



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

F. No. GEN/CB/610/2024-CBS

Date: 19.06.2025

DIN: 202506770000004934BB

ORDER NO. 07 /2025-26 CBS**UNDER REGULATION 16 (2) OF CUSTOMS BROKER LICENSING REGULATION, 2018**

M/s. Saidutta Clearing Agency Pvt Ltd (CB License No. 11/978) (EDI License No AAFCS5286ACH001) having address registered at Mr Ashwanii Dham, Saidutta Clearing Agency Pvt Ltd 201, Madhuban Building 23, Chochin Street Fort, Mumbai - 400001 (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/978, issued by the Commissioner of Customs, Mumbai under Regulation 8 of CHALR, 1984, [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 the form of O-I-O no- 990(L)/2024-25/ADC/Gr.I &IA/NS-I/CAC/JNCH dated- 06.11.2024, issued by the Addl Commissioner of Customs, was received on 07.11.2024. regarding the Customs Broker M/s. Saidutta Clearing Agency Pvt Ltd (CB License No. 11/978). The RUDs for the same have been received on 03.04.2025. Vide the offense report, inter alia, the following has been informed:

2.1 M/s Vegas International (IEC No:- BPNPG2029C)(here-in-after referred to as 'the importer'), having address at 21st Century Business, D-1/6, Shakarpur Extn. Delhi - 110092, through their Custom Broker M/s Sai Dutta Clearing Agency Pvt filed Warehouse Bill of Entry No. 8505793 dated 28.10.2023 (hereinafter referred to as 'subject Bill of Entry'). Based on the reasonable ground for suspicion of mis-declaration, the goods covered under subject Bill of Entry were examined 100% by the officials of SIIB(I) under Panchanama dated 28.11.2023.

The details of the Bill of Entry are given as under in Table-I.

TABLE-I

BE No. & Date	8505793 dated 28.10.2023
IGM No. & Date	2357407 dated 12.10.2023
Bill of Lading	AFFHANJEANSA31089 dated 09.10.2023
Container No.	EMCU3924915
Importer	M/s Vegas International (IEC No:- BPNPG2029C)
CHA	M/s Sai Dutta Clearing Agency Pvt. Ltd. (AAFCS5286ACH001)

Declared Items	Esse Lights Cigarettes (50*10*20)
Assessed Value	Rs 66,93,900/-
Total Duty Payable	Rs. 4,59,61,474/-
Invoice No.	73/23-24 dated 22.09.2023
Invoice Value	79500 USD
Supplier	One Point Trading Limited, Hong Kong
No of Cases	300Pkgs
Declared Weight	Rs. 3099.47 KGS (Total 30,00,000 sticks)
Country of Origin	Republic of Korea

2.2. During examination of the goods, **the description and quantity were found as declared. No concealment was observed.** The following markings were found on the Cigarette Packets.

*“Esse Lights
For the Stylish Leader
Super Slim Cigarettes
20 Class A Filter Cigarettes
American Blend
KTMG”*

2.3 However, Cigarette packets didn't have **any Pictorial warning**. Further **no Maximum Retail Price, Name of Manufacturer, Year of Manufacture, etc** were found on the packets. All tobacco products (whether domestically manufactured and sold or imported) require to comply with the requirements contained in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 [COTPA, 2003] and the Cigarettes and other Tobacco Products (Packaging and Labelling) (COTP) Rules, 2008 framed thereunder. **The COTP Rules are strict in nature and their compliance requires the printing of pictorial and textual warning on cigarette packets in specified format, colours, resolution, font and language.**

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 which extends to the whole India, Section 7(3) *ibid* mandates: -

“No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.”

Further, Section 8 of the said Act *supra* mandates the manner in which specified warning shall be made

(1) The specified warning on a package of cigarettes or any other tobacco products shall be—

- (a) legible and prominent;*
- (b) conspicuous as to size and colour;*
- (c) in such style or type of lettering as to be boldly and clearly presented in distinct contrast to any other type, lettering or graphic material used on the package or its label and shall be*

printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels.

(2) The manner in which a specified warning shall be printed, painted or inscribed on a package of cigarettes or any other tobacco products shall be such as may be specified in the rules made under this...

(3) Every package containing cigarettes or any other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.

2.4. Rule 3 of the Cigarettes and other Tobacco Products (Packaging and Labelling Rules) 2008 specifies Manner of packing and labelling for Cigarettes and reads as below: -

3. Manner of packing and labelling. - (1) Every person engaged directly or indirectly in the production, supply, import or distribution of cigarette or any other tobacco product shall ensure that: -

(a) every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules;

(b) the specified health warning shall cover at least eighty-five per cent (85%) of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area:

Provided that for conical package, the widest end of the package shall be considered as the top edge of the package:

Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover eighty-five per cent (85%) of each side or face of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning.

....

(h) every package of cigarette or any other tobacco product shall contain the following particulars, namely: -

(a) Name of the product;

(b) Name and address of the manufacturer or importer or packer:

(c) Origin of the product (for import);

(d) Quantity of the product;

(e) Date of manufacture; and

(f) Any other matter as may be required by the Central Government in accordance with the international practice.";

Thus, the Rule 3(1) of COTP, 2008 mandates the display of specified health warnings on both sides of the tobacco product packages covering at least 85% of the principal display area. The said rule ibid also prescribes certain crucial information Name of the Manufacturer, Country of Origin, Date of manufacture, etc.

