

**OFFICE OF THE COMMISSIONER**  
**CUSTOM HOUSE, KANDLA**  
**NEAR BALAJI TEMPLE, NEW KANDLA**  
**Phone : 02836-271468/469 Fax: 02836-271467**

DIN- 20250271ML0000212041		
A	File No.	GEN/ADJ/COMM/131/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-19-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla
D	Date of Order	28.02.2025
E	Date of Issue	28.02.2025
F	SCN No. & Date	GEN/ADJ/COMM/131/2023-Adjn-O/o Commr-Cus-Kandla dated 30.05.2023
G	Noticee / Party / Importer / Exporter	M/s. Analytix Business Solutions 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, Bahuali 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 penalty alone is in dispute.

## **BRIEF FACTS OF THE CASE-**

1. Intelligence gathered by Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, Ahmedabad, indicates that **M/s. Analytix Business Solutions (I) Pvt. Ltd.** (IEC-0805005684) B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Ahmedabad-380052 (hereinafter referred to as the 'M/s. ABS, Ahmedabad') is STPI unit (Software Technology Park of India) and engaged in the business of providing Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services etc. to their foreign clients.

2. Intelligence gathered by Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, Ahmedabad indicated that M/s. Analytix Business Solutions (I) Pvt. Ltd. have obtained Service Export from India Scheme (hereinafter referred to as SEIS) Scrips/licences by way of suppressing the fact regarding their STPI Status which are not eligible for availing SEIS benefits.

### **SEARCH OPERATION AT OFFICE PREMISES OF M/S. ABS, AHMEDABAD:**

3.1 Based on the above intelligence, the Officers of DRI, AZU carried out search on 27.05.2019 at the office premises of M/s. ABS, Ahmedabad located at B-403-405, GCP Business Centre, OPP. Memnagar Fire Station, Memnagar, Ahmedabad, Gujarat-380052 under panchnama dated 27.05.2019 [**RUD No.-01**]. The search was carried out in the presence of independent panch witnesses, Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s. ABS, Ahmedabad and Shri Rajiv Bhatia, President & Country Head of M/s. ABS, Ahmedabad. During the search operation, various documents relevant to the inquiry i.e. SEIS application, SEIS Scrips, Invoices/parallel invoices, agreements, general ledger, FIRC, correspondences of M/s. ABS with STPI, Gandhinagar regarding de-bonding etc. were covered from the office premises of M/s. ABS. On scrutiny of documents, it appeared, *prima facie*, that being STPI unit, M/s. ABS, Ahmedabad was not eligible for availing SEIS Benefits from DGFT and it also appears that M/s. ABS availed SEIS benefits fraudulently for services which are not notified under Appendix 3D of FTP 2015-2020, and not eligible for SEIS benefits.

### **4. STATEMENT OF KEY PERSON OF M/S. ABS, AHMEDABAD:-**

During the course of inquiry, statements of following persons of M/s. ABS were recorded under Section 108 of the Customs Act, 1962.

- (i) Statement dated 27.05.2019 of Shri Kirankumar Gunvantbhal Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd.
- (ii) Statement dated 19.06.2019 of Shri Kirankumar Gunvantbhal Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd.
- (iii) Statement dated 27.05.2022 of Shri Rajiv Bhatia, President & Country Head of M/s Analytix Business Solutions (India) Pvt. Ltd., Ahmedabad recorded under Section 108 of the Customs Act, 1962
- (iv) Statement dated 01.07.2019 of Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd.

**4.1** Statement dated 27.05.2019 of **Shri Kirankumar Gunvantbhal Modi**, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. were recorded under Section 108 of the Customs Act, 1962 [**RUD No.-02**] wherein he interalia stated that

- He joined M/s. Analytix Business Solutions (India) Private Limited as Accountant and in due time got promoted and at present he was working as Accounts Manager;
- that he looked after day to day bank transaction, preparing invoices and look after accounts related work of the company;
- that M/s. Analytix Business Solutions (India) Private Limited was incorporated in 2005;
- that on being asked regarding billing pattern he state that the amount of invoice needed to be raised was decided by Shri Fenil Shah, former Head India operations. Shri Fenil Shah has left the company and currently Shri Rajiv Bhatia was President and country head of the company. He did not get any basis for preparing billing but he was told by Shri Fenil Shah about how much manpower hours bill is to be raised for. The rate applied was as per the agreement with M/s. Analytix Solutions LLC.
- Further he was shown the Bills raised to M/s. Analytix Solutions LLC for the year 2015-16 and 2016-17, which are in triplicate and withdrawn under panchnama dated 27.05.2019 with the classification details of services provided having been mentioned differently, but the invoice number, date and total bill amount were same in all the invoices raised. On being asked to explain the reason for preparing parallel billing/invoices he stated that the first two Bill signed by Shri Fenil Shah was draft copy and the third bill which was submitted to obtain the SEIS scrips were the final Bill. On being asked to explain the making of two draft and one final copy of the invoice, he clarified that he used to make first copy of invoice as a draft copy, without mentioning that it is draft copy, on the basis of manpower hour provided by Shri Fenil Shah who used to sign the same. After 1 week of signing 1st copy of invoice, Shri Fenil Shah used to instruct him to bifurcate the description of services in the invoice. Afterwards he used to prepare the same invoice with same invoice number & date and same total amount with a bifurcated service classification and the same was again signed by Shri Fenil Shah. Further Shri Fenil Shah again used to instruct him to change the classification head of services and again used to make the third copy with same invoice number & date and total invoice amount, which were again signed by Shri Fenil Shah. He further stated that this practice of making three different copy of invoices with same invoice number & date and total amount started since April 2015 and continued every month till March 2018. I further state that after March 2018 he used to prepare draft copy by way of bifurcation of the description of services and were signed by Shri Fenil Shah.

**4.2** Further statement of **Shri Kiran kumar Gunvantbhai Modi** , Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. was recorded on 19.06.2019 under Section 108 of the Customs Act, 1962 [**RUD No.-03**] wherein he inter-alia stated that

- He looked after day to day bank transaction, prepare invoices & accounts related work of the M/s. Analytix Business Solutions (India) Private Limited as well as foreign clients on behalf of their

affiliated/parent company viz. M/s. Analytix Business Solutions, LLC, BOU West Cummings Park, Suite 2000, Woburn, Massachusetts, USA-01801. Further on being asked regarding work profile of M/s Analytix Business Solutions (India) Private Limited he stated that M/s. ABS was engaged in exporting services i.e. Accounting & Book Keeping Services and IT Software Services.

- M/s. ABS was 100% exporter of aforesaid services and have not provided service in domestic market. M/s. ABS used to provide services only to foreign clients of their affiliated/parent company viz. M/s Analytix Business Solutions, LLC, USA. M/s. ABS used to export services directly to foreign clients of M/s. Analytix Business Solutions, LLC, USA. There were agreements for providing aforesaid services between M/s Analytix Business Solutions, LLC, USA & their foreign clients and between M/s. Analytix Business Solutions, LLC, USA & M/s. Analytix Business Solutions (India) Private Limited. There were no direct agreement for providing service between M/s. Analytix Business Solutions (India) Private Limited and foreign client of M/s. Analytix Business Solutions, LLC, USA.
- That for providing services to foreign clients of M/s. Analytix Business Solutions, LLC, USA, as per agreement M/s. Analytix Business Solutions (India) Private Limited raised export invoices to M/s. Analytix Business Solutions, LLC, USA.
- On being asked regarding preparing multiple export invoices with different descriptions of services exported but with similar invoice no. & date and same invoice amount, he stated that he joined M/s. Analytix Business Solutions (India) Private Limited in 2007 and since his joining he used to prepare only one export invoice by way of mentioning service description as (i) Accounting & Book Keeping Charges (ii) Tax Support Services Charges and (iii) IT Service Charges till April/May 2018. After April/May 2018, as per the direction of Shri Fenil Shah, Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited, he used to prepare export invoices by way of mentioning service description as (i) Accounting & Book Keeping Charges, (ii) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services. As per the direction of Shri Fenil Shah in the month of April/May 2018, he prepared parallel invoices from April 2015 onwards with similar invoice no. & date and same invoice amount but change in the description of service by way of mentioning the service descriptions as (1) Accounting & Book Keeping Charges, (ii) Tax Support Services Charges, (ii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services with intend to wrongly avail Service Export From India Scheme (SEIS) benefits. He further stated that these redrafted parallel export invoices along with application were submitted in DGFT, Ahmedabad with intent to wrongly avail undue SEIS benefits from DGFT.
- He further stated that invoice values in respect of Accounting & Book Keeping Charges & Tax Support Services Charges were same in all original monthly export invoices and in redrafted monthly parallel export invoices prepared from April, 2015 onwards. But the invoice values in respect of IT Service Charges provided and mentioned in original monthly export invoices were divided in Operational Management Consultancy Services, Architectural Services and IT Software Development Services in

redrafted monthly parallel export invoices prepared from April, 2015. He further confirmed that actually M/s. Analytix Business Solutions (India) Private Limited exported Accounting & Book Keeping Services, Tax Support Services & I.T. Services to foreign clients and the same were mentioned in original monthly export invoices also.

- Further he was shown panchnama dated 27.05.2019 drawn at the office. Premises of M/s. Analytix Business Solutions (India) Pvt. Ltd., Memnagar, Ahmedabad and having seen the same and of its correctness, he put his dated signature on the said panchnama.
- Further he was shown documents bearing page no. 1, 24 to 26 & 152 of file no. 10 seized under panchnama dated 27.05.2019. In this regard, he stated that M/s. Analytix Business Solutions (India) Private Limited was registered as STPI (Software Technology Park of India) Unit under STP Scheme since 2005. Further, he stated that Board of Directors of M/s. Analytix Business Solutions (India) Private Limited has decided to de-bond the said STPI Unit from STPI Scheme and accordingly M/s. Analytix Business Solutions (India) Private Limited had submitted letters dated 08.03.2018 & 23.03.2018 in STPI, Gandhinagar for cancellation of LoP Ref. No. STPIG/EXIM/S/430/SOPL/2714 dated 12.08.2005 to exit from STP Scheme. Further, STPI, Gandhinagar issued "In Principal" De bond (Provisional) permission to M/s. Analytix Business Solutions (India) Pvt. Ltd. to exit from the STP Scheme vide letter dated 03.04.2018 in terms of Para 6.18 of Foreign Trade Policy and Appendix-6K of Foreign Trade Policy Handbook of Procedures. Further STPI, Gandhinagar approved the final de-bonding of the M/s. Analytix Business Solutions (India) Pvt. Ltd. to exit the STP Scheme vide letter dated. 23.07.2018 after submission of No dues & NOC issued by Customs and Central Excise Authorities. He further stated that M/s. Analytix Business Solutions (India) Pvt. Ltd. has continued as STPI Unit status till 03.04.2018.
- Further, he was shown his statement dated 27.05.2019 and after having perused the same he put his dated signature on the same. He further stated that in his statement dated 27.05.2019 he had wrongly stated that he used to prepare 2 or 3 type of export invoices in every month since 2005 with different service descriptions. But now he gave his correct statement that actually he used to prepare only one type of export invoice with service description as Accounting & Book Keeping Charges, Tax Support Services Charges and I.T. Service Charges till April/May 2018. Further he stated that as per direction of Shri Fenil Shah, Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited, he prepared parallel invoices by way of redrafting all the export invoices from April, 2015 to March, 2018 at one time in the month of April/May 2018 with the service description as (i) Accounting & Book Keeping Charges & (ii) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services with intent to wrongly avail SEIS benefits.
- That M/s. Analytix Business Solutions (India) Pvt. Ltd., has obtained SEIS scrip's for the year 2015-16 and 2016-17 total amounting to Rs. 94,77,875.83/- from DGFT by way of submitting the parallel redrafted invoices for the year of 2015-16 and 2016-17.

- SEIS applications were signed by Shri Fenil Shah, Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited.

**4.3** Statement dated 27.05.2022 of **Shri Rajiv Bhatia**, President & Country Head of M/s Analytix Business Solutions (India) Pvt. Ltd., Ahmedabad was recorded under Section 108 of the Customs Act, 1962 [**RUD No.-04**] wherein he interalia stated that:

- From November 2018 he was working in M/s. Analytix Business Solutions (India) Pvt. Ltd. as President & India Head.
- that M/s. Analytix Business Solutions (India) Pvt. Ltd. was established in 2005. M/s. Analytix Business Solutions (India) Pvt. Ltd. is engaged in the business of exporting IT Software Development Services / Accounting & Book Keeping Services / Tax support services etc. since 2005.
- that Directors of our company are Shri Pankaj M Patel and Shri Gulamrasul Bala; that he was President. & Country Head of M/s Analytix Business Solutions (India) Pvt. Ltd. and supervise all the work of the said company; that mainly look after delivery operations of above mentioned services, recruitment, training and employee retention.
- that M/s Analytix Business Solutions (India) Pvt. Ltd. is the subsidiary company of M/s. Analytix Business Solutions LLC.
- that Shri Fenil Shah was looking after all the work related to M/s Analytix Business Solutions (India) Pvt. Ltd. from 2005 onwards and after he resigned from the job and company, he (Rajiv Bhatia) was looking after all the work of M/s Analytix Business Solutions (India) Pvt. Ltd. from 19th November 2018 to till date excluding accounts work; that since he had joined the said company they were preparing the invoice in the same manner as submitted in DGFT for the SEIS benefit.
- On being specifically asked about description of services in the invoice produced in the name of M/s. Analytix Business Solutions LLC, Massachusetts, USA, he stated that they have not changed the description of services in invoices since he joined this company in November 2018 and continued the description of services as mentioned earlier.
- Further he was shown agreement between M/s. Analytix Business Solutions (India) Pvt. Ltd. and M/s. Analytix Business Solutions LLC dated 30.01.2016 and after reading the agreement he stated that they were providing the services mentioned in the said agreement i.e. accounting, book keeping, taxation, IT and IT enabled services.
- On being specifically asked he stated that M/s. Analytix Business Solutions (India) Pvt. Ltd. availed the benefit of SEIS scheme for the year 2015-2016 & 2016-2017; that M/s. Analytix Business. Solutions (India) Pvt. Ltd. Has availed SEIS scrips of Rs. 94,77,875.83 /- and all the scrips have been sold to M/s Mahalaxmi Exports, Ahmedabad

- that M/s. Analytix Business Solutions (India) Pvt. Ltd. Has taken registration under STPI (Software Technology Parks of India) in 2005 which was later renewed in 2010 for the period up to 2015
- that M/s. Analytix Business Solutions (India) Pvt. Ltd. has applied for de bonding from STPI scheme in the month of April, 2018 and final de-bonding has been given by STPI vide letter dated 23.07.2018.
- that M/s. Analytix Business Solutions (India) Pvt. Ltd. has not obtained Service Tax Registration since 2005 and our company has never applied for service tax registration till June, 2017.
- On being asked regarding the manner of classification of services provided by our company, he stated that Shri Kiran Modi, Manager Accounts, Shri Fenil Shah (left the company) and our company Directors can give the details regarding classification of services provided by their company.

**4.4** Statement of **Shri Pankaj Manilal Patel**, Director of M/s Analytix Business Solutions (India) Pvt. Ltd., B/403 405, GCP Business Centre, Opp Memnagar Fire Station, Memnagar, Ahmedabad, Gujarat-380053 was recorded on 01.07.2019 under Section 108 of the Customs Act, 1962 [**RUD No.-05**] wherein:

- he was shown panchnama dated 27.05.2019 drawn at the office premises of M/s. Analytix Business Solutions (India) Pvt. Ltd., Memnagar, Ahmedabad and having seen the same, he put his dated signature on the said panchnama.
- Further he was shown a statement dated 19.06.2019 of Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. In token of having read and its correctness, he put his dated signature on the said statement.
- Further on being asked he stated that at present he was one of the two directors of M/s Analytix Business Solutions (India) Pvt. Ltd., Ahmedabad. He further stated that he don't look after day to day work of M/s Analytix Business Solutions (India) Pvt. Ltd. Further on being asked regarding work profile of M/s. Analytix Business Solutions (India) Private Limited he stated that M/s. Analytix Business Solutions (India) Private Limited is engaged in exporting services viz Accounting & Book Keeping Services and IT. Software Services.
- that M/s Analytix Business Solutions (India) Private Limited is 100% EOU for providing aforesaid services and have not provided service in domestic market. M/s. Analytix Business Solutions (India) Private Limited used to provide services only to foreign clients of our affiliated/parent company viz M/s. Analytix Business Solutions, LLC, USA. M/s. Analytix Business Solutions (India) Private Limited used to export services directly to foreign clients of M/s. Analytix Business Solutions, LLC, USA. For providing aforesaid services, there were agreements between M/s. Analytix Business Solutions, LLC, USA & their foreign clients and between M/s Analytix Business Solutions, LLC, USA & M/s. Analytix Business Solutions (India) Private Limited. He further stated that there was no direct agreement between M/s. Analytix Business Solutions (India) Private Limited and foreign client of M/s. Analytix Business Solutions, LLC, USA for providing service.

- That for providing services to foreign clients of M/s. Analytix Business Solutions, LLC, USA. M/s. Analytix Business Solutions (India) Private Limited raised export invoices on M/s. Analytix Business Solutions, LLC, USA as per agreement.
- that M/s. Analytix Business Solutions (India) Pvt. Ltd. has obtained SEIS scrip's for the year 2015-16 and 2016-17 total amounting to Rs. 94,77,875.83/- from DGFT by way of submitting the parallel re-drafted invoices for the year 2015-16 and 2016-17. He further stated that their company has filed application for SEIS scrip with DGFT for the year 2017-18 for an amount of Rs. 90 Lakhs (approx.).
- On being asked regarding preparing multiple export invoices with different descriptions of services exported but with similar invoice no, & date and same invoice amount for the period from April 2015 to March 2017, he stated that he don't look after day to day work of M/s. Analytix Business Solutions (India) Private Limited. Further he stated that work related to preparing invoices were looked after by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. under the direction of Shri Fenil Shah, former Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited.
- Further on being asked he stated that export invoices with service description as (i) Accounting & Book Keeping Charges (1) Tax Support Services Charges and (iii) IT Service Charges were the correct invoices. Further he stated that but as per direction of Shri Fenil Shah, Sha Kirankumar Gunvantbhai Modi had changed the description of services as Accounting & Book Keeping Charges, (ii) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services with intent to wrongly avail Service Export From India Scheme (SEIS) benefits. Further he stated that these redrafted parallel export invoices along with application were submitted in DGFT, Ahmedabad with intent to wrongly avail undue SEIS benefits from DGFT.
- Further, on being asked he stated that invoice values in respect of Accounting & Book Keeping Charges & Tax Support Services Charges were same in all original monthly export invoices and in redrafted monthly parallel export invoices prepared from April, 2015 onwards. But the invoice values in respect of I.T. Service ( mentioned in original monthly export invoices) were divided in Operational Management Consultancy Services, Architectural Services and IT Software Development Services in redrafted monthly parallel export invoices from April, 2015 onwards.
- He further confirmed that actually M/s Analytix Business Solutions (India) Private Limited had exported Accounting & Book Keeping Services, Tax Support Services & I.T. Services to foreign clients and the same were mentioned in original monthly export invoices also.
- Further he was shown a worksheet bearing page 01 to 02 prepared on the basis of original monthly export invoices & parallel redrafted monthly export invoices for the period from April 2015 to March 2017 on the basis of documents withdrawn under panchnama dated 27.05.2019 drawn at M/s. Analytix Business Solutions (India) Pvt Ltd.. Ahmedabad. In this regard he stated that 02 service description (1) Operational Management Consultancy Services amounting to 3,82,280 USD and (ii) Architectural Services amounting to 5,09,900 USD were actually I.T



Services and the same were mentioned as IT services in original monthly export invoices. But parallel monthly export invoices were prepared by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd as per the direction of Shri Fenil Shah, former Head (India operations) of M/s.: Analytix Business Solutions (India) Private Limited by way of inserting two new services as (i) Operational Management Consultancy Services and (ii) Architectural Services with intent to wrongly avail SEIS benefits from DGFT.

- Further he was shown copy of Division 84 of Central Product Classification (CPC) bearing Pg. No. 1 to 05, taken from the DGFT website [www.dgft.gov.in](http://www.dgft.gov.in) & Annexure 3D of public notice 45/2015-2020 dated 05.12.2017 (as amended) bearing page 01 to 05. After having perused and understand the same he put his dated signature on first & last page of the said documents.
- After going through Division 84 of CPC, he stated that the services exported by their company which were mentioned as I.T. Services in actual export monthly invoices are classifiable under CPC Division 84. Further he confirmed that as per the said appendix 3D, services classifiable under CPC Division 84 are not eligible or notified services to avail SEIS benefits.
- Further he was shown documents bearing page no. 1, 24 to 26 & 152 of F0ile no. 10 seized under panchnama dated 27.05.2019. In this regard, he stated that M/s. Analytix Business Solutions (India) Private Limited was registered as STPI (Software Technology Park of India) Unit under STP Scheme since 2005. Further, he stated that Board of Directors of M/s. Analytix Business Solutions (India) Private Limited has decided to de bond the said STPI Unit from STPI Scheme and accordingly M/s. Analytix Business Solutions (India) Private Limited had submitted letters dated 08.03.2018 & 23.03.2018 in STPI, Gandhinagar for cancellation of LoP Ref. No STPIG/EXIM/S/430/SOPL/2714 dated 12.08.2005 & to exit from STP Scheme. Further, STPI, Gandhinagar issued "In Principal" De bond (Provisional) permission to M/s. Analytix Business Solutions (India) Pvt. Ltd to exit from the STP Scheme vide letter dated 03.04.2018 in terms of Para 6.18 of Foreign Trade Policy and Appendix-6K of Foreign Trade Policy Handbook of Procedures. Further on being asked he stated that further STPI, Gandhinagar approved the final de-bonding of the M/s. Analytix Business Solutions (India) Pvt. Ltd. to exit the STP Scheme vide letter dated 23.07.2018 after submission of No dues & NOC issued Customs and Central Excise Authorities.
- Further he was shown Appendix-6K of Foreign Trade Policy Handbook of Procedures. In this regard, after perusing the same he stated that the para Note(ii) of Appendix 6K Guidelines for Exit of EQU/EHTP/STP Units" reads as under "Further, the unit would continue to be treated as EQU/EHTP/STP unit till the date of final exit order or issue of fresh LOP under the new scheme in cases of conversion from one scheme to the other and subject to monitoring of the stipulated obligations under the relevant scheme." After going through the said para he stated that in case of exit of M/s. Analytix Business Solutions (India) Pvt. Ltd. from STPI Scheme, the date of final exit order is 23.07.2018, hence M/s Analytix Business Solutions (India) Pvt. Ltd. has continued as STPI Unit status till 23.07.2018 as per the para Note (ii) of Appendix-6K of FTP.
- Further he was shown page no. 10 & 11 of printout of "Formats & Procedure" taken from official site of STPI, Gandhinagar

<https://www.stpi.in>. In this regard he stated that aforesaid page no 10 & 11 contains the procedure of Exit from the STPI Scheme. Further, he stated that as per the aforesaid documents M/s. Analytix Business Solutions (India) Pvt. Ltd. has continued as STPI Unit status till 23.07.2018 as the date of final exit order to exit from STPI Scheme is 23.07.2018.

- Further he was shown public Notice no. 45/2015-2020 dated 05.12.2017. After perusing the same he stated that STPI units are not eligible for availing benefits under SEIS Scheme as per the said public notice. Hence, being a STPI Unit till 23.07.2018, M/s. Analytix Business Solutions (India) Pvt. Ltd. was not eligible for availing benefits under SEIS Scheme.
- Further he admitted that M/s. Analytix Business Solutions Indian Pvt. Ltd., Ahmedabad has wrongly obtained 02 duty scrips amounting to Rs. 94,77,875.83/- from DGFT under SEIS. Further he undertake to voluntarily pay the benefits amounting to Rs. 50,00,000/- on 02.07.2019 and the remaining amount within 10-12 days.

#### **05. EXPORT INCENTIVES UNDER DUTY CREDIT SCRIPS- SERVICE EXPORTS FROM INDIA SCHEME (SEIS): -**

5.1 In terms of Chapter 3 of the Foreign Trade Policy (FTP) 2015-2020, exporters are issued duty credit scrips under two schemes for exports of Merchandise and Services namely (i) Merchandise Exports from India Scheme (MEIS)& (ii) Service Exports from India Scheme (**SEIS**) with an objective to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

Service Exports from India Scheme (SEIS) has been introduced by the Government of India w.e.f. 01.04.2015 under the Foreign Trade Policy 2015-20 (FTP 2015-2020) replacing the erstwhile 'Served From India Scheme (SFIS) under the FTP 2009-15. As per FTP 2015-2020, Service Providers of Notified Services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. Objective of Service Exports from India Scheme (SEIS) is to encourage and maximize export of notified Services from India. Only Services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of this policy shall be eligible for SEIS benefit. The notified services and rates of rewards are listed in Appendix 3D. SEIS is a reward computed based on the 'net' free foreign exchange realized and the percentage of this reward is specified in Appendix 3D of the FTP 2015-20. Benefit allowed under this scheme is 3% to 5% as per nature of services supplied and the scrips can be used for the payment of Custom duties on imports, payment of excise on domestic procurement, including capital goods and payment of service tax. The duty scrips are freely transferable.

**5.2** Further, para 3.09 of Foreign Trade Policy-2015-2020 w.e.f. 01.04.2015 describes "Ineligible Categories under SEIS". The said para 3.09 of FTP [**RUD No.- 06**] is reproduced as below:

#### **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:

#### **I. 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 SEZ / EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units;**
- (f) Clubbing of turnover of services rendered by SEZ / EOU / 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.

**5.3** The SEIS entitlements as per Public Notice No. 03 dated 01/04/2015 as amended (vide Public Notice No. 45/2015-2020 dated 05.12.2017) **[RUD No. -07]** issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce on all the list of services are as under:

#### **Annexure to Appendix 3**

**Note 1:** *The services and rates of rewards notified against them shall be applicable for services export made between 1-4-2015 to 30-09-2015*

only. The list of services/rate is subject to review with effect from 1-10-2015.

