



**सीमाशुल्क आयुक्त -IV (निर्यात) का कार्यालय**  
**OFFICE OF THE COMMISSIONER OF CUSTOMS-IV (EXPORT)**  
**हवाई माल परिसर, सहार, अंधेरी (पूर्व), मुंबई - ४०००९९**  
**AIR CARGO COMPLEX, SAHAR ANDHERI (EAST) MUMBAI - 99**

F.No.S/10-46/2023-24/Adj (X) ACC

Date of Order : 18.12.2025

F.No.CUS/ASS/MISC/213/2023-Exp-Assmt

Date of Issue : 18.12.2025

F.No.GEN/ADJ/COMM/54/2024-Adjn

**DIN NO. 20251279OE0000005E7F**

**Party's Name: M/s. Aquity Solutions India Private Limited (IEC 0300008201)**  
**(SCN No. 08/Commr./ADJ(X)/2023-24)**

Passed by : **Shri Hardeep Batra,**  
Commissioner of Customs (Export), Air Cargo Complex, Mumbai-III

**CAO NO: CC/HB/08/2025-26 Adj(X) ACC**

**मूल आदेश /ORDER-IN-ORIGINAL**

1. यह प्रति उस व्यक्ति के प्रयोग में लाये जाने के लिए निशुल्क दी जाएगी, जिसके लिए इसे जारी किया गया है।  
This copy is granted free of charge for the use of the persons to whom it is issued.
2. यदि कोई व्यक्ति इस आदेश से असन्तुष्ट हो तो वह मांगे गये शुल्क, जहां शुल्क या शुल्क और जुर्माना विवादित हों अथवा जुर्माना जहां सिर्फ जुर्माना विवादित हो, के 7.5 प्रतिशत भुगतान के बाद सीमाशुल्क अधिनियम 1962 की धारा 129A के तहत उक्त न्यायाधिकरण के सहायक रजिस्ट्रार को संबोधित करते हुए, सीमाशुल्क, उत्पादशुल्क, सेवा कर न्यायाधिकरण, मुंबई (सी ई एस टी ए टी), पश्चिम क्षेत्रीय शाखा, 34 पी डिमेलो मार्ग, मस्जिद (पूर्व), मुंबई ४००००९, के समक्ष अपील दाखिल कर सकता है।  
Any person aggrieved by this order can file an appeal against this order to Customs, Excise, Service Tax Tribunal, Mumbai (CESTAT), Western Zonal Bench, 34, P.D'Mello Road, Masjid Bunder (East), Mumbai 400009, addressed to the Assistant Registrar of the said Tribunal under Section 129A of the Customs Act, 1962 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.
3. अपील जैसा कि सीमाशुल्क (अपील) नियम, 1982 के नियम 6 में बताया गया है, इन नियमों से संलग्न फॉर्म सी. ए. 3 में की जानी चाहिए। अपील चार प्रतियों में निम्नलिखित के साथ होनी चाहिए:-  
The appeal is required to be filed as provided in Rule 6 of the Customs (Appeal) Rules, 1982 in form C.A. 3 appended to these rules. The Appeal should be in quadruplicate and shall be accompanied by:-
  - (i) विरुद्ध अपील आदेशों की चार प्रतियां (कम से कम एक प्रति प्रमाणित होनी चाहिए)  
Four copies of the order appealed against (at least one of which should be a certified copy)
  - (ii) न्यायाधिकरण शाखा के सहायक रजिस्ट्रार अथवा शाखा से नजदीक स्थित किसी राष्ट्रीय कृत बैंक के पक्ष में उपयुक्त राशि का एक रेखांकित बैंक ड्राफ्ट  
A crossed Bank Draft of an applicable amount as mentioned below in favour of the Assistant Registrar, CESTAT, Mumbai.
- अ) रु. १,०००/- जहां शुल्क राशि एवं मांगा गया ब्याज और उगाहा गया जुर्माना रु. ५ लाख या कम हो  
Where the amount of duty and interest demanded and penalty imposed is five lakh rupees or less, one thousand rupees.
- आ) रु. ५,०००/- जहां शुल्क राशि एवं मांगा गया ब्याज और उगाहा गया जुर्माना रु. ५ लाख से अधिक पर रु. ५० लाख से ज्यादा न हो  
Where the amount of duty and interest demanded and penalty imposed is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees.
- इ) रु. १०,०००/- जहां शुल्क राशि एवं मांगा गया ब्याज और उगाहा गया जुर्माना रु. ५० लाख से अधिक हो  
Where the amount of duty and interest demanded and penalty imposed is more than fifty lakh rupees, ten thousand rupees.
4. अपील, इस आदेश की संसूचना की तिथि से 3 माह के भीतर दाखिल की जा सकती है।  
Appeal can be filed within 3 months from date of communication of this order.
5. विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क (अपील) नियम 1982, सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम 1982 का संदर्भ लिया जाए।  
For the provisions of Law and Form as referred above and other related matters. Customs Act, Customs (Appeals) Rules, 1982, Customs, Excise, Service Tax Tribunal (Procedure) Rules, 1982 may be referred.

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

Specific information was received by the officers of DRI, Indore Zonal Unit, Indore (hereinafter referred to as '**Officers of DRI**'), that M/s. Aquity Solutions India Private Limited having address at 1<sup>st</sup> Floor, Unit No. 103, Reliable Plaza Plot No. K10, Kalwa Industrial Area, Airoli, Navi Mumbai-400 708, Maharashtra (formerly known as M/s. MModal Global Service Private Limited, Navi Mumbai (hereinafter referred to as '**the Exporter**' or '**M/s. ASIPL**') having IEC No. 0300008201, PAN No. AAACC9165F and GST Registration No. 27AAACC9165F1ZM is primarily engaged in rendering **Medical Transcriptions Service, Medical Coding Service** to its fellow subsidiary company located in USA, i.e. M/s. Aquity Solutions LLC, USA. M/s. ASIPL have filed applications and obtained "Service Exports from India Scheme" (SEIS) benefit for financial years 2015-16 to 2018-19 from DGFT, Mumbai. The SEIS benefit was issued to M/s. ASIPL as detailed in the table below:-

**TABLE – A**

<b>Sr. No.</b>	<b>Scripts Number</b>	<b>No. of Scripts</b>	<b>Scrip date</b>	<b>Scrip Amount (Rs.)</b>
1	319138409 to 319138416	13	29.11.2017	9,11,70,141/-
2	319165104 to 319165132	29	15.05.2018	14,56,39,797/-
3	319223409 to 319223439	31	18.04.2019	15,55,30,836/-
4	319294197 to 319294228	32	27.07.2020	15,92,27,922/-
	<b>Total</b>	<b>105</b>		<b>55,15,68,696/-</b>

2. In total, the company has obtained Services Exports from India Scheme (SEIS) benefit amounting to INR 55.15 Crores during the period 2015-16 to 2018-19. First, the company had declared its services under "**Libraries, Archives, Museums and other Cultural Services**" (vide CPC- 963) to claim SEIS benefits wrongly for the Financial Year 2015-16, second time for the same Financial Year under the category of "**Marketing Management Consulting Services**" (vide CPC Code 86503) and for the rest Financial Years 2016-17 to 2018-19 under "**Hospital Services**" (vide CPC-9311), whereas, it was not eligible to receive the same, since, it was providing the core services of **Medical Transcription Services** to its fellow subsidiary company abroad. Hence, it appears that

the SEIS scrips issued to the company have been obtained on the basis of willful misstatement and suppression of facts.

3. Accordingly, investigations were initiated against M/s. ASIPL and a search was conducted at the official premises of M/s. ASIPL situated at 1<sup>st</sup> Floor, Unit No. 103, Reliable Plaza Plot No. K 10, Kalwa Industrial Area, Airoli, Navi Mumbai-400 708, Maharashtra on 23.10.2020 u/s. 105 of the Customs Act, 1962. During the search proceedings a detailed verification including analysis of E-mail communication, Walk Through of their business system and search operation was conducted by DRI Officers which resulted in seizure of incriminating documents under Panchanama proceedings dated 23.10.2020. The personnel of M/s. ASIPL when confronted with these evidences did not have any documentary evidence in support of correctness of the classification of services in their SEIS Application and availment of benefits under the scheme.

4. From the investigation and verification of all the above documents, E-mail communications, SEIS Applications, Agreements, Invoices, Foreign Inward Remittances etc., it appears that M/s. ASIPL has suppressed and willfully mis-stated various facts in their Applications to DGFT, Mumbai.

## 5. **DETAILS OF INVESTIGATION:**

5.1. DRI, Indore had written a letter to DGFT, Mumbai dated 26.10.2020 asking them to provide with the SEIS Applications and other relevant documents filed by M/s. ASIPL. DGFT, Mumbai vide letter dated 11.12.2020 provided with the various Applications and relevant documents in respect of M/s. ASIPL.

5.1.1. From the documents received from DGFT, Mumbai, it appears that M/s. ASIPL opted to avail benefits under Services Exports from India Scheme (SEIS) under Para 3.08 of the [FTP 2015-2020](#) and applied to DGFT Mumbai for claimed Export of Services pertaining to Financial Years 2015-16, 2016-17, 2017-18 and 2018-19.

5.1.2. For the years 2015-16, 2016-17, 2017-18 and 2018-19, SEIS Applications were filed by M/s. ASIPL before the DGFT, Mumbai dated 03.08.2017, 28.03.2018, 27.03.2019 and 09.07.2020 respectively duly signed by Shri Agnelo Rodrigues, Director and Company Secretary of M/s. ASIPL. DGFT, Mumbai issued SEIS Scrips to M/s. ASIPL

dated 29.11.2017, 15.05.2018, 18.04.2019 and 27.07.2020 for the years 2015-16, 2016-17, 2017-18 and 2018-19 respectively. The list of the scrips is as detailed below:

Sr. No.	Scrip No.	Port of Registration	Date Issued	Amount
1	319138404	INNSA1- Nhava Sheva Sea <b>(Period 2015-16)</b>	29.11.2017	2500000
2	319138405		29.11.2017	2500000
3	319138406		29.11.2017	2500000
4	319138407		29.11.2017	2500000
5	319138408		29.11.2017	10000000
6	319138409		29.11.2017	10000000
7	319138410		29.11.2017	10000000
8	319138411		29.11.2017	10000000
9	319138412		29.11.2017	10000000
10	319138413		29.11.2017	10000000
11	319138414		29.11.2017	10000000
12	319138415		29.11.2017	10000000
13	319138416		29.11.2017	1170141
Total				9,11,70,141

Sr. No.	Scrip No.	Port of Registration	Date Issued	Amount
1	319165104	INNSA1- Nhava Sheva Sea (Period 2016-17)	15.05.2018	5000000
2	319165105		15.05.2018	5000000
3	319165106		15.05.2018	5000000
4	319165107		15.05.2018	5000000
5	319165108		15.05.2018	5000000
6	319165109		15.05.2018	5000000
7	319165110		15.05.2018	5000000
8	319165111		15.05.2018	5000000
9	319165112		15.05.2018	5000000
10	319165113		15.05.2018	5000000
11	319165114		15.05.2018	5000000
12	319165115		15.05.2018	5000000
13	319165116		15.05.2018	5000000
14	319165117		15.05.2018	5000000
15	319165118		15.05.2018	5000000
16	319165119		15.05.2018	5000000
17	319165120		15.05.2018	5000000
18	319165121		15.05.2018	5000000
19	319165122		15.05.2018	5000000
20	319165123		15.05.2018	5000000
21	319165124		15.05.2018	5000000
22	319165125		15.05.2018	5000000
23	319165126		15.05.2018	5000000

24	319165127		15.05.2018	5000000
25	319165128		15.05.2018	5000000
26	319165129		15.05.2018	5000000
27	319165130		15.05.2018	5000000
28	319165131		15.05.2018	5000000
29	319165132		15.05.2018	5639797
<b>Total</b>				<b>14,56,39,797</b>

Sr. No.	Scrip No.	Port of Registration	Date Issued	Amount
1	319223409	INBOM4- Bombay Air Cargo (Period 2017-18)	18.04.2019	5000000
2	319223410		18.04.2019	5000000
3	319223411		18.04.2019	5000000
4	319223412		18.04.2019	5000000
5	319223413		18.04.2019	5000000
6	319223414		18.04.2019	5000000
7	319223415		18.04.2019	5000000
8	319223416		18.04.2019	5000000
9	319223417		18.04.2019	5000000
10	319223418		18.04.2019	5000000
11	319223419		18.04.2019	5000000
12	319223420		18.04.2019	5000000
13	319223421		18.04.2019	5000000
14	319223422		18.04.2019	5000000
15	319223423		18.04.2019	5000000
16	319223424		18.04.2019	5000000
17	319223425		18.04.2019	5000000
18	319223426		18.04.2019	5000000
19	319223427		18.04.2019	5000000
20	319223428		18.04.2019	5000000
21	319223429		18.04.2019	5000000
22	319223430		18.04.2019	5000000
23	319223431		18.04.2019	5000000
24	319223432		18.04.2019	5000000
25	319223433		18.04.2019	5000000
26	319223434		18.04.2019	5000000
27	319223435		18.04.2019	5000000
28	319223436		18.04.2019	5000000
29	319223437		18.04.2019	5000000
30	319223438		18.04.2019	5000000
31	319223439		18.04.2019	5530836
Total				15,55,30,836

Sr. No.	Scrip No.	Port of Registration	Date Issued	Amount
1	319294197	INBOM4- Bombay Air Cargo (Period 2018-19)	27.07.2020	5000000
2	319294198		27.07.2020	5000000
3	319294199		27.07.2020	5000000
4	319294200		27.07.2020	5000000
5	319294201		27.07.2020	5000000
6	319294202		27.07.2020	5000000
7	319294203		27.07.2020	5000000
8	319294204		27.07.2020	5000000
9	319294205		27.07.2020	5000000
10	319294206		27.07.2020	5000000
11	319294207		27.07.2020	5000000
12	319294208		27.07.2020	5000000
13	319294209		27.07.2020	5000000
14	319294210		27.07.2020	5000000
15	319294211		27.07.2020	5000000
16	319294212		27.07.2020	5000000
17	319294213		27.07.2020	5000000
18	319294214		27.07.2020	5000000
19	319294215		27.07.2020	5000000
20	319294216		27.07.2020	5000000
21	319294217		27.07.2020	5000000
22	319294218		27.07.2020	5000000
23	319294219		27.07.2020	5000000
24	319294220		27.07.2020	5000000
25	319294221		27.07.2020	5000000
26	319294222		27.07.2020	5000000
27	319294223		27.07.2020	5000000
28	319294224		27.07.2020	5000000
29	319294225		27.07.2020	5000000
30	319294226		27.07.2020	5000000
31	319294227		27.07.2020	5000000
32	319294228		27.07.2020	4227922
Total				15,92,27,922

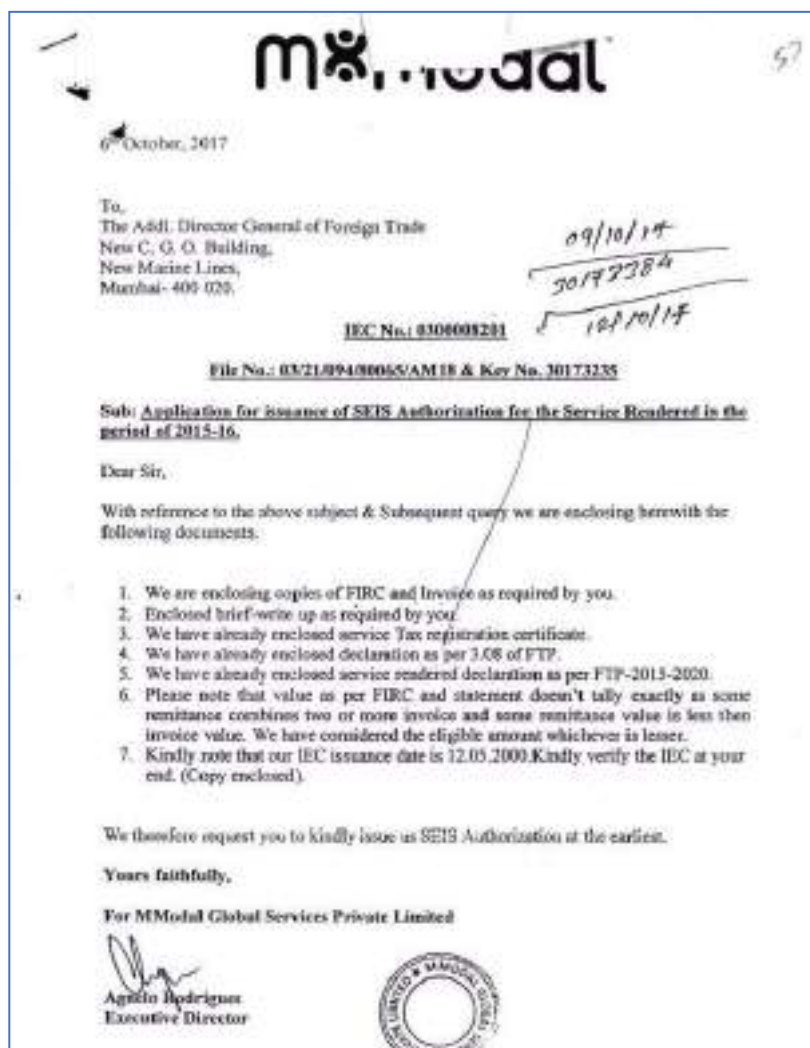
**5.1.3.** The total duty amount involved in the above mentioned **105 SEIS Scrips** obtained by M/s. ASIPL is **Rs. 55,15,68,696/-**.

**5.1.4.** During the scrutiny of the documents for the period 2015-16, it was revealed that for the year 2015-16, M/s. ASIPL filed application dated 03.08.2017 before DGFT, Mumbai for SEIS benefit and declared description of services rendered first as **“Libraries, Archives, Museums and other cultural services - CPC 963”** and

**“Management Consulting Services CPC - 865”**. After verification of this application, DGFT, Mumbai raised a Deficiency Letter dated 07.09.2017 which is placed as under:



**5.1.5.** That, in this Deficiency Letter it was stated that the declaration as per 3.08 was not as per [FTP 2015-20](#) and declaration regarding service rendered for financial year 2015-16 weren't as per [FTP 2015-2020](#). M/s. ASIPL submitted a reply to DGFT, Mumbai dated 06.10.2017, wherein, all the aforementioned deficiencies were looked upon/ The same is placed as under:



**5.1.6.** However, DGFT, Mumbai raised another Deficiency Letter dated 02.11.2017 specifically mentioning that **Service of Medical Transcription is not eligible for SEIS and is wrongly classified under Libraries, Archives, Museums and other cultural services.** Hence, the claim against Medical Transcription Services stands rejected. The said letter is placed as under:



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Government of India  
Ministry of Commerce and Industry  
O/o Additional Director General of Foreign Trade  
CGO Office, New Building, SE wing New Marine Lines, Churchgate  
Mumbai Mumbai -Maharashtra

File No:03/21/094/80065/AM18/ Dated:20.07.2017

**DEFICIENCY LETTER**


To,  
MMODAL GLOBAL SERVICES PRIVATE LIMITED  
3RD FL.BLDG.NO.3,MINDSPACE-AIROLI,  
PLOT NO.3(PART),KALWA TTC INDL.AREA  
MIDC,AIROLI,NAVI MUMBALM.S.  
400708

**Sub:Deficiency Letter**

Sir/Madam,

Your Application is deficient due to following reasons:  
*I. You are informed that service of medical transcription is not eligible for SEIS and is wrongly classified under Libraries archive ,measures of other cultural services. Hence the claim against medical transcription services stands rejected.*

You are requested to remove above deficiencies within a period of 30 days from the date of issue of this letter, otherwise your case will be treated as closed.

Yours faithfully,  


Place:Mumbai (Dr. D. C. Dabhole )  
Date:02.11.2017 Asst. Director General of Foreign Trade

5.1.7. Further, M/s. ASIPL submitted a reply to DGFT Mumbai dated 21.11.2017. as attached below:

**THE DIRECTOR**

Date: 21.11.2017

To,  
The Addl. Director General of Foreign Trade  
New C.O. Building,  
New Marine Lines,  
Mumbai- 400 029.

**IEC No.: 0300660281**

**File No.: 03/21/094/80065/AM18 & Key No. 30173235**

**Sub: Application for issuance of SEIS Authorization for the Service Rendered in the period of 2015-16.**

Dear Sir,

With reference to the above subject and subsequent raised by you we would like to clarify our all service falls under the category of CPC 865 Management Consulting Services further classified under CPC-86508 Other Management Consulting Services which is define as "Advisory, guidance and operational assistance services concerning other matters".

Further we would like to inform you that by oversight the same was filed under CPC 963. Instated of CPC 865 therefore we are submitting our revise application under the correct code enclosing the revise form as under:

1. Application in ANF -3B duly signed.
2. Original Enclosed ANF-3B duly certified by Chartered accountant (CA).

We therefore request you to kindly consider the same and issue us the SEIS Authorization at the earliest.

Yours faithfully,

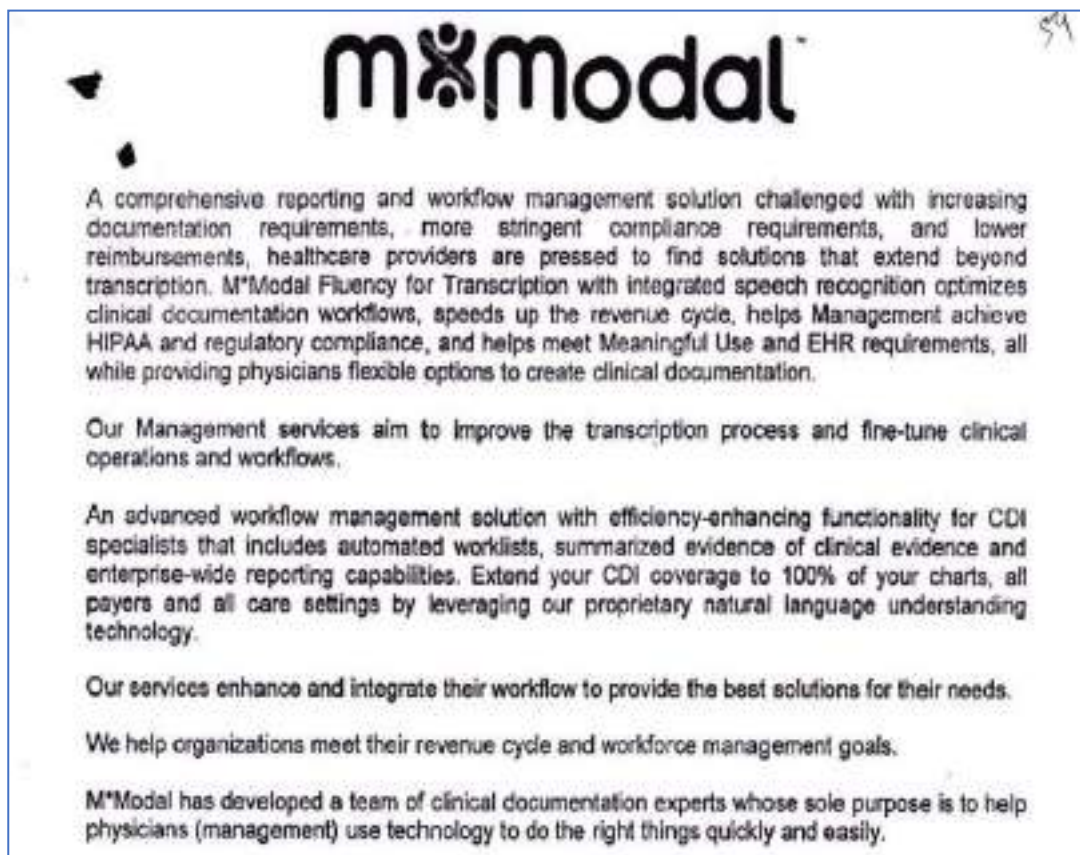
For MMODAL GLORAL SERVICES PRIVATE LIMITED,  
  
AUTHORISED SIGNATORY



22/11/17  
30173235

**5.1.8.** The reply submitted by M/s. ASIPL mentioned that all their services fall under the category of **CPC-865 Management Consulting Services** further classified under **CPC-86509-Other Management Consulting Services** which is defined as “**Advisory, Guidance and Operational Assistance Services concerning other matters**” and further mentioned that by oversight the services were declared under **CPC-963** instead of **CPC-865** and therefore, M/s. ASIPL submitted a revised application and declared all their services under **Management Consulting Services** to claim SEIS benefits.

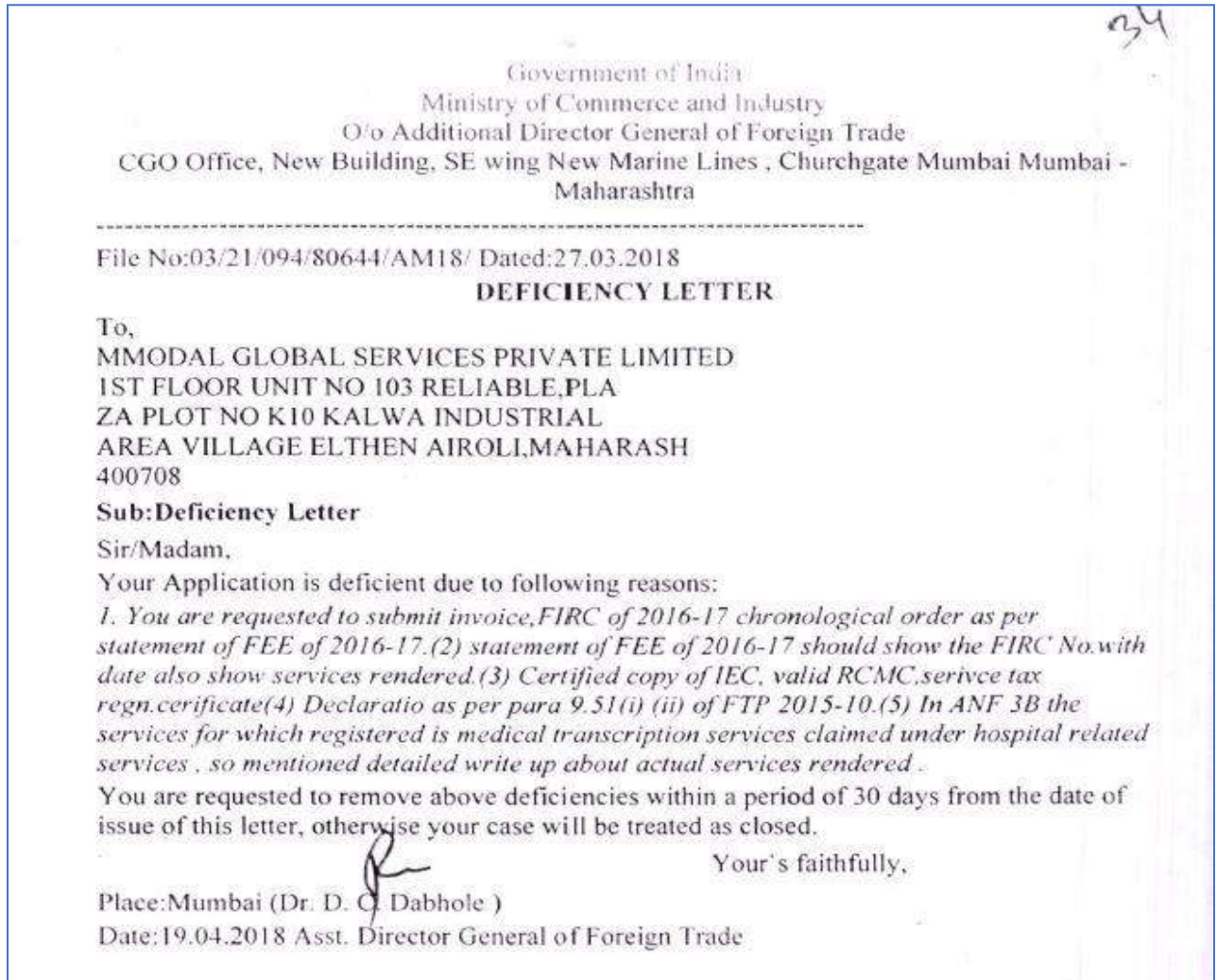
**5.1.9.** Further, it is pertinent to look at the brief write up submitted by M/s. ASIPL in reply to Deficiency Letter dated 02.11.2017 as placed ahead:



**5.1.10.** From the write up, it appears that M/s. ASIPL prepared a write-up to suit their declaration of services in their revised application.

