

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

Minutes of meeting of the Approval Committee of Noida SEZ held under the Chairmanship of Dr. L.B. Singhal, Development Commissioner (DC), Noida SEZ at 11:30 AM on 13/05/2020 through Video Conferencing

The following members of the Approval Committee were present during the meeting:-

- 1) Shri S.S. Shukla, Jt. Development Commissioner, NSEZ (physically present in NSEZ).
- 2) Shri Shyopat Singh, Asstt. Commissioner, Customs, Noida Commissionerate (present through conferencing).
- 3) Smt. Sandhya Maurya, Income Tax Officer, Income Tax Deptt., Noida (present through video conferencing)..

2. Besides, during the meeting S/Shri (i) Nitin Gupta, Dy. Development Commissioner, NSEZ, (ii) S.K. Tyagi, Specified Officer, NSEZ, (iii) Pramod Kumar, Asstt. Development Commissioner, NSEZ, (iv) Arun Singh Parihar, Assistant, NSEZ were also present through video conferencing/physically to assist the Approval Committee.

3. At the outset, DC, NSEZ welcomed the participants. After brief introduction, each items included in the agenda were taken up for deliberation one by one. After detailed deliberations as well as interaction with the applicants / representatives of the unit through video conferencing, the following decisions were taken:-

(i) Ratification of Minutes of last meeting of the Approval Committee held on 19/03/2020.

It was informed that no reference against the decisions of the Approval Committee held on 19/03/2020 was received and, therefore, Minutes of the meeting held on 19/03/2020 were ratified.



नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

(ii) Item wise decisions on proposals included in agenda:

1. **Proposal of M/s. Pertech Exports Pvt. Ltd. for One-time permission on ad-hoc basis for inclusion of import of trading items for sale into DTA, in its LOA – reg**

It was informed to the Approval Committee that M/s Pertech Exports Pvt. Ltd has been issued an LOA dated 10.05.2006 for undertaking the following authorized operations:-

1. *Manufacturing of Electronic Consumer Goods: LCD TV Sets, Plasma TV Sets, Satellite Receiver (DTH), C.A.S. (Set Top Box for TV Sets) and RO Water Systems, CTV, CFL, DVD, VCD, Chassis of Color and B&W TV Sets.*
2. *PCB as part of items to be used in the authorized operations.*
3. *Assembly/ manufacturing of (i) Main PCB Board, Power Supply board and operating unit/ card for TV, LED TV and Smart TV sets. (ii) LED Bulb, Tubes and its power supply. (iii) CFL Bulb, Tubes and its power supply. (iv) Mobile Phones (Bar phone), Touch phone and Smart phones. (v) P.C. Computer and P.C. Tablets.*
4. **Manufacturing & Assembly of Parts & Accessories of Mobile Phones and PC Tablets viz:**
 - i. *Memory Cards - 85235220*
 - ii. *Tempered Glass – 85176970, 85177000*
 - iii. *LCD Display – 85177090, 85176970*
 - iv. *Ear Phone – 85177090, 85176970, 85183000*
 - v. *Charger – 85044030, 85044090, 48191010, 48191090*
 - vi. *USB Cable – 85176970, 85176990, 39231090*
 - vii. *Blue Tooth(Beacon) – 85177090*
5. **Manufacturing of:** (i) *Power Bank – 85176970;* (ii) *CCTV Cameras – 85258010, 85258020;* and (iii) *Digital Cameras.*
6. **Trading of :**
 - i. *LED TV/ Smart TV (All types) – 8528*
 - ii. *Mobile Phones (Bar phone/Touch Phones/ Smart phones)(All types) – 85171210, 85171290*
 - iii. *LED TV/ Smart TV Panels (All types) – 8529*
 - iv. *Projector – 8528*
 - v. *Headphone/Bluetooth/Tempered Glass 85176970*
 - vi. *P.C. Tablet – 84713090*
 - vii. *Memory Card – 85235220*
 - viii. *CCTV Camera/Digital Camera – 8525*
 - ix. *LCD/LED Display – 8531*
7. **Trading of**
 - i. *Charger*
 - ii. *Data Cable/USB Cable*
 - iii. *Earphone*
8. **Trading of** (i) *Screen Expanders (85286900), (ii) Mobile Flashes (94052010) (iii) Mobile Pouches (42023190) (iv) Mobile Spare Parts (85177090) (v) AUX Cables (85444299) (vi) Anti-Radiation Stickers (39269099) (vii) Wireless Charging pads (85044090) (viii) Mobile Cleaning Kit (39269099) (ix) Sim Keys (85235210) (x) Headphone Suppliers (85183000) (xi) Mobile LCD Display (85177090) (xii) Headphone Pouches (42023190) (xiii) Mobile Phone Lenses (85177090) (xiv) OTG Adaptors (85441990) (xv) Smart Bands (85177090) (xvi) Bluetooth Mouse (84716060)", in its authorized operations.*

1.2 It was informed to the Committee the unit has commenced its export production w.e.f. 06.08.2007 and its LOA is valid till 05.08.2022. The unit vide its email dated 16.04.2020 had requested to allow them "**one-time permission on Ad-hoc basis**" on urgent basis to import the following items

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

and do DTA trading for fighting Covid19, PANDEMIC. Unit had further stated that this request is as per SEZ rules to avail **ONE TIME PERMISSION**, and they shall apply for its regular approval in next UAC meeting. The unit had also stated that they require it urgently for these items due to the present prevailing crisis and conditions in the country and world over. They wish to start trading these goods at the earliest possible in order to meet the current ongoing demand. The items for which they required permission are as mentioned below.

