

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

1st June 2011

To

All SEZ Developers

All SEZ Units

All Specified/Authorised Officers

All Assistant Development Commissioners

Subject: Role of specified/authorized officers – Regarding.

Since the coming into force of the Special Economic Zones Act, 2005 along with the Special Economic Zones Rules, 2006 on 10th February 2006, the number of Zones notified under the Act has grown tremendously in Karnataka and Kerala and they continue to increase. Each of these Zones has its own administrative-regulatory establishment with the Development Commissioner, Cochin Special Economic Zone notified as the Development Commissioner of the Zones, other than any multi-product Special Economic Zone, since separate posts at that level have not been envisaged at this stage. This is in accordance with the statutory intention in section 11 of the Special Economic Zones Act, 2005. The approved personnel for each of these Special Economic Zones created by an order of the Government of India which, *inter alia*, includes Superintendents of Central Excise/Superintendents of Customs/Appraisers of Customs as well as Inspectors of Central Excise/Preventive Officers /Examiners of Customs. As per section 12, all officers posted in a Special Economic Zone function under the administrative control of the Development Commissioner.

2. The Special Economic Zones Act, 2005 has created only one statutory authority in relation to Special Economic Zones but bearing in mind the specific task of handling of goods in a Special Economic Zone, the Special Economic Zones Rules, 2006 has recognized two other authorities, viz., Specified Officer and Authorized Officer. These authorities have been defined in Rule 2(zd) and Rule 2(c) of the Special Economic Zones Rules, 2006. As such officers are creations of the said Rules, their power and authority is circumscribed by the content of the Rules and the limit of their actions shall be the specific provisions of the Rules which require them to perform a certain function in a certain context. They shall not exercise any other power or perform any function other those prescribed in the Rules except where such functions have been specifically

delegated, in writing, by the Development Commissioner; in so doing, the Development Commissioner shall be guided by section 12 of the Special Economic Zones Act, 2005.

3. Specified Officers, in relation to a Special Economic Zone means Joint/Deputy/Assistant Commissioner of Customs for the time being posted in the Special Economic Zones and Authorized Officer means Inspectors/Preventive Officers/Appraisers/Superintendents of Customs for the time being posted in the Special Economic Zones. Where no Specified Officer is posted in a Special Economic Zone, Development Commissioner, under Rule 73 of the Special Economic Zones Rules, 2006, nominate a gazetted officer of Customs to discharge the functions of the Specified Officer under the Special Economic Zones Rules, 2006. Though these officers are drawn from the formations of and under the Central Board of Excise & Customs, it needs to be understood that this is a source of recruitment for the posts created in a Special Economic Zone; it neither confers on them the powers and functions of proper officer or corresponding offices created under or operating under the Customs Act, 1962 nor makes them accountable to any authority created by the Customs Act, 1962 during the time that they are posted in the Special Economic Zone. The manner of their posting and conditions of service is elaborated in the SEZ Instructions 8/2011 dated 1st June 2011.

4. In view of the technical background of the Authorized and Specified Officers posted in a Special Economic Zone and the historical functioning of officers occupying similar posts in the seven Special Economic Zones of the Government of India that have existed for decades preceding the enactment of the Special Economic Zones Act, 2005, the context of the Special Economic Zones needs amplification to set at rest all doubts about the responsibilities under the existing statute. The existing Export Processing Zones were converted in 2001 in the Foreign Trade Policy which substituted the Export Processing Zones scheme with the Special Economic Zones scheme and the salient difference between the two schemes was the removal of the restriction that only manufacturing entities could exist in such Zones and the introduction of the concept of “deemed foreign territory” for the purpose of tariff laws of the country. Though the Foreign Trade Policy was amended in 2001, only the re-designation of the existing Export Processing Zones took place then with the implementation of “deemed foreign territory” took place only in May 2004 with the coming into force of section 76A of the Customs Act, 1962 which recognized that removals to a Special Economic Zone was tantamount to physical export and removals from the Special Economic Zones was tantamount to imports into India. Accordingly, transactions inside a Special Economic Zone was placed outside the pale of the Customs Act, 1962. With the coming into force of the Special Economic Zones Act, 2005 on 10th February 2006 all links to the Foreign Trade Policy and the Customs Act, 1962 were removed except for the limited purpose of valuation of goods when brought into the Special Economic Zone from outside the

country or for clearances into the Domestic Tariff Area and for sanction of drawback to units procuring goods from the Domestic Tariff Area.