**Note 2:** The rate of reward for eligible services is subject to conditions as specified in FTP and HBP.

**Note 3:** For Educational Services, SEIS reward shall not be available on Capitation Fee.

**Note 4:** Under Maritime Transport Services marked with \*[9A (a), (b) and (c)], the reward shall be limited to Operations from India by Indian Flag Carriers only

**Note 5:** Following shall not be taken into account for calculation of entitlement under the SEIS.

**a.** Foreign Exchange remittances:

**I.** 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:  
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**
- f.** Clubbing of turnover of services rendered by EOU/ EHTP/ STPI/ BTP units with turnover of DTA Service Providers.
- g.** 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.
- h.** Service providers in Telecom Sector

**List of Services**

S.No.	SECTORS	Central Product Classification (CPC) Code	Admissible rate in % (on Net Foreign Exchange

			<i>earnings)</i> <i>[As</i> <i>amended</i> <i>by DGFT]</i>
<i>1</i>	<i>BUSINESS SERVICES</i>		
<i>A.</i>	<i>Professional services</i>		
<i>a.</i>	<i>Legal services</i>	<i>861</i>	<i>5/7</i>
<i>b.</i>	<i>Accounting, auditing and bookkeeping services</i>	<i>862</i>	<i>5/7</i>
<i>c.</i>	<i>Taxation services</i>	<i>863</i>	<i>5/7</i>
<i>d.</i>	<i>Architectural services</i>	<i>8671</i>	<i>5/7</i>
<i>e.</i>	<i>Engineering services</i>	<i>8672</i>	<i>5/7</i>
<i>f.</i>	<i>Integrated engineering services</i>	<i>8673</i>	<i>5/7</i>
<i>g.</i>	<i>Urban planning and landscape architectural services</i>	<i>8674</i>	<i>5/7</i>
<i>h.</i>	<i>Medical and dental services</i>	<i>9312</i>	<i>5/7</i>
<i>i.</i>	<i>Veterinary services</i>	<i>932</i>	<i>5/7</i>
<i>j.</i>	<i>Services provided by midwives, nurses, physiotherapists and paramedical personnel</i>	<i>93191</i>	<i>5/7</i>
<i>B</i>	<i>Research and development services</i>		
<i>a.</i>	<i>R&amp;D services on natural sciences</i>	<i>851</i>	<i>5/7</i>
<i>b.</i>	<i>R&amp;D services on social sciences and humanities</i>	<i>852</i>	<i>5/7</i>
<i>c.</i>	<i>Interdisciplinary R&amp;D services</i>	<i>853</i>	<i>5/7</i>
<i>C.</i>	<i>Rental/Leasing services without operators</i>		
<i>a.</i>	<i>Relating to ships</i>	<i>83103</i>	<i>5/7</i>
<i>b.</i>	<i>Relating to aircraft</i>	<i>83104</i>	<i>5/7</i>
<i>c.</i>	<i>Relating to other transport equipment</i>	<i>83101</i> <i>83102</i> <i>83105</i>	<i>5/7</i>
<i>d.</i>	<i>Relating to other machinery</i>	<i>83106-83109</i>	<i>5/7</i>
<i>D</i>	<i>Other business services</i>		
<i>a.</i>	<i>Advertising services</i>	<i>871</i>	<i>3/5</i>
<i>b.</i>	<i>Market research and public opinion polling services</i>	<i>864</i>	<i>3/5</i>
<i>c.</i>	<i>Management consulting service</i>	<i>865</i>	<i>3/5</i>
<i>d.</i>	<i>Services related to management consulting</i>	<i>866</i>	<i>3/5</i>
<i>e.</i>	<i>Technical testing and analysis services</i>	<i>8676</i>	<i>3/5</i>
<i>f.</i>	<i>Services incidental to agricultural, hunting and forestry</i>	<i>881</i>	<i>3/5</i>
<i>g.</i>	<i>Services incidental to fishing</i>	<i>882</i>	<i>3/5</i>
<i>h.</i>	<i>Services incidental to mining</i>	<i>883</i> <i>5115</i>	<i>3/5</i>
<i>i.</i>	<i>Services incidental to manufacturing</i>	<i>884</i> <i>885</i>	<i>3/5</i>
<i>j.</i>	<i>Services incidental to energy distribution</i>	<i>887</i>	<i>3/5</i>
<i>k.</i>	<i>Placement and supply services of</i>	<i>872</i>	<i>3/5</i>

	<i>personnel</i>		
<i>l.</i>	<i>Investigation and security</i>	<i>873</i>	<i>3/5</i>
<i>m.</i>	<i>Related scientific and technical consulting services</i>	<i>8675</i>	<i>3/5</i>
<i>n.</i>	<i>Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)</i>	<i>633 8861-8866</i>	<i>3/5</i>
<i>o.</i>	<i>Building – cleaning services</i>	<i>874</i>	<i>3/5</i>
<i>p.</i>	<i>Photographic Services</i>	<i>875</i>	<i>3/5</i>
<i>q.</i>	<i>Packaging services</i>	<i>876</i>	<i>3/5</i>
<i>r.</i>	<i>Printing, publishing</i>	<i>88442</i>	<i>3/5</i>
<i>s.</i>	<i>Convention services</i>	<i>87909</i>	<i>3/5</i>
<b>2</b>	<b>COMMUNICATION SERVICES</b>		
	<i>Audiovisual services</i>		
<i>a.</i>	<i>Motion picture and video tape production and distribution service</i>	<i>9611</i>	<i>5/7</i>
<i>b.</i>	<i>Motion picture projection service</i>	<i>9612</i>	<i>5/7</i>
<i>c.</i>	<i>Radio and television services</i>	<i>9613</i>	<i>5/7</i>
<i>d.</i>	<i>Radio and television transmission services</i>	<i>7524</i>	<i>5/7</i>
<i>e.</i>	<i>Sound recording</i>	<i>n.a.</i>	<i>5/7</i>
<b>3</b>	<b>CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>		
<i>A.</i>	<i>General Construction work for building</i>	<i>512</i>	<i>5/7</i>
<i>B.</i>	<i>General Construction work for Civil Engineering</i>	<i>513</i>	<i>5/7</i>
<i>C.</i>	<i>Installation and assembly work</i>	<i>514 516</i>	<i>5/7</i>
<i>D.</i>	<i>Building completion and finishing work</i>	<i>516</i>	<i>5/7</i>
<b>4.</b>	<b>EDUCATIONAL SERVICES (Please refer Note-3)</b>		
<i>A.</i>	<i>Primary education service</i>	<i>921</i>	<i>5/7</i>
<i>B.</i>	<i>Secondary education services</i>	<i>922</i>	<i>5/7</i>
<i>C.</i>	<i>Higher education services</i>	<i>923</i>	<i>5/7</i>
<i>D.</i>	<i>Adult education</i>	<i>924</i>	<i>5/7</i>
<b>5</b>	<b>ENVIRONMENTAL SERVICES</b>		
<i>A.</i>	<i>Sewage services</i>	<i>9401</i>	<i>5/7</i>
<i>B.</i>	<i>Refuse disposal services</i>	<i>9402</i>	<i>5/7</i>
<i>C.</i>	<i>Sanitation and similar services</i>	<i>9403</i>	<i>5/7</i>
<b>6</b>	<b>HEALTH-RELATED AND SOCIAL SERVICES</b>		
<i>A.</i>	<i>Hospital services</i>	<i>9311</i>	<i>5/7</i>
<b>7</b>	<b>TOURISM AND TRAVEL-RELATED SERVICES</b>		
<i>A.</i>	<i>Hotels and Restaurants (including catering)</i>		

a.	Hotel	641-643	3/5
b.	Restaurants (including catering)	641-643	3/5
B.	Travel agencies and tour operators services	7471	5/7
C	Tourist guides services	7472	5/7
8.	RECREATIONAL CULTURAL AND SPORTING SERVICES (other than audiovisual services)		
A.	Entertainment services (including theatre, live bands and circus services)	9619	5/7
B.	News agency services	962	5/7
C.	Libraries archives, museums and other cultural services	963	5/7
D.	Sporting and other recreational services	964	5/7
9	TRANSPORT SERVICE (Please refer Note 4)		
A.	Maritime Transport Services		
a.	Passenger transportation*	7211	5/7
b.	Freight transportation*	7212	5/7
c.	Rental of vessels with crew*	7213	5/7
d.	Maintenance and repair of vessels	8868	5/7
e.	Pushing and towing services	7214	5/7
f.	Supporting services for maritime transport	745	5/7
B.	Air Transport services		
a.	Rental of aircraft with crew	734	5/7
b.	Maintenance and repair of aircraft	8868	5/7
c.	Airport Operations and ground handling		5/7
C	Road Transport Services		
a.	Passenger transportation	7121 7122	5/7
b.	Freight transportation	7123	5/7
c.	Rental of Commercial vehicles with operator	7124	5/7
d.	Maintenance and repair of road transport equipment	6112 8867	5/7
e.	Supporting services for road transport services	744	
D	Services Auxiliary To All Modes of Transport		
a.	Cargo handling services	741	5/7
b.	Storage and warehousing services	742	5/7
c.	Freight transport agency services	748	5/7

(emphasis added)

It is pertinent to mention that the aforesaid notification no. 03/2015-2020 dated 01.04.2015 was amended vide Public Notice No. 45/2015-2020 dated 05.12.2017 and the said sub-para 2(e) of para 3.09 of FTP was incorporated in the said Public Notice No. 45/2015-2020 dated 05.12.2017 as **Note-5**.

**6. DETAILS OF SCRIPS AVAILED UNDER SEIS BY M/S. ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD., AHMEDABAD:**

The details of SEIS scrips obtained by M/s. Analytix Business Solutions (I) Pvt. Ltd. from DGFT, Ahmedabad are as under:

Sl. No.	SEIS Scrip No.	SEIS Scrip issue Date	Financial Year	Amount of SEIS
1	0819041085	23.10.2018	2015-16	33,44,148.35
2	0819041399	31.10.2018	2016-17	61,33,727.48
		<b>TOTAL</b>		<b>94,77,875.83</b>

It can be seen from above that M/s. Analytix Business Solutions (I) Pvt. Ltd. has availed 02 SEIS scrips w.r.t. services exported by them during financial year 2015-16 & 2016-17. Details of the said SEIS scrips are enclosed as **Annexure A**.

**7. WHY THE SERVICES EXPORTED BY M/S. ABS, AHMEDABAD APPEAR NOT TO BE ELIGIBLE FOR SEIS BENEFITS:**

7.1 M/s. Analytix Business Solutions (India) Private Limited was registered as STPI (Software Technology Park of India) Unit under STP Scheme in 2005 and Letter of Permission under STP Scheme bearing No. STPIG/EXIM/S/430/SOPL/2714 dated 12.08.2005 was issued by STPI Gandhinagar to M/s. Analytix Business Solutions (India) Private Limited (formerly known as M/s. Sunbelt Outsourcing Pvt. Ltd. Ahmedabad). Further, M/s. Analytix Business Solutions (India) Private Limited had submitted letters dated 08.03.2018 & 23.03.2018 **[RUD No.-08]** in STPI, Gandhinagar for cancellation of LoP Ref. No STPIG/EXIM/S/430/SOPL/2714 dated 12.08.2005 & to exit from STP Scheme. Further, STPI, Gandhinagar issued "In Principal" De bond (Provisional) permission to M/s. Analytix Business Solutions (India) Pvt. Ltd to exit from the STP Scheme vide letter dated **03.04.2018 [RUD No.-09]** in terms of Para 6.18 of Foreign Trade Policy and Appendix-6K of Foreign Trade Policy Handbook of Procedures. Further STPI Gandhinagar approved the final de-bonding of the M/s. Analytix Business Solutions (India) Pvt. Ltd. to exit the STP Scheme vide letter dated **23.07.2018 [RUD No.-10]** after submission of No dues & NOC issued Customs and Central Excise Authorities. Copy of the said letter dated 23.07.2018 of STPI, Gandhinagar is reproduced below:





## सॉफ्टवेयर टेक्नोलॉजी पार्क्स ऑफ इंडिया

(भारत सरकार, इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी मंत्रालय के अन्तर्गत स्वायत्त सोसाइटी)

9वीं मंजिल, गिफ्ट वन टावर, ब्लॉक - 56, रोड - 5सी, झोन - 5, गिफ्ट सिटी, गांधीनगर - 382355 (गुजरात) भारत

दूरभाष: +91-79-66748531, 66748532, फैक्स: +91-79-66748533

ई-मेल: gnr.info@stpi.in यु.आर.एल.: http://www.gnr.stpi.in

## Software Technology Parks of India

(An Autonomous Society under Govt. of India, Ministry of Electronics and Information Technology)

9<sup>th</sup> Floor, GIFT One Tower, Block-56, Road - 5C, Zone-5, GIFT City, Gandhinagar - 382355 (Gujarat) India

Phone: +91-79-66748531, 66748532, Fax: +91-79-66748533

E-mail: gnr.info@stpi.in URL: http://www.gnr.stpi.in

To,  
M/s. Analytix Business Solutions (I) Pvt. Ltd.,  
B/403-405, GCP Business Center,  
Opp. Memnagar Fire Station, Memnagar,  
Ahmedabad-380052.

Ref: STPIG/EXIM/S/430/SOPL/FD/1093

Dated: 23/07/18..

Sub: Final De-bonding letter to Letter of Permission No. STPIG/EXIM/S/430/SOPL/2714 Dated 12.08.2005 issued to work under STP Scheme.

Dear Sir,

M/s. Analytix Business Solutions (I) Pvt. Ltd., Ahmedabad has been approved as a 100% EOU unit under the Software Technology Park Scheme of Govt. of India, vide Letter of Permission No. STPIG/EXIM/S/430/SOPL/2714 Dated 12.08.2005. The Provisional exit letter issued to the unit vide Letter No. STPIG/EXIM/S/430/SOPL/IP/57 dated 03.04.2018 against the request for cancellation of LoP.

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The final de-bonding of the unit is considered on the basis of following:

- 1> No dues and No Objection Certificate issued by Customs and Central Excise Authorities vide reference No. F.No. CGST A'bad North/Div-VII/Customs/18-19 Dated 03.05.2018 received on 22.05.2018.
- 2> Compliance of Export Obligation.

The approval of final exit is issued in respect of 6.18 (a) & (b) of Foreign Trade Policy (1<sup>st</sup> April 2015-31<sup>st</sup> March 2020) updated up to 05.12.2017.

Yours faithfully,

*Devesh Tyagi* 23/07..

Devesh Tyagi  
Senior Director



*Seen*  
*14/01/2019*

CC To:

The Deputy Commissioner,  
Paldi Customs Division,  
Vidyalaya Chambers, Paldi,  
Ahmedabad

- for kind information and necessary action

*27-5-19*  
*27-5-19*  
*27-5-19*

7.2 It pertinent to mention that “Guidelines for exit of EOU/ EHTP/STP Units” are described in Appendix-6K of [FTP 2015-20](#) [RUD No.-11]. Appendix- 6K is reproduced as under:

### APPENDIX-6K

### GUIDELINES FOR EXIT OF EOU/EHTP/STP UNITS

(Please see Para 6.18 (d) of FTP)

- a) Applicable customs and excise duties would be paid, on the imported and indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock. The unit may be

allowed to dispose off raw material, components, consumables etc. against duty free licenses. The unit may also be permitted to export the CG, raw material/components etc.

- b) The penalty imposed by the appropriate authority, under the Foreign Trade (Development and Regulation) Act, 1992, as amended, for non-fulfillment of the conditions of approval, would be paid. In case an appeal against an order imposing penalty is pending, exit from the Scheme would be considered if the unit has obtained a stay order from Competent Authority and has furnished a Bank Guarantee for the penalty adjudicated by the appropriate authority unless the appellate authority makes a specific order exempting the unit from this requirement.
- c) In case the unit has failed to fulfill the terms and conditions of LOA and penal proceedings are to be taken up/are in process, a legal undertaking for payment of penalties, that may be imposed, would be executed with the concerned Development Commissioner as per enclosed proforma at ANNEXURE.
- d) EOUs wishing to continue operations in the DTA would need to comply with industrial, locational, environment or other laws, rules and regulations in force for DTA units.

**Note:**

- i) The unit would fulfill the above mentioned standard conditions in a period of six months from the date of issue of 'in principle' exit letter and obtain final exit permission from the Development Commissioner/SIA (in case manufacturing of item requires Industrial Licence) failing which the approval granted would lapse automatically. DC may however allow a further extension for fulfillment of the standard conditions in deserving cases.
- ii) **Further, the unit would continue to be treated as EOU/EHTP/STP unit till the date of final exit order or issue of fresh LOP under the new scheme in cases of conversion from one scheme to the other and subject to monitoring of the stipulated obligations under the relevant scheme.**

7.3 In the present case, final exit order w.r.t. exit of M/s. Analytix Business Solutions (India) Pvt. Ltd. from STP Scheme was issued by STPI, Gandhinagar on 23.07.2018 and as per para (ii) of Note of Appendix 6K- "Guidelines for Exit of EQU/EHTP/STP Units" the unit would continue to be treated as EQU/EHTP/STP unit till the date of final exit order .....". Hence in light of provisions of Para 6.18 of Foreign Trade Policy and Appendix-6K of FTP (Handbook of Procedures), it appears that M/s. Analytix Business Solutions (India) Pvt. Ltd. has continued status of STPI Unit till 23.07.2018.

7.4 Further, As per sub-para 2 (e) of para 3.09 of [FTP 2015-2020](#) w.e.f. 01.04.2015 and Note 5 (e) of Annexure to Appendix 3D as amended vide Public Notice No. 45/2015-20 dated 05.12.2017 "*Export turnover relating to services of units operating under SEZ/EOU/EHTP/STPI/BTP Schemes or supplies of*

*services made to such units”, are not entitle for availing SEIS benefits. In the present case, M/s. Analytix Business Solutions (India) Pvt. Ltd. was STPI Unit till 23.07.2018. Hence, in light of provisions of sub-para 2 (e) of para 3.09 of [FTP 2015-2020](#), being a STPI Unit, export turnover relating to services exported by M/s. Analytix Business Solutions (India) Pvt. Ltd. till 23.07.2018, are not eligible for availing benefit under SEIS.*

7.5 It is pertinent to mention that M/s. Analytix Business Solutions (India) Pvt. Ltd. has availed 02 SEIS scrips i.e. 0819041085 dated 23.10.2018 & 0819041399 dated 31.10.2018 for services exported by them during financial year 2015-16 & 2016-17 amounting to Rs. 33,44,148.35/- & 61,33,727.48/- respectively. As discussed in above paras & in light of provisions of sub-para 2 (e) of para 3.09 of [FTP 2015-2020](#) read with Appendix 6-K of FTP, M/s. Analytix Business Solutions (India) Pvt. Ltd. fraudulently availed the said 02 SEIS scrips from DGFT despite being STPI unit.

## **8. DETERMINATION OF CLASSIFICATION OF SERVICES EXPORTED BY M/S. ABS, AHMEDABAD:-**

M/s. Analytix Business Solutions (India) Pvt. Ltd. has exported Accounting & Book Keeping Services, Tax Support Services and IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. Accounting & Book Keeping Services and Tax Support Services are to be covered under UN CPC Code 862 & 863 respectively and the said classification are not disputable in the present case booked by DRI, Ahmedabad. W.r.t. IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. exported by M/s. Analytix Business Solutions (India) Pvt. Ltd., the said services are appear to be covered under CPC code 841 to 849 which are defined as under:

### **DIVISION 84 COMPUTER AND RELATED SERVICES [RUD No. -12]**

*841 Consultancy services related to the installation of computer hardware*

*8410 84100 Consultancy services related to the installation of computer hardware*

***Assistance services to the clients in the installation of computer hardware (i.e. physical equipment) and computer networks.***

### ***842 Software implementation services***

***All services involving consultancy services on, development and implementation of software.*** The term "software" may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two.

*8421 84210 Systems and software consulting services*

*Services of a general nature prior to the development of data processing systems and applications. It might be management services, project planning services, etc.*

*8422 84220 Systems analysis services*

*Analysis services include analysis of the clients' needs, defining functional specification, and setting up the team. Also involved are project management, technical coordination and integration and definition of the systems architecture.*

#### *8423 84230 Systems design services*

*Design services include technical solutions, with respect to methodology, quality-assurance, choice of equipment software packages or new technologies, etc.*

#### **8424 84240 Programming services**

***Programming services include the implementation phase, i.e. writing and debugging programmes, conducting tests, and editing documentation.***

#### *8425 84250 Systems maintenance services*

*Maintenance services include consulting and technical assistance services of software products in use, rewriting or changing existing programmes or systems, and maintaining up-to-date software documentation and manuals. Also included are specialist work, e.g. conversions.*

#### *843 Data processing services*

##### *8431 84310 Input preparation services*

*Data recording services such as key punching, optical scanning or other methods for data entry.*

##### *8432 84320 Data-processing and tabulation services*

*Services such as data processing and tabulation services, computer calculating services, and rental services of computer time.*

##### *8433 84330 Time-sharing services*

*This seems to be the same type of services as 84320. Computer time only is bought; if it is bought from the customer's premises, telecommunications services are also bought. Data processing or tabulation services may also be bought from a service bureau. In both cases the services might be time sharing processed. Thus, there is no clear distinction between 84320 and 84330.*

##### *8439 84390 Other data processing services*

*Services which manage the full operations of a customer's facilities under contract: computer-room environmental quality control services; management services of in-place computer equipment combinations; and management services of computer work flows and distributions.*

#### *844 Database services*

##### *8440 84400 Database services*

*All services provided from primarily structured databases through a communication network.*

*Exclusions: Data and message transmission services (e.g. network operation services, value-added network services) are classified in class 7523 (Data and message transmission services). Documentation services consisting in information retrieval from databases are classified in subclass 96311 (Library services).*

#### *845 Maintenance and repair services of office machinery and equipment including computers*

##### *8450 84500 Maintenance and repair services of office machinery and equipment including computers*

*Repair and maintenance services of office machinery, computers and related equipment.*

*849 Other computer services*

*8491 84910 Data preparation services*

*Data preparation services for clients not involving data processing services.*

*8499 84990 Other computer services n.e.c.*

*Other computer related services, not elsewhere classified, e.g. training services for staff of clients, and other professional computer services.*

(emphasis added)

## **9. WHY THE SERVICES EXPORTED BY M/S. ABS, AHMEDABAD APPEAR TO BE NOT COVERED UNDER “MANAGEMENT CONSULTANCY SERVICES” & “ARCHITECTURAL SERVICES”:-**

**9.1** Apart from “Accounting & Book Keeping Services” and “Tax Support Services”, it appears that M/s. ABS, Ahmedabad had classified their Services under “Architectural Services” & “Management Consulting Services” in their application before DGFT in order to get the SEIS Scrips. “Architectural Services” & “Management Consulting Services” defined under UN Central Product Classification (CPC) are reproduced as under:

### **865 8650 MANAGEMENT CONSULTING SERVICES [RUD NO -13]**

#### **86501 General management consulting services**

*Advisory, guidance and operational assistance services concerning business policy and strategy and the overall planning, structuring and control of an organization. More specifically, general management consulting assignments may deal with one or a combination of the following: policy formulation, determination of the organizational structure (decision-making system) that will most effectively meet the objectives of the organization, legal organization, strategic business plans, defining a management information system, development of management reports and controls, business turnaround plans, management audits, development of profit improvement programmes and other matters which are of particular interest to the higher management of an organization.*

#### **86502 Financial management consulting services (except business tax)**

*Advisory, guidance and operational assistance services concerning decision areas which are financial in nature, such as working capital and liquidity management, determination of an appropriate capital structure, analysis of capital investment proposals, development of accounting systems and budgetary controls, business valuations prior to mergers and/or acquisitions, etc., but excluding advisory services on short-term portfolio management which are normally offered by financial intermediaries.*

#### **86503 Marketing management consulting services.**

*Advisory, guidance and operational assistance services concerning the marketing strategy and marketing operation of an organization. Marketing consulting assignments may deal with one or a combination of the following: analysis and formulation of a marketing strategy, formulation of customer service and pricing policies, sales management and staff training, organization of distribution channels (sell to wholesalers or directly to retailers, direct mail, franchise etc.), organization of the distribution*



*process, package design and other matters related to the marketing strategy and operations of an organization.*

#### **86504 Human resources management consulting services**

*Advisory, guidance and operational assistance services concerning the human resources management of an organization. Human resources consulting assignments may deal with one or a combination of the following: audit of the personnel function, development of a human resource policy, human resource planning, recruitment procedures, motivation and remuneration strategies, human resource development, labour-management relations, absenteeism control, performance appraisal and other matters related to the personnel management function of an organization.*

#### **86505 Production management consulting services**

*Advisory, guidance and operational assistance services concerning methods for improving productivity, reducing production costs and improving the quality of production. Production consulting assignments may deal with one or a combination of the following: effective utilization of materials in the production process, inventory management and control, quality control standards, time and motion studies, job and work methods, performance standards, safety standards, office management, planning and design and other matters related to production management, but excluding advisory services and design for plant layout and industrial processes which are normally offered by consulting engineering establishments.*

#### **86506 Public relations services**

*Advisory, guidance and operational assistance services concerning methods to improve the image and relations of an organization or individual with the general public, government, voters, shareholders and others.*

#### **86509 Other management consulting services**

*Advisory, guidance and operational assistance services concerning other matters. These services include industrial development consulting services, tourism development consulting services, etc.  
(emphasis added)*

### **8671 Architectural services [RUD No.-14]**

#### **86711 Advisory and pre-design architectural services**

*Assistance, advisory and recommendation services concerning architectural and related matters. Included here are services as undertaking preliminary studies addressing issues such as site philosophy, intent of development, climatic and environmental concerns, occupancy requirements, cost constraints, site selection analysis, design and construction scheduling and any other issues affecting the nature of the design and construction of a project. The provision of these services is not necessarily related to a new construction project. For example, it may consist of advice concerning the means of carrying out maintenance, renovation, restoration or recycling of buildings, or appraisals of the value and quality of buildings or of advice on any other architectural matter.*

#### **86712 Architectural design services**

*Architectural design services for buildings and other structures. Design services may consist of one or a combination of the following: schematic design services, which consist of determining, with the client, the essential character of the project, defining intent,*

*space requirements, budget limitations and time scheduling; and of preparing sketches including floor plans, site plans and exterior views; design development services, which consist of a more precise illustration of the design concept in terms of siting plan, form, material to be used, structural, mechanical and electrical systems and probable construction costs; final design services, which consist of drawings and written specifications sufficiently detailed for tender submission and construction, and of expert advice to the client at the time of calling for and accepting tenders.*

### **86713 Contract administration services**

*Advisory and technical assistance services to the client during the construction phase to ensure that the structure is being erected in conformity with the final drawings and specifications. This involves services provided both in offices and the field, such as construction inspection, preparation of progress reports, issuance of certificates for payments to the contractor, guidance to the client and the contractor in the interpretation of contract documents and any other advice on technical questions that may develop during construction.*

### **86714 Combined architectural design and contract administration services**

*Combinations of architectural services utilized on most projects including schematic design, design development, final design and contract administration services. This may include post construction services which consist of the assessment of deficiencies in construction and instructions regarding corrective measures to be taken during the 12-month period following the completion of the construction.*

### **86719 Other architectural services**

*All other services requiring the expertise of architects, such as the preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc.*


9.2 Further, perusal of definition of “Management Consulting Services” under 86501 to 86509 makes it amply clear that Consultancy services defined therein are related to Advisory, guidance and operational assistance services concerning business policy and strategy and the overall planning, structuring and control of an organization. These consultancy services are nowhere related to IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. which is services actually provided/exported by M/s. ABS, Ahmedabad. Thus, it appears from the above said definition that the services to be qualified under “Management Consultancy Services” should cover three aspects i.e. “Advisory”, “guidance” & “Operational Assistance” concerning business policy and strategy and the overall planning, structuring and control of an organization. The word used here is “and” and not “or”, so all three components should be there to constitute Management Consultancy Services. From the perusal of the documents of M/s. ABS, Ahmedabad, it appears that they are not providing any advisory or guidance to their client concerning business policy and strategy and the overall planning, structuring and control of an organization. But in order to fraudulently avail SEIS Scrips from DGFT, M/s. ABS, Ahmedabad forged the Export invoices and the invoice values in respect of IT & IT Enabled Service Charges provided/exported and mentioned in original monthly export invoices were bifurcated among (i) “Operational Management Consultancy Services”, (ii) “Architectural Services” and (iii) “IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services” in forged monthly parallel export invoices prepared since April, 2015. The said facts regarding forgery were confirmed by Shri

9.3 Further, perusal of definition of “Architectural services” under 86711 to 86719 makes it amply clear that Architectural services defined therein are related to Advisory and pre-design architectural services, Architectural design services, Contract administration services, Combined architectural design and contract administration services and Other architectural services i.e. preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc. These Architectural services are nowhere related to IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. which are actually provided/exported by M/s. ABS, Ahmedabad. Further, in order to fraudulently avail SEIS Scrips from DGFT, M/s. ABS, Ahmedabad forged the Export invoices and the invoice values in respect of IT & IT Enabled Service Charges provided/exported by them and mentioned in original monthly export invoices were bifurcated among (i) “Operational Management Consultancy Services”, (ii) “Architectural Services” and (iii) “IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services” in forged monthly parallel export invoices prepared since April, 2015. The said facts regarding forgery were confirmed by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. who prepared the said parallel invoices & Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd. Sample copy of Original invoices & forged invoices **[RUD No.-15]** are reproduced as under:

Page 24 of 106



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**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**  
 B/403-405, GCP BUSINESS CENTRE,  
 OPP: MEMNAGAR FIRE STATION,  
 MEMNAGAR,  
 AHMEDABAD - 380 052  
 Tele Fax : +91-079-26560949

Invoice No. **011/2015-16**


Invoice Date **29-02-16**

**INVOICE**

CUSTOMER				
Name	ANALYTIX BUSINESS SOLUTIONS, LLC			
Address	800 WEST CUMMINGS PARK, SUITE 2000			
City	WOBURN	State	MASSACHUSETTS	ZIP 01801
Country	U.S.A.			

Sr. No.	DESCRIPTION	HOURS	RATE/HOUR	TOTAL
1	Accounting & Book Keeping Charges -			
	Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
	Accountants	10500	\$ 7.50	\$ 78,750.00
2	Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
3	Operational Management Consultancy Services			
	Medical Billing Services	1400	\$ 10.00	\$ 14,000.00
4	Architectural Services			
	Schematic Design Services with AV Illustration Services	2240	\$ 10.00	\$ 22,400.00
5	I.T. Enabled Services Charges			
	IT Software Development Services	1960	\$ 10.00	\$ 19,600.00
<b>SUB TOTAL</b>				<b>\$ 190,000.00</b>
<b>\$ -</b>				
<b>TOTAL</b>				<b>\$ 190,000.00</b>

Amount in Words ( One Lac Ninety Thousand US Dollars Only)



*F. R. Shah*

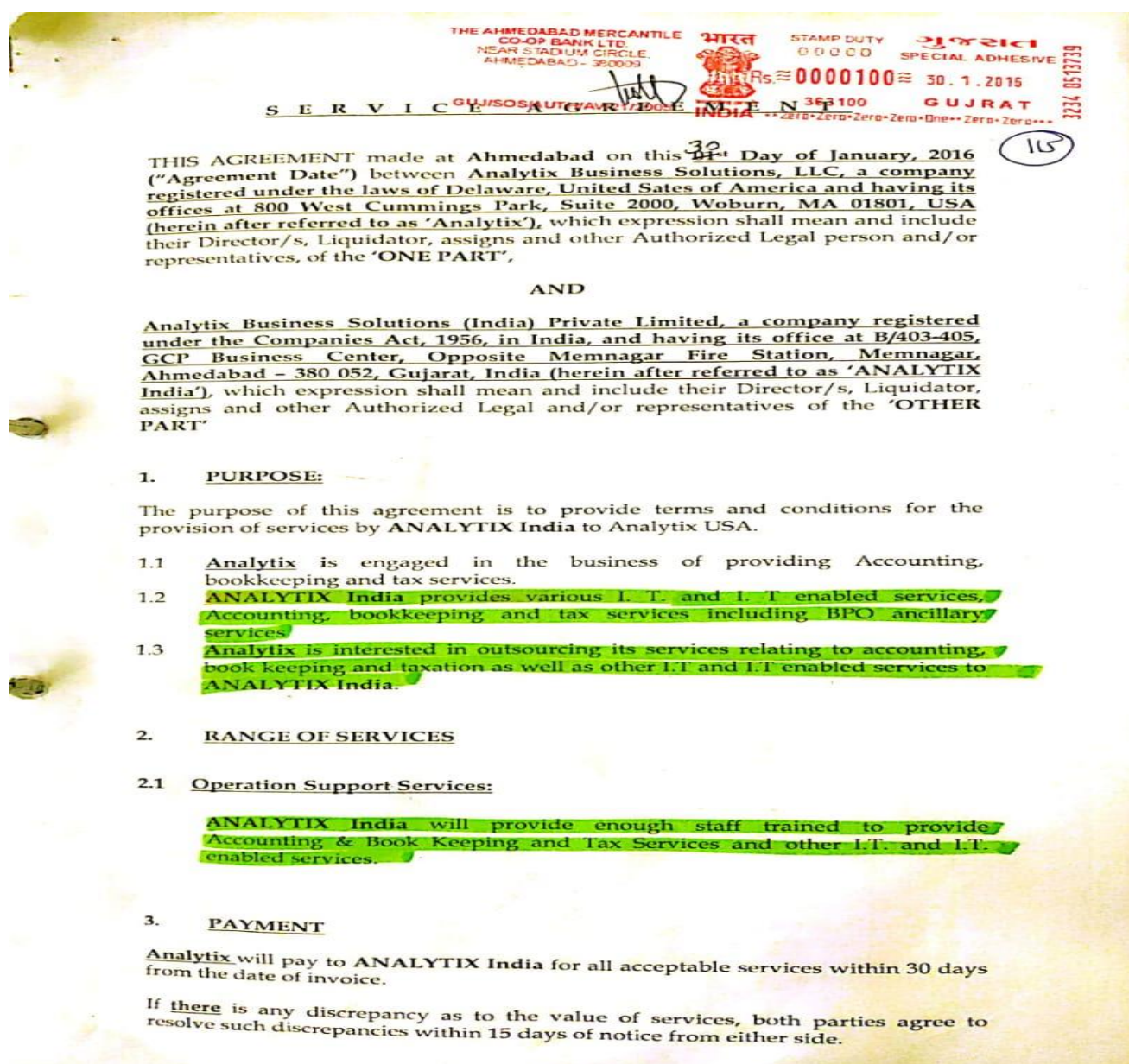
Authorized Signatory

PAN NO.: **AAIC9490D** IMPORT EXPORT CODE: **0805005684**

INVOICE AS PER AGREEMENT DTD. 1st January 2016.