2.5. Ministry of Health & Family Welfare vide Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2022 notified the new set of specified health warnings effective from 1st day of December, 2022 which is reproduced as under:

"(i) Textual Health Warning. - For smoking and smokeless forms of tobacco products, the words 'TOBACCO CAUSES PAINFUL DEATH' in Image-1 and the words 'TOBACCO USERS DIE YOUNGER' in Image-2 shall appear in white font colour on a red background. The words 'QUIT TODAY CALL 1800-11-2356' shall appear in white font colour on a black background. The intensity of color in the background of the textual health warning shall be: White: C:0%, M:0%,

Y:0% K:0%, Red: C:0%, M:100%, Y:100% K: 0% and Black: C:0%, M:0%, Y:0% K: 100%. The textual health warnings shall be printed with four colors with printing resolution of minimum 300 DPI (Dots per inch). The font type and colour of the health warning shall be exactly as uploaded on the website www.mohfw.gov.in OR ntcp.nhp.gov.in”

“2. The specified health warnings shall be-

- a. Image-1, shall be valid for a period of twelve months following its commencement.
- b. Image-2, shall come into effect following the end of twelve months from the date of

commencement of specified health warning of Image-1.

2.6. It appears that the Importer, by importing Cigarettes in packages without Specified Health Warnings (Texture Health Warning and Pictorial Health Warning) and other requisite information, has not complied with the provisions of the sub-section 4A of Section 46 of the Customs Act, 1962, which reads as under: -

(4A) The importer who presents a bill of entry shall ensure the following, namely: —

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

2.7. Further, Para 2 of the CBIC Circular No. 09/2017-Customs dated 29th March, 2017 directs that: -

All tobacco products (whether domestically manufactured and sold or imported) require to comply with the requirements contained in the Cigarettes and other Tobacco Products [(Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA 2003)] and the Rules framed thereunder. Ministry of Health and Family Welfare Vide Notification GSR 727 (E) dated 15.10.2014 notified the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment (COTP) Rules, 2014, which came into effect from 01.04.2016 [G.S.R. 739 (E) dated 24.09.2015]. The COTP Rules are strict in nature and their compliance requires that the printing of pictorial and textual warning on cigarette packets is in specified format, colours, resolution, font and language.

2.8. The Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 apply to packaged commodity which includes cigarettes. As the imported cigarettes were found to be packed in retail packing, they are covered under the Legal Metrology (Packaged Commodity) Rules, 2011 which require a declaration on the packs containing the name and address of the manufacturer or importer or packer, quantity of the product, month and year of manufacturing or pre-packing or importation, the retail sale price, etc. As the said details were missing on the cigarette packings, it appears that there is a violation of Legal Metrology (Packaged Commodities) Rules, 2011. The relevant provision of the said rules is reproduced below of sake of reference.

6. Declarations to be made on every package. —

- (1) Every package shall bear thereon or on the label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to —
 - (a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned. Explanation I.- If any name and address of a company is mentioned on the label without any qualifying words 'manufactured by' or 'packed

by', it shall be presumed that such name and address shall be that of the manufacturer and the

liability shall be determined accordingly; Explanation II. - If the brand name and address of the brand owner appears on the label as a marketer, then the brand owner shall be held responsible

for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation III. - In respect of packages containing food articles, the provisions of this sub-rule shall not apply, and instead, the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made there under shall apply

(b) The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package.

(c) The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned.

(d) The month and year in which the commodity is manufactured or pre-packed or imported shall be mentioned in the package. Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act 1954 (37 of 1954) and the rules made there under shall apply;

(e) the retail sale price of the package; Provided that for packages containing alcoholic beverages or spirituous liquor, the State Excise Laws and the rules made there under shall be applicable within the State in which it is manufactured and where the state excise laws and rules made there under do not provide for declaration of retail sale price, the provisions of these rules shall apply.

(f) Where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece shall be mentioned.

(g) such other matter as are specified in these rules:

Provided that –

(A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on-- (i) any package containing bidis or incense sticks; (ii) any domestic liquefied petroleum gas cylinder of 14.2kg or 5kg, bottled and marketed by a public sector undertaking;

3. The importer submitted letter dated 18.12.2023, vide which they submitted that the impugned goods are not meant for home consumption and are for supplies for embassies and re-export. Citing the said reasons, importer requested for NOC to move the goods to Delhi Public Warehouse under Bond-to-Bond transfer.

3.1. Summons dated 01.02.2024 were issued to the Importer, however no one appeared in the said summons proceedings. In reply to the summons dated 22.02.2024, authorised Representative of importer Shri Azad Sharma appeared in the said summons proceedings and his statement dated 05.03.2024 was recorded under Section 108 of the Customs Act, 1962, wherein he, inter-alia stated that;

a) The company started in 2023. The director of Company is Sanjip Gurung. This is their first import consignment. Previously they used to import alcohol for sale in domestic market, embassies etc through their other company M/s K.C. liquors. The said company used to provide liquors to the officers of various embassies in a duty-free mode. Officers of embassies get quota every quarter entitling them duty free alcohol, cigarettes, beers etc. Using these quotas they used to place orders to M/s K.C. Liquors. There was a demand of Cigarettes as well, however M/s K.C Liquors was not endorsed to import Cigarettes by DGFT. Hence a new firm M/s Vegas International was opened to cater demand of Cigarettes by embassies, IEC of M/s Vegas International is endorsed by DGFT for importation of Cigarettes.

