
	कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in	
A. File No.	:	GEN/ADJ/COMM/312/2023-Adjn-O/o Pr. Commr-Cus-Mundra.
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-051-24-25
C. Passed by	:	K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	:	28.03.2025. 28.03.2025.
E. SCN No. & Date	:	SCN F.No. GEN/ADJ/COMM/312/2023-Adjn dated 12.05.2023
F. Noticee(s) / Party / Importer	:	<ol style="list-style-type: none"> 1. M/s Gateway Distriparks Limited, (IEC No.0503027057), Sector 6, Dronagiri, Tal Uran, Navi Mumbai- 400707; 2. Shri Kartik Aiyer, Senior General Manager of M/s. Gateway Distriparks Limited, (IEC No: 0503027057) Sector 6, Dronagiri, Tai Uran, Navi Mumbai-400707; 3. Shri Anil G. Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, 1603, Gaurav Heights, Mahavir Nagar, Kandivali West, Mumbai-400067 4. M/s Adani Wilmar Limited. (IEC No 899000363), Fortune House, Nr Navarangpura, Railway Crossing, Ahmedabad-380009. 5. M/s Classic Marble Company Private Limited (IEC No 308007794), 15 Bhandup Village Road, Next to CEAT Tyre Factory, Subhash Nagar, Bhandup West, Mumbai-400078
G. DIN	:	DIN-20250371MO0000015466

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

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

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ रुपये 1000/- का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रुपये पाँच लाख या कम माँगा हो, रुपये 5000/- का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो, रुपये 10,000/- का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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 paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACTS OF THE CASE IN BRIEF:

M/s Gateway Distriparks Limited, Sector 6, Dronagiri, Tal Uran, Navi Mumbai- 400707 bearing IEC No.0503027057, hereinafter referred as 'GDL' is a Container Freight Station (CFS) service provider to importers and exporters, having their CFS at Mumbai, Chennai and Krishnapatnam.

2. Intelligence was gathered by the Chennai Zonal Unit of the Directorate of Revenue Intelligence (DRI-CZU) that GDL have obtained SEIS Scrips (Service Exports from India Scheme) from the Directorate General of Foreign Trade (DGFT) by intentionally mis-stating the amount earned in INR from exporters/importers for the services provided by them in their CFS as amount earned from foreign liners under the "Supporting Services for Maritime Transport" and such scrips were being utilized for payment of customs duty by other persons on their imports.

Foreign Trade Policy

3. The Foreign Trade Policy 2015-2020 (henceforth referred as FTP), which was notified under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992 by DGFT with effect from 01.04.2015, introduced two new schemes viz. Merchandise Exports from India Scheme (MEIS) for exports of specified goods to specified markets and Service Exports from India (SEIS) for increasing export of notified services, in the place of plethora of schemes existing earlier, as per Chapter 1 of FTP.

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

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

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

9.06 *"Applicant" means person on whose behalf an application is made and shall, wherever context so requires, includes person signing the application.*

9.20 *"Export" is as defined in FT (D&R) Act, 1992, as amended from time to time.*

9.38 *"Person" means both natural and legal and includes an individual, firm, society, company, corporation or any other legal person including the DGFT officials.*

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

9.51 *"Service Provider" means a person providing:*

- (i) *Supply of a 'service' from India to any other country; (Mode 1- Cross border trade)*
- (ii) *Supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2- Consumption abroad)*
- (iii) *Supply of a 'service' from India through commercial presence in any other country. (Mode 3 – Commercial Presence.)*
- (iv) *Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4- Presence of natural persons.)*

Definitions in FTDR Act

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

- (ii) *supplying, services or technology---*
 - (A) *from India into the territory of any other country;*
 - (B) *in India to the service consumer of any other country;*
 - (C) *by a service supplier of India, through commercial presence in the territory of any other country;*
 - (D) *by a service supplier of India, through presence of Indian natural persons in the territory of any other country;*

General Agreement on Trade in Services

6. The para 1 and 2 of “Article I – Scope and Definition of General Agreement on Trade in Services” (GATS), is as below:

Article I: Scope and Definition

1. This Agreement applies to measures by Members affecting trade in services.
2. *For the purposes of this Agreement, trade in services is defined as the supply of a service:*
 - (a) *from the territory of one Member into the territory of any other Member;*
 - (b) *in the territory of one Member to the service consumer of any other Member;*
 - (c) *by a service supplier of one Member, through commercial presence in the territory of any other Member;*
 - (d) *by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.*

7.1 *The GATS define the “supply of a service” to include the Production, distribution, marketing, sale and delivery of that service.*

Introduction to SEIS Scheme

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

“3.07 Objective -

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

3.08 Eligibility

- (a) *Service Providers of notified services, located in India, shall be rewarded under SEIS, subject to conditions as may be notified. Only Services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of this policy shall be eligible. The notified services and rates of rewards are listed in Appendix 3D.*
- (b) *Such service provider should have minimum net free foreign exchange earnings of US\$15,000 in preceding financial year to be eligible for Duty Credit Scrip. For Individual Service Providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US\$10,000 in preceding financial year.*
- (c) *Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E.*

- (d) *Net Foreign exchange earnings for the scheme are defined as under:
Net Foreign Exchange = Gross Earnings of Foreign Exchange minus
Total expenses / payment / remittances of Foreign Exchange by the
IEC holder, relating to service sector in the Financial year.*
- (e) *If the IEC holder is a manufacturer of goods as well as service
provider, then the foreign exchange earnings and Total expenses /
payment / remittances shall be taken into account for service sector
only. In order to claim reward under the scheme, Service provider shall
have to have an active IEC at the time of rendering such services for
which rewards are claimed.*

3.09 Ineligible categories under SEIS

- (1) *Foreign exchange remittances other than those earned for rendering
of notified services would not be counted for entitlement. Thus, other
sources of foreign exchange earnings such as equity or debt
participation, donations, receipts of repayment of loans etc. and any
other inflow of foreign exchange, unrelated to rendering of service, would
be ineligible.*
- (2) *Following shall not be taken into account for calculation of entitlement
under the scheme*
 - (a) *Foreign Exchange remittances:*
 - 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 EOU /
EHTP/ STPI / BTP Schemes or supplies of services made to such
units; (Amended vide Notification No 8/2015-20 dated 4th June,
2015)*
 - (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.*

3.10 Entitlement under SEIS

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

3.12 Effective date of schemes (MEIS and SEIS)

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

3.17 Transfer of export performance

(a) Transfer of export performance from one IEC holder to another IEC holder shall not be permitted. Thus, a shipping bill containing name of the applicant shall be counted in export performance/turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e- BRC/FIRC.

(b) However, MEIS, rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company/firm who has realized the foreign exchange directly from overseas) or by the company / firm who has realized the foreign exchange directly from overseas.

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

TABLE- 1: Transport Services under Appendix 3D

S. No.	Sectors	Central Product Classification Code (CPC Code)	Admissible rate in % (on Net Foreign Exchange earnings)
..			
9	TRANSPORT SERVICES (Please refer Note 4)		
A.	<u>Maritime transport Service</u>		
a.	Passenger Transportation Service *	7211	5
b.	Freight Transportation*	7212	5
c.	Rental of vessels with crew*	7213	5
d.	Maintenance and repair of vessels	8868	5
e.	Pushing and towing service	7214	5
f.	Supporting service for maritime transport	745	5
B.	Air Transport Service		
a.	Rental of aircraft with crew	734	5
..			
C	Road Transport Service		
a.	Passenger transportation	7121, 7122	5
b.	Freight transportation	7123	5
..			
D	Service Auxiliary to all modes of Transport		
a.	Cargo-Handling Service	741	5
b.	Storage and Warehousing service	742	5
c.	Freight transport agency service	748	5

As per **Note 2 of the Annexure to Appendix 3D**, the rate of reward for eligible services is subject to conditions as specified in FTP and HBP.

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

8.2. The Public Notice No.7/2015-20 dated 04/05/2016 issued by DGFT notified Appendix 3E which contain certain services, **out of the services notified [vide Appendix 3D], that are rendered to a foreign liner in a customs notified area, where payments for exports are paid in INR including by its agent out of amount remittable to foreign liner in foreign exchange or out of remittances received from overseas buyer in foreign exchange**, are deemed to be earned in foreign exchange and eligible for SEIS reward/scrip. During the period upto 2016-17, the services of Maritime Transport Services viz., 9(A)(c) – Rental of vessels with crew, 9(A)(d) – Maintenance & repair of vessels, 9(A)(e) –

Pushing and Towing services and 9(A)(f) – Supporting Services for maritime transport were only listed in Appendix 3E.

8.3. Under 9(A)(f) pertaining to supporting service for maritime transport, 44 services werelisted as eligible service in Appendix 3E. It includes among others-

- a. Storage Services, Shutout Charges (s.no. XIII),
- b. Terminal Handling Services (s.no. XIV),
- c. Cargo Dispatch Services (s.no. XVI),
- d. Cargo Storage Services (s.no. XVII),
- e. Internal Transportation Services (s.no. XXII),
- f. Warehousing Services (s.no. XXIII),
- g. Inter-Carting Services (s.no. XXIV),
- h. Survey & Inspection Services (s.no. XXVI),
- i. Equipment Hire Services viz. Forklift, Excavator, Payloader, Reach Stacker, Empty Handler, Hydra, Screening Net, Gangway, Grab, Hydra Cranes, Generator, Power supply, etc.(s.no. XXX),
- j. Cargo consolidation charges for export cargo (s.no. XXXIII) and
- k. Handling Services not specified elsewhere (s.no. XXXV).

Introduction to the Provisional Central Product Classification (CPC)

9. The Provisional Central Product Classification (CPC), issued by the Department of International Economic and Social Affairs, Statistical Office of the United Nations, constitutes a complete product classification covering goods and services. The CPC is a system of categories covering both goods and services that is **both exhaustive** (i.e. all goods and services are covered) **and mutually exclusive** (i.e. a given good or service may only be classified in one CPC category). The coding system of CPC is hierarchical and purely decimal. The classification consists of **Sections** (identified by the first digit), **Divisions** (identified by the first and second digits), **Group** (identified by the first three digits), **Class** (identified by the first four digits) and **Subclass** (identified by the first five digits). The first six sections (0 to 5) classify products and second four sections (6 to 9) classify services.

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

1. *When services are, prima facie, classifiable under two or more categories, classification shall be effected as follows, on the understanding that only categories at the same level (sections, divisions, groups, classes or subclasses) are comparable:*
 - (a) *The category, which provides the most specific description, shall be preferred to categories providing a more general description.*
 - (b) *Composite services consisting of a combination of different services that cannot be classified by reference to 1(a) shall be classified as if they consisted of the service that gives them their essential character, in so far as this criterion is applicable.*
 - (c) *When services cannot be classified by reference to 1(a) or 1(b), they shall be classified under the category that occurs last in numerical order among those which equally merit consideration.*
2. *Services, which cannot be classified in accordance with the above rules, shall be classified under the category appropriate to the services to which*

they are most akin.

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

9.3. The Land, Water and Air transport services (Division 71, 72 and 73), all consists a class/subclass for transportation of containerized freight. In general, the transportation of containerized freight is explained as transportation (by rail/road/marine vessel/air) of individual articles and packages assembled and shipped in specially constructed shipping containers designed for ease of handling in transport. The related subclass for Land (Rail Transport CPC Group 711 & Road Transport – CPC Group 712), Water (CPC Group 721) and Air transport services (CPC Group – 732) are 71123 [Transportation of containerised freight by railway], 71233 [Transportation of containerised freight by other land transport services i.e., by road], 7212 [Freight transportation by sea going vessels] and 73220 [Transportation of containerized freight by air] respectively.

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

9.5. The cargo handling services consist of class container handling services (7411) and other cargo handling services (7419). The cargo handling services is defined as handling services provided for freight in special containers or in non-containerized freight, which include services of freight terminal facilities and stevedoring services for all modes of transport and include cargo handling services incidental to freight transport, not elsewhere classified.

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

10. As per Para 3.04 of Hand Book of Procedures for FTP 2015-20, the application for the SEIS reward for eligible services **rendered**, shall be filed in ANF-3B form.

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

Definitions of Services

12. As per Section 2(j) of Foreign Trade (Development & Regulation) Act, 1992,

"services" means service of any description which is made available to potential users and includes all the tradable services specified under the General Agreement on Trade in Services entered into amongst India and other countries who are party to the said Agreement and provided that, this definition shall not apply to the domain of taxation.

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

i) *It defines "services" as*

"Services are the result of a production activity that changes the conditions of the consuming units, or facilitates the exchange of products or financial assets. These types of service may be described as change-effecting services and margin services, respectively. Change-effecting services are outputs produced to order and typically

consist of changes in the conditions of the consuming units realized by the activities of producers at the demand of the consumers. They can also be referred to as "transformation services". Change-effecting services are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. By the time their production is completed, they must have been provided to the consumers."

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

ii) With respect to service classification of transport, it states that *Transport covers the process of carriage of people and objects from one location to another as well as related supporting and auxiliary services and rentals (charters) of carriers with crew. Transport can be classified according to mode of transport and what is carried passengers or freight. A transport provider may subcontract in order to be able to use the services of other operators in providing part of the final transport service. Such services should be recorded on a gross basis. Sea transport covers all international freight and passenger transport services undertaken by seagoing vessels but does not include transport by underwater pipelines (included in pipeline transport) and cruise fares (included in travel). Air transport covers all international freight and passenger transport services provided by aircraft. Space transport includes satellite launches. Rail Transport covers international transport by trains. Road transport covers international freight transport by lorries and trucks and international passenger transport by buses and coaches. Inland waterway transport covers international transport on rivers, canals and lakes. Included are waterways that are internal to one country and those that are shared among two or more countries. Pipeline transport covers the transport of goods in pipelines, such as the transport of*

petroleum and related products, water and gas. Other supporting and auxiliary transport services covers all other transport services that cannot be allocated to any of the components of transport services previously described. Other supporting and auxiliary transport services include services that are auxiliary to transport and not directly provided for the movement of goods or people. Those services that are not covered above and that relate to one mode of transport only are recorded under the *other* category of the appropriate mode of transport (sea, air, rail, road or inland waterway transport). Included, for example, are: cargo handling (such as loading and unloading of containers) that is billed separately from freight; storage and warehousing; packing and repackaging; towing not included in freight services; pilotage and navigational aid for carriers; air traffic control; cleaning of transport equipment performed in ports and airports; and salvage operations and associated agents' fees (including freight forwarding and brokerage services). Services that relate to more than one mode of transport and that cannot be allocated to individual modes of transport are recorded under other supporting and auxiliary transport services (749). Some related items that are excluded from transport services are freight insurance (included in insurance service); goods procured in ports by non-resident carrier (goods, not services; repairs and maintenance of transport equipment (included in maintenance and repair i.e); repairs of railway facilities, harbours and air field facilities (included in construction); and rental of charters of carriers without crew (included in operating leasing services).

13.1. As per Article XXVIII(i) of the General Agreement on Trade in Services, **“service consumer”** is defined as *“any person that receives or uses a service.”*

14. Definitions of Liner and container in public domain:

As defined in the US glossary of Shipping, a 'liner' is a vessel advertising sailing on a regular basis and in the website of MSC, it is defined as a cargo vessel sailing between specified ports on a regular basis. The cargo carried by vessel are either in containers or as break bulk. As per Black Law, the Liner is a scheduled service between fixed ports on a trade route by such a cargo and/or passenger transport shipping line operations. The Merriam webster.com define liner as a ship belonging to a regular line or an airplane belonging to an airline. As per Black Law, “shipping container” is a standard sized container that is re-sealable and lockable that is used with standard equipment for handling freight. The US glossary defines 'container' as a truck trailer body that can be detached from the chassis for loading into a vessel, a rail car or stacked in a container depot and the MSC, defines 'intermodal container' (also container, freight container, ISO container, shipping container or simply 'box') as a standardized reusable steel box used for the safe, efficient and secure storage and movement of materials and products within a global containerized intermodal freight transport system and 'Intermodal' indicates that the container can be moved from one mode of transport to another (from ship, to rail, to truck) without unloading and reloading the contents of the container.

From the above definitions, it appeared that

- A box cannot be treated as a liner as liner is vessel only
- Transportation of box, is not a service to the foreign liner
- When the box with the goods laden in it or without the goods, when transported in a truck is a cargo transported by road transport/ when transported in a rail is a cargo transported by rail transport. Both cannot be a water-based transport or a supporting service for maritime transport.

Summary of all the provisions

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

- a) Applicant of SEIS reward/scrip shall be actual provider of the notified service/ specified services i.e. who actually renders or performs the services and not who arranges or otherwise deals with the notified service. (Para 3.08 (a) and Para 3.09 (1) of FTP)
- b) Applicant of SEIS reward should have **either**
supplied the notified service to the service consumer in any other country (Para 9.51 (i) of FTP)
or
supplied the notified service to service consumer of any other country in India. (Para & 9.51(ii) of FTP)
- c) Meaning in respect of notified services there are only two modes of services eligible for SEIS benefit
- d) Applicant should have earned the foreign exchange towards performing the notified service for which the SEIS reward is sought. (Para 9.50 & Para 3.09 (1) of FTP)
- e) Payment in Indian Rupees for service charges earned on specified services listed in Appendix 3E, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India (RBI).
- f) Specified services listed in Appendix 3E are sub-set of notified services mentioned in Appendix 3D wherein the payment received in INR is treated to be foreign exchange earnings
- g) Reward is calculated at the rate notified in Appendix 3D on the net foreign exchange earned by the applicant in performing the service after deducting the expenses/payments made in foreign exchange relating to service sector in the Financial Year. (Para 3.08(a) and Para 3.08(d) of FTP).
- h) Supporting service for maritime transport and air transport are only listed as services eligible for reward under Appendix 3E (Public Notice No.07/2015-20 dated 04/05/2016).
- i) In respect of services listed under Appendix 3E, the service should be rendered to a foreign liner in a custom notified area and the INR payment would be treated as deemed foreign exchange, provided the amount is received by the service provider from the agent out of amount remittable to the overseas principal or out of remittances to be sent by the overseas buyer (Public Notice No.07/2015-20 dated 04/05/2016).
- j) Remittances received towards statutory dues/levies or remittances received for payment or payable to the third party service providers who provide the notified service to the service consumers of any other country in India are not eligible for claim of SEIS benefit. (Para 9.50 of FTP)
- k) Documentary evidence of payments which are approved by RBI as deemed to be received in foreign exchange and deemed to be earned in

foreign exchange are required for claiming services listed in Appendix 3E (Para 3.08(c) of FTP).

- l) Earnings of income related to export of goods cannot be termed as service income for claim of SEIS benefit (Para 3.09 (2)(g) of FTP)
- m) The GATS define trade in services in terms of four modes of supply. Thus, the tradable service includes only those services rendered between a resident and a non-resident. Para 9.51 (i) & 9.51(ii) of FTP have restricted the eligibility to only two modes of supply namely Mode-1 cross border trade and Mode-2 consumption abroad respectively.
- n) The CPC being a decimal system, a reference to an aggregate category must be understood as a reference to all of the constituent parts of that category. Put differently, a reference to a three-digit CPC Group should, in the absence of any indication to the contrary, be understood as a reference to all the four-digit Classes and five-digit Sub-classes that make up the group; and a reference to a four-digit Class should be understood as a reference to all of the five-digit Sub-classes that make up that Class. (Interpretative Rules of CPC)
- o) Transport as per CPC is classified according to mode of transport and what is carried passenger or freight in Division 71 to 73. The “supporting and auxiliary transport services” described in Division 74 of CPC covers all other transport services that cannot be allocated to any of the components of transport services previously described in Division 71 to 73. It only includes services that are supporting or auxiliary to transport and not for services provided for the movement of goods or people. In other words, the income related to international trade in service of this group cannot include income related to freight transportation, which is provided for movement of goods.
- p) "Freight transport agency services" (CPC 7480, 74800) are described as "Freight Brokerage services, freight forwarding services (primarily transport organisation or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break-bulk services." The description of services does not include the actual shipping or movement of goods by road, airline or shipping line (or any other means) for any of these service providers and thereby the charges related to it are excluded from the “freight transport agency service”.
- q) The Appendix 3E excludes all modes of freight transport (Division 71 to 73 of CPC) and services supporting and auxiliary to land mode of transport.
- r) As per **Note 2 of the annexure to Appendix 3D**, the rate of reward for eligible services is subject to conditions as specified in FTP and HBP. That is to say that mere coverage of service in Appendix 3D is not sufficient for SEIS benefit, they have to fulfil the conditions specified in FTP and HBP (Handbook of Procedures).

A. INVESTIGATION

16. In pursuance of the intelligence gathered, under summon proceedings, the copies of ANF-3B Form along with annexures thereto filed by GDL before the DGFT for the year 2015-16 to 2019-20 were called for vide summons dated 12.02.2021 and obtained vide their letter dated 22.02.2021. Summons dated 15.03.2021 requesting the appearance of Shri R. Kumar, Dy CEO & CFO cum Company Secretary of GDL on 18.03.2021 was issued. In response, GDL vide

email dated 17.03.2021 replied that Shri R.Kumar had superannuated on 30.09.2019 and that Shri Kartik Aiyer, Sr. General Manager – Finance and Accounts will appear on behalf of the company. Following summons dated 18.03.2021 issued to Shri KartikAiyer, he appeared before DRI, Chennai and statement dated 22.03.2021 was recorded under Section 108 of the Customs Act, 1962 followed by a further statement dated 30.03.2021 as detailed in para 24 and 25 below.

Scrutiny of SEIS applications of GDL:

17. The ANF-3B Form as submitted by GDL to this office for the years 2015-16, 2016-17, 2017-18 and 2018-19 were filed before the Regional Authority, Directorate General of Foreign Trade, Mumbai. Shri Anil G. Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, 1603, Gaurav Heights, Mahavir Nagar, Kandivali West, Mumbai 400 067 has certified the claims made by GDL. Along with the application, they have filed Annexure C - for calculating the supply of eligible service appearing in Appendix 3E relating to services where value is realized in exports paid in Indian Rupees which are otherwise considered as having been paid for in free foreign exchange.

18. In the ANF-3B Form as received from GDL, they claimed to have rendered “Maritime Transport Services – 9(A)(f)” as services listed in Appendix 3E under Para 9.51(ii) of the FTP, 2015-20 and mentioned the earnings for the service rendered by them and worked out the net entitlement of SEIS benefit for the respective years which were examined and certified by the Chartered Accountant as shown below:

TABLE - 2

Year	Gross earnings in INR (deemed foreign exchange earnings from eligible service as per PN 7 dt 04.05.2016)	Total expenses/payment or remittances of foreign Exchange in USD (converted in INR)	Net Deemed Foreign exchange earnings in INR	Gross entitlement for SEIS benefit (in INR)	Net entitlement for SEIS benefit (INR)
2015-16	275,83,29,375	0	275,83,29,375	13,79,16,469 @5%	13,10,20,645 (after late cut fee of 5%)
2016-17	302,96,68,738	0	302,96,68,738	15,14,83,437 @5%	15,14,83,437
2017-18	168,58,15,720 (01.04.2017 to 31.10.2017)	0	168,58,15,720	8,42,90,786 @5%	17,61,13,273
	131,17,49,822 (01.11.2017 to 31.03.2018)	0	131,17,49,822	9,18,22,487 @7%	
2018-19	330,87,85,932	0	330,87,85,932	23,16,15,015 @7%	23,16,15,015
TOTAL					69,02,32,370

19. GDL in their applications filed during the years 2015-16, 2016-17, 2017-18 and 2018- 19 have further -

- ☐ certified that the Indian Rupee earned on account of services rendered from India alone in terms of Para 9.51(ii) of FTP, 2015-20 has been taken into account for application under SEIS as per Para 3.08(a) of the FTP.
- ☐ declared that they have perused the ineligible categories as present in the para 3.09 of the FTP and the Annexure to Appendix 3D updated from time to time, and that no service for which a claim has been filed under this application is covered under any of these ineligible categories
- ☐ certified that they have gone through the Appendix 3D and the Central Product Classification Provisional list (available in the downloads section of www.dgft.gov.in and as updated from time to time) and the services for

which SEIS claim is being made fall under the Codes as mentioned in the Appendix 3D

- certified that particulars and statements made in the SEIS applications are true and correct and nothing has been concealed; that any information furnished in the application if found incorrect or false will render them liable for any penal action or other consequences as may be prescribed in law or otherwise warranted; that in case of ineligible claim/over claim, they shall be under obligation to refund the ineligible claim/over claim in electronic mode/any other permitted mode of payment with interest at the rate prescribed under Section 28 AA of the Customs Act, 1962 from the date of issue of scrip in the relevant Head of Account of Customs within one month; that they shall also be under obligation to surrender the scrip whether partially utilized or fully unutilized, at any stage, if asked to do so by the DGFT.

On perusal of the SEIS scrips registered with customs for the years 2015-2016 to 2018-19, it has been observed that GDL have claimed SEIS benefits for an amount of Rs.69,02,32,368/-.

Deficiency Memo raised by DGFT, Mumbai on GDL and their reply:

20. Vide Deficiency Letter issued from file no 03/21/094/80550/AM18 dt 21.09.2018, DGFT, Mumbai has raised the following deficiencies and GDL replied vide dated 24.09.2018, which are reproduced below:

- (1) Whether the payment received in rupees is payment “which would have been otherwise received in foreign exchange?”

Reply: *GDL have merely reproduced Para 3.08 (c) of FTP and the effect of Public Notice 7 dt 04.05.2016 of DGFT.*

- (2) Invoices submitted by you do not mention the foreign liner, the same cannot be verified from the bank statements. Whether service is being provided under Para 9.5 (Export of Services)?

Reply: *We are once again enclosing the invoices with details of foreign liners along with flag & nationality of vessel. All the containers belong to foreign shipping companies. All our invoices show container details. We are enclosing herewith container prefix list from which the foreign shipping companies handling the containers can be verified in respect of any of our invoices.*

- (3) As per the Appendix 3E, the starting point is that payments which have been received in foreign exchange or which would have been otherwise received in foreign exchange but paid in Indian Rupees are to be considered. This means that although the payment has been received in Indian Rupees, it has to be a payment which would have otherwise been received in foreign exchange. Payment is received in foreign exchange when the contract for the supply of goods or services is entered into between the Indian supplier and the foreign buyer. These are usually negotiated through the banks. The invoices are the document which reveals that the buyer is a foreign entity and the supplier is an Indian entity.

Reply: *You have quoted the text of the first para of Annexure to 3E notified by PN 7 dt 04.05.2016 which are the broad guidelines considered by RBI before notifying list of eligible services under Appendix 3E. RBI has amply clarified this point in their letter to other service providers providing similar services. You are requested to refer to the invoices for details of foreign liners (foreign entity) & their Indian Agents. In case of services rendered as per 3.08 (c) of FTP there is no negotiation of documents through bank.*

- (4) The invoices have been raised by the applicant on the entities which have availed their services, and most (if not all) of these entities are Indian companies. From the fact of the document, it would appear that the payment received in rupees for the supply of the services is payment which would not have otherwise been made in foreign exchange. However, the possibility that contract/negotiations for the services would have taken place between the applicant and the foreign buyer with a stipulation that further invoices will be raised on the Indian companies by the supplier of services could be considered, in case the applicant is able to provide documents substantiating the same and explain the provisions under which the said contract/negotiations took place.

Reply: *You are requested to refer to the invoices for details of foreign liners & their Indian Agents. Invoices are one of the forms of contract. In international trade and in case of export/import, one party (exporter/importer) will always be an Indian company. Agents of foreign liners in India are also Indian companies. The Indian Agents can be subsidiary of foreign liners, Indian company representing foreign liners or NVOCC's representing foreign liners.*

- (5) Whether the payment made by the Indian agent is out of the following a) Out of the amount remittable to the Overseas Principal, or b) Out of remittances to be sent by the Overseas Buyer. From the documents available in the file, the above cannot be verified. In Appendix 3E, the further stipulation is that the payments which are to be considered would be those payments which are made by the Indian Agent of the Overseas Principal out of the amount remittable to the Overseas Principal, or those payments which are made by the Indian Agent out of the remittances to be sent by the overseas buyer. Payment out of an amount remittable to the Overseas Principal can be made by the Indian agent only if a contract has been entered into between the Overseas Principal (i.e., Foreign Liner) and the Indian agent, authorizing the Indian agent to collect the remittances on behalf of the Overseas Principal, and from these remittances make payment to the supplier of the service. As explained above, this would be known if the invoice had been raised in the name of the Overseas Principal with the endorsement that the remittances would be routed through the Indian agent. However, in the invoices submitted, the name of the foreign liner is not mentioned at all. Accordingly, documentary evidence substantiating the same would need to be provided by the applicant.

Reply: *You have quoted the text of the first para of Annexure to 3E notified by PN 7 dt 04.05.2016 which are the broad guidelines considered by RBI before notifying list of eligible services under Appendix 3E. RBI has amply clarified this point in their letter to other service providers providing similar services. Internal arrangement/agreements between foreign liners/Overseas Principals and its Indian subsidiary/Agents/NVOCC agents are not in our jurisdiction and purview. You are requested to refer to our invoices for details of foreign liners & their Indian agents.*

- (6) It is to be noted that all containers coming to India are handled in a similar manner and similar nature of invoices are raised for all the containers. Unless it is established that the payment received in Indian rupees by the supplier of services was a payment which would have otherwise been received in foreign exchange, all the services provided to such containers reaching India which are common to the services listed in Appendix 3E would automatically become eligible for SEIS, which would hardly seem to be the intention of the scheme.

Reply: *DGFT all across India including RA, Mumbai & HQ Delhi have approved/issued numerous SFIS/SEIS licenses totaling hundreds of crores. DGFT all across India have issued and redeemed numerous EPCG licenses over past so many years for such services. From the above it is clear that the intention of Public Notice No 7 dt 04.05.2016 mentioned in the effect of the public notice is well accepted by all offices of DGFT including ADGFT, Mumbai.*

- (7) If the payments made by the Indian agent are out of the remittances sent by the overseas buyer, then also documentary evidence regarding the same would be required. However, in the invoices submitted, the name of the foreign liner is not mentioned at all. Presently, from the invoices and the bank statements provided, none of the above is substantiated and it would appear that the contract for provision of services was entered into between the supplier of services and the Indian agent directly and payments have been made by the Indian agents to the supplier of the services. Accordingly, documentary evidence substantiating the same would need to be provided by the applicant. This documentary evidence would have to establish that contracts were entered into between the Indian supplier of services and the foreign liners for the particular services and it was further settled between the foreign liners and the Indian agents that the foreign liners would make remittances to the Indian agents in foreign exchange, out of which remittances the Indian agent would make payment to the supplier of services in Indian rupees. Bank Certificate to show that payment was made by the foreign liner to the Indian agent against the particular services would also be required.

Reply: *Financial arrangement/Contract between Foreign Liners and their agents are not in our purview. Document/contract executed by us is the invoice & receipt.*

- (8) Whether the services are covered under the Notified list of service. Many of the services included in the claim are not mentioned in Appendix 3E, such as Energy surcharge, Export-lashing, chocking, Import movement charges, Export Wharfage/demurrage, Ground rent, Export fuel surcharge etc. These have been covered under broad headings such as "Terminal handling Services/Cargo storage services" by the applicant. It is to be noted that RA is not in a position to decide whether such services are to be counted as eligible for SEIS. The list of services is contained in Appendix 3E appeared to be an exhaustive list and would probably have been provided by the administrative ministry after consultation with the stakeholders. Accordingly, it is required that the particular service mentioned in the invoice should match with the description of the service as given in Appendix 3E. It has been pointed out to the applicant that the services mentioned in the invoices were different from the services mentioned in Appendix 3E. On this issue, the applicant has replied that all the services which were mentioned in the invoice have not been included for the purpose of making the claim and they have submitted a list of services which they have included and which are different in description from the list as contained in Appendix 3E and also offered their explanation as to why the same have been included by them.

Some of the services included by the applicant are similar but not same to the services mentioned in Appendix 3E, as follows: 1) Import LCL cargo delivery charges. 2) Export LCL handling and transportation. 3) Export LCL de-stuff charges. 4) Export LCL lift on/off charges. 5) Import line de-stuffing charges. 6) Export shed space reservation charges. 7) Export –

warehouse reservation. For the above, a clarification would be required that services which are similar even if not worded in the same manner as in Appendix 3E shall also be counted to be eligible under Appendix 3E. In the absence of such clarification, the applicant would need to delete the said services from its claim because as far as this Office is concerned, the list of services in Appendix 3E is an exhaustive list and not merely illustrative.

There are many services which have been included by the applicant claiming that the same are covered under the broad heading of “Terminal Handling Services”, but do not appear to be covered under the said heading. Inclusion of these services by the applicant in their claim, that too without appropriate disclosure that they are including services which are quite different from the services as listed in Appendix 3E is in the nature of a serious misdeclaration. The applicant has admitted that these services have been included in their claim. A list of such services which have been included in the claim, but whose description is not provided in the list of services in Appendix 3E is as follows:

Sr No	Description of Service as in invoice	Description of service in Appendix 3E under which benefit has been claimed
1	Imports - plugging	Reefer container charges
2	Buffer / exp self-sealed service charges	Terminal handling Services
3	Energy surcharge	-do-
4	Export fuel surcharge	-do-
5	Export – lashing, choking	-do-
6	Import movement charges	-do-
7	Export wharfage / demurrage	Cargo storage services
8	Ground rent	-do-
9	Customs examination	Survey and inspection services
10	Scanning charges	-do-
11	Survey container load plant and equipment interchange report	-do-

The above list of services which are not as per Appendix 3E but have been included in the claim are as per the admission of the applicant. The admission having been made after the same were seen to be mentioned in the invoices and query had been raised. (Many more unrelated services are also mentioned in the invoices and it has to be presumed that the same have not been included in the claim, on the basis of the applicant’s own statement, as it is not possible to verify at our end as to which services mentioned in the invoices has been included/excluded.) Misdeclaration is usually dealtwith under the FT (D&R) Act.

Reply: *We have claimed SEIS benefit only for services which are covered under Appendix 3E. However, the exact description may not match because the description mentioned in Appendix 3E are generic in nature & the services mentioned in the invoice are the exact services covered under the generic description. We haven’t changed any classification in the application, it is the same as originally applied and submitted.*

From the detailed queries raised by DGFT and the replies of GDL, it appeared that they have solely relied on the inclusion of the name of the foreign liner in their invoices to claim SEIS benefits and appeared to have interpreted the conditions of Appendix 3E to their advantage in claiming that services rendered by GDL are eligible for SEIS benefits.

21. Based on the applications and reply to deficiency memo, the Regional Authority, Directorate General of Foreign Trade, Mumbai vide licence numbers as detailed below granted scrips for duty credit.

TABLE- 3

S.No.	LICENCE (SIES SCRIPS) NUMBER	LICENCE DATE	DUTY AMOUNT
1	319222296	4/11/2019	10000000
2	319222297	4/11/2019	10000000
3	319222299	4/11/2019	10000000
4	319222300	4/11/2019	10000000
5	319222301	4/11/2019	10000000
6	319222302	4/11/2019	10000000
7	319222303	4/11/2019	10000000
8	319222305	4/11/2019	10000000
9	319222307	4/11/2019	10000000
10	319222308	4/11/2019	10000000
11	319222309	4/11/2019	11483435
12	319222306	4/11/2019	10000000
13	319222304	4/11/2019	10000000
14	319222295	4/11/2019	10000000
15	319220016	3/27/2019	10000000
16	319220017	3/27/2019	10000000
17	319220018	3/27/2019	10000000
18	319220019	3/27/2019	10000000
19	319220020	3/27/2019	10000000
20	319220021	3/27/2019	10000000
21	319220022	3/27/2019	10000000
22	319220023	3/27/2019	10000000
23	319220024	3/27/2019	10000000
24	319220025	3/27/2019	10000000
25	319220026	3/27/2019	11020645
26	319220014	3/27/2019	10000000
27	319220015	3/27/2019	10000000
28	319225291	4/30/2019	10000000
29	319225292	4/30/2019	10000000
30	319225293	4/30/2019	10000000
31	319225294	4/30/2019	10000000
32	319225295	4/30/2019	6113273
33	319225278	4/30/2019	10000000
34	319225279	4/30/2019	10000000
35	319225280	4/30/2019	10000000
36	319225281	4/30/2019	10000000
37	319225282	4/30/2019	10000000
38	319225283	4/30/2019	10000000
39	319225284	4/30/2019	10000000
40	319225285	4/30/2019	10000000
41	319225286	4/30/2019	10000000
42	319225287	4/30/2019	10000000
43	319225288	4/30/2019	10000000
44	319225289	4/30/2019	10000000
45	319225290	4/30/2019	10000000
46	319235285	6/25/2019	10000000
47	319235286	6/25/2019	10000000
48	319235287	6/25/2019	10000000
49	319235288	6/25/2019	10000000
50	319235289	6/25/2019	10000000
51	319235290	6/25/2019	1615014.9
52	319235267	6/25/2019	10000000
53	319235268	6/25/2019	10000000
54	319235269	6/25/2019	10000000
55	319235270	6/25/2019	10000000

56	319235271	6/25/2019	10000000
57	319235272	6/25/2019	10000000
58	319235273	6/25/2019	10000000
59	319235274	6/25/2019	10000000
60	319235275	6/25/2019	10000000
61	319235276	6/25/2019	10000000
62	319235277	6/25/2019	10000000
63	319235278	6/25/2019	10000000
64	319235279	6/25/2019	10000000
65	319235280	6/25/2019	10000000
66	319235282	6/25/2019	10000000
67	319235281	6/25/2019	10000000
68	319235283	6/25/2019	10000000
69	319235284	6/25/2019	10000000
70	319222298	4/11/2019	10000000

22. M/s GDL have transferred the above scrips to various importers and in turn the importers, have utilized the scrips for payment of customs duty in their imports at various ports as detailed below:

TABLE- 4

Name of the Importer	Import Custom House Code	Importer IEC Code	BE No./ Date	Licencee Name	Licence Number	Total Scrips utilised for payment of Duty (Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
ADANI WILMAR LIMITED	INCCU1	899000363	3000306 26.04.2019	GATEWAY DISTRIPARKS LTD	319222295	2249198
					319222301	9999986
					319222302	9999986
					319222303	9999986
					319222304	9999968
					319222305	9999986
					319222306	9999986
					319222307	9999986
					319222308	9999986
					319222309	10398966
			3189003 11.05.2019	GATEWAY DISTRIPARKS LTD	319222296	9999979
					319222297	9999979
					319222299	9999979
					319222300	9999979
			3430613 29.05.2019	GATEWAY DISTRIPARKS LTD	319222295	7750790
			3520453 04.06.2019	GATEWAY DISTRIPARKS LTD	319222298	9999988
					319222309	1084450
					Total 151483179	151483179
ADANI WILMAR LIMITED	INHZA1	899000363	4049742 12.07.2019	GATEWAY DISTRIPARKS LTD	319235283	9680832
					319235284	9842180
					319235285	9842180
					319235286	9842180
					319235287	9842180
					319235288	9807567
					319235289	9842180
			4281270 30.07.2019	GATEWAY DISTRIPARKS LTD	319235283	319167
					319235284	157820
					319235285	157820
					319235286	157820

					319235287	157820
					319235288	192432
					319235289	157820
					Total 69999998	69999998

ADANI WILMAR LIMITED	INIXY1	899000363	2808058 11.04.2019	GATEWAY DISTRIPARKS LTD	319220022	9999999
					319220023	9999999
			2834356 13.04.2019	GATEWAY DISTRIPARKS LTD	319220024	2311101
					Total	22311099
ADANI WILMAR LIMITED	INMUN1	899000363	2724815 05.04.2019	GATEWAY DISTRIPARKS LTD	319220017	9999999
					319220018	9999999
					319220019	9999999
					319220020	9999999
					319220021	9999986
			2792766 10.04.2019	GATEWAY DISTRIPARKS LTD	319220014	9999999
					319220015	9999999
					319220016	9999999
					319220024	7688898
					319220025	9999999
					319220026	11020644
			3141387 07.05.2019	GATEWAY DISTRIPARKS LTD	319225278	8215622
			3199979 13.05.2019	GATEWAY DISTRIPARKS LTD	319225278	1784376
					319225279	9999999
					319225280	9999999
					319225281	9999999
					319225282	9999999
					319225283	9999999
					319225284	9999999
					319225285	9999999
					319225286	7138226
			3250490 16.05.2019	GATEWAY DISTRIPARKS LTD	319225287	9999999
					319225288	9999999
					319225289	9999999
					319225290	9999999
					319225291	9999999
					319225292	9999999
					319225293	9999999
					319225294	9999999
					319225295	6113271
			3604199 11.06.2019	GATEWAY DISTRIPARKS LTD	319225286	2861770
			3955557 06.07.2019	GATEWAY DISTRIPARKS LTD	319235268	9999999
					319235269	9999999
					319235270	9999999
					319235271	9999999
					319235272	9999999
					319235273	9999999
					319235274	9999999
					319235275	9999999
					319235276	9999999
					319235277	9999999
					319235278	9999999

					319235279	9999999
					319235280	9999999
					319235281	9999999
					319235282	9999999
					319235290	1615013
					Total	436437768
CLASSIC MARBLE COMPANY PVT LT	INNSA1	308007794	3896656 02.07.2019	GATEWAY DISTRIPARKS LTD	319235267	3383508
			3896798 02.07.2019	GATEWAY DISTRIPARKS LTD	319235267	3571430
			3897112 02.07.2019	GATEWAY DISTRIPARKS LTD	319235267	383475
			3922108 04.07.2019	GATEWAY DISTRIPARKS LTD	319235267	382718
			3923331 04.07.2019	GATEWAY DISTRIPARKS LTD	319235267	722471
			3931284 04.07.2019	GATEWAY DISTRIPARKS LTD	319235267	1556396
			Total			9999998
Grand Total (Rs.)						69,02,32,041

23. It is also verified that later the DGFT, Mumbai, have issued a Show Cause Notice dated 12.04.2022 to M/s GDL and the said SCN has been upheld & the SEIS scrips were ordered to be cancelled by the Additional Director General of Foreign Trade, Mumbai.

Voluntary Statements given under Section 108 of the Customs Act, 1962 by various persons in connection with ineligible benefits of SEIS availed by GDL:

24. Statement dated 22.03.2021 of Shri Kartik Aiyer, Senior General manager, Finance and Accounts, GDL, Mumbai (**RUD- 1**) Shri Karthik Aiyer, in his statement has inter-alia stated that:

- he was part of the team which processed and submitted SEIS applications on behalf of M/s.GDL and generally aware of the DGFT provisions governing SEIS Scheme.
- GDL provides a host of services viz., Container Yards, Customs Handling, General Warehousing, Bonded Warehousing, Cargo Stuffing and De-Stuffing, First and Last Mile Connectivity through own fleet of trailers, Empty Container Handling, Container Repair, Customised Solutions for Customers handling various cargo, Value Added Services –Palletisation, Sheet Wrapping etc. at all its container freight stations only and they are not handling similar services in any of the seaports or terminals located inside the seaports.
- when asked to explain who are the service consumers(s) in terms of Para 9.51 (ii) of the FTP of other countries to whom M/s GDL had rendered services in India and what are the actual services rendered to these consumers and the actual place of such services rendered for which SEIS benefits have been claimed, Shri Kartik Aiyer stated that they are rendering services to various foreign shipping lines viz., M/s APL, M/s Mearsk, M/s

Wan Hai etc. in India who are the service consumers of other countries as per the definition in terms of Para 9.51 (ii) of the FTP; that the actual place of service rendered to these shipping lines are their CFS and the actual services rendered are cargo handling, container handling, monitoring and maintaining the temperature for reefer containers, cargo and container storage, weighment of container laden with cargo, survey related services (for containers) etc.

- when asked to go through the Public Notice No 7/2015-2020 dated 04.05.2016 and its annexure (Appendix 3E) and answer the following.
- a) whether GDL have rendered any of the services notified in Appendix 3E to a consumer of any other country in India in a Customs Notified Area
- b) whether GDL have received any payments from a consumer of any other country in India in foreign exchange or Indian Rupees for the services rendered to them in a Customs Notified Area out of the remittances to be sent by M/s GDL to such a consumer of any other country in India
- c) Whether such remittances have been included in the ANF 3B applications submitted by M/s GDL for claiming SEIS benefits

Shri Kartik Aiyer replied as follows:

- a) Yes, they have rendered services under viz., Supporting services for maritime transport notified in Appendix 3E to a consumer of any other country in India i.e., foreign shipping lines in a Customs Notified Area i.e., our CFSs
- b) No
- c) No
- when asked to go through the printout of Appendix 3E and state under which sub entry(s) of Service Category 9A(f) does the services rendered by M/s GDL fall and state to whom such services were rendered, Shri Kartik Aiyer stated that they have rendered the following services viz., Reefer Container Charges (XII), Cargo Storage Services (XVII), Warehousing Services (XXIII), Survey & Inspection Services (XXVI), Shifting and Weighment Services (XXXIX); that these services were rendered by M/s GDL to importers, exporters, freight forwarders, Custom House Agents in respect of containers.
- M/s GDL does not render any stevedoring services in any of the ports in India including services in the dockside of the ports.
- GDL does not have any operational facility/infrastructure at Chennai Seaports including in the following two terminals viz., DP World and CITPL and Kattupalli Seaport at Chennai; that they do not have any operational facility/infrastructure at any other ports or terminals in India.
- GDL does not have any agreement with Chennai Port Trust, DP World, CITPL or with Kattupalli Seaport or with any of the other ports or terminals in India.
- On showing the summary statement showing calculation of SEIS claim for the year 2017- 18 forming part of M/s GDL's letter dated 17.04.2019 addressed to the DGFT, New Delhi and to explain in detail the exact nature

of service rendered by M/s GDL and to whom, ShriKartik Aiyer gave the actual nature of service rendered by M/s GDL as follows:

Sl No	Description of the Invoice Service Head	Exact nature of service rendered	To Whom
1	Cargo Handling	Stuffing of Cargo in Export Container and de-stuffing of Cargo in Import Container at M/s GDL	Importer or Exporter or freight forwarder or CHA
2	Cargo Storage	Storage of export cargo in the warehouse at the CFS till the container is ready for stuff and storage of import LCL and de-stuffed delivery cargo in the warehouse at the CFS	Importer or Exporter or freight forwarder or CHA
3	Addl Cargo Handling Charges	Same as Cargo Handling	Importer or Exporter or freight forwarder or CHA
4	Energy Surcharge	Cost to make up with the increasing prices of electricity	Importer or Exporter or freight forwarder or CHA
5	Fuel Surcharge	Cost to make up with the increasing prices of fuel viz. Diesel	Importer or Exporter or freight forwarder or CHA
6	Ground Rent	Charges for stay of the loaded container in the CFS beyond the free period	Importer or Exporter or freight forwarder or CHA
7	Addl Handling Charges	Charges for handling the container with the help of Reach Stacker by way of lift-on/ lift-off from and to the trailer and from and to the stack at the CFS (Applicable only in GDL, Krishnapattinam)	Importer or Exporter or freight forwarder or CHA
8	Handling Charges	Charges for handling the container with the help of Reach Stacker by way of lift-on/ lift-off from and to the trailer and from and to the stack at the CFS (Applicable only in GDL, Mumbai)	Importer or Exporter or freight forwarder or CHA
9	Handling and Transportation	Charges for handling the container with the help of Reach Stacker by way of lift-on/ lift-off from and to the trailer and from and to the stack at the CFS (Applicable for GDL CFS at Chennai, Krishnapattinam and Punjab Conware)	Importer or Exporter or freight forwarder or CH
10	Lashing Choking	Process of preparing the export container for receiving the export cargo and ensuring that the cargo is restrained inside the container	Exporter
11	Plugging	Monitoring and maintaining the temperature reefer containers by ensuring continued electric supply	Importer or Exporter
12	Survey CLP & EIR	Survey and inspection report of the loaded containers	Importer or Exporter
13	Warehouse Reservation	Charges for storage of export cargo inside warehouse at the CFS	Exporter
14	Customs Examination	Charges towards use of labour and equipment for presenting the imported goods in the container for customs examination in the CFS	Importer or CHA or Freight Forwarder
15	Scanning Charges	Charges towards moving the import containers on trailers for scanning by Customs in the Port Area	Importer or CHA or Freight Forwarder
16	Weighment	Weighment of the laden container (Import or Export) in the CFS premises.	Importer or Exporter or freight forwarder or CHA

- when asked to go through the invoice number GSL/I/HD/1718/05481 dated 24.06.2017 of M/s GDL, Chennai raised on M/s SSS Clearing & Forwarding P Ltd, Chennai for

total amount of Rs.21,05,133/- (scanned & placed below for ease of reference)

GDSL 70

GATEWAY DISTRI PARKS LIMITED
200, Ponneri High Road, Manali New Town Chennai 600103
Ph No. 91-44-37971600, Fax No : 91-44-37971601
PAN : AAACG3425C, STax: AAACG3425CSD004, CinNo : L74899MH1994PLC164024

Import Invoice

Category of Services: Storage and Warehousing Services / Cargo Handling Service/ Transport of Goods by Road

Invoice No.: GSU/HDH/171805481 Invoice Date: 24-06-2017 Payer Customer: C300911 Name SSS CLEARING & FORWARDING P LTD Address No. 55/166 3RD FLOOR CORAMERCHENT ST CHENNAI 600 001 Billing Customer C300911	BOE No. 9281024 Invoice Validity Date: 24-06-2017 BL No. MSCURU066321 IGM No. 2162151 IGM Line No. 204 Importer : SRIDHAR ENGG AND RUBBER PRODUCTS PVT LTD CHA SSS CLEARING & FORWARDING P LTD Shipping Line MSC AGENCY (INDIA) PRIVATE LIMITED FF	BOE Date 12-04-2017 BL Date 09-03-2017 IGM Date 10-04-2017 IGM Sub Line No. SMTP No. SMTP Date
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Cargo Description :
Narration: SSS CLEARING & FORWARDING P LTD

Cargo Details	20 : 1	40 : 10	45 : 0	TEUS : 21
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Invoice Details :

Description	Amount	Service Tax Amount	Swach Bharat Cess Amount	Krishi Kalyan Cess Amount	Total Inv. Amount
Ground Rent	10,08,625.00	2,33,607.50	8,343.13	8,343.13	19,18,918.76
Stacking Off	0.38	0.00	0.00	0.00	0.38
House & Premises Charges	4,050.00	507.00	20.25	20.25	4,657.50
Energy Surcharge	8,400.00	1,176.00	42.00	42.00	9,660.00
Fuel Surcharge	8,400.00	1,176.00	42.00	42.00	9,660.00
Handling & Transshipment	1,36,950.00	19,173.00	684.75	684.75	1,57,492.50
Customs Broker Fee	275.00	38.50	1.43	1.43	316.36
Weightage	2,200.00	308.00	11.00	11.00	2,520.00
Value Added Services-RFID	1,650.00	231.00	8.25	8.25	1,897.50
Total	18,30,550.38	2,56,277.00	9,152.81	9,152.81	21,05,133.00

Amount (in words): Rs. TWENTY ONE LAKH FIVE THOUSAND ONE HUNDRED FORTY EIGHT RUPEES AND ZERO PAISA ONLY

Customer Details :

Container No.	Size	Type	Com. Type	Gross Wt.	Free Days	Chrg. Days	COC Date	Arrival Date	GR From Date	GR To Date	Service	Line Amount	Service Tax	Amount
CHU9810228	40	HC	Gen	12.25	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU1057207	40	HC	Gen	19.27	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	12.73	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	0.42	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	0.33	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	14.74	0	0	06-06-2017	14-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	2.81	0	0	06-06-2017	14-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	2.82	0	0	06-06-2017	14-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	15.15	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	13.87	0	0	06-06-2017	13-04-2017			Documentation Charges	300.00	45.00	345.00
CHU9875143	40	HC	Gen	12.41	0	0	06-06-2017	13-04-2017			Documentation Charges	1,050.00	157.50	1,207.50
CHU9875143	40	HC	Gen	17.20	0	0	06-06-2017	13-04-2017			Documentation Charges	950.00	142.50	1,092.50
CHU9875143	40	HC	Gen	13.21	0	0	06-06-2017	13-04-2017			Documentation Charges	900.00	135.00	1,035.00
CHU9875143	40	HC	Gen	15.72	0	0	06-06-2017	13-04-2017			Documentation Charges	900.00	135.00	1,035.00
CHU9875143	40	HC	Gen	9.42	0	0	06-06-2017	13-04-2017			Documentation Charges	900.00	135.00	1,035.00
CHU9875143	40	HC	Gen	0.23	0	0	06-06-2017	13-04-2017			Documentation Charges	900.00	135.00	1,035.00
CHU9875143	40	HC	Gen	14.73	0	0	06-06-2017	14-04-2017			Documentation Charges	900.00	135.00	1,035.00
CHU9875143	40	HC	Gen	9.31	0	0	06-06-2017	14-04-2017			Documentation Charges	400.00	60.00	460.00
CHU9875143	40	HC	Gen	9.30	0	0	06-06-2017	14-04-2017			Documentation Charges	900.00	135.00	1,035.00