**5.1.11.** During the scrutiny of the documents for the period 2016-17, it was revealed that for the year 2016-17, M/s. ASIPL filed its application to DGFT, Mumbai for SEIS and declared description of services rendered as “**Hospital Services (9311)**”, “**Accounting, Auditing Services**” and “**Management Consulting Service**”. After verification of this

application, DGFT, Mumbai raised a Deficiency Letter dated 19.04.2018 which is placed ahead:



**5.1.12.** In this deficiency letter dated 19.04.2018, DGFT, Mumbai asked for detailed write- up about actual services rendered since the Medical Transcription Services were claimed under Hospital Services. In response, to this Deficiency Letter, M/s. ASIPL submitted a reply dated 24.04.2018 along with detailed write-up of their services justifying their services to be claimed under **“Hospital Services (9311)”, “Accounting, Auditing Services”** and **“Management Consulting Service”**. The write-up submitted by M/s. ASIPL is placed as under:





## Brief Write up of Services

We, MModal Global Services Pvt Ltd, are a leading service provider of Healthcare Industry solutions providing Hospital Services, Accounting & Book Keeping Services, Management Consulting Services, Clinical narrative capture services, Speech and Language Understanding technology and clinical documentation workflow solutions for the healthcare industry.

### **Hospital Services:**

Class: 9311 - Hospital services

a. Subclass: 93110 - Hospital services

Hospital Services which is to maintain the health status of a patient via Health Care (Medical Transcription & Medical Coding) services is gaining great momentum since the last decade due to the costs involved in the infrastructure and recruiting of technically skilled personnel for the Medical transcription & Medical Coding services.

Our end-to-end technology-enabled solutions convert the physician's (doctor's) dictation record into a comprehensive patient story through high-quality clinical documentation with rich context that is used for clinical decision support to maintain the health status of a patient in hospital. It is an act of transcribing medical reports that are dictated by doctors to maintain health status of patients.

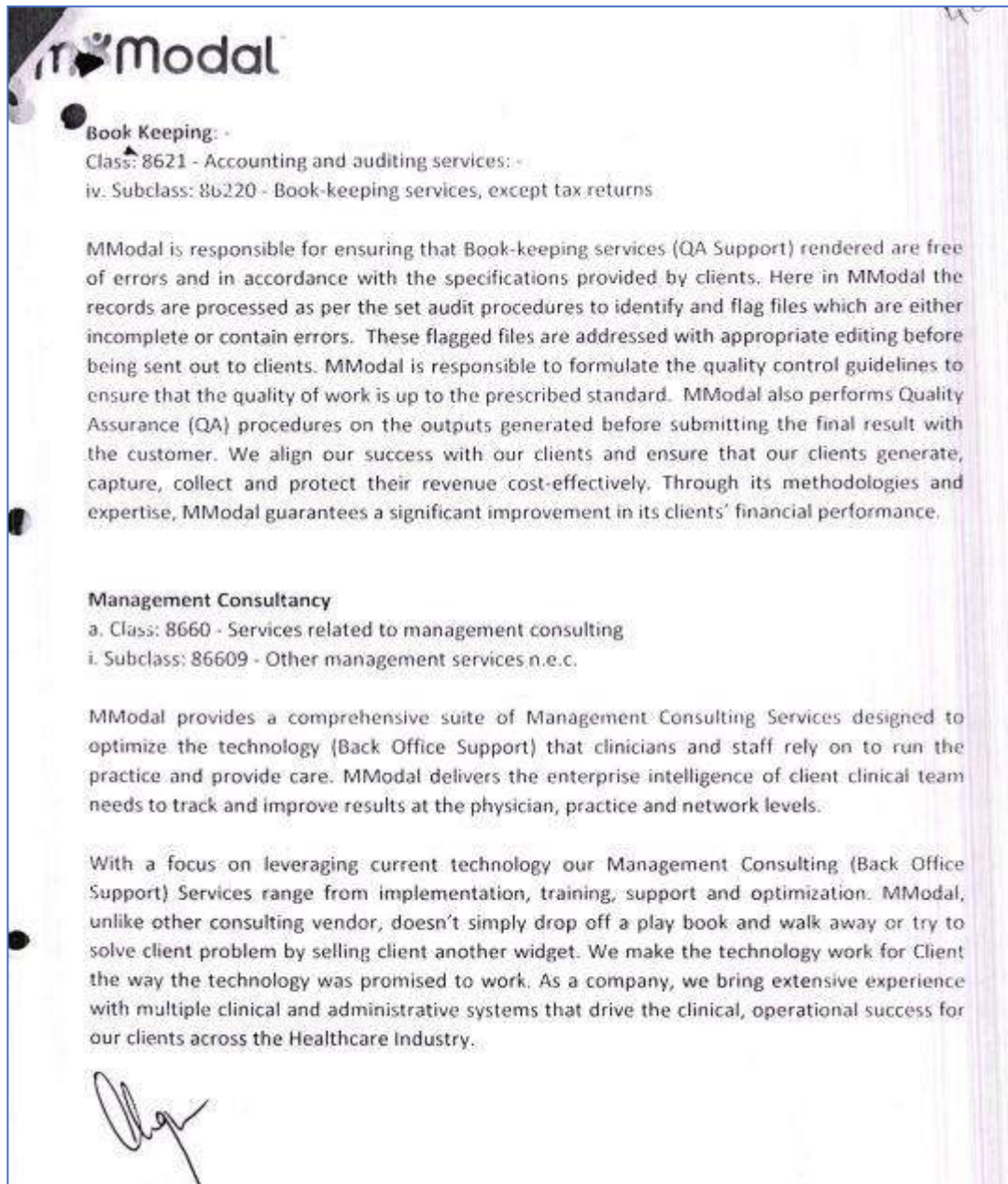
These services are an asset to our clients who depend on these services to maintain timely and accurate health status of their in-house patients. In this digital era, where the patient records and structured data are among the most valuable entities, the hospital service is an ideal way to transform the patient's health status maintenance into the electronic form. This electronic data not only ensures that doctors possess all the details about a patient's visit to the hospital, but it can be used for carrying out research in the medical field. Thus, this is growing as an industry and offering several jobs to the people worldwide.

Our health status maintenance innovative solutions provide for patient medical record maintenance that is contextually important in driving clinical decisions from analytical data available directly to the caregiver and provides for collaborative intelligence through services and technology that facilitate engagement, collaboration and intelligence among all stakeholders in maintaining the health status of a patient ecosystem.

MModal provide medical transcription & medical coding services to hospitals, practices, individual doctors and MTSOs. Our Hospital services via maintaining health status of patients are very secure and are compliant with the Health Insurance Portability and Accountability Act (HIPAA).

A handwritten signature in black ink, appearing to be 'A. Singh'.

Modal Global Services Pvt. Ltd., (CIN U72900MH1999PTC120345)  
an ISO 9001:2015 Certified Company



**5.1.13.** During the scrutiny of the documents for the period 2017-18, it was revealed that for the year 2017-18, M/s. ASIPL filed its application to DGFT, Mumbai for SEIS benefit and declared description of services rendered as **“Hospital Services (9311)”**, **“Professional Services (Accounting, auditing and Bookkeeping services 862)”** and **“Other business services (Management Consulting Service 865)”**.

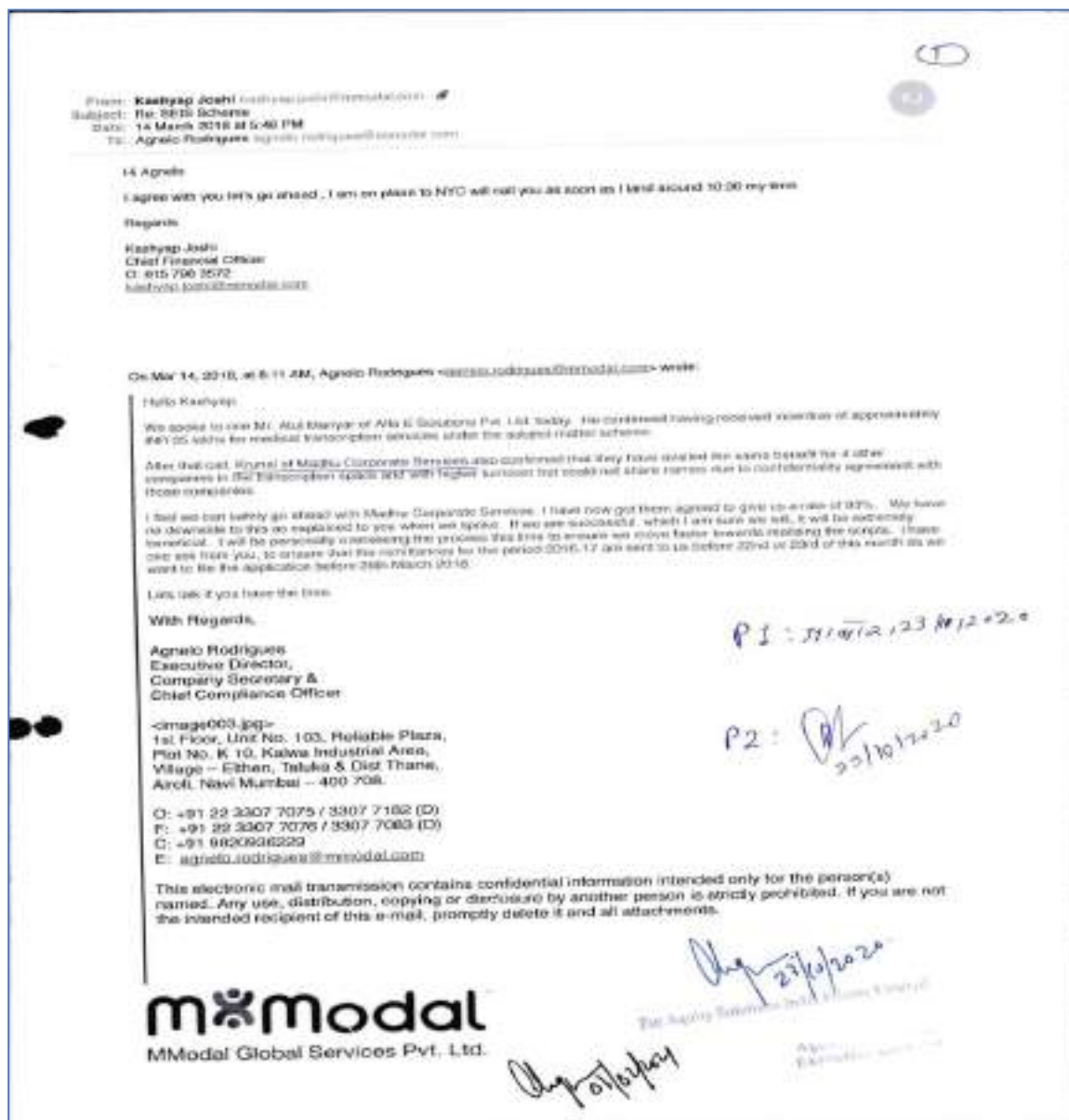
**5.1.14.** During the scrutiny of the documents for the period 2018-19, it was revealed that for the year 2018-19, M/s. ASIPL filed its application to DGFT, Mumbai for SEIS benefit





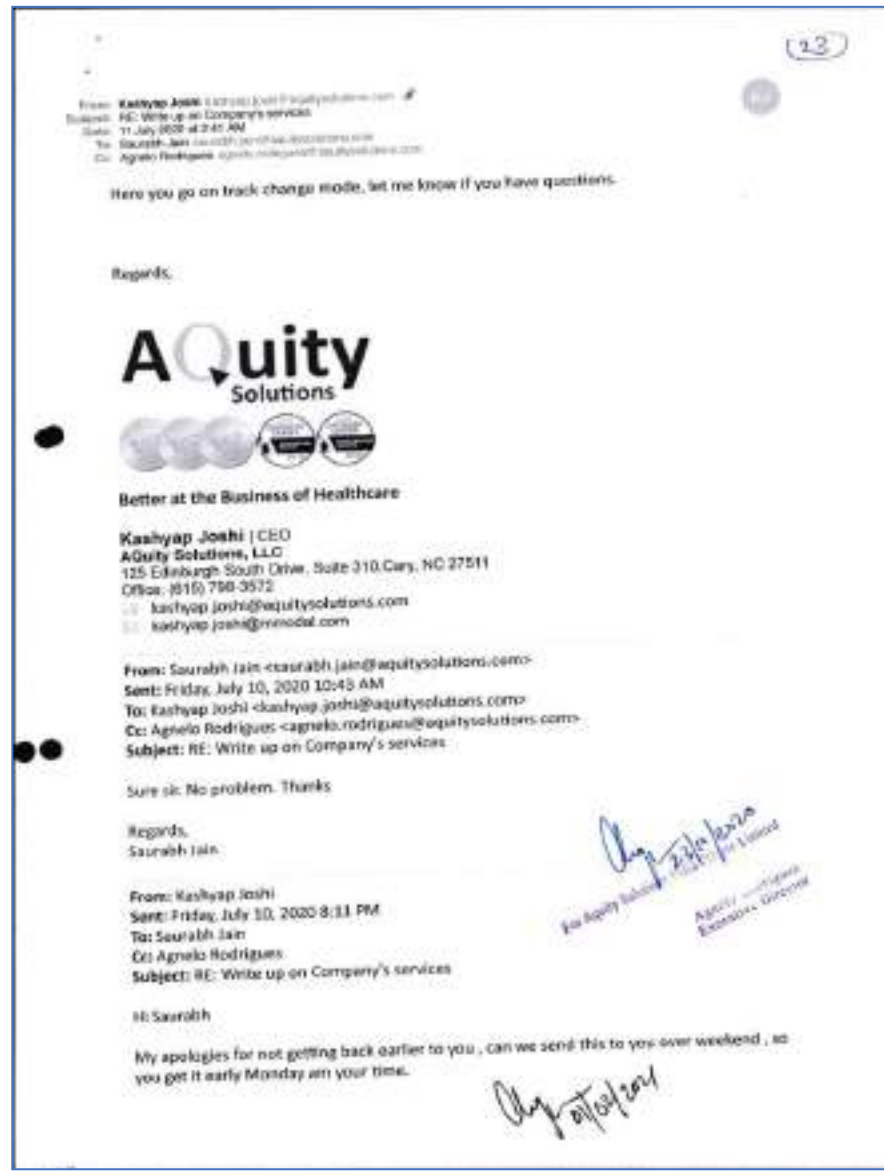
From the scrutiny of E-mail communication dated 05.03.2020, it appears that Shri Saurabh Jain, Senior Manager, Finance and Accounts of M/s. ASIPL knew from the very start that none of their services under which they have claimed SEIS incentives are specifically mentioned in the Specified List of Services for SEIS benefits. However, he went ahead and continued to take same basis for claiming incentives although their services weren't specified in the list. This clearly shows their *mala-fide* intention to defraud the Government Exchequer and claim ineligible incentives.

**5.2.2. Email Communication between Shri Kashyap Joshi, Chief Executive Officer and Shri Agnelo Rodrigues, Director and Company Secretary of M/s. ASIPL dated 14.03.2018:**

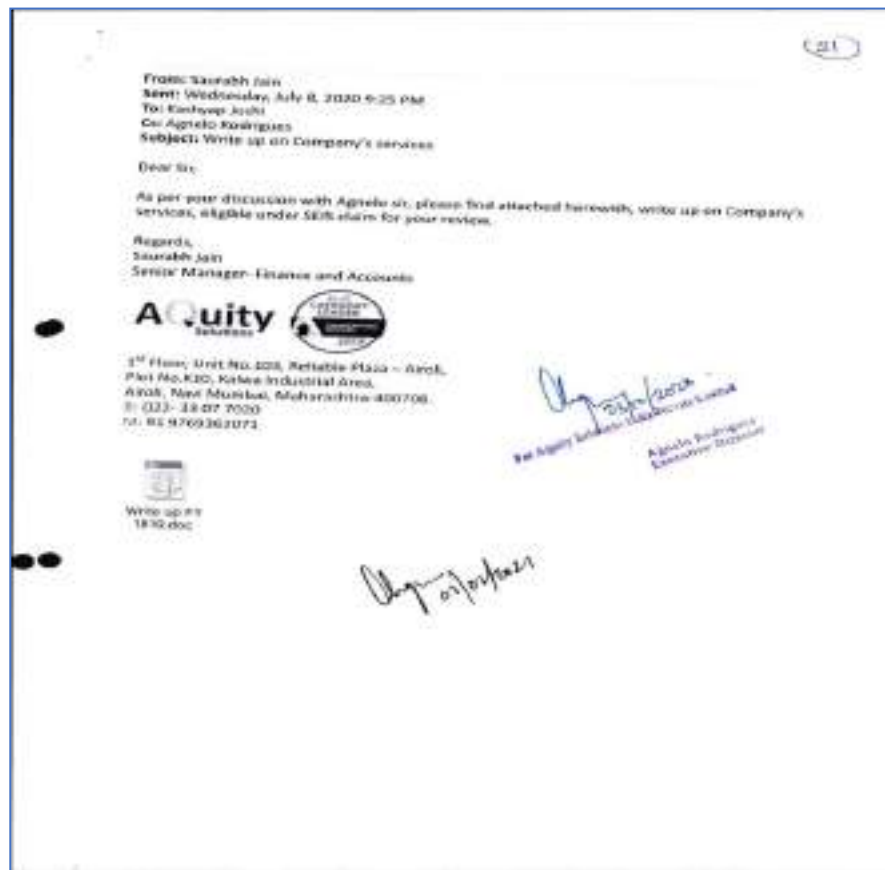
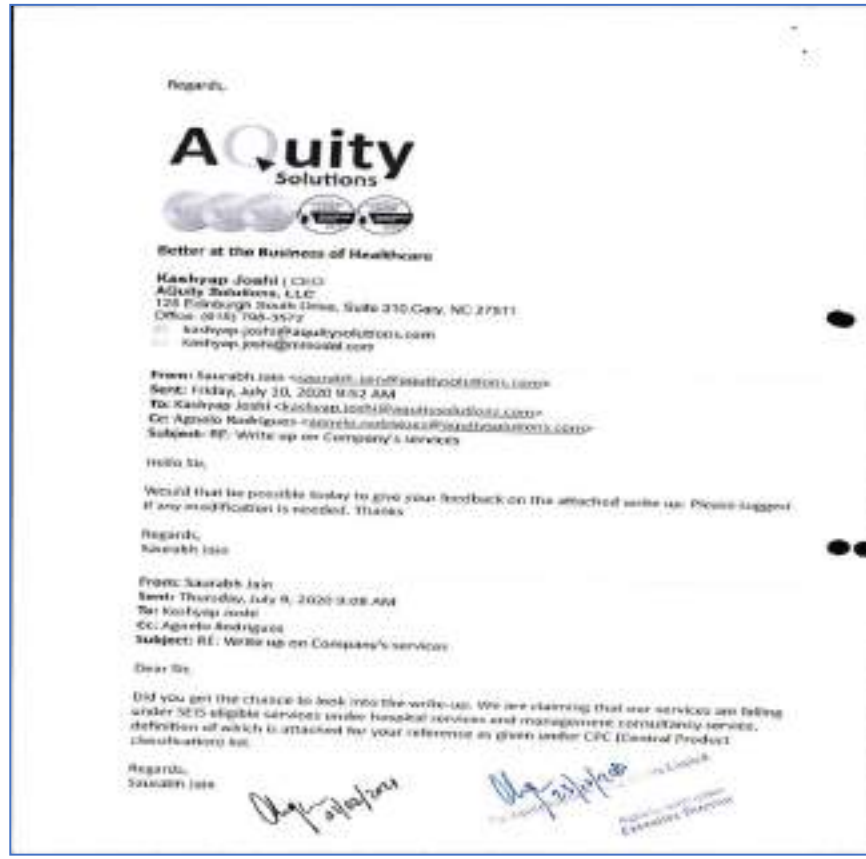


From the scrutiny of E-mail communication dated 14.03.2018 [RUD-16], it appears that Shri Krunal Pandya, Director of M/s. Madhu Corporate Services knowingly helped M/s. ASIPL in receiving ineligible SEIS incentives, however, he was well aware about non-eligibility of the same. It also appears that Shri Agnelo Rodrigues understood that the SEIS incentive was not available to them. However, he pressed the matter to gain undue benefits.

**5.2.3. Email Communication between Shri Saurabh Jain, Senior Manager- Finance & Accounts and Shri Kashyap Joshi, Chief Executive Officer (Shri Agnelo Rodrigues, Director and Company Secretary of M/s. ASIPL in CC) dated from 08.07.2020 to 11.07.2020:**







From the scrutiny of E-mail communication dated 08.07.2020 to 11.07.2020, it appears that Shri Saurabh Jain knew from the very start that none of their services under which they have claimed incentives are specifically mentioned in the Specified List of Services. However, he went ahead and with the assistance of Shri Agnelo Rodrigues drafted a write-up so as to suit their intention of wrongly claiming SEIS incentives for those services.

**5.3** On verification of various statutory documents filed by M/s. ASIPL, it is observed that they have made different declarations for providing services in different statutory documents, as detailed below:

Sr. No.	Document of M/s. ASIPL	Description of services provided by M/s. Aquity India as per this document	Remarks
1.	MGT-7	Data Processing, Hosting and related activities; Web Portal even though Health and Related Services are specifically mentioned in the list.	Even though Hospital Activities service specifically mentioned in Q1 Code
2.	GST Registration Certificate	Business Auxiliary Services, Technical Testing, Inspection, Certification	Even after Health Related Service are specifically mentioned in Service Accounting Code
3.	SEIS Applications	"Libraries, archives, Museums and other cultural services", "Management Consultancy Services" and "Hospital Services" etc.	As discussed in forementioned paras.

## **6. STATEMENTS RECORDED OF VARIOUS PERSONS INVOLVED-**

**6.1.** Statement of **Shri Agnelo John Rodrigues, Director and Company Secretary of M/s. ASIPL** was recorded on 23.10.2020 u/s. 108 of the Customs Act, 1962, wherein, he inter-alia, stated that:

- (i) in the capacity of Professional Director of the said company he was responsible for all the legal affairs of the said company. There are three Directors, namely Shir Kashyap Joshi, Shir Jason Kolinowski and himself, Shri Agnelo John Rodrigues. He stated that M/s. ASIPL was earlier known as M/s. MModal Global Services Private Limited, wherein, the shareholders were not the same. M/s. MModal Global Services Private Limited was a leading provider of Healthcare Business Process Outsourcing Services. The said company was working as per the standards set out by the Association for Healthcare Documentation Integrity (AHDI, formerly American Association for Medical Transcription, AAMT). Shri Kashyap Joshi is now in US who looks after co-ordination with different verticals of the company;
- (ii) He stated that he interacts with Shri Kashyap Joshi on regular interval, who in turn interacts with the other Directors or stakeholders. Regarding policy decisions,

matter is put up before the Board of Directors and they decide it during Board Meeting. Normally, he meets other Directors during Board Meetings only but in case of any urgent matter or crucial issues, he interacts with them according to situation. Most of the Board Meetings of the company are held in US, so he interacts with them over telephone;

- (iii) On being asked specifically regarding financial part, he informed that Shri Saurabh Jain, a qualified Chartered Accountant heads Finance Section of the company. Shri Saurabh Jain looks after work related to Accounting, Invoicing, Receiving Remittances, Claiming Incentives from Government Authorities for service exports and filing relevant documents with the concerned department etc.;
- (iv) He further informed that for any major financial decision or legal decision, Shri Saurabh Jain discusses with him and they mutually decide on any particular issue;
- (v) On being asked specifically regarding decision taken for availment of export incentives under Service Export Incentive Scheme (SEIS) of Government of India, he stated that the said decision of classifying the services and claiming benefit under the said Scheme was taken by him along with Shri Saurabh Jain and consented by the Board;
- (vi) He further informed that they are engaged in Medical Transcription Services. The said business of Medical Transcription or Coding is received from their fellow subsidiary company namely, M/s. Aquity Solutions LLC, US; that M/s. Aquity Solutions LLC, US is engaged with the hospitals/medical service providers and assigns work to M/s. ASIPL for medical transcription;
- (vii) On being asked to elaborate the nature of services provided by them, he informed that they are dealing with hospitals or medical clients. In foreign countries, the doctors don't write prescription, they give verbal instructions or prescription through audio; **M/s. ASIPL receives the said prescriptions of the hospitals/ doctors through a system known as 'Fluency Platform', these files are in voice format which are processed through their system, about 90% of the work is routed through their automated speed recognition engine and gets converted in to text, the remaining has to be physically typed by their transcriptionists. There are some jobs which are still 100% typed by their transcriptionists after listening to the voice recordings;**
- (viii) He stated that they have claimed export incentives under SEIS Scheme of Foreign Trade Policy (2015-2020) towards the services rendered by them like Medical Transcription, Back Office Support, Quality Assurance etc. to their foreign based fellow company;

- (ix) He informed that he uses E-mail ID: [agnelo.rodriques@aquitysolutions.com](mailto:agnelo.rodriques@aquitysolutions.com) for his official correspondence with his colleagues and his bosses, including Shri Kashyap Joshi and Shri Saurabh Jain, CA of their company.
- (x) On being shown E-mail correspondence dated 05.03.2020, he stated that the E-mail was sent by Shri Saurabh Jain, wherein, he had discussed regarding eligibility of services rendered by M/s. ASIPL under SEIS Scheme. He also read the said communication and stated that as per Shri Saurabh Jain, who is Chartered Accountant of M/s. ASIPL and also looking into matters related to DGFT had opined in that **"In the Specified List of Services, none of the services under which they have claimed incentive is specifically named, they have extracted CPC List for details of specified service and taken some basis for claiming incentive though they are not specified in the list also"**. He also stated that it was a fact that name of services rendered by M/s. ASIPL, i.e. Medical Transcription; Coding, Quality Assurance etc. were not classified in Central Product Classification (CPC). He informed that though the services rendered by the company were not specifically mentioned in CPC but the basis for claiming the benefit was that their services were catering to hospital services;
- (xi) He informed that they have classified the services under code 9311 of CPC which is applicable for "Health Related and Social Services". Further, he informed that under the said code the Hospital Services are classified and these services are **'Services delivered under the direction of Medical Doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Hospital Services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services etc.'**;
- (xii) On being shown Application Form for service exports (ANF-3B) filed before jurisdictional DGFT for the period 2015-16, wherein. they have shown their services as 'Library, Archives, Museums and other Cultural Services' and classified under S. No. 8.C & 1.D.C of Appendix-3D, and to explain what kind of services they have provided during the period, i.e. 2015-16, he informed that they were providing Medical Transcription services in 2015-16 also. It was decided by the company to claim benefit under CPC Code-9311 later on even though the services were same;
- (xiii) On being asked to explain on whose directions/guidance the mis-classification was done and benefits under SEIS was availed, he stated that his Finance Representative was interacting with their Consultant who had advised him that Transcribed Reports which go back to the Hospital are archived in their database and they should, therefore, claim the benefit under that head. Thereafter the Consultant who advised for the upcoming year informed that their services cater to Hospital Services and therefore they should claim under the category claimed;

- (xiv) On being asked whether he was trying to shift the responsibility on the Consultant, he stated that they had gone by their interactions with their representatives in the Finance Team;
- (xv) On being asked that they were suppressing the actual nature of service from the Competent Authority (DGFT) and enriching the company at the cost of Government Revenue, he stated that they have not suppressed any facts from the Competent Authority. They have submitted copies of their Invoices giving the nature of their services and they have also submitted Inward Remittance Certificates which provide the nature of services for which the remittance has been received;
- (xvi) On being asked to explain the “Health Related and Social Services” defined in CPC Code 9311 as **‘Services delivered under the direction of medical doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Hospital services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services etc.’**, he stated that as per his understanding any services that are intended to maintain the health of a patient in hospitals which is given under the direction of medical practitioners is mentioned in this category;
- (xvii) On being asked to explain what Medical Transcription Service is, he stated that Medical Transcription is the process of converting Patient Health Records which are dictated by medical practitioners in voice recording devices to text. The audio files are received from Hospital which is the ultimate clients through the platform. About 90% of the transcription from audio to text happens through the automated speech recognition engine, the transcriptionist listens to the recordings to fill the gaps that could not be processed through the speech recognition engine. Some audio files have to be manually processed completely without use of automated speech recognition. Once the work is completed the text files are delivered to the Hospital directly through the same platform from which it was received. They don’t have any direct contracts/agreements with the hospitals; they are working for their fellow company at US namely, M/s. Aquity Solutions LLC under agreements;
- (xviii) On being asked to explain what Quality Assurance Service/Back Office Service/Coding Service is, he stated that Quality Assurance Service is the quality check or audit of the transcribed work to ensure that the quality of work is maintained as per company standards contracted with ultimate customers, i.e. hospitals. Further, Back Office Services are certain Back Office Support Services that have to be provided like proper work routing from customers to their production units and return back, Tech support to customers facing issues with the platform, etc. And Coding Service is the process of coding the various diseases

for which patients are being treated so that the hospitals can bill the insurance companies appropriately;

- (xix) On being asked that merely for getting export incentives, they have mis-declared services in the applications before the jurisdictional DGFT Office, he stated that they have acted on the basis of advice provided to their Finance Team by Consultants, wherein, they understand that their services are in the nature of Hospital Services as their transcribed records help to maintain patients' health status and are referred to by the doctors during their treatment of the patients;
- (xx) On being confronted that Medical Transcription Service, as explained by him and as per the data/definition available in public domain is a service of translating or converting audio into the text form and the record help in maintaining health status, rather it is merely a conversion of audio to text it has nothing to do with the patients' health at M/s. ASIPL's end. From their understanding without medical transcription or conversion of audio to text a patient can be directly treated by the audio suggestion/prescription of doctor which is happening in countries like India, this service they are rendering for the facilitation of their clients not for the patients, he stated that, unfortunately in the US patients cannot be treated on the basis of audio prescriptions. There are laws that mandate maintenance of health records in electronic form for both treatment and insurance claims there in the US. It is therefore an essential document that is referred to by doctors while treating their patients in the US and which is critical for the operations of hospitals. Maintenance of health records in electronic form is as per laws prevalent in the US. They do not directly deal with insurance companies and their services are to hospitals. Their contract is with their fellow subsidiary who have contracts with the hospitals in the US and their entire arrangement for providing services is in this manner. Their fellow subsidiary is giving them work of different hospitals based in US and they are providing services as per the requirement;
- (xxi) On being shown Export Invoice No. NGP/18-19/023 dated 31.03.2019, wherein, the services rendered by them, i.e. Medical Transcription Services are classified by them under SAC (Service Accounting Code) 9983, which is universally accepted nomenclature/classification code; however, while claiming SEIS benefits they are classifying the said services under CPC 9311. These records are their own records and for the same service but are contradictory in terms of classification in the two documents being created/maintained by them, this again establishes that with intent to avail undue benefits under SEIS Scheme, they have wrongly classified the said services under 9311 before DGFT in the applications filed by them, because SEIS benefit is not available to services falling under CPC 9983 (meant for 'Other Professional, Technical and Business Services), to this he stated that along with all their applications they have submitted the invoice copies which clearly mentions Medical Transcription as the services provided. He

reiterated there was no intent to avail undue benefits. He further stated that with regards to the numbering of the service codes, their finance representative, Shri Saurabh Jain may be in a better position to answer the question.

