

No.B-11/3/2008-SEZ
Government of India
Ministry of Commerce and Industry
(Department of Commerce)

...

Uydog Bhawan, New Delhi
Dated the 27th May 2009

OFFICE MEMORANDUM

...

To

**The Development Commissioner SEZ & Chairperson, Approval
Committee (All Special Economic Zones)**

Sub: Procurement of used capital goods from DTA by SEZ Units.

Sir/Madam,

As you are aware the Department of Revenue, in order to regulate shifting of existing businesses from DTA to SEZs to avail of the direct tax exemption on the export income, substituted subsection (4) of Section 10AA of Income Tax Act as below:

“(4) This section applies to any undertaking, being the Unit, which fulfils all the following conditions, namely:

- (i) it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone;*
- (ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence.
Provided that this condition shall not apply in respect of any undertaking, being the Unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;*
- (iii) it is not formed by the transfer to a new business, of machinery or plant previously used for any purpose.*

Explanation: The provisions of Explanations 1 and 2 to sub-section (3) of section 80-IA shall apply for the purposes of clause (iii) of this sub-section as they apply for the purposes of clause (ii) of that sub-section.”

Relevant extract from Section 80IA referred to in the new subsection are as below:
Explanations to sub-section (3) of Section 80 IA :

Explanation 1.—For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely :—

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the assessee.

Explanation 2.—**Where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with.**

3. Keeping in view the provisions that exist in Section 10AA of the Income Tax Act, 1961 to deal with tax related issues in case of previously used Capital Goods, in terms of the provisions of sub-section (8) of Section 15 of the Special Economic Zones Act, 2005 , it is hereby prescribed that while granting any approval for setting up new units in any SEZ, the Approval Committee or the Development Commissioner, as the case may be, shall ensure that procurement of second hand capital goods shall be allowed only in terms of the provisions of sub-section (4) of Section 10AA read with Explanation 1 & 2 to sub-section (3) of Section 80 IA of the Income Tax Act ,1961. For this purpose, it has been decided to prescribe the following procedure for the guidance of the units in the SEZs:-

- (i) The units intending to move second hand capital goods in DTA should furnish details as prescribed in the enclosed annexure and must obtain prior approval of the Development Commissioner before such movement. No second hand capital goods will be allowed to be moved into the Zone without prior approval from the Development Commissioner.
- (ii) While computing the value of the used/second hand capital goods sought to be transferred into the Zone from DTA, including from an EOU, EHTP/STP/BTP unit, within the Zone or from any other Zone, the depreciation rates stipulated as per the provisions of Income Tax Act and Rules made thereunder will be adopted for arriving at the

depreciated value of such second hand capital goods intended to be moved into the Zone.

- (iii) It should be ensured by the Unit that the sum total of S. No. 5 & 6 of the enclosed annexure shall not exceed 20% of the sum total of S. Nos 3 & 4 of the annexure at any given point of time. However, the units can shift used/second hand capital goods valuing more than 20% in which case they will not be entitled to benefits under the Income Tax Act.
- (iv) For each transfer of used/second hand capital goods from the DTA into the zone the unit has to compute the values as mentioned above and indicate at the relevant S. Nos of the enclosed annexure.
- (v) The details of such procurement of used/second hand Capital goods from DTA (including from an EOU, EHTP/STP/BTP unit) should be clearly mentioned in the Annual Performance Report submitted by the unit.
- (vi) The limitation of 20% of the value of used/capital goods Capital goods that can move into the zone would not be applicable in respect of capital goods moved to DTA under Rule 50 of the SEZ Rules, 2006.

4. These instructions are issued in supersession of Instruction No. 8 issued vide this Department's O.M. No. F1/6/2006-SEZ dated 12th October 2007.

5. Please acknowledge the receipt of this communication the contents of which may please be brought to the notice of all concerned including Zones, Units and Members of Approval Committee.

(T. Srinidhi)
Director
Telefax: 23063265

ANNEXURE

Application for procurement of used capital goods from DTA (including from an EOU/EHTP/STP/BTP unit)

- (1) Name of the unit :
- (2) Date of Commencement of Commercial production :
- (3) Value of the installed Capital goods (Imported) (New & used/second hand) :
- (4) Value of the installed Capital goods (Procured from DTA) – (New) :
- (5) Value of the installed Capital goods (Procured from DTA) – (used/second hand) :
- (6) Value of the Capital Goods proposed to be procured from DTA - (used/second hand) :

We hereby declare that this procurement of the above mentioned second hand capital goods is strictly in terms of the provisions of sub-section (4) of Section 10AA read with explanation 1 & 2 to sub-section (4) of section 10AA read with explanation 1 & 2 to sub-section (3) of section 80 IA of the Income Tax Act 1981.

SIGNATURE OF THE UNIT

AUTHORISED SIGNATORY