Chapter III: Growth of SEZs

Audit observed that there was a requirement of multiplicity of approvals for SEZs with 38.78 percent of them becoming operational after their notification. 52 per cent of the land allotted remained idle even though the approvals dated back to 2006. There was a decline in the activity in the manufacturing sector in the SEZs. Land acquired for public purposes were subsequently diverted (up to 100% in some cases) after de-notification. Seventeen States were not on board in implementing the SEZ Act with matching State level legislations, which rendered the single window system not very effective. Developers and unit holders were almost left un-monitored, in the absence of an internal audit set-up. This posed a huge risk for revenue administration.

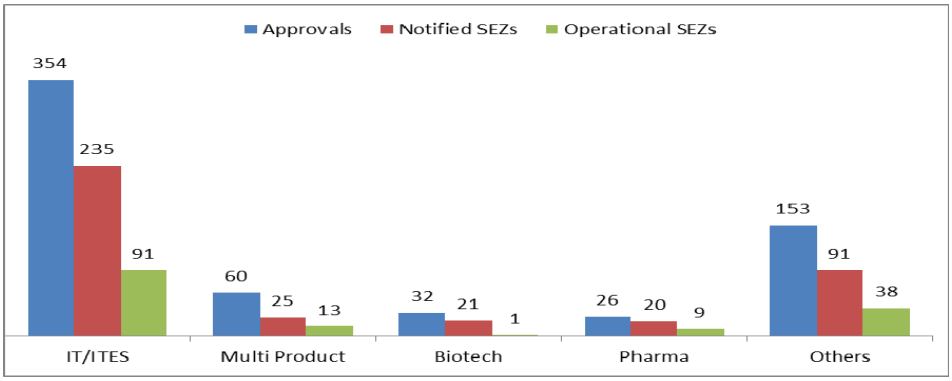
3.1 Growth pattern of SEZs-Regional and Sectoral Imbalances

While one of the significant objectives of establishing an SEZ was to achieve a balanced growth across all the regions of the country, it was noted that out of the 392 notified SEZs in India, 301 (77 per cent) are located in the infrastructural developed states (Andhra Pradesh -now bifurcated into Telangana and Andhra Pradesh -78; Maharashtra-65; Tamil Nadu-53; Karnataka-40, Haryana-35, and Gujarat-30) of the country. The numbers indicate certain locational preferences of SEZs in India. The spread of SEZs within the state is also in specific locations. To illustrate, in Andhra Pradesh, out of 36 operational SEZs, 20 are close to the vicinity of capital city Hyderabad. This scenario is similar in other States as well. This might have been because of the States could not be fully involved in the Scheme and 17 States have not even framed their respective SEZ Act/Policy.

A comparative analysis of the SEZ scheme across the globe in terms of their share of exports to the national exports may reveal necessary corrective measures to be taken by MOC&I as also recommended in the 83rd report of the Parliamentary Standing Committee.

Sector wise analysis of the SEZs revealed a pre-dominance of IT/ITES SEZs (56.64 per cent Approvals, 60 per cent 'notified' and 60 per cent 'operational'). Multiproduct SEZs which are more labour/capital intensive are very few (9.60 per cent Approvals, 6.37 per cent Notified and 8.55 per cent Operational), as depicted in the figure 7.

Figure 7: Category-wise distribution of SEZs in India



The large number of IT/ITES SEZs coincides with the expiry of the ten year Income-tax break period allowed to IT sector under Software Technogy Park Scheme which gave a fillip to the sector. Several units closed and shifted to SEZs to avail of the benefits offered in SEZ area.

DoC stated (April 2014) that SEZs suffer disadvantage because of the lack of the infrastructure status accorded by the banks to the developers. Regarding imbalance in growth in manufacturing sector and IT/ITES, it was also pointed out that manufacturing units are discouraged by not being allowed other fiscal benefits such as incentives given in Focus Product scheme and Focus Market scheme.

