

SPECIAL ECONOMIC ZONE - ISSUES IN DEVELOPING SEZ

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Special Economic Zone concept is development for a specific purpose and the SEZ is to be treated as a separate entity. SEZ enjoys tax relief and encouragement from the Government.

Special Economic Zone is to be developed with the approval of Development Commissionerate of Special Economic Zone. The letter of approval from the Commissioner clearly specifies the tax exemption available to SEZ.

During the construction of SEZ, the Inter State purchase of plant, machinery and equipment is exempt from CST against Form I. Concessional Form I is to be issued by Commissioner of SEZ against normal procedure of issue of forms by Commercial Tax Department.

The purchase of plant, machinery and equipment against Form I; is to be registered in the Certificate of Registration given by Commercial Tax Authorities. Even though there blanket exemption of CST (as per plain language); the requirement of registration restricts the scope.

The Developer of SEZ normally enters with agreement for construction with co-developer or contractor. The agreement of construction normally gets approved by Commissioner of SEZ. The commissioner of SEZ normally permits the co-developer or contractor to procure the material interstate against the Form I. Hence it is better to advise the developer / co-developer to purchase the material in the name of developer. Even if the co-developer purchases the material, form I (issued to developer) is to be used.

Local VAT act exempts the sale of goods to units located in SEZ and goods sold to operator, Developer, Co-developer and Contractors engaged by them for use in processing area of respective Special Economic Zone except motor Vehicles purchased. Motor Vehicles purchased inter state against Form I may be exempted. But Entry Tax on such vehicles is imposed and registration authorities do not register unless the entry tax is paid.

It is better to advise the developer to enter an agreement for supply of plant, machinery and equipment separately. The exemption either under CST Act or local act is available. The word used in the enactment is a sale. The works contract, deemed sale is not used. But the developer if situation demands, may specify that sale includes deemed sale and the provisions of sale equally apply to deemed sale. The definition for "sale" in Section 2(28) of AP VAT Act; includes the works contract, a deemed sale. Hence the same is not liable for VAT. The provisions and applications for sale; do apply for the deemed sale.

CST Act prescribes the Form I to be given to the seller of the material by Developer of SEZ. Form I is supplied by

Commissioner of SEZ to the developer of SEZ. The local VAT Act does not prescribe any form or any procedure in respect claiming exemption from VAT. The sale to a developer is exempt. It is for the seller to have proof of sale to SEZ units. The seller can claim exemption and input tax credit on the goods sold provided he possess enough proof that the sale is to the units located in SEZ and developer or to co-developer or contractor.

Contractor is eligible to claim input tax credit in respect of works contract. But the department may not allow the same on pretext that the sale (works contractor) is exempt from VAT. Moreover the sale to a contractor is exempt.

Sale include lease. The equipment purchased for leasing the same (using) in SEZ may be exempt. But the revenue may not agree with this view. The revenue may not impose lease tax (VAT) on lease but subject the purchase of equipment to VAT.

The Local VAT Act does not exempt TDS on the payments to the contractors. Hence the TDS as per Local VAT Act is to be deducted. The works contract - deemed sale to developer by Co-developer or by the Contractor may be exempt but TDS is to be deducted. The Co-developer or the contractor has to claim the refund from the department or to adjust against other taxes payable.

In the event of purchase of material in transit by the developer, sale in transit may be exempt but the original sale by first seller is not exempt. The Form I cannot be issued in respect of sale in transit. It is better to purchase all the identifiable materials, plant, machinery and equipment in the name of the developer. The commission may be paid to the person to whom the job of purchase of the items is assigned. Form I may be issued to the sellers of the material by developer to claim the purchase exempt from CST. The Local purchase in the name of the developer is exempt. The central excise portion on the purchase of the material is exempt.

The services in works contract are exempt from service tax. The services in works contract or the service of purchasing of the material if assigned to any person is exempt from service tax.

The TDS provisions are not exempt and the penal provisions of CST or VAT Act are not exempt. The misuse of the material, plant, machinery and equipment (not used in SEZ) does attract the penal provisions.

It is advisable to the State Government to prescribe the method of granting exemption to the sale to the units in SEZ and others in SEZ. It is very difficult to the seller of the material to find out whether goods sold are used in SEZ or not.