Seen & Signed 22/3/2023

GATEWAY DISTRI PARKS LIMITED
CHENNAI 600103

TOLU4914759 40	HC	Gen	13.87	0	0	06-06-2017 13-04-2017	Energy Surcharge	800.00	120.00	920.00
CARU8619226 40	FR	Gen	12.07	0	0	06-06-2017 13-04-2017	Energy Surcharge	800.00	120.00	920.00
CARU8619226 40	HC	Gen	12.26	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
CRXU4073997 40	VN	Gen	19.37	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
CRXU8751145 40	HC	Gen	12.72	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
CXDU2150931 40	HC	Gen	9.42	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
MEDU8003888 40	HC	Gen	9.83	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
MSCU3873463 20	DRY	Gen	5.61	0	0	06-06-2017 14-04-2017	Fuel Charges	500.00	120.00	620.00
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017 14-04-2017	Fuel Charges	400.00	60.00	460.00
MSCU8705723 40	HC	Gen	15.16	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
TOLU4914759 40	HC	Gen	13.87	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
TOLU8781093 40	FR	Gen	12.07	0	0	06-06-2017 13-04-2017	Fuel Charges	800.00	120.00	920.00
CARU8619226 40	HC	Gen	12.26	0	0	06-06-2017 13-04-2017	Ground Rent	1,45,950.00	21,892.50	1,67,842.50
CRXU4073997 40	VN	Gen	19.37	0	0	06-06-2017 13-04-2017	Ground Rent	1,45,950.00	21,892.50	1,67,842.50
CRXU8751145 40	HC	Gen	12.72	0	0	06-06-2017 13-04-2017	Ground Rent	1,45,950.00	21,892.50	1,67,842.50
CXDU2150931 40	HC	Gen	9.42	0	0	06-06-2017 13-04-2017	Ground Rent	1,45,950.00	21,892.50	1,67,842.50
MEDU8003888 40	HC	Gen	9.83	0	0	06-06-2017 13-04-2017	Ground Rent	1,43,150.00	21,472.50	1,64,622.50
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017 14-04-2017	Ground Rent	1,43,150.00	21,472.50	1,64,622.50
MSCU3873463 20	DRY	Gen	5.61	0	0	06-06-2017 14-04-2017	Ground Rent	71,575.00	10,736.25	82,311.25
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017 14-04-2017	Ground Rent	1,43,150.00	21,472.50	1,64,622.50
MSCU8705723 40	HC	Gen	15.16	0	0	06-06-2017 13-04-2017	Ground Rent	1,45,950.00	21,892.50	1,67,842.50
TOLU4914759 40	HC	Gen	13.87	0	0	06-06-2017 13-04-2017	Ground Rent	1,45,950.00	21,892.50	1,67,842.50
TOLU8781093 40	FR	Gen	12.07	0	0	06-06-2017 13-04-2017	Ground Rent	2,91,900.00	43,785.00	3,35,685.00
CARU8619226 40	HC	Gen	12.26	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
CARU8619226 40	HC	Gen	12.26	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
CRXU4073997 40	VN	Gen	19.37	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
CRXU4073997 40	VN	Gen	19.37	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
CRXU8751145 40	HC	Gen	12.72	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
CRXU8751145 40	HC	Gen	12.72	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
CXDU2150931 40	HC	Gen	9.42	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
CXDU2150931 40	HC	Gen	9.42	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
MEDU8003888 40	HC	Gen	9.83	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
MEDU8003888 40	HC	Gen	9.83	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017 14-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017 14-04-2017	PNR Charges	3,400.00	510.00	3,910.00
MSCU3873463 20	DRY	Gen	5.61	0	0	06-06-2017 14-04-2017	Handling & Transportation	6,250.00	937.50	7,187.50
MSCU3873463 20	DRY	Gen	5.61	0	0	06-06-2017 14-04-2017	PNR Charges	2,000.00	300.00	2,300.00
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017 14-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017 14-04-2017	PNR Charges	3,400.00	510.00	3,910.00
MSCU8705723 40	HC	Gen	15.16	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
MSCU8705723 40	HC	Gen	15.16	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
TOLU4914759 40	HC	Gen	13.87	0	0	06-06-2017 13-04-2017	Handling & Transportation	8,100.00	1,215.00	9,315.00
TOLU8781093 40	FR	Gen	12.07	0	0	06-06-2017 13-04-2017	PNR Charges	3,400.00	510.00	3,910.00
TOLU8781093 40	FR	Gen	12.07	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
CARU8619226 40	HC	Gen	12.26	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
CRXU4073997 40	VN	Gen	19.37	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
CRXU8751145 40	HC	Gen	12.72	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
CXDU2150931 40	HC	Gen	9.42	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
MEDU8003888 40	HC	Gen	9.83	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017 14-04-2017	Seal Charges	25.00	3.75	28.75
MSCU3873463 20	DRY	Gen	5.61	0	0	06-06-2017 14-04-2017	Seal Charges	25.00	3.75	28.75
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017 14-04-2017	Seal Charges	25.00	3.75	28.75
MSCU8705723 40	HC	Gen	15.16	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
TOLU4914759 40	HC	Gen	13.87	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75
TOLU8781093 40	FR	Gen	12.07	0	0	06-06-2017 13-04-2017	Seal Charges	25.00	3.75	28.75

Seen
S. K. Kulkarni
22/3/23



CARU9610225 40	HC	Gen	12.26	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
CRXU4073607 40	VN	Gen	19.37	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
CRXU9751145 40	HC	Gen	12.72	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
CRXU2150931 40	HC	Gen	9.42	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
MEDU8093888 40	HC	Gen	9.83	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017	14-04-2017	Container Weightment	200.00	30.00	230.00
MSCU3873463 20	DRY	Gen	5.81	0	0	06-06-2017	14-04-2017	Container Weightment	200.00	30.00	230.00
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017	14-04-2017	Container Weightment	200.00	30.00	230.00
MSCU9705723 40	HC	Gen	15.18	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
TCLU4914750 40	HC	Gen	13.87	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
TCLU8781093 40	FR	Gen	12.07	0	0	06-06-2017	13-04-2017	Container Weightment	200.00	30.00	230.00
CARU9610225 40	HC	Gen	12.26	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
CRXU4073607 40	VN	Gen	19.37	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
CRXU9751145 40	HC	Gen	12.72	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
CRXU2150931 40	HC	Gen	9.42	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
MEDU8093888 40	HC	Gen	9.83	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
MEDU8875146 40	HC	Gen	14.71	0	0	06-06-2017	14-04-2017	RFID Charges	150.00	22.50	172.50
MSCU3873463 20	DRY	Gen	5.81	0	0	06-06-2017	14-04-2017	RFID Charges	150.00	22.50	172.50
MSCU7895774 40	HC	Gen	7.92	0	0	06-06-2017	14-04-2017	RFID Charges	150.00	22.50	172.50
MSCU9705723 40	HC	Gen	15.18	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
TCLU4914750 40	HC	Gen	13.87	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50
TCLU8781093 40	FR	Gen	12.07	0	0	06-06-2017	13-04-2017	RFID Charges	150.00	22.50	172.50

Terms and Conditions :-

1. Receipt is valid subject to Realisation of Cheque.
2. This receipt is not a guarantee for delivery of container/cargo.
3. Delivery is subject to fulfillment of customs and other statutory formalities.
4. The insurance of cargo is required to be taken by the consignor/consignee from Warehouse to Warehouse. The liability of GATEWAY DISTRI PARKS LIMITED as the Customs Cargo Service Provider is limited to the liabilities arising out of its role as Customs Cargo Service Provider as per the legal framework in this regard.
5. For any delay in payment beyond the period of credit allowed by GATEWAY DISTRI PARKS LIMITED in writing, an interest @15% PM and part thereof shall be paid by the customer.
6. The payment to be made preferable by RTGS/NEFT or bank transfer by cheque/draft to be delivered at the CFS.
7. Incidence of cheque bouncing will attract penalty, as per Company's policy. The Company reserves the rights for any other action.
8. Service Tax in case of Road Transport services as applicable shall be paid by the respected receiver of the service as per notification No.30/2012-ST dated 20.06.2012.
9. According to Rule 2 & Sub-rule 1 of Service Tax rules 1994 as amended by notification No.35/2004-ST Person who pays or is liable to pay freight himself or through his agent for the transportation of goods carriage is liable to pay service tax directly to government.
10. GATEWAY DISTRI PARKS LIMITED shall not be responsible for or liable in any way, and the Customer shall indemnify GATEWAY DISTRI PARKS LIMITED against all damages, claims, costs and expenses suffered or incurred by GATEWAY DISTRI PARKS LIMITED resulting directly or indirectly from any defects in a Container and/or its contents and/or Cargo.
11. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container, exportation and importation of cargoes as per Government of India and all concerned regulatory bodies and all matters.

12. Bank Details :

Beneficiary Name	GATEWAY DISTRI PARKS LIMITED		
Bankers Name	HDFC BANK LTD.		
Bank Account No.	1660350000332	RTGS/NEFT IFSC	HDFC0000166
Bank Address	S.T.TOWER, NEW NO 24, 1ST FLOOR, 2ND LINE BEACH ROAD PARRY'S CORNER, CHENNAI - 600 001		

Generated BY:- GDL:MANAN Printed BY:- GDL:RAJAKUMAR.E

This is computer generated invoice, Signature not required.

Seen
S. Kartik
22/3/21

with the following item wise description viz., Ground Rent, Document & process charges, Energy surcharge, Fuel surcharge, Handling & transportation, Custom bottle seal, Weighment, Value Added Service-RFID and asked to give the actual nature of service rendered to M/s SSSClearing & Forwarding P Ltd for each item wise description in the said invoice, Shri Kartik Aiyer gave the item wise description in the said invoice as follows:

- Ground Rent – Since it is an import consignment charges were levied for stay of the loaded containers in M/s GDL, Chennai CFS beyond the free period.
- Docu & process charges – This is the charge levied for utilizing the EDI facility in their CFS for printing the Bill of Entry.
- Energy surcharge – This is the charge levied for making up with the increasing price of electricity consumed at M/s GDL, Chennai CFS for handling the import containers within their CFS which is collected from the importer.

- Fuel surcharge – This is the charge levied for making up with the increasing price of fuel viz. Diesel consumed at M/s GDL, Chennai CFS for moving the import containers within their CFS which is collected from the importer.
- Handling & transportation – This is the charge levied for handling the containers with the help of Reach Stacker by way of lift-on/ lift-off from and to the trailer and from and to the stack at M/s GDL, Chennai CFS which is collected from the importer.
- Custom bottle seal – This is the charge levied for affixing the customs bottle seal (which GDL have procured from customs authorized suppliers) on the import containers after examination by Customs at their CFS and collected from the importer.
- Weighment – This is the charge levied towards weighment of the import containers on arrival at M/s GDL, Chennai CFS before customs examination at the CFS.
- Value Added Service-RFID – This is the charge levied towards affixing the RFID sticker on the import containers on arrival at M/s GDL, Chennai CFS for the purpose of easy tracking of these containers within the CFS until they move out of their CFS which is collected from the importer.

- when asked to elaborate and explain why Energy Surcharge and Fuel Surcharge are raised in the said GDL Invoice, he stated that with the ever-increasing electricity and fuel costs, M/s GDL finds it hard to load these increases in the “handling and transportation charges”; that as per broad understanding with their customers, they recover the increased electricity and fuel costs by showing them under a separate invoice head as “Energy Surcharge” and “Fuel Surcharge” instead of loading them under “handling and transportation charges”; that the term “surcharge” was incorporated in the invoice to convince the customer that only a small amount is collected from them towards increase in the electricity and fuel costs.
- when asked to go through the printout of the Central Product Classification (CPC) pertaining to 745 (74510 to 74590 - Supporting services for water transport) and state how does the services rendered by M/s GDL, Chennai to M/s SSS Clearing & Forwarding P Ltd as reflected in the said invoice fits into the sub entries covered under the supporting services for maritime transport under Appendix 3E. Shri Kartik Aiyer replied that as per their understanding, the services rendered by M/s GDL, Chennai to M/s SSS Clearing & Forwarding P Ltd as reflected in the said invoice fits into the sub category 74590 - Supporting services for water transport as well as sub entries covered under the supporting services for maritime transport under Appendix 3E - 9A(f); that they have relied upon the sub entries covered under Appendix 3E - 9A(f) rather than the sub categories pertaining to 745 (74590 - Supporting services for water transport); that the storage services mentioned in sub category 74590 is applicable to them.
- when asked to go through the printout of the Central Product Classification (CPC) pertaining to 741 (Cargo handling services: 74110 - Container handling services and 741902 - Other cargo handling services) and 742 (Storage and warehousing services: 74290 – Other storage or warehousing services) and state why the services rendered by M/s GDL should not be more appropriately classified under 741 and 742, he replied that 741 is not applicable to M/s GDL since they are not handling cargo in a stand-alone sense and they are not handling containers in a stand-alone sense; that further, 742 is not applicable to M/s GDL since they are not rendering storage and warehousing service in

a stand-alone sense; that what they are handling is containerized cargo in a customs notified area (ie, M/s GDL) on behalf of the foreign liners.

- when asked to state whether GDL have entered into any agreement with any of the foreign liners in respect of the services rendered by M/s GDL to the importers/exporters/freight forwarders/custom house agents in their various CFS premises for which they have claimed SEIS benefits as per the invoices raised on these importers/exporters/freight forwarders/custom house agents, he stated that GDL have not entered into any agreement with any of the foreign liners in respect of the services rendered by M/s GDL to the importers/exporters/freight forwarders/custom house agents in their various CFS premises for which they have claimed SEIS benefits as per the invoices raised on them; that the containers which GDL have handled belongs to the foreign liners.
- when asked to state whether GDL have remitted the payment of Rs 21,05,133/- to M/s MSC Agency (India) Private Limited or their agents in India either in foreign exchange or INR which was received from M/s SSS Clearing & Forwarding P Ltd, Chennai in INR pertaining to the invoice number GSL/I/HD/1718/05481 dated 24.06.2017 of M/s GDL, Chennai raised on M/s SSS Clearing & Forwarding P Ltd, Chennai for the services rendered to M/s SSS Clearing & Forwarding P Ltd, Chennai, Shri Kartik Aiyer replied in the negative. **He further added that they have not remitted any amount collected from the importers/exporters/ freight forwarders/custom house agents for the services rendered to them in their various CFS premises for which they have claimed SEIS benefits, to any of the foreign liners or their agents in India either in foreign exchange or in INR.**
- GDL have claimed SEIS benefits for the services rendered within their CFS premises only and NOT for any services rendered to any foreign liner(s) in the seaport or terminal areas.
- in the light of answers to the above questions, when asked to explain why the Indian Rupees earned on account of services rendered by M/s GDL and taken into account for claiming SEIS benefits should not be treated as ineligible in terms of Para 3.09 of the FTP, Shri Kartik Aiyer replied that as far as M/s GDL is concerned they have claimed SEIS benefits for the services rendered to foreign liners.

24.1. To summarize: GDL had rendered services such as, cargo handling, container handling, cargo and container storage weighment of cargo laden containers etc. in their CFS, for the containers pertaining to the foreign liners; that they have not received payment from foreign liners or their Indian agents in foreign exchange or in INR; that they have rendered such services to importers, exporters, freight forwarders, CHAs; that GDL have not entered into any agreement with any of the foreign liners or their Indian agents in respect of the services rendered by them to the importers/exporters/freight forwarders/custom house agents; and that they have not remitted to the foreign liners or their Indian agents in India any amount collected from importers, exporters, freight forwarders, CHAs in foreign exchange or in INR for the services rendered by GDL for which they have claimed SEIS benefits.

25. Further Statement dated 30.03.2021 of Shri Kartik Aiyer, Senior General Manager, Finance and Accounts, GDL, Mumbai. **(RUD- 2)** Shri Karthik Aiyer, in his further statement inter-alia stated that:

- when asked to go through the condition for applying under Appendix 3E

covered under Public Notice No 7 dated 4.5.2016 and state what does it say, Shri Kartik Aiyer stated that as per their understanding, they have rendered service to foreign liners including through their agents in India in customs notified area for which they have received payments in Indian Rupees which they would otherwise have received in foreign exchange; that basically the conditions to be met are as follows;

a) Payment which would have been otherwise received in foreign exchange but received in Indian Rupees

b) For services rendered in customs notified areas to a foreign liner that in their case, they receive business from the foreign liners i.e., their containers which GDL are handling in their CFS which is a customs notified area; that GDL receive payments in Indian Rupees from their customers viz., importers/exporters/freight forwarders/custom house agents; that since, GDL are rendering the services in their CFS on behalf of these foreign liners the income earned by GDL through these services are eligible for SEIS benefits.

- when asked to clarify as to whether the foreign liners have asked M/s GDL to perform the services which GDL have claimed to have provided to the Indian customers viz., cargo handling, cargo storage, additional cargo handling charges, energy surcharge, fuel surcharge, ground rent, additional handling charges, handling charges, handling & transportation, lashing choking, plugging, survey CLP & EIR, warehouse reservation, customs examination, scanning charges, weighment etc., he replied in the negative.
- when asked whether the foreign liners pay M/s GDL at any point of time for the services rendered by M/s GDL, he replied that the foreign liners have not paid and never pay M/s GDL at any point of time for the services rendered by M/s GDL
- when asked to state what is the nature of relationship between M/s GDL and the foreign liners, he stated that the nature of relationship between M/s GDL and the foreign liners is such that they nominate their CFS for handling their containers.
- when asked to provide any document reflecting nomination of M/s GDL by any foreign liner, Shri Kartik Aiyer submitted a copy of the email dated 27.03.2021 from M/s RCL Agencies (India), (foreign liner) to M/s GDL nominating M/s GDL to move the import containers from APMT terminal in JNPT to M/s GDL, Mumbai.
- when asked to state whether any of GDL customers (importers/exporters/freight forwarders/custom house agents) who are paying M/s GDL for the services rendered to them by GDL state that they are paying on behalf of the foreign liners, he answered in the negative.
- when asked to state that when GDL have not entered into any agreement with any of the foreign liners for the services rendered by GDL and to explain how is GDL claiming SEIS benefit as if GDL have providing services to foreign liners, he stated that M/s GDL has no formal agreement with any of the foreign liners or their agents in India; that since the foreign liners ask GDL to receive their containers both for import and export in their CFS which is a customs notified area they have been rendering the services notified in appendix 3E to the paying customer/billing customer/importer/exporter who are normally exporters/importers/freight forwarders/custom house agents for which GDL are claiming SEIS benefits; that in few cases, there are email correspondences and other documents from the agents of the foreign liners asking them to render the notified services to the Indian customers.
- when asked to state how GDL thinks that they have provided service to the

foreign liner especially when GDL is confirming that there is no agreement between GDL and the foreign liners or their agents and especially when GDL’s customers (importers/exporters/freight forwarders/custom house agents) have never told GDL that they are paying on behalf of the foreign liners, Shri Kartik Aiyer answered that their invoices are reflecting the services provided on behalf of the liners and the names of the concerned foreign liners are reflected in the said invoices and hence, they feel that they are providing service to the foreign liner.

- when asked whether GDL are charging foreign liners or do foreign liners pay GDL for the services rendered to its customers i.e., (importers/exporters/freight forwarders/ custom house agents), he replied that GDL do not charge the foreign liners, nor do they pay GDL for the services rendered to their customers (importers/exporters/freight forwarders/custom house agents); that GDL only charges the customers (importers/exporters/freight forwarders/custom house agents) and receive payments from them in Indian Rupees.
- when asked whether there is any specific written requests from these foreign liners to M/sGDL to render the services covered under appendix 3E and as stated/claimed by GDL in their application ANF 3B and reflecting in their invoices (CFS handling charges, document and processing charges, energy surcharge, fuel surcharge, terminal service charges, handling charges, congestion charges, facility charges, admn charges, container tracking charges, housekeeping charges, EIR charges, survey charges, facilitation charges, seal cutting charges, auction container handling charges, scanning charges, handling and transportation charges, weighment etc.), he answered in the negative.
- when shown a few tax invoices generated by M/s GDL as tabulated below which are figuring in the excel sheet provided by M/s GDL for claiming SEIS benefits and when asked to state whether the paying customer / billing customer / Importer / Exporter are theagent (s) of the Shipping line mentioned against each:

TABLE – 5

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GDLIH/1718/003297; 02.08.2017	8353165; 28.01.2017	Shree Sant Kripa Appliances Pvt Ltd., Pune	Shree Sant Kripa Appliances Pvt Ltd., Pune	Shree Sant Kripa Appliances Pvt Ltd., Pune	Star Shipping Services India Pvt. Ltd.	19,13,016
2.	GDLIH/1819/017568; 28.08.2018	8452531; 12.02.2018	Vipul Enterprises, Thane	Vipul Enterprises, Thane	Vipul Enterprises, Thane	RCL Agencies (India) Pvt. Ltd.	22,75,117
3.	PCWIH/1718/14914; 11.11.2017	3528994; 07.10.2017	Blue Bird Logistics (P) Ltd., Delhi	Blue Bird Logistics (P) Ltd., Delhi	Pan India Infra Projects Pvt. Ltd.	Orient Overseas Container Line Ltd,	22,54,272
4.	GSLIH/1819/000601; 12.04.2018	5474896; 06.03.2018	Nippon Express (India) Pvt. Ltd. Chennai	GE Power Conversion India Pvt. Ltd., Chennai	GE Power Conversion India Pvt. Ltd., Chennai	Maersk India Pvt. Ltd.	24,87,322

TABLE 6

Sl. No.	Invoice No. & Date	SB No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
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				customer			
1.	GSL/E/HD/ 1718/00063; 05.04.2017	4960986; 24.03.2017	Interlink Shipping & Clearing Pvt. Ltd., Chennai	Interlink Shipping & Clearing Pvt. Ltd., Chennai	--	T.S.Lines (India) Pvt. Ltd.	41,918
2.	GKPEH1718/ 003178; 08.11.2017	9511187; 26.10.2017	Oceanic Enterprises India Pvt. Ltd., Chennai	Oceanic Enterprises India Pvt. Ltd., Chennai	Ravi Insulating Company	Maersk Line	10,620

Shri Kartik Aiyer stated that the said paying customer / billing customer / Importer / Exporter are not agents of the shipping lines mentioned against each;

- ☐ when asked to state whether M/s GDL have received payments from the said paying customer / billing customer / Importer / Exporter, he answered that M/s GDL have received payments from the said paying customer / billing customer / Importer / Exporter
- ☐ when asked to explain whether M/s GDL are receiving any payments from the foreign liners or their agents in India either in foreign exchange or in Indian Rupees, he answered in the negative.
- ☐ when asked to state that if GDL are not receiving any payments from the foreign liners either in foreign exchange or in Indian Rupees and if the said paying customer / billing customer / Importer / Exporter are not agents of the shipping lines (foreign liners) how is GDL complying with the conditions stated in appendix 3E, he stated that even though the said paying customer / billing customer / Importer / Exporter are not agents of the shipping lines, as per GDL's understanding it is not mandatory that the paying customer/billing customer/importer/ exporter should be an agent of the shipping line.
- ☐ In the light of the invoices shown and asked that GDL are providing services to Indian customers and not foreign customers, he replied that GDL is providing services to Indian customers and not foreign customers and that the said services are provided to these Indian customers on behalf of the foreign liners in customs notified area, i.e., their CFS.
- ☐ when tax invoice number GKPEH1718/003178 dt 08.11.2017 for Rs 10,620/- (for handling export consignment) was shown and asked why the amount reflected in the said invoice should not be treated as ineligible for the purpose of claiming SEIS benefits by M/s GDL since the invoice was raised on M/s Oceanic Enterprises India Pvt. Ltd., Chennai, the CHA (Indian entity) for the services rendered to M/s Ravi Insulating Company (exporter-Indian entity) and the entire transaction did not appear to generate any foreign exchange as earning in as much as GDL have not rendered service to the foreign customers in terms of Para 9.51 of the FTP and not received payment in foreign exchange from the foreign customers, Shri Kartik Aiyer replied that no foreign exchange has been received by M/s GDL in respect of the service rendered by M/s GDL (an Indian entity) to M/s Ravi Insulating Company (an Indian entity); that as per their understanding the income arising out of this invoice is deemed foreign exchange as per paragraph 3.08(c) of the FTP, 2015-20 and hence they have included this income in their SEIS claim; that the entire transaction arise out of the container which belongs to M/s Maersk Line which is a foreign liner and GDL have handled this transaction on behalf of M/s Maersk Line.
- ☐ when asked to state whether M/s Maersk Line specifically asked M/s GDL in writing to render the services viz. CFS handling charges to the exporter M/s

Ravi Insulating Company he answered in the negative.

- when tax invoice number GDLIH/1718/ 003297 dt 02.08.2017 for Rs 19,13,016/- (for handling import consignment) was shown and asked why the amount reflected in the said invoice should not be treated as ineligible for the purpose of claiming SEIS benefits by M/s GDL since the invoice was raised on the importer M/s Shree Sant Kripa Appliances Pvt. Ltd (Indian entity) and not to the foreign liner viz., M/s Star Shipping Services India Pvt Ltd and the entire transaction did not appear to generate any foreign exchange as earning in as much as GDL have not rendered service to the foreign customers in terms of Para 9.51 of the FTP and not received payment in foreign exchange from the foreign customers, in as much as the responsibility of the liner ends with the unloading of the import cargo (in the container belonging to the liner) in the terminal area of the seaport, Shri Kartik Aiyer stated that the service has been rendered by M/s GDL (an Indian entity) to M/s Shree Sant Kripa Appliances Pvt. Ltd (an Indian entity) for which no foreign exchange has been received by M/s GDL; that as per their understanding the income arising out of this invoice is deemed foreign exchange as per paragraph 3.08(c) of the FTP, 2015-20 and hence they have included this income in their SEIS claim; that the entire transaction arises out of the container which belongs to M/s Star Shipping Services which is a foreign liner and GDL have handled this transaction on behalf of M/s Star Shipping Services.
- when asked to state whether M/s Star Shipping Services specifically asked M/s GDL to render the services viz., docu and processing charges, energy surcharge, fuel surcharge, terminal service charges, handling charges, congestion charges, facility charges, admn charges, container tracking charges, housekeeping charges, EIR charges, survey charges, facilitation charges, seal cutting charges, auction container handling charges, scanning charges to the importer M/s Shree Sant Kripa Appliances Pvt. Ltd, he answered in the negative.
- when asked to state that GDL has claimed SEIS benefits (which is otherwise ineligible) for the services rendered to Indian customers as reflected in the SEIS applications on the basis of wilfull mis-statement/suppression of facts in as much as GDL are providing services to importers/exporters/CHAs/freight forwarders etc. who are all Indian entities; that there is no service agreements by M/s GDL with foreign liners; that foreign liners arenot paying in foreign exchange or in Indian Rupees to M/s GDL; that no remittances is being made by the agents of foreign liners to M/s GDL, Shri Kartik Aiyer replied that since M/s GDL operates container freight station which is a notified customs area and handles containers on behalf of foreign liners and the income earned by M/s GDL is received in Indian Rupees from Indian entities which would have otherwise been receivedin foreign exchange by the foreign liners from these Indian entities had these foreignliners directly serviced these Indian entities; that hence, they are of the opinion that they are eligible for the SEIS benefits.

25.1. To summarize: Foreign liners have not asked GDL to perform the services such as cargo handling, cargo storage, energy surcharge, fuel surcharge, ground rent, handling & transportation, lashing choking, plugging, survey CLP & EIR, warehouse reservation, customsexamination, scanning charges, weighment etc. to the customers of GDL; that Foreign liners or their Indian agents have not paid GDL, for such services rendered to the customers of GDL; that the customers of GDL have not paid GDL on behalf of the Foreign liners or their Indian agents; that GDL had no formal agreement with the Foreign liners or its Indian agents; that Foreign liners or its Indian agents did not ask GDL to receive their containers in their CFS. Since the names of the foreign liners are reflected in their invoices,

GDL have assumed that they were providing services to the foreign liners. Neither there were any written agreement/contract from the foreign liners to GDL to render services covered under Appendix 3E nor they have received any payment in foreign exchange or INR from the foreign liners or its Indian agents for the services rendered. The paying customer / billing customer / Importer / Exporter from whom GDL received the payments for the services rendered by them who are Indian entities are not agents of the foreign liners or its Indian agents.

Statements given by Foreign Liners or their Agents in India:-

26. Statement dated 09.04.2021 was recorded from Shri Ramalingam Balasubramaniam, Senior Manager, Operations, M/s Ocean Network Express (India) Pvt Ltd (liner) **(RUD- 3)** Shri Ramalingam Balasubramaniam, in his statement has inter-alia stated that:

□ they are basically a sea carrier involved in the transportation of sea cargo in containers from one country to another; that they own a few vessels and have their own containers on a lease agreement basis; that they transport sea cargo in containers in their own vessels as well as in other vessels; that they transport sea cargo in containers belonging to other operators; that with regard to exports they receive export cargo in containers on a laden basis (i.e., cargo stuffed and sealed in container laden on a trailer) at the terminal in the seaport; that the exporter is free to choose the CFS through which the cargo is stuffed and they as a foreign liner do not have any role in this; that their responsibility starts from the point the laden container arrives at the terminal in the seaport; that with regard to imports, most of the imports are through DPD (Direct Port Delivery) and the rest are through CFS; that the importers communicate their choice i.e. DPD or CFS through a third-party software called ODEX wherein they mention whether it is DPD or through CFS; that if it is through CFS, they clearly mention the name of the CFS which is always their choice and Ocean Network Express as a foreign liner do not have any say on the choice of the CFS; that based on the communication filed by various importers, they file the IGM in the Icegate incorporating the information container wise as to whether it is DPD or through the CFS preferred by the importers; that after filing of IGM, the concerned CFS file the PNR with the Customs for taking delivery of the containers allotted to their CFS as per the importers choice and move the import containers from the terminal in the seaport to their CFS; that once the containers are unloaded from the vessel into the terminal inside the seaport, their role as agent of their own foreign liner ends and they have nothing to do with the picking up of the imports from the terminal to the respective CFS.

□ they have not appointed any agents in India in as much as they as a foreign liner themselves carry out the activities described above; that they are the agent in India for M/s Ocean Network Express Pte Ltd, Singapore, being the foreign entity registered in Singapore.

□ they have not requested or instructed M/s GDL in writing to render any services to the exporters or importers or freight forwarders or custom house agents in relation to the cargo containers transported in their vessels.

□ M/s GDL have not rendered any services to them either in the Port/Terminal or in their CFS. Hence, the question of them as agent of M/s Ocean Network Express Pte Ltd, Singapore or M/s Ocean Network Express Pte Ltd, Singapore paying GDL either in foreign exchange or in Indian Rupees does not arise.

□ they have not appointed any of the exporters or importers or freight forwarders or custom house agents as their agents in India.

□ when asked to go through the tax invoices generated by M/s GDL as tabulated below for which SEIS benefits have been claimed by M/s GDL and to state to whom the services mentioned in the tax invoices were rendered by M/s GDL and also to state whether the said services were rendered by M/s GDL on their behalf

TABLE – 7

Sl. No.	Invoice No. & Date	SB/BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Exporter/Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLEH/1819/02572 dt 18.08.2018	6929179/16.08.2018	M/s Manilal Patel C&F Pvt Ltd	M/s Manilal Patel C&F Pvt Ltd	M/s Cotwin Knits	ONE (Ocean Network Express) Line (India) Pvt Ltd	7,080
2.	GSLIH/1819/001844 dt 03.05.2018	6159984 dt 27.04.2018	M/s Accumetric Silicones P Ltd	M/s Accumetric Silicones P Ltd	M/s Accumetric Silicones P Ltd	ONE (Ocean Network Express) Line (India) Pvt Ltd	11,859

Shri Ramalingam Balasuramaniam categorically stated that M/s GDL have not rendered the services on their behalf and they have not told them to do neither orally nor in any written form; that this is a pure business transaction between M/s GDL and the importer/exporter/CHA as the case may be and M/s Ocean Network Express Line (India) Pvt Ltd does not have any role in this; that M/s Ocean Network Express Line (India) Pvt Ltd is only mentioned in the tax invoices as they are the agent of the foreign liner for the vessel as well as the containers mentioned in the tax invoices mentioned above; that the tax invoices were not raised on them but to the billing customers viz., M/s Manilal Patel C&F Pvt Ltd and M/s Accumetric Silicones P Ltd as it is evident from the said tax invoices.

□ when asked to state whether they have ever asked the importers/exporters to pay the CFS on behalf of them, he answered that this question does not arise in view of his above answers.

26.1. To summarize: The exporters or importers are free to choose the CFS through which their cargo is stuffed/destuffed and Ocean Network Express (Liner) did not have any role in this; that they have not requested/instructed GDL in writing or orally to render any services to exporters/importers/freight forwarders/CHAs in relation to the cargo containers transported in their vessels; that they have not appointed any of the exporters/importers/ freight forwarders/CHAs as their agents in India; and that they have not asked the exporters/importers/freight forwarders/CHAs to pay GDL on their behalf ; M/s GDL have not rendered any services to them either in the Port/Terminal or in their CFS, hence, the question of they as agent of foreign liners paying GDL either in foreign exchange or in Indian Rupees does not arise.

27. Statement dt 05.07.2022 of Shri N. Shyam Sundar, Branch Manager, M/s CMA CGM Agencies India Pvt Ltd, Chennai (Liner) u/s 108 of the Customs Act, 1962 **(RUD- 4)**. Shri N. Shyam Sundar, in his statement, inter alia has stated that:

□ When asked to state in detail the nature of work undertaken by them as a foreign liner, Shri N. Shyam Sundar stated that M/s CMA CGM Agencies India Pvt Ltd having it's head office in Mumbai and having branches in Chennai, Bangalore, Coimbatore etc, is the agent of M/s CMA CGM SA, Marseilles, France; that they are basically a sea carrier involved in the transportation of sea cargo in containers from one country to another; that they own a few vessels and have their own containers; that they transport sea cargo in containers in their own vessels as well as in other vessels; that similarly, they transport sea cargo in containers belonging to other operators; that with regard to exports they receive export cargo in containers on a laden basis (i.e, cargo stuffed and sealed in container laden on a

trailer) at the terminal in the seaport; that the exporter is free to choose the CFS through which the cargo is stuffed and they as a foreign liner do not have any role in this; that their responsibility starts from the point the laden container arrives at the terminal in the seaport; that with regard to imports, most of the imports are through DPD (Direct Port Delivery) and the rest are through CFS; that the importers communicate their choice i.e. DPD or CFS through a software platform called ODEX; that if it is through CFS, they clearly mention the name of the CFS which is always their choice and they as a foreign liner do not have any say on the choice of the CFS; that based on the communication filed by various importers, they file the IGM in the ICEGATE incorporating the information container wise as to whether it is DPD or through the CFS preferred by the importers; that after filing of IGM, the concerned CFS file the PNR with the Customs for taking delivery of the containers allotted to their CFS as per the importers choice and move the import containers from the terminal in the seaport to their CFS; that once the containers are unloaded from the vessel into the terminal inside the seaport, their role as agent of their own foreign liner ends and they have nothing to do with the picking up of the imports from the terminal to the respective CFS.

□ When asked whether M/s CMA CGM SA, Marseilles, France directed them CMA CGM Agencies India Pvt Ltd to avail the services of CFS facility of M/s GDL, he stated in the negative; that with regard to imports, M/s CMA CGM Agencies India Pvt Ltd have an agreement with M/s GDL for movement of import containers from the seaport to their CFS.

□ When asked to state that based on the agreement between them and M/s GDL, have M/s GDL raised any tax invoice on M/s CMA CGM Agencies India Pvt Ltd for the movement of import containers, he answered in the negative.

□ When asked to state whether they have specifically requested or instructed M/s GDL in writing to render any services viz., handling and transportation charges etc to the exporters or importers or freight forwarders or custom house agents in relation to the cargo containers transported in their vessels (both import and export containers), he answered in the negative.

□ When asked to state whether M/s GDL rendered any services to them either in the Port/Terminal or in their CFS for which M/s GDL have raised any tax invoice on them and for which they have paid them either in foreign exchange or in Indian Rupees or have the foreign entity M/s CMA CGM SA, Marseilles, France paid them in foreign exchange or in Indian Rupee, he answered in the negative.

□ When asked whether they have appointed any of the exporters or importers or freight forwarders or custom house agents as their agents in India in relation to services rendered in the CFS of M/s GDL, he answered in the negative.

□ When asked to go through the tax invoices generated by M/s GDL as tabulated below for which SEIS benefits have been claimed by M/s GDL and state to whom the services mentioned in the tax invoices were rendered by M/s GDL and also to state whether the said services were rendered by M/s GDL on their behalf

TABLE - 8

Sl. No.	Invoice No. & Date	SB No. & Date	Name of the paying customer	Name of the billing customer	Name of the Exporter	Name of the Shipping Line	Amount (in Rs.)
1.	GSLEH/1718/04863 dt 13.01.2018	1896978/30.12.2017	M/s Insoorya Express Cargo, Chennai	M/s Insoorya Express Cargo, Chennai	M/s Hyundai Motors Indi Ltd	CMA CGM Agencies India Pvt Ltd	84,960
2.	GSLEH/1718/05786 dt 19.02.2018	254412/30.01.2018	M/s Insoorya Express Cargo, Chennai	M/s Insoorya Express Cargo, Chennai	M/s Hyundai Motors Indi Ltd	CMA CGM Agencies India Pvt Ltd	42,480

Shri N. Shyam Sundar stated in respect of both the invoices M/s GDL have rendered the stated service viz., Handling & Transportation to M/s Insoorya Express Cargo, Chennai, (CHA) on behalf of the exporter M/s Hyundai Motors Indi Ltd; that M/s GDL have not rendered the above-mentioned services on their (liner) behalf and they have not told them to render these services neither orally nor in any written form; that this is a pure business transaction between M/s GDL and the CHA/exporter and they, M/s CMA CGM Agencies India Pvt Ltd (as Liner) do not have any role in this; that M/s CMA CGM Agencies India Pvt Ltd is only mentioned as Shipping Line in the tax invoices as they are the agent of the foreign liner for the vessel as well as the containers mentioned in the tax invoices mentioned above; that the tax invoices were not raised on them but to the billing customer viz., M/s Insoorya Express Cargo, Chennai, as it is evident from the said tax invoices.

□ When asked have they ever asked the importers/exporters to pay M/s GDL CFS on their behalf, he answered in the negative.

□ When asked to go through the statement dated 30.03.2021 of Shri Kartik Iyer, Senior General Manager, Finance and Accounts, M/s Gateway Distriparks Ltd, Mumbai especially his answers to question numbers 2,9,16,19,21 and clarify their claim that they have provided services to the importers/exporters/freight forwarders/custom house agents on behalf of the foreign liners, Shri N. Shyam Sundar, after going through the statement dated 30.03.2021 of Shri Kartik Iyer stated that their claim that they have provided services to the importers/exporters/freight forwarders/custom house agents on behalf of the foreign liners does not appear to be correct.

27.1 : To summarize: They have not requested/instructed GDL in writing or orally to render any services to exporters/importers/freight forwarders/CHAs in relation to the cargo containers transported in their vessels; that they have not appointed any of the exporters/importers/ freight forwarders/CHAs as their agents in India; and that they have not asked the exporters/importers/freight forwarders/CHAs to pay GDL on their behalf or receive any amount from them; that the services rendered by GDL to their customers in their CFS for which they received the payments in INR is not remitted in foreign exchange to the foreign liners or their Indian agents or received from overseas buyer in foreign exchange by their customers viz exporters/importers/freight forwarders/CHAs

28. Statement dt 07.07.2022 of Shri Mohammed Riyaz Ahamed, Manager Documentation, M/s Samudera Shipping Line (I) Pvt Ltd, Chennai (Liner) u/s 108 of the Customs Act, 1962 (**RUD- 5**). Shri Mohammed Riyaz Ahamed, in his statement, inter alia has stated as follows:

□ When asked to state in detail the nature of work undertaken by them as a foreign liner, Shri Mohammed Riyaz Ahamed stated that M/s Samudera Shipping Line India Pvt Ltd, having its head office in Mumbai and having branches in Chennai and Kolkata, is the agent of M/s PT Samudera Shipping Line Jakarta; that they are basically a sea carrier involved in the transportation of sea cargo in containers from one country to another; that they own a few vessels and have their own containers; that they transport sea cargo in containers in their own vessels as well as in other vessels; that similarly they transport sea cargo in containers belonging to other operators; that with regard to exports they receive export cargo in containers on a laden basis (i.e., cargo stuffed and sealed in container laden on a trailer) at the terminal in the seaport; that the exporter is free to choose the CFS through which the cargo is stuffed and they as a foreign liner do not have any role in this; that their responsibility starts from the point the

laden container arrives at the terminal in the seaport; that with regard to imports, imports are through DPD (Direct Port Delivery) and through CFS; that the importers communicate their choice i.e. DPD or CFS through email; that if it is through CFS, they clearly mention the name of the CFS which is always their choice and they as a foreign liner do not have any say on the choice of the CFS; that based on the communication filed by various importers, they file the IGM in the Icegate incorporating the information container wise as to whether it is DPD or through the CFS preferred by the importers; that after filing of IGM, the concerned CFS file the PNR with the Customs for taking delivery of the containers allotted to their CFS as per the importers choice and move the import containers from the terminal in the seaport to their CFS; that once the containers are unloaded from the vessel into the terminal inside the seaport, their role as agent of their own foreign liner ends and they have nothing to do with the picking up of the imports from the terminal to the respective CFS.

□ When asked whether M/s PT Samudera Shipping Line Jakarta (foreign liner) or they M/s Samudera Shipping Line India Pvt Ltd directed M/s Shreesh Impex Pvt Ltd or M/s VithanLogistics to avail the services of CFS facility of M/s GDL, he answered in the negative.

When asked whether they have specifically requested or instructed M/s GDL in writing to render any services viz., handling and transportation charges etc to the exporters or importers or freight forwarders or custom house agents in relation to the cargo containers transported in their vessels (both import and export containers), he answered in the negative.

□ When asked whether M/s GDL rendered any services to them either in the Port/Terminal or in their CFS for which M/s GDL have raised any tax invoice on them and for which they have paid them (GDL) either in foreign exchange or in Indian Rupees or have their foreign entity M/s PT Samudera Shipping Line Jakarta paid them in foreign exchange or in Indian Rupee, he answered in the negative.

➤ When asked whether they have appointed any of the exporters or importers or freight forwarders or custom house agents as their agents in India in relation to services rendered in the CFS of M/s GDL, he answered in the negative

□ When asked to go through the tax invoice generated by M/s GDL as tabulated below for which SEIS benefits have been claimed by M/s GDL and state to whom the services mentioned in the tax invoice were rendered by M/s GDL and also to state whether the said services were rendered by M/s GDL on their behalf-

TABLE - 9

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH/1718/004515 dt 09.09.2017	3007030/28.08.2017	M/s Vithan Logistics, Chennai	M/s Shreesh Impex Pvt Ltd	M/s Shreesh Impex Pvt Ltd	M/s Samudera Shipping Line (I) Pvt Ltd	20,768/-

Shri Mohammed Riyaz Ahamed stated that M/s GDL have rendered the stated service viz., Handling & Transportation to M/s Shreesh Impex Pvt Ltd (importer); that M/s GDL have not rendered the above-mentioned services on their behalf and they have not told them to render these services neither orally nor in any written form; that this is a pure business transaction between M/s GDL and the importer and they, M/s Samudera Shipping Line India Pvt Ltd (as Liner) do not have any role in this; that M/s Samudera Shipping Line India Pvt Ltd is only mentioned as Shipping Line in the tax invoice as they are the agent of the foreign liner M/s PT

Samudera Shipping Line Jakarta; that the tax invoice was not raised on them but to the billing customer viz., M/s Shreesh Impex Pvt Ltd, as it is evident from the said tax invoice.

□ When asked to state whether they have ever asked the importers/exporters to pay M/s GDL CFS on their behalf, he answered in the negative.

□ When asked to go through the statement dated 30.03.2021 of Shri Kartik Iyer, Senior General Manager, Finance and Accounts, M/s Gateway Distriparks Ltd, Mumbai especially his answers to question numbers 2,9,16,19,21 in which they claim that they have provided services to the importers/exporters/freight forwarders/custom house agents on behalf of the foreign liners and clarify the same, Shri Mohammed Riyaz Ahamed stated that their claim that they have provided services to the importers/exporters/freight forwarders/custom house agentson behalf of the foreign liners does not appear to be correct.

28.1 : To summarize: They have not requested/instructed GDL in writing or orally to render any services to exporters/importers/freight forwarders/CHAs in relation to the cargo containers transported in their vessels; that they have not appointed any of the exporters/importers/ freight forwarders/CHAs as their agents in India; and that they have not asked the exporters/importers/freight forwarders/CHAs to pay GDL on their behalf or receive any amount from them; that the services rendered by GDL to their customers in their CFS for which they received the payments in INR is not remitted in foreign exchange to the foreign liners or their Indian agents or received from overseas buyer in foreign exchange by their customers viz exporters/importers/freight forwarders/CHAs.

29. Statement dt 05.07.2022 of Shri G. Nagamuni, Senior Executive, Equipment Controlin M/s Wan Hai Lines India Pvt Ltd, Chennai (Liner) u/s 108 of the Customs Act, 1962 (**RUD- 6**). Shri G. Nagamuni, in his statement has inter-alia stated that as follows:

□ When asked to state in detail the nature of work undertaken by them as a foreign liner, Shri G. Nagamuni stated that M/s Wan Hai Lines India Pvt Ltd having its head office in Mumbai and having branches in Chennai, Vizag, Mundra etc., is the agent of M/s Wan Hai Lines Taipei, Taiwan; that they are basically a sea carrier involved in the transportation of sea cargo in containers from one country to another; that they own a few vessels and have their own containers; that they transport sea cargo in containers in their own vessels as well as in other vessels; that similarly, they transport sea cargo in containers belonging to other operators; that with regard to exports they receive export cargo in containers on a laden basis (i.e., cargo stuffed and sealed in container laden on a trailer) at the terminal in the seaport; thatthe exporter is free to choose the CFS through which the cargo is stuffed and they as a foreign liner do not have any role in this; that their responsibility starts from the point the laden container arrives at the terminal in the seaport; that with regard to imports, most of the importsare through DPD (Direct Port Delivery) and the rest are through CFS; that the importers communicate their choice i.e. DPD or CFS through email to them; that if it is through CFS, they clearly mention the name of the CFS which is always their choice and they as a foreign liner do not have any say on the choice of the CFS; that based on the communication filed by various importers, they file the IGM in the Icegate incorporating the information container wise as to whether it is DPD or through the CFS preferred by the importers; that after filing of IGM, the concerned CFS file the PNR with the Customs for taking delivery of the containers allotted to their CFS as per the importers choice and move the import containers from the terminal in the seaport to their CFS; that once the containers are unloaded from the vessel into the terminal inside the seaport, their role as agent of their own foreign liner ends and theyhave nothing to do with the picking up

of the imports from the terminal to the respective CFS.

- When asked to state whether M/s Wan Hai Lines Taipei, Taiwan directed them M/s Wan Hai Lines India Pvt Ltd to avail the services of CFS facility of M/s GDL, he answered in the negative.
- When asked whether they have entered into an agreement or contract or memorandum of understanding with M/s GDL in relation to handling of containers (both import and export containers) which were transported in their vessels, he stated that they have contracts with their CFS vendors all over India including M/s GDL, Chennai for movement of empty containers from the empty yard to the terminal at the sea port; that they do not have any separate agreement with M/s GDL as far as movement of import containers from the terminal to their CFS; that the agreement with M/s GDL will cover any loss or damage or accident or theft of the import containers during the movement of containers from the terminal in the seaport to the CFS and similarly if any damage or loss or accident of theft of the import containers happens in the CFS, M/s GDL will be responsible; that this clause in the agreement is only to protect M/s Wan Hai Lines India Pvt Ltd from incurring any loss pertaining to the import containers/import cargo.
- When asked to state whether they have specifically requested or instructed M/s GDL in writing to render any services viz., handling and transportation charges etc to the exporters or importers or freight forwarders or custom house agents in relation to the cargo containers transported in their vessels (both import and export containers), he answered in the negative.
- When asked whether M/s GDL rendered any services to them either in the Port/Terminal or in their CFS for which M/s GDL have raised any tax invoice on them and for which they have paid them either in foreign exchange or in Indian Rupees or have their foreign entity M/s Wan Hai Lines Taipei paid them in foreign exchange or in Indian Rupee, he answered in the negative and further stated that however, M/s GDL have raised invoice on them for transportation of their empty containers from the yard to the terminal at seaport for which they have paid in Indian rupees; that they (GDL) have not rendered any services to them either in the Port/Terminal or in their CFS; that hence, the question of them as agent of M/s Wan Hai Lines, Taipei or M/s Wan Hai Lines, Taipei themselves paying them (GDL) either in foreign exchange or in Indian Rupees does not arise.
- When asked to state whether they have appointed any of the exporters or importers or freight forwarders or custom house agents as their agents in India, he answered in the negative.
- When asked to go through the tax invoices generated by M/s GDL as tabulated below for which SEIS benefits have been claimed by M/s GDL and state to whom the services mentioned in the tax invoices were rendered by M/s GDL and to state whether the said services were rendered by M/s GDL on their behalf-

TABLE – 10

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH/171 8/065 dt 29.03.201	5607196/ 16.03.2018	M/s Paramount Shipping Services Pvt Ltd, Chennai	M/s Paramount Shipping Services Pvt Ltd, Chennai	M/s Unicharm India Pvt Ltd	Wan Hai Lines India Pvt Ltd	54,280
2.	GSLIH/171 8/017 dt 26.03.201	5679240	M/s Paramount Shipping Services Pvt Ltd, Chennai	M/s Paramount Shipping Services Pvt Ltd, Chennai	M/s TT Steel Service India Pvt Ltd	Wan Hai Lines India Pvt Ltd	1,98,240

Shri G. Nagamuni stated that in respect of invoice at Sl No 1, M/s GDL have rendered the stated service viz., docu & Process charges, energy Surcharge, Fuel

Surcharge, Handling & Transportation and Weighment to M/s Paramount Shipping Services Pvt Ltd, Chennai (CHA) on behalf of the importer M/s Unicharm India Pvt Ltd; that in respect of invoice at Sl No 2, M/s GDL have rendered the stated service viz., Handling & Transportation to M/s Paramount Shipping Services Pvt Ltd, Chennai on behalf of the importer M/s TT Steel Service India Pvt Ltd; that M/s GDL have not rendered the above-mentioned services on their behalf and they have not told them (GDL) to render these services neither orally nor in any written form; that this is a pure business transaction between M/s GDL and the CHA/importers and they, M/s Wan Hai Lines India Pvt Ltd (as Liner) do not have any role in this; that M/s Wan Hai Lines India Pvt Ltd is only mentioned as Shipping Line in the tax invoices as they are the agent of the foreign liner for the vessel as well as the containers mentioned in the tax invoices mentioned above; that however, the tax invoices were not raised on them but to the billing customer viz., M/s Paramount Shipping Services Pvt Ltd as it is evident from the said tax invoices.

□ When asked to state whether they have ever asked the importers/exporters to pay the CFS on their behalf, he answered in the negative.

□ When asked to go through the statement dated 30.03.2021 of Shri Kartik Iyer, Senior General Manager, Finance and Accounts, M/s Gateway Distriparks Ltd, Mumbai especially his answers to question numbers 2,9,16,19,21 and to clarify their claim that they have provided services to the importers/exporters/freight forwarders/custom house agents on behalf of the foreign liners, Shri G. Nagamuni did not wish to comment.

