



Proposals for changes in SEZ and Allied Laws

by

**SBS and Company LLP
Chartered Accountants**

To
Mr Ravi Sannareddy,
Managing Director
Sri City India Private Limited,
Sri City

Dear Mr Ravi Sannareddy,

It gives me immense pleasure to congratulate your good self on being elected as member of committee responsible for recommending changes to the SEZ legislation. I am sure that this is one of the important mile stone in your efforts to make Sri City attain much brighter spot on the globe.

On behalf of our firm, I am herewith submitting certain issues which the firm encounters while helping our SEZ clients. The probable ways of addressing such issues were also detailed. I wish the committee will take the issues into consideration and deliberate on them and make recommendations for making the SEZ space more vibrant.

I once again on behalf of our firm congratulate your good self and submit our recommendations for due consideration. I shall assure that our team will be available at any time for discussion of the issues submitted hereunder. I shall also assure that our team can provide any technical or professional support required in this connection.

With Kind Regards,

**For SBS and Company LLP
Chartered Accountants**

**Suresh Babu S
Chairman and Manging Partner**

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Proposals under SEZ Legislation

The recommendations are as a result of practical challenges faced by the firm during the course of assisting the developer and units of various SEZs. This set of proposals are contributed by Mr Murali Krishna, Partner SEZ Practice.

Issue #1: Returnable Goods:

The current rules only deal with reporting of goods on non-returnable basis. There are certain instances where the goods are admitted into SEZ unit on returnable basis. There is no mechanism for reporting of such goods in <https://sezonline-ndml.co.in/>.

Proposal:

It is recommended that the portal should be equipped with a mechanism to report goods procured by SEZ unit on returnable basis.

Issue #2: Reporting of Services:

The current <https://sezonline-ndml.co.in/> allows reporting of goods into SEZ unit. The SEZ unit also procures services. The portal does not allow reporting of services.

Proposal:

It is recommended that the portal should be equipped with a mechanism to report services procured by SEZ unit.

Issue #3: Reporting of Transactions between Developer and Unit:

The current <https://sezonline-ndml.co.in/> allows reporting of sales between two SEZ units irrespective of locations of units in SEZ. The portal does not allow reporting of transactions of sales between the SEZ developer and SEZ unit.

Proposal:

It is recommended that the portal should be equipped with a mechanism to report such sales in the portal.

Issue #4: Work from Home/On Travel for Employees of Units engaged in business other than IT/ITES:

Current regulation Instruction No 55 dated 5th May 10 and Instruction No 58 dated 21st May 10 allows the facility for employees of IT/ITES units of SEZ to work from home or while they are in travel.

Proposal:

It is recommended that such facility is also extended to all other applicable sectors so that the burden of reporting/approval to the DC/Customs Authorities on the units will be reduced.

Issue #5: Provisions pertaining to The Destructive Insects and Pests Act, 1914:

The SEZ Act does not have any provisions pertaining to implementation of Plant Quarantine Act. This creates a vacuum for any unit which is required to adhere to the provisions of Plant Quarantine Act.

Proposal:

It is recommended that suitable amendments may be made to incorporate the procedure for allowing SEZ units to adhere to provisions of Plant Quarantine Act so that the units can carry the business more efficiently.

Proposals under Direct Taxation

The recommendations are as a result of practical challenges faced by the firm during the course of various interactions with developer and units of SEZs. This set of proposals are contributed by Mr Suresh Babu S and Mr Ramprasad T, Partners of Direct Taxation Practice.

Issue #6: Investment in Non-Processing Areas:

The deduction under Section 10AA of Income Tax Act, 1961 relating to Year 10 to 15 be allowed based on creation and utilisation of SEZ Re-investment reserve. The objective is to create new infrastructure by investing in new plant and machinery. So, the last five years of deduction under Section 10AA focus on re-investment on Infrastructure. However, there is no clarity as to whether such investment can be made into non-processing areas.

