declaration of description and value by unscrupulous CHA's and their clients thus only sounding a caution to carry out proper antecedent verification whereas the learned respondent had beyond the said suggestion to rely upon certain cases registered against their clients leading to issue of the show cause notice to the said clients and to them in their capacity as their Customs Broker even when the proceedings initiated against them under the CBLR relied upon in support of the issue of the impugned order _ stood set aside making the said order totally devoid of any merits	
22	The appellant further for the sake of brevity craves leave of the Board of Approval New Delhi to treat the grounds of the memorandum filed by them against cancellation of their LOA granted to them for operating at the NDR FTWZ Nandhiyambakkam Village Minjur Panchayat Ponneri Taluk Tiruvallur District in the state of Tamil Nadu	<p>Further it is stated that all the grounds have suitably countered in the order in original Passed by the Development commissioner.</p> <p>In view of the above, the appeal filed by the VJP Unit against cancellation of LOA and rejection of application for setting up FTWZ Unit may be set aside.</p>



**127.16(iii) Appeal filed by M/s. Shivansh Terminals LLP under the provision of Section 16(4) of the SEZ Act, 2005 against the Order-in-Original dated 02.01.2025 passed by DC, APSEZ, Mundra.**

**Jurisdictional SEZ – APSEZ, Mundra**

**Brief facts of the Case:**

1. The Appellant is a Warehousing Services Provider unit located in APSEZ, Mundra and is engaged in the authorized operations as approved vide LOA dated 05.07.2021. The Appellant has been carrying out its activities in full compliance with the provisions of the Special Economic Zones Act, 2005 and the Rules made thereunder, the terms & conditions of the LOA as well as other applicable laws.
2. Vide Show Cause Notice F. No. APSEZ/08/STL/2021-22/58 dated 28.04.2023 (hereinafter "the SCN"), the Development Commissioner proposed to cancel the LOA and impose penalty under Section 11(3) of the Foreign Trade (Development & Regulation) Act, 1992 on the ground that certain goods (Areca Nuts) were alleged to have been illegally imported and removed by M/S Omkar International through the Appellant, and that the Appellant transported the containers outside the SEZ with an intent to de-stuff the actual imported cargo (Areca Nuts) and replace it with the declared cargo (LDPE Regrind).
3. The Appellant filed a detailed reply dated 17.09.2024 to the SCN rebutting each of the allegations with substantive submissions on facts and law. It was inter alia submitted that:
  - The Appellant is only a Warehousing Service Provider and not the importer of the goods. It was not aware of and had no role in the alleged illegal import of Areca Nuts.
  - Gujarat Police has no authority to intercept import consignments. Their findings cannot be relied upon without independent corroboration.
  - The Appellant handled the receipt of containers strictly as per laid down procedures. Customs' own Panchnama proves that the container seals were intact and contents matched the import documents.
  - Mere movement of containers outside SEZ gate for a few hours cannot be grounds to allege illegal de-stuffing, especially when there is no evidence of tampering of seals or change of goods.
  - SCN was issued without any tangible evidence and is based on surmises and conjectures.
  - Penalty under Section 11(3) can be imposed only when a person knowingly submits a false/ forged document to authorities. No such act is alleged against the Appellant.
4. Further, during the personal hearing held on 07.10.2024, written submissions dated 07.10.2024 were filed highlighting the following points:
  - The Show Cause Notice was issued under Section 13 of FTDR Act which empowers the adjudicating authority only to impose penalty or confiscation, and not to cancel the LOA.

- There is no clarity in the SCN as to what specific contravention is alleged against the Appellant to invoke penal action. Simply being a custodian of goods does not make the Appellant liable for any act of the importer.
  - Gujarat Police investigations, which form the basis of the SCN, did not find any involvement of or file any charges against the Appellant, which shows that the Appellant had no role in the alleged offences.
5. However, without considering any of the aforesaid submissions and evidence presented by the Appellant, the Development Commissioner has proceeded to pass the Impugned Order in a mechanical manner, cancelling the LOA of the Appellant.

## **PRELIMINARY OBJECTIONS:**

Before addressing the substantive grounds of appeal, the Appellant raises the following preliminary objections that go to the root of the matter:

### **A. Show Cause Notice issued without jurisdiction**

2.1 The Show Cause Notice dated 28.04.2023 was issued under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992 ("FTDR Act"). Section 13 states:

*"Any penalty may be imposed or any confiscation may be adjudged under this Act by the Director General or, subject to such limits as may be specified, by such other officer as the Central Government may, by notification in the Official Gazette, authorise in this behalf."*

2.2 A bare reading of Section 13 makes it clear that it only empowers:

- a. Imposition of penalty
- b. Adjudication of confiscation

2.3 The provision does not grant any power to cancel a Letter of Approval issued under the SEZ Act. This power vests exclusively with the Approval Committee under Section 16(1) of the SEZ Act.

