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A	File No.	GEN/ADJ/COMM/159/2020-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-26-2025-26
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	30.07.2025
E	Date of Issue	30.07.2025
F	SCN No. & Date	F. No. DRI/CZU/VIII/26/331/2018
G	Noticee / Party / Importer / Exporter	M/s. Cargo partner logistics India Pvt. Ltd and others

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad-380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

Subject: Customs offence - SEIS scrips obtained by willful mis-statement and suppression of facts by M/s Cargo Partner Logistics India Private Limited, Gurgaon, Haryana, and utilized for payment of Customs Duty by persons other than M/s Cargo Partner Logistics India Private Limited -Demand of duty from Ms Cargo Partner Logistics India Private Limited under Section 28.4A of the Customs Act, 1962 Issue of Show Cause Notice - regarding.

A. Background

M/s Cargo Partner Logistics India Private Limited, Unit No. 513-516. 5th floor, JMD Megapolis Shu Road, Gurgaon 122018, Haryana bearing IEC No.0206025441, hereinafter referred as M/s CPLIPI is a freight forwarder and subsidiary of Multi Transport Und Logistic Holding AG. Shri Vikra Paul is the Managing Director and Shri Gurpreet Singh is the other Director in the firm.

2. Intelligence was gathered by the Chennai Zonal Unit of the Directorate of Revenue Intelligence (DRJ-CZU) that freight forwarders have obtained SEIS Scrips (Service Exports from India Scheme) from the Directorate General of Foreign Trade (DGFT) by intentionally mis-stating that foreign exchange remittances received towards air freight and sea freight as "freight transport agency" charges and amount earned in INR from exporters/importers as amour earned from foreign hnu and such scrips were being utilized for payment of customs duty by other persons on their imports.

B. SEIS Scheme

The Foreign Trade Policy 2015-2020 (henceforth referred as FTP), which was notified under Section of the Foreign Trade (Development & Regulation) Act, 1992 by Director General of Foreign Trade with effect from 01.04.2015, introduced two new schemes viz. Merchandise Exports from India Scheme(MEIS) for exports of specified goods to specified markets and Service Exports from India (SEIS) for increasing export of notified services, 11 the place of plethora of schemes existing earlier, as per Chapter 1 of FTP.

4. The SEIS scheme as notified in FTP from Para 3.07 to 3.12 are reproduced as below:

3.07 Objective-

Objective of Service Exports from India Scheme (SEIS) is to encourage export of notified Services from India.

3.08 Eligibility

(a) Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. Only Services rendered in the manner as per Para 9.51() and Para 9.51(ii) of this policy shall be eligible. The notified services and rates of rewards are listed in Appendix 3D.

(b) Such service provider should have minimum net free foreign exchange earnings of US\$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US\$10,000 in preceding financial year.

(c) Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E.

(d) Net Foreign exchange earnings for the scheme are defined as under: Net Foreign Exchange Gross Earnings of Foreign Exchange minus Total expenses/payment/ remittances of Foreign Exchange by the IEC holder, relating to service sector in the Financial year.

(e) If the IEC holder is a manufacturer of goods as well as service provider, then the foreign exchange earnings and Total expenses/payment/remittances shall be taken into account for service sector only.

In order to claim reward under the scheme, Service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.

3.09 Ineligible categories under SEIS

(1) Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. Thus, other sources of foreign exchange earnings such as equity or debt

participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.

(2) Following shall not be taken into account for calculation of entitlement under the -scheme

(a) Foreign Exchange remittances:

1. Related to Financial Services Sector

(i) Raising of all types of foreign currency Loans;

(ii) Export proceeds realization of clients;

(iii) Issuance of Foreign Equity through ADRs/GDRs or other similar instruments;

(iv) Issuance of foreign currency Bonds;

(v) Sale of securities and other financial instruments;

(vi) Other receivables not connected with services rendered by financial institutions; and

II. Earned through contract/regular employment abroad (e.g. labour

. remittances);

(b) Payments for services received from EEFC Account;

(c) Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.

(d) Foreign exchange turnover by Educational Institutions like equity participation, donations etc.

(e) Export turnover relating to services of units operating under EOU/EHTP/ STPI/BTP Schemes or supplies of services made to such units; (Amended vide Notification No 8/2015-20 dated 4th June, 2015)

Clubbing of turnover of services rendered by SEZ/EQU/EHTP/STPI/BTP units with turnover of DTA Service Providers;

(g) Exports of Goods.

(h) Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all."

(i) Service providers in Telecom Sector.

3.10 Entitlement under SEIS

Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as given in Appendix 3D) on net foreign exchange earned.

3.11 Remittances through Credit Card and other instruments for MEIS and SEIS:

Free Foreign Exchange earned through international credit cards and other instruments, as permitted by RBI shall also be taken into account for computation of value of exports.

3.13 Effective date of schemes (MEIS and SEIS)

The schemes shall come into force with effect from the date of notification of this Policy, i.e. the rewards under MEIS/SEIS shall be admissible for exports made/services rendered on or after the date of notification of this Policy.

3. Relevant definitions of terms used in FTP as given in Chapter 9 are reproduced below:

9.00 For purpose of FTP, unless context otherwise requires, the following words and expressions shall have the following meanings attached to them:-

9.02 "Act" means Foreign Trade (Development and Regulation) Act, 1992 (No.22 of 1992) [FT (D&R) Act] as amended from time to time.

9.06 "Applicant" means person on whose behalf an application is made and shall, wherever context so requires, includes person signing the application. 9.20 "Export" is as defined in FT (D&R) Act, 1992, as amended from time to time. 9.38 "Person" means both natural and legal and includes an individual, firm, society, company, corporation or any other legal person including the DGFT officials.

9.50 "Services" include all tradable services covered under General Agreement on Trade in Services (GATS) and earning free foreign exchange.

951 "Service Provider" means a person providing:

Supply of a 'service' from India to any other country; (Model- Cross border trade)

(ii) Supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2- Consumption abroad)

(ii) Supply of a 'service' from India through commercial presence in any other country. (Mode 3- Commercial Presence.)

(iv) Supply of a 'service' from India through the presence of natural persons

in any other country (Mode 4- Presence of natural persons.)

6. Definition of "export" in relation to services or technology as given in Section 2(e) of Foreign Trade (Development & Regulation) Act, 1992 is reproduced as below:

(ii) supplying, services or technology

(A) from India into the territory of any other country;

(B) in India to the service consumer of any other country;.

(C) by a service supplier of India, through commercial presence in the territory of any other country;

(D) by a service supplier of India, through presence of Indian natural persons in the territory of any other country:

7. The Public Notice No.3/2015-20 dated 01/04/2015 issued by DGFT notified Appendix 3D which listed the services with the provisional Central Product Classification (CPC).code pertaining to the services listed and admissible rate in % (on net foreign exchange earnings) as the reward for such export of services. The services related to the investigations, as in Appendix 3D, are tabulated below:-

TABLE A

9	<i>TRANSPORT SERVICE (Please refer Note 4)</i>		
A.	<i>Maritime Transport Services</i>		
a.	<i>Passenger transportation*</i>	7211	5/7
b.	<i>Freight transportation*</i>	7212	5/7
c.	<i>Rental of vessels with crew*</i>	7213	5/7
d.	<i>Maintenance and repair of vessels</i>	8868	5/7
e.	<i>Pushing and towing services</i>	7214	5/7
f.	<i>Supporting services for maritime transport</i>	745	5/7
B.	<i>Air Transport services</i>		
a.	<i>Rental of aircraft with crew</i>	734	5/7
b.	<i>Maintenance and repair of aircraft</i>	8868	5/7
c.	<i>Airport Operations and ground handling</i>		5/7
C	<i>Road Transport Services</i>		
a.	<i>Passenger transportation</i>	7121 7122	5/7
b.	<i>Freight transportation</i>	7123	5/7
c.	<i>Rental of Commercial vehicles with</i>	7124	5/7

	<i>operator</i>		
<i>d.</i>	<i>Maintenance and repair of road transport equipment</i>	6112 8867	5/7
<i>e.</i>	<i>Supporting services for road transport services</i>	744	
<i>D</i>	<i>Services Auxiliary To All Modes of Transport</i>		
<i>a.</i>	<i>Cargo handling services</i>	741	5/7
<i>b.</i>	<i>Storage and warehousing services</i>	742	5/7
<i>c.</i>	<i>Freight transport agency services</i>	748	5/7

service

As per Note 4 of the annexure to Appendix 3D, under Maritime Transport Service marked with *[9A(a), (b) and (c)], the reward shall be limited to Operations from India by Indian Flag Carriers only.

8. The Public Notice No.7/2015-20 dated 04/05/2016 issued by DGFT notified Appendix 3E which contain certain services, out of the services notified [vide Appendix 3D], that are rendered to a foreign liner in a customs notified area, where payments for exports are paid in INR out of amount remittable to foreign liner (including by its agent) in foreign exchange or out of remittances received from overseas buyer in foreign exchange, are deemed to be earned in foreign exchange and eligible for SEIS reward/scrip. During the period upto 2016-17, the services of Maritime Transport Services viz., 9(A)(c) - Rental of vessels with crew, 9(A)(d) - Maintenance & repair of vessels, 9(A)(e) Pushing and Towing services and 9(A)(f) -Supporting Services for maritime transport were only listed in Appendix 3E. Under Supporting services for maritime transport, 44 services were listed as eligible services including "terminal handling service. A(D)(XIV)", "cargo dispatch services - A(f)(XVI)" and "cargo storage services- A(f)(XVII)".

9.1 The Provisional Central Product Classification (CPC) was issued by the Department of International Economic and Social Affairs, Statistical Office of the United Nations, constitutes a complete product classification covering goods and services. The CPC is a system of categories covering both goods and services that is both exhaustive (i.e. all goods and services are covered) and mutually exclusive (i.e. a given good or service may only be classified in one CPC category). The coding system of CPC is hierarchical and purely decimal. The classification consists of Sections (identified by the first digit), Divisions (identified by the first and second digits), Group (identified by the first three digits), Class (identified by the first four digits) and Subclass (identified by the first five digits). The first five sections classify products and second five sections classify services.

9.2 The CPC prescribes Rules of Interpretation for both products and services. The Rules of Interpretation as in the WCO-HSN is adopted for products. It states that the classification of services shall be according to the terms of the categories as described in sections, divisions, groups, classes or subclasses of CPC. It device rules when services are *prima facie* classifiable under two or more categories on the understanding that only categories at the same level (sections, divisions, groups, classes or subclasses) are comparable. It states that

1. When services are, *prima facie*, classifiable under two or more categories, classification shall be effected as follows, on the understanding that only categories at the same level (sections, divisions, groups, classes or subclasses) are comparable:

(a) The category, which provides the most specific description, shall be preferred to categories providing a more general description.

(b) Composite services consisting of a combination of different services that cannot be classified by reference to 1(a) shall be classified as if they consisted of the service that gives them their essential character, in so far as this criterion is applicable.

(c) When services cannot be classified by reference to 1(a) or 1(b), they shall be classified under the category that occurs last in numerical order among those which equally merit consideration. 2. Services, which cannot be classified in accordance with the above rules, shall be classified under the category.appropriate to the services to which they are most akin.

9.3 The CPC contains explanatory note for each sector. The explanatory note for "Transport Service" which is relevant for the investigations is under section 7 and it contains 5 Divisions, namely, Land Transport Services (71), Water Transport Services (72), Air Transport Services (73), Supporting and Auxiliary Transport Services (74) and Post and Telecommunication Services (75). The Land Transport Service consists of two Groups, Transport services by railway (711) and Other Land Transport Service (712).

9.4 The Land, Water and Air transport services (Division 71, 72 and 73), all consists a class/subclass for transportation of containerized freight. In general, the transportation of containerized freight is explained as transportation (by rail/road/marine vessel/air) of individual articles and packages assembled and shipped in specially constructed shipping containers designed for ease of handling in transport. The related class/subclass for Land, Water and Air transport services are 71123, 7212 and 73220 respectively.

9.5 The Supporting and Auxiliary Transport Services contains 9 Groups. They are. Cargo Handling service (741), Storage and Warehousing Service (742), Supporting service for railway transport (743), Supporting Service for Road Transport (744), Supporting Service for Water Transport (745), Supporting Service for Air Transport (746), Travel Agency and tour operator services (747), freight transport agency service (748) and Other Supporting and Auxiliary Transport Service (749).

9.6 The cargo handling services consist of class container handling services (7411) and 'other cargo handling services (7419). The cargo handling services is defined as handling services provided for freight in special containers or in non-containerised freight, which include services of freight terminal facilities and stevedoring services for all modes of transport,

9.7 The freight transport agency service is explained as freight brokerage services, freight forwarding services (primarily transport organization or arrangement services on behalf of the shipper and consignee), ship and aircraft space brokerage services and air freight consolidation and break bulk services.

10. As per Para 2.52(a) of FTP, all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.

11. As per Para 3.04 of Hand Book of Procedures for FTP, the application for the SEIS reward for eligible services rendered, shall be filed in ANF-3B form.

12. As per ANF-3B form, the applicant undertakes to certify that he/she makes a true declaration therein and certifies that, the foreign exchange earned is on account of services rendered from India alone in terms of Para 9.51(i) and Para 9.52(H) of FTP and do not fall under ineligible category or service as per Para 3.08 and Para 3.09 of FTP and the Chartered Accountant/Cost and Works Accountant/Company Secretary certifies those declarations/claims.- after due examination.