**9.4** It also appears from the statement of Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. who prepared the said parallel invoices & Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd. that apart from “Accounting & Book Keeping Services” & “Tax Support Services” their profile is only on IT Software Services. However, it appears that they mis-declared their Services as “Architectural Services” & “Management Consultancy Services” which would be covered under 8671 & 865 CPC Code respectively, whereas their services were in the nature of IT Software Services (Apart from “Accounting & Book Keeping

Services” & “Tax Support Services”). As per Service Agreement dated 30.01.2016 & 01.04.2012 [RUD No.-16] entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., services to be provided by M/s Analytix Business Solutions (India) Pvt. Ltd. are Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services which are clearly classifiable under Division 862, 863 and Division-84 of UN Central Product Classification (CPC). It is pertinent to mention that services elaborated under CPC Code 865-“Management Consultancy Services” are related to advisory, guidance and operational assistance services concerning business policy and strategy and the overall planning, structuring and control of an organization & services elaborated under CPC Code 8671-“Architectural Services” are Advisory and pre-design architectural services, Architectural design services, Contract administration services, Combined architectural design and contract administration services and Other architectural services i.e. preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc. and the same are not related to IT & IT Enabled services i.e. IT Software Development Services, IT Infrastructure Services. Scanned copy of relevant portions of the said agreement entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., is reproduced as below:





4. **PRICE**

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4.1 Analytix shall pay to ANALYTIX India as per following rates

Sr. No.	Activity	Rate per hour (in US\$)
01	Accounting & Book Keeping Services	
	Chartered Accountants	US \$ 12.00 per hour
	Accountants	US \$ 7.50 per hour
02	Tax Support Services	US \$ 25.00 per hour
02	I.T. and I.T Enabled Services	US \$ 10.00 per hour

4.2 If the Quantum of work provided by Analytix is below minimum level it will ensure minimum revenue level of US \$ 10,000/- per month.

4.3 The charges and Prices of all other technical supporting and servicing activities will be decided on case to case basis.

4.4 All hourly fees are based upon hours actually worked by ANALYTIX India employees on behalf of Analytix.

4.5 ANALYTIX India will work closely with Analytix through out the implementation process to ensure a successful program launch.

5. **TERMS OF CONTRACT**

This agreement will commence from 01<sup>st</sup> January, 2016 and will continue till 31<sup>st</sup> December 2020.

6. **CONFIDENTIALITY**

This agreement contains confidential information and such shall not be disclosed to any third party without express written consent of both the parties. The parties are agrees to disclose the terms and conditions of this agreement only to their respective personnel with a need to know.

7. **NOTICE**

All notices and other communications relating to this agreement or its terms shall be in writing and mailed via first class postal services, certified or registered, with return receipt requested. All notice so mailed shall be deemed given 10 (ten) days after postmark date.

8. **ENTIRE AGREEMENT:**

This agreement (including any exhibits or addenda) constitutes the entire agreement between the parties regarding the provision of services by ANALYTIX India to Analytix and shall cancel, terminate and supersede any or all previous agreements, proposals, representations or statements, whether oral or written. The terms of this agreement shall supersede the terms of any invoice or purchase order issued by either party. Any modifications of this agreement must be in writing and signed by an authorized representative of each party.


**9.5** During investigation, based on the documents submitted, statements recorded, Service Agreement, book of accounts/ledger, independent auditor's report etc. it appears that the services provided/exported by them are not "Management Consulting Services" & -"Architectural Services" as defined under CPC Code list.

**WHY THE SERVICES (EXCEPT ACCOUNTING & BOOKKEEPING CHARGES AND TAX SUPPORT SERVICES) EXPORTED BY M/S. ABS, AHMEDABAD APPEAR TO BE CLASSIFIABLE UNDER CPC 841 TO 849 ON THE BASIS OF INDEPENDENT DOCUMENTARY EVIDENCES:**

**10.1 Export Invoices raised by M/s. ABS, Ahmedabad [RUD No. – 17]**

The description of services in original export invoices raised by M/s. ABS, Ahmedabad is shown as (i) Accounting & Bookkeeping Charges (ii) Tax Support Charges and (iii) IT Enabled Services. The service description mentioned in the sample invoice also correspond to the CPC codes 862, 863 & Division 84 only and not to that i.e. 862, 863, 865 & 8671 declared by M/s. ABS, Ahmedabad in their SEIS application before DGFT, Ahmedabad. Sample copies of export invoice raised by M/s. PIL, Ahmedabad is reproduced as below:

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**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**  
B/403-405, GCP BUSINESS CENTRE,  
OPP. MEMNAGAR FIRE STATION,  
MEMNAGAR,  
AHMEDABAD - 380 052  
Tele Fax : +91-079-26560949

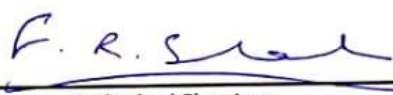
Invoice No. **011/2015-16**

Invoice Date **2/29/2016**

**INVOICE**

CUSTOMER					
Name	ANALYTIX BUSINESS SOLUTIONS, LLC				
Address	800 WEST CUMMINGS PARK, SUITE 2000				
City	WOBURN	State	MASSACHUSETTS	ZIP	01801
Country	U.S.A.				

DESCRIPTION	HOURS	RATE/HOUR	TOTAL
<b>Accounting &amp; Book Keeping Charges -</b>			
Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
Accountants	10500	\$ 7.50	\$ 78,750.00
Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
I.T. Enabled Services Charges	5600	\$ 10.00	\$ 56,000.00
<b>SUB TOTAL</b>			<b>\$ 190,000.00</b>
			<b>\$ -</b>
<b>Amount in Words ( One Lac Ninety Thousand US Dollars Only)</b>			<b>TOTAL \$ 190,000.00</b>

  
 \_\_\_\_\_  
 Authorized Signatory


PAN NO.: AAICS 9490D    IMPORT EXPORT CODE: 0805005684  
 INVOICE AS PER AGREEMENT DTD. 01st January 2016

It is pertinent to mentioned that to fraudulently obtain SEIS Scrips from DGFT, only service description in all the invoices raised by M/s. ABS, were changed as **(i)** “Operational Management Consultancy Services”, **(ii)** “Architectural Services” and **(iii)** “IT Enabled Services viz. IT Software



Development Services & IT Infrastructure Services” in place of IT Enabled charges and invoice amount w.r.t. IT Enabled charges were bifurcated among “Operational Management Consultancy Services”, **(ii)** “Architectural Services” and **(iii)** “IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services”. The said forged export invoices were submitted by M/s. ABS, Ahmedabad before DGFT and fraudulently availed SEIS benefits w.r.t. “Operational Management Consultancy Services”, **(ii)** “Architectural Services”. Sample copies of the said forged export invoice raised by M/s. ABS, Ahmedabad is reproduced as below:

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**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**  
 B/403-405, GCP BUSINESS CENTRE,  
 OPP- MEMNAGAR FIRE STATION,  
 MEMNAGAR,  
 AHMEDABAD - 380 052  
 Tele Fax : +91-079-26560949


Invoice No. **011/2015-16**  
 Invoice Date **29-02-16**

**INVOICE**

CUSTOMER				
Name	ANALYTIX BUSINESS SOLUTIONS, LLC			
Address	800 WEST CUMMINGS PARK, SUITE 2000			
City	WOBURN	State	MASSACHUSETTS	ZIP 01801
Country	U.S.A.			

Sr. No.	DESCRIPTION	HOURS	RATE/HOUR	TOTAL
1	Accounting & Book Keeping Charges -			
	Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
	Accountants	10500	\$ 7.50	\$ 78,750.00
2	Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
3	Operational Management Consultancy Services			
	Medical Billing Services	1400	\$ 10.00	\$ 14,000.00
4	Architectural Services			
	Schematic Design Services with AV Illustration Services	2240	\$ 10.00	\$ 22,400.00
5	I.T. Enabled Services Charges			
	IT Software Development Services	1960	\$ 10.00	\$ 19,600.00
<b>SUB TOTAL</b>				<b>\$ 190,000.00</b>
<b>\$ -</b>				
<b>TOTAL</b>				<b>\$ 190,000.00</b>

Amount in Words ( One Lac Ninety Thousand US Dollars Only)



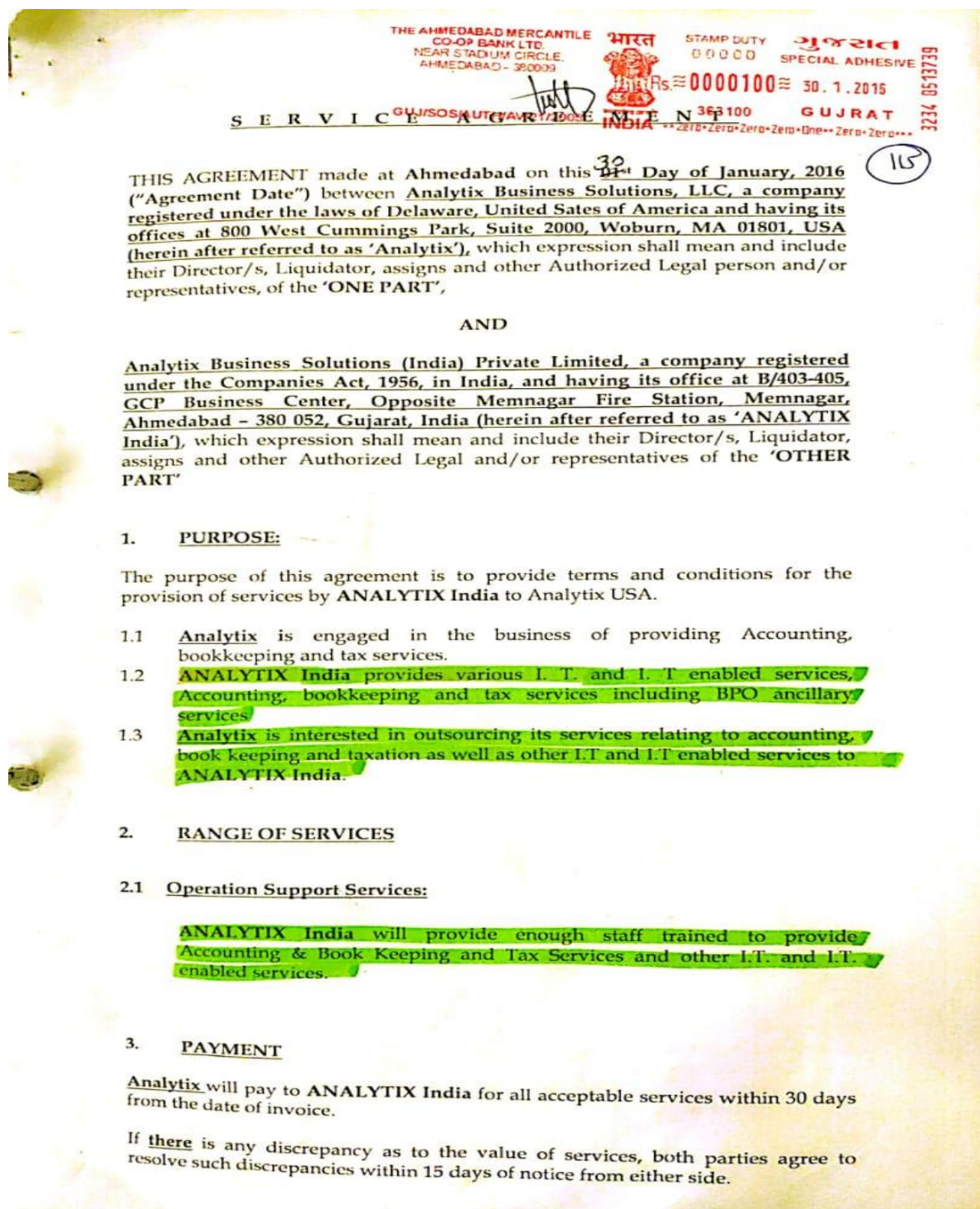
*F. R. Shah*  
 Authorized Signatory

PAN NO.: AAIC59490D    IMPORT EXPORT CODE: 0805005684

INVOICE AS PER AGREEMENT DTD. 1st January 2016.

**10.2 Agreement between M/s. ABS, Ahmedabad & their foreign client [RUD No. – 18],**

As per Service Agreement dated 30.01.2016 & 01.04.2012 entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., services to be provided by M/s Analytix Business Solutions (India) Pvt. Ltd. to M/s. Analytix Business Solutions LLC are Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services which are clearly classifiable under Division 862, 863 and Division-84 of UN Central Product Classification (CPC). Scanned copy of relevant portions of the said agreement entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., is reproduced as below:



### 10.3 General Ledger Report of M/s Analytix Business Solutions (India) Pvt. Ltd. [RUD No.-19]



In General Ledger Report of M/s Analytix Business Solutions (India) Pvt. Ltd. created on 27.05.2019 during the search operation, under Service Revenue Head, the description of services were mentioned as Chartered Account Services, Account Services, Tax Support Services & IT Enabled Services only. Copy of General Ledger Report is reproduced as under:

Analytix Business Solutions (India) Private Limited General Ledger Report For (04/01/2015 to 03/31/2019)									
Posted Dt.	Doc Dt.	Doc	Memo / Description	JNL	Debit	Credit	Balance		
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual	42,48,556.88		(18,11,23,615.19)		
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual	11,96,018.09		(17,99,27,597.10)		
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual	60,22,623.59		(17,39,04,973.51)		
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac crual		19,19,796.48	(17,58,24,769.99)		
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual		42,28,151.77	(18,00,52,921.76)		
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual		11,90,273.82	(18,12,43,195.58)		
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual		59,93,697.93	(18,72,36,893.51)		
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual		40,82,900.50	(19,13,19,794.01)		
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual		75,82,529.50	(19,89,02,323.51)		
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac crual	19,19,796.48		(19,69,82,527.03)		
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual	42,28,151.77		(19,27,54,375.26)		
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual	11,90,273.82		(19,15,64,101.44)		
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual	59,93,697.93		(18,55,70,403.51)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac crual		1,43,74,169.00	(19,99,44,572.51)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual		21,66,153.84	(20,21,10,726.35)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual		47,70,753.26	(20,68,81,479.61)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual		13,43,015.38	(20,82,24,494.99)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual		67,82,812.52	(21,49,87,307.51)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual		44,45,963.90	(21,94,33,271.41)		
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual		82,56,790.10	(22,76,90,061.51)		
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac crual	21,66,153.84		(22,55,23,907.67)		
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual	47,70,753.26		(22,07,53,154.41)		
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual	13,43,015.38		(21,94,10,139.03)		
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual	67,82,812.52		(21,26,47,326.51)		
10/31/2016	10/31/2016	CM0018	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac crual	1,43,74,169.00		(19,82,73,157.51)		
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual		22,20,242.40	(20,04,93,399.91)		
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual		48,89,878.31	(20,53,83,278.22)		
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac crual		13,76,550.29	(20,67,59,828.51)		
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac crual		69,31,679.00	(21,36,91,507.51)		
11/30/2016	11/30/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac crual		1,47,33,090.00	(22,84,24,597.51)		
11/30/2016	11/30/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac crual		84,62,961.00	(23,69,87,558.51)		

Created on: 05/27/2019, 6:08 PM IST

**Analytix Business Solutions (India) Private Limited**  
**General Ledger Report**  
**For (04/01/2015 to 03/31/2019)**

Posted Dt.	Doc Dt.	Doc	Memo / Description	JNL	Debit	Credit	Balance
03/31/2016	03/31/2016	012/2015-16	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru		50,39,642.08	(11,52,18,286.00)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru		16,76,243.52	(11,68,94,529.52)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		36,91,726.80	(12,05,86,256.32)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		10,30,337.50	(12,16,25,593.82)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru		52,33,272.18	(12,68,58,866.00)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru		16,83,515.80	(12,85,52,381.80)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		37,29,766.50	(13,22,82,148.10)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		10,49,979.67	(13,33,32,127.77)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru		52,87,263.23	(13,86,19,391.00)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru		17,03,938.32	(14,03,23,329.32)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		37,52,721.30	(14,40,76,050.62)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		10,56,441.76	(14,51,32,492.38)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru		53,19,803.62	(15,04,52,296.00)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru		19,30,579.20	(15,23,82,875.20)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		42,51,899.59	(15,66,34,774.79)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		11,96,959.10	(15,78,31,733.89)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru		60,27,362.11	(16,38,59,096.00)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		41,05,832.50	(16,79,64,928.50)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		76,25,117.50	(17,55,90,046.00)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru	19,30,579.20		(17,36,59,466.80)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru	42,51,899.59		(16,94,07,567.21)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru	11,96,959.10		(16,82,10,606.11)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru	60,27,362.11		(16,21,83,246.00)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru		19,29,061.44	(16,41,12,307.44)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		42,48,556.88	(16,83,60,864.32)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		11,96,018.09	(16,95,56,882.41)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac-cru		60,22,623.59	(17,55,79,506.00)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac-cru		41,02,604.63	(17,96,82,110.63)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac-cru		76,19,122.88	(18,73,01,233.51)
08/31/2016	08/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac-cru	19,29,061.44		(18,53,72,172.07)

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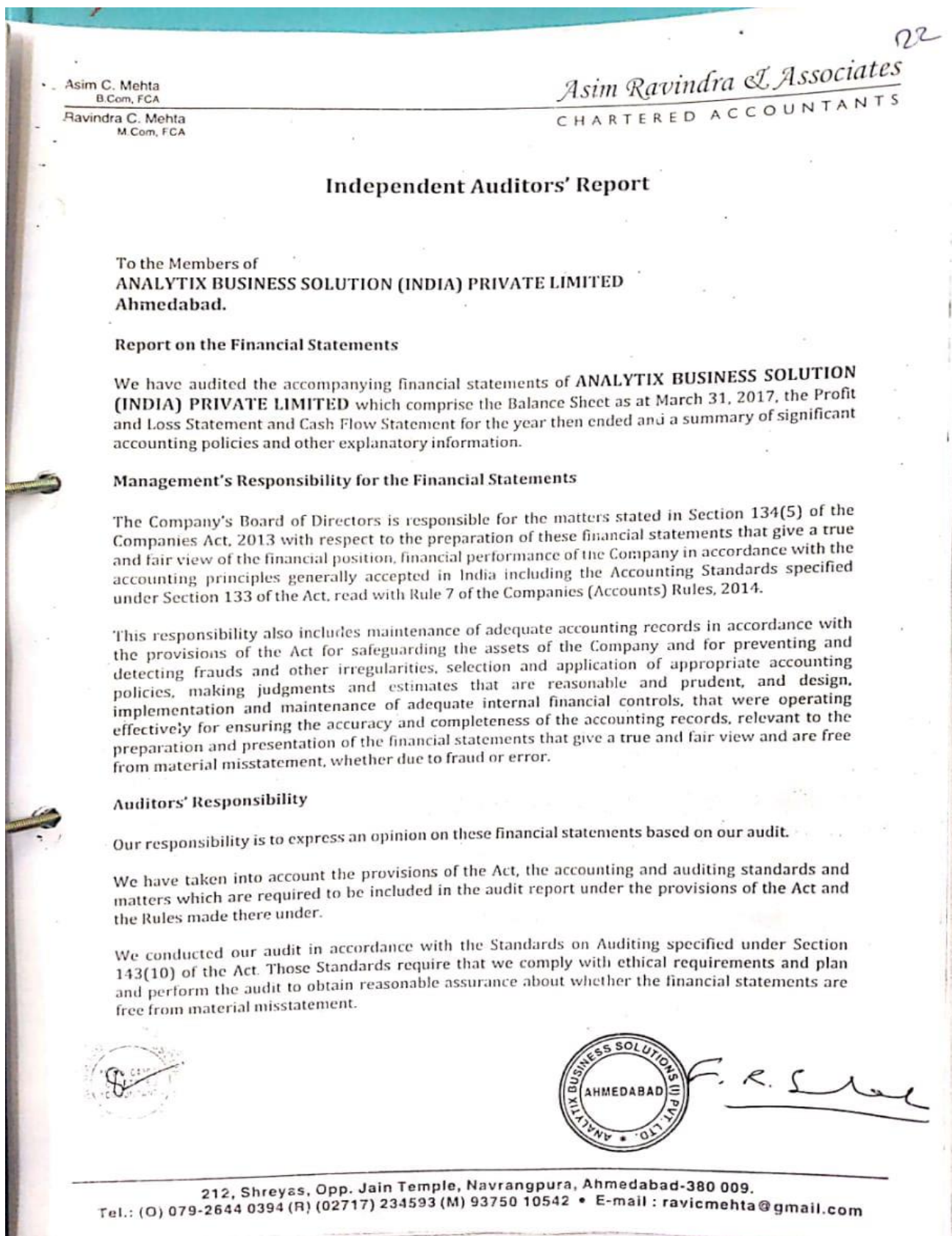
Analytix Business Solutions (India) Private Limited  
General Ledger Report  
For (04/01/2015 to 03/31/2019)

Posted Dt	Doc Dt	Doc	Memo / Description	JNL	Debit	Credit	Balance
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	42,48,556.88		(18,11,23,615.19)
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	11,96,018.09		(17,99,27,597.10)
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	60,22,623.59		(17,39,04,973.51)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		19,19,796.48	(17,58,24,769.99)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		42,28,151.77	(18,00,52,921.76)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		11,90,273.82	(18,12,43,195.58)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		59,93,697.93	(18,72,36,893.51)
09/30/2016	09/30/2016	006/2016-17.	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		40,82,900.50	(19,13,19,794.01)
09/30/2016	09/30/2016	006/2016-17.	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		75,82,529.50	(19,89,02,323.51)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	19,19,796.48		(19,69,82,527.03)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	42,28,151.77		(19,27,54,375.26)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	11,90,273.82		(19,15,64,101.44)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	59,93,697.93		(18,55,70,403.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		1,43,74,169.00	(19,99,44,572.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		21,66,153.84	(20,21,10,726.35)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		47,70,753.26	(20,68,81,479.61)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		13,43,015.38	(20,82,24,494.99)
10/31/2016	10/31/2016	007/2016-17.	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		67,62,812.52	(21,49,87,307.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	21,66,153.84		(22,76,90,061.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	47,70,753.26		(22,55,23,907.67)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	13,43,015.38		(21,94,10,139.03)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	67,62,812.52		(21,26,47,326.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	1,43,74,169.00		(19,82,73,157.51)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		22,20,242.40	(20,04,93,399.91)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		48,89,878.31	(20,53,83,278.22)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		13,76,550.29	(20,67,59,828.51)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		69,31,679.00	(21,36,91,507.51)
11/30/2016	11/30/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		1,47,33,090.00	(22,84,24,597.51)
11/30/2016	11/30/2016	008/2016-17.	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		84,62,961.00	(23,69,87,558.51)

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## **10.4 Independent auditor's report w.r.t. financial year 2016-17 [RUD-20]:**

In Independent auditor's report, service provided by M/s. Analytix Business Solutions (India) Pvt. Ltd. to M/s. M/s. Analytix Business Solutions LLC, USA were shown as (i) Finance & Accounts Services & (ii) Information Technology Services only. Further in the said auditor's report, income from operation were shown from (i) Finance & Accounts Services & (ii) Information Technology Services only.





**2. Notes on Account :-**

- (a) Balances of Sundry Creditors, Sundry Debtors and Loans & Advances are subject to confirmation.
- (b) Figures have been rounded off to the nearest thousand.
- (c) Previous year's figures have been regrouped wherever necessary.
- (d) Deferred tax resulting from timing difference between taxable income and accounting income is accounted for using the tax rates and laws that have been enacted or substantially enacted as on the balance sheet date. The deferred tax asset is recognized and carried forward only to the extent that there is a reasonable certainty that the liability will be realized in future. The figures of Deferred Tax Assets has been shown net at the year end.
- (e) Name of related parties & description of relationship with whom there were transactions during the year.

1 Analytix Business Solutions, LLC USA		Holding Company	
Sr. No	Services Provided	In Rs. 31-03-2017	In Rs. 31-03-2016
1	Finance & Accounts	100,060,845	76,639,796
2	Information Technology	52,097,857	38,578,490
Total		152,158,702	115,218,286

2 Director's Remuneration		In Rs. 31-03-2017	In Rs. 31-03-2016
Sr. No	Name of Director		
1	Mr. Gulamrasul R. Bala	40,000	40,000
2	Mr. Pankaj M. Patel	40,000	40,000
Total		80,000	80,000

The Company has due Rs. 2,07,38,876 65/- (Previous year Rs.1,40,48,176/-) from Analytix Business Solutions,LLC USA

**(f) Amount paid / payable to Auditors.**

Sr. No	Particulars	In Rs. 31-03-2017	In Rs. 31-03-2016
A.	As Audit Fee	40,000	50,000
B.	Tax Audit Fees	5,000	5,000
Total		45,000	55,000

As per our report of even date annexed here with  
Signature to Accounting Policies and Note 'A' to 'Q'  
For **ASIM RAVINDRA & ASSOCIATES**  
Chartered Accountants

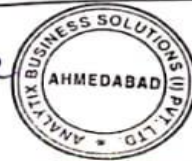
**RAVINDRA MEHTA**  
Partner  
M NO. 043051  
FRN No.118775W  
Place: Ahmedabad  
Date: 7-09-2017

**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**

**Pankaj M Patel**  
Director  
DIN - 00079278

**Gulamrasul R Bala**  
Director  
DIN - 00079155

Place : Ahmedabad  
Date : 7-09-2017



*Handwritten notes:*  
P1 - 27-5-19  
P2 - 27-5-2019  
27.5.2019

*Handwritten signature:* F. R. S. ...

PARTICULARS	In Rs. 31-03-2017	In Rs. 31-03-2016
<b>NOTE-K</b>		
<b>INCOME FROM OPERATION</b>		
Finance & Accounts	100,060,845	76,639.796
Information Technology	52,097,857	38,578.490
<b>TOTAL</b>	<b>152,158,702</b>	<b>115,218.286</b>
<b>NOTE-L</b>		
<b>Other Income</b>		412.668
Foreign Exchange Gain	-	20.039
Interest Income	9.576	2.853
Profit on sale of asset	5.310	43.760
Other Income	-	
<b>TOTAL</b>	<b>14.886</b>	<b>479.319</b>
<b>NOTE-M</b>		
<b>EMPLOYEE COSTS</b>		
Salary to Staff	95,868.511	70,200.460
Bonus	3,854.353	2,773.000
Contract Labour	3,744.426	3,431.588
Employer's cont. to PF/ESIC	3,517.090	2,547.490
Staff Welfare Expenses	2,421.461	1,186.337
Recruitment Expenses	2,145.389	841.635
Employees Benefits	1,639.191	1,357.769
Training & Development Expenses	933.985	325.613
Leave Encashment Pay	645.534	1,633.907
Overtime allowance	384.211	225.326
Stipend to Trainee	49.400	61.90
<b>TOTAL</b>	<b>115,203.552</b>	<b>84,585.029</b>
<b>NOTE-N</b>		
<b>EMPLOYEE COST - R &amp; D</b>		
Salary to staff	10,186.613	2,225.742
Contract Labour	489.700	169.200
Employer's cont. to PF/ESIC	359.503	82.486
Stipend to trainee	32.009	-
Bonus	12.480	-
Overtime allowance	1.841	0.035
<b>TOTAL</b>	<b>11,082.146</b>	<b>2,477.463</b>

**11.** Therefore, in view of the foregoing paras, it appears that the services provided/exported by M/s. ABS, Ahmedabad actually fall under Division-84 of UN Central Product Classification (CPC) Code (Except Accounting & Bookkeeping Charges and Tax Support Services). The list of evidences is summarised as under:

- 1) In original Export Invoices, the description of services are shown as i) Accounting & Bookkeeping Charges (ii) Tax Support Charges and (iii) IT Enabled Services, but in order to fraudulently avail SEIS benefits M/s. ABS forged the export invoices.
- 2) Services mentioned in the sample agreements with foreign clients were Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services.
- 3) In General Ledger Report of M/s Analytix Business Solutions (India) Pvt. Ltd., under Service Revenue Head, the description of services were mentioned as Chartered Account Services, Account Services, Tax Support Services & IT Enabled Services.
- 4) In Independent auditor's report service provided by M/s. Analytix Business Solutions (India) Pvt. Ltd. to M/s. M/s. Analytix Business Solutions LLC, USA were shown as (i) Finance & Accounts Services & (ii) Information Technology Services only. Further in the said auditor's

report, income from operation were shown from (i) Finance & Accounts Services & (ii) Information Technology Services only.