- b) The plan for the consignment imported under WH Bill of Entry No. 8505793 dated 28.10.2023 was to keep goods in Customs Bonded Warehouse and to supply the goods to the Embassies located in Delhi as and when they received order for the same.
- c) On being asked that if Plan was to sell goods in Embassies located in Delhi then why goods were kept in a Customs Bonded Warehouse of Mumbai Zone, he replied that they wanted goods in Delhi only, however supplier was ready to ship goods till Nhava Sheva only hence goods landed in JNPT and were kept in Punjab Bonded Warehouse.
- d) On being asked that the supplier of said consignment is M/s One Point Trading, Hongkong whose website showed that it deals with Serum, Electronics, Garments etc and nowhere it appeared that it deals with Cigarettes, he replied that the said company is a trading company and it can supply goods as per requirement of Customers. There are many such companies in Hongkong and Dubai.
- e) That they got to know about said supplier on Internet. They contacted them through mail and inquired about prices. He will submit copy of mail communication within a week.
- f) On being asked that the Invoice shows that 100% payment must be made before shipment and whether they have made any payment in this regard, he replied that it seems Invoice was generated on a set pattern. However, the supplier has given them credit of 90 days. He will submit copy of communication made by supplier in this regard within a week.
- g) On being asked that the Bill of Lading shows that consignor is M/s Golden Start Tobacco Trading FZ LLC, UAE. However as per Invoice, the name of Consignor should be M/s One Point Trading Ltd. He replied that as far as he knows, their supplier M/s One Point Trading Ltd procured goods from M/s Golden Start Tobacco Trading FZ LLC, UAE and since this company was the actual shipper of the goods hence its name is shown as the consignor in Bill of Lading.
- h) On being asked about the violation of Section 46(4A) of Customs Act, 1962 read with Section 7(3) of the Cigarettes and Other Product Act, 2003 [COTPA, 2003], as the imported Cigarettes didn't have Pictorial warning as per Section 7(3) of the COTPA Act, 2003, he replied that as far as he knows sale of Cigarettes in Duty Free Shops or embassies is not considered as home consumption and hence the said pictorial warning do not apply for sale taking place in DFS or Embassies.
- i) On being shown CBIC Instruction F.No. 450/160/2009-Cus.IV dated 29 December 2009 which mandates that distribution or sale of cigarettes in duty free shops shall also be subject to compliance of the Cigarettes and Other Tobacco Products (Packaging and Labelling Rules), 2008, he replied that as he said earlier, as far as he knows, said rules and stipulations are not applicable for sale taking place in DFS or Embassies. He will produce relevant notifications/rules in this regard within a week.
- j) Copy of CBIC Circular No. 09/2017 dated 29.03.2017 was shown and it was asked that it seems that there is a violation of said circular also. He replied that Please give him some time to submit relevant documents/ notifications. He hoped, it will clear all doubts.
- k) On being asked that whether he has any purchase order from a Duty-Free Shop or Embassy, he replied that as of now, they didn't have but they had purchase order from 02 embassies in last quarter i.e. Oct-Dec 2023. These purchase orders were lapsed now as the order needed to be fulfilled in the same quarter. However, he will submit copy of the purchase order within a week.

3.2. In this regard, it is pertinent to mention that the Importer/authorised representative failed to submit the relevant notification/rules/purchase order/email communication, etc as affirmed by him during recording of statement. It appeared that the importer has no such documents in their possession. Further, it was also noted on scrutiny of the import

documents uploaded in e-Sanchit at the time of filing of Bill of Entry, that the importer had not made any such declaration that the goods are meant for re-export in Bill of Entry or any import documents. It appeared that it is a case of Improper Importation Violating Section 46(4A) of the Customs Act, 1962 read with Section 7(3) of the COTPA, 2003, the goods were seized vide Seizure Memo No. 198/2024 dated 26.03.2024.

3.3. Statement of Shri Kuldeep Singh Rangrass, G -Card holder of CB firm M/s Sai Dutta Clearing Pvt Ltd, under authorisation from proprietor of the said CB firm, was recorded on 18.04.2024 under Section 108 of the Customs Act, 1962, wherein he, inter-alia stated that;

- a) That they are aware about procedures to be followed by CB. He looked after Customs clearance related work of imported goods only.
- b) Mr Vikrant Chawla, Proprietor of M/s Vegas International contacted his Company's director for the Customs Clearance of the said Bill of Entry.
- c) His office staff physically received all the necessary supporting documents i.e. Invoice, Packing List, Bill of Lading etc from M/s Vegas International
- d) His office has verified all the KYC documents of the Importer viz GSTIN registration certificate, IEC on DGFT website and also verified the address of the Importer physically, after online verification of IEC and GSTIN, the said importer seemed genuine. Accordingly, they proceeded to file the Bills of Entry of the Importer M/s Vegas International. The Importer provided the Import documents i.e. commercial Invoice, Packing List, Bill of Lading and Bond receipt of the said consignment in person.
- e) That they had received payment of Rs 33,000/- per container in current bank account of HDFC Bank of M/s Sai Dutta Clearing Pvt Ltd for the said consignment.
- f) That it was their first consignment for M/s Vegas International.
- g) That they have filed the Bill of Entry as per the documents i.e Bill of Lading and Commercial Invoice provided by the importer. The HSN Code of goods mentioned in the Bill of Lading of the said consignment as 24022090. Accordingly, they had classified the goods under CTI 24022090, also they referred to Tariff Book.
- h) On being asked that Cigarettes like Esse Lights imported from abroad didn't have pictorial warning on packaging, did they know about it and if they did, why didn't they warn importer regarding same, he replied that they had informed importer regarding same but he told them that he was planning to re-export all the goods and sale taking place in embassies is not considered as home consumption hence it didn't require any pictorial warning.
- i) That they had filed Bill of Entry as per the documents i.e. Bill of Lading and Commercial Invoice provided by the importer. They are aware about the notification and rules. He informed them that the said rules and stipulations regarding pictorial warning are not applicable for re- export and sale taking place in DFS or embassies. They trusted the Importer and didn't verify it.
- j) That they did their part by informing the importer to comply with all the provisions of the act, other allied acts and rules and regulations. Since, he filed the Bill of Entry based on suggestion of Importer, he didn't verify the authenticity of documents/data provided by the Importer.
- k) That he was not aware of the modus operandi of the Importer
- l) That they inform importer to comply with all the provisions of the Act, other allied acts and Rules/regulations.

3.4. A letter dated 30.04.2024 was forwarded to the Principal Commissioner of Customs (Preventive), New Delhi with a request to search premises of the Importer M/s Vegas International located at "21st Century Business Centre, D-1/6 Shakarpur Extension, Delhi- 110092". Deputy Commissioner of Customs (Gr-V), Customs Preventive, New Delhi, vide letter dated 10.05.2024 informed that said address was not traceable.