2.4 It is a settled principle that statutory authorities must act strictly within the four corners of their empowering statute. In *The Consumer Action Group & Anr vs State Of Tamil Nadu & Ors* [(AIR 2000 SUPREME COURT 30601), the Supreme Court held:

*"Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test to judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution."*

"When such a wide power is vested in the Government it has to be exercised with greater circumspection. Greater is the power, greater should be the caution. No power is absolute, it is hedged by the checks in the statute itself. Existence of power does not mean to give one on his mere asking. The entrustment of such power is neither to act in benevolence nor in the extra statutory field. Entrustment of such a power is only for



the public good and for the public cause. While exercising such a power the authority has to keep in mind the purpose and the policy of the Act and while granting relief has to equate the resultant effect of such a grant on both viz., the public and the individual."

2.5 Similarly, in *Sri. Sudarshan V Biradar vs State of Karnataka* on 17 April, 2023 [WRIT PETITION No.15800 OF 2022], it was observed:

*"Whenever any person or body of persons exercising statutory authority acts beyond the powers conferred upon it by the statute such acts become ultra vires and resultantly void. Therefore, substantive ultra vires would mean delegated legislation goes beyond the scope of the authority conferred on it by the parent statute. It is the fundamental principle of law that a public authority cannot act outside the powers that is conferred upon it."*

2.6 The principle that when a statute requires something to be done in a particular manner, it must be done in that manner alone has been consistently upheld by the Supreme Court:

a. **Opto Circuit India Ltd. vs Axis Bank [AIR 2021 SUPREME COURT 7531]**

*"15. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner."*

b. **Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266**

*"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."*

2.7 Therefore, the Development Commissioner could not have cancelled the LOA while exercising powers under Section 13 of FTDR Act. The entire proceedings being without jurisdiction are void ab initio.

## **B. Violation of Section 16(1) Requirements**

2.8 Even assuming the Development Commissioner could exercise powers under Section 16(1) of SEZ Act (though not invoked in SCN), the requirements thereof have not been met.

2.9 Section 16(1) states:

*"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."*

2.10 Two essential prerequisites emerge:

- a. There must be persistent contravention
- b. The Approval Committee must cancel the LOA



2.11 Neither requirement is satisfied in the present case:

- a. The entire case is based on a single alleged incident of 23.02.2023. No pattern of repeated violations has been shown.
- b. The Impugned Order has been passed by the Development Commissioner, not the Approval Committee as required by statute.

2.12 On "persistent contravention", courts have consistently held that isolated incidents do not qualify:

- a. **M/S GUPTA BROTHERS v. EAST DELHI MUNICIPAL CORPORATION & ANR [W.P.(C) 2641/2015; Delhi High Court]:**

*The word 'persistent' otherwise means "continuing firmly or obstinately in an opinion or course of action in spite of difficulty or opposition"*

- b. The word "Persistent" has been discussed in the following judgments:

**[1] Vijay Amba Das Diware & others Vs. Balkrishna Waman Dande & another [(2000) 4 SCC 126].**

**Background and proposition:**

This judgment pertains to persistent default in payment of rent. The date to pay rent occurs periodically on a day fixed for payment in each month. In every month, there is a need to follow the promise to pay the rent.

Failure to perform the duty over a long spell of repetitive acts of omissions proves habit and makes the behaviour persistent in the form.

**[2] Vijay Narain Singh Vs. State of Bihar & others [(1984) 3 SCC**

**Background and proposition:**

This case pertains to preventive detention. The acts of detenu, as defined in the law concerned, have to be persistent. To be persistent, the acts have to be committed with repetitiveness and habitualness in those abhorred and anti-social acts.

## Grounds of Appeal:

### A. **The Impugned Order suffers from total non-application of mind and has been passed in gross violation of the principles of natural justice:**

- i. It is settled law that the order of a quasi-judicial authority must be a reasoned and speaking one. The authority is duty bound to analyse the material before it and disclose the reasons which lead to the conclusion arrived at. An order which does not give reasons is not an order in the eyes of law.
- ii. In the present case, the Development Commissioner has passed the Impugned Order in a highly arbitrary and mechanical manner without even a whisper about the detailed submissions made by the Appellant in its replies dated 17.09.2024 and 07.10.2024. There is not even a single line in the order discussing the Appellant's defence and giving reasons for rejecting the same.
- iii. It was incumbent upon the Development Commissioner to have dealt with each of the contentions and evidence put forth by the Appellant and given a point-wise rebuttal in the Impugned Order if he wished to reject them. Failure to do so vitiates the order and makes it unsustainable in law.
- iv. The Hon'ble Supreme Court in the case of Commissioner of Police, **Bombay vs. Gordhandas Bhanji**, AIR 1952 SC 16 held that:

*"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or What he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

The Development Commissioner's order is in teeth of this ratio as it contains no reasons or findings having nexus to the Appellant's submissions.

- v. In *M/s. Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors.* reported in 2008 (5) Supreme 281, the Hon'ble Supreme Court testing the correctness of an order passed by the Assistant Commissioner of Sales Tax against the assessment, at Paragraph 10, held as follows:

*" 10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless."*

- vi. In *Kranti Associates Private Limited and another vs Masood Ahamed Khan and Others* reported in (2010) 9 SCC 496, the Hon'ble Supreme Court has considered a catena of decisions and summarised its finding as under: -

*51. Summarizing the above discussion, this Court holds:*

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.



- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi judicial and even by administrative bodies.
- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. ***Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or rubber stamp reasons' is not to be equated with a valid decision-making process.***
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EINHCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- o. **In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".**



The Impugned Order woefully falls short of this standard as it does not discuss the evidence or contentions at all.

- vii. Thus, the Impugned Order is a non-speaking, unreasoned and perverse one liable to be set aside on this ground alone.

**B. No case for cancellation of LOA is made out under Section 16(1) of SEZ Act:**

- i. Cancellation of LOA is a drastic measure having serious civil consequences for a unit. Section 16(1) of the SEZ Act provides that LOA can be cancelled by the Approval Committee only when it has reason to believe that the unit has persistently contravened any of the terms & conditions or its obligations under the LOA.
- ii. The Impugned Order does not disclose any persistent or repeated contraventions committed by the Appellant warranting cancellation of LOA. The very basis of the action is an isolated incident of certain goods allegedly imported by a third party through the Appellant's premises.
- iii. There is no finding in the order that the Appellant was involved in or aware of the alleged illegal import. At best there are wild inferences drawn merely because the Appellant acted as a custodian of the goods. But there is not an iota of evidence to show abetment or collusion on part of the Appellant.
- iv. It is pertinent to note that the detailed investigations conducted by Gujarat Police in the matter did not find any involvement of the Appellant in the alleged illegal import of Areca Nuts. The charge-sheet filed by them does not implicate the Appellant in any manner whatsoever. This crucial fact has been totally ignored by the Development Commissioner.
- v. Customs' own Panchnama categorically states that when the containers were opened at the Appellant's premises in presence of Customs officers, the seals were intact and the goods were found to be granules matching the import documents. This clinching evidence demolishes the allegation that goods were changed by de-stuffing containers while in transit.
- vi. The movement of containers outside SEZ gates for a few hours by the transporters cannot ipso facto lead to a presumption of tampering or replacement of goods without any corroborative evidence, especially when the same is satisfactorily explained by the vehicle drivers.
- vii. The Impugned Order without any cogent basis makes bald allegations of "unauthorized and illegal movement of containers" by the Appellant 'in gross violation of Customs Act and SEZ Act'. The order does not specify which particular provisions were violated and how.
- viii. Thus, the Impugned Order does not even remotely make out a case of persistent contravention by the Appellant so as to attract Section 16(1) of SEZ Act for cancellation of LOA. The Appellant cannot be vicariously held liable for any alleged acts of the importer, if any, without any evidence of knowledge or involvement.

**C. The SCN issued under Section 13 of FTDR Act does not empower the adjudicating authority to cancel LOA:**

- i. As pointed out in the written submissions dated 17.09.2024 and 07.10.2024, the SCN has been issued under Section 13 of FTDR Act, 1992 which empowers the adjudicating authority only to impose penalty or order confiscation. It does not provide for cancellation of LOA.
- ii. The SCN does not even refer to or allege any contravention under Section 16(1) of SEZ Act which is the only provision dealing with cancellation of LOA on account of persistent contraventions.
- iii. It is trite law that a show cause notice is the foundation of any quasi-judicial proceedings and the adjudicating authority cannot travel beyond it. When the SCN does not invoke the correct legal provision (Section 16(1) of SEZ Act) or make out grounds for cancellation of LOA, the Impugned Order passed on this basis is without authority of law.
- iv. The Hon'ble Supreme Court in *J.S. Yadav vs State Of U.P & Anr* on 18 April, 2011 (2011 AIR SCW 3078) held that:  
It is a settled principle of law that no one can be condemned unheard and no order can be passed behind the back of a party and if any order is so passed, the same being in violation of principles of natural justice, is void ab initio.

This legal proposition was reiterated by Supreme Court in *Ranjan Kumar vs State of Bihar & Ors* on 16 April, 2014 (2014) 16 SCC 187 it was held by that:

"9. In *J.S. Yadav v. State of Uttar Pradesh* and another [(2011) 6 SCC 5701] it has been held that no order can be passed behind the back of a person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."

- v. Viewed thus, the Impugned Order is wholly without jurisdiction, besides being in violation of principles of natural justice. The Development Commissioner could not have passed an order for cancellation of LOA in the absence of any such grounds in the SCN.

