

LEGAL CENTRIC ANALYSIS ABOUT SPECIAL ECONOMIC ZONES IN INDIA

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The present paper deals with Special Economic Zones (SEZs) in Indian context. At the outset a general introduction of SEZ is given along with its objectives and entities involved in it. Then legislative framework for Special Economic Zones in India with reference to Act, Rules and authorities have been discussed and after that the procedure to set up SEZ and operations within it has been discussed. At last some issues like land acquisition, labour legislations etc. have been discussed that ends with concluding remarks.

INTRODUCTION

The Special Economic Zones play a significant role in the development of commerce and industry along with trade, as a result it is an instrumental in creation of the jobs as well as overall economic development of a nation and it increases its participation at international domain. In this context it is pertinent to mention that, India was the first country in Asia to recognize the effectiveness of Export Processing Zone (EPZ) model in promoting exports, and it established EPZ in *Kandla* in the year 1965,¹ although it was not the same as SEZ with respect to legislative framework, incentives and overall activities.² So before we discuss about SEZ it is pertinent to have some idea about it. To start it first we have to conceptualize it.

CONCEPTUALIZING SEZ

In order to have a better understanding about SEZ, it is proposed to conceptualize the meaning and types of SEZ. In general terms “*special economic zone is typically an enclave of units operating in a well-defined area within the geographical boundary of a country where certain economic activities are promoted by a set of policy measures that are not generally applicable to rest of the country.*”³ Basically set of fiscal and non-fiscal incentives are extended to SEZs to achieve the object.⁴ It is pertinent to mention here that, there are various types of SEZs depend on the nature or type of work which they perform like: Sector Specific SEZ, Multi-Product SEZ etc. Despite of the nomenclature, whatsoever type of SEZ were in existence before the commencement of the Act, they had option to change into SEZ to avail

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¹ Special Economic Zones in India, <http://sezindia.nic.in/about-introduction.asp> (last updated Sep. 15, 2015).

² From 1965 till 1999 various export processing zones were in India but they were not effective due to various reasons and in which major reason was the inward looking approach of government itself where opportunities were not extended to rivale and other players in this field. When the then Union Commerce and Industry Minister, late Murasoli Maran visited China then he was really influenced by the model of SEZ as it was there.

³ ARJYA B MAJUMDAR, SPECIAL ECONOMIC ZONES: POLICY AND PROCEDURE 1-3 (1ST ed. 2009). In simple terms we can say that SEZ means specifically demarcated area consisting of units subject to special laws that normally do not apply to rest of the country.

⁴ The object of the SEZ Act, 2005 is to provide for the establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.

the benefits. That is why most of them have been changed like: Kandala SEZ, Noida SEZ, Falta SEZ etc. and many new SEZs came into existence.⁵ This is because of the *tangible*⁶ and *intangible benefits*⁷ which are attached to it.

As we have already mentioned the object of the Act is, “*establishment, development and management of the Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto.*”⁸ To achieve above-mentioned objectives basically there are three entities which are involved within SEZ. These are *Developer*⁹, *Co-developer*¹⁰ and *Unit*¹¹. As per the legislative provisions they can't start to work as developer, co-developer and unit till the moment Letter of Approval (LOA) has not been granted to them for the mentioned purpose/purposes.

LEGISLATIVE FRAMEWORK

SEZs in India basically govern by the Special Economic Zones Act, 2005 and the Special Economic Zones Rules, 2006 as amended as and when required¹², SEZ notifications, SEZ instructions, SEZ press notes and various State SEZ laws. It is not possible to have a look of all these at this juncture, but it would be beneficial to have an overall idea about the Act. The Act consists of 8 chapters having 58 sections.¹³ There are three Authorities under the Special Economic Zones Act, 2005 which are basically responsible for establishment, development

⁵ For details refer, <http://sezindia.nic.in/index.asp> (last updated Sep. 16, 2015).

⁶ There are various tangible means direct or apparent benefits attached with the *establishment, development and management of the Special Economic Zones* like contribution in the GDP along with increment in the State's GDP, development of world class infrastructure or we can say contribution in the upliftment of standard of living and the employment generation which is one of the most crucial task before the government which is supposed to be done by SEZs basically on the basis of PPP model.

⁷ There are various intangible means indirect benefits which are associated with tangible benefits like: transformation from rural towards urban societies, healthy competition which is important for consumers, technical advancements etc.