- 5) Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. who prepared the said parallel invoices & Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd. interalia stated in their statement that apart from "Accounting & Book Keeping Services" & "Tax Support Services", their profile is only in IT Software Service Sector. They also admitted that to fraudulently avail SEIS benefits they forged the Export Invoices.

**12.** DGFT vide Trade Notice No. 04/2018 dated 25.04.2018 [**RUD No.- 21**] has noted that ***"the Appendix 3D does not mention any service as IT/ITeS Service and only has a positive list of the Services, with a CPC Provisional code which has been made eligible for claiming benefit under SEIS"*** and also clarified that ***"only the service categories which have been notified in Appendix 3D for SEIS are allowed for claim under SEIS.."*** From the above trade notice, it is clear that the underlying services provided by a company should be listed in Appendix 3D for them to be eligible for SEIS.

**13.** From the above **para 4** i.e. list of services and their corresponding CPC codes which are eligible for SEIS benefits as defined in Appendix 3D of FTP 2015-2020, it appears that except "Accounting & Book Keeping Services" & "Tax Support Services", the services provided/exported by M/s. ABS, Ahmedabad which are classifiable under CPC 841 to 849 are not covered under Appendix 3D and hence not eligible for SEIS benefits.

**14.** As seen from various statutory and other documents as described in **para 11** (above) viz. original Invoices, service agreement with foreign clients, General ledger report, Independent auditor's report and confirmatory statements of the Accounts Manager and Director of M/s. ABS recorded under Section 108 of the Customs Act, 1962, it appears that M/s. ABS had correctly classified the services exported/provided by them to their overseas clients in aforesaid documents described in **para 11**. The said exported services are classifiable under Division 84 of UN CPC as discussed in detail in **para 8 & 9** above. It is pertinent to mention that services classifiable under Division 84 are not eligible for availing SEIS benefits as discussed in **para 04, 12 & 13**. Hence, it appears that while applying for SEIS benefits in the Form ANF-3B before the DGFT, Ahmedabad, M/s. ABS had wilfully mis-stated and mis-classified their services under Other Business Services (Architectural services 8671) (Sr. No. 1Ae as per Appendix 3D) & Other Business Services (Management Consulting Services (865) (Sr. No. 1Dc as per Appendix 3D) which are eligible for availing SEIS benefits instead of their correct services classifiable under Division 84, and had managed to fraudulently obtain the SEIS Scrips from DGFT. It further appears that decision regarding classifying the services in a wrong CPC Code was taken by M/s. ABS itself and M/s. ABS also forged export invoices to avail SEIS benefits, and that it is not due to lack of knowledge or unintentional mistake, but a wilful decision about wrong classification which led to wrongful availment of SEIS benefits.

#### **15 INELIGIBLE AMOUNT AVAILED BY M/S. ABS, AHMEDABAD UNDER SEIS BY WAY OF MIS-STATED AND MIS-CLASSIFIED THEIR SERVICES:**

M/s. ABS, Ahmedabad had wilfully mis-stated and mis-classified their services under Other Business Services (Architectural services 8671) (Sr. No. 1Ae as per Appendix 3D) & Other Business Services (Management Consulting Services (865) (Sr. No. 1Dc as per Appendix 3D) instead of correct service classification under Division 84 of UN CPC and accordingly fraudulently availed SEIS benefits amounting to Rs. 20,67,762.1/-. Quantification of the said ineligible SEIS amount is detailed in '**Annexure-D**' attached with the show cause notice. It is pertinent to mention that being STPI unit till 23.07.2018, full SEIS amount availed by M/s. ABS, Ahmedabad vide 02 SEIS scrips as mentioned in '**Annexure A**' attached with this Show Cause Notice, are ineligible.

### **MODUS OPERANDI ADOPTED FOR AVAILMENT OF SEIS SCRIPS:**

**16.** M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC-0805005684) B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Ahmedabad-380052 was STPI Unit till 23.07.2018 and was engaged in the business of providing only Information Technology (IT) & IT Enabled Services i.e. viz. IT Software Development Services & IT Infrastructure Services" and Accounting & Bookkeeping Services & Taxation Services to their foreign clients. Despite knowing the fact that they are STPI Unit and STPI units are not eligible for availing SEIS benefits in terms of para 3.09 of FTP 2015-20, M/s. ABS intentionally misstated the fact before DGFT that *"services for which benefit is claimed does not include ineligible services and remittances as listed under para 3.09 of [FTP 2015-20](#)"* and thus, it appears that M/s. ABS fraudulently availed SEIS licenses/SEIS scrips from DGFT for the period of 2015-16 & 2016-17.

Further, it appears that apart from Accounting & Bookkeeping Services and Tax Services, M/s. ABS had wrongly classified their exported services in ANF-3B as Architectural services (8671) and Management Consulting Services (865) instead of IT & IT enabled services and availed the benefit of SEIS, which was otherwise not available to them. In terms of Para 3.02 of the Foreign Trade Policy 2015-2020 read with sub-clause 2(5) of Notification No 25/2015-Cus., dated 8-4-2015 the SEIS Duty Credit Scrips and goods imported/domestically procured against the SEIS Duty Credit Scrips shall be freely transferable. Accordingly, M/s. ABS had sold/transferred the SEIS Scrips obtained by them to various other importers, who had utilized these SEIS Scrips / licences against the duty free imports made by them.

#### **16.1 WILFUL MIS-STATEMENT & SUPPRESSION OF FACTS:**

M/s. Analytix Business Solutions (India) Private Limited was registered as STPI (Software Technology Park of India) Unit under STP Scheme since 2005 and remained STPI unit until 23.07.2018 when STPI Gandhinagar approved the final de-bonding of the M/s. Analytix Business Solutions (India) Pvt. Ltd. to exit the STP Scheme. Despite knowing the said fact that final de-bonding/exit from STP Scheme of M/s. ABS was done on 23.07.2018, M/s. ABS intentionally misstated the fact before DGFT that *"services for which benefit is claimed does not include ineligible services and remittances as listed under para 3.09 of [FTP 2015-20](#)"* and availed SEIS Scrips from DGFT for the period of 2015-16 & 2016-17. It is pertinent to mention that as per para 3.09 of FTP, Export turnover relating to services of units operating under STPI are not eligible for availing SEIS benefits.



Further, M/s. ABS has declared the exported services as IT Enabled Services in original **Export Invoices**. The services to be provided by M/s. ABS to their foreign clients mentioned in the **Service Agreements** are "Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services". In **General Ledger Report** of M/s Analytix Business Solutions (India) Pvt. Ltd., under Service Revenue Head, the description of services were mentioned as Chartered Account Services, Account Services, Tax Support Services & IT Enabled Services. As per **Independent Auditor's Report**, service provided by M/s. Analytix Business Solutions (India) Pvt. Ltd. to M/s. Analytix Business Solutions LLC, USA were shown as (i) Finance & Accounts Services & (ii) Information Technology Services only. Further, in the said auditor's report, income from operation were shown from (i) Finance & Accounts Services & (ii) Information Technology Services only. Thus, it appears that M/s. ABS had correctly classified the services exported/provided by them to their overseas clients in aforesaid documents and the said exported services are classifiable under Division 84 of UN CPC (except Accounting & Bookkeeping Services and Tax Services which are eligible for SEIS benefits) . But despite knowing the fact that they provided IT & IT enabled services i.e. IT Software Development Services & IT Infrastructure Services, M/s. ABS had wilfully forged the export invoices and further mis-stated and mis-classified their services under Other Business Services (Architectural services 8671) (Sr. No. 1Ae as per Appendix 3D) & Other Business Services (Management Consulting Services (865) (Sr. No. 1Dc as per Appendix 3D) to fraudulently avail SEIS scrips instead of correct services viz. IT Software Development Services & IT Infrastructure Services classifiable under Division 84 of UN CPC which are not eligible for availing SEIS benefits.

Thus, M/s. ABS had fraudulently obtained SEIS Scrips by way of adopting above stated modus operandi and suppressed the facts while applying for obtaining the SEIS Scrips in order to avail wrongful benefits under SEIS scheme. This shows their malafide intention to misclassify the services provided by them to avail the SEIS benefit which is not rightfully due to them and resulted in violation of the provisions of the Customs Act, 1962 in the payment of customs duties w.r.t. import of goods by utilizing the SEIS scrips obtained through fraudulent means.

#### **17. VOLUNTARY PAYMENT/REFUND OF SEIS INCENTIVES BY M/s. ABS, AHMEDABAD:-**

Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd., in his statement recorded under Section 108 of Customs Act, 1962 admitted that being a STPI unit till 23.07.2018, M/s. ABS, Ahmedabad wasnot eligible for availing SEIS benefits for the year of 2015-16 & 2016-17 and had agreed to pay the ineligible amount. Accordingly, M/s. ABS Ahmedabad voluntarily made payment of SEIS duty total amounting to Rs. **94,77,875.83/-** (Rupees Ninety Four Lakhs Seventy Seven Thousand Eight Hundred Seventy Five and Eighty Three paise only) vide 02 TR-6 Challans **[RUD No.- 22]**. The details of payments made by M/s. ABS, Ahmedabad are enclosed as **Annexure 'B'**.

#### **18. CANCELLATION OF SEIS SCRIPS BY DGFT, AHMEDABAD:-**

**18.1** During the course of investigation, this office vide letter F. No. DRI/AZU/GI-02/ENQ-61 (INT-21)/2019 dated 08.07.2019 **[RUD No.-23]** had

requested the Additional Director General of Foreign Trade, Ahmedabad to cancel the SEIS Scrips issued to M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC-0805005684) B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Ahmedabad-380052 as detailed in Annexure 'A', to the extent of misuse of such SEIS Scrips by mis-classification of their export services in contravention of the relevant provisions of Foreign Trade Policy.

**18.2** The Deputy Director General of Foreign Trade issued Show Cause Notice dated 20.01.2020 from F. No. 08/21/094/80105/AM18 to M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC- 0805005684) for ab-initio cancellation of SEIS Scrip No. 0819041399 dated 31.10.2018 for Rs. 61,33,727.48/- **[RUD No.-24]** under the provisions of The Foreign Trade (Development and Regulation) Act, 1992 and The Foreign Trade (Regulation) Rules, 1993.

**18.3** The Deputy Director General of Foreign Trade issued Show Cause Notice dated 08.01.2020 from F. No. 08/21/094/80104/AM18 to M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC-0805005684) for ab-initio cancellation of SEIS Scrip No. 0819041085 dated 23.10.2018 for Rs. 3344148.35/- **[RUD No.-25]** under the provisions of The Foreign Trade (Development and Regulation) Act, 1992 and The Foreign Trade (Regulation) Rules, 1993.

## **VIOLATION OF STATUTORY PROVISIONS: -**

### **19. Violation of Various Statutory Provisions by M/s. ABS, Ahmedabad: -**

**19.1** From the independent documentary evidences as well as confirmatory statements on record it appears that M/s. ABS, Ahmedabad have wilfully and fraudulently suppressed the fact they are STPI Unit and mis-stated & mis-classified the services provided, before the DGFT, Ahmedabad with an intent to avail undue benefit of SEIS. On the basis of such wilful mis-statements and mis-classifications based on suppression of facts, SEIS Scrips were issued to them by DGFT. Such SEIS scrips fraudulently obtained by them are invalid ab-initio and now DGFT has initiated action for cancellation of the said SEIS Scrips. It appears that M/s. ABS, Ahmedabad by resorting to such acts, have contravened provisions of Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993, Foreign Trade Policy, 2015-20 etc., and of Customs notification, as detailed below:

- (a) **Section 11 of** the Foreign Trade (Development and Regulation) Act, 1992, read with **Rule-14 of** Foreign Trade (Regulation) Rules, 1993, in as much as they have make, signed and used the declarations, statements or documents for the purposes of obtaining SEIS Scrips knowing or having reason to believe that such declarations, statements or documents were not representing the true, correct, and actual classification of services, and they thereby have employed fraudulent practice for the purposes of obtaining the SEIS Scrips;
- (b) **Provisions of Exim policy related to SEIS scheme** in as much as they have availed benefit of SEIS scheme of Foreign Trade Policy



2015-2020 though they were not eligible for the services rendered by them, if classified correctly.

## **19.2 Violation of Notification No. 25/2015-Customs dated 8<sup>th</sup> April, 2015 issued under Customs Act, 1962, by M/s. ABS, Ahmedabad:**

### **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 AayatNiryat Forms of Foreign Trade Policy 2015-2020*

*\**  
*\**

In the instant case it appears that M/s. ABS, Ahmedabad was STPI unit until 23.07.2018 and provided IT & IT enabled services i.e. IT Software Development Services & IT Infrastructure Services (except Accounting & Bookkeeping Services and Tax Services which are eligible) which are not notified in Appendix 3D of Foreign Trade Policy, 2015-20, therefore M/s. ABS Ahmedabad has violated the condition 2 (1) of the Notification No. 25/2015-Customs dated 08th April, 2015 issued under section 25 of the Customs Act, 1962.

## **20. RECOVERY OF DUTY FROM M/S. ABS, AHMEDABAD:**

### **Section 28AAA of the Customs Act, 1962 –**

Section 28AAA was inserted in the Customs Act, 1962 in 2012 to provide for recovery of duties from the person to whom an instrument such as credit Scrips was issued, i.e. exporter, where such Scrips was obtained by means of collusion, or wilful misstatement or suppression of facts. It appears that M/s. ABS, Ahmedabad-a STPI Unit (till 23.07.2018) had provided/exported IT & IT enabled services i.e. IT Software Development Services & IT Infrastructure Services (except Accounting & Bookkeeping Services and Tax

Services which are eligible) and appears to have fraudulently obtained the SEIS Scrips and subsequently transferred/sold the Scrips to various importers. As per section 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** :*

As per para 3.02 of the Foreign Trade Policy 2015-2020 SEIS Duty Credit Scrips holder was eligible to transfer/sell the entitlement freely. The Duty Credit Scrips can be used for (i) Payment of Customs Duties for import of inputs or goods, except items listed in Appendix 3A; (ii) Payment of excise duties on domestic procurement of inputs or goods, including capital goods as per DoR notification; (iii) Payment of service tax on procurement of services as per DoR notification; and (iv) Payment of Customs Duty and fee as per paragraph 3.18 of this Policy. In the instant case it appears that M/s. ABS, Ahmedabad had wrongly obtained SEIS Scrips by suppressing the fact that they are STPI Unit till 23.07.2018 and by mis-stating their exported Services as Architectural services (8671) Management Consulting Services (865). M/s. ABS, Ahmedabad had transferred/sold all the SEIS Scrips to various importers via brokers. The said importers had imported the goods by utilizing the said SEIS duty credit Scrips for payment of duties.

In view of the facts discussed in the foregoing paras and material evidences available on record, it appears that M/s. ABS, Ahmedabad had obtained SEIS Scrips by means of suppression of facts regarding STPI status and regarding the nature of services exported by them and wilful mis-statement regarding the classification of services exported by them and M/s. ABS, Ahmedabad subsequently sold/transferred the same to various importers. The said various importers had utilised the said ineligible SEIS amount for payment of Customs duties against the imports made by them. Therefore, the import duties equivalent to the duty credit Scrips utilised by the other importers for their imports, as detailed in **Column 16 of Annexure 'C'** attached with this Show Cause Notice, is required to be recovered from M/s. ABS, Ahmedabad under Section 28AAA of the Customs Act, 1962 along with interest under Section 28 AA of the Customs Act, 1962.

**21. CONFISCATION AND PENALTY:**

**21.1** The goods imported, against the SEIS Scrips which were fraudulently obtained and DGFT, Ahmedabad has issued SCNs & initiated action for cancellation of the said SEIS Scrips and the said Scrips were not eligible to the benefit of exemption under Notification No. 25/2015-Customs dated 08th April, 2015 issued under Section 25 of the Customs Act, 1962, are also liable for confiscation under Section 111(m) and 111(o) of Customs Act, 1962. M/s. ABS, Ahmedabad who in relation to the imported goods, did or omitted to do acts/omissions which rendered such goods liable to confiscation under section 111 are liable to penalty under Section 112(a) of the Customs Act, 1962.

The relevant legal provisions under Customs Act, 1962 are as follows:

As per **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 transshipment, with the declaration for transshipment 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;*

**21.2** It appears that M/s. ABS, Ahmedabad, as a person, had suppressed the facts regarding STPI status and mis-declared/mis-stated their exported Services in ANF-3B Form and fraudulently obtained SEIS Scrips. They had subsequently transferred/sold the Scrips to various importer through brokers. These Scrips were used by various importers for purpose of availing benefit of Customs Duty exemption available under Notification No. 25/2015-Customs dated 08<sup>th</sup> April, 2015 issued under Section 25 of the Customs Act, 1962. Therefore, M/s. ABS, Ahmedabad had knowingly or intentionally made, signed and used, or caused to be made, signed or used, Customs declarations/statements/documents and other declarations/statements/documents which were false or incorrect in material particular and were used in the transaction of business for the purposes of Customs Act, 1962.

Therefore, M/s. ABS, Ahmedabad are liable for penalty under Section 114AA of the Customs Act, 1962.

### **SECTION 114AA**

*Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

### **VIOLATION OF STATUTORY PROVISIONS BY KEY PERSONS OF M/S. ABS, AHMEDABAD - SHRI KIRAN KUMAR GUNVANTBHAI MODI, ACCOUNTS MANAGER AND SHRI FENIL SHAH, FORMER HEAD (INDIA OPERATIONS):-**

**22.1** It further appears that mis-declaration of classification of services & suppression regarding STPI status in the SEIS application viz. Form ANF-3B presented by M/s. ABS, Ahmedabad before the DGFT, Ahmedabad had been signed by Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad and wilfully suppress the facts regarding true status of Company i.e. STPI status and mis-state the true, correct, and actual classification of services with an intent to avail undue benefit of SEIS scheme. It therefore appears that Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad was primarily responsible for wrongful availment of export benefits under SEIS Scheme by M/s. ABS, Ahmedabad; thereby enabling and abetting M/s. ABS, Ahmedabad in availing undue benefit of SEIS Scheme and conversely facilitating various importers to utilise the wrongly obtained SEIS duty credit Scrips for their imports.

**22.2** Therefore, it appears that by his deliberate acts of commission and omission Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad has rendered the goods which were imported (by utilising the ineligible Scrips) liable for confiscation. Thereby Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad is liable for penalty under section 112(a) of the Customs Act, 1962.

**22.3.** Further, it appears that Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad had knowingly or intentionally caused to be made, signed or used, Customs declarations/statements/documents and other declarations/ statements/documents which were false or incorrect in material particular and were used in the transaction of business for the purposes of Customs Act. Therefore, he is also liable for penalty under Section 114AA of the Customs Act, 1962.

**22.4** It further appears that Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. prepared forged export invoices and the said forged export invoices further submitted before DGFT in order to avail SEIS benefits fraudulently. It therefore appears that Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad was also responsible for wrongful availment of export benefits under SEIS Scheme by M/s. ABS, Ahmedabad; thereby enabling and abetting M/s. ABS, Ahmedabad in availing undue benefit of SEIS

Scheme and conversely facilitating various importers to utilise the wrongly obtained SEIS duty credit Scrips for their imports.

**22.5** Therefore, it appears that by his deliberate acts of commission and omission Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad has rendered the goods which were imported (by utilising the ineligible Scrips) liable for confiscation, thereby Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad is liable for penalty under section 112(a) of the Customs Act, 1962.

**22.6** Further, it appears that Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad had knowingly or intentionally caused to be made, signed or used, Customs declarations/statements/documents and other declarations/statements/documents which were false or incorrect in material particular and were used in the transaction of business for the purposes of Customs Act. Therefore, he is also liable for penalty under Section 114AA of the Customs Act, 1962.

### **23. PROVISIONS FOR THE CONFISCATION OF GOODS IMPORTED BY VARIOUS IMPORTERS USING INELIGIBLE SEIS SCRIPS FRAUDULENTLY OBTAINED BY M/S. ABS, AHMEDABAD:-**

From the discussion in foregoing paras, it appears that various importers (i.e. person/s other than the person to whom the instrument SEIS Scrips) have already imported goods at various ports as detailed in **Annexure 'C'** attached with this Show Cause Notice, by claiming exemption against the 02 SEIS Scrips which were fraudulently obtained by M/s. ABS, Ahmedabad. Hence, such imports can be termed as imports made without observing the conditions prescribed under Notification No. 25/2015 -Customs dated 08/04/2015, as amended; hence such goods imported at various ports valued at **Rs. 3,49,89,700/-** (Rupees Three Crore Forty Nine Lakh Eighty Nine Thousand Seven Hundred Only) are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

### **24. QUANTIFICATION OF LIABILITIES PERTAINING TO IMPORTATION OF GOODS:-**

**24.1** As established in the above paras, M/s. ABS, Ahmedabad have obtained total 02 SEIS Scrips from DGFT, Ahmedabad fraudulently, by wilful mis-statement and suppression of various facts, and the total duty involved in these 02 Scrips/Licences is **Rs. 94,77,875.83/-** (Rupees Ninety Four Lakh Seventy Seven Thousand Eight Hundred Seventy Five and Eighty Three Paise Only) and the said 02 SEIS scrips were further utilised by the various importers (i.e. person/s other than the person to whom the instrument/SEIS Scrips had been transferred) during import at various ports as mentioned in **Annexure 'C'**.

**24.2** It is also evident that M/s. ABS, Ahmedabad have transferred/sold the aforesaid **02** SEIS Scrips to other importer/s. 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 was fraudulently obtained from DGFT, Ahmedabad and SCNs have been issued by DGFT for ab-initio cancellation of said SEIS Scrip. The duty involved

in this 02 SEIS Scrips which was transferred to other importer/s by M/s. ABS, Ahmedabad and subsequently utilised by the said importer/s at various ports to the tune of Rs. **94,77,870.11/-** (Rupees Ninety Four Lakh Seventy Seven Thousand Eight Hundred Seventy and Eleven Paisa only), as enumerated in the **Column 16 of the Annexure ‘C’** attached with this Show Cause Notice, is required to be recovered from M/s. ABS, Ahmedabad under Section 28AAA of the Customs Act, 1962 along with interest under Section 28 AA of the Customs Act,1962 as discussed in Para 20. The value of goods and duty relatable to utilisation of such cancelled instruments (including that which may possibly be utilised in future) which is recoverable, alongwith Jurisdictional Customs Authorities (port of import) is detailed below as **TABLE ‘X’**:

**TABLE – X**

Sr. No.	Name & Address of Importer / IEC Holder	Total Assessable Value (Item Wise of the Imported Goods (In Rs.)	Ineligible SEIS Amount transferred by M/s. ABS Ahmedabad & thereafter utilised by other importers for their imports (In Rs.)	Jurisdictional Custom Authority	Bill of Entry/ SEIS Scrips Details
(1)	(2)	(3)	(4)	(5)	(6)
1	GOKUL AGRO RESOURCES LIMITED (IEC-0814023363)	<b>2,66,55,125</b>	<b>61,33,723.70</b>	Customs, Kandla Port [INIXY1], New Customs Building, Near Balaji Temple, Kandla – 370210	As per Annexure ‘C’
2	FRIGORIFICO ALLANA PRIVATE LIMITED (IEC-0388146478)	83,34,575	33,44,146.41	Customs, Nhava Sheva-I, JNCH, Nhava Sheva (INNSA1), Tal.-Uran, Dist.-Raigad, Maharashtra-400707	
	<b>Total</b>	<b>3,49,89,700</b>	<b>94,77,870.11</b>		

**SHOW CAUSE NOTICE-**

**25.** M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC-0805005684) B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Ahmedabad-380052, were called upon to show cause as to why:

- (i) The duty payable amount aggregating to Rs. **94,77,870.11/-** (Rupees Ninety Four Lakh Seventy Seven Thousand Eight Hundred Seventy and Eleven Paisa only), as mentioned in Column- **4** of Table **‘X’** mentioned in para 24.2 above relatable to utilisation of cancelled instruments (SEIS Scrips), utilised by person/s other than the person to whom the instruments (SEIS Scrips) were issued, 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.
- (ii) The goods totally valued at **Rs. 3,49,89,700/-** (Rupees Three Crore Forty Nine Lakh Eighty Nine Thousand Seven Hundred Only), as mentioned in

Column- 3 of **Table 'X'** above, imported against Bills of Entry covered in **Annexure 'C'** attached with this Show Cause Notice, imported by wrongly availing duty exemption under Notification No. 25/2015-Customs dated 08/04/2015 as amended, should not be held liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

(iii) Penalty should not be imposed upon M/s. Analytix Business Solutions (I) Pvt. Ltd. under the provisions of Section 112(a) & 114AA of the Customs Act, 1962.

(iv) The amount already paid by M/s. Analytix Business Solutions (I) Pvt. Ltd. amounting to **Rs. 94,77,875.83/-** (Rupees Ninty Four Lakh Seventy Seven Thousand Eight Hundred Seventy Five and Eighty Three Paise Only) should not be adjusted and appropriated against the duty demanded at para (i) above.

(v) Penalty should not be imposed upon Shri Fenil R Shah, former Head (India Operations) of M/s. Analytix Business Solutions (I) Pvt. Ltd. under the provisions of Section 112(a) & 114AA of the Customs Act, 1962 for their role as reflected at para 22 above with respect to contraventions pertaining to Bills of Entry/SEIS Scrips referred in Annexure 'C'.

(vi) Penalty should not be imposed upon Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. Analytix Business Solutions (I) Pvt. Ltd. under the provisions of Section 112(a) & 114AA of the Customs Act, 1962 for their role as reflected at para 22 above with respect to contraventions pertaining to Bills of Entry/SEIS Scrips referred in Annexure 'C'.

**26.** Further, **M/s. Gokul Agro Resources Limited**, 76/1, 80, 89, & 91, Meghpar-Borichi, Galpadar Road, nr. Sharma Resort, Taluka-Anjar, Gujarat-370110 (IEC- 0814023363) were also called upon to show cause as to why:

(i) The goods totally valued at **Rs. 2,66,55,125/-** (Rupees Two Crore Sixty Six Lakh Fifty Five Thousand One Hundred Twenty Five Only), as mentioned in Column- 3 of **Table 'X'** should not be held liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962, imported by them against Bills of Entry covered in **Annexure 'C'** attached with this Show Cause Notice, for which duty exemption under the Notification 25/2015-Customs dated 08.04.2015 was availed by utilising SEIS Scrips which were obtained by wilful mis-statement and suppression of facts by M/s. Analytix Business Solutions (I) Pvt. Ltd.

**27.** Further, **M/s. Frigorifico Allana Private Limited** Khopoli-pen road, Village-Sarsan, Taluka-Khalapur, Raigad, Maharashtra- 410203 (IEC-0388146478) were also called upon to show cause, as to why:

(i) The goods totally valued at **Rs. 83,34,575/-** (Rupees Eighty Three Lakh Thirty Four Thousand Five Hundred Seventy Five Only), as mentioned in Column- 3 of **Table 'X'** above should not be held liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962, imported by them against Bills of Entry covered in **Annexure 'C'** attached with this Show Cause Notice, for which duty exemption under the Notification 25/2015-Customs dated 08.04.2015 was availed by utilising SEIS Scrips which were obtained by wilful mis-statement and suppression of facts by M/s. Analytix Business Solutions (I) Pvt. Ltd.

**PERSONAL HEARING-**

**28.** Shri Savan Pandya appeared for personal hearing on behalf of M/s. Analytix Business Solution and Shri Kiran Kumar Gunvant Bhai Modi and reiterated the submission dated 28.03.2024 and also referred to their detailed submission made earlier. He submitted that proceedings are already completed vide DGFT action, copy of which is submitted to Customs. Any further proceedings is double jeopardy, not permissible under law. Goods being not available, cannot be confiscated.

**28.1** Shri Arvind Sonawane appeared for personal hearing on behalf of M/s. Frigorifico Allana Pvt. Ltd. and reiterated the submission made vide their letter dated 30.05.2024. He also referred to case laws compilation including orders on the issue passed by other custom authorities.

**28.2** Shri Ramesh Kumar Netada appeared for personal hearing on behalf of M/s. Gokul Agro Resources Ltd. During the course of personal hearing he reiterated the submission dated 19.04.2024 and requested to drop the proceedings initiated against them vide the impugned SCN dated 30.05.2023 as they were the bonafide purchaser of the SEIS License from Mahalaxmi Exports. They have also relied upon the order dated 08.08.2023 passed by the then Commissioner, Kandla in the matter of M/s. Fashion Accessories and others.

**SUBMISSION-**

**29.** M/s. Analytix Business Solutions and Shri Kiran Kumar Gunvant Bhai Modi vide their submission dated 09.10.2023, interalia, submitted that-

- (i) They have argued that the SCN is issued mainly for two reasons-  
(a) that SEIS benefit was not available to them being STPI status and (b) they have mis-declared the services to wrongfully avail the benefit of the SEIS scheme.
- (ii) At the material time when the benefit of SEIS was claimed, they had ceased to be an STPI unit and were not operating under the said scheme.
- (iii) They have correctly classified the services for which export invoices were issued by them.
- (iv) They are a Pvt. Ltd company, interalia, engaged in business of IT enabled Professional services like Accounting and Book keeping, Consulting, AV Schematic designing, RPO, Virtual assistance etc. as well as IT services like software development, IT infra etc. Noticee No.2 is an employee of the company working as Accounts Manager.
- (v) For the period from F.Y. 2005-2015, they were registered and licensed as a 100% EOU under the Software Technology Park of India Scheme (STPI) framed by the Ministry of Commerce and Industries under the FTP. A letter of Approval being LOP STIPG/EXIM/S/430/SOPL/2715 dated 12.08.2015 was issued in our favour by the competent authority under the STPI scheme and this LoA issued in 2005 being valid upto year 2010, was renewed and extended by the competent authority upto 31.07.2015. They had not applied for renewal and extension of the LOA beyond year



2015 and therefore they had ceased to be an EOU under STPI scheme, but a formal letter/communication about their exit from the above scheme was issued by the concerned authority on 23.07.2018 thereby formalizing their exit from the STPI scheme.

