ONE-STOP DESTINATION FOR TAXMAN AND TAXPAYER

Shuddhi Yagna on SEZs calls for a DESH Ordinance

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By Naresh Minocha, Consulting Editor

WHAT
is unsaid or the least said or simply forgotten is as important as what is hyped in the national discourse. This fact always emerges as the 24-carat gold in any ***Shuddhi Yagna***
of policies. This test is equally applicable to the sermons given by all stalwarts over the years across the political spectrum.

(See: Shuddhi Yagna of PM's Speech on Borders Yields Glittering Truth)

A recent instance that requires ***Shuddhi Yagna***
(purification worship) is the policy paralysis on Special Economic Zones (SEZs). These drivers of growth and foreign exchange reserves have been waiting for a decade for policy certainty and stability.

Modi Government inherited terrible mess in this area from the UPA regime. The former was expected to reform SEZ policy, tax incentives and relevant laws to put SEZs on an even keel. This has not happened till today.

Commerce & Industry Minister (CIM) Piyush Goyal did not refer to â€˜SEZs' even once in the foreword to Foreign Trade Policy (FTP) 2023. The abbreviation â€˜SEZ' went missing in the official presentation of FTP unveiled on 31 st March 2023. There was hardly anything new on SEZs, both in the detailed policy and in the handbook of procedures on FTP.

This oversight is unwelcome as SEZs policy is a great legacy and a big-ticket reforms from Vajpayee Government. It unveiled SEZ policy on 31 st March 2000 as an engine for export-led growth. The policy formed part of larger export-import policy (later renamed as FTP).

Announcing the Exim Policy, CIM Murasoli Maran stated that the idea of SEZs"
basically is that in these areas export production can take place free from plethora of rules, and regulations governing import and export ."

Announcing governance mechanism for SEZ scheme on 30th May 2000, Mr Maran explained that SEZ scheme envisaged a simple and transparent policy and procedure for the promotion of exports with the"***minimum of paper work*** ".

He added the scheme"***will be the cornerstone of our re-oriented trade policy which is aimed at export-led growth*** ."

The present situation is a far cry from what Vajpayee Government envisioned. SEZs are now entangled in knots of separate & sequential approvals from the Centre and States and their appendages. An operational SEZ must seek approval even to lay a boundary wall within its approved area or lay a new pipeline.

The micro-governance of SEZs and units located in SEZs is frightening. Plethora of Rules has increased the compliance cost. This, in, turn has forced many aspiring exporters to prefer domestic tariff area (DTA) to SEZs.

Reverting to FTP 2023, it is perhaps the first time that CIM skipped a reference to SEZ in his statement (now squeezed as preface) on new FTP. Mr Goyal, a dynamic minister, appears helpless as the new SEZ law has been delayed by inter-ministerial differences crafted by officials.

This is unusual for the Government which takes pride in breaking silos within the governance system. The delay also conflicts with its orchestrated passion for speed and scale in the decision-making.

The SEZs are still major driver of Indian exports even though they have lost sheen under the changed fiscal and economic ecosystem since 2012. They accounted for exports aggregating to USD 139.34 billion in 11 months of 2022-23.

The Government thus ought to create an ecosystem for usage of idle or loss-incurring assets created under SEZ scheme. UPA first created gold rush of sorts among entrepreneurs with liberal tax incentives, lax regulations and loopholes that facilitated irregularities including frauds.

(See: Recast SEZ Policy with recipe from ARC and CAG 19 March 2008).

Faced with a barrage of criticism, UPA later withdrew certain direct tax exemptions and tightened the regulatory screw. This led many SEZ developers to make a beeline to exit the scheme.

Companies, still periodically continue to either partly or fully surrender unutilized SEZ area. Both MNCs and Indian giants have secured denotification of their SEZs under persisting dismal business environment and subdued export prospects.

Recall what CIM Nirmala Sitharaman said on 1 st April 2015 while unveiling FTP 2015-2020. She stated: "
Special Economic Zones have been facing some challenges in recent times. In order to boost exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs. It is hoped that this measure will give a new impetus to the development and growth of SEZs in the country ."