3.5. The Importer vide letter dated-12.02.2024 and dated 01.03.2024 requested for re- export of shipment back to the supplier. Further vide letter dated 24.04.2024 the importer informed that the cigarettes were warehoused awaiting purchase orders from prospective clients, including diplomatic mission and duty-free shops. Once these orders are received the cigarettes would have been removed from the warehouse to the domestic markets well as to the diplomatic missions, after filing appropriate ex-bond Bills of Entry and after complying with all the rules and regulations relating to the sale of cigarettes. The importer relied upon the Public Notice No. 60/2019 dated 21.06.2019 of JNCH and submitted that the labelling/packing requirements may be completed in the warehouse to meet the statutory requirements under the Legal Metrology Act (printing of MRP etc.), requirements of FSSAI (putting of pictorial warning in respect of cigarettes), requirements of DGFT, State Excise Laws etc. Vide the said letter, the importer inter-alia requested for allowing re-export of the impugned goods.

3.5.1. Further, summonses dated 15.05.2024, 03.06.2024 and 11.06.2024 were issued to the Proprietor of M/s Vegas International, however no one attended the said proceedings. M/s Vegas International vide letter dated 18.06.2024 expressed his inability to attend the summon proceedings scheduled on 19.06.2024 which was fixed vide summon dated 11.06.2024. Further, Summonses dated 08.08.2024 and 05.09.2024 were issued to the Proprietor of M/s Vegas International requesting appearance on 13.08.2024 & 12.09.2024 respectively and submission of documents like Purchase Order from Embassies, relevant rules/notifications enabling import of cigarettes without pictorial warning. The said proceedings also went unattended by the importer.

3.5.2. During examination, goods were found to be Cigarettes of 100 mm length (including 35 mm of filter length). Thus, it appeared that classification of goods is proper.

3.5.3. Policy Condition: As per Import Policy Note No. 13 of the General Notes regarding Import Policy of ITC (HS), 2022 Schedule 1 – Import Policy, issued by the DGFT, import of cigarette or any other tobacco product shall be subject to the provisions contained in the Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2018 (as amended from time to time) as notified by the Ministry of Health & Family Welfare. Rule 3(1) of COTP, 2008 mandates the display of specified health warnings on both sides of the tobacco product packages covering at least 85% of the principal display area. The said rule ibid also prescribes certain crucial information Name of the Manufacturer, Country of Origin, Date of manufacture, etc. Ministry of Health & Family Welfare vide Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2022 notified the new set of specified health warnings effective from 1st day of December, 2022. As goods were found without safety health warnings, it appears that there is a violation of DGFT ITC (HS), 2022 Schedule 1 – Import Policy read with Section 7(3) of the COTPA, 2003 read with Rule 3 of COTP Rules, 2008 (as amended).

3.5.4. The impugned goods were seized on 26.03.2024. In terms of Section 110(2) of the Customs Act, 1962, the Commissioner of Customs, NS-IV on 24.09.2024 has granted extension of 06 months for issuance of Show Cause Notice. The same was informed to the importer vide letter dated 25.09.2024.

3.5.5. The importer filed Writ Petition 14021 of 2024 in the Hon'ble High Court of Bombay. In the said WP, the importer petitioner drew reference to their letters dated 12.02.2024 and 24.04.2024. The importer petitioner requested the Hon'ble Court to pass the order or directions to the Customs Authorities to permit the re-export of the impugned shipment back to the supplier. Hon'ble High Court vide their Order dated 11.10.2024 directed the Customs Authorities to dispose of the petitioner's representations dated 12 Feb 2024 and 24 Apr 2024 as expeditiously as possible and in any event within 30 days from today in accordance with law and on their merits after giving the petitioner a personal hearing in the matters. The decision on these representations must be communicated to the petitioner within this period of 30 days.

3.5.6. In pursuance of the directions of the Hon'ble Court, SIIB(I) issued letter dated 15.10.2024 giving an opportunity to the importer to either appear in person or make submissions and clarifications in the matter on or before 22.10.2024. However, the importer vide their email dated 21.10.2024 made their submissions/clarifications in response to SIIB(I)'s letter dated 15.10.2024. Vide the said letter, they re-iterated their submissions made in the Writ Petition before the Hon'ble High Court.

4. It appeared that omissions of CB firm as mentioned above with respect to the goods imported vide WH Bill of Entry No. 8505793 dated 28.10.2023 resulted in Improper Importation of goods violating provisions of the Customs Act, 1962, The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, Cigarettes and other Tobacco Products (Packaging and Labelling Rules) 2008, hence he is also liable to pay penalty under Section 112(a)&(b)/114A of the Customs Act, 1962. The CB is also liable to Pay Penalty under Section 114AA of the Customs Act, 1962, for submitting the false documents for the Customs purpose. Further appropriate action under provisions of CBLR, 2018 may be initiated.

5. The AA observed that it was case of improper importation violating Section 46 (4A) of the Customs Act-1962, read with Section 7(3) of the COTPA, 2003. Further violation under Section 7 (3) of the COTPA, 2003 read with Rule 3 of the COTP Rules, 2008 (as amended), read with Ministry of Health & Family Welfare vide Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2022, CBIC instruction F. No 450/160/2009-Cus.IV dated- 29.12.2009, CBIC Circular no- 09/2017-Customs dated- 29.03.2017, Legal Metrology Act-2009, Legal Metrology (Packaged Commodities) Rules, 2011, FT(D&R) Act-19922, Import Policy ITC HS 2022 and Foreign Trade Policy, 2023.