13. As per Section 26) of Foreign Trade (Development & Regulation) Act, 1992, "services"" means service of any description which is made available to potential users and includes all the tradable services specified under the General Agreement on Trade in Services entered into amongst India and other countries who are party to the said Agreement and provided that, this definition shall not apply to the domain of taxation.

14.1 The international federation of freight forwarders, termed as "FIATA", prescribe FIATA model rule for freight forwarding services. It defines freight forwarding service, freight forwarder and carrier as below:-

"Freight Forwarding Services means services of any kind relating to the carriage, consolidation, storage, handling, packing or distribution of the goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the goods for official purposes, procuring insurance of the goods and collecting or procuring payment or documents relating to the goods." (Paragraph 2.1)

"Freight Forwarder means the person concluding a contract of Freight Forwarding Services with a Customer" (Paragraph 2.2)

"Carrier means any person actually performing the carriage of the Goods with his own means of transport (performing Carrier) and any person subject to carrier liability as a result of an express or implied undertaking to assume such liability (contracting Carrier)" (Paragraph 2.3).

14.2 The FIATA differentiates the freight forwarder's liability upon their relationship with customers as an agent or as a principal. In respect of the freight forwarder's liability other than principal, it states that the basis of liability is the freight forwarder's duty of care and when there is breach of his duty of care, he has to compensate the customer for loss or damage and he is not liable for acts and omission of third parties such as carrier, port authorities etc. (Paragraph 7 of FIATA Model Rule for Freight Forwarding Services)

14.3 In respect of freight forwarder's liability as Principal, the FIATA model of rules states that the freight forwarder by issuing transport document undertook to assume the carrier liability and he is responsible to his customers for the acts and omissions of third parties he has engaged for the performance of the contract of carriage or other services as if such acts and omission were his own and his rights and duties shall be subject to the provisions of the law applicable to the related mode of transport or service concerned. In other words, in respect of freight forwarders' liability for air transport, ocean freight and land transportation, the provisions applicable to relevant mode of transport (air, ocean or land) are made applicable to the freight forwarder. (Paragraph 7)

15.1 As per Manual on Statistics of International Trade in Services 2010 (MSITS 2010) published by United Nations Statistical Commission and as per the System of National Accounts (SNA), and Balance of Payment Manual [an internationally agreed standard set of recommendations on how to compile measures of economic activity], and related classification such as "Central Product Classification", and for GATS related negotiations the concepts related to trade in services are detailed as below:-.

i) It defines "services" as

"Services are the result of a production activity that changes the conditions of the consuming units, or facilitates the exchange of products or financial assets. These types of service may be described as change-effecting services and margin services, respectively. Change-effecting services are outputs produced to order and typically consist of changes in the conditions of the consuming units realized by the activities of producers at the demand of the consumers. They can also be referred to as "transformation services". Change-effecting services are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. By the time their production is completed, they must have been provided to the consumers."

Margin services result when, one institutional unit facilitates the change of ownership of goods, knowledge-capturing products, some services or financial assets between two other institutional units. Margin services are provided by wholesalers and retailers and by many types of financial institutions. Margin services resemble change-effecting services in that they are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. By the time their production is completed, they must have been provided to the consumers.

ii) With respect to service classification of transport, it states that Transport covers the process of carriage of people and objects from one location to another as well as related supporting and auxiliary services and rentals (charters) of carriers with crew. Transport can be classified according to mode of transport and what is carried passengers or freight. A transport provider may subcontract in order to be able to use the services of other operators in providing part of the final transport service. Such services should be recorded on a gross basis. Sea transport covers all international freight and passenger transport services undertaken by seagoing vessels but does not include transport by underwater pipelines (included in pipeline transport) and cruise fares (included in travel). Air transport covers all international freight and passenger transport services provided by aircraft, Space transport includes satellite launches. Rail Transport covers international transport by trains. Road transport covers international freight transport by lorries and trucks and international passenger transport by buses and coaches. Inland waterway transport covers international transport on rivers, canals and lakes. Included are waterways that are internal to one country and those that are shared among two or more countries. Pipeline transport covers the transport of goods in pipelines, such as the transport of petroleum and related products, water and gas. Other supporting and auxiliary transport services covers all other transport services that cannot be allocated to any of the components of transport services previously described. Other supporting and auxiliary transport services include services that are auxiliary to transport and not directly provided for the movement of goods or people: Those services that are not covered above and that relate to one mode of transport only are recorded under the other category of the appropriate mode of transport (sea, air, rail, road or inland waterway transport). Included, for example, are: cargo handling (such as loading and unloading of containers) that is billed separately from freight; storage and warehousing; packing and repackaging; towing not included in freight services;

pilotage and navigational aid for carriers; air traffic control; cleaning of transport equipment performed in ports. and airports; and salvage operations and associated agents' fees (including freight forwarding and brokerage services).

16. As per Article XXVII() of the General Agreement on Trade in Services, "service consumer" is defined as "any person that receives or uses a service."

17. From the combined reading of above mentioned provisions and definitions including Para 3.08 of FTP, it appears that SEIS scheme is subject to following eligibility and entitlement criteria:

a) Applicant of SEIS reward/scrip shall be actual providers of the notified service/services i.e. who actually renders or performs the services and not who arranges or otherwise deals with the notified service. (Para 3.08 (a) and Para 3.09 (1) of FTP)

b) Applicant of SEIS reward should have either supplied the notified service to the service consumer in any other country or supplied the notified service to service consumer of any other country in India. (Para 9.51 (1) & 9.51 (ii) of FTP)

c). Applicant should have earned the foreign exchange towards performing the notified service for which the SEIS reward is sought. (Para 9.50 & Para 3.09 (1) of FTP)

d) Reward is calculated at the rate notified in Appendix 3D on the net foreign exchange earned by the applicant in performing the service after deducting the expenses/payments made in foreign exchange relating to service sector in the financial year. (Para 3.08(a) and Para 3.08(d) of FTP).

e) Supporting service for maritime transport is only listed as services eligible for reward under Appendix 3E (Public Notice No.07/2015-20 dated 04/05/2016)."

f) In respect of services listed under Appendix 3B, the service should be rendered to a foreign liner in a customs notified area and the INR payment would be treated as deemed foreign exchange, provided the amount is received by the service provider from the agent out of amount remittable to the overseas principal or out of remittances to be sent by the overseas buyer (Public Notice No.07/2015-20 dated 04/05/2016).

g) Remittances received towards statutory dues/levies or remittances received for payment or payable to the third party service providers who provide the notified service to the service consumers of any other country in India are not eligible for claim of SEIS benefit. (Para 9.50 of FTP)

h) Documentary evidence of payments which are approved by RBI as deemed to be received in foreign exchange and deemed to be earned in foreign exchange are required for claiming SEIS benefit listed in Appendix 3B (Para 3.08(0) of FTP).

i) Earnings of income related to export of goods cannot be termed as service income for claim of SEIS-benefit (Para 9.09 (1)(g) of FTP)

j) The CPC being a decimal system, a reference to an aggregate category must be understood as a reference to all of the constituent parts of that category. Put differently, a reference to a three-digit CPC Group should, in the absence of any indication to the contrary, be understood as a reference to all the four-digit Classes and five-digit Sub-classes that make up the group; and a reference to a four-digit Class should be understood as a reference to all of the five-digit Sub-classes that make up that Class. (Interpretative Rules of CPC)

k) Transport as per CPC is classified according to mode of transport and what is carried passenger or freight in Division 71 to 73. The "supporting and auxiliary transport services" described in Division 74 of CPC covers all other transport services that cannot be allocated to any of the components of transport services previously described in Division 71 to 73. It only includes services that are supporting or auxiliary to transport and not for services provided for the movement of goods or people. In other words, the income related to international trade in service of this group cannot include income related to freight, which is provided for movement of goods.

l) An agency is a consensual relationship created by contract or by law where one party, the principal, grants authority to another party, the agent, to act on behalf of and under the control of the principal to deal with third party. When the relationship between the freight forwarder and his customer or the relationship between the freight forwarder and the shipping line/airline are on principal to principal basis and the freight forwarder issues "contract of carriage" and undertakes to assume the carrier

liability with his customers, the income derived as "freight" or "others" cannot be termed as income under "freight transport agency service!".

m) "Freight transport agency services" (CPC 7480, 74800) are described as "Freight Brokerage services, freight forwarding services (primarily transport, organisation or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break-bulk services." The description of services does not include the actual shipping or movement of goods by airline or shipping line (or any other means) for any of these service providers and thereby the charges related to it are excluded from the "freight transport agency service".

n) Under Maritime Transport Service, for Ocean Freight, the reward is not eligible for the goods carried by foreign liner as it would be evident that carriage by foreign vessel would become import of service (Note 4 of Appendix 3D). Under Air Transport Service, "freight transportation of air" is not included in Appendix 3D

o) The Appendix 3B excludes all modes of freight transport (Division 71 to 73 of CPC) and services auxiliary to air and land mode of transport.

18. The criteria listed at the above paragraph are further supported by the Trade Notice 11/2015- 20 dt. 21.07.2016 issued by DGFT stated that only foreign exchange remittances earned as amounts in lieu of services rendered by the Service Exporter would be counted for computation of the entitlement under the scheme.

C: Investigation

19. In pursuance of the intelligence gathered, under summon proceedings, the copies of ANF-3B Form filed before the DGFT, financial statements filed before the Ministry of Corporate Affairs for the year 2015-16, and 2016-17 and sample copies of invoices issued were called for and obtained from M/s. CPLIPL vide their letter/email dated 01/06/2018 and 14/06/2018. The ANF- 3B Form as submitted by M/s. CPLIPL to this office for the years 2015-16 and 2016-17 were filed before the Regional Authority; Directorate General of Foreign Trade, New Delhi on 02/01/2018 and 10/01/2018 respectively. Shri Deepak Bhalla, Chartered Accountant, D: Bhalla & Associates, Chartered Accountants, Flat No.4B, F/F, Deewan Estate, Plot No. 15, Galli. No.2, Bhagwati Garden, New Delhi has certified the claim made by M/s CPLIPL. Along with the application, they have filed Annexure A and Annexure C listing the invoices relating to service rendered for calculating the foreign exchange earnings for services covered under Appendix 3D and Appendix 3B respectively..

20. In the ANF-3B Form as received from M/s. CPLIPL, M/s CPLIPL had claimed to have rendered

- "cargo handling service - 9(D)(a)" "storage and warehousing services - 9(D)(b)" and "freight transport agency services-9(D)(o)" listed in Appendix 3D and
- "terminal handling service XIV", "cargo dispatch services XVI" and "cargo storage services - XVII" listed in Appendix 3E as "supporting service for maritime transport - 9(A)(f)"

under Para 9.51(i) of the FTP, 2015-20 and mentioned the earnings for the service rendered by them as below;

TABLE B

Year		Gross foreign exchange earned in USD	Total expenses/payment/remittances of foreign exchange in USD	Net Foreign exchange earned in USD
2015-16	Appendix 3D	37,66,872.02	0	37,66,872.02
	Appendix 3E	62,42,503.92	25,80,786.04	36,61,717.88
2016-17	Appendix 3D	58,89,055.85	0	58,89,055.85

	Appendix 3E	87,09,393.61	41,07,230.90	46,02,162.74
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21. The statement of foreign exchange received against service rendered by M/s CPEIPI in the said ANF-3B Form given in Annexure A, wherein the invoices issued by M/s CPLIPL with earnings in USD for claim under Appendix 3D were declared. Similarly, the statement of INR received against services rendered by M/s CPLIPL in the said ANF-3B form given in Annexure C, wherein the value of realized exports paid-in Indian rupees for claim under Appendix 3E were declared. Both the annexures were duly certified by M/s CPLIPL and the Chartered Accountant.

22. M/s CPLIPL worked out the net entitlement of SEIS benefit for the years 2015-16 and 2016- 17 as 2,41,69,659.78/- and 3,38,34,179.99/- respectively in the said ANF-3B Form and the said claim was examined, verified and certified by the Chartered Accountant as correct.

23. In the ANF-1, filed along with the ANF-3B, they have claimed that the service rendered by M/s CPLIPL as customs house agent service, cargo handling, service, business auxiliary services, transport of goods by road, goods transport agency and legal-consultancy services.

24. M/s CPLIPL in their application filed during the years 2015-16 and 2016-17 have further:

- Claimed that SEIS benefit was only for services rendered by them under para 9.51(i) of FTP, 2015-20 and their services were listed in Appendix-3D or listed in Appendix 3E.
- They had undertaken not to have taken benefit on in-eligible services as given in para 3.09 of FTP.
- Claimed that they are service provider exporter and have supplied the services under transport services (supporting service for maritime transport) of Appendix 3E and realised payment in INR which can be treated as receipt in Deemed Foreign Exchange as per Para 3.08(c) of [FTP 2015-20](#).

25. The Regional Authority, DGFT, New Delhi vide granted scrips for duty credit for Rs. 2,41,69,659.78/- and Rs. 3,38,34,179.99/- under the category of license "SEIS". M/s. CPLIPL had transferred the scrip to M/s. Noble Natural resources and M/s. Cargill India Pvt. Ltd.