Mrs Sitharaman had announced MEIS (Merchandise Exports from India Scheme) and SEIS (Services Exports from India Scheme) as new schemes under FTP.

The industry expected FTP 2023 to reboot SEZ policy & set a timeline for introduction of new law as a replacement for SEZ Act 2005. More of this a bit later in the column.

Consider first the forgotten facts to fathom the depth of policy paralysis on SEZs. To the best of this columnist's knowledge, no minister in Modi Government ever disclosed its inability to act on what BJP preached to UPA on SEZs. The foremost advise it gave was to constitute an independent regulatory authority to address all issues faced by SEZs.

This sage idea was one of the 16 recommendations made by BJP committee on SEZs. The Committee, chaired by M. Venkaiah Naidu, submitted its report to BJP President in January 2007. It lambasted UPA Government for turning SEZs into "
biggest land-grab racket in the history of independent India."

The recommendation to constitute an"***independent regulatory authority***
"later found mention in an annexure to Parliamentary Standing Committee (SC) report on SEZs that submitted its report in June 2007.

Forget this forgotten report. Leave aside for a while the unimplemented recommendations made by SEZ Policy Review Committee. It submitted its report to the Government in November 2018 under chairmanship of Baba Kalyani, a leading industrialist.

Overlook also for a moment the unimplemented recommendations of Public Accounts Committee, Comptroller and Auditor General (CAG), PSC and other entities.

Just focus on what Prime Minister Narendra Modi, Finance Minister Nirmala Sitharaman and other representatives of Modi Government have stated on SEZs over the years. Evaluate their statements against the prevailing ground reality as part of ***Shuddhi Yagna.***

Laying the foundation stone of JNPT SEZ in Navi Mumbai on 16th August 2014, Mr Modi stated: "
the Government is concerned at the large number of stalled SEZ projects across the country, and a high-level team has been constituted to review the problems and resolve them at the earliest."

The Government should have disclosed the composition of this high-level team and what it recommended and what happened to its suggestions.

PM's call for earliest resolution of issues was followed up by a missive to Finance Ministry and Commerce Ministry to resolve taxation and other issues faced by SEZ.

The Financial Express quoted PM Office's communication dated 25th November 2014 in its story captioned '**_Fast-track resolution of SEZ issues: PMO to ministries_**' published on 2nd December 2014.

Despite PM's timely and notable intentions, ground reality has not changed. Many SEZs continue to grapple with challenges posed by imposition of minimum alternate tax (MAT) and other fiscal and non-fiscal issues.

These include difficulties resulting from demonetisation, Covid-19 pandemic and associated lockdowns, absence of single-window clearance system, coupled with unfavourable global business environment.

Several SEZ developers have shared their woes with the Government while seeking repeated extensions of letter of approval (LoA) issued by Board of Approval (BoA) for SEZs. It is an inter-ministerial panel under the administrative control of the Commerce Department.

A case in point of stalled SEZs is State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT). After securing LoA on 10th March 2010, it invested Rs 2607.64 crore on development of SEZ in Krishnagiri District. It is, however, yet to make it functional.

Asked for reasons for this delay, SIPCOT told BoA that"
that due to introduction of Minimum Alternate Tax (MAT) and dividend distribution Tax (DDT) by GoI, industries are reluctant to take up lands in SEZ, since their proposed project in SEZ are not viable when compared to DTA besides low demand due to general industrial recession. However, they are taking all the necessary effective steps to operationalize this SEZ ."

According to BoA agenda for its meeting held on 15 th April 2023, SIPCOT has sought 7th extension of the validity of SEZ's LoA to 31 st March 2027 from 31 st March 2023.

In December 2020, SIPCOT secured approval for denotification of entire 62.22 hectares that it had acquired for developing an SEZ for footwear sector in Kancheepuram district.