**6.2. Statement of Shri Saurabh Jain, Senior Manager Finance And Accounts of M/s. ASIPL** was recorded on 23.10.2020 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*, stated that:

- (i) He has been working in M/s. ASIPL as Senior Manager, Finance and Accounts since 25<sup>th</sup> January, 2020. He informed that his work in M/s. ASIPL as Senior Manager, Finance and Accounts includes finalization of Books of Accounts, handling of Statutory Audits and other audits, handling of taxation matters, monthly management reporting, filing of Tax Returns, monthly billing review, filing of SEIS claims, handling of US GAAP Audit etc.;
- (ii) He informed that M/s. ASIPL provides Medical Transcription Services, Medical Coding Services, Quality Assurance Services, IT Support Services, Back Office Support Services (Quality and Turnaround Time Monitoring, Implementation, Routing and Load Balancing, Training, Operations Support and Optimization, Management Information System and Analysis, Accounting and Data Processing, Receivables, Management and other similar assignments), Scribing Services to their clients;
- (iii) He informed that M/s. ASIPL provides services to only one foreign client, i.e. M/s. Aquity Solutions LLC;
- (iv) While elaborating in detail the procedure of providing services to their foreign client M/s. Aquity Solutions LLC, he stated that their company has executed agreement with M/s. Aquity Solutions LLC, USA only and pursuant to the said agreements, they are providing Medical Transcription Services to it. He further clarified that they are raising invoices to M/s. Aquity Solutions LLC, USA and against the said invoices, they receive remittances from them. On the basis of the said invoices and remittances, they have claimed export incentives under Service Export Incentive Scheme of Foreign Trade Policy (SEIS Scheme). **He further stated that in the invoices they have mentioned the said services as Medical Transcription Services clearly, however, in the application filed before DGFT the said services were declared as 'hospital Services' or 'libraries, Archives, Museums and other cultural services' for claiming SEIS benefits;**
- (v) He stated that they have claimed SEIS Scheme benefits for services under CPC Code 9311 as "Hospital Services" except Back Office Support Services and Scribing Services. They have claimed SEIS benefit for Back Office Services under CPC code 8660 as "Services relating to Management Consulting". They have not claimed any benefit for Scribing Services yet;

- (vi) On being asked to justify their claim made for services under CPC Code 9311 as "Hospital Services", he stated that as their services were related to Hospital, they claimed SEIS scheme benefits under CPC Code 9311 as "Hospital Services";
- (vii) On being asked to go through the relevant page of CPC Code 9311 as "Hospital Services" and explain whether Medical Transcription Service were mentioned in it or not, he stated that Medical Transcription Services are not mentioned against CPC Code 9311 and CPC code 9311 includes "Hospital Services" only;
- (viii) On being asked to peruse Trade Notice No. 04/2018 dated 24.04.2018 and in light of the said Trade Notice of DGFT, he was asked to explain whether the services rendered, i.e. Medical Transcription Services are entitled for SEIS benefits under Appendix-3D or not because the said services are not notified in Appendix-3D, to which he replied that he has gone through the contents of the Trade Notice No. 04/2018 dated 24.04.2018 and Medical Transcription Services and IT support Services are not mentioned there;
- (ix) On being asked to go through the ISIC classification pages viz. 7499-Other Business Activities Not Elsewhere Classified and then corresponding CPC Code 87909-Other Business Services and to explain why their claim made against CPC Code 9311 as "Hospital Services" for SEIS benefits be classified Under Other Business Activities Not Elsewhere Classified (This class includes a great variety of service activities Generally delivered to commercial clients) having specific heading as "Other Secretarial Activities, such as transcribing from tapes or discs, to which he replied that they were of the opinion that being the services related to Hospital Services it would be more precise to cover under CPC Code 9311 as "Hospital Services" and accordingly they claimed the benefit under CPC Code 9311 as "Hospital Services". They were not sure of taking these services under CPC Code 87909-Other Business Services and the ISIC Classification viz. 7499-Other Business Activities Not Elsewhere Classified (This class includes a great variety of service activities generally delivered to commercial clients) having specific heading as "Other Secretarial Activities" such as transcribing from tapes or discs. Since, Other Business Services includes other secretarial activities such as transcribing from tapes or discs, their services may also be covered under CPC Code 87909-Other Business Services;
- (x) On being asked to go through the E-mail submitted by him which were forwarded by him to Shri Kashyap Joshi, Director and copy to Shri Agnelo Rodrigues, Director, wherein, he has stated that ***"In the Specified List of Services, none of the services under which they have claimed incentive is specifically named, we have extracted CPC List for details of specified service and taken some basis for claiming incentive though they are not clearly specified in the list also"***, he stated that he joined M/s. Aquity India on 25.01.2020 and he had opinion



that none of the services under which they claimed incentives was specifically named in the Specified List of Services they claimed though they are not clearly specified in the list also.

**6.3 Further statement of Shri Agnelo John Rodrigues, Director and Company Secretary and Authorized Representative of M/s. ASIPL** was recorded on 01.02.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*:

- (i) On being asked regarding his role and responsibility in the said company, he stated that in the capacity of Professional Director of the said company, he is responsible for all the legal affairs of the said company and he also submitted Authorization Letter for appearing to record statement on behalf of M/s. ASIPL via E-mail dated 25.01.2021. Statement given by him in the capacity of a Director will be binding on the company as well as other Directors of the company;
- (ii) On being asked to give a brief introduction and details of M/s. ASIPL (Earlier known as M/s. MModal Global Service Private Limited) including all the details of the key persons (Indian and overseas) of the company and its subsidiary including all the offices/branch situated in the country, he informed that M/s. ASIPL was originally incorporated as M/s. CBay Systems (India) Private Limited in the year 1999 and in year 2012 the name was changed to M/s. MModal Global Service Private Limited. Further in February, 2019 the name of the company was further changed to M/s. ASIPL. M/s. ASIPL is governed by Board of Directors consisting of Shri Kashyap Joshi, Shri Jason Kolinowski and himself. Besides the Board, they have various Managers to take care of various functions of the organizations. Shri Kashyap Joshi and Shri Jason Kolinsky, are US citizens and he is a citizen of India. All other Managers working in India are citizens of India. They currently do not have any subsidiary in India or overseas. In fact, they are a subsidiary of a foreign company, i.e. M/s. Aquity Holding Inc USA. They have had various branches in India in various states;
- (iii) On being asked whether M/s. Aquity Solutions LLC USA a Hospital, he replied in negative. He further added that it is a USA subsidiary of M/s. Aquity Holding Inc USA;
- (iv) On being asked to peruse the Invoices of M/s. ASIPL (formerly known as M/s. MModal Global Service Private Limited) and to whom they are generating the invoices, he submitted that he has seen the invoices dated 31.01.2019, 28.02.2019 and 31.03.2019 (03 invoices). They are raising the invoices on a monthly basis to the sole customer that they currently have contract with, i.e. M/s. Aquity Solutions LLC and in the past M/s. MModal Services Limited. Both companies are in USA. They do not raise invoices directly to Hospitals;

- (v) On being asked about the procedure which the company adopts in order to avail SEIS benefits, he stated that they had taken advice from Consultants about the SEIS scheme and have been guided orally by them in making their application before the DGFT to avail the benefits. He also stated that the names of the Consultants, are M/s. Shangrila Corporate Services Private Limited, Mumbai and M/s. Madhu Corporate Services Private Limited, Mumbai;
- (vi) On being asked whether any written guidance was given to M/s. ASIPL or not by the aforesaid Consultants, he stated that the Consultants have always advised orally and had prepared the applications;
- (vii) On being shown Form MGT-7 which is a Statutory Return filed under Companies Act, 2013, wherein, principal activity of business was shown as J (Information and Technology Services) described as "Data Processing, Hosting and related activities; Web Portal" and asked to justify it being a Hospital Service. And even if their services were related to Hospital Services, wouldn't they be declaring their services under Main Activity Group Code Q which is "Hospital and Medical Care". He stated that in MGT-7, they have chosen the service as per the drop down to disclose that their services fall under IT/ ITes Industry. The Group Code Q pertaining to "Hospital and Medical Care" does not give any explanation of the services included therein and therefore it was not chosen;
- (viii) On being confronted that at first during 2015-16, they declared their services as "Library, Archives, Museums and other Cultural Services" and as per the documents provided by DGFT, Mumbai in which it was clearly mentioned that Medical Transcription Service is not eligible for SEIS. Thereafter, M/s. ASIPL had declared all their services vide letter dated 21.11.2017 under Management Consulting Services (865), further classified under CPC 86509 Other Management Consulting Services which is defined as "Advisory, Guidance and Operational Assistance Services concerning other matters. These services include Industrial Development Consulting Services, Tourism Development Consulting Services etc.", he stated that for 2015-16, they had appointed M/s. Shangrila Corporate Services Private Limited, Mumbai to advise them and make necessary application for claiming entitlement under SEIS. In 2016-17, when they appointed M/s. Madhu Corporate Services Private Limited, Mumbai, they were orally advised by them that the services are better classified under a different head namely "Hospital Services" and that they should claim the benefits under that particular Head;
- (ix) On being confronted that for the period of 2016-17, 2017-18 and 2018-19, they have classified their services as "Hospital Services", however, Mr. Saurabh Jain was aware of the fact that their services don't fall under the Positive List for availing SEIS benefits (as per the E-mail print out taken during the search), and on being pointed out that M/s. ASIPL still went ahead with the wrong classification purposely which shows *mala fide* intention, to which he replied that he had seen the E-mail

in which it was mentioned that none of the services under which they have claimed incentive was specifically named. For 2015-16, they had appointed M/s. Shangrila Corporate Services Private Limited, Mumbai to advise them and make necessary application for claiming entitlement under SEIS. In 2016-17, when they appointed M/s. Madhu Corporate Services Private Limited, Mumbai, they were advised by them, their services were better classified under a different head namely "Hospital Services" and that they should claim the benefits under this particular Head;

- (x) On being explained that under the International Standard Industrial Classification (ISIC) 'Transcription Services' are classified under "Other Business Activities not elsewhere classified and sub-classified under other Secretarial Services for which ISIC Code is 7499. The same is reproduced herewith as under:

*"7499- Other business activities Not Elsewhere Classified*

*This class includes a great variety of service activities generally delivered to commercial clients. This class includes:*

*- Stenographic and mailing activities:*

- typing*

- Other secretarial activities such as transcribing from tapes or discs*

The corresponding CPC Code for "7499 -Other Business Activities Not Elsewhere Classified" is 87909 with description as "Other Business Services Not Elsewhere Classified". As per Central Product Classification (CPC) detail classification of 87909-Other business services n.e.c is reproduced as under:

*"87909 Other business services n.e.c.-*

*Services generally provided to businesses, not elsewhere classified.*

*Included here are business brokerage services, appraisal services other than for real estate, secretarial services, demonstration and exhibition services, etc."*

When he was asked to peruse the classification code and comment whether their clarification of services under Hospital Service is right or wrong, he stated that when they had claimed the SEIS benefits, they had solely gone on the oral expertise of their Consultants with regards to the classification of their services;

- (xi) On being asked that as an Executive Director, Company Secretary & Chief Compliance Officer of M/s. ASIPL, wasn't it his responsibility to check and verify the advice of Consultants (which was only verbal), he stated that since he is not expert in this particular matter, they had appointed Consultants to advise and guide them and in good faith, they had relied upon their advice;
- (xii) On being asked to peruse the Deficiency Letters issued by DGFT, Mumbai from time to time stating that their services weren't as per FTP 2015-20 and Medical Transcription Services wasn't eligible for SEIS benefits (as discussed earlier), he

stated that they had revised their application and filed based on advice of their Consultants, they hadn't changed the descriptions of their services before the DGFT;

**6.4.** Further statement of **Shri Agnelo John Rodrigues, Director and Company Secretary, M/s. ASIPL** was recorded on 02.02.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*:

- (i) On being asked to when did he join M/s. ASIPL and how many Crores worth of scrips have been issued by DGFT to M/s. ASIPL in view of the documents which were submitted to DGFT under his signature, he stated that he joined M/s. ASIPL in February, 2009 as Company Secretary and Chief Compliance Officer and he became the Director of the company in the year 2014. Being the signatory, all applications in respect of SEIS were signed by him and M/s. ASIPL availed approximately Rs. 55 Crores worth of SEIS Scrips;
- (ii) He was asked to peruse print out of E-mail communication dated 05.03.2020 taken during search at office premise of M/s. ASIPL, Navi Mumbai on 23.10.2020 which is reproduced as under:-

*Dear Sir,*

*As required, please find attached herewith, Public Notice 03/2015-20 for Specified List of Services for SEIS claim. Also attached Central Product Classification (CPC List) for Sub-code with elaboration of Specified Services and relevant extracts from the CPC List for the services under which we have claimed incentives.*

*In the Specified List of Services, none of the services under which we have claimed incentives is specifically named, we have extracted CPC List for details of Specified Service and taken some basis for claiming incentives though they are not clearly specified in the list also.*

*Regards,*

*Saurabh Jain,*

*Senior Manager- Finance and Accounts*

From the aforementioned E-mail it was clear that their service of transcription was not specifically mentioned in the Annexure to Appendix 3D, he was asked who had drafted the E-mail, he replied that Shri Saurabh Jain had drafted this E-mail and sent it to Shri Kashyap Joshi and with a copy to him in which it was written that none of the services under which they have claimed incentives was specifically named, they have extracted CPC List for details of Specified Service and taken some basis for claiming incentives, though, they are not clearly specified in the list also. He was aware of this communication;

- (iii) One being asked, that he was aware of the fact that their service of transcription was not specifically mentioned in Annexure to Appendix-3D (which is a Positive

List of Services) but M/s. ASIPL still went ahead with mis-classifying their services as “Hospital Service” to claim undue and ineligible Scrips resulting in loss of Customs Duty to the Government, he stated that the company had appointed Consultants to advice and liaison and process application for SEIS benefits and as per their oral advice, they were informed that the services fall within the description of Hospital Services and they should therefore make application under that head with his approval and signature;

- (iv) **On being asked that if the Consultants advised him to specify the services in different code, will he accept and do so again as he wasn't an expert, to this he replied in negative and said he will do some amount of homework as well as discuss that internally with the management and his reporting manager to see whether their services do fall in that category or not;**
- (v) He stated that he is aware that it is his responsibility that approximately total Rs. 55 Crores amount of ineligible Scrips have resulted in evasion of Customs duty of approximately Rs. 55 Crores in violation of the Customs Act, 1962, he stated that they do not have any written opinion from the Consultants. However, at the time of making applications, they were of the opinion that their services fell under the “Hospital Services” category and therefore were eligible for SEIS benefit. In the absence of written opinion from the Consultants, he did understand that he and the company have made a mistake and this could amount to responsibility being cast on them;
- (vi) On being asked to see the CPC definitions of “Management Consulting Services”, “Hospital Services” and the Write-up of services in response to Deficiency Letters issued by DGFT and comment on how does their Write-up justify their nature of services in which they have claimed SEIS benefits under “Management Consulting Services” for 2015-16 and “Hospital Services” for 2016-17, 2017-18 & 2018-19, respectively, he stated that he has seen both the Write-up of services. In the first write-up in response to the Deficiency Letter dated 07.09.2017, it was submitted that in the first, second and third paragraph it gives details of the capability of their platform and the services related to the transcription services. Fourth para suggests that their services enhance and integrate customer's workflow to provide the best solutions for their needs. As per the fifth para, they help organizations meet their revenue cycles and workforce management goals. After perusing the definition of CPC 86509 “Other Management Consulting Services”, as per his understanding the Transcription Services that they provide manages the process of converting the voice dictation of doctors into a written format for them to refer to in the course of their medication, so the service helps them in their operational process;

He further stated after perusing the definition of CPC 9311 “Hospital Services” and brief write-up that they have tried to explain in this write-up that their Medical

Transcription Services is how the dictation are converted into text reports which are referred by doctors in maintaining the health status of their patients and how technology has enhanced the capabilities of these services;

He further added that, there has been difference in the classification of services for the period 2015-16 and 2016-17 for which the SEIS benefits have been claimed. There has been a mistake on his part that he didn't ask for any written communication with their Consultants before going for the different nature of the services from time to time and he accepted his mistake and takes the responsibility for it;

On being asked that in different returns/documents (GST, MGT-7, application for SEIS claim as detailed in Para 5.3), they have been classifying services differently, he stated that questions related to GST Returns may be asked to Shri Saurabh Jain and for SEIS claims, he has already explained. Further, He stated that in MGT-7, they have chosen the service as per the drop down to disclose that their services fall under IT/ITes Industry and shown the group code as J (Information and Communication Services) described as "Data Processing, Hosting and related activities; Web Portal;

- (vii) On being asked to see the definition of CPC 8432 "Data-Processing and Tabulation Services" and the definition of Group code J (Information and Communication Services) described as "Data Processing, Hosting and related activities; Web Portal", he was asked whether the keywords "Data Processing" is mentioned in the definition of Group code J (Information and Technology Services) and CPC 8432, he stated that both the definitions have the same keyword, i.e. Data Processing. On being asked that their services are Data Processing Services as per the MGT-7 and should be falling under the closest CPC, i.e. 8432 "Data-Processing and Tabulation Services", he stated that he agreed that data processing that they have declared as their main services in MGT-7 appears in CPC 8432 but in his understanding and for claiming the SEIS benefits, they chose the closest definition, i.e. Hospital Services;
- (viii) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS), wherein, the para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, he stated that he had seen the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on MEIS and SEIS where in the para 3.3.2 (ii) at Page No. 33. it was clearly mentioned in the CAG Report, he agreed with the same and stated that Medical Transcription Services weren't eligible for SEIS incentives. On having perused this Report he stated that he will take this up for discussion with the Board

Members and apprise them that they may have to refund the entire benefits under SEIS after revisiting this;

- (ix) On being asked whether he agreed that M/s. ASIPL has taken undue SEIS incentives as per the Report of CAG, India 2020 No. 5 of 2020, he stated that as per the CAG Report, Medical Transcription Services weren't ineligible for SEIS benefits and therefore, he agreed that the SEIS incentives claimed by M/s. ASIPL were ineligible. However, he will have to discuss the issue with the Board Members for refunding ineligible SEIS benefits;

**6.5 Further statement of Shri Saurabh Jain, Senior Manager Finance and Accounts of M/s. ASIPL** was recorded on 03.02.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*, stated that:

- (i) He joined M/s. ASIPL on 21.01.2020 as Senior Manager Finance & Accounts and during his tenure total Rs. 15.92 Cr. worth of Scrips for the financial year 2018-19 had been issued to M/s. ASIPL based on the documents which were submitted to DGFT;
- (ii) He was asked to peruse print out of E-mail communication dated 05.03.2020 taken during search at office premise of M/s. ASIPL, Navi Mumbai on 23.10.2020 which is re-produced as under:-

*Dear Sir,*

*As required, please find attached herewith, Public Notice 03/2015-20 for Specified List of Services for SEIS claim. Also attached Central Product Classification (CPC List) for Sub-code with elaboration of Specified Services and relevant extracts from the CPC List for the services under which we have claimed incentives.*

*In the Specified List of Services, none of the services under which we have claimed incentives is specifically named, we have extracted CPC List for details of Specified Services and taken some basis for claiming incentives though they are not clearly specified in the list also.*

*Regards,*

*Saurabh Jain,*

*Senior Manager- Finance and Accounts*

From the aforementioned E-mail, it was clear that their Service of Transcription was not specifically mentioned in the Annexure to Appendix 3D. On being asked who had drafted this mail, he stated that the E-mail was drafted by him. **As he joined the company on 21.01.2020, after seeing the CPC List, he found that Medical Transcription keywords were nowhere mentioned in Annexure to Appendix 3D, therefore, he wrote to Shri Kashyap Joshi that their service isn't specifically mentioned in the Annexure to Appendix 3D, but on going**

through the definition of “Hospital Services” where it is found the nature of service which they provide was mentioned, considering that basis, they might have taken this under “Hospital Services”;

- (iii) On being confronted that he was aware of the fact that their Service of Transcription was not specifically mentioned in Annexure to Appendix 3D (which is a Positive List of Services) but he still went ahead with mis-classifying services as “Hospital Service” to claim undue and ineligible Scrips, he stated that he agreed that Medical Transcription Services weren’t specifically mentioned in the Annexure to Appendix 3D, but it seemed that the services which they provide were in the definition of Hospital Services. Considering the same as basis and after taking verbal opinion from the Consultants, they filed applications for SEIS benefits under “Hospital Services” despite knowing that Medical Transcription Services wasn’t clearly mentioned in the Annexure to Appendix 3D;
- (iv) On being asked about the details of their Consultants, he stated that for claiming SEIS benefits for 2015-16, the consultant was a person named Shri Jaikishan Bhagchandka of M/s. Shangrila Corporate Services Private Limited, 301/A, Crystal Plaza, New Link Road, Andheri West, Mumbai-400 053, Landline No. (022) 61355000. Further, for claiming SEIS benefits for 2016-17, 2017-18 and 2018-19, the Consultant was a person named Shri Krunal Pandya of M/s. Madhu Corporate Service Private Limited, B-203, Hetal Arch Co-Society, S.V. Road, Malad West, Mumbai-400 064, Mob. No. 9892206171;
- (v) On being asked if the consultants advised them to specify the services in different code, will he accept that and do so, he stated that if the consultants convince the management (Shri Agnelo Rodrigues, Shri Kashyap Joshi, Shri Jason Kolinowski) that the classification of services for SEIS scheme taken earlier were wrong then the management may accept it, as he is not in the position to take the key decisions;
- (vi) On being asked to peruse the Deficiency Letter issued by DGFT dated 02.11.2017 as received from DGFT Mumbai. On reading this Deficiency Letter, he was asked to reply specifically that did he still believe Medical Transcription Services were eligible for SEIS scheme, he stated that on reading the Deficiency Letter issued by DGFT dated 02.11.2017, it was clear that Medical Transcription Services provided by M/s. ASIPL were not eligible for SEIS benefits;
- (vii) On being asked to see the CPC definitions of “Management Consulting Services”, “Hospital Services” and the Write-up of services in response to Deficiency Letters issued by DGFT and comment on how does their Write-up justify their nature of services in which they have claimed SEIS benefits under “Management Consulting Services” for 2015-16 and “Hospital Services” for 2016-17, 2017-18 & 2018-19, respectively, he stated that he joined this company in the month of January 2020.



But in his opinion this decision might have been taken after discussion with management as suggested by the then Consultants. After perusing the definition of CPC 9311 “Hospital Services” and brief write-up, what they have tried to explain in the write-up is that Medical Transcription Services is how the dictation are converted into text reports which are referred by doctors in maintaining the health status of their patients and how technology has enhanced the capabilities of these services;

- (viii) On being asked that they have purposefully mis-classified services repeatedly before DGFT, first as “Library, Archives, Museums and Other Cultural Services”, second time as “Management Consultancy Service” and third time as “Hospital Services” despite the fact that their services weren’t mentioned in the Annexure to Appendix 3D, and they are trying to blame all this on the “verbal guidance” of the Consultants. He was asked did he think, being the Senior Manager, Finance and Accounts, it was his responsibility to ensure correct classification and proper declaration before DGFT & other Authorities, he stated that there has been difference in the classification of services for the period 2015-16 and 2016-17, 2017-18 and 2018-19 for which the SEIS benefits have been claimed. However, he wasn’t a part of this company before January, 2020 so he can’t explain the same. And Shri Jai Shekhwat, who assumed his position during that period may be asked the same. **However, after his joining in the company, he pointed out to company that their services do not specifically fall in Appendix 3D.** After discussion with Shri Agnelo Rodrigues and seeing the previous year’s write-up, he updated that write-up along with Shri Agnelo Rodrigues Sir and sent it to Shri Kashyap Joshi for his opinion and approval. Once this was approved by Shri Kashyap Joshi, the same was sent to Consultant for his review and confirmation and accordingly the same was filed with the signature of Shri Agnelo Rodrigues alongwith the application;
- (ix) On being asked why in different returns/documents (GST, application for SEIS claim, MGT-7), they had been classifying different services, he stated that they have their services registered for “Business Auxiliary Services”, “Technical Testing, Inspection Certification etc.” under Service Tax Registration and during the GST transition, they have kept the same services under GST. Business Auxiliary Services covers provision of services on behalf of clients. And as they are doing outsourcing work to M/s. Aquity Solutions LLC, USA, they fall under this service category. Further, he stated that the services they provide are Medical Transcription Services in which they maintain the health record (status) of the patients. The same service was falling under the definition of “Hospital Services” considering which the same might have been taken under “Hospital Services” and also few of the services were in relation to provisioning of Back Office Support Services which come under Management Consulting Services. The brief write-up of the services taken in each year was submitted to DGFT at the time of filing of

SEIS Application. Further, he stated that in MGT-7, they have chosen the service as per the drop down to disclose that their services fall under IT/ITes Industry and shown the Group Code as J (Information and Communication Services) described as "Data Processing, Hosting and related activities; Web Portal";

- (x) On being asked to see the definition of CPC-8432 "Data-Processing and Tabulation Services" and the definition of Group Code J (Information and Communication Services) described as "Data Processing, Hosting and related activities; Web Portal. Further, he was asked whether the keywords "Data Processing" both are mentioned in the definition of Group Code J (Information and Technology Services) and CPC 8432, he stated that both the definitions have the same keyword, i.e. Data Processing;
- (xi) On being asked that their services are Data Processing Services as per the MGT-7 and should be falling under the closest CPC, i.e. 8432 "Data-Processing and Tabulation Services", he stated he agreed that Data Processing that they have declared as their main services in MGT-7 is in CPC 8432. However, he had no idea about the reason of taking the services under Data Processing in MGT-7 as the same was filed by the Company Secretary;
- (xii) He was shown the International Standard Industrial Classification (ISIC), Transcription Services are classified under "Other Business Activities Not Elsewhere Classified and Sub-classified under other Secretarial Services for which ISIC Code is 7499. The same is reproduced herewith as under:
- "7499- Other Business Activities Not Elsewhere Classified.  
This class includes a great variety of service activities generally delivered to commercial clients.  
This class includes:  
- Stenographic and mailing activities:  
• typing  
• Other secretarial activities such as transcribing from tapes or discs*

However, corresponding CPC Code for "7499-Other Business Activities Not Elsewhere Classified" is 87909 with description as "Other Business Services Not Elsewhere Classified". As per Central Product Classification (CPC) detailed classification of 87909-Other Business Services Not Elsewhere Classified is reproduced as under:

*"87909 Other Business Services Not Elsewhere Classified-  
Services generally provided to businesses, not elsewhere classified.  
Included here are business brokerage services, appraisal services other than for real estate, secretarial services, demonstration and exhibition services, etc."*

On being asked to peruse the aforementioned definitions and to comment on it, he stated that he agreed that in ISIC with Secretarial Activities, "Transcribing from Tapes Or Discs Services" is written, but the same is not mentioned in corresponding CPC Code 87909 and only "Secretarial Services" are mentioned in CPC;

- (xiii) On being asked whether Medical Transcription is Transcribing Service or not, he stated that Medical Transcription is Transcribing Service as per his knowledge;
- (xiv) On being asked about previous answers, wherein, he has accepted that Medical Transcription was Transcribing Service and only "Secretarial Services" is excerpted in CPC from ISIC and, it clearly means that Transcribing Service isn't mentioned in CPC, then how were they classifying Medical Transcription Services in Hospital Services, he stated that he agreed that Transcribing Service is not mentioned in CPC List, however, seeing the definition of Hospital Services, they classified it in Hospital Services;
- (xv) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS), wherein, the Para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, he stated that he agreed with the Report, as per this Report, Medical Transcription Service doesn't fall under eligible services for SEIS benefits as these services come under CPC 8432. He also agreed that M/s. ASIPL has taken undue SEIS incentives as per the Report of CAG, India 2020 No. 5 of 2020, he stated that after seeing the Report, it seemed the Medical Transcription Service was ineligible for SEIS incentives.