Further, in their reply (June 2014) DoC stated, that balanced regional and sectoral development has never been an objective of SEZ Act. However, States have been divided into different categories with regard to the land requirement for setting up of SEZs to ensure balanced regional development. The SEZ Rules, 2006 also provide for requirements of land for different sectors to have balanced sectoral developments.

Regarding developments of IT SEZ for abolition of Tax holidays in STPS, DoC stated that as per SEZ Act and Rules, IT SEZ can only be set up on the vacant lands and the use of second-hand capital goods from DTA has been made in line with the provisions of Section 10AA of the IT Act which allows only 20 per cent utilization of used plant and machinery. Development of IT/ITES SEZs required comparatively less time as the area to be developed is also small and the infrastructure required is less compared to multi-product SEZ. When the infrastructure is developed in other parts of India, industries will automatically spread. Moreover, it is for the concerned State Government to utilize the SEZ framework for development of various regions of the State. However, the Central Government has made special provisions for different

States regarding area requirement and built up area requirement in the SEZ Rules, 2006, especially for North-Eastern States.

Audit is of the opinion that the SEZ policy and procedures are not directed towards involving all the states and the unique advantageous points of certain regions and sectors.

Recommendation: *The SEZ policy and procedures need to be integrated with the Sectoral and State policies with the involvement of the unique advantageous points therein.*

3.2 Blocks in the single window clearance system

One possible reason for the skewed regional spread of SEZs, among others, could be the absence of an effective single window mechanism as envisaged in the SEZ policy for giving all the clearances to the SEZ projects by a single authority which could not be implemented successfully. It was observed that the single window mechanism is either absent or has not worked as per its intended objectives. In addition to the Central Regulatory Regime, only 11 states have framed their respective SEZ Act/Policy (Gujarat, Haryana, Tamil Nadu, Madhya Pradesh, Punjab, Jharkhand, Uttar Pradesh, Karnataka, Maharashtra, Kerala and West Bengal). The remaining 17 states could not enact the SEZ Act which led to a lack of coordination across departments at the Central and State Government level resulting in delay in according approvals and this was also stated by the Developers/units in their feedback.

Absence of Single Window Mechanism was observed even in the States (Tamilnadu, Kerala and Uttar Pradesh) which had their respective SEZ Act/Policy in place. One such case is discussed in Box-4.

Box-4: Lack of co-ordination leading to seven years of delay

M/s OSE Infrastructure Limited, Noida was granted Formal Approval (November 2006) by BoA for setting up of IT/ITES SEZ and was notified in May 2007. However, the SEZ could not start the construction even after 7 years due to non-clearance of FAR (Floor area ratio) by NOIDA Authority although necessary directions from the State Government was issued (June 2009). Meanwhile BoA accorded fourth extension to the approval up to November 2013.

Moreover, the investment of ₹ 343.22 crore as projected in their Project Report could not be made in the absence of clearance from NOIDA Authority.

A well framed State level SEZ Act or policy with an effective single window mechanism would provide a comprehensive regulatory framework for the development of SEZs in the state in consonance with the Central Act to provide fiscal incentives to SEZ Developers/ Units and provide a platform for

facilitating/resolving state level matters such as labour, pollution control authority, Municipal Corporation, etc. The above account calls for a review of the single window system in various States to unplug the loopholes. In a recent study (1 May 2014) report of the Department of Industrial Policy and Promotion (MOC&I) on improving the Business environment in India, Single Window Clearance has been one of the best practices for catalyzing the business environment in India.

DoC, stated (April 2014) that the SEZ scheme is a well devised scheme, with the Unit Approval Committees (UAC) at the State level and BoA at Central level acting as a single window mechanism. BoA is represented by members from different Ministry/Department, which finally gives clearances. However, DOC, in their reply (June 2014) stated that there is a need for review of single window system in various States to unplug the loopholes and it is for the State Governments to take the proper initiative on this issue. DoC further stated that in many States, single window system is yet to be implemented.

Audit is of the opinion that the envisaged single window system for speeding up the process of approvals has not rolled out as many States are not on board with their matching policies/Acts.

