



प्रधान सीमाशुल्क आयुक्त (सामान्य) का कार्यालय
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
 कस्टम ब्रोकरअनुभाग, नवीन सीमाशुल्क भवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
 बेलाई इस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

F.NO. GEN/CB/635/2024-CBS

Date: 23.01.2025

DIN: 20250177000000621496

SHOW CAUSE NOTICE No. 74/2024-25 CBS

M/s. Prayosha Logistics LLP (CB No. 11/1980) PAN No. AAYFP9463G having address 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/CB) is holder of Customs Broker License No. 11/1980, issued by the Commissioner of Customs, Mumbai under Regulation 7(1) of CBLR, 2013 (now regulation 7(2) of CBLR, 2018) and as such they are bound by the regulations and conditions stipulated therein.

2. An offence report in a form of OIO dated 12.11.2024 issued vide F. No. S/10-35/2024-25 Adj(X) ACC & CAO NO: CC/HB/06/2024-25 Adj(X) ACC, received from O/o the Commissioner of Customs (Export), Air Cargo Complex, Mumbai, wherein inter-alia following were stated: -

2.1. The Exporter M/s Siddh Exports LLP (hereinafter referred to as "the exporter/the noticee") having office at B7, Aristrocate Building, Ground Floor, Lajja Silk Mill Compound, Village Mogra, Andheri East, Mumbai-400069 and having IEC No. ADRFS2375Q, has filed 16 shipping bills of activated/unlocked mobile phones, out of which, 6 SBs were filed through their Customs Broker M/s. Prayosha Logistics LLP (CB No. 11/1980) and claimed ineligible Duty Drawback on export of mobile phones which was pre-activated by inserting an Indian SIM card.

3. An investigation was initiated by Special Investigation and Intelligence Branch SIIB (X), ACC, Sahar, Mumbai on the basis of clarification issued by the drawback division of CBIC vide letter F. No. 609/4/2020-DBK/1063 dated 25.09.2020 w.r.t Admissibility of Duty Drawback on 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".

4. The investigation report revealed that the exporter, M/s. Siddh Exports LLP, filed 25 shipping bills for mobile phones, none of which was filed under the drawback scheme in 2018. Furthermore, during the year 2019 (up to September 2019), the exporter filed 39 shipping bills for the export of mobile phones, out of which 16 shipping bills, filed before September 2019, were under the drawback scheme, and duty drawback was claimed on those 16 shipping bills. Details of these 16 shipping bills are mentioned below in Table-I:

Table-I

Sl. No.	SB & Date	LEO Date	Total Mobiles Phones	FOB declared in Rupees	Drawback claimed in Rupees
1	4956450 18.06.2019	dt18.06.2019	1143	7479431.91	221209.63
2	5184415 27.06.2019	dt28.06.2019	1745	10950001.89	334491.87
3	5399985 06.07.2019	dt06.07.2019	1302	8948075.35	249013.76
4	5765299 23.07.2019	dt23.07.2019	1500	12523713.05	293218.7
5	5898032 29.07.2019	dt29.07.2019	1719	15529978.11	336759.87
6	6011235 02.08.2019	dt02.08.2019	1309	9376683.93	248514.3
7	6216151 13.08.2019	dt13.08.2019	3790	29705259.08	733712.34
8	6365433 20.08.2019	dt20.08.2019	1565	10168050.58	301085.33
9	6450608 23.08.2019	dt24.08.2019	2800	21021569.36	547342.63
10	6504265 26.08.2019	dt27.08.2019	2715	21106311.34	530626.14
11	6645584 31.08.2019	dt01.09.2019	4152	33695049.71	806526.08
12	6689084 03.09.2019	dt04.09.2019	5630	47597691.4	1101041.26
13	6790974 07.09.2019	dt07.09.2019	1598	13341558.29	310973.48
14	6967638 16.09.2019	dt17.09.2019	1679	16401213.99	322811.22
15	7048657 19.09.2019	dt20.09.2019	2869	24206227.12	559186.1
16	7097745 21.09.2019	dt21.09.2019	1181	9535244.66	227523.46
Total			36697	291586060/-	7124036/-

The declared FOB value of the above mentioned 16 shipping bills is Rs. 29,15,86,060/- and duty drawback claimed in the said shipping bills is Rs. 71,24,036/.

5. Considering the facts above, it seems that M/s. Siddh Exports LLP may have intentionally misrepresented the description of the phones by concealing the information that the devices being exported had been already used. The activation reports submitted by the mobile brand companies indicate that the majority of the exported mobile phones were indeed used after manufacturing, and as such, no duty drawback was admissible on these phones. Consequently, the duty drawback

claimed and availed appears to be inadmissible under 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.