**6.6. Statement of Shri Ganesh Omkarlal Bambori, Proprietor of a Chartered Accountant firm, M/s. Bambori & Associates, 3/A, Ganga Niwas, Opp., Tikitar Pvt. Ltd., Village Road, Bhandup (W) Mumbai-400075 was recorded on 17.02.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*, stated that:**

- (i) he is Proprietor of M/s. Bambori & Associates situated at 3/A, Ganga Niwas, Opp., Tikitar Pvt. Ltd., Village Road, Bhandup (W) Mumbai-400075. He resides at 2001, Mahaveer Universe Phoenix LBS Road, Bhandup (W) Mumbai-400 078. His Membership Number is 131260. He has been practising since 12 years. His E-mail ID is [caganeshbambori@gmail.com](mailto:caganeshbambori@gmail.com);
- (ii) On being asked to provide the details about the work he has done for M/s. ASIPL, he stated that he has done certification of enclosure to ANF-3B for Financial Year 2015-16 to 2018-19 which was pre-requisite documents for SEIS claims. He

worked with M/s. ASIPL under specific Letter of Engagement for the Financial Year 2018-19 and under verbal communication with Shri Jay Sekhawat for the Financial Years 2015-16 to 2017-18;

- (iii) On being asked about the procedure he had taken while certifying enclosure to ANF-3B of M/s. ASIPL, he stated that he examined and verified the following points:-
- i. Bills, invoices, FIRC's and evidence of foreign exchange earnings.
  - ii. Relevant records of expenditure in foreign exchange relating to service sector in the financial year.
  - iii. Services for which benefit is claimed do not include ineligible services and remittances as per the FTP and HBP 2015-20, policy circulars and Trade Notice as published from time to time.
  - iv. He has verified the information in Sl. No. 6 to 12 of the ANF-3B filed by the applicant.
  - v. He also examined and verified that he has correlated all the invoices mentioned in Annexure-B of this Certificate with the corresponding proof of remittance, he also correlated description of these invoices with the corresponding service category as per Appendix-3D and has filled the Table-1 of Certificate and the provisional CPC Code in Annexure-B accordingly;
- (iv) On being asked about the procedure while verifying the services in enclosure to ANF-3B in respect of M/s. ASIPL, he stated that M/s. ASIPL submitted Invoices and Write-up of services which were duly signed by Executive Director (Shri Agnelo John Rodrigues) of M/s. ASIPL. Only on that basis, he had verified the services of the company. He never verified the Write-up of services of the company with relevant CPC Code definition. In the Write-up of services, it was mentioned that Hospital Services which maintain the health status of the patient via health care service and electronic medical record reporting including Medical Transmission Service and Clinical Secretarial Service end to end technology solutions convert the physician dictation into compressive patient record through high quality clinical documentation with rich contacts that is used for clinical decision support and maintaining the health status of patients in hospital. The Write-up of services was totally different with relevant CPC definition, i.e. Hospital Services;
- (v) On being asked that M/s. ASIPL at first declared their services as "Library, Archives, Museums and other cultural services" in the year 2015-16 despite the fact that the services, i.e. Medical Transcription Services provided by M/s. ASIPL were not mentioned in the Annexure to Appendix 3D, however, the enclosure of ANF-3B verified by him for the year 2015-16. Did he think being the Chartered Accountant, it was his responsibility to ensure correct classification and proper

declaration before DGFT & other Authorities, to this he stated that M/s. ASIPL submitted the Write-up of services for "Other Management Consulting Services" before him. M/s. ASIPL did not submit any Write-up of services for "Library, Archives, Museums and other cultural services". He has not seen the relevant CPC Code for "Library, Archives, Museums and other cultural services". He has seen the definition of relevant CPC for the period 2015-16 for the services "Other Management Consulting Services". Only on the definition provided by the company, i.e. the data of medical transcript stored as a record and can be used, hence it is defined as "Library, Archives, Museums and other cultural services". After that Shri Jay Sekhawat requested for re-classification of the said services as "Other Management Consulting Services (86509)" and provided Write-up of "Management Consulting Services". After seeing the definition of relevant CPC it is clear that Write-up of services submitted by the company is totally different from relevant CPC definition in the category;

- (vi) On being asked to see the invoices submitted by him, wherein, Medical Transcription Services have been shown and the column of services as per Appendix 3D/3E of enclosure to ANF-3B for the F.Y. 2018-19, wherein. for taking SEIS benefits Hospital Services have been shown in enclosure, he replied that Medical Transcription Services is not specifically mentioned in Appendix 3D, but the basis to mention Medical Transcription Service as "Hospital Services" in enclosure to ANF-3B is that the services were going to be used for Hospital only which maintain the health status of the patient via health care service and electronic medical record reporting including Medical Transmission Service and Clinical Secretarial Service end to end technology solutions convert the physician dictation into compressive patient record through high quality clinical documentation with rich contacts that is used for clinical decision support and maintaining the health status of patient in hospital;
- (vii) On being asked to peruse the definition of CPC 9311 'Hospital Services', i.e **"Services delivered under the direction of medical doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Hospital services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services etc"**. He was asked to see the definition given by him and the actual definition of CPC and asked for his reply, to which he stated that he has seen the definition of CPC of "Hospital Services". He further agreed that both the Write-up of services (Write-up of services submitted by M/s. ASIPL and CPC definition) were different. He had certified the enclosure to ANF-3B on the basis of Write-up of services as provided by the company;
- (viii) On being asked that being a Chartered Accountant wasn't it his responsibility to check the CPC definition before certifying the enclosure to ANF-3B for the services

for SEIS benefits, he stated that yes it was his responsibility to check the CPC definition before certifying the enclosure to ANF-3B. He had certified the enclosure to ANF-3B only on the basis of Write-up of services submitted by M/s. ASIPL. After perusal the definition of Hospital Services of CPC, it is clear that the Write-ups of services submitted by M/s. ASIPL was different from actual CPC definition of Hospital Services;

- (ix) He was shown the International Standard Industrial Classification (ISIC), Transcription Services are classified under "Other business Activities Not Elsewhere Classified and Sub-classified under other Secretarial Services for which ISIC Code is 7499. The same is re-produced herewith as under:

*"7499- Other business activities Not Elsewhere Classified.*

*This class includes a great variety of service activities generally delivered to commercial clients.*

*This class includes:*

*- Stenographic and mailing activities:*

*• typing*

*• Other secretarial activities such as transcribing from tapes or discs*

However, corresponding CPC Code for "7499-Other Business Activities Not Elsewhere Classified" is 87909 with description as "Other Business Services Not Elsewhere Classified". As per Central Product Classification (CPC) detailed classification of 87909-Other Business Services Not Elsewhere Classified is re-produced as under:

*"87909 Other business services Not Elsewhere Classified -*

*Services generally provided to businesses, not elsewhere classified.*

*Included here are business brokerage services, appraisal services other than for real estate, secretarial services, demonstration and exhibition services, etc."*

On being asked to peruse the aforementioned definitions and to comment on it, he stated that he agreed that in ISIC with secretarial activities, "Transcribing from Tapes or Discs Services" is written but the same is not mentioned in corresponding CPC Code 87909 and only "Secretarial Services" are mentioned in CPC.

- (x) On being asked whether Medical Transcription is Transcribing Service or not, he stated that Medical Transcription is Transcribing service as per his knowledge;
- (xi) On being asked to peruse the Deficiency Letter issued by DGFT dated 02.11.2017 as received from DGFT, Mumbai, wherein, it is specifically mentioned that Medical Transcription Services are not eligible for SEIS scheme, he replied that it was clear that Medical Transcription Service weren't eligible for SEIS benefits;
- (xii) On being asked to go through the enclosure to ANF-3B of M/s. ASIPL for the year 2015-16 to 2018-19 in which he has certified the Services first as "Library, Archives, Museums and other cultural services", Second time as "Management

Consulting Services” (865) further classified under CPC 86509 “Other Management Consulting Services” which is defined as “Advisory, Guidance and Operational Assistance Services concerning other matters” and third time as “Hospital Services” despite the fact that the services of M/s. ASIPL are not mentioned in the Annexure to Appendix 3D, he stated that generally he communicated with Shri Jay Sekhawat (The then Account Manager of M/s. ASIPL). He has seen CPC definition for “Management Consultancy Services” only. He has never seen the CPC Code definition of relevant services in respect of M/s. ASIPL while certifying the enclosure to ANF-3B. Shri Jay Sekhawat submitted aforesaid all Write-up of services of M/s. ASIPL which were sheer contradictory with the service definition of relevant CPC. It was his responsibility to see the CPC definition of services before certifying the services of M/s. ASIPL;

- (xiii) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) where in the para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, he stated that he agreed with this Report that Medical Transcription Service don't fall under eligible services for SEIS benefits as these services come under CPC 8432. M/s. ASIPL submitted the Write-up of services which is different from relevant CPC definition. He certified the enclosure to ANF 3B only based on the Write-up;
- (xiv) On being shown the invoices submitted by him in which SAC Code was 9983 (Other Professional, Technical and Business Services), however, the services have been shown as Medical Transcription Services but for claiming SEIS benefits the same services have been shown as Other Management Services (2015-16) and Hospital Services (2016-17 to 2018-19). On being asked to explain the same he stated that he has only verified Invoices with regard to supply of service from India to outside India and corresponding FIRC. He hasn't verified the SAC Code, i.e. 9983;
- (xv) On being asked having perused the Deficiency Letters, relevant CPC definition and CAG Report in foregoing questions, would he still verify the said services as provided by M/s. ASIPL as “Hospital Services”, he stated that M/s. ASIPL has wrongly taken SEIS benefits by declaring services as “Hospital Services” and “Other management Consulting Services” and in future he would not verify and examine the enclosure to ANF-3B as “Hospital Service” for M/s. ASIPL.

**6.7 Statement of Shri Krunal Pandya, Director of M/s. Madhu Corporate Services Private Limited** was recorded on 09.03.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*, stated that:

- (i) he is Director of M/s. Madhu Corporate Services Private Limited, Mobile No. 98922-06171 (8-203, Hetal Arch, S.V. Road Malad West Mumbai- 400064) residing at A-1102, Regal Adarsh Dugdhalaya of Marve Road Malad West Mumbai-400064. His driving License No. is MH0220110046194 and Aadhar No is 6689 0732 3570. His E-mail ID is [krunal@madhuconsplancy.com](mailto:krunal@madhuconsplancy.com);
- (ii) On being asked he stated that in the capacity of Director of M/s. Madhu Corporate Services Private Limited, they have entered into agreement with M/s. ASIPL for collection of documents, preparation of application, submission of online as well as hard copies of the application along with declaration in the office of DGFT, Mumbai and follow up of the application in DGFT for issuance of SEIS Scrips; \
- (iii) On being asked to introduce the nature of work/services provided by M/s. Madhu Corporate Services Private Limited, he stated that his Company was providing Consultancy Services for claiming incentives from O/o. DGFT, Mumbai related matters and trading in transferrable Duty Credit Scrips;
- (iv) On being asked to submit the documents in respect of SEIS Scrips availed by M/s. ASIPL , he stated that they have a Letter of Engagement with M/s. ASIPL for three years, i.e. 2016-17, 2017-18 and 2018.19. He submitted following signed copies of documents in respect of SEIS Scrips availed by M/s. ASIPL:
  - i. Application submission receipt of DGFT, Covering letter, declarations, brief Write-up of the services, ANF-3B, online Application, Manual ANF-3B application alongwith CA Certificate enclosure to ANF-3B, Statement of Earnings and Statement of Expense certified by CA and query letter by DGFT and reply submitted in DGFT for the year 2016-17;
  - ii. Application submission receipt of DGFT, Covering letter, declarations, brief Write-up of the services ANF-3B, online application, Manual ANF-3B application alongwith CA certificate enclosure to ANF-3B, Statement of Earnings and Statement of Expense certified by CA for the year 2017-18;
  - iii. Application submission receipt of DGFT, Covering letter, declarations, revised brief Write-up of the services, ANF-3B, online application, Manual ANF-3B application alongwith CA certificate enclosure to ANF-3B, Statement of Earnings and Statement of Expense certified by CA for the year 2018-19;
  - iv. Letter of Engagement dated 16.03.2018 with M/s. Mmodal Global Services Private Limited and Letter of engagement dated 09.07.2020 M/s. ASIPL;
  - v. Purchase Invoice from M/s. ASIPL, Sale Invoice and extract of bank statement as payment of proof for the year 2016-17, 2017-18 and 2018- 19.
- (v) On being asked to provide the details of scope/ambit of Letter of Engagement in respect of M/s. ASIPL in details by highlighting the particular head in the said Letter of Engagement, he stated that the scope/ambit of Letter of Engagement in respect of M/s. ASIPL is providing a complete checklist of documents that will be required



for making the Application for claiming SEIS benefits under FTP. Checking and vetting of documents required to file along with application, Ensuring accuracy of application in the specified format of ANF & Appendix, Guidance in obtaining Certificate of CA for filing the application, as required, Compilation of the information provided by the company as required for filing of the application, Collection of documents to be submitted along with Application, Preparation of application through online e-com, Submission of hard copy of Application to the office DGFT, Mumbai, Discussion to ascertain the status and reason for Query, if any with Additional DGFT Officers, Assisting in replying of Deficiency Memo, Assisting in providing for clarification to the Authority in case of any query raised, Representation to the authority along with company's personnel as and when required, Assistance in obtaining Duty Credit Scrip after all the data documents are provided by the company as per DGFT Office requirement and shall act on company's specific instructions to carry out the activities covered in their scope and will not perform any management functions or take decisions on their behalf, Follow-up and pursue the status of the application in DGFT's office on behalf of company for issuance of SEIS Scrips;

- (vi) On being asked to provide the details of word "Assisting" as mentioned in the scope/ambit of Letter of Engagement in respect of M/s. ASIPL, he stated that Assisting means to assist in the preparation of all relevant documents (as provided by company) for submitting the same before DGFT, Mumbai to avail SEIS benefits;
- (vii) On being asked to provide the details of persons with whom he used to communicate regarding filing and processing the application for SEIS benefits, he stated that he used to communicate with Shri Jai Shekhawat, Shri Saurabh Jain and Shri Agnelo Rodrigues regarding filing and processing the application for SEIS benefits;
- (viii) On being referred to the statements given by Shri Agnelo Rodrigues and Shri Saurabh Jain, wherein, they have mentioned that M/s. ASIPL had applied for SEIS benefits after taking verbal opinions from Consultants, namely M/s. Shangrila Corporate Services Private Limited for 2015-16 and M/s. Madhu Corporate Services Private Limited for 2016-17, 2017-18 and 2018-19, he stated that they had discussed regarding SEIS Scheme and it was final call of the company that which service was best suited for which classification against CPC. As he was not under any management position to take any key decisions regarding any application filed by the company. The decision making power or finalization of nature of services as well as application for claiming SEIS benefits lied with Shri Agnelo Rodrigues, Shri Jai Shekhawat and Shri Saurabh Jain;
- (ix) On being asked to provide the details of the services provided by M/s. ASIPL, he stated that referring to personal discussions with Shri Jai Shekhawat and Shri Agnelo Rodrigues and their Engagement Letter with M/s. ASIPL, they provide

Medical Transcription, Quality Assurance and Medical Coding Services to Hospital, practicing individual doctors. They had also discussed about Book-Keeping and Management Consulting Services;

- (x) On being asked that as mentioned in the previous question that M/s. ASIPL provides "Medical Transcription Services" but as the documents submitted by him reflect that M/s. ASIPL has declared the same service in "Hospital Services" to take SEIS benefits, he stated that M/s. ASIPL submitted the brief Write-up of services which were duly signed by Executive Director (Shri Agnelo John Rodrigues) of M/s. ASIPL, wherein it was mentioned that *"We, ASIPL are leading service provider of healthcare industry solutions specializing in Hospital Services and Management Consulting Services:*

Hospital Services:

Class: 9311- Hospital Services

a.Subclass: 93 110- Hospital Services

*"Hospital Services which maintain the health status of a patient via health care services and electronic medical record reporting, including medical transcription services and clinical secretarial services, has gained great momentum over the last decade due to the comparatively higher costs involved in the infrastructure and recruiting of technically skilled personnel for medical transcription services....."*

*.....Our end to end technology enabled solutions convert the physician's (doctor's) dictation into a comprehensive patient record through high quality clinical documentation with rich context that is used for clinical decision support and maintaining the health status of a patient in hospital. Transcribing medical reports that are dictated by doctors, to maintain the health status of patients is highly skilled process that requires Specialized training and tools...*

*.....The Company also provides maintenance services for various platforms used to provide medical transcription services including managing servers, networking, clients interface requirements, smooth movements of encoded patients medical records files with appropriate audit trails and tracking.*

On that basis, he collected the relevant documents from M/s. Aquity India and submitted the same before the DGFT office;

- (xi) On being asked to see the definition of CPC 9311 "Hospital Services", i.e. *"Services delivered under the direction of medical doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Hospital services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services, etc"*. After reading the detail Write-up of services as provided by the party and the actual definition of CPC 9311, he was asked to comment on it. He stated that he read the detailed Write-up of services as provided by the party and the actual definition of CPC 9311. On perusal of both the definition, he said that it

was clear that the actual definition of CPC 9311 and the Write-up of services provided by M/s. ASIPL both were different;

- (xii) He was shown the International Standard Industrial Classification (ISIC), Transcription Services are classified under "Other Business Activities Not Elsewhere Classified and Sub-classified under other Secretarial Services for which ISIC code is 7499. The same is re-produced herewith as under:

*"7499- Other business activities Not Elsewhere Classified.*

*This class includes a great variety of service activities generally delivered to commercial clients.*

*This class includes:*

*- Stenographic and mailing activities:*

*• typing*

*• Other secretarial activities such as transcribing from tapes or discs*

However, corresponding CPC code for "7499 -Other business activities Not Elsewhere Classified" is 87909 with description as "Other business services Not Elsewhere Classified". As per Central Product Classification (CPC) detailed classification of 87909-Other business services Not Elsewhere Classified is reproduced as under:

*"87909 Other business services Not Elsewhere Classified -*

*Services generally provided to businesses, not elsewhere classified.*

*Included here are business brokerage services, appraisal services other than for real estate, secretarial services, demonstration and exhibition services, etc."*

On being asked to peruse the aforementioned definitions and to comment on it, he stated that he agreed that in ISIC with Secretarial Activities, "Transcribing from Tapes or Discs Services" is written;

- (xiii) On being asked whether Medical Transcription Services were the part of Transcribing Services or not, he stated that that Medical Transcription Services were the part of Transcribing Services;
- (xiv) On being asked to see the Trade Notice No. 04/2018 dated 25.04.2018 issued by DGFT in which it was clearly mentioned that Appendix 3D only has a Positive List of Services, with a CPC Provisional Code which has been made eligible for claiming benefit under SEIS. He was asked to explain in detail the meaning of **"Appendix 3D only has a Positive List of Services"**, to this he stated that **"Appendix 3D only has a Positive List of Services"** means the services mentioned in Appendix 3D are only eligible for SEIS benefits not other than that;
- (xv) On being asked to peruse the Deficiency Letter issued by DGFT dated 02.11.2017 as received from DGFT, Mumbai, he stated that it was clearly mentioned that Medical Transcription Services were not eligible for SEIS benefits;

- (xvi) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) where in the Para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) were not eligible for SEIS benefits, he stated that he agreed with this Report that Medical Transcription Service doesn't fall under eligible services for SEIS benefits as these services come under CPC 8432. From perusal of all the foregoing documents it was clear that M/s. ASIPL had wrongly taken SEIS benefits by declaring it's services as "Hospital Services" and "Other management Consulting Services";
- (xvii) On being asked to peruse the enclosure to ANF-3B of M/s. ASIPL for the year 2015-16 to 2018-19 in which the Services declared first as "Library, Archives, Museums and other cultural services", Second time as "Management Consulting Services" (865) further classified under CPC 86509 "Other Management Consulting Services" which is defined as "Advisory, Guidance and Operational Assistance Services concerning other matters" and third time as "Hospital Services" despite the fact that the services of M/s. ASIPL are not mentioned in the Annexure to Appendix 3D. On being asked to explain the same, he stated that he had seen the relevant documents of the F.Y. 2015-16 first time, since he worked with M/s. ASIPL for the year 2016-17, 2017-18 and 2018-19. Generally, he communicated with Shir Jay Sekhawat of M/s. ASIPL. What services company was providing, how the services were being exported was company's discretion and his scope was limited to enter into any management functions or decisions;
- (xviii) On being asked having perused the Deficiency Letters, relevant CPC definition and CAG Report in aforementioned questions, did he think "Medical Transcription Services" were eligible for SEIS benefits, he stated that M/s. ASIPL has wrongly taken SEIS benefits by declared it's services as "Hospital Services" and "Other Management Consulting Services" and in future he would not assist M/s. ASIPL to avail SEIS benefits for Medical Transcription Service.

**6.8. Statement of Shri Ashish Kumar, Assistant Vice President and Authorized Representative of M/s. Shangrila Corporate Services Private Limited** was recorded on 15.03.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia* stated that:

- (i) he is Assistant Vice President, M/s. Shangrila Corporate Services Private Limited, Mobile No. 82919-39097 (A-301, Crystal Plaza, New Link Road, Andheri (W) Mumbai- 400053). He resides at 104, Beach Heaven 2, Juhu Tara Road, Mumbai- 400049. His driving License No is MH0220080047066;
- (ii) He stated that in the capacity of Assistant Vice President and Authorized Representative of M/s. Shangrila Corporate Services Private Limited, this

statement was legally bound on him and his company also. On being asked regarding his role and responsibility, he stated that in the capacity of Assistant Vice President and Authorized Representative of M/s. Shangrila Corporate Services Private Limited, they have entered into the agreement for the year 2015-16 with M/s. ASIPL (Earlier known as M/s. MModal Global Services Private Limited) for collection of documents, preparation of application, submission of online as well as hard copies of the application along with declaration in the office of DGFT, Mumbai and follow up of the application in DGFT for issuance of SEIS scrips;

- (iii) On being asked to provide the details of the Directors of M/s. Shangrila Corporate Services Private Limited, he stated that the Directors of M/s. Shangrila Corporate Services Private Limited were as under:
- i. Shri Jai Kishan Bhagchandka
  - ii. Shri Ashish Kedia
- He also stated that aforesaid two persons were also the Directors in another firm, i.e. M/s. Shangrila Corporate Consultant LLP;
- (iv) On being asked to submit documents as called in, he submitted following documents:
- i. Two ANF-3B Applications alongwith CA Certificate enclosures to ANF-3B.
  - ii. Letter dated 10.03.2017 from M/s. Shagrila Corporate Services Pvt. Ltd to M/s. MModal Global Services Private Limited.
  - iii. Contract for arranging benefits against their eligible services dated 24.03.2017, 10.03.2017 of M/s. MModal Services Private Limited.
  - iv. Authority Letter dated 13.03.2021 issued by Shri Jai Kishan Bhagchandka, Director, M/s.Shangrila Corporate Services Pvt. Ltd.
  - v. Mutual Non-Disclosure Agreement dated 24.03.2017 between M/s. MModal Global Services Private Limited and M/s. Shangrila Corporate Services Private Limited.
- (v) On being asked who was the signing authority of M/s. Shangrila Corporate Services Private Limited and M/s. Shangrila Corporate Consultant LLP for contract/agreement and invoices etc., he stated that Shri Jaikisan Bhagchandka was the signing authority of M/s. Shangrila Corporate Services Private Limited and M/s. Shangrila Corporate Consultant LLP and he only knows the more details about this issue.

**6.9. Statement of Shri Jaikisan Bhagchandka, Director of M/s. Shangrila corporate Services Private Limited** was recorded on 17.03.2021 u/s. 108 of the Customs Act, 1962, wherein, he *inter-alia*, stated that:

- (i) he is Director of M/s. Shangrila corporate Services Private Limited, Mobile No. 9870098205 (A-301, Crystal Plaza, New Link Road, Andheri (W), Mumbai-400053) residing at 503, Highland Park, Andheri West, Mumbai-400053. His

Driving License No. is MH0220080155488. He is also a partner in M/s. Shangrila Corporate consultants LLP. His E-mail ID is [info@scsIndia.co.in](mailto:info@scsIndia.co.in);

- (ii) On being asked he informed that his company had entered into the agreement for the year 2015-16 with M/s. ASIPL for collection of documents, preparation of application, submission of online as well as hard copies of the application along with declaration in the office of DGFT, Mumbai and follow-up of the application in DGFT office for issuance of SEIS scrips;
- (iii) On being asked about his work profile in M/s. Shangrila Corporate Services Private Limited, he stated that his work in M/s. Shangrila Corporate Services Private Limited (further referred as SCS) is overview of the company, marketing, preparation of application for filing for SEIS, MEIS, Advance License, EPCG License etc. related to the Foreign Trade policy, purchase and sale of Transferable Licenses/Scrips;
- (iv) He informed that M/s. SCS is providing Consultancy Services for claiming incentives from O/o. DGFT related matters and trading in transferrable duty credit scrips. Further, they collect the documents for submission of application for claiming incentives from DGFT;
- (v) On being asked to provide the details of scope/ambit of contract in respect of M/s. ASIPL in details, he stated that the scope/ ambit of contract in respect of M/s. ASIPL is as follows:
  - i. Amendment in IEC.
  - ii. Amendment/ issuance of RCMC.
  - iii. Collection of documents, assisting in processing of documents, preparation of application, filing of online application for SEIS benefits.
  - iv. Purchase of license/ scrips.
- (vi) On being referred to statements of Shri Agnelo Rodrigues and Shri Saurabh Jain, wherein, they have mentioned that M/s. ASIPL has applied for SEIS benefits after taking verbal opinions from consultants namely M/s. SCS for 2015-16, he stated that he had discussed regarding SEIS Scheme and it was final call of the company that which service is best suited for which classification against CPC, as they were not under any position to take any key decisions regarding any application filed by the company. The decision making power or finalization of nature of services as well as application for claiming SEIS benefits lies with the company;
- (vii) On being asked to peruse two ANF-3Bs wherein in the point 5, i.e. Sector-wise details of Net Foreign Exchange earned for eligible services in one ANF- 3B, M/s. ASIPL (Earlier M/s. MModal Global Services Private Limited) described its services as "Libraries, Archives, Museums and other cultural services", "Management Consulting Services", however, in another ANF-3B "Libraries,

archives, Museums and other cultural services” were subsumed in “Management Consulting Services”. However, the actual prime service of M/s. ASIPL (Earlier M/s MModal Global Services Private Limited) was Medical Transcription Service, he stated that after going through the Deficiency Memo from O/o. DGFT, Mumbai that *Services of Medical Transcription is not eligible for SEIS and is wrongly classified under Libraries Archives, Museums and other cultural services. Hence the claim against Medical Transcription Services stands rejected*, the Deficiency Memo was forwarded to M/s. ASIPL (Earlier M/s. MModal Global Services Private Limited) after that the company had taken the stand that their services were classified under “Management Consulting Services” and submitted the reply to DGFT along with Write-up of services;

- (viii) On being asked to go through "Contract of arranging benefits against our eligible services" dated 24.03.2017 in which it was mentioned that:

*for issuance & Monetization of Duty credit scrips for FTP 2015-20 (relating to other than medical transcription services), we will transfer the same to you / your nominee @ 90% (Ninety Percent) inclusive of taxes...*

*... if SCS is able to enhance eligibility amount for our medical transcription Services SCS shall work on a turnkey basis where your scope of services will include as under...*

On being asked about the contract, he stated that in the scope of services of M/s. SCS is collection/processing/tabulation of relevant details/information/documents, Preparation and filing of applications/forms/representation before the concerned authority. M/s. ASIPL provided all necessary documents/letter/assistance/authorization to represent and submit/collect documents to or from the various authorities and to follow up with the concerned authority for release of the benefits;

- (ix) On being asked to see the detailed chart of SEIS working summery in respect of M/s. ASIPL for the F.Y. 2016-17, 2017-18 and 2018-19 in which net foreign earning in USD for “Management Consulting Service” was USD 79,03,962, USD 44,35,142.96 and USD 22,91,377.58 respectively, however, for 2015-16 net foreign earning in USD for “Management Consulting Service” was 4,74,09,060.73, which is very high compared to the years 2016-17, 2017-18 and 2018-19. On being asked to explain the same, he stated in the year 2015-16, the party had declared its all services as Management Consulting Services after receiving Deficiency Letter from DGFT. However, in the subsequent years they had separately taken SEIS benefits on “Medical Transcription Services” and “Management Consulting Services”;
- (x) On being asked didn't he as a Consultant notice the huge difference in the classification of the services between the two applications filed before the DGFT for the same nature of services being provided, he stated that their work as

Consultant was to prepare, process and file the application as per the documents provided by the M/s. ASIPL. He did agree that there has been a huge difference in classification between the two applications, but it was not their outlook to decide which service was to be categorized under what classification and therefore, they worked as directed by the company;

- (xi) On being asked to peruse the Deficiency Letter issued by DGFT dated 02.11.2017 as received from DGFT, Mumbai, he stated once the Deficiency Letter was issued the company had evaluated and clarified that by oversight, they had classified their "Medical Transcription Services" under "Libraries, Archives, Museums and other cultural Services", however, the same should be covered more appropriately under "Management Consulting Services" and therefore, they had decided to submit the revised application and accordingly the same had been processed by him;
- (xii) On being asked to see the ANF-3B for the year of 2015-16, wherein, M/s. ASIPL first declared its services first as under "Libraries, Archives, Museums and other Cultural Services" and second time as "Management Consulting Services" which was further declared as "Hospital Services", however, the nature of services provided by M/s. ASIPL remained same, i.e. "Medical Transcription Services". He was asked how can a service be classified three times differently, he stated that M/s. ASIPL had classified its services three times. Initially, they decided their services covered under "Libraries, Archives, Museums and other Cultural Services" but after getting Deficiency Letter from DGFT they had classified it in "Management Consulting Services" and regarding the classification in the "Hospital Services", during that period, he did not handle the same;
- (xiii) On being asked whether "Medical Transcription Services" is eligible for SEIS benefits under "Hospital Services", he stated that Medical Transcription Services were not eligible for SEIS benefits under Hospital;
- (xiv) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India scheme (MEIS) and Service Exports from India Scheme (SEIS), wherein, the Para 3.3.2 (ii) at Page No. 33, it is clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, he stated that he saw the CAG Report and agreed that "Medical Transcription Service" do not fall under eligible services for SEIS benefits as these services come under CPC 8432;
- (xv) On being asked having perused the Deficiency Letters, relevant CPC definition and CAG Report in aforementioned questions, did he think "Medical Transcription Services" were eligible for SEIS benefits, he stated that Medical Transcription Services are not eligible for SEIS Benefits and M/s. ASIPL has wrongly taken SEIS benefits on Medical Transcription Services.