**D. Impugned Order is based on mere conjectures and assumptions without any credible evidence on record:**

- i. A bare perusal of the Impugned Order shows that it has been passed in a casual and perfunctory manner solely relying upon the investigation report of Gujarat Police, without any independent application of mind by the Development Commissioner.
- ii. The entire case in the SCN is projected on the basis of the purported detection of illegal import of Areca Nuts by Gujarat Police. However, it is beyond doubt that Gujarat Police has no authority or jurisdiction under the Customs Act to investigate into import offences. Their findings have no statutory backing.
- iii. Curiously, although the Impugned Order heavily relies on Gujarat Police investigation to allege illegal imports through the Appellant's premises, it conveniently glosses over the fact that the charge-sheet filed by Gujarat Police does not implicate or level any allegations against the Appellant. This clearly



- demonstrates the pick and choose approach adopted by the Development Commissioner to artificially rope in the Appellant.
- iv. The Impugned Order alleges "unauthorized and illegal movement of containers" by the Appellant with "active involvement" and "motive to destuff the actual imported cargo i.e. Areca Nuts from the containers and replace it with declared cargo i.e. LDPE Regrind". These are nothing but bald allegations without an iota of evidence in support thereof.
  - v. There is not even a whisper, leave alone any cogent evidence, to show that the Appellant was in any way involved in or aware of the alleged illegal import of Areca Nuts by M/S Omkar International. No statement of M/ s Omkar International or any other entity has been referred to in the Impugned Order to implicate the Appellant or prove its involvement.
  - vi. The entire case of alleged tampering and replacement of goods is demolished by the Appellant's own Panchnama which shows that when the containers were opened and examined at the Appellant's premises in presence of the Customs officers, the container seals were found intact and the goods were granules matching the import documents. This vital evidence has been simply brushed aside by the Development Commissioner without giving any reasons.
  - vii. Pertinently, although the SCN alleges that the "long duration of time spent by vehicles between exit and re-entry from Rangoli gate testifies" the illegal de-stuffing of Areca Nuts and replacement with LDPE granules, no evidence whatsoever has been brought on record to substantiate this bald allegation.
  - viii. The movement of containers outside the SEZ gate for 4-5 hours cannot by itself lead to any conclusion of tampering of goods. The plausible explanation given by the vehicle drivers that being late hours they had gone out to have food and rest has not been controverted by any evidence and that the drivers were compelled by the security personnels to park the trucks outside when they were going for food. For that purpose only, the cctv footage was demanded.
  - ix. Thus, the Impugned Order is based on mere surmises, conjectures and uncorroborated assumptions without any credible evidence on record. The Hon'ble Supreme Court in E. P. Royappa vs State Of Tamil Nadu & Anr (1974 AIR 555) held that:

*"Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."*

**In Samudabhai Punjabhai Sangada vs State of Gujarat (CRIMINAL APPEAL NO. 1591 of 2013), it has been stated by Gujarat High Court that:**

"It is required to be stated that in this very judgment of the Hon'ble Apex Court in the case of Anjan Kumar Sarma (supra), the earlier judgment of the Hon'ble Apex Court has also been referred to which is in the case of Jahnrlal Das v. State of Orissa, reported in AIR SC 1991 SC 1388 --- (1991) 3 SCC 2711, and it has been observed :

*"It is no more res integra that suspicion cannot take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. At times it can be a case of 'may be true'. But there is*



a long mental distance between 'may be true' and 'must be true' and the same divides conjecture from sure conclusions.

Similarly, in Assistant Collector of Central Excise vs V.P. Sayed Mohammed [1983 AIR 168] it was held that:

*"Hence a mere whim or a surmise or suspicion furnishes an insufficient foundation upon which to raise a reasonable doubt, and so a vague conjecture, whimsical or vague doubt, a capricious and speculative doubt, an arbitrary, imaginary, fanciful, uncertain chimerical, trivial, indefinite or a mere possible doubt is not a reasonable doubt. Neither is a desire for more evidence of guilt, a capricious doubt or misgiving suggested by an ingenious counsel or arising from a merciful disposition or kindly feeling towards a prisoner, or from sympathy for him or his family" (See Woodroffe & Ameer Ali's Law of Evidence, 13th Edn. Vol.I pp. 203-204)."*

**E. The Impugned Order is violative of Article 14 of the Constitution being arbitrary, unfair and discriminatory:**

- i. It is well settled that Article 14 strikes at arbitrariness and prohibits unreasonable discrimination. The scope of article 14 was drastically increased by the Supreme Court by including the executive discretion under its ambit. In the case of E.P. Royappa v. State of Tamil Nadu, 1974, the court said that Article 14 gives a guarantee against the arbitrary actions of the State. The Right to Equality is against arbitrariness. They both are enemies to each other. So, it is important to protect the laws from the arbitrary actions of the Executive.
- ii. In S.G. Jaisinghani v. Union of India, Supreme Court, for the first time held "absence of arbitrary power" as sine qua non to rule of law with confined and defined discretion, both of which are essential facets of Article 14. Justice Subba Rao elaborating on the wide expanse of Article 14, vide para 14 held thus: "In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits."

In A.K. Kraipak v. Union of India, it was held that Natural Justice (natural justice is technical terminology for the rule against bias and the right to a fair hearing (audi alteram partem)) is an integral part of Article 14. The court held that "the Principle of Natural Justice helps in the prevention of miscarriage of Justice, These Principles also check the arbitrary power of the State."

ii) In the present case, the actions of the Development Commissioner reek of arbitrariness, unfairness and discrimination against the Appellant inasmuch as:

- a. The Impugned Order has been passed in a cavalier and casual manner without properly appreciating the evidence on record and the detailed submissions made by the Appellant. This shows total non-application of mind and dereliction of duty on part of the authority.
- b. The Appellant's LOA has been cancelled solely relying on uncorroborated investigation by Gujarat Police, an agency having no authority to investigate

customs offences. On the other hand, the evidence Authorised of Customs' own Panchnama which exonerates the Appellant has been simply brushed aside. This cherry-picking of evidence is grossly unfair.

