

Import of goods by SEZ Developer and Units in SEZ

General:

Rule 27(1) of Special Economic Zone Rules, 2006 (herein after referred as SEZ Rules) allows the Developer of SEZ and Units in SEZ to import¹ all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods (including semi-finished Jewellery), component, consumables, spares goods and materials for making capital goods without payment of duty, taxes or cess, required for the purpose of **authorised operations** except the goods which are prohibited for import under Indian Tariff Classification (Harmonised System) for Import and Export.

From the above it is evident that in order to import the goods duty free, following two criteria should primarily be satisfied:

- ✓ Goods imported or procured must be covered under the authorised operations of SEZ Developer/Unit and
- ✓ Such goods should not be prohibited for import under Indian Tariff Classification (Harmonised System) for Import and Export.

However, the said rule allows the Developer of SEZ and Units in SEZ to import the prohibited goods too subject to the prior approval of Board of Approval (BOA). The phrase '*Authorised operations*' has been defined vide Section 2(c) of SEZ Act, 2005 to mean operations which are authorised by the Board in case of Developer under Section 4(2) and by Development Commissioner (DC) in case of Units in SEZ under Section 15(9) of SEZ Act, 2005.

Import of goods by Developer of SEZ and Units in SEZ is exempted from **any duty of customs** leviable under Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force under Section 26(1)(a) of the SEZ Act, 2005.

Further, Article 269A of Constitution of India provides that supply of goods and services in the course of import into the territory of India shall be deemed to be supply of goods and services in the course of inter-state trade or commerce. Thus, any import of goods by SEZ Developer/Unit would attract integrated tax leviable thereon under section 3(7) of Customs Tariff Act, 1975. Similarly, import of services by SEZ Developer/Unit would require payment of Integrated tax leviable under section 5 of Integrated Goods and Service Tax Act, 2017 (herein after referred as IGST Act, 2017).

However, Ministry of Finance (Department of Revenue) vide Notification No. 64/2017 – Customs, dated 05-07-2017 has exempted goods imported by SEZ Developer/Unit from whole of integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of IGST Act, 2017. Similarly, vide Notification No. 18/2017 – Customs, dated 05-07-2017 has exempted services imported by SEZ Developer/Unit from whole of Integrated tax leviable thereon under section 5 of IGST Act, 2017.

¹ Generally, goods procured by SEZ and Units in SEZ from DTA is also termed as import, but the article specifically focuses on import of goods by SEZ and Units in SEZ from outside India. Therefore, herein after the word "Import" in this article means import specifically from outside India.

Administrative set up for SEZs :

The functioning of the SEZs is governed by a three-tier administrative set up that are framed to look into the matters of SEZ.



- (i) **Board of Approval/Board** : The Board is the apex body/authority in case of approval mechanisms and other related issues related to SEZ that is constituted by the central government to exercise the powers conferred under the SEZ Act. All major decisions related to SEZ will be taken by Board. The Board consists of 19 members representing various Ministries and Departments.

(Note: Board constituted by Central Government for SEZ is also the apex body for Export Oriented Units (EOUs) to exercise powers conferred under EOU Scheme)

- (ii) **Unit Approval Committee(UAC)** : Every request for setting up of Units in the SEZ are approved at the Zone² level by the UAC consisting of Development Commissioner, after a discussion with the Customs Authorities and representatives of State Government. It is the authority which mainly deals with the matters related to Units in SEZ and its related approvals.
- (iii) **Development Commissioner(DC)** : Development Commissioner is a chairman of the UAC. DC is the nodal officer for SEZs and helps in resolution of problem, if any, faced by the units or developer.

Under the DC, there will be Specified Officers(SO) to look the overall functioning of each SEZ in zone, Authorised Officers (AO) to look into the day to day transactions of Units in SEZ and provide necessary approvals/clearances for imports, exports etc.