29.1. To summarize, the foreign liners have categorically stated that they have nothing to do with the transactions of GDL with the Indian importers, the Indian exporters, the Indian Customs Brokers as reflected in the tax invoices generated by GDL and that the claim of GDL that they have done these transactions on behalf of the liners is not correct. The Indian importers, the Indian exporters and their customs brokers also have categorically stated that they have not entered into these transactions with GDL on behalf of any foreign liners.

Voluntary statements under section 108 of the Customs Act, 1962, given by Importers, Exporters, Customs Brokers:

30. Statement dated 17.12.2021 of Shri A.V. Balaji, Manager (Operations), M/s Paramount Shipping Services Pvt Ltd, Chennai (Customs Brokers). **(RUD- 7)** Shri A.V. Balaji, in his statement has inter-alia stated that:

□ When shown the tax invoice of M/s Gateway Distriparks Limited, (GDL) Chennai described below:

TABLE – 11

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH21 22/ 000091 03.04.2021	3314822; 26.03.20 21	M/s Paramount Shipping Services Pvt Ltd, Chennai	M/s Paramount Shipping Services Pvt Ltd, Chennai	Cataler India Auto Parts, Bangalore	ONE (Ocean Network Express)	18,969/-

and to state who paid the amount of Rs 18,969/- to M/s GDL and why, Shri A.V. Balaji stated that the amount of Rs 18,969/- was towards the services rendered by M/s GDL for clearing the said import containers from their CFS; that the same was paid by M/s Paramount Shipping Services Pvt Ltd, Chennai to M/s GDL; that they are the CHA who handled the said import consignment for Cataler India Auto Parts, Bangalore; that they, in turn raised tax invoice on M/s Cataler India Auto Parts, Bangalore and they paid them.

- ☐ when asked to state
- a) Whether M/s Cataler India Auto Parts, Bangalore or M/s Paramount Shipping Services Pvt Ltd, Chennai is an agent of M/s ONE (Ocean Network Express)
 - b) Whether M/s ONE (Ocean Network Express) instructed M/s GDL to render the following services viz., Docu & Process Charges, Energy Surcharge, Fuel Surcharge, Terminal Service Charges, Handling & Transportation, Custom Bottle Seal, on behalf of M/s Cataler India Auto Parts, Bangalore or on behalf of M/s Paramount Shipping Services Pvt Ltd, Chennai
 - c) Whether they paid any amount to M/s ONE (Ocean Network Express) or their Indian Agent(s) either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports.

Shri A.V. Balaji in respect of

- a) stated that M/s Paramount Shipping Services Pvt Ltd, Chennai or M/s Cataler India Auto Parts, Bangalore is NOT an agent of M/s ONE (Ocean Network Express).
- b) stated that M/s ONE (Ocean Network Express). has NOT instructed M/s GDL to render the above-mentioned services on their behalf or on behalf of M/s Cataler India Auto Parts, Bangalore.
- c) stated that they have never paid any amount to M/s ONE (Ocean Network Express). or their Indian Agent(s) either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports as reflected in the above said tax invoice.

31. Statement dt 06.07.2022 of Shri K. Mohanasundaram, General Manager, (Traffic & Customs), M/s Hyundai Motor India Ltd u/s 108 of the Customs Act, 1962 (**RUD- 8**). Shri K. Mohanasundaram, in his statement, inter alia has stated that:

☐ When asked to go through the tax invoice generated by M/s Gateway Distriparks Limited (GDL) as tabulated below for which SEIS benefits have been claimed by M/s GDL and to answer the following:

TABLE – 12

Sl. No.	Invoice No. & Date	SB No. & Date	Name of the paying customer	Name of the billing customer	Name of the Exporter	Name of the Shipping Line	Amount (in Rs.)
1.	GSLEH/1718/04863 dt 13.01.2018	1896978/30.12.2017	M/s Insoorya Express Cargo, Chennai	M/s Insoorya Express Cargo, Chennai	M/s Hyundai Motor Indi Ltd	CMA CGM Agencies India Pvt Ltd	84,960
2.	GSLEH/1718/05786 dt 19.02.2018	254412/30.00.18	M/s Insoorya Express Cargo, Chennai	M/s Insoorya Express Cargo, Chennai	M/s Hyundai Motor Indi Ltd	CMA CGM Agencies India Pvt Ltd	42,480

- (a) What are the services rendered by M/s GDL to you as exporter for the above invoice?
- (b) As exporter, have you requested M/s GDL in writing or orally to render these services to you?
- (c) Has the foreign liner M/s CMA CGM Agencies India Pvt Ltd directed you in writing or orally to avail the services of CFS facility of M/s GDL?
- (d) Have you paid the amount of Rs 84,960/- and Rs. 42,480/- to M/s GDL?
- (e) Have you entered into any tripartite agreement involving the foreign liner M/s CMACGM Agencies India Pvt Ltd and the CFS, M/s GDL with regard to your exports?

Shri Mohanasundaram stated as follows. In respect of

- (a) M/s GDL have rendered the following services viz., Handling & Transportation in respect of our export consignment covered under the shipping bill nos 1896978/30.12.2017 and 254412/30.01.2018.
- (b) As exporter, we have not requested M/s GDL either in writing or orally to render these services to us.
- (c) The foreign liner M/s CMA CGM Agencies India Pvt Ltd has not directed us in writing or orally to avail the services of CFS facility of M/s GDL.
- (d) We, as exporter have not paid the amount of Rs 84,960/- and Rs. 42,480/- to M/s GDL. The said amount was paid by M/s Insoorya Express Cargo, Chennai to whom M/s GDL have billed the invoice amounts. M/s Insoorya Express Cargo have in turn raised a bill to us alongwith the CHA services rendered by them to us in respect of the above export consignments.
- (e) No.

☐ When asked who decides the choice of CFS with respect to their export consignments and whether the liner have any role in their choice of CFS, he answered that the choice of CFS will be done by their CHA depending upon the availability of the customs officers and the infrastructural facility available at the given CFS so that there is no delay in clearance of their export consignments; that the foreign liner does not have any role in this.

☐ When asked whether the foreign liner M/s CMA CGM Agencies India Pvt Ltd asked them to pay M/s GDL on their behalf in respect of the services rendered by M/s GDL in their CFS with respect to their exports, he answered in the negative.

32. Statement dt 06.07.2022 of Shri K.A. Srinivasan, Senior Executive, M/s Insoorya Express Cargo, Chennai (Customs Broker) u/s 108 of the Customs Act, 1962 (RUD- 9). Shri K. A. Srinivasan, in his statement, inter alia has stated that:

☐ When asked to see the tax invoices of M/s Gateway Distriparks Limited, (GDL) Chennai described below:

TABLE - 13

Sl. No.	Invoice No. & Date	SB No. & Date	Name of the paying customer	Name of the billing customer	Name of the Exporter	Name of the Shipping Line	Amount (in Rs.)
1.	GSLEH/1718/04863 dt 13.01.2018	1896978/30.12.2017	M/s Insoorya Express Cargo, Chennai	M/s Insoorya Express Cargo, Chennai	M/s Hyundai Motor India Ltd	CMA CGM Agencies India Pvt Ltd	84,960
2.	GSLEH/1718/05786 dt 19.02.2018	254412/30.01.2018	M/s Insoorya Express Cargo, Chennai	M/s Insoorya Express Cargo, Chennai	M/s Hyundai Motor India Ltd	CMA CGM Agencies India Pvt Ltd	42,480

and to state who paid the amount of Rs 84,960/- and Rs. 42,480/- to M/s GDL and why, Shri Srinivasan stated that the amount of Rs 84,960/- and Rs. 42,480/- was towards the services of handling and transportation rendered by M/s GDL for clearing the said export containers from their CFS; that the amount of Rs 84,960/- and Rs. 42,480/- was paid by M/s Insoorya Express Cargo, Chennai to M/s GDL; that they are the CHA who handled the said export consignment for M/s Hyundai Motor India Ltd; that they, in turn raised tax invoice on M/s Hyundai Motor India Ltd and they (Hyundai) paid them.

- ☐ When asked to state the following.
- a) Whether M/s Hyundai Motor India Ltd or M/s Insoorya Express Cargo, Chennai is an agent of M/s CMA CGM Agencies India Pvt Ltd?
 - b) Whether M/s CMA CGM Agencies India Pvt Ltd instructed M/s GDL to render the following services viz., Handling & Transportation, on behalf of M/s Hyundai Motor India Ltd or on behalf of M/s Insoorya Express Cargo, Chennai?
 - c) Have you paid any amount to M/s CMA CGM Agencies India Pvt Ltd either in foreign currency or in Indian currency for the services rendered by M/s

GDL in connection with the said exports?

Shri K.A. Srinivasan stated as follows.

In respect of a) M/s Insoorya Express Cargo, Chennai or M/s Hyundai Motor India Ltd is NOT an agent of M/s CMA CGM Agencies India Pvt Ltd.

In respect of b) M/s CMA CGM Agencies India Pvt Ltd has NOT instructed M/s GDL to render the above-mentioned services on their behalf or on behalf of M/s Hyundai Motor India Ltd.

In respect of c) they have never paid any amount to M/s CMA CGM Agencies India Pvt Ltd either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said exports as reflected in the above said tax invoices.

33. Statement dt 06.07.2022 of Shri R. Suresh, Proprietor, M/s Vithan Logistics, Chennai (Customs Broker) u/s 108 of the Customs Act, 1962 **(RUD- 10)**. Shri R. Suresh, in his statement, inter alia has stated as follows:

➤ When asked to see the tax invoices of M/s Gateway Distriparks Limited, (GDL) Chennai described below

TABLE - 14

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH/1718/004515 dt 09.09.2017	3007030/28.08.2017	M/s Vithan Logistics, Chennai	M/s Shreesh Impex Pvt Lt	M/s Shreesh Impex Pvt Ltd	M/s Samudera Shipping Line (I) Pvt Ltd	20,768/-

and state who paid the amount of Rs 20,768/- to M/s GDL and why, Shri R. Suresh stated that the amount of Rs 20,768/- was towards the services of handling and transportation rendered by M/s GDL for clearing the said import containers from their CFS; that the amount of Rs 20,768/- was paid by them (M/s Vithan Logistics, Chennai) to M/s GDL; that they are the CHA who handled the said import consignment for M/s Shreesh Impex Pvt Ltd; that since M/s Shreesh Impex Pvt Ltd was the billing customer they got the said amount reimbursed from them.

- When asked to state the following.
- a) Whether M/s Vithan Logistics, Chennai or M/s Shreesh Impex Pvt Ltd is an agent of M/s Samudera Shipping Line (I) Pvt Ltd?

b) Whether M/s Samudera Shipping Line (I) Pvt Ltd instructed M/s GDL to render the following services viz., Handling & Transportation, on behalf of M/s Shreesh Impex Pvt Ltd or on behalf of M/s Vithan Logistics, Chennai?

c) Have you paid any amount to M/s Samudera Shipping Line (I) Pvt Ltd either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports?

Shri R. Suresh stated as follows.

In respect of a) M/s Vithan Logistics, Chennai or M/s Shreesh Impex Pvt Ltd is NOT an agent of M/s Samudera Shipping Line (I) Pvt Ltd.

In respect of b) M/s Samudera Shipping Line (I) Pvt Ltd has NOT instructed M/s GDL to render the above-mentioned services on their behalf or on behalf of M/s Shreesh Impex Pvt Ltd.

In respect of C) They have never paid any amount to M/s Samudera Shipping Line

(I) Pvt Ltd either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports as reflected in the above said tax invoice.

34. Statement dt 11.07.2022 of Shri P. Sivadasan, Accountant, M/s Shreesh Impex Pvt Ltd, Bangalore (Importer) u/s 108 of the Customs Act, 1962 (**RUD- 11**). Shri P. Sivadasan, in his statement, inter alia has stated as follows:

☐ When asked to go through the tax invoice generated by M/s Gateway Distriparks Limited (GDL) as tabulated below for which SEIS benefits have been claimed by M/s GDL and to answer the following-

TABLE - 15

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH/1718/004515 dt 09.09.2017	3007030/28.08.2017	M/s Vithan Logistics, Chennai	M/s Shreesh Impex Pvt Ltd	M/s Shreesh Impex Pvt Ltd	M/s Samudera Shipping Line (I) Pvt Ltd	20,768/-

- What are the services rendered by M/s GDL to you as importer for the above invoice?
- As importer, have you requested M/s GDL in writing or orally to render these services to you?
- Has the foreign liner M/s Samudera Shipping Line (I) Pvt Ltd directed you in writing or orally to avail the services of CFS facility of M/s GDL?
- Have you paid the amount of Rs 20,768/- to M/s GDL?
- Have you entered into any tripartite agreement involving the foreign liner M/s Samudera Shipping Line (I) Pvt Ltd and the CFS, M/s GDL with regard to your imports?

Shri P. Sivadasan stated as follows. In respect of

- M/s GDL have rendered the following services viz., Handling & Transportation in respect of their import consignment covered under Bill of Entry No:3007030/28.08.2017
- As importer, they have not requested M/s GDL either in writing or orally to render these services to them. These services were availed by M/s Vithan Logistics, Chennai who were the CHA who handled this import consignment for them.
- The foreign liner M/s Samudera Shipping Line (I) Pvt Ltd has not directed them in writing or orally to avail the services of CFS facility of M/s GDL
- They, as importer have not paid the amount of Rs 20,768/- to M/s GDL. The said amount was paid by M/s Vithan Logistics, Chennai even though M/s Shreesh Impex Pvt Ltd is mentioned as the billing customer in the said invoice of M/s GDL.
- No.

☐ When asked to state who decides the choice of CFS with respect to their import consignments and whether the liner have any role in their choice of CFS, he stated that the choice of CFS is theirs and the foreign liner does not have any role in this; that they coordinate only with M/s Vithan Logistics who decide the CFS through which their import consignments should be cleared; that for this import consignment, the choice of M/s GDL CFS was their choice and the foreign liner M/s Samudera Shipping Line (I) Pvt Ltd did not have any role in this.

☐ When asked to state whether the foreign liner M/s Samudera Shipping Line (I) Pvt Ltd asked them to pay M/s GDL on their behalf in respect of their imports, he answered in the negative.

35. Statement dt 05.07.2022 of Shri A.V. Balaji, Manager (Operations),

M/s Paramount Shipping Services Pvt Ltd, Chennai (CHA) u/s 108 of the Customs Act, 1962. **(RUD- 12)** Shri A.V. Balaji, in his statement has inter-alia stated that:

□ When asked to see the tax invoice of M/s Gateway Distriparks Limited, (GDL)Chennai described below:-

TABLE-16

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH/1718/018665dated 29.03.2018	5607196/16.03.2018	M/s Paramount Shipping Services Ltd, Chennai	M/s Paramount Shipping Service Ltd, Chennai	M/s Unicharm India Pvt Ltd	Wan Hai Lines India Pvt Ltd	54,280

and to state who paid the amount of Rs. 54,280/- to M/s GDL and why, Shri A.V. Balaji stated that the amount of Rs 54,280/- was towards the services rendered by M/s GDL for clearing the said import containers from their CFS; that the amount of Rs 54,280/- was paid by them M/s Paramount Shipping Services Pvt Ltd, Chennai to M/s GDL; that they are the CHA who handled the said import consignment for M/s Unicharm India Pvt Ltd; that they, in turn raised tax invoice on M/s Unicharm India Pvt Ltd and they (Unicharm) paid them.

□ When told that the subject import consignment had arrived through the vessel belonging to M/s Wan Hai Lines (I) Pvt Ltd and in this connection, to state the following.

- a) Whether M/s Unicharm India Pvt Ltd or M/s Paramount Shipping Services Pvt Ltd, Chennai is an agent of M/s Wan Hai Lines (I) Pvt Ltd?
- b) Whether M/s Wan Hai Lines (I) Pvt Ltd instructed M/s GDL to render the following services viz., docu & Process charges, energy Surcharge, Fuel Surcharge, Handling & Transportation and Weighment, on behalf of M/s Unicharm India Pvt Ltd or on behalf of M/s Paramount Shipping Services Pvt Ltd, Chennai?
- c) Have you paid any amount to M/s Wan Hai Lines (I) Pvt Ltd or their Indian Agent(s) either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports?

Shri A.V. Balaji stated as follows.

In respect of a) M/s Paramount Shipping Services Pvt Ltd, Chennai or M/s Unicharm India Pvt Ltd is NOT an agent of M/s Wan Hai Lines (I) Pvt Ltd.

In respect of b) M/s Wan Hai Lines (I) Pvt Ltd has NOT instructed M/s GDL to render the above-mentioned services on their behalf or on behalf of M/s Unicharm India Pvt Ltd.

In respect of C) They have never paid any amount to M/s Wan Hai Lines (I) Pvt Ltd or their Indian Agent(s) either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports as reflected in the above said tax invoice.

36. Statement dt 07.07.2022 of Shri G. Sanjeeva Kumar, Senior Executive, Excise & Taxation, M/s Unicharm India Pvt Ltd, Sricity, Andhra Pradesh (Importer) u/s 108 of the Customs Act, 1962 **(RUD- 13)**. Shri G. Sanjeeva Kumar, in his statement has inter-alia stated that as follows:

➤ When asked to go through the tax invoice generated by M/s Gateway Distriparks Limited (GDL) as tabulated below for which SEIS benefits have been claimed by M/s GDL and to answer the following-

TABLE - 17

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GSLIH/1718/	5607196/	M/s Paramount	M/s Paramount	M/s Unicharm	Wan Hai Lines	54,280

	018665 dated 29.03.2018	16.03.2018	Shipping Services Ltd, Chennai	Shipping Service Ltd, Chennai	India Pvt Ltd	India Pvt Ltd	
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- (a) What are the services rendered by M/s GDL to you as importer for the above invoice?
- (b) As importer, have you requested M/s GDL in writing or orally to render these services to you?
- (c) Has the foreign liner M/s Wan Hai Lines India Pvt Ltd directed you in writing or orally to avail the services of CFS facility of M/s GDL?
- (d) Have you paid the amount of Rs 54,280/- to M/s GDL?
- (e) Have you entered into any tripartite agreement involving the foreign liner M/s Wan Hai Lines India Pvt Ltd and the CFS, M/s GDL with regard to your imports?

Shri G. Sanjeeva Kumar stated as follows. In respect of

- (a) M/s GDL have rendered the following services viz., docu & Process charges, energy Surcharge, Fuel Surcharge, Handling & Transportation and Weighment in respect of their import consignment covered under Bill of Entry No: 5607196/ 16.03.2018
- (b) As importer, they have not requested M/s GDL either in writing or orally to render these services to them. They have engaged M/s IP Services Pvt Ltd, Delhi for coordinating their imports who in turn have engaged the services of M/s Paramount Shipping Services Pvt Ltd, Chennai; that these services were availed by M/s Paramount Shipping Services Pvt Ltd, Chennai who were the CHA who handled this import consignment.
- (c) The foreign liner M/s Wan Hai Lines India Pvt Ltd has not directed them in writing or orally to avail the services of CFS facility of M/s GDL
- (d) They, as importer have not paid the amount of Rs 54,280/- to M/s GDL. The said amount was paid by M/s Paramount Shipping Services Pvt Ltd, Chennai.
- (e) No.

□ When asked who decides the choice of CFS with respect to their import consignments and whether the liner have any role in their choice of CFS, he stated that the choice of CFS is theirs and the foreign liner does not have any role in this; that they coordinate only with M/s IP Services Pvt Ltd, Delhi who decide the CFS through which their import consignments should be cleared; that M/s IP Services Pvt Ltd, Delhi engage the CHA M/s Paramount Shipping Services Pvt Ltd, Chennai through whom their import consignments are cleared from the CFS; that for this import consignment, the choice of M/s GDL CFS was their choice and the foreign liner M/s Wan Hai Lines India Pvt Ltd did not have any role in this.

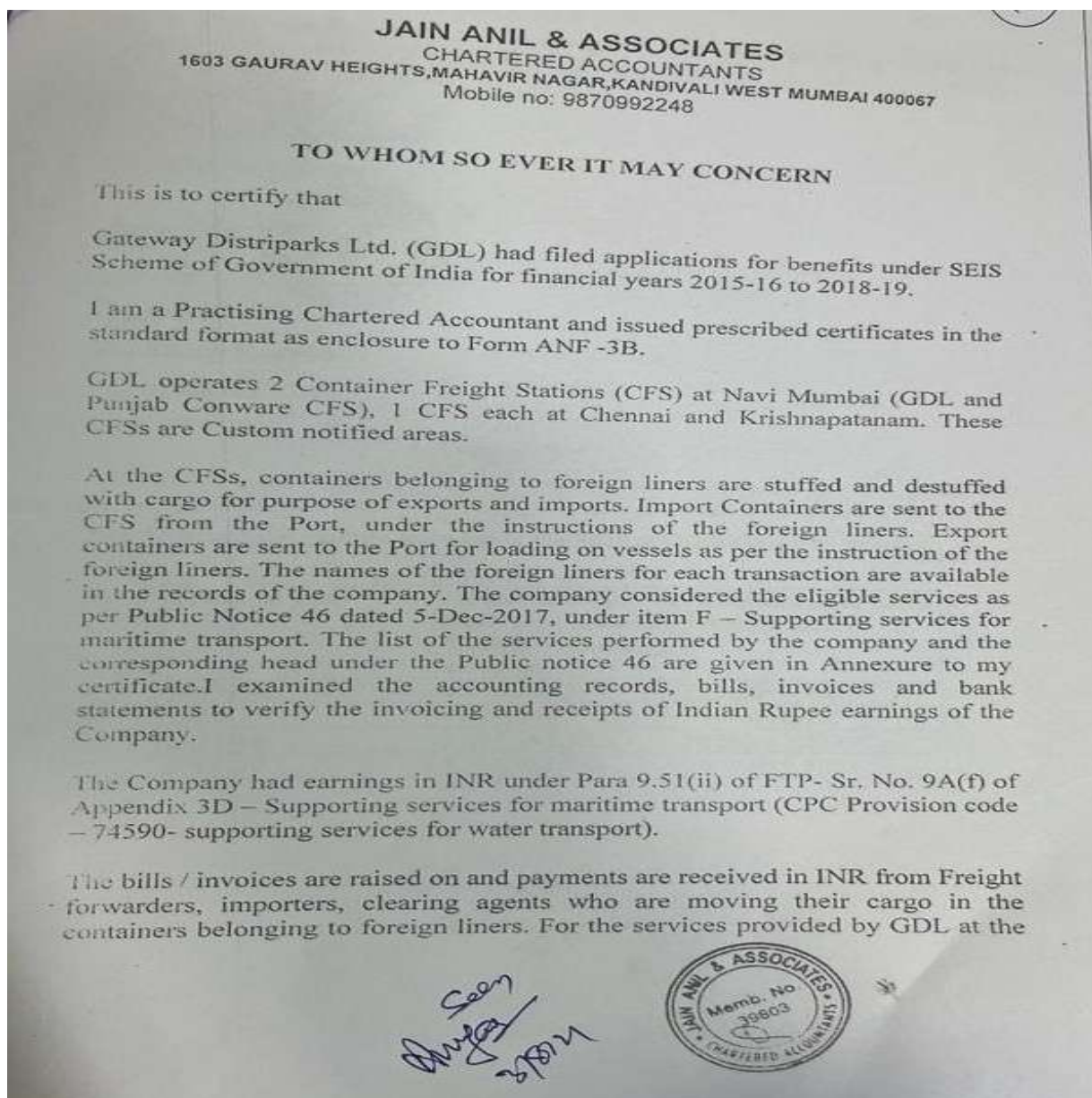
□ When asked to state whether the foreign liner M/s Wan Hai Lines India Pvt Ltd asked them to pay M/s GDL on their behalf in respect of their imports, he answered in the negative.

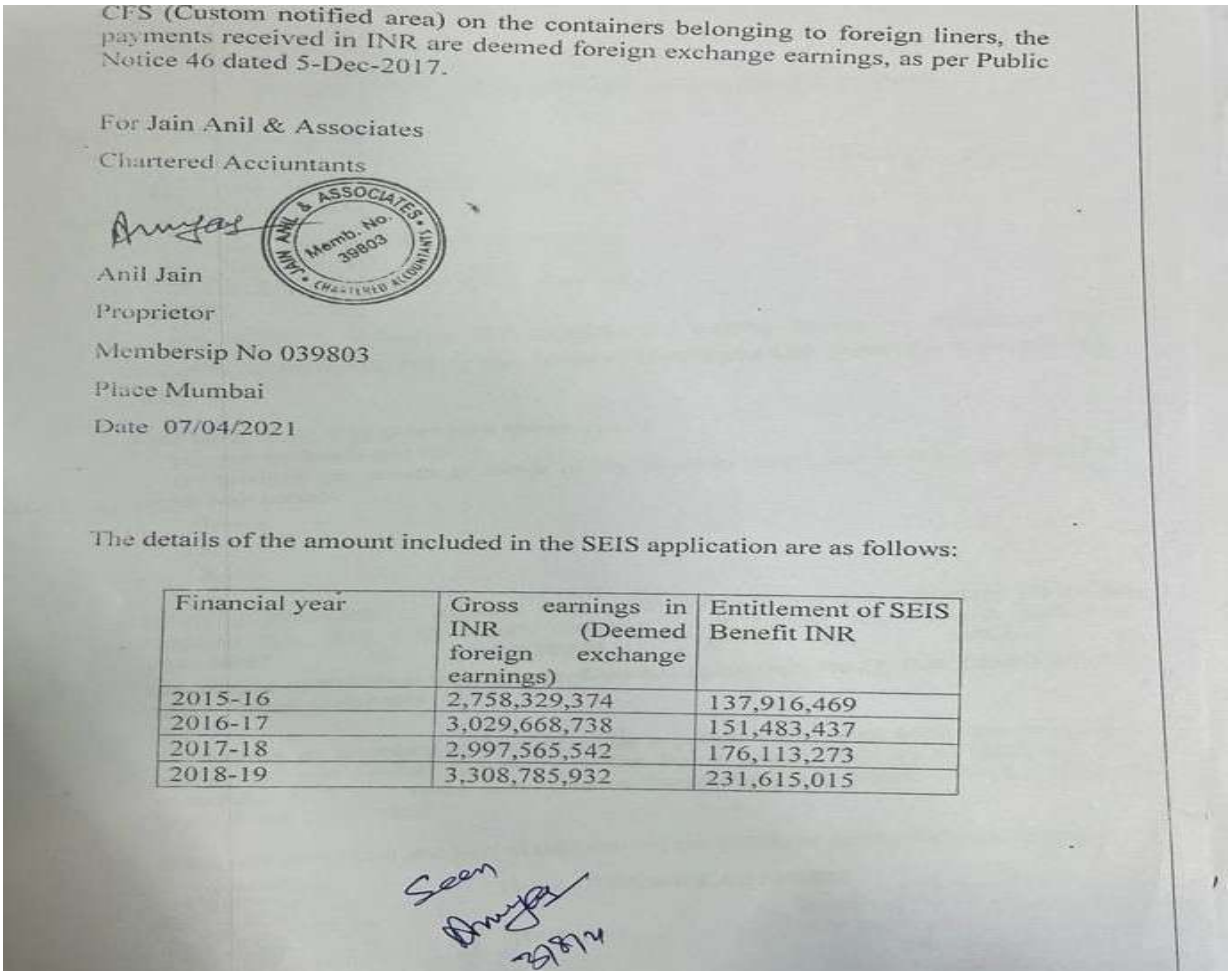
36.1. To summarize: The exporters/importers/freight forwarders/Customs Brokers in their voluntary statements have stated that they are NOT agents of the foreign liners or their Indian agents; that the foreign liners or their Indian agents have NOT instructed M/s GDL to render the notified services to them on their behalf; that they have never paid any amount to the foreign liners or their Indian agents either in foreign currency or in Indian currency for the services rendered by M/s GDL as reflected in the tax invoices.

Statement of the Chartered Accountant:-

37. Statement dated 03.08.2021 of Shri Anil G Jain, Chartered Accountant, Proprietor of M/s Jain Anil & Associates, Mumbai (**RUD- 14**) Shri Anil G Jain, in his statement has inter-alia stated that:

□ the Certificate of Chartered Accountant (CA) / Cost and Works (ICWAI) / Company Secretary (CS) forming part of the ANF 3B applications of M/s GDL for claiming SEIS benefits and issued by thier firm M/s Jain Anil & Associates to M/s GDL for the years 2015- 16, 2016-17, 2017-18 and 2018-19 were issued by his firm and signed by him. The said certificate is scanned and placed below for ease of reference:





□ he has received a total amount of Rs 20,000/- at the rate of Rs 5000/- per Certificate viz., for the ANF 3B applications of M/s GDL for the years 2015-16, 2016-17, 2017-18 and 2018-19

□ he has verified the sample invoices forming part of the ANF 3B applications of M/s GDL based on which he has given certificate of Chartered Accountant (CA) for claiming SEIS benefit by M/s GDL.

□ when asked to state whether he has gone through the Appendix 3E to the Public Notice No.7 /2015-20 dated 04/05/2016 before issuing the said certificate, Shri Anil G Jain stated that he has not gone through the Appendix 3E to the Public Notice No.7 /2015-20 dated 04/05/2016 before issuing the said certificate; that he has given the Certificate on the basis of M/s Gateway Distriparks Ltd. informing him that they are eligible for the services covered under 9A(f) of the Appendix 3E i.e., “Supporting Services for Maritime Transport”; that on the oral request of Shri Rakesh Garg, Proprietor of M/s Rakesh Garg & Associates, who are the tax auditors to M/s Gateway Distriparks Ltd., he certified the ANF 3B applications of M/s GDL; that the amount of Rs 20,000/- was received by him by way of bank transfer from Shri Rakesh Garg only and not from M/s Gateway Distriparks Ltd.

□ when asked to go through the Appendix 3E to the Public Notice No.7 /2015-20 dated 04/05/2016 and state what does the said Public Notice say in terms of the condition for applying under Appendix 3E, he stated that as per his understanding, the conditions can be sub-divided as follows:

- The SEIS claimant should have received foreign exchange for the services rendered by him which should be covered under Appendix 3E.
- The SEIS claimant should have received foreign exchange for the services rendered by him but instead of receiving in foreign exchange, he may receive in Indian Rupees.
- The SEIS claimant should have received such foreign exchange or the Indian Rupees from the foreign liner or from their agents in India.
- The amount such received by the SEIS claimant should have been out of the amount to be paid to the foreign liner by its Indian agent. (or)

- e) The amount such received by the SEIS claimant should have been out of the amount to be sent by the overseas buyer.
- f) The SEIS claimant should have rendered services covered under Appendix 3E to a foreign liner in a Customs Notified Area.
- g) The Indian Rupees thus received by the SEIS claimant would be considered as deemed to have been in foreign exchange and deemed to have been earned in foreign exchange by the SEIS claimant which shall be eligible for issuing rewards under the SEIS.

□ when asked to explain in detail as to how M/s GDL have met these conditions for becoming eligible for availing SEIS benefits, he stated that since M/s GDL have provided services in their Container Freight Stations i.e., Customs Notified Area, he felt they have met these conditions for becoming eligible for availing SEIS benefits.

➤ when asked to go through the tax invoices generated by M/s GDL as tabulated below for which SEIS benefits have been claimed by M/s GDL and to state what are the services rendered by M/s GDL and also to state whether the services were rendered by M/s GDL to foreign liners as required under the conditions mentioned in Appendix 3E.

TABLE - 18

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GDLIH/1718/003297 dated 02.08.2017	8353165; 28.01.2017	Shree Sant Kripa Appliances Pvt Ltd., Pune	Shree Sant Kripa Appliances Pvt Ltd., Pune	Shree Sant Kripa Appliances Pvt Ltd., Pune	Star Shipping Services India Pvt Ltd	19,13,016
2	GDLIH/1819/017568 dated 28.08.2018	8452531; 12.02.2018	Vipul Enterprises Thane	Vipul Enterprises Thane	Vipul Enterprises Thane	RCL Agencies (India) Pvt Ltd	22,75,117
3	PCWIIH/1718/14914 dated 17.11.2017	3528994; 07.10.2017	Blue Bird Logistics (P) Ltd., Delhi	Blue Bird Logistics (P) Ltd. Delhi	Pan India Infra Projects Pvt Ltd	Orient Oversea Container Line Ltd	22,54,272
4	GDLIH/1819/000601 dated 12.04.2018	5474896; 06.03.2018	Nippon Express (India) Pvt Ltd., Chennai	GE Power Conversion India Pvt Ltd., Chennai	GE Power Conversion India Pvt Ltd. Chennai	Maersk India Pvt Ltd	24,87,322

TABLE - 19

Sl. No.	Invoice No. & Date	BOE No. & Date	Name of the paying customer	Name of the billing customer	Name of the Importer	Name of the Shipping Line	Amount (in Rs.)
1.	GDL/E/HD/171 / 00063; dated 05.04.2017	4960986; 24.03.2017	Interlink Shipping & Clearing Pvt Ltd., Chennai	Interlink Shipping & Clearing Pvt Ltd., Chennai	--	T.S. Lines (India) Pvt Ltd	41,918
2	GKPEH/1718/03178; dated 08.11.2017	9511187; 26.10.2017	Oceanic Enterprises India Pvt Ltd., Chennai	Oceanic Enterprises India Pvt Ltd., Chennai	Ravi Insulating Company	Maersk Line	10,620

Shri Anil G Jain has stated that M/s GDL have rendered the following services to the importers/exporters/freight forwarders/custom house agents as the case may be viz., document and processing charges, energy surcharge, fuel surcharge, terminal service charges, handling charges, congestion charges, facility charges, admin charges, container tracking charges, housekeeping charges, EIR charges, survey charges, facilitation charges, seal cutting charges, auction container handling charges, scanning charges etc. in their CFS premises; that they appear to have not provided services to any foreign liners in a customs notified area i.e., their CFS premises.

when asked to state, in the light of the definition of “service provider” in terms of Para 9.51 of the FTP, whether M/s GDL would be eligible to be called as

“Service Providers” especially when they have provided services to the importers/exporters/freight forwarders/custom house agents as the case may be who are Indian entities, he stated that M/s GDL does not appear to come under the definition of “Service Provider”.

□ when asked to explain how the services rendered by M/s GDL to the importers/exporters/freight forwarders/custom house agents as the case may be relate to CPC code 745 in the light of harmonious reading of the sub categories of “Supporting service for maritime transport”, he stated that the services mentioned therein are not related to the services rendered by M/s GDL to the importers/exporters/freight forwarders/ custom house agents as the case may be; that he had given certificate based on the information given by the management of M/s GDL that their services are classifiable under CPC 745 and that he has not gone through the Public Notice No. 7/2015-20 dated 04/05/2016 or Appendix 3E or the Central Product Classification Code mentioned in the certificate prior to his certification.

□ when asked to state whether the claim for SEIS benefit for services listed in said invoices and all amount received in INR can be claimed as payments which would have been otherwise received in foreign exchange but paid in INR out of amount to be remittable by the overseas buyer, he stated that at the time of certification of the claim, he had not read the provisions of the “Central Product Classification”, Foreign Trade Policy 2015-20 and related public notices; that he had certified the claim based on the information given by the management of M/s GDL that their services rendered to the importers/exporters/freight forwarders/custom house agents as the case may be are eligible for SEIS benefits.

□ when asked to state whether had he ever visited any of the Container Freight Stations of M/s GDL before giving his certificate in ANF 3B to ascertain the actual nature of the services rendered by them he answered in the negative.

□ when asked to state whether he ever conduct any discussion with the management of M/s GDL with regard to the eligibility of the SEIS benefits in the light of Appendix 3E of the Public Notice No. 7/2015-20 dated 04/05/2016, the Central Product Classification Code 745 and the tax invoices generated by M/s GDL before giving his certificate, he answered in the negative and further stated that he certified the ANF 3B applications of M/s GDL based on the oral request of Shri Rakesh Garg.

□ when asked to state whether he agrees with the fact that but for the Certificate of Chartered Accountant (CA) / Cost and Works (ICWAI) / Company Secretary (CS) forming part of the ANF 3B applications issued by him, M/s GDL could not have made the SEIS claim before DGFT, he answered yes and stated that without his certificate, M/s GDL could not have claimed SEIS benefits from the DGFT.

□ when asked to state whether he had complied with the instruction for Chartered Accountant (CA) for filling up Annexure A to C of the ANF 3B application which states “The certifying professional should ensure that the application in coherence with the UN Central Product Classification Provisional List and Descriptions therein, before filling this claim. In cases of mis-declaration, action shall be initiated as per existing laws, rules and regulations.” Shri Anil G Jain replied in the negative.

when asked to state whether he as the certifying Chartered Accountant have complied with the clarifications sought by DGFT, Hqrs. vide email dated 11.03.2019 reproduced below:

1. The RA need not ascertain that the services have been provided to foreign

- liners, since the Chartered Accountant certifying the claim and the application is supposed to check this aspect, which is in the public domain under the general guidelines of the Appendix 3E as notified.
2. The RA need not verify any documents to ensure that the payments belong to the category as specified in the Appendix 3E since, the list of eligible services for which rupee payment has been allowed has been prepared only after consultations with Ministry of Shipping and the RBI. The Chartered Accountant is supposed to check all payment related documents, such as Bank Certificate, FIRC and the related trail of services provided for each payment.
 3. The Chartered Accountant certifying the claim may be asked by RA Mumbai to provide a statement clearly mentioning the category/sub category of services which would be applicable for each of the services in the relevant invoices which have a different description than the one mentioned in the Appendix 3E, as per the observation of RA Mumbai. The RA may then process the case based on this CA certified statement.

Shri Anil G Jain stated that he has not complied with all the clarifications sought for by DGFT.

when asked to comment that M/s GDL have mis-represented or mis-stated before the DGFT in the ANF-3B form filed for SEIS claim and wrongly claimed SEIS benefit for which he had certified the claim as correct, Shri Anil G Jain stated that he as proprietor of M/s Jain Anil & Associates issued the certificate in good faith on the oral request of Shri Rakesh Garg without going into the provisions of the Foreign Trade Policy and its public notices; that after reading the provisions now, he understood that they are not eligible for SEIS benefits.

□ when asked to go through his certificate dated 07/04/2021 forming part of attachment to his email dated 07/04/2021 wherein he had stated that “import containers are sent to the CFS from the Port under the instructions of the foreign liners and export containers are sent to the Port for loading on vessels as per the instruction of the foreign liners” and asked whether he had gone through the instructions of the foreign liners, if so, to give details regarding the nature of instructions, he replied that he had not gone through any such instructions of the foreign liners; that the draft certificate dated 07/04/2021 was sent to him by Shri Kartik Aiyer of M/s Gateway Distriparks Ltd through email (kartik@gateway-distriparks.com) which he simply signed by taking print out in his letter head.

37.1. To summarize: The Chartered Accountant has not gone through the Appendix 3E before issuing the certificate; that on the oral request of Shri Rakesh Garg, tax auditor to GDL and on GDL informing him that they are eligible for the services covered under “Supporting Services for Maritime Transport”, he certified the ANF-3B applications of GDL. GDL have not provided any service to foreign liners; that GDL does not appear to come under the definition of “Service Provider” in terms of Para 9.51 of the FTP. The services mentioned in CPC 745 are not related to the services rendered by GDL; that at the time of certification, the CA had not read the provisions of CPC, FTP, related Public Notices etc. In this regard, the CA has stated that he had issued the certificate in good faith on the oral request of Shri Rakesh Garg without going into the provisions of FTP and the PN and that the draft certificate was received by him from Shri Kartik Aiyer of M/s GDL through e-mail which he simply taken print out in his letterhead and signed. He also did not conduct any discussion with the management of GDL regarding the eligibility of SEIS benefits. Therefore, it appeared that the CA has not complied with the instructions for CA for filling up the ANF-3B form of GDL and he has also not

complied with the clarifications sought by DGFT.

Hon'ble Supreme Court Judgment in M/s Arebee Star Maritime Agencies Pvt Ltd & Ors

38. The three-member bench of Hon'ble Supreme Court in the case of The Chairman, Board of Trustee, Cochin Port Trust Vs M/s Arebee Star Maritime Agencies Pvt Ltd & Ors in Civil Appeal No. 2525 of 2018 [enclosed as **RUD- 15**] has arrived at the following conclusions taking into account the provisions of the MPT Act and the Customs Act, which appeared to be relevant for the present investigations.

- a. It states that the vessel is obliged to deliver the goods to the consignee on the quay side but the place of delivery has been shifted by the provisions of the Port Trust Act to the warehouse where the Port trust had stored the goods. Until the stage of landing and removal to a place of storage, the steamer's agent or the vessel itself may be made liable for rates payable by the vessel for services performed to the vessel. Post landing and removal to a place of storage, detention charges for goods that are stored, and demurrage payable thereon from this point on, i.e., when the Port Trust takes charge of the goods from the vessel, or from any other person who can be said to be owner as defined under section 2(o), it is only the owner of the goods or other persons entitled to the goods (who may be beneficially entitled as well) that the Port Trust has to look to for payment of storage or demurrage charges. (**Para 24 of the Judgement**).
- b. The point that port trust takes charge of the goods, and gives receipt therefor, the steamer agent may be held liable for Port Trust dues in connection with services rendered qua unloading of goods, but that thereafter, the importer, owner, consignee or their agent is liable to pay demurrage charges for storage of goods (**Para 82 of the judgement**).
- c. In respect of carrying goods in a container, and on landing when the container is stored without the goods being destuffed, the owner of the goods or the person entitled to the goods is liable to pay storage or demurrage charges. (**Para 82 of the judgement**).
- d. a container which has to be returned is only a receptacle by which goods that are imported into India are transported. Considering that the container may belong either to the consignor, shipping agent, ship-owner, or to some person who has leased out the same, it would be the duty of the Port Trust to destuff every container that is entrusted to it, and return destuffed containers to any such person within as short a period as is feasible in cases where the owner/person entitled to the goods does not come forward to take delivery of the goods and destuff such containers (**Para 82 of the judgement**).

38.1. From the definitions of liner and container and from the above Hon'ble Supreme Court judgement, the following inferences appeared to be relevant for the issues in this case.

- a. A container is only a receptacle where cargo is kept and cannot be an extension of the liner (vessel).
- b. Transportation of box, is not a service to the foreign liner
- c. When the box with the goods laden in it or without the goods, when transported in a truck is a cargo transported by road transport/ when transported in a rail is a cargo transported by rail transport. Both cannot be a water-based transport or a supporting service for maritime transport.
- d. The services rendered to a cargo in the container, cannot be treated as service to the liner.

- e. The liner is obligated to port trust to unload the cargo only up to the terminal (storage point). Any activity beyond the storage point, whoever renders, is the service rendered to the importer.
- f. Any warehousing services rendered at the Port cannot be treated as service to the liner but to the importer (owner of the cargo) only.
- g. It is obligation of the importer to arrange for destuff the cargo from the container and not the responsibility of the liner to destuff. Any service rendered for destuffing the cargo relates to importer and not to the liner.

39. Ineligibility of services rendered by GDL for SEIS benefit:

39.1. In terms of Para 9.51(i) of FTP, “the service rendered should originate in India and terminate in a foreign country outside India” (cross border mode of supply-Mode I) **or** in terms of Para 9.51(ii), “the service should be rendered in India to a foreigner” (consumption abroad mode of supply-Mode II). In the instant case, the service rendered appeared to originate in India (CFS) and terminate in India (CFS) and therefore, not satisfying the condition of Para 9.51(i). Further, the service rendered of inland is for an Indian entity (viz., importer/exporter/freight forwarder/Customs Brokers), but not to a foreign entity, as evident from the invoices referred and the statements given by the service receivers viz; importers/exporters/Customs Brokers/Freight Forwarders and as stated by Shri Kartik Aiyer in his statements. Therefore, it appeared that all the services rendered by GDL in their CFS does not satisfy the condition prescribed under Para 9.51(ii) of FTP as the services were not rendered to foreigners and GDL appeared to be not eligible for SEIS benefit


39.2. It appeared that the averments of GDL is that since they rendered services for the containers which belong to foreign liners, they were of the view that they rendered services to the foreign liner or foreign liner agents in India. The liner is defined in glossaries as vessel sailing between specified ports on a regular basis. A container is defined as a box used for storage and movement of materials and products in an intermodal freight transport system. The term intermodal indicates that the container can be moved from one place to another (from/to ship, rail & truck) without unloading and reloading the contents of the container. The container owner includes, shipping lines, NVOCC operators and exporters/importers themselves. The NVOCC implies “Non Vessel Owning Common Carrier” who owns container or took lease of containers from other container owners. The Appendix 3E, states that the service should be rendered to a foreign liner. However, in respect of GDL, all the services were related to containers, owned by Shipping lines, NVOCC operators and exporters/importers. The shipper (exporter)/freight forwarder books the container with the container owner for using the container to load and transport export goods and the container owner gives booking confirmation. The container owner includes, shipping lines, NVOCC operators and exporters themselves. In case of container booked with shipping lines, the shipping lines releases booking confirmation. In case of NVOCC operators, they have slot booked in shipping lines for freight movement, and based on booking confirmation they receive from shipping line, issue booking confirmation to exporters. In case of exporters who own the containers, the exporters contact the shipping line/NVOCC operators/Slot Charterer and obtain booking confirmation for loading the cargo onto the vessel at the gateway port. Based on the booking confirmation, the exporter loads the goods in the container and on completion of export formalities and handing over of the container, the shipping line issues BL. It appeared in this case, the service is provided by an Indian service provider M/s. GDL, inside their CFS which is a customs notified area in India, to a resident in India (exporter/importer or freight forwarder or Customs Broker) who consumes the service. Thus, there appeared no export of

service in terms of Section 2(e)(II)(ii) of the Foreign Trade (Development & Regulation) Act, 1992.

39.3. As explained above, the service is rendered by an Indian entity (GDL) and consumed by the Indian importer/exporter/freight forwarders/CBs and amount paid in INR. Thus, it appeared, the service per se has not earned any foreign exchange. The Appendix 3E states that benefit is eligible only for payments which have been received in foreign exchange, or which would have been otherwise received in foreign exchange, but paid in INR. In this case, it appeared that the entire transactions do not earn any foreign exchange to anybody; that the actual transaction is recorded in the form of invoice raised by the service supplier (GDL) to service receiver (exporter/importer/ freight forwards/CBs) both Indian entities reflecting exclusively in the accounts of the two parties engaged in the transaction.

39.4. Ineligibility of “Handling & Transportation”, “Additional Handling Charges” “Handling Charges” and “Weighment” taken as “Terminal Handling Services”

The Statements annexed to their ANF 3B application showing calculation of SEIS income for the period 2015-16, 2016-17, 2017-18 and 2018-19, consists of income shown as “Handling & Transportation”, “Weighment” and “Additional Handling Charges taken as benefit under the Appendix 3E category “Terminal Handling Services”, as observed in sampleInvoices No. GSL/E/HD/1718/00001 dated 01.04.2017 and GKP/S/IC/1718/00223 dated 31.01.2018, which are scanned and placed below for ease reference:



GATEWAY DISTRI PARKS LTD
200, Ponnarai High Road, Manali New Town Chennai Chennai, 600103,
Phone : 044-37971600, Fax : 044-37971601, Website : www.gateway-distriparks.com
ServiceTax No:AAACG3425CSD004, PAN AAACG3425C, CIN: L74899MH1994PLC164024

Export Invoice

Category of Services : Storage and Warehousing Services / Cargo Handling service/ Transport of Goods by Road

Invoice No. : GSL/E/HD/1718/00001
Invoice Date: 01-04-2017
Paying Customer C300040
PAN : AAGFA6004N
ALL-WIN SHIPPING SERVICES
NO.1,THAMBU CHETTY STREET,,CHENNAI, State - TamilNadu
Billing Customer C300040
ALL-WIN SHIPPING SERVICES
NO.1,THAMBU CHETTY STREET,,CHENNAI, State - TamilNadu
No. of Container 20 : 0 40 : 1 45 : 0


Shipping Bill No. 5110058
Shipping Bill Date 30-03-2017
CHA Name ALL-WIN SHIPPING SERVICES
Shipping Line CMA CGM AGENCIES INDIA PRIVATE LIMITED
Shipper FF
Cargo Arrival Date
Customer Invoice No. 721
Cargo Description: DRUM SET
Narration: ALL-WIN SHIPPING SERVICES
TEUS : 2

Description	Amount	Service Tax Amount	Swach Bharat Cess Amount	Krishi Kalyan Cess Amount	Total Inv. Amount
Rounding Off	0.24	0.00	0.00	0.00	0.24
Handling & Transportation	9,200.00	1,288.00	48.00	48.00	10,584.00
Weightment	175.00	24.50	0.88	0.88	201.28
Value Added Services-RFID	150.00	21.00	0.75	0.75	172.50
Total	9,525.24	1,333.50	47.63	47.63	10,954.00

Amount (In words) : Rs. **** TEN THOUSAND NINE HUNDRED FIFTY FOUR RUPEES AND ZERO PAISA ONLY

Container No.	Size	Type	Com. Type	Gross Wt.	Chrg. Days	LEO Date	Arrival Date	GR From Date	GR Till Date	Service	Line Amount	Service Tax	Total Amount	Total Cost Amt.	Gate Out Date
DRYU4078571	40	HC	Gen	4,300	0		30-Mar-17			Ground Inspection	1,700.00	255.00	1,955.00	0	
DRYU4078571	40	HC	Gen	4,300	0		30-Mar-17			Transportation Charges-Laden	7,500.00	1,125.00	8,625.00	0	
DRYU4078571	40	HC	Gen	4,300	0		30-Mar-17			Container Weighment	175.00	26.28	201.28	0	
DRYU4078571	40	HC	Gen	4,300	0		30-Mar-17			RFID Charges	150.00	22.50	172.50	0	

Terms and Conditions :-
1. Receipt is valid subject to Realisation of Cheque.
2. This receipt is not a guarantee for delivery of container/cargo.
3. Delivery is subject to fulfillment of customs and other statutory formalities.
4. The Insurance of cargo is required to be taken by the consignee from Warehouse to Warehouse. The liability of GATEWAY DISTRI PARKS LIMITED as the Customs Cargo Service Provider is limited to the liabilities arising out of its role as Customs Cargo Service Provider as per the legal framework in this regard.
5. For any delay in payment beyond the period of credit allowed by GATEWAY DISTRI PARKS LIMITED in writing, an interest @15% PM and part thereof shall be paid by the customer.
6. The payment to be made preferable by RTGS/NEFT or bank transfer by cheque/draft to be delivered at the CFS.
7. Incidence of cheque bouncing will attract penalty, as per Company's policy. The Company reserves the rights for any other action.
8. GATEWAY DISTRI PARKS LIMITED shall not be responsible for or liable in any way, and the Customer shall indemnify GATEWAY DISTRI PARKS LIMITED against all damages, claims, costs and expenses suffered or incurred by GATEWAY DISTRI PARKS LIMITED resulting directly or indirectly from any defects in a Container and/or its contents and/or Cargo.
9. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container, exportation and importation of cargoes as per Government of India and all concerned regulatory bodies and all matters.
10. Bank Details :
Beneficiary Name GATEWAY DISTRI PARKS LIMITED Bankers Name HDFC BANK LTD.
Bank Account No. 1660350000332 RTGS/NEFT IFSC HDFC0000168
Bank Address S.T.TOWER, NEW NO.24, 1ST FLOOR, 2ND LINE BEACH ROAD PARRY'S CORNER, CHENNAI - 600 001
Generated BY:- GRFLKARTHICK.M
This is computer generated invoice, Signature not required.



GATEWAY DISTRI PARKS LTD
Krishnapatnam Port Road Opp. Nidiguntapalem Railway Station Thatipartipalem, 524323, Andra pradesh (new)
Phone : , Fax : , Website : www.gateway-distriparks.com
GSTIN No :37AAACG3425C1Z4, PAN AAACG3425C, CIN: L74899MH1994PLC164024

TAX Invoice
Original for Recipient

Invoice No. : GKP/IS/IC/1718/00223

Invoice Date: 31-01-2018

Paying Customer C700379
NANDYALA SATYANARAYANA
SANTA MARKET TADEPALLEGUDAM,ANDHRA PRADESH,,Andra pradesh (new)

Ext. Doc No.