**6.10. Statement of Shri Jay Singh, Dy. General Manager (Accounts & Stats), M/s. ASIPL** was recorded on 04.06.2021 u/s. 108 of the Customs Act, 1962, wherein, he inter-alia stated that:

- (i) His name is Jai Singh. His father's name is Shri Vijay Singh Sekhawat. He resides at Orchard Residency, Tower-6, 303, Ghatkopar West, Mumbai-400086. He was currently working as Senior Manager Finance and Accounts at Techdata Solutions Private Limited having its office at Powai, Mumbai. His E-mail ID is [jay.shekhawat84@gmail.com](mailto:jay.shekhawat84@gmail.com);
- (ii) On being asked about his work profile in M/s. ASIPL (Accounts and Tax). He reported to the Executive Director of M/s. ASIPL;
- (iii) He was asked to peruse the Invoices of M/s. ASIPL and asked to whom they were generating the Invoices, he stated that he perused the Invoices dated 31.03.2017 and 31.03.2017 (02 invoices) and stated that they were raising Invoices on a monthly basis to their sole customer that they had contract with, i.e. M/s. Aquity Solutions LLC (formerly M/s MModal Service Limited, USA) for the period 2015-16, 2016-17 & 2017-18. They did not raise invoices directly to Hospitals;
- (iv) On being asked to tell how many Crores worth of Scrips have been issued by DGFT to M/s. ASIPL due to documents which were submitted to DGFT during his tenure, he stated that during his tenure total Rs. 39.23 Cr. worth of Scrips for the Financial Year 2015-16, 2016-17 and 2017-18 had been issued to M/s. ASIPL based on the documents which were submitted to DGFT;
- (v) On being asked about the procedure followed by the company in order to avail the SEIS incentives, he stated that Consultants namely M/s. Shangrila Corporate Services Private Limited for year 2015-16 and M/s. Madhu Corporate Services Private Limited for year 2016-17 and 2017-18 used to guide them in knowing the eligible services after understanding the nature of business. And his part was basically to submit remittance details received during the year along with sample, FIRC and BRC sample copies. Applications were also prepared by the Consultants. Management, i.e. Shri Agnelo Rodrigues used to examine and review the applications before filing and signing the same. Basically the ultimate SEIS incentives brought to the company was because of the Application prepared by the Consultants and due cooperation from the Management, i.e. Shri Agnelo Rodrigues;
- (vi) On being asked whether he was aware that service of Medical Transcription was not specifically mentioned in Annexure to Appendix 3D (which is a Positive List of Services) but the company still went ahead with mis-classifying its services as "Library, Archives, Museums and other Cultural Services", as "Management

Consultancy Service” and as “Hospital Services” to claim undue and ineligible Scripts resulting in loss of Customs Duty to the tune of approximately 39.23 Crores for 2015-16, 2016-17 and 2017-18 to the Government Exchequer, he stated that Yes, he was aware that Medical Transcription was not specifically mentioned in Annexure to Appendix 3D. However, Consultants helped them to understand and process how and where our services fall in order to claim the SEIS incentives;

- (vii) On being asked whether he was implying that all the responsibility of wrong availment of incentives lied with the Consultants, he stated that Consultants helped them to understand and process how and where their services would fall in order to claim the SEIS incentives. However, Management (Shri Agnelo Rodrigues) used to examine, review and process his signed copies of application for SEIS. So, it was basically Shri Agnelo Rodrigues who was the sole decision maker in the whole process. However, he was not in the position to say whether availment is wrong or not;
- (viii) On being asked to see the CPC definitions of “Management Consulting Services”, “Hospital Services” and the Write-up of services in response to Deficiency Letters issued by DGFT and comment on how did the Write-ups justify the nature of services in which they have claimed SEIS benefits under "Management Consulting Services", for 2015-16 and "Hospital Services" for 2016-17 & 2017-18 respectively, to this he stated that he has perused the aforesaid documents. In 2015-16 services classified under Management Consulting Services which aims to improve the Transcription Services and fine tune clinical operation. This management enhanced and integrated their workflow to provide best solution for needs. This was discussed between Management and Consultants and then accordingly agreed for 2016-17 and 2017-18, it was claimed under Hospital Services as per the suggestions of Consultants and agreed by the Management because it is aimed at maintaining the health status of a patient;
- (ix) On being asked about the aforesaid Consultants, he stated that for claiming SEIS benefits for 2015-16, Consultant was a person named Shri Jaikishan Bhagchandka of M/s. Shangrila Corporate Services Private Limited, 301/A, Crystal Plaza, New Link Road, Andheri West, Mumbai-400 053, Landline No. (022) 61355000. Further, for claiming SEIS benefits for 2016-17, 2017-18 and 2018-19, Consultant was a person named Shri Krunal Pandya of M/s. Madhu Corporate Service Private Limited, B-203, Hetal Arch Co-Society, S.V. Road, Malad West, Mumbai-400 064, Mob. No. 9892206171;
- (x) On being asked to peruse the Deficiency Letter issued by DGFT dated 02.11.2017 as received from DGFT, Mumbai. On reading the Deficiency Letter he was asked to reply specifically whether he still believed Medical Transcription Services were eligible for SEIS scheme, he stated that upon going through the Deficiency Letter,

he thought Medical Transcription Services provided by M/s. ASIPL were not eligible for SEIS benefits;

- (xi) On being asked whether M/s. ASIPL was basically doing job work for M/s. MModal Service Limited, USA as it has out-sourced its work of transcription to M/s. ASIPL, he stated that yes, they were doing the job work for M/s. MModal Service Limited, USA under a contract for providing various services like Medical Transcription, Medical Coding, Virtual Scribing, Back Office Support etc.;
- (xii) The company has purposefully mis-classified its services repeatedly before DGFT, First as "Library, Archives, Museums and other Cultural Services", Second time as "Management Consultancy Service" and third time as "Hospital Services" despite the fact that their services were not mentioned in the Annexure to Appendix 3D, did he think, being the then Deputy General Manager (Accounts and Tax), it was his responsibility to ensure correct classification and proper declaration before DGFT & other Authorities, he stated that there had been difference in the classification of services for the period 2015-16, 2016-17 and 2017-18 for which the SEIS benefits had been claimed. However, his work consisted accounting, closing of books monthly, quarterly and yearly and return filing, tax filing, transfer pricing, helping in statutory audit service, providing data to Consultant (Billing, providing FIRC, BRC and soft copy of invoices on a sample basis) etc. The applications to DGFT for SEIS were never prepared by him nor were the nature of services decided by him. It was solely done by Management (Shri Agnelo Rodrigues) with the help of Consultants. He wasn't the key person to make any decisions;
- (xiii) He was asked to peruse the definition of CPC 8432 "Data-Processing and Tabulation Services" and the definition of Group code J (Information and Communication Services) described as "Data Processing, Hosting and related activities; Web Portal". Further he was asked whether the keywords "Data Processing" was present both in the definition of Group Code J (Information and Technology Services) and CPC 8432, to which he stated that yes, both the definitions had the same keyword, i.e. Data Processing;
- (xiv) On being asked that their services were data processing services as per the MGT-7 and should be falling under the closest CPC, i.e. 8432 "Data-Processing and Tabulation Services". He stated that he agreed that company's services fall under the closest CPC, i.e. 8432 "Data-Processing and Tabulation Services", however, their Data Processing Services were performed for a Hospital through M/s. Aquity Solutions LLC, USA, so the application was processed through 'Hospital Services';

- (xv) On being asked whether M/s. ASIPL has any agreements with hospitals/doctors in USA, he replied in negative and said that as per his knowledge, M/s. ASIPL didn't have any such agreement with hospitals/doctors in USA;
- (xvi) On being confronted that M/s. ASIPL provide services, i.e. Transcription, Coding, Virtual Scribing Services and Back Office Support Services, but they have taken SEIS benefits under "Management Consulting Services" (865) further classified under CPC 86509 "Other Management Consulting Services" which is defined as "Advisory, Guidance and Operational Assistance Services concerning other matters" for the period 2015-16 and for the period of 2016-17, 2017-18 they have classified the services as "Hospital Services". He was further asked to see the Trade Notice No. 04/2018 dated 25.04.2018 in which it was explicitly mentioned "it is noted that Appendix 3D does not mention any services as IT/ITes service and only has a Positive List of services, with a CPC Provisional Code which has been made eligible for claiming benefit under SEIS", he was asked to explain the same to which he stated that basically company's services (Medical Transcription Services) were not specifically mentioned in the Positive List of Services but after going through the CPC, Consultants advised them to make it fall under "Hospital Services";
- (xvii) He was shown the International Standard Industrial Classification (ISIC), Transcription Services are classified under "Other Business Activities Not Elsewhere Classified and Sub-classified under other Secretarial Services for which ISIC code is 7499. The same is reproduced herewith as under:

*"7499- Other business activities Not Elsewhere Classified*

*This class includes a great variety of service activities generally delivered to commercial clients.*

*This class includes:*

*- Stenographic and mailing activities:*

*• typing*

*• Other secretarial activities such as transcribing from tapes or discs*

However, corresponding CPC Code for "7499-Other Business Activities Not Elsewhere Classified" is 87909 with description as "Other Business Services Not Elsewhere Classified". As per Central Product Classification (CPC) detailed classification of 87909-Other Business Services Not Elsewhere Classified is reproduced as under:

*"87909 Other business services n.e.c. -*

*Services generally provided to businesses, not elsewhere classified.*

*Included here are business brokerage services, appraisal services other than for real estate, secretarial services, demonstration and exhibition services, etc."*

He stated that he agreed that in ISIC with Secretarial Activities, Transcribing from Tapes or Discs Services is written but the same is not mentioned in corresponding

CPC code 87909 and only "Secretarial Services" are mentioned in CPC. Further, only Convention Services is the only service mentioned in the Positive List from CPC Code 87909;

- (xviii) On being asked whether Medical Transcription was Transcribing Service or not, he stated that Medical Transcription was Transcribing service as per his knowledge;
- (xix) On being asked that in reply to the previous two questions, wherein, he had accepted that Medical Transcription is Transcribing Service and only "Secretarial Services" is excerpted in CPC from ISIC and, it clearly means that Transcribing Service isn't mentioned in CPC, then how were they claiming the SEIS incentives, he stated that he agreed that Transcribing Service wasn't mentioned in CPC List, however, seeing the definition of Hospital Services, they classified it in Hospital Services;
- (xx) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS), wherein, the Para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, he stated that he agreed with this Report, as per this Report, Medical Transcription Service weren't falling under eligible services for SEIS benefits as these services fall under CPC 8432.

## 7. **LEGAL PROVISIONS:**

### 7.1. **The Customs Act, 1962:-**

- A. **Section 28AAA: Recovery of duties in certain cases.** (1) *Where an instrument issued to a person has been obtained by him by means of—(a)collusion; or (b)willful misstatement; or (c)suppression of facts,for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such instrument is utilized under the provisions of this Act or the rules made or notifications issued thereunder, by a person other than the person to whom the instrument was issued, the duty relatable to such utilization 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.*

**Explanation 1.—** *For the purposes of this sub-section, "instrument" means any scrip or authorisation or license or certificate or such other document, by whatever name called, issued under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), with respect to a reward or incentive scheme or duty exemption*

scheme or duty remission scheme or such other scheme bestowing financial or fiscal benefits, which may be utilized under the provisions of this Act or the rules made or notifications issued thereunder.

**Explanation 2.** — The provisions of this sub-section shall apply to any utilization of instrument so obtained by the person referred to in this sub-section on or after the date on which the Finance Bill, 2012 receives the assent of the President, whether or not such instrument is issued to him prior to the date of the assent.

(2) Where the duty becomes recoverable in accordance with the provisions of sub-section (1), the person from whom such duty is to be recovered, shall, in addition to such duty, be liable to pay interest at the rate fixed by the Central Government under section 28AA and the amount of such interest shall be calculated for the period beginning from the date of utilization of the instrument till the date of recovery of such duty.

- B. **Section 28AA:** the person liable to pay Duty under Section 28 shall be liable to pay interest at rates fixed under sub-section 28(2) of the Customs Act, 1962.
- C. **Section 114AB: Penalty for obtaining instrument by fraud, etc.-** Where any person has obtained any instrument by fraud, collusion, willful misstatement or suppression of facts and such instrument has been utilized 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.

*Explanation:* For the purposes of this section, the expression “instrument” shall have the same meaning as assigned to it in the explanation 1 to Section 28AAA.

- D. **Section 117: Penalties for contravention, etc., not expressly mentioned-** Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].

## 7.2. **SEIS Scheme and related Laws:**

- A. The SEIS scheme envisaged in the Foreign Trade Policy 2015-2020 is based on the General Agreement on Trade in Services (GATS), which came into effect from January, 1995 onwards. The provisions of GATS as available on the official website of WTO ([www.wto.org](http://www.wto.org)) are detailed below:

The GATS applies in principle to all service sectors, with two exceptions. Article I(3) of the GATS excludes “services supplied in the exercise of governmental authority”. These are services that are supplied neither on a commercial basis nor

in competition with other suppliers. Cases in point are social security schemes and any other public service, such as health or education, that is provided at non-market conditions. The GATS distinguishes between four modes of supplying services:

- (i) **Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);**
- (ii) Consumption abroad refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service;
- (iii) Commercial presence implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains); and
- (iv) Presence of natural persons consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

Four modes of supply for the delivery of services in cross-border trade from the above is as follows:

Mode	Criteria	Supplier Presence
Mode 1: Cross-border supply	Service delivered within the territory of the Member, from the territory of another Member	Service supplier not present within the territory of the member
Mode 2: Consumption abroad	Service delivered outside the territory of the Member, in the territory of another Member, to a service consumer of the Member	
Mode 3: Commercial presence	Service delivered within the territory of the Member, through the commercial presence of the supplier	Service supplier present within the territory of the Member
Mode 4: Presence of a natural person	Service delivered within the territory of the Member, with supplier present as a <a href="#">natural person</a>	

The supply of many services is possible only through the simultaneous physical presence of both producer and consumer. There are thus many instances in which, in order to be commercially meaningful, trade commitments must extend to cross-border movements of the consumer, the establishment of a commercial presence within a market, or the temporary movement of the service provider



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

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 the Director General of Foreign Trade with effect from 01.04.2015, introduced two new schemes viz. Merchandise Exports from India Scheme (MEIS) for exports of specified goods to specified markets and **Service Exports from India Scheme (SEIS)** for increasing export of notified services, in the place of plethora of schemes earlier, as per Chapter 1 of FTP.

The relevant portions of SEIS scheme as notified in FTP 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 Paragraph 9.51(i) and Paragraph 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 India n 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.
- (f) 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 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.

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

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

3.12 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.

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

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

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

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

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

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

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

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

**(i) Supply of a 'service' from India to any other country; (Mode1- 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.)”**

**7.3. 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 India n natural persons in the territory of any other country.”

**7.4. 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.

**7.5. The Provisional Central Product Classification (CPC)** was issued by the Department of International Economic and Social Affairs, Statistical Office of the United Nations, constitutes a complete product classification covering goods and services. The CPC is a system of categories covering both goods and services that is both exhaustive and mutually exclusive. 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). It also contains descriptions about the services. As per Rule 56 of Rules for Interpretation of the application of CPC, under Chapter-III of CPC version 2.1, **“when services are classifiable under two or more categories, classification shall be effected as follows:**

- (a) The category that 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 which cannot be classified by reference to (a) shall be classified as if they consisted of the service which gives them their essential character, in so far as this criterion is applicable;

- (c) When services cannot be classified by reference to (a) or (b), they shall be classified under the category that occurs last in numerical order among those that equally merit consideration”.

- 7.6. As per the Public Notice no. 07/2015-20 dated 04-05-2016 issued by DGFT notified Appendix 3E listed the services, out of the services notified (vide Appendix 3D) where payments for exports are paid in INR but remitted or remittable from overseas buyer in foreign exchange including through its agents in India are deemed to be earned in foreign exchange and eligible for SEIS reward/scrip. As per Paragraph 3.04 of Hand Book of Procedures for FTP, the application for the SEIS reward for eligible services rendered shall be filed in **ANF-3B form**. As per this 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 Paragraph 9.51(i) and Paragraph 9.52(ii) of FTP and do not fall under ineligible category or service as per Paragraph 3.08 and Paragraph 3.09 of FTP and the Chartered Accountant/Cost and Works Accountant/Company Secretary certifies those declarations/claims after due examination.
- 7.7. 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.
- 7.8. **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) [an internationally agreed standard set of recommendations on how to compile measures of economic activity], "services" are defined as below:  
"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.*

- 7.9.** *As per the MSITS, 2010 in Chapter III titled “Services transactions between residents and non-residents”, “Service Subcontracting” states that “Service subcontracting entails the purchase and sale of services without any significant transformation of the service between the purchase and the sale (for example, in business, transport, construction or computing). For example, a specialist service arranger who has been paid to provide back-office functions for a customer may subcontract to another contractor. Subcontracting is therefore similar in some ways to merchanting of goods, as the services are purchased and resold. However, the degree of transformation involved may be harder to identify for services than for goods, for example, in the case of bundling and managing the services of different contractors. “Service merchanting” of this kind is an important activity in some economies. The value of services exported and imported in the economy of the service arranger is recorded on a gross basis. This treatment is applicable because the arranger buys and sells the services; if the arranger acted as an agent on a commission basis, then only the commission would be recorded as the service provided by the arranger. These services are classified to the appropriate specific service classification, for example, transport, construction, computer, or other business services.”*
- 7.10.** *From the combined reading of abovementioned provisions and definitions including Paragraph 3.08 of FTP, it appears that SEIS scheme is subject to following eligibility and entitlement criteria:*
- a) Applicant of SEIS reward/scrip shall be an actual provider of the notified service/services, i.e. who actually renders or performs the services and not who arranges or otherwise deals with the notified service including acquisition and re-sale of services. (Paragraph 3.08 (a) and Paragraph 3.09 (1) of FTP)*
  - b) Applicant of SEIS reward should have either supplied the notified service to the service consumer in any other country or supplied the notified service to service consumer of any other country in India . (Paragraph 9.51 (i) & 9.51(ii) of FTP)*
  - c) Applicant should have earned the foreign exchange towards performing the notified service for which the SEIS reward is sought. (Paragraph 3.09 (1) of FTP)*

- d) *Reward is calculated at the rate notified in Appendix 3D on the net foreign exchange earned by the applicant in performing the service after deducting the expenses/payments made in foreign exchange. (Paragraph 3.08(a) and Paragraph 3.08(d) of FTP)*
- e) *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. (Paragraph 9.50 of FTP).*

**7.11.** *The criteria listed at the above paragraph is further supported by the Trade Notice 11/2015-20 dated 21-07-2016 issued by DGFT stated that only foreign exchange remittances earned as amounts in lieu of services rendered by the Service Exporter would be counted for computation of the entitlement under the Scheme and the State/Central Taxes payable by any customer to Governments which are collected from the customer by the service provider on behalf of the Government concerned are not earnings of the service provider.*

## **8. QUANTIFICATION OF LIABILITIES:**

**8.1.** As established in the above paras, M/s. Aquity India have obtained 105 SEIS Scrips from DGFT Mumbai by willful mis-statement and suppression of various facts. However, during investigation it has been gathered that total 93 Scrips have been utilized. These 93 scrips have been utilized by 4 Importers for import of their goods. The details of SEIS Scrips and the corresponding Bs/E are detailed in Table-B below:

**TABLE-B**

Port at Scrip Utilized	BE Number	BE Date	Importer by which scrip utilized	Scrip Number	Amount of Scrip utilized against Duty (in Rs.)
New Mangalore Port	4515382	22-12-17	Adani Wilmar Limited	319138404	2499990
New Mangalore Port	4515382	22-12-17	Adani Wilmar Limited	319138405	2499990
New Mangalore Port	4515382	22-12-17	Adani Wilmar Limited	319138406	2499990
New Mangalore Port	4515382	22-12-17	Adani Wilmar Limited	319138407	892847
New Mangalore Port	4436263	16-12-17	Adani Wilmar Limited	319138407	1607143
New Mangalore Port	4436263	16-12-17	Adani Wilmar Limited	319138408	9999988
New Mangalore Port	4436263	16-12-17	Adani Wilmar Limited	319138409	9999988
New Mangalore Port	4436263	16-12-17	Adani Wilmar Limited	319138410	9999988
New Mangalore Port	4436263	16-12-17	Adani Wilmar Limited	319138411	9999988
New Mangalore Port	4506702	21-12-17	Adani Wilmar Limited	319138412	9999988
New Mangalore Port	4506702	21-12-17	Adani Wilmar Limited	319138413	9999988
New Mangalore Port	4506702	21-12-17	Adani Wilmar Limited	319138414	9999988
New Mangalore Port	4515382	22-12-17	Adani Wilmar Limited	319138415	9999988
New Mangalore Port	4506702	21-12-17	Adani Wilmar Limited	319138416	509645
New Mangalore Port	4515382	22-12-17	Adani Wilmar Limited	319138416	82784

New Mangalore Port	4662627	03-01-18	Adani Wilmar Limited	319138416	577706
Nhava Sheva Port	7207851	13-07-18	Frigorifico Allana Pvt. Ltd.	319165104	4999990
Nhava Sheva Port	7207851	13-07-18	Frigorifico Allana Pvt. Ltd.	319165105	4999990
Nhava Sheva Port	7207851	13-07-18	Frigorifico Allana Pvt. Ltd.	319165106	4999990
Nhava Sheva Port	7457461	01-08-18	Frigorifico Allana Pvt. Ltd.	319165107	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165108	334540
Nhava Sheva Port	7457461	01-08-18	Frigorifico Allana Pvt. Ltd.	319165108	4665446
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165111	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165112	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165113	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165114	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165115	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165116	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165117	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165118	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165119	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165120	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165121	4999986
Nhava Sheva Port	7536024	07-08-18	Frigorifico Allana Pvt. Ltd.	319165124	4999992
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165109	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165110	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165122	4999986
Nhava Sheva Port	7459831	01-08-18	Frigorifico Allana Pvt. Ltd.	319165123	4999986
Nhava Sheva Port	7536024	07-08-18	Frigorifico Allana Pvt. Ltd.	319165125	4999992
Delhi Air Cargo	6589056	30-05-18	Augmont Enterprises Pvt. Ltd.	319165126	4999950
Delhi Air Cargo	6615445	01-06-18	Augmont Enterprises Pvt. Ltd.	319165127	1448400
Delhi Air Cargo	6589056	30-05-18	Augmont Enterprises Pvt. Ltd.	319165127	3551570
Delhi Air Cargo	6615445	01-06-18	Augmont Enterprises Pvt. Ltd.	319165128	4999978
Delhi Air Cargo	6615445	01-06-18	Augmont Enterprises Pvt. Ltd.	319165129	3940302
Delhi Air Cargo	6615574	01-06-18	Augmont Enterprises Pvt. Ltd.	319165129	1059650
Delhi Air Cargo	6615574	01-06-18	Augmont Enterprises Pvt. Ltd.	319165130	4949979
Delhi Air Cargo	7401833	28-07-18	Augmont Enterprises Pvt. Ltd.	319165130	49970
Delhi Air Cargo	6615483	01-06-18	Augmont Enterprises Pvt. Ltd.	319165131	1895800
Delhi Air Cargo	6615574	01-06-18	Augmont Enterprises Pvt. Ltd.	319165131	3104171
Delhi Air Cargo	6615483	01-06-18	Augmont Enterprises Pvt. Ltd.	319165132	5639780
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223409	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223410	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223411	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223412	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223413	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223414	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223415	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223416	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223417	4999991

Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223418	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223419	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223420	4999991
Calcutta Sea Port	3252537	16-05-19	EmamiAgrotech Ltd.	319223421	2581140
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223421	2418858
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223422	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223423	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223424	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223425	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223426	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223427	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223428	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223429	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223430	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223431	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223432	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223433	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223434	4999982
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223435	4999982
Calcutta Sea Port	3259411	16-05-19	EmamiAgrotech Ltd.	319223436	4999982
Calcutta Sea Port	3259411	16-05-19	EmamiAgrotech Ltd.	319223437	4208840
Calcutta Sea Port	3367584	24-05-19	EmamiAgrotech Ltd.	319223437	791152
Calcutta Sea Port	3260896	16-05-19	EmamiAgrotech Ltd.	319223438	1272011
Calcutta Sea Port	3367584	24-05-19	EmamiAgrotech Ltd.	319223438	3727979
Calcutta Sea Port	3252460	16-05-19	EmamiAgrotech Ltd.	319223439	5530834
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294218	4999998
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294219	4999998
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294220	4999998
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294221	4999998
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294222	4999998
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294223	759403
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294223	4240574
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294224	4999982
Nhava Sheva Port	8442928	11-08-20	Frigorifico Allana Pvt. Ltd.	319294225	3379135
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294225	1620847
Nhava Sheva Port	8442928	11-08-20	Frigorifico Allana Pvt. Ltd.	319294226	4999982
Nhava Sheva Port	9929176	12-12-20	Frigorifico Allana Pvt. Ltd.	319294227	104118
Nhava Sheva Port	8670498	01-09-20	Frigorifico Allana Pvt. Ltd.	319294227	2517696
Nhava Sheva Port	8442928	11-08-20	Frigorifico Allana Pvt. Ltd.	319294227	1922734
Nhava Sheva Port	8524110	19-08-20	Frigorifico Allana Pvt. Ltd.	319294228	3364606
Nhava Sheva Port	8670498	01-09-20	Frigorifico Allana Pvt. Ltd.	319294228	863292
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294214	3485838
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294215	4999998
Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294216	4999998

Nhava Sheva Port	8413911	08-08-20	Frigorifico Allana Pvt. Ltd.	319294217	4999998
Nhava Sheva Port	8406219	07-08-20	Frigorifico Allana Pvt. Ltd.	319294197	4999982
Nhava Sheva Port	8406219	07-08-20	Frigorifico Allana Pvt. Ltd.	319294198	4999982
Nhava Sheva Port	8406219	07-08-20	Frigorifico Allana Pvt. Ltd.	319294199	4999982
Nhava Sheva Port	8406219	07-08-20	Frigorifico Allana Pvt. Ltd.	319294200	4999982
Nhava Sheva Port	8406219	07-08-20	Frigorifico Allana Pvt. Ltd.	319294201	345961
Nhava Sheva Port	2311650	11-01-21	Frigorifico Allana Pvt. Ltd.	319294227	455443
<b>TOTAL</b>					<b>48,53,99,230/-</b>

9. From the investigation carried out by DRI, as described in the foregoing paras, the followings facts appear to emerge:

9.1. M/s. ASIPL [formerly known as M/s. MModal Global Service Private Limited, Navi Mumbai (IEC-0300008201)] is a fully owned subsidiary of M/s. Aquity Holdings Inc. USA. M/s. ASIPL is engaged in providing primarily “Medical Transcription Service” to various clients by bringing them on online platforms. Shri Kashyap Joshi is the Director, Shri Agnelo John Rodrigues is Executive Director and Chief Compliance officer of M/s. ASIPL.