Proposal:

It is recommended that the amount be allowed to be utilised in developing or creating a non-processing area where in supporting infrastructure is created by the SEZ Unit. These facilities could be used to upgrade the skill level of unemployed local youth.

The above proposal is line with the requirement of 10AA (2) (ii) of the Income- Tax Act, 1961 which allows usage of amount in the SEZ Re-investment reserve for business purpose till the new plant and machinery is acquired.

Issue #7: Certain Amounts to be excluded while calculation of SEZ Re-Investment Reserve:

For computing the amount to be transferred to the SEZ Re-Investment reserve only export profits are considered. Though amount utilised outside India out of export proceeds are considered as part of export turnover the same view cannot be extended to more than what it intended for. Since the amount in the reserves cannot be used in creating an asset outside India the amount so utilised out of export turnover would not qualify for deduction during Years 10 -15.

Proposal:

Amount utilised in convertible foreign exchange outside India with RBI approval out of export proceeds should be excluded while determining the amount of profits to be transferred to the reserves.

Issue #8: Addition of SEZ Re-Investment Reserve to the Book Profits:

While computing book profits under Section 115JB of Income Tax Act, 1961 any amount transferred to any reserve should be added back to book profits for determining the tax liability. As MAT provisions are applicable to SEZ units, the mandatory requirement of transfer to SEZ Re-investment reserve deserves a separate treatment.

Proposal:

Sec 115JB of Income Tax Act, 1961 which provides for taxation based on book profits of the company should provide for exclusion of amount transferred to SEZ Re-investment reserve considering larger object of infrastructure creation.

Proposals under Indirect Taxation

The recommendations are as a result of practical challenges faced by the firm during the course of various interactions with developer and units of SEZs. This set of proposals are contributed by Mr Sri Harsha and Mr Manindar, Partners of Direct Taxation Practice.

Issue #9: Conflict between GST Laws and Rules for supplies made to SEZ unit/SEZ developer:

Section 16 of Integrated Goods & Services Tax Act, 17 (IGST Act) deals with the concept of 'zero rated supplies'. As per Section 16, any supply made to SEZ developer/SEZ unit is treated as 'zero rated supplies' and the supplier has an option to make such supply without payment of tax.

On the other hand, Rule 89 of Central Goods & Services Tax Rules, 17 (CGST Rules) state that the supplies which are used for authorised operation are only eligible for refund.

Hence, there is an apparent conflict between the IGST Act and CGST Rules. The IGST Act does not specify that the supplies to SEZ unit/developer should be for authorised operations, where as the rules specify such condition.

Proposal:

It is recommended that the IGST Act is to be amended in line with the CGST Rules, so that the supplier providing supplies to SEZ unit/developer will be in a position to understand that no tax is required to be charged if such supplies are used for authorised operations of SEZ unit/developer. If the SEZ unit/developer does not use the supplies for authorised operations, then the supplier only be referring to the IGST act will not be in a position to understand that on such supply IGST has to be charged.

Issue #10:Endorsment by Specified Officer for claim of Refund of Input Tax Credit:

Rule 89 of CGST Rules vide second proviso states that in respect of supplies to a SEZ unit/developer, the application for refund shall be filed by supplier of services along with such evidence regarding receipt of services for authorised operations by the specified officer of the Zone.

However, as stated in the proposals under the SEZ legislation, the current portal <https://sezonline-ndml.co.in/> does not allow reporting of services. In such a situation, the specified officer does not have any trial to examine whether the developer/unit has received such services for endorsing.

Proposal:

It is recommended that appropriate changes shall be made to <https://sezonline-ndml.co.in/>, to allow the developer/unit to report services. The same would also enable the specified officer of zone to examine the trail to endorse the invoices, so that the supplier shall be eligible for refund of input tax credit. Needless to say, any issue faced by the supplier, the consequences will be on the developer/unit. Hence, there is a requirement to make changes in the law to accommodate the supplier, who is also an important stakeholder in the transactions.