The AA imposed penalty of Rs. 500,000/- (Rupees Five Lakh only) under Section 112 (a)(i) and 112(b)(i) of the Customs Act, 1962 and penalty of Rs. 500,000/- (Rupees Five Lakh only) under Section 114AA of the Customs Act, 1962 on the CB Firm M/s. Sai Dutta Clearing Pvt Ltd.

6. ROLE OF CUSTOMS BROKER: -

6.1 The Customs Broker is an agent authorized by the exporter to work on their behalf. As per regulations of the CBLR, 2018, it is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information he imparts to a client and to advise the client accordingly 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. Further, it is mandatory for a Customs Broker to 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.

From the Offense Report in the above-mentioned case, it appears that Customs Broker M/s Sai Dutta Clearing Agency didn't adhere to the Regulations 10(d), 10(e), 10 (f) and 10 (n) of the Customs Broker Licensing Regulations, 2018, as under.

(i) Sub-regulation 10 (d) of the CBLR, 2018 which reads 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 noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;"

On perusal of the offence report, it is clear that the Importer has violated Section 46 (4A) of the Customs Act-1962. Further the Importer has violated under Section 7 (3) of the COTPA, 2003 and Rule 3 of the COTP Rules, 2008 (as amended), read with Ministry of Health & Family Welfare vide Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2022, CBIC instruction F. No 450/160/2009-Cus.IV dated- 29.12.2009, CBIC Circular no- 09/2017-Customs dated- 29.03.2017, Legal Metrology Act-2009, Legal Metrology (Packaged Commodities) Rules, 2011, FT(D&R) Act-19922, Import Policy ITC HS 2022 and Foreign Trade Policy, 2023.

The CB, in his statement dated- 18.04.2024, stated that they had informed importer regarding pictorial warnings but the Importer told them that he was planning to re-export all the goods and sale taking place in embassies is not considered as home consumption hence it didn't require any pictorial warning. That the CB had filed Bill of Entry as per the documents i.e. Bill of Lading and Commercial Invoice provided by the importer. Further, as per the offense report, on scrutiny of the import documents uploaded in e-Sanchit, at the time of filing of Bill of Entry, **it was noted that the importer had not made any such declaration that the goods are meant for re-export in Bill of Entry or any import documents.** The CB should have advised the Importer to make such declaration in the Import documents and to upload the same in e Sanchit, and should have made the such declarations in the B/e also. The CB also failed to inform the Customs Authorities that the goods are meant for re-export or sale to embassies or DFS as has been claimed by the Importer. The Importer failed to produce any purchase orders from the embassies or DFS. Thus the CB failed to advise his client regarding Section 46 (4A) of the Customs Act-1962, and other provisions of the allied act, and rules and regulations thereof and the same has resulted in Import of cigarettes violating many provisions of different acts and rules and regulations. The CB also failed to bring the matter to the notice of Customs Authorities.

In view of the above, the CB appears to have violated the provisions of Regulation 10(d) of CBLR, 2018.

(ii) Sub-regulation 10 (e) of the CBLR, 2018 which reads 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"

The CB, in his statement dated- 18.04.2024, on being asked that Cigarettes like Esse Lights imported from abroad didn't have pictorial warning on packaging, did they know about it and if they did, why didn't they warn importer regarding same, has replied that they had informed importer regarding same but he told them that he was planning to re-export all the goods and sale taking place in embassies is not considered as home consumption hence it didn't require any pictorial warning. That they had filed Bill of Entry as per the documents i.e. Bill of Lading and Commercial Invoice provided by the importer. They are aware about the notification and rules. He informed them that the said rules and stipulations regarding pictorial warning are not applicable for re- export and sale taking place in DFS or embassies. That they trusted the Importer and didn't verify it. Thus, the did not verify the claim of the importer that the goods are for the sale to the Embassies and Duty free shops and failed to act diligently. The Custom Broker did not ask for purchase orders for the same.

Further, it was also noted on scrutiny of the import documents uploaded in e-Sanchit at the time of filing of Bill of Entry, **that the importer had not made any such declaration**

that the goods are meant for re-export in Bill of Entry or any import documents. The CB also did not verify the documents properly as the Consignor in the Bill of lading is M/s Golden Start Tobacco Trading FZLLC, UAE, and the name of the Consignor in Invoice is M/s One Point Trading Ltd. Further, due the negligence of the CB, the Importer violated provisions of the act, and allied acts along with rules and regulations thereof.

This gross negligence and failure to fulfil basic professional responsibilities constitutes a clear violation of Regulation 10(e) of CBLR, 2018, which mandates Customs Brokers to exercise due diligence.

(iii) Sub-regulation 10 (f) of the CBLR, 2018 which reads as:

"not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"

The CB appears to have failed to inform the Importer about the CBIC instruction F. No 450/160/2009-Cus.IV dated- 29.12.2009, CBIC Circular no- 09/2017-Customs dated- 29.03.2017. The CBIC instructions mandates that distribution and sale to Duty Free Shops shall be subject to compliance of the Cigarettes and other Tobacco Products (Packaging and Labelling Rules), 2008. The Imported goods should have pictorial warnings for sale to DFS, but the CB has failed to inform the Importer regarding the same.

Thus the CB appears to have violated the provisions of Regulation 10 (f) CBLR, 2018.

(iv) Sub-regulation 10 (n) of the CBLR, 2018 which reads 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"

It is observed that the CB, in his statement dated- 18.04.2024, had stated that they had verified the KYC documents of the Importer on DGFT website and also verified address of the Importer physically.

While as per the offense report, a letter dated 30.04.2024 was forwarded to the Principal Commissioner of Customs (Preventive), New Delhi with a request to search premises of the Importer M/s Vegas International located at "21st Century Business Centre, D-1/6 Shakarpur Extension, Delhi- 110092". Deputy Commissioner of Customs (Gr-V), Customs Preventive, New Delhi, vide letter dated 10.05.2024 informed that said address was not traceable. It clearly depicts that the CB failed to verify the functioning of his client as the declared address.

