



NOIDA SPECIAL ECONOMIC ZONE

Minutes of the Approval Committee meeting in respect of 100% Export Oriented Units held under the chairmanship of Shri A. Bipin Menon, Zonal Development Commissioner, NSEZ at 11.00 AM on 03.11.2021 through Video Conferencing.

The following members of the Approval Committee participated in the meeting through video conferencing:-

1. Shri Kiran Mohan Mohadikar, I.R.S., Deputy Development Commissioner, NSEZ.
2. Shri Alok Kumar Singh, Assistant Commissioner (Customs) Jodhpur at Jaipur.
3. Shri Vinod Ahirwar, Deputy Commissioner Customs, New Customs House, New Delhi.
4. Shri Rakesh Kumar, FTDO, Office of the Additional DGFT, Central Licensing Authority, New Delhi.

Besides, during the Approval Committee meeting Shri H. K. Meena, Assistant Development Commissioner was also present to assist the Approval Committee. It was informed that the quorum is available and the meeting can proceed.

At the outset, the Chairman welcomed the participants. After brief introduction, each items included in the agenda were taken up for deliberation one by one. After detailed deliberations amongst the members of the Approval Committee as well as interaction with the applicants / units wherever required, the following decisions were taken:-

5.01 (2021) Ratification of the Minutes of the Approval Committee meeting held on 06.08.2021:-

As no reference in respect of the decisions of the Approval Committee held on 06.08.2021 was received from any of the members of the Approval Committee or Trade, Minutes of the Meeting held on 06.08.2021 were unanimously ratified.

5.02 (2021) Proposal of M/s Jain Grani Marmo Pvt Ltd for DTA sale of Granite items -reg.

It was informed to the UAC that Jain Grani Marmo Private Limited was issued LOP No. 12-

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171/2000-100%EOU dated 24.03.2000 for manufacture and export of "Marble/Serpentine Slabs and Tiles, Dressed Marble/ Serpentine Block, Granite Tiles, All types of Natural Stone in the form of Dressed Block, Slabs & Tiles thereof, Dressed Block of Artificial Stone, Slabs and Tiles of Artificial Stone and polished Granite Slabs". As per records, the date of commencement of production of the unit is 31.03.2000. As per APRs submitted, the NFE of the unit is positive.

2. Unit's last five-year block was upto 31.03.2020 and after that, the validity of LOP was extended in piecemeal. Vide letter dated 24.08.2021, the validity of LOP was extended 15.02.2022 with condition that during the period, DTA sale of the goods shall not be allowed. This condition was laid keeping in view of the fact that a Writ Petition No. 4214/2017 is pending in Hon'ble High court of Rajasthan at Jodhpur. The High Court, vide Order dated 26.04.2017 has stayed the OIO dated 26.02.2016. Vide OIO dated 26.02.2016, a penalty of Rs.14.00 crore was imposed upon the Unit for unauthorized clearance of marble goods in DTA and deemed exports since inception.

3. Brief facts about the Writ Petitions filed by the unit are as under:-

3.1 Vide Circular No. 74(RE-08)/2004-09 dated 26.03.2009, DGFT it was decided by Board of Approval that EOUs cannot do DTA sale of marble under para 6.9(b) of FTP. The Unit approached to Hon'ble High Court and challenged the validity of circular by filing D.B. WP No. 10877/2009. The Hon'ble High Court granted interim stay and permitted the unit to supply marble against foreign exchange remittance in the DTA on payment of applicable duties subject to the condition that if, however, ultimately the petitioner is found liable to any other consequences, he will give an undertaking to suffer those consequences. The undertaking was given by the Unit to the jurisdictional Division of Central Excise office.

3.2 Further, DGFT issued Notification No. 115(RE-2010) /2009-14 dated 07.05.2012 for amendment in para 6.9(b) of FTP. The effect of the amendment amplifies that EOUs cannot supply marble in Domestic Tariff Area under para 6.9 of FTP, except under paragraph 6.9(c) of FTP. The unit filed another WP No. 5459/2012 on 30.05.2012 in the Hon'ble High court judicature of Rajasthan challenging the legality and validity of the Notification No. 115 (RE-2010) 2009-14 dated 07.05.2012.

3.3 The Hon'ble High Court vide Order dated 19.11.2013 dismissed both the petitions

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with the observation that they do not find any merit in the challenge laid in the petitions and vacated the interim stay order.

3.4 The unit was liable for penal action under FTDR Act. Further, the unit also given an undertaking in the matter to face the consequences of unauthorized clearances undertaken during interim stay. Accordingly, SCN dated 08.12.2015 was issued followed by OIO dated 26.02.2016.

3.5 Vide OIO dated 26.02.2016, a penalty of Rs.14,00,00,000.00 (Rupees fourteen crore only) has been imposed upon the unit for (i) unauthorized clearance of marble goods in DTA in terms of para 6.8(a), 6.9(b) of FTP and IEC No. 4199000852 was also suspended.

3.6 Unit filed appeal in DGFT and vide Order-in-Appeal dated 06.09.2016, the adjudicating authority ordered that they uphold the findings and the order of the Adjudicating Authority;

3.7 Unit filed writ petition in Hon'ble High Court of Rajasthan at Jodhpur for seeking review of the Order dated 19.11.2013 issued by the Hon'ble High Court of Rajasthan and against Order-in-Original dated 26.02.2016 in Hon'ble High Court of Rajasthan, Jodhpur in D.B.W.P. No. 4214/2017. The Hon'ble High Court, vide interim order dated 26.04.2017, has stayed the Order dated 26.02.2016 and directed to restore the IEC Code of the unit, subject to submission of undertaking by the unit.