26. In the statement dated 27/07/2018, Shri Pramod re-worked their eligibility for SEIS benefit as INR 45,28,172/- and Rs.34,48,255.71 for the years 2015-16 and 2016-17 respectively and undertook to pay the ineligible scrip benefit availed within 6 months. Accordingly, during the course of investigations M/s CPLIPL paid back voluntarily an amount of 5,00,27,412/- on various dates as detailed in Annexure-II to this Show Cause Notice as wrongly availed SEIS benefit.

27. Summons dated 26/02/2020 were issued to Shri Asitha Udwela, Director, who has signed the ANF-3B form and also to Shri Vikram Paul, Managing Director respectively for recording statement under section 108 of the Customs Act, 1962. In this connection, Shri Rajiv Singh, Managing Director in his letter dated 27/02/2020 has replied that Shri Asitha Udwela and Shri Vikram Paul' were not presently working in M/s CPLIPL; that the statement made by Shri Pramod Mourya is true and correct and he is authorised to deal with the matter on behalf of M/s CPLIPL and M/s CPLIPL accepts the same based on which they have refunded the excess benefit received by them.

28. Shri Deepak Bhalla, M/s D.Bhalla & Associates, Chartered Accountant who examined and certified the claim of M/s CPLIPL before DGFT in his voluntary statement dated 28/01/2020 had interalia stated that-

- He had verified sample invoices listed in Annexure A (Appendix 3D claim) and had given the certificate of Chartered Accountant; that he had co-related the invoices with the FIRC or, evidences of foreign exchange mentioned therein;
- The management of M/s. CPLIPL had informed him that they had appointed a consultant to examine the applicability of their claim under the FTP, 2015-20 and hence he had not verified the claim of eligibility of services under para 3.09 of the FTP, 2015-20.
- When he was shown the provisional CPC explanations for group 741, 742 and 748 and was asked to explain the how the services rendered by M/s CPLIPL would fit in the above group as given in Public Notice No.3/2015-20, to which he stated that he did not know anything about

public notice no.3/2015-20 and CPC code mentioned in the certificate and reiterated that he has given the certificate without going into the provisions of the FTP;

- When he was shown the Public Notice No.7/2015-20 dated 4/5/2016 and was asked to explain how the services of M/s CPLIPL would fit in "terminal handling service XIV", "cargo dispatch services XVI" and "cargo storage services - XVII" listed in Appendix 3E, to which he reiterated that he had given the certificate without reading the FTP, 2015- 20 or the CPC;
- When he was shown paragraph 3.09 of the FTP, 2015-20 and the invoice number CPB0904107/2017 of M/s CPLIPL to M/s Logenix International LLC, USA and was asked to explain as how he has certified the air freight as notified service under Appendix 3D, to which he stated that he had certified based on certification by M/s CPLIPL and oral opinion given by their consultant; that now on reading the Appendix 3D, he admitted that "air freight" is not listed as notified service in Appendix 3D;
- When he was shown the invoice number CPCC901694/2017 dated 02/02/2017 raised by M/s CPLIPL to M/s Qubico, Belgium and was asked to explain whether the ocean freight benefit claimed under 9.51(1) of the FTP, 2015-20 was rendered through Indian flag vessel, to which he stated that he did not know;
- When he was shown the invoice number CPCC907055/2015 dated 27/04/2015 along with Appendix 3E (Public notice no:7/2015-20) and was asked to explain whether ocean. freight is listed in Appendix 3E and whether the ocean freight was rendered by M/s CPLIPL to foreign liner, he stated that ocean freight is not listed as eligible service in Appendix 3E and M/s CPLIPL has not rendered any service to foreign liner; When he was shown the invoice number CPBL906791/2016 dated 11/05/2016 (claimed benefit under Appendix 3E for earnings in INR) along with Appendix 3E and was asked about claim of air freight and air freight related handling expenses under Appendix 3E, he stated that air freight, earned in INR, mentioned in the said 'invoice is not listed in Appendix 3D or 3E and air freight-related handling charges mentioned in the said invoice, earned in INR, which can be termed as supporting service for air transport is not listed in Appendix 3E;
- he was shown sample invoices and, was asked to explain how M/s CPLIPL has rendered/Performed terminal handling services and shipping, line services for ocean related consignments and similarly terminal services and fork lift charges for air related consignments, to which he stated that these charges are receipted charges wherein services were rendered by terminals/shipping line/airline; that M/s CPLIPL has paid the service providers and have claimed the amount from their customers, may be with or without markup.
- It was brought to his notice that it appears M/s CPLIPL has mis-re-presented or mis- stated before the DGFT in the ANF-3B form, filed for SEIS claim and wrongly claimed SEIS benefit by-
 - o Availing SEIS benefit on "ocean freight", "air freight" and "air freight -related handling income" as services listed in Appendix 3E,
 - o Availing SEIS benefit on "ocean freight" received in foreign exchange' from abroad where ocean freight was not rendered through Indian Flag-vessel,
 - Availing SEIS benefit on "air freight" received inf foreign exchange as service listed. in Appendix 3D-and,
 - o Availing SEIS benefit on receipted charges such as "terminal handling income", shipping line charge" etc., without rendering any service.

and for availing wrong benefits, M/s D.Bhalla and Associates had certified the claim as correct. For this he stated that, he as partner in M/s D.Bhalla and Associates issued the certificate in good faith believing the consultant and the management of the company. without going into the provision of the Foreign Trade Policy and its public notices and admitted that it was his mistake and the consultant and management has put facts before him wrongly and made him to sign the certificate and for signing the certificate. he has got Rs.50,000/- from them.

29. Scrutiny of invoices listed in Annexure A and Annexure C of the ANF-3B form filed for the years 2015-16 & 2016-17:

29.1 As seen from the paragraph 20 above, M/s CPLIPL in the ANF-3B form filed have claimed benefit under Appendix 3D for "cargo handling service - 9(D)(a)" "storage and warehousing services-9(D)(b)" and "freight transport agency services-9(D)(c)". The invoices related to the income under the above services were listed in Annexure A and against every invoice, M/s CPLIPL has claimed those invoices

consist of income related to all the above services. Upon perusal of the invoices raised by M/s CPLIPL to its customers abroad as listed in Annexure A, it is observed that: .

- The invoices were related to inbound or outbound cargo through airline and shipping lines.
- The invoices were raised against agent/ associates in foreign country, as customers and were invoiced in USD for both incoming and outgoing cargo for payments to be made in foreign exchange.
- The sea freight consignment invoice shows standard ocean base charges such as ocean freight, insurance etc., and land-based charges such as on carriage charges, terminal handling fee, documentation fee, cargo handling fee etc.
- The air freight consignment invoice shows standard air base charges such as air freight, fuel surcharge, security charges etc., and land-based charges such as terminal handling charges, x-ray charges, documentation fee, cargo handling charges etc.
- In case the invoices were raised to their agent/associate abroad they include profit sharing charges along with other charges in the invoice.
- In case of standard ocean base charges and standard air base charges, they have not charged service tax in India.

30. Similarly, as seen from the paragraph 20 above, M/s CPLIPL in the ANF-3B form filed have claimed benefit under Appendix: 3E for "terminal handling service XIV", "cargo dispatch services XVI" and "cargo storage services - XVII" as "supporting service for maritime transport -9(A)(f). The invoices related to the income under the above services were listed in Annexure C and against every invoice, M/s CPLIPL has claimed those invoices consist of income related to all the above services. Upon perusal of the invoices raised by M/s CPLIPL to its customers in India as listed in Annexure C to ANF-3B form, it is observed that

- The invoices were raised against the Indian customers for both incoming cargo (imports) and outgoing cargo (exports) for payments to be made in INR.
- The sea freight consignment invoice shows standard ocean base charges such as ocean freight, insurance etc., and land-based charges such as inland haulage charges, terminal handling fee, documentation fee, cargo handling fee, on carriage cost etc.
- The air freight consignment invoice shows standard air base charges such as air freight, fuel surcharge, security charges etc., and land-based charges such as terminal handling charges, on carriage charges, x-ray charges, documentation fee, cargo handling charges, ADC charges (airport development charges) etc.
- In case of standard ocean base charges and standard air base charges, they have not charged service tax in India.

31. It appears from the careful scrutiny of the Annexure A and C filed with the SEIS claim by M/s CPLIPL that:

a) They have shown the standard airbase charges and land based charges related to air freight consignment received from the Indian customers, as their earnings for claim under Appendix 3E, towards rendering "supporting service for maritime transport" as observed in the invoice number CPBL906791/2016 dated 11/05/2016 dated, wherein the total income stated was 3,61,517/- (excluding tax) as deemed foreign exchange, which is listed at sl.no.1880 of Annexure C to ANF-3B form filed for the year 2016- 17.

b) They have shown standard ocean base charges and land based charges related to ocean freight consignment for goods-sent from India through foreign line, charges. received from Indian export customers, as their earnings for claim under Appendix 3B, towards rendering "supporting service for maritime transport" as observed in the invoice number CPMA906155/2015 dated 08/04/2015, goods consigned through foreign line MSC Sierra II wherein the total income stated was 16,47,159.05/-; (excluding tax) as deemed foreign exchange which is listed at S1.No.247 (3,88,431.75) and Sl.No.248 (12,58,727.30) of Annexure C to ANF-3B form filed for the year 2015-16. The services rendered as stated in the above mentioned invoice are given in Table -D below:-

c). They have shown standard ocean base charges and land based charges, related to ocean freight consignment brought into India by foreign line, charges' received from importers in India, as their earnings for claim under Appendix 3E, towards rendering "supporting service for maritime transport" as observed in the invoice number. CPBL907055/2015 dated 27/04/2015, for goods brought through vessel

APL; Austria wherein the total income stated was 5,74,830/- (excluding tax) as deemed foreign exchange, which is listed at sl.no.1166. of Annexure C to ANF-3B form filed for the year 2015-16.

d) They have shown standard air base charges, received from affiliate concerns at abroad in USD as their claim under Appendix 3D, towards rendering "freight transport agency service" as observed in the invoice number CPBL913659/2015 dated 21/08/2015 wherein the total income stated was \$23,609,78 and remittances received as \$22,691.61, which is listed at sl.no.2856 of Annexure A to ANF-3B form filed for the year 2015-16.

e) They have shown standard ocean base charges received from affiliate concerns at abroad in USD as their claim under Appendix 3D, towards rendering "freight transport agency service" as observed in the invoice number CPAM901197/2017 28/01/2017 wherein the total income stated was \$2,425/- excluding tax and remittances received as \$2,425/-, which is listed at sl.no.10838 (\$2,325/-), sl.no.10839 (\$25/-) and sl.no.10839 (\$75) of Annexure A to ANF-3B form filed for the year 2016-17.

f) They have shown land based ocean related charges such as "terminal handling charges" "demurrage charges" received from affiliate concerns at abroad in USD as their claim under Appendix 3D, towards rendering "cargo handling service" as observed in the invoice number CPAM916037/2016 dated 14/10/2016 wherein "the total income stated was \$527.5/- excluding tax and remittances received as USD \$527.41/- which is listed at sl.no.7334 (\$379/-), 7335(\$125/-) and 7336(\$23:41) of Annexure A to ANF-3B form filed for the year 2016-17.

Para 3.08 of the FTP, service provider of notified service is only eligible for SEIS benefit. The services of freight rendered by a foreign line is not a notified service and hence the service rendered is not, eligible under Appendix 3D and consequently cannot be eligible under Appendix 3E also.

o Even in case the shipment is made through Indian Shipping line and the amount was received in INR even then the freight transportation under CPC 7212 is not notified as eligible service under Appendix 38.

When the goods are transported through a foreign line, the freight service is imported by an Indian customer for transport goods. Claiming SEIS benefit violates the objective of the Scheme itself. (Para 3.07 of the FTP, 2015-20) It appears that the freight charge shown in the table at para 31 (b) was meant for transporting the goods laden container from Chennai to Uganda. This implies the freight service originates from the boundary of India and destined to boundary away from India. The services listed in Appendix 3E as discussed in para 8 above, is eligible only when the service is rendered in the customs notified area (within the boundary of India).

Hence, for the above reasons all the invoices related to service income on ocean freight of exported goods, listed in Annexure C, appears to be ineligible for SEIS benefit and M/s CPLIPL to claim the benefit, appears to have mis-declared the income as "supporting service for maritime transport".

32.3 Ineligibility of SEIS on land based service charges on export goods shown as eligible service income under Appendix 3B:

Upon scrutiny of invoice at para 31 b) above, it is seen that the land-based service charges include terminal handling charges, on carriage charges, inland haulage charges etc., all related to ocean cargo, on which SEIS benefit was taken as "terminal handling service", "cargo dispatch service" and "cargo storage service", listed in Appendix 3E under "supporting service for maritime transport". The said charges are ineligible for SBIS benefit for the reasons mentioned 'below:-

M/s CPLIPL do not render service of terminal handling. It is done by the Ports and other agencies at Ports. M/s CPLIPL pays the Ports, the terminal handling charges and bills the : exporter/importer for reimbursement. Thus, the terminal handling charges is a receipted charge for which M/s CPLIPL has claimed SEIS benefit. As per Para 3.08 of the FTP, service provider of notified service is only, eligible for SEIS benefit."