⁸ Supra note 5

⁹ As per Section 2(g) of the *Special Economic Zones Act, 2005* Developer means, “*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.*”

¹⁰ As per Section 2(f) of the *Special Economic Zones Act, 2005* Co-Developer means, “*a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (12) of Section 3.*”

¹¹ As per Section 2 (zc) of the *Special Economic Zones Act, 2005* Unit means, “*a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after commencement of this Act.*”

¹² In exercise of the powers conferred by Section 55 of the *Special Economic Zones Act, 2005* (28 of 2005), the Central Government framed and announced the Rules which were recently amended in 2010 deal with procedural aspects regarding SEZs in India.

¹³ Chapter I of the *Special Economic Zones Act, 2005* i.e. Preliminary (Section 1-2), Chapter II deals with establishment of SEZ (Section 3-7), Chapter III deals with constitution of board of approval (Section 8-10), Chapter IV deals with development commissioner (Section 11-12), Chapter V deals with single window clearance (Section 13-25), Chapter VI deals with special fiscal provisions for SEZs (Section 26-30), Chapter VII deals with SEZ Authority (Section 31-41) and Chapter VIII deals with miscellaneous issues (Section 42-58).

and management of SEZs in India. These are Development Commissioner¹⁴, Board of Approval¹⁵ and Approval Committee¹⁶.

SETTING UP SEZ

There are various types of Special Economic Zones like: Free Trade Zones (FTZ), Export Processing Zone (EPZ), Enterprise Zone, Single Factory, Free Ports and Specialized Zone etc.¹⁷ They differ in purposes to be achieved and the incentives which are provided to them by the government to achieve those objectives. But this classification is not adopted in the Act in lieu of it, Act deals with Sector Specific SEZ, Multi Product SEZ and other SEZS. The Rule 5 of SEZ Rules, 2006 deals with minimum area requirement such as in case of multi-product SEZ 1000 Hectares, Sector-specific SEZ 100 Hectares etc¹⁸. These requirements are different in the case of Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Tripura, Himanchal Pradesh, Uttaranchal, Sikkim, Jammu and Kashmir, and Goa or in a Union Territory¹⁹.

Here it is pertinent to mention that, when we are dealing with land requirement, as per Section 6 of the Act read with rule 11(10), total area which is supposed to be notified in the name of SEZ is further required to be demarcated into two distinct areas viz. processing and non-processing area.²⁰

PROCEDURE FOR SETTING UP SEZ (DEVELOPER/CO-DEVELOPER/UNIT)

Any person who intends to set up an SEZ may approach either the State Government {Section 3(1) of the Act} or the Board of Approval (BOA) {Section 3(2) of the Act} directly²¹. It means person is having two options at his discretion but in the case when application is forwarded to BOA first then concurrence of State Government is required within six months of formal approval and if application has been forwarded to State Government first then the same must be forwarded to BOA within 45 days of acceptance.

¹⁴ As per Section 2(h) of the *Special Economic Zones Act, 2005*; Development Commissioner means, “the Development Commissioner appointed for one or more Special Economic Zones under sub-section (1) of section 11.”

¹⁵ As per Section 2(e) of the *Special Economic Zones Act, 2005*; Board means, “the Board of Approval constituted under sub-section (1) of Section 8.”

¹⁶ As per Section 2 (b) of the *Special Economic Zones Act, 2005*; Approval Committee means, “an Approval Committee constituted under sub-section (1) of section 13.”

¹⁷ P. Pakdeenurit, N. Suthikarnnarunai Member, IAENG, and W. Rattanawong, *Special Economic Zone: Facts, Roles, and Opportunities of Investment*, available at http://www.iaeng.org/publication/IMECS2014/IMECS2014_pp1047-1051.pdf (last updated Sep. 18, 2015).

¹⁸ See for details, Rule 5 i.e. *Requirements for establishment of a Special Economic Zone*, available at http://sezindia.nic.in/writereaddata/rules/SEZ_Rules_July_2010.pdf (last updated Sep. 19, 2015).

¹⁹ *ibid*

²⁰ As per Section 6 of the *Special Economic Zones Act, 2005*: the areas falling within the Special Economic Zones may be demarcated by the Central Government or any authority specified by it as-

(a) the processing area for setting up Units for activities, being the manufacture of goods, or rendering services; or

(b) the area exclusively for trading or warehousing purposes; or

(c) the non-processing areas for activities other than those specified under clause (a) or clause (b).

²¹ *supra* note 4, at 26

Now BOA may accept the proposal or reject it. But in case of rejection reasons are supposed to be given in writing (application of natural justice). In case of acceptance procedural requirements are supposed to be fulfilled like possession of land etc. but if these are not fulfilled till date still *in principle approval* may be issued on the satisfaction of BOA. This approval may be without modification in proposal or with modification. As the case may be after that it shall be forwarded to Central Government for the issuance of Letter of Approval (LOA). At this stage developer is supposed to furnish relevant information about the area of land and on satisfaction with furnished information Central Government notifies that area of land as an SEZ. The effect of such notification is that after notification of that notified area is not considered as a part of nation for economic measures or for reasons mentioned under Act and rules prescribed there under.