- (vi) In the F.Y. 2015-16 and 2016-17, they had applied for Service Export from India Scheme (SEIS). The Office of DGFT granted permission to them to allow operations under SEIS scheme after proper verification of the application and also after considering their eligibility to apply for the scheme. The list of services and rates for which they had applied for the SEIS scheme were as per the appendix-3D of the [FTP 2015-20](#) and some of their services related to IT and IT infrastructure which were not as per the specified services, no application was made for claiming any benefit of SEIS for such services.
- (vii) A unit operating as EOU/STP can avail the benefits of EOU or STP only till the validity period as provided under the letter of Permission or Letter of Approval. Any benefit availed by the unit after the expiry of the LoP is impermissible as per the FTP. As per Para 6.05 of the [FTP 2015-2020](#), once unit commences production, LoP/LoI issued shall be valid for a period of 5 years for its activities. This period may be extended further by DC for a period of 5 years at a time. Further, as per para 6.01 of the Handbook of Procedure (HoP), the unit working under STP can work only as per LoP and extension of LoP can be applied by the unit if unit wanted to continue with the status of STP. They had valid LoP till 11.08.2015 and it was not extended further. Therefore, they had not enjoyed any benefit of STP. The appendix 6K referred in the show cause notice provides for guidelines that before final exit, unit shall pay appropriate duties on the goods in stock and also dispose off raw materials, components on payment of duties. It also provides that penalties if any imposed by DGFT for non fulfillment of conditions etc. shall also be paid before final exit. However, these guidelines nowhere stipulate that even if the LoP has expired, the unit can continue to enjoy the benefits of EOU/STP like import of duty free raw materials etc. till the date of final exit.
- (viii) They have provided management consultancy services and architectural services. The detailed invoice contains the services which are classified as (i) accounting and book keeping services, (ii) tax support services (iii) medical billing services (operational management consultancy services), (iv) schematic AV design services and IT services. Medical billing services availed by healthcare providers and hospitals for effectively managing daily complexities of medical billing is directly related to the operational assistance to the clients for effective planning and controlling the organization. Therefore, the medical billing services provided by them to their foreign based service recipient was related to the management consultancy services and therefore, it was clearly eligible for SEIS scheme as per Appendix-3D.
- (ix) As regard to the architectural services, they have submitted that they have mentioned the services i.e. schematic design services with AV elastration service which was classified by them under architectural services. The department has not disputed and not

brought on record any evidence contradicting the nature of services provided by them, and therefore, merely by referring to the classification under UN CPC Code, the show cause notice cannot allege that they had no provided any services in the nature of architectural services. In fact none of the statements recorded by the department suggest even remotely that they had not provided services of medical billing and schematic design services.

**29.1.** M/s. Analytix Business Solutions and Shri Kiran Kumar Gunvant Bhai Modi vide their submission dated 28.03.2024, interalia, submitted that-

- (i) The noticees were not in possession of any duty credit scrips, at the time of issuance of above mentioned show cause notice and the same were transferred much prior to issuance of SCN in accordance with law and therefore it is not possible to confiscate the scrips as the same were not available and therefore when scrips are not available for confiscation any further proceedings and or penalty cannot be imposed in absence of confiscated scrips. They have relied upon the decision of Raja Impex Pvt Ltd, 2008 (229) ELT 185 (P&H) and also Shiv Kripa Ispat, 2009 92350 ELT 623 (Tri-LB) that when goods were not available for confiscation, no confiscation was warranted and no redemption fine could be imposed.
- (ii) The DGFT had earlier initiated the proceedings with respect to above mentioned same cause and same violation and the present noticees had duly participated in the proceedings and at the end the Dy. DGFT passed an order vide OIO no. 08/F3/00019/AM20/ECA dated 18.08.2021 confirming the demand of amount of SEIS scrips, pursuant to which noticees had made payment equal to the amount of SEIS scrips availed. Therefore case of SEIS scheme stood concluded and closed for all purposes. That the entire proceedings had been completed and attained finality for all purposes. However, the second show cause notice had been issued to on the basis of the same allegations and same issue raised by the customs department. This result into double jeopardy because the noticees had been proposed to be penalized twice for the same offence which is impermissible in the eyes of law.
- (iii) That no one can be proceeded and penalize for the same set of facts/cause, circumstances and allegations as it is well settled of law mentioned in Article 20 of Constitution of India. Moreover, after taking various judgements of Apex court and High Courts, it was held in the Bhagwati Electrical Enterprises Vs. Commissioner of Cus. Hyderabad-II, (2005) 189 ELT 467, that once the issue is settled and reached the finality, it cannot be re opened. As well as in the case of Paro Food Products Vs. Commissioner of Central Excise, Hyderabad (2005) 184 ELT 50, it was observed that repeated show cause is hit by res judicata. As well as in the Solitaire Machine Tools Ltd. Vs. Commissioner of C.Ex., Vadodara, (2008) 222 ELT 404, viewed that proceedings with two separate adjudication and confirmation of two demands are not permissible.
- (iv) The Show cause notice is barred by limitation. They have placed reliance on State of Punjab Vs. Bhatinda District Co-Op. Milk P.Union Ltd reported in 2007(217) E.L.T. 325 (S.C) wherein it was

held that where statute does not provide for any specific time limit to issue show cause notice, the same should be issued within reasonable time. In the present case, the issue relates back to the period of Oct, 2018 and therefore the show cause notice issued on 30.02.2023 is clearly barred by limitation of time. Further the SCN is time barred as per Section 124 of the Customs Act, 1962.

- (v) They have also relied upon various other judgements viz. Ram khazana Electronic 2003(156) ELT 122 (Tri.- Del), Shiwalya Spinning & Weaving Mills (P) Ltd. 2002 (146) ELT 610 (Tri.- Del), Munjal Showa Ltd. Vs Commr. Of C.Ex Faridabad (2008) 277 ELT 330 to argue that since goods are not available for confiscation, no redemption fine could be imposed.
- (vi) They have further relied upon the decision of Om Siddh Vinayak Impex Pvt. Ltd Vs. Union of India 2017 (353) E.L.T 409(Guj.) to argue that the revenue can not initiate parallel proceedings in respect of the same subject matter. In another case, Commissioner of Central Excise, Meerut-II vs Prince Gutka Ltd. reported in 2015 (322) ELT 165 (S.C) the Hon'ble Supreme Court held that there could not be a second show cause notice for the same show cause of action.
- (vii) The duty scrips under SEIS scrips were granted to noticees by the competent authority after proper verification of their eligibility to claim the said duty scrips. Noticees had not hid any document from the revenue nor mis declared anything for availing the benefit of SEIS scheme. Further, the scrips were not utilized by noticees but sold to other importers under bona fide belief that the duty scrips were validly granted to noticees. Therefore, penalty under Section 114AA and 112(a) are not sustainable. They have relied upon the decision of Hon'ble Tribunal in the matter of ARJ Exim India vs Commr. Of Cus, Chennai/Mumbai 2019 (370) E.L.T 614 (Tri-Mumbai) has held that the penalties under 112(a) and 114AA are not imposable when there is no mens rea on the part of the noticees.
- (viii) They have relied upon the decision of Z.U. Alvi Vs CCE, Bhopal in 2000(36) RLT 721, it was held by the appellate Tribunal that when a person was not in charge or responsible for the conduct of business of the manufacturer and was dealing with goods only in his official capacity as an employee, he could not be considered to be a person liable for penalty under Rule 209A of the Rules. Rule 209A has been para materia to Sec. 112 of the CA, 1962 and therefore, the above principle is applicable in the instant case. Hence proposal to impose penalty on Noticee No. 2 under Section 112(a) and 114AA of the CA, 1962 deserves to be vacated in the interest of justice.

**29.2** M/s. Frigorifico allana vide their submission dated 30.05.2024 and 20.02.2025, interalia, submitted that-

- (i) The show cause notice is unsustainable to the extent that it has called upon them to show cause as to why the goods imported by them under the said scrips should not be held liable for confiscation.

- (ii) The said Scrips were freely transferrable as provided in Para 3.02 of the Foreign Trade Policy 2015-20 and were endorsed as “Transferrable” by the licensing authority. They bonafide purchased the same for valuable consideration.
- (iii) The imported the consignment of “RBD Palmolein of Edible Grade in Bulk and Crude Sunflower Seed Oil of Edible Grade in Bulk” and cleared the said goods against the said Scrips/Licenses by availing the benefit of Notification No. 25/2015-Cus dated 08.04.2015.
- (iv) The scrips were valid when the goods were imported, therefore no fault can be found with the goods imported by them.
- (v) The allegation that the original licensee had obtained the scrip by willful mis-statement and suppression of the facts cannot and does not make the scrips to be non-est or void ab-initio.
- (vi) It is settled law as laid down by the following judgements that a licence which is alleged to be obtained by fraud or misrepresentation is not void ab-initio, but is only voidable and if before it is voided by cancellation by the licensing authority, the goods under it are already imported and cleared, the subsequent cancellation of the license will not render the imports to be invalid in law:
  - a. East India Commercial Company Ltd Vs. CC-1983 (13) ELT 1342.
  - b. Chemi Colour Agency and another Vs CC IE-1987 (30) ELT 175
  - c. K. Uttamlal (Exports) Pvt. Ltd Vs. Union of India-1990 (46) ELT 527
  - d. Kantilal Manilal and Company versus Union of India-1994(69) ELT 240.
  - e. CC vs Sneha Sales Corporation-2000 (121) ELT 577
  - f. Wearon Exports Private Limited vs. union of India-2004 (163) ELT 149.
  - g. CC vs. Patiala Castings P. ltd-2012 (283) ELT 269
  - h. CC v Gopichand Krishnan Kumar Bhatia-2013 (295) ELT 739
  - i. Ajay Kumar & Co. V CC-2006 (205) ELT 747- Upheld in 2009(238) ELT 387
  - j. The decision in the case of Ajay Kumar & Co. has been followed by the Hon’ble Supreme Court in its decision in Commissioner V Vallabh Design product-2016(341) ELT A222(SC).
- (vii) Even if the scrips are to be cancelled ab-initio, as laid down by the Supreme Court in CC vs. Sneha Sales Corporation-2000 (121) ELT 577, such ab initio cancellation by the licensing authority after the goods have been cleared under the license cannot affect the clearances already made.
- (viii) Further as held in Supreme Castings Ltd Vs. Jt DGFT-2016(342) ELT 176, a license which has already expired cannot be cancelled.
- (ix) They have further placed reliance on the decision of Hon’ble High Court in the case of Taparia overseas P. Vs. UoI-2003(161)ELT 47 BOM
- (x) They have also relied upon the judgements-
  - a. Hon’ble Tribunal in the case of Good Luck Industries vs CC reported in 1999 (108) ELT 818- which has been upheld by the SC as reported in 2000(120) ELT A 66
  - b. Hico Enterprise v CC-2005(189) ELT 135

c. Commissioner Vs. Vallabh Design Products-2016 (341) ELT A222 (SC)

**29.3** M/s. Gokul Agro resources Ltd. vide their submission dated 19.04.2024, interalia, submitted that-

(i) They have not purchased the Scrips of M/s. Analytix Business Solutions (I) Pvt. Ltd directly from M/s. Analytix Business Solutions (I) Pvt. Ltd but the same had been purchased through Mahalaxmi Exports, Ahmedabad.

(ii) While procuring the aforementioned SEIS license from the open market, they were unable to trace the facts as to the mis-utilization of license by the exporter, M/s. Analytix Business Solutions(I) Pvt. Ltd as per the provisions of Section 28AAA of the Customs Act, 1962.

(iii) The mandate of Section 28AAA is crystal clear that the notice under sub section 3 of Section 28AAA is to be sent to the person for mis-utilising the instrument issued to another person.

(iv) They have relied upon the order dated 08.08.2023 passed by the O/o- Commissioner and order dated 18.12.2023 passed by O/o- Commissioner, Kolkata.

## **DISCUSSION AND FINDINGS-**

**30.** I have carefully gone through the Show Cause Notice, written submissions, record of personal hearing and all the evidences placed on record.

**31.** The issues to be decided before me are:-

- a. whether the services rendered by the exporter are notified as per Appendix 3D to [FTP 2015-2020](#) and eligible for SEIS Scheme;
- b. whether the exporter had STPI status during the relevant time;
- c. Whether duty under Section 28AAA of the Customs Act, 1962 is required to be paid by M/s. Analytix Business Solution along with applicable interest;
- d. Whether the exporter is liable for penal actions under various sections as proposed in the Show cause notice;
- e. Whether the imported goods are liable for confiscation under Section 111 of the Customs Act, 1962

## **EXPORT PROMOTION SCHEMES UNDER FTP 2015-2020**

**32.** Before proceeding further, it is pertinent to discuss the SEIS Scheme. In terms of Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, [an act which provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto] the Central Government notified the Foreign Trade Policy 2015-20 w.e.f 01.04.2015. FTP 2015-20 introduced two new schemes, namely "Merchandise Exports from Indian scheme (MEIS)" for export of specified goods to specified Markets and "Service

Exports from Indian Schemes (SEIS)” for increasing exports of notified services, in place of plethora of schemes earlier, with different conditions for eligibility and usage. The matter in hand pertains to SEIS.

**33.** In terms of Chapter 3 of the Foreign Trade Policy (FTP) 2015-2020 exporters are issued duty credit Scrips under two schemes for exports of Merchandise and Services namely (i) Merchandise Exports from India Scheme (MEIS)& (ii) Service Exports from India Scheme (**SEIS**) with an objective to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India’s export competitiveness.

**34.** Service Exports from India Scheme (SEIS) has been introduced by the Government of India w.e.f. 01.04.2015 under the Foreign Trade Policy 2015-20 (FTP 2015-2020) replacing the erstwhile ‘Served From India Scheme (SFIS) under the FTP 2009-15. As per FTP 2015-2020, Service Providers of Notified Services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. As per Para 3.07 of FTP 2015-2020, objective of Service Exports from India Scheme (SEIS) is **to encourage export of notified Services from India**. Further as per Para 3.08 of FTP 2015-2020, Services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of this policy are eligible for SEIS benefit. The notified services and rates of rewards are listed in Appendix 3D. SEIS is a reward computed based on the ‘net’ free foreign exchange realized and the percentage of this reward is specified in Appendix 3D of the FTP 2015-20. Benefit allowed under this scheme is 3% to 7% (as amended from time to time) as per nature of services supplied and the Scrips can be used for the payment of Custom duties on imports, payment of excise on domestic procurement, including capital goods and payment of service tax. The duty Scrips are freely transferable. The SEIS entitlements as per Public Notice No. 03 dated 01/04/2015 (as amended by DGFT) issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce on all the list of services are as under:

**Annexure to Appendix 3D**

**Note 1:** *The services and rates of rewards notified against them shall be applicable for services export made between 1-4-2015 to 30-09-2015 only. The list of services/rate is subject to review with effect from 1-10-2015.*

**Note 2:** *The rate of reward for eligible services is subject to conditions as specified in FTP and HBP.*

**Note 3:** *For Educational Services, SEIS reward shall not be available on Capitation Fee.*

**Note 4:** *Under Maritime Transport Services marked with \*[9A (a), (b) and (c)], the reward shall be limited to Operations from India by Indian Flag Carriers only*

**List of Services**

S.No.	SECTORS	Central Product Classification (CPC) Code	Admissible rate in % (on Net
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			<b>Foreign Exchange earnings)</b> [As amended by DGFT]
<b>1</b>	<b><u>BUSINESS SERVICES</u></b>		
<b>A.</b>	<b><u>Professional services</u></b>		
a.	Legal services	861	5/7
b.	Accounting, auditing and bookkeeping services	862	5/7
c.	Taxation services	863	5/7
d.	Architectural services	8671	5/7
<b>e.</b>	<b><u>Engineering services</u></b>	<b>8672</b>	<b>5/7</b>
f.	Integrated engineering services	8673	5/7
g.	Urban planning and landscape architectural services	8674	5/7
h.	Medical and dental services	9312	5/7
i.	Veterinary services	932	5/7
j.	Services provided by midwives, nurses, physiotherapists and paramedical personnel	93191	5/7
<b>B</b>	<b><u>Research and development services</u></b>		
a.	R&D services on natural sciences	851	5/7
b.	R&D services on social sciences and humanities	852	5/7
c.	Interdisciplinary R&D services	853	5/7
<b>C.</b>	<b><u>Rental/Leasing services without operators</u></b>		
a.	Relating to ships	83103	5/7
b.	Relating to aircraft	83104	5/7
c.	Relating to other transport equipment	83101 83102 83105	5/7
d.	Relating to other machinery	83106-83109	5/7
<b>D</b>	<b><u>Other business services</u></b>		
a.	Advertising services	871	3/5
b.	Market research and public opinion polling services	864	3/5
c.	Management consulting service	865	3/5
d.	Services related to management consulting	866	3/5
<b>e.</b>	<b><u>Technical testing and analysis services</u></b>	<b>8676</b>	<b>3/5</b>
f.	Services incidental to agricultural, hunting and forestry	881	3/5
g.	Services incidental to fishing	882	3/5
h.	Services incidental to mining	883 5115	3/5
i.	Services incidental to manufacturing	884 885	3/5
j.	Services incidental to energy distribution	887	3/5
k.	Placement and supply services of personnel	872	3/5
l.	Investigation and security	873	3/5
m.	Related scientific and technical consulting services	8675	3/5
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633 8861-8866	3/5
o.	Building – cleaning services	874	3/5
p.	Photographic Services	875	3/5
q.	Packaging services	876	3/5
r.	Printing, publishing	88442	3/5
s.	Convention services	87909	3/5

<b>2</b>	<b>COMMUNICATION SERVICES</b>		
	<b>Audiovisual services</b>		
<i>a.</i>	<i>Motion picture and video tape production and distribution service</i>	9611	5/7
<i>b.</i>	<i>Motion picture projection service</i>	9612	5/7
<i>c.</i>	<i>Radio and television services</i>	9613	5/7
<i>d.</i>	<i>Radio and television transmission services</i>	7524	5/7
<i>e.</i>	<i>Sound recording</i>	n.a.	5/7
<b>3</b>	<b>CONSTRUCTION AND RELATED ENGINEERING SERVICES</b>		
<i>A.</i>	<i>General Construction work for building</i>	512	5/7
<i>B.</i>	<i>General Construction work for Civil Engineering</i>	513	5/7
<i>C.</i>	<i>Installation and assembly work</i>	514 516	5/7
<i>D.</i>	<i>Building completion and finishing work</i>	516	5/7
<b>4.</b>	<b>EDUCATIONAL SERVICES (Please refer Note-3)</b>		
<i>A.</i>	<i>Primary education service</i>	921	5/7
<i>B.</i>	<i>Secondary education services</i>	922	5/7
<i>C.</i>	<i>Higher education services</i>	923	5/7
<i>D.</i>	<i>Adult education</i>	924	5/7
<b>5</b>	<b>ENVIRONMENTAL SERVICES</b>		
<i>A.</i>	<i>Sewage services</i>	9401	5/7
<i>B.</i>	<i>Refuse disposal services</i>	9402	5/7
<i>C.</i>	<i>Sanitation and similar services</i>	9403	5/7
<b>6</b>	<b>HEALTH-RELATED AND SOCIAL SERVICES</b>		
<i>A.</i>	<i>Hospital services</i>	9311	5/7
<b>7</b>	<b>TOURISM AND TRAVEL-RELATED SERVICES</b>		
<i>A.</i>	<i>Hotels and Restaurants (including catering)</i>		
<i>a.</i>	<i>Hotel</i>	641-643	3/5
<i>b.</i>	<i>Restaurants (including catering)</i>	641-643	3/5
<i>B.</i>	<i>Travel agencies and tour operators services</i>	7471	5/7
<i>C</i>	<i>Tourist guides services</i>	7472	5/7
<b>8.</b>	<b>RECREATIONAL CULTURAL AND SPORTING SERVICES (other than audiovisual services)</b>		
<i>A.</i>	<i>Entertainment services (including theatre, live bands and circus services)</i>	9619	5/7
<i>B.</i>	<i>News agency services</i>	962	5/7
<i>C.</i>	<i>Libraries archives, museums and other cultural services</i>	963	5/7
<i>D.</i>	<i>Sporting and other recreational services</i>	964	5/7
<b>9</b>	<b>TRANSPORT SERVICE (Please refer Note 4)</b>		
<i>A.</i>	<b><u>Maritime Transport Services</u></b>		
<i>a.</i>	<i>Passenger transportation*</i>	7211	5/7
<i>b.</i>	<i>Freight transportation*</i>	7212	5/7
<i>c.</i>	<i>Rental of vessels with crew*</i>	7213	5/7
<i>d.</i>	<i>Maintenance and repair of vessels</i>	8868	5/7
<i>e.</i>	<i>Pushing and towing services</i>	7214	5/7
<i>f.</i>	<i>Supporting services for maritime transport</i>	745	5/7
<b>B.</b>	<b><u>Air Transport services</u></b>		
<i>a.</i>	<i>Rental of aircraft with crew</i>	734	5/7
<i>b.</i>	<i>Maintenance and repair of aircraft</i>	8868	5/7
<i>c.</i>	<i>Airport Operations and ground handling</i>		5/7



<b>C</b>	<b><u>Road Transport Services</u></b>		
a.	Passenger transportation	7121 7122	5/7
b.	Freight transportation	7123	5/7
c.	Rental of Commercial vehicles with operator	7124	5/7
d.	Maintenance and repair of road transport equipment	6112 8867	5/7
e.	Supporting services for road transport services	744	
<b>D</b>	<b><u>Services Auxiliary To All Modes of Transport</u></b>		
a.	Cargo handling services	741	5/7
b.	Storage and warehousing services	742	5/7
c.	Freight transport agency services	748	5/7

(emphasis added)

**34.1** Para 3.09 of Foreign Trade Policy-2015-2020 w.e.f. 01.04.2015 describes “Ineligible Categories under SEIS”. The said para 3.09 of FTP **[RUD No.-06]** is reproduced as below:

**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:

**I. 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 SEZ /EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units;**
- (f) Clubbing of turnover of services rendered by SEZ / EOU /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.

**34.2** The SEIS entitlements as per Public Notice No. 03 dated 01/04/2015 as amended (vide Public Notice No. 45/2015-2020 dated 05.12.2017) **[RUD No. -07]** issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce on all the list of services are as under:

### ***Annexure to Appendix 3***

**Note 1:** *The services and rates of rewards notified against them shall be applicable for services export made between 1-4-2015 to 30-09-2015 only. The list of services/rate is subject to review with effect from 1-10-2015.*

**Note 2:** *The rate of reward for eligible services is subject to conditions as specified in FTP and HBP.*

**Note 3:** *For Educational Services, SEIS reward shall not be available on Capitation Fee.*

**Note 4:** *Under Maritime Transport Services marked with \*[9A (a), (b) and (c)], the reward shall be limited to Operations from India by Indian Flag Carriers only*

**Note 5:** *Following shall not be taken into account for calculation of entitlement under the SEIS.*

**a.** *Foreign Exchange remittances:*

**I.** *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:*  
*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**
- f. Clubbing of turnover of services rendered by EOU/ EHTP/ STPI/ BTP units with turnover of DTA Service Providers.*
- g. 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.*
- h. Service providers in Telecom Sector*

**34.3** It is pertinent to mention that the aforesaid notification no. 03/2015-2020 dated 01.04.2015 was amended vide Public Notice No. 45/2015-2020 dated 05.12.2017 and the said sub-para 2(e) of para 3.09 of FTP was incorporated in the said Public Notice No. 45/2015-2020 dated 05.12.2017 as

**Note-5.**

**34.4** Clearly, in order to avail the benefit of SEIS schemes, the following conditions are to be met:-

- (i) Service must be exported
- (ii) Exported services must be notified
- (iii) Service provider must be located in India
- (iv) Services must be rendered in the manner as laid down in Para 9.51(i) and Para 9.51(ii) of the [FTP 2015-2020](#)
- (v) Export turnover related to STPI unit shall not be eligible for SEIS scheme.

**NATURE OF SERVICE PROVIDED BY THE EXPORTER-**

**35.** I find that M/s. Analytix Business Solutions (I) Pvt. Ltd. were engaged in the business of providing Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services etc. to their foreign clients.

**36.** Intelligence was gathered by Directorate of Revenue Intelligence (DRI), Ahmedabad Zonal Unit, Ahmedabad that M/s. Analytix Business Solutions (I) Pvt. Ltd. had obtained Service Export from India Scheme (hereinafter referred to as SEIS) Schemes/licences by way of suppressing the fact regarding their STPI (Software Technology Park of India) Status which are not eligible for availing SEIS benefits.

**37.** I find that M/s. Analytix Business Solutions (India) Pvt. Ltd. had exported Accounting & Book Keeping Services, Tax Support Services and IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. Accounting & Book Keeping Services and Tax Support Services are to be covered under UN CPC Code 862 & 863 respectively and the said classifications are not disputable in the present case booked by DRI, Ahmedabad. However, IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. exported by them are covered under CPC code 841 to 849 which are defined as under:

#### **DIVISION 84 COMPUTER AND RELATED SERVICES [RUD No. -12]**

*841 Consultancy services related to the installation of computer hardware*

*8410 84100 Consultancy services related to the installation of computer hardware*

**Assistance services to the clients in the installation of computer hardware (i.e. physical equipment) and computer networks.**

#### **842 Software implementation services**

**All services involving consultancy services on, development and implementation of software.** The term "software" may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two.