On carriage charges are the charges for inland transportation of containers that takes place after the container is discharged from the vessel at the port of discharge. In this case, it is the transportation cost incurred for transportation of container after the vessel lands at Mombasa Port. The SBIS benefit is eligible only for service rendered from India to any other country (Mode-1) or from India to a service consumer of any other country (Mode- 2). The SEIS benefit is not eligible for mode 3, that is, service rendered from India through commercial presence in any other country. Moreover, in this case, the benefit is taken under Appendix 3B for service rendered under Mode 3, when the eligibility under

Appendix 3E is restricted to service performed to a foreign liner in a custom notified area. M/s CPLIPL have claimed charges related to inland haulage service received from his customers. The haulage service was done by road or through rail.

O In case, the service was done by rail, the service provider was the rail operators and not M/s CPLIPL. M/s CPLIPL pays the rail operator and bills "the exporter/importer for reimbursement. The inland haulage charge is a receipted charge for which M/s CPLIPL has claimed SEIS benefit. As per Para 3.08 of the FTP, 2015-20, service provider of notified service are only eligible for SEIS benefit. However,, for receipted charges M/s CPLIPL is not the service. provider : and the service is also "rail transport service" and not "supporting service for maritime transport". Further, any charges upto port of loading is considered to be FOB value of the goods. The Para 9.09(1)(g) of the FTP, 2015-20, charges related to export of goods cannot be taken into account for calculation of entitlement under the SEIS scheme.

In case, the service was done through roadways, M/s CPLIPL could have rendered the service by themselves and received payment in INR from the exporter. Any charge upto the Port of loading is considered to be part of FOB value of the exported goods. As per Para 9.09(1)(g) of the FTP, 2015-20, income related to export of goods cannot be termed as income for calculation of entitlement under SEIS and in any case the service was not rendered to a foreign liner, but the exporter in India.

It is reiterated that the land-based charges such as inland haulage charges incurred by the exporter upto Port are part of FOB value of the goods. For the said value, the exporter claims MEIS benefit. Herein, M/s CPLIPL, as service provider, has claimed SEIS benefit for the said income. Hence, for the same amount both MEIS and SEIS are given in contrary to the objective of the Export Scheme itself. Similarly, for the "terminal handling charges" the benefit was claimed by Port or other agencies at Port, who render the service.

Thus, it appears to be clear that the claim on service income related to terminal handling charges, on-carriage charges and inland-haulage charges against the invoices listed in Annexure C of ANF-3B are ineligible as the service per-se was not rendered by them and were only a receipted charge.

32.4 Ineligibility of SEIS on Ocean Freight of import goods under Appendix 3B :

Upon scrutiny of para 31c) above, it appears that there were ocean freight charges, paid by the importer for which SEIS benefit is claimed under "supporting service for maritime transport" under Appendix 3E.

It appears that the ocean freight charges received from the importer for consignment transported from Kaohsiung in Taiwan to Chennai through a foreign line as eligible income under Appendix 3E. The importer paid the freight charges in INR. Necessarily, the freight is imported from foreign line (who actually performed the service), by the freight forwarder and sold to importer in India. Claiming SEIS benefit on this income vitiates the basic objective of SEIS scheme (Para 3.07 of the FTP, 2015-20)..

It appears that the ocean freight charges received from customers in INR were shown as eligible income under Appendix 3B. As discussed above, the Appendix 3E lists only "supporting service for maritime transport" and the ocean freight is for transportation of goods and cannot be termed as services related to auxiliary or supporting service for transport.

It appears that the freight charge shown there was received from the importer in India in INR. The entire transaction does not generate any foreign exchange as earning, which ought to have been paid in INR. Hence, there cannot be deemed foreign exchange as per paragraph 3.08(c) of the FTP, 2015-20.

Thus, it appears, the ocean freight on import goods claimed as benefit against the invoices listed in Annexure C of ANF-3B are ineligible as the service per se is imported and not exported and the service do not generate any foreign exchange as earning.

32.5 Ineligibility of SEIS on Cargo Handling service rendered on imported goods under Appendix 3E :

Upon scrutiny of para 31 c) above, it appears that there were land-based cargo handling expenses such as terminal charges etc., paid by the importer for which SEIS benefit is claimed under "supporting service for maritime transport" under Appendix 3B

In respect of terminal handling charges, the port render the service and it is only a receipted charge for M/s CPLIPL."

Further, as claimed by M/s. CPLIPL in the ANF-3B application form, the 6 services for which SEIS is claimed as detailed in Para 20 above, it appears that M/s CPLIPL is ineligible to claim SEIS for these services and the reasons are analysed as below:

32.1 Ineligibility of SEIS claim for Air freight and Air freight related cargo handling charges under Appendix 3B:

Upon scrutiny of the invoice at para 31 a) above, it appears that there were air freight charges and air freight related cargo handling charges, where payments in INR received were shown as eligible income under Appendix 3E and these charges were mis-declared in Annexure C to ANF- 3B as services rendered as supporting service for maritime transport. The Appendix 3E, as discussed in paragraph (8) above lists only supporting service for maritime transport and hence, the service amount received as air freight charges and air freight cargo related charges in INR cannot be considered as deemed to be received in foreign exchange and deemed to be earned in foreign exchange for the purpose of claiming SEIS benefit. Hence, all the invoices related to air freight charges listed in Annexure C and claimed SEIS benefit appears to be ineligible, as they are not notified under Appendix 3D or Appendix 3E and the invoices related to air freight cargo handling charges listed in Annexure C and claimed SEIS benefit appears to be ineligible under SEIS, as they are not notified under Appendix 3F

32.2 Ineligibility of SEIS on Ocean Freight of export goods under Appendix 3E:

Upon scrutiny of invoice at para 31 b) above, the ocean freight service income, where payments were received in INR from exporter were shown as eligible income under Appendix 3E by M/s CPLIPL under "supporting service for maritime transport". It appears the said income is not eligible for SEIS benefit for all the reasons mentioned below:-

As discussed in Paragraph 8 above, the Appendix 3E lists only "supporting service for maritime transport". The Ocean freight is the transport service directly provided for movement of goods and cannot be termed as services that are supporting or auxiliary to transport service.

It appears that the freight charges shown there was intended for, transporting the consignment through a foreign liner to destination outside India. Necessarily, M/s CPLIPL has paid amount to foreign line to transport the export consignment to Mombasa, Uganda. It implies, the service of freight was imported from foreign line. The service listed in Appendix 3B, as discussed in paragraph (8) above, are eligible only when the services are rendered (exported) to a foreign liner.

It appears that the freight charges were incurred to transport the goods through a foreign line and the amount towards, freight charges is claimed from the Indian exporter.

As per Appendix 3D, the freight transportation under CPC 7212 is eligible for SEIS benefit only when it is rendered through an Indian shipping line. As per

Para 3.08 of the FTP, service provider of notified service is only eligible for SEIS benefit. The services of freight rendered by a foreign line is not a notified service and hence the service rendered is not, eligible under Appendix 3D and consequently cannot be eligible under Appendix 3E also.

o Even in case the shipment is made through Indian Shipping line and the amount was received in INR even then the freight transportation under CPC 7212 is not notified as eligible service under Appendix 38.

When the goods are transported through a foreign line, the freight service is imported by an Indian customer fo transport goods. Claiming SEIS benefit violates the objective of the Scheme itself. (Para 3.07 of the FTP, 2015-20) It appears that the freight charge shown in the table at para 31 (b) was meant for transporting the goods laden container from Chennai to Uganda. This implies the freight service originates from the boundary of India and destined to boundary away from India. The services listed in Appendix 3E as discussed in para 8 above, is eligible only when the service is rendered in the customs notified area (within the boundary of India).

Hence, for the above reasons all the invoices related to service income on ocean freight of exported goods, listed in Annexure C, appears to be ineligible for SEIS benefit and M/s CPLIPL to claim the benefit, appears to have mis-declared the income as "supporting service for maritime transport".

32.3 Ineligibility of SEIS on land based service charges on export goods shown as eligible service.income under Appendix 3B:

Upon scrutiny of invoice at para 31 b) above, it is seen that the land-based service charges include terminal handling charges, on carriage charges, inland haulage charges etc., all related to ocean cargo, on which SEIS benefit was taken as "terminal handling service", "cargo dispatch service" and "cargo storage service", listed in Appendix 3E under "supporting service for maritime transport". The said charges are ineligible for SBIS benefit for the reasons mentioned 'below:-

M/s CPLIPL do not render service of terminal handling. It is done by the Ports and other agencies at Ports. M/s CPLIPL pays the Ports, the terminal handling charges and bills the : exporter/importer for reimbursement. Thus, the terminal handling charges is a receipted charge for which M/s CPLIPL has claimed SEIS benefit. As per Para 3.08 of the FTP, service provider of notified service is only, eligible for SEIS benefit."

On carriage charges are the charges for inland transportation of containers that takes place after the container is discharged from the vessel at the port of discharge. In this case, it is the transportation cost incurred for transportation of container after the vessel lands at Mombasa Port. The SBIS benefit is eligible only for service rendered from India to any other country (Mode-1) or from India to a service consumer of any other country (Mode- -2). The SEIS benefit is not eligible for mode 3, that is, service rendered from India through commercial presence in any other country. Moreover, in this case, the benefit is taken under Appendix 3B for service rendered under Mode 3, when the eligibility under Appendix 3E is restricted to service performed to a foreign liner in a custom notified area. M/s CPLIPL have claimed charges related to inland haulage service received from his customers. The haulage service was done by road or through rail..

O In case, the service was done by rail, the service provider was the rail operators and not M/s CPLIPL. M/s CPLIPL pays the rail operator and bills "the exporter/importer for reimbursement. The inland haulage charge is a receipted charge for which M/s CPLIPL has claimed SEIS benefit. As per Para 3.08 of the FTP, 2015-20, service provider of notified service are only eligible for SEIS benefit. However,, for receipted charges M/s CPLIPL is not the service. provider : and the service is also "rail transport service" and not "supporting service for maritime transport". Further, any charges upto port of loading is considered to be FOB value of the goods. The Para 9.09(1)(g) of the FTP, 2015-20, charges related to export of goods cannot be taken into account for calculation of entitlement under the SEIS scheme.

In case, the service was done through roadways, M/s CPLIPL could have rendered the service by themselves and received payment in INR from the exporter. Any charge upto the Port of loading is considered to be part of FOB value of the exported goods. As per Para 9.09(1)(g) of the FTP, 2015-20, income related to export of goods cannot be termed as income for calculation of entitlement under SEIS and in any case the service was not rendered to a foreign liner, but the exporter in India.

It is reiterated that the land-based charges such as inland haulage charges incurred by the exporter upto Port are part of FOB value of the goods. For the said value, the exporter claims MEIS benefit. Herein, M/s CPLIPL, as service provider, has claimed SEIS benefit for the said income. Hence, for the same amount both MEIS and SEIS are given in contrary to the objective of the Export Scheme itself. Similarly, for the "terminal handling charges" the benefit was claimed by Port or other agencies at Port, who render the service.

Thus, it appears to be clear that the claim on service income related to terminal handling charges, on-carriage charges and inland-haulage charges against the invoices listed in Annexure C of ANF-3B are ineligible as the service per-se was not rendered by them and were only a receipted charge.

32.4 Ineligibility of SEIS on Ocean Freight of import goods under Appendix 3B :

Upon scrutiny of para 31c) above, it appears that there were ocean freight charges, paid by the importer for which SEIS benefit is claimed under "supporting service for maritime transport" under Appendix 3E.

It appears that the ocean freight charges received from the importer for consignment transported from Kaohsiung in Taiwan to Chennai through a foreign line as eligible income under Appendix 3E. The

importer paid the freight charges in INR. Necessarily, the freight is imported from foreign line (who actually performed the service), by the freight forwarder and sold to importer in India. Claiming SEIS benefit on this income vitiates the basic objective of SEIS scheme (Para 3.07 of the FTP, 2015-20).

It appears that the ocean freight charges received from customers in INR were shown as eligible income under Appendix 3B. As discussed above, the Appendix 3E lists only "supporting service for maritime transport" and the ocean freight is for transportation of goods and cannot be termed as services related to auxiliary or supporting service for transport.

It appears that the freight charge shown there was received from the importer in India in INR. The entire transaction does not generate any foreign exchange as earning, which ought to have been paid in INR. Hence, there cannot be deemed foreign exchange as per paragraph 3.08(c) of the FTP, 2015-20.

Thus, it appears, the ocean freight on import goods claimed as benefit against the invoices listed in Annexure C of ANF-3B are ineligible as the service per se is imported and not exported and the service do not generate any foreign exchange as earning.

32.5 Ineligibility of SEIS on Cargo Handling service rendered on imported goods under Appendix 3E :

Upon scrutiny of para 31 c) above, it appears that there were land-based cargo handling expenses such as terminal charges etc., paid by the importer for which SEIS benefit is claimed under "supporting service for maritime transport" under Appendix 3B

In respect of terminal handling charges, the port render the service and it is only a receipted charge for M/s CPLIPL."

In these transactions, the importer consumes the service and pays in INR. All the actual service providers viz., the Port, Terminal etc., who rendered the cargo handling service are within the customs frontier of India. To explain, the service is provided by resident operator of the compiling economy (India), inside the customs frontier of the importing economy on the compiling economy imports. Hence the service is not as per the manner in paragraph 9.510) and 9.51(ii) of the FTP, 2015-20 and such service do not constitute export in terms of section 2(e)(ii) of the Foreign Trade (Development & Regulation) Act, 1992.

