



आयुक्त, सीमाशुल्क (सामान्य) का कार्यालय  
OFFICE OF THE COMMISSIONER OF CUSTOMS (GENERAL),  
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई -400001. NEW CUSTOM  
HOUSE, BALLARD ESTATE, MUMBAI - 400001.

संचिका सं./F. No.- GEN/CB/337/2025-CBS

आदेश दिनांक/Date of Order: 27.02.2026

CAO No. 153/2025-26/CAC/CC(G)/SJS/Adj-CBS जारी दिनांक/Date of issue: 13.03.2026

संख्या:

DIN:- 20260377NO0000882E60

द्वारा जारी : श्रद्धा जोशी शर्मा

Issued By : Shraddha Joshi Sharma

आयुक्त, सीमाशुल्क (सामान्य)

Commissioner of Customs (Gen.)

मुंबई -400 001

Mumbai - 400 001

**ORDER-IN-ORIGINAL मूल आदेश****ध्यान दीजिए/ N.B. :**

1. यह प्रति उस व्यक्ति को निजी उपयोग हेतु निःशुल्क प्रदान की जाती है, जिसे यह जारी की जा रही है।  
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2. इस आदेश के विरुद्ध अपील माँगे गए राशी के 7.5% के भुगतान पर सीमाशुल्क अधिनियम, 1962 की धारा 129A(1B)(i) के संबंधमें सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण में स्वीकार्य है, जहाँ शुल्क या शुल्क एवं जुर्माना विवादित हों, या जुर्माना, जहाँ सिर्फ जुर्माना ही विवादित हो। यह अपील इस आदेश के संप्रेषण की तारीख के तीन महीने के अंदर दायर की जाएगी। यह अपील सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण नियमावली (कार्यविधि), 1982, के प्रावधानों के अंतर्गत, यथोत्तखंडपीठ में स्वीकार्य है।

An appeal against this order lies with the Customs, Central Excise and Service Tax Appellate Tribunal in terms of section 129A(1B)(i) of the Customs Act, 1962, on payment of 7.5% of the amount demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. It shall be filed within three months from the date of communication of this order. The appeal lies with the appropriate bench of the Customs, Central Excise and Service Tax Appellate as per the applicable provisions of the Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

3. यह सूचित किया जाता है की इस आदेश के अमल में आते ही, न्याय निर्णयन अधिकारी का अधिकार क्षेत्र समाप्त होता है और सीमाशुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील अधिकरण, पश्चिम क्षेत्री यखंडपीठ, के M/s Knowledge Infrastructure Systems Pvt. Ltd. & Others vs ADG, DRI, Mumbai के संदर्भ में जारी आदेश क्रमांक A/86617-86619/2018 दिनांक के अनुसार न्यायिक आदेश तदोड 31.05.2018 प्रांत न्याय निर्णयन अधिकारी 'functus officio' बन जाता है

It is informed that the jurisdiction of the Adjudicating Authority stands alienated with the conclusion of the present adjudication order and the Adjudicating Authority attains the status of 'functus officio' as held by Hon'ble CESTAT, Mumbai in its decision in the case of M/s Knowledge Infrastructure Systems Pvt. Ltd. &

Others vs ADG, DRI, Mumbai vide Order No. A/86617-86619/2018 dated 31.05.2018.

4. यदि एक ही प्रकरण में उसी पक्षकार के विरुद्ध कई कारण बताओ नोटिस लगाकर आदेश पारित किया जाता है तो प्रत्येक प्रकरण में अलग अपील दायर की जाए।

In case where an order is passed by bunching several show cause notices on an identical issue against the same party, separate appeal may be filed in each case.

5. यह अपील फॉर्म C.A.-3 में दायर की जानी चाहिए जो कि सीमाशुल्क नियमावली (अपीलस), १९८२ के नियम में उल्लेखित व्यक्ति 2 के उपनियम 3 के तहत निर्धारित है एवं उसी नियमावली के नियम 6 द्वारा हस्ताक्षरित एवं सत्यापित की जाएगी।

The Appeal should be filed in Form C.A.-3 prescribed under Rule 6 of the Customs (Appeals) Rules, 1982 and shall be signed and verified by the person specified in sub-rule 2 of rule 3 rules ibid.

6. (i) यदि प्रतिवादित आदेश, जिसके विरुद्ध अपील की गई है, में शुल्क एवं मांगे गए ब्याजवलागाएगए जुर्माने की राशि रु-/1000 .पाँच लाख या इस से कम होतो रु ., (ii)यदि यह राशि रुपाँच लाख से अधिक . ) एवं -/5000 .हो किंतु पचास लाख से अधिक न होतो रुiii) यदि यह राशि रुपचास लाख से अधिक होतो . के शुल्क -/10000 .रु का भुगतान क्रॉसड बैंक ड्राफ्ट के माध्यम से अधिकरण की खंडपीठ के सहायक पंजीयक के पक्ष में जिस स्थान पर खंडपीठ स्थित है, के किसी भी राष्ट्रीय क्रत बैंक की शाखा में किया जाए एवं डिमांड ड्राफ्ट अपील के साथ संलग्न किया जाए।

A fee of (i) Rs. 1000/- in case where the amount of duty and interest demanded and the penalty imposed in the impugned order appealed against is Rupees Five Lakhs or less, (ii) Rs. 5000/- in case where such amount exceeds Rupees Five Lakhs but not exceeding Rupees Fifty Lakhs and (iii) Rs. 10000/- in case where such amount exceeds Rupees Fifty Lakhs, is required to be paid through a crossed bank draft in favour of the Assistant registrar of the Bench of the Tribunal on a branch of any nationalized bank located at the place where the bench is situated and demand draft shall be attached to the Appeal.

7. अपील की एक प्रति में कोर्ट फी अधिनियम, 50 .के तहत निर्धारित रु 6 की अनुसूची मद 1870 का कोर्ट फी स्टैम्प लगा होना चाहिए एवं इसके साथ संलग्न इस आदेश की उक्त प्रति में रु 50 .का कोर्ट फी स्टैम्प लगा होना चाहिए।

One copy of the Appeal should bear a Court Fee Stamp of Rs. 50 and said copy of this order attached therein should bear a Court Fee Stamp of Rs. 50 as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

**Brief Facts of the Case:**

M/s. Prayosha Logistics LLP (CB License No. 11/1980) (PAN No. AAYFP9463G), having their registered address at 3C/23, Second Floor, Kalpataru Aura, Opposite R City Mall, L.B.S. Marg, Ghatkopar West, Mumbai-400086, Maharashtra (hereinafter referred to as the "Customs Broker" or "CB"), is the holder of a Customs Broker License issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of the CBLR, 2013 [now corresponding to Regulation 7(2) of the CBLR, 2018]. As a licensed entity, they are strictly bound by the statutory regulations and conditions stipulated therein.

2. An offence report in the form of Show Cause Notice No. 01/COMMR(X)/DBK(EDI)/2025-26/ACC dated 11.06.2025 was received from the Commissioner of Customs (Export), Air Cargo Complex (ACC), Mumbai, wherein, inter-alia, the following facts were brought on record:

2.1. The Exporter, M/s. Siddh Exports LLP (IEC No. ADRFS2375Q) (hereinafter referred to as "the exporter" or "the noticee"), having its office at B7, Aristrocate Building, Ground Floor, Lajja Silk Mill Compound, Village Mogra, Andheri East, Mumbai-400069, filed two Shipping Bills for the export of mobile phones through their Customs Broker, M/s. Prayosha Logistics LLP. It was alleged that the exporter claimed ineligible Duty Drawback on the export of mobile phones that were already pre-activated/unlocked, the details of which are as follows.

- i. Shipping Bill No. 8320499 dated 01.02.2021- Declared FOB Value: ₹ 31,48,150.10; Claimed Drawback Amount: ₹1,16,604.48
- ii. Shipping Bill No. 8322998 dated 01.02.2021 Declared FOB Value: ₹ 3,98,69,928.40; Claimed Drawback Amount: ₹14,30,200.19

2.2 An investigation into the matter was initiated by the Special Investigation and Intelligence Branch [SIIB (X)], ACC, Sahar, Mumbai. The investigation was prompted by a specific clarification issued by the Drawback Division of the CBIC vide letter F. No. 609/4/2020-DBK/1063 dated 25.09.2020, concerning the admissibility of Duty Drawback on the export of "unlocked/tested" mobile phones by merchant exporters.