GSTIN NO: 37ABGPN2371N1Z8

Due Date 31-01-2018

Narration: Invoice SI/17-18/127157

Description	Qty.	Unit Price	HSN/SAC Code	Taxable Value	CGST %age	CGST Amount	SGST %age	SGST Amount	IGST %age	IGST Amount	Total Amount
Additional Handling Charges	1	70,000.00	996711	70,000.00	9.00	6,300.00	9.00	6,300.00	0.00	0.00	82,600.00
Total				70,000.00		6,300.00		6,300.00		0.00	82,600.00
Gross Total				70,000.00							82,600.00

Amount (In words) : *****

EIGHTY TWO THOUSAND SIX HUNDRED RUPEES AND ZERO PAISA ONLY

Terms and Conditions :-
1. Receipt is valid subject to Realisation of Cheque.
2. This receipt is not a guarantee for delivery of container cargo.
3. Delivery is subject to fulfillment of customs and other statutory formalities.
4. The insurance of cargo is required to be taken by the consignee/consignee from Warehouse to Warehouse. The liability of GATEWAY DISTRI PARKS LIMITED as the Customs Cargo Service Provider is limited to the liabilities arising out of its role as Customs Cargo Service Provider as per the legal framework in this regard.
5. For any delay in payment beyond the period of credit allowed by GATEWAY DISTRI PARKS LIMITED in writing, an interest @15% PM and part thereof shall be paid by the customer.
6. The payment to be made preferable by RTGS/NEFT or bank transfer by cheque/draft to be delivered at the CFS.
7. Incidence of cheque bouncing will attract penalty, as per Company's policy. The Company reserves the rights for any other action.
8. GATEWAY DISTRI PARKS LIMITED shall not be responsible for or liable in any way, and the Customer shall indemnify GATEWAY DISTRI PARKS LIMITED against all damages, claims, costs and expenses suffered or incurred by GATEWAY DISTRI PARKS LIMITED resulting directly or indirectly from any defects in a Container and/or its contents and/or Cargo.
9. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container, exportation and importation of cargoes as per Government of India and all concerned regulatory bodies and all matters.
10. Bank Details :
Beneficiary Name GATEWAY DISTRI PARKS LIMITED
Bank Account No. 57500000009657
Bank Address NELLORE - ANDHRA PRADESH
Bankers Name HDFC BANK
RTGS/NEFT IFSC HDFC0000473

Generated BY:-


GRFL/SRIKANTH

39.4.1. Shri Karthik Aiyer of M/s. GDL in his voluntary statement, while explaining the nature of all the 3 services rendered in their CFSs stated that the Charges are, for handling the container with the help of Reach Stacker by way of lift-on/ lift-off from and to the trailer and from and to the stack at the CFS; that these services are rendered to exporters/importers/freight forwarders/CHAs.

39.4.2. The Hon'ble Supreme Court, as discussed in paragraph 38 above, has viewed that the liner is obligated to port trust to unload the cargo (container) only up to the terminal (storage point); that container is only a receptacle by which goods are imported into India are transported; that it is obligation of the importer to arrange for moving the container to the CFS and store the same till it is cleared out of customs. The activities performed in this process like handling the container with the help of Reach Stacker by way of lift-on/ lift-off from and to the trailer and from and to the stack at the CFS, till it is cleared out of Customs charge is the responsibility of the CFS who acts on the instruction of the beneficiary of the cargo who is the importer and not the responsibility of the Foreign liner or its Indian agent. The responsibility of the liner ends once the import cargo handed over to the owner of the container or the importer at the Gateway port. It appeared after handing over of import containers by liner at gateway port, the responsibility of the liner ceases and any services rendered afterwards is attributed only to the owner of the container or the importer, the beneficiary of cargo to whom M/s GDL has rendered the services. The Bill of lading which mentions the place of delivery as Port/CFS, is issued by the container owners (shipping line or multimodal transport operators or freight forwarders) who contract with the exporter at foreign country. In the activity of ocean shipping, the container owner and liner are different. The Appendix 3E clearly states that to avail SEIS benefit, the service has to be rendered to a foreign liner. The container owner is obligated to deliver and not the foreign liner who brought the goods into the Indian waters and the container handling services rendered inside the CFS cannot be claimed as service to the foreign liner. Hence, the service of Terminal Handling services rendered to the importers cannot be termed as an eligible service for SEIS benefit.

39.5. Ineligibility of “Cargo Storage” , “Ground Rent” and “warehouse reservation” charges taken as Cargo Storage Services”

The Statements annexed to their ANF 3B application showing calculation of SEIS income for the period 2015-16, 2016-17, 2017-18 and 2018-19, consists of income shown as “Cargo Storage”, “Ground Rent” and “warehouse reservation” taken as benefit under the Appendix 3E category “Cargo Storage Services”, as observed in sample invoices No. GDL/I/HD/1718/04357 dated 29.04.2017 and No. GDL/I/HD/1718/10521 dated 08.06.2017, which are scanned and placed for ease reference:



GATEWAY

GATEWAY DISTRIK PARKS LIMITED
 Sector-6, Dronagiri Taluka-Uran, Navi Mumbai 400707
 Ph No: 022-27246500, Fax No: 022-27246538
 PAN : AAACGG3425C, STax: AAACGG3425CST001, CInNo: L74899MH1994PLC164024

Category of Services: Storage and Warehousing Services / Cargo Handling Service/ Transport of Goods by Road

Invoice No. : GDL/MD/1718/04357
Invoice Date: 25-04-2017
Paying Customer: C101576
Name: DHL LOGISTICS PVT. LTD.
Address: 7TH FLOOR, THE LEELA GALLERIA MUMBAI MUMBAI 400059
Billing Customer: C101576
Name: DHL LOGISTICS PVT. LTD.
Address: 7TH FLOOR, THE LEELA GALLERIA MUMBAI MUMBAI 400059
Cargo Description : PO 430 4511223396 572 95067581
Narration: DHL LOGISTICS PVT. LTD.AS PER MAIL

BOE No.: TEMPFSCU50999 10000
Invoice Validity Date: 03-05-2017
BL No.: 2163191
IGM Line No.: 84
Importer : PROCTER AND GAMBLE HOME PRODUCTS PVT. CHA DHL LOGISTICS PVT. LTD.
Shipping Line: C103176
PF

BOE Date: 28-04-2017
BL Date: 28-04-2017
IGM Sub Line No.:

SMTP No.:
SMTP Date:

Invoice Details:

Description	Amount	Service Tax Amount	Swach Bharat Cess Amount	Krishi kalyan Cess Amount	Total Inv.
Cargo Storage	3,000.00	420.00	15.00	15.00	3,450.00
Cargo Handling	1,500.00	225.00	9.90	9.90	2,277.00
Docu. & Process Charges	250.00	35.00	1.25	1.25	287.50
Fuel Surcharge	150.00	21.00	0.75	0.75	172.50
Fuel Surcharge	150.00	21.00	0.75	0.75	172.50
Handling & Transportation	23,280.00	3,256.20	116.40	116.40	26,772.00
Facility Charges	100.00	14.00	0.50	0.50	115.00
Admin Charges	100.00	14.00	0.50	0.50	115.00
Housekeeping Charges	50.00	7.00	0.25	0.25	57.50
Survey Charges	100.00	14.00	0.50	0.50	115.00
Total	29,160.00	4,062.40	145.80	145.80	33,534.00

Cargo Details 20 : 0 40 : 1 45 : 0 TEUS : 2

Rs. THIRTY THREE THOUSAND FIVE HUNDRED THIRTY SIX RUPEES AND ZERO PAISA ONLY

Container Details:

Container No. / Size	Type	Com. Type	Gross Wt.	Free Days	Chrg. Days	DOC Date	Arrival Date	GR From Date	GR To Date	Service	Line Amount	Service Tax	Amount
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Cargo Delivery	1,900.00	267.00	2,277.00
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Documentation Charge	250.00	37.50	287.50
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Energy	150.00	22.50	172.50
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Fuel Charges	150.00	22.50	172.50
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Handling & Transportation	23,280.00	3,256.20	26,772.00
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Facility Charges	100.00	15.00	115.00
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Admin Charges	100.00	15.00	115.00
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			House Keeping	50.00	7.50	57.50
FSCU830999 40	HC	Gen	14.34	0	0	27-04-2017	27-04-2017			Survey Charges	100.00	15.00	115.00

Terms and Conditions :-

1. Receipt is valid subject to Realization of Cheque.
2. This receipt is not a guarantee for delivery of container/cargo.
3. Delivery is subject to fulfillment of customs and other statutory formalities.
4. The insurance of cargo is required to be taken by the consignee/consignor from Warehouse to Warehouse. The liability of GATEWAY DISTRIK PARKS LIMITED as the Customs Cargo Service Provider is limited to the liability arising out of its role as Customs Cargo Service Provider as per the legal framework in it's regard.
5. For any delay in payment beyond the period of credit allowed by GATEWAY DISTRIK PARKS LIMITED in writing, an interest @15% PM and part there of shall be paid by the Customer.
6. The payment to be made preferable by RTGS/NEFT or bank transfer by cheque/draft to be delivered at the CFS.
7. Incidence of cheque bouncing will attract penalty, as per Company's policy. The Company reserves the rights for any other action.
8. Service Tax in case of Road Transport services as applicable shall be paid by the respected receiver of the service as per notification No.30/2012-ST dated 20.06.2012. According to Rule 2 & Sub-rule 1 of Service Tax rules 1994 as amended by notification No.35/2004-ST Person who pays or is liable to pay freight himself or through his agent for the transportation of goods carriage is liable to pay service tax directly to government.
10. GATEWAY DISTRIK PARKS LIMITED shall not be responsible for or liable in any way, and the Customer shall indemnify GATEWAY DISTRIK PARKS LIMITED against all damages, claims, costs and expenses suffered or incurred by GATEWAY DISTRIK PARKS LIMITED resulting directly or indirectly from any defects in a Container and/or its contents and/or Cargo.
11. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container, exportation and importation of cargo.

GATEWAY DISTRIKARKS LIMITED
Sector-8, Dronagiri Taluka-Uran, Navi Mumbai 400707
Ph No. 022-27246500 , Fax No : 022-27246538

PAN : AAACG3425C , STax: AAACG3425CST001 , CinNo : L74899MH1994PLC164024

Import Invoice

Category of Services: Storage and Warehousing Services / Cargo Handling Service/ Transport of Goods by Road

Invoice No. : GDUI/HD/1718/10521 Invoice Date: 08-06-2017 Paying Customer C100485 Name KALPANA SHIPPING AGENCY Address 604,6TH FLOOR,ATLANTIC TOWERS, R.B.MEHTA MARG,GHATKOPAR(E), MUMBAI 400077 Billing Customer C100485 Name KALPANA SHIPPING AGENCY Address 604,6TH FLOOR,ATLANTIC TOWERS, R.B.MEHTA MARG,GHATKOPAR(E), MUMBAI 400077 Cargo Description : US WALNUTS IN SHELL HS CODE: 0802.51.0000 900 X 50 LB BAGS ORDER #: S0028226 / PO028357	BOE No. 9232065 Invoice Validity Date: 08-06-2017 BL No. IGM No. 2161933 IGM Line No. 222 Importer : R.K. ENTERPRISES CHA KALPANA SHIPPING AGENCY Shipping Line C101788 FF	BOE Date 11-04-2017 BL Date IGM Date 07-04-2017 IGM Sub Line No. SMTP No. SMTP Date
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Narration: KALPANA SHIPPING AGENCY

Cargo Details 20 : 0 40 : 1 45 : 0 TEUS : 2

Invoice Details:

Description	Amount	Service Tax Amount	Swach Bharat Cess Amount	Krishni kalyan Cess Amount	Total Inv. Amount
Ground Rent	1,10,100.00	15,414.00	550.50	550.50	1,26,615.00
Weightment	1,780.00	249.20	8.90	8.90	2,047.00
Cargo Handling	1,862.10	260.69	9.31	9.31	2,141.41
Handling & Transportation	24,500.00	3,430.00	122.50	122.50	26,175.00
Scanning Charges	2,000.00	280.00	10.00	10.00	2,300.00
Total	1,40,242.10	19,633.89	701.21	701.21	1,61,278.41

Amount (in words) : **Rs. ONE LAKH SIXTY ONE THOUSAND TWO HUNDRED SEVENTY NINE RUPEES AND ZERO PAISA ONLY**

Received with Thanks from M/s **C100485**

Sum Of Rs 161278by Cheque Chq No. Chq Dt. Drawn on Branch

Container Details:

Container No.	Site	Type	Com. Type	Gross Wt.	Free Days	Chrg. Days	COC Date	Arrival Date	GR From Date	GR Till Date	Service	Line Amount	Service Tax	Amount
TCNU4928343	40	HC	Gen	24.53	0	0	07-06-2017	13-04-2017			Cargo Delivery Charges	1,662.10	279.31	2,141.41
TCNU4928343	40	HC	Gen	24.53	0	0	07-06-2017	13-04-2017	13-04-2017	08-06-2017	Ground Rent	1,10,100.00	16,515.00	1,26,615.00
TCNU4928343	40	HC	Gen	24.53	0	0	07-06-2017	13-04-2017			Handling & Transportation	24,500.00	3,675.00	26,175.00
TCNU4928343	40	HC	Gen	24.53	0	0	07-06-2017	13-04-2017			Scanning Charges	2,000.00	300.00	2,300.00

Terms and Conditions :-

1. Receipt is valid subject to Realisation of Cheque.
2. This receipt is not a guarantee for delivery of container/cargo.
3. Delivery is subject to fulfillment of customs and other statutory formalities.
4. The insurance of cargo is required to be taken by the consignor/consignee from Warehouse to Warehouse. The liability of GATEWAY DISTRIKARKS LIMITED as the Customs Cargo Service Provider is limited to the liabilities arising out of its role as Customs Cargo Service Provider as per the legal framework in this regard.
5. For any delay in payment beyond the period of credit allowed by GATEWAY DISTRIKARKS LIMITED in writing, an interest @15% PM and part there of shall be paid by the customer.
6. The payment to be made preferable by RTGS/NEFT or bank transfer by check/draft to be delivered at the CFS.
7. Incidence of cheque bouncing will attract penalty, as per Company's policy. The Company reserves the rights for any other action.
8. Service Tax in case of Road Transport services as applicable shall be paid by the respected receiver of the service as per notification No.30/2012-ST dated 20.06.2012.
9. According to Rule 2 & Sub-rule 1 of Service Tax rules 1994 as amended by notification No.35/2004-ST Person who pays or is liable to pay freight himself or through his agent for the transportation of goods carriage is liable to pay service tax directly to government.
10. GATEWAY DISTRIKARKS LIMITED shall not be responsible for or liable in any way, and the Customer shall indemnify GATEWAY DISTRIKARKS LIMITED against all damages, claims, costs and expenses suffered or incurred by GATEWAY DISTRIKARKS LIMITED resulting directly or indirectly from any defects in a Container and/or its contents and/or Cargo.
11. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container, exportation and Importation of cargoes as per Government of India and all concerned regulatory bodies and all matters.

12. Bank Details :

Beneficiary Name	GATEWAY DISTRIKARKS LIMITED		
Bankers Name	HDFC BANK LIMITED		
Bank Account No.	61100310000014	RTGS/NEFT IFSC	HDFC0000110
Bank Address	GROUND FLOOR, NEXT TO CDC DEPT., PORT USERS BUILDING JNPT NHAVA SHEVA, NAVI MUMBAI - 400707		

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39.5.1 Shri Karthik Aiyer of M/s. GDL in his voluntary statement, while explaining the nature of the services rendered, has stated that in respect of “Cargo Storage”,

the charges are levied for storage of export cargo in the warehouse at the CFS till the container is ready for stuffing and storage of import LCL and de-stuffed delivery cargo in the warehouse at the CFS; that in

respect of “Ground Rent” the charges are levied for stay of the loaded container in the CFS beyond the free period; that these two services are rendered to exporters/importers/freight forwarders/CHAs; that in respect of “warehouse reservation” the charges are for storage of export cargo inside the warehouse at the CFS and the service is rendered to exporters.

39.5.2 In respect of export cargo, upon scrutiny of invoices mentioned above, it appeared that they have taken benefit on, export cargo storage in their CFS before stuffing in the container and the ground rent for the container loaded with export cargo in their CFS, in the process of export as service rendered to foreign liners. As discussed in paragraph -- above, a container is only a box wherein the goods are stored, owned by shipping line or any other person. The exporter / freight forwarder who contract with the container owners, hires the container, store the goods for export and pay M/s GDL, the rent for storing the cargo with the container.

Prior, to loading the containers for onward movement to Port, the possibilities are

- a) The customs have not cleared the cargo; or
- b) The customs have cleared the cargo and the cargo laden container is kept waiting its onward journey to port.

In the case of (a) above, there was no bill of lading issued as the container owner (shipping line/freight forwarder/NVOCC) has not taken possession of the cargo for export. The exporter availed the service, and paid the service amount. Hence, the service rendered appeared to be not to the container owner or to the foreign liner but to the exporter who consumed the service. The SEIS benefit is available only for the service rendered to the foreign liner. Further, the exporter is an Indian entity and not a foreign entity. Since the services rendered are neither in line with Para 9.51(i) of FTP nor with Para 9.51(ii) of FTP, they appear not eligible for SEIS benefit.

In the case of (b) above, it is the exporter/freight forwarder/transporter/CFS who undertook to move the container to the Port and therefore it appeared the rent for storing the container in the CFS prior to the movement of the laden container to the port, is the service to the exporter, an Indian entity.

In the cases of both (a) & (b), the charges are part of FOB value of the goods exported and as per Para 3.09(2)(g) of the FTP, 2015-20 (as it exists up to 04/12/2017), the value of export of goods cannot be taken into account for calculation under SEIS scheme. It appeared, the said charges, which form part of value of goods, is invariably offset by MEIS benefit as it is the stated objective as per Para 3.03 of the FTP, 2015-20. In this regard, the method of calculation of FOB as in the Ministry of Commerce website is as below: -

Annex 3-2 Method of Calculation of FOB Value 1. FOB Value shall be calculated as follows:

(a) FOB Value = Ex-Factory Price + Other Costs


(b) Other Costs in the calculation of the FOB value shall refer to the costs incurred in placing the goods in the ship for export, including but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees, service charges, etc. (<https://commerce.gov.in/wp-content/uploads/2020/12/Annex-3-2-Method-of-Calculation-of-FOB-value.pdf>).

39.5.3. In respect of import cargo, it appeared the amount is the storage cost received from the importers for storing the containers at their locations beyond the free period allowed. As discussed in paragraph 38 above, the Hon’ble Supreme Court has viewed that once the goods are handed-over to the port authorities and given receipt therefor the container owner may be held liable for dues in connection

with the services rendered qua unloading of goods but that thereafter the importer is liable to pay demurrage charges for storage of goods. In specific, the Hon’ble Supreme court, has stated in respect of carrying goods in a container, and on landing when the container is stored without the goods being de-stuffed, the owner of the goods or the person entitled to the goods is liable to pay storage or demurrage charges. Hence, it appeared the income earned from the importer is for rendering service to the importer, who availed the service. Therefore, claiming SEIS benefit on terminal service income, as service rendered to foreign liner appeared to be not correct. Further, the income earned on rendering service to goods that landed in India for home consumption, the importer, who consumes the service, paid the charges in Indian Rupee for the service rendered. It appeared, the service rendered in India to a customer in India is taken for SEIS benefit, which is in violation of Para 9.51(i) & (ii) of FTP.

39.6. Ineligibility of “Customs Examination”, “Scanning Charges” “survey CLP & EIR” taken as “Survey & Inspection Services”

The Statements annexed to their ANF 3B application showing calculation of SEIS income for the period 2015-16, 2016-17, 2017-18 and 2018-19, consists of income shown as “Customs Examination”, “Scanning Charges” and “Survey CLP & EIR” taken as benefit under the Appendix 3E category “Survey & Inspection Services”, as observed in sample Invoice No.GDL/I/HD/1718/00118, which is scanned and placed below for ease of reference:



Sector-6, Dronagiri Taluka-Uran, Navi Mumbai 400707
Ph No. 022-27246500 , Fax No : 022-27246538
PAN : AAACG3425C , STax: AAACG3425CST001 , CinNo : L74899MH1994PLC164024

Category of Services: Storage and Warehousing Services / Cargo Handling Service/ Transport of Goods by Road

Invoice No. : GDL/I/HD/1718/00118
Invoice Date: 01-04-2017
Paying Customer C100486
Name KUEHNE + NAGEL PVT.LTD
Address MIRCHANDANI BUSINESS PARK, PLOT NO5,SAKINAKA JUNCTION,ANDHERI -GHATKOPAR ROAD MUMBAI 400072
Billing Customer C100486
Name KUEHNE + NAGEL PVT.LTD
Address MIRCHANDANI BUSINESS PARK, PLOT NO5,SAKINAKA JUNCTION,ANDHERI -GHATKOPAR ROAD MUMBAI 400072
Cargo Description : 22 ONE WAY PALLETS = 8360 REUSABLE PLASTIC TRAY EPS 106 FOR FRESH FRUIT PACKING 22 ONE WAY PALLETS =
Narration: CHRGS DR TO KNL AS PERMIAL RECD.

BOE No. 9111450
Invoice Validaty Date: 01-04-2017
BL No.
IGM No. 2158824
IGM Line No. 199
Importer : SAHYADRI FARMERS PRODUCER COMPANY LTD.
CHA ICETRAIL LOGISTICS PVT LTD
Shipping Line C100916
FF

BOE Date 31-03-2017
BL Date
IGM Date 23-02-2017
IGM Sub Line No.
Vessel Name
APL CHARLESTON
SMTP No.
SMTP Date

Description	Amount	Service Tax	Swach Bharat Cess	Krishi kalyan Cess	Total Inv. Amount
Ground Rent	1,19,400.00	16,716.00	597.00	597.00	1,37,310.00
Rounding Off	0.48	0.00	0.00	0.00	0.48
Docu. & Process Charges	700.00	98.00	3.50	3.50	805.00
Energy Surcharge	800.00	112.00	4.00	4.00	920.00
Fuel Surcharge	2,900.00	364.00	13.00	13.00	2,990.00
Handling & Transportation	27,700.00	3,878.00	138.50	138.50	31,855.00
Housekeeping Charges	400.00	58.00	2.00	2.00	460.00
Survey CLP & EIR	1,700.00	238.00	8.50	8.50	1,955.00
Seal Cutting Charges	50.00	7.00	0.28	0.28	57.52
Customs Examination	2,000.00	280.00	10.00	10.00	2,300.00
Total	1,55,350.48	21,749.00	778.78	778.78	1,78,653.00

Amount (in words) :
Rs. ONE LAKH SEVENTY EIGHT THOUSAND SIX HUNDRED FIFTY SEVEN RUPEES AND ZERO PAISA ONLY

Container No.	Size	Type	Com. Type	Gross Wt.	Free Days	Chrg. Days	COC Date	Arrival Date	GR From Date	GR Till Date	Service	Line Amount	Service Tax	Amount
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Documentation Charges	350.00	52.50	402.50
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Documentation Charges	350.00	52.50	402.50
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Energy Surcharge	400.00	60.00	460.00
U8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Energy Surcharge	400.00	60.00	460.00
ESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Fuel Charges	1,300.00	195.00	1,495.00
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Fuel Charges	1,300.00	195.00	1,495.00
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017	01-04-2017	01-04-2017	Ground Rent	59,700.00	8,955.00	68,655.00
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017	01-04-2017	01-04-2017	Ground Rent	59,700.00	8,955.00	68,655.00
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Congestion Charges	1,500.00	225.00	1,725.00
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Facility Charges	700.00	105.00	805.00
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Handling & Transportation	11,000.00	1,650.00	12,650.00
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Admin Charges	500.00	75.00	575.00
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Cont. Tracking Charges	150.00	22.50	172.50
GESU5691194	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Congestion Charges	1,500.00	225.00	1,725.00
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Facility Charges	700.00	105.00	805.00
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Handling & Transportation	11,000.00	1,650.00	12,650.00
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Admin Charges	500.00	75.00	575.00
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			Cont. Tracking Charges	150.00	22.50	172.50
HCU8024079	40	HC	Gen	14.43	0	0	01-04-2017	25-02-2017			House Keeping	200.00	30.00	230.00

39.6.1 Shri Karthik Aiyer of M/s.GDL in his voluntary statement, while explaining the nature of the services rendered, has stated that in respect of “Customs Examination”, the charges are towards use of labour and equipment for presenting

the imported goods in the container for customs examination in the CFS; that in respect of “Scanning charges” the charges are towards moving the import containers on trailers for scanning by Customs in the Port Area; that in respect of “Survey CLP & EIR” the charges are for Survey and inspection report of the loaded containers; that all these services are rendered to exporters and importers.

39.6.2. Applying the analogy as discussed in paragraph 39.2, 39.3 and 39.4 above, the charge appeared to be for the services rendered to importer/exporter (who are Indian entities) and the foreign liner has not availed the said service. Therefore, claiming SEIS benefit under Appendix 3E appeared to be not correct and in violation of Para 9.51(i) of FTP, Para 9.51(ii) of FTP and Section 2(e)(II)(ii) of FTDR Act 1992, as there is no export of service.

39.7. Ineligibility of “Cargo Handling”, “Additional Cargo Handling Charges” and “Lashing & Choking” taken as “Terminal Handling Services”

The Statements annexed to their ANF 3B application showing calculation of SEIS income for the period 2015-16, 2016-17, 2017-18 and 2018-19, consists of income shown as “Cargo Handling”, “Additional Cargo Handling Charges” and “Lashing & Choking” taken as benefit under the Appendix 3E category “Terminal Handling Services”, as observed in sample invoice numbers as observed in the sample invoice discussed in para 39.4. & 39.5 above.

39.7.1 Shri Karthik Aiyer of M/s GDL in his voluntary statement, while explaining the nature of the services rendered, has stated that in respect of “Cargo Handling” and “Additional cargo Handling charges, the charges are for Stuffing of Cargo in Export Container and de-stuffing of Cargo in Import Container at M/s. GDL; that in respect of “Lashing and Choking” the charges are for the process of preparing the export container for receiving the export cargo and ensuring that the cargo is restrained inside the container; that all these services are rendered to exporters/importers/freight forwarders/CHAs.

39.7.2. Applying the analogy as discussed in paragraph 39.2 to 39.4 above, the charges appeared to be for the services rendered to importer/exporters (who are Indian entities) and the foreign liner has not availed the said service. Therefore, claiming SEIS benefit under Appendix 3E appeared to be not correct and in violation of Para 9.51(i) of FTP, Para 9.51(ii) of FTP and Section 2(e)(II)(ii) of FTDR Act 1992, as there is no export of service.

39.8. Ineligibility of “Energy Surcharge”, and “Fuel Surcharge ” taken as “Terminal Handling Services”

The Statements annexed to their ANF 3B application showing calculation of SEIS income for the period 2015-16, 2016-17, 2017-18 and 2018-19, consists of income shown as “Energy Surcharge”, and “Fuel Surcharge ” taken as benefit under the Appendix 3E category “Terminal Handling Services”, as observed in the sample invoice discussed in para 39.5 above.


39.8.1 Shri Karthik Aiyer of M/s.GDL in his voluntary statement, while explaining the nature of the services rendered, has stated that in respect of “Energy surcharge” the charges are for Cost to make up with the increasing prices of electricity; that in respect of “Fuel surcharge” the charges are for Cost to make up with the increasing prices of fuel viz. Diesel; that all these services are rendered to exporters/ importers/freight forwarders/CHAs.

39.8.2. Applying the analogy as discussed in paragraph 39.2 to 39.4 above, the charges appeared to be for the services rendered to importer/exporters (who are

Indian entities) and the foreign liner has not availed the said service. Therefore, claiming SEIS benefit under Appendix 3E appeared to be not correct and in violation of Para 9.51(i) of FTP, Para 9.51(ii) of FTP and Section 2(e)(II)(ii) of FTDR Act 1992, as there is no export of service.

39.9.Ineligibility of “Plugging ” taken as “Reefer Container Charges”

The Statements annexed to their ANF 3B application showing calculation of SEIS income for the period 2015-16, 2016-17, 2017-18 and 2018-19, consists of income shown as “Plugging ” taken as benefit under the Appendix 3E category “Reefer Container Charges”, as observed in a sample Invoice No. GDL/I/HD/1718/05328 dated 05.05.2017, which is scanned and placed below for ease of reference:



GATEWAY DISTRI PARKS LIMITED
Sector-6, Dronagiri Taluka-Uran, Navi Mumbai 400707
Ph No. 022-27246500 , Fax No : 022-27246538
PAN : AAACG3425C , STax : AAACG3425CST001 , CinNo : L74899MH1994PLC164024

Import Invoice
Category of Services: Storage and Warehousing Services / Cargo Handling Service/ Transport of Goods by Road

Invoice No. : GDL/I/HD/1718/05328
Invoice Date: 05-05-2017
Paying Customer : C111526
Name : ORCHID LINE INDIA PVT LTD.
Address : F-262/1, Dreams The Mall, LBS Road, Bhandup West, Mumbai Mumbai 400078
Billing Customer : C111526
Name : ORCHID LINE INDIA PVT LTD.
Address : F-262/1, Dreams The Mall, LBS Road, Bhandup West, Mumbai Mumbai 400078
Cargo Description : FROZEN BASA FILLETS
Narration: 000000002444 RS.169771,5-5-17, RS.169771 AS AGREED

BOE No. 9287387
Invoice Validity Date: 05-05-2017
BL No.
IGM No. 2162325
IGM Line No. 110
Importer : M M FISHRIES P LTD.
CHA : SKILLS LOGISTICS PVT. LTD
Shipping Line : C102981
FF

BOE Date 12-04-2017
BL Date
IGM Da's 12-04-2017
IGM Sub Line No.
SMTP No.
SMTP Date

Cargo Details 20 : 0 40 : 2 45 : 0 TEUS : 4


Description	Amount	Service Tax Amount	Swach Bharat Cess Amount	Krishi kalyan Cess Amount	Total Inv. Amount
Ground Rent	19,440.00	2,721.60	97.20	97.20	22,356.00
Monitoring	4,800.00	672.00	24.00	24.00	5,520.00
Plugging	12,400.00	1,736.00	62.00	62.00	14,260.00
Handling & Transportation	1,14,000.00	15,960.00	570.00	570.00	1,31,100.00
Total	1,50,640.00	21,089.60	753.20	753.20	1,73,238.00

Amount (In words) : Rs. ONE LAKH SEVENTY THREE THOUSAND TWO HUNDRED THIRTY SIX RUPEES AND ZERO PAISA ONLY

Received with Thanks from M/s C111526
Sum Of Rs 169771 by Cheque Chq No. Chq Dt. Drawn on Branch

Container No.	Size	Type	Com. Type	Gross Wt.	Free Days	Chrg. Days	COC Date	Arrival Date	GR From Date	GR To Date	Service	Line Amount	Service Tax	Amount
TCLU1372926	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	Ground Rent	9,720.00	1,458.00	11,178.00
SZLU9700965	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	Ground Rent	9,720.00	1,458.00	11,178.00
TCLU1372926	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	Handling & Transportation	57,000.00	8,550.00	65,550.00
SZLU9700965	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	Handling & Transportation	57,000.00	8,550.00	65,550.00
TCLU1372926	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	RF-Monitoring	2,400.00	360.00	2,760.00
SZLU9700965	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	RF-Monitoring	2,400.00	360.00	2,760.00
TCLU1372926	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	RF-Plug-in	6,200.00	930.00	7,130.00
SZLU9700965	40	HRG	Gen	32.3	0	0	05-05-2017	14-04-2017	14-04-2017	05-05-2017	RF-Plug-in	6,200.00	930.00	7,130.00

Terms and Conditions :-
1. Receipt is valid subject to Realisation of Cheque.
2. This receipt is not a guarantee for delivery of container/cargo.
3. Delivery is subject to fulfillment of customs and other statutory formalities.
4. The insurance of cargo is required to be taken by the consignor/consignee from Warehouse, to Warehouse. The liability of GATEWAY DISTRI PARKS LIMITED as the Customs Cargo Service Provider is limited to the liabilities arising out of its role as Customs Cargo Service Provider as per the legal framework in this regard.
5. For any delay in payment beyond the period of credit allowed by GATEWAY DISTRI PARKS LIMITED in writing, an interest @15% PM and part thereof shall be paid by the customer.
6. The payment to be made preferable by RTGS/NEFT or bank transfer by cheque/draft to be delivered at the CFS.
7. Incidence of cheque bouncing will attract penalty, as per Company's policy. The Company reserves the rights for any other action.
8. Service Tax in case of Road Transport services as applicable shall be paid by the respected receiver of the service as per notification No.30/2012-ST dated 20.06.2012.
9. According to Rule 2 & Sub-rule 1 of Service Tax rules 1994 as amended by notification No.35/2004-ST Person who pays or is liable to pay freight himself or through his agent for the transportation of goods carriage is liable to pay service tax directly to government.
10. GATEWAY DISTRI PARKS LIMITED shall not be responsible for or liable in anyway, and the Customer shall indemnify GATEWAY DISTRI PARKS LIMITED against all damages, claims, costs and expenses suffered or incurred by GATEWAY DISTRI PARKS LIMITED resulting directly or indirectly from any defects in a Container and/or its contents and/or Cargo.
11. The Customer is solely responsible for compliance with all laws, ordinances or regulations in force relating to the Container, exportation and Importation of cargoes as per Government of India and all concerned regulatory bodies and all matters.
12. Bank Details :
Beneficiary Name : GATEWAY DISTRI PARKS LIMITED
Bankers Name : HDFC BANK LIMITED
Bank Account No. : 0119031000014
Bank Address : GROUND FLOOR, NEXT TO CDC DEPT., PORT USERS BUILDING JNPT NHAVA SHEVA, NAVI MUMBAI - 400707
RTGS/NEFT IFSC : HDFC0000110



39.9.1 Shri Karthik Aiyer of M/s.GDL in his voluntary statement, while explaining the nature of the services rendered, has stated that in respect of “Energy surcharge” the charges are for monitoring and maintaining the temperature for reefer containers by ensuring continued electric supply; that the services are rendered to exporters and importers.

39.9.2. Applying the analogy as discussed in paragraph 39.2 to 39.9 above, the charges appeared to be for the services rendered to importer/exporters (who are Indian entities) and the foreign liner has not availed the said service. Therefore, claiming SEIS benefit under Appendix 3E appeared to be not correct and in violation of Para 9.51(i) of FTP, Para 9.51(ii) of FTP and Section 2(e)(II)(ii) of FTDR Act 1992, as there is no export of service.

39.10. It appeared that GDL neither have any agreement with the foreign liners nor agents of foreign liners in India to provide service to foreign liners. Neither foreign liners are paying GDL in free foreign exchange or in INR nor it was being received from the agents of foreign liners. GDL raised invoices on the importer/exporter/freight forwards/CBs and in turn received money from them in INR and the money so received may not be considered as deemed foreign exchange as it was not received from the foreign liners or agents of foreign liners in India. The Appendix 3E specifically states that ‘payments which have been

received in foreign exchange or which would have been otherwise received in foreign exchange but paid in INR' are only eligible for SEIS benefit. In this case, the liner/container operator did not have any formal agreement with GDL for availing various services in the CFSs of GDL nor they were paying in INR. Therefore, it appeared that the services were rendered to Indian entities by GDL and not to a foreign liner. It is pertinent to mention that while filing application for GDL for SEIS benefit, they submitted invoices without correlating the services rendered by them for foreign liners and it was only after the query raised by the RA [refer to para 20(2) above], GDL submitted the invoices which merely contained the details of foreign liners along with flag & nationality of vessel.

40. It is pertinent to mention that the SCN dated 12.04.2022 issued to M/s GDL has already been decided by the Addl. Director General of Foreign Trade, Mumbai, vide Order-in-Original No.01/RKM/2022-23 dated 03.02.2023 (**RUD-16**), wherein the following findings held and orders passed by the authority:

"39. ... I observe that the SEIS benefits are available wherein the Notified Services are rendered in the manner by a service provider falling in categories covered by Para 9.51(i) and Para 9.51(ii) of the FTP. It is further observed that the Payment in Indian Rupees in the manner prescribed for service charges earned on specified services notified under Appendix 3E, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India for the purpose of this scheme.

40. In the current case, the Noticee, in the write up on services provided by them along with the application, has clearly stated that they have an agreement with some of the major shipping lines for using their services for the containers belonging to their shipping lines. It was also mentioned therein that the agreement with the shipping lines ensures that the CFS receives by and large all the containers traffic handled by these shipping lines. However, no agreement or even extract of the agreement was detailed in/ provided with the write-up to show that the services for which benefits were claimed in this application were rendered to the Foreign Shipping Lines in any manner for which any charges/ remuneration accrued to the Foreign Shipping Lines.

41. Therefore, the arrangement of requirement of Delivery Order and Form 13 from Foreign Shipping Lines for the CFS to allow delivery of imports containers in case of imports and dispatch of export container in case of export is limited to the extent of ensuring container traffic and its scope does not extend to the services claimed in the application that are provided by the CFS to the importer/clearing agent/freight forwarder in relation to the cargo carried in the containers. This clearly answers the first question stated above in negative.

42. The Noticee has stated that they are into providing laden containerized cargo handling services in their own CFS with their own resources for containers of foreign liners moving in and out of India through vessels/carriers/ships of foreign liners. During the personal hearing dated 15.12.2022, the Noticee has agreed that they do not have an agreement with the shipping line and no payment is made by the shipping line. The Noticee, in their write-up, provided while submitting the application, stated that shipping lines are the initiators for the imports segment of the CFS business. They have further stated that on receipt of the request of the delivery from the importer, the cargo in the container is examined and the importer pays the duty assessed to the Customs Authorities. Handling/storage charges are paid to the CFS by the importer/Freight Forwarder/Agent as the case may be. The importer can take the examined container as such for factory de-stuffing or can bring empty trucks to the CFS for loading the cargo directly

from the container. With customs approval and under customs supervision, cargo intended for transshipment to other ICDs/CFSs are re-stuffed in other containers.

43. From the above description of the services given by the Noticee, it is amply clear that the recipient of services are Indian importers/clearing agents/freight forwarders and these importers/clearing agents/freight forwarders are not service consumers of any other country in case of imported goods. Similarly, the recipients of services are Indian exporters/clearing agents/freight forwarders and these exporters/clearing agents/freight forwarders are not service consumers of any other country in case of exported goods. Therefore, the unassailable position that emerges is that the said supply of services is beyond the scope of Para 9.51(ii) of FTP, 2015-20 which stipulates the supply of service from India to service consumers of any other country in India (Mode 2 – consumption abroad).

44. Therefore, it is beyond any doubt that the services applied in this application are beyond the scope of service exports and therefore, the answer to the question no.ii stated above is in negative.

45. I am conscious of the contention of the Noticee that there is no express requirement of the Agreement under the provisions of the SEIS. For arriving at the proper conclusion on the nature of transactions, it is essential to carefully examine the Invoice relating to the service provided for arriving at the conclusion regarding the identity of the recipient of services. On the issue of the relationship of the parties, I place reliance on decision of the Hon'ble Supreme Court in *Tirumala Venkateswara Timber and Bamboo Firm Vs. Commercial Tax Officer, Rajamundry* – 1968 SCR (2) 476 wherein the Apex Court held that

“4..... The true relationship of the parties in each case has to be gathered from the nature of the contract, its terms and conditions, and the terminology used by the parties is not decisive of the legal relationship”

....

47..... The consideration received for the services rendered is in INR. This also answers the next issue that whether the payments from the service recipients would have otherwise been received in FFE in negative. While the details of the shipping liner is present in the invoice which is the shipping line linked with the container, the invoice is issued to the Indian entity and the Indian entity has made the payment to the CFS i.e. GDL, the services rendered therein namely such as Additional Handling Charges and Handling Charges have not been rendered to the foreign shipping liner.

48. Further, Para 3.08(c) of FTP permits payments in Indian Rupees for services charges earned on specified services, shall be treated as received in deemed foreign exchange as per guidelines of Reserve Bank of India.....

49 Therefore, the INR remittances received from Indian importers/clearing agents/freight forwarders cannot be considered as deemed to be received in Free Foreign Exchange (FFE) as per Appendix 3E.

50. The Noticee has relied upon the email dated 11.03.2019 sent by the DGFT Headquarters informing that the RA may process the case based on the CA Certificate. On perusal of one such CA Certificate submitted along with SEIS claim for 2015-16, it is clearly mentioned in the enclosure to ANF3B which is a “Certificate of Chartered Account (C.A./Cost & Works Accountant (ICWA)/Company Secretary (C.S.) that he has examined prescribed registers and also relevant records of GDL for the period 01.04.2015 to 31.03.2016 and certified that inter alia bills and invoices have been examined and verified by him and that services for which benefit has been claimed does not

include ineligible services and remittances. However, the CA Certificate submitted by the applicant has clearly put forth the stand of the applicant certified by the Chartered Accountant that services for which benefit was claimed did not include ineligible services and remittances as per the FTP and HBP, 2015-20, Policy Circulars and Trade Notices as published from time to time. This certificate is not correct as the first requirement of export of services itself is not fulfilled as claimed the Table at S.No.6 of the Enclosure to ANF3B. Further, the statements submitted after being certified by CA also provide the remittances received against each service head as applicable as per Appendix 3E. In respect of the same claim, Additional CA certificate submitted along with GDL's letter dated 12.03.2019 classifies the service rendered by GDL under applicable categories/sub-categories of services mentioned in Annexure to Appendix 3E of [FTP 2015-20](#) while clearly declaring them as service exports. Similar is the position regarding CA certifies in respect of SEIS claims for the other 3 years. As is clear from the above factual position, the CA certificates are mis-representing the vital aspect related to the nature of service under Para 9.5(ii) of the FTP, 2015-20. This mis-representation is critical for determination of the acts of omission and commission in this particular case.

52. However, this argument of the Noticee and the certificate provided by the CA is not within the scope of the legal and factual matrix detailed in the discussions above. Therefore, the Noticee had mis-represented the services as export of services with intent to claim inadmissible SEIS benefits.

53. Therefore, the provisions of Section 9(4) of the FTDR Act, 1992 read along with Rule 10(a) of FTR are applicable in the said case and the SEIS scrips, granted to the Noticee vide four fine numbers mentioned in the table given below, are liable to be cancelled *ab initio*.

...

55. In view of the above discussions and findings, I pass the following order:
(i) The SEIS Scrips issued from File No.032109480550AM18 for Rs.13,10,20,645/- for Financial Year 2015-16, SEIS scrip issued from File No.032109480548AM18 for Rs.15,14,83,435/- for Financial Year 2016-17, SEIS scrip issued from File No.032109880306AM19 for Rs.17,61,13,273/- for Financial Year 2017-18 and SEIS Scrip issued from File No.032109850032AM20 for Rs.23,16,15,015/- for Financial Year 2018-19 are cancelled *ab initio* under Section 9(4) of the FTDR Act, 1992."

Suppression of facts and wilful mis-statement by GDL:

41. During the course of investigation, it has come to light that GDL knowing very well the nature of the services being rendered by them and the nationality of the service consumer to whom the services were rendered by them have wrongly claimed SEIS benefit by wilfull mis-statement. A sample of statement showing calculation of SEIS for export services rendered and received charges by GDL for the period 2017-18 is scanned and placed for ease of reference below:

Gateway Distriparks Ltd

Statement showing calculation of SIES Claim for service export period AM 2017-18

	*GDL Mumbai			GDL Punjab Conware			GDL Chennai			GDL KPTM			Total		Grand Total
	Apr-Oct 17	Nov-Mar 18	Total	Apr-Oct 17	Nov-Mar 18	Total	Apr-Oct 17	Nov-Mar 18	Total	Apr-Oct 17	Nov-Mar 18	Total	Apr-Oct 17	Nov-Mar 18	
Invoice Service Head															
Cargo Handling	1,63,15,799	1,27,68,373	2,90,84,172	7,84,94,766	6,43,35,104	14,28,29,870	8,93,301	14,19,218	23,12,519	0	3,90,120	3,90,120	9,57,03,366	7,89,12,815	17,46,16,181
Cargo Storage	3,49,75,685	1,58,19,352	5,07,95,037	0	0	0	0	0	0	3,55,456	18,03,722	21,59,178	3,53,31,141	1,79,61,614	5,32,92,755
Additional Cargo Handling Char	0	0	0	5,59,42,944	3,57,33,136	9,16,76,080	0	0	0	0	0	0	5,59,42,944	3,57,33,136	9,16,76,080
Energy Surcharge	40,97,725	24,46,694	65,44,359	2,34,069	1,64,493	3,98,562	80,98,206	57,50,050	1,38,48,256	4,000	11,130	15,130	1,24,34,000	83,72,307	2,08,06,307
Fuel Surcharge	1,51,88,830	97,41,311	2,52,30,141	46,38,038	29,75,729	76,13,767	82,23,490	58,54,700	1,40,78,190	4,500	11,400	15,900	2,83,54,858	1,85,83,140	4,69,37,998
Ground Rent	9,74,32,785	7,86,33,611	17,60,66,397	3,38,93,822	3,99,23,426	7,38,17,247	7,44,61,398	5,35,89,429	12,80,50,827	0	0	0	20,57,88,005	17,21,46,466	37,79,34,471
Additional Handling Charges	0	0	0	0	0	0	0	0	0	53,12,920	20,84,948	73,97,868	53,12,920	20,84,948	73,97,868
Handling Charges	42,78,51,061	32,72,98,331	75,51,49,393	0	0	0	0	0	0	0	0	0	42,78,51,061	32,72,98,331	75,51,49,393
Handling & Transportation	0	0	0	32,78,58,834	26,33,64,043	59,12,32,876	35,19,16,342	26,18,30,725	61,37,47,067	2,24,83,601	3,20,39,857	5,45,23,458	70,22,68,777	55,72,34,524	1,25,95,03,401
Lashing Choking	83,37,408	54,39,214	1,37,76,622	62,34,024	45,39,860	1,07,73,884	0	0	0	0	0	0	1,45,71,432	99,79,074	2,45,50,506
Plugging	1,00,25,843	44,04,580	1,44,30,423	7,24,200	5,96,500	13,20,700	10,99,501	17,39,300	28,38,801	0	0	0	1,18,49,544	67,40,380	1,85,89,924
Survey CLP & EIR	12,73,722	0	12,73,722	6,87,753	1,83,755	8,71,508	0	0	0	0	0	0	19,61,475	1,83,755	21,45,230
Warehouse Reservation	1,13,80,709	99,08,053	2,12,88,762	1,90,85,602	1,81,42,407	3,72,08,009	0	0	0	0	0	0	3,04,46,311	2,80,50,460	5,84,96,771
Customs Examination	97,42,600	77,41,750	1,74,84,350	19,75,039	14,71,475	34,46,514	2,12,000	1,62,507	3,74,507	15,000	1,08,750	1,23,750	1,19,44,639	94,84,482	2,14,29,121
Scanning Charges	68,65,589	68,22,567	1,36,88,156	54,36,017	37,90,766	92,26,783	4,13,500	7,77,000	11,90,500	0	1,72,400	1,72,400	1,27,15,106	1,15,62,733	2,42,77,839
Weightment	1,46,68,250	1,21,88,207	2,68,56,457	1,44,05,688	1,20,01,450	2,64,07,138	39,37,729	24,64,765	63,97,494	3,33,476	7,67,135	11,00,611	3,33,40,143	2,74,21,556	6,07,61,699
Total	A	65,84,56,005	49,32,11,984	1,15,16,67,989	54,96,00,294	44,72,22,143	99,68,22,436	44,92,50,468	33,39,26,234	78,31,76,702	2,85,08,953	3,73,89,461	6,58,98,414	1,68,58,15,720	1,31,17,49,822
Rate of Entitlement **	B	5%	7%	5%	7%		5%	7%		5%	7%		5%	7%	
Amount of entitlement	C=AxB	3,29,22,800	3,45,24,839	2,74,80,015	3,13,05,550		2,24,62,523	2,33,74,836		14,25,448	26,17,262		8,42,90,786	9,18,22,488	17,61,13,274

Seem
Srinivas
22/3/21

JAIN ANIL & ASSOCIATES
CHARTERED ACCOUNTANTS
MEMBER NO. 33900

Rdm

*We operate 4 CFS's across India , referred in abbreviated form as GDL Mumbai , GDL Punjab Conware, GDL Chennai & GDL KPTM
** Rate of Entitlement is as per Public Notice No.

It appeared from the above that GDL have not rendered the said services to any foreign liners or agents of foreign liners in India and all the said services were rendered for which payments received by GDL from the Indian entities of exporters/freight forwarders.

41.1. In terms of para 3.08(a) of FTP, Service Providers of notified services (listed in Appendix 3D), located in India, shall be rewarded under SEIS, subject to conditions as may be notified. Only services rendered in the manner as per Para 9.51(ii) of FTP are eligible for SEIS benefit. Appendix 3E, lists services whose earnings even if in Indian currency can be treated as foreign exchange, provided, they are rendered to a foreign liner or its Indian agents. However, the services listed in Appendix 3E are a subset of services listed in Appendix 3D of FTP. Therefore, if the services are not rendered in terms of Para 9.51(ii) of FTP, then SEIS benefit is not eligible at all.

41.2. The Chartered Accountant who certified the ANF-3B applications of GDL, has admitted that he had issued the certificate in good faith on the oral request of Shri Rakesh Garg without going into the provisions of the FTP and PN issued thereon and he further stated that he simply signed the draft certificate received by him from Shri Kartik Aiyer of GDL and he issued certificate for a monetary consideration of Rs 20,000/-. The CA has also not complied with the clarifications sought by the DGFT.

41.3. In their statements, the representative of foreign liners or their Indian agents, have categorically stated that they have not requested or instructed M/s GDL in writing to render any services to the exporters/ importers/freight forwarders /custom brokers in relation to the cargo containers transported in their vessels; that they have not asked the exporters/importers/freight forwarders/CBs to pay GDL on their behalf and that M/s GDL have not rendered any services to them either in the Port/Terminal or in their CFS.

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41.4. As regards, the importers/exporters/customs brokers who have availed the notified services rendered by GDL in their CFS, in their statements, they have also categorically stated that they were NOT agents of the foreign liners or their Indian agents; that the foreign liners or their Indian agents have NOT instructed M/s GDL to render the notified services to them on their behalf; that they have never paid any amount to the foreign liners or their Indian agents either in foreign currency or in Indian currency for the services rendered by M/s GDL as reflected in the tax invoices.

41.5. GDL in their statements have also admitted they do not charge the foreign liners, nor do the foreign liners pay GDL for the services rendered to their customers (importers/exporters/freight forwarders/custom house agents); that GDL only charges the customers and receive payments from them in Indian Rupees; that there is no specific written requests from the foreign liners to M/s GDL to render the services covered under appendix 3E as stated/claimed by GDL in their application ANF 3B and reflecting in their invoices . It appeared that there is no business or financial connection between GDL and the foreign liners or its Indian agents.

41.6. The above appeared to clearly indicate that though GDL were well aware that they have not rendered the services in terms of Para 9.51(ii) of FTP, which is very fundamental condition for claiming SEIS benefit, they had filed SEIS claims. Further, they successfully got the said applications certified by the chartered accountant to get the SEIS benefit and mis-led the scrip issuing authorities as well. From the above, it can be clearly seen that GDL appeared to be ineligible for the claim for SEIS benefit.

41.7. The above appeared to indicate there was wilful mis-statement & wilful suppression of facts by GDL. Further, it appeared knowingly that they were only rendering services to the Indian exporters/importers/freight forwarders/custom house agents in customs notified area, GDL have mis-stated that they rendered services to those Indian entities for and on behalf of the foreign liners with a view to claim SEIS rewards intentionally.

