

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

Following were present:-

1	Shri Krishan Kumar	Jt. Development Commissioner, KASEZ
2	Shri H.C. Verma	Asstt. Commissioner (Cus) - Rep. of Commissioner of Customs.
3	Shri R.G. Khaikar	FTDO, KASEZ - Rep. of Jt. DGFT.

Absentees:

- (1) Director (Banking)
- (2) Asstt. Collector/SDM
- (3) Asst. Commissioner (Income-tax)
- (4) GM, DIC, Bhuj

65. Review/confirmation of the minutes of last meeting of the Approval Committee:

Minutes of the last meeting of the Approval Committee were confirmed.

65.1 New Proposals to set up Units in KASEZ:

65.1.1 M/s. Global Multichem, Chandigarh:

The proposal of the applicant is for setting up a unit for manufacturing activity of Mica (ITC HS 25252010) and Walnut Shells (ITC HS 8021200) and trading activity as per Annexure-'A' of their application dated 03/12/2013 and 16/12/2013. The Company's representative who appeared before the Committee mentioned following facts:-

1. They are having a DTA unit, which is in the third year and exporting 100% since inception. During the year 2013-14 they did an export of Rs.3.97 crores.
2. The products are oil field chemicals used for drilling purposes.
3. In the SEZ they intend to do some value addition and to export it as a special chemicals to reach to the end users.
4. Investment in project is Rs.150.20 lakhs which is to be met from term loan/unsecured loan and promoters contribution.
5. Export projected for 5 year period is Rs.30606.92 lakhs and they are likely to achieve NFE of Rs.6121.38 lakhs.

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

However, Director of the company was not able to explain the unusually high frequency of foreign exchange outgo as well as export figures, etc. The Committee, therefore, asked him to re-examine and submit proposal. Accordingly, the proposal was deferred

65.1.2 M/s. Neptune Overseas, Gandhidham:

The proposal of the applicant is for setting up a unit for warehousing service activity. The Company's representative who appeared before the Committee mentioned following facts:-

1. They intend to set up the warehousing service facility at the infrastructure developed by the M/s. Worlds Window Infrastructure and Logistics Pvt. Ltd., who is the co-developer for FTWZ in Kandla SEZ.
2. The Co-developer has agreed to sub-lease them an area of 1500 sq.mtrs.
3. Investment in project is Rs.60.00 lakhs which is to be met from promoters' contribution.
4. Export projected for 5 year period is Rs.153.00 lakhs and they are likely to achieve NFE of Rs.123.00 lakhs.

The Committee noted that the co-developer of FTWZ has given NOC to the applicant for allotment of an area of 1500 sq.mtrs. and accordingly approved the proposal subject to standard terms and conditions. The Applicant also expressed his interest in acquiring space elsewhere in the Zone. It was informed to the Applicant that if they wish to take any unit in SDF building from KASEZ, they can participate in the bid.

65.1.3 M/s. Om Exporters, Rajasthan:

The proposal of the applicant is for setting up a unit for manufacturing activity of Pan Masala (ITC HS 21069020), Pan Masala Containing Tobacco (ITC HS 24039990), Scented Supari (ITC HS 21069030) and scented Zarda (ITC HS 24039930). The Company's representative appeared before the Committee and mentioned following facts:-

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

1. They were operating from Nepal. The project at Nepal was not viable and they wish to move the manufacturing facility to India.
2. Investment in project is Rs.63.00 lakhs which will be met from own sources.
3. Export projected for 5 year period is Rs.9320.00 lakhs and they are likely to achieve NFE of Rs.9245.00 lakhs.

The Committee approved the proposal subject to the condition that no DTA sale shall be permitted and the unit shall be required to follow all the rules/guidelines, policy of Govt. of India and Govt. of Gujarat on manufacturing/export of these products. If at any stage, Govt. of Gujarat withdraws permission for operating of export units for manufacture of Pan Masala & Gutka, the firm shall close its operations at KASEZ. The permission shall also be subject to all standard terms & conditions and availability of space in Zone. They were advised to make bid for acquiring space in SDF.