Issue #11: Reporting of Works Contract Services for New Units:

The newly established SEZ units will procure construction services either from developer or units located in domestic tariff area. The construction services were treated as 'composite supply' and accordingly deemed as 'services' in terms of Para 6 of Schedule II of Central Goods & Services Tax Act, 17 (CGST Act).

Hence, the supplier providing construction services has to raise an invoice under CGST Act as if the said transaction is a supply of service. Whereas, the supplier shall mobilise cement, sand, steel and other materials to the location of newly established unit to commence the construction activity, which the unit has to report that it has received goods. However, the invoice state that the supplier has provided services. There is a mis-match between the portal and CGST Act and non-adherence of any of these would lead to defeat of respective provisions under the said laws.

Proposal:

It is recommended that the <https://sezonline-ndml.co.in/> will be amended in such a way to capture the transaction of works contract services so that the GST laws and SEZ laws are in compliance by the unit/developer. The committee may also think of creating a facility to capture the details of the goods with help of delivery challan and other related information instead of only invoices.

Proposals under various Labour Laws

The recommendations are as a result of practical challenges faced by the firm during the course of various interactions with developer and units of SEZs. This set of proposals are contributed by our associate Mr S V Ramachandra Rao, Managing Director of Resource Inputs Limited.

The Contract Labour (Regulation and Abolition) Act 1970:

Issue #12: Applicability of the Act:

Section 1(4) deals with the applicability of the Act.

In case of any **establishment**, the Act shall be applicable in which **fifty or more (AP State amendment)** are employed or were employed on any day of the preceding twelve months as contract labour. Where as in case of **Contractor** who employs or employed **fifty or more** workmen on any day of the preceding twelve months.

Proposal:

To boost up the economy and for smooth functioning of small size and unorganised sectors, it is recommended to increase the limit of **Fifty to Hundred**.

The Factories Act 1948:

Issue #13: Applicability of the Act:

Section 2(m) deals with the definition of "Factory".

The Definition of "Factory" means any premises including precincts where-

In case of manufacturing process is being carried on with the aid of power, where on **twenty or more (AP State amendment)** workers are working or were working on any day of the preceding twelve months

In case of manufacturing process is being carried on without the aid of power, where on **Forty or more** workers are working or were working on any day of the preceding twelve months

Proposal:

As the minimum limit of Twenty and Forty is very smaller in number which forces smaller size and informal sector to abide with many rules and regulations. It is recommended to increase the minimum limit of **Twenty to Forty** in case of manufacturing process being carried on with the aid of power or without the aid of power.

Issue #14: Increase in the Overtime Hours:

Section 64(4) deals with limit of number of overtime hours for a quarter.

The total number of hours of work in a week including overtime, shall not exceed Sixty. The total number of hours of overtime shall not exceed fifty for any quarter

Proposal:

It is recommended to increase the limit of total number of overtime hours from **Fifty to one hundred and forty-four** as recommended by International Labour Organisation.

The Industrial Employment Standing Orders Act 1946:

Issue #15: Applicability of the Act:

Section 1(3) deals with the applicability of the Act.

It applies to every industrial establishment where in one hundred or more workmen are employed or were employed on any of the preceding twelve months

However, the Andhra Pradesh Government vide GO Ms No 33, Labour Employment Training and Factories (Lab II) dated 5th July 1999 reduced the requirement of hundred and or more workmen to fifty or more workmen.

Proposal:

It is very tough for small size and unorganised sector employers to abide with formally defined conditions of employment. Hence it is recommended to increase the applicability limit to two hundred and or more workmen.

The Building and Other Construction Workers (RE and CS) Act, 1996:

Issue #16: Applicability of the Act:

Section 25-A deals with the applicability of Section 24-C and 25-E of the Act.