D. SUMMARY OF THE INVESTIGATION

42. From the careful scrutiny of ANF-3B applications, Annexures thereto, CA Certificates, statements recorded and the foregoing paragraphs, the following appeared to emerge:

- (i) GDL have applied for and obtained SEIS scrips to the tune of Rs 69 crores under the category 9A(f) "Supporting Services for Maritime Transport" of Appendix 3E to Public Notice No 7/2015-2020 dated 04.05.2016 for the years 2015-16 to 2018-19.
- (ii) As per Appendix 3E, the SEIS claimant should have received foreign exchange or Indian Rupees (deemed foreign exchange) for the services rendered by him to the foreign liners or their agents in India in a Customs Notified Area. The amount such received by the SEIS claimant should have been out of the amount to be paid to the foreign liner by its Indian agent. (or) the amount such received by the SEIS claimant should have been out of the amount to be sent by the overseas buyer. The service rendered by the SEIS claimant should be covered under Appendix 3E.
- (iii) GDL have claimed to have rendered services in terms of Para 9.51 (ii) of FTP i.e. "Supply of service from India to service consumer(s) of any other country in India (Mode 2 – consumption abroad)"

- (iv) As per the Annexures to Form ANF 3B application and the sample invoices forming part of ANF-3B, GDL have rendered services such as cargo handling, cargo storage, energy surcharge, fuel surcharge, ground rent, handling & transportation, lashing choking, plugging, survey CLP & EIR, warehouse reservation, customs examination, scanning charges, weighment etc. in their CFS premises at Mumbai (Navi Mumbai & Punjab Conware), Chennai & Krishnapatnam.
- (v) The customers of GDL who have availed these services are exporters/importers/freight forwarders/CHAs who are Indian companies and have paid GDL in Indian Rupees for the services rendered by GDL in their CFS as reflected in the invoices raised by GDL. The amount so received by GDL cannot be considered as deemed to be received in foreign exchange and deemed to be earned in foreign exchange for the purpose of claiming SEIS benefit.
- (vi) GDL have not rendered services to the foreign liners or their agents in India. They have not received payment from foreign liners or their agents in India in foreign exchange or in INR for the services rendered by GDL to the importers/exporters/freight forwarders/custom house agents.
- (vii) GDL have not remitted to the foreign liners or their agents in India any amount collected from importers, exporters, freight forwarders, CHAs either in foreign exchange or in INR for the services rendered by GDL for which they have claimed SEIS benefits.
- (vii) GDL have not entered into any agreement/contract with any of the foreign liners in respect of the services rendered by them to the importers/exporters/freight forwarders/ custom house agents. GDL have claimed that they are rendering services to various foreign shipping lines viz., M/s APL, M/s Maersk, M/s Wan Hai etc. in India who are the service consumers of other countries as per the definition in terms of Para 9.51 (ii) of the FTP. However, GDL could not produce any evidence in the form of agreement/contract/specific requests from Foreign liners or their Indian agents to prove that the services are rendered to Foreign liners or to the Indian entities at the behest of Foreign liners/agents. GDL also could not produce any evidence to prove that the amount received in INR for the services rendered to Indian entities in their CFS is out of the amount to be paid to the foreign liner/agent (or) out of the amount to be sent by the overseas buyer. Thus it appeared GDL could not prove that the services rendered by them in their CFSs to Indian entities has resulted in earning of foreign exchange or deemed foreign exchange as required under Para 3.08 of FTP 2015-20.
- (viii) GDL further claimed that the details of the container numbers and the foreign liner's/agent's name are reflected in their invoice which makes them eligible to claim SEIS benefit. The invoices were raised by GDL in the name of importers/exporters/freight forwarders/CB's who consumed the services within the country and NOT in the name of foreign liners or their Indian agents. Hence these invoices cannot be considered as contract between GDL and the foreign liners or their Indian agents, as they are not party to it.
- (viii) The following foreign liners or their Indian agents in their voluntary statements have categorically stated that they have not requested or instructed M/s GDL in writing to render any services mentioned above to the exporters/ importers/freight forwarders /custom brokers in relation to the cargo containers transported in their vessels; that they have not asked the exporters/importers/freight forwarders/CBs to pay GDL on their behalf ; that M/s GDL have not

rendered any services to them either in the Port/Terminal or in their CFS, hence, the question of they, as agent of foreign liners paying GDL either in foreign exchange or in Indian Rupees does not arise.

- M/s Ocean Network Express (India) Pvt Ltd (liner) agent of M/s Ocean Network Express Pte Ltd, Singapore
- M/s CMA CGM Agencies India Pvt Ltd, Chennai (Liner) agent of M/s CMA CGM SA, Marseilles, France
- M/s Samudera Shipping Line India Pvt Ltd (Liner) agent of M/s PT Samudera Shipping Line Jakarta
- M/s Wan Hai Lines India Pvt Ltd, Chennai (Liner) agent of M/s Wan Hai Lines, Taipei

The statements given by the above Indian agents of Foreign liners exposes the hollow claim of GDL that they are rendering the services on behalf of Foreign liners or their Indian agents.

- (ix) The exporters or importers are free to choose the CFS through which their cargo is stuffed/destuffed and the foreign liners do not have any role in this.
- (x) The importers/exporters/customs brokers who have availed the notified services rendered by GDL in their CFS, in their voluntary statements have categorically stated that they are NOT agents of the foreign liners or their Indian agents; that the foreign liners or their Indian agents have NOT instructed M/s GDL to render the notified services to them on their behalf; that they have never paid any amount to the foreign liners or their Indian agents either in foreign currency or in Indian currency for the services rendered by M/s GDL as reflected in the tax invoices.
- (xi) GDL in their statements have also admitted they do not charge the foreign liners, nor do the foreign liners pay GDL for the services rendered to their customers (importers/exporters/freight forwarders/custom house agents); that GDL only charges the customers and receive payments from them in Indian Rupees; that there is no specific written requests from the foreign liners to M/s GDL to render the services covered under appendix 3E as stated/claimed by GDL in their application ANF 3B and reflecting in their invoices . It appeared that there is no business or financial connection between GDL and the foreign liners or its Indian agents
- (xii) The services were rendered independently on its own by GDL to the Indian entities like importers/exporters/freight forwarders/customs brokers, who did not remit/receive any foreign exchange to/from the foreign liners or its Indian agent. Thus, the services rendered by GDL do not satisfy the primary condition mentioned in Public Notice No.7/2015-20 dated 04/05/2016, Appendix 3E and Para 3.08, 9.51(ii) of [FTP 2015-20](#).
- (xiii) The amount received by GDL from the Indian entities for the services rendered by them in their CFSs is NOT out of the amount to be paid to the foreign liner by its Indian agent. (or) out of the amount to be sent by the overseas buyer. In effect the services rendered by GDL for which they have claimed SEIS scrips did not result in earning of any foreign exchange to the country which is the primary condition under Appendix E. Thus it appeared that GDL had failed to establish that the payment received in Indian rupees from the Indian entities for the services rendered in their CFS, was the payment which would have otherwise been received in foreign exchange.
- (xiv) The Chartered Accountant who certified the ANF-3B applications of GDL did not conduct any discussion with the management of GDL regarding the eligibility of SEIS benefits. He had not read the provisions of CPC, FTP, related Public Notices etc. and Appendix 3E before issuing the certificate.

On the oral request of Shri Rakesh Garg, tax auditor to GDL and on GDL informing him that they are eligible for the services covered under “Supporting Services for Maritime Transport”, he certified the ANF-3B applications of GDL for a monetary consideration of Rs 20,000/-. The CA has not complied with the instructions for CA for filling up the ANF-3B form of GDL. He has not complied with the clarifications sought by the DGFT.

- (xv) The services rendered to Indian exporters/importers/freight forwarders/customs house agents by GDL in customs notified area (CFS) have been mis stated by them as services rendered to them on behalf of the foreign liners for the purpose of claiming SEIS benefits.

43. M/s Adani Wilmar Limited, who utilized scrips for payment of customs duty have imported and cleared the goods vide Bills of entry as detailed in TABLE- 4 above. The said goods are to be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

44. M/s Classic Marble Company Pvt Ltd who utilized scrips for payment of customs duty have imported and cleared the goods vide Bills of entry as detailed in TABLE- 4 above. The said goods are to be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

45. Accordingly, duty which is liable to be demanded under Section 28AAA of the Customs Act, 1962 works out to **Rs.68,02,32,044/-** in respect of M/s Adani Wilmar Ltd and **Rs.99,99,998/-** in respect of M/s Classic Marble Company Pvt Ltd as detailed in TABLE- 4 above. The port wise duty to be demanded under Section 28AAA of the Customs Act, 1962 is tabulated below:

TABLE- 20

Sl. No.	No. of Bills of Entry	Port	Assessable Value (in Rs.)	Duty demanded U / S. 28AAA of the Customs Act, 1962	Jurisdictional Adjudicating Authorities
1.	2	3	4	5	6
1	4	INCCU1	64,20,12,641	15,14,83,179	The Commissioner of Customs, (Port) 15/1, Strand Road, Kolkata-700001
2	2	INHZAI	22,97,71,526	6,99,99,998	The Commissioner of Customs, Adani Hazira Port, Choryashi, Bypass Road, Hazira, Dist Surat, Gujarat Adani Hazira Port
3	2	INIXY1	19,92,66,207	2,23,11,099	The Principal Commissioner of Customs, Kandla Custom House, Near Balaji Temple, Kandla, Gujarat
4	7	INMUN1	217,30,09,658	43,64,37,768	The Principal Commissioner of Customs, Mundra, 5B, Port User Building Mundra Port, Mundra, Gujarat – 370421
5	6	INNSAI	3,06,23,530	99,99,998	The Principal Commissioner of Customs, Nhava Sheva-I Commissionerate, Jawaharlal Nehru Custom House, Nhava Sheva, Tal Uran, Dist. Raigad, Maharashtra-400707
Total	21		327,46,83,562	69,02,32,041	

E: PROVISIONS OF THE FINANCE ACT, 2022 AND THE SCN/ADJUDICATING AUTHORITY

46. Since the noticees would have been asked to show cause to different jurisdictional adjudicating authorities in respect of imports made by them through various Customs Houses, attention is drawn to the amendments made by Finance Act 2022 in the Customs Act 1962. The Finance Act 2022, enacted on 30/03/2022, inserted Section 110AA in the Customs Act 1962 and the same is reproduced below:

“110AA. Where in pursuance of any proceeding,
.....

47. In the instant case,

.....

48. In the instant case, the highest duty utilization of Rs.43.64 Crores (out of total duty utilization of Rs. 69.02 Crores through five Commissionerates) under Section 28AAA is under INMUN1 (Mundra Port)

F: VIOLATION OF STATUTORY PROVISIONS AND CONFISCATION OF GOODS AND PENALTIES.

49. As per Para 3.08 (a) of the FTP 2015-20 Service Providers of notified services, located in India, shall be rewarded under SEIS. Only services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of this policy shall be eligible. GDL does not appear to come under the definition of "Service Provider" in terms of Para 9.51(ii) of the FTP 2015-20 i.e., Supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2-Consumption abroad) in as much as they have not rendered services to the foreign liners or its Indian agents.

49.1. GDL, appeared to have claimed SEIS benefits solely on the strength of inclusion of the name of the foreign liner in their invoices and appeared to have interpreted the conditions of Appendix 3E to their advantage by claiming that services rendered by GDL are to the foreign liners thereby becoming eligible for SEIS benefits. The claim under Appendix 3E is eligible only when the services are provided to foreign liners or its Indian agents.

49.2. In respect of invoices raised by GDL to exporters, these charges paid by exporters to GDL are part of FOB value of the goods. For the said FOB value, the exporters claim MEIS benefit. Herein, GDL, as service provider, has claimed SEIS benefit for the said income. Hence, for the same amount both MEIS (for the exporters) and SEIS (for GDL) are given in contrary to the objective of the Export Scheme itself.

49.3. In respect of invoices raised by GDL to importers, for the services rendered by GDL (Indian entity), the importers (Indian entities) pay in INR and not in foreign exchange. For the said reason the service rendered by GDL is not as per the manner in paragraph 9.51(ii) of the FTP, 2015-20 and such service do not constitute export in terms of section 2(e)(II)(ii) of the Foreign Trade (Development & Regulation) Act, 1992. The entire transaction does not appear to generate any foreign exchange as earning, which ought to have been paid in INR, hence, there cannot be deemed foreign exchange as per paragraph 3.08(c) of the FTP, 2015-20. It is nothing but a purely commercial transaction between two Indian entities within India.

The objective of SEIS is to encourage export of notified services from India. Hence it vitiates the basic objective of SEIS. In view of the above, it appeared that GDL have violated the provisions of Para 3.08 (a) of the FTP and claimed SEIS benefits.

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

49.5. The foreign exchange or INR received and claimed as deemed net foreign

exchange, to the extent of Rs.1209.43 Crores as detailed in TABLE- 2 above, appeared to be not earned for rendering of notified service against which scrips issued by DGFT as detailed in TABLE- 3 above, and hence that cannot be considered as export of notified services and therefore the condition 2(1) of the Notification 25/2015-Cus. dt. 08.04.2015 as well as the Paragraph 3.08 of FTP, are not complied with and therefore it appeared that corresponding SEIS scrips/rewards are not eligible for the benefit of the exemption of Customs Duty vide Notification 25/2015- Cus. dt. 8.04.2015.

49.6. GDL have obtained the SEIS scrips by gross mis-declaration/mis statement and transferred the said scrips to various importers who utilized it for payment of Customs duty in violation conditions of Notification 25/2015-Cus. dated 08.04.2015 on goods imported vide Bills of Entry listed in TABLE-4, and thereby rendered the said imported goods liable for confiscation under 111(o) of the Customs Act, 1962.

49.7 As the said ineligible SEIS scrips under dispute are instruments referred in Section 28AAA of the Customs Act, 1962, which were obtained by GDL by willful mis-statement and suppression of facts and were utilized for payment/debit of Customs duties as listed in TABLE-4 above, such duty so debited is liable to be demanded under Section 28AAA of the Customs Act, 1962 from M/s GDL and the interest is liable to be demanded under Section 28AA *ibid*.

49.8 M/s Adani Wilmar Limited, had utilized the said SEIS scrips valued at Rs.68.02 crores as detailed in TABLE 4 for payment of customs duty on import of goods vide bills of entry through various ports as mentioned in TABLE- 4. As GDL have obtained those SEIS scrips by wilful mis-statement and/or suppression of facts and/or collusion for availing duty exemption and the said imported goods were cleared by using the said Scrips in violation conditions of Notification 25/2015-Cus dated 08.04.2015, the said goods are to be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

49.9 M/s Classic Marble Company Private Limited, had utilized the SEIS scrips valued at Rs.99.99 lakhs as detailed in TABLE- 4 for payment of customs duty on import of goods vide bills of entry mentioned in TABLE- 4. As GDL have obtained those SEIS scrips by wilful mis-statement and/or suppression of facts and/or collusion for availing duty exemption and the said imported goods were cleared by using the said Scrips in violation conditions of Notification 25/2015-Cus dt. 08.04.2015, the said goods are to be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

G. PENALTIES

M/s GDL:

50. By actually not rendering notified services to the foreign liners in Customs Notified Area, by merely including the name of the Foreign liners in the invoices and projecting the same as services rendered to foreign liners, GDL appeared to have wilfully mis-stated that the deemed foreign exchange earned on account of services rendered from India alone in terms of Para 9.51 (ii) of FTP had been taken into account for this application under SEIS as per Para 3.08(a) of FTP 2015-20 and these do not fall under any category or service which are not eligible as per Para 3.08 and 3.09 of FTP 2015-20 in the said ANF-3B forms.

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

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

50.3 As the instrument (SEIS scrips) issued to M/s GDL appeared to have been obtained by mis-declaring /willful misstatement of facts and the instrument has been utilized by person other than M/s GDL, M/s GDL appeared to be liable for penalty under section 114AB of the Customs Act, 1962.

Shri Kartik Aiyer, Senior General Manager of M/s GDL

51. Shri Kartik Aiyer, Senior General Manager of M/s GDL, has signed the ANF-3B form filed for availing SEIS benefit. He appeared to have known very well that the services rendered by M/s GDL as specified under Appendix 3E were not the services rendered to foreign liners but rendered to containers owned by NVOCC/ shipping line / importers / exporters and ultimately the services were consumed by Exporters and Importers. As admitted by Shri Anil Jain, in his statement dated 03.08.2021, Shri Kartik Aiyer, had prepared a draft certificate and sent to the Chartered Account to get it certified for the ineligible scrip to mis-represent the licence issuing authorities. Hence the SEIS benefit for which service is claimed would not be eligible for SEIS benefit under Para 3.08 of the FTP, 2015-20. Therefore, it appeared due to his act of his commissions and / or omissions he has rendered the goods imported through the said ineligible scrips liable for confiscation, thereby he appeared liable for penalty under Section 112(a) of the Customs Act, 1962. Further, for having intentionally signed document / declaration (ANF-3B form & declarations with ANF-3B form) which he knew very well were false or incorrect in material particulars solely to get scrip/reward to avail the benefit of exemption vide Notification 25/2015- Cus. dated 08.04.2015, it appeared Shri Kartik Aiyer is also liable for penalty under **Sections 114AA & 114AB** of the Customs Act, 1962.

Shri Anil G Jain:

52. CA Anil G Jain, Proprietor of M/s Jain Anil & Associates, Chartered Accountant had examined and certified the SEIS claim of M/s GDL as correct for compliance of non-inclusion of ineligible services and remittances as listed under Para 3.09 of FTP as required under ANF-3B.

52.1 The Chartered Accountant being the professional engaged/mandated as per statute to certify any claim, it means an absolute assurance is expected by the statutory authorities to reduce the engagement risk to zero in that claim. The engagement of a Chartered Accountant is to nullify the material misstatement and also the fraud, illegal acts etc. In the instant case, the issue is the certification of earnings made by M/s GDL to conclude that it does not include any earning related to ineligible services. In this case, the Chartered Accountant without going through the provisions of the FTP, provisions of CPC, related Public Notices etc. and Appendix 3E had blindly signed the certificate for a monetary consideration of Rs 20,000/-. He has also admitted in his statement dated 03.08.2021 that he received the draft certificate from Shri Kartik Aiyer of M/s GDL which he simply signed by taking print out in his letter head. He failed to satisfy himself regarding the eligibility or otherwise of SEIS claim of GDL before signing the certificate and failed in verifying the records/documents as required under ANF-3B and therefore abetted GDL in their suppression and mis-statement of facts for the purpose of getting exemption benefit under the Notification 25/2015-Cus. dated 08.04.2015. As the goods imported vide the scrips so obtained are liable for confiscation under Section 111(o) of the Customs Act, 1962

and he is liable for penalty under Section 112(a) of the Customs Act, 1962. His gross material misstatement in the form of certification had resulted in wrongful SEIS benefits to GDL. He knowingly signed the Chartered Accountant Certificate which was false and incorrect in particulars which resulted in the issuance of scrips by DGFT thereby making him liable for penalty under **Sections 114AA & 114AB** of the Customs Act, 1962.

H: CHARGES:

53. In view of above, a notice was issued to M/s Gateway Distriparks Limited (GDL), Sector 6, Dronagiri, Taluk Uran, Navi Mumbai-400707, who were called upon to show cause to the Principal Commissioner/Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why-

- (i) The SEIS Scrips as given in TABLE-3 above, obtained by GDL, should not be held as obtained by willful mis-statement and/or suppression of facts and/or collusion in terms of Section 28AAA of the Customs Act, 1962;
- (ii) The goods covered under bills of entry as detailed in column 4 of TABLE-4 above and in column 6 of **ANNEXURE-A** to this Show Cause Notice, of totally valued at **Rs.327,46,83,562/-** imported vide SEIS scrips obtained by willful mis-statement and/or suppression of facts and/or collusion for availing duty exemption under the Notification 25/2015-Cus. dated 08.04.2015, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962;
- (iii) The duty payable amount aggregating **Rs.69,02,32,041/-** (Rupees Sixty Nine Crores Two Lakhs Thirty Two Thousand and Forty One only) as mentioned in column (7) of TABLE-4 above, should not be demanded and recovered from them under Section 28AAA of the Customs Act, 1962 along with interest from the date of issue of the Scrips in terms of Section 28AA of the Customs Act, 1962
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962, for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation under Section 111(o) of the Customs Act 1962.
- (v) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for their acts of omission and commission as discussed in para 50 above.
- (vi) Penalty should not be imposed on them under Section 114AB of the Customs Act, 1962, for having obtained the instruments by willful mis-statement and/or suppression of facts and/or collusion as explained above.

53.1. Shri Kartik Aiyer, Senior General Manager of M/s Gateway Distriparks Limited (GDL), Sector 6, Dronagiri, Taluk Uran, Navi Mumbai-400707, was called upon to show cause to the Principal Commissioner/Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat- 370421, as to why;

- (i) Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962 for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation.
- (ii) Penalty should not be imposed on them under Section 114AA of the

Customs Act, 1962, for his acts of omission and commission as discussed in para 51 above.

- (iii) Penalty should not be imposed on them under Section 114AB of the Customs Act, 1962, for having obtained the instruments by willful mis-statement and/or suppression of facts and/or collusion as explained above.

53.2. Shri Anil G. Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, 1603, Gaurav Heights, Mahavir Nagar, Kandivali West, Mumbai 400067, was called upon to show cause to the Principal Commissioner/Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why-

- (i) Penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962 for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation.
- (ii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for his acts of omission and commission as discussed in para 52 above.
- (iii) Penalty should not be imposed on them under Section 114AB of the Customs Act, 1962, for having obtained the instruments by willful mis-statement and/or suppression of facts and/or collusion as explained above.

53.3 M/s Adani Wilmar Limited (IEC No 899000363), Fortune House, Nr Navarangpura Railway Crossing, Ahmedabad 380009 were called upon to show cause to the Principal Commissioner/Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why-

- (a) The goods of declared assessable value of **Rs. 64,20,12,641/-** imported and cleared through INCCU1, as detailed in column 6 of **ANNEXURE- A** to this Show Cause Notice, for which duty exemption under the Notification 25/2015- Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and/or suppression of facts and/or collusion for availing duty, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
- (b) the declared assessable value of goods of **Rs.22,97,71,526/-** imported and cleared through INHZA1, as detailed in column 6 of **ANNEXURE- A** to this Show Cause Notice, for which duty exemption under the Notification 25/2015- Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and suppression of facts for availing duty, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
- (c) the declared assessable value of goods of **Rs.19,92,66,207/-** imported and cleared through INIXY1, as detailed in column 6 of **ANNEXURE- A** to this Show Cause Notice, for which duty exemption under the Notification 25/2015- Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and suppression of facts for availing duty, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
- (d) the declared assessable value of goods of **Rs.217,30,09,658/-**

imported and cleared through INMUN1, as detailed in column 6 of **ANNEXURE- A** to this Show Cause Notice, for which duty exemption under the Notification 25/2015- Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and suppression of facts for availing duty, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

53.3. M/s Classic Marble Company Private Limited (IEC No 308007794), 15 Bhandup Village Road, Next to CEAT Tyre Factory, Subhash Nagar, Bhandup West, Mumbai 400078, in respect of Bills of entry as detailed in TABLE-4, were also called upon to show cause to the Principal Commissioner/Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, as to why-

- (i) the goods of declared assessable value of **Rs.3,06,23,530/-** imported and cleared through INNSA1, as detailed in column 6 of **ANNEXURE- A** to the Show Cause Notice, for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and suppression of facts for availing duty, should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.

54. SUBMISSION OF THE NOTICEES AGAINST THE INSTANT SCN:

54.1 The Noticee no. 5, M/s Classic Marble Company Pvt. Ltd., submitted their defence submission dated 10.06.2023, received in this office on 26.06.2023, wherein they submitted as under –

In Para 1 & Para 2 of their reply M/s Classic Marble have reproduced the brief facts and allegations made in the SCN, which are not reproduced here for the sake of brevity.

3. *We emphatically deny that the powers regarding confiscation under Sec.111(o) of Customs Act, 1962 can be exercised in this case and we have to make submissions on following grounds which are raised without prejudice to each other.*

4. *We are the bonafide transferee of SEIS scrips and not connected with the alleged offences of mis-statement and/or suppressions of facts and/or collusion committed by GDL to avail the alleged SEIS scrips and department has rightly demanded the entire custom duty from GDL. Therefore, the imports made by us as a bonafide transferee cannot be termed as improper importation so as to exercise the powers of the confiscation under 111(o) of Customs Act, 1962.*

4.1 *We submit that in the normal course of business we purchased the SEIS scrips originally issued to **GDL** for a valuable consideration. At the time of purchase of the said license we made sure that same were endorsed as transferable. At the time of import we filed Bill of Entry and submitted all the relevant documents including the said license. After the proper Officer made out the charge order U/S. 47 of the said Act, we cleared the imported goods for own consumption. The said license was duly debited at the time of assessment of Bill of Entry.*

- 4.2 *We imported the goods against the subject **SEIS scrips** as transferee thereof. The said scrips were purchased by us for valuable consideration. We had absolutely no notice or knowledge of any alleged irregularity or breach committed by the original exporter in whose name the scrips were initially issued. As transferee, we are concerned only with the fact that scrips is duly endorsed as transferable by the competent authority i.e., licensing authority. In the present case it is admitted position that the subject **SEIS scrips** were endorsed as transferable. It is also undisputed position that the endorsement of transferability on the said scrips is genuine and not forged.*
- 4.3 *Relying on the endorsement of transferability, we purchased the said scrips for a price. We are therefore bonafide purchaser/ transferee of the said scrips for valuable consideration without notice of the breach committed by the original exporter. As transferee we are entitled to import the goods covered by the said scrips and cleared the same on debit of customs duty under **SEIS scrips** as per provisions contained in the Customs Notification. At the time of clearance of imported goods we satisfied all the relevant conditions of Customs Notifications, with regard to debit in **SEIS scrips** and thereby correctly and validly availed the exemption of relevant custom notification.*
- 4.4 *We submit that the disputed issue regarding demand of customs duty from the bonafide purchasers/transferees of scrips for valuable consideration, without notice of breach committed by the original exporter has been time and again settled by Hon'ble Supreme Court/High Court/CESTAT by holding that the importer having no knowledge of any violation cannot be made liable for payment of customs duty or for imposition of any penalty or imported goods cannot be confiscated. The relevant compilation of 29 pronouncements are as per compilation attached as **Exhibit-'A**.*
- 4.5 *As the law is settled in the aforesaid pronouncements, the department has correctly not demanded any custom duty from us and not proposed for imposition of any penalty.*
- 4.6 *We submit that powers regarding confiscation under 111(o) of Customs Act, 1962 can be exercised only in cases involving improper importation. We have correctly availed the exemption of Noti.No.25/2015-Cus dated 8.4.2015 and there is no involvement of any improper importation or violation of any of the condition of the said Notification.*
- 4.7 *Accordingly powers regarding confiscation in this case cannot be exercised as we are not liable for payment of custom duty which is rightly not demanded from us and therefore the imported goods validly cleared by us cannot be subject matter of confiscation.*
- 4.8 *Without prejudice to above it is submitted that, vide Para 53(ii), the **GDL** is already called upon to explain as to why the imported goods cleared subsequently under **SEIS scrips** should not be held liable for confiscation under the provision of section 111(o) of Customs Act 1962 and on this count also power regarding confiscation cannot be exercised against the notice, who is not connected with the alleged offence committed by **GDL** .*
5. *Even otherwise it is settled proposition of law that powers regarding confiscation can be exercised only when goods are seized and provisionally released against enforceable security.*
- 5.1 *As per submissions made here in above the imported goods cleared by the bonafide transferee of license/ scrips cannot be subject matter of confiscation, however, the powers regarding confiscation also cannot be exercised in this case as neither the imported goods were seized nor released provisionally*

against enforceable security. This is settled in following pronouncements.

S. No.	Particulars
1.	<p>2000 (115) ELT 278 (S.C.) Weston Components Ltd. V/s. CC, New Delhi.</p> <p><i>Redemption fine imposable even after release of goods on execution of bond - Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962</i></p>
2.	<p>2003 (156) ELT 122 (Tri.-Del.) Ram Khazana Electronic V/s. CC, Air Cargo, Jaipur</p> <p><i>Redemption fine - Goods not available for confiscation - No enforceable security available with department - HELD : Redemption fine could not be imposed - Section 125 of Customs Act, 1962. [para 10]</i></p>
3.	<p>2004 (169) ELT 68 (Tri.-Del.) Mahalaxmi International Export. V/s. CC, Jaipur</p> <p><i>Redemption fine - Goods neither available for confiscation, nor originally cleared against bond - Hence, imposition of redemption not permissible under law - Section 125 of Customs Act, 1962. [2003 (156) E.L.T. 122 (Tribunal) followed]. [para 10]</i></p>
4.	<p>2004 (175) ELT 880 (Tri.- Kolkata.) Rakesh Mehta V/s. CC, Kolkata.</p> <p><i>Confiscation of currency - Customs - Currency not available for confiscation nor any bond executed by appellant in favour of Department - Confiscation of currency or imposition of redemption fine not warranted - Sections 111(d) and 125 of Customs Act, 1962. [2003 (156) E.L.T. 122 (Tribunal); 2003 (158) E.L.T. 316 (Tribunal) relied on]. [para 5]</i></p>
5.	<p>2005 (180) ELT 483 (Tri.-Del.) Sunsui India Ltd. V/s. CC, Jaipur</p> <p><i>Confiscation of goods - Imported goods cleared out of Customs charge after assessment of Bills of Entry and payment of duty - Investigation subsequent to release of goods pointed out undervaluation - Goods never seized, thus though liable to confiscation, was never available with Department for actual confiscation - No question arises of confiscation and giving option to importer to pay fine in lieu of confiscation under Section 125 of Customs Act, 1962. [para 4]</i></p> <p><i>Penalty - Actual confiscation of goods not required for imposition of penalty under Section 112 of Customs Act, 1962. [para 6]</i></p>
6.	<p>2009 (235) E.L.T. 623 (Tri. - LB) Shiv Kripa Ispat Pvt. Ltd., V/s. CCE. Nashik</p> <p><i>Confiscation and redemption fine - Non-availability of goods - Whether goods can be confiscated and redemption fine imposed even if they are not available for confiscation - Identical issue considered in 2008 (229) E.L.T. 185 (P&H) and such order is binding - High Court in said order held that redemption fine in lieu of confiscation was not imposable when goods were allowed to be cleared without execution of bond/undertaking - Similar view taken by Tribunal also in 1999 (112) E.L.T. 400 (Tribunal) and affirmed by Supreme Court [2005 (184) E.L.T. A36 (S.C.)] - Binding precedents under Customs Act, 1962 applicable to impugned case relating to excisable goods - Goods cannot be confiscated when</i></p>

	<i>not available and redemption fine not imposable - Sections 111 and 125 ibid - Rule 25 of Central Excise Rules, 2002. [paras 2, 3, 9, 10,11, 12, 13]</i>
7.	<p>2012 (280) ELT 88 (Tri. - Ahmd.) CCE, Vadodara-II Vs. Asoj Soft Caps Pvt. Ltd.</p> <p><i>Redemption fine - Imposition of - Goods ordered to be confiscated, though entire goods were not available - Part of the goods already cleared - HELD : Redemption fine can be imposed only in respect of goods seized and provisionally released - Rules 25 and 26 of Central Excise Rules, 2002. [para 3]</i></p>
8	<p>2017 (357) E.L.T. 1264 (Tri. - Mumbai) JAGSON INTERNATIONAL LTD V/s. COMMR. OF CUS. (PREVENTIVE), MUMBAI</p> <p><i>Redemption fine - Customs - Section 125 of Customs Act, 1962 not empowers determination of assessment and not to be resorted to except when duty already been assessed but foregone at the time of import - Imported platform rigs being no longer available at the time of commencement of investigations and never seized nor available for confiscation, redemption on payment of fine not possible. [para 17]</i></p>
9	<p>2017 (358) E.L.T. 358 (Tri. - Mumbai) COMMISSIONER OF CUSTOMS (IMP.), NHAVA SHEVA V/s.S.B. IMPEX</p> <p><i>Redemption fine - Imposition of - Goods not available for confiscation - Goods not seized and released under any bond or undertaking - Redemption fine not imposable - Section 125 of Customs Act, 1962. [para 6]</i></p>
10	<p>2018 (362) E.L.T. 376 (Tri. - Mumbai) BHARATHI RUBBER LINING & ALLIED SERVICES P. LTD V/s. C.C. (IMPORT), NHAVA SHEVA</p> <p><i>Confiscation and fine - It is not sustainable if goods not available for confiscation - Sections 111 and 125 of Customs Act, 1962. [para 7]</i></p>
11	<p>2018 (363) E.L.T. 277 (Tri. - Chennai) BRAMHANI INDUSTRIES LTD V/s. C.C. (AIRPORT & AIR CARGO), CHENNAI</p> <p><i>Confiscation and fine - Import - When imported goods evidently found as not corresponding in respect of value, confiscation under Section 111(m) of Customs Act, 1962 ordinarily very permissible - Also no bar for imposition of redemption fine under Section 125 ibid if no duty liability determined - Impugned Section 125 ibid provides for giving owner of goods option to pay in lieu of confiscation such fine as adjudicating officer thinks fit - Only proviso to be, such fine shall not exceed market price of goods confiscated less in case of imported good duty chargeable thereon - Sections 111(m) and 125 of Customs Act, 1962. [para 10.1]</i></p> <p><i>Confiscation/Redemption fine - Offending goods already cleared out of Customs charge - When goods not available, no confiscation to be ordered, unless goods cleared under bond, etc. - Ordering confiscation as also redemption fine under Section 125 of Customs Act, 1962 not justified by law and therefore set aside - Sections 111(m) and 125 of Customs Act, 1962. [para 10.4]</i></p>
12	<p>2018 (363) E.L.T. 497 (Tri. - Mumbai) MACNAIR EXPORTS PVT. LTD /s. COMMISSIONER OF CUSTOMS (EP), MUMBAI</p> <p><i>EXIM - Diversion of goods imported under DEEC Scheme to domestic market - No evidence to support plea of assessee that goods came to its unit was proof of use of goods in manufacture by itself or supporting manufacturer - Existence of any machinery or infrastructure facility of its own carrying out</i></p>

	<i>manufacturing activity or manufacturing facility of supporting manufacturer not established - Assessee had not come with clean hands to establish its claim that goods imported were not diverted to the market - Demand of duty, imposition of fine as goods are not available for confiscation and imposition of penalties affirmed - Sections 28, 111, 112 and 125 of Customs Act, 1962. [paras 3, 4]</i>
13	<p>2018 (363) E.L.T. 526 (Tri. - Mumbai) PANKAJ KUMAR & CO V/s. COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI</p> <p><i>Confiscation, redemption fine and penalty - Import of Thiourea - Requirement of registration under Insecticides Act, 1968 - Import immediately after order of Commissioner (Appeals) classifying goods under Chapter 29 as chemicals and holding that there was no need for registration under Insecticides Act, 1968 - Goods not detained or seized and not available for confiscation or released against bond or bank guarantee - Confiscation cannot be ordered, consequently no redemption can be imposed - Imposition of penalty also not justified - Sections 111, 112 and 125 of Customs Act, 1962. [paras 4, 5]</i></p>
14	<p>2018 (363) E.L.T. 908 (Tri. - Mumbai) N.K. CHAUDHARI V/s. COMMISSIONER OF CUSTOMS (EP), MUMBAI</p> <p><i>Confiscation and redemption fine - Non-availability of goods - In view of Larger Bench's decision in 2009 (235) E.L.T. 623 (Tri.-LB.), redemption fine not imposable when goods not available for confiscation - Accordingly, redemption fine set aside - Section 125 of Customs Act, 1962. [para 4]</i></p>
15	<p>2018 (363) E.L.T. 996 (Tri. - Mumbai) TRANSWORLD POLYMERS PVT. LTD V/s. COMM. OF CUS., NHAVA SHEVA</p> <p><i>Valuation (Customs) - Undervaluation - Documents obtained from foreign supplier on enquiry from Italian Customs showing higher value found to be genuine, invoices, bill of exports, bill of lading matching with those invoices submitted by appellants - Undervaluation of goods by appellants established - Accordingly, enhancement of value and confirmation of differential duty demand and penalty related to such demand upheld - Section 14 of Customs Act, 1962 - Rule 4 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. [paras 6, 6.1, 6.2, 6.3, 6.4]</i></p> <p><i>Confiscation and redemption fine - Non-availability of goods - Goods neither available nor the same released on provisional basis therefore, redemption fine imposed by adjudicating authority not legal and proper - Sections 111 and 125 of Customs Act, 1962. [para 6.4]</i></p>
16	<p>2018 (363) E.L.T. 1021 (Tri. - Mumbai) GENX ENTERTAINMENT LTD V/s. COMMISSIONER OF CUS. (AIRPORT), MUMBAI</p> <p><i>Demand - Limitation - Suppression - Goods having been cleared in the normal course, proceedings for recovery and confiscation initiated much later - Goods when not available for confiscation, no question of redemption of goods under Section 125 of Customs Act, 1962 arises. [para 12]</i></p>
17	<p>2018 (364) E.L.T. 407 (Tri. - Mumbai) TEJ OVERSEAS V/s. COMMISSIONER OF CUSTOMS, MUMBAI</p> <p><i>Confiscation and redemption fine - Non-availability of goods - Redemption fine not imposable, goods not being available for confiscation - Sections 111(m), 111(o) and 125 of Customs Act, 1962. [para 6]</i></p>
18	2019 (365) E.L.T. 572 (Tri. - Mumbai)

	<p><i>HI-TECH ENGINEERS V/s. COMMISSIONER OF CUS. (ACC & IMPORT), MUMBAI</i></p> <p><i>Demand - Confiscation of goods - Fraud - Diversion of duty free imports in local markets under garb of Naval clearances - Import of goods under exemption Notification No. 150/94-Cus., for intended supply to Indian Navy diverted in open market and never consigned for intended purpose - Store-keeper in Naval Dockyard falsely certified that imported goods meant for use on Board Indian Naval Ship and given receipt on reverse of shipping bill without physically receiving and storing goods in Naval Stores or supplying same on Indian Navy Ships - HELD : Controller of Procurement, Material Organization's statement clarifying that shipping bills always signed by Controller personally and Store-keeper not authorized to sign any of documents except giving receipt of items - Also, illegal diversion of goods stands accepted by partners in their statements - Further, goods exempted from duty in terms of impugned notification only when goods procured by Government of India or shipped on order of department of Govt. of India - None of impugned conditions followed by assessee firms - Clear case of evasion of duty by frauds - However, demand for period beyond five years not sustainable - Also, since goods not available for confiscation, no ground to confiscate same and therefore no redemption fine may be imposed - Impugned order upheld except setting aside redemption fine and demands beyond 5 years. [para 5]</i></p>

- 5.2 *There is no dispute that in this case neither the goods are seized nor released provisionally against enforceable security. The goods are also not available physically. The disputed issue is settled by Hon'ble Supreme court as well as larger bench of Hon'ble CESTAT the powers regarding confiscation cannot be exercised in such case.*
- 5.3 *Therefore, on this ground also the imported goods validly cleared by us with fulfilment of all conditions of exemption Notifications cannot be confiscated.*

Lastly, M/s Classic Marble Co. Pvt. Ltd. prayed to drop the proposed proceedings for confiscation under Section 111(o) of the Customs Act, 1962, being a bona fide transferee.

54.2 The Noticee no. 4, M/s Adani Wilmar Ltd. vide their letter dated 30.06.2023 submitted their defence reply, which is as under –

Para 1. & 2. – In Para 1. & 2. the Noticee no. 4 has repeated contents of the Notice, hence the same are not reproduced herewith for the sake of brevity.

Para 3 to 12 - In Para 3 to 11. the Noticee has provided brief facts, and contents of investigation, hence the same are not reproduced herewith for the sake of brevity.

GENERAL DENIALS

- A. The Noticee denies each and every allegation levelled by the Department in the SCN. It is denied that the Noticee has imported the impugned goods without observing the conditions prescribed under Notification No. 25/2015, as amended, using the SEIS scrips. It is submitted that the Noticee has made the said import in the capacity of a *bonafide* transferee under the provisions of the Policy and the relevant Rules, Notifications thereunder. The Noticee also submits that it is not in dispute that the Noticee is a bonafide transferee and that it is not the case of the Department that the Noticee had any role in the alleged fraud or suppression which is alleged by the Department.
- B. In the present case, the following facts are not in dispute:

- a. that the Noticee is not the exporter nor has the Noticee made any misdeclaration, neither is the Noticee connected with any misdeclaration as to the export goods;
 - b. that the SEIS scrips are not forged;
 - c. that the SEIS scrips were issued only after the Customs Officers endorsed the Shipping Bill particulars, including the description and value of the export goods on the SEIS scrips;
 - d. that the Noticee has purchased allegedly tainted SEIS scrips (which have been issued in relation to exports which are alleged to have been misdeclared by GDL), only after the said SEIS scrips were duly verified by the Customs authorities and endorsed as being transferable by the Licensing authority, as per the procedure set out in this respect;
 - e. that, the Noticee has paid full consideration @ 98%-100% of the face value of the duty credit, as per the market rates prevailing at the time of purchase of the SEIS scrips;
 - f. that the Noticee did not have any notice or knowledge or belief of the tainted nature of the SEIS scrips purchased by it in the usual course of its business;
 - g. that the SEIS was checked and verified by the Customs authorities at the time of imports by the Noticee and that the duty was debited in the SEIS scrips only after such verification;
 - h. that the SEIS scrips are in full force and effect up until date and not suspended by the licensing authority.
- C. In these facts, the Noticee makes the following submissions in its defense, each of which is urged without prejudice to the others.

SUBMISSIONS

- D. At the outset the Noticee denies each and every allegation made under the SCN under reply and nothing alleged therein is admitted or deemed to be admitted unless so specifically admitted herein.
 - E. It is submitted that the proceedings initiated against the Noticee vide the impugned SCN is ex-facie, erroneous and liable to be set aside.
- I. Issue is no longer *res integra* and covered in favour of the Appellant itself in the Appellant's own case:**
- F. It is submitted that the issue of utilizing scrip for import of goods under MEIS as purchased by the Noticee from open market, which is allegedly fraudulently obtained by the Main Party, is no longer *res integra* and settled in favour of the Noticee itself in an identical case vide Order-In-Original No. 18/Manish Saxena/Commr(Adj.)/Delhi/NCH/2022-23 dated 09.03.2023 (“**OIO dated 09.03.2023**”) issued by the Ld. Commissioner of Customs (Adjudication), Delhi Zone.
 - G. It is submitted that the Show Cause Notice F No. DRI/AZU/GI-02/ENQ-10(INT-23/2018)/2019 dated 15.09.2020 (“**SCN dated 15.09.2020**”) which was adjudicated vide the OIO dated 09.03.2023 had proposed to confiscate goods which were imported by the Noticee by utilizing the MEIS scrips as allegedly fraudulently obtained by M/s. Tagros Chemicals India Pvt. Limited (“**M/s. Tagros/Main Noticee**”) and purchased by the Noticee from the open market. The OIO dated 09.03.2023 dropped the proceedings against the Appellant and on correct appreciation of facts held that the imported goods are not liable for confiscation under section 111 (m) and 111 (o) of the Act as:

- a. no mis-declaration in bills of entry was brought out in respect of value or in any other particular other than the use of excess ineligible credit in duty payment at time of import by M/s Tagros or any of the co-noticees.
 - b. The scrip was utilized as per condition laid out in Notification No. 24/2015.
 - c. Further, at time of import the MEIS scrips were valid and ineligibility due to wrong reward rate was not known and the benefit was sanctioned by Customs officer through system identifying the scrip as eligible for credit (condition 2(5) of the Notification No. 24/2015).
 - d. No condition of the Notification No. 24/2015 was violated.
- H. Relevant extract of the OIO dated 09.03.2023 is reproduced hereunder:

“3.27 For the other importers (other than M/s Tagros Chemicals), there is no evidence that they were aware of the wrong availment of MEIS scrip. They have submitted that they purchased the scrips from open market with proper payment and the scrips were valid at time of utilization, for which they did due-diligence. So the co-noticee importers are held as not liable to any penalty also. The co-noticees have not been given notice for any penalty also.

3.28 In the present case, no mis-declaration in bills of entry is brought out in respect of value or in any other particular other than the use of excess ineligible credit in duty payment at time of import by M/s Tagros or any of the co-noticees. The scrip was utilized as per condition laid out in notification 24/2015- Cus dt 8/4/2015. Further, at time of import the MEIS scrips were valid and ineligibility due to wrong reward rate was not known and the benefit was sanctioned by Customs officer through system identifying the scrip as eligible for credit (condition 2(5) of the notification 24/2015- Cus dt 8/4/2015). No condition of the notification is violated. Hence, imported goods are not liable to confiscation under section 111 (m) and 111 (o) of the Customs Act 1962, which states:

.....”

- I. It is submitted that even in the present case, the Noticee was a bonafide purchaser of the SEIS scrips from open market and it is not even the case of the Respondent that the Noticee had any knowledge or was hand in hand with GDL in the act of alleged fraudulent availment of the said SEIS scrips. In view of the same, following the principles of judicial discipline and consistency in view, the SCN ought to be dropped.
- J. It is submitted that it is a trite law that where the facts and circumstances are identical, consistent view ought to be taken by the department. Reliance in this regard is placed on the decision of the Hon’ble Apex Court in ***Union of India v. SRJ Peety Steels Pvt. Ltd. [2017 (354) ELT A104 (SC)]*** which upheld the decision of the Hon’ble jurisdictional High Court in ***SRJ Peety Steels Pvt. Ltd. v. Union of India [2015(323) ELT 261 (Bom.)]*** wherein it was held as under:

“4. In our view, the matter deserves to be remanded to the Tribunal, as the Tribunal should take a consistent view regarding pre-deposit when the facts and circumstances in the matters before it are similar. Accordingly, the matter is remanded to the Tribunal. The Tribunal will take into consideration its earlier orders in Nasik Strips Pvt. Ltd. and Mithulal Gupta, Bhavshakti Steelmines Pvt. Ltd. (supra) while deciding whether the appellant herein is entitled to waiver of pre-deposit. The appellant to appear before the Tribunal on 22-8-2011.”

- K. Reliance is placed on the following decisions to buttress the aforesaid submission:
- a. *Viral Builders v. Union of India [2016 (42) STR 980 (Guj.)]*.
 - b. *Wardha Coal Transport Pvt. Ltd. v. Union of India [2009 (13) STR 490 (Bom.)]*.
- L. It is further submitted that the department cannot be allowed to take a contrary stand and with the change of authorities from state to state the law cannot vary. If such a practice by the department is propagated, then such judicial inconsistency will shake public confidence in administration of justice. The same assessee would have to litigate in different jurisdictions for the same issue even when the said issue stands settled in its favour. The Hon'ble Supreme Court as well as the Hon'ble High Courts have always attempted to curb such practice by the department. Reliance is placed on the following decisions to buttress the said submission:
- a. *Jayaswals Neco Ltd vs. CCE, Nagpur [2006 (195) ELT 142 (SC)]*.
 - b. *Birla Corporation Ltd. vs. Commissioner of Central Excise [2005 (186) ELT 266 (SC)]*.
 - c. *Karle International vs. CC, Bangalore [2012 (281) ELT 486 (Kar)]*.
- M. In view of the aforesaid legal and factual background, it is submitted that SCN ought to be dropped.

II. Impugned SCN is not sustainable:

- N. It is submitted that the Impugned SCN is issued to the Noticee proposing confiscation of the imported goods and penalty on the Noticee, merely because the Noticee has utilized the SEIS scrips, which are alleged to be fraudulently obtained by GDL. It is submitted that in the Impugned SCN, there is not a single mention of Noticee's role in alleged contravention of customs provisions and further there is no mention of Noticee's involvement or knowledge of such an alleged fraud or misrepresentation committed by GDL.
- O. The Impugned SCN has been issued by the Department is a result of summons proceedings carried out in GDL's case, wherein the contention has been made that GDL have obtained SEIS scrips from the DGFT by intentionally mis-stating the amount earned from "Supporting Services for Maritime Transport" were rendered independently on its own by GDL to the Indian entities like importers/exporters/freight forwarders/customs brokers, who did not remit/receive any foreign exchange to/from the foreign liners or its Indian agent. Thus, the services rendered by GDL do not satisfy the primary condition mentioned in Public Notice No.7/2015-20 dated 04/05/2016, Appendix 3E and Para 3.08, 9.51(ii) of the FTP 2015-20.
- P. As such, if there is any contravention of the provisions of the Act or Rules made thereunder, it could be by GDL and not the Noticee. Accordingly, the duty has been demanded along with interest and penalty from GDL alleging fraudulent procurement of SEIS scrips. It is reiterated that there is not a single mention of the role of the Noticee in the alleged contravention. In the entire SCN there is no reference made to Noticee apart from asking them to show cause for utilizing the disputed SEIS scrips and thereby proposing confiscation of goods imported using the disputed SEIS scrips. In view of the same, it is submitted that in so far as the Noticee is concerned, the impugned SCN is *void ab initio* as same has been issued without making any allegation against them.
- Q. Reliance in this respect is placed upon the Hon'ble Supreme Court's judgment in the case of ***Kaur & Singh V/s. Collector of Central Excise, New Delhi [1997 (94) ELT 289 (SC)]***, wherein it is held as under:

“3. This Court has held that the party to whom a show cause notice of this kind is issued must be made aware of the allegation against it. This is a requirement of natural justice. Unless the assessee is put to such notice, he has no opportunity to meet the case against him. This is all the more so when a larger period of limitation can be invoked on a variety of grounds. Which ground is alleged against the assessee must be made known to him, and there is no scope for assuming that the ground is implicit in the issuance of the show cause notice. [See Collector of Central Excise v. H.M.M. Limited, 1995 (76) E.L.T. 497 and Raj Bahadur Narayan Singh Sugar Mills Limited v. Union of India, 1996 (88) E.L.T. 24].”

- R. Further reliance is placed upon the Hon’ble Supreme Court judgment in the case of **Commissioner of Central Excise, Nagpur V/s. Ballarpur Industries Ltd. [2007 (215) ELT 489 (SC)]**, wherein the Hon’ble Court has held that the show cause notice is the foundation in the matter for levy and recovery of duty, penalty, interest and confiscation of goods.
- S. In view of the same, it is submitted that the impugned SCN would not have been issued to the Noticee in the first place. As such, the impugned SCN proposing confiscation of imported goods under Section 111 (o) of the Act, needs to be struck aside being untenable on this count alone.

III. Goods are not available for confiscation:

- T. The impugned SCN is issued to the Noticee for confiscation of the imported goods without looking into the law laid down by the Hon’ble Supreme Court and various High courts in this regard.
- U. It is submitted that without making any allegation against the Noticee, the proposal of confiscation of goods is made under Section 111(o) of the Act which is merely based on the utilization of SEIS scrips procured by GDL, is premature and arbitrary. There is not even an allegation in the SCN to the effect that the Noticee had any role in the issuance of the alleged fraudulent SEIS scrips.
- V. It is submitted that the relevant Bills of Entry under dispute have been assessed finally and cleared for home consumption and as such the goods are not physically available for confiscation. It is a settled law that the imported goods once cleared after final assessment, cannot be the subject matter of confiscation, as no redemption fine can be imposed.
- W. Reliance in this regard is placed on the judgement of the Hon’ble Bombay High Court in the case of Commissioner of Customs (Import), Mumbai V/s. Finesse Creation Inc. [2009 (248) ELT 122 (Bom)], wherein it is held as under:

“5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation

could have been imposed. The goods in fact had been cleared earlier. The judgment in Weston (supra) is clearly distinguishable. In our opinion, therefore, there is no merit in the questions as framed. Consequently appeal stands dismissed."

The said judgment is upheld by the Hon'ble Supreme Court in the case of **Commissioner V/s. Finesse Creation Inc. [2010 (255) ELT A120 (SC)]**.

- X. In view of the same it is submitted that the issue has reached finality with the judgment of the Hon'ble Supreme Court and in view of the same the impugned SCN to the extent the same is issued to the Noticee deserves to be quashed and set aside.
- Y. Reliance is also placed upon below mentioned judgments to buttress the aforesaid argument:
 - a. Airport Authority of India v. CC (Exports-Seaport), Chennai [2016 (334) E.L.T. 529 (Tri. - Chennai)],
 - b. New Drug & Chemical Co. v. CC (E.P.) [2016 (331) E.L.T. 600 (Tri. - Mumbai)]
 - c. Skoda Auto India Pvt. Ltd. v. CC (Import), Nhava Sheva [2014 (313) E.L.T. 600 (Tri. - Mumbai)]
- Z. In view of the above, since the impugned SCN is issued to the Noticee proposing confiscation of goods which admittedly are not available for confiscation, the proceedings initiated against the Noticee in respect of the confiscation of the goods deserves to be dropped.