6. According to the activation reports received from the relevant mobile companies, it has been observed that the exporter attempted to export pre-activated mobile phones, which constitutes a violation of the directive issued by the Office of the OSD (Drawback Division), CBIC, New Delhi, under letter F. No. 609/4/2020-DBK/1063 dated 25.09.2020. Based on the activation reports submitted by the mobile companies, the quantification of the ineligible duty drawback is as follows:

Table-II

Period	No. of SBs	Total FOB Value of the Goods (in Rs.)	Total Drawback Claimed (in Rs.)	FOB for Activated Mobile Phones (in Rs.)	Ineligible Drawback Amount for Activated Phones (in Rs.)
2019	16	29,15,86,060/-	71,24,036/-	26,90,37,931/-	65,72,697/-

7. Further, it is evident from the statement under Section 108 of the Customs Act, 1962, dated 05.02.2021, by Mr. Rajesh Nisar, Partner of M/s. Siddh Exports LLP, in which he inter-alia stated that:

- In Shipping Bill 8322998 dated 01.02.2021, the mobile phones were activated; however, at the time of filing the shipping bill, the Customs Broker described them as "non-activated" based on the invoice provided to them.
- Their Customs Broker, M/s. Prayosha Logistics LLP, was aware that the mobile phones were activated.
- He acknowledged that the report received from the respective mobile phone companies regarding the activation status of the mobile phones, as per the IMEI list submitted by the exporter, and accepted that some of the phones were indeed activated, as mentioned in the report.

8. Mr. Dinesh G. Mirani, partner of the Customs Broker M/s. Prayosha Logistics LLP, in his statement recorded on 05.02.2021 under Section 108 of the Customs Act, 1962, inter alia stated the following:

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

9. Therefore, it appears that the Customs Broker connived with the exporter by making false and incorrect statements in an attempt to mislead the department by concealing the vital information that mobiles to be exported, are pre-activated and despite knowing the fact, he had filed the subject shipping bills under the drawback claim. The said fact later proven by the activation reports from the mobile brand companies, which confirmed that the mobile phones in the said shipping bills were indeed activated. As a result, it seems that the same mis-declaration was made in all other shipping bills filed by the Customs Broker, both before and after the filing of Shipping Bill No. 8322998 dated 01.02.2021, on behalf of the exporter. The Customs Broker deliberately and knowingly failed to fulfill the responsibilities laid down in the Customs Broker Licensing Regulations (CBLR), 2018.

10. From the investigation, it has been revealed that the Customs Broker had filed 06 shipping bills, as detailed in Table-III below, in which the exporter incorrectly claimed ineligible duty drawback. Further, shipping bill no. 8322998 dated 01.02.2021 filed by Customs Broker M/s. Prayosha Logistics LLP on behalf of the exporter wherein mobile phones were unlocked/activated before exporting. Shri Rajesh Nisar, Partner of M/S. Siddh Exports LLP in his statement dated 05.02.2021 stated that their CB was known to the fact that the mobile phones sought to be exported vide shipping bill no. 8322998 dated 01.02.2021 were pre-activated. Despite having prior knowledge about the fact, CB had

mentioned "non-activated" in the description of the goods which indicates that CB was colluded with the exporter to claim ineligible duty drawback. The details of the shipping bills filed by the Customs Broker, M/s. Prayosha Logistics, during the year 2019 (up to September 2019) are provided below: -

Table-III

Sr. No.	SB No. & date	Declared FOB Value	Claimed Amount	DBK on activated mobile phone	DBK on activated mobile phone
1	6450608 dt 23.08.2019	21021569	547343	19814580	512495
2	6504265 dt 26.08.2019	21106311	530626	20418705	512085
3	6645584 dt 31.08.2019	33695050	806526	30066035	724200
4	6689084 dt 03.09.2019	47597691	1101041	46215832	1068382
5	6790974 dt 07.09.2019	13341558	310973	12764876	295889
6	6967638 dt 16.09.2019	16401214	322811	15924286	311779
Total		153163393/-	3619320/-	145204314/-	3424830/-

11. Further, Considering the facts above, it appears that the Customs Broker, M/s. Prayosha Logistics LLP (11/1980), Mumbai, assisted the exporter, M/s. Siddh Exports LLP, through acts of commission and omission. The Customs broker facilitated the clearing of goods in violation of the Customs Act, 1962 and aided the exporter to fraudulently claim duty drawback on pre-activated mobile phones. Additionally, the CB had deliberately not declared the actual condition of the mobile phones in the shipping bills. Thus, it appears that the Customs Broker has not complied with various provisions of the Customs Brokers Licensing Regulations 2018.

12. From the offence report, the following omissions leading to the violation of obligations stipulated in Regulation 10 of CBLR, 2018 are apparent:

12.1. The regulation 10(d) of CBLR,2018, which read as:

"advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, 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, the Customs Broker appears to have been aware of the ineligibility of duty drawback on pre-activated mobile phones. Such fact has been revealed through the statement of Sh. Mr. Rajesh Nisar, Partner of M/s. Siddh Exports LLP. Therefore, it is CB's responsibility to advise his client to declare correct information in the shipping bill but CB failed to do so. From the offence report, it is also unearthed that CB has not only failed to advise his client but also not made efforts to bring the matter to the attention of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs.