9.2. It appears that M/s. ASIPL is providing Medical Transcription Services and Coding Services, wherein, they transcribe voice format files of prescriptions of the hospitals/ doctors in to text to their fellow subsidiary namely, M/s. Aquity Solutions LLC, US and declare it first as “Library, Archives, Museums and Other Cultural Services”, second time as “Management Consultancy Service” and third time as “Hospital Services” despite the fact that their services weren’t mentioned in the Annexure to Appendix 3D. The services of Medical Transcription are not notified under Annexure 3D and therefore, do not appear to be eligible for SEIS benefits. M/s. ASIPL has mis-represented the facts while claiming benefits as they were fully aware that the services provided by them were not entitled for benefits under SEIS Scheme. This further gets corroborated by the E-mails among Shri Saurabh Jain, Shri Kashyap Joshi and Shri Agnelo Rodrigues as discussed earlier. Further, it also appears from one of the Export Invoices No. NGP/18-19/024 dated 31.03.2019 (covered earlier) that the services rendered by M/s. ASIPL are classified under Service Accounting Code SAC-9983 (meant for other Professional, Technical and Business Services) which is universally accepted Nomenclature/Classification Code, however, while claiming the benefits M/s. ASIPL is classifying the services under CPC 9311 (Hospital Services). It appears that M/s. ASIPL has mis-represented the facts while claiming benefits as they were fully aware that the services provided by them were not entitled for benefits under SEIS Scheme.



**9.3.** As per the International Standard Industrial Classification (ISIC) **Transcription Services** are classified under “Other business Activities Not Elsewhere Classified” and Sub-classified under **other Secretarial Services** for which ISIC code is 7499 as “**Other Secretarial Activities such as Transcribing from Tapes or Discs**”. However, corresponding CPC Code for aforesaid ISIC code 7499 is 87909 “Other Business Services Not Elsewhere Classified” which is reproduced ahead as “Services Generally Provided To Businesses, Not Elsewhere Classified. Included here are Business Brokerage Services, Appraisal Services other than for Real Estate, **Secretarial Services**, Demonstration and Exhibition Services etc.”. However, Appendix 3D which is a Positive List of Services for SEIS benefits suggests only “Convention Services” from CPC 87909 is eligible for SEIS benefits and by no stretch of imagination Medical Transcription Services can be called Convention Services.

**9.4.** From the foregoing Investigation of documents, E-mail communications, SEIS Applications etc., it appears that M/s. ASIPL mis-declared its services various times in their application to DGFT, Mumbai, in order to fraudulently avail SEIS Scrips by willfully mis-stating the nature of services exported by them to be “Libraries, Archives, Museums and Other Cultural Services”, “Management Consultancy Services” and “Hospital Services” which are listed in the CPC as eligible for SEIS scrips, without any evidences.

**9.5.** As per the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS), wherein, the Para 3.3.2 (ii) at Page No. 33, it is clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits (as discussed earlier). Therefore, it appears M/s. ASIPL has misrepresented the facts while claiming benefits as they were fully aware that the services provided by them were not entitled for benefits under SEIS Scheme.

**9.6.** Actual services provided by M/s. ASIPL appears to be Transcribing Service. The same has been accepted by Shri Agnelo John Rodrigues (Director and Company Secretary of M/s. ASIPL), Shri Saurabh Jain (Senior Manager Finance & Accounts of M/s. ASIPL) and Shri Jay Singh (earlier Deputy General Manager, Accounts & Tax, M/s. ASIPL) in their respective statements recorded u/s. 108 of the Customs Act, 1962.

**9.7.** It appears that Shri Agnelo John Rodrigues and Shri Saurabh Jain knew about the ineligibility of the said services to obtain SEIS benefits, therefore they hatched a conspiracy to submit the Write-up of Services which was manipulated to suit their case and submitted to DGFT, Mumbai. E-mails have been recovered from Shri Agnelo John Rodrigues and Shri Saurabh Jain to this effect.

**9.8.** Therefore, it appears that M/s. ASIPL have obtained SEIS Scrips by means of willful mis-statement and suppression of facts and hence, the duty relatable to utilization of the aforementioned SEIS scrips/ instrument worth **Rs. 48,53,99,230/-** appears to never have been exempted or debited and duty of **Rs. 48,53,99,230/-** appears to be recoverable from M/s. ASIPL under the provisions of Section 28AAA of the Customs Act, 1962 along with the applicable interest.

**9.9.** It also appears that the SEIS Scrips were obtained by willful mis-statement and suppression of facts, therefore M/s. ASIPL appears to be liable for penalty u/s. 114AB of the Customs Act, 1962.

**10. ROLES OF INDIVIDUALS AND CONCERNED OF M/S. ASIPL:**

**10.1. Role of Shri Agnelo John Rodrigues, Director and Company Secretary of M/s. ASIPL:** Shri Agnelo John Rodrigues, Professional Director of the said company is responsible for all the legal affairs of the said company. He is Company Secretary in this company. He is also the authorized person to sign and raise the ANF-3B Application Forms for availing SEIS Scrips to the tune of Rs. 55 Crores for the period 2015-16, 2016-17, 2017-18 and 2018-19.

**10.1.1.** It appears that he was well aware of the nature of services provided by M/s. ASIPL and was further aware of the fact that they were willfully mis-stating the description of services in their SEIS Application with a fraudulent intent to avail SEIS Scrips. It appears that Shri Agnelo John Rodrigues was aware of the fact that they were not eligible for SEIS Scrips for the services provided by them but he still went ahead with wrongly classifying services multiple times after DGFT, Mumbai raised Deficiency Letters evidently shows that he was willfully mis-stating and suppressing facts to fraudulently avail SEIS scrips, and intentionally making false and incorrect declarations and statements in the SEIS applications. It appears that being a part of higher management

he had a major role in decision making regarding the classification of their services and he willfully misclassified the services to get undue benefit under the SEIS.

10.1.2. It appears that he also knew very well that these scrips would be sold and utilized by the ultimate customer to pay duty on the goods imported by them, thereby causing loss to Government Exchequer. It appears that this *modus* of willful mis-statement and suppression of facts and making false and incorrect declarations and statements was specifically undertaken intentionally in order to avail SEIS scrips fraudulently. It also appears that such abetment for evasion of duty was fully known to him. Therefore, Shri Agnelo John Rodrigues appears to be liable for penalty u/s. 117 of the Customs Act, 1962.

**10.2. Role of Shri Saurabh Jain, Senior Manager Finance and Accounts of M/s.**

**ASIPL:** Shri Saurabh Jain, Senior Manager Finance and Accounts of the said company is responsible for finalization of Books of Accounts, handling of statutory audits and other audits, handling of taxation matters, monthly management reporting, filing of tax returns, monthly billing review, filing of SEIS claims, handling of US GAAP audit etc.

10.2.1. It appears that he was well aware of the nature of services provided by M/s. ASIPL and was further aware of the fact that they were willfully mis-stating the description of services in their SEIS application with a fraudulent intent to avail SEIS Scrips. It appears that Shri Saurabh Jain was aware of the fact that they were not eligible for SEIS scrips for the services provided by them but he still went ahead with wrongly classifying services before DGFT, Mumbai for the period 2018-19.

10.2.2. It appears, he was willfully mis-stating and suppressing facts to fraudulently avail SEIS scrips and intentionally making false and incorrect declarations and statements in the SEIS Applications. He also knew very well that these scrips would be sold and utilized by the ultimate customer to pay duty on the goods imported by them, thereby causing loss to Government exchequer.

10.2.3. It appears that this *modus* of willful mis-statement and suppression of facts and making false and incorrect declarations and statements was specifically undertaken intentionally in order to avail SEIS scrips fraudulently. It also appears that such abetment

for evasion of duty was fully known to him. Therefore, Shri Saurabh Jain appears to be liable for penalty u/s. 117 of the Customs Act, 1962.

**10.3. Role of Shri Jay Singh Vijay Singh Sekhawat, Deputy General Manager (Accounts and Tax) of M/s. ASIPL (2015-16 to 2017-18):** Shri Jai Singh Sekhawat, Deputy General Manager of the said company for the period 2015-16, 2016-17 and 2017-18 was responsible for accounting, closing of books monthly, quarterly and yearly and return filing, tax filing, transfer pricing, helping in statutory audit service, providing data to consultant (Billing, providing FIRC, BRC and soft copy of invoices on a sample basis) etc. He was well aware of the nature of services provided by M/s. ASIPL and the fact that they were willfully mis-stating the description of services in their SEIS Application with a fraudulent intent to avail SEIS Scrips. It appears that Shri Jai Sekhawat was aware of the fact that they were not eligible for SEIS scrips for the services provided by them but he still went ahead with wrongly classifying services before DGFT, Mumbai for the period 2015-16, 2016-17 and 2017-18.

10.3.1. It appears, he was willfully mis-stating and suppressing facts to fraudulently avail SEIS scrips and intentionally making false and incorrect declarations and statements in the SEIS Applications. He also knew very well that these scrips would be sold and utilized by the ultimate customer to pay duty on the goods imported by them, thereby causing loss to Government exchequer.

10.3.2. It appears that this *modus* of willful mis-statement and suppression of facts and making false and incorrect declarations and statements was specifically undertaken intentionally in order to avail SEIS scrips fraudulently. It also appears that such abetment for evasion of duty was fully known to him. Therefore, Shri Jai Singh Sekhawat, appears to be liable for penalty u/s. 117 of the Customs Act, 1962.

**10.4. Role of Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates:** Shri Ganesh Omkarlal Bambori, is a Chartered Accountant and Proprietor of M/s. Bambori & Associates, a CA firm, who has verified the SEIS Application of M/s. ASIPL. He verified the invoices and Write-up of services which were duly signed by Executive Director (Shri Agnelo John Rodrigues) of M/s. ASIPL.

10.4.1. It appears that he has never verified the Write-up of services of the company with relevant CPC Code definition. It appears, he had opted to sign blindly on the SEIS Application as per directions received from M/s. ASIPL. Being a Chartered Accountant, it was his responsibility to ensure correct classification and proper declaration before DGFT & other authorities but as it appears, he failed to do so. It appears, he was well aware of the nature of services provided by M/s. ASIPL, and was further aware of the fact that they were willfully mis-stating the description of services in their SEIS application with a fraudulent intent to avail SEIS Scrips.

10.4.2. It appears Ganesh Omkarlal Bambori was aware of the fact that M/s. ASIPL was not eligible for SEIS scrips for the services provided. It further appears evident that he was willfully verifying mis-statement and suppression of facts to fraudulently avail SEIS scrips, and intentionally making false and incorrect declarations and statements in the SEIS Applications before DGFT, Mumbai.

10.4.3. It appears that this *modus* of willful mis-statement and suppression of facts and making false and incorrect declarations and statements, was specifically undertaken intentionally in order to avail SEIS scrips fraudulently. Therefore, Shri Ganesh Omkarlal Bambori appears to be liable for penalty u/s. 117 of the Customs Act, 1962.

**10.5. Role of Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila corporate Services Pvt. Ltd.:** Shri Jaikishan Bhagchandka is the SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd., who initiated interaction with M/s. ASIPL regarding SEIS incentives. It appears he entered into an agreement with the company for collection of documents, preparation of application, submission of online as well as hard copies of the application along with declaration in the office of DGFT, Mumbai and follow up of the application in DGFT office for issuance of SEIS scrips for the year 2015-16.

10.5.1. It appears, being the Consultant, he ought to have guided M/s. ASIPL, properly and should have verified the documents and informed them that they are not eligible for SEIS benefits. However, he opted to remain silent on the issue and allowed M/s. Aquity India to go ahead with their SEIS Application. It appears that he had opted to remain silent on the issue of eligibility of SEIS benefits.

10.5.2. It further appears evident that he was willfully mis-stating and suppressing facts to fraudulently avail SEIS scrips, and intentionally making false and incorrect declarations and statements in the SEIS Applications. It appears that this modus of willful mis-statement and suppression of facts and making false and incorrect declarations and statements, was specifically undertaken intentionally in order to avail SEIS scrips fraudulently. It also appears that such abetment for evasion of duty was fully known to him. Therefore, Shri Jaikishan Bhagchandka appears to be liable for penalty u/s. 117 of the Customs Act, 1962.

**10.6. Role of Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd.:** Shri Krunal Pandya is the SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. who initiated interaction with M/s. ASIPL regarding SEIS incentives. It appears that he entered into an agreement with the company, wherein, the scope of work was to receive a complete checklist of documents that would be required for making the Application for claiming SEIS benefits under FTP. Checking and vetting of documents required to file along with application, ensuring accuracy of application in the specified format of ANF & Appendix.

10.6.1. It appears that under his guidance was required in obtaining Certificate of CA for filing the application; Compilation of the information provided by the company as required for filing of the application; Collection of documents to be submitted along with Application; Preparation of application through online e-com; Submission of hard copy of Application to the office DGFT, Mumbai; Discussion to ascertain the status and reason for Query, if any with Additional DGFT officers.

10.6.2. It appears that he assisted in replying to Deficiency Memo, assisting in providing for clarification to the Authority in case of any query raise; Representation to the authority along with company's personnel as and when required; Assistance in obtaining duty credit scrip after all the data documents are provided by the company as per DGFT office requirement and shall act on company's specific instructions to carry out the activities covered in their scope and will not perform any management functions or take decisions on their behalf; Follow up and pursue the status of the application in DGFT's office on

behalf of company for issuance of SEIS scrips for the financial years 2016-17 to 2018-19.

10.6.3. It appears that they had discussed regarding SEIS scheme and conclusively decided that which service was best suited for which classification against CPC. It appears, being the Consultant, he ought to have guided M/s. ASIPL properly and should have verified the documents and informed them that they are not eligible for SEIS benefits. However, he opted to remain silent on the issue and allowed M/s. Aquity India to go ahead with their SEIS application. It appears that he had opted to remain silent on the issue of eligibility of SEIS benefits. It further appears evident that he was willfully mis-stating and suppressing facts to fraudulently avail SEIS scrips, and intentionally making false and incorrect declarations and statements in the SEIS Applications. It appears that this *modus* of willful mis-statement and suppression of facts and making false and incorrect declarations and statements, was specifically undertaken intentionally in order to avail SEIS scrips fraudulently. It also appears that such abetment for evasion of duty was fully known to him. Therefore, Shri Krunal Pandya appears to be liable for penalty under Section 117 of the Customs Act, 1962.

**11. ISSUANCE OF SCN:** On completion of investigation, the DRI has prepared and forwarded an Investigation Report depicting the above facts of the case. On the basis of said Investigation Report, the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Andheri (East) has issued a SCN No. 08/Commr./Adj. (X)/2023-24 dated 28.12.2023 to the Exporter, M/s. ASIPL and six others.

**11.1.** Vide said SCN dated 28.12.2023 M/s. Aquity Solutions India Pvt. Ltd. (formerly known as M/s. Mmodal Global Service Private Limited) was called upon to show cause to the Principal Commissioner of Customs, Export Commissionerate, Air Cargo Complex, Sahar, Mumbai-400099, within 30 days of the receipt of this notice, as to why:

- (i) The duty for an amount of Rs. 48,53,99,230/- (Rupees Forty Eight Crores Fifty Three Lakhs Ninty Nine Thousand Two Hundred Thirty only) should not be recovered under the provisions of Section 28AAA of the Customs Act, 1962 along with the applicable interest from M/s. ASIPL as they have obtained SEIS scrips by means of willful misstatement and suppression of facts as the duty relatable to utilization of the aforementioned SEIS scrips/instrument worth Rs. 48,53,99,230/- appears to never have been exempted or debited.

- (ii) Interest at rates fixed under Sub-section 28 (2), as M/s. ASIPL are liable to pay Duty u/s. 28 should not be recovered u/s. 28AA of the Customs Act, 1962.
- (iii) Penalty should not be imposed on M/s. ASIPL u/s. 114AB of the Customs Act, 1962 as that SEIS scrips were obtained by willful misstatement and suppression of facts.

**11.2.** Vide said SCN dated 28.12.2023, (i) Shri Agnelo John Rodrigues, Director and Company Secretary of M/s. ASIPL; (ii) Shri Saurabh Jain, Senior Manager Finance and Accounts of M/s. ASIPL; (iii) Shri Jay Singh Vijay Singh Sekhawat, Deputy General Manager (Accounts and Tax) of M/s. ASIPL; (iv) Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates; (v) Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd.; and (vi) Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. were also called upon to show cause to the Commissioner of Customs, Export Commissionerate, Air Cargo Complex, Sahar, Mumbai – 400 099, within 30 days of the receipt of this notice, as to why:

- (i) Penalty should not be imposed on each one of them u/s. 117 of Customs Act, 1962

## **12. APPLICATION BEFORE THE SETTLEMENT COMMISSION BY NOTICEES**

**NOS. 1 TO 4:** The Noticees, viz. (i) M/s. ASIPL; (ii) Shri Agnelo John Rodrigues, Director and Company Secretary of M/s. ASIPL; (ii) Shri Saurabh Jain, Senior Manager Finance and Accounts of M/s. ASIPL; (iii) Shri Jay Singh Vijay Singh Sekhawat, Deputy General Manager (Accounts and Tax) of M/s. ASIPL has preferred Settlement Application F. No. 15/CUS/RV/2024-SC (MB) // SA (C) 35,36,37,38/2024 dated 22.07.2024 before the Interim Settlement Board-III, Mumbai against the subject SCN dated 28.12.2023 in terms of provisions of Section 127B (5) of the Customs Act, 1962.

**12.1.** The Settlement Commission has disposed the said Settlement Application vide Order No. 10/FO/CUS/RV/2025 dated 22.07.2025, whereby, the issue covered under subject SCN dated 28.12.2023 has been settled and following order has been passed:

*The Board finds that the Applicant and Co-Applicants have made true and full disclosure of their liabilities and has cooperated in the proceedings. The Board also takes note of the fact that, the Applicant has paid the entire amount of Rs. 48,53,99,230/- demanded in the SCN, along with Rs. 36,90,26,606/- towards interest. The Board therefore*



settles the case of Applicant and Co-Applicant under section 127C (5) of the Customs Act, 1962 on the following terms and conditions:

(i) **Duty:** The Board settles the liability to duty at **Rs. 48,53,99,230/-** (Rupees Forty Eight Crore Fifty Three Lakh Ninety Nine Thousand Two Hundred and Thirty Only) and such amount already paid by the Applicant is appropriated towards such liability.

(ii) **Interest:** The Board directs that, the Applicant shall pay applicable interest under the provisions of section 28AA of the Customs Act, 1962 on the above settled duty liability and such amount shall be appropriated from the amount of **Rs. 36,90,26,606/-** already paid by the Applicant towards their interest liability;

(iii) **Penalty:**

- (a) The Board imposes a penalty of **Rs. 1,50,00,000/-** (Rupees One Crore Fifty Lakh Only) on the Applicant **M/s Aquity Solutions Pvt. Ltd.**
- (b) The Board imposes a total penalty of **Rs. 2,50,000/-** (Rupees Two Lakh Fifty Thousand Only) on the Co-Applicant **Shri Agnelo John Rodrigues.**
- (c) The Board imposes a total penalty of **Rs. 50,000/-** (Rupees Fifty Thousand Only) on the Co-Applicant **Shri Saurabh Jain.**
- (d) The Board imposes a total penalty of **Rs. 50,000/-** (Rupees Fifty Thousand Only) on the Co-applicant **Shri Jay Singh Vijay Singh.**

The Board grants immunity to the Applicant and Co-Applicants from penalty under the Customs Act, 1962 in excess of the above amounts so far as proceedings under the impugned Show Cause Notice against them are concerned.

The concerned jurisdictional Commissioner i.e., Pr. Commissioner of Customs, Export Commissionerate, Air Cargo complex, Sahar, Mumbai, is directed to verify that the entire amount settled including applicable interest and penalty has been deposited by the Applicant and Co-Applicants from the original challans within 30 days of the receipt of this Order.

(iv) **Prosecution:** Subject to verification of duty, interest and penalty deposited by the Applicant and Co-Applicants within 30 days of the receipt of this Order, the Board grants immunity to the Applicant and Co-Applicants from prosecution under the Customs Act, 1962 so

*far as proceedings under the impugned Show Cause Notice against them are concerned.*

### **WRITTEN SUBMISSION OF THE NOTICEES**

**13.** In response to the SCN dated 28.12.2023, Noticee No. 7, namely Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. has submitted written reply in his defence vide letter dated 23.10.2025. Contentions of the Noticees are re-produced below:

**A. THE NOTICEE'S ROLE WAS LIMITED TO PROVIDING PROCEDURAL ASSISTANCE TO THE COMPANY. HENCE, NO ALLEGATION OF WILFUL MISSTATEMENT AND SUPPRESSION CAN BE ATTRIBUTED TO THE NOTICEE AND ACCORDINGLY PENALTY IS LIABLE TO BE DROPPED:**

- A.1 As mentioned in the facts supra, the Ld. Commissioner, vide SCN dated 28.12.2023, has made the following allegations against the Noticee (in para 11.6):
- a. That the Noticee did not properly guide the Company or verify the documents provided by the Company while availing the SEIS scrips;
  - b. That the Noticee stayed silent on the issue of eligibility of SEIS benefits and allowed the Company to file the SEIS application;
  - c. That the Noticee was not only wilfully misstating and suppressing facts but also intentionally making false and incorrect declarations and statements in the SEIS applications so as to fraudulently avail SEIS scrips.
- A.2. Based on the above allegations, the Ld. Commissioner has proposed to impose penalty on the Noticee under Section 117 of the Customs Act.
- A.3. At the outset, Noticee submits that the allegation of wilful misstatement and suppression of facts is wholly untenable in law for the reasons stated infra.
- A.4. As mentioned above, during the normal course of its business, the Company approached the Noticee and sought to enter into the Service Agreement for providing certain procedural assistance to the Company qua availment of SEIS benefits for the financial years 2016-17 to 2018-19.
- A.5. At the cost of repetition, the role of the Noticee (as stipulated by the agreement) is summarized below-
- a. Providing the Company with a complete checklist of documents required for making the SEIS application;
  - b. Vetting, all the documents required to be filed along with the application; (This includes checking and verifying the documents/forms, and ensuring compliance with the procedures mandated under the Foreign Trade Policy

- (FTP) for completing and submitting the application to the Office of the DGFT to claim benefits under the SEIS)
- c. Ensuring accuracy of the application in the specific format(ANF & Appendix);
  - d. Understanding the company's operation(nature of the service rendered) and mapping it against the eligible services that accrue benefit under the SEIS under FPT;
  - e. Offering, guidance in obtaining certificate of CA;
  - f. Compiling of all the information provided by the Company as required for filling, of application;
  - g. Collection of documents to be submitted along with Application;
  - h. Preparation of the application through E-com;
  - i. Submission of physical hard copy of the application to the Addl. DGFT, Mumbai;
  - j. Providing status of the application;
  - k. Assisting in replying to deficiency if any raised by the authority;
  - l. Representation to the authorities along with the company's personnel as and when required;
  - m. Assistance in obtaining duty credit scrips after all data and documents are provided by the company as per the requirement of the Addl. DGFT;
  - n. Follow up with the Addl. DGFT office for issuance of the duty credit scrips issued under SEIS
- A.6. Evidently, the Noticee's role in the entire process was strictly limited to providing procedural assistance in accordance with the scope defined under the agreement executed with the Company. The agreement clause of Scope of limitation also states the same,
- A.7. In other words, the determination or classification of services by the Noticee was not within the scope of the agreement. Its management call to the company. Moreover, the Noticee did not undertake to classify services under the FTP or to certify the correctness of declarations made in Form ANF-3B. This responsibility rested exclusively with the Company and the Noticee had no authority or say in deciding the correct head for classification of services for claiming benefits under SEIS,
- A.8. Further, it is an undisputed fact that it was the Company who filed the claim for availment of SEIS benefits (vide Form ANF-3B) and not the Noticee. It is also undisputed that pursuant to filing of the said claim, it was the Company who was in receipt of the said benefits.
- A.9. Therefore, it is submitted that if there is any alleged misstatement or suppression, such act can only be attributed to the Company, which was the applicant and declarant before the DGFT.

**The Noticee had no personal interest and nothing to gain from alleged acts of evading duty.**

- A.10. As mentioned above, it was the Company (and not the Noticee) who filed, and subsequently was in receipt, of the SEIS benefits. The Noticee was neither eligible nor in receipt of any benefits.
- A.11. Therefore, it is submitted that the Noticee had nothing to gain from any alleged evasion. The Ld. Commissioner, vide SCN dated 28.12.2023, failed to adduce any evidence to suggest that the Noticee derived any undue benefit, pecuniary or otherwise, from the grant of SEIS scrips to the Company.
- A.12. It is submitted that the question of suppression arises only when an assessee wants to obtain a benefit not available to him under the law. Reliance in this regard is placed on **M/s. Geep Industrial Syndicate-1999 (114) ELT 850 (1)** and **M/s. Mahindra & Mahindra Ltd. - 2000 (125) ELT 477 (T)**.
- A.13. Further, the SCN dated 28.12.2023 does not adduce any evidence to establish *mens rea* on the part of the Noticee or to demonstrate that he was privy to any deliberate act of misrepresentation.

**In any case, classification of services under the respective healings was based on bona fide belief.**

- A.14. In any case, and without prejudice to the submissions made above, Noticee submits that its actions and the conduct has always been bonafide. The Noticee has not indulged in any action that may cause loss to the Government Exchequer.
- A.15. As is evident from above, the entire case in the SCN is that the Noticee was aware that the services rendered by the Company were not eligible for SEIS benefits and yet verified the misstatement and suppression of facts done by the Company. However, there is not a single iota of evidence to support this allegation.
- A.16. On the contrary, the Department (DGFT) has time and again approved the application filed by the Company and extended the benefit under the SEIS Scheme. The same is evident from the following –
- a. The Company followed due procedure for claiming and obtaining the SEIS benefit. This is an undisputed fact and there is nothing in the SCN to suggest otherwise.
  - b. The applications filed by the Company to avail the SEIS benefits were duly scrutinized by the authorities and consequently defect/deficiency memos were issued. Vide the defect/deficiency notices and memos, Department enquired regarding the services provided by the Company and also sought explanation regarding the correct classification.

- c. Against the defect/deficiency memo, the Company responded by submitting all the details requested by the Department. It also included the nature of services, the manner in which the services were provided, etc. The Company gave reasons to substantiate their claim for classification.
  - d. After scrutiny of the same, benefit under the SEIS scheme was extended to the Company. This clearly shows application of mind by the authorities. Notably, vide the defect memos, queries with respect to eligibility to avail benefit under SEIS services (and classification of service adopted by the Company) was raised and consequently confirmed and approved/validated by the Department. Therefore, there was no suppression or wilful misstatement on part of the Noticee.
  - e. Notably, the applications during the years 2017-18 and 2018-19 were made by the Company on the basis of the approval granted and benefit extended by the authorities in the previous years.
  - f. In the year 2016-17, the Company described the services exported as "Hospital Services (9311)", "Accounting, Auditing Services (8621)" and "Services related to Management Consulting (8660)". The same classification was used for the following years of 2017-18 and 2018-19 since it was accepted by the Department previously. Thus, the Company had no reason to doubt that the services provided by them were ineligible for benefit.
  - g. There is no allegation or evidence on record to show that the declarations made by the Company in the applications regarding the true nature of the services rendered have been incorrect.
- A.17. As is evident from the above, it is amply clear that the actions of the Noticee were completely bona fide. It is submitted that in the absence of any mala fide actions, no penalty is imposable. Reliance in this regard is placed on **M/s. Hindustan Steel Ltd. Vs. State of Orissa 1978 (2) ELT (J159) (SC)**, wherein the Hon'ble Supreme Court held that *no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bona fide belief*.
- A.18. Following the above judgment, in the case of **M/s. Cement Marketing Vs. Assistant Commissioner of Sales Tax-1980 (6) ELT 295 (SC)**, the Hon'ble Supreme Court held that *penalty cannot be imposed when the assessee raises a contention of bona fide belief*.
- A.19. In view of the above judicial pronouncements, it is submitted that no penalty is imposable when actions of the Noticee were completely bona fide.

