Instruction No.6/2009

Office of the Development Commissioner
Special Economic Zones - Kerala and Karnataka
CSEZ Administrative Office, Kakkanad,
Kochi, Kerala – 682 037

Subject: DTA Clearance by SEZ units – levy and collection of duty – reg

It has been observed that different practices are being observed at different Special Economic Zones and by different authorized officers in the matter of assessment of value and levy of duty. It must be borne in mind that taxation is the privilege of the Supreme Legislative body and that no tax can be levied without authority of Parliament. Since the developers and units have been conferred with many exemptions, it is necessary to ensure that there is no short-levy when clearing into the Domestic Tariff Area so that such unit is not able to detrimentally affect a manufacturer of like goods in the Domestic Tariff Area. The Special Economic Zones Act also does not incorporate a refund procedure and, hence, there is an obligation on the part of the authorized officers to ensure that no duty in excess of that imposed by Parliament is collected from the developer or unit.

2. Duties intended to be levied by Parliament is authorized to be collected by the charging section of the statute. Hence, it should be noted that no duty can be collected without an authorizing legislation and that lack of coverage in an exemption notification, whether conditional or otherwise, does not render that notification to be a charging section. Normally, when goods are imported into the country, the provisions of section 12 of Customs Act, 1962 would apply. Special Economic Zones being outside Customs territory of India, the charging section in the Special Economic Zones Act would have to be invoked upon clearance into the Domestic Tariff Area. Section 30 of Special Economic Zone Act imposes duties of customs, including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, as leviable on goods when imported into India, on goods removed from a Special Economic Zone to Domestic Tariff Area. Duties of customs has not been defined in the Act but as per section 2(zd), the definition in the Customs Act, 1962 shall be the definition. According to section 2 (15) of Customs Act, 1962 “duty” means a duty of customs leviable under that Act. Wherever the Customs Tariff Act is to be resorted to and the duties are based on *ad valorem*, section 14 of Customs Act, 1962 would be applicable for valuation.

3. According to section 14, the values shall be the price at the time and place of importation. This would imply that the duty shall be leviable not only on the price of goods as fixed by the supplier but also to include the costs, particularly freight and insurance on the goods, till the goods are cleared for home consumption. Hence the commonly used reference to CIF value as the basis for assessment of value and levy of duty. Normally, goods are billed at place of import, being the port of clearance for home consumption, on CIF terms in all cases of import. Central Board of Excise & Customs has issued detailed instructions on the practice to be followed when the goods are imported on terms other than CIF to load the value accordingly for purposes of duty. It is clarified that place of importation for goods emanating from Special Economic Zones is the gate of the Zone and the invoice as well as all clearance documents should indicate CIF value as at that place for a proper assessment and state it specifically. If no such categorization is done, it will be presumed that goods are billed on FOB/FOL basis and appropriate loading will be imposed on declared value. All units that have cleared into the

Domestic Tariff Area after the Special Economic Zones Act came into force shall furnish a certification that values declared on clearance documents have been on CIF basis for all past clearances, if they have not been on FOB/FOL basis.

4. It also needs noting that goods when procured from Domestic Tariff Area and, not having been utilized for authorized operations, are cleared into the Domestic Tariff Area, duty under sec 30 of Special Economic Zones Act, 2005 will become leviable as there is no differentiation in the said provision. This will, however, not apply to goods brought into the Special Economic Zone without deriving the exemptions under section 26 of the Special Economic Zones Act, 2005 since the conditions relating to bringing in of goods into the Zone will operate only when sec 26 is availed of. Accordingly, all other goods brought into Zone are outside the ambit of the Special Economic Zones Act, 2005 and, hence, not subject to section 30 of the Act. It follows that the authorized officer should be satisfied that the goods have been procured without exemptions for which it would be advisable for the units to declare accordingly to the authorized officer when goods are brought into the Zone. If the developer or unit fails to do so, the authorized officer may be constrained to apply section 30 of the Special Economic Zones Act, 2005.

5. Goods brought into the Special Economic Zone, whether imported or exported in terms of section 2(m) or 2 (o) of Special Economic Zones Act, 2005 are not warehoused since the operations in the Special Economic Zone are outside the ambit of the Customs Act, 1962 which contains warehousing provisions. The clearance of such goods into the Domestic Tariff Area is independent of the original action of bringing it in and the proceeding under section 30 of the Special Economic Zones Act, 2005 is an entirely new one delinked from the procurement. Accordingly, the contents at the time of declaration upon procurement is not required to be conformed to or related to declaration in the clearance document relating to removal. However, the authorized officer may use such values as benchmark to eliminate possibility of undervaluation, particularly when the goods are cleared as such without any apparent justification for non-utilization.

6. It is also implicit that all exemptions, partial or total, provided for under the Customs Tariff Act, 1975 are applicable to levy of duty under section 30 of the Special Economic Zones Act, 2005, whether conditional or otherwise, unless such exemption clearly excludes clearances from Special Economic Zones. Conditions prescribed for availment of any exemption would need to be complied with strictly to avail of the exemption and exemptions, whether conditional or otherwise, shall be available only for the goods specifically described in the exemption notification. An exemption notification applying to a specified category would also prevail over a general notification that covers all classes.

7. Goods cleared from a Special Economic Zones are subject to countervailing duties, anti-dumping duties and safeguard duties imposed by either Customs Tariff Act, 1975 (as for countervailing the Central Excise duty) or by notification under the said Act for all other duties. Goods produced or manufactured in a Special Economic Zone are exempted by special additional duty to countervail value added tax imposed by a State Government as per Notification 45/2005 dated 16.5.2005 except where the said goods are exempt from such levies of the concerned State Government. This is in recognition of the fact that such countervailing is not required since the concerned Value Added Taxes Act does not recognize the unit in the Special Economic Zone to be outside its ambit and is, therefore, liable to the VAT as leviable, unlike an import under the Customs Act, 1962 which is a transaction not covered within the ambit of taxing legislation for value added tax and, hence, requiring countervailing.

8. Goods that can be cleared into the Domestic Tariff Area are such as are the result of authorized operations permitted by the competent authority under the Special Economic Zones Act, 2005. All authorized officers are required to ensure that this is so and that the Letter of Approval is a valid one at

the time of such clearance. For exiting units, appropriate permissions under the Special Economic Zones Rules, 2006 needs to be verified.
9. The above are general guidelines that are not intended to restrict assessment powers but to ensure compliance with general principles of taxation. Any situation of doubt should be immediately brought to the notice of the Specified Officer for clarification who, shall after consultation with Development Commissioner, take steps to resolve the doubt.

10. Any case of difficulty arising from the above instructions may be brought to the notice of the undersigned.

(C J Mathew)
Development Commissioner
26.10.2009

To

All authorized officers in Kerala and Karnataka
All Developers and Units

Copy to:

1. Deputy Development Commissioner, CSEZ
2. Deputy Commissioner of Customs, CSEZ