- Thus, for the reasons stated above, the service income due to cargo handling service on imported goods against invoices listed in Annexure C, taken benefit under Appendix 3E are not eligible for SEIS benefit.:

32.6 Ineligibility of SETS benefit on ocean freight and air freight under Appendix 3D.: Upon scrutiny of para 31 d) and para 31 e) above, the standard air base charges and standard ocean base charges, received from affiliate concerns at abroad in foreign exchange were taken as claim under Appendix 3D, as service rendered under "freight transport agency service". It appears the said income is not eligible for SEIS benefit for the reasons mentioned below:-

- It appears that standard air base charges. and standard ocean base. charges are air freight charges or ocean freight charges for movement of goods. As discussed in paragraph 17(k), it appears the said service cannot be termed as supporting and auxiliary transport services as, the supporting and auxiliary transport services include .services. that are auxiliary to transport and not services directly provided for the movement of goods. It appears that the air freight charges were incurred to transport the goods through an airline. The air freight transportation under CPC 732 is not listed as notified service under Appendix 3D. As per Para 3.08 of the FTP, 2015-20 service provider of notified service is only eligible for SEIS benefit.

It appears that the ocean freight charges were incurred to transport the goods from Nhava Sheva to Santos (Brazil) through foreign shipping line. The ocean freight transportation under CPC 7212 is listed as notified service in Appendix 3D only for services rendered through an Indian Flag Carrier,. As per para.3.08 of the FTP, 2015-20, service provider of notified service is only eligible for SEIS benefit.

It appears that when the air freight charges and ocean freight charges were incurred for :-carriage.of goods by foreign airline/shipping line from India, the service become import of service. Necessarily M/s CPLIPL would have paid the airline/shipping line'in INR for importing such service which is getting reimbursed in foreign exchange by their associate concern. The objective of SEIS is to encourage export of notified services:from. India. Hence it vitiates the basic objective of SEIS.

M/s CPLIPL is a freight forwarder, following the Standard Trading Conditions of Federation of Freight Forwarders' Association in India and FIATA Rules as a member of FIATA. As per the Standard Trading Conditions of Federation of Freight Forwarders Association in India; M/s CPLIPL is not a performing carrier as they do not transport goods in their own means of transport. All the transactions were as a contractual carrier wherein they undertake to the customer as transporter and transport the goods with the aid of performing-carriers. As per the paragraph 7 of the FIATA model rule for-freight forwarding services, (discussed in paragraph 14.3 above), these transactions with the customers have to be considered on Principal to principal basis and not as an agent, as they undertake to assume the liability of a carrier. There by it appears that the collection of freight charges is towards fulfilling the obligation of transporting the goods from Indian origin to foreign destination or vice versa and necessarily a charge for freight transportation and not for providing auxiliary service or agency service to classify the service rendered as "freight transport agency service".

Hence, from the above it appears to be clear that the air freight charges related to service rendered through any airline and ocean freight charges related to service rendered through foreign shipping line taken for SEIS benefit for invoices listed against Annexure A to ANF-3B form filed by M/s CPLIPL are ineligible as they were transportation service for movement of goods, mis-declared as "freight transport agency service".

33. Upon scrutiny of paragraph 31(f) above, it is noticed that the terminal handling charges, on-carriage charges, received from affiliate concerns at abroad in foreign exchange were taken as claim under Appendix 3D, as service rendered under "cargo handling service", "storage warehousing service" and "freight transport agency service". It appears the said income is not eligible for SEIS benefit for the reasons mentioned below:-

M/s CPLIPL do not render service of terminal handling. It is done by the Ports and other agencies at Ports. M/s CPLIPL pays the Ports the terminal handling charges and bills the affiliate for reimbursement. Thus, the terminal handling charges is a receipted charge for which M/s CPLIPL has claimed SEIS benefit. As per Para 3.08 of the FTP service provider of notified service is only eligible for SEIS benefit. However, for receipted charges M/s CPLIPL is not the service provider.

M/s CPLIPL have claimed benefit on "on carriage" charges claimed from the agents/ associates in foreign exchange. As discussed in paragraph 30 above, on carriage charges is the charge for inland transportation of containers from the destination port to the location of the customer. The service rendered is mode-3 under 9.51(iii) of the FTP, 2015-20 and is not eligible for SEIS under Para 3.08 (a) of the FTP, 2015-20.

M/s CPLIPL have claimed charges related to inland haulage service received from his affiliate abroad. The haulage service was done by road or through rail. In case, the service was done by rail, the service provider was the rail operators and not M/s CPLIPL. M/s CPLIPL pays the rail operator and bills the affiliate for reimbursement. The inland haulage charge is a receipted charge for which M/s CPLIPL has claimed SEIS benefit. As per Para 3.08 of the FTP, 2015-20, service provider of notified service are only eligible for SEIS benefit. However, for receipted charges M/s CPLIPL is not the service provider;

Therefore, it appears that the terminal handling charges are receipted charge for M/s CPLIPL and the claim of SEIS benefit on such charges on invoices listed in Annexure A under Appendix 3D is not correct.

34. Declaration by M/s CPLIPL as member of FIATA.

As discussed in paragraph 14 above, FIATA prescribe model rule for freight forwarding services. In FIATA, M/s CPLIPL is a member and naturally they have to abide by the model rule. The FIATA differentiate the freight forwarder's liability upon their relationship with customers as an agent or as a principal. In respect of the freight forwarder's liability as an agent, the freight forwarder is not liable for acts and omission of third parties viz., carrier, port authorities, etc., who render the actual services. This implies, the freight forwarder renders an agency function, where, the freight is paid by exporter/importer directly to the shipping line/airline and the freight forwarder earns commission. When the freight forwarder issues a bills of lading, the freight forwarder acts as a Principal, the FIATA model rule states that the freight forwarder is responsible to his customers for the acts and omissions of third parties whom he has engaged for the performance of the contract of carriage or other services as if such acts and omission were his own. Further it states the Freight Forwarders rights and duties shall be subject to the provisions of the law applicable to the related mode of transport or service concerned. In this case, M/s CPLIPL buys and sells freight and profit or loss on freight depends on the margin between buying and selling rate. When the M/s CPLIPL acts as a Principal, the income derived on freight cannot be

termed as service due to agency function and hence cannot be termed as "freight transport agency service".

The financial accounts of the freight forwarder for the years 2015-16 & 2016-17, reflect gross revenue as income and freight charges paid to shipping companies as the expense. This means, M/s CPLIPL has purchased freight and sold freight and not acted as an agent or as an intermediary: The Appendix 3D which has a category for "freight transport agency services" for all modes (category 9(D(c) Provisional CPC 748) is for agency services and would not include freight transport cost, as an agency would not provide transport per se.

- 36. Declaration before Service Tax Department:-

The CBIC has issued a Circular No.197/7/2016-Service Tax dated 12th August 2016 relating to applicability of service tax on freight forwarders on transportation of goods from India. It states that in case, the freight forwarders deal with the exporters as an agent of airline/carrier/ocean liner, as one who merely acts as a sort of booking agent with no responsibility of transportation. and bears' no liability with respect to transportation, then the service of freight forwarder would be liable to tax and the service of actual transportation (freight charges) would not be liable for service tax. In case, the freight forwarder acts as a principal, negotiate freight with the airline/carrier/ocean liner and actual freight with the exporter and raises invoice of freight to exporter, then the freight forwarder undertake all the legal responsibility for transporting the goods from Indian shore to foreign destination and undertakes all attendant risks, which implies, the freight forwarder provides the transportation of goods and are not liable to pay service tax. M/s CPLIPL, as seen from the service tax returns filed during the period from 2015-16 to 2016- 17 has treated, the "freight charges" received from exporters as "non-taxable" and has not paid service tax. This implies, M/s CPLIPL in their transactions with the exporters,, in respect of freight, have dealt on Principal to Principal basis, in alignment with FIATA model rules and have not rendered agency function, thereby the freight earned cannot be classified under Freight Transport Agency service under CPC 748 and the SEIS claim under freight transport agency service appears ineligible.

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37. Declaration before GST Department:-

M/s CPLIPL before the GST classify the ocean freight and air freight invoiced under the -category "996521- Water transport services of goods- Coastal and transoceanic (overseas) water transport of services of goods by refrigerator vessels, tankers, bulk cargo vessels, container ships etc.," and "996531-Air and space transport services of goods - Air transport services of letters and parcels and other goods" respectively. Its equivalent CPC group/class are 7212 & 732. Thus, it appears before the GST, the freight invoices are classified by them under group 72 and 73, whereas for claiming SEIS benefit the said service is misstated as under group 74.

D: VIOLATION OF STATUTORY PROVISION, CONFISCATION OF GOODS AND PENALTIES.

38. From the above, it appears to be clear that:

i) "The freight charges relate to transportation of goods. The CPC under "Transport Service" covers the process of carriage of person and goods from one location to another and related supporting. and auxiliary services. The Division 71, 72 and 73 explains the transportation of person, and goods and Division 74 explains the "supporting and auxiliary transport service". As discussed in paragraph. 15.1 (ii) above, the supporting and auxiliary transport service covers all other transport services that cannot be allocated to Division 71 to 73. and covers services that are auxiliary to transport and not directly provided for movement of goods or people. The freight service charged by M/s CPLIPL was for transportation of goods and appears to be covered. well within the Division 71 to 73.of the CPC. However, M/s CPLIPL in the SEIS claim, in violation of Rules of Interpretation of CPC, have claimed the freight charges as service under group 748 (Freight Transport Agency Service) within Division 74.

The "Freight transport agency services" (CPC 7480, 74800) is described in CPC as "Freight Brokerage services, freight forwarding services (primarily transport organisation or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break-bulk services." M/s CPLIPL being a contractual carrier, wherein they undertake to customer as transporter, have done all transaction on principal to principal basis, the collection of freight charges appears to be necessarily for transporting the goods and not for providing auxiliary service or agency service. Hence, it appears, M/s CPLIPL has violated the provisions, of Para 3.08(a) of FTP, 2015-20 read

with policy circular 3/2015-20 dated 01/04/2015 by wrongly claiming freight income under 9(A)(D)(c) of the said policy circular which relates to Freight transport agency service.

iii) As per paragraph 3.07 of the FTP, 2015-20; the objective of SEIS is to encourage export of notified service from India and not for any inflow of foreign exchange. The eligibility criteria to claim SEIS benefits is based on both the nature of service rendered and foreign exchange earnings, and only foreign exchange earnings do not qualify for a claim. When the freight forwarder (M/s CPLIPL) purchased freight and sold freight, the character of freight, which relates to service of transportation of goods would not undergo any change and remain as service of transportation of goods, but outsourced and rendered by shipping line and airline, classifiable under CPC 7212 or CPC 732 as ocean freight transportation or air freight respectively. When these services are not notified under FTP, 2015-20 the claim on amount earned in foreign exchange due to freight would not be eligible for benefit and it violates the Para 3.08 and Para 3.09 of the FTP, 2015-20.

M/s CPLIPL had shown earning in INR, received from exporters' which apparently included air/ocean, freight charges and have availed rewards for entire earnings though the actual freight transportation service has been performed by foreign liners. in which they had imported the freight service and sold such freight service in INR to exporters. Again, this appears to vitiate the paragraph 3.07 of the FTP, 2015-20 being the basic objective of SEIS is to encourage export of service from India.

M/s CPLIPL has shown earning in INR, received from exporters' which apparently included air related cargo handling expenses and have availed reward for entire earnings though the air related cargo handling expenses are not listed in Appendix 3E. In respect of amount billed and collected from the exporters/importers under the heads "terminal handling charges" classifiable under CPC as "supporting service for maritime-transport", the terminals have rendered the actual service and have claimed amount from the freight forwarders directly or through shipping lines. Therefore, as per paragraph 3.09(a) of the FTP, it appears the service was not rendered by M/s CPLIPL, and it is only a receipted charge.

In respect of amount billed and collected as "on carriage", the service would not be eligible under paragraph 3.08 (a) of the FTP, as the said services was not rendered in the manner as per Para 9.51(i) and Para 9.5 (ii) of the FTP.

the services actually provided by the third parties (terminal handling service, inland haulage service by rail) to the containers of shipping line as arranged and paid by M/s. CPLIPL, do not earn any foreign.exchange for M/s. CPLIPL as those services are physically and documentarily received from third parties by the containers in India and hence do not constitute "service" for M/s. CPLIPL as per Para 9.50 of the FTP read with Para 9.00 ibid.

In the ANF-3B forms filed with the DGFT, M/s CPLIPL has claimed, the services rendered as "cargo-handling service", "supporting service for maritime transport" and "freight transport agency service". Accordingly, they filed the statement Annexure A and Annexure C listing the documents/details relevant for taking such benefits. From the foregoing, it appears to reveal that for claiming SEIS benefit, M/s CPLIPL has mis-declared (Refer para 31,32 & 33):

- a) Air freight received from their associate concern as "freight transport agency" service income under Annexure A (Appendix 3D);
- b) Ocean freight received from their associate concern, when freight was transported through foreign line as "freight transport agency" service income under Annexure A (Appendix 3D);
- c) Terminal handling charges, air freight and ocean freight all billed and received from the associate concern which were receipted charges as "freight transport agency income" under Annexure A (Appendix 3D) as the actual services were rendered by ports, airline and shipping line;
- d) Air freight, ocean freight and air related.cargo handling charges received in INR as "supporting service of maritime transport" income under Annexure C (Appendix 3E);
- e) Ocean freight received in INR from exporter, which was actually bought from foreign line and sold to exporter, as service.rendered to foreign liner under Annexure C (Appendix 3E);
- f) Air freight and air related cargo handling income received in INR from exporters in India as service rendered to foreign line under Annexure C (Appendix 3E) and

g) On-carriage income received as service rendered in the manner as per para 9.51() of the FTP, 2015-20.