5. The defining transformation that occurred in May 2004 was the delinking of the Central Excise Act, 1944 from operations in Special Economic Zones. Prior to the delinking, the units in the Export Processing Zone were considered as factories coming under the ambit of the Central Excise Act, 1944 with the Zone itself being notified under section 3 of the Central Excise Act, 1944, the exemption of Central Excise duties being available in terms of notification issued under section 5A of the Central Excise Act, 1944 and duties on clearance into the local market being charged to duty under section 3 of the Central Excise Act, 1944. The exemption of duty on goods imported to be used in such units was granted by a separate notification under the Customs Act, 1962 which required the units to be declared as a warehouse under that Act. Warehouses were under the control of bond officers and hence units in Export Processing Zones (which later became Special Economic Zones in 2001) were bonded under section 62 of the Customs Act, 1962 with deemed registration under the Central Excise Act, 1944 till May 2004. Moreover, with the Government of India as the only developer till 2001 when the Foreign Trade Policy incorporated the Special Economic Zone scheme, the need for exempting duty on goods brought into Zones for use by the developer was not felt. Since these Export Processing Zones (and Special Economic Zones) were operated as industrial parks by the Government of India, the functions of bond officers was discharged by officers of Customs on the rolls of the said Export Processing Zones as Deputy Commissioner of Customs, Superintendent/Appraisers of Customs and Inspectors/Preventive Officers drawn on deputation from Central Board of Customs and under the administrative control of the Development Commissioner but exercising powers under the Customs Act, 1962 in discharge of which the supervisions vested with the local Commissioner of Customs.

6. With the operationalizing of Chapter XA of the Customs Act, 1962, the applicability of warehousing provisions was done away with but the physical control over the operations continued with the specific roles and responsibilities assigned to officers of Customs posted in the Special Economic Zones under the Customs Act, 1962 including the responsibility to supervise the utilization of goods imported or procured free of duty. With effect from 10th February 2006, when Chapter XA of the Customs Act, 1962 was superceded, the power, functions and responsibilities under the Customs Act, 1962 of the Customs officers posted in Special Economic Zones ceased to exist and such officers exercise their role as Specified Officers and Authorised Officers as creations of the Special Economic Zones Act, 2005. In the absence of requirements of physical bonding under the Special Economic Zones Rules, 2006, physical control over the units or the boundaries of the Special Economic Zones has become redundant. The historically assigned functions of control over the gate is now superfluous and it is for the Development Commissioner, with adequate safeguards, through control over the security

establishment of the Developer at the mandated boundary enclosure, to ensure that the scope for diversion of non-duty paid goods is eliminated. For this purpose, the Development Commissioner may require the Developer to enforce such systems as deemed fit and may also delegate functions to the one or more officers posted in the Special Economic Zones and such officers shall be empowered thereon to act on that delegation. In the exercise of such delegated power, not conferred by the Rules, the said officers, including Specified and Authorized Officers shall be responsible to the Development Commissioner. This, however, shall not preclude interception of any goods at the gates or within if there is suspicion that any conveyance is carrying goods out of the Zone without proper documentation; the Authorized Officer shall keep the Specified Officer and Authorized Officer informed of all such interceptions.

7. Authorized officers are concerned with flow of goods into and out of the Zone. With the zero rating of imported goods by section 76A of the Customs Act, 1962 and the provisions of section 53 of the Special Economic Zones Act, 2005 which place Zones outside the customs territory of India in relation to authorized operations of a developer/co-developer/entrepreneur in a Zone, there is no bar on the bringing in of any goods into a Zone from outside India. Further, the deemed port/airport/ICD status of a Zone with the facility of clearance therefrom by a importer in the Domestic Tariff Area of goods brought from outside India implies that any goods may be brought into a Zone from outside India. The utilization of such goods in the Zone shall be contingent on being granted exemption under section 26 of the Special Economic Zones Act, 2005 for which a bill of entry will have to be filed with the Authorized Officer of the Special Economic Zone. Those goods which are intended for importers in the Domestic Tariff Area or for consignees outside India only if they are brought in to a Special Economic Zone from gateway ports/ airports in India which are not the port of discharge and destination as declared in the relevant column of the bill of lading covering such goods. Likewise, if the imported goods are destined for any other gateway in India or elsewhere, goods may be landed in a port that is also a Special Economic Zone; the rationale for this lies in the provisions of the Customs Act, 1962 which requires that a bill of entry can be filed only in that jurisdiction where the manifest has been filed as the intended destination of the goods and there is no jurisdiction to clear goods for home consumption or warehousing at any other gateway, such goods will necessarily have to be taken to the declared destination. Separate procedures for account of such transshipment cargo shall be issued for such Special Economic Zones. Should the entrepreneur in such a Special Economic Zone handle goods in the course of performance of its authorized operations, it shall account in this prescribed manner for such goods as are not intended to be utilized in the Zone. The general principle governing movement is that all or any type of goods may be brought into the Zone at any time but their movement out of the Zone shall, if they be covered by a bill of lading with the said Zone as the destination or covered by a bill of lading which shows a gateway port/airport or an Inland Container Depot as the