65.2 Broad Banding request in the existing LoA:

65.2.1 M/s. Dyna Glycols Pvt. Ltd., KASEZ.

M/s.Dyna Glycols Pvt. Ltd. is an existing unit in KASEZ approved for manufacturing of Polyethylene Glycol 200, 400 & 3350, as amended from time to time. The present proposal is for broad-banding of LOA for manufacturing of following items:

Sr.No.	Item	ITC (HS) Code	Import Policy	Export Policy
1	Other organic surface active agent	3402 1900	Free	Free
2	Organic Surface Active Agent	3403 1100	Free	Free
3	Other Organic Compound	2942 0090	Free	Free

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

4	Other Saturated Monohydric Alcohols	2905 1620	Free	Free
5	Other Industrial Fatty Alcohol	3823 7090	Free- The import of any alcohol which is directly potable or can be used for making potable alcohol is however not permitted	Free

The representative of the said unit appeared before the Committee and mentioned that at the time of making the application, this item was not included and now they have export orders for the above items. The representative of the unit informed that from their present activity they have exported goods worth Rs.10856.21 lakhs, thereby getting NFE of Rs.9465.69 lakhs during last five years. For the present proposal, they have projected export of Rs.1630.70 lakhs for new products. NFE for these products is projected as Rs.349.10 lakhs. The representative also mentioned that by utilizing existing facilities, they shall manufacture the products

The Committee approved the proposal subject to standard terms and conditions.

65.3 Consideration of cancellation of LOP of M/s. Safari Fine Clothing Pvt. Ltd.

The Committee took note of following documents placed before it:-

1. Order No.KASEZ/IA/1852/2001-02/9054-55 DATED 04.12.2013 suspending LoA of the Unit.

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

2. Reply dated 26.12.2013 furnished by the unit in reply to SCN No.KASEZ/CUS/Inquiry-Safari Fine/13-14 dated 11/12-12-2013 issued to it. The SCN and the reply furnished by the unit were placed before the last UAC which was held on 31.12.2013.
3. Letter No. S/20-09/Misc/SIIB/2013-14/11199 dated 17.01.2014 received from the Commissioner of Customs, Custom House, Kandla giving status of cases against the unit.
4. Parawise comments prepared by KASEZ Administration on replies submitted by the Unit with respect to SCN dated 11/12-12-2013.

The Committee also noted that the firm was granted personal hearing during the 63rd UAC meeting held on 17.12.2013 & 64th UAC meeting held on 31.12.2013 and that the arguments put forth by the unit during P.H. and written submissions are same. After detailed deliberations the Committee made following observations:-

1. The unit has not furnished any cognizant reasons to establish that the imported goods have not been diverted. The arguments put forth by them at certain places are not in confirmity to each other. In this regard, following few points are highlighted:-
 - i) In para 7&8 of its defense reply, the unit has mentioned that their staff started unloading of goods under misbelief that customs procedures are already over which is contradictory to their own contention made in para 5 that the directions were given to staff to wait till the Proper Officer comes and checks the Seal, marks & numbers of the containers.
 - ii) In para 6 of their reply, they mentioned that they had sent their employee to the residence of the Preventive Officer to bring him to KASEZ for the purpose of inspection. But in para 7&8 of their reply they have clearly mentioned that the concerned P.O. was not contacted by them.

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

2. The Unit has accepted the fact that the goods were unloaded in their premises without getting the Seal, marks & numbers of the containers verified from the P.O. who was assigned the job.
3. The Unit has also not disputed the fact that when the Customs Officers of KASEZ Administration reached their premises, 3 containers had already been emptied and the two containers were parked at the premises of the Unit in open condition with their seals broken.
4. The Unit has not been able to furnish any convincing evidence to prove that the bales shown as unloaded from the import containers were actually imported. There has been no denial of the fact that amendment to the B/E was filed after the goods had been unloaded in the premises of the Unit.
5. The Bill of Lading, Commercial Invoice and Packing List unsigned (all photocopies), submitted by the unit at the time of filing amendment to the B/E are dated 20-11-2013. Thus, the amendment to the B/E should have been filed before 24.11.2013 i.e. before arrival of the goods in KASEZ.
6. The Unit has also alleged that they were not provided the relied upon documents. However, the acknowledgement given by Mr. Ankur Mahajan, Authorised Person of the Unit on 19-12-2013 clearly mentions that they had received copies of all the relied upon documents, except mentioned at Sl.No.8 & 10. Further, regarding Sl.No.8 & 10, it is mentioned as under:-

