

MINUTES OF THE MEETING (2018 SERIES) OF THE UNIT APPROVAL COMMITTEE FOR EXPORT ORIENTED UNIT PUNE CLUSTER HELD UNDER THE CHAIRMANSHIP OF DEVELOPMENT COMMISSIONER, SEEPZ SEZ ON 17.05.2018 AT 11:30.00A.M. onwards

Members Present:-

1. Shri. Pravin Chandra : Joint Development Commissioner, Pune Cluster.
2. Shri Aditya Saole : Nominee of Income Tax, Pune DC, IT
3. Shri Maneesh Dudduri : Nominee of Commissioner of Customs Pune
4. Smt. Sujatha R.Nair : Nominee of the DGFT, Pune FTDO,

Agenda Item No. 01:- Application for amalgamation of M/s. Sigma Electric Manufacturing Corporation Pvt.Ltd., and M/s.Sigma Electric Pvt.Ltd.

The Committee noted that the proposal of the unit for amalgamation of M/s. Sigma Electric Manufacturing Corporation Pvt.Ltd and M/s. Sigma Committee was submitted before the UAC held on 05.12.2017 and the Committee deferred the proposal with a direction to Dy. Commissioner of GST, Pune-1 to submit the detailed report and his observation on the issue. The Committee also directed the nominee of Income Tax Authorities to submit their views after receipt of report from the Dy. Commissioner of GST, Pune-1.

Vide letter dated 03.01.2018 Dy. Commissioner has made the following observation:-

1. If EOU unit is amalgamated with DTA unit then the debonding of EOU is necessary with payment of dues as fresh LOP is demanded by assessee and also PAN and identity of EOU is going to be changed. Since status of EOU & DTA unit is different all duty on stock lying with EOU must be paid.
2. The Address of DTA unit and EOU is same and As per FTP EOU unit should be isolated from DTA unit and also as per Central Excise procedure two manufacturing unit never exist on same address.
3. The newly formed DTA Company is only on paper. It has not any assets financial worth to buy the EOU unit. It is need to clarify the source of fund.

In this case NCLT has accepted the transfer an amalgamation and after amalgamation the new entity is generated but in this case no third new entity is generated. The parent company's name was changed within a month of formulation. last year. They have no field any balance sheet/return to the ministry of corporation affair. The sunk rock metal foundries India Pvt.Ltd., was name of the parent company it was formulated by selling equity to sunk rock Mauritius acquisition company by

selling share at premium of 2000 per share. This transaction also by checked by income tax Department.

In view of the above, they have a view that all above verification and rectification, compliances such as de-bounding needed to be carried out first before issuing fresh LOP another company having different PAN as well as different status.

Further the committee noted that vide letter dt.04.05.2018 the Income tax Authority has given comments on the Dy. Commissioner GST observation. The details are as follows:-

Sr no.	Dy. Commissioner Observation	Comments of Income Tax Authority
1	The de-bonding of EOU into DTA unit is necessary in the case of amalgamation and the procedure duty forgone must be repaid by EOU first.	Issue of de-bounding of EOUS into DTA unit and collection of procedure duty buy the EOU, falls in the domain of law Department of central Tax (GST) this office has no role in the levy/collection of procedural duty.
2.	As per the procedure of Central Excise, it is required that the EOU unit and DTA unit (said entries involved in for amalgamation) should be isolated, but the address for these unit in this case is same and hence not treated as isolated.	For the requirement of two separate isolated entries in the case of amalgamation is as per the procedure of central excise the said procedural requirement is as per the Law /procedures administrated by Department of Central Tax, hence this office has no role for the same.
3	The newly formed DTA Company should be resultant third new entity, as per the above mentioned letter, but in this case it is a paper company with no financial assets and net worth to buy the EOU unit. The fund raised by the investment buyer is through sale of its shares at highest premium value to a Mauritius based Company and there is need to identify the source of this fund from Mauritius	The issue of the identification and verification of source of Fund from Mauritius in this case and said sale of shares by the Foreign entries are regulated by the RBI, the entries transaction being approved by competent government authorities cannot be questioned, in absence of any cogent evidence in records to suggest contrary

Further, Income Tax authority has stated that the Hon'ble High Court has passed the order of amalgamation dated 14.09.2017 and the NCLT has accepted the transfer of amalgamations. Further , they have stated that the case is not effected presently. In case this office receives any concrete information, it will be ensured that these issues are verified in future, as per the procedures of Income Tax Act.

In view of above, fact the committee observed that

1. M/s. Sigma Electric Manufacturing Corporation Pvt Ltd., has pursuant to a Scheme of Amalgamation sanctioned vide the order of the National Company Law Tribunal, Mumbai Bench(NCLT) dated Sept 14, 2017 has merged and amalgamated into parent company M/s. Sigma Electric Manufacturing Pvt. Ltd.
2. The unit does not exit from the EOU Scheme and LOP will remain same.

3. unit has given undertaking for taking over the past and future liabilities by parent company and confirmed that they are fully responsible for all the liability, if any payable by merged company and also undertake to follow all terms and condition as EOJ as per LOP and FTP.

4. The committee has noted that as per the Order dated 14.09.2017 of National Company Law Tribunal, Mumbai Bench(NCLT) the Development Commissioner Noida SEZ has also accorded approval for amalgamation of M/s Sigma Electric Manufacturing Corporation Pvt. At at Jaipur with its parent company M/s. Sigma Electric Manufacturing Pvt.Ltd in terms of Para 6.34(6) of HBP 2015-20 subject to the following condition:-

(a) M/s. Sigma Electric Manufacturing Pvt.Ltd has agreed to take over all assets & liability of M/s. Sigma Electric Manufacturing Corporation Pvt.Ltd(100%EOU).

(b) M/s. Sigma Electric Manufacturing Pvt.Ltd shall fulfill all the conditions as imposed from time to time in respect of EOJ scheme

(c) M/s. Sigma Electric Manufacturing Pvt.Ltd shall follow all provisions of FTP 2015-20

(d) The Assets and liabilities of merged unit M/s. Sigma Electric Manufacturing Corporation Pvt. Ltd shall be merged and transferred into M/s. Sigma Electric Manufacturing Pvt.Ltd.

(e) However Committee observed that the existing EOJ M/s. Sigma Electric Manufacturing Corporation Pvt.Ltd., is located at Gat No.154/1,155, Mahalunge Village, Chakan Talegaon Road, Post Chakan, Pune and the new Company M/s. Sigma Electric Manufacturing Pvt. Ltd. is also has same address i.e Gat No.154/1,155, Mahalunge Village, Chakan Talegaon Road, Post Chakan, Pune, which is not correct , as in the EOJ Premises another company cannot exist without any permission.

The observation of Dy. Commissioner, CGST in this regard are as under.

“ The amalgamation of EOJ with a DTA unit is related with the procedures of Company Act, Central Excise & Income Tax Act. Here DTA unit is formed 6 months back on the same address, where there is address of an EOJ unit. EOJ unit should be isolated from DTA unit as per the policy of FTP. Also as per Central excise procedure two manufacturing unit never exist on same address. The assessee has violated the rules & procedures of Central Excise ”.

Decision: - In the light of above facts , whether the merger can be approved need to be referred to MOC as the policy is silent in this regard.

Meeting ended with vote of thanks to the Chair.



**Chairperson-cum-
Development Commissioner**