3.3 Notification of SEZ-absence of time limit

Section 4 (1) of SEZ Act 2005, stipulates the procedure for notification wherein the Developer who has been granted Letter of Approval submits the particulars of the identified land to the Central Government who in turn notifies the SEZ after satisfying that the requirements under sub-section (8) of Section 3 and other requirements as may be prescribed are fulfilled.

However, no time limit has been prescribed in SEZ Act or Rules within which the Developer needs to submit all the details required for notifying the SEZs. Absence of such provisions resulted in delays in issuing notifications. Consequently, only 392 SEZs could be notified in India as against 625 Formal Approvals granted. Analysis of approvals accorded vis-a-vis notifications between 2006 and July 2013 across the country indicated that pendency, year on year, ranged between 57 per cent and 95 per cent, necessitating a need for reviewing the time taken at various stages. Coupled with the fact that extensions for SEZ approvals are being given in a routine manner, relaxing the time limit only compounds the issue.

Review of six SEZs in Andhra Pradesh, Odisha and Uttar Pradesh indicated that SEZ could not be notified even after a lapse of 7 years in case of M/s

IDCO, Kalinga Nagar, Odisha or got delayed by 7 years in case of M/s Gopalpur SEZ, Odisha.

A case where one developer in Andhra Pradesh was accorded 14 approvals in 2008 but could not be notified till date is highlighted at Box 5.

Box-5: Fourteen approvals to one Developer, but none notified

In Andhra Pradesh, a Developer M/s Deccan Infrastructure and Land Holdings Ltd., a subsidiary of AP Housing Board was accorded 14 Formal Approvals to set up SEZs in different places of the State over 640.964 Hectares in 2008. The validity of LOP expired in 2011, which was extended up to July 2012. Even then the Developer could not fulfil the conditions stipulated for notification viz., legal possession, irrevocable land rights, contiguity of land, etc in any of the approvals. No action was taken either to review the case or cancel the approval.

DOC in their reply (June 2014) stated that the Developer shall, after the grant of LoA submit the exact particulars of the identified area to the Central Government and subsequently that Government may, after satisfying itself, notify the specifically identified area in the State as a SEZ. Completion of the formalities for notifying SEZ requires coordination with various authorities of the State Government, which takes time. Hence, it is difficult to prescribe a time limit for issue of notification after the formal approval is granted to the Developer. Moreover, the SEZ is not eligible for any duty benefits before issue of notification. Issue of notification is pre-requisite for getting SEZ benefits.

Audit is of the opinion that timelines may inter alia help in monitoring delays, if any.

Recommendation: *MOC&I may consider prescribing time limits for each stage of the SEZ life cycle for benchmarking purposes.*

3.4 Delays in approval

Board of Approval (BoA) is empowered to grant approval/reject/modify proposals for establishment of SEZs as per section 9 of SEZ Act 2005 read with Rule 5 of SEZ Rules 2006. A time limit has been prescribed in the Rules ibid on the part of all the concerned authorities, viz., Development Commissioner, State Government and Government of India ranging between 15 days to 6 months for processing at various stages. However, no such time limit has been prescribed for BoA to grant the approvals. We noted from the scrutiny of BoA Minutes and Agenda papers that in 5 instances in Maharashtra, Kerala and Tamilnadu, the proposals were deferred for six months to one year, ostensibly due to paucity of time even though the

applicants had secured the possession of land and explicit recommendations of the State Governments were in place. Consequently, setting up of these SEZs got delayed to that extent.

DOC in their reply (June 2014) stated that while delay in giving approvals is an exception and not the norm, it occurs sometimes due to unavoidable administrative reasons. Now the meetings of BoA are being convened regularly and such delays are not happening.

The reply of the department is not tenable as the reason cited for delay in granting of approvals was paucity of time which is evident from the agenda of 33rd BoA. Further, in the Agenda itself, the BoA clarified that the land was in possession of Developer in respect of M/s MM Tech Towers, M/s Emaar MGF Land Ltd. and M/s Yashprabha Enterprises. BoA also grants In-Principle approval on the basis of State Government recommendation and hence, In-Principle approval could have been granted in respect of M/s Yashprabha Enterprises and M/s Limitless Properties Ltd. who were recommended by the concerned State governments.

