

SPEED POST / A C K

 सत्यमेव जयते Government of India	Government of India Ministry of Commerce & Industry Office of the Development Commissioner Admin Office Building, MEPZ - Special Economic Zone, National Highway - 45, Tambaram, Chennai - 600 045 Fax: 044 2262 8218, Email Id: dc@mepz.gov.in
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File No. MSEZH/R/2019/50008

Dated : 04.10.2019

To

Shri. S Karthik Ramnarayan,  
 Old No. 30B, New No.16B, 1 st Floor,  
 Subiksha Flat, VOC Street,  
 Jain Staff Colony, Nanganallur,  
 Chennai,  
 Pin-600061.

Sir,

Sub: Information required under RTI Act, 2005 -Reg.

Kindly refer to your RTI application dated 21.09.2019 with the required fee received in this office on 21.09.2019. The information as available in this office records are provided herewith in respect of this office:

S.NO	INFORMATION REQUESTED	INFORMATION FURNISHED
1	<p>Marg Swarnabhoomi, Cheyyur, Kanchipuram District, Tamilnadu is an SEZ developed by M/s. New Chennai Township Private Limited (100% Subsidiary of Marg Limited). I want a copy of the following:</p> <p>Application form for dual use of infrastructure in Non Processing area if filed by the developer.</p>	<p>M/s. New Chennai Township Private Limited, Developer of the SEZ has not filed any application for dual use of infrastructure in Non processing area as per records available in this office.</p>
2	<p>Orders of your office demanding refund of duty exemptions wrongly claimed by the developer.</p>	<p>Two Order-in-Originals demanding refund of duty exemptions from the Developer is enclosed.</p> <ol style="list-style-type: none"> <li>1. Order No.9/43/2006/Pvt. SEZ.II Dt 15.02.2016.</li> <li>2. Order No.9/44/2006/Pvt. SEZ. II Dt. 15.02.2016.</li> </ol>



2. If you are not satisfied with the information furnished above, you may prefer an appeal with the 1<sup>st</sup> Appellate Authority detailed below within 30 days of the date of this letter.

Shri.D.Anandan,IAS,  
Joint Development Commissioner,  
MEPZ-Special Economic Zone,  
Government of India,  
Ministry of Commerce & Industry  
N.H. 45, Tambaram,  
Chennai-600 045.

Yours sincerely,

*Santosh Kumar C. Menon*  
04/10/19

(SANTOSHKUMAR C.MENON)  
CPIO/Superintendent of Customs

ET 236961796 In

DISPATCHED ON

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Despatcher/Menz-Set



W.P. 16430/2016

Government of India  
Ministry of Commerce & Industry  
Office of the Development Commissioner  
MEPZ Special Economic Zone  
Tambaram, Chennai- 600 045.

No.9/43/2006/Pvt.SEZ.II Dt. 1772 EC 1776

Dt. 15.02.2016.

ORDER - IN - ORIGINAL

PASSED BY : DEVELOPMENT COMMISSIONER, MEPZ-SEZ

- 1 . Any Person/ Party aggrieved by this order may under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 file an appeal against the same to the appropriate authority viz. The Appellate Committee in the Ministry of Commerce & Industry, Department of Commerce, New Delhi under the Chairmanship of Additional Secretary, Ministry of Commerce & Industry aided by Joint Secretaries and Director of the Ministry within 45 days from the date of service of this adjudication order together with a copy of this order and a complete set of evidence in the form of Annexures to the appeal relied upon in support of the appeal.
- 2 . Any person/ party desirous of filing an appeal against this order shall deposit the penalty amount and produce proof of payment of penalty amount along with the appeal to the Appellate Authority failing which the appeal is liable to be rejected for non-compliance of the provision of Section 15 of the Foreign Trade (Development and Regulation) Act, 1992.
- 3 . The penalty amount is to be deposited under the Head of Account 1453 Foreign Trade & Export Promotion Minor Head 102 - Other receipts fines and penalties etc. Import & Exports Control Organisation.
- 4 . Evidence of payment of penalty is required to be furnished to the Adjudication Authority within 45 days from the date of service of this adjudication order, failing which the Importer - Exporter Code Number of the persons/companies/ other entities concerned is liable to be suspended under the provisions of Section 11(4) of the Foreign Trade (Development & Regulation) Act, 1992 without making any further reference to them.

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5. M/s. New Chennai Township Pvt. Ltd. were issued Letter of Approval No.F.2/404/2006-SEZ dated 23.05.2007 for setting up a sector specific SEZ for Multiservices over an area of 121.41 hectares at Seekinakuppam Village, Cheyyur Taluk, Kancheepuram Dist., Tamil Nadu.

6. M/s. New Chennai Township Pvt. Ltd, Multiservices SEZ were granted permission by Ministry of Commerce & Industry vide letter F.2/404/2006-SEZ dated 30.01.2008 for development of 7500 housing units not exceeding built-up area of 7,50,000 sq.mts.

9 . M/s. New Chennai Township Pvt. Ltd., developer of Multiservices SEZ were permitted in various meetings of Unit Approval Committee to procure materials under exemption as per SEZ Act and Rules..

10 . M/s. New Chennai Township Pvt. Ltd constructed residential units in the SEZ on procurement of duty free material approved by the Unit Approval Committee in various meetings and has also submitted periodical reports to the O/O DC, MEPZ-SEZ which were placed before the UAC meetings for review and monitoring.

11 . In terms of Instruction 65 dated 27.10.2010, Ministry of Commerce & Industry, New Delhi, issued the following guidelines on "Housing",

" Five per cent of the total area should be used for constructing low cost housing and dormitories in all SEZs of a size of 100 hectares or more. In case of a SEZ of a size of less than 100 hectares, developers should provide low cost housing /dormitories to the employees depending upon the need of the SEZ as per the National Urban Housing Policy 2007. Developer should rent out these houses to the employees of units. The units could take these houses on long-term lease for renting out to their employees. The housing facilities created in the non-processing area could also be allowed to be used by persons who are working for establishment relating to SEZ developers, units and or are users of infrastructure facilities created in the SEZ. In case a unit, having houses on long lease closes down, these can be transferred to other working units or the developer. Proper space for street vendors in the commercial areas shall be provided keeping in view the National Policy on Urban Street Vendors, 2009."