- c. No reasons whatsoever have been given to reject the Appellant's defence and evidence showing lack of involvement in the alleged offence. Failure to consider a party's submissions and passing cryptic; unreasoned orders is the hallmark of arbitrariness and bias.
- d. The SCN does not even allege persistent contraventions under Section 16(1) of SEZ Act, yet the Appellant's LOA has been cancelled on this ground. Imposition of such a disproportionate and harsh penalty de hors the SCN is ex-facie arbitrary and unfair.
- e. The Appellant cannot be condemned unheard by-passing orders on grounds which were never put to it in the SCN. This is an affront to the cardinal principles of natural justice enshrined in Article 14.
- f. There is no evidence that any other co-noticee such as the importer M/S Omkar International had been penalized in a similar fashion for the alleged offences. Singularly picking on the Appellant without any incriminating evidence demonstrates the bias and discrimination in decision making.
- iii. The Apex Court in *Maneka Gandhi vs Union of India* (1978) 1 SCC 248 held that Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. It requires that state action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality.
- iv. The Court further held that:  
*"The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated must answer the test of reasonableness in order to be in conformity with Article 14."*
- v. Article 14 thus embodies a guarantee against arbitrariness and unreasonableness in state action. Every action of the state or its instrumentalities must pass the test of reasonableness and non-discrimination. Actions which are arbitrary and unreasonable per se fall foul of Article 14.
- vi. Tested on the anvil of the aforesaid principles, the Impugned Order is patently arbitrary, unreasonable and discriminatory and suffers from the vice of non-application of mind, bias and non-consideration of the Appellant's submissions and evidence. No reasonable person would have passed such a drastic order in the given facts and circumstances.
- vii. Accordingly, the Impugned Order deserves to be set aside being violative of Article 14 of the Constitution on the grounds of arbitrariness, unfairness, unreasonableness and discrimination.

**G. The Impugned Order cancelling LOA is violative of right to livelihood, embodied under Article 21 of the Constitution.**

The object of any Government is to promote the trade and not to curtail the same, specially units functioning under SEZ as they promote exports. The method which is adopted by the Development Commissioner in cancelling LOA is like strangulating the neck of the Appellant. The cancellation of LOA certainly amounts to a capital punishment so far as the Appellant is concerned. His entire business



has come to standstill. He cannot do any business activities and without business, he cannot pay salaries to his employees, pay bills to the loans and ultimately, all his developments over a long period of time could be ruined in few months and it is also very difficult to regain the business in this competitive world. This ultimately affects his right to livelihood, embodied under Article 21 of the Constitution.

The Madras High Court's judgment in *Abdul Samad Mohamed Inayathullah v. The Superintendent of CGST and C. Excise* (WP(MD)No.8016 of 2023, WMP(MD) No.7445 of 2023) addresses the intersection of taxation law and constitutional rights, specifically examining how GST registration cancellation impacts small-scale entrepreneurs' fundamental rights to trade and livelihood. This judgment builds upon significant precedents and establishes comprehensive guidelines for balancing tax compliance with business continuity.

The Bombay High Court's decision in *Rohit Enterprises Vs Commissioner State GST Bhavan* (WP.No.11833 of 2022) further developed this framework by recognizing that GST provisions cannot be interpreted to deny fundamental rights to trade and commerce, particularly in the context of post-pandemic recovery. The court emphasized that constitutional guarantees are unconditional and must be enforced regardless of administrative challenges. Relevant excerpts are quoted below:

*"9. In our view, the provisions of GST enactment cannot be interpreted so as to deny right to carry on Trade and Commerce to any citizen and subjects. The constitutional guarantee is unconditional and unequivocal and must be enforced regardless of shortcomings in the scheme of GST enactment. The right to carry on trade or profession cannot be curtailed contrary to the constitutional guarantee under Art. 19(1)(g) and Article 21 of the Constitution of India. If the person like petitioner is not allowed to revive the registration, the state would suffer loss of revenue and the ultimate goal under GST regime will stand defeated. The petitioner deserves a chance to come back into GST fold and carry on his business in legitimate manner.*

**In S A Traders vs Commissioner State Goods And Services [Writ Petition (M/S) No. 113 of 2023]**, Uttarakhand High Court discussed the violation of Fundamental Right of livelihood in the context of cancellation of GST Registration. Hon'ble HC held that:

*"Such denial of registration of GST number, therefore, affects his right to livelihood. If he is denied his right to livelihood because of the fact that his GST Registration number has been cancelled, and that he has no remedy to appeal, then it shall be violative of Article 21 of the Constitution as right to livelihood springs from the right to life as enshrined in Article 21 of the Constitution of India. In this case, if we allow the situation so prevailing to continue, then it will amount to violation of Article 21 of the Constitution, and right to life of a citizen of this country"*

**H. The impugned order has been issued in utter disregard to the Order dated 13.08.2024 of the Hon'ble High Court of Gujarat in SCA No.16621 of 2023 filed by the appellant**



Appellant submits that the impugned order has been issued with prejudice and malice as the Hon'ble High Court of Gujarat in SCA No.16621 of 2023 has specifically ordered vide its order dated 13.08.2024 that the show cause notice should be decided within a period of two months from the date of receipt of the copy of the order of the Hon'ble High Court.