Under the Regulation 10(d) of CBLR, 2018, it is the responsibility of CB to advise his client to comply with the provisions of non-compliance. Also, CB should have informed Docks DC/AC about the instance, but CB failed to do so. Therefore, in view of the above, it appears that CB has violated the provisions of Regulation 10(d) of CBLR, 2018.

12.2. The regulation 10(e) of CBLR,2018, which read as:

"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 appears 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, 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, it appears that the Customs Broker has violated the provisions of Regulation 10(e) of the Customs Brokers Licensing Regulations (CBLR), 2018.

12.3. The regulation 10(n) of CBLR,2018, which read as:

“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, it appears that the Customs Broker has colluded with the exporter to clear the subject shipping bills and was fully aware that any omissions or commissions by the exporter could adversely affect their professional reputation. It is standard business practice for a Customs Broker to thoroughly understand the identity and operations of their clients, as failure to do so could result in an investigation into their actions. Therefore, in light of the above, it appears that the Customs Broker has violated the provisions of Regulation 10(n) of the Customs Brokers Licensing Regulations (CBLR), 2018.

In view of the above, it is evident that the exporter claimed duty drawback on pre activated mobile phones and CB M/s. Prayosha Logistics LLP abetted the exporter to avail this non-eligible duty drawback for the said period and did not bring the matter to the notice of the Customs authorities. Hence, it is appeared that CB M/s. Prayosha Logistics LLP (11/1980) has violated the regulations 10(d), (e) and (n) of CBLR, 2018.

13. The CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded. In this regard, I rely on the judgement of the Hon'ble Supreme Court in case of Commissioner of Customs Vs M/s K.M. Ganatra & Co *has held that:*

“the Customs House Agent (CHA) occupies a very important position in the customs house. The customs procedures are complicated. The importers have to deal with a multiplicity of agencies namely carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through its agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies...”

14. In view of the above, it appears that M/s. Prayosha Logistics LLP (CB No. 11/1980) has failed to comply with sub-regulations 10 (d), 10 (e) & 10(n) of Customs Brokers Licensing Regulations, 2018 and thereby committed misconduct rendering themselves liable to penalty under Regulation 18 of the CBLR, 2018.

15. Now therefore, in terms of Regulation 17(1) of CBLR, 2018, CB M/s Prayosha Logistics LLP (CB No. 11/1980), are hereby called upon to show cause, as to:

- i) Why the Customs Broker license bearing No. 11/1980 issued to them should not be revoked,
- ii) Why security deposited should not be forfeited,
- iii) Why penalty should not be imposed upon them under Regulation 14 read with Regulation 17 & Regulation 18 of the CBLR, 2018 as elaborated in above paras of this Show Cause Notice within 30 days of receipt of this notice.

16. The CB M/s. Prayosha Logistics LLP (CB No. 11/1980) is directed to appear for personal hearing on the date as may be fixed and to produce proof of evidence/documents, if any, in their defence to the Inquiry Officer, **Pramod kumar Chauhan, Assistant Commissioner of Customs, Audit Commissionerate, NCH, Mumbai** to conduct inquiry into the case under regulation 17 of CBLR, 2018. If no reply is received within the stipulated time period, it will be presumed that they have no explanation to offer, and it will be presumed that they do not want personal hearing and the issue will be decided on the facts available on records.

17. This notice is being issued without prejudice to any other action that may be taken against the CB or any other person(s)/firm(s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or any other law for the time being in force.

18. The documents/records relied upon are as under:

- (i) OIO dated 12.11.2024 issued vide F. No. S/10-35/2024-25 Adj(X) ACC & CAO NO: CC/HB/06/2024-25 Adj(X) ACC, received from O/o the Commissioner of Customs (Export), Air Cargo Complex, Mumbai.


(RAJAN CHAUDHARY)

Pr. Commissioner of Customs (General)
NCH, Mumbai-I.

To,
M/s. Prayosha Logistics LLP
(CB No.11/1980), AAYFP9463G
Add: 3C/23 SECOND FLOOR KALPATARU AURA
OPP. R CITY MALL, LBS MARG GHATKOPAR WEST
MUMBAI-400086, MAHARASHTRA.

Copy to:

1. IO, Pramod kumar Chauhan, Asst. Commissioner of Customs, Audit Commissionerate, NCH, Zone-I. Mumbai
2. The Pr. Chief/Chief Commissioner of Customs, Mumbai Zone I, II, III.
3. CIU's of NCH, ACC & JNCH.
4. The Pr. Commissioner/Commissioner of Customs, Mumbai Zone I, II, III.
5. EDI of NCH, ACC & JNCH.
6. BCBA.
7. Office copy
8. Notice Board.