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12 . M/s. New Chennai Township Pvt. Ltd did not reveal the fact that the residential units so constructed in the SEZ were allotted to persons not connected with the SEZ while submitting their requirement of materials for approval of the UAC.

M/s. New Chennai Township Ltd., Multiservices SEZ were directed to furnish complete details/status of residential allotments made by them vide letter dated 19.02.2014. As the developer had not provided the required details, on the basis of findings in the draft report of CAG on Performance Audit of SEZs that M/s. New Chennai Township Pvt. Ltd., Multiservices SEZ had allotted on lease residential units in the non-processing area of the SEZ to private individuals and companies who are not connected with the SEZ and on the basis of clarification issued by MOC&I vide letter dated 21.01.2014 that residential units in a SEZ cannot be allotted to persons not connected with the SEZ, a show cause notice No. 9/43/2006/Pvt. SEZ II/1389 dated 12.05.2014 and was issued by the O/O DC, MEPZ-SEZ as to why action should not be taken against them invoking SI.No.2 of the declaration under bond-cum-LUT undertaking executed by them with the Office of the DC, MEPZ-SEZ read with condition (2) of Bond-cum-LUT for violation of condition No. (7) of Bond-cum-LUT read with Rule 25 of SEZ Rules, 2006 and Insutruccion No. 65 dated 27.10.2010 and for recovery of applicable duties/benefits availed of by them for development of residential facilities in the SEZ.

13. In Reply to the show cause notice M/s. New Chennai Township Pvt.Ltd , developer of sector specific SEZ for Engineering vide letter dated 29.05.2014 and further vide letter dated 16.09.2014 (after grant of personal hearing on 09.09. 2014) interalia submitted that

- i) approval dated 30.01.2008 was granted to them for construction of 7500 residential units
- ii) They have developed residential units in the non-processing area of the SEZ and leased out the residential units to various people including people who are connected to the operations of the SEZ and Units in the SEZ.
- iii) That they have not sold vacant land in the SEZs in accordance with Rule 11(10) of the SEZ Rules.

SEZ



iv) That it will be difficult to differentiate the lessee as SEZ connected and not connected with the SEZ as most of the lessees have taken the apartments on lease hoping to take up some assignment in the SEZ.

v) There is no clear prohibition in any of the provisions of SEZ Act, SEZ Rules or in the guidelines under Instruction 65 issued regarding residential allotments to others.

14. An opportunity for a Personal Hearing was granted to M/s. New Chennai Township Pvt. Ltd. Developer on 9.9.2014 at 11.30 AM. Mr. Srikanth, Manager of M/s. New Chennai Township Pvt. Ltd. represented the developer and reiterated the facts stated in the reply to the SCN and a further letter dated 8.5.14 was submitted by the developer. The defence to the allegations made in the SCN issued to the developer as recorded in the paras supra was further reiterated vide their letter dated 16.09.2014

15. Meanwhile, Ministry of Commerce and Industry issued a Notification dated 2.1.2015 indicating guidelines on the dual use of social infrastructure by developers in the non processing area of the SEZ. The notification also stipulates that existing developers who had already used the infrastructure for dual use, shall refund the duty/tax exemptions, both Central and State, availed by them.

16. In view of the issue of Notification dated 2.1.2015, an Addendum to the show cause notice was issued to the developer on 28.5.2015 putting the developer to Notice for recovery of dues in terms of the said Notification for dual use of infrastructure in the Non Processing Area. The developer vide letter dated 9.6.2015 replied to the Addendum requesting for waiver of refund of duties, exemptions and concessions already availed in the creation of social infrastructure facilities including residential units and also requested a personal hearing to explain the case in person.

17. As requested by the developer, a personal hearing was granted to the developer as provided for in the Addendum to the show cause notice, on 28.7.2015. During the personal hearing, they made a submission that though the residential units in the non processing area of the SEZ may have been leased to outsiders, the actual occupants or users of the residential units are only SEZ employees. They also informed that they would provide details of the actual occupants of the residential units, submit proof to the effect that they were only SEZ employees and that they may be granted some time for providing the details.

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18. However vide their letter dated 5.11.2015, they have not submitted any documents evidencing that the actual users of the residential units are only SEZ employees. They have reiterated the earlier submissions made by them as recorded in the paras supra.

**FINDINGS:-**

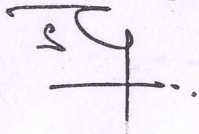
19. I have gone through the facts of the case, the allegations made in the SCN, the replies given by the developer and the averments made during the personal hearing.

Show Cause Notice No 9/43/2006/Pvt. SEZ II/1389 dated 12.05.2014 was issued on the premise of illegal allotment of residential units constructed in SEZ to persons not connected with the SEZ, which is in gross violation of Instruction No 65 dated 27/10/2010 and the basic philosophy and spirit of the SEZ ACT and Rules and as to why action should not be taken against them for recovery of applicable duties/benefits.

At the outset the reasons and purpose for the enactment of SEZ Act is discussed below for better understanding of the case *ibid*.

**Statement of Objects and Reasons sought in the bill for approval of SEZ Act inter alia states that:**

*The Government of India had announced a Special Economic Zone Scheme in April 2005 with a view to provide an internationally competitive environment for exports. The objectives of special economic zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export growth.*





While the policy relating to the special economic zone is contained in the Foreign Trade policy, incentives and other facilities offered to the Special Economic Zone developer and units are implemented through various notifications and circulars issued by the concerned Ministries/ Departments. The present system therefore, does not lend enough confidence for investors to commit substantial funds for development of infrastructure and for setting of the units in the Zone for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism., a central act for the Special Economic Zone has been found in line with international practice.