*8421 84210 Systems and software consulting services*

*Services of a general nature prior to the development of data processing systems and applications. It might be management services, project planning services, etc.*

*8422 84220 Systems analysis services*

*Analysis services include analysis of the clients' needs, defining functional specification, and setting up the team. Also involved are project management, technical coordination and integration and definition of the systems architecture.*

*8423 84230 Systems design services*

*Design services include technical solutions, with respect to methodology, quality-assurance, choice of equipment software packages or new technologies, etc.*

#### **8424 84240 Programming services**

**Programming services include the implementation phase, i.e. writing and debugging programmes, conducting tests, and editing documentation.**

*8425 84250 Systems maintenance services*

*Maintenance services include consulting and technical assistance services of software products in use, rewriting or changing existing programmes or systems, and maintaining up-to-date software documentation and manuals. Also included are specialist work, e.g. conversions.*

*843 Data processing services*

*8431 84310 Input preparation services*

*Data recording services such as key punching, optical scanning or other methods for data entry.*



*8432 84320 Data-processing and tabulation services**Services such as data processing and tabulation services, computer calculating services, and rental services of computer time.**8433 84330 Time-sharing services**This seems to be the same type of services as 84320. Computer time only is bought; if it is bought from the customer's premises, telecommunications services are also bought. Data processing or tabulation services may also be bought from a service bureau. In both cases the services might be time sharing processed. Thus, there is no clear distinction between 84320 and 84330.**8439 84390 Other data processing services**Services which manage the full operations of a customer's facilities under contract: computer-room environmental quality control services; management services of in-place computer equipment combinations; and management services of computer work flows and distributions.**844 Database services**8440 84400 Database services**All services provided from primarily structured databases through a communication network.**Exclusions: Data and message transmission services (e.g. network operation services, value-added network services) are classified in class 7523 (Data and message transmission services). Documentation services consisting in information retrieval from databases are classified in subclass 96311 (Library services).**845 Maintenance and repair services of office machinery and equipment including computers**8450 84500 Maintenance and repair services of office machinery and equipment including computers**Repair and maintenance services of office machinery, computers and related equipment.**849 Other computer services**8491 84910 Data preparation services**Data preparation services for clients not involving data processing services.**8499 84990 Other computer services n.e.c.**Other computer related services, not elsewhere classified, e.g. training services for staff of clients, and other professional computer services.**(emphasis added)*

**38.** Apart from “Accounting & Book Keeping Services” and “Tax Support Services”, it is seen that M/s. ABS, Ahmedabad had classified their Services under “Architectural Services” & “Management Consulting Services” in their application before DGFT in order to get the SEIS Scrips. “Architectural Services” & “Management Consulting Services” defined under UN Central Product Classification (CPC) are reproduced as under:

**865 8650 MANAGEMENT CONSULTING SERVICES [RUD NO -13]****86501 General management consulting services**

*Advisory, guidance and operational assistance services concerning business policy and strategy and the overall planning, structuring and control of an organization. More specifically, general management consulting assignments may deal with one or a combination of the following: policy formulation, determination of the organizational structure (decision-making system) that will most effectively meet the objectives of the organization, legal organization, strategic business plans, defining a management information system, development of management reports and controls, business turnaround plans, management audits, development of profit improvement programmes and other matters which are of particular interest to the higher management of an organization.*

#### **86502 Financial management consulting services (except business tax)**

*Advisory, guidance and operational assistance services concerning decision areas which are financial in nature, such as working capital and liquidity management, determination of an appropriate capital structure, analysis of capital investment proposals, development of accounting systems and budgetary controls, business valuations prior to mergers and/or acquisitions, etc., but excluding advisory services on short-term portfolio management which are normally offered by financial intermediaries.*

#### **86503 Marketing management consulting services.**

*Advisory, guidance and operational assistance services concerning the marketing strategy and marketing operation of an organization. Marketing consulting assignments may deal with one or a combination of the following: analysis and formulation of a marketing strategy, formulation of customer service and pricing policies, sales management and staff training, organization of distribution channels (sell to wholesalers or directly to retailers, direct mail, franchise etc.), organization of the distribution process, package design and other matters related to the marketing strategy and operations of an organization.*

#### **86504 Human resources management consulting services**

*Advisory, guidance and operational assistance services concerning the human resources management of an organization. Human resources consulting assignments may deal with one or a combination of the following: audit of the personnel function, development of a human resource policy, human resource planning, recruitment procedures, motivation and remuneration strategies, human resource development, labour-management relations, absenteeism control, performance appraisal and other matters related to the personnel management function of an organization.*

#### **86505 Production management consulting services**

*Advisory, guidance and operational assistance services concerning methods for improving productivity, reducing production costs and improving the quality of production. Production consulting assignments may deal with one or a combination of the following: effective utilization of materials in the production process, inventory management and control, quality control standards, time and motion studies, job and work methods, performance standards, safety standards, office management, planning and design and other matters related to production management, but excluding advisory services and design for plant layout and industrial processes which are normally offered by consulting engineering establishments.*

#### **86506 Public relations services**

*Advisory, guidance and operational assistance services concerning methods to improve the image and relations of an organization or individual with the general public, government, voters, shareholders and others.*

### **86509 Other management consulting services**

*Advisory, guidance and operational assistance services concerning other matters. These services include industrial development consulting services, tourism development consulting services, etc.*

*(emphasis added)*

## **8671 Architectural services [RUD No.-14]**

### **86711 Advisory and pre-design architectural services**

*Assistance, advisory and recommendation services concerning architectural and related matters. Included here are services as undertaking preliminary studies addressing issues such as site philosophy, intent of development, climatic and environmental concerns, occupancy requirements, cost constraints, site selection analysis, design and construction scheduling and any other issues affecting the nature of the design and construction of a project. The provision of these services is not necessarily related to a new construction project. For example, it may consist of advice concerning the means of carrying out maintenance, renovation, restoration or recycling of buildings, or appraisals of the value and quality of buildings or of advice on any other architectural matter.*

### **86712 Architectural design services**

*Architectural design services for buildings and other structures. Design services may consist of one or a combination of the following: schematic design services, which consist of determining, with the client, the essential character of the project, defining intent, space requirements, budget limitations and time scheduling; and of preparing sketches including floor plans, site plans and exterior views; design development services, which consist of a more precise illustration of the design concept in terms of siting plan, form, material to be used, structural, mechanical and electrical systems and probable construction costs; final design services, which consist of drawings and written specifications sufficiently detailed for tender submission and construction, and of expert advice to the client at the time of calling for and accepting tenders.*

### **86713 Contract administration services**

*Advisory and technical assistance services to the client during the construction phase to ensure that the structure is being erected in conformity with the final drawings and specifications. This involves services provided both in offices and the field, such as construction inspection, preparation of progress reports, issuance of certificates for payments to the contractor, guidance to the client and the contractor in the interpretation of contract documents and any other advice on technical questions that may develop during construction.*

### **86714 Combined architectural design and contract administration services**

*Combinations of architectural services utilized on most projects including schematic design, design development, final design and contract administration services. This may include post construction services which consist of the assessment of deficiencies in construction and instructions regarding corrective measures to be taken during the 12-month period following the completion of the construction.*

### **86719 Other architectural services**

*All other services requiring the expertise of architects, such as the preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc.*

**39.** Further, on perusal of definition of “Management Consulting Services” under 86501 to 86509, I find that Consultancy services defined therein are related to Advisory, guidance and operational assistance services concerning business policy and strategy and the overall planning, structuring and control of an organization. These consultancy services are nowhere related to IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. which is actually provided/exported by M/s. ABS, Ahmedabad. Therefore, it is clear from the above said definition that the services to be qualified under “Management Consultancy Services” should cover three aspects i.e. “Advisory”, “guidance” & “Operational Assistance” concerning business policy and strategy and the overall planning, structuring and control of an organization. The word used here is “and” and not “or”, so all three components should be there to constitute Management Consultancy Services. From the perusal of the documents of M/s. ABS, Ahmedabad, it is clear that they are not providing any advisory or guidance to their client concerning business policy and strategy and the overall planning, structuring and control of an organization. But in order to fraudulently avail SEIS Scrips from DGFT, M/s. ABS, Ahmedabad forged the Export invoices and the invoice values in respect of IT & IT Enabled Service Charges provided/exported and mentioned in original monthly export invoices were bifurcated among **(i)** “Operational Management Consultancy Services”, **(ii)** “Architectural Services” and **(iii)** “IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services” in forged monthly parallel export invoices prepared since April, 2015. The said facts regarding forgery were confirmed by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. who prepared the said parallel invoices & Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd.

**40.** Further, perusal of definition of “Architectural services” under 86711 to 86719 makes it amply clear that Architectural services defined therein are related to Advisory and pre-design architectural services, Architectural design services, Contract administration services, Combined architectural design and contract administration services and Other architectural services i.e. preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc. These Architectural services are nowhere related to IT & IT enabled services i.e. IT Software Development Services, IT Infrastructure Services etc. which are actually provided/exported by M/s. ABS, Ahmedabad. Further, in order to fraudulently avail SEIS Scrips from DGFT, M/s. ABS, Ahmedabad forged the Export invoices and the invoice values in respect of IT & IT Enabled Service Charges provided/exported by them and mentioned in original monthly export invoices were bifurcated among **(i)** “Operational Management Consultancy Services”, **(ii)** “Architectural Services” and **(iii)** “IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services” in forged monthly parallel export invoices prepared since April, 2015. The said facts regarding forgery were confirmed by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. who prepared the said parallel invoices & Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt.

ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.

B/403-405, GCP BUSINESS CENTRE,  
OPP. MEMNAGAR FIRE STATION,  
MEMNAGAR,  
AHMEDABAD - 380 052  
Tele Fax : +91-079-26560949

Invoice No. 011/2015-16

Invoice Date 2/29/2016

INVOICE

CUSTOMER

Name	ANALYTIX BUSINESS SOLUTIONS, LLC			
Address	800 WEST CUMMINGS PARK, SUITE 2000			
City	WOBURN	State	MASSACHUSETTS	ZIP 01801
Country	U.S.A.			


DESCRIPTION	HOURS	RATE/HOUR	TOTAL
Accounting & Book Keeping Charges - Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
Accountants	10500	\$ 7.50	\$ 78,750.00
Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
I.T. Enabled Services Charges	5600	\$ 10.00	\$ 56,000.00
		SUB TOTAL	\$ 190,000.00
		\$	-
Amount in Words ( One Lac Ninety Thousand US Dollars Only)		TOTAL	\$ 190,000.00

Authorized Signatory

PAN NO.: AAICS 9490D IMPORT EXPORT CODE: 0805005684

INVOICE AS PER AGREEMENT DTD. 01st January 2016

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**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**  
 B/403-405, GCP BUSINESS CENTRE,  
 OPP. MEMNAGAR FIRE STATION,  
 MEMNAGAR,  
 AHMEDABAD - 380 052  
 Tele Fax : +91-079-26560949

Invoice No. 011/2015-16

Invoice Date 29-02-16


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**INVOICE**

CUSTOMER				
Name	ANALYTIX BUSINESS SOLUTIONS, LLC			
Address	800 WEST CUMMINGS PARK, SUITE 2000			
City	WOBURN	State	MASSACHUSETTS	ZIP 01801
Country	U.S.A.			

Sr. No.	DESCRIPTION	HOURS	RATE/HOUR	TOTAL
1	Accounting & Book Keeping Charges - Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
	Accountants	10500	\$ 7.50	\$ 78,750.00
2	Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
3	Operational Management Consultancy Services			
	Medical Billing Services	1400	\$ 10.00	\$ 14,000.00
4	Architectural Services			
	Schematic Design Services with AV Illustration Services	2240	\$ 10.00	\$ 22,400.00
5	I.T. Enabled Services Charges			
	IT Software Development Services	1960	\$ 10.00	\$ 19,600.00
<b>SUB TOTAL</b>				<b>\$ 190,000.00</b>
<b>\$</b>				<b>-</b>
<b>TOTAL</b>				<b>\$ 190,000.00</b>

Amount in Words ( One Lac Ninety Thousand US Dollars Only)



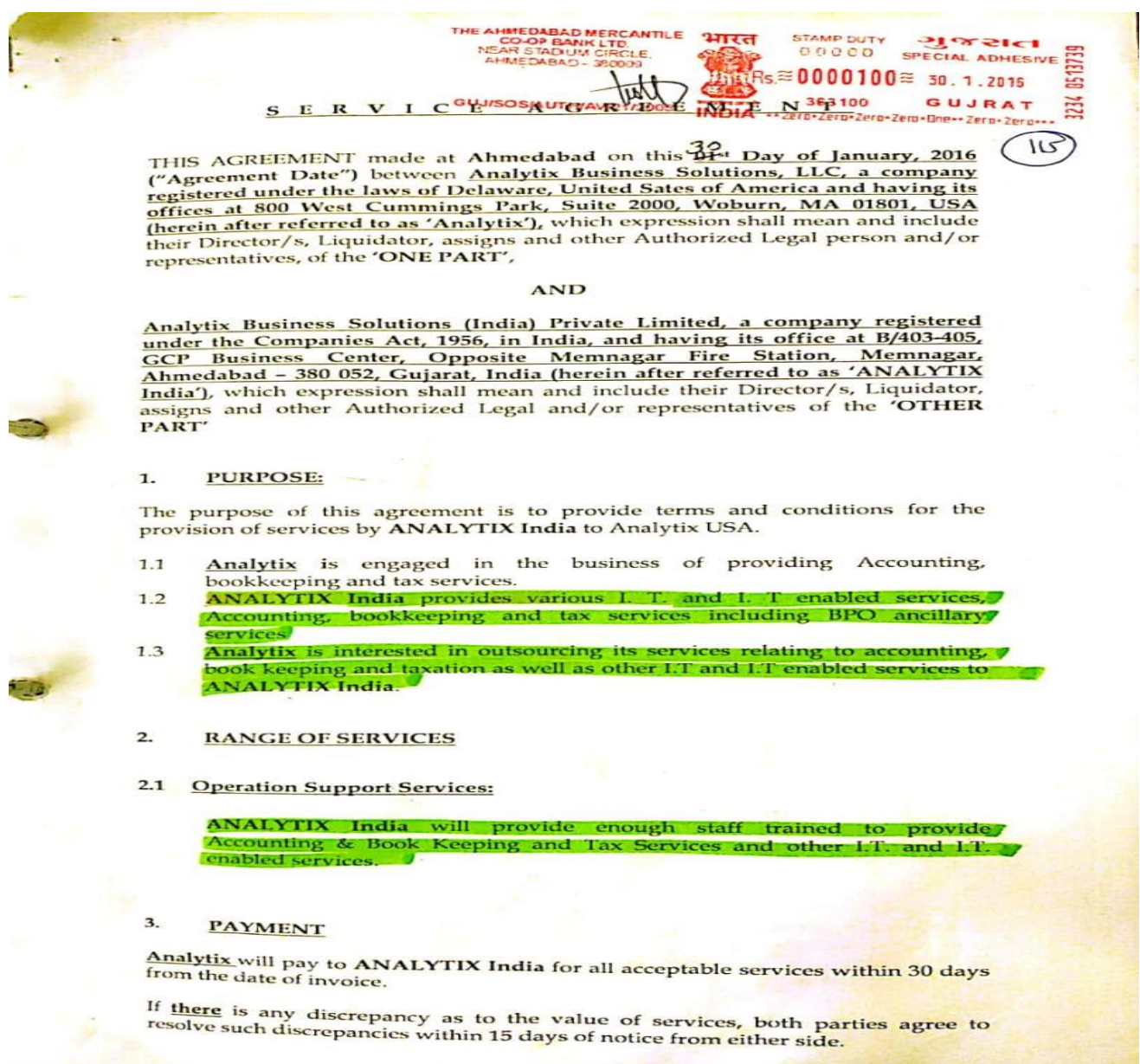
  
 Authorized Signatory

PAN NO.: AAICS 9490D      IMPORT EXPORT CODE: 0805005684

INVOICE AS PER AGREEMENT DTD. 1st January 2016.



**41.** As per Service Agreement dated 30.01.2016 & 01.04.2012 **[RUD No.-16]** entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., services to be provided by M/s Analytix Business Solutions (India) Pvt. Ltd. are Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services which are clearly classifiable under Division 862, 863 and Division-84 of UN Central Product Classification (CPC). It is pertinent to mention that services elaborated under CPC Code 865-“Management Consultancy Services” are related to advisory, guidance and operational assistance services concerning business policy and strategy and the overall planning, structuring and control of an organization & services elaborated under CPC Code 8671-“Architectural Services” are Advisory and pre-design architectural services, Architectural design services, Contract administration services, Combined architectural design and contract administration services and Other architectural services i.e. preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc. and the same are not related to IT & IT Enabled services i.e. IT Software Development Services, IT Infrastructure Services. Scanned copy of relevant portions of the said agreement entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., is reproduced as below:



4. **PRICE**

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4.1 Analytix shall pay to ANALYTIX India as per following rates

Sr. No.	Activity	Rate per hour (in US\$)
01	Accounting & Book Keeping Services	
	Chartered Accountants	US \$ 12.00 per hour
	Accountants	US \$ 7.50 per hour
02	Tax Support Services	US \$ 25.00 per hour
02	I.T. and I.T Enabled Services	US \$ 10.00 per hour

4.2 If the Quantum of work provided by Analytix is below minimum level it will ensure minimum revenue level of US \$ 10,000/- per month.

4.3 The charges and Prices of all other technical supporting and servicing activities will be decided on case to case basis.

4.4 All hourly fees are based upon hours actually worked by ANALYTIX India employees on behalf of Analytix.

4.5 ANALYTIX India will work closely with Analytix through out the implementation process to ensure a successful program launch.

5. **TERMS OF CONTRACT**

This agreement will commence from 01<sup>st</sup> January, 2016 and will continue till 31<sup>st</sup> December 2020.

6. **CONFIDENTIALITY**

This agreement contains confidential information and such shall not be disclosed to any third party without express written consent of both the parties. The parties are agrees to disclose the terms and conditions of this agreement only to their respective personnel with a need to know.

7. **NOTICE**

All notices and other communications relating to this agreement or its terms shall be in writing and mailed via first class postal services, certified or registered, with return receipt requested. All notice so mailed shall be deemed given 10 (ten) days after postmark date.

8. **ENTIRE AGREEMENT:**


This agreement (including any exhibits or addenda) constitutes the entire agreement between the parties regarding the provision of services by ANALYTIX India to Analytix and shall cancel, terminate and supersede any or all previous agreements, proposals, representations or statements, whether oral or written. The terms of this agreement shall supersede the terms of any invoice or purchase order issued by either party. Any modifications of this agreement must be in writing and signed by an authorized representative of each party.

42. **Export Invoices raised by M/s. ABS, Ahmedabad [RUD No. – 17]**

The description of services in original export invoices raised by M/s. ABS, Ahmedabad is shown as (i) Accounting & Bookkeeping Charges (ii) Tax Support Charges and (iii) IT Enabled Services. The service description mentioned in the sample invoice also correspond to the CPC codes 862, 863 & Division 84 only and not to that i.e. 862, 863, 865 & 8671 declared by M/s. ABS, Ahmedabad in their SEIS application before DGFT, Ahmedabad. Sample copies of export invoice raised by M/s. PIL, Ahmedabad are reproduced as below:



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**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**  
 B/403-405, GCP BUSINESS CENTRE,  
 OPP. MEMNAGAR FIRE STATION,  
 MEMNAGAR,  
 AHMEDABAD - 380 052  
 Tele Fax : +91-079-26560949


Invoice No. **011/2015-16**

Invoice Date **2/29/2016**

**INVOICE**

CUSTOMER					
Name	ANALYTIX BUSINESS SOLUTIONS, LLC				
Address	800 WEST CUMMINGS PARK, SUITE 2000				
City	WOBURN	State	MASSACHUSETTS	ZIP	01801
Country	U.S.A.				

DESCRIPTION	HOURS	RATE/HOUR	TOTAL
<b>Accounting &amp; Book Keeping Charges -</b>			
Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
Accountants	10500	\$ 7.50	\$ 78,750.00
Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
I.T. Enabled Services Charges	5600	\$ 10.00	\$ 56,000.00
<b>SUB TOTAL</b>			<b>\$ 190,000.00</b>
			\$ -
<b>Amount in Words ( One Lac Ninety Thousand US Dollars Only)</b>			<b>TOTAL \$ 190,000.00</b>


  
 \_\_\_\_\_  
 Authorized Signatory

PAN NO.: **AAICS 9490D**    IMPORT EXPORT CODE: **0805005684**  
 INVOICE AS PER AGREEMENT DTD. **01st January 2016**

**43.** It is pertinent to mention that to fraudulently obtain SEIS Scrips from DGFT, only service description in all the invoices raised by M/s. ABS, were changed as **(i)** "Operational Management Consultancy Services", **(ii)** "Architectural Services" and **(iii)** "IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services" in place of IT Enabled charges and invoice amount w.r.t. IT Enabled charges were bifurcated among "Operational Management Consultancy Services", **(ii)** "Architectural Services" and **(iii)** "IT Enabled Services viz. IT Software Development Services & IT Infrastructure Services". The said forged export invoices were submitted by M/s. ABS, Ahmedabad before DGFT and fraudulently availed SEIS benefits w.r.t. "Operational Management Consultancy Services", **(ii)** "Architectural

Services". Sample copies of the said forged export invoice raised by M/s. ABS, Ahmedabad are reproduced as below:

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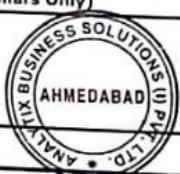
**ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**  
 B/403-405, GCP BUSINESS CENTRE,  
 OPP- MEMNAGAR FIRE STATION,  
 MEMNAGAR,  
 AHMEDABAD - 380 052  
 Tele Fax : +91-079-26560949


Invoice No. 011/2015-16  
 Invoice Date 29-02-16

INVOICE

CUSTOMER					
Name	ANALYTIX BUSINESS SOLUTIONS, LLC				
Address	800 WEST CUMMINGS PARK, SUITE 2000				
City	WOBURN	State	MASSACHUSETTS	ZIP	01801
Country	U.S.A.				

Sr. No.	DESCRIPTION	HOURS	RATE/HOUR	TOTAL
1	Accounting & Book Keeping Charges -			
	Chartered Accountants	2250	\$ 12.00	\$ 27,000.00
	Accountants	10500	\$ 7.50	\$ 78,750.00
2	Tax Support Services Charges	1130	\$ 25.00	\$ 28,250.00
3	Operational Management Consultancy Services			
	Medical Billing Services	1400	\$ 10.00	\$ 14,000.00
4	Architectural Services			
	Schematic Design Services with AV Illustration Services	2240	\$ 10.00	\$ 22,400.00
5	I.T. Enabled Services Charges			
	IT Software Development Services	1960	\$ 10.00	\$ 19,600.00
SUB TOTAL				\$ 190,000.00
Amount in Words ( One Lac Ninety Thousand US Dollars Only)				\$ -
TOTAL				\$ 190,000.00



  
 Authorized Signatory

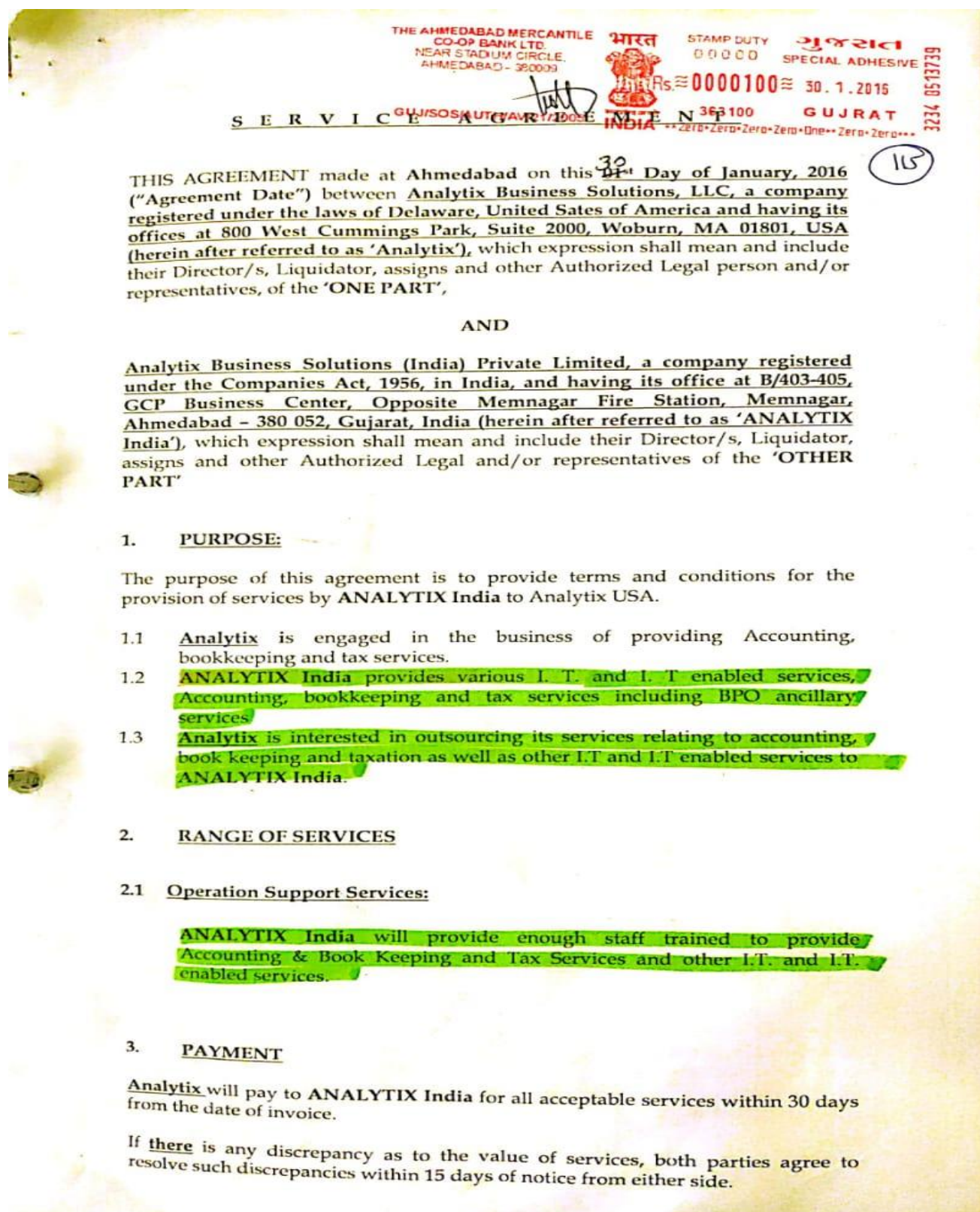
PAN NO.: AAICS 9490D    IMPORT EXPORT CODE: 0805005684  
 INVOICE AS PER AGREEMENT DTD. 1st January 2016.

44. Agreement between M/s. ABS, Ahmedabad & their foreign client [RUD No. – 18],

As per Service Agreement dated 30.01.2016 & 01.04.2012 entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., services to be provided by M/s Analytix Business Solutions (India) Pvt. Ltd. to M/s. Analytix Business Solutions LLC are Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services which are clearly classifiable under Division 862, 863 and Division-84 of UN Central Product Classification (CPC). Scanned copy



of relevant portions of the said agreement entered between M/s. Analytix Business Solutions LLC, USA & M/s Analytix Business Solutions (India) Pvt. Ltd., is reproduced as below:



45. General Ledger Report of M/s Analytix Business Solutions (India) Pvt. Ltd. [RUD No.-19]

In General Ledger Report of M/s Analytix Business Solutions (India) Pvt. Ltd. created on 27.05.2019 during the search operation, under Service Revenue Head, the description of services were mentioned as Chartered Account Services, Account Services, Tax Support Services & IT Enabled Services only. Copy of General Ledger Report is reproduced as under:



Analytix Business Solutions (India) Private Limited  
General Ledger Report  
For (04/01/2015 to 03/31/2019)

Posted Dt.	Doc Dt.	Doc	Memo / Description	JNL	Debit	Credit	Balance
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	42,48,556.88		(16,11,23,615.19)
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	11,96,018.09		(17,99,27,597.10)
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	60,22,623.59		(17,39,04,973.51)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		19,19,796.48	(17,58,24,769.99)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		42,28,151.77	(18,00,52,921.76)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		11,90,273.82	(18,12,43,195.58)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		59,93,697.93	(18,72,36,893.51)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		40,82,900.50	(19,13,19,794.01)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		75,82,529.50	(19,89,02,323.51)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	19,19,796.48		(19,89,82,527.03)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	42,28,151.77		(19,27,54,375.26)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	11,90,273.82		(19,15,64,101.44)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	59,93,697.93		(18,55,70,403.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		1,43,74,169.00	(19,99,44,572.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		21,66,153.84	(20,21,10,726.35)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		47,70,753.26	(20,68,81,479.61)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		13,43,015.38	(20,82,24,494.99)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		67,62,812.52	(21,49,87,307.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	21,66,153.84		(21,94,33,271.41)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	47,70,753.26		(22,55,23,907.67)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	13,43,015.38		(22,07,53,154.41)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	67,62,812.52		(21,94,10,139.03)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		22,20,242.40	(21,26,47,326.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		48,89,878.31	(20,53,83,278.22)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		13,76,550.29	(20,67,59,828.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		69,31,679.00	(21,36,91,507.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		1,47,33,090.00	(22,84,24,597.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		84,62,961.00	(23,69,87,558.51)

Created on: 05/27/2019, 6:08 PM IST

**Analytix Business Solutions (India) Private Limited**  
**General Ledger Report**  
**For (04/01/2015 to 03/31/2019)**

Posted Dt.	Doc Dt.	Doc	Memo / Description	JNL	Debit	Credit	Balance
03/31/2016	03/31/2016	012/2015-16	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual		50,39,642.08	(11,52,18,286.00)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual		16,76,243.52	(11,68,94,529.52)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		36,91,726.80	(12,05,86,256.32)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual		10,30,337.50	(12,16,25,593.82)
04/30/2016	04/30/2016	001/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual		52,33,272.18	(12,68,58,866.00)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual		16,93,515.80	(12,85,52,381.60)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		37,29,766.50	(13,22,82,148.10)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual		10,49,979.67	(13,33,32,127.77)
05/31/2016	05/31/2016	002/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual		52,87,263.23	(13,86,19,391.00)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual		17,03,938.32	(14,03,23,329.32)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		37,52,721.30	(14,40,76,050.62)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual		10,56,441.76	(14,51,32,492.38)
06/30/2016	06/30/2016	003/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual		53,19,803.82	(15,04,52,296.00)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual		19,30,579.20	(15,23,82,875.20)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		42,51,899.59	(15,66,34,774.79)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual		11,96,959.10	(15,78,31,733.89)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual		60,27,362.11	(16,38,59,096.00)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		41,05,832.50	(16,79,64,928.50)
07/31/2016	07/31/2016	004/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual		76,25,117.50	(17,55,90,046.00)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual	19,30,579.20		(17,36,59,466.80)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual	42,51,899.59		(16,94,07,567.21)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual	11,96,959.10		(16,82,10,608.11)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual	60,27,362.11		(16,21,83,246.00)
07/31/2016	07/31/2016	CM0025	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual		19,29,061.44	(16,41,12,307.44)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual		42,48,556.88	(16,83,60,864.32)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		11,96,018.09	(16,95,56,882.41)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual		60,22,623.59	(17,55,79,506.00)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Accrual		41,02,604.63	(17,96,82,110.63)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Accrual		76,19,122.88	(18,73,01,233.51)
08/31/2016	08/31/2016	005/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Accrual			(18,53,72,172.07)
08/31/2016	08/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Accrual	19,29,061.44		

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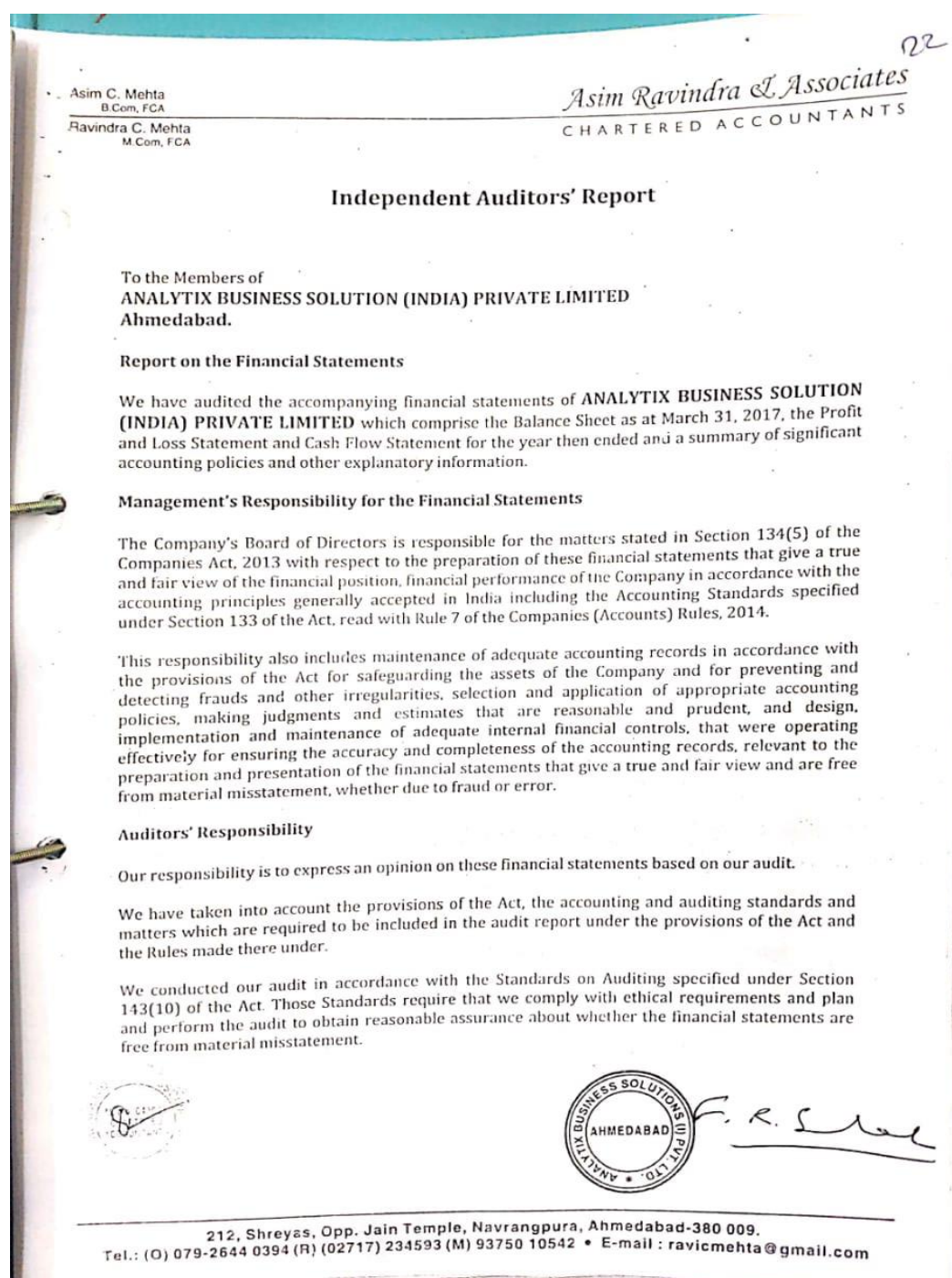
Analytix Business Solutions (India) Private Limited  
General Ledger Report  
For (04/01/2015 to 03/31/2019)

Posted Dt.	Doc Dt.	Doc	Memo / Description	JNL	Debit	Credit	Balance
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	42,48,556.88		(18,11,23,615.19)
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	11,96,018.09		(17,99,27,597.10)
06/31/2016	06/31/2016	CM0016	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	60,22,623.59		(17,39,04,973.51)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		19,19,796.48	(17,58,24,769.99)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		42,28,151.77	(18,00,52,921.76)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		11,90,273.82	(18,12,43,195.58)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		59,93,697.93	(18,72,36,893.51)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		40,82,900.50	(19,13,19,794.01)
09/30/2016	09/30/2016	006/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		75,82,529.50	(19,89,02,323.51)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	19,19,796.48		(19,69,82,527.03)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	42,28,151.77		(19,27,54,375.26)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	11,90,273.82		(19,15,64,101.44)
09/30/2016	09/30/2016	CM0017	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	59,93,697.93		(18,55,70,403.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		1,43,74,169.00	(19,99,44,572.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		21,66,153.84	(20,21,10,726.35)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		47,70,753.26	(20,68,81,479.61)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		13,43,015.38	(20,82,24,494.99)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		67,62,812.52	(21,49,87,307.51)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		44,45,963.90	(21,94,33,271.41)
10/31/2016	10/31/2016	007/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		82,56,790.10	(22,76,90,061.51)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	21,66,153.84		(22,55,23,907.67)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual	47,70,753.26		(22,07,53,154.41)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual	13,43,015.38		(21,94,10,139.03)
10/31/2016	10/31/2016	CM0010	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual	67,62,812.52		(21,26,47,326.51)
10/31/2016	10/31/2016	CM0018	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual	1,43,74,169.00		(19,82,73,157.51)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		22,20,242.40	(20,04,93,399.91)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: I.T. Enabled Services Charges	ARJ-Ac- crual		48,89,878.31	(20,53,83,278.22)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		13,76,550.29	(20,67,59,828.51)
11/01/2016	11/01/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Accountants	ARJ-Ac- crual		69,31,679.00	(21,36,91,507.51)
11/30/2016	11/30/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Chartered Accountants	ARJ-Ac- crual		1,47,33,090.00	(22,84,24,597.51)
11/30/2016	11/30/2016	008/2016-17	Invoice - Analytix Business Solutions LLC: Tax Support Services Charges	ARJ-Ac- crual		84,62,961.00	(23,69,87,558.51)

Created on: 05/27/2019, 6:08 PM IST

**46. Independent auditor's report w.r.t. financial year 2016-17 [RUD-20]:**

In Independent auditor's report, service provided by M/s. Analytix Business Solutions (India) Pvt. Ltd. to M/s. Analytix Business Solutions LLC, USA were shown as (i) Finance & Accounts Services & (ii) Information Technology Services only. Further in the said auditor's report, income from operation was shown from (i) Finance & Accounts Services & (ii) Information Technology Services only.