The appellant had fully co-operated with the adjudicating authority and filed its written submissions on 17.09.2024 and attended personal hearing on 07.10.2024. However, the order was not issued within two months from the receipt of the Hon'ble High Court's order and the adjudicating authority waited for the meeting of the Approval Committee so as to place the show cause notice before the committee and get the LOA cancelled. It was only when the meeting was held on 26.12.2024, the notice was placed before the UAC and the LOA was got cancelled and in the impugned order it was mentioned that since a unanimous decision has been taken by the UAC to cancel the LOA, she had to follow the same. The sequence of events clearly shows the prejudice of the learned adjudicating authority and her disrespect towards the order of the Hon'ble High Court.

### **Prayer:**

In view of the aforesaid, it is most respectfully prayed that this Hon'ble Board may be pleased to:

- A. Set aside and quash the Impugned Order dated 02.01.2025 passed by the Development Commissioner, APSEZ;
- B. Hold and declare that the SCN dated 28.04.2023 is without jurisdiction and not sustainable, and drop all proceedings pursuant thereto;
- C. Direct reinstatement of the Appellant's LOA No. APSEZ/o8/STL/ 2021-22 dated 05.07.2021 with continuity;
- D. Grant an ad-interim stay on the Impugned Order pending final disposal of the appeal;
- E. Pass such other and further orders as may be deemed just and proper in the facts and circumstances of the case.

### **COMMENTS RECEIVED FROM DC, APSEZ, Mundra::**

#### **Comments/Grounds/Observation:**

M/s. Shivansh Terminal LLP, APSEZ Mundra in their Annexure-A attached with Form of Appeal has mentioned that appeal is being filed under Section 16(2) of the SEZ Act, 2005. However, Section 16(4) of the SEZ Act, 2005 is the provision to file appeal before Board. Therefore, the appeal may be disposed of.

Show Cause Notice clearly mentioned (i) time period to file reply which was 15 days from the receipt of the Show Cause Notice and (ii) date of personal hearing. However, the reply was filed by M/s. Shivansh Terminal LLP on 17.09.2024 i.e. after lapse of 20 months. Also, no one appeared for personal hearing too on the date mentioned in SCN.

Copy of FIR (**Exhibit-1**) clearly mentioned that 04 containers of M/s. Shivansh Terminal LLP reached at Adinath Cargogodown, Mundra, outside SEZ area. These 04 containers were loaded with areca nuts (restricted / prohibited item) were dumped

there and other material named PVC Regrind – raw material which was already in the godown (which was declared in the concerned bill of entry **Exhibit-3**) was loaded into 04 containers.

### **Preliminary Objections:**

#### **A. Show Cause Notice without Jurisdiction:**

It is to mention that the matter in the present appeal is Order-In-Original, not the Show Cause Notice. M/s. Shivansh Terminal LLP even approached the Hon'ble High Court of Gujarat for quashing of Show Cause Notice. However, the court ordered for adjudication of the Show Cause Notice and not questioned the issuance of Show Cause Notice. Even the subject Order-In-Original has been passed as per the direction of the Gujarat High Court.

The appellant has also relied upon some judgment in their favor. Since the matter which is being appealed for in about the Show Cause Notice. It appears that they all are not required to be taken into consideration. Also, we have already a judgment of Hon'ble High Court of Gujarat which belongs to this case, as mentioned above (**Exhibit-02**)

#### **B. Violation of Section 16(1) requirements:**

The appellant has stressed on two key points which are required for cancellation of Letter of Approval. The first one is there should be persistent contravention and second one is the approval committee must cancel the LoA.

- i. With regard to persistent contravention, it is to submit that in the present case, M/s. Shivansh Terminal LLP jointly filed a Bill of Entry for import of goods with 04 containers. Transshipment permission was given to M/s. Shivansh Terminal LLP for movement of containers from port terminal to SEZ unit. One-by-One all the containers were gone out of the SEZ are and as alleged in the FIR Copy, the said containers were emptied at Adinath Godown Shed-1 (which is about 10 km away from the port exit gate). So, not only one containers, they persistently moved out four containers in contravening provision of SEZ Rules, 2006. Also, if movements of all the 04 containers counted as single contravention, there are several judgments where it is established by the Courts that it is not necessary to wait for further contravention if not in the public interest. Some of these are:

Bombay High Court decision 2004, in case of **SEBI vs Cabot International Capital Corporation**, upheld the order of SAT where penalty were imposed upon M/s. Cabot International under SEBI Act. M/s. Cabot contested that "there was no occurrence of default or repetition of the alleged violation by the respondents". However, Bombay High Court decided the matter in favor of SEBI.