1. Digital Infrared Thermometer HS code 9025
2. 3M and KN95 masks. HS code 9020, 6307,6217,9018
3. PPE KITs HS CODE 6307,6211
4. Ventilators HS CODE 9018
5. Face Shield HS code 3926
6. Rapid testing kits 3822

1.3 It was informed to the Committee that earlier proposals for inclusion of trading activities in the LOA of M/s Pertech Export Pvt. Ltd. were considered by Approval Committee in its meetings held on 04.10.2018, 05.12.2018, 13.03.2019 and approved inter alia subject to the following conditions

- i. No DTA Sale of trading goods would be allowed.
- ii. Trading will be allowed only for physical export to any other country, for supply to other units and Developers in the same or other SEZ or EOUs, against freely convertible currency in terms of Section 2(z) of SEZ Act, 2005.
- iii. Unit will maintain separate area earmarked for manufacturing and trading activities and maintain separate records/accounts of NFE for manufacturing and trading activities.
- iv. NFE status for manufacturing activity and trading activity will be seen separately.

1.3(i) Unit had never approached the BOA against such conditions, especially the condition imposed for disallowing sale of trading goods in DTA. Accordingly it was observed that aforesaid conditions imposed by the Approval Committee could not be reviewed by this office or Approval Committee.

1.4 In view of above, the request of the unit **couldn't be acceded to by the Competent Authority. The unit vide email dt. 23.04.2020 was informed accordingly.**

1.5 It was informed to the Approval Committee that on receipt of email reply dt. 23.04.2020, the unit vide its emails dt. 23.04.2020 and 24.04.2020 have made representation before this office and requested for "**permission on an Ad-Hoc one time basis**" till next UAC meeting is held and they submit their proposal in that meeting to regularise these items and to sell these in DTA as per SEZ rules.

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

1.6 Further, it was informed to the Approval Committee that in the meanwhile unit vide its email dt. 26.04.2020 had represented the matter to DOC and requested them to treat the same as an appeal before the BOA against the rejection of their instant proposal for allowing trading, by DC, NSEZ. In its appeal unit had reiterated its earlier submissions and mentioned that it is not possible to undergo manufacturing process when it's under complete lockdown and all factories are closed in SEZ. The unit had also mentioned in the email that if BOA also rejects their appeal on 27.04.2020, they do not want to lose more time in filing their writ with Hon'ble High Court of Allahabad, the next day.

1.7 After receipt of the above representations DOC vide its email dt. 27.04.2020 requested comments of this office in the matter. Accordingly detailed facts of the case along with point-wise comments against the submissions made by unit, were forwarded to DOC vide email dt.28.04.2020.

1.8 Against the representation made by unit before DOC and report/comments sent by this office, the DOC vide its letter dated 30.04.2020 has informed this office as under:

"I am directed to refer to the subject mentioned above and to state that the issue has been examined in this Department and competent authority has desired that the matter may be taken up afresh in UAC through Video Conferencing and the decision may be conveyed to the unit under intimation to this Department"

1.9 In view of above directions of DoC this office vide email dt. 02.05.2020 and 08.05.2020 had requested the unit to submit certain relevant documents/information at the earliest, so that complete facts of the case could be placed before the Approval Committee for consideration through video conferencing:-

1.10 In reply M/s Pertech Exports Pvt. Ltd. vide its email dt. 06.05.2020, 08.05.2020 and 09.05.2020 has submitted its reply. **Details of documents/information sought and reply received from unit are given in the table below:-**

S.No.	Documents/information requested from unit	Reply given by the unit	Observations made by this office
(i)	Detailed proposal giving projections of export, import, NFE earnings and DTA sale in respect of proposed additional items, including source/country of import and	<ul style="list-style-type: none">Unit has shared a catalogue as attachment.It mentioned that it shall be submitting the DTA and NFE detail with the copies of orders in hand, however <u>instead of</u>	<ul style="list-style-type: none">It has been observed that this is only price and specification catalogue of Health Care Products.

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

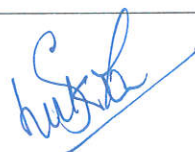
	copies of orders in hand etc.	<p><u>submitting requested details of projections</u>, unit submitted its reply as under:</p> <p>“1.Regarding NFE in our this company, We have made an export of INR 152 CR during the year 2018-19-20 ,and import of INR59.0R this time , thus we are having NFE positive by About INR 100 CR during and thus we have NFE positive by about INR !)) CR during this time”</p>	<ul style="list-style-type: none"> • <u>No details of projections of export, import, NFE earnings and DTA sale in respect of proposed additional trading items, including source/country of import and copies of orders in hand etc. have been provided.</u>
(ii)	Projections of proposed employment to be generated.	As the work is mostly related to import and selling in DTA and as there are government restrictions to do with no of workers we can employ at the moment , so we shall be working with 10-15 employees at the moment . Later we can generate an employment of 100 workers.	-
(iii)	Complete specific details of Rapid Testing Kits proposed to be imported i.e. country of import, status of specification/approval of same by ICMR etc	<ul style="list-style-type: none"> • Unit has informed that they have dropped this product and shall not be importing this product as they don't have much demand for the same . • <u>Unit has informed its amended/revised list of trading products for sale in DTA as under:</u> <ol style="list-style-type: none"> 1. Digital Infrared thermometer HS code 9025 2. 3M and KN95 masks . HS code 9020, 6307,62 3. Ventilators HS CODE 9018 4. Face Shield HS code 3926 5. Thermal Scanners 6. Fogging machines 	<ul style="list-style-type: none"> • <u>Revised list of products have been provided as given in adjacent previous column.</u> • <u>Unit has not provided ITC HS Codes of Thermal scanners and Fogging machines.</u> • <u>Earlier, unit had provided ITC HS codes of “3M and KN95 masks as 9020, 6307, 6217, 9018 whereas now only 9020, 6307, 62 have been given.</u>
(iv)	As per SEZ Rule 22(3) read with condition No. 7 of the BLUT, unit has to submit to Development Commissioner and the Specified Officer, APR within a period of 180 days following the close of financial year. Besides, the APRs are required to be filed in SEZ Online systems in terms of Rule 78 of SEZ Rules. However the APRs for	<p>Unit has informed as under:</p> <ul style="list-style-type: none"> • “With due respect sir , APR work looks tough to be submitted amid lockdown, as our staff who has all the files and details of preparing the APR , he comes from delhi , and intra state movement is completely closed down, hence it's is impossible to submit 	<ul style="list-style-type: none"> • <u>Unit has not submitted the requested APRs and assured to submit the same after lockdown. Unit has requested to consider their proposal without APRs.</u>



नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

	<p>the period 2017-18 & 2018-19 pertaining to the current block of five years are not seen to have been submitted by you. It is therefore requested that CA certified APRs for the period 2017-18 and 2018-19 may be submitted giving separate break up of manufacturing and trading activities/details. In case you have already submitted the same, copies of said APRs (with acknowledgement) and SEZ online request IDs may be furnished.</p>	<p>APR on urgent basis now , so kindly allow us exemption on submitting APR at the moment , and we shall be submitting it post lockdown so meanwhile u can put this as pending from our end If that is feasible And consider our proposal without the APR.”</p> <ul style="list-style-type: none"> “Regarding APR, we have to request that we shall submit this in due course of time after LOCK DOWN is removed and normal activities start as our concerned staff and CA is not available at present..” 	
(v)	<p>Unit has mentioned to have made export of Rs. 120 crore in 2018-19 and its NFE in current five year block is plus by USD 1 Billion, which may be clarified with yearwise break up details of import, export, DTA sale, NFE during the current block of five years separately for manufacturing and trading. Here it is mentioned that current block of five years of the unit is effective from 06.08.2017 to 05.08.2022</p>	<p>Unit has informed as under:</p> <p>“With due respect sir , DTA, past export NFE submissions look tough to be submitted amid lockdown, as our staff who has all the files and details of preparing the Same and , he comes from delhi , and intra state movement is completely closed down, hence it’s is impossible to submit This too on urgent basis now , so kindly allow us exemption on submitting The past export details at the moment , and we shall be submitting it post lockdown so meanwhile u can put this as pending from our end If that is feasible And consider our proposal without these submissions .”</p>	<ul style="list-style-type: none"> There is variation in figures of export/NFE obtained from NSDL and informed by unit via email. Hence correct status of these figures can only be known on receipt of CA certified APRs as requested from the unit. Unit has assured to submit the requested details after lockdown and requested to consider their proposal without these submissions.
(vi)	<p>Unit has mentioned in its emails that company does not have any unit outside the zone for import of proposed trading items, however, as per IEC details, company is having its DTA unit as Branch 2 at A 130, UDYOG KENDRA EXTN.-II, ECOTECH-III, GREATER NOIDA, UTTAR PRADESH in addition to Company’s head office address, which may be clarified.</p>	<p>Unit has informed that this unit was closed down a year ago and they have already cancelled the GST of outside company and surrendered this company's GST and place of activity outside the zone., As proof of cancellation of GST, unit vide its email dt. 09.05.2020 has provided Screen Shot of GST Cancellation of 09AACCP1232C3ZX taken from IRIS Pertidot GSTIN-Info App.</p>	<ul style="list-style-type: none"> On checking with GST Website the GST No. 09AACCP1232C3ZX is shown to be cancelled. Date of Registration is 22.09.2018 and date of cancellation is 29.07.2019. However, unit has not given any clarification as to why they have not got it updated in its IEC and the said DTA branch is still reflected in IEC of company.



नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

1.11 It was informed to the Approval Committee that in spite of repeated communications from this office Unit has not given required documents/information/clarification. Besides, unit has not provided any signed application for the proposal and the proposal/information mentioned above have been received through email only.

1.12 Further it was informed to the Committee that unit has not submitted its APR for the year 2017-18 (06.08.2017 to 31.03.2018) and 2018-19 for the current block of 5 year i.e. 06.08.2017 to 05.08.2022, year-wise details of import and export for the year 2017-18 to 2019-2020 obtained from M/s NSDL in respect of M/s Pertech Exports Pvt. Ltd. are as under:-

(Rs. In lakhs)

year	Import*	Export*	NFE**
2017-18	174.55	nil	-174.55
2018-19	6406.26	7912.59	1506.33
2019-20	3212.31	2942.54	-269.77
	Cumulative NFE		1062.01

*Data obtained from NSDL.

**However, exact NFE status can only be known from APRs. APR for the year 2017-18 (06.08.2017 to 31.03.2018) & 2018-19 are still awaited from the unit. As per the data received from NSDL, unit's NFE during this period is positive by Rs. 1062.01 lakhs approx. However, exact NFE status during the current block period effective from 06/08/2017 can only be known from APRs and since the unit has been allowed manufacturing and trading both, hence NFE status in APRs also needs to be given separately for manufacturing and trading to know the exact NFE status.

