

Rehashed SEZ (DESH) Law, Cynosure of All Eyes

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Hon'ble Finance Minister Mrs. Nirmala Sitharaman, while presenting the Union Budget, 2022, declared that *"the Special Economic Zones Act will be replaced with a new legislation that will enable the states to become partners in Development of Enterprise and Service Hubs."* She further added that *"alongside, we will also undertake reforms in Customs Administration of SEZs, and it shall henceforth be fully IT driven and function on the Customs National Portal with a focus on higher facilitation and with only risk-based checks. This will ease doing business by SEZ units considerably."*

The said announcement from the Hon'ble Finance Minister was a much needed one to dispel doubts in the minds of captains of the industry and trade about the future outlook of the SEZ framework. The growth momentum achieved by SEZ in the initial years had started waning as the sunset clause for fiscal concessions was triggered. To add fuel to the fire, the SEZ framework in India, came under challenge before the Dispute Settlement Body (DSB) of the World Trade Organisation (WTO), where DSB ruled that India's SEZ policy is inconsistent with the WTO guidelines as it gave direct tax concessions on exports.

Thus, there was an expectation that a new legislation would be implemented soon after the announcement by the Finance Minister, and the Government had planned to table the draft Development of Enterprises and Services Hubs (DESH) Bill, 2022, during the Monsoon Session of the Parliament. However, DESH Bill could not be introduced during Monsoon Session as planned. The Bill was expected to provide certain fiscal incentives, promote economic activity, integrate SEZs with domestic market, generate employment, attract investments, and remove bottlenecks around the SEZ scheme as promised by the Finance Minister.

As the contours of the final DESH bill is still under wraps and the Government busy giving finishing touches to the legislation, the trade is waiting with enthusiasm and are holding back investment plans in anticipation of certain significant reforms in alignment with the promise of the government. The Industry and Trade expects that the new legislation will incorporate the key suggestions made by the SEZ Policy review committee, which was constituted under the Chairmanship of Baba Kalyani, Chairman of Bharat Forge to evaluate the SEZ Policy and give suggestions to weed-out the policy bottlenecks and sculpt a framework which does not fall foul of WTO guidelines.

Considering the broader objective of the SEZ scheme, its potential to grab larger share of global business and to give expression to the widely consulted Baba Kalyani report, the existing SEZ framework needs

revamp, such that it promotes economic activity, generates employment, attracts foreign investments, and offers flexibility to units. Some critical changes which may be introduced to the scheme include the following:

- Structure suitable fiscal benefit or retain tax/duty reliefs
- Larger integration with domestic market to help weather cyclical changes in global market
- Recalibration of 'net-foreign exchange' conditions and land use criteria
- Duty payment only on imported inputs used in DTA sale, instead of levy of duty on the entire finished goods sold in DTA, as at present.
- Broad banding of 'Service' definition in alignment with GST law
- Introduction of a negative list of Authorised Operations rather than positive list
- Availability of RODTEP benefit on export of goods
- Procedural relaxations for exit from SEZ
- Permission to subcontract goods and services for DTA units without conditions.
- One Integrated online portal for all approvals
- Single application forms for license, permission, registration or furnishing returns/intimations by Developer or a Unit
- Dispute resolution through mediation/arbitration
- Flexible Work from Home (WFH) policy

SEZ scheme has a vast potential to boost export from India and foster the country's growth. SEZs have proven to be a great success in countries like China, Dubai and Singapore, as many supply-chain related issues have been resolved through this scheme, and India can be no different. Having said that, it is imperative for the Government to redress the operational and compliance challenges faced by the existing SEZ framework and redraw the scheme with suitable modifications at the earliest to make it more attractive.

While the Government deliberate, conclude legislative process and create requisite administrative architecture, the trade and industry can evaluate the challenges and represent to government for suggestive changes in law and procedure, in the interest of time. Existing SEZs and the ones waiting to join the bandwagon have pinned hopes on the upcoming budget. It is expected that the Union Budget would lay the roadmap for revamp and the eventual roll-out of the rehashed SEZ framework. This would help in expeditious removal of the bottlenecks, so that SEZs are able to operate with adequate flexibility in order to realise the true potential of the SEZ construct.