The Special Economic Zone Act was enacted on 23-6-2005 (act 28 of 2005) and came into force on 10.2.2006 Notification No. S.O. 196(E) dated 10.2.2006.

The preamble of the Act reads thus:

*An Act to provide for the establishment , development and management of the Special Economic Zone for the promotion of exports and the matter connected therewith or incidental there to .*

The Special Economic Zones are established and approved and authorized to operate by the Developer under Section 4 of the SEZ Act

The infrastructural facility in the case ibid i.e. housing is provided under Section 2 (p) of the Act read with Rule (2) ( 1) (s).

**2p of the SEZ Act** reads as follows:- "Infrastructure facilities" means industrial, commercial or social infrastructure or other facilities necessary

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for the development of a SEZ or such other facilities which may be prescribed".

**2(1) (s) of SEZ Rules, 2006** reads as follows:- "Infrastructure means facilities needed for development, operation and maintenance of a SEZ and includes industrial, business and social amenities like development of land, roads, buildings, sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and inter-connecting pipelines for liquids and gases, inland container depot or container freight station, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, **residential and business complex**, water supply, including desalination plant, sanitation facility."

From the above it is seen that the Act provides for Integrated Infrastructure for establishment, development and management of the SEZ for the promotion of exports and matters connected therewith or incidental thereto.

20. The salient feature of the SEZ Act 2005 and the SEZ Rules 2006 providing exemptions are discussed below:

a. **Sec.7. Exemption from taxes ,duties or cess:** Any goods or services exported out of or imported in to or procured from the Domestic Tariff area by,-

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- i. A unit in a special economic zone; or
- ii. A Developer , shall subject to such terms , conditions and limitations as may be prescribed , be exempt from the payments of taxes , duties or cess under all enactments specified in the first schedule.

**b. Sec 26. Exemption, Drawbacks and concessions to every developer and entrepreneur:-** (1) Subject to the provisions of sub - section (2) every Developer and the entrepreneur shall be entitled to the following exemptions , drawbacks and concessions.

The Central Government may prescribe the manner in which , and the terms and conditions subject to which , the exemptions, concession, drawback or other benefits shall be granted to the Developer or entrepreneur under sub -section (1)

The above benefits are given subject to conditions as explained under Para 21 below.

**21.** The integrated infrastructural facilities in the case ibid as per Section 2(p) read with Rule 2 (1) (s) i.e. housing, is to be provided for the establishment, development and management of the SEZ for promotion of exports and matter connected therewith or incidental thereto!!

Rule 10 of SEZ Rules, 2006, permits the developer , co-developers and contractor for procurement of items for authorized operation under benefits permissible.

Provided also that the Developer or Co-developer as the case may be, or the SEZ Unit shall be responsible and liable for proper utilization of such goods in all cases.

SEZ



Rule 11 of SEZ Rules, 2006, deals about usage of processing and non processing area.

Rule 11 (10) SEZ Rules, 2006, reads thus:- No vacant land in the non-processing zone shall be leased for business or social purpose such as educational institutions , hospitals hotels, recreation and entertainment facilities, residential and business complex, to any person except a co-developer approved by the board.

Provided that the developer or co-developer may lease the completed infrastructure along with the vacant land appurtenant thereto for such purpose. **(proviso 1)**

Provided further that infrastructure for business or social purposes in the Special Economic Zone, as may be approved by the Board, shall be eligible for exemptions, concessions, drawback and any such infrastructure created in addition or in excess thereof shall not be eligible for any exemptions, concessions and drawback **(proviso 2)**

*Provided also that the developer , or co-developer shall strive to provide housing facilities not only for the management and office staff but also for workers of the Special Economic Zone (proviso 3)*

22. Proviso 2 of sub rule (10) of Rule 11 of SEZ Rules, 2006 was deleted vide Ministry's Notification dated 02.01.2015 and Rule 11-A was also inserted vide the said notification which, interalia, stipulates refund of the customs duties, central excise duties, service tax and such other Central levies and tax benefits, as also State exemptions, or refunds taken from the State or local taxes, if the infrastructure in NPA is put to dual use.

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The above Notification issued by Ministry of Commerce & Industry further confirms the intention of the SEZ Act and Policy that duty benefits are meant only for establishment, development and management of the SEZ for the promotion of exports, and matter connected therewith or incidental thereto and not for extending such facilities to persons or activities not connected with the SEZ. The allotment of housing facilities by the developer after availing of duty/tax benefits, prior to the issuance of Notification dated 02.01.2015 can be construed to be in violation of Instruction 65 dated 27.10.2010 as alleged in the show cause notice dated 12.5.2014.

22. From the above, it is clear that it is mandatory to provide housing facility only to the staff and workers working in special economic zone as they are connected to promotion of exports and falls within ambit of the Act and Rules . People not connected with the SEZ are not eligible for allotment of housing in the Special Economic Zone . Further, any residential allotments made to persons not connected with the SEZ can be construed or treated as allotments in excess/or in addition to the approval granted by the BOA/MOC&I thereby rendering them liable for payment of duties/taxes for the material procured for the above purpose.

23. On the same lines, it can be construed that the approvals for materials for the residential activity of the developer is limited to the housing facilities provided for the staff and workers of the SEZ and duties and exemptions granted in respect of materials used for allotment of residential units to persons not connected with the SEZ are not eligible for such duties and exemptions.

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The provisos of sub-rule 10 of Rule 11 of SEZ Rules, 2006 and Section 2(p) of the Act and Rule 2 (1) (s) of the SEZ Rules read with statement of objects and reasons and the preamble of the Act literally means that housing facilities are to be provided to the staff and workers in the Zone.