The drawback division of CBIC clarified that: -

*"Rule 2(e) of the Customs and Central Excise Duties Drawback Rules, 2017 (Rules 2017) defines "manufacture" as including processing of or any other operation carried out on goods and that the term manufacturer shall be construed accordingly, Clause (i) of second proviso to Rule 3(1) of the Rules, 2017 provides that no Duty Drawback shall be allowed on export of goods that have been taken into use after manufacture".*

*"Some merchant exporters of mobile phones are undertaking various activities on mobile phones like activation and unlocking of mobile phones by inserting an Indian SIM card in India and placing a call for 5 minutes or testing of handsets or re-flashing of software for a particular region etc. it is undisputed that these activities are all post manufacturing and post packaging activities undertaken by the merchant exporters before export. As the mobile phones packages are opened and the mobile phones are suitably worked upon for sale in destination countries, thereby they are already "taken into use" by merchant exporters and such activity disentitle them for Duty Drawback".*

2.3 Furthermore, it was noted from the records that the past export data of the exporter, M/s. Siddh Exports LLP (IEC No. ADRFS2375Q), pertaining to the period up to 23.09.2019, was retrieved from the EDI system, and the investigation of the Shipping Bills filed till that date was concluded with an Investigation Report (IR) issued on 30.09.2023. Based on specific intelligence, it was brought to the notice of the department that the exporter unscrupulously continued to attempt the export of pre-activated mobile phones to avail ineligible duty drawback benefits. In this pursuit, the exporter filed two Shipping Bills, namely SB No. 8320499 dated 01.02.2021 and SB No. 8322998 dated 01.02.2021, through their Customs Broker, M/s. Prayosha Logistics LLP, under the Duty Drawback Scheme. The subject goods were carted at Air Cargo Complex, Sahar, Mumbai, and were consigned to M/s. Captains Freight Services FZCO, D15 & D16, Dubai Airport Free Zone, Dubai, UAE. Upon scrutiny, it was also observed that the exporter had deliberately opted to claim export incentives by selecting 'YES' under the reward scheme column for all items

in the said Shipping Bills, clearly indicating their intent to fraudulently claim rewards in addition to the inadmissible drawback.

2.4 Acting on the intelligence, the goods covered under the aforementioned two Shipping Bills, i.e., SB No. 8320499 and SB No. 8322998, both dated 01.02.2021, were put on hold for detailed verification. A 100% physical examination of the consignments was carried out on 02.02.2021 by the officers of SIIB(X), Air Cargo Complex, in the presence of Shri Dinesh G. Mirani, representative of the Customs Broker, and Shri Rajesh Nisar, Partner of the exporter firm, M/s. Siddh Exports LLP. The examination proceedings were duly drawn and recorded under a Panchanama dated 02.02.2021. During the course of the said examination, the carton numbers, the description of the goods, and the IMEI numbers declared by the exporter were verified and found to be in order with the declarations made in the respective Shipping Bills.

2.5 However, during the detailed physical examination of the packages pertaining to Shipping Bill No. 8320499 dated 01.02.2021, it was observed that the mobile phones appeared to be new and unused. In stark contrast, the examination of the packages under Shipping Bill No. 8322998 dated 01.02.2021 revealed that out of a total of 16 packages, the seals on the majority of the mobile phone boxes in 9 packages were tampered with or broken. Specifically, all mobile boxes containing Samsung and Tecno brand phones were found to have their factory seals already broken, suggesting that the phones had been opened for some form of post manufacturing activity. Furthermore, visible fingerprints, touch marks, and other distinct indications were noticed on several mobile phones, strongly implying that the devices had been unlocked, tested, or taken into use prior to their attempted export under Shipping Bill No. 8322998 dated 01.02.2021.

2.6 In view of the facts outlined above, it appeared that M/s. Siddh Exports LLP deliberately mis-declared the description of the exported mobile phones by concealing the fact that the devices had been taken into use after manufacture. The activation reports officially submitted by the respective mobile brand manufacturers confirmed that the majority of the exported handsets, particularly those covered under Shipping Bill No.

8322998 dated 01.02.2021, were indeed activated post manufacture. It was established that such activation was executed through either the insertion of SIM cards or connection via Wi-Fi. Consequently, it appeared that the duty drawback claimed and availed on these specific goods was inadmissible under the provisions of Clause (i) of Rule 3 of the Customs and Central Excise Duties Drawback Rules, 2017, read with Section 75(1) of the Customs Act, 1962. Furthermore, the activation reports indicated that the exporter attempted to export pre-activated mobile phones, which contravenes the directive issued by the Office of the OSD (Drawback Division), CBIC, New Delhi, vide letter F. No. 609/4/2020-DBK/1063 dated 25.09.2020.

2.7 Consequently, it appeared that the goods covered under Shipping Bill No. 8322998 dated 01.02.2021 were seized vide seizure memo dated 04.02.2021 on the grounds of contravention of the Customs Act, 1962, as the subject goods appeared liable for confiscation under the provisions of the said Act. Regarding the consignment covered under Shipping Bill No. 8320499 dated 01.02.2021, it appeared that reports received from Samsung and Xiaomi mobile companies confirmed that the mobile phones were non-activated. Accordingly, no discrepancies were found in this regard as per the information provided by the respective manufacturers.

2.8 It appeared that the exporter, vide letters dated 04.02.2021 and 19.02.2021, requested the provisional release of their cargo, citing significant financial losses due to market volatility. It appeared they further requested the provisional release of the goods covered under Shipping Bill No. 8322998 dated 01.02.2021 to prevent order cancellation. In response, the SIIB (X) informed the exporter that their request for provisional release had been approved by the Competent Authority. It appeared that the release was granted on the condition that the exporter furnish a Bond for the full FOB value of the goods and a Bank Guarantee equivalent to 25% of the export benefit claimed. Subsequently, it appeared that the exporter submitted a Bond of ₹4,00,00,000/- and a Bank Guarantee of ₹3,58,000/- towards the provisional release of the goods under Shipping Bill No. 8322998 dated 01.02.2021, and the consignment was allowed provisional release for export.

2.9 Further, it appeared that the past export records of M/s.Siddh Exports LLP (IEC ADRFS2375Q) from 24.09.2019 to 12.03.2021 were retrieved and examined. Upon scrutiny, it appeared that the exporter had filed a total of 105 Shipping Bills during this period under the Duty Drawback Scheme, including the two subject Shipping Bills. It appeared that the exporter claimed Duty Drawback benefits on all 105 Shipping Bills. Furthermore, the BRC (Bank Realization Certificate) status of the said Shipping Bills was retrieved from the ICES 1.5 system, which indicated that foreign remittances had been realized for all 105 Shipping Bills.

2.10 It appeared from the investigation that the total FOB value of the activated mobile phones filed under the aforementioned shipping bills amounted to ₹99,50,99,729.60. However, the FOB value of mobile phones classified under the "No Report" category comprising devices for which activation data could not be ascertained due to issues such as incorrect IMEI numbers or the absence of inbuilt software to capture activation dates stood at ₹8,74,67,554/-. It appeared that these mobile phones were liable for confiscation under the provisions of Section 113(i) and 113(ia) of the Customs Act, 1962. Consequently, Duty Drawback amounts of ₹2,86,94,118.60 and ₹25,23,817/-, totalling ₹3,12,17,935.60, along with applicable interest, appeared to be recoverable from the exporter in accordance with the Central Excise Duties Drawback Rules, 2017, read with Section 75 and Section 75A(2) of the Customs Act, 1962.

Table

	<b>FOB Value (Rs.)</b>	<b>Drawback (Rs.)</b>
<b>Activated Phones</b>	99,50,99,729.6	2,86,94,118.6
<b>No Report</b>	8,74,67,554	25,23,817
<b>Total</b>	108,25,67,283.6	3,12,17,935.6

2.11 It appeared that the exporter had deposited a drawback amount of ₹11,03,905/- against Shipping Bill No. 5323608 dated 21.09.2020 through Demand Draft No. 049335 dated 03.03.2021. Subsequently, an additional amount of ₹30,00,000/- was returned by the exporter via Demand Draft No. 051016 dated 10.03.2022. It is pertinent to note that the

voluntary return of the drawback amount does not absolve the exporter of their statutory liability nor does it mitigate the gravity of the case initiated against them. During the course of the investigation and in statements recorded under Section 108 of the Customs Act, 1962, the exporter explicitly declared that the exported mobile phones were "non-activated". However, contrary to this declaration, official reports received from the respective mobile brand companies confirmed that a significant number of the mobile phones covered under the subject shipping bills were, in fact, activated prior to export. This discrepancy establishes a clear and prima facie case of misdeclaration on the part of the exporter, rendering them liable for penal action under the applicable provisions of the Customs Act, 1962.