Like SIPCOT, many companies included Infosys & Taiwan's electronics giant Foxconn have got at least one or more of their SEZs denotified. Infosys has also been going slow in development of its Noida SEZ, for which it was issued LoA in April 2015. The company belatedly applied for 4 th extension of LoA, according to BoA agenda for its meeting held on 17 th January 2023.

Infosys expects to achieve completion of Phase-1 plan by the end of September, 2025.The reasons cited for the delay include global challenges for IT sector, extended period in obtaining permission from State bodies, Covid and certain other factors.

There are also instances of SEZs ready to execute export orders in pharmaceuticals and R&D domains. They can't get going for want of regulatory approvals.

It is common for the companies to seek repeated extensions for their respective LOAs with a faint hope for policy reboot that can improve prospects for their delayed or stalled SEZs.

The hope was rekindled by Mrs Sitharaman in her Budget speech for 2022-23 on 1 st February 2022. She stated:"
The Special Economic Zones Act will be replaced with a new legislation that will enable the states to become partners in â€˜Development of Enterprise and Service Hubs.' This will cover all large existing and new industrial enclaves to optimally utilise available infrastructure and enhance competitiveness of exports ."

The same day Mr Goyal told reporters: "
As regards the new law, we are in consultation with all the various stakeholders, states, SEZ developers and industrial parks across the country and also with the finance to see how the equalisation levy will be worked out. So, it should take 4-6 months. We can come out with the final framework of the new law governing SEZs and industrial parks ."

The Government first planned to introduce Development of Enterprises and Services Hubs (DESH) Bill, 2022 in Parliament during the monsoon session. It did not happen. It neither introduced the bill during the winter session nor in two-phase budget session.

According to status of implementation of 2022-23 budget announcements as on 1 st February 2023,
"The drafting of â€˜Development of Enterprises and Services Hubs (DESH) Bill, 2022' to replace the SEZ Act is complete. Finalisation of Cabinet Note is under process."

This is the last official disclosure on the fate of the Bill. The interregnum has been marked by periodic reports on persisting differences between Finance and Commerce Ministries over the Bill. One news story cited objections on certain provisions of the Bill by Niti Aayog.

The Export Promotion Council for EOUs & SEZs (EPCES) last year gave a thumbs-up to the Bill. Simultaneously, it voiced concern on certain provisions of the Bill.

In the April-June 2022 issue of EPCES News, EPCES chairman Bhuvnesh Seth wrote: "
D/o Commerce circulated draft of the new legislation. Most of the long pending concerns of SEZ community like SEZ to DTA supplies on duty foregone principle, job work and reverse job work for SEZ units for better capacity utilisation, payment for supplies of services to DTA in INR have been addressed in the new legislation."

In a letter dated 22 nd June 2022 mailed to Commerce Ministry, EPCES listed its major concerns on specified provisions in the draft Bill. According to the letter, "
EPCES strongly opposes the provision of DTA Equalisation Duty on goods supplied from Development Hubs to DTA. The provision of customs duty on inputs for the goods supplied from Hubs to DTA is as per international norm and... schemes."

EPCES also wants exemption under IGST Act to be incorporated in the new legislation.

Unfortunately, the Government did not make public the draft DESH bill for public consultation. This is notwithstanding clear-cut policy on pre-legislative public consultation laid down by outgoing UPA regime in 2014.

Now that Parliament is not in session, the Cabinet should approve the finalized DESH Bill for its introduction as an Ordinance at the earliest. The Ordinance can later be repealed and replaced by a bill during the monsoon session of Parliament.

In its first tenure, Modi Government had issued ordinance on 2 nd March 2019 to amend SEZ Act to include trust or entity in the definition of person, who can promote an SEZ. After returning to power in May 2019, the Government replaced the ordinance with The Special Economic Zones (Amendment) Act, 2019 for which a bill was moved in Lok Sabha during June 2019.

The Ordinance on DESH Act would benefit all SEZs, prospective promoters, apart from paving the way for utilization of idle building space in SEZs.

The ordinance can serve as booster dose for the economy. The ball is in the Prime Minister's court.