Import of goods by SEZ Developer:

For import of goods duty free, the Developer would be required to fulfil the following procedures and conditions as prescribed, namely:

- (i) Only the **goods which are approved by the UAC** as goods required for authorised operations would be allowed to be imported or procured by Developer. However, in case of SEZ set up by Central Government, the goods required for the authorised operations would be approved by BOA. [Ref: Rule 10 of SEZ Rules, 2006]
- (ii) The Developer is required to make an **application** to DC after obtaining approval from BOA(for setting up of SEZ) specifying the list of goods or services including equipments, construction materials required for authorised operations **duly certified by Chartered Engineer** for approval by UAC. [Ref: Rule 12(2) of SEZ Rules, 2006]
- (iii) The Developer should declare the **place of storage** within processing area of SEZ to the Specified Officer (SO). In case the storage is outside the processing area but within SEZ, the Developer would be required to comply with the safeguards as may be specified by SO. [Ref: Rule 12(3) of SEZ Rules, 2006]

² All states and Union territories are divided into 7 Zones based on various criteria and requirements. Each Zone will have a UAC to exercise the powers conferred under the SEZ Act.

- (iv) The goods imported are required to be kept in a **clearly demarcated area for inspection** by the Authorised Officer before such goods are brought to use. [Ref: Rule 12(4) of SEZ Rules, 2006]
- (v) The Developer is required to execute Bond-cum-Legal undertaking (**BLUT**)³ **in Form D**, jointly with DC and SO undertaking to account for the goods, to utilize the goods for authorised operations within the period of 1 year or such period as may be extended by the SO. [Ref: Rule 12(5) of SEZ Rules, 2006]
- (vi) The Developer shall maintain a proper account of the import / procurement, consumption and utilization of goods and submit **quarterly and half-yearly returns to the DC in Form E** for placing the same before the UAC for consideration. [Ref: Rule 12(6) of SEZ Rules, 2006]
- (vii) The Developer shall submit a **half-yearly certificate** for the period ending 31st March and 30th September of every financial year regarding utilization of goods from an Independent Chartered Engineer or Independent Chartered Accountant or Cost Accountant as the case may be, to DC and SO and such certificate shall be filed **within 30 days** of period specified, as the case may be. [Ref: Rule 12(7) of SEZ Rules, 2006]
- (viii) The Developer shall not remove goods from SEZ to Domestic Tariff Area⁴ (DTA) except with the **permission of the SO** and on payment of duty applicable on such goods. [Ref: Rule 12(8) of SEZ Rules, 2006]

Import of goods by SEZ Unit:

For import of goods duty free, the Units in SEZ would be required to follow the below procedures and conditions as prescribed namely:

- (i) As in the case of developer, the Units are also required to execute a BLUT in **Form H** with DC and SO. Therefore, before allowing duty free import, it may be ensured that the unit has executed BLUT and the goods intended to be imported are for the purpose of authorised operations. [Ref: Rule 22 of SEZ Rules, 2006]
- (ii) The Unit shall **maintain proper accounts**, financial year wise, and such accounts should clearly indicate the value of goods imported or procured from DTA, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in DTA or transfer to SEZ or EOU or Electronic Hardware Technology parks (EHTP) or Software Technology Parks (STP), as the case may be, and balance in stock;

Provided that Units/Developer shall maintain such records for a period of **7 years** from the end of relevant financial year;

Provided further that the Unit engaged in both trading and manufacturing activities shall maintain separate records for trading and manufacturing services. [Ref: Rule 22(2) of SEZ Rules, 2006]

³ BLUT is different from LUT, where BLUT is an agreement by way of bond between SEZ Developer/Unit and DC to utilize the goods imported or procured duty free for authorised operations within the time specified & to abide with the terms and conditions of such BLUT, whereas LUT is used to make zero rated supplies to SEZ Developer/Unit by units in DTA.

⁴ DTA means whole of India (including the territorial waters and continental shelf) but does not include the areas of SEZ.