1.13 Further, the Approval Committee was informed about the brief Status of Customs / Court cases in respect of M/s Pertech Exports Pvt. Ltd. and its sister concern M/s Morgan Tectronics Ltd. as under:-

A. M/s Pertech Export Pvt. Ltd.

- (i) It may be mentioned that the unit was issued SCN dated 19/03/2012 by DRI, LZU u/s 28 and 124 of the Custom Act, 1992, inter alia calling upon the unit to show cause as to why declared invoice value of picture tube per piece (USD 8 & USD 9) should not be re-determined and penalty should not be imposed. The matter was placed before the UAC dated 02/05/2012 which decided that the matter would be further considered for adjudication under FTDR Act if the unit (another unit – M/s. Morgan Tectronics Ltd., a sister concern unit of the promoters has also been issued SCN by DRI) were not absolved of the charges in the adjudication order by DRI.
- (ii) The matter regarding issue of SCN by DRI to the unit and adjudication thereof by the Commissioner Customs, CEST Noida vide their Order dt. 28.04.2014 was placed before the Approval Committee held on 06.04.2016, along with proposal of the unit for inclusion of Trading Items in LOA. The Committee inter alia did not agree to the proposal of the unit for trading of Mobile Phones and parts thereof as the same was proposed to be sold in DTA only. Besides in the same meeting another request for trading of readymade garments was not allowed by the UAC being an altogether different activities from the approved authorized operations in terms of instruction 69. Against this decision of the UAC the unit had not made any appeal before the BOA as per records. The UAC had also directed the unit to submit copy of their appeal filed against adjudication order dt. 28.04.2014 along

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

with copy of stay order.

- (iii) Besides subsequently various proposal for inclusion of trading activities in the LOA of M/s Pertech Export Pvt. Ltd. have been considered/approved by UAC held on 04.10.2018, 05.12.2018, 13.03.2019, inter alia subject to the following conditions
- (iv) No DTA Sale of trading goods would be allowed.
- (v) Trading will be allowed only for physical export to any other country, for supply to other units and Developers in the same or other SEZ or EOUs, against freely convertible currency in terms of Section 2(z) of SEZ Act, 2005.
- (vi) Unit will maintain separate area earmarked for manufacturing and trading activities and maintain separate records/accounts of NFE for manufacturing and trading activities.
- (vii) NFE status for manufacturing activity and trading activity will be seen separately.

B. Comments received from S.O. Customs NSEZ

- (viii) DRI Jodhpur has recently (Nov./Dec. 19) issued an Alert Circular regarding issuance of fake invoices wherein name of two units of Pertech Exports Pvt Ltd (One NSEZ unit and another DTA unit at Greater Noida) were mentioned. On being studied there was no actual movement of goods to and from NSEZ unit.
- (ix) Recently (in Nov. 2019), an issue of submission of fake and manipulated documents by the said unit i.e. M/s Pertech Exports Pvt. Limited was also reported to this office from Delhi Customs in a High Sea Sale consignment which is being investigated by Delhi Customs (airport) and they have also suggested to take necessary action against the NSEZ unit.
- (x) Moreover in last three months, Anti Evasion Team Of Delhi Customs and Team of DRI Noida have also visited to the premises of the unit on the issue of IGST refund taken by unit/supplier.
- (xi) In the past also, the applicant was having two sister concerns in the name of M/s Pertech Exports Pvt Ltd and M/s Morgan Tectronics Pvt Ltd. in NSEZ, Noida.
- (xii) In both the units, Anti Evasion Team of Customs, Delhi had booked more than 3 cases on the issue of mis-declaration and valuation which were under litigation in High Court where appeal of the Department was not accepted on the ground of monitory limit. These three cases, however, appear to have attained finality.

C. Status of M/s Morgan Tectronics Ltd., sister concern of M/s Pertech Exports Pvt. Ltd.

The promoters of M/s Pertech Exports Pvt. Ltd. have also been issued another LOA dt. 31.07.1991 to their sister concern M/s Morgan Techtronics Ltd. for manufacturing of (i) Consumer Electronic Hardware items, (ii) Loader with Lens for VCD player and (iii) Trading activities. Unit commenced the production on 10.08.1991 and LOA was valid upto 31.03.2017.

Matter of M/s Morgan Techtronics Ltd. for review of Authorized Operations in the wake of number of reports about contravention of provisions of SEZ Act & Rules, conditions of LOA and BLUT was placed before UAC in its meeting held on 10.02.2016 with full facts. The said UAC decided as under:

- i. To cancel the LOA No. 08/07/91-NEPZ dated 31/07/1991 issued to M/s. Morgan Tectronics Ltd. forthwith under Section 16 of SEZ Act, 2005. No further import & export will be allowed to the unit.
- ii. (NFE will be calculated as per SEZ Rules and in case unit has failed to achieve positive NFE suitable action in terms of Rule 54 of SEZ Rules, 2006 read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 may be taken.
- iii. The unit shall complete exit formalities under Rule 74 of SEZ Rules, 2006.
- iv. The above actions would be without prejudice to any other action under any other law.

Decision of UAC was conveyed to the unit vide letter dt.23.02.2016.