40. The notification No. 25/2015 dated 08.04.2015 issued under Section 25 of the Customs Act, 1962 as amended exempts goods when imported into India against a Service Exports from India Scheme duty credit scrip-issued by the Regional Authority under paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy (hereinafter referred to as the said scrip) from (a).the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as said Customs Tariff Act) and (b) the whole of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act subject to certain conditions listed under paragraph 2. The condition in paragraph 2(1) is that the duty credit in the said scrip is issued to a service provider located in India against export of notified services listed in Appendix 3D of Appendices and Aayat Niryat Forms of Foreign Trade Policy 2015-2020.

41. The foreign exchange or INR received and claimed as deemed foreign exchange, to the extent of 101,53,56,486/- as detailed in Annexure I to this notice, appears to be not earned. for rendering of notified service against which scrips under dispute i.e., 0519103496 dated 16.01.2018 and 0519104932 dated 30.01.2018 in file No.05/21/094/80490/AM18 and 05/21/094/80532/AM18 respectively are issued and that cannot be considered as export of notified services and therefore the condition 2(1) of the Notification 25/2015- Cus..dated 08.04.2015 as well as the Paragraph 3.08, 3.09 and 3.10 of FTP, are not complied with and therefore it appears that corresponding SEIS scrips/rewards are not eligible for the benefit of the exemption of Customs Duty vide Notification 25/2015- Cus. dated 08.04.2015.

42. As the said ineligible scrips/rewards issued to M/s: CPLIPL were transferred by M/s. CPLIPL to the actual importers listed in Annexure-I who utilized them in payment of Customs duty exemption on goods imported vide Bills of Entry at various ports referred therein, those goods are liable for confiscation under Section 111(0) of the Customs Act, 1962.

43. As the said ineligible SEIS scrips under dispute are instruments referred in Section 28AAA of the Customs Act, 1962, which were obtained by M/s. CPLIPE by wilfull mis-statement and suppression of facts in collusion with Shri Deepak Bhalla, the Chartered Accountant and were utilized for payment/debit of Customs duties as referred in Annexure-I, such duty so debited is liable to be demanded under Section 28AAA of the Customs Act, 1962 from M/s. CPLIPL and the interest is liable to be demanded under Section 28AA ibid.

Penalties

44. M/s CPLIPL:-

44.1. M/s CPLIPL appears to have willfully mis-stated that the foreign exchange earned on account of services rendered from India alone in terms of Para 9.51 (i) and Para 9.51 (ii) of FTP had been taken into account for this application under SEIS as per Para 3.08(a) of FTP 2015-20 and these do not fall under any category or service which are not eligible as per Para 3.08 and 3.09 of FTP 2015-20 in the said Form.

44.2 M/s CPLIPL in their business of freight forwarding, do not act as agent to the shipping line or airline and receive brokerage or commission from shipping line or airline and all their transactions with the exporters/importers and the shipping line were on principal to principal basis. However, for the purpose of claiming benefit on freight charges, have mis-declared the freight service "freight transport agency service".

44.3 In respect of Service Tax and GST, M/s CPLIPL declared the freight income received from the exporters or importers as "transportation service" whereas for claiming benefit they mis-declared the same as "supporting and auxiliary transport service".

44.4 At the time of filing the application, when they were aware of the Trade Notice No.11/2015-20 dated 21/07/2016, which is categorical that "only foreign exchange earned in lieu of notified services rendered by the service exporter would be counted for entitlement under SEIS", they claimed on freight income and terminal handling income when the service was not rendered by them.

44.5 At the time of filing the application they have willfully mis stated that they have supplied supporting service for maritime transport under the category "terminal handling service", "cargo dispatch service" and "cargo storage service" and earned deemed foreign exchange as per para 3.08 (c)

of the FTP, 2015-20, when the service income relates to ocean freight, air freight and air freight related cargo handling expenses.

44.6 M/s. CPLIPL is also liable for penalty under Section 112 of the Customs Act, 1962 and under Section 114AB of the Customs Act, 1962 as it is the person on whose behalf ANF-33 is filed, in terms of Para 9.06 of the FTP 2015-2020.

44.7 M/s CPLIPL as it is person on whose behalf ANF-3B is filed in terms of Para 9.06 of the FTP, 2015-20 which is under dispute which are issued in non-compliance of conditions of the Notification 25/2015-Cus. dated 08.04.2015 and obtained under gross mis-declaration/mis statement and thereby rendering goods imported under those scrips liable for confiscation under section 111(0) of the Customs Act, 1962, M/s CPLIPL appears to be liable to penalty under Section 112 of the Customs Act, 1962.

44.8 Further, for having made declarations in ANF-3B Form, knowing well that they are false and incorrect in material particulars as explained above for purpose of availing benefit of Customs Duty exemption available under Section 25 of the Customs Act, 1962, M/s CPLIPL appears to be liable for penalty under Section 114AA of the Customs Act, 1962.

45. Shri. Deepak Bhalla:

45.1. CA Deepak Bhalla, M/s D.Bhalla & Associates, Chartered Accountant had examined and certified the SEIS claim of M/s. CPLIPL as correct for compliance of non-inclusion of ineligible services and remittances as listed under Para 3.09 of FTP 2015-20 [as required under ANF-3B].

45.2 The Chartered Accountant being the professional engaged/mandated as per statute to certify any claim, it means an absolute assutance is expected by the statutory authorities to reduce the engagement risk to zero in that claim. The engagement of a Chartered Accountant is to nullify the material misstatement and also the fraud, illegal acts etc. In the instant case, the issue is the certification of earnings made by M/s CPLIPL to conclude that it does not include any earning related to ineligible services. In this case, the Chartered Accountant without knowing the implications of Central Product Classification Code (CPC Code), public notices (No.3/2015-20 and 7/2015-20), had signed the certificate. It appears, it is gross violation of any principle/standards, when a Chartered Accountant certifies the air freight and air freight related cargo handling service as "supporting service for maritime transport" service. It appears his misstatement that the claim of M/s CPLIPL does not include ineligible services as per para 3.09 of the FTP, 2015-20 is clearly an intentional act. He knew well his certification relates to conclusion on compliance of Law and it appears his gross material misstatement on earning had resulted in inflated sanction of benefit.

45.3 He appears to have failed in examining the claim of M/s. CPLIPL properly and failed in verifying the records/documents as required under ANF-3B and therefore abetted M/s. CPLIPL in their suppression and mis-statement of facts for the purpose of getting exemption benefit under the Notification 25/2015-Cus. dated 08.04.2015. As the goods imported vide the scrips so obtained are liable for confiscation under Section 111(0) of the Customs Act, 1962 and he is liable for penalty under Section 112 of the Customs Act, 1962.

45.4 Therefore, it appears that he has willfully mis-stated that there were no ineligible services and remittances in the claim and that the foreign exchange earned as 49.32 Crore and 67.67 during the years 2015-16 & 2016-17 respectively, so as to get scrips/rewards to avail the benefit of exemption vide Notification 25/2015- Cus. dated 08.04.2015, knowing well that they are incorrect, thereby making him liable for penalty under 114AA of the Customs Act, 1962.

46. M/s Noble Natural Resources India (P), Limited, who utilized the said scrip no.0519103496 for payment of customs duty on import of goods vide bill of entry no.5232516 dated 15/02/2018 and 5247906 dated 16/02/2018. The said goods are liable for confiscation under Section 111(0) of the Customs Act, 1962.

47. M/s Cargill India Private Limited, who utilized the said scrip 0519104932 for payment of customs duty on import of goods vide bill of entry no.5232479 dated 15/02/2018. The said goods are liable for confiscation under Section 111(0) of the Customs Act, 1962.

E. Charges/Allegations

48. From the foregoing paragraphs, the following appears to emerge: .

- a) SEIS scrip/reward is eligible for the actual providers of the services notified in Appendix-3D of FTP, who export their services from India either by providing those services to the service consumers, who actually use those services, located in any other country or by providing those services to service consumers of any other country in India, and earn foreign exchange for those services.
- b) SEIS scrip/reward is eligible for services charges received in INR on specified services as notified under Appendix 3E; treating the receipt as deemed foreign exchange.
- c) Foreign exchange earned in lieu of services rendered by the service exporter would be counted for entitlement under SEIS.
- d) Under Maritime Transport Service, for Ocean Freight, the reward is not eligible for the goods carried by foreign liner. Under Air Transport Service, "freight transportation of air" is not included in Appendix 3D. The Appendix 3E excludes all modes of freight transport (Division 71 to 73 of CPC) and services auxiliary to air and land mode of transport.
- e) M/s. CPLIPL is a freight forwarder and in the course of business buys freight from shipping line and airline and sells freight to exporters and importers and undertake all legal responsibility for transporting the goods from Indian shore to foreign destination. M/s CPLIPL also renders cargo handling service or arrange to render cargo handling to service through port and other agencies.
- f) M/s CPLIPL applied for SEIS reward with the Regional Authority, Delhi, DGFT on 02/01/2018 and 10/01/2018 in the ANF-3B for the years 2015-16 and 2016-17 respectively and both the claims were declared to be duly examined and certified by Shri Deepak Bhalla, M/s D Bhalla & Associates, Chartered Accountant.
- g) M/s. CPLIPL is rewarded with SEIS Scrip/Licence numbers 0519103496 dated 16/01/2018 and 0519104932 dated 30/01/2018.
- h) ANF-3B requires undertaking by the applicant that if any information furnished in the application if found incorrect or false will render him/them liable for any penal action or other consequences as may be prescribed in law or otherwise warranted and M/s CPLIPL and Shri Deepak Bhalla the Chartered Accountant had given such undertaking in their claim.
- i) Those scrips being transferable were transferred to various importers who utilized them in the import of their goods vide Annexure I.
- j) Investigations found that there was misstatement/ suppression of the facts like (refer para 31,32,33 above)
 - a. The core transportation income such as ocean freight and air freight were mentioned as freight transport agency income.
 - b. ocean freight received in foreign exchange for transportation of goods in foreign vessel were taken for SEIS benefit (violation of Note 4 of Appendix 3D) by claiming service income under Freight Transport Agency
 - c. air freight received in foreign exchange for transportation of goods taken for claim for SEIS (air freight not listed in Appendix 3D) by claiming income under Freight Transport Agency
 - d. ocean freight, air freight and air freight related cargo handling received in FNR were claimed for benefit (all not listed in Appendix 3E)
 - e. actual foreign exchange earned for the notified services not performed/provided by M/s. CPLIPL, payments received for third party service providers etc., were taken for benefit.
- k) The personnel of M/s CPLIPL have admitted the mis-statement and paid voluntarily the benefit taken to the extent of 5,00,27,412/- as detailed in Annexure II to this notice.
- l) The purpose of claim of SEIS reward/scrip is to avail the benefit of exemption of Customs Duty vide the Notification 25/2015-Cus. dated 08.04.2015, which is subject to the compliance of the conditions stated therein.
- m) M/s. CPLIPL, by their actions failed to comply with the condition 2(1) of the Notification 25/2015-Cus. dated 08.04.2015 as well as the Para 3.08, Para 3.09 and Para 3.10 of FTP in obtaining the SEIS scrips under dispute and thereby rendering the goods imported by using those scrips are liable for confiscation under Section 111(0) of the Customs Act, 1962.

n) As the said ineligible SEIS scrips under dispute are instruments obtained by M/s. OPLIPL by wilfull mis-statement and suppression of facts in collusion with Shri Deepak Bhalla, Chartered Accountant and were utilized for payment/debit of Customs duties as referred in Annexure-I, such duty so debited is liable to be demanded under Section 28AAA of the Customs Act, 1962 from M/s. CPLIPL along with the demand of interest under Section 28AA ibid.

o) Shri Pramod Mourya, Director in his statement dated 27/07/2018, admitting the wrong availment of SEIS benefit, on their own recalculated; their eligibility of SEIS benefit as 34,48,255.71/- and 45,28,172/- for the years 2015-16 and 2016- 17 and produced the relevant invoices for verification. He certified that all the services listed by M/s. CPLIPL in the revised eligibility were exclusively rendered by M/s CPLIPL. However, on verification it was found they have claimed benefit on "on carriage" charges in violation of para 3.08(a) of the FTP, 2015-20 and accordingly denying the benefit on "on carriage" the eligibility was reworked.