**Penalty cannot be imposed in cases of dispute pertaining to classification.**

- A.20. Noticee submits that it is a settled principle of law that if there is difference of opinion about classification between the importer and department, penalty should not be imposable.
- A.21. Reliance in this regard is placed on **M/s. Bahar Agrochem & Feeds Vs. CCE-2012 (277) ELT 382 (Tri-Mum)**.
- A.22. It is also a settled position of law that classification is a question of law and hence no penalty is imposable on the Noticee. Reliance in this regard is placed on **Commissioner of C. Ex., Meerut v. M/s. Dewan Chemical Industries 1999 (106) E.L.T. 357 (Tribunal)**.
- A.23. In light of the above, it is evident that penalty is not imposable in cases where the dispute pertains to classification since the same is purely an interpretational issue and hence a question of law.
- A.24. In view of the aforesaid grounds, no allegation of wilful misstatement or suppression of facts can be alleged by the Ld. Commissioner and hence penalty under Section 117 of the Customs Act is liable to be dropped.

**The allegation that the Noticee stayed silent on the issue of eligibility of SEIS claim is wholly misplaced since the Noticee's duty did not extend to check/verify the eligibility of SEIS benefits.**

- A.25. Vide the SCN dated 28.12.2023, the Ld. Commissioner has proposed to impose penalty on the Noticee, inter alia, based on the allegation that the Noticee stayed silent on the issue of eligibility of SEIS benefits and allowed the Company to file the SEIS application.
- A.26. In this regard, it is submitted that the company was already having knowledge about the FTP/SEIS scheme and already availed the benefit of 2015-16. The consultant was under impression that the company is having a doctors here in india and providing, the diagnostic services from india. The consultant has already shared the CPC definitions with the company and the company has selected the matched CPC as a eligible services under the SEIS scheme. The agreement entered into between the Company and Noticee did not require him to perform the management role. The consultant has check the eligibility of SEIS claim and provided the CPC defination to the company. The company has signed the BRIEF WRITE UP of the services with the CPC code definition and confirm that their services very much falls under the elgible list of services under SEIS.
- A.27. It is re-iterated that the Company approached the Noticee requiring and requesting procedural assistance in the course of availing SEIS benefits. Further, the Noticee's duty was restricted to procedural aspects such as providing a checklist of all documents, collating all claims, submitting hard copies of claims to DGFT, etc.

A.28. Therefore, by no stretch of imagination, can the Noticee be held responsible for checking / verifying the eligibility of SEIS claims since its management call of the company and the company has already given write about the services, that how their services falls under the CPC definition.

A.29. In view of the above, no allegation of failing to verify eligibility of SEIS claims can be attributed to the Noticee. Accordingly, penalty in terms of Section 117 of the Customs Act is liable to be dropped. The consultant has limited knowledge about the DGFI's documentation and not about the technicality different services provided by companies.

**B. PENALTY CANNOT BE IMPOSED BY MERELY ALLEGING THAT THE NOTICEE FAILED TO PROPERLY GUIDE THE COMPANY AND VERIFY DOCUMENTS PROVIDED BY THE COMPANY:**

B.1. Vide the SCN dated 28.12.2023, the Ld. Commissioner has proposed to impose penalty under Section 117 of the Customs Act, inter alia, on the allegation that the Noticee did not properly guide the Company or verify the documents provided by the Company while availing the SEIS scrips.

B.2. At the outset, it is submitted that such an allegation is based on assumption and conjectures and that there is no basis for the same. As mentioned above, the Noticee properly verified and examined all documents provided and always acted to the best of his knowledge. The consultant has provided the details about CPC definition with the company and company has submitted a signed write-up about the services of the company with the CPC definition.

B.3. Without prejudice to the above, even if it is assumed that the Noticee failed to properly verify the documents, it is submitted that penalty cannot be imposed merely on the grounds that due diligence was not done properly.

B.4. Reliance in this regard is placed on the decision of the Hon'ble Bombay High Court in **Mahesh P Patel vs. Commissioner of Customs (EP) 2019 (367) ELT 865 (Bom.)** wherein the allegation against the assessee was that as a Chartered Accountant, he abetted in the fraud committed by the principal importer since he had issued Export Performance Certificate and Solvency Certificate without verifying the facts and authenticity of the documents produced before him.

B.5. The Hon'ble High Court held that mere failure to conduct proper due diligence cannot be a ground for imposition of penalty. It was further held that it is necessary that the active role of such person is proven to enable imposition of penalty.

- B.6. The Ld. Commissioner, in the SCN dated 28.12.2023, has failed to adduce a single piece of evidence which proves active role of the Noticee in helping the Company avail wrongful SEIS benefits.
- B.7. Reliance is also placed on the decision of the Hon'ble CESTAT in **S.N Garg vs. CCE, Allahabad 2013 (292) ELT 93 (Tri. Del.)**, wherein the issue pertained to imposition of penalty on the Chartered Accountant alleging abetment in misdeeds of the Company. The Hon'ble Tribunal specifically held that mere undertaking in relation to the work cannot be a basis for imposition of penalty.
- B.8. As mentioned above, in the present case, the Noticee was merely engaged in advising and providing procedural assistance to the Company for availing SEIS benefits, It is an undisputed fact that it was the Company who actually filed the claim for availment in SEIS benefits (vide Form ANF-3B). Therefore, penalty cannot be imposed on the Noticee for mere undertaking of the work.
- B.9. It is also re-iterated that Noticee had nothing to gain from any alleged evasion. The Ld. Commissioner, vide SCN dated 28.12.2023, failed to adduce any evidence to suggest that the Noticee derived any undue benefit, pecuniary or otherwise, from the grant of SEIS scrips to the Company.
- B.10. Further, the SCN dated 28.12.2023 does not adduce any evidence to show undue benefit/gain received by the Noticee or establishes mens rea on the part of the Noticee or to demonstrate that he was privy to any deliberate act of misrepresentation.
- B.11. In light of the above submissions and judicial pronouncements, it is submitted that penalty proposed under Section 117 of the Customs Act is liable to be dropped.

**C. PENALTY UNDER SECTION 117 OF THE CUSTOMS ACT, 1962 IS NOT IMPOSABLE:**

- C.1. Vide the SCN dated 28.12.2023, the Lal. Commissioner has proposed to impose penalty under Section 117 of the Customs Act on the Noticee for alleged wilful misstatement and suppression of facts to fraudulently avail SEIS benefits.
- C.2. Bare perusal of the provisions of Section 117 reveals that penalty may be imposed on any person who -
- a. Contravenes any provision of the Customs Act; or
  - b. Fails to comply with any provision of the Customs Act with which it was his duty to comply
- C.4. It is also evident that penalty under Section 117 of the Customs Act is leviable in cases where no express penalty is provided under any other sections.



- C.5. As submitted in the grounds supra, the Noticee has not contravened any provision of the Customs Act, nor has he failed to comply with any provision of the Customs Act with which it was his duty to comply.
- C.6. It is re-iterated that the Noticee was merely advising and providing procedural assistance to the Company for availing SEIS benefits. It is an undisputed fact that it was the Company who actually filed the claim for availment in SEIS benefits (vide Form ANF- 3B) and hence allegation of misstatement and / or suppression, if any, ought to be attributed to the Company and not the Noticee.
- C.7. In any case, it is re-iterated that the procedural assistance and advise given by the Noticee qua description and classification of services exported by the Company was based on bona fide belief.
- C.8. In light of the above, it is submitted that penalty under Section 117 of the Customs Act is not imposable and hence the same is liable to be dropped.
- D. In view of the above submissions, it is respectfully prayed to: (i) drop the proceedings initiated vide the Show Cause Notice No. 08/COMMR/ADJ(X)/2023-24 dated 28.12.2023; and (ii) hold that no penalty is imposable on the Noticee under Section 117 of the Customs Act, 1962;

**13.1. In response to the SCN dated 28.12.2023, Noticee No. 5, namely Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates** has submitted written reply in his defence vide letter dated 24.10.2025. Contentions of the Noticees are re-produced below:

- A. He is in communication with Mr. Jay Shekhawat - Deputy General Manager, Finance and Accounts of Aquity Solutions India Private Limited under a verbal arrangement from Financial Years 2015-16 to 2017-18. Further, he got into a specific Letter of Engagement with the Company for the Financial Year 2018-19. During the period of dispute, I was appointed as an independent examiner and verifier of certain invoices that formed part of the procedure required to certify enclosure to ANF-3B.
- B. At the outset, it is pertinent to highlight that the above-mentioned agreement restricted the applicant to only examination and verification of bills, invoices, FIRC's and evidence of foreign exchange earnings which were required to be filed along with ANF-3B.
- C. The Company was issued with a SCN dated 28.12.2023 proposing to recover duty equivalent to the ineligible SEIS scrips and imposing penalty alleging that the benefits under the SEIS scrips were wrongly availed.

- D. It is most humbly submitted that the he has extended full co-operation to the investigating teams and wherever possible, information/documents were provided on time. There have been no efforts to hide any material particulars. The Applicant always acted in *bona fide* manner and always maintained full and complete transparency with the Department.
- E. It is submitted that the actions and conduct of the Noticee has always been *bona fide*. He has not indulged in any action that may cause loss to the Government Exchequer.
- F. He was at all times acting as a mere verifier of the documents produced by the Company. He has only assisted in making and filing of the SEIS Application along with conducting an independent verification of the supporting documents. At no point in time was he actually involved in classifying the services exported by the Company. Hence, it is submitted that he was always acting in *bona fide* belief.
- G. As evident from above, the entire case in the SCN is that the he was aware that the services rendered by the Company were not eligible for SEIS benefits and yet verified the misstatement and suppression of facts done by the Company. However, there is not a single iota of evidence to support this allegation.
- H. On the contrary, the Company claimed and obtained SEIS benefit basis their understanding and basis the approval given by the Department. The same is evident from the following -
- I. The company followed due procedure for claiming and obtaining the SEIS benefit. This is an undisputed fact and there is nothing in the SCN to suggest otherwise.
- J. The applications filed by the Company to avail the SEIS benefits were duly scrutinized by the authorities and consequently defect/deficiency memos were issued. Vide the defect/deficiency notices and memos, Department enquired regarding the services provided by the Company and also sought explanation regarding the correct classification.
- K. Against the defect/deficiency memo, the Company responded by submitting all the details requested by the Department. It also included the nature of services, the manner in which the services were provided etc. The Company gave reasons to substantiate their claim for classification.
- L. After scrutiny of the same, benefit under the SEIS scheme was extended to the Company. This clearly shows application of mind by the authorities. Notably, vide the defect memos, queries with respect to eligibility to avail benefit under SEIS services (and classification of service adopted by the Company) was raised and

consequently confirmed and approved/validated by the Department. Therefore, suppression and willful misstatement cannot be alleged.

- M. It may be noted that the applications during the years 2017-18 and 2018-19 were made by the Company on the basis of the approval granted and benefit extended by the authorities in the previous years.
- N. In the year 2016-17, the Company described the services exported as "Hospital Services (9311)", "Accounting, Auditing Services (8621)" and "Services related to Management Consulting (8660)". The same classification was used for the following years of 2017-18 and 2018-19 since it was accepted by the Department previously. Thus, I had no reason to doubt that the services provided by them were ineligible for benefit.
- O. From the above, it is evident that the conduct of Applicant has been bonafide.
- P. The impugned SCN has alleged willful misstatement both against the Applicant and the Company with respect to the nature of services exported. It is submitted that no evidence supporting the allegation of misstatement was produced or highlighted in the SCN.
- Q. The company provided a clear description of the nature of services vide the write-up and the correctness of the same was never disputed or challenged by the Department.
- R. It is submitted that when a detailed description of services exported was explicitly provided and the same was duly accepted by the Department, any case of willful misstatement does not arise in the first place and hence the same is devoid of merits.
- S. From the above it is clear that, I had worked as independent examiner and not done any conduct or have not indulged in any action that may cause loss to the Government Exchequer.
- T. Therefore, it is requested to kindly accept his reply and grant waiver of penalty under the Customs Act, or any other Act and rules made thereunder.

**13.2. In response to the SCN dated 28.12.2023, Noticee No. 6, namely Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd.** has submitted written reply in his defence vide letter dated 29.10.2025. On perusal of reply of the Noticee No. 6, it appeared that the contentions and prayer stated therein are verbatim identical as the contentions of Noticee No. 7 (already re-produced in Para No. 13 *supra*). Therefore, the similar contentions (as submitted by Noticee No.

7) are not re-produced here to avoid duplication. However, there are certain different contentions submitted by Noticee No. 6, which are re-produced hereinbelow:

**A. PENALTY CANNOT BE IMPOSED IN CASES OF DISPUTE PERTAINING TO INTERPRETATION OF LAW:**

- A.1. Noticee submits that it is a settled principle of law that difference of opinion about classification between the importer/ Exporter and department is purely a question of interpretation of law. Considering the same, penalty is not imposable when there is a dispute pertaining to interpretation of law.
- A.2. Reliance in this regard is placed on **M/s. Bahar Agrochem & Feeds Vs. CCE - 2012 (277) ELT 382 (Tri-Mum)**.
- A.3. It is also a settled position of law that classification is a question of law and hence no penalty is imposable on the Noticee. Reliance in this regard is placed on **Commissioner of C. Ex., Meerut v. Dewan Chemical Industries 1999 (106) E.L.T. 357 (Tribunal)**.
- A.4. In light of the above, it is evident that penalty is not imposable in cases where the dispute pertains to classification since the same is purely an interpretational issue and hence a question of law. Therefore, penalty under Section 117 of the Customs Act is liable to be dropped.

**B. WITHOUT PREJUDICE TO THE ABOVE, NOTICEE SUBMITS THAT WHEN A CASE HAS BEEN SETTLED BY THE SETTLEMENT COMMISSION, IT SHALL BE DEEMED TO BE SETTLED IN ITS ENTIRETY AND NO PROCEEDINGS CAN BE ADJUDICATED QUA OTHER CO-NOTICEES:**

- B.1. Vide the SCN dated 28.12.2023, the Ld. Commissioner has proposed to impose penalty on the Noticee under Section 117 of the Customs Act.
- B.2. Noticee submits that the SCN dated 28.12.2023 was primarily issued to the Company, i.e., the principal Noticee. Further, the Company had voluntarily approached the Hon'ble Settlement Commission the provisions of the relevant statute, seeking a full and final resolution of the issues arising out of the subject matter of the SCN.
- B.3. Significantly, the Settlement Commission, after due consideration of the facts, submissions, and documents placed before it, passed final order settling the case in its entirety.
- B.4. In light of this, it is stated that once a matter has been settled by the Settlement Commission, such settlement is final and conclusive in nature, and the entire case, including all issues arising therefrom, stands resolved.

- B.5. It is submitted that the jurisdiction of the Settlement Commission is wide and extends to the entire subject matter of the Show Cause Notice, including all facts, allegations, and parties involved. Therefore, once the Commission has exercised its jurisdiction and passed an order settling the case, the same cannot be reopened or re-adjudicated by any other authority, including in respect of co-Noticees.
- B.6. Reliance in this regard is placed on the following decisions of the Hon'ble CESTAT, which are non-exhaustive in nature -
- a. M/s. S.K. Colombowala v. CC (Import), Mumbai-2007 (220) 2007 (220) E.L.T. 492 (Tri. Mumbai);
  - b. M/s. Pearl Polymers v. Commr. of C. Ex., Raigad - 2008 (226) E.L.T. 566 (Tri. - Mumbai);
  - c. M/s. Windoors (India) v. Commissioner of Central Excise, Mumbai-II - 2009 (246) E.L.T. 345 (Tri. Mumbai); and
  - d. M/s. A.M. Ahmad & Co. v. Commissioner of Customs, Tuticorin - 2023 (383) E.L.T. 416 (Mad.)
- B.7. In the present case, the allegations against the Noticee are intrinsically linked to the same set of facts and transactions that formed the basis of the proceedings against the Company. The Noticee was not an independent actor but was acting in the course of official duties in relation to the claims made by the Company.
- B.8. As such, the fate of the proceedings against the Noticee is inextricably tied to the outcome of the proceedings against the Company. Once the Settlement Commission has settled the matter in respect of the Company, the substratum of the case itself ceases to exist, and no further proceedings can be sustained against the Noticee.
- B.9. In view of the above judicial pronouncements, the Noticee submits that the proceedings initiated against it are without jurisdiction and are liable to be dropped, as the matter stands conclusively settled by the Hon'ble Settlement Commission in respect of the Company.
- C.1 THE NOTICEE'S ROLE WAS LIMITED IN PROVIDING PROCEDURAL ASSISTANCE TO THE COMPANY. HENCE NO ALLEGATION OF WILFUL MISSTATEMENT AND SUPPRESSION CAN BE ATTRIBUTED TO THE NOTICEE AND ACCORDINGLY PENALTY IS LIABLE TO BE DROPPED.
- C.2 FURTHER, NOTICEE SUBMITTED THAT THE SCN DATED 28.12.2023 DOES NOT ADDUCE ANY EVIDENCE TO ESTABLISH MENS REA ON THE PART OF THE NOTICEE OR TO DEMONSTRATE THAT HE WAS PRIVY TO ANY DELIBERATE ACT OF MISREPRESENTATION.
- C.3 NOTICEE RE-ITERATED THAT THE PROCEDURAL ASSISTANCE GIVEN BY THE NOTICEE QUA DESCRIPTION AND CLASSIFICATION OF SERVICES

EXPORTED BY THE COMPANY WAS BASED ON BONA FIDE BELIEF AND SUBMITTED THAT PENALTY UNDER SECTION 117 OF THE CUSTOMS ACT IS NOT IMPOSABLE AND HENCE THE SAME IS LIABLE TO BE DROPPED.

### **RECORDING OF PERSONAL HEARING**

**14.** In adherence of Principles of Natural Justice, an opportunity was granted to Noticee Nos. 5 to 7, namely Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates (Noticee No. 5); Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd. (Noticee No. 6); and Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. (Noticee No. 7) to appear before the undersigned for Personal Hearing. Accordingly, PH Memo dated 24.10.2025 directing the Noticees to appear for PH on 03.11.2025.

**14.1.** In response to the PH Memo, Noticees Nos. 6 & 7 appeared for PH on 03.11.2025 before the undersigned through virtual mode (through WEBEX). They re-iterated the submissions vide their letters dated 29.10.2025 and 23.10.2025 respectively and requested to drop the proceedings against them.

**14.2.** In response to the PH Memo, Noticee No. 5 appeared for PH on 10.11.2025 before the undersigned through virtual mode (WEBEX). He stated that he had already made the written submission in the matter and that he has nothing more to add to those submissions and he had been simply made a party to the SCN by DRI.

**14.3.** As issue pertains to Noticee Nos. 1 to 4 has already been settled by Settlement Commission vide its Order dated 22.07.2025, hence, they were not called for PH in the present adjudication proceedings.

### **DISCUSSION AND FINDINGS**

**15.** I have carefully gone through the SCN dated 28.12.2023, material on record and written/oral submissions of Noticees Nos. 5 to 7. In the instant case all the seven (07) Noticees were directed to submit written submissions to the SCN in their defence. However, Noticee Nos. 1 to 4 preferred a Settlement Application before the Settlement Commission against the SCN which has been finally settled by the Settlement Commission vide Order dated 22.07.2025. Rest of the Noticees Nos. 5 to 7 has submitted

written reply vide their letters dated 24.10.2025, 23.10.2025 and 29.10.2025 respectively, which has been taken on record and considered in the present adjudication proceedings.

**16. PRINCIPLE OF NATURAL JUSTICE:** Before going into the merits of the case, I find that in the instant case, in compliance of the provisions of Section 28 (8) read with Section 122A of the Customs Act, 1962 and in terms of the Principle of Natural Justice, PH in this matter had been granted to remaining three Noticees Nos. 5 to 7 and these Noticees appeared before the undersigned through virtual mode and submitted their oral submissions.

**17. SETTLEMENT OF CASE IN RESPECT OF NOTICEES NOS. 1 TO 4:** I find that Noticee Nos. 1 to 4 has preferred a Settlement Application before the Settlement Commission, Mumbai, which has been finally settled and the Settlement Commission has appropriated an amount of **Rs. 48,53,99,230/-** towards Customs Duty availed by the Noticee No. 1, i.e. M/s. ASIPL as well as appropriated an amount of **Rs. 36,90,26,606/-** towards interest recoverable from Noticee No. 1. I find that Noticee No. 1 has deposited this amount of Customs Duty and Interest in the Government Treasury vide Challan No. MUMBAI\_III/FY/2023-24/0304/34362 dated 27.02.2024. Vide said Settlement Order, penalty of Rs. 1,50,00,000/- has been imposed on Noticee No. 1; penalty of Rs. 2,50,000/- has been imposed on Noticee No. 2 and penalty of Rs. 50,000/- each has been imposed on Noticees Nos. 3 & 4.

**17.1.** As the issue w.r.t. Noticees Nos. 1 to 4 has already been settled and as per Section 127J of Customs Act, 1962 every of settlement passed under sub-section 5 of Section 127 C shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in that Chapter, be reopened in any proceeding under this Act or under any other law for the time being force. Therefore, I am proceeding to adjudicate the present case for remaining Noticees Nos. 5 to 7 only.

**18. FRAMING OF ISSUES:** Pursuant to a meticulous examination of the SCN dated 28.12.2023 and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- (i) As to whether Noticees Nos. 5 to 7 are liable for penal action under the provisions of Section 117 of the Customs Act, 1962 for the acts of negligence and not providing proper guidance to the Noticee No. 1 in availment of SEIS Scrips?

**19.** Before, going to decide the liability of penalty on Noticees Nos. 5 to 7, I am describing the gist of present case and roles played by Noticees Nos. 5 to 7 in following Paras.

**19.1.** I find that intelligence was gathered by DRI, Indore Zonal Unit that the Exporter of services, M/s. ASIPL are primarily engaged in rendering Medical Transcriptions Service, Medical Coding Service to its fellow subsidiary company located in USA, i.e., M/s. Aquity Solutions LLC, USA. The Exporter have filed applications and obtained "Service Exports from India Scheme" (SEIS) benefit for financial years 2015-16 to 2018-19 from DGFT, Mumbai.

**19.2.** I find that in total, the Exporter has obtained SEIS benefit amounting to INR 55.15 Crores during the period 2015-16 to 2018-19. Initially, the Applicant had declared its services under "Libraries, Archives, Museums and Other Cultural Services" (vide CPC-963) to claim SEIS benefits wrongly for the financial year 2015-16. Second time for the same Financial Year, they have applied under the category of "Marketing Management Consulting Services" (vide CPC Code 86503) and for the rest of the period i.e. Financial Years 2016- 17 to 2018-19 under "Hospital Services" (vide CPC-9311), whereas, it was not eligible to receive the same, since it was not providing the core services of Medical Transcription Services directly to the Hospitals but the same is provided to its fellow subsidiary company abroad.

**19.3.** I find that on the basis of intelligence, an investigations were initiated and a search was conducted at the official premises of the Exporter, on 23.10.2020, which resulted in seizure of incriminating documents under Panchnama dated 23.10.2020.

**19.4.** I find that DRI vide letter dated 26.10.2020 requested the DGFT, Mumbai to provide with the SEIS applications and other relevant documents filed by the Applicant. In response DGFT, Mumbai vide letter dated 11.12.2020 provided the applications and relevant documents. From the documents received from DGFT Mumbai, it appears that the Applicant opted to avail benefits under SEIS under Para 3.08 of the FTP 2015-2020 and applied to DGFT, Mumbai for claiming export of services pertaining to financial years 2015-16, 2016-17, 2017-18 and 2018-19. A total of 105 SEIS scrips were obtained involving duty amount of **Rs. 55,15,68,696/-** (as detailed in Table-A supra).



**19.5.** I find that on scrutiny of the documents for the period 2015-16, it was revealed that the Applicant had filed application before DGFT Mumbai for availing SEIS benefit and declared description of services rendered first as "Libraries, Archives, Museums and Other Cultural Services CPC 963" and subsequently as "Management Consulting Services CPC 865". However, DGFT raised Deficiency Letter mentioning that Service of Medical Transcription is not eligible for SEIS and is wrongly classified under Libraries, Archives, Museums and Other Cultural Services. Hence, the claim against Medical Transcription Services stands rejected. The Exporter in consultation with their CA (Noticee No. 5) and Consultant (Noticee No. 6) replied to DGFT stating that all their services fall under the category of CPC 865 Management Consulting Services further classified under CPC 86509 Other Management Consulting Services which is defined as "Advisory, guidance and operational assistance services concerning other matters" and further mentioned that by oversight the services were declared under CPC 963 instead of CPC 865. The Applicant submitted a revised application and declared all their services under Management Consulting Services to claim SEIS benefits.

**19.6.** I find that on scrutiny of the documents for the period 2016-17, it was revealed that the Applicant had filed its application to DGFT declaring services as "Hospital Services (9311)", "Accounting, Auditing Services" and "Management Consulting Service" in consultation with their CA (Noticee No. 5) and Consultant (Noticee No. 7). After verification, DGFT, raised a Deficiency Letter dated 19.04.2018, asking them to provide detailed Write-up about actual services rendered since the Medical Transcription Services were claimed under "Hospital Services". In response, the Applicant submitted a reply along with detailed Write-up justifying their services to be claimed under "Hospital Services 9311)", "Accounting, Auditing Services" and "Management Consulting Service". Further, on scrutiny of the documents for the period 2017-18, it was revealed that the Applicant filed its application to DGFT Mumbai for SEIS benefit and declared description of services rendered as "Hospital Services (9311)", "Professional Services (Accounting, auditing and Book keeping services 862) and "Other business services (Management Consulting Service 865)", for the period 2018-19, they have filed application for SEIS benefit and declaring their services as "Hospital Services (9311)" and "Other business services". SEIS Applications for the Financial Years 1216-17 to 2018-19 were filed in consultation with a Consultant (Noticee No. 7).

**19.7.** I find that from the scrutiny of E-mail communications, it was revealed that Shri Saurabh Jain, Senior Manager Finance and Accounts (Noticee No. 3) of the Applicant company knew from the very start that none of their services under which they have claimed SEIS incentives are specifically mentioned in the Specified List of Aervices for SEIS benefits. However, he went ahead and with the assistance of the Shri Agnelo Rodrigues, Noticee No. 2 drafted a Write-up so as to suit their intention of wrongly claiming SEIS incentives for those services. It was further observed that they have made different declarations for providing services in different statutory documents such as MGT-7, GST Registration certificate SEIS Applicants etc.

**19.8.** I find that although the Exporter have obtained 105 SEIS Scrips by willful mis-statement and suppression of various facts but out of 105 only 93 scrips were utilized by 4 importers for import of their goods (as detailed in Table-B *supra*). The total value of the scrips utilized by a person other than the person who have obtained the SEIS scrips, is amounting to **Rs. 48,53,99,230/-**.

**19.9.** It appears that the Exporter is providing Medical Transcription Services and Coding Services, wherein, they transcribe voice format files of prescriptions of the hospitals/ doctors in to text to their fellow subsidiary, namely M/s. Aquity Solutions LLC, US and declare it first as "Library, Archives, Museums and Other Cultural Services", second time as "Management Consultancy Service" and third time as "Hospital Services". The services of Medical Transcription are not notified under Annexure 3D and therefore, do not appear to be eligible for SEIS benefits. The Exporter has misrepresented the facts while claiming benefits as they were fully aware that the services provided by them were not entitled for benefits under SEIS Scheme. This further gets corroborated by the E-mails exchanged among Shri Saurabh Jain, Shri Kashyap Joshi and Shri Angelo John Rodrigues. Further, it also appears from one of the Export Invoices No. NGP/18-19/024 dated 31.03.2019 (covered earlier) that the services rendered by the Applicant are classified under Service Accounting Code SAC-9983 (meant for Other Professional, Technical and Business Services) which is universally accepted Nomenclature/ Classification Code, however, while claiming the benefits the Exporter had classified the services under CPC 9311 (Hospital Services). It appears that the Exporter has

misrepresented the facts while claiming benefits even though they were fully aware that the services provided by them were not entitled for benefits under SEIS Scheme,

**19.10.** I find that as per the International Standard Industrial Classification (ISIC), Transcription Services are classified under "Other business Activities Not Elsewhere Classified" and Sub-classified under Other Secretarial Services for which ISIC code is 7499 as "Other Secretarial Activities such as Transcribing from Tapes or Discs". However, corresponding CPC code for aforesaid ISIC code 7499 is 87909 "Other Business Services Not Elsewhere Classified" included here are Business Brokerage Services, Appraisal Services other than for Real Estate, Secretarial Services, Demonstration and Exhibition services etc.". However, Appendix 3D which is a Positive List of Services for SEIS benefits suggests only "Convention Services" from CPC 87909 is eligible for SEIS benefits and by no stretch of imagination Medical Transcription Services can be called Convention Services.

**19.11.** From the foregoing Investigation of documents, email communications, SEIS applications etc., it is apparent that the Exporter has mis-declared its services in their SEIS Applications to DGFT, in order to fraudulently avail SEIS Scrips by willfully mis-stating the nature of services exported by them.