- ii. With regard to cancellation by approval committee, it is to share that the whole matter along with their written submission and records of personal hearing, was placed in the approval committee in its 112nd meeting held on 26.12.2024. The approval committee unanimously decided to cancel the Letter of Approval after considering the seriousness of the case and to mitigate the unauthorized



activities of warehousing units. Also, as per Section 13(7) of the SEZ Act, 2005 which states as:

*"(7) All orders and decisions of the Approval Committee and all other communications issued by it shall be authenticated by the signature of the Chairperson or any other member as may be authorised by the Approval Committee in this behalf."*

In view of the above provision, it is the function of the Development Commissioner of the SEZ, in the capacity of Chairperson of the Approval Committee, to authenticate and convey the decision of Approval Committee.

Thus, the Development Commissioner has not cancelled the LoA. The subject Order-In-Original is merely a communication and is being authenticated by the DC in terms of above provision. And in the present case, Approval Committee only has decided to cancel the LoA not the Development Commissioner **(Exhibit-4)**.

It is also important to note that appellant chose to challenge the order passed by the Development Commissioner when their LoA got cancelled. However, their Letter of Approval was also signed by the Development Commissioner. This shows their ill presentation of the provisions of Law.

In view of the above facts on record, the contentions raised by the appellant are baseless.

#### **Comments on Grounds of Appeal:**

<b>S. No.</b>	<b>Grounds of the Appeal</b>	<b>Comments of the Zone</b>
A.	<b>The Impugned Order suffers from total non-application of mind and has been passed in gross violation of the principles of natural justice:</b>	<p>The impugned Order suffers from total non-compliance of mind and has been passed in gross violation of the principles of natural justice:</p> <p>The appellant is saying that their submission has not been discussed and the development commissioner has without application of mind passed the order without any discussion. It is to re-iterate the fact that the said Order-In-Original is merely a form of communication. It was the Approval Committee who cancelled their Letter of Approval. Approval committee in their minutes clearly mentioned that they have gone through their written submission and records of personal hearing. Even though, this office wants to emphasize the fact that when there are enough facts available on records, which proves that contravention is</p>



		there, not each and every point is required to be discussed.
B.	<b>No case for cancellation of LOA is made out under Section 16(1) of SEZ Act:</b>	<p>i. With regard to persistent contravention, it is to submit that in the present case, M/s. Shivansh Terminal LLP jointly filed a Bill of Entry for import of goods with 04 containers. Transshipment permission was given to M/s. Shivansh Terminal LLP for movement of containers from port terminal to SEZ unit. One-by-One all the containers were gone out of the SEZ are and as alleged in the FIR Copy, the said containers were emptied at Adinath Godown Shed-1 (which is about 10 km away from the port exit gate). So, not only one containers, they persistently moved out four containers in contravening provision of SEZ Rules, 2006.</p> <p>Also, for such serious violations on their behalf, persistent contraventions should not be waited for to be happened. It appears that although law says for consistent contravention, but the nature of consistent contravention is contextual. In the present context, wait for further contraventions might have lead to much more heinous act.</p> <p>ii. The appellant is pleading that they were not involved in or aware of the illegal import. It is to submit that the said case of illegal import of areca nut is still pending with SIIB, Custom House, Mundra. And it is important to mention that SIIB Mundra had withdrawn the NOC which was earlier given to M/s. Shivansh Terminal LLP. Also, the investigation is still pending with them. However, it shows that SIIB might have some proofs against M/s. Shivansh Terminal LLP.</p>

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|  | <p>iii. The appellant submitted that they were only custodian of the goods. Having been custodian was not a mere. It is to submit that being a SEZ / warehousing unit, it was their responsibility to place the goods in their unit after getting transshipment approval from the authorized officers of the SEZ. However, the containers went out from the SEZ area taking benefit of being transporter also (these facts were mentioned in show cause notice also). It was also admitted during the course of personal hearing that the drivers of the 04 containers were hungry so they went outside which was very lame excuse as the inside SEZ area, there are such facilities. No one is above the law. It was their responsibility to get the containers inside the SEZ unit, however, they failed in doing so and violated the provisions of Rule 28 &amp; 29 of the SEZ Rules, 2006.</p> <p>iv. The appellant is saying that Gujarat Police did not find anything and the chargesheet filed by them does not implicate their name. It is to submit that copy of chargesheet was never provided by M/s. Shivansh Terminal LLP. Here are some key facts available, related to the appellant and Gujarat Police:</p> |
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**Gujarat Police investigation:**

It is important to note that A Police case was also registered at Adinath Cargo, a godown where the areca nuts imported through the subject 04 containers were dumped and PVC regrind as per FIR copy, was loaded on those containers. Copy of FIR also suggests that containers of M/s. Shivansh Terminal were loaded with areca nuts which were unloaded and then loaded with material

PVC Regrind-Raw Material already lying there. The name coming into the FIR itself tells the crux of the case.