Though Rule 11-A inserted vide Notification dated 2.1.2015, provides for refund of the customs duties, central excise duties, service tax and such other Central levies and tax benefits, as also State exemptions, or refunds taken from the State or local taxes in case the infrastructure is put for dual use in the NPA, the residential allotments made by the developer prior to the issuance of Notification dated 02.01.15 can be construed as illegal allotments, liable for refund of benefits availed from Government and even in terms of the abovesaid Notification, the benefits availed in case of dual use of infrastructure, have to be refunded by the developer.

24. The purpose of promulgating the SEZ Act and the Rules thereunder inter alia is for provision of Integrated Infrastructure for establishment, development and management of the SEZ for the promotion of exports, and matter connected therewith or incidental thereto. The objects of the SEZ Act include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export led growth and for generation of additional economic activity, and creation of employment opportunities. It is not the intention of the legislature to provide infrastructure in the SEZ for leasing such facilities to persons not connected with the SEZ.

The avowed objective of the SEZ Act which finds place in all the Sections of the Act and Rules thereunder is to provide integrated infrastructural

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facilities for promotion of exports and matters connected thereto or incidental thereto in a SEZ. The duty/tax benefits are meant only for provision of the above facilities inside SEZ. It cannot be the understanding of the developer that the Government provides duty free benefits to undertake infrastructure work in the SEZ and lease such infrastructure at commercial rates to outsiders not connected with the SEZ even in the absence of Notification No. 65. As per Rule 11(12) of SEZ Rules, 2006, "The Central Government may lay down guidelines for development, operation and maintenance of Special Economic Zones". Instruction 65 issuing guidelines on "housing" in SEZs, among others, is a clarification and an affirmation of the intent/objective of the Act and Policy which were already in place. There is no need for it to be explicitly stated that the housing facilities offered in a SEZ cannot be leased/sold to persons not connected with the SEZ. One cannot take refuge on a mere technicality stating that the restriction for allotment of residential units to persons not connected with the SEZ is not explicitly stated in the SEZ Act or SEZ Rules. The developer in the most weird imagination cannot expect that the Government will grant duty free benefits for setting up residential infrastructure in the SEZ to be leased to persons not connected with the SEZ. Therefore the plea of the co-developer that SEZ Act, SEZ Rules does not explicitly mandate allotment of housing units only to the staff/workers of the SEZ units, is hallow and not tenable.

*Therefore the argument of the developer on this count is also not tenable.*

25. The plea from the Developer during the personal hearing was that the staff and workers may not take up all the housing units. If not allotted to outsiders, housing units may remain vacant/ unsold which would cause hardship and inconvenience. This plea is not tenable as *the mere fact that a correct interpretation of a statutory provision may lead to hardship would*

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*not be a valid consideration for distorting the language of the statutory provisions.*

26. From the foregoing, it is explicitly clear that M/s.New Chennai Township Private Limited, Engineering Sector SEZ have violated the conditions stated in the provisos (1) and ( 3) of sub-rule 10 of Rule11 read with Section 2(p) of the SEZ Act and Rule 2 (1) (s) of the SEZ Rules, 2006, by allotting housing units to persons not connected with the SEZ. Hence they are not eligible for exemptions, concessions and drawbacks granted as per proviso 2 of sub-rule 10 of Rule11 ( prior to the issuance of the Notification dated 02.01.2015 wherein proviso 2 of sub rule 10 of Rule 11 of SEZ Rules, 2006 was deleted) read with Rule 10 read with Section 7 and Section 26 of the SEZ Act, and not eligible for the abovesaid benefits even after the issuance of the said Notification as the residential infrastructure in the SEZ developed by them was put to dual use, and thereby render themselves liable to refund the exemption, concessions, and drawbacks etc availed by them as per Rule 25 of SEZ Rules, 2006 in respect of the allotment of housing units made to persons not connected with the SEZ, which cannot be construed as authorised operations of the developer and the payment shall be made as per conditions (2) of the Bond-cum-LUT for violation of condition (7) of the Bond-cum-Legal Undertaking executed by them.

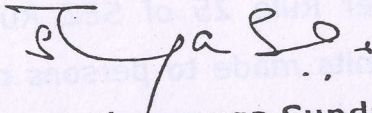
27. Therefore, in exercise of the powers vested in me as the jurisdictional Development Commissioner vide SEZ Notification No. S.O. 77(E) dated 13.01.2010 issued under subsection (2) of Section 21 of the SEZ Act, 2005, (28 of 2005) as the enforcement officer for SEZs for the purpose of notified offences under the Foreign Trade (Development and Regulations) Act, 1992 read with No. S.O.76-E dated 13.01.2010 issued under sub section (1) of Section 21 of SEZ Act, 2005 (28 of 2005) and Section 21(3)

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of the SEZ Act, 2005, I hereby order M/s. New Chennai Township Pvt. Ltd., Multi Services SEZ to refund duty exemptions availed as detailed in Annexure 'A' to this Order mounting to a sum of **Rs.3,85,76,230 (Rupees three crores eighty five lakhs seventy six thousand two hundred and thirty only)** within 45 days from the date of receipt of this Order. Even though the developer had violated the provisions of SEZ Act and Rules thereunder by allotting residential units to persons not connected with the SEZ prior to the issue of the aforesaid Notification dated 02.01.2015 by Ministry of Commerce & Industry, New Delhi, in as much as Notification dated 02.01.2015 provides only for refund of applicable duties and benefits and imposes no penalty on such dual use of infrastructure, I impose no penalty on the developer, subject to the refund of duty exemptions indicated above within the stipulated time indicated.

28. This Order is issued without prejudice to any other action that may be taken under any other Act, Rules or Regulations in force.

  
(DR. M.K. Shanmuga Sundaram)  
DEVELOPMENT COMMISSIONER.

To

M/s.New Chennai Township Pvt. Ltd.,  
Multiservices SEZ,  
Seekanakuppam, Cheyyur,  
Kancheepuram - 603 305.