**19.12.** I find that as per the Report of CAG, India 2020 No. 5 of 2020, it is clearly mentioned that **Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits.**

**19.13.** I find that the actual services provided by the Exporter appears to be Transcribing Service. The same has been accepted by Shri Angelo John Rodrigues (Director and Company Secretary of the Exporting firm – Noticee No. 2), Shri Saurabh Jain (Senior Manager Finance & Accounts – Noticee No. 3) and Shri Jay Singh (earlier Deputy General Manager, Accounts & Tax of the Exporting firm – Noticee No. 4) in their respective statements recorded u/s. 108 of the Customs Act, 1962.

**19.14.** I find that Shri Angelo John Rodrigues (Noticee No. 2) and Shri Saurabh Jain (Noticee No. 3) knew from the beginning that the services exported by them is not eligible for SEIS benefits, however, they hatched a conspiracy to submit write up of services which was manipulated to suit their case and submitted to DGFT, Mumbai. These facts

were also confirmed from the E-mails recovered from Shri Angelo John Rodrigues (Noticee No. 2) and Shri Saurabh Jain (Noticee No. 3) to this effect.

**19.15.** In view of the above facts, and un-retracted inculpatory statements of higher management employee of the company, I find that the Exporter have obtained SEIS scrips by means of willful misstatement and suppression of facts and hence, the duty relatable to utilization of the aforementioned SEIS scrips/instrument worth **Rs. 48,53,99,230/-** is recoverable from the Applicant under the provisions of Section 28AAA of the Customs Act, 1962 along with the applicable interest.

**19.16.** I find that for their act of willful misstatement and suppression of facts in order to obtain SEIS scrips fraudulently, the SCN proposes penalty under Section 114AB of the Customs Act, 1962 on the Exporting firm and under Section 117 on the rest of the Noticees Nos. 2 to 7.

**19.17.** I find that the Noticees No. 1 has deposited an amount of **Rs. 48,53,99,230/-** towards Customs Duty as well as an amount of **Rs. 36,90,26,606/-** towards interest in the Government Treasury vide Challan No. MUMBAI\_III/FY/2023-24/0304/34362 dated 27.02.2024 which has been appropriated vide Settlement Order dated 22.07.2025. Vide said Settlement Order, penalty of Rs. 1,50,00,000/- has been imposed on Noticee No. 1; penalty of Rs. 2,50,000/- has been imposed on Noticee No. 2 and penalty of Rs. 50,000/- each has been imposed on Noticees Nos. 3 & 4.

**20.** Now I take up the issue to be decided, i.e. as to whether Noticees Nos. 5 to 7 are liable for penal action under the provisions of Section 117 of the Customs Act, 1962 for the acts of negligence and not providing proper guidance to the Noticee No. 1 in availment of SEIS Scrips.

**20.1.** I observe that SCN has proposed penalty under Section 117 of the Customs Act, 1962 on (i) Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates (Noticee No. 5); (ii) Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd. (Noticee No. 6); and (iii) Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. (Noticee No. 7).

**20.2.** The provisions of Section 117 of the Customs Act, 1962 has already been reproduced at Para 7 (D) *supra*.

**20.3. Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates**

**(Noticee No. 5):** I find that the SCN proposed imposition of penalty on Shri Ganesh Omkarlal Bambori, Proprietor of CA firm, M/s. Bambori & Associates. I find that during the course of investigation, statement of Shri Ganesh Bambori was recorded u/s. 108 of the Customs Act, 1962 on 17.02.2021. The relevant portion of the statement is reproduced hereinbelow:

- (i) On being asked that being a Chartered Accountant wasn't it his responsibility to check the CPC definition before certifying the enclosure to ANF-3B for the services for SEIS benefits, he stated that **yes it was his responsibility to check the CPC definition before certifying the enclosure to ANF-3B. He had certified the enclosure to ANF-3B only on the basis of Write-up of services submitted by M/s. ASIPL. After perusal the definition of Hospital Services of CPC, it is clear that the Write-ups of services submitted by M/s. ASIPL was different from actual CPC definition of Hospital Services;**
- (ii) On being asked to go through the enclosure to ANF-3B of M/s. ASIPL for the year 2015-16 to 2018-19 in which he has certified the Services first as "Library, Archives, Museums and other cultural services", Second time as "Management Consulting Services" (865) further classified under CPC 86509 "Other Management Consulting Services" which is defined as "Advisory, Guidance and Operational Assistance Services concerning other matters" and third time as "Hospital Services" despite the fact that the services of M/s. ASIPL are not mentioned in the Annexure to Appendix 3D, he stated that generally he communicated with Shri Jay Sekhawat (The then Account Manager of M/s. ASIPL). He has seen CPC definition for "Management Consultancy Services" only. He has never seen the CPC Code definition of relevant services in respect of M/s. ASIPL while certifying the enclosure to ANF-3B. **Shri Jay Sekhawat submitted aforesaid all Write-up of services of M/s. ASIPL which were sheer contradictory with the service definition of relevant CPC. It was his responsibility to see the CPC definition of services before certifying the services of M/s. ASIPL;**
- (iii) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) where in the para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, **he stated that**

**he agreed with this Report that Medical Transcription Service don't fall under eligible services for SEIS benefits as these services come under CPC 8432. M/s. ASIPL submitted the Write-up of services which is different from relevant CPC definition. He certified the enclosure to ANF 3B only based on the Write-up;**

- (iv) On being asked having perused the Deficiency Letters, relevant CPC definition and CAG Report in foregoing questions, would he still verify the said services as provided by M/s. ASIPL as "Hospital Services", **he stated that M/s. ASIPL has wrongly taken SEIS benefits by declaring services as "Hospital Services" and "Other management Consulting Services" and in future he would not verify and examine the enclosure to ANF-3B as "Hospital Service" for M/s. ASIPL.**

20.3.1. I find that Shri Ganesh Omkarlal Bambori being a CA of exporting firm has verified the invoices and Write-up of services which were duly signed by Executive Director (Shri Agnelo John Rodrigues) of M/s. ASIPL. It appears that he has never verified and cross-tallied the Write-up of services of the company with relevant CPC Code definitions. During the course of investigation in his voluntary statement he admitted that it is a mistake on his part that he has not verified the nature of Services vis-à-vis CPC Code definitions and merely certified the applications on the basis of manipulated Write-ups prepared by the Director of exporting firm. It appears, he had opted to sign blindly on the SEIS Application as per directions received from M/s. ASIPL.

20.3.2. Being a CA, it was his mandatory responsibility to ensure correct classification and proper declaration before DGFT & other authorities but as it appears, he failed to do so. It appears, he was well aware of the nature of services provided by M/s. ASIPL, and was further aware of the fact that they were willfully mis-stating the description of services in their SEIS application with a fraudulent intent to avail SEIS Scrips. Instead of raising query, he went on certifying the ANF forms and SEIS Applications prepared by the Exporter in consultation with Noticees Nos. 6 & 7, without applying his mind.

20.3.3. It appears Ganesh Omkarlal Bambori was aware of the fact that M/s. ASIPL was not eligible for SEIS scrips for the services provided. It further appears evident that he was willfully verifying mis-statement and suppression of facts to fraudulently avail SEIS scrips, and intentionally making false and incorrect declarations and statements in the SEIS Applications before DGFT, Mumbai.

20.3.4. In view of the above discussions, I find that due to verification and certification about the correctness of facts of the SEIS Application by the CA, the Exporter has smoothly availed the unentitled SEIS incentives and use it for setting against the import duty by various importers, which resulted in loss to Government Exchequer. Therefore, in the light of acts of negligence on the part of Noticee No. 5, which he voluntarily admitted in his statement, I inclined to hold Noticee No. 5, namely Shri Ganesh Omkarlal Bambori, Proprietor of CA firm, M/s. Bambori & Associates liable for penalty u/s. 117 of the Customs Act, 1962.

**20.4. Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd. (Noticee No. 6):** I find that the SCN proposed imposition of penalty on Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd. I find that during the course of investigation, statement of Shri Jaikisan Bhagchandka was recorded u/s. 108 of the Customs Act, 1962 on 17.03.2021. The relevant portion of the statement is re-produced hereinbelow:

- (i) On being asked to peruse two ANF-3Bs wherein in the point 5, i.e. Sector-wise details of Net Foreign Exchange earned for eligible services in one ANF- 3B, M/s. ASIPL (Earlier M/s. MModal Global Services Private Limited) described its services as "Libraries, Archives, Museums and other cultural services", "Management Consulting Services", however, in another ANF-3B "Libraries, archives, Museums and other cultural services" were subsumed in "Management Consulting Services". However, the actual prime service of M/s. ASIPL (Earlier M/s MModal Global Services Private Limited) was Medical Transcription Service, he stated that after going through the Deficiency Memo from O/o. DGFT, Mumbai that *Services of Medical Transcription is not eligible for SEIS and is wrongly classified under Libraries Archives, Museums and other cultural services. Hence the claim against Medical Transcription Services stands rejected*, the Deficiency Memo was forwarded to M/s. ASIPL (Earlier M/s. MModal Global Services Private Limited) after that the company had taken the stand that their services were classified under "Management Consulting Services" and submitted the reply to DGFT along with Write-up of services;
- (ii) On being asked didn't he as a Consultant notice the huge difference in the classification of the services between the two applications filed before the DGFT for the same nature of services being provided, he stated that their work as Consultant was to prepare, process and file the application as per the documents provided by the M/s. ASIPL. **He did agree that there has been a huge**

**difference in classification between the two applications, but it was not their outlook to decide which service was to be categorized under what classification and therefore, they worked as directed by the company;**

- (iii) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India scheme (MEIS) and Service Exports from India Scheme (SEIS), wherein, the Para 3.3.2 (ii) at Page No. 33, it is clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) is not eligible for SEIS benefits, **he stated that he saw the CAG Report and agreed that “Medical Transcription Service” do not fall under eligible services for SEIS benefits as these services come under CPC 8432;**
- (iv) On being asked having perused the Deficiency Letters, relevant CPC definition and CAG Report in aforementioned questions, did he think “Medical Transcription Services” were eligible for SEIS benefits, **he stated that Medical Transcription Services are not eligible for SEIS Benefits and M/s. ASIPL has wrongly taken SEIS benefits on Medical Transcription Services.**

20.4.1. I find that Shri Jaikishan Bhagchandka is the SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd., who initiated interaction with M/s. ASIPL regarding SEIS incentives. It appears he entered into an agreement with the company for collection of documents, preparation of application, submission of online as well as hard copies of the application along with declaration in the office of DGFT, Mumbai and follow up of the application in DGFT office for issuance of SEIS scrips for the year 2015-16.

20.4.2. Being a professional Consultant who tendered his services for charges, he ought to have guided M/s. ASIPL, properly and should have verified the documents and informed them that they are not eligible for SEIS benefits. However, he opted to remain silent and did not act diligently in his professional capacity on the issue and allowed M/s. Aquity India to go ahead with their SEIS Application. It appears that he had opted to remain silent on the issue of eligibility of SEIS benefits. Also, being dealt with Government Authorities, he should have been aware of all the requisite formalities and relevant Notifications, Orders issued with respect to availment of export incentives and he is not supposed to just to collect documents or handle the documents after taking from the party and submit to the DGFT and collect SEIS Scrips and hand over to the Exporter. Being a professional Consultant there are certain responsibilities cast upon



him, which he failed to perform in the present case, and merely depending on write-up provided by the exporting firm filed SEIS Applications before DGFT, processed these applications and obtained SEIS Scrips, which are issued on the basis of false information submitted to DGFT and the services tendered by the exporting firm is never eligible for SEIS benefit. Being a Consultant, Shri Jaikisan must have to carefully verified the information provided by the exporter vis-à-vis CPC definitions before proceeding to file the application, which he miserably failed.

20.4.3. In view of the above discussions, I find that due to non-verification of the nature of services provided by the exporting firm vis-à-vis CPC definitions, the Noticee No. 6 failed to give proper advise to the exporting firm and merely relying on the manipulated Writ-up do the work of collecting application from the exporter, submitted in DGFT and got the SEIS Scrips issued in favour of the exporter. These acts on the part of Shri Jaikisan facilitate the Exporter for smooth availment of the unentitled SEIS incentives and use it for setting against the import duty by various importers, which resulted in loss to Government Exchequer. Therefore, in the light of acts of negligence on the part of Noticee No. 6, which he voluntarily admitted in his statement, I inclined to hold Noticee No. 6, namely Shri Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd. liable for penalty u/s. 117 of the Customs Act, 1962.

**20.5. Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. (Noticee No. 7):** I find that the SCN proposed imposition of penalty on Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. I find that during the course of investigation, statement of Shri Krunal Pandya was recorded u/s. 108 of the Customs Act, 1962 on 09.03.2021. The relevant portion of the statement is re-produced hereinbelow:

- (i) On being asked to see the definition of CPC 9311 "Hospital Services", i.e. *"Services delivered under the direction of medical doctors chiefly to in-patients, aimed at curing, reactivating and/or maintaining the health status of a patient. Hospital services comprise medical and paramedical services, nursing services, laboratory and technical services including radiological and anaesthesiological services, etc"*. After reading the detail Write-up of services as provided by the party and the actual definition of CPC 9311, he was asked to comment on it. **He**

**stated that he read the detailed Write-up of services as provided by the party and the actual definition of CPC 9311. On perusal of both the definition, he said that it was clear that the actual definition of CPC 9311 and the Write-up of services provided by M/s. ASIPL both were different;**

- (ii) On being asked to peruse the Report of CAG, India 2020 No. 5 of 2020 regarding Performance Audit on Merchandise Exports from India Scheme (MEIS) and Service Exports from India Scheme (SEIS) where in the Para 3.3.2 (ii) at Page No. 33, it was clearly mentioned that Medical Transcription Services coming under 8432 (not included in Appendix 3D) were not eligible for SEIS benefits, **he stated that he agreed with this Report that Medical Transcription Service doesn't fall under eligible services for SEIS benefits as these services come under CPC 8432. From perusal of all the foregoing documents it was clear that M/s. ASIPL had wrongly taken SEIS benefits by declaring it's services as "Hospital Services" and "Other management Consulting Services";**
- (iii) On being asked to peruse the enclosure to ANF-3B of M/s. ASIPL for the year 2015-16 to 2018-19 in which the Services declared first as "Library, Archives, Museums and other cultural services", Second time as "Management Consulting Services" (865) further classified under CPC 86509 "Other Management Consulting Services" which is defined as "Advisory, Guidance and Operational Assistance Services concerning other matters" and third time as "Hospital Services" despite the fact that the services of M/s. ASIPL are not mentioned in the Annexure to Appendix 3D. On being asked to explain the same, **he stated that he had seen the relevant documents of the F.Y. 2015-16 first time, since he worked with M/s. ASIPL for the year 2016-17, 2017-18 and 2018-19. Generally, he communicated with Shir Jay Sekhawat of M/s. ASIPL. What services company was providing, how the services were being exported was company's discretion and his scope was limited to enter into any management functions or decisions;**
- (iv) On being asked having perused the Deficiency Letters, relevant CPC definition and CAG Report in aforementioned questions, did he think "Medical Transcription Services" were eligible for SEIS benefits, **he stated that M/s. ASIPL has wrongly taken SEIS benefits by decaled it's services as "Hospital Services" and "Other Management Consulting Services" and in future he would not assist M/s. ASIPL to avail SEIS benefits for Medical Transcription Service.**

20.5.1. I find that Shri Krunal Pandya is the SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. who initiated interaction with M/s. ASIPL regarding SEIS incentives. It appears that he entered into an agreement with the company, wherein, the scope of work was to receive a complete checklist of documents that would be required

for making the Application for claiming SEIS benefits under FTP. Checking and vetting of documents required to file along with application, ensuring accuracy of application in the specified format of ANF & Appendix. He provided his consultancy services to the exporter for the Financial Years 2016-17 to 2018-19.

20.5.2. Being a professional Consultant who tendered his services for charges, he ought to have guided M/s. ASIPL, properly and should have verified the documents and informed them that they are not eligible for SEIS benefits. However, he opted to remain silent on the issue and allowed M/s. Aquity India to go ahead with their SEIS Application. It appears that he had opted to remain silent on the issue of eligibility of SEIS benefits. Also, being dealt with Government Authorities, he should have aware of all the requisite formalities and relevant Notifications, Orders issued with respect to availment of export incentives and he is not mere a postman to collect document from the party and submitted to the DGFT and collect SEIS Scrips and hand over to the Exporter. Being a professional Consultant there are certain responsibilities cast upon him, which he failed to perform in the present case, and merely depending on Writ-up provided by the exporting firm filed SEIS Applications before DGFT, processed these applications and obtained SEIS Scrips, which are issued on the basis of false information submitted to DGFT and the services tendered by the exporting firm is never eligible for SEIS benefit. I find that he merely depended on the Write-up provided by the Exporter and the SEIS Scrip obtained in the previous Financial Year 2015-16 and did not apply his mind to verify the eligibility of service to obtain SEIS Scrip. Being a Consultant, Shri Krunal Pandya must have to carefully verified the information provided by the exporter vis-à-vis CPC definitions before proceeding to file the application, which he miserably failed.

20.5.3. It is observed that he assisted in replying to Deficiency Memo, assisting in providing for clarification to the Authority in case of any query raise; Representation to the authority along with company's personnel as and when required; Assistance in obtaining duty credit scrip after all the data documents are provided by the company as per DGFT office requirement and shall act on company's specific instructions to carry out the activities covered in their scope and will not perform any management functions or take decisions on their behalf; Follow up and pursue the status of the application in DGFT's office on behalf of company for issuance of SEIS scrips for the financial years 2016-17 to 2018-19.

20.5.4. In view of the above discussions, I find that due to non-verification of the nature of services provided by the exporting firm vis-à-vis CPC definitions, the Noticee No. 7 failed to give proper advise to the exporting firm and merely relying on the manipulated write-up do the work of collecting application from the exporter, submitted in DGFT and got the SEIS Scrips issued in favour of the exporter. These acts on the part of Shri Krunal Pandya facilitate the Exporter for smooth availment of the unentitled SEIS incentives and use it for setting against the import duty by various importers, which resulted in loss to Government Exchequer. Therefore, in the light of acts of negligence on the part of Noticee No. 7, which he voluntarily admitted in his statement, I am inclined to hold Noticee No. 7, namely Shri Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd., liable for penalty u/s. 117 of the Customs Act, 1962.

**21. REBUTAL TO THE DEFENCE SUBMISSIONS OF NOTICEES NOS. 5 TO 7:**

**21.1.** I find that all the three Noticees in their written reply contended that they are merely CA/Consultants and acted in a bona fide manner on the basis of information/documents provided by the Exporter and they do not have any monetary gains in performing their jobs. In this regard, I find that during the course of investigation, it came out from the E-mail communications made between Shri Saurabh Jain, Senior Manager Finance and Accounts, Shri Kashyap Joshi, CEO and Shri Agnelo Rodrigues, Director and Company Secretary, and the un-retracted statements of Shri Saurabh Joshi, Shri Agnelo Rodrigues and others, that the management was fully aware that the services provided by them were not mentioned in Public Notice No. 03/2015-20 for the Specified List of Services and the CPC List, that they continued their claim of SEIS benefit by classifying their services as Hospital Services, instead of their actual services i.e. Medical transcription services and Medical Coding. The entire act of classifying their services in wrong head knowing that the services provided by them do not fall in the CPC list or not mentioned in the Public Notice No. 03/2015-20, was in order to avail SEIS benefit illegally. In order to obtain the instrument fraudulently, the Exporter had submitted wrong undertaking in the form ANF-3B and also misleading Write-up to the DGFT even when the specific query was raised regarding eligibility of the services provided by them for the SEIS benefit. For the entire act of wilful mis-declaration and suppression of facts for obtaining the SIES instrument fraudulently.

21.1.1. I find that the Noticees Nos. 5 to 7 being CA and Consultants could have averted the wrong-doings of the exporting firm and refrain them from availing undue incentives from Government, whereas, in the instant case these three Noticees readily proceeded with verification and submission of SEIS Application with DGFT, which were prepared on the basis of wrong information/statement/declaration and which resulted in availment of undue export incentive in form of SEIS Scrip by the exporter.

21.1.2. Furthermore, I find that all the three Noticees in their respective voluntary statements recorded u/s. 108 of the Customs Act, 1962 has admitted their fault, therefore, they rendered themselves liable for penal action under the provisions of Section 117 *ibid*.

21.1.3 I find that all the Notices in their respective written submissions have inter alia have admitted that they have only provided procedural assistance to the company and there is no *mens rea* on their part to demonstrate that they were privy to any deliberate act of mis-representation and hence no penalty under Section 117 of the Customs Act is imposable. Assuming that there was no *mens rea* without concurring the contentions of the Noticees, I am of the considered view that the provision contained in Section 117 of the Customs Act, 1962 is a civil penalty provision designed to ensure compliance rather than to punish criminal intent. Therefore, the absence of deliberate intention or knowledge cannot exonerate a person from liability once the contravention in the nature of lapse in procedural assistance is established. In this regard, I place reliance on the recent judgement of the **Hon'ble High Court of Karnataka in the case of Principal Commissioner of Customs v. M/s Pigeon International**; wherein the Hon'ble Court has categorically stated that the statutory language of Section 117 is clear and unambiguous and does not necessitate any element of ***mens rea*** for attracting penal consequences. The judgment assumes importance as it reaffirms the strict liability nature of customs law, emphasizing that any contravention or failure to comply with the Act's

provisions, regardless of intent, invites penalty. Therefore, all the three noticees are liable for penal action under the provisions of Section 117.

21.1.4. I find that it is settled legal position that statements recorded u/s. 108 of the Customs Act, have evidentiary value and can be used against the person who tendered the said statement or whose name cropped in during the course of statement in any judicial or quasi-judicial proceedings.

21.1.5. I find that the legal position about the importance and validity of statements rendered u/s. 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

- (i) **Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd. reported in 2000 (120) E.L.T. 280 (S.C.)** : *Statement recorded by a Customs Officer under Section 108 is a valid evidence.*
- (ii) **In 1996 (83) E.L.T. 258 (S.C.) in the case of Shri Naresh J. Sukawani V/s. Union of India** : *"4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act"*.
- (iii) It was held that *statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt.* Similar view was taken in the case of **In Gulam Hussain Shaikh Chougule v. S. Reynolds (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)**.
- (iv) **State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC)**: *Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law". (Vide Taylors's Treatise on the Law of Evidence, VI. I).*

- (v) *There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in the case of **K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721.***
- (vi) Hon'ble Supreme Court in the case of **Kanhailal Vs. UOI, 2008 (1) Scale 165** observed: *"The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava's case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*
- (vii) Hon'ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of **Kantilal M. Jhala V/s. Union of India vide judgment dated: October 5, 2007 (reported in 2007- TIOL-613-HC-MUM-FEMA)** held that *"Confessional statement corroborated by the seized documents, admissible even if retracted"*.
- (viii) The Apex Court in the case **Hazari Singh V/s. Union of India reported in 110 E.L.T. 406**, and case of **Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508** has held that *"the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person"*.
- (ix) The Hon'ble Supreme Court in the case of **Badaku Joti Savant V/s. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)]** laid down that *statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.*
- (x) In the case of **Bhana Khalpa Bhai Patel V/s. Asstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)]**, the Hon'ble Apex Court at Para 7 of the judgment held that: *"It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721"*.
- (xi) In the case of **Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409**, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*

- (xii) Hon. Supreme Court's decisions in the case of **Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940**. *The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence.*
- (xiii) In the case of **Jagjit Singh V/s. State Of Punjab And Another**, Hon'ble Punjab and Haryana High Court in **Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013** held that\: *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

21.1.6. In view of the above referred consistent judicial pronouncements, the importance of statements rendered u/s. 108 of the Customs Act, 1962 during the course of investigation in present case is quite imperative. **I find that the statements made in the case were voluntary, wherein, all the three Noticees have admitted their fault and therefore these statements are very much valid in Law and can be relied upon as having full evidentiary value.**

21.1.7. I find that from the above statement evidences it has been clearly established that all the three Noticees have admitted that they have failed in proper verification and certification of information provided by the Exporter and prepared, verified and filed SEIS Applications before DGFT which resulted in issuance of undue SEIS Scrips to the Exporter.

**21.2.** I find that Noticee No. 7 in his written reply submitted that being the case of the Exporter has been settled by the Settlement Commission, the case against him should be dropped. In this regard, I find that in the Order issued by Settlement Commission did not gave clean cheat to the Exporter and its Directors/Employee, instead the Settlement Commission confirmed the duty demand with interest and upheld the penal provisions proposed in the SCN and accordingly imposed penalty on all the four Noticees approached the Settlement Commission. Furthermore, it is settled law that the subject order is limited to the persons who moved the Settlement Commission and same cannot



be used for other co-noticees. Therefore, I am of the view that the contention of the Noticee No. 7 is neither cogent nor correct, hence, not acceptable.

**21.3.** I find that the Noticees Nos. 6 & 7 in their written submissions kept reliance on various case laws in their defence. In this regard, I find that the Hon'ble Supreme Court of India in case of **M/s. Ambica Quarry Works V/s. State of Gujarat & Others [1987 (1) S.C. C.213]** observed that *"the ratio of any decision must be understood in the background of the facts of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it"*.

21.3.1. The facts and circumstances in the instant case and the cited case laws are different. It is a settled position in law that a ratio of a decision would apply only when the facts are identical. Thus, the case laws relied upon by the Petitioner do not support Petitioner in any manner.

21.3.2. In the matter of **M/s. Alnoori Tobacco Products Ltd. 2004(170) ELT 135 (SC)**, the Hon'ble Supreme Court held as follows:

*"..... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the state and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgements of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes"*

21.3.3. Hon'ble Supreme Court in the Westinghouse Saxby judgement itself, has acknowledged the complexity of the issue and has pointed to the undesirability of generalising the decisions of one case to others. The Hon'ble Court, has referred to the observations made in its own judgement in the case of "A. Nagaraju Bros Vs. State of A.P, thus- *".....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently.....There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests*

*like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application”.*

21.3.4. Further, the Hon’ble Supreme Court, in the case of **Commissioner of Central Excise, Mumbai Versus M/s Fiat India (P) Ltd.** has observed that “*a case is only an authority for what it actually decides and not for what may seem to follow logically from it. ...Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect... To decide, therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive*”.

21.3.5. Accordingly, with regards to the subject case laws relied upon by the Petitioner in his Petition (Grounds of Petition), it is submitted that each case is unique and is to be dealt independently taking into account the facts and circumstances of each case.

**22.** In view of the above discussions and findings, I pass the following order.

### **ORDER**

**23. (i)** I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** on Shri Ganesh Omkarlal Bambori, Proprietor of M/s. Bambori & Associates (Noticee No. 5) under the provisions of Section 117 of the Customs Act, 1962.

**(ii)** I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** on Shri Jaikisan Bhagchandka, SEIS Consultant and Director of M/s. Shangrila Corporate Services Pvt. Ltd. (Noticee No. 6) under the provisions of Section 117 of the Customs Act, 1962.

**(i)** I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** on Shri Krunal Pandya, SEIS Consultant and Director of M/s. Madhu Corporate Services Pvt. Ltd. (Noticee No. 7) under the provisions of Section 117 of the Customs Act, 1962.

**24.** This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other

person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

  
(HARDEEP BATRA)  
Commissioner of Customs-IV,  
Export Commissionerate, ACC,  
Mumbai.

To,

1. **Shri Ganesh Omkarlal Bambori, Proprietor,**  
M/s. Bambori & Associates,  
3/A, Ganga Niwas, Opp. Tikitar Pvt. Ltd.,  
Village Road, Bhandup (W)  
Mumbai, Maharashtra.
2. **Shri Jaikisan Bhagchandka, SEIS Consultant and Director,**  
M/s. Shangrila Corporate Services Private Limited,  
A-301, Crystal Plaza, New Link Road,  
Andheri (W), Mumbai – 400 053, Maharashtra.
3. **Shri Krunal Pandya, SEIS Consultant and Director,**  
M/s. Madhu Corporate Services Private Limited,  
8-203, Hetal Arch, S.V. Road,  
Malad (West), Mumbai – 400 064, Maharashtra.

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Customs Zone-III, CSI Airport, Mumbai.
2. The Addl. Director General, DRI, <sup>Indors</sup> Lucknow Zonal Unit, <sup>Indors</sup> Lucknow, <sup>Madhya Pradesh</sup> Uttar Pradesh.
3. The Addl. Commissioner of Customs, Export, ACC, Mumbai Zone-III.
4. The Deputy Commissioner of Customs, CAC, Export, ACC, Sahar, Mumbai.
5. The Deputy Commissioner of Customs, Tax Recovery Cell (Export), ACC, Mumbai.
6. The Supdt./CHS, ACC, Mumbai – For display on Notice Board.
7. The DC/EDI Section for uploading on website of ACC, Mumbai-III.
8. Office Copy.