2.12 It appeared that M/s. Siddh Exports LLP willfully mis-declared the description of the exported mobile phones by failing to disclose that the devices had been "taken into use" after manufacture. The activation reports obtained from the respective mobile brand companies indicated that a substantial number of the exported mobile phones were activated prior to export, thereby establishing that the devices were utilized post-manufacture. In such cases, duty drawback is strictly inadmissible as per the second proviso to Rule 3(1)(c) of the Customs and Central Excise Duties Drawback Rules, 2017, read with Section 75(1) of the Customs Act, 1962. Accordingly, the drawback amount claimed and availed by the exporter appeared to be inadmissible and is recoverable along with applicable interest under Section 75A(2) of the Customs Act, 1962, read with Rule 17 of the aforementioned Rules. It appeared that the exporter deliberately mis-declared the nature of the exported mobile phones with the intent to avail inadmissible duty drawback benefits, despite being fully cognizant that pre-activated mobile phones are ineligible for such benefits. In view of the foregoing, M/s. Siddh Exports LLP appeared to have rendered themselves liable for penal action under Sections 114(iii) and 114AA of the Customs Act, 1962 in relation to the impugned goods.

2.13 It appeared that the statement of Shri Rajesh Nisar, Partner of the exporter firm M/s. Siddh Exports LLP, was recorded under Section 108 of the Customs Act, 1962, on 05.02.2021, wherein he, inter-alia, deposed that:

- In respect of Shipping Bill No. 8322998 dated 01.02.2021, the mobile phones were indeed activated; however, at the time of filing the said shipping bill, the Customs Broker had described them as "non-activated" based on the invoice provided to them.
- Their Customs Broker, M/s. Prayosha Logistics LLP, was fully aware of the fact that the mobile phones were activated.
- He acknowledged the reports received from the respective mobile brand companies regarding the activation status of the mobile phones against the IMEI list submitted by the exporter, and accepted that some of the phones were indeed activated, as evidenced in the said reports.

2.14 Further, it appeared that the statement of Shri Dinesh G. Mirani, Partner of the Customs Broker firm M/s. Prayosha Logistics LLP, was recorded under Section 108 of the Customs Act, 1962, on 05.02.2021, wherein he, inter-alia, stated the following:

- He handles customs-related work concerning exports, including mobile consignments, imports, and liaising with exporters, and has been associated with the company since 2019.
- He became aware of the activation status of the mobile phones only during the physical examination process.
- He acknowledged the reports received from the respective mobile brand companies regarding the activation status of the mobile phones against the IMEI list submitted by the exporter, and accepted that some of the phones were indeed activated, as stated in the reports.

3. Furthermore, while it is a well-established principle that under the regime of trade facilitation, a significant amount of trust is placed on Customs Brokers who act as a crucial

link between Importers/Exporters and the Customs Department, the allegations levelled against the CB must be viewed in the context of the investigation. In the present case, the Customs Broker, M/s. Prayosha Logistics LLP, filed 105 Shipping Bills under the Duty Drawback Scheme, against which drawback was subsequently claimed by the exporter. The Show Cause Notice alleged that there was a suppression of facts and misstatement regarding the condition of the exported goods. Specifically, in respect of Shipping Bill No. 8322998 dated 01.02.2021, where the mobile phones were found to be unlocked/activated prior to export, the investigating agency relied upon the statement of the exporter dated 05.02.2021, who claimed that the CB had declared the goods as "non-activated" despite allegedly being aware of their pre-activated status. Conversely, Shri Dinesh G. Mirani, Partner of the CB firm, in his statement dated 05.02.2021, categorically clarified that he became aware of the activation status only at the time of the physical examination. Based on the exporter's statement and the activation reports obtained from the mobile brand companies, the department initially averred that the Customs Broker had connived with the exporter by making incorrect declarations in the shipping bills to claim what was, at the material time, alleged to be inadmissible drawback.

4. From the findings of the offence report, the following commissions and omissions leading to the apparent violation of the statutory obligations stipulated under Regulation 10 of the CBLR, 2018, are brought on record:

4.1 The regulation 10(d) of CBLR, 2018:

*"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be"*

In the instant matter, it was alleged in the offence report that the Customs Broker was fully aware of the statutory ineligibility of claiming duty drawback on pre-activated mobile phones. The investigating agency relied upon the statement of Shri Rajesh Nisar, Partner of M/s. Siddh Exports LLP, to assert this claim. Accordingly, it was alleged that a

strict statutory responsibility was cast upon the CB to properly advise their client to declare the correct information and the exact description of the goods in the shipping bills, a duty which the CB allegedly failed to discharge.

Furthermore, the Show Cause Notice alleged that the CB not only failed to advise their client against the said claim but also made no efforts to bring this alleged non-compliance to the attention of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs. It was contended that under Regulation 10(d) of the CBLR, 2018, it is the bounden duty of the CB to inform the jurisdictional Deputy/Assistant Commissioner of Customs regarding such instances of deliberate misdeclaration. Since the CB allegedly remained silent and facilitated the misdeclaration, the SCN charged the Customs Broker with the violation of the provisions of Regulation 10(d) of the CBLR, 2018.

4.2 The regulation 10(e) of CBLR, 2018:

*"exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;"*

Upon scrutiny of the subject offence report, it was alleged in the Show Cause Notice that the Customs Broker failed to exercise due diligence and did not inform the exporter about the ineligibility of duty drawback on pre-activated mobile phones. Instead, it was alleged that the broker assisted the exporter in availing the ineligible duty drawback by deliberately omitting the correct description of the goods in the shipping bills. Therefore, based on these assertions, it was alleged that the Customs Broker violated the provisions of Regulation 10(e) of the Customs Brokers Licensing Regulations (CBLR), 2018.

4.3 The regulation 10(n) of CBLR, 2018:

*"verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and*

*functioning of his client at the declared address by using reliable, independent, authentic documents, data or information"*

In the present case, the Show Cause Notice alleged that the Customs Broker failed to comply with the mandates of Regulation 10(n) of the CBLR, 2018. The investigating agency averred that by allegedly facilitating the clearance of the subject shipping bills with inaccurate customs declarations, the CB demonstrated a failure to thoroughly understand the identity and actual operations of their client. It was contended in the offence report that verifying a client's functioning is a fundamental professional practice for a Customs Broker, and the purported failure to do so in this instance warranted regulatory scrutiny. Therefore, based on these initial assertions, it was alleged that the Customs Broker had violated the provisions of Regulation 10(n) of the Customs Brokers Licensing Regulations (CBLR), 2018.

5. In view of the offence report received from the Commissioner of Customs (Export), Air Cargo Complex (ACC), Mumbai, action under the CBLR, 2018 was initiated against the CB M/s. Prayosha Logistics LLP (CB License No. 11/1980). Further, in view of the Board's Instruction No. 24/2023 dated 18.07.2023, the case was not considered appropriate for immediate suspension of the CB license under Regulation 16 of the CBLR, 2018. However, action under Regulation 17 of the CBLR, 2018 was initiated against the CB M/s. Prayosha Logistics LLP and accordingly, based on the Offence Report, the following articles of charge were framed against the CB:

- (i) Article of Charge-I: Violation of Regulation 10(d) of the CBLR, 2018.
- (ii) Article of Charge-II: Violation of Regulation 10(e) of the CBLR, 2018.
- (iii) Article of Charge-III: Violation of Regulation 10(n) of the CBLR, 2018

5.1 In light of the above, a Show Cause Notice (SCN) No. 25/2025-26 dated 28.08.2025 was issued to the CB M/s. Prayosha Logistics LLP (CB License No. 11/1980) under the provisions of Regulation 17(1) of the CBLR, 2018, wherein the CB was called upon to show cause, as to why:

- a. The Customs Broker License bearing no. 11/1980 issued to them should not be revoked under Regulation 14 read with Regulation 17 of the CBLR, 2018;
- b. Security deposited should not be forfeited under regulation 14 read with regulation 17 of the CBLR, 2018;
- c. Penalty should not be imposed upon them under Regulation 18 read with Regulation 17 of the CBLR, 2018.