1. Copy to Specified Officer, Authorised Officer, Mahindra World City SEZ for necessary action for recovery of duties in terms of Notification dated 02.01.2015.
2. Copy to Chief Commissioner of Income Tax Department, Aiykar Bhawan, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034 for information and necessary action.



3. Copy to Commissioner of Service Tax, "Newry" Towers, 2054-I, 2<sup>nd</sup> Avenue, 12<sup>th</sup> Main Road, Anna Nagar, Chennai - 600 040 for information and necessary action.
4. Copy to Principal Secretary, Industries Department, Government of Tamil Nadu for information and necessary action.
5. Copy to Commissioner, Commercial Taxes Department, Government of Tamil Nadu, Chepauk, Chennai - 600 005.

Copy To:

1) The Developer,

M/S. New Chennai Township Private Limited,

Marg Axis,

4/318, Rajiv Gandhi Road,

Kottivakkam,

Chennai - 600 041.

2) Authorized Officer,

New Chennai Township Pvt Ltd. (SEZ)

① 058260415 →

② 058260429

③ 058260432

④ 058260446

⑤ 058260450

DESPATCHED ON

T. Sujatha

Despatcher/Mapz-Seq



WP: 16038/214

ANNEXURE 1

Government of India  
Ministry of Commerce & Industry  
Office of the Development Commissioner  
MEPZ Special Economic Zone  
Tambaram, Chennai- 600 045.

No.9/44/2006/PVT. SEZ.II / 777 to 781.

DI. 15.02.2016.

ORDER - IN - ORIGINAL

PASSED BY : DEVELOPMENT COMMISSIONER, MEPZ-SEZ

- 1 . Any Person/ Party aggrieved by this order may under Section 15 of the Foreign Trade (Development and Regulation) Act, 1992 file an appeal against the same to the appropriate authority viz. The Appellate Committee in the Ministry of Commerce & Industry, Department of Commerce, New Delhi under the Chairmanship of Additional Secretary, Ministry of Commerce & Industry aided by Joint Secretaries and Director of the Ministry within 45 days from the date of service of this adjudication order together with a copy of this order and a complete set of evidence in the form of Annexures to the appeal relied upon in support of the appeal.
- 2 . Any person/ party desirous of filing an appeal against this order shall deposit the penalty amount and produce proof of payment of penalty amount along with the appeal to the Appellate Authority failing which the appeal is liable to be rejected for non-compliance of the provision of Section 15 of the Foreign Trade (Development and Regulation) Act, 1992.
- 3 . The penalty amount is to be deposited under the Head of Account 1453 Foreign Trade & Export Promotion Minor Head 102 - Other receipts fines and penalties etc. Import & Exports Control Organisation.
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5. M/s. New Chennai Township Pvt. Ltd. were issued Letter of Approval No.F.2/404/2006-SEZ dated 23.05.2007 for setting up a sector specific SEZ for Engineering over an area of 126.26 hectares at Seekinakuppam Village, Cheyyur Taluk, Kancheepuram Dist., Tamil Nadu.

6. M/s. New Chennai Township Pvt. Ltd, Engineering Sector SEZ were granted permission by Ministry of Commerce & Industry vide letter F.2/404/2006-SEZ dated 30.01.2008 for development of 7500 housing units not exceeding built-up area of 7,50,000 sq.mts.

9 . M/s. New Chennai Township Pvt. Ltd., developer of sector specific SEZ for Engineering were permitted in various meetings of Unit Approval Committee to procure materials under exemption as per SEZ Act and Rules..

10 . M/s. New Chennai Township Pvt. Ltd constructed residential units in the SEZ on procurement of duty free material approved by the Unit Approval Committee in various meetings and has also submitted periodical reports to the O/O DC, MEPZ-SEZ which were placed before the UAC meetings for review and monitoring.

11 . In terms of Instruction 65 dated 27.10.2010 , Government of India, Ministry of Commerce & Industry, New Delhi, issued the following guidelines on "Housing",

" Five per cent of the total area should be used for constructing low cost housing and dormitories in all SEZs of a size of 100 hectares or more. In case of a SEZ of a size of less than 100 hectares, developers should provide low cost housing /dormitories to the employees depending upon the need of the SEZ as per the National Urban Housing Policy 2007. Developer should rent out these houses to the employees of units. The units could take these houses on long-term lease for renting out to their employees. The housing facilities created in the non-processing area could also be allowed to be used by persons who are working for establishment relating to SEZ developers, units and or are users of infrastructure facilities created in the SEZ. In case a unit, having houses on long lease closes down, these can be transferred to other working units or the developer. Proper space for street vendors in the commercial areas shall be provided keeping in view the National Policy on Urban Street Vendors, 2009."

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12 . M/s. New Chennai Township Pvt. Ltd did not reveal the fact that the residential units so constructed in the SEZ were allotted to persons not connected with the SEZ while submitting their requirement of materials for approval of the UAC.

M/s. New Chennai Township Ltd., Engineering Sector SEZ were directed to furnish complete details/status of residential allotments made by them vide letter dated 19.02.2014. As the developer had not provided the required details, on the basis of findings in the draft report of CAG on Performance Audit of SEZs that M/s. New Chennai Township Pvt. Ltd., Engineering Sector SEZ had allotted on lease residential units in the non-processing area of the SEZ to private individuals and companies who are not connected with the SEZ and on the basis of clarification issued by MOC&I vide letter dated 21.01.2014 that residential units in a SEZ cannot be allotted to persons not connected with the SEZ, a show cause notice No. 9/44/2006/Pvt. SEZ II/1389 dated 12.05.2014 and was issued by the O/O DC, MEPZ-SEZ as to why action should not be taken against them invoking Sl.No.2 of the declaration under bond-cum-LUT undertaking executed by them with the Office of the DC, MEPZ-SEZ read with condition (2) of Bond-cum-LUT for violation of condition No. (7) of Bond-cum-LUT read with Rule 25 of SEZ Rules, 2006 and Insutruction No. 65 dated 27.10.2010 and for recovery of applicable duties/benefits availed of by them for development of residential facilities in the SEZ.

