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Analysing developments impacting business

GOVERNMENT PERMITS HYBRID WORKING FOR UNITS IN SPECIAL ECONOMIC ZONE

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Background

The Special Economic Zone (**SEZ**) regime, which was introduced in 2005 to promote exports and improve balance of payments, became less lucrative with sunset of income tax benefits granted thereunder. In view thereof and with an objective of unfettering the exporters from procedural hindrances, the Hon'ble Finance Minister, in her budget 2022 speech, announced replacement of this framework by September 2022.

Pending this revision and to suit the hybrid working model adopted by the IT/ITES globally, the Ministry of Commerce and Industry, has amended the existing Special Economic Zone Rules, 2006 *vide* the SEZ (Third Amendment) Rules 2022 dated 14 July 2022. In terms of this amendment, the existing Rule 43 has been amended and a new Rule 43A, to permit the IT/ITES SEZ units, to implement hybrid working upon application.

The Hybrid Working Model – Permissions and Records

In terms of the newly introduced Rule 43A, a maximum of 50% of employees (including the contractual employees) of an IT/ITES SEZ unit would be permitted to work from outside the SEZ premises, at a given point in time. However, these limits can be stretched to permit even higher number of employees to work from home in *bona fide* cases, at the discretion of the development commissioner.

For the above, detailed procedure for obtaining the permission and maintaining the records has been prescribed, which is summarized below:

- An SEZ unit would be required to submit the proposal for permission to the jurisdictional development commissioner, for implementing hybrid working model (or work from home) atleast fifteen days in advance, except for temporarily incapacitated or travelling employees. The Units, whose employees are presently working from home under exceptional permissions granted during pandemic by SEZ authorities, need to re-apply for the permission within 90 days from introduction of Rule 43A.
- The proposal shall have the following information, a) Terms and conditions to work from home; b) Number of employees availing the facility; c) The details of such employees; d) The date of commencement of work from home.
- The development commissioner, upon examination of the proposal and being satisfied with the information, can grant permission to implement the hybrid working model for a period of one year, which would be subject to annual renewal.
- The SEZ unit would be required to maintain accurate attendance record for the entire period of permission for work from home and shall submit such attendance record to the development commissioner, from time to time.

- The other conditions of operation of SEZ Units i.e., performance of authorised operations, accounting for employee output towards fulfilment of export obligations etc. will be strictly implemented as per the ongoing practice.
- The SEZ Unit needs to apply for permission from specified officer to remove goods such as laptops, computer, video projection system, secured connectivity (for virtual private network, virtual desktop infrastructure) and such other electronic equipment, from the SEZ Unit to domestic tariff area, to establish a connection between the employee and work related to the project of the units. In this regard, the SEZ Unit need to undertake the following:
 - Issue a certificate authorising the employee, containing the details of equipment i.e., make, brand, serial number, and model number etc.
 - Such certificate needs to be endorsed by the Specified Officer and acknowledgement thereof shall be kept in records by the Unit;
 - Maintain proper record of goods removed from SEZ Unit and certificates issued therefor.

The permission for temporary removal of goods would be valid up to the end date for hybrid work permission granted by development commissioner.

Comments

As the global IT/ITES industry promptly adapted to the pandemic induced dynamics, statutory acceptance of hybrid working model comes as a significant respite for the units operating in SEZ area. Though the proposed amendment provides a detailed manner of application and approval, we believe that the industry would require clarity on operation implementation *inter alia*, on procedural aspects such as format of application, permissible terms and condition including minimum work hours, timings, employee rotation policy, frequency of submission of attendance or work from home records, etc.

In addition to the above, the SEZ Units also needs to keep a beady eye on the proposed new SEZ law and inter-play thereof with what appears to be stop-gap measure by the government.

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