For setting up SEZ Unit proposal (in the form of consolidated application consists of various documents required to be checked for permission) for the same is submitted to the concerned development commissioner and the same is forwarded to the approval committee by development commissioner after initial scrutiny. While applying the principle of natural justice such proposal may be accepted or rejected by approval committee. In the case of rejection aggrieved party may file appeal to the Board of Approval.

MAJOR OPERATIONS WITHIN SEZ

The establishment of SEZ is mostly aimed to attract the investment from the foreign countries and enhance the growth of the country.²² It is possible only either by reduction or relaxation of various rules and regulations which are generally applicable across the country. A brief discussion is done under following heads:

Labour practices: After the wave of industrialization across the world labor practices have been evolved as major area of concern. In this context there are two enactments namely: Industrial Disputes Act, 1947 and Contract Labour (Regulation and Abolition) Act, 1970 which play crucial role to set a bargaining system in India. Now with respect to SEZs in India former law is applicable but the powers which are supposed to be exercised by concerned labor commissioner may be delegated to the concerned development commissioner and the effect of such delegation is that it speeds up process of dispute resolution. Another important point in this context is that, the state government may declare the activities in SEZ as Public Utility Services. This would mean that by virtue of Section 22 of the Industrial Disputes Act, 1947 all strikes in an SEZ without due compliance would be deemed as illegal²³.

Supply of goods from DTA: Under this head it is already discussed while conceptualizing SEZ (notified area of land) that it is not considered as a part of nation. So movement of goods from Domestic Tariff Area (DTA) to SEZ is considered as export for which DTA suppliers

²² *supra* note 18, at 3.

²³ *supra* note 22, at 63; also see rule 5(5) of SEZ Rules 2006

are eligible to export benefits.²⁴ Apart from this suppliers from DTA can claim for rebate on excise duty paid for movement of goods from DTA to SEZ²⁵.

Apart from abovementioned points in the case of SEZ procedure and formalities are comparatively relaxed under customs, excise, foreign trade and development rules and regulations etc. to facilitate export.²⁶

ISSUES TO BE RESOLVED: The main objective for the establishment and development of Special Economic Zones in India is the promotion of exports and for matters connected therewith or incidental thereto. But to achieve this objective there are other issues which are supposed to be addressed properly like:²⁷

- Issue of Land acquisition without adequate compensation
- Loss of Agricultural Land by increase in no. of SEZ
- Problem of food security which is interrelated with above issues
- Issue of employment generation
- Labour rights issues, and
- Loss to exchequer etc.

Though the paper has its limitations to discuss all the above mentioned issues but for reference if we talk about the first issue i.e. a major concern with respect to the set up of SEZ, which involves huge displacement especially of farmers or those who depend on agricultural land. Now the problem in Indian context is that basically compensation is allotted to only those who are the owners of land and current laws are silent about those who depend on agricultural land, but not the owner. Secondly, as per SEZ regulations a systematic approach is supposed to be followed in case of acquisition but data shows that approx. 54.5% land out of total acquired land till date in the name of SEZ belongs to agricultural land²⁸. Above mentioned second and third issues are interrelated. Establishment of SEZs facilitated with the presumption that it will help in employment generation but in last few decades if we look their role then it is apparent that they have done less than what was expected from them in this field i.e. employment generation and due to that state exchequer also affected. These issues require more concern for overall development of SEZ.

²⁴ As per rule 26 of SEZ Rules, 2006 benefits are extended on the basis on current FTP policy. It states that, supplies from the Domestic Tariff Area to a Unit or Developer for their authorized operations shall be eligible for export benefits as admissible under the Foreign Trade Policy.

²⁵ As per rule 18 of central excise rules, 2002 Rebate is provided on duty. It states that, Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

²⁶ See, r 29 of SEZ Rules, r 9(1) of central excise rules and s 8(6) of CST Act, 1956 etc.

²⁷ Suresh Babu M, *SEZs in India: Some Issues*, available at <http://www.hss.iitm.ac.in/courses/sureshbabu/SEZ.pdf> (last updated Sep. 21, 2015).

²⁸ *supra* note 4, at 129-145 and for details see, <http://sezindia.nic.in/asez-sez-granted-under2005.asp> (last updated Sep. 21, 2015).

CONCLUSION

In concluding remark we can say that, in Indian scenario the institutionalization of the Special Economic Zones having potential to provide employment and improve the problem of balance of payments by increasing export. But we don't have to forget the issues related with it, which require enough concern and adequate remedy/procedural steps for its better and more workable existence and presence in India.