5.2 Shri Hari Singh Mina, Disposal, Zone-I, Assistant Commissioner of Customs, was appointed as Inquiry Officer (IO) to conduct the inquiry proceedings against the CB M/s. Prayosha Logistics LLP. under Regulation 17 of the CBLR, 2018.

**INQUIRY REPORT: -**

6. The Inquiry Officer (here in after referred to as the 'IO') concluded the inquiry proceedings and submitted the Inquiry Report dated 25.11.2025, wherein all the charges levelled against the CB of violation of Regulations 10(d), 10(e) & 10(n) of the CBLR, 2018 were held as "Not Proved".

**FINDINGS OF THE INQUIRY OFFICER: -**

7. The IO submitted that he had gone through the Show Cause Notice No. 25/2025-26 dated 28.08.2025, the records of the Personal Hearings and Defence submissions made during the personal hearings. The IO submitted that he had also gone through the statements of all the persons recorded during the investigation, the alleged Articles of Charges or contraventions mentioned in the Show Cause Notice as well as legal provisions reflected in CBLR, 2018.

7.1 The IO submitted that he had taken on record the submissions made by the CB and discussed all the submissions & examined their merits.

**7.2 Article of Charge -I- Violation of Regulation 10(d) of CBLR, 2018**

The IO found that the CB submitted that the SCN rests entirely on the CBIC Clarification dated 25.09.2020 regarding the ineligibility of drawback on activated mobile

phones, that there was no question of advising their client to comply as the Hon'ble Delhi High Court had already quashed the said clarification vide its order dated 13.02.2025.

The IO found that the charged CB M/s. Prayosha Logistics LLP had filed Shipping Bills on behalf of exporter M/s. Siddh Exports LLP for clearance of mobile phones. The IO found that as per the offence report, it was alleged that the Customs Broker appeared to have been aware of the ineligibility of duty drawback on pre-activated mobile phones, a fact purportedly revealed through the statement of Shri Rajesh Nisar, Partner of M/s Siddh Exports LLP.

The IO found from the offence report that it was the responsibility of the CB to advise their client to declare correct information in the shipping bill, but the CB failed to do so and also made no efforts to bring the matter to the attention of the Deputy or Assistant Commissioner of Customs. However, the IO found that the Hon'ble Delhi High Court held that unlocking is "mere configuration" for export that "does not diminish value" and enhances marketability, thus quashing the CBIC clarification. The IO further noted that the SLP filed by the Department against this order was dismissed by the Hon'ble Supreme Court vide its order dated 18.07.2025, making it a declared law binding on lower authorities.

The defence submission stated that the activated mobiles would still be entitled to drawback, and the goods were examined by customs officers before the grant of drawback. The IO observed from the documents produced that the Air Cargo Customs Commissionerate issued Standing Order No. 147/2021 prescribing a standard operating procedure (SOP) for grant of drawback based on IMEI verification only on 12.03.2021. The IO found that during the period 24.09.2019 to 12.03.2021 when the mobile phones were exported, there were no such written guidelines requiring verification of IMEI numbers to identify activated status. Thus, it is apparent that the matter was under deliberation within the Customs field formation and no occasion would arise for the CB to advise the client about the eligibility of drawback.

The IO submitted that the CBIC clarification was issued only on 25.09.2020, and for the period between 26.09.2020 to 12.03.2021, the Customs Broker had no avenue to advise the client in the absence of any authority being published by the jurisdictional customs viz ACC Sahar. The IO found that such advise or sensitization was impossible prior to the issuance of the Standing Order, which the charged customs broker could not have anticipated.

The IO found that in the absence of any standing order or any legal notification/circular, the CB was not in any position to advise the client correctly about the eligibility of drawback. The IO found that the CB could not have brought the non-compliance of the client to the notice of the Customs Authorities when no such published guidelines existed. Thus, the IO found that the allegation that the CB failed to advise their client does not hold ground. Accordingly, the IO held the Article of Charge alleging violation of Regulation 10(d) of the CBLR, 2018 as "Not Proved".

### **7.3 Article of Charge –II- Violation of Regulation 10(e) of CBLR, 2018**

The IO stated that the defence submission stated that the SCN alleged that the CB failed to exercise due diligence and did not inform the exporter about the ineligibility of duty drawback on the pre-activated mobile phones; that the CB assisted the exporter in availing the ineligible duty drawback by omitting the correct description of the goods; that in the submissions of the CB, the CB stated that they had correctly declared the goods in the respective shipping bills based on the invoice and packing list provided by the exporter after due diligence. The IO found that the article of charge II i.e. violation of Regulation 10(e) of CBLR 2018 was similar in nature to Article of Charge-I i.e. violation of Regulation 10(d) of CBLR, 2018. Hence, the IO submitted that his findings on this article of charge were similar and stated his findings as under:

The IO found from the records that the CBIC, New Delhi clarification dated 25.09.2020 had been quashed, meaning the exporter would be entitled to claim the drawback and the Department would be precluded from claiming any loss of revenue. The IO found that for the period between 26.09.2020 to 12.03.2021, there was an absence of

any authority being published by the jurisdictional customs viz. ACC Sahar on the issue of eligibility of drawback, and that the CB had correctly declared the goods based on the exporter's documents. The IO found that such published authority was required prior to holding the CB liable for failure to exercise due diligence, which the department failed to establish.

The IO found that it was the responsibility of the CB to ascertain correctness based on the available information for the exported items. Thus, the IO found that the CB had correctly declared the goods and in most of the cases, the goods were examined by the officers of the ACC Sahar before the grant of drawback. Accordingly, the IO submitted that the CB did not fail to exercise due diligence while filing the Shipping Bills for the subject export consignments and accordingly, Article of Charge alleging violation of Regulation 10(e) of the CBLR, 2018 was "Not Proved".

#### **7.4 Article of Charge –III- Violation of Regulation 10(n) of CBLR, 2018**

The IO stated that the SCN alleged that the Custom Broker colluded with the exporter to clear the subject shipping bills and failed to comply with the provisions of Regulation 10(n), specifically by failing to submit accurate customs declarations and engaging in unethical business practices.

The IO found that after hearing the CB in person and going through their defence submissions, the CB had submitted documents such as IEC, MTNL Telephone Bill, and PAN. On the basis of the same, the IO found that it had been established that the Exporter, M/s. Siddh Exports LLP, was in existence and operating from the declared address, viz. Flat no 7, Vivina building no. 2, S V Road, Opp Dena Bank, Andheri (West) Mumbai-400058, during the period in question.

The IO also found that in the course of the investigation, Shri Rajesh Nisar, Partner of the Exporter M/s. Siddh Exports LLP, had appeared before the officers of SIIB Export ACC Sahar, and his statement was recorded under Section 108 of the Customs Act. The IO stated that since the exporter remained present in ACC Sahar and presented himself for

investigation, it would not be correct to say that the Customs broker did not adhere to KYC norms as required in terms of Regulation 10(n) of CBLR, 2018.

The IO submitted that the charged CB had also relied on the decisions in the case of M/s VS Bhagwati Shipping vs Commissioner of Customs-New Delhi (Airport & General) (2025(1) TMI 1221-CESTAT New Delhi) and Rupali Logistics Clearing and Forwarding P. Ltd (2024(12) TMI 961-CESTAT Mumbai), which supported the case of the CB. Furthermore, the IO found that the CB submitted that in earlier proceedings initiated against them vide SCN no. 74/2024-25 dtd 23.01.2025 involving the exact same exporter, M/s Siddh Exports LLP, the charge of violation of Regulation 10(n) of CBLR, 2018 was found untenable and was accordingly dropped.

7.5 The IO observed that the CB had requested the cross-examination of Shri Rajesh Nisar, Partner of Exporter M/s Siddh Exports LLP, whose statement dated 05.02.2021 was relied upon as evidence in the Offence Report. The CB submitted that this request was made in line with the provisions of Regulation 17(4) of CBLR, 2018, and relied upon the judgment of the Hon'ble Bombay High Court in the case of *Principal Commissioner of Customs (General) Mumbai vs A.B. Paul & Co* dated 04.02.2026 in Customs Appeal No. 2 of 2025, arguing that no order from the licensing authority could be sustained in the absence of the grant of cross-examination.