3.5 Non-consideration of State Government's Recommendation

As per section 3 (3) of The Special Economic Zones Act, 2005, any person, who intends to set up a Special Economic Zone, may, after identifying the area, at his option, make a proposal directly to the Board for the purpose of setting up the Special Economic Zone, provided that where such a proposal has been received directly from a person under sub-section, the Board may grant approval and after receipt of such approval, the person concerned shall obtain the concurrence of the State Government within the period, as may be prescribed.

We noted that in eight cases the developers had submitted proposal for setting up of SEZ directly to the Board and state government recommendation was received in the Department of Commerce (DoC) before considering the case in the meeting of BoA. However, the developers were granted formal approval by BoA without considering State government's recommendation for In-Principle approval/deferment.

Further, we also noted that in respect of M/s APIIC's proposal to set up a Biotech SEZ at Karakapatla village, Medak district, Andhra Pradesh in an area of 100 acres, the state government vide their letter no. 9289/INF/A2/2006 dated 01.07.2006 and 19.07.2006 had recommended the proposal for formal approval for an area of 75 acres. However, the BoA had granted formal approval for an area of 100 acres (40.47 hectares) without considering the

state government's recommendation to restrict the Bio-tech SEZ to the extent of 75 acres only.

DOC in their reply (June 2014), inviting attention to the provisions of SEZ Act and SEZ Rules stated that initially, the proposals for setting up of establishment of SEZs were considered and approved by the BoA even without the recommendation of State Government. Rules have been substituted vide GSR 501(E) dated 14.6.2010 which indicates "every proposal under sub-sections (2) to (4) of section 3 shall be made in Form 'A' and be submitted to the concerned Development Commissioner as specified in Annexure-III, who, within a period of fifteen days, shall forward it to the Board with his inspection report, State Government's recommendation and other details specified under Rule 7."

Cases indicated by the Audit pertain to the period well before 2010 and, therefore, such proposals were considered and approved by the Board in accordance with the then prevailing provisions of SEZ Act/Rules. However the observation of the audit is noted for further compliance.

Similar other cases may be reviewed and outcome intimated to audit.

3.6 Irregular extension of formal approvals

Rule 6 (2) (a) of the Special Economic Zones Rules, 2006 envisages that Developer or Co-developer as the case may be, shall submit the application for extension of validity of approval in Form C1 to the concerned Development Commissioner.

In respect of two developers i.e. M/s Peninsula Pharma research center and M/s Wipro Ltd. the dates of formal approval of which are 25.10.2006 and 25.06.2007 respectively, audit scrutiny revealed that application for extension of validity of formal approval had neither been made in Form C 1 prescribed for the purpose nor duly recommended by the concerned Development Commissioner.

It was further noticed that in case of M/s APIIC, Karakapatla village, Mulugu Mandal, Medak Distt, Andhra Pradesh (F. 2/317/2006-EPZ), formal approval was granted on 26 October 2006. Further extension upto 25 April 2014 was granted on 27 June 2013 except for the period 26 October 2010 to 25 October 2011.

Similarly, in the case of M/s Ansal IT City and Parks Ltd, Plot No. TZ-06, Tech Zone, Greater Noida, Uttar Pradesh (F-2/28/2006-SEZ), scrutiny of records revealed that formal approval was granted on 07.04.2006. The formal

approval was periodically extended till 11.06.2014 except for the intervening period 07.04.2012 to 11.06.2012 (66 days).

DoC in their reply stated (June 2014) that as per Rule 6(2)(a) of the SEZ Rules, the formal approval granted to the Developer is valid for a period of 3 years within which time at least one Unit should have commenced production for the SEZ to become operational from such a date of commencement of production. The Board may, on an application by the Developer, extend the validity period. The Developer shall submit the application in Form C1 to the concerned DC, who shall forward it to the Board with its recommendations. Form C1 has been introduced in the SEZ Rules w.e.f. 14.6.2010 and, therefore, the question of granting extension to formal approval without Form C1 does not arise.