In view of the above, the CB appears to have violated provisions of Regulation 10 (n) of the CBLR, 2018.

6.2 From the investigation, it appears that the CB M/s. Saidutta Clearing Agency Pvt Ltd (CB License No. 11/978), a licensed Customs Broker (CB), highlights a serious breach of regulatory obligations under the Customs Brokers Licensing Regulations (CBLR), 2018. The case involves, one Bill of entry i.e., 8505793 dated 28.10.2023, for Import of declared cigarettes. However, Cigarette packets didn't have **any Pictorial warning**. Further **no Maximum Retail Price, Name of Manufacturer, Year of Manufacture, Etc** were found on the packets. The Importer has thus violated, Importer has violated Section 46 (4A) of the Customs Act-1962. The Importer has violated under Section 7 (3) of the COTPA, 2003 and Rule 3 of the COTP Rules, 2008 (as amended), read with Ministry of Health & Family Welfare vide Cigarettes and other Tobacco Products (Packaging and Labelling) Amendment Rules, 2022, CBIC instruction F. No 450/160/2009-Cus.IV dated- 29.12.2009, CBIC Circular no- 09/2017-Customs dated- 29.03.2017, Legal Metrology Act-2009, Legal Metrology (Packaged

Commodities) Rules, 2011, FT(D&R) Act-19922, Import Policy ITC HS 2022 and Foreign Trade Policy, 2023. violated provisions of allied acts along with Rules and regulation thereof as stated above.

The CB appears to have failed to advice its client regarding provisions of different allied acts. It appears that the CB did not verify the claim of the importer that the goods are for the sale to the Embassies and Duty free shops and failed to act diligently. Further, it was also noted on scrutiny of the import documents uploaded in e-Sanchit at the time of filing of Bill of Entry, that the importer had not made any such declaration that the goods are meant for re-export in Bill of Entry or any import documents. The CB also appears to have failed to verify the functioning of client at the declared address, as the address of the Importer was found to be intraceable. Had the CB fulfilled its basic verification duties, the Improper Importation of the goods might have been not occurred.

The CB's actions or inactions violated not just Regulation 10(n), but also related provisions regarding due diligence (10e) and client advisories (10d), making this a case of multiple regulatory breaches. This case should serve as a wake-up call for the CB to strengthen their compliance mechanisms, implement robust verification protocols, and understand that regulatory requirements are not mere formalities but essential safeguards against economic offenses. Therefore, it appears that the CB has violated the provisions of regulation 10(d), 10(e), 10(f) & 10(n) of the CBLR, 2018.

7. From the above facts, it appeared that, prima facie, Customs Broker CB Saidutta Clearing Agency Pvt Ltd (CB License No. 11/978) had violated Regulation 10(d), 10(e), 10(f) & 10(n) of CBLR, 2018. It is apprehended that the Custom Broker may adopt similar modus operandi in future consignments and department cannot remain oblivious to the danger posed by such an eventuality.

8. In view of the above, the license of the CB was suspended vide order no 05/2025-26 dated 03.06.2025.

9. Record of Personal Hearing and written submission of the CB

An opportunity for personal hearing was given to the Customs Broker M/s Sai Dutta Clearing Pvt Ltd. on 12.06.2025. The said opportunity was availed by the representative of the Customs Broker, i.e., Shri K.S Mishra and Shri Aditya Tripathi (Advocate), on behalf of the CB. As the part of proceedings, they have reiterated their reply/submission dated vide letter dated- 12.06.2025. Vide the submission the CB, inter-alia, stated the following.

9.1 That M/s Sai Dutta Clearing Agency Pvt. Ltd., Madhuban Building 23, Chochin Street Fort, Mumbai – 400001 (herein after referred as the Customs Broker) is holder of Customs Broker Licence No.11/978 issued by the Commissioner of Customs, Mumbai. In the instant case, based on offence report received on 07.11.2024 in the form of O-I-O No. 990 (L)/2024-25/ ADC/Gr.1&1A/NS- 1/CAC/JNCH dated 06.11.2024 action has been initiated against the Customs Broker under CBLR, 2018 suspending above said licence vide order No. 05/2025 -26 CBS dated 03.06.2025

9.2. That instant proceeding is initiated under Customs Broker Licensing Regulation, 2018 (herein after referred to as CBLR, 218) relating to import of cigarettes covered by Ware House Bill of Entry No. 8505793 dated 28.10.2023 filed by the CB on behalf of the importer namely M/s Vegas International. The imported goods were subjected to 100% examination and Panchnama dated 28.11.2023 was drawn. Examination of the goods revealed that description and quantity were found as declared. It was however, observed that statutory pictorial warning and other relevant details including MRP were not declared on the packages. During the course of investigation statements of Shri Azad Sharma representative of the importer and Shri Kuldeep Singh, G-card holder of the CB were recorded and on the basis investigation

the said goods were finally seized on 26.03.24 for non-compliance of provisions of COTPA Act, COPT Rules, 2008 Legal Metrology Package Rules, 2011.

9.3 That though no further investigation was undertaken, issuing of SCN within stipulated period was further extended by another six months. In the meantime, the importer vide letter 12.02.2024 and 01.03.2024 requested for re-export of shipment to the supplier and further vide letter dated 24.04.2024 informed that cigarettes were warehoused awaiting purchase orders from prospective client including diplomatic missions and duty-free shops. Once these orders are received, the cigarettes would have been removed from the ware house after filing ex bond Bills of Entry after complying with all the rules and regulations relating sale of cigarettes. Relying on Public Notice No.60/21.06.2019 importer further submitted that the labelling/packing requirement may be completed in the warehouse to meet the statutory requirements under the legal Metrology Act (printing of MRP tec.), requirement of FSSAI (putting of pictorial warning in respect of cigarettes), requirements of DGFT, State Excise Laws etc.