While no such cross-examination was granted to the CB during the inquiry proceedings, the IO found that the substratum of the Show Cause Notice itself did not survive. The IO noted that the entire proceedings rested on the CBIC Clarification dated 25.09.2020, which had been quashed by the Hon'ble Delhi High Court vide its order dated 13.02.2025, holding that the CBIC has no authority to read into Rule 3(1) of the Drawback Rules a prohibition that is not statutorily provided. The IO further relied on the fact that the SLP filed by the Department against the said Hon'ble Delhi High Court order had been dismissed by the Hon'ble Supreme Court vide its order dated 18.07.2025, making it a declared and binding law under Article 141 of the Constitution of India.

Additionally, regarding the compliance of KYC norms, the IO relied upon the decisions of the Hon'ble CESTAT in the case of *M/s VS Bhagwati Shipping vs Commissioner of Customs-New Delhi* [2025(1) TMI 1221-CESTAT New Delhi] and *Rupali Logistics Clearing and Forwarding P. Ltd* [2024(12) TMI 961-CESTAT Mumbai], which supported the case of the CB.

Accordingly, relying on the aforementioned binding judicial precedents and the facts on record, the IO concluded that the proceedings initiated against the CB under the present SCN would be in excess of jurisdiction. Therefore, without needing to rely on the contested statements, the IO held all the charges under Regulations 10(d), 10(e), and 10(n) of the CBLR, 2018 as "Not Proved".

## 8. SUMMARY OF THE FINDINGS:

The IO concluded the findings of the inquiry as under:

1.	Violation of Regulation 10(d) of CBLR, 2018	Not Proved
2.	Violation of Regulation 10(e) of CBLR, 2018	Not Proved
3.	Violation of Regulation 10(n) of CBLR, 2018	Not Proved

8.1 Under the provisions of Regulation 17(6) of the CBLR, 2018, a copy of the Inquiry Report dated 25.11.2025 was shared with the CB and further, to uphold the Principle of Natural Justice, an opportunity of personal hearing was granted to the CB on 18.02.2026.

### **RECORDS OF PERSONAL HEARING: -**

9. Upon the issuance of the Disagreement Memo, and to uphold the principles of natural justice, an opportunity for a Personal Hearing was granted to the CB, M/s. Prayosha Logistics LLP (CB No. 11/1980), on 18th February at 12:00 p.m. before the Adjudicating Authority. Shri Girish Nadkarni(Advocate) and Shri Dinesh G Mirani(Partner) of the CB firm M/s. Prayosha Logistics LLP appeared for the Personal Hearing on the scheduled date and time. During the hearing, he submitted a written reply in response to the Disagreement Memo and reiterated the facts and grounds mentioned therein. His submissions were taken

on record. Consequently, the matter was taken up for final adjudication based on the facts of the case, the Inquiry Officer's report, his written submissions, and the evidence available on record.

**WRITTEN SUBMISSION OF THE CB:**

10. The CB made a written submission during the PH, the main contentions and defence of which is summarized below:

10.1 Firstly, the CB submitted that they had requested to cross examine Shri Rajesh Nisar, Partner of the exporter M/s Siddh Exports LLP, whose statement dated 05.02.2021 was relied upon in the Offence report as evidence. The CB submitted that no such cross examination was granted to them, which is in line with the provisions of Regulation 17(4) of CBLR, 2018. In support of this contention the CB relied on the judgment in the case of Principal Commissioner of Customs (General) Mumbai vs A.B. Paul & Co dated 04.02.2026 in Customs Appeal no. 2 of 2025; that being so, it is a settled principle of law that no order from the licensing authority could be sustained in the absence of grant of cross examination of the witness.

10.2 Further, the CB submitted that at the heart of the present controversy is the clarification issued by the Central Board of Indirect Taxes and Customs ("CBIC") dated 25 September 2020. The CB submitted that this clarification interpreted the proviso (i) to Rule 3(1) of the Customs & Central Excise Duties Drawback Rules, 2017 to mean that a mobile phone which is 'unlocked' or 'activated' prior to export must be treated as a good that has 'been taken into use after manufacture'. This clarification became the sole basis on which a Show Cause Notice bearing No. 01/COMMR(X)/DBK(EDI)/2025-26/ACC dated 11.06.2025 was issued, thereby disentitling such exports from the benefit of duty drawback.

10.3 The CB submitted that the Hon'ble Delhi High Court vide its order dated 13.02.2025 in the case of Siddh Exports LLP vs Union of India had quashed the said CBIC Clarification by holding it ultra vires to the provisions of Section 75(1) of the Customs Act 1962. Further,

the CB stated that the Court noted that unlocking is a "mere configuration" for export, i.e., a step that "does not diminish value" and enhances marketability, and that CBIC has no authority to read into Rule 3(1) a prohibition that is not statutorily provided.

10.4 The CB further stated that the SLP filed by the Department through the Union of India against the said Hon'ble Delhi High Court order has been dismissed by the Hon'ble Supreme Court vide its order dated 18.07.2025. Therefore, the CB stated that in terms of Article 141 of the Constitution of India, the order passed by the Supreme Court is a declared law and binding on the lower authorities in terms of the principles of judicial discipline. In this context the CB submitted that since the clarification dated 25.09.2020 has been quashed, the substratum for the Show Cause Notice which premised solely on the clarification would no longer survive.

10.5 The CB mentioned that it is pertinent to note that the present Disagreement Memo dated 28.01.2026 is legally unsustainable, contrary to binding judicial precedents, and seeks to revive charges already found to be "not proved" by the Inquiry Officer. Further, the CB submitted that they shall not agitate the issue of denial of cross-examination if the adjudicating authority drops the proceedings against them. The CB accordingly prayed that the Disagreement Memo be withdrawn, the Inquiry Officer's report exonerating the Customs Broker be accepted in full, and the proceedings initiated under Regulation 10(d), 10(e) and 10(n) of CBLR, 2018 be dropped forthwith.

10.6 With respect to charge of violation of Regulation 10(d):

The CB submitted that Shipping Bills were filed for export of 'Mobile Phones' by merchant exporters. Upon investigation, it was alleged that duty drawback was inadmissible on pre-activated mobile phones as per CBIC Clarification dated 25.09.2020. The goods were examined by the customs officers before the grant of drawback. The Hon'ble Delhi High Court had quashed the said CBIC Clarification vide its order dated 13.02.2025, holding it ultra vires to the Customs Act, 1962. Therefore, the CB submitted that there was no question of advising their client to comply with the provision of CBIC Clarification dated 25.09.2020 which has been declared void. The CB submitted that the

Hon'ble Supreme Court vide order dt. 18.07.2025 had already dismissed the SLP filed by the Department.

The CB further submitted that they had no reasons to advise the client as no standing order requiring verification of IMEI numbers was published by the jurisdictional Customs prior to 12.03.2021 and therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn. The CB submitted that they placed reliance upon the judgment of the Hon'ble Delhi High Court in the case of Siddh Exports LLP vs Union of India.

10.7 With respect to charge of violation of Regulation 10(e):

The CB submitted that the SCN has alleged that they failed to exercise due diligence regarding the ineligibility of duty drawback on pre-activated mobile phones, that the Hon'ble Delhi High Court has inter-alia quashed the said CBIC Clarification as ultra vires to the Customs Act, 1962. Further, the CB stated in their submissions that they had correctly declared the goods in the respective shipping bills based on the invoice and packing list provided by the exporter, on the basis of which they had filed the Shipping Bills after due diligence. That being so there is no violation of Regulation 10(e) of CBLR, 2018. The CB submitted that all the relevant documents were given by the exporter and after due verification/compliance of KYC the Shipping Bills were filed. Therefore, the CB stated that the charge under Regulation 10(e) does not survive and merits to be withdrawn.

10.8 With respect to charge of violation of Regulation 10(n):

The CB submitted that the Adjudicating Authority, in the Disagreement Memo dated 28.01.2026, has already concurred with the findings of the Inquiry Officer regarding the "Not Proved" charge of Regulation 10(n) of the CBLR, 2018. The CB stated that they had successfully submitted authentic KYC documents, including the IEC, MTNL Telephone Bill, and PAN, which clearly established that the exporter, M/s. Siddh Exports LLP, was in existence and operating from the declared address during the period in question. Furthermore, the partner of the exporter firm had appeared before the SIIB

(Export) officers and recorded his statement, proving the physical identity and functioning of the client.