Against the decision of the UAC, unit preferred an appeal before BOA. The BOA in its

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

meeting dt. 09.11.2016 rejected the appeal. The unit filed an appeal before the Hon'ble High Court of Delhi against the decision of BOA. The Hon'ble Court in its order dt. 22.04.2019 set aside the impugned order and remanded back the matter to BOA inter alia to consider the petitioners appeal afresh. In compliance with the direction of Hon'ble Court, the BOA in its meeting held on 18.06.2019 reconsidered the appeal and additional submissions of the appellant and after deliberations decided that the decision of the UAC under Section 16(1) of the SEZ Act, 2005 was in order, and rejected the appeal. Grounds of rejection of appeal mentioned by BoA are reproduced as under:-

- (i) The UAC decided to cancel the LOA of the unit in terms of Section 16 of the SEZ Act, 2005 after providing personal hearing to the unit on 10.02.2016 wherein Shri P.V. Khullar, Director of M/s. Morgan Telectronics Ltd. admitted to the mis-declarations and discrepancies in the two bills of entry. The unit has voluntarily deposited an amount of Rs. 50 lakhs towards his duty/penalty/fine liability emerging as the outcome of the investigation. Since the mis-declarations and discrepancies were found more than once, which clearly establishes the persistent violation of SEZ Act/Rules and terms and conditions of LoA.
- (ii) M/s. Pertech Export Pvt. Ltd. has been issued separate LoA and performance of the said unit is subject to separate monitoring by the Approval Committee in terms of Rule 54 of SEZ Rules, 2006. As such, export performance of M/s. Pertech Export Pvt. Ltd. cannot be clubbed with M/s. Morgan Telectronics Ltd. both being separate entities.
- (iii) The appeal filed by the appellant unit before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Allahabad was allowed by the Tribunal vide order dated 11.09.2018 on the ground that the Commissioner of Customs, Air Cargo, New Customs House, New Delhi had no jurisdiction to confiscate the goods and impose penalty on the appellant and it was only the joint/Dy. Commissioner/Asstt. Commissioner of Customs, in Noida SEZ unit, who had the jurisdiction to take necessary action. Therefore, the CESTAT order is based on procedure and not on merit of the case.
- (iv) Further, the Custom Appeal Nos. 4&5 of 2019 filed by the Commissioner of Customs against order dated 11.09.2018 of CESTAT has also been dismissed vide order dated 24.05.2019 on technical grounds, without going into merits as the tax effect involved was below the monetary limit of Rs. 50,00,000/-
- (v) The Hon'ble High Court has specifically directed the BoA to consider the petitioner's contention that it had achieved positive NFE. The necessary documents submitted by the unit to DoC to establish their claim has been verified and it is found that cumulative NFE of the unit during 2012-13 and 2014-15 comes out to be negative by Rs. 9361.85 lakhs. The unit has itself admitted that it cleared the goods into DTA against payments in INR
- (vi) As regards contention of the appellant that Rule 54 of the SEZ Rules, 2006 being not followed in this case, it was noted that the UAC cancelled the LoA of the unit in terms of the provisions of Section 16(1) of the SEZ Act, 2005 and appellant was given an opportunity of being heard. There seems to be no deviation by the UAC, as Rule 54 cannot be interpreted in isolation. The proceedings under Section 16(1) of SEZ Act, 2005 and Rule 54 of SEZ Rules, 2006 are independent in nature. The LoA was cancelled under section 16(1) of the SEZ Act, 2005. Now, that the unit has negative NFE also, the matter may be placed before the UAC for review and taking further action under FT (D&R) Act, 1992.

Decision:- The Board, after deliberations, decided that the decision of UAC under section 16(1) of SEZ Act, 2005 was in order and rejected the appeal.

The unit again filed a case against the rejection of the appeal by BOA. The matter is still sub-judice before Hon'ble Court and next date of hearing 11.08.2020.

1.14 Ms. Nidhi Khullar and Sh. P.V. Khullar, representative of the unit joined the meeting through video conferencing. The Committee expressed its displeasure for non-submission of APRs for the year 2017-18 & 2018-19 and not submitting the required documents / information / clarification in support of their proposal despite repeated reminders from this office. Ms. Nidhi Khullar requested the Committee for one week time and assured to submit the

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

pending APRs. She informed the Committee that the items proposed to be traded are FDA/NIOSH Certified and the import of these items shall be from China/Philippines/Vietnam/Europe. She also informed the Committee that she has a clarification with her to the effect that FDA / NIOSH certified items do not require any ICMR certification for clearance in DTA. She also assured the Committee that she shall provide a copy of the same. The Committee desired to know the quantity/HS Code/ period of Trading for the items mentioned in their proposal viz. Digital Infrared thermometer HS code 9025 , 3M and KN95 masks . HS code 9020, 6307,62, Ventilators HS CODE 9018, Face Shield HS code 3926 , Thermal Scanners, Fogging machines from the representatives of the unit.

1.15(i) During the discussion Specified Officer (SO), NSEZ informed about the case initiated by IGI Customs (Delhi) regarding filing of Bill of Entry by M/s Pertech Exports Pvt. Ltd. with NSEZ Customs for import of mobile phones against high sea sale basis. It was informed by SO, NSEZ that the said goods were originally imported by M/s Eminence (one of their unit) at Noida. The consignment is presently with Customs IGI, Delhi and has not been released to M/s Pertech Exports Pvt. Ltd. on the ground that M/s Pertech Exports Pvt. Ltd. have prepared/presented forged high seas sale agreement and some deficiencies have also been pointed out in the related documents. IGI Customs Delhi has directed NSEZ Customs to initiate action against M/s Pertech Exports Pvt. Ltd. for doing so. Presently the case is under investigation. On specifically being asked by the SO, Mr. P.V. Khullar, stated that the said consignment has still not been released by IGI Customs because of pending investigation.