13. In Reply to the show cause notice M/s. New Chennai Township Pvt.Ltd , developer of sector specific SEZ for Engineering vide letter dated 29.05.2014 and further vide letter dated 16.09.2014 (after grant of personal hearing on 09.09. 2014) interalia submitted that

- i) approval dated 30.01.2008 was granted to them for construction of 7500 residential units
- ii) They have developed residential units in the non-processing area of the SEZ and leased out the residential units to various people including people who are connected to the operations of the SEZ and Units in the SEZ.
- iii) That they have not sold vacant land in the SEZs in accordance with Rule 11(10) of the SEZ Rules.

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iv) That it will be difficult to differentiate the lessee as SEZ connected and not connected with the SEZ as most of the lessees have taken the apartments on lease hoping to take up some assignment in the SEZ.

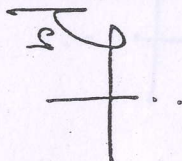
v) There is no clear prohibition in any of the provisions of SEZ Act, SEZ Rules or in the guidelines under Instruction 65 issued regarding residential allotments to others.

14. An opportunity for a Personal Hearing was granted to M/s. New Chennai Township Pvt. Ltd. Developer on 9.9.2014 at 11.30 AM. Mr. Srikanth, Manager of M/s. New Chennai Township Pvt. Ltd. represented the developer and reiterated the facts stated in the reply to the SCN and a further letter dated 8.5.14 was submitted by the developer. The defence to the allegations made in the SCN issued to the developer as recorded in the paras supra was further reiterated vide their letter dated 16.09.2014

15. Meanwhile, Ministry of Commerce and Industry issued a Notification dated 2.1.2015 indicating guidelines on the dual use of social infrastructure by developers in the non processing area of the SEZ. The notification also stipulates that existing developers who had already used the infrastructure for dual use, shall refund the duty/tax exemptions, both Central and State, availed by them.

16. In view of the issue of Notification dated 2.1.2015, an Addendum to the show cause notice was issued to the developer on 28.5.2015 putting the developer to Notice for recovery of dues in terms of the said Notification for dual use of infrastructure in the Non Processing Area. The developer vide letter dated 9.6.2015 replied to the Addendum requesting for waiver of refund of duties, exemptions and concessions already availed in the creation of social infrastructure facilities including residential units and also requested a personal hearing to explain the case in person.

17. As requested by the developer, a personal hearing was granted to the developer as provided for in the Addendum to the show cause notice, on 28.7.2015. During the personal hearing, they made a submission that though the residential units in the non processing area of the SEZ may have been leased to outsiders, the actual occupants or users of the residential units are only SEZ employees. They also informed that they would provide details of the actual occupants of the residential units, submit proof to the effect that they were only SEZ employees and that they may be granted some time for providing the details.





18. However vide their letter dated 5.11.2015, they have not submitted any documents evidencing that the actual users of the residential units are only SEZ employees. They have reiterated the earlier submissions made by them as recorded in the paras supra.

**FINDINGS:-**

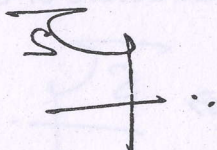
19. I have gone through the facts of the case, the allegations made in the SCN, the replies given by the developer and the averments made during the personal hearing.

Show Cause Notice No 9/44/2006/Pvt. SEZ II/1389 dated 12.05.2014 was issued on the premise of illegal allotment of residential units constructed in SEZ to persons not connected with the SEZ, which is in gross violation of Instruction No 65 dated 27/10/2010 and the basic philosophy and spirit of the SEZ ACT and Rules and as to why action should not be taken against them for recovery of applicable duties/benefits.

At the outset the reasons and purpose for the enactment of SEZ Act is discussed below for better understanding of the case ibid.

**Statement of Objects and Reasons sought in the bill for approval of SEZ Act interalia states that:**

*The Government of India had announced a Special Economic Zone Scheme in April 2005 with a view to provide an internationally competitive environment for exports. The objectives of special economic zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export growth.*





While the policy relating to the special economic zone is contained in the Foreign Trade policy, incentives and other facilities offered to the Special Economic Zone developer and units are implemented through various notifications and circulars issued by the concerned Ministries/ Departments. The present system therefore, does not lend enough confidence for investors to commit substantial funds for development of infrastructure and for setting of the units in the Zone for export of goods and services. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism., a central act for the Special Economic Zone has been found in line with international practice.

The Special Economic Zone Act was enacted on 23-6-2005 (act 28 of 2005) and came into force on 10.2.2006 Notification No. S.O. 196(E) dated 10.2.2006.

The preamble of the Act reads thus:

*An Act to provide for the establishment , development and management of the Special Economic Zone for the promotion of exports and the matter connected therewith or incidental there to .*

The Special Economic Zones are established and approved and authorized to operate by the Developer under Section 4 of the SEZ Act

The infrastructural facility in the case ibid i.e. housing is provided under Section 2 (p) of the Act read with Rule (2) ( 1) (s).

**2p of the SEZ Act** reads as follows:- "Infrastructure facilities" means industrial, commercial or social infrastructure or other facilities necessary

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for the development of a SEZ or such other facilities which may be prescribed".

**2(1) (s) of SEZ Rules, 2006** reads as follows:- "Infrastructure means facilities needed for development, operation and maintenance of a SEZ and includes industrial, business and social amenities like development of land, roads, buildings, sewerage and effluent treatment facilities, solid waste management facilities, port, including jetties, single point moorings, storage tanks and inter-connecting pipelines for liquids and gases, inland container depot or container freight station, warehouses, airports, railways, transport system, generation and distribution of power, gas and other forms of energy, telecommunication, data transmission network, information technology network, hospitals, hotels, educational institutions, leisure, recreational and entertainment facilities, **residential and business complex**, water supply, including desalination plant, sanitation facility."