P) Accordingly, duty which is liable to be demanded under Section 28AAA of the Customs Act, 1962 works out to 5,07,67,820/- (2,07,33,877/- and 3,00,33,943/-for the years 2015-16 and 2016-17 respectively) as detailed in Annexure I.

q) M/s. CPLIPL, by rendering the goods imported vide the scrips under dispute liable for confiscation rendered themselves liable for Penalty under Section 112 of the Customs Act, 1962

r) M/s CPLIPL for having imade intentional mis-statements for availing the SEIS scrips/rewards and also by suppressing the facts before DGFT knowing that they are incorrect, for the purpose of availing benefit of Customs, Duty exemption vide Notification 25/2015-Cus. dated 08.04.2015 available under Section 25 of the Customs Act, 1962, has rendered. liable for penalty under Section 114AA and section 114AB of the Customs Act, 1962.

s) Shri Deepak Bhalla, Chartered Accountant, by failing in examining the claim of M/s. CPLIPL properly and in verifying the records/documents as required under ANF-3B, abetted M/s. CPLIPL in their suppression and mis-statement of facts for the purpose of getting exemption benefit under the Notification 25/2015-Cus. dated 08.04.2015, available under Section 25-of the Customs Act; 1962, rendered herself liable for penalty under Section 112 of the Customs Act, 1962, for rendering the goods imported vide said SEIS scrips/rewards under dispute under Section 111(0) of the Customs Act, 1962.

t) Shri Deepak Bhalla, Chartered Accountant had willfully mis-stated that there were no ineligible services and remittances in the claim and suppressed the fact about the foreign exchange knowing that they are incorrect, in order to get SEIS scrips/rewards for availing the benefit of exemption vide Notification 25/2015- Cus. dated 08.04.2015, available under Section 25 of the Customs Act, 1962, thereby making him liable for penalty under 114AA of the Customs Act, 1962. 30

49. Now, therefore, M/s Cargo Partner Logistics India Private Limited, Unit No.513-516, 5th Floor, JMD Megapolis Sohna Road, Gurgaon 122018, are hereby called upon to show cause, in writing, to the Commissioner of Customs, Custom House, Near Balaji Temple, Kandla 370210 in respect of Bills of entry covered in Annexure-I, within thirty days of receipt of this Notice, as to why:

50.(i) The goods covered in bills of entry no. 5232516 dated 15/02/2018, 5232479 dated 15/02/2018 and 5247906 dated 16/02/2018 valued at 28,56,04,590/- as detailed in Annexure I to this notice, imported vide SEIS scrips obtained by willful mis-statement and suppression of facts for availing duty exemption under the Notification 25/2015-Cus, dated 08.04.2015, should not be held liable for confiscation under Section 111(0) of the Customs Act, 1962;

(ii) The duty payable amount aggregating 5,07,67,820/- (Rupees Five Crore, Seven Lakh, Sixty Seven Thousand Eight Hundred and Twenty Zero only) as detailed in Annexure I to this notice should not be demanded and recovered from them under Section 28AAA of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962

(iii) Penalty should not be imposed on them under Section 112 of the Customs Act, 1962 for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation.

(iv) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the declarations made knowing that they were incorrect.

(v) Penalty should not be imposed on them under Section 114AB of the Customs Act, 1962 for having obtained instrument by willful misstatement as explained above.

(vi) The amount of 5,00,27,412/- paid by M/s CPLIPL on various dates as detailed in Annexure II should not be adjusted towards the adjudicating liabilities above.

51. Now, therefore, Shri Deepak Bhalla, Chartered Accountant, D.Bhalla & Associates, Chartered Accountants, Flat No.4B, F/F, Deewan Estate, Plot No. 15, Galli No.2, Bhagwati Garden, New Delhi is hereby called upon to show cause, in writing, Commissioner of Customs, Custom House, Near Balaji Temple, Kandla 370210 in respect of Bills of entry covered in Annexure-I, within thirty days of receipt of this Notice, as to why:

(i) Penalty should not be imposed on him under Section 112 of the Customs Act, 1962 for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation.

(ii) Penalty should not be imposed on him under Section 114AA and Section 114AB of the Customs Act, 1962, for the declarations made knowing that they were incorrect.

52. Now, therefore, M/s Nobel Natural Resources India (P) Limited (LEC No.0311046975), Survey No.302/2, 303, Opp. Rama Cylinder, VIL, Bhimasar, Taluka Anjar, Kutch Gujarat 370240 are hereby called upon to show cause, in writing to the Commissioner of Customs, Custom House, Near Balaji Temple, Kandla 370210, in respect of Bills of entry 5232516 dated 15/02/2018 and 5247906 dated 16/02/2018 as detailed in Annexure I within thirty days of receipt of this Notice, as to why the declared assessable value of imported goods of 7,69,63,215/- as detailed in Annexure I to this notice for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by willful mis-statement and suppression of facts for availing duty, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962;

53. Now, therefore. M/s Cargill India Private Limited (IEC No.0596044330), Su No.415, National Highway Road, 8-A, PO Bhimasar Taluka, Anjar, Gujarat 370240 are hereby called upon to show cause, in writing to the Commissioner of Customs, Custom House, Near Balaji Temple, Kandla 370210, in respect of Bill of entry 5232479 dated 15/02/2018 as detailed in Annexure I within thirty days of receipt of this Notice, as to why the declared assessable value of imported goods of 320,86.41.375/- as detailed in Annexure I to this notice for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by willful mis-statement and suppression of facts, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962;

54. **RECORD OF PERSONAL HEARING-**

54.1. Miss Shreya Ganju, Cargill India Pvt. Ltd. appeared for personal hearing on 18.07.2025 on behalf of M/s. Cargill India Pvt. Ltd. and reiterated the submission dated 18.07.2025 and requested to drop the proceedings in the matter.

54.2. Shri Ramesh C. Kainthola, Advocate, being duly authorised made submission dated 23.07.2025 and requested to consider the same before deciding the case.

55. **WRITTEN SUBMISSION-**

55.1. M/s. Cargill India Pvt. Ltd. vide their submission dated 18.07.2025 has referred to the decisions of Nhava Sheva and Commr.(A) and argued that they were the bonafide purchaser of the goods.

55.2 M/s. COFCO International (earlier k/a Noble Natural resources) vide their submission dated 23.07.2025 has argued that-

- a. SCN is vague, without reason and violative of principles of natural justice
- b. the SCN does not discuss the role of noticee in the alleged fraudulent availment of scrips.
- c. they have referred certain decisions.
 - (i) Commr. Of C.Ex Bangalore Vs. Brindavan beverages (P) Ltd 2007(6)(TMI)4-SC
 - (ii) Rajmal lakhichand v. Commr. Of Customs, Aurangabad, 2010.
- d. No ground or justification has been given in the notice for confiscation of goods.
- e. they were under bonafide belief that the scrip were validly issued by DGFT
- f. they have taken due care.
- g. At the time of import of impugned goods, the scrips were valid,\.

h. They have also referred to the decision of Taprai overseas etc.

DISCUSSION AND FINDINGS-

56. I have carefully gone through the Show cause notice dated 14.07.2020, written submission dated 18.07.2025 and 23.07.2025, Orders dated 01.01.2021 and 10.11.2023 of the Hon'ble Settlement Commission and all the evidences placed on record.

57. I find that out of the four noticees, two noticees viz. M/s. Cargo Partner logistics India Pvt. Ltd. and Shri Deepak Bhalla, Chartered Accountant, have approached the Hon'ble Settlement Commission.

58. The Hon'ble Settlement Commission, Additional Bench Mumbai vide order dated 01.01.2021 issued under Section 127C(5) of the Customs Act, 1962 has settled the disputes arising out of SCN dated 14.07.2020 in respect of M/s. Cargo Partner logistics India Pvt. Ltd. The relevant part of the order is reproduced below:-

ORDER-

7.1 **Customs duty**- *Bench settles the duty liability at Rs. 5,07,67,822/- (Rupees Five Crores Seven lakh Sixty Seven Thousand Eight Hundred Twenty Two only). Since the above amount has been paid, no further liability subsists on this count.*

7.2 **Interest**- *Bench settles the interest liability at Rs. 59,53,723/- (Rupees Fifty Nine Lakhs Fifty Three Thousand Seven Hundred and Twenty Three Only) which shall stand appropriated from Rs. 59,73,798/- deposited by the Applicant towards interest. The applicant is entitled to refund of the excess paid interest of Rs. 20,255/-.*

7.3. **Penalty**:- *No penalty on the applicant (M/s. Cargo partner Logistics India Pvt. Ltd)*

7.4. **Prosecution**- *The Bench grants immunity from prosecution to the Applicant under the Customs Act, 1962 so far as proceedings under the instant SCN against them are concerned.*

59. Further, the Hon'ble Settlement Commission, Additional Bench, Mumbai vide order dated 10.11.2023 has settled the disputes arising out of SCN dated 14.07.2020 in respect of Shri Deepak Bhalla, Chartered Accountant. The relevant part of the order is reproduced below:-

ORDER-

The Bench grants immunity to the Applicant from all penalty and prosecution under the Customs Act, 1962 so far as proceedings under the impugned Show Cause Notice against him are concerned.

60. I find that once the Settlement Commission passes an order under Section 127C(5) of the Customs Act, the same is treated as conclusive in terms of Section 127(J) of the Customs Act, 1962.

60.1. Therefore, the instant adjudication proceedings are in respect of other co-noticees viz. M/s. Cargil India Pvt. Ltd. and M/s. Noble Natural resources India Pvt. Ltd. (now k/s M/s. COFCO International) only.

60.2. The issues to be decided before me are whether the goods imported by utilising the fraudulently availed scrips by exporter are liable for confiscation under S. 111(o) of the Customs Act, 1962.

CONFISCATION OF IMPORTED GOODS IN THE HANDS OF RESPECTIVE IMPORTERS-

61. As discussed in the brief of the case and decided by the settlement commission, it is not disputed that M/s. CPLIPL had made mis-statements for availing the SEIS scrips/rewards and also by suppressing the facts before DGFT knowing that they were incorrect for the purpose of availing benefit of SEIS. Accordingly, M/s. CPLIPL has paid duty alongwith interest.

62. It is also evident that M/s. CPLIPL has transferred/sold the SEIS Scrips to other importer/s viz. M/s. Cargill India Pvt. Ltd and M/s. Noble Natural resources. The said importer/s (person/s other than the person to whom the instrument (SEIS Scrips) were issued) have imported their goods by utilizing the said transferred SEIS duty credit Scrips which were fraudulently obtained from DGFT and later cancelled.

63. I find that the Show Cause notice has proposed confiscation of goods from the above mentioned importers under Section 111(o) of the Customs Act, 1962.

SUBMISSION OF IMPORTERS IN RESPECT OF CONFISCATION OF GOODS-

64. M/s. Cargill India Pvt. Ltd vide their submission has argued that-

- a. they are the bonafide purchaser of the scrip in question
- b. the similar issue of Cargill has been adjudicated by the office of Commissioner of Customs, Nhava Sheva and Commr. (A), Ahmedabad in their favour.

65. M/s. Noble Natural resources vide their submission has, interalia, argued that-

- a. SCN is vague, without reason and violative of principles of natural justice
- b. the SCN does not discuss the role of noticee in the alleged fraudulent availment of scrips.
- c. they have referred certain decisions.

(i) Commr. Of C.Ex Bangalore Vs. Brindavan beverages (P) Ltd 2007(6)(TMI)4-SC

(ii) Rajmal lakhichand v. Commr. Of Customs, Aurangabad, 2010.

d. No ground or justification has been given in the notice for confiscation of goods.

e. they were under bonafide belief that the scrip were validly issued by DGFT

f. they have taken due care.

g. At the time of import of impugned goods, the scrips were valid.

h. They have also referred to the decision of Taprai overseas etc.

66. On going through the submissions made by the various importers, I find that they have mainly stated that-

(i) they were the bonafide purchaser of scrips after paying due consideration;

(ii) the scrips were valid when they were transferred and when they were utilised;

(iii) the scrips were found to be fake after the same were utilised

(iv) they have relied on various judgements.

67. Before proceeding further, it is pertinent to examine the case law referred by the importer.

The relevant extract of judgement of Hon'ble High Court of Bombay in the matter of TAPARIA OVERSEAS (P) LTD. Versus UNION OF INDIA, referred by them, is reproduced below for ease of reference:-

37. Alternatively, let us consider it from another angle assuming that licence comes to an end upon its suspension and/or cancellation, in catena of cases, it is laid down that the date of import of goods would be the date on which the Bill of Entry was presented under section 46. This legal position is clear from the decision of the Apex Court as laid down in Union of India v. Apar Ltd. 1999 (112) E.L.T. 3 (S.C.) and Garden Silk Mills v. Union of India - 1999 (113) E.L.T. 358 (S.C.). The same is the view taken by the Apex Court in Sampat Raj Durgar case (cited supra). Imports against replenishment Licences were permitted duty free if the importers produced an import Replenishment Licence the goods or the materials were imported into India. In the instant cases when the goods were imported into India, and even when the Bills of Entry were filed, neither were the licences suspended nor the same cancelled. In all these cases, Bills of Entry were filed by the petitioners well before the suspension and/or cancellation of the licences in question, thus the imports were made under valid licences, the goods could not be subjected to levy of customs duty in the peculiar facts and circumstances of the cases in hand.

68. I find that before Section 28AAA was introduced by S.122 of Finance Act, 2012 w.e.f 28.05.2012, various cases were decided by the appropriate forums involving demand of duty, confiscation and penalty from the importers. However, with introduction of Section 28AAA, the cases where an instrument (scrip or authorisation or licence or certificate or such other document) issued to a person has been obtained by him by means of collusion or wilful misstatement or suppression of facts and such instrument is utilised by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty is recovered from the person to whom such instrument was issued. Therefore, the demand of duty from the person who has indulged in obtaining instrument by way of fraud has been rectified with the insertion of Section 28AAA of the Customs Act, 1962. In view of the same, I find that the said referred case laws are not applicable in the instant case.