Reply is not acceptable because case cited by audit in respect of M/s APIIC and M/s Ansal IT City and Parks Ltd extensions were granted after 14.6.2010.

3.7 Non furnishing of projected exports in Form A

We noted that in 16 cases the figures for projected exports from the project in the next five years in Form A at the time of submitting proposal for setting up of SEZs were not furnished by the Developer along with the application which is a mandatory requirement. However, BoA granted formal approvals and subsequently issued notification for setting up of SEZ. Since the Developers did not project the export figures in their application, their performance with respect to projected exports in these case could not be monitored all along.

DoC in their reply (June 2014) stated that Form A is scrutinized at the time of considering proposals for setting up of SEZs. The cases pointed out by the Audit are isolated cases and is not a standard practice. The projected exports figures serve as a guideline for measuring export performance vis-à-vis projected exports. The Zonal Development Commissioners periodically monitor the export performance of all SEZ Developers and Units. After the SEZ becomes operational and Units start production, the Units are granted LoPs for a block of 5 years. They are required to achieve positive Net Foreign Exchange (NFE) for a block of 5 years. Their performance is measured on this criteria and further extension of LoP is based on achievement of positive NFE. The defaulting Units are penalized as per the provisions of the SEZ Act/Rules.

The contention of DoC that the cases pointed out by the audit are isolated cases, is not acceptable because test check of records of 187 Developers revealed that 16 Developers have not submitted the Form A while applying for setting up of SEZ. Further, the issue raised by audit is not regarding

monitoring of the earning of foreign exchange by the developer/unit, rather it is non adherence of the codal provisions.

3.8 Extension of approvals despite failure to commence work

Formal and in-principle approval given to Developers for establishing SEZs is valid for three years and one year respectively as stipulated in Rule 6 (2) of SEZ rules 2006. Letters of approval awarded to SEZ Units are valid for one year within which the unit needs to commence production vide Rule 19(4). As per the earlier provision BoA can give approvals for extension of this time limit maximum up to two years after ascertaining the facts that the Developers/Units have taken sufficient steps towards operationalization of the project and further extension is based on justifiable reasons. However, restriction of two years was relaxed (June 2010) which led to extension of approval for 7 to 8 years, even though the developers had not commenced any investment, thereby defeating the very intent of the scheme. We noted in the case of 31 developers and 10 units in 9 states (Andhra Pradesh, Gujarat, Haryana, Karnataka, Maharashtra, Odisha, Tamilnadu, Uttar Pradesh and West Bengal) that extensions were given as a matter of routine despite nil/meagre investments in these projects.

Consequently, the projected investments, employment and exports could not be achieved in any of the projects. We believe that according extensions in a routine manner without linking it to the progress of the projects is fraught with the risk of Developers utilising the SEZ route to plan for alternative use of SEZ land or for raising loans against the government land[7], besides defeating the intended socio-economic benefits projected by the Developers.

The following illustration at Box-6, further highlights the issue being flagged where M/s Navi Mumbai SEZ in Maharashtra were granted routine extensions (6th year) even though the Developer had not complied with the conditions attached to the approval.

Box-6: Routine Extensions despite failure to meet the conditions set

M/s Navi Mumbai SEZ (NMSEZ) applied (February 2006) for setting up of Multiproduct SEZ over an area of 1250 hectares at Dronagiri, Maharashtra and stated in its application that the land is contiguous except for Public Roads and Railway Lines wherein Flyovers/underpasses would be made. BoA granted Formal approval (July 2007) subject to the conditions that the developer would establish contiguity by having dedicated security gates/Flyovers/underpasses and no tax benefit would be available for establishing contiguity. It was further stated that the work for establishing contiguity would be started only after obtaining approval from Railways and NHAI.

Meanwhile, MOE&F granted environmental clearance (August 2006) subject to the condition that the Developer ensures that the mangroves are fully conserved in the creek areas at the periphery of NMSEZ and as Dronagiri comes under CRZ notification, the Developer needs to comply with the Hon'ble Mumbai High Court order dated 6th October 2006 in Writ Petition No. 3246 of 2004.

