

Minutes of the 15th Meeting of the Approval Committee held under the Chairmanship of Development Commissioner for Sector Specific Special Economic Zone for Power Sector at Warora, District Chandrapur of M/s. Wardha Power Company Pvt. Ltd. held on 09.01.2015.

1. Name of the SEZ : M/s. Wardha Power Company Pvt. Ltd., Dist. Chandrapur.
2. Sector : Power Sector.
3. Meeting no. : 15.
4. Date : 09.01.2015.

Members Present: -

1. Shri. P. S. Raman, : Member
Jt. Development Commissioner,
SEEPZ- SEZ.
2. Shri. P. G. Rathod, : Office of the Jt. Director of
Dy. Director of Industries. Industries(Mumbai).
3. Smt. S. R. Motwani, : Nominee of Zonal Additional
Asstt. DGFT. DGFT, Mumbai.
4. Shri. S. B. Akashi, : Nominee of Commissioner of
Joint Commissioner Central Excise and Custom,
Nagpur.
5. Shri. Manoj Kumar Saraf, : Nominee of Developer.
Manager - Accounts

IN ATTENDANCE

6. Shri. Sayed Gulfam Ali,
Asstt. Commissioner of Central Excise,
M/s. Wardha Power Company Pvt. Ltd. - SEZ.
Chandrapur

Agenda Item No. 01: Confirmation of Minutes of the meeting held on 05.12.2014.

The Minutes of the 14th Meeting held on 05.12.2014 were confirmed.

Agenda Item No. 02: Representation of problem being faced on the matter of obtaining Form A1/A2 for claiming ab-initio exemption from payment of Services Tax. (M/s. Wardha Power Company Pvt. Ltd.)

This office vide even letters dated 01.08.2014 and 09.10.2014 has directed the Specified Officer to submit a detailed report under what circumstances the A1 Form have been cancelled. In reply to above letters the Specified Officer has submitted report as stated under:-

1. The unit has submitted Form A1 on 18.07.2013 to Specified Officer, which was duly verified and issued by the Specified Officer on 18.07.2013.

2. On the basis of Form A1 dated 18.07.2013 the unit has applied for issuance of authorization in Form A2 before the jurisdictional Deputy Commissioner of Central Excise, division Chandrapur.

3. Deputy Commissioner, Chandrapur, vide their letter dated 07.08.2013 has sent unit's application to SO's office, stating that all the services which are actually used by units are for their two activities - 1) Business of electricity and electricity sale and transfer power Grid. Out of these two only one activity is authorized operation. On the ground mentioned above party's request for ab-initio exemption is not tenable. Also already orders for rejection of refund have been issued and those are pending at various stage.

4. On basis of ground mentioned in above letter from Deputy Commissioner, Chandrapur, and the Specified officer vide his letter dated 05.09.2013 has cancelled Form-A1 and asked unit to surrender the same.

5. Further unit vide letter dated 17.12.2013 to Deputy Commissioner, Chandrapur, has submitted the copy of Order-in Appeal dated 29.10.2014 issued by Commissioner of Central Excise (Appeal), Nagpur, wherein the para no. 7.5, it has been clarified that the observation of the lower authority that sale of electricity is a separate business is an incorrect interpretation. Therefore, Unit has again requested Deputy Commissioner, Chandrapur for issuance of Form-A2.

6. Meanwhile, SO has received a letter dated 24.03.2014 from O/o Commissioner, Central Excise, Nagpur issued by Superintendent (Cust. Tech), wherein the Commissioners Observation was as under:-

- It was found that the value of export is too low and their NFE is on Negative side.
- Some of their services are not exclusively used in the Authorized Operations from the SEZ.

6(i) The Specified Officer, vide letter dated 15.04.2014 has asked the unit to submit the reason regarding negative NFE. The unit has replied that positive NFE is to be achieved cumulatively for block of 5 years. They are in process of arranging sale of electricity to meet the required NFE within Specified time limit.

6(ii) The Specified Officer vide letter dated 09.07.2014 has communicated unit's reply to the Deputy Commissioner, Chandrapur. Also the Specified Officer had suggested Deputy Commissioner to put a question mark on achievement of positive NFE within required time by unit and forward the copy to Development Commissioner, SEEPZ-SEZ.

7. Also Specified Officer has informed that through unit was asked to surrender the Form-A1 but till the date they did not surrender the same. The unit vide letter dated 06.08.2014 to Specified Officer has communicated that in view of the Commissioner Appeals) Order dated 29.10.2013, the unit is having sale of electricity as authorized operation and accordingly the Form-A1 issued by Specified is in order and continue to be valid till the date. And unit further requested to return their application of Form-A2 to Deputy Commissioner of Chandrapur.
8. Accordingly Specified Officer vide letter dated 08.08.2014 has sent back the unit's application of Form-A2 to Deputy Commissioner of Chandrapur.

However, the Specified Officer hasn't replied to this office letter about cancellation of the Form A1. Hence the matter was considered for discussion in the Unit Approval Meeting for detailed discussion held on 05.12.2014. The unit Approval Committee deferred the proposal as the Specified Officer as M/s. Wardha Power Company Pvt. Ltd., Nagpur did not attend the meeting. Hence, the matter is reconsidered before Approval committee for detailed discussion.

Relevant Rule Provision:- Rule 31 of SEZ Rules, 2006 Notification No. 12/2013-Service Tax and Notification No. 7/2014-Service Tax.

Decision:- The committee noted that the matter is sub Judice before The Hon'ble Bombay High Court at Aurangabad bench. The specified officer present for the UAC meeting stated that Form-A1 stands in order in view of the commissioner (Appeal) Order dated 29.10.2013. In regard, Specified Officer was asked to ascertain a detailed report whether A2 has been denied by the Jurisdictional Central Excise Authority and if so, on what grounds.

The meeting ended with the vote of thanks to the Chair.


Chairperson - cum -
Development Commissioner.