69. Therefore, the pertinent questions that arise before me are:

- (i) Whether the goods imported are liable for confiscation even though the importers purchased the valid scrips and utilised the same for importing the goods.
- (ii) Whether the goods can be confiscated even though the same are not available for physical confiscation

Whether the goods imported are liable for confiscation even though the importers purchased the valid scrips and utilised the same for importing the goods.

70. Before moving further, it is pertinent to refer the relevant Sections involving confiscation and recovery in cases of instruments as given below:-

Section 111 of Customs Act, 1962:

Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:

*
*
*

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

.....
.....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

71. I find that Section 111(o) states that the goods brought from a place outside India shall be liable to confiscation if those goods were exempted subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in

force, *in respect of which the condition is not observed* unless the non-observance of the condition was sanctioned by the proper officer. Therefore, clearly the section 111(o) mandates that all the conditions laid out under Customs Act, 1962 or any other law must be observed. It is pertinent to note that the provisions of Section 111(o) doesn't talk about the *intent of the importer of goods*, therefore, whether the scrip was purchased with malafide or bonafide is immaterial insofar as to the extent of confiscation of goods is concerned. It is further pertinent to note that such intent gains significance while imposing penalty under Section 112 for penalty for improper importation of goods as the said section clearly contains words or phrases "*who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation* under Section 111, or abets the doing or omission of such an act, or *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation* under Section 111.". Therefore, on careful reading of the Section 111(o) and 112, it is clear that section 111(o) mandates confiscation of goods even if the intent of the importer of goods was bonafide.

72. It is important to examine whether any condition of the Notification No. 25/2015-Customs dated 8th April, 2015 is violated or otherwise.

Notification No. 25/2015-Customs dated 8th April, 2015 issued under Customs Act, 1962

As per the Notification:

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods when imported into India against a Service Exports from India Scheme duty credit scrip issued by the Regional Authority under paragraph 3.10 read with paragraph 3.08 of the Foreign Trade Policy (hereinafter referred to as the said scrip) from,-

(a) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as said Customs Tariff Act); and

(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act.

2. The exemption shall be subject to following conditions, namely:-

- (1) *that the duty credit in the said scrip is issued to a service provider located in India against export of notified services listed in Appendix 3D of Appendices and Aayat Niryat Forms of Foreign Trade Policy 2015-2020*
- (2) *at the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations as mentioned in the Table 2 annexed to the Notification No. 16/2015- Customs dated 01.04.2015 or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005): Provided that the Commissioner of Customs may within the jurisdiction, by special order, or by a Public Notice, and subject to such conditions as may be specified by him, permit import and export through*

any other sea-port, airport, inland container depot or through any land customs station;

(3) *that the said scrip is registered with the Customs Authority at the port of registration specified on the said scrip;*

(4) *that the said scrip is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods and the proper officer of customs, taking into account the debits already made under this exemption and debits made under the notification Nos . 21 of 2015 - Central Excise, dated the 8 th April, 2015 and 11 of 2015 -Service Tax, dated the 8 th April, 2015, shall debit the duties leviable on the goods, but for this exemption;*

73. I find that the condition no. 2(1) is not fulfilled as the services rendered were not notified in Appendix 3D as discussed in the foregoing paras. Clearly the condition no. 2(1) is violated which has rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962.

74. Further it is important to examine the argument of the importers that the said scrips were valid at the time of importation. I find that the Notification No. 25/2015-2020 dated 08.04.2015 exempts the goods imported against SEIS duty credit scrip and as per Sr.No. 2(4) such duty credit scrip is produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods and proper officer debits the duties leviable on the goods, but for this exemption.

75. In this regard, it is relevant to reproduce the provisions of Section 28AAA of the Customs Act, 1962-

28AAA- Recovery of duties in certain cases:

(1) *Where an instrument issued to a person has been obtained by him by means of -*

- (a) *collusion; or*
- (b) *wilful misstatement; or*
- (c) *suppression of facts,*

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued:

On perusal of the above mentioned section, I find that in cases where the instrument has been obtained by way of collusion/wilful misstatement/suppression of facts and the same has been utilised, the duty relatable to such utilisation of instrument ***shall be deemed never to have been exempted or debited***. The words and phrases ***shall be deemed never to have been exempted or debited*** clearly implies that the duty, which was debited or exempted by the proper officer while import of goods as per Sr.No. 2(4) of the Notification No. 25/2015-2020, is made

void ab initio by the provisions of Section 28AAA of the Customs Act, 1962. Clearly the provisions of Section 28AAA retrospectively invalidates the benefits of the fraudulent scrips and make the exemption of duty and validity of scrip void ab initio. Therefore, the argument of the noticees that they utilised the valid scrip at the time of import is not sustainable insofar as confiscation of goods is concerned. Further, the office of DGFT has cancelled the scrip ab initio and imposed penalty upon the exporter.

Whether the goods can be confiscated even though the same are not available for physical confiscation-

76. In the instant case, it is evident that the goods are not physically available for confiscation. However, the provisions of Section 125(1) and Judgements of Hon'ble High Court of Madras and Hon'ble high Court of Gujarat, as discussed below, don't necessitate the requirement of physical availability of goods for confiscation and imposition of redemption fine.

Section 125 of the Customs Act, 1962 provides for an option to pay fine in lieu of confiscation. Relevant paras of Section 125 are reproduced hereunder:-

"Section 125: Option to pay fine in lieu of confiscation:--

(1) **Whenever confiscation of any goods is authorized by this Act**, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and **shall, in the case of any other goods, give to the owner of the goods** or where such owner is not known, the person from whose possession or custody, such goods have been seized, **an option to pay in lieu of confiscation such fine as the said officer thinks fit:**

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods."

77. It is apparent from the sub-section (1) of Section 125 that whenever confiscation of goods is authorized by this Act, the officer adjudging it shall in the case of goods other than prohibited goods give an option to pay fine in lieu of confiscation. The pre-requisite for making an offer of fine under Section 125 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 125 of the Act rests is that the goods in question are liable to be confiscated under the Act. It is clear that the goods, imported against the scrip fraudulently obtained by the exporter, are liable to confiscation under the provision of Section 111(o) of the Customs Act, 1962 as discussed above, therefore the

imposition of fine under Section 125 in lieu of confiscation is sustainable even though the goods are not available for confiscation.

78. In this regard, I rely on the Judgement of Hon'ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017, wherein the Hon'ble Court in Para 23 categorically held that the physical availability of goods doesn't have any significance for imposition of redemption fine under Section 125, which is reproduced as under:-

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii)”

79. Further, the above judgement has been relied upon by the Hon'ble High Court of Gujarat in the matter of SYNERGY FERTICHEM PVT. LTD. Versus STATE OF GUJARAT {2020 (33) G.S.T.L. 513 (Guj.)}. The relevant Paras of the said judgement are reproduced hereinbelow:-

“174. The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the “redemption fine”, would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act...”, brings out the point clearly. ***The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant.*** The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

175. ***We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.***

176. We may also refer to and rely upon a Supreme Court decision in the case of M.G. Abrol v. M/s. ShantilalChhotalal& Co, AIR 1965 SC 197, wherein the Supreme Court dealt with the very same issue and held as under;

“Another contention raised for the respondent is that the Additional Collector could not confiscate the goods after they had left the country and that therefore his order of confiscation of the scrap which according to him was not steel skull scrap was bad in law. The affidavit filed by the Additional Collector, appellant No. 1, mentions the circumstances in which the scrap exported by respondent was allowed to leave the country. It was allowed to leave the country after the Collector had formally seized it and after the agents of the shipping company had undertaken not to release the documents in respect of the cargo to its consignees. This undertaking meant that the cargo would remain under the control of the customs authorities as seized cargo till further orders from the Additional Collector releasing the cargo and making it available to the consignees by the delivery of the necessary documents to them. The documents were allowed to be delivered to them on the application of the respondents praying for the passing on of the necessary documents to the purchasers of the goods in Japan and on the respondents giving a bank guarantee that the full f.o.b. value to be released from the said parch would be paid to the customs authorities towards penalty or fine in lieu of confiscation that might be imposed upon the respondents by the adjudicating authority. The customs authorities had seized the goods when they were within their jurisdiction. It is immaterial where the seized goods be kept. In the circumstances of the case, the seized goods remained on the ship and were carried to Japan. The seizure was lifted by the Additional Collector only when the respondents requested and gave bank guarantee. “The effect of the guarantee was that in case the Additional Collector adjudicated that part of the goods exported was not in accordance with the licence and had to be confiscated, the respondents, would, in lieu of confiscation of the goods, pay the fine equivalent to the of the bank guarantee. Section 183 of the Act provides that whenever confiscation is authorised by the Act the Officer adjudging it would give the owner of the goods option to pay in lieu of confiscation such fine as the officer thinks fit. This option was extended to the respondent at the stage before the goods were released from seizure. The formal order of confiscation had to be passed after the necessary enquiry and therefore when passed in the present case after the goods had actually left this country cannot be said to be an order which could not be passed by the Customs Authorities. I, therefore, do not agree with this contention.”

80. In view of the above discussion, case laws and provisions of Section 111(o) and 125 of the Custom Act, 1962, I hold that the goods are liable to confiscation under Section 111(o) of the Customs

Act, 1962 and find it apt to impose fine upon the importers, being the owner of goods, in lieu of confiscation under section 125(1) of the Custom Act.

81. In view of the above, I hereby pass the following order-

A. ORDER IN RESPECT OF M/s. CARGO PARTNER LOGISTICS INDIA PVT. LTD-

In terms of Section 127J of the Customs Act, 1962, the order dated 01.01.2021 of Hon'ble Settlement Commission is conclusive in view of the payment of Rs. 5,07,67,822/- as Customs duty and Rs. 59,53,723/- as Interest by M/s. Cargo Partner Logistics India Pvt. Ltd.

B. ORDER IN RESPECT OF SHRI DEEPAK BHALLA, CHARTERED ACCOUNTANT-

In terms of Section 127J of the Customs Act, 1962, the order dated 10.11.2023 of Hon'ble Settlement Commission is conclusive and final.

C. ORDER IN RESPECT OF M/S. CARGILL INDIA PVT. LTD-

I order to confiscate the goods having assessable value of Rs. 20,86,41,375/- for which duty exemption under Notification No. 25/2015-Cus dated 08.04.2015 was availed based on SEIS scrips obtained by wilfull mis-statement and suppression of facts under Section 111(o) of the Customs Act, 1962.

Since the goods are not available for confiscation, I impose Redemption fine of Rs. 1,00,00,000/- (Rupees One Crore only) under Section 125 of the Customs Act, 1962).

D. ORDER IN RESPECT OF M/S. NOBLE NATURAL RESOURCES (KNOW K/A COFCO INTERNATIONAL)-

I order to confiscate the goods having assessable value of Rs. 7,69,63,215/- for which duty exemption under Notification No. 25/2015-Cus dated 08.04.2015 was availed based on SEIS scrips obtained by wilfull mis-statement and suppression of facts under Section 111(o) of the Customs Act, 1962.

Since the goods are not available for confiscation, I impose Redemption fine of Rs. 35,00,000/- (Rupees Thirty Five lakhs only) under Section 125 of the Customs Act, 1962).

82. This order is issued without prejudice to any action that can be taken under this act or any other law for the time being in force.

(M. Ram Mohan Rao)

Commissioner

F.No. GEN/ADJ/COMM/159/2020-Adjn-O/o Commr-Cus-Kandla

DIN-20250771ML000000DE1E

By Speed Post/Email

To,

- (1) M/s Cargo Partner Logistics India Private Limited, Unit No. 513-516. 5th floor, JMD Megapolis Sohna Road, Gurgaon 122018, Haryana.

- (2) Shri Deepak Bhalla, Chartered Accountant, D. Bhalla & Associates, Chartered Accountants, Flat No. 4B, F/F, Deewan Estate, plot No. 15, Galli No. 2, Bhagwati Garden, New Delhi.
- (3) M/s Noble Natural Resources India Private Limited (IEC No. 0311046975), Survey No. 302/2, 303, Opp. Rama Cylinder, VIL, Bhimasar, Taluka, Anjar, Kutch Gujarat 370240.
- (4) M/s Cargil India Private Limited, Survey No. 415, National Highway Road, 8-A. PO Bhimasar, Taluka, Anjar, Gujarat 370240.

Copy to:

- (1) The Chief Commissioner of Customs, Customs Zone, Ahmedabad
- (2) The Commissioner of Customs, Inland Container Depot, Ludhiana 141001
- (3) The Addl. Director General of Foreign Trade, Centre Licencing Area (CLA)-"Y" Shape Building, 'A' Wing, I.P. Bhawan, Near I.T.O, New Delhi 110 002.
- (4) The Additional Director General, DRI, Chennai Regional Unit, 27, G.N. (Chetty) Road, T. Nagar, Chennai-600017.
- (5) The Superintendent, (EDI/TRC), Custom House, Kandla for uploading of the same on the official website.
- (6) Guard File.