IV. Issue is no longer res integra:

- AA. Without prejudice to the aforesaid and in any event, it is submitted that it is not in dispute that the Noticee is a bonafide buyer of the SEIS scrips which are in dispute. In the present case as mentioned above there is no proposal to recover any duty from the Noticee. Even in cases where the department has tried to proceed against the bonafide transferees, law has been settled in their favour. The Supreme Court in the case of **Commissioner V/s. Vallabh Design Products [2016 (341) ELT A222 (SC)]**, has upheld the decision of Punjab & Haryana High Court reported as **[2007 (219) ELT 73 (P & H)]** wherein it is held that no duty can be demanded, no penalty can be imposed and no goods can be liable for confiscation from the bonafide transferees of license.
- BB. The Hon'ble Punjab & Haryana High Court in the aforesaid case has held that since the transferee of DEPB scrip (which was obtained by fraud/forgery by the transferor) was not a party to fraud and has obtained it on payment of full price from open market on bona fide belief of it being genuine, demand of duty, interest and penalty and confiscation of imported goods is not sustainable.
- CC. In view of the same, it is submitted that the case of the Noticee squarely falls under judgment of the Supreme Court in the case of *Vallabh Design (supra)*. It is reiterated that in the aforementioned case of Vallabh design, the issue was that of demand of duty, levy of penalty and confiscation of imported goods of the transferee.
- DD. It is further submitted that Article 142 of the Constitution of India, 1950 stipulates that the judgments passed by the Hon'ble Supreme Court are to be enforced throughout country. In view of the same, when the Hon'ble Supreme Court has seized of the matter and decided the case in the favor of transferee of scrip, the issue is no more res integra and as such impugned SCN is not sustainable on this count, alone.
- EE. Further reliance is placed upon the Hon'ble Punjab and Haryana High Court Judgment in the case of **Commissioner of Customs V/s. Leader Valves Ltd.**

[2007 (218) E.L.T. 349 (P & H)] which laid down the following three clear proposition of law in Paragraph 9:

“The assessee-respondent admittedly is not a party to the fraud. There are categorical finding that they had purchased FPS from the open market in the bona fide belief of its being genuine. They had paid full price and accordingly have availed the benefit. Merely because at a later stage, the FPS has been found to be fabricated and fake on the basis of BCER the assessee-respondent could not be deprived of the benefits which were legitimately available to them.

It is also worth noticing that the assessee-respondent was never issued any show cause notice before cancelling the FPS which was obtained by M/s. Parker Industries and obviously the notice was also to be issued to them alone.

The revenue cannot avail the extended period because the assessee-respondent could not be accused of mis-representation, collusion or suppression of facts within the meaning of proviso postulated by Section 28 of the Customs Act.”

Further the Punjab and Haryana High Court in para 9 of their judgement held that:

“We are of the considered view that this appeal is devoid of any merit. The assessee-respondent is admittedly not a party to the fraud. There are categorical finding that they had purchased the DEPB from the open market in the bonafide of its being genuine. They had paid full price and accordingly have availed the benefit. Merely, because at a later stage the DEPB has been found to be fabricated and fake on the basis of BCER, the assessee-respondent could not be deprived of the benefit which were legitimately available to them.....”

FF. An appeal filed by the Department against the above decision the P&H High Court has been dismissed by The Hon’ble Supreme Court of India as reported in **2008 (227) E.L.T. A29 (S.C.)** with following order:

“The Special leave petition is dismissed both on the ground of delay as also on merit”.

V. The imported goods are not liable to confiscation under Section 111(o) of the Act:

GG. Without prejudice to the aforesaid and in any event, it is submitted that the goods imported vide the impugned Bills of Entry are not liable for confiscation under Section 111(o) of the Act.

HH. Relevant extract of the Section 111(o) of the Act reads as under:

“Section 111 - Confiscation of improperly imported goods, etc

.....

II. It is submitted that as stated earlier, the Noticee has procured the SEIS scrips by paying consideration from open market. The said Scrips are freely transferable and the same can be used for payment of customs duties at the time of import. The Noticee has paid 98% to 100% of the amount of the SEIS scrips at the time of procurement and utilized the same following due process of law. Customs Authority never objected the utilization of Scrips at the time of import and assessed the goods finally.

JJ. In this backdrop, as there is no misdeclaration on part of Noticee, the goods are not liable for confiscation under Section 111(o) of the Act.

KK. Further, as is seen from the aforementioned factual and legal submissions, the Noticee has declared everything that was communicated to them by the

exporter. Moreover, even till date there is no definitive conclusion as to whether the actions of the exporter are incorrect.

- LL. In view of the afore stated detailed submission, the imported goods are not liable for confiscation under Section 111(o) and of the Act and as such the imported goods are not liable for confiscation and the said charges are required to be dropped being untenable.

VI. Noticee is a bona fide holder in due course:

- MM. Without prejudice to the aforesaid and in any event, it is submitted that it is not in dispute that the Noticee is a bonafide buyer of the SEIS scrips which are in dispute. In the present case as mentioned above there is no proposal to recover any duty from the Noticee. Even in cases where the department has tried to proceed against the bonafide transferees, law has been settled in their favour.
- NN. The Noticee has paid consideration for the SEIS purchased by it at the market-determined rate of 98% to 100% of the Duty Credit. The consideration was paid by RTGS for the bona fide purchase of SEIS scrips. The SEIS scrips were purchased and fully utilized by the Noticee well within its validity period. The Noticee at any stage was not aware or had reason to believe that the title of GDL or any intermediary holder was defective whether at the time of purchase of the SEIS or at the time of utilization thereof or at any subsequent point in time. The Noticee thus, is a holder in due course insofar as the SEIS is concerned and the Noticee's claim to benefit under the SEIS in exercise of its choate and perfected rights cannot be defeated even for reasons of any alleged fraud that may operate against the title of the exporter-license holder.
- OO. Thus, it is submitted that once the DGFT had issued the scrips after proper verification of the exports, the doctrine of caveat emptor cannot be invoked. It is further not in dispute that the SEIS scrips were valid at the time of import and it is still valid and therefore it is not open for the Customs Authorities to allege that the Noticee has imported the impugned goods without observing the conditions prescribed under Notification No. 25/2015 as amended and propose confiscation of the impugned goods.
- PP. Without prejudice to the aforesaid and in any event, it is trite law that where the SEIS scrips were issued on the basis of forged documents and the transferee was not a party to fraud, it has been held that demand as well as the confiscation of goods against the bona fide purchasers cannot be confirmed. Thus, it is submitted that once it has been held that the demand itself is not sustainable, the question of confiscation of goods does not arise at all.
- QQ. The Hon'ble Delhi Tribunal in the case of **Ajay Kumar and Co v. Commissioner of Customs** reported in **2006 (205) ELT 747 (Tri-Del)**, after following the judgment of the Hon'ble Bombay High Court in the case of Taparia Overseas (P) Limited and the Hon'ble Supreme Court's judgments in case of Sampatraj Dugar and Sneha Sales Corporation, set aside the demand as well as the confiscation of goods against the bona fide transferee both on merits and on time bar. The Hon'ble Tribunal was pleased to hold as under:

"5. After hearing both the sides duly represented by Shri Mohan Jaikar, ld. Advocate and Shri S.M. Tata, ld. SDR, we find that the Hon'ble Supreme Court in the case of Union of India v. Sampatraj Dugar [1992 (58) E.L.T. 163 (S.C.)] has held that cancellation of Import License cannot be held to be retrospective and cannot be pressed into service when the same was valid at the time of importation of the goods. To the similar effect is another decision of the Hon'ble Supreme Court in the case of Collector of Customs, Bombay v. Sneha Sales Corporation [2000 (121) E.L.T. 577 (S.C.)] laying

down that Import license having been cancelled after import and clearance of goods, import cannot be said to be in contravention of the provisions of Imports and Exports (Control) Act, 1947. In the case of *Taparia Overseas (P) Ltd. v. Union of India* [2003 (161) E.L.T. 47 (Bom.)] it was held that transfer of license to transferee for value without notice of fraud by original license holder is governed by common law and not by provisions of any statute. As such, transaction cannot be held to be void *ab initio* but voidable at the instance of party defrauded. The Hon'ble Court observed that inasmuch as, the procedure was followed by the transferee while getting the license transferred in their names and the petitioner had obtained scrips for valuable consideration without any notice of the fraud alleged to have been committed by the original license holder while obtaining scrips. If that be so, the concept that fraud vitiated everything would not be applicable to the cases where the transaction of transfer of license is for value without notice arising out of mercantile transactions, governed by common law and not by provisions of any statute. Accordingly, the Hon'ble Court held that goods imported and Bill of Entry filed prior to cancellation of license has to be held as having been made under valid scrips and goods cannot be subjected to levy of Customs duty.

6. By applying the ratio as laid down by the Court in the above decisions, to the fact of the present case, it has to be held that the imports made under the FPS Scrips, which were valid at the time of import, the subsequent cancellation of the same on the ground that original allottee procured them by fraud will not have any bearing upon the imports made by the Noticee. There is nothing in the impugned order to reflect upon any mala fide on the part of the Noticee or to show that he was a party to the fraudulent obtaining of scrips by M/s. Parker or had any knowledge about the tainted character of the scrips. As such, we are of the view that the imports made by the Noticee in terms of the said scrips cannot be held invalid."

- RR. Upholding the aforementioned decision of the Hon'ble Tribunal, New Delhi, the Hon'ble Apex Court in the case of **Commissioner of Customs, Amritsar v. Ajay Kumar & Co.** [2009 (238) E.L.T. 387 (S.C.)] set aside the demand as well as the confiscation of goods against the bona fide transferee both on merits and on time bar and held as under:

"4. It is seen that in view of the fact that in the show cause notices, there was no reference to the alleged infraction of M/s. Parker Industries, the transferor of the license in question. The judgments of the CESTAT and the High Court do not suffer from any infirmity to warrant interference. It is to be noted that in *Commissioner of Customs (Import) Bombay v. M/s. HICO Enterprises* [2008 (11) SCC 720] similar view was taken. The appeal is dismissed."

- SS. Further, the Hon'ble Delhi Tribunal in the case of **Leader Valves Ltd. V/s Commissioner of Customs** reported in **2006 (193) E.L.T. 459 (Tri. - Del.)**, in Paragraph 3 held as under:

"3. Regarding the purchase of FPS scrips by the Noticees and their liability under Section 112 of the Customs Act, ld. Commissioner has observed as under:

"However, I find nothing on record to infer that M/s. Leader Valves Ltd., S-3&4, Industrial Area, Jalandhar had purchased the freely transferable FPS scrip otherwise than in a bona fide manner and utilized the same towards debit/exemption of duty and there is nothing to suggest of his having colluded with the exporter who obtained the FPS scrips by fraudulent manner. Therefore, I do not hold them liable to penal action under Section 112 of the

Customs Act, 1962”.

In the face of these findings Id. Commissioner could not legally order the recovery of the duty under Section 28 of the Customs Act. In this context, the law laid down by the Hon’ble Bombay High Court in the case of Taparia Overseas (P) Ltd. v. Union of India reported in 2003 (161) E.L.T. 47 can be read with advantage. In that case the goods were imported by the transferee of the license for consideration and without knowledge of commission of fraud by the original holder of the license. But later on license was cancelled for having obtained by fraud and duty was demanded from the transferee of the license but the same was set aside by the Court by holding that import having been made under a license which was valid at the relevant time, having been not suspended or cancelled, the transferee being for consideration, the goods could not be subjected to levy of customs duty. The case of the Noticees squarely stands covered by the law laid down in that case, keeping in view the above referred facts and findings of the Commissioner reproduced above, in their favor. Therefore, the impugned order is set aside and the appeal of the Noticees is allowed with consequential relief as per law.”

- TT. Affirming the above order of the Hon’ble Tribunal, the Hon’ble Punjab and Haryana High Court in its judgment reported in **2007 (218) E.L.T. 349 (P & H)** laid down the following three clear proposition of law in Paragraph 9:

“9. ... We are of the considered view that this appeal is devoid of any merit. The assessee-respondent admittedly is not a party to the fraud. There are categorical finding that they had purchased FPS from the open market in the bona fide belief of its being genuine. They had paid full price and accordingly have availed the benefit. Merely because at a later stage, the FPS has been found to be fabricated and fake on the basis of BCER the assessee-respondent could not be deprived of the benefits which were legitimately available to them. It is also worth noticing that the assessee-respondent was never issued any show cause notice before cancelling the FPS which was obtained by M/s. Parker Industries and obviously the notice was also to be issued to them alone. The revenue cannot avail the extended period because the assessee-respondent could not be accused of mis-representation, collusion or suppression of facts within the meaning of proviso postulated by Section 28 of the Customs Act.”

- UU. An appeal filed by the department against the above decision the P&H High Court has been dismissed by The Hon’ble Supreme Court of India as reported in **[2008 (227) E.L.T. A29 (S.C.)]** with following order:

“The Special leave petition is dismissed both on the ground of delay as also on merit”.

- VV. Reliance is further placed on the following judgements in order to buttress the aforesaid contention:

- a. Commissioner of Customs, Amritsar v. Vallabh Design Products [2007 (219) E.L.T. 73 (P&H)] maintained by the Hon’ble Apex Court in Commissioner v. Vallabh Design Products [2016 (341) E.L.T. A222 (S.C.)];
- b. Pee Jay International v. Commissioner of Customs [2016 (340) E.L.T. 625 (P & H)];
- c. Binani Cement Ltd. & Ors. [2008 TIOL 2058 CESTAT, Ahmedabad].

- WW. Thus, in continuation of the contention above, it is submitted that firstly there is neither any allegation nor any finding to the effect that the Noticee was a party to the purported fraud played by GDL and second that once the submissions of the Noticee that they were *bona fide* purchasers of the SEIS scrips is accepted, the allegation that the Noticee has imported the impugned

goods without observing the conditions prescribed under Notification No. 25/2015 as amended and propose confiscation of the impugned goods does not sustain.

- XX. In view of the above judicial precedents, it is submitted that License users who had purchased the same from the market without any notice of the same being allegedly obtained with fraud, mis-representation and suppression of fact, cannot be held liable for confiscation of goods under the Act.

VII. The SEIS scrips were valid at the time of procurement and are still valid:

- YY. Without prejudice to aforesaid and in any event, it is submitted that the Impugned SCN proposes confiscation without attributing any role of the Noticee in the alleged contravention. The impugned SCN has been issued to the Noticee merely because they have utilized the SEIS scrips which have allegedly been procured by GDL fraudulently. The Noticee is shocked and surprised to see the impugned SCN proposing confiscation of the impugned goods, when there is no allegation made against them. It is not the case of the Department that Noticee is any which way involved in the alleged contravention. It is reiterated that the Noticee is a bonafide importer who have procured the said SEIS Scrips from an open market, for a valid consideration. In fact, the impugned SCN does not even allege that the Noticee, in any manner, involved in the alleged contravention of fraudulent ways of obtaining SEIS by GDL.
- ZZ. Without prejudice to the aforesaid and assuming without admitting that the subject SEIS scrips are issued based on the fraudulent declaration, the Noticee submits that the same was valid at the time of their purchase. Further, there is no mention in the impugned SCN whether the same has been revoked by DGFT or otherwise.
- AAA. Once it is not alleged that the scrips have been held to be invalid till date, the Custom Authorities have no jurisdiction to move against the Noticees as the license issuing authority has not taken any action against the person to whom the scrips were issued.
- BBB. It is an admitted position that on the date, on which the goods were assessed by the Department, the said SEIS scrips were valid and subsisting. The transaction done under the said scrips therefore cannot be questioned by the Department.
- CCC. The Noticee is a *bona fide* purchaser of the SEIS scrips for consideration and without notice of the alleged fraud. It is submitted that the Noticee in the present case was not involved in the export activity of GDL and the Noticee had no privity of contract with GDL. The Noticee had only purchased the said SEIS scrips from its agent Select, for a valuable consideration and used the same for imports of their goods. It is pertinent to mention that the SEIS scrips used for imports of goods by Noticee were valid at the time of import and are still valid.
- DDD. As stated in the facts above, it is pertinent to note that the exports were duly verified by the DGFT and only after being convinced that the conditions of the respective schemes are satisfied, the scrips were issued to the exporter i.e., GDL.
- EEE. Further, the said scrips were duly endorsed by the DGFT while the same were transferred to the Noticee, evidencing the validity of the said scrips.
- FFF. Thereafter, during the imports by the Noticee, the Customs Authorities verified the scrips and permitted the Noticee to clear the goods without paying any duty in lieu of the said scrips, which had duty credit in them. Thus, evidencing

that the Customs Authorities were also satisfied that the said scrips are valid and accordingly permitted for utilization of the same for payment of duty.

GGG. Thus, from the above it is clear that the said SEIS scrips were validly issued by the DGFT and the same were duly verified in accordance with the prescribed procedure. Further, the DGFT itself believed the requisite documents to be genuine at the time of issuing the said SEIS scrips. The Noticee, therefore, submit that confiscation of goods and levy of penalty cannot be proposed, assuming without admitting that the allegations made against the exporters are correct.

HHH. It is not in dispute that the said SEIS scrips were issued by the DGFT and the same were duly verified in accordance with the prescribed procedure. The Noticee were therefore *bona fide* purchasers without notice and have taken all the reasonable care and diligence as required by a prudent person and did not omit to act in a manner, which omission would render the imported goods liable to confiscation under Section 111(o) of the Customs Act, 1962.

III. It is submitted that it was not possible for the Noticee to verify whether the said SEIS scrips issued by the DGFT were based on the mis-declared/forged documents. It is pertinent to note that once the DGFT issues scrips, it is implied that the export of the exporters is duly verified, and the said Scrips are valid. The issuance of the Scrips by the DGFT is proof enough for the Noticee to consider it valid and act upon it.

JJJ. The endorsement of transferability by the licensing authority is conclusive evidence of all prior administrative acts having been completed in accordance with the law and the Customs Department and the licensing authority are estopped from disturbing the title and rights under the SEIS in the hands of a *bona fide* buyer for value. Thus, the SCN proposing confiscation of goods ought to be set aside on this count itself.

VIII. In any event, the scrip obtained is voidable and not void and the purported revocation cannot be retrospective:

KKK. Without prejudice to the aforesaid and assuming without admitting that the subject SEIS is issued based on the illegal documents, the Noticee submits that the License was valid at the time of imports by the Noticee and if at all the same gets revoked, subsequently, the said revocation of the License cannot be retrospective.

LLL. It is an admitted position that on the date on which the goods were assessed by the department, the said SEIS scrips were valid and subsisting. The transaction done under the said scrips is voidable and not void.

MMM. It is settled law that license which is obtained by fraud or misrepresentation of facts is only voidable and not void. It is good in law until it is voided. Thus, a license which is obtained by fraud or misrepresentation is valid in law until such time that it is cancelled by the licensing authority.

NNN. Reliance is placed on the decision of the Hon'ble Tribunal, Mumbai reported in ***Ineos Abs (India) and others v/s CC Kandla (Tri-Mumbai) 2015-TIOL-2090-CESTAT-MUM***. In this case the Hon'ble Tribunal has specifically held that bonafide purchasers of Scrips for value without any notice of fraud are not liable for payment of Customs duty for imports under Scrips nor could avilment of credit in MEIS scrips be denied and even the confiscation of goods and penalty was set aside. The relevant extract is reproduced for reference:

“Appellants being bonafide purchasers of Scrips for value without any notice of fraud, it has to be held that the concept of fraud vitiating everything is not applicable - authorities themselves are also responsible to the extent of not having checked the fraud at the time of exports - scrips/scrips were

transferred to the appellant importers who had no knowledge of the misrepresentation by the exporters in obtaining them - Bills of Entry were filed by the appellant importers well before the cancellation of scrips, thus imports were made under valid scrips - Therefore, goods could not be subjected to levy of Customs duty for imports under Scrips nor could availment of credit in MEIS scrips be denied - confiscation of goods imported by the appellants who are transferees of the scrips/scrips, demands of duty and interest and penalties set aside & appeals allowed”.

OOO. The facts of the present case is identical/similar to the case of *Ineos Abs (India) (supra)*, hence the ratio of Hon’ble Tribunal squarely applies to the imports undertaken by Noticee. In view of the above, the proposal for confiscation of goods and levy of penalty under the Impugned SCN against the Noticee is not sustainable.

PPP. Reliance is further placed on the following judgements in order to buttress the aforesaid contention:

- a. *Commissioner of Customs v. Leader Valves [2007 (218) E.L.T. 349 (P&H)] maintained by the Hon’ble Apex Court in Commissioner v. Leader Valves Ltd. [2008 (227) E.L.T. A29 (S.C.)];*
- b. *Commissioner of Customs, Amritsar v. Vallabh Design Products [2007 (219) E.L.T. 73 (P&H)] maintained by the Hon’ble Apex Court in Commissioner v. Vallabh Design Products [2016 (341) E.L.T. A222 (S.C.)].*
- c. *Pee Jay International v. Commissioner of Customs [2016 (340) E.L.T. 625 (P & H)];*
- d. *Prayagraj Dyeing & Printing Mills Pvt. Ltd. v. Union of India [2013 (290) E.L.T. 61 (Guj.)];*
- e. *Industrial Chem. Manufacturing Co. Ltd. v. C.C. (Import), Nhava Sheva [2015 (317) E.L.T. 262 (Tri. - Mumbai)];*
- f. *Commissioner of Cus., Amritsar v. Gopi Chand Krishan Kumar Bhatia [2013 (295) E.L.T. 739 (Tri. - Del.)].*

QQQ. In view of the above binding judicial precedents, it is submitted that the imports by the Noticee cannot be considered as void ab-initio and Noticee cannot be liable for the alleged contravention on the part of the Main Noticee and the proceedings against the notice be dropped at this stage itself.

Lastly M/s Adani Wilmar Ltd, prayed to quash the proceedings initiated against them.

54.3 The Noticee no. 1, M/s Gateway Distriparks Limited vide their letter dated 04.08.2023 received in this office email on 05.08.2023, submitted their defense submission to SCN, which is reproduced as under :

1. *In para 1 of their defence reply the noticee have reproduced the procedural aspects of their SEIS application and grant of SEIS benefots by the DGFT, which are not reproduced herewith for the sake of brevity.*

2. *In para 2 of their defence submission, the noticee have explained the process of Exports and Imports undertaken by the Noticee, which is not reproduced herewith for the sake of brevity.*

3. Para wise reply to the Show Cause Notice dated 12.05.2023.

3.1 The contents of Para 1-15 of the SCN deal with various statutory provisions, and hence, merit no response.

- 3.2 The contents of Para 16-21 of the SCN are a matter of record and hence, merit no response from the Noticee. It is however, submitted that the SEIS Scrips were awarded to the Noticee after proper scrutiny of all documents submitted in that regard and upon complete satisfaction of the department. It is also pertinent to mention at this juncture that various deficiency memos were also issued, and only after the satisfaction of the department, the SEIS Scrips were issued to the Noticee.
- 3.3 The Contents of Para 22 are a matter of record and hence, merit no response from the Noticee.
- 3.4 The Contents of Para 23 are a matter of record and hence, merit no response from the Noticee. It is however, submitted that the Noticee duly appealed against the order of the Additional Director General of Foreign Trade which is pending final adjudication.
- 3.5 The Contents of Para 24 & 25 of the SCN are a matter of fact. It is submitted that the entire process of imports and exports, undertaken by the Noticee has been explained in the aforesaid paragraph (Para 2). It is abundantly clear from the aforesaid para that shipping lines are directly involved in the entire transaction and everything is flowing under their hand and seal. It is further submitted that the DO, which is one of the necessary requirements of the transaction is issued by the shipping lines only. Therefore, their role is not just limited to the container service but are actively involved in the entire transaction. Further, the requirement of law does not provide for the receipt of amount from a foreign fellow/person/shipping line, it only states that for services provided to the foreign lines, the amount received in INR would be acceptable and would be deemed to be in foreign exchange. Therefore, it is totally immaterial as to who pays, what is material is that the end recipient of the services, which are the shipping line only.
- 3.6 The contents of Para 26 of the SCN are not correct to the extent discussed herein. It is submitted that in answer to question 1, as contained in the RUD, **Samudera Shipping** has admitted that they are a foreign container liner and have owned / leased containers which they send to Container Freight Station. They have also stated that the exporter is free to choose the CFS and their responsibility starts from the point the laden container arrives at the terminal at the seaport. It is pertinent to note that, based on their statement, the key points that arise are:
- (a) Samudera Shipping have instructed GDL CFS not to hand over the containers to the importers without their consent which is given in the form of delivery order (DO).
- (b) Form 13 is given by the shipping line which starts the movement from the CFS to the terminal, which is not mentioned in the statement. This Form 13 clearly shows the involvement of the foreign shipping lines, which cannot be denied or read in isolation. A copy of DO / Form 13 of Samudera Shipping is enclosed as **Annexure R-18**.
- 3.7 That it is also pertinent to note that Ocean Express have indicated that importers use third party software called "ODEX" to indicate choice of CFS. However, Shipping lines instruct CFS not to hand over the containers to the importers without their consent which is given in the form of delivery order (DO). These DO show that the shipping lines after sending their containers to our CFS instructed us to deliver the containers / cargo on their behalf to the importers.
- 3.8 Further, a copy of One line's advisory, enclosed as **Annexure R-19**, to customers dated 17-12-2019 on use of ODEX states that ODEX becomes compulsory from 1-1-2020. Our SEIS claim is for the period 2015-16 to 2018-

19 (upto March 2019). The advisory also states “ 2. *The current practice of issuing physical Form 13 through our Surveyor would be discontinued from 1st of January 2020.*” Hence, it is abundantly clear that during the period 2015-16 to 2018-19, Form 13 were issued by One Express to CFS.

3.9 That it is abundantly clear that CFS are receiving instructions from Ocean Express on how to service the containers sent by them to the CFS of the Noticee. There is an agreement between Ocean Express and GDL CFS on imports containers. Clearly GDL CFS is handling containers as per One express instruction and providing service to them for delivery of cargo / containers to their customers. It is appropriate to mention that in answer to Question 5, as contained in RUD-11, Ocean Express have claimed “limited contract” with GDL CFS. Copy is agreement is enclosed as **Annexure R-20**, which shows full imports services including transport of loaded containers and empty containers on their behalf from the empty yards for exports staffing.

3.10 Further, in answer to question 6, in 1 sample case, Samudera Shipping Line has claimed that services were provided by GDL to the exporters / importers and not to them.

Copies of DO / form 13 are enclosed as **Annexure R-21**, showing that services were rendered on their instructions on their containers, i.e., the shipping lines only.

3.11 The contents of Para 27 of the SCN are not correct to the extent discussed herein. It is submitted that in answer to question 1, Wan Hai Lines has categorically admitted that they are a foreign container liner and have owned / leased containers which they use to send to Container Freight Station.

3.12 That in answer to question 4, as contained in the RUD, Wan Hai Lines have claimed that they have not given instructions to GDL CFS to render services related to exporters / importers. It is submitted that this position is not correct. Copies of DO / release order are enclosed as **Annexure R-22**, showing that the entire process is carried as per their instructions on their containers. Therefore, it is abundantly clear that they are completely involved in the entire process.

3.13 Further, in answer to question 7, as contained in the RUD, it is submitted that in 2 sample cases, Wan Hai Lines has claimed that services were provided by GDL to the exports / importers and not to them. Copies of DO / RO / form 13 are enclosed as **Annexure R-23**, showing that services were rendered on their instructions on their containers.

3.14 The contents of Para 28 & 29 of the SCN are not correct to the extent discussed herein. It is submitted that the transaction has proceeded in the similar manner as already discussed in the aforesaid paragraphs. Therefore, it is amply clear that the foreign shipping lines are actively involved in the entire transaction. The DO copies amply clarify the entire position that the transaction is taking place under their instructions.

3.15 It is submitted that the contents of Para 30 of the SCN are not correct. It is submitted that Paramount Shipping Services Pvt. Ltd. are CHA of importer Unicharm India Pvt. Ltd. who have made payment to GDL CFS for our services. They have also stated that the shipping line Wan Hai has not asked GDL to render services.

However, it is pertinent to note that Wan Hai have instructed GDL CFS not to hand over the containers to the importers without their consent which is given in the form of delivery order (DO). These DO show that the shipping lines after sending their containers to our CFS instructed us to deliver the containers /

cargo on their behalf to the importers. Copies of DO are already enclosed, which amply shows that instructions are flowing from the shipping lines, upon with the Noticee is acting throughout the services that it is providing on the instructions and under behest of the foreign liners.

- 3.16 It is submitted that the contents of Para 31-36 of the SCN are not correct. It is submitted that the entire transaction is flowing in the manner as detailed above in Para 3.11, wherein the shipping lines are giving instructions to the Noticee in the form of DO.
- 3.17 The contents of Para 37 of the SCN are baseless and hence, are denied in entirety. The allegation that the certificate issued by the Chartered Accountant, M/s Anil Jain & Associates was issued without the due consideration, scrutiny, verification and appreciation of the documents submitted by the Noticee is absolutely vague, meaningless, and is hence, refuted and denied by the Noticee. The further allegation that the said certificate was merely issued in good faith and on the oral request of Shri Rakesh Garg, without going into the provisions of the Foreign Trade Policy and various public notices is without any merit. The Noticee submits that all the documents towards the grant of certificate were duly submitted with the Chartered Accountant, and it was only after due consideration and verification of all submitted documents, the certificate was granted/awarded/signed by the Chartered Accountant.

A copy of the list of documents submitted towards the grant of the certificate bearing the acknowledgement of the Chartered Accountant firm is enclosed as **Annexure R-24**.

- 3.18 That it is further submitted that the certificate dated 07.04.2021 enclosed at Para 37 of the SCN is not the certificate given by Mr Anil Jain & Associates, to the DGFT as part of application for SEIS benefits but is in response to summons from DRI Chennai. The certificate clearly and unequivocally states that the same has been issued after due verification of documents such as invoices and other supporting documents towards the Noticee Company's application under SEIS read with the public notice 46, Sr. No. 9A(f) of Appendix 3D and para 9.51(ii) of the FTP.
- 3.19 That it is submitted that the reliance of the department on the judgment of the Hon'ble Supreme Court in M/s Arebee Star Maritime Agencies Pvt. Ltd. & Ors. is not correct. It is submitted here the understanding of the department that transportation of box is not a service to the foreign liner is not correct. It is submitted that the entire transportation is happening on instructions and behest of the foreign shipping lines and therefore, they are playing a major and instrumental role in the entire transaction. Further, the Public Notice NO. 77/2017, issued by OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-IV), MUMBAI ZONE-II, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, TALUKA: URAN, DISTRICT: RAIGAD, MAHARASHTRA-400707, makes it amply clear that CFSs were responsible to safety and security of cargo during the movement of such containers. Therefore, the entire obligation was on CFS only and hence, the context of the judgment cannot be borrowed and read in the facts and circumstances of the present case.

4 Reply on the Ineligibility of services rendered by GDL for SEIS benefit.

- 4.1 The contents of Para 39.1 are not correct and hence, denied. It is submitted that the Noticee falls under Para 9.51(ii) of the Foreign Trade Policy as the services are rendered to foreign entity/foreign liners/foreign vessel. It is submitted that as a matter of practice, these services are provided through the freight forwarders/agents/NVOCC, who act on instructions and behest of the foreign

liners/agents. Therefore, the ultimate recipients of these services are the foreign liners only and hence, the Noticee is squarely covered within the requirements flowing from Para 9.51(ii) of the Foreign Trade Policy 2015-2020.

- 4.2 The contents of Para 39.2 of the SCN are not correct and are baseless. It is submitted that the Noticee is providing laden containerized cargo handling services in their own CFS with their own resources for containers of Foreign Liners moving in and out of India through vessels/ carriers/ships of foreign liners. As detailed above (i) all the vessels belong to foreign liners having foreign flags & all the containers belong to foreign shipping companies (ii) all these details can be verified from invoices submitted by the Noticee with the JDGFT (iii) services were rendered in customs notified area to foreign liners. Thus, the Noticee is providing supporting services for maritime transport to foreign entities (foreign liners) in respect of goods, both imported into India and exported out of India. Specifically, since the service is being supplied within the territory of India, the Noticee is covered under Clause (ii) of Para 9.51. Therefore, the services of the Noticee are covered under Clause (ii) of Para 9.51. Therefore, the services are ultimately provided to the foreign liners only and not to the residents of India.
- 4.3 The contents of Para 39.3 of the SCN are baseless, incorrect and devoid of merits. It is submitted that the service charges have been earned by the Noticee in INR from freight forwarders, importers, clearing agents who are moving the cargo in the containers belonging to foreign liners, which is in accordance with the requirements of Appendix 3E.
- 4.4 The contents of Para 39.4 of the SCN are baseless, incorrect and devoid of merits, and hence, denied in its entirety. It is submitted that the Noticee provides “supporting services for maritime transport” which is a combination of various legs of services. It is further submitted that the services provided by the Noticee has to be understood as composite service in light of the facts and circumstances for which the benefits of the SEIS were granted to the Noticee. It is submitted that the handling & transportation, additional handling, handling and weightment charges forms a part of the Terminal Handling Charges, therefore, it forms an essential leg of the service which is being provided to the foreign liner on its behest and instruction. Since, these services are rendered to the exporters/importers/freight forwarders/CHAs as a part of the composite transaction/services, therefore, the charges are not ineligible. It is further submitted that the obligation of the owner only comes into picture when SMPT is filed, until then the owner is not known and hence, the entire responsibility is on the shipping line, who is the ultimate recipient of services. Therefore, since the services are rendered to the foreign liners, hence, the amount received in INR is as per law and in terms of the objective of the SEIS Scheme. Further, it is abundantly clear that the Form 13 issued by shipping line is instruction to the CFS to send the containers of the shipping line loaded with export cargo to the terminal for loading on their ships for exports voyage. Hence, shipping lines plays a major and pivotal role in the entire transaction. In addition, in cases of import, Shipping lines file the IGM at the port terminal on arrival of the vessel. This is done on the online customs system (ICEGATE) and the access to ICEGATE is controlled by issue of login and passwords by Customs. Shipping lines allot loaded import containers for further movement of containers to the CFS. Shipping lines instruct CFS not to hand over the containers to the importers without their consent which is given in the form of Delivery Order (DO). These DO show that the shipping lines after sending their containers to our CFS instructed us to deliver the containers / cargo on their behalf to the importers. Therefore, it is crystal clear that the entire transaction happening on the instruction of the foreign liners/shipping lines only.

A copy of the Dos is enclosed as **Annexure R-25**.

- 4.5 The contents of Para 39.5 of the SCN are baseless, incorrect and devoid of merits. It is submitted that the charges were levied in lieu of services pertaining to cargo storage, ground rent and warehouse reservation. It is submitted that the "Cargo storage" charges are levied towards the storage of export cargo in the warehouse at the CFS till the container is ready for stuffing and storage of import LCL and then for the de-stuffed delivery cargo at the CFS. The "Ground Rent" is towards the charges levied for the stay of the loaded container in the CFS beyond the free period and "warehouse reservation" charges towards the storage of export cargo inside the warehouse at the CFS. It is submitted that the entire transaction forms a leg of the ultimate transaction which is provided to the shipping liners at their behest and under their instructions. It is submitted in this regard that the charges received as in accordance with Appendix 3E, as it nowhere mentions/specifies that the amount in INR has to be received by foreign lines only. The only requirement of Appendix 3E is that the services must be provided to the foreign lines, which in clear and unambiguous words is the case of the Noticee.
- 4.6 The Contents of Para 39.6 of the SCN are vague, baseless and hence, denied in its entirety. It is submitted that the analogy of Para 39.2, 39.3 and 39.4 is absolutely vague. The services undertaken and performed by the Noticee has to be seen and construed as a whole and not independently. The entire case of the department towards the Noticee is baseless and against the provisions of law. It is submitted that the services pertaining to "customs examination", "scanning charges" and "Survey CLP & EIR" charges form a part of just one leg of transaction that the Noticee is performing. Therefore, the amount received towards such services by importers/exporters etc. are well within the requirements of Appendix 3E and received in lieu of services provided to the foreign liners.
- 4.7 The contents of Para 39.7 of the SCN are baseless, incorrect and devoid of merits. It is submitted that these services are rendered to the foreign liners through their agents/freight forwarders/NVOCC. The understanding of the department is not correct that these services are provided to the importers/exporters who are Indians. It is submitted that until the SMPT is filed, the knowledge as to who is importer/exporter is not known. Hence, these charges are attributable to the foreign liners only because it is they who instruct the Noticee through their agents/freight forwarders/NVOCC to move cargo/container.
- 4.8 The contents of Para 39.8 of the SCN are baseless, incorrect devoid of merits, and hence, denied. It is submitted that the energy surcharge and fuel surcharge were the charges towards maintaining and monitoring the temperature for reefer containers by ensuring continuous supply of electricity. The contention of the department that these services were offered/provided to exporters and importers who are Indian entities is not correct. It is submitted that these services are a leg of services towards the ultimate transaction which is serving the foreign liner. Since, the entire transaction is happening on the behest and instructions of the foreign liners, therefore, they are the recipients of this service. The understanding of the department is not correct as it is not construing the entire transaction as a whole but is analysing each leg of services independently which is totally against the object of the policy including the services rendered by the Noticee for which the SEIS Scripts were granted to it.
- 4.9 The Contents of Para 39.9 of the SCN are not correct, and hence denied in entirety. It is submitted that the ultimate recipient of services in the facts and circumstances of the present case is the foreign liner. The reefer container charge is towards a leg of services provided by the Noticee. Further, neither the

SEIS Scheme nor Appendix 3E states that the charges have to be received by foreign liners or their agents or importers or exporters. It merely states that the payment needs to be received in (a) foreign exchange or (b) otherwise received in foreign exchange but paid in INR. In the present case, the entire amount is paid in INR towards the services provided to the foreign liners, therefore, it is beyond any ambiguity that the Noticee is providing services to foreign liners and is squarely covered within the four corners of the SEIS Scheme read with FTP & Handbook of Procedure 2015-2020.

- 4.10 The Contents of Para 40 of the SCN are a matter of record and hence, merit no response from the Noticee. It is submitted that the Noticee has filed an appeal against the order dated 03.02.2023 passed by the Additional Director General of Foreign Trade, Mumbai. A copy of the said appeal is enclosed herewith as **Annexure R-26**.

5 Reply on alleged suppression of facts and wilful misstatement by GDL.

- 5.1** The department in Para 41 of the SCN has alleged that the Noticee has obtained the SEIS Scrips by suppression of facts and wilful misstatement. The reasoning of the department behind this allegation is the fact that the services were rendered by the Noticee to the consumers who happened to be Indians and not the ones belonging to a foreign national. It is submitted in this regard that the department has blatantly ignored the statutory provisions governing the SEIS and the fact that the SEIS scrips were awarded to it after multiple rounds of scrutiny of various documents submitted by the Noticee. It is submitted that the Noticee provided the services in accordance with Para 3.08(a) and Para 9.51 (ii) of the Foreign Trade Policy and therefore, the SEIS Benefits were duly exhausted by the Noticee.
- 5.2** It is further submitted that the contents of Para 41.2 are not correct. The Noticee submits that the CA certificate was issued after due scrutiny and after due consideration of the policy provisions contained in the Foreign Trade Policy. The Noticee had submitted all relevant and material documents with the CA, and the CA upon due scrutiny of the same and upon its full satisfaction has granted the CA certificate to the Noticee.
- 5.3** As far as the contents of Para 41.3 of the SCN are concerned, it is submitted that in cases of import, it is the Shipping lines that file the IGM at the port terminal on arrival of the vessel. This is done on the online customs system (ICEGATE) and hence, does not require any humanely involvement. The access to ICEGATE is controlled by issue of login and passwords by Customs. Shipping lines allot loaded import containers for further movement of containers to the CFS. Shipping lines instruct CFS not to hand over the containers to the importers without their consent which is given in the form of delivery order (DO). These DO show that the shipping lines after sending their containers to the Noticee's CFS instructed the Noticee to deliver the containers / cargo on their behalf to the importers. Further in case of the export, Form 13 issued by shipping line is instruction to the CFS to send the containers of the shipping line loaded with export cargo to the terminal for loading on their ships for exports voyage. Hence, it is amply clear that the entire transaction is happening on behest and under the hand and seal of the foreign liners/foreign shipping lines only.
- 5.4** The contents of Para 41.4 are not correct. It is submitted that the agreement entered into between the agents and the Noticee, clearly and specifically provides that they are the agents acting on behalf of the foreign liners. A copy of the agreement is enclosed as **Annexure R-27**.
- 5.5** The contents of Para 41.5 are misconceiving and confusing. It is unambiguously clear from the aforesaid facts and circumstances that the services are being provided to the foreign liners on their behest and instructions. Since,

the services are being provided to the foreign liners therefore, the amount received in INR which would otherwise have been received in foreign exchange is valid in terms of Appendix 3E. The case of the department that the amount in INR is received from the exporters/importers/agents, who are Indians do not qualify in terms of Appendix 3E is not correct. Appendix 3E, in no manner whatsoever, provides that the amount in INR has to be received from foreign liners. It merely specifies that the same has to be in turn of services provided to the foreign liners, which the Noticee is very well performing and is beyond any ambiguity.

5.6 The contents of Para 41.6 are totally misconceived, wrong, baseless and hence, denied in its entirety. It is submitted that the Noticee have rendered services in terms of the Foreign Trade Policy, the SEIS Scheme and the Handbook of Procedure, and hence, the benefits availed by it are legal and valid & in terms of the SEIS scheme.

5.7 The contents of Para 41.7 are denied in its entirety for being wrong. It is submitted that there was no wilful mis-statement and wilful suppression of facts by the Noticee. The SEIS Scrips were awarded to the Noticee upon due scrutiny of all documents and upon the complete satisfaction of the department. Hence, the case in hand is not a case of wilful mis-statement and wilful suppression of facts, and hence, is liable to be dropped.

6. Reply on alleged violation of statutory provisions and confiscation of goods and penalties.

6.1 The department under Para 49 of the SCN has alleged that the Noticee has violated the statutory provisions, more specifically, Para 3.08(a) and Para 9.51(ii) of FTP 2015-20.

6.2 That department has alleged that the Noticee has claimed the benefits of the SEIS solely on the strength of inclusion of name of the foreign liners in their invoices. It is submitted in this regard that the understanding of the department is vague and wrong. It is submitted that the entire leg of services provided by the Noticee are as per the requirements of Para 9.51(i) and 9.51(ii) of the FTP as the entire services are rendered to the foreign liners, who are either acting on their own or through their authorised agents/exporters/NVOCC. It is submitted that even through the importers are Indians, the services in no manner whatsoever are provided to them as they are merely acting under the hand and seal of the foreign liners, who are the ultimate recipient of services. Therefore, the inclusion of names of foreign liners is not nominal but as per the requirement of the policy stipulated under the Handbook of Procedure, Foreign Trade Policy 2015-2020 and SEIS Scheme.

6.3 It is also submitted that the Noticee has duly complied with the Conditions for availing benefit of SEIS Scrips under SEIS under Chapter 3 the Foreign Trade Policy, Chapter 3 of Handbook of Procedures and the Public Notices dated 01.04.2015 and 04.05.2016, and hence all the statutory requirements stand satisfied.

6.4 Para 3.08 to Chapter 3 of FTP has laid down the eligibility for availing SEIS benefit. For ease and convenience of reference, relevant part of the Para is reproduced as under:

“3.08 Eligibility

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

(b) ...

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

6.5 Perusal of Para 3.08, in so far as relevant for the purposes of the present SCN, lays down the following requirements:

- (i) Service Providers of notified services must be located in India.
- (ii) Service should be rendered in the manner provided under Para 9.51(i) and Para 9.51(ii) of the policy.
- (iii) The services must be notified services as listed in Appendix 3D.
- (iv) In case service charges are earned in Indian Rupees ("INR"), it can be treated as deemed foreign exchange as per guidelines of Reserve Bank of India and such services must fall under Appendix 3E.

6.6 In so far as the requirement no. (i) is concerned, there is no dispute that the Noticee is a service provider located in India in as much as the Noticee is a company registered in India as per the applicable company laws and providing the services within the territory of India.

6.7 With respect to requirement no.(ii), it may be noted that Paragraph 3.08 (a) of the FTP only recognizes services provided in the modes defined in clauses (i) and (ii) of paragraph 9.51 as eligible for SEIS Scripts under the SEIS. Paragraph 9.51 defines the term "service provider" to mean a person providing a service in four modes described in clauses (i) to (iv). The modes of service recognized under clauses (i) and (ii) are:

- (i) Mode 1 – "cross-border trade" which is supply of a service from India to any other country.
- (ii) Mode 2 – "consumption abroad" which is supply of a service from India to service consumer(s) of any other country in India.

6.8 Noticee is providing laden containerized cargo handling services in their own CFS with their own resources for containers of Foreign Liners moving in and out of India through vessels/ carriers/ships of foreign liners. As detailed in letter dated 23.08.2018 (i) all the vessels belong to foreign liners having foreign flags & all the containers belongs to foreign shipping companies (ii) all these details can be verified from invoices submitted by the Noticee with the JDGFT (iii) services were rendered in customs notified area to foreign liners. Thus, the Noticee is providing supporting services for maritime transport to foreign entities (foreign liners) in respect of goods, both imported into India and exported out of India. Specifically, since the service is being supplied within the territory of India, the Noticee is covered under Clause (ii) of Para 9.51. Therefore, the services of the Noticee are covered under Clause (ii) of Para 9.51.

6.9 With respect to requirement no. (iii), it is not under dispute that supporting services for maritime transport are covered under Sl.9(A)(f) of Appendix 3D which corresponds to CPC 745.

6.10 It may be noted that Appendix 3E creates further sub-categories under the services covered under Sl.9(A)(f) of Appendix 3D. In this regard, it must be observed that the forty-four sub-categories to 'supporting services for maritime transport' under Sl.(A)(f) of Appendix 3E are alien to CPC 745. Rather, they have been specifically created under Appendix 3E to clarify which services would be considered as 'supporting services for maritime transport' to be eligible for the benefit of SEIS Scrips under Para 3.00.

6.11 Further, C.A. Certificates have classified service description detailed in the invoice under description of services mentioned in annexure to Appendix 3E. Therefore, the services rendered by the Noticee is covered under requirement no. (iii) r/w (iv).

6.12 In so far as requirement no. (iv) is concerned, it is clear from a perusal of the declarations submitted along with the applications seeking benefit of SEIS, duly verified and attested by Chartered Accountant, that though service charges have been earned in INR but payment for the same would have been otherwise received in foreign exchange.

6.13 Further, factually, service charges have been earned by the Noticee in INR from freight forwarders, importers, clearing agents who are moving the cargo in the containers belonging to foreign liners. Further, at the CFSs, containers belonging to foreign liners are stuffed and destuffed with cargo for purpose of exports and imports. Import Containers are sent to the CFS from the Port, under the instructions of the foreign liners. Further, in case of import journey of containerized international maritime cargo, movement of container from seaport to CFS is undertaken upon filing of 'Sub Manifest Transshipment Permit' (SMTP) by the concerned shipping line. Shipping line has the constructive control over the container & cargo and CFS can release the cargo to the importer, only upon receipt of a 'Delivery Order' (DO) from the concerned shipping line. Export containers are sent to the Port for loading on vessels as per the instruction of the foreign liners. In case of export journey of containerized international maritime cargo, movement of container is undertaken on receipt of 'Form 13 (e-gate pass)' from the concerned shipping line. Therefore, entire movement of cargo & container is taking place at instruction & behest of the foreign liners. Therefore, the payment, although made by freight forwarders, importers, clearing agents, is inextricably linked with movement of cargo & container taking place at instruction & behest of the foreign liners.

6.14 It is further submitted that it is normal a trade & widely prevalent trade practice to receive payment through/from freight forwarders, importers, clearing agents for movement of cargo & container taking place at instruction & behest of the foreign liners.

6.15 Further, opening part of Appendix 3E reads as under: -

Payments which have been received in foreign exchange or which would have been otherwise received in foreign exchange, but paid in Indian Rupees (INR), including through its agents in India out of the amount remittable to the overseas principal, or out of remittances to be sent by the overseas buyer, for services rendered in Customs Notified Areas to a foreign liner (or procured by a foreign entity in case of services included in rental of vessels with crew) as listed below would be considered as deemed to be received in foreign exchange and deemed to be earned in foreign exchange and shall be eligible for issuing rewards under the Services Exports From India Scheme. (Emphasis added)

6.16 The said opening paragraph of Appendix 3E, in so far as relevant for present discussion, lays down the following requirements:

- (i) Payments which have been received in foreign exchange or which would have been otherwise received in foreign exchange, but paid in Indian Rupees (INR)
- (ii) including through its agents in India out of the amount remittable to the overseas principal, or out of remittances to be sent by the overseas buyer
- (iii) for services rendered in Customs Notified Areas to a foreign liner as listed below
- (iv) would be considered as deemed to be received in foreign exchange and deemed to be earned in foreign exchange

(v) shall be eligible for issuing rewards under the Services Exports from India Scheme.

6.17 At this juncture it is important to note that the Hon'ble Supreme Court in *Mamta Surgical Cotton Industries v. Commr. (Anti-Evasion)*, (2014) 4 SCC 87, dealing with ambit & scope of the word "include" held as under: -

54. The word "include" is generally used to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. That is to say that when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. [Vide *Commr. of Customs v. Carya Equipment India (P) Ltd.* [(2012) 4 SCC 645] ; *U.P. Power Corpn. Ltd. v. NTPC Ltd.* [(2014) 1 SCC 371] ; *Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd.* [(2007) 3 SCC 607] ; *Dadaji v. Sukhdeobabu* [(1980) 1 SCC 621] ; *Mahalakshmi Oil Mills v. State of A.P.* [(1989) 1 SCC 164 : 1989 SCC (Tax) 56] and *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union* [(2007) 4 SCC 685 : (2007) 2 SCC (L&S) 82] .]

6.18 Therefore, the phrase 'through its agents in India out of the amount remittable to the overseas principal, or out of remittances to be sent by the overseas buyer' occurring after 'including' is only an enumeration & is not the only manner in which payment ought to be received to qualify the benefit of the said opening paragraph. Therefore, the manner in which payment has been received by the Noticee, is clearly within the ambit & scope of the said opening para of Appendix 3E.

6.19 Without prejudice & in any case, in light of requirements laid down by DGFT, New Delhi in its email dated 11.03.2019, benefit of the SEIS Scripts has to be allowed on the basis of CA certificate. Accordingly, Noticee submitted the additional CA Certificate dated 12.03.2019. The CA further submitted a CA Certificate with the DRI on 07.04.2021. Therefore, the Noticee has satisfied each & every applicable condition of Appendix 3E i.e., (i) payments which have been received in foreign exchange or which would have been otherwise received in foreign exchange, but paid in Indian Rupees (INR) (ii) for services rendered in Customs Notified Areas to a foreign liner as listed (iii) would be considered as deemed to be received in foreign exchange and deemed to be earned in foreign exchange (iv) shall be eligible for issuing rewards under the Services Exports from India Scheme.

6.20 It is further submitted that it is trite law, vide *CCE v. Ratan Melting & Wire Industries*, (2008) 13 SCC 1 that circulars/clarifications issued by department is binding on them.

6.21 Thus, in view of aforesaid submission, the allegation of mis-classified / mis-stated is incorrect & the INR payment received by the Noticee, in manner & facts, detailed above is eligible for availing the benefit under SEIS scheme.

6.22 It is further submitted that the allegation that Indian exporters (from whom Noticee has received payments in INR) who would have otherwise claimed rewards under MEIS on the FOB value of exports which includes the cost of services rendered by GDL in their CFS, cannot be a ground to deny benefit to the Noticee in as much as no such restriction is flowing from the SEIS scheme.

6.23 Further, the allegation that Noticee has not entered into any agreement with the foreign liner or their agents in India to provide the above-mentioned services

cannot be a ground to deny benefit to the querist in as much as no such restriction is flowing from the SEIS scheme, Handbook of Procedure or the Foreign Trade Policy 2015-2020.