“The document mentioned at Sr.No.8 is already available with us whereas the document listed at Sr.No.10 is a video footage which will be watched by us on a later stage”.

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

6. The Committee also noted status of 5 cases listed in the Order dated 04.12.2013 suspending LoP of the Unit and also the status of cases indicated by the O/o Commissioner of Customs, Kandla in their letter dated 17-1-2014. These documents reveal that in SCN No.KASEZ/IA/1852/2001 dated 31.03.2013, a penalty of Rs.35,000/- was imposed for not intimating the change in Constitution of the firm and for non-achievement of NFE and other cases have either not reached their finality and are pending before different Authorities or the firm has been exonerated in these cases. Besides provisions of the different Acts & Rules mentioned include suspending LOP in the SCN, etc. the Committee specially took note of following provisions:-

- i) Sub-section (1) of Section 16 of the SEZ Act 2005, as amended, which is reproduced below:-

“The Approval Committee may, at any time, if it has any reason or cause to believe that the entrepreneur has persistently contravened any of the terms and conditions or its obligations subject to which the letter of approval was granted to the entrepreneur, cancel the letter of approval”

- ii) Section 11 of the Foreign Trade (Development & Regulation) Act, 1992, as amended, inter-alia mentions as under:-

“11.(1)No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

*(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy, he shall be liable to a penalty of not less than ten thousand rupees and not more than five times the value of the goods or services or technology in respect of which any contravention made or attempted to be made, whichever is more.....
.....”*

7. Keeping the above in mind, the Committee took following decisions:-

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

1. The Letter of Permission of the Unit may not be cancelled this time as it is not clearly established that the entrepreneur (Unit) has *persistently* contravened any of the terms and conditions or its obligation subject to which the LoP was granted to the entrepreneur.

2. The act of the unit in diverting the goods to Domestic Tariff Area which were supposed to be brought in KASEZ mainly for the purpose of exports and also its act of not following the prescribed procedure before the goods were offloaded in their premises, is a serious offence. The Committee directed the O/o Development Commissioner, KASEZ to issue a detailed Speaking Order and impose the maximum penalty as per Section 11 of the Foreign Trade (Development & Regulation) Act 1992, as amended in 2010.

3. The Committee also directed the o/o DC, KASEZ that the amount of revenue foregone which comes to Rs.1,91,907/- may be recovered from the unit alongwith interest thereon. Further, the Unit may be strictly warned that incase of any violation of conditions of LoP in future, the LoP of the Unit may be cancelled forthwith.


65.4 Supplementary agenda:

65.4.1 M/s.Flamingo Logistics, KASEZ:

M/s. Flamingo Logistics, KASEZ has been approved for warehousing services and trading of all items except restricted and prohibited items vide LOA dated 19/5/2011, as amended from time to time. The LOA was issued for setting of their unit in the FTWZ being developed by co-developer M/s.Worlds Window Infrastructure and Logistics Pvt. Ltd. Representative of the Company appeared before the Committee and mentioned that the co-developer has not yet developed infrastructural facilities and therefore, they intend to change location from FTWZ to

Minutes of the 65th Approval Committee Meeting of Kandla SEZ, held on 28th January, 2014 at KASEZ under the Chairmanship of Shri Mahendra Jain, IAS, Development Commissioner, KASEZ

any other location in KASEZ and that they want to make bid for units in new SDF complex. The Committee approved their request for change of location from FTWZ to KASEZ. They were asked to participate in the bid for allotment.


(Mahendra Jain)
DC, KASEZ.