Inspite of the Developer's failure to comply with any of the above condition, BoA notified the SEZ in the same year (November 2007) and had been granting extensions (beyond 6th year) in a routine manner. The Developer had procured (as of 31st March 2013) duty free goods valuing ₹ 37.82 crore with duty forgone of ₹ 4.9 crore. The expected socio-economic benefits projected by the Developer on account of Investment (₹ 2800 crore), Exports (₹ 10000 crore) and employment (75000) could not be achieved as the project had not taken off even six years after its notification.

DoC in their reply stated (June 2014) that Rule 19(4) of SEZ Rules, 2006 does prescribe a limit for extensions of LOA of a unit by the DC. Beyond the prescribed limit of extensions permissible under the para, BoA grants further extensions on a case to case basis, under proviso to rule 19(4).

Extensions of LoA in respect of Developers/Co-Developers are granted by BoA taking into consideration the merits of the case, factors like global recession, industry-specific cyclical problems etc.

The loss of revenue pointed out by the Audit is not an actual loss but a presumptive loss. Once the unit commences operations and exports within the extended period of LoA, there is no loss to the Government. In case the unit fails to commence operations and the LoA lapses, applicable duties and dues, if any, will be collected by the Government.

The reply of the department was not acceptable because in terms of proviso under Rule 19(4) extension for the maximum period of 3 years was subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete and a chartered engineer's certificate to this effect is submitted by the entrepreneur. In the cases pointed out by audit, none of the conditions were met by the developers and the developers failed to commence operations as such the duty benefits availed by them need to be recovered.

3.9 Extension beyond 6th year in contravention of norms set

The Board of Approval in their meeting (September 2012) advised the Development Commissioners to recommend the requests for extension of formal approval beyond 5th year and onwards only after satisfying that the Developer had taken sufficient steps towards operationalization of the project and further extension is based on justifiable reasons. Board also observed that extensions may not be granted as a matter of routine unless some progress has been made on ground by the developers. The Board, therefore, after deliberations, extended the validity of the formal approval to the requests for extensions beyond fifth year for a period of one year and those beyond sixth year for a period of 6 months from the date of expiry of last extension.

However, we noted from the scrutiny of minutes of the subsequent BoA meetings that in 22 cases pertaining to Andhra Pradesh, Gujarat, Maharashtra, Karnataka, Odisha, Tamilnadu and West Bengal, extensions beyond 6th year were further granted for one year instead of for six months.

DoC in their reply stated (June 2014) that in the cases highlighted by the Audit, BoA has granted extensions beyond 6th year to 9 developers in Tamil

Nadu after taking into consideration factors like global recession, market conditions of a particular industry etc. based on which BoA, the highest deciding authority on SEZ issues, takes a decision on a case to case basis.

Reply is not acceptable because BoA does not have any power to override the provisions of SEZ Act/Rule.

3.10 SEZs operating without environmental clearance

Though the key objectives of SEZs are to boost exports and attract investments, if not properly planned, they can impact natural habitats and result in loss of necessary forest cover and bio-diversity.

As per sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to Notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority (SIEAA), duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified in the Notification.

It was noted that 10 out of 36 operational developers in Andhra Pradesh and 2 out of 11 selected operational developers in Maharashtra have not obtained Environmental Clearances as per the information available on the website of the MoEF[8] and the data given by SIEAA as detailed below:

Sl. No	Name of Developer	Date of Notification	Date of Operation	Nature of project or activity as per the schedule to notification dated 14/09/2006
1	Anrak Aluminum Ltd Makavanipalem, Vizag	5.52009	NA	Alumina 3(a)
2	APACHE SEZ Development India Pvt. Ltd.; Footwear; Tada, Nellore Dist.	8.8.2006	27.12.11	Leather Complexes 7(c)
3	APIIC Ltd.; Formulation; Jedcharla, Mahaboobnagar	13.6.2007	NA	Formulations 5(f)
4	Divi's Laboratories Limited; Pharma Chippada, Vizag	16.5.2006	12.12.06	Formulations 5(f)
5	Dr. Reddy's Laboratories Ltd.; Pharma; Ranastalam, Srikakulamj	11.11.2009	NA	Formulations 5(f)
6	Hetero Infrastructure; Pharma; Nakkapalli, Vizag	11.01.2007	01.04.11	Formulations 5(f)
7	APIIC, Building Product, Prakasam	08.09.2009	13.08.10	7(c)