- v. The appellant submitted that as per Custom panchnama, the seal was found intact and granules were found in the containers. It is to re-iterate that if this being a simple case, SIIB would have completed their investigation. Also, the NOC given to them for starting their operations was also withdrawn. It is also interesting to know the fact that whatever Gujarat Police registered in the FIR, "PVC Regrind-Raw material" has been referred which was alleged to have been loaded into the 04 containers which were first unloaded and areca nuts were dumped. So, the material which was found by Gujarat Police and which was declared in Bill of Entry was same. It does not seem coincidence.
- vi. The appellant's plea that movement of trucks outside SEZ for a few hours does not lead to tampering or replacement of goods. It is to submit that first, why the drivers went out from the SEZ area for eating food when there is facility in port area itself. Second, being a LoA granted SEZ unit, it was their responsibility to move the goods directly into SEZ area. The Show Cause Notice mentions all these facts precisely that how they managed to carry out such illegal activities.
- vii. It is to submit that Show Cause Notice as well as Order-In-Original may be referred where relevant provisions and violations thereof are clearly mentioned.
- viii. All the facts available with this case clearly transpires that the



		appellant was involved in illegal import of areca nuts.
C.	<b>The SCN issued under Section 13 of FTDR Act does not empower the adjudicating authority to cancel LOA:</b>	<p>i. As pointed out in the written submissions dated 17.09.2024 and 07.10.2024, the SCN has been issued under Section 13 of FTDR Act, 1992 which empowers the adjudicating authority only to impose penalty or order confiscation. It does not provide for cancellation of LOA.</p> <p>ii. The SCN does not even refer to or allege any contravention under Section 16(1) of SEZ Act which is the only provision dealing with cancellation of LOA on account of persistent contraventions.</p> <p>iii. It is trite law that a show cause notice is the foundation of any quasi-judicial proceedings and the adjudicating authority cannot travel beyond it. When the SCN does not invoke the correct legal provision (Section 16(1) of SEZ Act) or make out grounds for cancellation of LOA, the Impugned Order passed on this basis is without authority of law.</p> <ul style="list-style-type: none"> <li>The Hon'ble Supreme Court in J.S.Yadav vs State Of U.P &amp; Anr on 18 April, 2011 (2011 AIR SCW 3078) held that:</li> </ul> <p>It is a settled principle of law that no one can be condemned unheard and no order can be passed behind the back of a party and if any order is so passed, the same being in violation of principles of natural justice, is void ab initio.</p> <p>This legal proposition was reiterated by Supreme Court in Ranjan Kumar vs State of Bihar &amp; Ors on 16 April, 2014 (2014) 16 SCC 187 it was held by that:</p> <p>"9. In J.S. Yadav v. State of Uttar Pradesh and another [(2011) 6 SCC 570] it has been held that no order can be passed behind the back of a</p>

		<p>person adversely affecting him and such an order, if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice."</p> <p>v. Viewed thus, the Impugned Order is wholly without jurisdiction, besides being in violation of principles of natural justice. The Development Commissioner could not have passed an order for cancellation of LOA in the absence of any such grounds in the SCN.</p>
D.	<b>Impugned Order is based on mere conjectures and assumptions without any credible evidence on record:</b>	<p>Impugned Order is based on mere conjectures and assumptions without any credible evidence on record.</p> <p>As mentioned in <i>para supra</i>, there are evidences which shows that they were involved in illegal import of areca nuts.</p> <p>Thus, the case laws relied upon are helpless in the subject matter.</p>
E.	<b>The Impugned Order is violative of Article 14 of the Constitution being arbitrary, unfair and discriminatory:</b>	<p>The impugned order is violative of Article 14 of the Constitution being arbitrary, unfair and discriminatory</p> <p>Not applicable</p>
F.	<b>Missing in the Appeal</b>	Missing in the appeal
G.	<b>The Impugned Order cancelling LOA is violative of right to livelihood, embodied under Article 21 of the Constitution.</b>	<p>The impugned order cancelling LoA is violative of right to livelihood, embodied under Article 21 of the Constitution:</p> <p>Not Applicable</p>
H.	<b>The impugned order has been issued in utter disregard to the Order dated 13.08.2024 of the Hon'ble High Court of Gujarat in SCA No.16621 of 2023 filed by the appellant</b>	<p>Following the High Court Order and to adjudicate the show cause notice, personal hearing in the matter was given as soon as order was received. However, the adjudication was got delayed because of availability of Approval Committee member's quorum as the Approval Committee is the ultimate authority to decide the cancellation of LoA. As there was not a single person who had to adjudicate the matter, it was the Approval Committee to decide the Show Cause Notice. Thus, the case laws relied upon are not applicable in the present case.</p>

- In addition to above submission / comments, the zone also mentioned that there are several instances noticed across all the SEZ's where unauthorized activities by the warehousing units are seen which somehow damage the value of SEZ's. The Ministry of Commerce has also issued several instructions to mitigate such unauthorized activities.
- In view of above, Board of Approval is requested to consider grounds and submission by the zone while judging their appeal.

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