

ERGO

Analysing developments impacting business

ANALYSING DEVELOPMENTS IMPACTING BUSINESS – MINISTRY OF COMMERCE AND INDUSTRIES ALLOWS FLOOR-WISE DENOTIFICATION OF BUILT-UP AREA IN SPECIAL ECONOMIC ZONES

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Introduction

The Department of Commerce, Ministry of Commerce and Industry (MCI), by a recent notification dated 6 December 2023 (Amendment), has amended Special Economic Zone Rules, 2006 to insert rule 11B, which allows demarcation of a portion of built-up area in an Information Technology (IT) or an Information Technology Enabled Services (ITES) Special Economic Zones as a non-processing area subject to permission of Board of Approval (Board) post underlying compliances and at request of the developer.

BREAKDOWN OF THE AMENDMENT

Under the Amendment, a non-processing area may be used for setting up and operation of businesses engaged in IT or ITES. It is paramount to note that the non-processing area shall consist of and comprise of the entire / complete floor and a portion / part of the floor cannot be demarcated as a non-processing area. In other words, the Amendment allows the developer to demarcate a portion of built-up area in IT/ITES Special Economic Zones on a floor-by-floor basis for setting up and operating business activities engaged in IT or ITES (as part of non-processing area), subject to the approval of the Board.

Further as stated in the Amendment, in order to ensure adequate screening of the movement of persons and goods, in and out of the premises demarcated as SEZ units and non-processing area, an adequate and appropriate access control mechanism shall be installed and incorporated.

Under the Amendment, it has been highlighted that permission for the demarcation of a non-processing area shall not be granted in the event, the SEZ area or the processing area for IT/ITES decreases to less than 50% (fifty percent) of the total built up area or less than the area specified in the table below:

	CATEGORIES OF CITIES AS PER ANNEXURE IV-A	MINIMUM BUILT UP PROCESSING AREA
1.	Category 'A'	50,000 square meters
2.	Category 'B'	25,000 square meters
3.	Category 'C'	15,000 square meters

Under the Amendment, the Board shall permit demarcation of non-processing area for setting up and operation of businesses engaged in IT or ITES Special Economic Zone after repayment of (i) tax benefits attributable to the non-processing areas, calculated as the benefits provided for the processing area of the Special Economic Zone, in proportion of the built up area of the non-processing area to the total built up area of the processing area of the IT or ITES Special Economic Zone, as specified by the Central Government; and (ii) tax benefits already availed for creation of social or commercial infrastructure and other facilities in non-processing area; without interest by the developer. The amount of re-payment by the developer shall be calculated based on a certificate issued by a Chartered Engineer.

Furthermore, the business engaged in IT or ITES Special Economic Zone in a non-processing area shall not be permitted to avail any rights or facilities available to SEZ units nor any tax benefits based on operation and maintenance of common infrastructure and facilities. Lastly, businesses engaged in IT or ITES Special Economic Zone in a non-processing area shall be subject to the provisions of all Central Acts and orders made thereunder.

COMMENTS

The Amendment is indeed a groundbreaking step in ongoing efforts to increase occupancy within Special Economic Zone Park, boosting economic growth and job opportunities. It will help in optimum utilization of real estate resources.

The Amendment is a welcome change for the developers. They can now engage with a wider pool of IT/ITES players and businesses for their vacant spaces of Special Economic Zones resulting in economic growth of the developers. Further, it will certainly bolster higher occupancy due to suitable business environment, without extensive compliances and the developer may also be able to secure higher rentals for such non-processing areas. Clearly, the Amendment is mutually beneficial for both the developers and occupants of the Special Economic Zone Parks. For occupants, this Amendment envisages more flexibility for the setting up of IT/ITES offices without extensive compliances and permissions.

Whilst this Amendment promotes growth in Special Economic Zones, MCI has also ensured that no undue advantages including tax exemptions or any other tax benefits based on operation and maintenance of common infrastructure and facilities shall be provided for non-processing area.

The Amendment could have been more streamlined on the process for the approval from the Board for demarcation of non-processing areas.

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