1.15(ii) Specified Officer, NSEZ, requested Mr Khullar to submit reply of the letters (Original letter + 2 reminders) issued to them by NSEZ, Customs with regard to presenting forged documents along with the Bill of Entry filed in the name of M/s Pertech Exports for import of the said consignment to NSEZ on high sea sale basis. He informed that reply of the letter has already been submitted. With regard to the consignment lying with IGI, Customs, Delhi, Mr.Khullar added that this consignment would now be imported/got released by M/s Eminence Technology, Plot No. 4, Ecotech-III, udyog Kendra-II, Greater Noida. lying with IGI, Customs with whom M/s Pertech Exports, NSEZ, had entered into high sea sale agreement and as such now M/s Pertech Exports, NSEZ, have nothing to do with the same.

1.16 Ms. Khullar informed during the meeting and also confirmed vide email dt. 13.05.2020 the details of quantity / ITC HS Code / period of Trading for the items mentioned in their proposal, as under:-

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

S.No.	Items and HS Code	Qty.	Period
i.	Digital Infrared thermometer HS code 9025	10,000 pieces	Monthly for six month to one year
ii.	3M and KN95 masks HS code 9020, 6307,62	10 Million pieces	For one year
iii.	Ventilators HS CODE 9018	5,000 Units	6 Months
iv.	Face Shield HS code 3926	1 Million Units	6 Months
v.	Thermal Scanners 9025	5,000 Units	4 Months
vi.	Fogging machines 8424	10,000 Units	6 Months

1.17 The Committee observed the following relevant SEZ provisions:

Provisions of SEZ Act, 2005:

- i) Section 14(1)(d) of SEZ Act,2005 reads as under:
14(1) “Every Approval Committee may discharge the functions and exercise the powers in respect of the following matters, namely:-“
(d) “approve, modify or reject proposals for setting up Units for manufacturing or rendering services or warehousing or trading in the Special Economic Zone [other than the grant of licence under clause (e) of sub-section (2) of section 9] in accordance with the provisions of sub-section (8) of section 15;”
- ii) Section 15(1)(3) of SEZ Act, 2005 reads as under:
“The Approval Committee may, either approve the proposal without modification, or approve the proposal with modifications subject to such terms and conditions as it may deem fit to impose, or reject the proposal in accordance with the provisions of sub-section (8):”

Provisions of SEZ Rules, 2006:

- i) Proviso one to Rule 19(2) of SEZ Rules, 2006 reads as under:
“Provided that the Approval Committee may also approve proposals for broad-banding, diversification, enhancement of capacity of production, change in the items of manufacture or service activity, if it meets the requirements of rule 18 :”
- (ii) Rule 18(1) of SEZ Rules, 2006 reads as under:
“The Approval Committee may approve or approve with modification or reject a proposal placed before it under sub-rule (2) of rule 17 within fifteen days of its receipt.”

1.18 Approval Committee, in pursuance of provisions contained in para **1.17** above, after due deliberations and taking into account the extraordinary situation caused by the pandemic COVID-19 outbreak, decided to approve the request of the unit for onetime permission on ad-hoc basis for inclusion of following trading items for import and sale into DTA as per details and

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

conditions given below:-

i)

S.No.	Items and HS Code
i.	Digital Infrared thermometer HS code 9025
ii.	3M and KN95 masks HS code 9020, 6307,62
iii.	Ventilators HS CODE 9018
iv.	Face Shield HS code 3926
v.	Thermal Scanners 9025
vi.	Fogging machines 8424

- ii. Committee decided to give this one time ad-hoc permission of import and sale in DTA upto 30.06.2020 i.e. imports shall be allowed upto 30.06.2020 and sale in DTA shall also be allowed upto 30.06.2020.
- iii. Import as well as DTA Sale of aforesaid items shall not exceed the quantity as indicated by the firm in para 1.16 above. However since quantities indicated by the unit is for a longer period i.e. ranging from 4 months to 12 months and since the permission for import as well as DTA clearance is given on one time ad-hoc basis upto 30.06.2020 only, unit should effect import taking in to account this factor that no DTA clearance is allowed after 30.06.2020 as per the decision of the Approval Committee.
- iv. All the import/DTA Sale consignment of above trading items shall be subject to 100% examination in terms of quantity as well as value by Customs at the time of import as well as at the time of DTA clearance.
- v. No high sea sale/purchase (transactions) shall be permitted in respect of import of these items by the unit.
- vi. No restricted / prohibited items shall be allowed for import and export.
- vii. FDA/NIOSH Certification in respect of above trading items shall be verified by the Customs at the time of import as well as at the time of DTA Sale.
- viii. Unit shall ensure compliance with applicable quality standards of the items to be imported/cleared into DTA.
- ix. As per Rule 76 trading is part of services. As per Section 2(z)(iii) of SEZ

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

Act, 2005, services can be rendered only against Foreign Exchange. Hence unit can sell these trading goods in DTA only in Foreign Exchange. While permitting DTA clearance, Customs Authorities shall verify the same.

- x. Unit shall comply with all the relevant statutory provisions, specification, regulations, domestic rules, including provisions with respect to ICMR applicable in respect of import and DTA Sale of above approved trading items.
- xi. Conditions imposed by earlier UACs in its meetings held on 04.10.2018, 05.12.2018, 13.03.2019 in respect of permissions given therein shall continue to be applicable as per decisions in those UACs.
- xii. Committee directed the unit to submit APRs for 2017-18 and 2018-19 within a week duly certified by Chartered Accountant and signed by Unit's authorised signatory as well as status of realization of export proceeds in respect of export effected earlier. In respect of 2019-20, APR will be given within the permissible time.
- xiii. As regards the case initiated by IGI Customs regarding High sea sale as given in detail in para 1.15 above, Customs will examine the issue in consultation with IGI Customs and will take necessary action as considered appropriate.
- xiv. Committee decided that complete facts regarding status of submissions of pending APRs, status of NFE earnings updated upto 30.06.2020 and realization of export proceeds, import of above mentioned approved trading items effected by the unit up to 30th June 2020 and status of Customs related cases against the unit, will be placed before the Approval Committee scheduled to be held in the month of July, 2020 for consideration and decision as considered appropriate by Approval Committee. The meeting of the Approval Committee is usually held on first Wednesday of every month.