- 6.24** In any case, since the Noticee has duly satisfied all the requirements for availing benefit under SEIS Scheme, thus the benefit cannot be denied for grounds & reasons alien to the scheme.
- 6.25** Therefore, the allegations of the department in Para 49 of the SCN is meritless. It is further submitted that the SEIS scrips were awarded after proper scrutiny of all documents and hence, the present case is not a case of suppression or collusion, or wilful misstatement as alleged by the department.
- 6.26** It is further submitted that the Foreign Exchange or the INR received by the Noticee as deemed foreign exchange is correct, legally valid and as per the terms of the Foreign Trade Policy, Handbook of procedures, SEIS scheme and the notifications issued in that regard.
- 6.27** It is further submitted that the SEIS Scrips were not obtained by collusion or misstatement or mis-declaration. The transfer of SEIS Scrips was also well within the bounds law and hence, any proposal to confiscate goods imported vide those scrips are bad and hence, are liable to be dropped as the ingredients of Section 28AAA read with 28AA, Section 111(o) read with 112(a) and section 114AB and 114AA are not attracted in the instant case for the reasons detailed in the paragraphs below.

7. Reply on merits.

- 7.1** Having dealt with the para wise reply in detail in the foregoing paragraphs, it is now essential to advert to the charges levelled by the department against the Noticee in Paragraph 53 of the SCN. The department has alleged that the Noticee has obtained the SEIS Scrip by wilful misstatement and /or suppression of facts and /or collusion in terms of Section 28AAA along with applicable interest as per Section 28AA of the Customs Act, 1962. The SCN has also proposed to impose penalty on the Noticee as per Sections 114AA, 114AB, 111(o) & 112(a) of the Customs Act, 1962.
- 7.2** It is submitted in that regard that the SCN in itself is vague and ambiguous to the extent that it has failed to highlight as to what facts have been wilfully suppressed and/or misrepresented by the Noticee in obtaining the SEIS Scrip. The department has made such allegations without appreciating the fact that the SEIS Scrips were awarded/granted to the Noticee upon due scrutiny of the application and upon full and complete satisfaction of the department as to the eligibility of the Noticee. It is pertinent to mention that all the documents showcasing the transaction undertaken by the Noticee towards SEIS application was submitted with the department for its due consideration and review subject to which the benefit was granted to the Noticee. Therefore, a bald allegation alleging suppression and/or misrepresentation and/or collusion with the terms of Section 28AAA of customs Act is not tenable in facts and circumstances of the present case.
- 7.3** In the instant case, the Noticee has indeed never furnished any false declaration, statement, or document with the DGFT. This stand substantiated by the fact that the SCN has not even specified a single document submitted by the Noticee, which is alleged to have been forged, tampered with or false in any material particular. All the documents on the basis of which the Noticee had made the application for claiming the benefit of SEIS scrips are well within the knowledge and possession of the Department. Despite the same, the Department has failed to categorically specify exact document (s) which are allegedly forged or tampered with or false in any material aspect. Such an allegation, being of serious nature, ought to have been supported by material particulars.

7.4 Furthermore, the department in the SCN has relied on the provisions of the Customs Act, 1962, without specifying the specific ingredients of those provisions which are attracted to the case of the Noticee in light of various facts and circumstances detailed hereinabove. Therefore, these bald allegations without specifying the exact ingredients of the provisions are vague and full of ambiguities.

7.5 In *Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd. and Ors.* (2007) 5 SCC 388, the Hon'ble Supreme Court highlighted the importance of an unambiguous notice in the following words;

“14. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show-cause notice is the foundation on which the Department has to build up its case. If the allegations in the show-cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show-cause notice. In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by CEGAT cannot be faulted.”

(Emphasis Supplied)

7.6 The allegations in the show cause notice ought to be specific so as to enable a noticee a proper opportunity to retort to the allegations indicated in the show cause notice. Similar was the view of the High Court of Delhi in **Shiv Nath Raj Har Narain (India) v. Union of India (UOI) and Ors.** 2009 SCC OnLine Del 540, wherein the High Court pointed out a greater obligation of any authority to follow a fair procedure in case where the penalty proposed is harsh and stringent. In this context, the High Court opined thus:

“15. In this case, the notice issued to the petitioner is bereft of essential particulars; it also does not enclose complaints received against it (the petitioner) or other materials, which persuaded the respondents to conclude, as they did, that there was infraction of the provisions of the statute. It is said that where the penalty is stringent or harsh, the authority is under a greater obligation to follow a fair procedure (Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409). Here, the respondents proposed, and imposed a penalty of Rs. 10,00,000/-. The notice did not indicate what obligation, amounting to infraction of the substantive provisions of the Act, or the concerned rule, had occurred. It is also unclear whether the aggrieved importer sought recourse to the normal dispute resolving channels, under the contract, or under the municipal laws, applicable to the transaction. In these circumstances, the petitioner's grievance about adopting of an unfair procedure, is well founded. As regards the second question, the petitioner's grievance about lack of jurisdiction to adjudicate disputes appeared to be well founded. The authorities have the power and jurisdiction to decide whether provisions of the Act and Rules are not complied with, and if they decide that there is a violation, impose the penalty warranted in the circumstances of the case. Yet, the Act does not authorize the determination of whether an Indian exporter acts in breach of his contractual obligations - that role is exclusively of the Courts.”

(Emphasis Supplied)

7.7 Accordingly, the allegations made by the Department against the Noticee vide SCN dated 12.05.2023 are to be examined in the light of the aforesaid decisions in **Brindavan Beverages (supra)** and **Shiv Nath Raj Har Narain (supra)**. Upon a mere perusal of the allegations made by the Department against the Noticee vide

Para 53 of the SCN, it becomes clear that the same are quite bald and lack specific particulars regarding what facts have been misstated/suppressed/incorrectly authenticated by the Noticee. In the absence of specifics, the Noticee would be deprived of the opportunity to give an appropriate reply to the SCN. Therefore, considering the foregoing submissions in light of the established principles of law on unambiguous SCN, it is abundantly clear that the SCN dated 12.05.2023 is vague and ambiguous in as much as the same has made bald allegations against the Noticee without any specific detail about alleged suppression/misstatement/collusion.

7.8 Before advertng to the reply on specific allegations, it is important to discuss the provisions of law on which the department has relied to build a case against the Noticee in the present SCN.

7.9 Section 28AAA of the Customs Act, 1962, provides for the Recovery of duties in cases The relevant portion of Section 28AAA has been reproduced below:

“28-AAA. 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

Provided that

Explanation 1.—For

Explanation 2.—The

(2) Where the duty

(3) For the purposes

(4) Where an order

(5) Where the personsub-section (1) of Section 142.]”

7.10 Upon a mere perusal of the aforesaid provision of law, it is crystal clear that for section 28AAA to be attracted, it must be proved that an instrument (SEIS in the present case) has been obtained by collusion or wilful-misstatement or suppression of facts. However, in the instant case, the department has failed to show the collusion or wilful-misstatement or suppression of facts that the Noticee has committed in obtaining the SEIS Scrips. At the cost of repetition, it is reiterated that the same was granted to the Noticee after due consideration of the material documents submitted by the Noticee and upon due satisfaction of the department. Therefore, in no manner whatsoever, the provisions of section 28AAA are attracted in the instant case. Further, the fact that the department has failed to specify the exact and most appropriate ingredient which is attracted in the instant case is also indicative of the fact that the department itself is not sure of the offense that the Noticee has committed. The department has merely laid down the provisions of section 28AAA of the Customs Act, 1962 without specifying the ingredient applicable in the instant case.

7.11 At this juncture, it is imperative to note that the Hon’ble supreme court in *Aban Loyd Chiles Offshore Ltd. v. Commr. of Customs* [(2006) 6 SCC 482] observed that:

“20. The proviso to Section 28(1) can be invoked where the payment of duty has escaped by reason of collusion or any wilful misstatement or suppression of facts. So far as ‘misstatement or suppression of facts’ are concerned, they are qualified

by the word 'wilful'. The word 'wilful' preceding the words 'misstatement or suppression of facts' clearly spells out that there has to be an intention on the part of the assessee to evade the duty.

(Emphasis Supplied)

"22. *We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or misstatement. The use of the word "wilful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, 6th Edn. (p. 1599) defines "wilful" in the following manner:*

"Willful.—Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass...."

An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done...."

(Emphasis Supplied)

7.12 Further reliance in this regard is also made on the judgment of the Hon'ble Supreme Court in *Continental Foundation Joint Venture Holding v. Collector of Central Excise, Chandigarh-I* (2007) 10 SCC 337, wherein the Hon'ble Supreme Court held that:

"12. The expression "suppression" has been used in the proviso to Section 11-A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop (sic evade) the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation Under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."

"14. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful", preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". Therefore, there cannot be suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement of fact must be wilful."

(Emphasis Supplied)

7.13 Therefore, based on the aforesaid submission, it is humbly submitted that the ingredients of section 28AAA of the Customs Act, 1962 are not attracted in the instant case as there is no wilful misstatement, suppression or collusion on part of the Noticee in obtaining the SEIS Scrips. In arguendo, the department has also failed to prove so in the entire the SCN and the same is evident from the vagueness of the SCN that it has failed to rely on any such document in order to bring the Noticee within the four corners of Section 28AAA of the Customs Act, 1962. It is further submitted that since Section 28AAA is not attracted in the instant case, therefore, the demand of duty aggregating to Rs. 69,02,32,041 is baseless, illegal and hence, is liable to be dropped.

7.14 It is further submitted that since demand of duty under section 28AAA of the Customs Act, 1962 is not attracted in the instant case, therefore, any demand of interest as per section 28AA would not be attracted. Therefore, the Charges Levelled in Para 53 (i) & (iii) are not sustainable qua the Noticee and is liable to be dropped in light of the facts and circumstances of the present case.

7.15 The Charge levelled by the department in Para 53 (ii) of the SCN is not applicable to the present case of the Noticee as no import of goods have ever been undertaken by the Noticee. The said paragraph/charge is applicable to the case of M/s Adani Wilmar Limited and have been dealt towards the end of this SCN by the Noticee. Therefore, the provisions of Section 111(o) are not attracted to case of the Noticee in the aforesaid facts and circumstances.

7.16 The department in Para 53 (v) has sought/proposed to impose penalty under Section 114AA of the Customs Act, 1962 for making incorrect declarations knowing that they were incorrect. In this regard, the Noticee submits that the said provision of law is not attracted as in no manner whatsoever has the noticee made any incorrect declaration either knowingly or unknowingly. Further, it is also submitted that the SCN has failed to point out such deliberate and incorrect declaration wherein the accountability of the Noticee is in question. The Noticee has made all the declarations as per the law and in line with the requirements of the SEIS. It is important to retort to Section 114AA of the Customs Act in order to understand the requirement of law for the applicability of this section.

7.17 As per Section 114AA of the Customs Act, 1962, a penalty can only be imposed if a person has “knowingly” or “intentionally” used false and incorrect material particular in the transaction of any business for the purposes of the Customs Act, 1962. For the sake of clarity, true portion of Section 114AA has been reproduced below:

“Section 114AA- Penalty for use of false and incorrect material.—
”

7.18 Upon a mere perusal of the aforesaid provision of law, it is quite clear that in order to attract section 114AA, it must be proved that the declarations have been made knowingly, intentionally and deliberately, under the impression that such a document or statement is false and/or incorrect. However, in the present case all the declarations made by the Noticee were duly scrutinized by the department and was granted only after the satisfaction of the department. Further, the entire SCN is silent regarding the incorrect and false declaration made by the department.

7.19 In this regard, reliance must be placed on the decision of the Supreme Court in *Hindustan Steel Ltd v. State of Orissa* 1978 (2) ELT 159 (SC) wherein it was held that penalty should not be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

7.20 Similarly, in *Uniworth Textiles Limited v. Commissioner of Central Excise, Raipur* (2013) 9 SCC 753, the Supreme Court observed that if an action is proposed to be taken on the basis of suppression or misstatement of facts, such an act must be deliberate, i.e., the correct information must be deliberately concealed. In this context, the Apex Court stated:

“22. *We are not persuaded to agree that this observation by the Commissioner, unfounded on any material fact or evidence, points to a finding of collusion or suppression or misstatement. The use of the word “wilful” introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one’s state of mind. Black’s Law Dictionary, 6th Edn. (p. 1599) defines “wilful” in the following manner:*

“Willful.—Proceeding from a conscious motion of the will; voluntary; knowingly; deliberate. Intending the result which actually comes to pass....”

An act or omission is ‘willfully’ done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done....”

24. *Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that “the appellants had not brought anything on record” to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fides lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar [(2005) 8 SCC 760 : 2006 SCC (L&S) 47] that: (SCC p. 770, para 21)*

“21. ... It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.”

(Emphasis Supplied)

7.21 Drawing an analogy from the aforesaid jurisprudence, it can be said that penalty can only be imposed by the Department on the hypothesis that the Noticee had suppressed or misrepresented facts with the intent to obtain SEIS scrips. However, this hypothesis, in the instant case, falls to the ground as the factual score clearly reveals that the Noticee was not granted the SEIS scrips by the Department in a mechanical manner without application of mind, but rather a thorough scrutiny of the Noticee's application along with the supporting documents was carried out by the Department before granting the SEIS scrips to the Noticee.

7.22 The Noticee had also furnished supporting documents and clarifications to the Department on different occasions in response to the several deficiency memos issued by the Department. Therefore, there is no rhyme or reason, whatsoever, to impose penalty on the Noticee under the provisions of Section 114AA of the Customs Act, 1962 for the SEIS scrips were issued to the Noticee only after due verification and scrutiny of all the necessary facts and documents.

7.23 Therefore, in the list of aforesaid, penalty under section 114AA of the Customs Act, 1962 is not attracted as the Noticee was granted SEIS Scrips only after due scrutiny of all relevant and material documents submitted by it.

7.24 The department has also sought/proposed to impose a penalty under Section 114AB [Para 53 (vi) of the SCN] of the Customs Act, 1962 for obtaining an instrument by wilful misstatement or suppression of facts or collusions.

7.25 It is submitted by the Noticee that in order to attract the provisions of Section 114AB, it must be proved that the said instrument has been obtained by fraud, collusion, wilful misstatement or suppression of facts and has been utilized towards discharge of duty. The relevant portion of section 114AB has been reproduced below:

“Section 114AB. Penalty for obtaining instrument by fraud, etc.-Where any person

7.26 However, as stated in the foregoing paragraphs, the SCN has failed to establish that the Noticee has obtained the SEIS Scrip by wilful misstatement, collusion, suppression or fraud. It is further submitted that considering the facts

and circumstances of the present case the said allegations do not stand on the parameters law as the Noticee has not violated any of those parameters or have acted in abeyance of the legal principle including the Customs Act, the FTP, FTDR Act and the SEIS Scheme.

7.27 The Noticee further submits that the provisions of law on which the department has relied requires deliberate and intentional act (mens rea) on part of the Noticee in order to fall within the bounds of those offences. However, it is crystal clear from the facts and circumstances of the present case that the SEIS was granted upon due scrutiny of all relevant and material documents and hence, lacks any intention to deceive and cause gain to itself. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in Commr. of Customs v. Essar Oil Ltd., (2004) 11 SCC 364, wherein the Supreme Court held that:

“29. By “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from ill will towards the other is immaterial. The expression “fraud” involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable, or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See *Vimla (Dr.) v. Delhi Admn.* [1963 Supp (2) SCR 585 : (1963) 2 Cri LJ 434] and *Indian Bank v. Satyam Fibres (India) (P) Ltd.* [(1996) 5 SCC 550]]

31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. *It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously.* A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See *Ram Chandra Singh v. Savitri Devi* [(2003) 8 SCC 319] .)

32. “Fraud” and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to “wing me into the easy-hearted man and trap him into snares”. It has been defined as an act of trickery or deceit. In *Webster's Third New International Dictionary* “fraud” in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In *Black's Legal Dictionary*, “fraud” is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or

surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In *Concise Oxford Dictionary*, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to *Halsbury's Laws of England*, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise, fraud arises out of deliberate active role of the representator about a fact, which he knows to be untrue, yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false. In a leading English case i.e. *Derry v. Peek* [(1886-90) All ER Rep 1 : (1889) 14 AC 337 : 58 LJ Ch 864 : 61 LT 265 (HL)] what constitutes "fraud" was described thus (All ER p. 22 B-C):

"[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false."

(Emphasis Supplied)

7.28 Therefore, in order to attract penalty under Sections 114AA and 114AB of the Customs Act, 1962, it must be established that (a) the declaration or statement, made or submitted, as the case may be, towards the grant of the instrument was false and incorrect and (b) the instrument was obtained by fraud, collusion, wilful misstatement or suppression of facts. However, the SCN has failed to prove so and has merely made bald allegations without any material proof in that regard. At the cost of repetition, it is further submitted that the SEIS was granted after complete scrutiny of records and upon the satisfaction of the authority.

7.29 It is further submitted and clarified that the charges contained under Para 53 (ii) & (iv) of the SCN does not pertain to the Noticee. It is submitted that the goods covered in several bills of entry as detailed in Table-4 and Annexure-A of the SCN, valued at Rs. 327,46,83,562/- does not pertain to the Noticee as those imports have not been undertaken by the Noticee. Even otherwise, it is submitted that the SEIS scrip was not obtained by wilful mis-statement or suppression. The SEIS Scrips were granted to the Noticee after multiple rounds of scrutiny of the documents submitted by it and upon due satisfaction of the authorities. Therefore, the allegation that the SEIS Scrips involved in the import were obtained by wilful mis-statement or suppression is illegal and devoid of merits, and hence, is liable to be dropped.

7.30 Without prejudice to the above, the Noticee further states that the ingredients of Section 111(o) of the and SCN are not attracted. It is imperative to note that for Section 111(o) to be attracted, it must be satisfied that there is an "improper" "import" of goods from a place outside India. However, in the instant case, the Noticee has not imported anything as it was merely providing "supporting services for maritime transport", which has been extensively discussed in the foregoing paragraphs of this submission. It is further submitted that for sub-section (o) of section 111 to be attracted, there has to be some import without consideration or non-observance of the condition sanctioned for such import. Since, it is abundantly clear from the SCN itself that the Noticee was not into import of goods, therefore, the current charge is totally illegal, baseless, meritless and hence, is liable to be set aside.

7.31 The SCN in Para 53(iv) has proposed to impose penalty on the Noticee under Section 112(a) of the Customs Act, 1962 for rendering the goods imported vide the SEIS Scrips under dispute which is liable for confiscation under section 111(o) of the Customs Act, 1962. It has already been submitted by the Noticee in the foregoing Paragraphs that the Noticee was not into import of goods and was merely providing the Supporting services for maritime transport. It is also abundantly clear from the submissions made in Para 7.27 & 7.28 that the ingredients of section 111(o) are not attracted in the instant case as import has been undertaken by the Noticee. Therefore, the proposed penalty for something which has not been undertaken/done by the Noticee is absolutely illegal, meritless and is liable to be set aside.

7.32 Without prejudice to the above, it important to note that for section 112 of the Customs Act to be attracted, it must be established that some goods have been “imported” improperly”. However, the instant SCN has failed to establish as to what goods have been imported by the Noticee. It is abundantly clear that the Noticee was providing the Supporting services for maritime transport and the same is without any dispute. Hence, the proposed penalty under Section 112(a) is completely illegal and is liable to be set aside in facts and circumstances of the present case.

7.33 Therefore, in light of the foregoing submissions, it is submitted that (a) the SEIS Scrips were granted to the Noticee as per the terms and conditions of the FTP, Handbook on Procedures and the SEIS Scheme (b) the SEIS Scrips were granted after multiple rounds of scrutiny of the documents submitted by the Noticee and upon the due satisfaction of the relevant authority (c) the SCN itself is vague, meritless, as it has failed to appreciate the services undertaken by the Noticee as well the provisions of law under which the SEIS Scrips were granted to the Noticee and (d) no import of goods were ever undertaken by the Noticee as it is involved in the supporting services for maritime transport.

7.34 It is further submitted that the Penalty proposed in Para 50 of the SCN are liable to be dropped for the reasons detailed hereinabove. It is further reiterated that the Noticee has duly complied with the provisions of the Foreign Trade Policy 2015-2020, Handbook of Procedure and SEIS Scheme. It is also abundantly clear from the aforesaid submissions that the SEIS Scrips were awarded to the Noticee after multiple rounds of scrutiny of various documents submitted in that regard, hence, the provisions of section 28AAA read with 28AA are not attracted in the instant case. Further, considering the aforesaid detailed submission, the proposal to impose penalty as per section 114AA & 114AB are bad in law and are liable to be dropped. Needless to say, since the SEIS Scrips were validly obtained and then transferred, so, the proposal to confiscate goods covered under Bills of entry as detailed in Table-4 and Annexure-A of the SCN are bad, hence, proceedings under Section 111(o) read with Section 112(a) are also not attracted and hence, are liable to be dropped by the department in light of the facts and circumstances of the present case.

54.4 The Noticee no. 2 Shri Kartik Aiyer, Sr. Gen. Manager of M/s Gateway Distriparks Limited, filed his defence submission dated 04.08.2023, received via email in this office on 05.08.2023, which is reproduced as under –

1. In Para 1 of the defence submission the Noticee no. 2 has repeated the brief facts of the case, which are not reproduced here for the sake of brevity.
2. Reply on merits

- 2.1 At the outset, the Noticee No.2 submits that the charges contained in Para 53.1 of the SCN are baseless, frivolous, illegal and hence, liable to be dropped and set aside in the facts and circumstance of the present case.
- 2.2 It is submitted that the department in Para 53.1 of the SCN has sought to impose a penalty on the Noticee No.2 as per Section 112(a) of the Customs Act, 1962 for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation. Section 111(o) of the Customs Act 1962.
- 2.3 It is submitted that Section 112(a) of the Customs Act, 1962 can only be invoked if the requirements of Section 111(0) of the Customs Act, 1962 are met. In this regard, it is submitted that the Noticee No.2 has not rendered any import of goods in the capacity of Senior General Manager of the Noticee No. 1. It is submitted that the Noticee No.1 was never involved in the import of goods but was providing "supporting services for maritime transport" for which the SEIS benefit was provided to it. It is further submitted and clarified that goods were imported by other entities to which the Noticee No.2 had no role to play.
- 2.4 It is submitted that for Section 112 of the Customs Act to be attracted, the ingredients of Section 111(0) must be satisfied vis-à-vis the role of the Noticee No.2. That for Section 111(0) to be attracted, it must primarily be proved that the goods have been "improperly" "Imported" and in specific any condition that has been laid down for import has not been observed in rendering the import of goods. It is, however, undisputed that the Noticee No. 1 has not rendered any import and hence, Noticee No.2 who worked in the capacity of Senior General Manager of the Noticee No.1 has no role to play in any imports. Further, even in the imports rendered by other entities upon the transfer of the SEIS Scrips, the Noticee No.2 had no role to play as it had no association with those company that have made imports. Further, it is reiterated for the sake of clarity that the Noticee No.2 was only a part of the team that submitted and processed applications towards the grant of the SEIS Scrips, that was granted upon multiple scrutiny of all records submitted by the Noticee No. 1, and hence, the scrips have been validly taken by the Noticee No. 1. therefore, the bald allegation that the Noticee is liable to penalty under section 112(a) of the Customs Act, 1962 for rendering goods liable to confiscation under section 111(0) of the Customs Act, 1962 is non-sustainable and hence, liable to be dropped and set aside in light of the foregoing submissions read with the submission advanced by the Noticee No. 1.
- 2.5 Further, Section 112 of the Customs Act, 1962 lays down certain conditions for the imposition of penalty for the improperly imported goods. It is submitted that none of the conditions are satisfied against the Noticee No.2 in the instant case. Therefore, the said charge proposing to levy penalty as per section 112(a) of the Customs Act, 1962 is liable to be dropped.
- 2.6 That it is also submitted that the SCN proposing to impose penalty under section 112(a) is vague in itself as it has failed to specify circumstances for which this provision has been invoked by the department. The Noticee No.2 has no nexus, even remotely with the imports undertaken by other companies to whom the SEIS Scrips were transferred. It is further clarified that as per the roles of the Noticee No.2, he was only obligated to look after the accounts and finance, and hence, in no manner whatsoever, the liability of improper imports as alleged by the department be extended to the Noticee No.2 in facts and circumstances of the present case.
- 2.7 In Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd. and Ors. (2007) 5 SCC 388, the Hon'ble Supreme Court highlighted the importance of an unambiguous notice in the following words;

"14. There is no allegation of the respondents being parties to any arrangement. In any event, no material in that regard was placed on record. The show-cause notice is the foundation on which the Department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show-cause notice, In the instant case, what the appellant has tried to highlight is the alleged connection between the various concerns. That is not sufficient to proceed against the respondents unless it is shown that they were parties to the arrangements, if any. As no sufficient material much less any material has been placed on record to substantiate the stand of the appellant, the conclusions of the Commissioner as affirmed by CEGAT cannot be faulted."

(Emphasis Supplied)

2.8 The allegations in the show cause notice ought to be specific so as to enable a noticee a proper opportunity to retort to the allegations indicated in the show cause notice. Similar was the view of the High Court of Delhi in Shiv Nath Raj Har Narain (India) v. Union of India (UOI) and Ors. 2009 SCC OnLine Del 540, wherein the High Court pointed out a greater obligation of any authority to follow a fair procedure in case where the penalty proposed is harsh and stringent. In this context, the High Court opined thus:

"15. In this case, the notice issued to the petitioner is bereft of essential particulars; it also does not enclose complaints received against it (the petitioner) or other materials, which persuaded the respondents to conclude, as they did, that there was infraction of the provisions of the statute. It is said that where the penalty is stringent or harsh, the authority is under a greater obligation to follow a fair procedure (Prakash Kumar v. State of Gujarat, (2005) 2 SCC 409). Here, the respondents proposed, and imposed a penalty of Rs. 10,00,000/-. The notice did not indicate what obligation, amounting to infraction of the substantive provisions of the Act, or the concerned rule, had occurred. It is also unclear whether the aggrieved importer sought recourse to the normal dispute resolving channels, under the contract, or under the municipal laws, applicable to the transaction. In these circumstances, the petitioner's grievance about adopting of an unfair procedure, is well founded. As regards the second question, the petitioner's grievance about lack of jurisdiction to adjudicate disputes appears to be well founded. The authorities have the power and jurisdiction to decide whether provisions of the Act and Rules are not complied with, and if they decide that there is a violation, impose the penalty warranted in the circumstances of the case. Yet, the Act does not authorize the determination of whether an Indian exporter acts in breach of his contractual obligations - that role is exclusively of the Courts."

(Emphasis Supplied)

2.9 Accordingly, the allegations made by the Department against the Noticee No.2 vide SCN dated 12.05.2023 are to be examined in the light of the aforesaid decisions in Brindavan Beverages (supra) and Shiv Nath Raj Har Narain (supra). Upon a mere perusal of the allegations made by the Department against the Noticee No.2 vide Para 53.1 of the SCN, it becomes clear that the same are quite bald and lack specific particulars regarding the facts as well as the applicable provision of law. Therefore, considering the foregoing submissions in light of the established principles of law on unambiguous SCN, it is abundantly clear that the SCN dated 12.05.2023 is vague and ambiguous in as much as the same has made bald allegations against the Noticee No.2 without any specific detail on facts

as well as on law. Therefore, the said charge is liable to be dropped as it is vague and full of ambiguities.

- 2.10 It is submitted that the department in Para 53.1 (ii) of the SCN has proposed to impose penalty under Section 114AA of the Customs Act, 1962, for his acts of omission and commission as alleged by the department in Para 51 of the SCN. It is humbly submitted in this regard that the said charge is illegal and baseless and is liable to be set aside as no ground under Section 114AA of the Customs Act, 1962 is made out.
- 2.11 It is a trite law that penalty proceedings are quasi-criminal proceedings and penalty can not be imposed in absence of mens rea. However, as per the case in hand, there is a clear absence of mens rea as all the declarations made by the Noticee No. 1 and the Noticee No.2 was merely a part of the team making such declarations, without even signing or certifying any document under its hand and seal. The same has already been dealt in detail in the reply on behalf of the Noticee No. 1. therefore, in absence of mens rea, the penalty is bad and hence is liable to be set aside. Reliance in this regard is place on the judgment of the Hon'ble Supreme Court in Commissioner of Income Tax v. Anwar Ali AIR 1970 SC 1782.
- 2.12 Further, it is submitted that for Section 114AA of the Customs Act, 1962 to be attracted in the present case, it must be established that a person has "knowingly or intentionally any declaration, statement or document which is false or incorrect in any material particular". It is, however, important to note that the entire SCN has failed to point out the ingredients of Section 114AA of the Customs Act, 1962, so attracted in the case of the Noticee No.2. At the cost of repetition, it is reiterated that the SEIS benefits were granted to the Noticee No.1 upon due scrutiny of all material records and upto the full and complete satisfaction of the concerned authority.
- 2.13 That without prejudice to the above, it is also submitted that no statements and declarations were made and/or signed by the Noticee No.2 towards the grant of the SEIS Scrips. The Noticee No.2 was only a part of the team doing so and was summoned only after Mr R. Kumar had retired from the Company's services in September 2019, who had signed the ABF 3B and other applications. Therefore, the said proposal to impose a penalty under section 112 and 114AA must be dropped and set aside. Reliance in this regard is placed on the judgment of the learned CESTAT in Mahindra and Mahindra Ltd. v Commissioner of Customs(Import), Mumbai 2011 SCC OnLine CESTAT 2739.
- "18. The last issue for consideration is whether Shri R.U. Prabhu, Dy. General Manager of the appellant company is liable for penalty under Section 112(a) of the Customs Act or not. Shri R.U. Prabhu was only an employee of the appellant and he did not stand to gain personally by making the wrong declarations. In as much as the appellant has been penalised, we are of the view that penalty on Sri. Prabhu is not warranted and accordingly we set aside the same."
- 2.14 Further reliance is also placed on the judgment of Hon'ble CESTAT, Chennai in Commissioner of Customs v. Sri Krishna Sounds and Lightings 2019(370) ELT 595(Tri-Chennai), wherein it was held that the penalty can be imposed only in situation when the benefits are claimed presenting forged documents. However, in facts and circumstances of the present case, it is amply clear that the SEIS Scrips were awarded after multiple rounds of scrutiny and upon the satisfaction of the sanctioning authority. Therefore, the case under section 114AA of the Customs Act is not made out and hence, the same is liable to be dropped.

- 2.15 That the department has further sought to impose penalty as per section 114AB of the Customs Act, 1962 for having obtained the instrument by wilful mis-statement and/or suppression of facts and/or collusion. It is submitted in this regard that the department has failed to point out the exact and appropriate ingredient which is attracted in the present case. It is submitted that the Noticee No. 2 has not committed wilful mis-statement and/or suppression of facts and/or collusion for the grant of the scrips. It is abundantly clear from the aforesaid submission that the Noticee No.2 had a very limited role to play and was merely a part of the team. Secondly, he was acting under the hand and seal of the company and hence, penalty cannot be imposed on the Noticee no.2 for the bonafide acts towards the Noticee No.1.
- 2.16 Further, Section 114AB is not at all attracted towards the Noticee No.2 in the present case. Section 114AB states that where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.
- 2.17 That upon a mere perusal of the aforesaid provision, this section is applicable in circumstances when the instrument is obtained by any person in fraud, collusion, willful misstatement or suppression of facts and the same is then utilized by other person. It is, however, pertinent to note that the SEIS Scrips in the instant case were not obtained by the Noticee No.2, neither the same was utilized by others in the name of the Noticee No.2. therefore, in terms of the express provision of law contained in section 114AB of the customs law, it is abundantly clear that the said provision is not attracted in the instant case of Noticee No.2 and is hence, liable to be dropped.
- 2.18 Therefore, the allegation qua the Noticee No.2 is non-est and is liable to be set aside in light of the foregoing submissions read with the submission advanced on behalf of the Noticee No.1, i.e., M/s Gateway Distriparks Limited.
3. Lastly, the noticee no. 2 prayed to drop the proceedings in view of his above submissions.

54.5 The Noticee no. 3 Shri Anil Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, Mumbai, filed his defence submission dated 12.08.2023, which is reproduced as under –

1. & 2. In Para 1 & Para 2 of his submission, the noticee no. 3 has repeated the facts and allegations made in the notice, which are not reproduced here for the sake of brevity.
3. Sir the notice denies the aforesaid allegations in totality and submits in his defence as under.
4. The notice had gone through the text of the show cause notice and it appears that as per provisions of Foreign Trade Policy, an applicant for obtaining Service Export from India Scrips (SEIS) has to apply before the DGFT office. In that application a declaration in Form ANF-3B has to be submitted certifying that the foreign exchange earned is on account of services rendered from India and do not fall under ineligible categories as service as per para 3.08 and para 3.09 of FTP. These declarations are to be signed by a Chartered Accountant/Cost Accountant/Company Secretary after due examination.
5. The notice had signed such ANF-3B Form on behalf of M/s GDL. It is on record.

6. The notice is a chartered accountant by profession and is doing his profession as per professional and ethical norms. He was approached by Sh.Rakesh Garg, Proreitor of M/s Rakesh Garg & Associates, who are tax auditor of M/s GDL in connection with the requirement of a certificate, certifying the total remittances received by M/s GDL in foreign exchange.

It is submitted that all the required documents for verification foreign remittances were produced / handed over by the M/s GDL to the notice. The notice had duly acknowledged the receipt of such documents and the letter on which notice gave that acknowledgement is enclosed.

It is further submitted that there is reference of notice's statement dated: 03.08.2021 at Para 37 of the impugned show cause notice whereunder it has been mentioned that the notice had given the certificate on the basis of sample invoices and that the records were not verified. This position in Para 37 is denied, being against the factual position. The statement referred to in the said Para is not voluntary and noticee was dictated to tender such statement. The fact that the statement is voluntary is evident from the fact that all the relevant records were handed over to the noticee under proper acknowledgement.

7. In para 24 of the impugned show cause notice M/s GDL has provided number of services some of which are alleged to be not eligible services. As per M/s GDL, these services were supporting services for maritime transportation of foreign liners owned/leased cargo container for which payment were received from foreign shipping lines (including their agents) incidental to whole logistic chain relevant to claimed services. As per Appendix 3E of the FTP, there is a list of services, which are eligible under para 3.08(c) of FTP. Para 3.08(c) lays down that "Payment of Indian Rupees for service charges earned on specified services shall be treated as receipt in deemed foreign exchange as per guidelines of RBI."

The impugned show cause notice is disputing the eligibility of these services on the ground that these may not fall under the category of supporting services for maritime transport.

The notice is not called upon to comment on same. Nor the notice is competent to do the same. It is for M/s GDL to put forth their contentions in this regard.

8. The notice retreats that the certificate was issued by the notice on the basis of all the relevant record produced by M/s GDL. There was no manipulation in the record. The only issue is as to whether some of the services are stated to be not eligible services which is a matter of interpretation.

The notice respectfully submits that the notice is a chartered accountant by profession and has no expertise regarding provisions of FTP 2015-20.

A chartered accountant it's not supposed to know the complexities or interpretations regarding services, which can be termed as supporting services for maritime export. Can any chartered accountant can certify such eligibility criteria? He can only certify the invoices, which the notice had factually done. Any other chartered accountant would have done the same

9. Public notice No. 07/2015-2020 dated 04.05.2016 had laid down amended provision as per which "a documentary evidence in the Form of CA/CWA/CS certificate, which certifies that payments in INR for services rendered as under Appendix 3E have been scrutinized and these payments in INR are approved under RBI guidelines as deemed to be received in foreign exchange and deemed to be earned in foreign exchange" is required to be submitted by applicants which claim benefits for INR payment.

The above provision requires to certify the payments received in INR for services rendered under Appendix 3E. The certificate given by CA was for that limited purpose. The notice has given the correct certificate on a Bonafide belief that these are all the services rendered in customs notified area and that all charges received in INR were deemed to be received as foreign exchange.

It appears that the department has observed in the SCN that the receipts in INR against specified services were not eligible services on the part of M/s GDL. Sir, it is respectfully submitted that the eligibility or otherwise in respect of foreign exchange or Indian rupees earned by GDL is something on which notice cannot comment. It is something that has been alleged in the SCN against M/s GDL.

10. Sir, the notice is a chartered accountant who is supposed to certify the amount so received by the M/s GDL. He is not supposed to verify the eligibility or otherwise of the primary/main services/supporting services. The notice cannot be held liable on the facts and circumstances of the case.

11. Penalty under Section 112 of the Customs Act, 1962 has been proposed. Section 112 is reproduced as under: -

"Section 112 Any person,
....."

The penalty under aforesaid section is imposable when, a person has done some act so as to render the goods liable to confiscation under Section 111 of the Customs Act, 1962. Giving a certificate based books of accounts cannot be termed as abatement. No penalty under Section 112 of the said act is imposable.

12. Penalty under Section 114AA of the Customs Act, 1962 has also been proposed. The same is reproduced as under: -

SECTION 114AA. Penalty for use of false and incorrect material. - If a person
.....

It is reiterated that a chartered accountant has to certify the data on the basis of books of accounts. If there is a provision in FTP that receipt of payments in Indian rupees for certain services shall be deemed to be receipt in Foreign Exchange, how can it be expected from a chartered accountant. His certificate as to details of receipt of payments in foreign exchange or Indian Currency based on books of accounts is correct. No malafide intention can be said to be there. It is for the Department of Foreign Trade or customs department to ensure that the services are covered under the term "deemed foreign exchange" or not. The notice is not concerned with such interpretation. No penalty under Section 114AA of the Customs Act, 1962 is imposable.

13. In view of above, it is humbly prayed that the proposed penal action against the notice may please be withdrawn.

14. It is also requested that personal hearing in the matter may be accorded to the notice before any adjudication in the matter is done.

54.6 Further, the Noticee no. 01 - M/s Gateway Distriparks Limited filed their additional reply vide letter dated 12.11.2024 wherein they have mostly repeated the contents of their earlier submission dated 04.08.2023, hence I refrain from reproducing all the contents of the additional submission. However, the main contents of the submission are as under –

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Allegations in the SCN are not maintainable qua the Noticee:

39. With respect to the allegations contained in Para 39 of the SCN, it is submitted that the said earnings are towards the services detailed in Appendix 3E of the FTP, towards rendering supporting services for maritime transport. It is submitted that in view of the submissions made in Para 4 of the detailed reply to the SCN, it is clear beyond reasonable doubt that a host of services performed by the Noticee on behest and under the instructions of the foreign liners through their agents/NVOCC are towards the maritime support services only for which the SEIS Scrips were awarded to the Noticee after due scrutiny of all documents and upon the satisfaction of the DGFT authorities. Further, the ultimate recipients of these services are the foreign liners only and hence, the Noticee is squarely covered within the requirements flowing from Para 9.51(ii) of the Foreign Trade Policy 2015-2020. Therefore, the allegation that the amount has been received against the services not applicable as per Appendix 3E is factually incorrect and non-maintainable.
40. In so far as the allegation at Paras 39 & 49 of the SCN are concerned whereby it has been stated that the claim of the Noticee for availing SEIS Scrips is ineligible as (i) the service consumer/receivers are from India against the stipulation of Para 9.50 of the FTP 2015-20; (ii) the services not being rendered to foreign liners; (iii) transport of containerized cargo by rail under to/from CFS to Gateway Ports not covered within CPC 745 and Appendix 3E; and (iv) services not being rendered in the customs notified area, are concerned, it is submitted that in view of the submissions made in paras 4 & 5, the Noticee was eligible and has been rightfully granted the benefit of SEIS Scrips qua the services provided by it. It is also imperative to mention that the SEIS Scrips were awarded/granted to the Noticee after due satisfaction and upon multiple rounds of scrutiny by the DGFT authorities. In this regard, the Noticee relies on the detailed submissions made by it for grant of the SEIS scrips under Para 1.10 to 1.31 of the detailed reply to the SCN. The department has also alleged that the Chartered Accountant Certification was obtained in good faith and was signed without the due consideration, scrutiny, verification and appreciation of the documents submitted by the Noticee, including the relevant provisions of law. The Noticee submits that the said observation is absolutely vague, meaningless, and is hence, refuted and denied. The Noticee submits that once the documents were submitted for the consideration by a Chartered Accountant in compliance with the relevant provisions of law in that regard, it is presumed that all such documents were signed only after due consideration, scrutiny and proper verification including the relevant provisions of law.
41. With respect to the allegations contained in Para 39, it is submitted that in view of the submissions made in Para 6.4 to 6.27, the eligibility of the notice for the SEIS Scrips has to be adjudged from the point of view of the requirement flowing from Chapter 3 of the FTP & Chapters 2 & 9 of the Handbook on Procedure. Noticee has already demonstrated that it satisfies all the requirements pursuant to which the SEIS Scrips has been duly granted to it. Further, the department has examined the application in several rounds by issuing deficiency note, and it was only upon its due satisfaction of the department that the SEIS scrips were granted to the Noticee. Therefore, the various contentions of the department on subject matter not relevant for the grant and utilization of the SEIS Scrips by the Noticee is nothing but an attempt to saddle the Noticee with demand & penalty including illegal and arbitrary actions of the department.
42. In so far as the allegation contained in Para 49 of the SCN is concerned, it is submitted in view of the detailed submission canvassed in Para 6, of the detailed reply to the SCN that the said allegation is in correct both in facts as well as in

law. The Noticee submits that it has only rendered notified services as per Appendix 3E of the FTP and has received the amount in INR which would otherwise have been received in foreign exchange. Therefore, as such there is no violation of the applicable Statutory Provisions. It is reiterated in this regard that though the payment is received directly from the exporter out of remittances by the overseas principal/buyer, the service is actually rendered to the foreign liners by virtue of the fact that upon clearance of the goods by Customs at the CFS, the movement of goods from CFS to Gateway Port can only commence upon the forwarding note being put up by the foreign liner. Therefore, when the movement of the goods are dictated by the foreign liner and the Noticee can only render the service of transportation of goods from CFS to Gateway Port at the instance of the foreign liner, in effect the services are being provided to the foreign liner irrespective of the payment having been received from the exporter. Further, the Noticee submits that if the Indian exporters of these goods do not directly engage the services of the Noticee, then the foreign liners or their agents would have procured the Noticee's services to transport the goods from the CFS to the maritime port. However, as the Indian exporter is procuring the Noticee's supporting services for maritime transport on behalf of the importers/consumers located outside India, these services are being provided by the Noticee to such importers/consumers. Thus, the supporting services for maritime transport are being exported by the Noticee outside India. Therefore, the allegation in the SCN that the consumers/receivers of services provided by the Noticee are from India is wrong as the recipients/receivers/consumers of services provided by the Noticee are the foreign liners as well as overseas principals acting through the concerned NVOCC/forwarding agent/CHA/Exporter/Importer, etc in India. Since the end user/beneficiary of services provided by the Noticee herein are foreign principals/foreign ship liners, the services rendered by the Noticee have clearly moved out of India. Thus, expenditure by NVOCC/forwarding agent/CHA/Exporter/Importer located in India on behalf of foreign liners/principals for services rendered by the Noticee has, as a natural corollary, ushered in foreign exchange, thereby entitling the Noticee to the benefit of SEIS Scrips under the FTP.

No fraud, suppression and misstatement on part of the Noticee & therefore, the proposal made at Para 53(i) & (iii) non-tenable against the Noticee.

43. The Noticee submits that Section 28AAA can be invoked if and only if an instrument, SEIS Scrips, in the present case has been issued to a person by collusion, suppression and Wilful misstatement.
44. In present case, as has been detailed in the reply to the SCN, the SEIS Scrips were issued upon due verification and upon brining all material information before the license issuing authority/DGFT and the DGFT had thoroughly reviewed the applications submitted by the Noticee and even sought clarifications from the Noticee before issuing the SEIS Scrips. In response, the Noticee had duly clarified the queries raised by the DGFT. In its response, the Noticee had in very lucid terms clarified the service profile, the consumers of its services, and how the Noticee's services fell within the category of "eligible services" under the SEIS. No follow up queries were raised by the DGFT. It was subsequent to these clarifications only that the DGFT had issued the subject SEIS Scrips to the Noticee. Therefore, considering the facts and circumstances in which the Scrips were awarded to the Noticee, the ingredients of Section 28AAA are not attracted.
45. Without prejudice, it is further submitted that this issue at the best can be said to be an interpretative issue and thus, any allegation of misstatement of facts is totally unfounded.

46. It is further submitted that the licensing authority has issued the license after due verification and satisfaction, the customs authority cannot review the decision the licensing authority. Without prejudice, it is humbly submitted that the Noticee's eligibility for receipt of benefits under the SEIS cannot be put on the same footing as alleged misstatement of facts by the Noticee in its applications or correspondences with the DGFT. It is a trite law that suppression, misstatement or collusion is not attracted when the facts were known to the department. Admittedly, in the present case, entire set of facts were known to the department, and it was only after a due and proper verification of the underlying documents that the SEIS Scrips were awarded to the Noticee. Therefore, the proposal of the department to hold that the scrips have been obtained by wilful mis-statement and/or suppression and/or collusion is bad and non-tenable in the facts and circumstances of the present case.
47. It would also be imperative to mention that since the ingredients of section 28AAA are not met, therefore, any demand of duty as per Section 28AAA including interest as per Section 28AA is also bad and is liable to be dropped.
48. Without prejudice to the above, it is submitted that Section 28AAA of the Act does not provide for any period of limitation. However, it is a settled position of law that in cases/situations wherein no period of limitation has been prescribed for initiating any action then a reasonable period of limitation has to be adopted for initiation of an action by way of a show cause notice for refund and recovery of duty along with interest and penalty in terms of the Judgment of Hon'ble Delhi High Court in Commissioner of Customs, ACC (Import) v. Anurag Trading Company Limited 2023 SCC OnLine Del 1978. Therefore, as a consequence, an outer period of 5 years would apply for initiating any action under Section 28AAA of the Act.

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Submission on the Charges qua the Noticee

50. The Noticee submits that the charges levelled against it by the department in Para 53 of the SCN is not sustainable and is liable to be dropped in terms of the detailed submissions made by it in Para 7.1 to 7.34 of the reply to the SCN.
51. In so far as Charge contained in Para 53 (ii) & (iv) of the SCN is concerned, it is most humbly submitted that the same is not applicable to the present case of the Noticee as no import of goods have ever been undertaken by the Noticee. The said paragraph/charge is applicable to the case of M/s Adani Wilmar Limited and therefore, the provisions of Section 111(o) are not attracted to case of the Noticee in the aforesaid facts and circumstances.
52. With respect to the Charge Contained in Para 53(i) of the SCN, proposing to hold the scrips obtained by the Noticee as obtained by wilful mis-statement and /or suppression of facts and /or collusion in terms of Section 28AAA of the Customs Act 1962, it is humbly submitted that the ingredients of Section 28AAA are not attracted in the instant case, as the SEIS Scrips were validly issued/awarded to the Noticee upon due scrutiny of all the documents and upon due satisfaction of the DGFT authorities as per the prevailing law. It is however, submitted that in order to fall within the four corners of Section 28AAA of the Act, it must be satisfied that the act was deliberate. In taxation, an expression can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression. Therefore, in order to establish any of the elements under Section 28AAA, an intention to deceive the exchequer must be ascertainable. The fraudulent intention is the mala fide that is required to be

established. However, no such intention is ascertainable from a mere perusal of the SCN as the benefits of the SEIS was granted to the Noticee, basis the requirements flowing from the law and upon due scrutiny of the underlying documents by the department.

53. In this regard it is also relevant to mention that the Noticee received 3 letters from the office of Additional Director General of Foreign Trade, Mumbai, regarding audit objections raised by the office of the Director General of Audit (C), Indian Audit & Accounts Department, in relation to the issuance of SEIS script. Through those letters dated 11.10.2021, 22.03.2021 & 16.06.2021, various objections were raised regarding the SEIS Script issued to it. The department through these letters also alleged that the Applicant has claimed the script in excess of their entitlement. Noticee, by reply dated 10.12.2021 & 08.08.2022, once again clarified host of issues e.g., Nature of Services, Deductions of Expenses, Income on which SEIS benefit was claimed, Foreign Exchange Outgo etc.
54. That it is submitted by the Applicant that those 3 letters issued by the department raising audit objections also clarifies that the Applicant was entitled to receive benefits under the SEIS Scheme, granted to it after several rounds of scrutiny and clarification. In other words, department believed that the Applicant was validly holding the SEIS Scrip and hence, these notices were served to it. Therefore, it is concluded that there was not even a slightest of doubt regarding the services provided by the Applicant, the money received against such services in INR, thereby believing that the Applicant was validly holding the SEIS Scripts. Therefore, after closely scrutinizing the application including the underlying documents, the case of suppression and mis-statement does not hold good in law as well as in given facts of the case.
55. It is further relevant and appropriate to mention that this fact has been ignored by the ADGFT and has been taken by the Noticee in the appeal before the DGFT which is pending adjudication.
56. In so far as the duty demand raised by the department under Para 53(iii) including the interest is concerned, the same is not sustainable and is liable to be dropped as the requirements of Section 28AAA are not met in the present case. The Noticee craves leave to rely on the detailed submission made in Para 7.1 to 7.14 of the reply to the SCN.
57. The Noticee further submits that the proposal of the department in Para 53(v) of the SCN to impose a penalty as per Section 114AA of the Act is unsustainable in both law and facts of the present case. The department in Para 53 (v) has sought/proposed to impose penalty under Section 114AA of the Customs Act, 1962 for making incorrect declarations knowing that they were incorrect. In this regard, the Noticee submits that the said provision of law is not attracted as in no manner whatsoever has the noticee made any incorrect declaration either knowingly or unknowingly. Further, it is also submitted that the SCN has failed to point out such deliberate and incorrect declaration wherein the accountability of the Noticee is in question. The Noticee has made all the declarations as per the law and in line with the requirements of the SEIS. It is important to retort to Section 114AA of the Customs Act in order to understand the requirement of law for the applicability of this section.
58. As per Section 114AA of the Customs Act, 1962, a penalty can only be imposed if a person has “knowingly” or “intentionally” used false and incorrect material particular in the transaction of any business for the purposes of the Customs Act, 1962. Therefore, the present proposal is bad in law and is liable to be dropped. The detailed submission in this regard has been canvassed in Para 7.16 to 7.23 of the detailed reply to the SCN.

59. With respect to the proposal contained in Para 53(vi), it is submitted that the provisions of Section 114AB are not attracted in the instant case as in order to attract the provisions of Section 114AB, it must be proved that the said instrument has been obtained by fraud, collusion, wilful misstatement or suppression of facts and has been utilized towards discharge of duty. However, as stated in the foregoing paragraphs, the SCN has failed to establish that the Noticee has obtained the SEIS Scrip by wilful misstatement, collusion, suppression or fraud. On a contrary, the Noticee submits that the said Scrips have been validly issued/awarded to it by the DGFT upon due scrutiny of all documents and in consonance with the prevailing law in that regard and as a consequence, the ingredients of Section 28AAA are not attracted in the instant case.
60. It is imperative to note that the SEIS Scrips awarded to the Noticee after a rigorous scrutiny of all underling documents, in accordance with the law, and the Scrips in question have not been obtained by fraud or wilful-mis-statement or suppression, and the Scrips are still valid as on date.

Appeal against decision of the Ld. ADGFT is pending before Hon'ble DGFT.

61. The Noticee submits that an appeal has been filed and is pending before the Hon'ble DGFT, Delhi against the decision of the Ld. ADGFT, Mumbai. In view of the pendency of the appeal preferred by the Noticee, it is most humbly prayed that the present adjudication be kept in abeyance as any adverse decision at this stage would highly prejudice the Noticee for the reason that it as an arguable case on merits before the Hon'ble DGFT.
62. Further, since the licensing authority, i.e., the Hon'ble DGFT is yet to decide on the validity of the SEIS Scrips, therefore, any decision at this stage would highly be prejudicial to the Noticee and would cause great hardship to it.
63. The Noticee further submits that the Hon'ble Finance Minister in her speech stopped the SEIS scheme with prospective effect and not retrospective effect. Which means that scrips granted as per the provisions of law and after due and proper scrutiny of all underlying documents cannot be cancelled retrospectively. In other words, ab-initio cancellation was never the intention and mandate of the legislature.
64. Without prejudice to the above, since the issuing authority is yet to take a decision on the cancellation of the Scrips, validly granted to the Noticee, given the pendency of the appeal before the Hon'ble DGFT, therefore, any decision at this point by the Ld. Commissioner would be directly in the teeth of the pending appeal and would cause great prejudice to the Noticee.

Lastly, M/s GDL prayed to drop and withdraw the proceedings initiated in the present Show Cause Notice and to grant a hearing before decision.