The CB submitted that since the Inquiry Officer concluded that the allegation of violation of Regulation 10(n) of the CBLR, 2018 was without any solid evidence, and the Adjudicating Authority explicitly agreed with this finding of "Not Proved", the charge under Regulation 10(n) does not survive against them. Therefore, the CB stated that no further proceedings or penal actions are warranted under this specific regulation and the same stands dropped.

10.9 The CB submitted that the SCN is unsustainable in law and the CB is liable to be discharged and the SCN dropped and Your Honour is requested to do so.

#### **DISCUSSIONS AND FINDINGS:**

11. I have gone through the facts and records of the case; the offence report received in the form of Show Cause Notice No. 01/COMMR(X)/DBK(EDI)/2025-26/ACC dated 11.06.2025 issued by the Commissioner of Customs (Export), Air Cargo Complex (ACC), Mumbai; Show Cause Notice No. 25/2025-26 dated 28.08.2025 issued under Regulation 17(1) of the CBLR, 2018 ; the Inquiry Report dated 25.11.2025 ; the Disagreement Memo dated 28.01.2026 ; and the CB's written submissions.

12. Briefly stating, the case involved an investigation into the claim of allegedly ineligible duty drawback on the export of mobile phones by M/s Siddh Exports LLP through their Customs Broker, M/s. Prayosha Logistics LLP (CB License No. - 11/1980). The exporter M/s Siddh Exports LLP filed 02 Shipping Bills, namely No. 8320499 dated 01.02.2021 and No. 8322998 dated 01.02.2021, for the export of mobile phones and claimed a drawback of Rs. 1,16,604.48/- and Rs. 14,30,200.19/- respectively. Upon investigation, it was alleged that the exported mobile phones were pre-activated/unlocked, and as per the CBIC Clarification dated 25.09.2020, no drawback is admissible on activated/unpacked mobile phones exported by merchant exporters. The SCN alleged that the Customs Broker appeared to have been aware of this ineligibility but failed to advise

their client to comply with the said CBIC Clarification. Further, it was alleged that the CB assisted the exporter in availing the ineligible drawback by deliberately omitting the correct description of the goods, thereby failing to exercise due diligence, and also failed to accurately verify the functioning of the client. Consequently, the CB is charged with violating Regulations 10(d), 10(e), and 10(n) of the CBLR, 2018.

12.1 I observe that the CB in their defense has heavily relied upon the Hon'ble Delhi High Court order dated 13.02.2025, which quashed the said CBIC Clarification, and the subsequent dismissal of the Department's SLP by the Hon'ble Supreme Court. However, the professional conduct of a Customs Broker under the licensing regulations must be evaluated based on the legal position prevailing at the material time of the transactions. The impugned Shipping Bills were filed on 01.02.2021. At that specific point in time, the CBIC Clarification dated 25.09.2020, read with Rule 3(1) of the Customs & Central Excise Duties Drawback Rules, 2017, unequivocally barred the admissibility of drawback on used/activated goods. The judicial pronouncements issued much later do not retrospectively absolve the Customs Broker of their statutory obligation to advise their client to comply with the directives that were actively in force at the time of export. The failure to declare the activated status of the phones at that critical juncture facilitated the circumvention of the then existing legal framework. Thus, these facts are material in determining the CB's failure to discharge their regulatory duties and due diligence under the CBLR, 2018.

13. I find that 03 articles of charges have been framed against the CB, i.e. violation of Regulations 10(d), 10(e), and 10(n) of the CBLR, 2018. Since a Disagreement Memo was issued in respect of the Inquiry Officer's findings for charges under Regulations 10(d) and 10(e), however the Adjudicating Authority concurred with the IO that the charge under Regulation 10(n) was "Not Proved", I now proceed to discuss the articles of charges, sequentially.

### **13.1 Violation of Regulation 10(d) of the CBLR, 2018:**

(a) I find that the charge of violation of Regulation 10(d) of the CBLR, 2018 has been levelled against the CB on the grounds that, from the statement of Shri Rajesh Nisar, Partner of the exporter M/s Siddh Exports LLP, it appeared that the Customs Broker M/s. Prayosha Logistics LLP was aware of the ineligibility of duty drawback on pre-activated mobile phones. The offence report alleged that the CB did not advise their client to comply with the CBIC Clarification dated 25.09.2020 and Rule 3(1) of the Customs & Central Excise Duties Drawback Rules, 2017, which purportedly barred the admissibility of drawback on activated/unpacked mobile phones. In the instant case, the CB appeared to have failed to advise his client to comply with the above mentioned rules and regulations framed under the provisions of the Customs Act, 1962. Moreover, the CB also failed to bring the matter of non-compliance to the notice of the Deputy/Assistant Commissioner of Customs and hence, it appeared that the CB failed to perform their obligation under regulation 10(d) of CBLR, 2018.

(b) I find that the Inquiry Officer, in this regard, has observed that the entire basis of the proceedings was revolving around the CBIC Clarification dated 25.09.2020. The IO found that the Hon'ble Delhi High Court vide its order dated 13.02.2025 had quashed the said CBIC Clarification by holding that unlocking is a "mere configuration" for export that does not diminish value, and that CBIC had no authority to read a prohibition into Rule 3(1) of the Drawback rules that is not statutorily provided. The IO also found that the SLP filed by the Department against the said High Court order was dismissed by the Hon'ble Supreme Court vide its order dated 18.07.2025. Furthermore, the IO observed that Standing Order No. 147/2021, requiring the verification of IMEI numbers, was issued only on 12.03.2021. The IO found that during the period the mobile phones were exported (01.02.2021), there were no such written guidelines published by the jurisdictional customs at ACC Sahar. Thus, the IO found that the CB had no avenue to advise the client correctly about the eligibility of the drawback nor to bring the non-compliance to the notice of the Customs Authorities. Accordingly, the IO held the Article of Charge alleging violation of Regulation 10(d) of the CBLR, 2018 as "Not Proved".

(c) The CB in this regard submitted that the present Disagreement Memo seeks to revive charges already found to be "not proved" by the Inquiry Officer despite settled law declared by the Hon'ble Supreme Court. The CB submitted that the CBIC Clarification dated 25.09.2020 has been struck down as ultra vires the provisions of Section 75(1) of the Customs Act, 1962, by the Hon'ble Delhi High Court, and this decision was affirmed by the Hon'ble Supreme Court. The CB contended that in terms of Article 141 of the Constitution of India, the order passed by the Supreme Court is a declared law and is binding on the lower authorities. The CB further submitted that since the clarification dated 25.09.2020 has been quashed, it is rendered void in law, and therefore the substratum for the Show Cause Notice which was premised solely on the clarification no longer survives. Therefore, the charge under regulation 10(d) of CBLR, 2018 does not sustain and merits to be withdrawn.

(d) Regulation 10(d) casts a clear and affirmative obligation on the Customs Broker (CB) to advise his client to comply with the provisions of the Act, rules, regulations, notifications and orders issued thereunder. Having gone through the facts and records of the case, I find that the investigation alleged the CB failed to advise their client regarding the ineligibility of duty drawback on Shipping Bills No. 8320499 and 8322998, both dated 01.02.2021. As asserted in the Disagreement Memo, it is a matter of record that both the impugned Shipping Bills were filed after the CBIC Clarification dated 25.09.2020 and before the said Hon'ble High Court of Delhi Order dated 13.02.2025. The professional conduct of a Customs Broker under the licensing regulations must be strictly evaluated based on the legal position prevailing at the material time. At that specific point in time, the CBIC Clarification dated 25.09.2020 was the existing legal position. Furthermore, the admissibility of drawback on used phones was governed by Rule 3(1) of the Customs & Central Excise Duties Drawback Rules, 2017, which bars the admissibility of drawback on used goods, and as a Customs Broker, he is supposed to be aware of the said Rule.

I find that the CB cannot retrospectively seek shelter under judicial pronouncements issued years later to justify their failure to discharge their statutory advisory duties at the

time of the transactions. The CB cannot run away from the obligations of advising his client to comply with the Rules and Regulations as provided in Regulation 10(d) of CBLR, 2018. The statement of the exporter explicitly confirmed that the CB was aware that the mobile phones were activated. Therefore, as provided in Regulation 10(d) of CBLR, 2018, the CB should have advised the exporter regarding the ineligibility of drawback on such mobile phones and brought the matter to the notice of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs. The CB's failure to act demonstrates a clear breach of regulatory duty. Accordingly, I disagree with the findings of the Inquiry Officer, uphold the charge, and hereby hold the violation of Regulation 10(d) of the CBLR, 2018 as proved.