2. Notes on Account :-

(a) Balances of Sundry Creditors, Sundry Debtors and Loans & Advances are subject to confirmation.

(b) Figures have been rounded off to the nearest thousand.

(c) Previous year's figures have been regrouped wherever necessary.

(d) Deferred tax resulting from timing difference between taxable income and accounting income is accounted for using the tax rates and laws that have been enacted or substantially enacted as on the balance sheet date. The deferred tax asset is recognized and carried forward only to the extent that there is a reasonable certainty that the liability will be realized in future. The figures of Deferred Tax Assets has been shown net at the year end.

(e) Name of related parties & description of relationship with whom there were transactions during the year.

1 Analytix Business Solutions, LLC USA

Holding Company

Sr. No	Services Provided	In Rs. 31-03-2017	In Rs. 31-03-2016
1	Finance & Accounts	100,060,845	76,639,796
2	Information Technology	52,097,857	38,578,490
Total		152,158,702	115,218,286

2 Director's Remuneration

Sr. No	Name of Director	In Rs. 31-03-2017	In Rs. 31-03-2016
1	Mr. Gulamrasul R. Bala	40,000	40,000
2	Mr. Pankaj M. Patel	40,000	40,000
Total		80,000	80,000

The Company has due Rs. 2,07,38,876 65/- (Previous year Rs.1,40,48,176/-) from Analytix Business Solutions,LLC USA

(f) Amount paid / payable to Auditors.

Sr. No	Particulars	In Rs. 31-03-2017	In Rs. 31-03-2016
A.	As Audit Fee	40,000	50,000
B.	Tax Audit Fees	5,000	5,000
Total		45,000	55,000

As per our report of even date annexed here with  
Signature to Accounting Policies and Note 'A' to 'Q'  
For ASIM RAVINDRA & ASSOCIATES  
Chartered Accountants

RAVINDRA MEHTA  
Partner  
M NO. 043051  
FRN No.118775W  
Place: Ahmedabad  
Date: 7-09-2017

ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.

Pankaj M Patel  
Director  
DIN - 00079278

Gulamrasul R Bala  
Director  
DIN - 00079155

Place : Ahmedabad  
Date : 7-09-2017

P1 - 27.5.2019

P2 - 27.5.2019

27.5.2019

27.5.2019

PARTICULARS	In Rs. 31-03-2017	In Rs. 31-03-2016
<b>NOTE-K</b> <b>INCOME FROM OPERATION</b> Finance & Accounts Information Technology <b>TOTAL</b>	 100,060,845 52,097,857 <b>152,158,702</b>	 76,639,796 38,578,490 <b>115,218,286</b>
<b>NOTE-L</b> <b>Other Income</b> Foreign Exchange Gain Interest Income Profit on sale of asset Other Income <b>TOTAL</b>	 - 9,576 5,310 - <b>14,886</b>	 412,668 20,039 2,853 43,760 <b>479,319</b>
<b>NOTE-M</b> <b>EMPLOYEE COSTS</b> Salary to Staff Bonus Contract Labour Employer's cont. to PF/ESIC Staff Welfare Expenses Recruitment Expenses Employees Benefits Training & Development Expenses Leave Encashment Pay Overtime allowance Stipend to Trainee <b>TOTAL</b>	 95,868,511 3,854,353 3,744,426 3,517,090 2,421,461 2,145,389 1,639,191 933,985 645,534 384,211 49,400 <b>115,203,552</b>	 70,200,460 2,773,000 3,431,588 2,547,490 1,186,337 841,635 1,357,769 325,613 1,633,907 225,326 61,90 <b>84,585,029</b>
<b>NOTE-N</b> <b>EMPLOYEE COST - R &amp; D</b> Salary to staff Contract Labour Employer's cont. to PF/ESIC Stipend to trainee Bonus Overtime allowance <b>TOTAL</b>	 10,186,613 489,700 359,503 32,009 12,480 1,841 <b>11,082,146</b>	 2,225,742 169,200 82,486 - - 0.035 <b>2,477,463</b>

47. DGFT vide Trade Notice No. 04/2018 dated 25.04.2018 [RUD No.- 21] has noted that “the Appendix 3D does not mention any service as IT/ITeS Service and only has a positive list of the Services, with a CPC Provisional code which has been made eligible for claiming benefit under SEIS” and also clarified that “only the service categories which have been notified in Appendix 3D for SEIS are allowed for claim under SEIS..”

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From the above trade notice, it is clear that the underlying services provided by a company should be listed in Appendix 3D for them to be eligible for SEIS.

### STATEMENT OF KEY PERSONS-

**48.** I find that **Shri Kirankumar Gunvantbhal Modi**, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. in his statement dated 27.05.2019 recorded under Section 108 of the Customs Act, 1962 **[RUD No.-02]** stated that he looked after day to day bank transaction, preparing invoices and accounts related work of the company. During the statement he admitted that he prepared three set of invoices having same invoice number, date and bill amount except the description of services. On being asked he stated that the first two Bills signed by Shri Fenil Shah were draft copy and the third bill which was submitted to obtain the SEIS scrips were the final Bill. He further stated that this practice of making three different copies of invoices with same invoice number & date and total amount started since April 2015 and continued every month till March 2018.

**49.** Further, another statement of Shri Kirankumar Gunvantbhal Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. was recorded on 19.06.2019 under Section 108 of the Customs Act, 1962 **[RUD No.-02]** wherein he stated that he joined M/s. Analytix Business Solutions (India) Private Limited in 2007 and since his joining he used to prepare only one export invoice by way of mentioning service description as (i) Accounting & Book Keeping Charges (ii) Tax Support Services Charges and (iii) IT Service Charges till April/May 2018. After April/May 2018, as per the direction of Shri Fenil Shah, Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited, he used to prepare export invoices by way of mentioning service description as (i) Accounting & Book Keeping Charges, (ii) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services. As per the direction of Shri Fenil Shah in the month of April/May 2018, he prepared parallel invoices from April 2015 onwards with similar invoice no. & date and same invoice amount but change in the description of service by way of mentioning the service descriptions as (1) Accounting & Book Keeping Charges, (ii) Tax Support Services Charges, (ii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services **with intent to wrongly avail Service Export From India Scheme (SEIS) benefits.** He further admitted that these redrafted parallel export invoices along with application were submitted in DGFT, Ahmedabad with intent to wrongly avail undue SEIS benefits from DGFT.

**50.** He further stated that in his statement dated 27.05.2019 he had wrongly stated that he used to prepare 2 or 3 type of export invoices in every month since 2005 with different service descriptions. But now he gave his correct statement that actually he used to prepare only one type of export invoice with service description as Accounting & Book Keeping Charges, Tax Support Services Charges and I.T. Service Charges till April/May 2018. Further he stated that as per direction of Shri Fenil Shah, Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited, **he prepared parallel invoices by way of redrafting all the export invoices from April, 2015 to March, 2018 at one time in the month of April/May 2018 with the service description as (i) Accounting & Book Keeping Charges & (i) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services** with intent to wrongly avail SEIS benefits.

**51.** He further stated that invoice values in respect of Accounting & Book Keeping Charges & Tax Support Services Charges were same in all original monthly export invoices and in redrafted monthly parallel export invoices prepared from April, 2015 onwards. But the invoice values in respect of IT Service Charges provided and mentioned in original monthly export invoices were divided in Operational Management Consultancy Services, Architectural Services and IT Software Development Services in redrafted monthly parallel export invoices prepared from April, 2015. He further confirmed that M/s. Analytix Business Solutions (India) Private Limited exported Accounting & Book Keeping Services, Tax Support Services & I.T. Services to foreign clients and the same were mentioned in original monthly export invoices also.

**52.** I find that **Shri Pankaj Manilal Patel**, Director of M/s Analytix Business Solutions (India) Pvt. Ltd., in his statement recorded on 01.07.2019 under Section 108 of the Customs Act, 1962 **[RUD No.-05]** admitted that M/s. Analytix Business Solutions (India) Pvt. Ltd. has obtained SEIS scrip's for the year 2015-16 and 2016-17 total amounting to Rs. 94,77,875.83/- from DGFT by way of submitting the parallel re-drafted invoices for the year 2015-16 and 2016-17. He further stated that work related to preparing invoices were looked after by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. under the direction of Shri Fenil Shah, former Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited.

**53.** Shri Pankaj Manilal Patel further admitted that export invoices with service description as (i) Accounting & Book Keeping Charges (ii) Tax Support

Services Charges and (iii) IT Service Charges were the correct invoices. However as per the direction of Shri Fenil Shah, Shri Kirankumar Gunvantbhai Modi had changed the description of services as (i) Accounting & Book Keeping Charges, (ii) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services with intent to wrongly avail Service Export From India Scheme (SEIS) benefits.

**54.** He further confirmed that M/s Analytix Business Solutions (India) Private Limited had exported Accounting & Book Keeping Services, Tax Support Services & I.T. Services to foreign clients and the same were mentioned in original monthly export invoices also. He also stated that 02 service description (i) Operational Management Consultancy Services amounting to 3,82,280 USD and (ii) Architectural Services amounting to 5,09,900 USD were actually I.T Services and the same were mentioned as IT services in original monthly export invoices. But parallel monthly export invoices were prepared by Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd as per the direction of Shri Fenil Shah, former Head (India operations) of M/s. Analytix Business Solutions (India) Private Limited by way of inserting two new services as (i) Operational Management Consultancy Services and (ii) Architectural Services with intent to wrongly avail SEIS benefits from DGFT.

**55.** During the course of statement, on being shown the copy of Division 84 of Central Product Classification (CPC) bearing Pg. No. 1 to 05, taken from the DGFT website [www.dgft.gov.in](http://www.dgft.gov.in) & Annexure 3D of public notice 45/2015-2020 dated 05.12.2017 (as amended) bearing page 01 to 05, he stated that the services exported by their company which were mentioned as I.T. Services in actual export monthly invoices were classifiable under CPC Division 84. Further he confirmed that as per the said appendix 3D, services classifiable under CPC Division 84 are not eligible or notified services to avail SEIS benefits.

**56.** I find that the above statements are consistent insofar as the nature of service and intent to wrongly avail SEIS benefits are concerned. Further, the statements has never been retracted. It is a settled law that the statement recorded under Section 108 of the Customs Act, 1962 is a material piece of evidence and can be used as a substantive evidence. In this regard, I rely on the following judgements wherein the courts have held the evidentiary value of statements recorded under Section 108 and effect of retraction of statements:-

- a. The Hon’ble Supreme Court in the judgement in the case of Bhana Khalpa Bhai Patel v. Asstt. Collector of Customs, Bulsar-1997 (96) E.L.T 211(S.C) has held as under:-

“7. An attempt was made to contest the admissibility of the said statements in evidence. **It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence** vide Ramesh Chandra v. State of West Bengal, AIR 1970 SC 940 and K.I Pavunny v. Asstt. Collector (HQ), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C) = (1997) 3 SCC 721.”

- b. The Hon’ble Supreme Court has observed in the case of Naresh J. Sukhwani Vs Union of India reported as 1996 (83) E.L.T 258 and held as under :-

**“4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs official under Section 108 of the Customs Act, 1962. That material incriminates the petitioner inculcating him in contraventions of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention as much as Mr. Dudani’s statement clearly inculcates not only himself but also the petitioner. It can, therefore, be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we don’t think that there is any illegality in the order of confiscation of foreign currency and imposition penalty. There is no ground warranting reduction of fine.”**

**57.** Further, I rely on the order passed by the Hon’ble CESTAT, Mumbai in the case of M/s. S.M. Steel Ropes reported as 2014 (304) E.L.T.591 (Tri. Mumbai), wherein the Hon’ble Tribunal, by referring to various judgements of Hon’ble Supreme court and High Courts, held that confirmation of duty demand on the basis of voluntary statements is sustainable in law. Relevant Para 5.1 is reproduced as under:-

*“5.1 As regards .....*

*..... The adjudicating authority has confirmed the demand only on the basis of figures given in the statements of Shri Balkrishna Agarwal. In the absence of delivery challans which were recovered and seized at the time of Panchanama proceedings, he has not taken the computation of demands*

*based on such delivery challans as reflected in the annexure to the show cause notice. Therefore, the adjudicating authority has strictly proceeded based on the evidences available which in the present case are the statements of Shri Balkrishna Agarwal. As to the question whether the demands can be confirmed on the strength of confessional statements, this position stands settled by the decision of the Hon'ble Apex Court in the case of K.I pavunny v. Asstt. Cotlector (HQ) Cervtral Excise Collectorate, Cochin- 1997 (90) E.L.T. 241 (S.C.) wherein it was held that confessional statements of accused, if found to be voluntary, can form the sole basis for conviction. Only if it is retracted, the Court is required to examine whether it was obtained by threat, duress or promise and whether the confession is truthful. In the present case, we find that there is no retraction of the confessional statement by Shri Balkrishna Agarwal. As regards the lack of corroborative evidence, it is a settled position of law that "admitted facts need not be proved" as held by the Hon'ble High Court of Madras in the case of Govindasamy Ragupathy- 1998 (98) E.L.T. 50 (Mad). In a recent decision in the case of Telestar Travels Pvt. Ltd. -2013 (289) E.L.T. 3 (S.C.), the Hon'ble Apex Court held that reliance can be placed on statement if they are based on consideration of relevant facts and circumstances and found to be voluntary. Similarly in the case of CCE, Mumbai vs. Kalvert Foods India Pvt. Ltd. -2011 (270) E.L.T. 643 (S.C.) the Hon'ble Apex Court held that if the statements of the concerned persons are out of their volition and there is no allegation of threat, force, coercion, duress or pressure, such statements can be accepted as a valid piece of evidence. **In the light of the above decisions, we are of the considered view that the confirmation of duty demand based on the voluntary statements of the Managing Partner of the appellant firm is sustainable in law. Consequently the interest and penal liabilities imposed on the appellants would also sustain.***

**58.** In view of the above discussion and findings and relevant case law, I hold that the statements recorded under Section 108 of the Customs were voluntary in nature and further corroborated by the material evidences viz. Agreement with foreign clients, general Ledger, Original Export Invoices, Parallel invoices, Independent Auditor's report.



**59.** Therefore, in view of the foregoing paras, it is clear that the services exported by M/s. ABS, Ahmedabad actually fall under Division-84 of UN Central Product Classification (CPC) Code (Except Accounting & Bookkeeping Charges and Tax Support Services). The list of evidences is summarised as under:-

- 1) In original Export Invoices, the description of services are shown as i) Accounting & Bookkeeping Charges (ii) Tax Support Charges and (iii) IT Enabled Services, but in order to fraudulently avail SEIS benefits M/s. ABS forged the export invoices.
- 2) Services mentioned in the sample agreements with foreign clients were Information Technology (IT) & IT Enabled Services, Accounting & Bookkeeping Services and Tax Services.
- 3) In General Ledger Report of M/s Analytix Business Solutions (India) Pvt. Ltd., under Service Revenue Head, the description of services were mentioned as Chartered Account Services, Account Services, Tax Support Services & IT Enabled Services.
- 4) In Independent auditor's report service provided by M/s. Analytix Business Solutions (India) Pvt. Ltd. to M/s. Analytix Business Solutions LLC, USA were shown as (i) Finance & Accounts Services & (ii) Information Technology Services only. Further in the said auditor's report, income from operation was shown from (i) Finance & Accounts Services & (ii) Information Technology Services only.
- 5) Shri Kiran kumar Gunvantbhai Modi, Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. who prepared the said parallel invoices & Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd. interalia stated in their statement that apart from "Accounting & Book Keeping Services" & "Tax Support Services", their profile is only in IT Software Service Sector. They also admitted that to fraudulently avail SEIS benefits they forged the Export Invoices.

#### **SUBMISSION OF M/s. ANALYTIX BUSINESS SOLUTIONS (INDIA) PVT. LTD IN RESPECT OF CLASSIFICATION-**

**60.** I find that they have submitted that they are a Pvt. Ltd company, interalia, engaged in business of IT enabled Professional services like Accounting and Book keeping, Consulting, AV Schematic designing, RPO, Virtual assistance etc. as well as IT services like software development, IT infra etc. Noticee No.2 is an employee of the company working as Accounts Manager. They have provided management consultancy services and architectural services. The detailed invoice contains the services which are classified as (i) accounting and book keeping services, (ii) tax support services (iii) medical billing services (operational management consultancy services), (iv) schematic AV design services and IT services. Medical billing services availed by healthcare providers and hospitals for effectively managing daily complexities of medical billing is directly related to the operational assistance to the clients for effective planning and controlling the organization. Therefore, the medical billing services provided by them to their foreign based service recipient was related to the management consultancy services and therefore, it was clearly eligible for SEIS scheme as per Appendix-3D. As regard to the architectural services, they have submitted that they have mentioned the services i.e. schematic design services with AV elastration service which was classified by

them under architectural services. The department has not disputed and not brought on record any evidence contradicting the nature of services provided by them, and therefore, merely by referring to the classification under UN CPC Code, the show cause notice cannot allege that they had not provided any services in the nature of architectural services. In fact none of the statements recorded by the department suggest even remotely that they had not provided services of medical billing and schematic design services.

**61.** I find that the nature of IT service being Medical Billing services and Architectural service is not evident from various documents referred in the show cause notice viz. Agreement, the General ledger, the Audit report, original invoices etc. Further neither the Accounts Manager of M/s. Analytix Business Solutions (India) Pvt. Ltd. Shri Kiran kumar Gunvantbhai Modi, nor Shri Pankaj Manilal Patel, Director of M/s Analytix Business Solutions (India) Pvt. Ltd have mentioned this fact despite having crucial role in the business of M/s. Analytix Business Solutions. This is clearly an afterthought to argue that they were eligible for SEIS benefits. Therefore, it is clear that they have not rendered such services.

**62.** Further, I find that they have annexed various emails suggesting that the nature of services provided by them fell in the category of architecture services. In this regard, while going through the emails and chats, I hold that these are not a valid documents to establish that the nature of service being provided was architectural in nature especially when original invoices, agreements and ledgers are mentioning the services as IT and IT enabled services. Further, it is also hard to believe that Shri Kiran Kumar and Shri Pankaj Manilal Patel were unaware of the nature of service provided.

**63.** The noticee has further argued that although consolidated invoices were prepared by them during the relevant period, but upon realizing that the services namely “management consultancy services” and “architectural services” are not in the nature of IT services and they are eligible for SEIS benefit, they had bifurcated the actual nature of services provided by them and the amount charged in respect of each type of services. In this regard, it is pertinent to note that Shri Kiran Kumar, Accounts Manager in his statements, as mentioned above, has admitted that **he prepared parallel invoices by way of redrafting all the export invoices from April, 2015 to March, 2018 at one time in the month of April/May 2018 with the service description as (i) Accounting & Book Keeping Charges & (i) Tax Support Services Charges, (iii) Operational Management Consultancy Services, (iv) Architectural Services and (v) IT Software Development Services** with intent to wrongly avail SEIS benefits. The submission is silent on preparation of invoices in 2018 for the period 2015 to 2018 which clearly shows the malafide intent of the noticee to wrongly avail the benefit of SEIS scheme.

## **OTHER SUBMISSION OF M/S. ANALTIX BUSINESS SOLUTIONS-**

### ***Whether the exporter had STPI status during the relevant time:***

**64.** I find that the show cause notice has alleged that M/s. Analytix Business solutions Pvt. Ltd had STPI status during the relevant period and being STPI unit they were ineligible for SEIS schemes. In this regard, Para 3.09 of Foreign Trade Policy-2015-2020 w.e.f. 01.04.2015 describes “Ineligible Categories under SEIS”. The said para 3.09 of FTP **[RUD No.-06]** is reproduced as below:-

#### **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:

#### **I. 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 SEZ /EOU/EHTP/STPI/BTP Schemes or supplies of services made to such units;**
- (f) Clubbing of turnover of services rendered by SEZ / EOU /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.

**65.** Further, the SEIS entitlements as per Public Notice No. 03 dated 01/04/2015 as amended (vide Public Notice No. 45/2015-2020 dated 05.12.2017) **[RUD No. -07]** issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce on all the list of services are as under:

### ***Annexure to Appendix 3***

**Note 1:** *The services and rates of rewards notified against them shall be applicable for services export made between 1-4-2015 to 30-09-2015 only. The list of services/rate is subject to review with effect from 1-10-2015.*

**Note 2:** *The rate of reward for eligible services is subject to conditions as specified in FTP and HBP.*

**Note 3:** *For Educational Services, SEIS reward shall not be available on Capitation Fee.*

**Note 4:** *Under Maritime Transport Services marked with \*[9A (a), (b) and (c)], the reward shall be limited to Operations from India by Indian Flag Carriers only*

**Note 5:** *Following shall not be taken into account for calculation of entitlement under the SEIS.*

**a.** *Foreign Exchange remittances:*

**I.** *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:*  
*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***

**f.** *Clubbing of turnover of services rendered by EOU/ EHTP/ STPI/ BTP units with turnover of DTA Service Providers.*

- g. 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.*
- h. Service providers in Telecom Sector*

**66.** I find that the noticee has not disputed that the STPI unit is eligible for SEIS benefits. Rather, they have argued that they had exited from the STPI status on 11.08.2015. In this regard, they have submitted that they were granted the letter of permission on 12.08.2005 to operate as STPI unit which was valid till 11.08.2010. Further, this LOP issued to them were renewed by them on 22.10.2010 and was valid till 11.08.2015. However, after the date of 11.08.2015, they had not applied for the extension of LOP and therefore, their LOP was not renewed or extended, and therefore, for the period after 11.08.2015, they could not be considered to be STPI unit.

**67.** In this regard, Para 6.18 of the [FTP 2015-2020](#), reproduced below, is required to be examined:-

#### 6.18 Exit from EOU Scheme

- (a) With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.
- (b) If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.
- (c) In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.
- (d) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit from the scheme at any time on payment of duty on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfilment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.
- (e) Unit proposing to exit out of EOU scheme shall intimate DC and Customs and Central Excise authorities in writing. Unit shall assess duty liability arising out of de-bonding and submit details of such assessment to Customs and Central Excise authorities. Customs and Central Excise authorities shall confirm duty liabilities on priority basis, subject to the condition that the unit has achieved positive NFE, taking into consideration the depreciation allowed. After payment of duty and clearance of all dues, unit shall obtain "No Dues Certificate" from Customs and Central Excise authorities. On the basis of "No Dues Certificate" so issued by the Customs and Central Excise authorities, unit shall apply to DC for final de-bonding. In case there is no proceeding pending under FT(D&R) Act, as amended, DC shall issue final de-bonding order within a period of 7 working days. Between "No Dues Certificate" issued by Customs and Central Excise authorities and final de-bonding order by DC, unit shall not be entitled to claim any exemption for procurement of capital goods or inputs. However, unit can claim Advance Authorisation



/ DFIA / Duty Drawback. Since the duty calculations and dues are disputed and take a long time, a BG / Bond / Instalment processes backed by BG shall be provided for expediting the exit process.

(f) In cases where a unit is initially established as DTA unit with machines procured from abroad after payment of applicable import duty, or from domestic market after payment of excise duty, and unit is subsequently converted to EOU, in such cases removal of such capital goods to DTA after de-bonding would be without payment of duty. Similarly, in cases where a DTA unit imported capital goods under EPCG Scheme and after completely fulfilling export obligation gets converted into EOU, unit would not be charged customs duty on capital goods at the time of removal of such capital goods in DTA when debonding.

(g) An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit under Advance Authorization as one time option. This will be subject to fulfilment of positive NFE criteria. (h) A simplified procedure may be provided to fast track the De-bonding/ Exit of the STP / EHTP Unit which has not availed any duty benefit on procurement of raw material, capital goods etc.

**68.** I find that the noticee vide their letter dated 08.03.2018 requested STPI Gandhinagar requested for Cancellation of Letter of Permission (LoP) No. STPIG/EXIM/S/430/SOPL/2714 dated 12.08.2005 to exit from the STP scheme. In pursuance of the same, the Sr. Director, STPI, Gandhinagar vide letter No. STPIG/EXIM/S-430/SOPL/IP/57 dated 03.04.2018 allowed "In Principle" Exit (provisional) as per Para 6.18 of FTP, Appendix-6K of FTP Hand Book of Procedures and subject to fulfilment of standard conditions in a period of six month, failing which the permission granted would be lapsed automatically and the unit would continue to be treated as STP unit till the date of final exit order.

**69.** In view of the same, the Sr. Director, STPI, Gandhinagar vide letter STPIG/EXIM/S/430/SOPL/FD/1093 dated 23.07.2018 allowed the final exit in terms of Para 6.18(a) & (b) of [FTP 2015-2020](#). It is pertinent to note that the final de-bonding (exit) was considered on the basis of following:

(i) No dues and No Objection certificate issued by Customs and Central Excise authorities.

(ii) Compliance of Export obligation.

**70.** Thus it is clear that the final exit from STPI status is subject to fulfilment of standard conditions and NOCs issued by Customs and Central Excise authority. Therefore, it is crystal clear that the unit exited from STPI status only on 23.07.2018. The argument of the noticee that non-renewal of LOP after 11.08.2015 would be considered as exit from STPI status is without any merit as not having a valid LOP and exiting from STPI status are mutually exclusive

& distinct from each other. A unit can continue to be an STPI unit without having a valid LOP as exiting from STPI status depends on fulfilling all the standard conditions as given in letters dated 03.04.2018 and 23.07.2018 of Sr.Director, STPI, Gandhinagar.