9.4 . That, in view of letters 12.02.2024 and 24.04.2024 the importer filed Writ Petition No.14021 of 2024 before the Hon'ble Bombay High Court and requested to pass the order or direction to the Customs Authorities to permit re-export of the impugned goods back to the supplier. The Hon'ble High Court vide their order dated 11.10.2024 directed the Customs Authorities to dispose of the petitioner's representations dated 12.02.2024 and 24.04.2024 as expeditiously and in any event within 30 days from that day in accordance with law and on their merit after giving the petitioner a personal hearing in the matter. The decision on these representations must be communicated to the petitioner within this period of 30 days.

9.5. Accordingly, a show cause notice dated 28.10.2024 was issued to the importer and Customs Broker for imposing penalty under section 112(a) &(b)/114 of the Customs Act, 1962 which was adjudicated vide Order-in-Original dated 06.11.2024. The adjudicating authority while holding in para 35 that Customs Broker's role is to be examined vis-à-vis Regulations 10 (d), 10 (e), 10 (f), 10 (n) of CBLR, 2018 imposed penalty of Rs.5,00,000/- under section 112 (a) & (b) and penalty of Rs.5,00,000/- under section 114 of the Customs Act, 1962.

9.6. That, in view of offence report received on 07.11.2024, wherein details of examination of goods, reference to Rule 3 of Cigarettes and Tobacco Products (Packaging and Labelling Rules) 2008, Health warning issued by Ministry of Health & Family Welfare CBIC Circular dated 29.03.2017, The Legal Metrology Act, 2009 and Legal Metrology (packaged Commodity) Rules, 2011, Letter dated 18.12.2023 of the importer, statements recorded under section 108 of the Customs At,1962, observation of the adjudicating authority and penalty imposed has/c been referred and discussed in para 2.1 to 5 of the suspension order.

9.7. It is humbly submitted that the Hon'ble Principal Commissioner without considering the vital facts and evidence relevant to the case, has ordered suspension of CB Licence solely by relying on unsubstantiated observation and unsustainable findings by the adjudicating authority. Some of issues considered for suspension of CB Licence are mentioned hereunder:

9.7.1 Role of Customs Broker as mentioned in para 6 of the suspension order is reproduced hereunder:

"The Customs Broker is an agent authorised by the exporter to work on their behalf. As per regulations of CBLR 2018, it is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information he imparts to a client and to adv/Ce the client accordingly to comply with the provisions of the Act, other allied acts and rules and regulations thereof and in case of non-compliance, shall bring the matter to notice of Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be. Further it is mandatory for Customs Broker to verify correctness of Importer Exporter Code (IEC) number. Goods and Service tax Identification Number (GSTIN), identity of his client and functioning of his client at declared address by using reliable, independent authentic documents, data or information."

9.7.2 From the Offence Report in the abovementioned case, it appears that the Customs Broker M/s Sai Dutta Clearing Agency did not adhere to Regulations 10 (d), 10 (e), 10(f) and 10 (n) of Customs Broker Licensing Regulation, 2018 and further discussed the said provisions vis-à-vis evidence relied upon.

9.7.3 It is further stated in para 6.2 that from the investigation it appears that M/s Sai Dutta Clearing Agency Pvt. Ltd. has committed a serious breach of regulatory obligation of Customs Broker Licensing Regulation, 2018. Based on the reference to provisions of CBLR, 2018 it is observed that CB has failed to advise his client regarding provisions of allied acts. It appears that the CB did not verify the claim of the importer that goods are for sale to embassy and Duty Free shops and failed to act diligently. Further It was also noted on scrutiny of the import document uploaded in e-Sanchit at the time of filing Bill of Entry that importer had not made any such declaration that goods are meant for re-export in the Bill of Entry or any import documents. The CB also appears to have failed to verify functioning of client at declared address as the address of the importer was found to be untraceable. Had the CB fulfilled its basic verification duties the importer the improper importation of the goods might not have occurred.

9.7.4 It is further observed that this case should serve as wake-up call for CB to strengthen compliances mechanism and implement robust verification protocol etc.

9.8 In the light of offence report received from the adjudicating authority and analysis of evidence as stated above, submission of the Customs Broker against the suspension order dated 03.06.2025 is as under-

9.8.1. That, as far as suspension Order No. 05/2025 -26 CBS issued under Regulation 16 (1) of Customs Broker Licensing Regulation, 2018 is concerned, it was always an endeavour on the part of the noticee to sincerely comply with the obligation cast upon the Customs Broker under CBLR, 2018. Therefore, before dealing with alleged lapses, at the outset it is emphatically and vehemently denied that there was any violation of provisions of CBLR, 2018.

9.8.2. Since, suspension order issued under Regulation 16 (1) of Customs Broker Licensing Regulation, 2018 on the basis of purported offence report received on 07.11.2024 in the form of Order-in-Original to appreciate the facts in proper prospect, the phrase offence report as defined in CBLR, 2018 is reproduced hereunder.

"Explanation. — Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations."

9.8.3 From the definition of offence report it is revealed that it refers to summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker whereas suspension order refers to the offence report received in the form of O-I-O (Order-in-Original), which is nothing but an adjudication order.

9.8.4 It is further submitted that an adjudication order is not the same as an offence report. An adjudication order is a decision made by an adjudicating authority regarding a violation of law, while an offence report is a formal document that records the details of an offence or Violation.

9.8.5 Thus, by no stretch of imagination such order passed by the adjudicating authority can fall within the ambit of definition of "Offence Report". Hence, suspension order dated 03.06.2025 passed under Regulation 16 (1) of Customs Broker Licensing Regulation, 2018 is not legally and therefore not sustainable.

9.8.6. As far as taking cognizance of O-I-O dated 08.11.2024 passed by the adjudicating authority is concerned it is submitted that as per para 35, the adjudicating authority has

only held that the Customs Broker's role is to be examined vis-à-vis Regulations 10 (d), 10 (e), 10 (f), 10 (n) of CBLR, 2018 and that there is no prima facie framing of charges necessitating immediate suspension of CB Licence.