### **13.2 Violation of Regulation 10(e) of the CBLR, 2018:**

(a) I find that the charge of violation of Regulation 10(e) of the CBLR, 2018 was levelled against the CB on the grounds that they allegedly failed to exercise due diligence to ascertain the correctness of the information regarding the export of mobile phones. The Disagreement Memo alleged that the Customs Broker, M/s. Prayosha Logistics LLP, assisted the exporter in availing the ineligible duty drawback by deliberately omitting the correct description of the goods in the Shipping Bills. It appeared that this failure to exercise due diligence and accurately declare the pre-activated status of the mobile phones facilitated the exporter's non-compliance, thereby violating the professional obligations mandated under Regulation 10(e).

(b) I find that the Inquiry Officer, in this regard, has observed that the CB had correctly declared the goods in the respective Shipping Bills based on the Invoice and packing list provided by the exporter. The IO noted that for the period between 26.09.2020 to 12.03.2021, in the absence of any authority being published by the jurisdictional customs viz. ACC Sahar on the issue of eligibility of drawback, the allegation of failure to exercise due diligence could not be sustained. The IO further reasoned that in most of the cases, the goods were examined by the officers of the ACC Sahar before the grant of drawback.

Consequently, the IO concluded that the charge of lack of due diligence under Regulation 10(e) was "Not Proved".

(c) The CB, in this regard, submitted that they had fulfilled all KYC norms and verified the credentials of the importer. They stated that all the relevant documents were given by the exporter and the Shipping Bills were filed after due verification. The CB contended that since the Hon'ble Delhi High Court quashed the CBIC Clarification dated 25.09.2020 as ultra vires to the Customs Act, 1962, the premise that an "ineligible" drawback was claimed is legally flawed. Therefore, they argued that they had acted with complete due diligence and the charge under Regulation 10(e) does not survive.

(d) Regulation 10(e) mandates that a Customs Broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to the clearance of cargo. Having meticulously perused the Offence Report, the IO's findings, the CB's submissions, and the available evidence on record, I find that the core allegation is that the CB deliberately omitted the "pre-activated" status of the mobile phones in the shipping bills. However, upon factual verification of the export documents and the statements recorded under Section 108 of the Customs Act, 1962, it is explicitly clear that the exporter, Shri Rajesh Nisar, admitted that the CB was fully aware that the mobile phones were activated. I find that the CB blindly filed the Shipping Bills based on the commercial invoice declaring them as "non-activated". A Customs Broker acts as a crucial intermediary and is legally obligated to verify the correctness of information, not merely accept anything declared without exercising due diligence on their part. The CB is expected to act with utmost responsibility, and their reliance on the exporter's documents in this instance was negligent, ignoring their own awareness of the goods' actual status.

Furthermore, I find that the argument that the goods were subjected to physical examination by the proper officers of Customs at ACC Sahar, who assessed and cleared the goods for drawback, does not absolve the CB of their independent statutory obligations. When the assessing and examining officers of the Department physically inspect the goods,

they rely on the initial declarations made by the CB. The CB cannot run from their responsibilities entrusted under CBLR, 2018, by citing the obligatory responsibility of the customs officers. Coupled with the fact that at the material time, the CBIC clarification restricting such drawback was actively in force, there is clear evidence of negligence, omission, and deliberate misdeclaration on the part of the CB. Accordingly, I disagree with the findings of the Inquiry Officer and hold the CB guilty of the violation of Regulation 10(e) of the CBLR, 2018.

### **13.3 Violation of Regulation 10(n) of the CBLR, 2018:**

(a) I find that the charge of violation of Regulation 10(n) of the CBLR, 2018 was levelled against the CB on the grounds that they allegedly failed to verify the correctness of the Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information. The Offence Report alleged that the Customs Broker colluded with the exporter to clear the subject shipping bills by failing to submit accurate customs declarations and engaging in unethical business practices, thereby violating the provisions of Regulation 10(n) of the CBLR, 2018.

(b) I find that the Inquiry Officer, in this regard, has observed that the CB had submitted documents such as the IEC, MTNL Telephone Bill, and PAN, which established that the Exporter, M/s. Siddh Exports LLP, was in existence and operating from the declared address, viz. Flat no. 7, Vivina Building no. 2, SV Road, Opp. Dena Bank, Andheri (West), Mumbai-400058 during the period in question. The IO also noted that Shri Rajesh Nisar, Partner of the exporter firm, had appeared before the officers of SIIB (Export) ACC Sahar and his statement was recorded under Section 108 of the Customs Act. The IO reasoned that since the exporter presented himself for investigation, it would not be correct to say that the Customs broker did not adhere to KYC norms as required in terms of regulation 10(n) of CBLR, 2018. Accordingly, the IO concluded that the allegation of violation of Regulation 10(n) of the CBLR, 2018 is without any solid evidence to prove the specific allegation and held the allegation as "Not Proved".

(c) The CB, in this regard, submitted that they had successfully obtained and verified authentic KYC documents, including the IEC, MTNL Telephone Bill, and PAN, prior to undertaking the clearance work. The CB highlighted that the physical identity and functioning of the client were beyond dispute, as the partner of the exporter firm actively participated in the investigation. Crucially, the CB submitted that the Adjudicating Authority, in the Disagreement Memo dated 28.01.2026, had already explicitly concurred with the findings of the Inquiry Officer regarding the "Not Proved" status of the charge under Regulation 10(n). Therefore, the CB stated that the charge does not survive and must be formally dropped.

(d) Regulation 10(n) mandates that a Customs Broker shall verify the correctness of the IEC, GSTIN, identity, and functioning of their client at the declared address using reliable, independent, and authentic documents. Having perused the records, I find that the CB had collected valid and recognized KYC documents namely the IEC, PAN, and a utility bill (MTNL Telephone Bill) which confirmed the existence of M/s Siddh Exports LLP at their registered address. The fact that the partner of the exporter firm appeared before the SIIB (Export) officers and gave a statement under Section 108 further corroborates that the exporter was a genuine, functioning entity and not a fictitious or "dummy" firm created for fraudulent purposes.

Furthermore, it is a matter of record that I, as the Adjudicating Authority, had explicitly stated in Paragraph 5 of the Disagreement Memo that I "agree with the findings of the Inquiry Officer with regard to 'Not-Proved' charges of Regulation 10(n) of CBLR,2018". There is absolutely no evidence to suggest that the Customs Broker failed in their obligation to verify the identity and functioning of the client. Since the KYC verification was thorough and complete, the charge of collusion based on KYC failure is entirely devoid of merit. Therefore, I fully concur with the Inquiry Officer's findings and hold the CB not guilty of the violation of Regulation 10(n) of the CBLR, 2018.

14. The CB, in their written submissions, requested the cross-examination of Shri Rajesh Nisar, Partner of Exporter M/s Siddh Exports LLP, whose statement dated

05.02.2021 was relied upon in the Offence report as evidence. The CB submitted that this request was made in line with the provisions of Regulation 17(4) of CBLR, 2018, and placed reliance upon the decision of the Hon'ble Bombay High Court in the case of Principal Commissioner of Customs (General) Mumbai vs A.B. Paul & Co dated 04.02.2026 in Customs Appeal no. 2 of 2025. I have gone through the facts and records of the case in detail. I observe that the CB has explicitly submitted that they shall not agitate the issue of denial of cross-examination if the proceedings against them are dropped. Since I have already concluded in the preceding paragraphs that the charges leveled against the CB under Regulations 10(d) and 10(e) of the CBLR, 2018 are sustainable due to the CB's non-compliance with the legal position existing at the material time of export, the core basis of the proceedings is firmly established by documentary timelines. Regarding the denial of cross-examination, I find that the documentary evidence on record, specifically the timing of the shipping bills relative to the then-active CBIC Clarification dated 25.09.2020 , independently establishes the CB's failure to discharge their statutory obligations. The statement of the exporter merely corroborates the facts already evident from the record. Therefore, no prejudice is caused to the CB.