- (iii) The Unit shall submit **Annual Performance Report (APR) in Form I** to the DC **within 90 days** of the end of financial year and the DC shall place the same before the UAC for consideration. [Ref: Rule 22(3) of SEZ Rules, 2006]
- (iv) In case of any doubt as to whether any goods are required for authorised operation by the developer or unit, it shall be decided by DC. [Ref: Rule 27(2) of SEZ Rules, 2006]

Procedure for Import of goods by SEZ Developer and Unit:

Procedure for import of goods by the Developer and Unit has been provided in Rule 28 of SEZ Rules, 2006. As per the SEZ Rules, a Unit or Developer may directly import goods into SEZ or through any of below –

- (i) Ports or Airports;
- (ii) Land Customs Stations⁵;
- (iii) Inland Container Depots⁶ (ICD);
- (iv) Foreign Post Offices;
- (v) Authorised Couriers;
- (vi) Personal baggage of passengers authorised by the SEZ Unit and
- (vii) Via Satellite data communications such as internet or any other telecommunication link for software related Units.

➤ Overview on procedure for Import by Port/Airport/land Customs Stations/ICD:

- (a) The SEZ Developer and Unit (herein after referred as Importer) is required to file **Bill of Entry (BOE) for Home Consumption** in “SEZ Online Portal⁷” in quintuplicate(5) giving the detailed description of goods and specifically endorsed as “Special Economic Zone Cargo” along with bill of lading, invoice, airway bill and packing list with the AO.

The BOE would be **assessed by AO** in the same manner as BOE for normal import is assessed and such BOE assessed by AO would not require any counter signature of SO. In case BOE is not assessed on the date of filing itself, the goods shall be allowed to be transferred on the basis of registration of BOE and by providing an endorsement on the BOE by AO to this effect. [Ref: Rule 29(2) of SEZ Rules, 2006]

- (b) The registered and duly assessed BOE is to be **submitted to the Customs officers** at the port of import and the same shall be treated as permission for transfer of consignment to the SEZ.

⁵ Land Customs Station in simple terms means a customs station, situated where there is a land connectivity between two different nations to ship the goods via road.

⁶ ICD is a dry port equipped for handling and temporary storage of containerized cargo as well as empties. This means that hinterland/local customers can receive port services more conveniently closer to their premises.
Ex: Goods imported from USA via port is unloaded at Chennai Port and transferred to the importer at Hyderabad through transshipment by Rail for customs clearance of such goods at the ICD in Hyderabad and not at the Chennai port even though the goods were unloaded at Chennai port.

⁷ SEZ Online system is a web-based application that enables the SEZ Developer and Units to report various transactions undertaken by them and to obtain the necessary approvals from SEZ officials online.

- (c) The goods are allowed **clearance on the basis of the BOE assessed by SEZ customs authority** and the goods are allowed transferred to SEZ either under customs escort⁸ or under a transshipment⁹ procedure, at the option of the SEZ importer.
- (d) Once the goods have been received into SEZ, SEZ importer is required to **submit the fifth copy of BOE bearing endorsement by AO** that goods have been received at the SEZ, to the Customs Officer at the port of import within 45 days from the date of clearance of goods failing which the incharge of the port of import shall write to the SO of the concerned SEZ for raising demand of duty on the importer. [Ref: Rule 29(2)(g) of SEZ Rules, 2006]
- (e) Endorsement by AO and submission of endorsed BOE to customs officer is deemed to be completion of the customs procedure for the purpose of issuing “**Out of Charge**” to the BOE initially filed in SEZ Online portal. [Ref: Rule 29(2)(h) of SEZ Rules, 2006]

➤ Overview on procedure for Import through courier:

The SEZ importers prefer to import small consignment through courier mode owing to the fact that parcels are delivered at the door of the importers and the process of delivery is comparatively faster

As per rule 29(2)(i) of the SEZ Rules, 2006, the following procedure shall be adopted:

- (a) The procedure for filing BOE, getting it assessed by AO and submitting the fifth copy of BOE to customs authorities with 45 days will be same as specified in import by port/airport/land Customs Station/ICD.
- (b) The courier will deliver the goods to the SEZ importer under customs escort or shall hand over to the custodian for transshipment to SEZ under transshipment procedure.
- (c) In case the SEZ importer is not able to get the parcel duty free, the duty paid by importer on such eligible goods shall be refunded by the SO as drawback under section 74 of Customs Act, 1962.