place of destination and for which a Bill of Entry as accepted by the Authorized Officer of the Zone has been the basis of the release to the Zone from such gateway port/airport or an Inland Container Depot, be only against Bill of Entry for home consumption, Shipping Bill for export by sea or by air or Bill of Export for export by vehicle or, where applicable under the Special Economic Zones Rules, 2006 against serially numbered challans. The security establishment of the Developer shall allow goods out of the Zone only against these documents or against an out-pass counter-signed by the Authorized Officer except for goods which are required to be moved in and out of the Zone regularly for the authorized operations of the entrepreneur and for which a general permission has been taken from the Specified Officer.

8. While there is no bar on goods being brought into the zone, it is clarified that goods within the meaning of the Special Economic Zones Rules, 2006 are those brought in with intention to avail the exemptions and benefits allowed under section 26 of the Special Economic Zones Act, 2005 which is always subject to the terms and conditions relating to admission into and exit from the Zone as provided in the Special Economic Zones Rules, 2006. The availment of such benefits shall depend on certification of entry by the Authorized Officer in the Bill of Entry/Bill of Export and/or ARE-1 as provided in the Special Economic Zones Rules, 2006. The continued benefit of exemptions and other privileges shall also depend on compliance with the conditions of temporary removals and return thereof which requires the exercise of responsibilities on the part of Authorized Officer on exit and entry thereof. These shall be the extent of statutory responsibilities in relation to goods admitted into the Zone or remaining within the Zone till removal for export, into the Domestic Tariff Area or destruction within/outside the Zone. If such certification at the time of admission is not obtained by the entity operating in the Zone, the officer of Customs at port of entry shall inform the Authorized Officer about imported goods purportedly intended for the Zone to enable collection of duty as though it had been removed under section 30 of the Special Economic Zones Act, 2005, the non-return of goods temporarily removed shall be noted for recovery of duty as though it had been removed under section 30 of the Special Economic Zones Act, 2005 or the officer in-charge of the factory of manufacture from which such goods were purportedly removed for movement to the Zone shall recover the duty foregone as goods diverted without payment of duties under the Central Excise Act, 1944. In the case of export goods, the final endorsement of having been shipped on board a vessel or aircraft is made at the gateway after verification of seals. Hence, the control of outflow through a proper documentation system is sufficient to ensure safeguard of revenue.

9. For this reason, the provision of detailed examination at the time of entry or export has been done away with and verification of seals at random has been introduced. Export goods are subject to the same level of examination by the Authorized Officer as is prescribed by Central Board of Excise & Customs from time to time for similar exports

from Domestic Tariff Area. There is also no responsibility to oversee utilization as visits to units are permitted in exceptional cases by Specified Officer of the Development Commissioner. The quarterly consumption reports submitted by developer/co-developer and annual report furnished by entrepreneurs of units are to be scrutinized by the Approval Committee which is responsible for monitoring utilization.

10. Goods that are covered under the exemptions and privileges of section 26 of the Special Economic Zones Act are those required for authorized operations of developer/co-developer or units. Authorized operations of an entrepreneur include erection of buildings for factory space and such other facilities as well for outfitting the space as are generally accepted as requirements in work-places of that sector. Such facilities include training space, canteens, creches, food court and fitness-cum-recreation centres. While all imported goods are not liable to duties of Customs if physically brought into the Zone, they can be used only after filing the documentation prescribed by the Special Economic Zones Rules, 2006 with the Authorized Officer. Such documentation in the form of Bill of Entry is a pre-requisite for bringing the goods into the Zone if the bill of lading indicates a destination in the relevant column that is not the Special Economic Zone but a port/airport/Inland Container Depot. In all cases where the goods are brought in under a transshipment manifest, the Bill of Entry needs to be filed after the goods arrive in the Zone. The eligibility to use goods procured from the Domestic Tariff Area shall be contingent upon endorsement made in the ARE-1 and/or Bill of Export by the Authorized Officer