3.8 Unit has also submitted undertaking in pursuance of the interim order date 26.04.2017 granted by the Hon'ble Rajasthan High Court, Jodhpur in D.B. Civil WP No. 4214/2017 that in case, the writ petition filed by the petitioner company is dismissed, then the petitioner company shall pay the amount of penalty and be bound by the consequences provided under the law.

3.9 On receipt of High Court Order, the IEC was restored.

3.10 The last hearing in WP No. 4214/2017 was held on 12.08.2021 and next date has not been granted yet.

3.11 The unit filed another WP No.13871/2015 in the Hon'ble High Court of Rajasthan, Jodhpur challenging the decision of Department of Commerce/ BoA conveyed vide letter No. 7/7/2014-EOU dated 13.11.2015 regarding disposal of marble under para 6.8(d) and 6.8(e)

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of FTP. The last hearing in WP No. 13871/2015 was held on 05.10.2020 and next date has not been granted after that.

4. Vide letter dated 24.08.2021 for extension of validity of LOP upto 15.02.2022, one condition was imposed that, "During the period, DTA sale of the goods shall not be allowed".

5. Unit, vide letter dated 01.09.2021 and again vide letter dated 30.09.2021 represented the matter of DTA sale of Granite. Besides other facts, unit has mentioned the following:-

5.1 Their unit is registered as EOU as per LOP for manufacture of various products which includes Granite and all other type of other natural stone.

5.2 They are regular in filing QPR / APR and having positive NFE.

5.3 Multi-wire saw Machine and Polished machine installed for Granite processing with investment of around Rs.13.09 crores as per project.

5.4 Term loan of Rs.9.70 crores availed for Multi-Wire saw machine and Polishing Machine installed for Granite processing.

5.5 Unit referred para 6.08 of FTP provides for sale of finished products / rejects / waste / scrap / remnants and by-products.

5.6 Since inception of the EOUs, the DTA sale provision were made keeping in view the fact that EOU is required to dispose off non-exportable or rejected finished goods or that there may a recession or prohibition on imports on a particular commodity by various countries at a particular time. These provisions are continuing over the years to meet adverse economic scenario. Further, DTA sale provisions has been liberalized from time to time keeping in view the changed business scenario and practical difficulties faced by the EOU like recession, non-exportable surplus, rejects, political unrest, war, etc.

5.7 Their competitors 100% EOUs are making DTA sale of Granite export surplus. In case of facility of DTA sale of granite is not allowed to their unit, then, export surplus shall get accumulated and shall face storage problem besides interest cost on accumulated such stock which are not exportable.

5.8 In absence of DTA sale of Granite, they shall not be able to face present adverse

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economic scenario created by COVID 19, substantial hike in shipping cost / ocean freight due to non-availability of containers and even no way out to dispose of export surplus/ rejects. DTA sales are essential to run the plant to have minimum cost of product in the competitive market to save employment and closure of their unit.

6. As per records, unit is a One Star Export House Status Holder.

7. Keeping in view the fact that import of the input material i.e. Granite blocs (HS 25161200) is restricted and export of finished goods i.e. granite slabs (HS 68022390) is permitted freely provided the value is US\$ 50 or above per square metre (for maximum thickness of slab 20mm) and keeping in view the provisions of para 6.05 (h) and 6.08 (a)(i) of FTP 2015-2020, the UAC has decided to allow DTA sale of Granite subject to following conditions:-

7.1 Granite slabs made out of imported raw materials will not be cleared in DTA;

7.2 Granite Slabs (ITC HS Code 68022390) would need to be manufactured out of indigenous raw materials (ITC HS Code 25161200).

7.3 All other provisions of FTP should be complied with.

7.4 Quarterly report on stock position, consumption and clearance is required to be submitted to the DC, NSEZ office.

5.03 (2021) Repro India Limited for Submission of Registered Sub-lease deed of 600 sq.ft. of proposed location between M/s Repro Books Limited and M/s Repro India Limited (100%EOU)..

Repro India Limited was approved as a 100%EOU at Khasra No. 13/9, 22, 17/1/1, Village Malpura, Mau Road, Tehsil Daharuhara, Rewari, Haryana-123110 (area 600 sq.ft.) for manufacture and export of Trade Books, Education Books, Children Books and Magazines. The proposal of the unit was approved vide UAC in its meeting dated 07.09.2020 subject to condition that unit will submit registered revised sub-lease deed to the location prior to LUT. In view of genuine problem in the Registrar Office UAC allowed to unit to execute LUT and

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also granted time till 31st Dec 2020 to unit for submitting the registered sub Lease deed. Unit started production w.e.f 01.12.2020 and keeping in the view of problem stated above, UAC extended the time period for submitting Lease deed from time to time upto 31st August.2021.

2. Vide email dated 08.09.2021, unit has submitted copy of Deed of Sub-Lease between Repro Books Limited and Repro India Limited for 600 sq.ft. situated in Malpura Mau Raod, Malpura Rewari, Haryana-123110 with validity period of 5 years commencing from 20.08.2021 till 19.08.2026.

3. It was requested to unit's representative to provide annual turnover details of exports and imports at the earliest.

4. The Committee after deliberations, has accepted the submission of Registered Sub-lease Deed.

The meeting ended with vote of thanks to the Chair.


(Kiran Mohan Mohadikar, I.R.S)
Deputy Development Commissioner

(A. Bipin Menon)
Development Commissioner