➤ Overview on procedure for Import by post:

Rule 29(4) of the SEZ Rules deals with the procedure for imports of goods by SEZ's through post. The SEZ importer is required to follow the below procedure:

- (a) The procedure for filing BOE and getting it assessed by AO will be same as specified in import by port/airport/land Customs Station/ICD.
- (b) The copy of intimation letter received from the post office is required to be pasted on the reverse side of the original BOE.
- (c) The assessed BOE is to be submitted to the Customs Officer at the post office and the same would be treated as permission for transfer of consignment to the SEZ.

⁸ Customs escort means goods that are transferred to SEZ will be accompanied by the customs officials till it reaches SEZ.

⁹ Transshipment means transfer of a shipment from one carrier, or more commonly, from one vessel to another in order to deliver the goods to the ultimate destination.

(d) Where the SEZ is situated away from the post office, the goods are to be moved to the SEZ under customs escort or may be handed over to the custodian of SEZ or delivered to the Units or its authorized representative after sealing of the parcel.

➤ Overview on procedure for Import through personal Baggage:

Under Rule 29(5) of the SEZ Rules, SEZ may import goods including precious goods, namely gold/silver/platinum or gems and jewellery as personal baggage through an authorized passenger subject to the following procedure :

- (a) The authorized passenger bringing the goods must declare the goods with the customs at port/airport in the arrival hall in the declaration form as specified by commissioner incharge of the airport and hand over the goods duly packed indicating the name, address of the consignee accompanied by invoice and packing list to the customs authorities at the port/airport for detention in the warehouse under a detention receipt.
- (b) The Customs officer of the port/airport shall detain the goods and issue detention receipt.
- (c) The Importer shall file BOE online and submit the original BOE for assessment along with the copy of detention receipt issued by port custom authorities to AO for assessment.
- (d) The authorized representative shall present assessed BOE and original detention receipt at the detention counter where goods are allowed clearance after making entries in the warehouse register and detention receipt register.
- (e) After release, the goods may either be moved to the SEZ importer under customs escort or may be handed over to the custodian or authorised representative of SEZ after sealing the parcel with customs seal.
- (f) The goods are allowed to be taken after verification by AO at SEZ gate.

➤ Overview on procedure for Import through Internet or through Data communication or Telecommunications Links:

Import of Information technology enabled services including software is allowed through Internet or through Data Communication links or e-mails subject to following procedure :

- (a) In respect of all the materials imported through internet or through data communication or telecommunication links or e-mail, importer is required to file consolidated BOE for a month within 3 working days of closure of the month along with invoice and other relevant documents and shall obtain "Out of Charge" from AO subject to following conditions, namely:
 - (i) Import documents are required to be routed through banks or advance payments for imports could be routed through Foreign Currency Account;
 - (ii) Instructions, if any, issued by RBI from time to time, in this behalf shall be complied with.[Ref: Rule 29(6) of SEZ Rules, 2006]

Post Import requirements:

A. Submission of Reports:

- (a) Developer shall submit Quarterly Report on import and procurement of goods from the Domestic Tariff Area, utilization of the same and the stock in hand, in Form E to DC within 30 days from the end of the specified period [Ref: Rule 22(4) of SEZ Rules, 2006]
- (b) Unit shall submit Annual Performance Report (APR) in Form I to DC, within 6 months from the end of relevant financial year [Ref: Rule 22(3) of SEZ Rules, 2006]

Unit and Developer can also opt to submit monthly reports online in SEZ Online portal. However, submission of monthly reports does not replace the obligation of Developer and Unit to submit the quarterly reports and APR.

B. Time Limit for Settlement of Import Payments (under FEMA Regulations):

- (a) Remittance for imports should be completed not later than six months from the date of shipment, except where amounts are withheld towards guarantee of performance, etc.
- (b) If payment has been deferred above six months, then such payment arrangement in excess of six months up to three years (Capital Goods) / one year (Non-Capital Goods) would be treated as Trade Credit for which Trade Credit Regulations under ECB need to be followed.
- (c) Any deferment beyond the above period needs RBI approval.
- (d) Importer can make advance remittance for import of goods subject to the conditions specified by RBI vide AP (DIR Series) Circulars (and Master Direction on Imports) and AD bank must ensure to create Outward Remittance Message (ORM) for all outward remittances in IDPMS.