11. Examination of goods brought from outside India shall be restricted to seal verification before endorsing out of charge on the Bills of Entry. However, with the prior permission of Specified Officer, Authorized Officer may carry out detailed examination at the place identified by the Specified Officer. This shall not apply to importers of gold which shall be escorted by Authorized Officer from the gateway and allowed for use only after physical verification by such officer. For goods procured from the Domestic Tariff Area for which endorsements in ARE-1 and/or Bill of Export, the Authorized Officer shall exercise such checks as are prescribed from time by the Central Board of Excise & Customs for export of goods. Goods taken temporarily out of the Zone against serially numbered challans shall also be subject to random check by the Authorized Officer. Similarly, goods intended for export out of the country shall also be subject to random check. Random check, in this context, means the selection of packages as deemed to be necessary from the packing list just before the goods leave the Zone and subjecting them to the level of desired verification. This will deter any attempt at illicit removal of goods. Exports of jewellery shall be subject to detailed examination and sealing before removal from the Zone. Authorized Officers shall maintain a record of all packages opened by them and furnish a summary of the details of the month to the Specified Officer on the fifth of every following month.

12. Authorized Officers shall allow temporary removals only against serially numbered challans in the format prescribed in Annexure I. Copies of all such challans shall be maintained by the Authorized Officer for complying with the verification requirements prescribed in the Special Economic Zones Rules, 2006 on the return of such goods from the Domestic Tariff Area.

14. Authorized Officers shall maintain a detailed record of all inward flow of goods into the Zone and the outward movement thereafter in cases where the unit in the Special Economic Zone has been permitted to sub-contract for a Domestic Tariff Area exporter to ensure that duty-exempt goods of the entrepreneur have not been utilized for the manufacture of such exports.

15. Assessment by Authorized Officers is limited to the Bills of Entry and Shipping Bills filed by the units/developers/co-developers. Generally, the declared value shall be accepted since the goods required for authorized operations are exempted. The Bills of Entry filed for imported goods are in the form prescribed for home consumption and hence the correlation with the value declared therein is not relevant when such imported goods are removed for any reason into the Domestic Tariff Area. The value declared in the Shipping Bills shall also be accepted as the repatriated foreign exchange is credited towards fulfillment of export obligation; under-declaration is a remote possibility and the objective of the scheme being the earning of foreign exchange, the value of exports ensures compliance. Valuation of goods being brought in against a Bill of Export and valuation of goods being cleared into the Domestic Tariff Area requires careful consideration since there is revenue angle. Generally, the value of goods cleared into the Domestic Tariff Area should not be less than the export value of such goods. Capital goods are entitled to depreciation in valuation for the period that the machinery has been put to use for authorized operations. All other goods brought into the Zone should not generally be cleared into the Domestic Tariff Area at a value less than the value at the time of procurement. Authorized Officers shall be particularly careful to follow the provisions of section 14 of the Customs Act, 1962 and the Customs Valuation Rules in the assessment. Adoption of any value other than the declared value should be accompanied by a note explaining the reasons for revision of the value and the legal sanction for adopting such a revision. Placing reliance on extraneous factors, such as insurance claimed, is beyond the scope of law which requires that duty shall be collected on the actual monetary and non-monetary consideration for that goods received by the seller from the buyer. Further, the value for levy of duty is “price at the time and place of importation” – this definition in section 14 of the Customs Act, 1962 leads to adoption and acceptance of CIF value in the case of imported goods as the insurance and freight costs are incurred on the movement to the place of import. In the clearance of goods into the Domestic Tariff Area, the place of importation is the external boundary of the Zone and hence the CIF value in this case is limited to the invoice value and the cost of freight