From the above it is seen that the Act provides for Integrated Infrastructure for establishment, development and management of the SEZ for the promotion of exports and matters connected therewith or incidental thereto.

20. The salient feature of the SEZ Act 2005 and the SEZ Rules 2006 providing exemptions are discussed below:

**a. Sec.7. Exemption from taxes ,duties or cess:** Any goods or services exported out of or imported in to or procured from the Domestic Tariff area by,-

i) A unit in a special economic zone; or

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- ii) A Developer , shall subject to such terms , conditions and limitations as may be prescribed , be exempt from the payments of taxes , duties or cess under all enactments specified in the first schedule.

**b. Sec 26. Exemption, Drawbacks and concessions to every developer and entrepreneur:-** (1) Subject to the provisions of sub - section (2) every Developer and the entrepreneur shall be entitled to the following exemptions , drawbacks and concessions.

The Central Government may prescribe the manner in which , and the terms and conditions subject to which , the exemptions, concession, drawback or other benefits shall be granted to the Developer or entrepreneur under sub -section (1)

The above benefits are given subject to conditions as explained under Para 21 below.

**21.** The integrated infrastructural facilities in the case ibid as per Section 2(p) read with Rule 2 (1) (s) i.e. housing, is to be provided for the establishment, development and management of the SEZ for promotion of exports and matter connected therewith or incidental thereto.

Rule 10 of SEZ Rules, 2006, permits the developer , co-developers and contractor for procurement of items for authorized operation under benefits permissible.

Provided also that the Developer or Co-developer as the case may be, or the SEZ Unit shall be responsible and liable for proper utilization of such goods in all cases.

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Rule 11 of SEZ Rules, 2006, deals about usage of processing and non processing area.

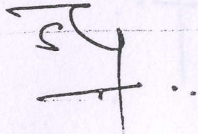
Rule 11 (10) SEZ Rules, 2006, reads thus:- No vacant land in the non-processing zone shall be leased for business or social purpose such as educational institutions , hospitals hotels, recreation and entertainment facilities, residential and business complex, to any person except a co-developer approved by the board.

Provided that the developer or co-developer may lease the completed infrastructure along with the vacant land appurtenant thereto for such purpose. **(proviso 1)**

Provided further that infrastructure for business or social purposes in the Special Economic Zone, as may be approved by the Board, shall be eligible for exemptions, concessions, drawback and any such infrastructure created in addition or in excess thereof shall not be eligible for any exemptions, concessions and drawback **(proviso 2)**

*Provided also that the developer , or co-developer shall strive to provide housing facilities not only for the management and office staff but also for workers of the Special Economic Zone (proviso 3)*

22. Proviso 2 of sub rule (10) of Rule 11 of SEZ Rules, 2006 was deleted vide Ministry's Notification dated 02.01.2015 and Rule 11-A was also inserted vide the said notification which, interalia, stipulates refund of the customs duties, central excise duties, service tax and such other Central levies and tax benefits, as also State exemptions, or refunds taken from the State or local taxes, if the infrastructure in NPA is put to dual use.





The above Notification issued by Ministry of Commerce & Industry further confirms the intention of the SEZ Act and Policy that duty benefits are meant only for establishment, development and management of the SEZ for the promotion of exports, and matter connected therewith or incidental thereto and not for extending such facilities to persons or activities not connected with the SEZ. The allotment of housing facilities by the developer after availing of duty/tax benefits, prior to the issuance of Notification dated 02.01.2015 can be construed to be in violation of Instruction 65 dated 27.10.2010 as alleged in the show cause notice dated 12.05.2014.

22. From the above, it is clear that it is mandatory to provide housing facility only to the staff and workers working in special economic zone as they are connected to promotion of exports and falls within ambit of the Act and Rules . People not connected with the SEZ are not eligible for allotment of housing in the Special Economic Zone . Further, any residential allotments made to persons not connected with the SEZ can be construed or treated as allotments in excess/or in addition to the approval granted by the BOA/MOC&I thereby rendering them liable for payment of duties/taxes for the material procured for the above purpose.

23. On the same lines, it can be construed that the approvals for materials for the residential activity of the developer is limited to the housing facilities provided for the staff and workers of the SEZ and duties and exemptions granted in respect of materials used for allotment of residential units to persons not connected with the SEZ are not eligible for such duties and exemptions.

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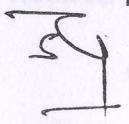


The provisos of sub-rule 10 of Rule 11 of SEZ Rules, 2006 and Section 2(p) of the Act and Rule 2 (1) (s) of the SEZ Rules read with statement of objects and reasons and the preamble of the Act literally means that housing facilities are to be provided to the staff and workers in the Zone.

Though Rule 11-A inserted vide Notification dated 2.1.2015, provides for refund of the customs duties, central excise duties, service tax and such other Central levies and tax benefits, as also State exemptions, or refunds taken from the State or local taxes in case the infrastructure is put for dual use in the NPA, the residential allotments made by the developer prior to the issuance of Notification dated 02.01.15 can be construed as illegal allotments, liable for refund of benefits availed from Government and even in terms of the abovesaid Notification, the benefits availed in case of dual use of infrastructure, have to be refunded by the developer.

24. The purpose of promulgating the SEZ Act and the Rules thereunder inter alia is for provision of Integrated Infrastructure for establishment, development and management of the SEZ for the promotion of exports, and matter connected therewith or incidental thereto. The objects of the SEZ Act include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export led growth and for generation of additional economic activity, and creation of employment opportunities. It is not the intention of the legislature to provide infrastructure in the SEZ for leasing such facilities to persons not connected with the SEZ.