54.7 Noticee No.2, Shri Kartik Aiyer, Senior General Manager, M/s GDL, submitted their additional written submission vide letter dated 12.11.2024 wherein he repeated his earlier submission received via email in this office on 05.08.2023. Hence the same is not reproduced here for the sake of brevity.

55 RECORD OF PERSONAL HEARING:

I observe that '*Audi alteram partem*', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to all the noticees on 30.05.2024, 15.07.2024 and 13.11.2024. Details of the all the Personal hearings held are as

under:

55.1 Shri Sanjay Garge and Shri Dhruvan Mehta, Authorised Representative appeared in the personal hearing held on 30.05.2024, via virtual mode on behalf of M/s Adani Wilmar Limited (Noticee No. 04). They reiterated their written submission and submitted that they have purchased the SEIS Scrips from M/s. Gateway Distriparks Limited on a bona-fide basis. They stated that they will file additional submissions in this case and the same may also be taken in consideration.

55.2 Shri Dinesh H. Mehta, Advocate appeared in the personal hearing held on 30.05.2024, via virtual mode on behalf of M/s Classic Marble Company Private Limited (Noticee No. 05). He reiterated the written submission and submitted that they are the bonafide transferee of SEIS scrips and not connected with the alleged offences of mis-statement and/or suppressions of facts and/or collusion committed by GDL. He further submitted that it is settled proposition of law that powers regarding confiscation can be exercised only when goods are seized and provisionally released against enforceable security.

55.3 Shri Abhishek Anand, Advocate, attended the personal hearing on behalf of M/s Gateway Distriparks Limited, Noticee no. 1, on today, i.e. 13.11.2024, at 1100 hrs. In the personal Hearing Shri Abhishek Anand relied upon and reiterated their earlier written submission received in this office on 09.08.2023 and also relied upon and reiterated his latest written submission dated 13.11.2024, submitted today, i.e. 13.11.2024 in this office.

55.4 Shri Kartik Aiyer, Sr. G.M., M/s Gateway Distriparks Limited, attended the personal hearing on behalf of himself, i.e. Noticee no. 2 on today, i.e. 13.11.2024, at 1100 hrs, in the matter of M/s. Gateway Distriparks Limited. In the personal Hearing Shri Kartik Aiyer, relied upon and reiterated his earlier written submission received in this office on 09.08.2023.

55.5 Kumari Gauri Bhatnagar, Advocate, attended the personal hearing on behalf of Noticee no. 3, Shri Anil Jain, on today, i.e. 13.11.2024, at 10.55 hrs. through mode. In the Personal Hearing, Kumari Gauri relied upon and reiterated their earlier written submission dated 30.06.2023. She did not add any additional submission / points.

56. DISCUSSION AND FINDINGS

56.1 After having carefully gone through the Show Cause Notice i.e. GEN/ADJ/COMM/312/2023-Adjn **dated 12.05.2023**, relied upon documents, submissions made by the Noticees and the records available before me, I now proceed to decide the case. The main issues involved in the case which are required to be decided in the present adjudication are as below, whether:

- (i) The SEIS Scrips as given in TABLE-3 of the Notice, obtained by GDL, are liable to be held as obtained by willful mis-statement and/or suppression of facts and/or collusion in terms of Section 28AAA of the Customs Act, 1962;
- (ii) The goods covered under bills of entry as detailed in column 4 of TABLE-4 above and in column 6 of ANNEXURE-A to the Show Cause Notice, totally valued at Rs.327,46,83,562/- imported vide SEIS scrips alleged to be obtained by willful mis-statement and/or suppression of facts and/or collusion for availing duty exemption under the Notification 25/2015-Cus. dated 08.04.2015, are liable for confiscation under Section 111 (o) of the Customs Act, 1962;
- (iii) The duty payable amount aggregating to Rs.69,02,32,041/- (Rupees Sixty Nine Crores Two Lakhs Thirty Two Thousand and Forty One only), as

mentioned in column (7) of TABLE-4 of the notice, is liable to be demanded and recovered from them under Section 28AAA of the Customs Act, 1962 along with interest from the date of issue of the Scrips in terms of Section 28AA of the Customs Act, 1962.

- (iv) M/s Gateway Distriparks Limited (GDL) is liable to be penalized under the provisions of Section 112(a) of the Customs Act, 1962, for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation under Section 111(o) of the Customs Act, 1962;
- (v) M/s Gateway Distriparks Limited (GDL) is liable to be penalized under the provisions of 114AA of the Customs Act, 1962, for their acts of omission and commission as discussed in para 50 of the Notice;
- (vi) M/s Gateway Distriparks Limited (GDL) is liable to be penalized under the provisions of 114AB of the Customs Act, 1962, for having obtained the instruments by willful mis-statement and/or suppression of facts and/or collusion as explained and alleged in the notice.
- (vii) Shri Kartik Aiyer, Senior General Manager of M/s Gateway Distriparks Limited (GDL) is liable to be penalized under the provisions of 112(a) of the Customs Act, 1962, for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation;
- (viii) Shri Kartik Aiyer is liable to be penalized under the provisions of 114AA of the Customs Act, 1962, for his acts of omission and commission as discussed in para 51 of the notice;
- (ix) Shri Kartik Aiyer is liable to be penalized under the provisions of 114AB of the Customs Act, 1962, for having obtained the instruments by willful mis-statement and/or suppression of facts and/or collusion as explained and alleged in the notice;
- (x) Shri Anil G. Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, Mumbai, is liable to be penalized under the provisions of 112(a) of the Customs Act, 1962, for rendering the goods imported vide the SEIS scrips under dispute liable for confiscation;
- (xi) Shri Anil G. Jain, is liable to be penalized under the provisions of 114AA of the Customs Act, 1962, for his acts of omission and commission as discussed in para 52 of the notice;
- (xii) Shri Anil G. Jain, is liable to be penalized under the provisions of 114AB of the Customs Act, 1962, for having obtained the instruments by willful mis-statement and/or suppression of facts and/or collusion as explained and alleged in the notice;
- (xiii) The declared assessable value of goods of Rs. 64,20,12,641/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INCCU1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips allegedly obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and/or suppression of facts and/or collusion for availing duty, are liable for confiscation under Section 111 (o) of the Customs Act, 1962;
- (xiv) The declared assessable value of goods of Rs.22,97,71,526/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INHZA1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips allegedly obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and/or suppression of facts and/or collusion for availing duty, are liable for confiscation under Section 111 (o) of the Customs Act, 1962;
- (xv) The declared assessable value of goods of Rs.19,92,66,207/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INIXY1, as detailed in column 6 of ANNEXURE- A to the Show

cause Notice, for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips allegedly obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and/or suppression of facts and/or collusion for availing duty, are liable for confiscation under Section 111 (o) of the Customs Act, 1962;

- (xvi) The declared assessable value of goods of Rs.217,30,09,658/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INMUNI, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips allegedly obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and/or suppression of facts and/or collusion for availing duty, are liable for confiscation under Section 111 (o) of the Customs Act, 1962;
- (xvii) The declared assessable value of goods of Rs.3,06,23,530/- imported by Classic Marble Company Private Limited (IEC No 308007794), Mumbai, and cleared through INNSA1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, for which duty exemption under the Notification 25/2015-Cus. dated 08.04.2015 was availed based on SEIS scrips allegedly obtained by M/s Gateway Distriparks Limited (GDL) by willful mis-statement and/or suppression of facts and/or collusion for availing duty, are liable for confiscation under Section 111 (o) of the Customs Act, 1962;

56.2 After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me to decide in this case is as to whether M/s Gateway Distriparks Limited (GDL) had obtained the SEIS Scrips fraudulently through mis-declaration of their exported services in ANF-3B Form.

56.3 I find that intelligence was gathered that M/s Gateway Distriparks Limited (GDL) had obtained SEIS Scrips (Service Exports from India Scheme) from the Directorate General of Foreign Trade (DGFT) by intentionally mis-stating the amount earned in INR from exporters/importers for the services provided by them in their CFS as amount earned from foreign liners under the “Supporting Services for Maritime Transport” and such scrips were being utilized for payment of customs duty by other persons on their imports, though they were not providing any of the services notified under Appendix 3D of the FTP, 2015-20. It is pertinent to mention here that as per the FTP Service Providers of eligible services shall be entitled to Duty Credit Scrip at notified rates (as given in Appendix 3D) on net foreign exchange earned. Further, the Public Notice No.7/2015-20 dated 04/05/2016 issued by DGFT notified Appendix 3E which contain certain services, out of the services notified [vide Appendix 3D], that are rendered to a foreign liner in a customs notified area, where payments for exports are paid in INR including by its agent out of amount remittable to foreign liner in foreign exchange or but of remittances received from overseas buyer in foreign exchange, are deemed to be earned in foreign exchange and eligible for SEIS reward/scrip. During the period upto 2016-17, the services of Maritime Transport Services viz., 9(A)(c) - Rental of vessels with crew, 9(A)(d) – Maintenance & repair of vessels, 9(A)(e) - Pushing and Towing services and 9(A)(f) - Supporting Services for maritime transport were only listed in Appendix 3E. Under 9(A)(f) pertaining to supporting service for maritime transport, 44 services were listed as eligible service in Appendix 3E. It includes among others-

- l. Storage Services, Shutout Charges (s.no. XIII),
- m. Terminal Handling Services (s.no. XIV),
- n. Cargo Dispatch Services (s.no. XVI),
- o. Cargo Storage Services (s.no. XVII),
- p. Internal Transportation Services (s.no. XXII),
- q. Warehousing Services (s.no. XXIII),
- r. Inter-Carting Services (s.no. XXIV),

- s. Survey & Inspection Services (s.no. XXVI),
- t. Equipment Hire Services viz. Forklift, Excavator, Payloader, Reach Stacker, Empty Handler, Hydra, Screening Net, Gangway, Grab, Hydra Cranes, Generator, Power supply, etc.(s.no. XXX),
- u. Cargo consolidation charges for export cargo (s.no. XXXIII) and
- v. Handling Services not specified elsewhere (s.no. XXXV).

Further, the Provisional Central Product Classification (CPC), issued by the Department of International Economic and Social Affairs, Statistical Office of the United Nations, constitutes a complete product classification covering goods and services. It states that when services are prima facie classifiable under two or more categories, classification shall be on the understanding that only categories at same level (sections, divisions, groups, classes or subclasses) are comparable. The CPC also contains explanatory note for each sector.

56.4 As per Para 3.04 of Hand Book of Procedures for FTP 2015-20, the application for the SEIS reward for eligible services rendered, shall be filed in ANF-3B form. As per ANF-3B form, the applicant certifies that the foreign exchange earned is on account of services rendered from India alone in terms of Para 9.51 (i) and Para 9.51(ii) of FTP and do not fall under ineligible category or service as per Para 3.08 and Para 3.09 of FTP and the Chartered Accountant/Cost and Works Accountant/Company Secretary certifies those declarations/claims after due examination.

56.5 From the combined reading of above-mentioned provisions and definitions including Para 3.08 of FTP, I observe that SEIS scheme is subject to following eligibility and entitlement criteria:

- a) Applicant of SEIS reward/scrip shall be actual provider of the notified service/ specified services i.e. who actually renders or performs the services and not who arranges or otherwise deals with the notified service. (Para 3.08 (a) and Para 3.09 (1) of FTP)
- b) Applicant of SEIS reward should have either supplied the notified service to service consumer in any other country (Para 9.51(i) of FTP)
- or
- supplied the notified service to service consumer of any other country in India. (Para & 9.51(ii) of FTP)
- c) Specified services listed in Appendix 3E are sub-set of notified services mentioned in Appendix 3D wherein the payment received in INR is treated to be foreign exchange earnings
- d) Supporting service for maritime transport and air transport are only listed as services eligible for reward under Appendix 3E (Public Notice No. 07/2015-20 dated 04/05/2016).
- e) In respect of services listed under Appendix 3E, the service should be rendered to a foreign liner in a custom notified area and the INR payment would be treated as deemed foreign exchange, provided the amount is received by the service provider from the agent out of amount remittable to the overseas principal or out of remittances to be sent by the overseas buyer (Public Notice No. 07/2015-20 dated 04/05/2016).
- f) Remittances received towards statutory dues/levies or remittances received for payment or payable to the third party service providers who provide the notified service to the service consumers of any other country in India are not eligible for claim of SEIS benefit. (Para 9.50 of FTP)
- g) Documentary evidence of payments which are approved by RBI as

deemed to be received in foreign exchange and deemed to be earned in foreign exchange are required for claiming services listed in Appendix 3E (Para 3.08(c) of FTP).

- h) Earnings of income related to export of goods cannot be termed as service income for claim of SEIS benefit (Para 3.09 (2)(g) of FTP)
- i) The GATS define trade in services in terms of four modes of supply. Thus, the tradable service includes only those services rendered between a resident and a non-resident. Para 9.51 (i) & 9.51(ii) of FTP have restricted the eligibility to only two modes of supply namely Mode-1 cross border trade and Mode-2 consumption abroad respectively.
- j) The CPC being a decimal system, a reference to an aggregate category must be understood as a reference to all of the constituent parts of that category. Put differently, a reference to a three-digit CPC Group should, in the absence of any indication to the contrary, be understood as a reference to all the four-digit Classes and five-digit Sub-classes that make up the group; and a reference to a four-digit Class should be understood as a reference to all of the five-digit Sub-classes that make up that Class. (Interpretative Rules of CPC)
- k) Transport as per CPC is classified according to mode of transport and what is carried passenger or freight in Division 71 to 73. The “supporting and auxiliary transport services” described in Division 74 of CPC covers all other transport services that cannot be allocated to any of the components of transport services previously described in Division 71 to 73. It only includes services that are supporting or auxiliary to transport and not for services provided for the movement of goods or people. In other words, the income related to international trade in service of this group cannot include income related to freight transportation, which is provided for movement of goods.
- l) "Freight transport agency services" (CPC 7480, 74800) are described as "Freight Brokerage services, freight forwarding services (primarily transport organisation or arrangement services on behalf of the shipper or consignee), ship and aircraft space brokerage services, and freight consolidation and break-bulk services." The description of services does not include the actual shipping or movement of goods by road, airline or shipping line (or any other means) for any of these service providers and thereby the charges related to it are excluded from the “freight transport agency service”.
- m) The Appendix 3E excludes all modes of freight transport (Division 71 to 73 of CPC) and services supporting and auxiliary to land mode of transport.
- n) As per **Note 2 of the annexure to Appendix 3D**, the rate of reward for eligible services is subject to conditions as specified in FTP and HBP. That is to say that mere coverage of service in Appendix 3D is not sufficient for SEIS benefit, they have to fulfil the conditions specified in FTP and HBP (Handbook of Procedures).

57. Further, I would throw some light on the statements recorded during the course of investigation. From the statements dated 22.03.2021 and 30.03.2021 recorded under Section 108 of the Customs Act, 1962, of Shri Kartik Aiyer, Sr. Gen. Manager of M/s GDL, I observe as under -

- that he (Shri Kartik Aiyer) was part of the team which processed and submitted SEIS applications on behalf of M/s.GDL and was generally aware of the DGFT

provisions governing SEIS Scheme.

- > When asked to go through the printout of the Central Product Classification (CPC) pertaining to 741 (Cargo handling services: 74110 - Container handling services and 741902 - Other cargo handling services) and 742 (Storage and warehousing services: 74290 - Other storage or warehousing services) and state why the services rendered by M/s GDL should not be more appropriately classified under 741 and 742, he replied that 741 is not applicable to M/s GDL since they are not handling cargo in a stand-alone sense and they are not handling containers in a stand-alone sense; that further, 742 is not applicable to M/s GDL since they are not rendering storage and warehousing service in a stand-alone sense; that what they are handling is containerized cargo in a customs notified area (i.e., M/s GDL) on behalf of the foreign liners.
- He stated that GDL have not entered into any agreement with any of the foreign liners in respect of the services rendered by M/s GDL to the importers/exporters/freight forwarders/custom house agents in their various CFS premises for which they have claimed SEIS benefits as per the invoices raised on them; that the containers which GDL have handled belongs to the foreign liners.
- He further stated that they have not remitted any amount collected from the importers/exporters/ freight forwarders/custom house agents for the services rendered to them in their various CFS premises for which they have claimed SEIS benefits, to any of the foreign liners or their agents in India either in foreign exchange or in INR.
- That M/s GDL have claimed SEIS benefits for the services rendered within their CFS premises only and NOT for any services rendered to any foreign liner(s) in the seaport or terminal areas.
- when asked to clarify as to whether the foreign liners have asked M/s GDL to perform the services which GDL have claimed to have provided to the Indian customers viz., cargo handling, cargo storage, additional cargo handling charges, energy surcharge, fuel surcharge, ground rent, additional handling charges, handling charges, handling & transportation, lashing choking, plugging, survey CLP & EIR, warehouse reservation, customs examination, scanning charges, weighment etc., he replied in the negative.
- > when asked whether the foreign liners pay M/s GDL at any point of time for the services rendered by M/s GDL, he replied that the foreign liners have not paid and never pay M/s GDL at any point of time for the services rendered by M/s GDL
- when asked to state whether any of GDL customers (importers/exporters /freight forwarders/custom house agents) who are paying M/s GDL for the services rendered to them by GDL state that they are paying on behalf of the foreign liners, he answered in the negative.
- that M/s GDL has no formal agreement with any of the foreign liners or their agents in India
- that GDL do not charge the foreign liners, nor do they pay GDL for the services rendered to their customers (importers/exporters/freight forwarders/custom house agents); that GDL only charges the customers (importers/exporters/freight forwarders/custom house agents) and receive payments from them in Indian Rupees.
- when asked whether there is any specific written requests from these foreign liners to M/s GDL to render the services covered under appendix 3E, he answered in the negative.

- when shown a few tax invoices generated by M/s GDL and asked about them Shri Kartik Aiyer stated that the said paying customer / billing customer / Importer / Exporter are not agents of the shipping lines mentioned against each invoice
- when asked to explain whether M/s GDL are receiving any payments from the foreign liners or their agents in India either in foreign exchange or in Indian Rupees, he answered in the negative
- that M/s GDL is providing services to Indian customers and not foreign customers and that the said services are provided to these Indian customers on behalf of the foreign liners in customs notified area, i.e., their CFS

57.1 From the statements dated 09.04.2021, 05.07.2022, 05.07.2022 and 07.07.2022 of representatives of various foreign liners, recorded under Section 108 of the Customs Act, 1962, I observe as under –

> that they transport sea cargo in containers in their own vessels as well as in other vessels; that they transport sea cargo in containers belonging to other operators; that with regard to exports they receive export cargo in containers on a laden basis (i.e., cargo stuffed and sealed in container laden on a trailer) at the terminal in the seaport; that the exporter is free to choose the CFS through which the cargo is stuffed and they as a foreign liner do not have any role in this.

> they have not requested or instructed M/s GDL in writing to render any services to the exporters or importers or freight forwarders or custom house agents in relation to the cargo containers transported in their vessels.

> M/s GDL have not rendered any services to them either in the Port/Terminal or in their CFS. Hence, the question of them as agent of M/s Ocean Network Express Pte Ltd, Singapore or M/s Ocean Network Express Pte Ltd, Singapore paying GDL either in foreign exchange or in Indian Rupees does not arise.

> when asked to go through the tax invoices generated by M/s GDL as tabulated in the relevant paras of the notice, for which SEIS benefits have been claimed by M/s GDL and to state to whom the services mentioned in the tax invoices were rendered by M/s GDL to them or on their behalf, all of them stated that M/s GDL have not rendered the services on their behalf and they have not told them to do either orally or in any written form; that this is a pure business transaction between M/s GDL and the importer/exporter/CHA as the case may be and the foreign Liner does not have any role in this;

> when asked to state whether they have ever asked the importers/exporters to pay the CFS on behalf of them, they answered in the negative.

> When asked to go through the statement dated 30.03.2021 of Shri Kartik Iyer, Senior General Manager, Finance and Accounts, M/s Gateway Distriparks Ltd, Mumbai, about his claim that they have provided services to the importers/exporters/freight forwarders/custom house agents on behalf of the foreign liners, they replied that this claim does not appear to be correct.

57.2 From the statements dated 17.12.2021, 05.07.2022, 06.07.2022, 06.07.2022, 06.07.2022, 07.07.2022 and 11.07.2022, recorded under section 108 of the Customs Act, 1962, of the Importers, Exporters, Customs Brokers etc., I observe as under –

> When shown the respective tax invoices raised by M/s Gateway Distriparks Limited, (GDL), to state who paid the amount of the invoice to M/s GDL and why, they stated that the respective amounts were paid by them towards the services

rendered by M/s GDL for clearing the said import containers from their CFS.

> The foreign liners has not directed them in writing or orally to avail the services of CFS facility of M/s GDL.

> that they have never paid any amount to any foreign liner or their Indian Agent(s) either in foreign currency or in Indian currency for the services rendered by M/s GDL in connection with the said imports/exports.

57.3 From the statement dated 03.08.2021 of Shri Anil G Jain, Chartered Accountant, Proprietor of M/s Jain Anil & Associates, Mumbai, recorded under section 108 of the Customs Act, 1962, I observe as under –

> that he has received a total amount of Rs 20,000/- at the rate of Rs 5000/- per Certificate viz., for the ANF 3B applications of M/s GDL for the years 2015-16, 2016-17, 2017-18 and 2018-19.

> that he has not gone through the Appendix 3E to the Public Notice No. 7/2015-20 dated 04/05/2016 before issuing the said certificate; that he has given the Certificate on the basis of M/s Gateway Distriparks Ltd. informing him that they are eligible for the services covered under 9A(f) of the Appendix 3E i.e., “Supporting Services for Maritime Transport”; that on the oral request of Shri Rakesh Garg, Proprietor of M/s Rakesh Garg & Associates, who are the tax auditors to M/s Gateway Distriparks Ltd., he certified the ANF 3B applications of M/s GDL; that the amount of Rs 20,000/- was received by him by way of bank transfer from Shri Rakesh Garg only and not from M/s Gateway Distriparks Ltd.

> when asked to go through the tax invoices generated by M/s GDL for which SEIS benefits have been claimed by M/s GDL, and state whether the services were rendered by M/s GDL to foreign liners as required under the conditions mentioned in Appendix 3E, he stated that M/s GDL appear to have not provided services to any foreign liners in a customs notified area i.e., their CFS premises.

> when asked to state, in the light of the definition of “service provider” in terms of Para 9.51 of the FTP, he stated that M/s GDL does not appear to come under the definition of “Service Provider”.

> that he had given certificate based on the information given by the management of M/s GDL that their services are classifiable under CPC 745 and that he has not gone through the Public Notice No. 7/2015-20 dated 04/05/2016 or Appendix 3E or the Central Product Classification Code mentioned in the certificate prior to his certification.

> that at the time of certification of the claim, he had not read the provisions of the “Central Product Classification”, Foreign Trade Policy 2015-20 and related public notices; that he had certified the claim based on the information given by the management of M/s GDL that their services rendered to the importers/exporters /freight forwarders/custom house agents as the case may be are eligible for SEIS benefits.

> that he certified the ANF 3B applications of M/s GDL based on the oral request of Shri Rakesh Garg.

> when asked to state whether he agrees with the fact that but for the Certificate of Chartered Accountant (CA) / Cost and Works (ICWAI) / Company Secretary (CS) forming part of the ANF 3B applications issued by him, M/s GDL could not have made the SEIS claim before DGFT, he answered yes and stated that without his certificate, M/s GDL could not have claimed SEIS benefits from the DGFT.

> that he has not complied with the clarifications sought for by DGFT vide email dated 11.03.2019.

> that after reading the various provisions now, he understood that they are not eligible for SEIS benefits.

> when asked to go through his certificate dated 07/04/2021 forming part of attachment to his email dated 07/04/2021 wherein he had stated that “import containers are sent to the CFS from the Port under the instructions of the foreign liners and export containers are sent to the Port for loading on vessels as per the instruction of the foreign liners” and asked whether he had gone through the instructions of the foreign liners, if so, to give details regarding the nature of instructions, he replied that he had not gone through any such instructions of the foreign liners; that the draft certificate dated 07/04/2021 was sent to him by Shri Kartik Aiyer of M/s Gateway Distriparks Ltd through email (kartik@gateway-distriparks.com) which he simply signed by taking print out in his letter head.

57.4 From the combined reading of the above statements recorded during the investigation, of Shri Kartik Aiyer, Sr. Gen. Manager of M/s GDL, the various foreign Liners or their Indian agents, the Indian exporters, importers, freight forwarders or their Customs Brokers, I find that M/s GDL had rendered services such as, cargo handling, container handling, cargo and container storage weighment of cargo laden containers etc. in their CFS, for only the containers pertaining to the foreign liners, but M/s GDL have not entered into any formal agreement with the Foreign liners or its Indian agents for performing these services and that they have actually rendered such services to the Indian importers, exporters, freight forwarders, CHAs. M/s GDL have also not remitted to the foreign liners or their Indian agents in India any amount collected from importers, exporters, freight forwarders, CHAs in foreign exchange or in INR for the services rendered by GDL for which they have claimed SEIS benefits. The Foreign liners or their Indian agents have not paid GDL, for such services rendered to the customers of GDL and the customers of GDL have also not paid GDL on behalf of the Foreign liners or their Indian agents. Further, I find that the Foreign liners have never asked M/s GDL to perform the services such as cargo handling, cargo storage, energy surcharge, fuel surcharge, ground rent, handling & transportation, lashing choking, plugging, survey CLP & EIR, warehouse reservation, customs examination, scanning charges, weighment etc. to the customers of M/s GDL (which are actually the Indian importers, exporters, freight forwarders, CHAs. Further, I find that the Foreign liners or its Indian agents did not ask M/s GDL to receive their containers in their CFS. I observe that merely reflecting the names of the foreign liners in their invoices, M/s GDL cannot be allowed to assume that they were providing services to the foreign liners. I find that neither there were any written agreements/contracts from the foreign liners to M/s GDL to render any services covered under Appendix-3E nor they have received any payment in foreign exchange or INR from the foreign liners or its Indian agents for the services rendered. The paying customer / billing customer / Importer / Exporter from whom GDL received the payments for the services rendered by them who are Indian entities are not agents of the foreign liners or its Indian agents.

I further find that the CA certificate, obtained by M/s GDL from the Chartered Accountant Shri Anil Jain, and submitted to the DGFT office to obtain the SEIS benefits, was issued by the CA, without verifying any of the details of services provided by M/s GDL. I find that the CA, Shri Anil Jain had issued the certificate on the oral request of Shri Rakesh Garg without going into the provisions of FTP and the PN and that the draft certificate was received by him from Shri Kartik Aiyer of M/s GDL through e-mail, of which he simply taken print out in his letterhead and signed and received a monetary consideration of Rs 20,000/-. He also did not conduct any discussion with the management of GDL regarding the eligibility of SEIS benefits. He certified the ANF-3B applications of M/s GDL, after M/s GDL informing him that they are eligible for the services covered under “Supporting Services for Maritime Transport”. The Chartered Accountant has not gone through the Appendix 3E before issuing the certificate or gone through the provisions of CPC, FTP, related Public Notices etc. Therefore, I find that the CA has not complied with the instructions for

CA for filling up the ANF-3B form of GDL and he has also not complied with the clarifications sought by DGFT.

57.5 Further it is pertinent to mention here that in plethora of judgment pronounced by different courts it is well established law that statement recorded under Section 108 of the Customs Act, 1962 has evidential value.

Union of India vs. Padam Narain Aggarwal and Ors. 2008 (231) E.L.T. 397 (S.C.)

This section does not contemplate magisterial intervention. The power is exercised by a Gazetted Officer of the Department. It obliges the person summoned to state truth upon any subject respecting which he is examined. **He is not absolved from speaking truth on the ground that such statement is admissible in evidence and could be used against him.** The provision thus enables the officer to elicit truth from the person examined. The underlying object of Section 108 is to ensure that the officer questioning the person gets all the truth concerning the incident.

N. J. Sukhawani vs. Union of India 1996 (83) E.L.T. 258 (S.C.)

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 officials under Section 108 of the Customs Act. That material incriminates the petitioner inculcating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch 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 do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

Ramesh Chandra v. State of West Bengal 1999 (110) E.L.T. 324 (S.C.)

This case reaffirmed that statements recorded under Section 108 are admissible in evidence, reinforcing the legal principle established in earlier cases Bhana Khalpa Bhai Patel VS Assistant Collector Of Customs, Bulsar, Gujarat - Supreme Court.

Naresh Kumar Sukhwani Vs Union of India 1996(83) ELT 285(SC)

The Apex Court in the case of **Naresh Kumar Sukhwani vs Union of India 1996(83) ELT 285(SC)** has held that statement made under Section 108 of the Customs Act, 1962 is a material piece of evidence collected by the Customs Officials. That material incriminates the Petitioner inculcating him in the contravention of provisions of the Customs Act. Therefore, the statements under Section 108 of the Customs Act, 1962 can be used as substantive evidence in connecting the applicant with the act of contravention.

Kanwarjeet Singh & Ors vs Collector of Central Excise, Chandigarh 1990 (47) ELT 695 (Tri)

It was held that strict principles of evidence do not apply to a quasi-judicial proceedings and evidence on record in the shape of various statements is enough to punish the guilty.

Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.)

Hon'ble High Court decision in the case of Assistant Collector of Customs Madras-I vs. Govindasamy Ragupathy-1998(98) E.L.T. 50(Mad.) wherein it was held by the Hon'ble Court confessional statement under Section 108 even though later retracted is a voluntary statement-and was not influenced by threat, duress

or inducement etc. is a true one

Govind Lal vs. Commissioner of Customs Jaipur {2000(117} E.L.T. 515(Tri)

In the case of **Govind Lal vs. Commissioner of Customs Jaipur {2000(117} E.L.T. 515(Tri)}**- wherein Hon'ble Tribunal held that— 'Smuggling evidence-statement- when statement made under Section 108 of the Customs Act, 1962 never retracted before filing the replies to the Show Cause Notice- retraction of the statement at later stage not to affect their evidence value'.

Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.

In the case of **Surjeet Singh Chabra vs. UOI 1997 (84) ELT (646) SC.** Hon'ble Supreme Court held that statement made before Customs Officer though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. As such, the statement tendered before Customs is valid evidence under law.

57.6 In view of above statements recorded under Section 108 of the Indian Customs Act, 1962, of various persons during investigation I find M/s GDL were providing services in their CFS which does not satisfy the conditions prescribed under Para 9.51(ii) of FTP as the services were not rendered to foreigners, and the same were not included in Appendix 3E. The Appendix 3E specifically states that 'payments which have been received in foreign exchange or which would have been otherwise received in foreign exchange but paid in INR' are only eligible for SEIS benefit. In this case, the liner/container operator did not have any formal agreement with GDL for availing various services in the CFSs of GDL nor they were paying in INR. Therefore, I find that the services were rendered to Indian entities by GDL and not to a foreign liner. Further, I observe that, the exporter / freight forwarder who contract with the container owners (foreign liners), hires the container, store the goods for export and pay M/s GDL, the rent for storing the cargo with the container. Therefore, even the containers owned by foreign liners are actually on Hire by Indian Importer/exporter/freight forwarder or CHA, at the time of rendering of services by M/s GDL. Hence, for the services provided by M/s GDL, there is no doubt in my mind that no reward under SEIS scheme is admissible to M/s GDL and the same is liable to be disallowed. I hold so.

I further observe that the DGFT, Mumbai, issued a Show Cause Notice dated 12.04.2022 to M/s GDL and the said SCN was upheld & the SEIS scrips were cancelled by the Additional Director General of Foreign Trade, Mumbai, with following observations -

"The Noticee, in the write up on services provided by them alongwith the application, has clearly stated that they have an agreement with some of the major shipping lines for using their services for the containers belonging to their shipping lines. It was also mentioned therein that the agreement with the shippinglines ensures that the CFS receives by and large all the containers traffic handled by these shipping lines. However, no agreement or even extract of the agreement was detailed in/ provided with the write-up to show that the services for which benefits were claimed in this application were rendered to the Foreign Shipping Lines in any manner for which any charges/ remuneration accrued to the Foreign Shipping Lines.

From the description of the services given by the Noticee, it is amply clear that the recipient of services are Indian importers/clearing agents/freight forwarders and these importers/clearing agents/freight forwarders are not service consumers of any other country in case of imported goods. Similarly, the recipients of services are Indian exporters/clearing agents/freight forwarders and these exporters/clearing agents/freight forwarders are not service consumers of any other country in case of exported goods. Therefore, the unassailable position that emerges is that the said supply of services is beyond the scope of Para 9.51(ii) of FTP, 2015-20 which stipulates the supply

of service from India to service consumers of any other country in India (Mode 2 – consumption abroad).

The consideration received for the services rendered is in INR. This also answers the next issue that whether the payments from the service recipients would have otherwise been received in FFE in negative.

As is clear from the above factual position, the CA certificates are mis-representing the vital aspect related to the nature of service under Para 9.5(ii) of the FTP, 2015-20. This mis-representation is critical for determination of the acts of omission and commission in this particular case.

55. In view of the above discussions and findings, I pass the following order:

(i) The SEIS Scrips issued from File No.032109480550AM18 for Rs.13,10,20,645/- for Financial Year 2015-16, SEIS scrip issued from File No.032109480548AM18 for Rs.15,14,83,435/- for Financial Year 2016-17, SEIS scrip issued from File No.032109880306AM19 for Rs.17,61,13,273/- for Financial Year 2017-18 and SEIS Scrip issued from File No.032109850032AM20 for Rs.23,16,15,015/- for Financial Year 2018-19 are cancelled ab initio under Section 9(4) of the FTDR Act, 1992.”

From the above DGFT order, I observe that the DGFT authorities have also came to the same findings and consequently have cancelled the SEIS scrips ‘ab initio’ under Section 9(4) of the FTDR Act, 1992. I find support on my above findings from the decisions of Hon’ble Supreme Court in Tirumala Venkateswara Timber and Bamboo Firm Vs. Commercial Tax Officer, Rajamundry – 1968 SCR (2) 476, relied upon by the DGFT Authorities and three-member bench decision of Hon’ble Supreme Court in the case of The Chairman, Board of Trustee, Cochin Port Trust Vs M/s Arebee Star Maritime Agencies Pvt Ltd & Ors in Civil Appeal No. 2525 of 2018 as mentioned in the Notice.

57.7 M/s GDL have contended in their defence submission that since they rendered services for the containers which belong to foreign liners, they have rendered services to the foreign liner or foreign liner agents in India. I observe that the container owner includes, shipping lines, NVOCC operators and exporters/importers themselves. The Appendix 3E, states that the service should be rendered to a foreign liner. However, in respect of M/s GDL, all the services were related to containers, owned by Shipping lines, NVOCC operators and exporters/importers. The shipper (exporter)/freight forwarder or Importer, books the container with the container owner for using the container to load and transport export/import goods and the container owner gives booking confirmation. Thus, I find that in this case the service is provided by an Indian service provider M/s. GDL, inside their CFS which is a customs notified area in India, to a resident in India (exporter/importer or freight forwarder or Customs Broker) who consumes the service. Thus, there is no export of service in terms of Section 2(e)(II)(ii) of the Foreign Trade(Development & Regulation) Act, 1992. Further, the Noticee has contended that the end recipient of the services are the shipping line / foreign liners. I have already held in view of the discussion in above paras, that the end recipient of services are the Exporter/importer/freight forwarders or CHAs in whose names the invoices are actually raised by M/s GDL. Further, M/s GDL have contended that the services were provided by them on the instructions of various foreign liners. I find that it is amply clear that the various foreign liners/their agents in their statements have clearly stated that they have not made any agreement with M/s GDL to provide any service to them, nor they have made any payment or any remittances to M/s GDL. They are not choosing to which CFS the containers containing the goods would go to. The noticee have further relied on DOs with shipping lines which instructs them to not hand over containers to importers

without their consent. I observe that DO (Delivery order) is not an agreement to render service, as the invoices are ultimately raised in the name of the Importer only. Hence, contentions of M/s GDL is not sustainable and is disallowed.

Invocation of Section 28AAA of the Customs Act, 1962 and interest thereon:

58. Now, I move forward to determine whether Section 28AAA of the Customs Act, 1962, is invocable for recovery of the benefits fraudulently taken by Noticee. Section 28AAA stipulates that:

(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), or ² [any other law, or any scheme of the Central Government, for the time being in force, by such person] or his agent or employee and such instrument is utilised under the provisions of this Act or the rules ³ [or regulations] 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:

Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under [section 28](#).

58.1 As discussed in the foregoing paras, I have held that for the services provided by M/s GDL, no reward under SEIS scheme is admissible to M/s GDL and the same is liable to be disallowed. In the instant case, M/s Gateway Distriparks Limited (GDL) were very well aware of the nature of the services being rendered by them and the nationality of the service consumer to whom the services were rendered by them. They knew that the said services were not being rendered to any foreign liners or agents of foreign liners in India and all the said services were rendered for which payments received by GDL from the Indian entities of exporters/freight forwarders. This clearly indicate that though GDL were well aware that they have not rendered the services in terms of Para 9.51(ii) of FTP, which is very fundamental condition for claiming SEIS benefit, they had filed SEIS claims. Further, they successfully got the said applications certified by the chartered accountant wrongfully to get the SEIS benefit and mis-led the scrip issuing authorities as well. The Chartered Accountant who certified the ANF-3B applications of GDL, has admitted that he had issued the certificate in good faith on the oral request of Shri Rakesh Garg without going into the provisions of the FTP and PN issued thereon and he further stated that he simply signed the draft certificate received by him from Shri Kartik Aiyer of GDL and he issued certificate for a monetary consideration of Rs 20,000/-. All the above facts indicate that there was wilful mis-statement & wilful suppression of facts by M/s GDL. I further find that knowing fully well that they were only rendering services to the Indian exporters/importers/freight forwarders/custom house agents in customs notified area, M/s GDL have mis-stated that they rendered services to those Indian entities for and on behalf of the foreign liners with a view to claim SEIS rewards intentionally, to which they were not eligible.

Thus, I find that M/s. Gateway Distriparks Limited 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 and which 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. Hence, I find that as per Section 28AAA of the Customs Act, 1962, the duty related to the utilisation of instrument along with interest under Section 28AA of the Customs Act, 1962 is to be recoverable from the Noticee M/s Gateway Distriparks Limited (GDL).

59. Confiscation of Goods under Section 111 (o) of the Customs Act, 1962

59.1 Section 111 of the Customs Act, 1962 stipulates that:

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

(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;

In the show cause notice it has been alleged that various importers have used the SEIS Scrips which were fraudulently obtained by M/s Gateway Distriparks Limited and DGFT has already cancelled those Scrips, hence such imports can be termed as imports made without observing the conditions prescribed under Notification No. 25/2015 dated 08.04.2015 and the imported goods are liable for confiscation under Section 111(o) of the Customs Act, 1962.

59.2 However, in the Show Cause Notices there is no allegation on the users of SEIS License. There is nothing mentioned in the Notice that there was any role or connivance of Importers – M/s Adani Wilmar Ltd and M/s Classic Marble Ltd. in the alleged offence done by M/s GDL. Both the importers have submitted that they have purchased the Scrips from open market with proper payment and the scrips were valid at the time of utilization. In this regard, I rely on the judgment of Hon'ble Bombay High Court in the case of **M/s Taparia Overseas (P) Ltd vs UOI: 2003 (161) ELT47** wherein petitioner has acquired licenses from original license holder for valuable consideration by paying heavy premium without notice of any fraud alleged to have been played by original license holder. The licenses were suspended after the petitioner has filed Bill of Entry for home consumption and the goods were lying in docks pending customs clearances. Hon'ble High Court has observed that:

“In the case at hand, it is not in dispute that the petitioners had obtained licenses for valuable consideration without any notice of the fraud alleged to have been committed by the original license holder while obtaining licenses. If that be so, the concept that fraud vitiates everything would not be applicable to the cases where the transaction of transfer of license is for value without notice arising out of mercantile transactions, governed by common law and not by provisions of any statute.

In this behalf we are reminded of the observation of Kings Bench in case of Master v Miller made by justice Butler J. while dealing with the case arising out of contract.

“He who is guilty of fraud shall never be permitted to avail himself of it, and if a contract founded in fraud be questioned between the parties to that contract. I agree that as against the person who has committed the fraud, and who endeavours to avail himself of it, the contract shall be considered as null and void. But there is no case in which a fraud intended by one man shall overturn a fair and bonafide contract between two others. Even as between the parties themselves we must not forget figurative language of Lord Chief Justice Wilmot, who said that “statute law is like a tyrant, where he comes he makes all void, but a common law is like a nursing father and makes void only that part where the fault is and preserves the rest.”

On the above canvas having examined the well settled, established and well recognised concept of law that the effect of fraud is not to render the transaction void

ab initio but renders it voidable at the instance of the party defrauded and transaction continues valid until the party defrauded has decided to avoid it....

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.

Under the circumstances, I find that in all cases at hand, the goods were imported, under valid licences. The goods imported were neither prohibited nor restricted by or under the Customs Act, as such, it was not open for the Customs Authorities to withhold clearance thereof. In the result, all the petitions are allowed. Action of respondent, the Revenue in all these petitions withholding clearance of goods imported by petitioners is declared as bad and illegal. Consequently, all import are held to be legal and proper.”

The above judgment was maintained by Apex Court in Union of India vs Blue Blends & Texture Mfg Co Ltd (2006). There are several other judgments which has been quoted by the other Noticees in their written submission, pronounced on the same issue. In case of **M/s Commissioner of Customs vs Vallabh Design Products 2007 (219) ELT 73 (P&H)** pronounced by Punjab & Haryana High Court later maintained by Hon’ble Supreme Court in 2016 (341) ELT A222 (SC), wherein it was held that:

“Since the transferee of DEPB Scrips was not a party to fraud and has obtained it on payment of full price from open market on bona fide belief of it being genuine, demand of duty, interest and penalty and confiscation of Imported goods is not sustainable.

In case of **M/s Leader Valves Ltd. V/s Commissioner of Customs reported in 2006 (193) E.L.T. 459**

(Tri. Del.), in Paragraph 3 held as under:

"3. Regarding the purchase of FPS scrips by the Noticees and their liability under Section 112 of the Customs Act, Id. Commissioner has observed as under:

"However, I find nothing on record to infer that M/s. Leader Valves Ltd., S-3&4, Industrial Area, Jalandhar had purchased the freely transferable FPS scrip otherwise than in a bona fide manner and utilized the same towards debit/exemption of duty and there is nothing to suggest of his having colluded with the exporter who obtained the FPS scrips by fraudulent manner. Therefore, I do not hold them liable to penal action under Section 112 of the Customs Act, 1962".

59.3 In view of above discussions, I find that the imported goods on which SEIS scrips were utilised by bonafide purchasers, are not liable for confiscation under Section 111(o) of the Customs Act, 1962.

60. Penalty on M/s Gateway Distriparks Limited and Shri Kartik Aiyer Senior General Manager of M/s Gateway Distriparks Limited.

60.1 I move forward to examine the proposed penalty on M/s Gateway Distriparks Limited.

Section 112(a) of Customs Act, 1962 stipulates that :

Any person, -

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.

60.1.1 In the foregoing paras, I have held that imported goods are not liable to be confiscated under Section 111 of the Customs Act, 1962. Accordingly, penalty

under Section 112(a) of the Customs Act, 1962, is not applicable on M/s Gateway Distriparks Limited and also not applicable on Shri Kartik Aiyer, Senior General Manager of M/s Gateway Distriparks Limited.

60.2 Further, Section 114AA of the Customs Act, 1962 stipulates that :

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.

Based on the evidences gathered during investigation, it is clear that Noticee was fully aware of the nature of services provided by them. They knowingly and intentionally signed/used false declaration in their application ANF 3B knowing well that they are false and incorrect in material particulars as explained above for purpose of availing benefit of Customs Duty exemption available under Section 25 of the Customs Act, 1962. Further, they have obtained the CA certificate fraudulently and submitted to concerned DGFT authorities for grant of SEIS scrips. These Scrips were later used by various importers to pay the duty. Hence, I find that M/s Gateway Distriparks Limited Private has intentionally signed/used false declaration which were incorrect in material particular to get the SEIS scrips. Accordingly, they are liable to be penalized under Section 114AA of the Customs Act, 1962. I hold so.

60.3 Section 114AB of the Customs Act, 1962, further stipulates that :

Where any person has obtained any instrument by fraud, collusion, wilful misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.

In the present case, as discussed in foregoing paras, it has been proved beyond doubt that instruments were obtained by way of wilful misstatement. Accordingly the Noticee is liable to be penalized under Section 114AB of the Customs Act, 1962. I hold so.

60.4 During the foregoing paras it was found that mis-declaration of services in the SEIS application (ANF-3B form & declarations with ANF-3B form) made before DGFT, had been signed by Shri Kartik Aiyer, to wilfully suppress and mis-state the facts by changing/mis-declaring the description of services before DGFT to fraudulently obtain the SEIS scheme despite knowing the fact that their rendered services were not qualified for SEIS. Shri Kartik Aiyer, further provided format of CA certificate to be signed by the CA Shri Anil Jain, and submitted the same to concerned DGFT authorities despite knowing fully well that no verification has been done by the CA at his end. Shri Kartik Aiyer has intentionally signed/caused to be made customs declaration/other declaration/statement/documents which were false and were used in the transaction of business for the purpose of customs act, 1962. Hence, I find that Shri Kartik Aiyer is liable to be penalized under Section 114AA and Section 114AB of the Customs Act, 1962. I hold so. However, while deciding the quantum of penalty, I shall give due regard to his position as a salaried employee in his company.

61. Penalty on Shri Anil Jain, Chartered Accountant (CA), (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, Mumbai

61.1 In the foregoing paras, as I have held that imported goods are not liable for confiscation under Section 111 of the Customs Act, 1962, hence no penalty under Section 112 is imposable on Shri Anil Jain, CA.

61.2 I observe that the engagement of a Chartered Accountant is done to nullify

the material misstatement and also the fraud, illegal acts etc. In this case, the Chartered Accountant without going through the provisions of the FTP, provisions of CPC, related Public Notices etc. and Appendix 3E had blindly signed the certificate for a monetary consideration of Rs 20,000/-. He has also admitted in his statement dated 03.08.2021 that he received the draft certificate from Shri Kartik Aiyer of M/s GDL which he simply signed by taking print out in his letter head. His gross material misstatement in the form of certification had resulted in wrongful SEIS benefits to GDL. He knowingly signed the Chartered Accountant Certificate which was false and incorrect in particulars which resulted in the issuance of scrips by DGFT thereby making him liable for penalty under **Sections 114AA** of the Customs Act, 1962. However, the penalty under Section 114AB of the Customs Act, 1962, can only be imposed on the person who has obtained the Instrument/scrip etc and such instrument has been utilised by such person, which in the present matter is M/s Gateway Distriparks Limited and not the CA, Shri Anil Jain. Hence no penalty under Section 114AB is imposable on Shri Anil Jain, CA. Thus, the last issue before me has been finalized.

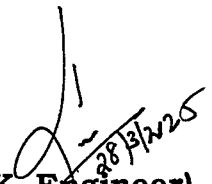
62. In view of the above, I pass the following order:

Order

- i) I hold the SEIS Scrips as given in TABLE-3 of the Notice, obtained by GDL, as obtained by willful mis-statement and suppression of facts in terms of Section 28AAA of the Customs Act, 1962.
- ii) I hold that the goods covered under bills of entry as detailed in column 4 of TABLE-4 above and in column 6 of ANNEXURE-A to the Show Cause Notice, totally valued at Rs.327,46,83,562/- imported by M/s Classic Marbles Ltd. and M/s Adani Wilmar Ltd., **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above.
- iii) I confirm the demand of duty payable amount aggregating to Rs.69,02,32,041/- (Rupees Sixty Nine Crores Two Lakhs Thirty Two Thousand and Forty One only), utilised by person/s other than the person to whom the instruments (SEIS Scrips) were issued, as mentioned in column (7) of TABLE-4 of the notice, under Section 28AAA of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962, which shall be recoverable from M/s Gateway Distriparks Limited.
- iv) I refrain from imposing penalty on M/s Gateway Distriparks Limited under Section 112 (a) of the Customs Act, 1962, for the reasons discussed above.
- v) I impose penalty of **Rs. 5,00,00,000/- (Rupees Five Crores only)** on M/s Gateway Distriparks Limited under Section 114AA of the Customs Act, 1962.
- vi) I impose penalty of **Rs. 8,00,00,000/- (Rupees Eight Crores only)** on M/s Gateway Distriparks Limited under Section 114AB of the Customs Act, 1962.
- vii) I refrain from imposing penalty on Shri Kartik Aiyer, Senior Gen. Manager, M/s Gateway Distriparks Limited under Section 112 (a) of the Customs Act, 1962, for the reasons discussed above.
- viii) I impose penalty of **Rs. 5,00,000/- (Rupees Five lakhs only)** on Shri Kartik Aiyer, Sr. gen. Manager of M/s Gateway Distriparks Limited under Section 114AA of the Customs Act, 1962.
- ix) I impose penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** on Shri Kartik Aiyer, Sr. Gen. Manager of M/s Gateway Distriparks Limited under Section 114AB of the Customs Act, 1962.

- x) I refrain from imposing penalty on Shri Anil Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/s Jain Anil & Associates, Mumbai, under Section 112(a) of the Customs Act, 1962, for the reasons discussed above.
- xi) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** on Shri Anil Jain, Chartered Accountant, under Section 114AA of the Customs Act, 1962.
- xii) I refrain from imposing penalty on Shri Anil Jain, Chartered Accountant, under Section 114AB of the Customs Act, 1962, for the reasons discussed above.
- xiii) I hold that the goods declared assessable value of goods of Rs.64,20,12,641/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INCCU1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above.
- xiv) I hold that the goods of declared assessable value of goods of Rs.22,97,71,526/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INHZA1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above.
- xv) I hold that the goods of declared assessable value of goods of Rs.19,92,66,207/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INIXY1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above.
- xvi) I hold that the goods of declared assessable value of goods of Rs.217,30,09,658/- imported by M/s Adani Wilmar Limited (IEC No 899000363), Ahmedabad, and cleared through INMUNI, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above.
- xvii) I hold that the goods of declared assessable value of goods of Rs.3,06,23,530/- imported by Classic Marble Company Private Limited (IEC No 308007794), Mumbai, and cleared through INNSA1, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above., and cleared through INMUNI, as detailed in column 6 of ANNEXURE- A to the Show cause Notice, **are not liable for confiscation** under Section 111(o) of the Customs Act, 1962, for the reasons discussed above.

63. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.


(K. Engineer)

Pr. Commissioner of Customs,
Custom House, Mundra.

By Speed Post /E-Mail/Notice Board

To (Noticees)

- (1) M/s. Gateway Distriparks Limited, (IEC No: 0503027057) Sector 6, Dronagiri, Taluka- Uran, Navi Mumbai -400707 (email id-mail@gatewaydistriparks.com)
- (2) Shri Kartik Aiyer, Senior General Manager of M/s. Gateway Distriparks Limited, (IECNo: 0503027057) Sector 6, Dronagiri, Tal Uran, Navi Mumbai-400707
- (3) Shri Anil G. Jain, Chartered Accountant, (Membership No: 039803), Proprietor, M/sJain Anil & Associates, 1603, Gaurav Heights, Mahavir Nagar, Kandivali West, Mumbai-400067
- (4) M/s Adani Wilmar Limited. (IEC No 899000363), Fortune House, Nr Navarangpura Railway Crossing, Ahmedabad-380009.
- (5) M/s Classic Marble Company Private Limited (IEC No 308007794), 15 Bhandup Village Road, Next to CEAT Tyre Factory, Subhash Nagar, Bhandup West, Mumbai- 400078

Copy to:-

- 1) The Pr. Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 27, G.N (Chetty) Road, T.Nagar, Chennai-600017, (email id-driczu@nic.in), for information.
- 2) The Assistant/Deputy Commissioner Review Section, The Office of the Chief Commissioner of Customs, Ahmedabad.
- 3) The Assistant/Deputy Commissioner EDI Section, Customs House Mundra for necessary action please.
- 4) The Assistant/Deputy Commissioner TRC Section, Customs House Mundra for necessary action please.
- 5) The Assistant/Deputy Commissioner RRA Section, Customs House Mundra for necessary action please.
- 6) Guard File