It is applicable to industrial establishments in which **less than fifty workmen on an average per working day have been employed in preceding calendar month**

Proposal:

It is recommended to increase the limit to **one hundred workmen** on an average per working day.

Issue #17: Notice to close down any undertaking:

Section 25-FF-A deals with the serving of Sixty days' notice to be given of the intension to close down any undertaking.

An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective clearly stating the reasons for closure of the undertaking

However, Service of Notice shall not applicable to an undertaking in which less than **fifty workmen** are employed or were employed on an average per working day in the preceding twelve months.

Proposal:

It is recommended to increase the limit of fifty workmen to **one hundred workmen**.

The Building and other Construction Workers Welfare Cess Act, 1996:

Issue #19: Collection of Cess:

Section 3 deals with the levy and collection of cess.

Cess shall be levied and collected at such rate not exceeding two percent, but not less than one percent of the cost of construction incurred by an employer.

Proposal

There is no clarity on the costs and expenses to be included in cost of construction and it is recommended that cost incurred on the purchase and transportation of plant, machinery and other equipment meant to be used in a factory shall be excluded from the cost of construction incurred by the employer.

Trade Union Act 1926

Issue #20: Membership of a Trade Union:

Section 9A deals with the minimum requirement about the membership of a Trade Union.

An establishment or an industry having workmen **not less than ten percent or one hundred of workmen**, whichever is less, subject to minimum of seven workmen shall continue to have at all times a registered trade union of workmen.

Proposal

As it makes small scale industries hard to establish and maintain labour unions, it is recommended to increase the limit to **thirty percent or three hundred of workmen**, subject to minimum of seven workmen.

Issue #21: Mode of Registration:

Section 4 deals with mode of registration.

Any seven or more members of a Trade Union may, by subscribing their names can get registered. However, not required to registered if less than ten percent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration.

Proposal

It is recommended to increase the limit to **thirty percent or three hundred of the workmen** which ever is less.

Issue #22: Proportion of office bearers from the industry:

Section 22 (2) deals with the proportion of office bearers.

There is a provision of all the office bearers of a registered trade union, except not more than one third of the total number of the office bearers or five whichever is less, shall be person engaged or employed in the establishment or industry with which the Trade Union is connected.

Proposal

It is recommended to also include a provision that that all the office bearers of the registered trade unions of the industrial establishments ***situated in the Special Economic Zone*** declared as such by the Government of India shall be persons actually engaged or employed in an industry (as on the date of application for registration)with which trade union is connected.

Issue #23: Renewal of Registration Certificate:

There is no provision for renewal of registration certificate

Proposal

It is recommended that submit an application by every registered trade union for renewal of registration once in three year thirty days before the expiry of three years and the authority after satisfying that the provisions of the act and rules made under are complied with, may renew the registration for a further period of three years. Non-renewal amounts to cancellation of registration of the Trade Union.

Issue #24: Recognition of Trade Union:

There is no provision in the Law for recognition of Trade Union. However, at the sixteenth session of the Indian Labour Conference held at Nainital in May, 1958, the Code of Discipline was ratified by all central employers and workers organizations. Accordingly, where there are more than one registered trade union, verification of membership is done by Labour Department and the union having simple majority is declared as recognised union for a period of two years.

Proposal

It is recommended that most of the Employers and Recognised Trade Unions sign long term settlements for a period of 3 years. The recognition of trade union may be done for a period of 4 years so that the trade union and the management will have better relations to address the issues.

The Interstate Migrant Workmen Act 1949

Issue #25: Applicability of the Act:

Section 1(4) deals with the applicability of the Act

The Act shall be applicable in case of every establishment, in which five or more inter-state migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months and in case of every contractor who employs or who employed five or more inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.

Proposal

As it is very hard for small scale businesses to get registered and follow rigid rules to regulate the employment of interstate migrant workmen, it is recommended to increase the limit of **five to fifty**