The avowed objective of the SEZ Act which finds place in all the Sections of the Act and Rules thereunder is to provide integrated infrastructural





facilities for promotion of exports and matters connected thereto or incidental thereto in a SEZ. The duty/tax benefits are meant only for provision of the above facilities inside SEZ. It cannot be the understanding of the developer that the Government provides duty free benefits to undertake infrastructure work in the SEZ and lease such infrastructure at commercial rates to outsiders not connected with the SEZ even in the absence of Notification No. 65. As per Rule 11(12) of SEZ Rules, 2006, "The Central Government may lay down guidelines for development, operation and maintenance of Special Economic Zones". Instruction 65 issuing guidelines on "housing" in SEZs, among others, is a clarification and an affirmation of the intent/objective of the Act and Policy which were already in place. There is no need for it to be explicitly stated that the housing facilities offered in a SEZ cannot be leased/sold to persons not connected with the SEZ. One cannot take refuge on a mere technicality stating that the restriction for allotment of residential units to persons not connected with the SEZ is not explicitly stated in the SEZ Act or SEZ Rules. The developer in the most weird imagination cannot expect that the Government will grant duty free benefits for setting up residential infrastructure in the SEZ to be leased to persons not connected with the SEZ. Therefore the plea of the co-developer that SEZ Act, SEZ Rules does not explicitly mandate allotment of housing units only to the staff/workers of the SEZ units, is hallow and not tenable.

*Therefore the argument of the developer on this count is also not tenable.*

25. The plea from the Developer during the personal hearing was that the staff and workers may not take up all the housing units. If not allotted to outsiders, housing units may remain vacant/ unsold which would cause hardship and inconvenience. This plea is not tenable as *the mere fact that a correct interpretation of a statutory provision may lead to hardship would*

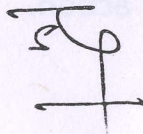
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*not be a valid consideration for distorting the language of the statutory provisions.*

26. From the foregoing, it is explicitly clear that M/s.New Chennai Township Private Limited, Engineering Sector SEZ have violated the conditions stated in the provisos (1) and ( 3) of sub-rule 10 of Rule11 read with Section 2(p) of the SEZ Act and Rule 2 (1) (s) of the SEZ Rules, 2006, by allotting housing units to persons not connected with the SEZ. Hence they are not eligible for exemptions, concessions and drawbacks granted as per proviso 2 of sub-rule 10 of Rule11 ( prior to the issuance of the Notification dated 02.01.2015 wherein proviso 2 of sub rule 10 of Rule 11 of SEZ Rules, 2006 was deleted) read with Rule 10 read with Section 7 and Section 26 of the SEZ Act, and not eligible for the abovesaid benefits even after the issuance of the said Notification as the residential infrastructure in the SEZ developed by them was put to dual use, and thereby render themselves liable to refund the exemption, concessions, and drawbacks etc availed by them as per Rule 25 of SEZ Rules, 2006 in respect of the allotment of housing units made to persons not connected with the SEZ, which cannot be construed as authorised operations of the developer and the payment shall be made as per conditions (2) of the Bond-cum-LUT for violation of condition (7) of the Bond-cum-Legal Undertaking executed by them.

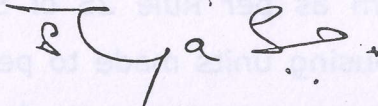
27. Therefore, in exercise of the powers vested in me as the jurisdictional Development Commissioner vide SEZ Notification No. S.O. 77(E) dated 13.01.2010 issued under subsection (2) of Section 21 of the SEZ Act, 2005, (28 of 2005) as the enforcement officer for SEZs for the purpose of notified offences under the Foreign Trade (Development and Regulations) Act, 1992 read with No. S.O.76-E dated 13.01.2010 issued under sub section (1) of Section 21 of SEZ Act, 2005 (28 of 2005) and Section 21(3)





of the SEZ Act, 2005, I hereby order M/s. New Chennai Township Pvt. Ltd., Engineering SEZ to refund duty exemptions availed as detailed in Annexure-A to this Order, amounting to a sum of **Rs.3,23,31,270 (Rupees three crores twenty three lakhs thirty one thousand two hundred and seventy only)** within 45 days from the date of receipt of this Order. Even though the developer had violated the provisions of SEZ Act and Rules thereunder by allotting residential units to persons not connected with the SEZ prior to the issue of the aforesaid Notification dated 02.01.2015 by Ministry of Commerce & Industry, New Delhi, in as much as Notification dated 02.01.2015 provides only for refund of applicable duties and benefits and imposes no penalty on such dual use of infrastructure, I impose no penalty on the developer, subject to the refund of duty exemptions indicated above within the stipulated time indicated.

28. This order is issued without prejudice to any other action that may be taken under any other Act, Rules or Regulations in force.

  
(DR. M.K. SHANMUGA SUNDARAM)  
DEVELOPMENT COMMISSIONER.

To

M/s. New Chennai Township Pvt. Ltd.,  
Engineering Sector SEZ,  
Seekanakuppam, Cheyyur,  
Kancheepuram - 603 305.

1. Copy to Specified Officer, Authorised Officer, Mahindra World City SEZ for necessary action for recovery of duties in terms of Notification dated 02.01.2015.
2. Copy to Chief Commissioner of Income Tax Department, Aiykar Bhawan, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034 for information and necessary action.



3. Copy to Commissioner of Service Tax, "Newry" Towers, 2054-I, 2<sup>nd</sup> Avenue, 12<sup>th</sup> Main Road, Anna Nagar, Chennai - 600 040 for information and necessary action.
4. Copy to Principal Secretary, Industries Department, Government of Tamil Nadu for information and necessary action.
5. Copy to Commissioner, Commercial Taxes Department, Government of Tamil Nadu, Chepauk, Chennai - 600 005.

Copy To:

- 1) The Developer,  
M/s. New Chennai Township Private Limited,  
Marg Axis,  
4/318, Rajiv Gandhi Salai,  
Kottivakkam,  
Chennai - 600 041.
- 2) Authorised officer,  
New Chennai Township Pvt. Ltd. SEZ.

- ① 058260415.
- ② 058260429
- ③ 058260432
- ④ 058260446
- ⑤ 058260450