[8] Ministry of Environment and Forest

Sl. No	Name of Developer	Date of Notification	Date of Operation	Nature of project or activity as per the schedule to notification dated 14/09/2006
8	APIIC, IT/ITES; Hill No.3, Madhurawada, Vizag	28.12.2006	03.02.08	7(c)
9	APIIC, IT / ITES; Hill No.2, Madhurawada, Vizag	11.04.2007	25.11.09	7(c)
10	LandT; IT / ITES; Hi-Tech City, Keesarapalli, Gannavaram	15.01.2007	01.04.10	7(c)
11	Wockhardt Infrastructure Development Limited	17.04.2007	31.05.2012	SEZs (7 (c))
12	Quadron Business Park Ltd SEZ, Pune (formerly known as DLF Akruti Infopark Ltd)	14.09.2007	12.11.2007	SEZs (7(c))

Carrying out operations without appropriate environmental clearances by the statutory authorities are a risk requiring a review of their activities vis-à-vis the norms on the subject.

DoC in their reply stated (June 2014) that in the case of M/s. Quadron Business Park Limited, one unit has obtained the Certificate of Environment Clearance and submitted to the Zonal DC Office. Second Unit has also obtained clearance from Pollution Control Board. They have been asked to obtain the Environment Clearance Certificate without further delay. However, observations have been noted for compliance and the matter is being examined for further necessary action.

DoC may intimate the final outcome to audit.

3.11 Environmental Impact and CRZ clearance in the case of M/s Adani Ports and Special Economic Zone Ltd.

The Hon'ble Supreme Court of India[9] ordered that forests, tanks, ponds, etc., which are nature's bounty, maintain delicate ecological balance and hence need to be protected for a proper and healthy environment. Further, the Central Government issued instructions in April 2006 banning construction activity within 500 yards from defence Notified land. SEZ Instruction No.65 dated 27 October 2010 also prescribes restriction on use of irrigated and double crop land for setting up of SEZs.

The Ministry of Environment and Forests had banned a number of ecologically destructive activities along the coast vide CRZ-91 dated 19th February 1991 (amended as CRZ-2011). Moreover, the guidelines on development of SEZs issued through, Department of Commerce, SEZ Division, instruction no. 65 dated 27 October 2010 stipulate that as far as possible SEZs shall be self-contained with respect to basic facilities and requirements. The

[9] Civil Appeal No.4787/2001(SLP No.13695/2000) dt.25/7/2001

developer of the SEZs shall make a development plan, keeping in view the site analysis and assessment of physical and natural resources. Further, the developer of the SEZs would strive to address environmental aspects as prescribed by law, planned green areas, ground water recharging areas and disaster mitigation aspects.

We observed at DC, Adani Ports & Special Economic Zone Ltd. (formerly Mundra Ports and Special Economic Zone Ltd.)(AP&SEZ), Mundra office that, as per the decision in 59th meeting of BoA dated 30 August 2013, it was granted In-Principle approval to establish their new multiproduct SEZ on 1856 hectares land at Mundra, of which 1840 hectares land was actually a reserved forest land allotted to the AP&SEZ in 2009 by Government (vide GOI, Ministry of Environment and Forest, New Delhi's letter no.F.No.8-2/1999-FC(Pt) dated 30 September 2009 and as per Govt. of Gujarat, Forest and Environment Department's Memorandum No.FCA-1009(10-14)SF-18-K dated 17 November 2009). Remaining land of 16 hectares was de-notified from the existing SEZ with an intention to club it with 1840 hectares land for fulfilment of conditions of 'contiguity of land' for new SEZ. Thus, BoA considered in-principle approval to establish new SEZ on reserved forest land.