15. I find that a Customs Broker occupies a very important position in the Custom House and is expected to safeguard the interests of both the importers/exporters and the Customs Department. A high degree of trust is placed in the CB by Government Agencies, they are expected to act as a bridge of compliance between the trade and the Department. In the present case, the Department initially alleged that M/s. Prayosha Logistics LLP (CB License No. 11/1980) violated Regulations 10(d), 10(e), and 10(n) of the CBLR, 2018. I have meticulously examined the evidence and found that the CB's blind reliance on invoice declarations without independent verification demonstrates a clear lack of intent to comply with the law. I find that when the entire foundation of the dispute is rooted in a CBIC Clarification that was actively in force at the material time of the exports, the CB cannot be absolved of professional misconduct by relying on subsequent judicial pronouncements that quashed the said circular. Furthermore, while I observe that the charges under Regulation 10(n) against the CB were found untenable and are dropped, the violations of

Regulations 10(d) and 10(e) stand firmly proved. Therefore, I find that the CB has rendered itself liable for penal action under the CBLR, 2018. Hence, while deciding the matter, I rely on the following caselaws:

- a) **The Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co.** in civil appeal no. 2940 of 2008 upheld the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

*"the CB occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CB is supposed to safeguard the interest of both the importers and the Customs. A lot of trust is kept in CB by the importers/exporters as well as by the government agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CB Licensing Regulations lists out obligations of the CB. Any contravention of such obligations even without intent would be sufficient to invite upon the CB the punishment listed in the Regulations".*

- b) **The Hon'ble CESTAT Delhi in case of M/s. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General)** wherein in (para 6.1) it is opined that: -

*"6.1 These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CB was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CB, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."*

16. In view of the detailed discussion and analysis, it is established that the Customs Broker failed to act with complete professional transparency by blindly relying on the commercial invoice and packing list provided by the exporter without independent

verification. Although this documentation explicitly declared the mobile phones as "unlocked and non activated" prior to clearance, the CB was obligated to exercise due diligence rather than accept these declarations at face value while facilitating the exports. The fact that the Customs Officers conducted a physical examination of the goods and initially assessed and cleared them for the grant of drawback does not absolve the Customs Broker of their primary, statutory responsibility. I find that the Customs Broker, acting as a professional intermediary, was not entitled to merely rely on the explicit written declarations of the exporter when their regulatory obligations required strict vigilance.

Further, the investigation into the export of the "mobile phones" revealed that the clearance was processed during a period when the CBIC Clarification dated 25.09.2020 regarding the ineligibility of duty drawback on pre-activated devices was actively in force. While this foundational clarification was subsequently quashed as ultra vires by the Hon'ble Delhi High Court and affirmed by the Hon'ble Supreme Court, a Customs Broker's compliance is measured against the legal framework existing at the material time of the transaction. A drawback claim processed in direct contravention of the prevailing departmental directives and statutory rules does, in itself, constitute professional misconduct and negligence on the part of the CB.

Accordingly, I find clear evidence of omission, negligence, and a failure to exercise due diligence in facilitating the export consignments. I also observe that the inquiry report in this matter was submitted within the prescribed time limit of 90 days, ensuring procedural propriety. Furthermore, while the charges of KYC violation under Regulation 10(n) were found untenable and dropped, the gravity of the violations under Regulations 10(d) and 10(e) cannot be ignored. Considering that the professional conduct of the CB fell outside the bounds of due diligence and transparency, I find that penal action is strictly warranted. However, applying the doctrine of proportionality, I find the proposed action of complete revocation of the license to be disproportionate to the offense committed. In this regard, I place reliance on the following caselaws:

- a) **Delhi High Court has, in the case of Falcon Air Cargo and Travels (P) Ltd [2002 (140) ELT 8 (DEL)] held as follows:**

"13. By order dated 15-7-2000, licence was revoked. It is not clear how there could be revocation when the licence itself was not functional after 13-1-2000. Licence can be suspended or revoked on any of the grounds as mentioned in Regulation 21. It is, therefore, clear that if any of the grounds enumerated existed, two courses are open to the Commissioner. One is to suspend the licence and the other is to revoke it. Suspension would obviously mean that licence would be for a particular period inoperative. An order of revocation would mean that licence is totally inoperative in future, it loses its currency irretrievably. Obviously, suspension/revocation, as the case may be, has to be directed looking to the gravity of the situation in the background of facts. For minor infraction or infraction which are not of very serious nature order of suspension may suffice. On the contrary, when revocation is directed it has to be only in cases where infraction is of a very serious nature warranting exemplary action on the part of the authorities, otherwise two types of actions would not have been provided for. Primarily it is for the Commissioner/Tribunal to decide as to which of the actions would be appropriate but while choosing any of the two modes, the Commissioner/Tribunal has to consider all relevant aspects and has to draw a balance sheet of gravity of infraction and mitigating circumstances. The difference in approach for consideration of cases warranting revocation or suspension or non-renewal has to be borne in mind while dealing with individual cases. In a given case the authorities may be of the view that non-renewal of licence for a period of time would be sufficient. That would be in a somewhat similar position to that of suspension of licence though it may not be so in all cases. On the other hand, there may be cases where the authorities may be of the view that licensee does not deserve a renewal either. Position would be different there. Though we have not dealt with the question of proportionality, it is to be noted that the authorities while dealing with the consequences of any action which may give rise to action for suspension, revocation or nonrenewal have to keep several aspects in mind. Primarily, the effect of the action vis-a-vis right to carry on trade or profession in the background of Article 19(l)(g) of the Constitution has to be noted. It has also to be borne in mind that the proportionality question is of great significance as action is under a fiscal statute and may ultimately lead to a civil death."

**b) Delhi High Court has in case of Ashiana Cargo Services [2014 (302) ELT 161 (DEL)] held as follows:**

"11. Viewing these cases, in the background of the proportionality doctrine, it becomes clear that the presence of an aggravating factor is important to justify the penalty of revocation. While matters of discipline lie with the Commissioner, whose

discharge their duties at the time of export cannot be ignored. While identical KYC charges against the CB involving the exact same exporter under Regulation 10(n) were found untenable and are dropped, the complete exoneration of the CB would be legally untenable and unjust. I hold that the Customs Broker, M/s. Prayosha Logistics LLP (CB License No. 11/1980), has failed to act with professional care and has violated the provisions of Regulations 10(d) and 10(e) of the CBLR, 2018. However, keeping in mind the proportionality of the offense, the extreme step of revocation of the license is not warranted. Therefore, the interest of justice would be met by ordering the forfeiture of their security deposit and imposing a suitable penalty.

19.1 I note that the security deposit of the CB has already been forfeited vide earlier Order-in-Original No. 60/2025-26 dated 21.07.2025. However, the forfeiture of the security deposit ordered in the present case shall prevail or come into force if any contrary decision is taken by any higher appellate forum in respect of the said earlier order. Accordingly, I pass the following order:

**ORDER**

20. I, Commissioner of Customs (General), in exercise of the power conferred upon me under Regulation 17(7) of the CBLR, 2018, pass the following order:

- (i) I hereby order for the forfeiture of the entire amount of the security deposit furnished by the Customs Broker M/s. Prayosha Logistics LLP (CB License No. 11/1980) under Regulation 14 of the CBLR, 2018, subject to the condition mentioned in paragraph 19.1 above.
- (ii) I hereby impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the Customs Broker M/s. Prayosha Logistics LLP (CB License No. 11/1980) under Regulation 18(1) of the CBLR, 2018.

This order is passed without prejudice to any other action which may be taken or purported to be taken against the Customs Broker and their employees under the Customs Act, 1962, or any other act for the time being in force in the Union of India.

  
(Shradha Joshi Sharma)  
Commissioner of Customs (Gen.)  
NCH, Mumbai-I

To,

**M/s. Prayosha Logistics LLP (CB License No. 11/1980)**

3C/23, Second Floor, Kalpataru Aura,  
Opposite R City Mall, L B S Marg,  
Ghatkopar West, Mumbai-400086.

**Copy to:**

1. The Pr. Chief Commissioner/ Chief Commissioner of Customs, Mumbai - I, II, III Zone.
2. SIIB (X), ACC, Sahar, Mumbai.
3. EDI of NCH, ACC & JNCH
4. ACC (Admn), Mumbai with a request to circulate among all departments.
5. JNCH (Admn) with a request circulate among all the concerned.
6. Cash Section, NCH
7. Office copy