1.19 The Approval Committee further directed to convey the aforesaid approval to the unit under intimation to DoC in terms of DOC letter dated 30.04.2020.

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

2.

Ratification of broad-banding/LOA amendment approvals granted by D.C., NSEZ electronically during the Covid-19 lockdown period, by Approval Committee - reg.

It was informed to the Approval Committee that during imposition of ongoing nationwide complete lockdown since 23.03.2020, proposals were being received from a number of NSEZ units for broadbanding of their authorised operations by way of inclusion of additional manufacturing /trading products especially for supply to DTA towards fight against the unprecedented outbreak of COVID-19.

2.2 Further it was informed to the Committee that taking into account the extraordinary situation caused by outbreak of Covid-19, in order to ease broad banding as a relief measure in the current pandemic situation caused by Covid-19, the DOC vide its letter No. K-43022/7/2020-SEZ (Part I) dated 31.03.2020 while referring the provisions of first proviso to Rule 19(2) of the SEZ Rules, 2006, mentioned that based on the urgency due to the outbreak of COVID-19, requests were being received from SEZ stakeholders involved in pharma sector for manufacturing of masks, hand sanitizers, lab gown and other preventive protective products/equipment. DOC has directed all the Development Commissioners that till 30th of June, 2020, such broad-banding, consistent with the such objective, shall be allowed, without prejudice, at the level of DC subject to subsequent ratification by Approval Committee.

2.3 It was informed to the Committee that accordingly various such proposals for broadbanding of authorised operations by way of inclusion of additional manufacturing items like face masks, lab gowns/coats, shoe covers, body suits, sanitizers, fabric bags etc, in LOAs were approved by DC electronically subject to ratification by Approval Committee. Details of such proposals received, approved and permissions issued during lockdown till date, are as under:

(i) M/s Eshakti.com Pvt. Ltd.

Name and address of the unit	:	M/s. eShakti.com Pvt. Ltd. SDF No. J-11, 13, 15, 16 & M-9, NSEZ.
Date of LOA	:	18/06/2017
DCP	:	22/06/2018
LOA Validity	:	21/06/2023
Authorized operations already allowed to the unit	:	1. Manufacturing of Cotton Woven Dress, Cotton Knits Dress, Polyester Woven Dress. 2. Manufacturing of: (i) Other Woven Dress (62044990); (ii) Other woven skirts (62045990); (iii) Polyester Knit Dress (61044300); (iv) Blended Woven Dress (62044990); (v) Blended Knit Dress (61044990); (vi) Other Woven Pants (62046990); (vii) Wool/Silk woven blend dress

नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

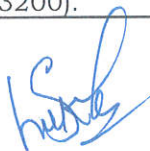
		(62044220); (viii) Wool/Silk knit blend dress (61044100); (ix) Cotton Woven Jackets (62043200).
Additional authorized operations approved to the unit, subject to ratification by Approval Committee.	Manufacturing of:	(i) Lab Coats made of cotton fabric (62011290) and Polyester Cotton blended fabric (62011390) (ii) Hospital Gowns made of cotton fabric (62079110), blended fabric(62079929) and SMS fabric (62101000) (iii) Protective face mask made of cotton woven fabric(62149090), cotton knitted fabric(61178030)
Date of receipt of the application	:	23.03.2020
Date of permission issued	:	23.03.2020

(ii) M/s C & B Aormas LLP

Name and address of the unit	:	M/s C & B Aromas LLP Plot No. 59 J-A, NSEZ, Phase-II, Noida
Date of LOA DCP LOA Validity	:	13.04.2016 11.04.2017 10.04.2022
Authorized operations already allowed to the unit	:	1.Manufacturing of (i) EAU DE Perfume, EAU DE Toilette, Perfume Body Spray, Room freshener, (ii) Perfume Gift set contain Perfume, Fragrance and other items related thereto. 2.Manufacturing of Perfume Compounds (33029011).
Additional authorized operations approved to the unit, subject to ratification by Approval Committee.	:	Manufacturing of: (i) Hand Cleanser (34019090) (ii) Hand Cleanser Gel (34019090) (iii) Wash / Lotion (34013019)
Date of receipt of the application	:	25.03.2020 & 26.03.2020
Date of permission issued	:	27.03.2020

(iii) M/s Eshakti.com Pvt. Ltd.

Name and address of the unit	:	M/s. eShakti.com Pvt. Ltd. SDF No. J-11, 13, 15, 16 & M-9, NSEZ.
Date of LOA DCP LOA Validity	:	18/06/2017 22/06/2018 21/06/2023
Authorized operations already allowed to the unit	:	Manufacturing of Cotton Woven Dress, Cotton Knits Dress, Polyester Woven Dress. Manufacturing of: (i) Other Woven Dress (62044990); (ii) Other woven skirts (62045990); (iii) Polyester Knit Dress (61044300); (iv) Blended Woven Dress (62044990); (v) Blended Knit Dress (61044990); (vi) Other Woven Pants (62046990); (vii) Wool/Silk woven blend dress (62044220); (viii) Wool/Silk knit blend dress (61044100); (ix) Cotton Woven Jackets (62043200).



नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

		Manufacturing of: (i) Lab Coats made of cotton fabric (62011290) and Polyester Cotton blended fabric (62011390) (ii) Hospital Gowns made of cotton fabric (62079110), blended fabric(62079929) and SMS fabric (62101000) (iii) Protective face mask made of cotton woven fabric(62149090), cotton knitted fabric(61178030)
Additional authorized operations approved to the unit, subject to ratification by Approval Committee.		Manufacturing of: 1. Fabric bags made of woven polyester and woven cotton (62171090) 2. Fabric bags made of knitted polyester (61178040) 3. Fabric bags made of knitted cotton (61178030)
Date of receipt of the application	:	02.04.2020
Date of permission issued		03.04.2020

(iv) M/s Karna Apparels Pvt. Ltd.

Name and address of the unit	:	M/s. Karna Apparels Pvt. Ltd. SDF NO E-1, 2, 6, 29, D-9 , H-9, 10, 11,M-2 to 8, NSEZ, Phase-II, Noida
Date of LOA DCP LOA Validity	:	12.10.2009 10.03.2010 09.03.2025
Authorized operations already allowed to the unit	:	Manufacturing of Readymade Garments (Ladies Dress, Suits, Skirts, Jackets, Top, Trousers, Shirts, Pant, Jumpsuit etc.) (viz, W Dress 62044390, K Dress 61044300, C Dress 62114300, W Top 62069000, K Top 61069090, W Jumpsuit 62114300, K Jumpsuit 61143010, W Pant 62046300, K Pant 61046300, W Skirt 62045300, K Skirt 61045300, W Jacket 62043300, K Jacket 61043990, C Men Shirt 62052000, S Men Shirt 61059090, Suit 62041300, Other Garments 61143020, (Capacity: 2100000 pieces/annum)" - (as approved by Approval Committee held on 04.03.2020).
Additional authorized operations approved to the unit, subject to ratification by Approval Committee.	:	Manufacturing of: 1. Medical Gowns/Coat (PPE) - HS Code: 62101000 2. Medical Shoe Cover (PPE) - HS Code: 39262029 3. Face Mask (PPE) - HS Code: 63079090
Date of receipt of the application	:	09.04.2020
Date of permission issued	:	10.04.2020



नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

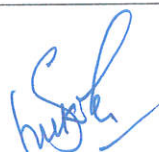
(v) M/s Shape N Size Fashions

Name and address of the unit	:	M/s. Shape N Size Fashions SDF No. M-12, NSEZ , Noida-201305
Date of LOA	:	17.12.2018
DCP	:	16.08.2019
LOA Validity	:	15.08.2024
Authorized operations already allowed to the unit	:	Manufacturing of (i) Cotton Knitted Dress (ii) Poly Knitted Dress (iii) Cotton Woven Dress (iv) Poly Woven Dress (v) Other Woven Dress (vi) Stitching Job Work
Additional authorized operations approved to the unit, subject to ratification by Approval Committee.	:	Manufacturing of: <ol style="list-style-type: none"> 1. Lab Coats made of woven fabric for men & boys (6201) and for girls & women (6202) 2. Hospital Gowns made of woven fabric for men & boys (6207) and for girls and women (6208) and knitted Fabric for Men & boys (6107) and for Women & girls (6108) 3. Overall protective body suit (6211) 4. Protective face mask made of woven fabric (6211, 6217), knitted fabric (6111, 6117) and other mask (6307) and face mask made of non woven fabric (901890)
Date of receipt of the application	:	13.04.2020
Date of permission issued	:	15.04.2020

(vi) M/s La Moda Eleganza

Name and address of the unit	:	M/s. La Moda Eleganza SDF No. E-18, NSEZ , Noida-201305
Date of LOA	:	03.02.1997
DCP	:	02.12.1997
LOA Validity	:	01.12.2022
Authorized operations already allowed to the unit	:	Manufacturing of Readymade Garments & Accessories, Unstitched Embroidered Fabrics and Made-ups
Additional authorized operations approved to the unit, subject to ratification by Approval Committee.	:	Manufacturing of: <ol style="list-style-type: none"> 1. Overall protective body suit made of non - woven fabric (62101000) 2. Protective face mask made of non-woven fabric (62104090, 63079090, 90189099)
Date of receipt of the application	:	29.04.2020
Date of permission issued	:	01.05.2020

2.4 It was informed to the Committee that due to various factors like



नौएडा विशेष आर्थिक क्षेत्र

(दिनांक 13/05/2020 को आयोजित अनुमोदन समिति की बैठक का कार्यवृत्त)

limitations of resources, urgent nature of proposals, complete nationwide lockdown etc., aforesaid proposals have been processed/approved electronically via. Email/whatsapp from home and accordingly scanned copy of duly ink-signed permission letters as per approval details above have been issued electronically through email to applicant units. Relevant print-outs of the screen shots/notes approved electronically and permissions issued have been placed in respective files.

2.5 After due deliberation, Approval Committee ratified the aforesaid LOA broadbanding/LOA amendments approved electronically by Development Commissioner and permissions issued to the respective units electronically during the COVID-19 lockdown period, in terms of DOC's letter No. K-43022/7/2020-SEZ (Part I) dated 31.03.2020.

Meeting ended with a vote of thanks to the Chair.



(S. S. Shukla)

Jt. Development Commissioner



(Dr. L. B. Singhal)

Development Commissioner