Further, as per information provided by Specified officer, DC office-Mundra, AP&SEZ, Mundra did not get environmental clearance for setting up SEZ. For information on details of CRZ clearance by AP&SEZ, it was replied that the developer did not provide information regarding CRZ clearance to DC office.

However, as per the information (SCN dated 30 September 2013 and report on environmental issue) available in the website of Ministry of Environment and Forests (MoEF) it was observed that:

- MoEF granted environment and CRZ clearance to AP&SEZ on 12 January 2009 for the development of port facilities at Mundra. However, on the basis of representations from the Machhi Mar Adhikar Sangarsh Sangthan, MoEF conducted (6-7 December 2010) site verification and found certain violations related to construction of air port, township, hospitals and destruction of mangroves. Ministry issued directions on 23 February 2011 to project authorities not to undertake any reclamation activity and not to initiate any new construction activity in new CRZ area.
- PIL 12 of 2011 was also filed by Kheti Vikas Sewa Trust in the Hon'ble High Court of Gujarat alleging destruction of mangroves by the project authorities.

- On account of serious violations, MoEF constituted (September 2012) a committee to examine the issue and committee submitted (18 April 2013) report which revealed the violations such as massive ecological changes with adverse impacts, construction of airship/aerodrome without EC, unauthorized construction resulting in blocking of creeks, rampant destruction of mangroves etc.
- Committee also recommended remedial measures to safeguard environment and issued SCN to AP&SEZ on 30 September 2013.

It was noticed that, even though SEZ area was within Coastal Region Zone and SEZ was functioning since 2006, department failed to ascertain the non compliance of the environmental guidelines/CRZ guidelines up to December 2010. This issue came to the notice of the department only after receiving representations from the fishermen community in December 2010. Non-monitoring of environmental compliance by the department from 2005-06 to 2010-11 led to a negative impact on various aspects of environment as reported by MoEF.

DoC in their reply stated (June 2014) that although, the Environmental Clearance has not been granted by MoEF to the SEZ, however, the Expert Appraisal Committee of MoEF has recommended the project for environmental and CRZ clearance. The matter is being examined for further necessary action.

DoC may intimate the final outcome to audit.

3.12 Absence of mechanism to monitor non-operational Units

Rule 54 of SEZ Rules read with Annexure I of the rules stipulate monitoring the performance of units which have completed at least one year of operations from the date of commencement of production. However, there is no provision to monitor the units that have not commenced their operations. Consequently, their actions remain generally out of the day-to-day monitoring by the DC/UAC. Few such cases where the fifth year of extension is in progress but the Units were yet to start their operations despite importing duty free goods are shown below:

Developer/Unit	Location/State	Value of goods imported and amount of duty forgone (₹ in crore)	Year of Import
M/s XL Energy	FAB City, Hyderabad, Andhra Pradesh	153/37.94	2008 and 2009
M/s iGate Global Solutions	MIDC Pune, Maharashtra	14.15/ 1.75	
M/s Hangers Plus	Mahindra World City, Tamilnadu	1.5/0.37	

The above account calls for a review of the monitoring system in place to provide for a system of periodic monitoring of non-operational units as there was none as per the system in place. Further, non-operational units are also fraught with the risk of leased land being mortgaged by the Developers to raise capital for the purposes other than SEZ use as commented at paragraph 4.10 of this report.

DoC in their reply stated (June 2014) that with a view to strengthen monitoring system, SEZ Online System has been introduced. UAC in the zones also monitors the performance of SEZ Units and the Formal Approval granted to the Units is valid for one year and in case the Unit does not implement the project, it has to approach for further extension with justification. In case, the performance of the SEZ is not satisfactory, extension is not granted.

Reply is not acceptable because cases highlighted by audit indicates that there were weaknesses in monitoring the performance of SEZ units.

Recommendation: *MOC&I may consider introducing a suitable mechanism to monitor non-operational SEZ units.*