***DOUBLE JEOPARDY- ACTION BY DGFT AND CUSTOMS-***

**71.** The noticee in their submission has argued that the DGFT had earlier initiated the proceedings with respect to above mentioned same cause and same violation and the present noticees had duly participated in the proceedings and at the end the Dy. DGFT passed an order vide OIO no. 08/F3/00019/AM20/ECA dated 18.08.2021 confirming the demand of amount of SEIS scrips, pursuant to which noticees had made payment equal to the amount of SEIS scrips availed. Therefore case of SEIS scheme stood concluded and closed for all purposes. That the entire proceedings had been completed and attained finality for all purposes. However, the second show cause notice had been issued to on the basis of the same allegations and same issue raised by the customs department. This result into double jeopardy because the noticees had been proposed to be penalized twice for the same offence which is impermissible in the eyes of law. That no one can be proceeded and penalize for the same set of facts/cause, circumstances and allegations as it is well settled of law mentioned in Article 20 of Constitution of India. Moreover, after taking various judgements of Apex court and High Courts, it was held in the Bhagwati Electrical Enterprises Vs. Commissioner of Cus. Hyderabad-II, (2005) 189 ELT 467, that once the issue is settled and reached the finality, it cannot be re opened. As well as in the case of Paro Food Products Vs. Commissioner of Central Excise, Hyderabad (2005) 184 ELT 50, it was observed that repeated show cause is hit by res judicata. As well as in the Solitaire Machine Tools Ltd. Vs. Commissioner of C.Ex., Vadodara, (2008) 222 ELT 404, viewed that proceedings with two separate adjudication and confirmation of two demands are not permissible.

**72.** In this regard, it is pertinent to mention that an exporter after making the exports (of goods or/and services) apply for duty credit scrips before the office of DGFT concerned under the Foreign Trade Act, 1992 read with [FTP 2015-2020](#). Accordingly, the DGFT issues the scrip which are freely transferrable and the same are used by the scrip owner for import by debiting the scrips value against the import duties. I find that the office of DGFT had issued two show cause notices viz. 08/21/094/80104/AM18 dated 08.01.2020 and 08/21/094/80105/AM18 dated 20.01.2020 for cancellation of scrips ab initio under the provisions of Section 11 of the FTA, 1992 and Section 7 and Section 10 of the Foreign Trade (Regulation) Rules, 1993. Both the show cause notices were decided vide OIO F.No. 08/F3/00019/AM20/ECA dated 18.08.2021

whereby penalty of Rs. 20,000/- was imposed upon M/s. Analytix Business Solutions (I) Pvt. Ltd under Section 11(3) of the FTA, 1992. Further M/s. Analytix was placed under Denied Entry List. However, the instant SCN dated 30.05.2023 proposed recovery of duty of Customs under Section 28AAA of the Customs Act, 1962 alongwith confiscation and penalties under Customs Act, 1962. Both the proceedings are mutually exclusive and are independent of each other. Both the proceedings operate under different Acts for their respective contraventions and in no way coincide with each other. Therefore, the case laws relied upon by the noticee are not applicable in the instant case. Further, on perusal of Para 20 of the Order dated 18.08.2021 issued by Dy. DGFT, I find that the said Order dated 18.08.2021 allows adjudication proceedings under Customs Act, 1962. The said Para is reproduced below:-

*“20. This order is without prejudice to any other action that may be taken against M/s. Analytix Business Solutions (I) Pvt. Ltd., located at B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Memnagar, Ahmedabad having IEC No.: 0805005684 or its Directors under the Foreign Trade (Development & Regulation) Act, 1992 and the Rules and orders issued thereunder and/ **or any other law for the time being in force.**”*

**SHOW CAUSE NOTICE IS TIME BARRED-**

**73.** The exporter has further argued that the Show cause notice is barred by limitation. They have placed reliance on State of Punjab Vs. Bhatinda District Co-Op. Milk P.Union Ltd reported in 2007(217) E.L.T. 325 (S.C) wherein it was held that where statute does not provide for any specific time limit to issue show cause notice, the same should be issued within reasonable time. In the present case, the issue relates back to the period of Oct, 2018 and therefore the show cause notice issued on 30.02.2023 is clearly barred by limitation of time. Further the SCN is time barred as per Section 124 of the Customs Act, 1962.

**74.** In this regard, I find that recovery proceedings under Section 28AAA can be initiated only when the scrips are utilised while importing the goods. Section 28AAA is reproduced below:-

***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 :***

**75.** It is clear that only when the wrongly availed scrips are utilised against the imports, the recovery proceedings can be initiated under the provisions of Section 28AAA of Customs Act, 1962. On perusal of Annexure-C to the SCN. I find that the said scrips had been utilised vide Bills of entry dated 17.11.2018, 01.12.2018, 19.12.2018 and 26.12.2018. Therefore, the earliest date of utilisation of scrips is 17.11.2018 and the show cause notice was issued on 30.05.2023. Considering that Section 28AAA invokes extended period on account of collusion/wilful mis-statement/suppression, the issuance of SCN was within reasonable period.

Without prejudice to the above, it is pertinent to note that the act of fraudulent availment of scrip or any instrument from the office of DGFT under the provisions of FTA, 1992 remains unchecked or unearthed for the purposes of Customs Act, 1962 until an intelligence is gathered by an investigating agency in the said context. It is only when such investigation is carried out and utilisation of scrips is done, the provisions of Section 28AAA comes into effect. Further as per Circular No.334/1/2012-TRU dated 01.06.2012, recovery proceedings under Section 28AAA of the Customs Act, 1962 are required to be initiated only when DGFT initiates action for cancellation of scrips under FTA, 1992, therefore, prescribing a time limit, even for a reasonable period, under Section 28AAA was unwarranted and a conscious decision of the legislature.

**76.** In view of the above discussion, findings and case laws, I hold that the exporter i.e. M/s. Analytix Business Solutions (I) Pvt. Ltd had fraudulently availed the scrips by mis-declaring as well as mis-classifying the services rendered by them in order to wrongly avail the benefit of SEIS scheme. Thus, they are liable to pay duties of Customs amounting to Rs. 94,77,870.11/- under Section 28AAA of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

#### **CONFISCATION OF GOODS AND PENALTY UPON M/S. ANALYTIX BUSINESS SOLUTION AND ITS EMPLOYEES:-**

**77.** I find that the goods imported, against the SEIS Scrips which were fraudulently obtained and which had been cancelled by DGFT, were not eligible to the benefit of exemption under Notification No. 25/2015-Customs dated 08th April, 2015 issued under Section 25 of the Customs Act, 1962 and therefore the

said goods are liable for confiscation under Section 111 of Customs Act, 1962. The relevant legal provisions under Customs Act, 1962 are as follows:

As per **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 transshipment, with the declaration for transshipment 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;*

**78.** I find that Section 111(m) is not attracted here as the Bills of Entry for importation of goods were filed by the respective importers therefore, the subject goods shall not be held liable for confiscation under Section 111(m) at the hands of the exporter i.e. M/s Analytix Business Solutions.

**79.** However, M/s. Analytix Business Solutions had mis-declared/mis-stated their Services in ANF-3B Form and fraudulently obtained SEIS Scrips. They had subsequently transferred/sold the Scrips to various importers. Therefore, their acts had rendered the imported goods liable for confiscation under Section 111(o) of the Customs Act, 1962 since the condition no. 2(1) has been violated. The violation of Notification No. 25/2015-Customs dated 8th April, 2015 is given below:-

**Violation of Notification No. 25/2015-Customs dated 8<sup>th</sup> April, 2015 issued under Customs Act, 1962, by M/s. Analytix Business Solutions:**

**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*

\*

\*

**80.** In the instant case, it is clear that M/s. Analytix Business Solutions had suppressed the STPI status and provided 'IT and IT enabled services', classifiable under Division 84 of UN CPC which are not eligible for availing SEIS benefits in terms of Appendix 3D of Appendices of Foreign Trade Policy, 2015-20 therefore they have violated the condition 2 (1) of the Notification No. 25/2015-Customs dated 08th April, 2015 issued under section 25 of the Customs Act, 1962. Therefore, the imported goods have been rendered liable for confiscation under Section 111(o) of the Customs Act, 1962. However, redemption fine under Section 125 of the Customs Act, 1962 is imposable on the owner of goods, therefore, no redemption fine is imposable on M/s. Analytix Business Solutions, being the exporter in the instant case and not the owner of goods.

**81.** M/s Analytix Business Solutions, in relation to the imported goods, did or omitted to do acts/omissions which had rendered such goods liable to confiscation under section 111(o), therefore, they are liable to penalty under Section 112(a) of the Customs Act, 1962.

#### **PENALTY UNDER SECTION 114AA-**

**82.** I find that M/s. Analytix Business solutions (M/s. ABS) had suppressed the facts regarding STPI status and mis-declared/mis-stated their exported Services in ANF-3B Form and fraudulently obtained SEIS Scrips. They had subsequently transferred/sold the Scrips to various importer through brokers. These Scrips were used by various importers for purpose of availing benefit of Customs Duty exemption available under Notification No. 25/2015-Customs dated 08<sup>th</sup> April, 2015 issued under Section 25 of the Customs Act, 1962. Therefore, M/s. ABS, Ahmedabad had knowingly or intentionally made, signed and used, or caused to be made, signed or used, Customs declarations/statements/documents and other declarations/statements/documents which were false or incorrect in material particular and were used in the transaction of business for the purposes of Customs Act, 1962. Therefore, M/s. ABS, Ahmedabad are liable for penalty under Section 114AA of the Customs Act, 1962.

## **SECTION 114AA**

*Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

**83.** I find that the exporter i.e. M/s. ABS has argued that the duty scrips under SEIS scrips were granted to noticees by the competent authority after proper verification of their eligibility to claim the said duty scrips. Noticees had not hidden any document from the revenue nor mis declared anything for availing the benefit of SEIS scheme. Further, the scrips were not utilized by noticees but sold to other importers under bona fide belief that the duty scrips were validly granted to noticees. Therefore, penalty under Section 114AA and 112(a) are not sustainable. They have relied upon the decision of Hon'ble Tribunal in the matter of ARJ Exim India vs Commr. Of Cus, Chennai/Mumbai 2019 (370) E.L.T 614 (Tri-Mumbai) has held that the penalties under 112(a) and 114AA are not imposable when there is no mens rea on the part of the noticees. They have further relied upon the decision of Z.U. Alvi Vs CCE, Bhopal in 2000(36) RLT 721, it was held by the appellate Tribunal that when a person was not in charge or responsible for the conduct of business of the manufacturer and was dealing with goods only in his official capacity as an employee, he could not be considered to be a person liable for penalty under Rule 209A of the Rules. Rule 209A has been para materia to Sec. 112 of the CA, 1962 and therefore, the above principle is applicable in the instant case. Hence proposal to impose penalty on Noticee No. 2 under Section 112(a) and 114AA of the CA, 1962 deserves to be vacated in the interest of justice.

**84.** In this regard, it has been already discussed that M/s. Analytix Business Solutions had intentional and wilfully mis-declared/mis-stated the facts before DGFT in order to fraudulently avail the benefit of SEIS Schemes. Therefore, the argument of the noticee that ther was no mens rea has no merit. Thus the said decisions or case laws are not applicable in the instant case.

### **VIOLATION OF STATUTORY PROVISIONS BY KEY PERSON OF M/S. ANALYTIX BUSINESS SOLUTIONS:-**

**85.** I find that mis-declaration/mis-statement of classification of services & suppression regarding STPI status in the SEIS application viz. Form ANF-3B presented by M/s. ABS, Ahmedabad before the DGFT, Ahmedabad had been signed by Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad with an intent to avail undue benefit of SEIS scheme. Therefore, Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad was primarily responsible for wrongful availment of export benefits under SEIS Scheme by M/s. ABS, Ahmedabad; thereby enabling and abetting M/s. ABS, Ahmedabad in availing undue benefit of SEIS Scheme and facilitating various importers to utilise the wrongly obtained SEIS duty credit Scrips for their imports.

**86.** Therefore, by his deliberate acts of commission and omission Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad has rendered

the goods, which were imported (by utilising the ineligible Scrips) by the respective importers, liable for confiscation. Thus, Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad is liable for penalty under section 112(a) of the Customs Act, 1962.

**87.** Further, it is evident that Shri Fenil R Shah, former Head (India Operations) of M/s. ABS, Ahmedabad had knowingly or intentionally caused to be made, signed or used, Customs declarations/statements/documents and other declarations/ statements/documents which were false or incorrect in material particular and were used in the transaction of business for the purposes of Customs Act. Therefore, he is also liable for penalty under Section 114AA of the Customs Act, 1962.

**88.** I further find that Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s Analytix Business Solutions (India) Pvt. Ltd. prepared forged export invoices and the said forged export invoices were further submitted before DGFT in order to avail SEIS benefits fraudulently. It is therefore clear that Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad was also responsible for wrongful availment of export benefits under SEIS Scheme by M/s. ABS, Ahmedabad; thereby enabling and abetting M/s. ABS, Ahmedabad in availing undue benefit of SEIS Scheme and facilitating various importers to utilise the wrongly obtained SEIS duty credit Scrips for their imports.

**89.** Therefore, by his deliberate acts of commission and omission Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad has rendered the goods which were imported (by utilising the ineligible Scrips) liable for confiscation. Thus, Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad is liable for penalty under section 112(a) of the Customs Act, 1962.

**90.** Further, it is clear that Shri Kiran kumar Gunvantbhai Modi working as Accounts Manager of M/s. ABS, Ahmedabad had knowingly or intentionally caused to be made, signed or used, Customs declarations/statements/documents and other declarations/statements/documents which were false or incorrect in material particular and were used in the transaction of business for the purposes of Customs Act. Therefore, he is also liable for penalty under Section 114AA of the Customs Act, 1962.

#### **CONFISCATION OF IMPORTED GOODS IN THE HANDS OF RESPECTIVE IMPORTERS-**

**91.** As established in the above paras, M/s. ABS had obtained SEIS Scrips from DGFT, fraudulently, by wilful mis-statement and suppression of their STPI status, and the total duty involved in the 2 scrips is **Rs. 94,77,875.83/-**(Rupees Ninety Four Lakh Seventy Seven Thousand Eight Hundred Seventy Five and Eighty Three Paise Only).

**92.** It is also evident that M/s. ABS had transferred/sold the SEIS Scrips to other importer/s. 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. The value of goods and duty relatable to utilisation of such cancelled instruments which is recoverable, is detailed below:-

Sr. No.	Name & Address of Importer / IEC Holder	Total Assessable Value (Item Wise) of the Imported Goods (In Rs.)	Ineligible SEIS Amount transferred by M/s. ABS, Ahmedabad & thereafter utilised by other importers for their imports (In Rs.)	Jurisdictional Custom Authority	Bill of Entry/ SEIS Scrips Details
(1)	(2)	(3)	(4)	(5)	(6)
1	GOKUL AGRO RESOURCES LIMITED (IEC-0814023363)	2,66,55,125	61,33,723.70	Customs, Kandla Port [INIXY1], New Customs Building, Near Balaji Temple, Kandla – 370210	As per Annexure ‘C’
2	FRIGORIFICO ALLANA PRIVATE LIMITED (IEC-0388146478)	83,34,575	33,44,146.41	Customs, Nhava Sheva-I, JNCH, Nhava Sheva (INNSA1), Tal.-Uran, Dist.-Raigad, Maharashtra-400707	
	<b>Total</b>	<b>3,49,89,700</b>	<b>94,77,870.11</b>		

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

**SUBMISSION OF IMPORTERS IN RESPECT OF CONFISCATION OF GOODS-**

**94.** M/s. Frigorifico Allana has argued that the said Scrips were freely transferrable as provided in Para 3.02 of the Foreign Trade Policy 2015-20 and were endorsed as “Transferrable” by the licensing authority. They bonafide purchased the same for valuable consideration. They imported the consignment of “RBD Palmolein of Edible Grade in Bulk and Crude Sunflower Seed Oil of Edible Grade in Bulk” and cleared the said goods against the said Scrips/Licenses by availing the benefit of Notification No. 25/2015-Cus dated 08.04.2015. The scrips were valid when the goods were imported, therefore no fault can be found with the goods imported by them. The allegation that the original licensee had obtained the scrip by willful mis-statement and suppression of the facts cannot and does not make the scrips to be non-est or void ab-initio. It is settled law as laid down by the following judgements that a licence which is alleged to be obtained by fraud or mis-representation is not void ab-initio, but is only voidable and if before it is voided by cancellation by the licensing authority, the goods under it are already imported and cleared, the subsequent cancellation of the license will not render the imports to be invalid in law:

- a. East India Commercial Company Ltd Vs. CC-1983 (13) ELT 1342.
- b. Chemi Colour Agency and another Vs CC IE-1987 (30) ELT 175
- c. K. Uttamlal (Exports) Pvt. Ltd Vs. Union of India-1990 (46) ELT 527
- d. Kantilal Manilal and Company versus Union of India-1994(69) ELT 240.
- e. CC vs Sneha Sales Corporation-2000 (121) ELT 577
- f. Wearon Exports Private Limited vs. union of India-2004 (163) ELT 149.
- g. CC vs. Patiala Castings P. ltd-2012 (283) ELT 269
- h. CC v Gopichand Krishnan Kumar Bhatia-2013 (295) ELT 739
- i. Ajay Kumar & Co. V CC-2006 (205) ELT 747- Upheld in 2009(238) ELT 387
- j. The decision in the case of Ajay Kumar & Co. has been followed by the Hon'ble Supreme Court in its decision in Commissioner V Vallabh Design product-2016(341) ELT A222(SC).
- (ii) Even if the scrips are to be cancelled ab-initio, as laid down by the Supreme Court in CC vs. Sneha Sales Corporation-2000 (121) ELT 577, such ab initio cancellation by the licensing authority after the goods have been cleared under the license cannot affect the clearances already made.
- (iii) Further as held in Supreme Castings Ltd Vs. Jt DGFT-2016(342) ELT 176, a license which has already expired cannot be cancelled.
- (iv) They have further placed reliance on the decision of Hon'ble High Court in the case of Taparia overseas P. Vs. UoI-2003(161)ELT 47 BOM
- (v) They have also relied upon the judgements-
  - a. Hon'ble Tribunal in the case of Good Luck Industries vs CC reported in 1999 (108) ELT 818- which has been upheld by the SC as reported in 2000(120) ELT A 66
  - b. Hico Enterprise v CC-2005(189) ELT 135
  - c. Commissioner Vs. Vallabh Design Products-2016 (341) ELT A222 (SC)

**94.1** M/s. Gokul Agro resources Ltd. has argued that they have not purchased the Scrips of M/s. Analytix Business Solutions (I) Pvt. Ltd directly from M/s. Analytix Business Solutions (I) Pvt. Ltd but the same had been purchased through Mahalaxmi Exports, Ahmedabad. While procuring the aforementioned SEIS license from the open market, they were unable to trace the facts as to the mis-utilization of license by the exporter, M/s. Analytix Business Solutions(I) Pvt. Ltd as per the provisions of Section 28AAA of the Customs Act, 1962. The mandate of Section 28AAA is crystal clear that the notice under sub section 3 of Section 28AAA is to be sent to the person for mis-utilising the instrument issued to another person. They have relied upon the order dated 08.08.2023 passed by the O/o- Commissioner and order dated 18.12.2023 passed by O/o- Commissioner, Kolkata.

**95.** 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.

**96.** Before proceeding further, it is pertinent to examine the case laws referred by the importers.

### **96.1 East India Commercial Company Ltd Vs. CC-1983 (13) ELT 1342**

I find that the moot question before the Hon'ble Apex court was-

"The appellants had brought into India from the U.S.A. a large quantity of electrical instruments under a licence. The respondent, the Collector of Customs, Calcutta started proceedings for confiscation of these goods under Section 167(8) of the Sea Customs Act, 1878. The appellants contend that the proceedings are entirely without jurisdiction as the Collector can confiscate only when there is an import in contravention of an order prohibiting or restricting it and in the present case the collector was proceeding to confiscate on the ground **that a condition of the licence under which the goods had been imported had been disobeyed**. The appellants, therefore, ask for a writ of prohibiting directing the Collector to stop the proceedings. *The question is, has the Collector jurisdiction to adjudicate whether the goods are liable to be confiscated?*"

96.1.1 It is seen that the said judgement was in context of proceedings under Section 167(8) of the Sea Customs Act, 1878 and the instant proceedings pertain to Section 111 of the Customs Act, 1962. Further, the said proceedings examined the confiscation on the ground of violation of condition of licence, however, in the instant matter confiscation of goods in on account of violation of condition of Notification issued under Customs Act, 1962.

96.1.2 Section 167(8) of the erstwhile Sea Customs Act stated that "If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction.....such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty". In this regard, it is pertinent to note that Section 111 of the Customs Act, 1962 is very broad in nature and not limited to the prohibition or restriction of the goods.

96.1.2 Clearly, the aforementioned decision of the Apex court is distinguishable from the case in hand. Further, in the instant case, the DGFT had cancelled the said instrument and penalised the exporter i.e. M/s. ABS and placed them under Denied Entry List.

### **96.2 Chemi Colour Agency and another Vs CC IE-1987 (30) ELT 175**

96.2.1 In the said judgement, para 7 is relevant as argued by the noticee-

*"Para 7-In the instant case the goods had already been imported and in respect of the first consignment the customs authority had accepted the customs duty and in respect of the second consignment the duty has been assessed, but the customs authority refused to accept the same on the ground that the licence in question has been suspended. The said suspension and/or cancellation of the licence cannot make the importation of the goods invalid inasmuch as when the licence was transferred it was a valid licence and when the goods were imported, the licence was valid and only after importation, the licence had been suspended. No notice whatsoever have been given to the transferee of the licence, namely, the petitioner. Such transfer of the said licence was made with notice to the licensing authority. Accordingly, I uphold the contentions of Mr. Sen that in the facts and circumstances of the case, the customs authority had acted illegally in refusing to clear the goods on the basis of an order of suspension of the licence when on the basis of the licence goods have already been imported and when already there is a provision for taking action against the original exporter in whose favour the R.E.P. licence was granted, by way of adjustment against import entitlement of the exporter. When the*

law provides remedy in case of cancellation of the R.E.P. licence to take action against the original exporter in a particular manner, the respondents cannot adopt any other manner which is not provided for under the law and that too against a third party who had not contravened any of the provisions of the law and who had acted bona fide in the matter. In the facts and circumstances of the case, it is not open for the respondents to take any action which would visit any penal consequences to the petitioners. The order of suspension of the said licence, on the face of it, is illegal as after the goods had been allowed to be imported on the basis of a valid licence the respondents cannot suspend the same and cannot make the importation invalid after a lapse of long time causing serious prejudice and loss to the petitioners who utilised the licence with the full knowledge of the licensing authority and that it is well established principle of law that the long silence and/or inaction on the part of the licensing authority to take steps for cancellation of the licence had created an estoppel against the licensing authority and that the petitioners not only altered position to its prejudice but such an inaction had encouraged the petitioners to make such importation after spending huge sum of money. Considering the facts and circumstances of the case, I hold that the customs authorities had acted illegally in not clearing the goods which was imported on the basis of the said licence. Accordingly, the rule is made absolute. Let a writ in the nature of mandamus do issue commanding the respondents to forthwith clear the said goods which was imported under the said licence subject to the payment of the customs duty and complying all usual customs formalities under the law and subject to payment of port charges.

96.2.2 In this regard, it is pertinent to mention that while deciding the matter of confiscation of goods under Section 111 of the Customs Act, 1962, intention of the importer is not relevant, therefore, the bona fide or malafide is irrelevant. Any violation falling within the provisions of Section 111 renders the goods liable for confiscation. Only while deciding the penalty under Section 112 of the Act, intention is taken into account. Further, in the instant case the scrips have been cancelled ab initio. Therefore, the ratio of case is not applicable in the instant case.

**96.3** I find that the other judgements relied upon by all the importers were in a context where demand of duty under Section 28 of the Customs Act, 1962 and consequent penalty against the importers utilising the Scrips was set aside. In the instant case, the question of payment of duty doesn't even arise as the same has to be paid by the exporter (the person to whom the instrument was issued). 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 it is 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.***

**96.4** 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.

**97.** 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.***

**98.** 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 transshipment, with the declaration for transshipment 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;*

**99.** I find that Section 111(m) is not attracted here as there is no evidence to state that the details and particulars stated in the Bills of Entry did not correspond to the goods imported by the respective importers therefore, the subject goods shall not be held liable for confiscation under Section 111(m) at the hands of the exporter.

**100.** 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.

**101.** 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 8<sup>th</sup> 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;*

**102.** 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.

**103.** 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.

**104.** 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-***

**105.** 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."

**106.** 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.

**107.** 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)"

**108.** 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."

**109.** 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.

**110.** In view of the above discussion and findings, I hereby pass the following order-

**A. ORDER IN RESPECT OF M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC-0805005684) B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Ahmedabad-380052**

- (i) I determine and confirm the duty amount of Rs. 94,77,870.11/- (Rupees Ninety Four Lakh Seventy Seven Thousand Eight Hundred Seventy and Eleven Paise only), and order to recover the same from them under Section 28AAA of the Customs Act, 1962.

I order to appropriate the amount already paid by M/s. Analytix Business Solutions (I) Pvt. Ltd. amounting to Rs. 94,77,875.83/- (Rupees Ninty Four Lakh Seventy Seven Thousand Eight Hundred Seventy Five and Eighty Three Paise Only) against the duty demand.

- (ii) I order to recover interest at applicable rate on the amount confirmed at (i) above in terms of Section 28AAA(2) of the Customs Act, 1962 readwith Section 28AA of the Customs Act, 1962.
- (iii) I order to confiscate the goods, already cleared, totally valued at Rs. 3,49,89,700/- (Rupees Three Crore Forty Nine Lakh Eighty Nine Thousand Seven Hundred Only) under Section 111(o) of the Customs Act, 1962. However, I do not impose any redemption fine on them under Section 125 of the Customs Act, 1962 as they were not the owner of imported goods. However,

such fine is imposed on importers of the goods as stated in Table below.

- (iv) I impose Penalty of Rs.9,47,787/-(Rupees Nine Lakhs Forty Seven Thousand Seven Hundred and Eighty Seven only) upon them under the provisions of Section 112(a) of the Customs Act, 1962.
- (v) I impose Penalty of Rs. 94,77,870/-(Rupees Ninety Four Lakh Seventy Seven Thousand Eight Hundred and Seventy only), upon them under the provisions of Section 114AA of the Customs Act, 1962.

**B. ORDER IN RESPECT OF SHRI FENIL R SHAH, FORMER HEAD (INDIA OPERATIONS) OF M/S. ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**

- (i) I impose Penalty of Rs 5,00,000/- (Rupees Five Lakhs only) upon him under the provisions of Section 112(a) of the Customs Act, 1962.
- (ii) I impose Penalty of Rs. 50,00,000/- (Rupees Fifty lakhs only) upon him under the provisions of Section 114AA of the Customs Act, 1962.

**C. ORDER IN RESPECT OF SHRI KIRAN KUMAR GUNVANTBHAI MODI, ACCOUNTS MANAGER OF M/S. ANALYTIX BUSINESS SOLUTIONS (I) PVT. LTD.**

- (i) I impose Penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon him under the provisions of Section 112(a) of the Customs Act, 1962.
- (ii) I impose Penalty of Rs.10,00,000/- (Rupees Ten lakhs only) upon him under the provisions of Section 114AA of the Customs Act, 1962.

**D. ORDER IN RESPECT OF IMPORTERS-**

I order to confiscate the goods imported by persons/firm/company/importer mentioned in Column (2) below under Section 111(o) of the Customs Act, 1962. However, since the goods are not available for physical confiscation, I impose redemption fine as mentioned in Column (6) below in lieu of confiscation:

Sr. No.	Name & Address of Importer / IEC Holder	Total Assessable Value (Item Wise) of the Imported Goods (In Rs.)	Ineligible SEIS Amount transferred by M/s. ABS, Ahmedabad & thereafter utilised by other importers for their imports (In Rs.)	Redemption Fine (in Rs.)
(1)	(2)	(3)	(4)	(5)
1	GOKUL AGRO RESOURCES LIMITED (IEC-0814023363)	2,66,55,125	61,33,723.70	10,00,000/- (Ten Lakhs Only)
2	FRIGORIFICO ALLANA PRIVATE LIMITED (IEC-0388146478)	83,34,575	33,44,146.41	5,00,000/- (Five Lakhs only)
	<b>Total</b>	3,49,89,700	94,77,870.11	



**111.** This order is issued without prejudice to any other action that can be taken against the exporter or importer or any other person under this Act or any other law for the time being in force.

(M. Ram Mohan Rao)  
Commissioner of Customs  
Custom House Kandla

F. No. GEN/ADJ/COMM/131/2023-Adjn-O/o Commr-Cus-Kandla

DIN- 20250271ML0000212041

**To (Noticees),**

- (i) M/s. Analytix Business Solutions (I) Pvt. Ltd. (IEC-0805005684) B/403-405, GCP Business Center, Opp. Memnagar Fire Station, Ahmedabad-380052
- (ii) M/s. Gokul Agro Resources Limited, 76/1, 80, 89, & 91, Meghpar-Borichi, Galpadar Road, nr. Sharma Resort, Taluka-Anjar, Gujarat-370110
- (iii) M/s. Frigorifico Allana Private Limited Khopoli-pen road, Village-Sarsan, Taluka-Khalapur, Raigad, Maharashtra- 410203

Copy submitted to:

- (i) The Additional Director General, DRI, AZU, 15, Magnet Corporate park, Off Sola Flyover, SG Highway, Thaltej, Ahmedabad.
- (ii) The Additional Director General, Central Economic Intelligence Bureau, 6<sup>th</sup> Floor, B Wing, Janpath Bhawan, Janpath, New Delhi-110001 for kind information please.
- (iii) Guard File.