and insurance till the gates of the Zone. A general principle to be adopted in recovery of duties is that there shall be no liability to duty on goods lying in the Zone and only such goods as are removed into the Domestic Tariff Area permanently or such goods which are not accounted for by utilisation in the authorized operations, on the presumption that they have been removed without following proper procedure prescribed in the Special Economic Zones Rules, 2006, unless recorded as having been destroyed in accordance with the Special Economic Zones Rules, 2006 shall be liable to duty under section 30. If goods undergo the destruction procedure, if the goods merely change form and are then removed into the Domestic Tariff Area, the assessment shall be on the value declared for the goods and the rate of duty shall be applicable on the changed form of goods including scrap. A general exception to the principle of duty leviability arising on removal of goods into the Domestic Tariff Area is the collection of duty on goods at the time of exit or cancellation of Letter of Approval; in such cases, duty shall be levied on the goods remaining in the premises on the assumption that it is not intended for export or movement to a developer/co-developer or unit in that or any other zone and hence will be removed into the Domestic Tariff Area at some later stage. On goods auctioned for any reason by any statutory authority or under any law for the time being in force, it shall be made clear that goods purchased in auction by any individual other than a developer/co-developer or unit in that or any other Zone shall be liable to duty on the auction value separately and the responsibility for payment of such duty shall vest with the successful bidder who shall be required to file a Bill of Entry for assessment. Authorized Officers shall promptly demand duty upon intimation from the concerned Customs formation that the quintuplicate copy of the Bill of Entry has not been received from the Special Economic Zone. The responsibility for certification of the Bills of Entry/ARE-1 and/or Bill of Export is to be discharged upon arrival of the goods and the certification does not have to be delayed till the expiry of deadlines prescribed in the Special Economic Zones Rules, 2006.

16. Goods removed to the Domestic Tariff Area under section 30 are eligible for exemptions and concessions – general as well as conditional – allowable under the relevant notifications issued under the Customs Act, 1962 and Central Excise Act, 1944 but the fulfillment of post-clearance conditions shall be monitored by the Authorized Officer who shall demand the duty so exempted on expiry of deadline for compliance with conditions without giving any further notice. It shall be the responsibility of the Authorized Officer to keep track of such clearances.

17. In assessing the documents or certifying any documents relating to goods required by a entrepreneur/developer/co-developer, the Authorized Officer shall be guided by the sole principle of requirement for authorized operations of the said entrepreneur/developer/co-developer. If the Authorized Officer has, at any time, any doubt regarding the need of a particular item for authorized operations, the Authorized

Officer shall immediately place the same directly before the Development Commissioner for a decision. The Development Commissioner may or may not seek the advise of the Specified Officer but the decision of the Development Commissioner shall be implemented. No document should be kept pending by the Authorized Officer except where the matter has been so placed before the Development Commissioner.

18. Specified Officers may, from time to time, issue instructions for ensuring compliance with the above functions and responsibilities of the Authorized Officers, wherever warranted, to supplement the above.

19. Specified Officers shall also ensure that no Zone is at any time without an Authorized Officer and may allot additional charge to any Authorized Officer in the jurisdiction of the said Specified Officer.

20. Specified Officers shall, in addition, to the specified duties and responsibilities assigned to them under the Special Economic Zones Rules, 2006 shall also guide the Authorized Officers in the discharge of their responsibilities and ensure that they limit their activities to such as entrusted specifically under the Special Economic Zones Rules, 2006 or delegated by the Development Commissioner.

21. The permissions required by the entrepreneur/developer/co-developer from the Specified Officer in various provisions of the Special Economic Zones rules, 2006 shall be sought in the format prescribed in SEZ Instructions 9/2011 and the same shall be placed before the Specified Officer by the Assistant Development Commissioner within twenty four hours of its receipt and after making entries in the Register of Applications which shall be rounded off upon issue of permission in the format prescribed in the said instructions. The list of such permissions in the format is not exhaustive and suitable wordings may be used by the applicant in lieu of the ones listed therein.

22. This instruction is issued for strict and immediate compliance. All existing files shall be made to conform to the contents of this instruction. Any difficulty in implementation may be brought to the notice of the undersigned.

C J Mathew
Development Commissioner

Annexure I

(Format of challan for temporary removals)

_____ Special Economic Zone

Serial No:

Date:

Name of unit/developer/co-developer:

Permission number accorded by competent authority and date:

Items permitted to be removed and quantity:

Item being removed, quantity and value:

Date of removal:

Name and address of recipient:

Marks and numbers of package:

Description of item to be returned:

Quantity to be returned (including of wastes/rejects):

Expected date of returns:

(Signature) _____

(Designation) _____

(Name of unit/developer/co-developer) _____

For office use

Removed as per description above

(Signature of Authorized Officer and date) _____

Examined goods on return

(Signature of Authorized Officer and date) _____