9.8.7 In this regard kind attention is to Regulation 20 (2) which is reproduced hereunder for easy reference.

“Regulation 20 (2): Notwithstanding anything contained in sub- regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.”

9.8.8 That in the instant case on the basis of investigation conducted a show cause notice dated 28.10.2024 was issued which happens to be an investigation report which ought to have been treated as offence report and not the adjudication order dated 06.11.2024 received on 07.11.2024. Therefore, in terms of Regulation 20 (2) suspension order dated 03.06.2025 passed under Regulation 16(1) of Customs Broker Licensing Regulation, 2018 is beyond the period prescribed.

9.9. Notwithstanding the submissions made on alleged offence report forming the basis of instant proceedings, so far as violation of various provisions of CBLR, 2018 is concerned, submissions are as under.

9.9.1 It is submitted that for the import covered by Ware House Bill of Entry No. 8505793 dated 28.10.2023 was filed on behalf of the importer based on the document provided by the importer involving import of cigarettes. All the requisite KYC documents were obtained and details of which were duly verified. From the investigation, following facts emerge.

- Goods were subjected to 100% examination which revealed that description and quantity were found as declared.
- It is further seen that in para 3.5.2 of the suspension order it is specifically recorded that classification of goods is proper.

9.9.2 In regard to allegations of violation of Regulations 10 (d), 10 (e), 10 (f), 10 (n) of the CBLR, 2018 kind attention is invited to statement of Shri Kudeep Singh, G-card holder of the CB recorded on 18.04.2024 wherein he inter alia stated that;

- a. They are aware about procedure to be followed by CB. He looked after customs clearance of imported goods only;
- b. Mr. Vikrant Chawla, prop. of Vegas International contacted his company's director for customs clearance of the said Bill of Entry;
- c. His office staff physically received all the necessary supporting documents i.e. Invoice, Packing List, Bill of Lading etc. from M/s Vegas International;
- d. His office has verified all KYC documents of importer viz GSTIN registration certificate, IEC on DGFT website and also verified the address of importer physically, after online verification of IEC and GSTIN, the said importer seemed genuine. Accordingly, they proceeded to file Bill of Entry of the importer M/s Vegas International;
- e. The importer provided import documents i.e. commercial Invoice Packing List, Bill of Lading and Bond receipt of the said consignment in person;
- f. That they had received payment of Rs.33,000/- per container in current bank account of M/s Sai Dutta Clearing Pvt. Ltd. for the said consignment;
- g. That it was their first consignment for M/s Vegas International;
- h. That they have filed Bill of Entry as per the documents i.e. commercial Invoice Packing List, Bill of Lading. The HSN Code of the goods mentioned in Bill of Lading of consignment as

24022090. Accordingly, they classified the goods under CTH24022090 also they referred to Tariff Book.

i. On being asked that cigarettes like ESSE Light imported from abroad did not have pictorial warning on packages, did he know about it and if they did, why did not warn importer regarding the same, he replied that they had informed importer regarding the same but he told them he was planning to re-export all the goods and sale taking place in embassies is not considered as home consumption hence it did not require any pictorial warning;

j. That they had filed Bill of Entry as documents i.e. Bill of lading and commercial invoice provided by the importer. They are aware about notification and rules. He informed them the said rules and stipulation regarding pictorial warning are not applicable for re-export and sale is affected to DFS or Embassies. They trusted the importer and did not verify it.;

k. That they did their part by informing the importer to comply with all the provisions of act, other allied acts and rules and regulations. Since, he filed Bill of Entry based on suggestion of the importer, he did not verify the authenticity of documents/data provided by the importer;

l. That he was not aware of the modus operandi of the importer.

m. That they informed importer to comply with all the provisions of the act, other allied acts and Rules/regulations.

9.9.3 That, from the above statement, it is amply clear that the importer was advised to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof. The importer had not disputed the contents of statement tendered by Shri Kudeep Singh, G-card holder. Since, the goods were yet to be cleared as disclosed by the importer there was no reason to disbelieve the submission made by the importer. Further, as regards observation/allegation that Customs Broker did not verify the claim that the goods were for sale to embassy and duty-free shop and did not ask for purchase order before filing Bill of Entry, it is submitted that CB is not obliged to do such verification under the provisions of CBLR, 2018. No information what so ever was withheld from the department and having advised the importer to comply with provisions other allied acts and rules, Customs broker had reasonable belief as disclosed by the importer during investigation, importer would act as advised by the Customs Broker before clearing the goods for home consumption.

9.9.4 Customs Broker had exercised due diligence to ascertain the correctness of any information and verified 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 as required.

9.9.5 It is further submitted in that view various documents such as Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), correspondence and evidence on record existence of the importer cannot be in dispute. In view of settled legal position, the Customs Broker is not obliged to physically verify existence of the importer. It may however be observed that non-existence of the importer is not supported by any credible/reliable evidence.

9.10. In regard to alleged misdeclaration/improper import kind attention further invited to Order-in-Appeal 329 (Gr. I & IA)/2025(JNCH)/Appeals dated 10.03.2025 wherein the Hon'ble Commissioner (Appeals) while dealing with appeal filed against imposition of penalty, has after considering the facts and evidence held that no active role can be attributed to the appellant. There is also nothing that CB had knowingly or intentionally mis-declared, mis-stated or made any incorrect details in respect of import consignment. CB has filed Bill of Entry on the basis of documents received from the importer. No evidence is adduced to the effect that the CB has knowingly mis-declared the address of the importer.

9.11 In view of above submissions, it is further stated that in view of settled legal position that when bill of Entry is filed as per documents, CB cannot not be held liable for contravention of law by importer. This fact is further corroborated from the evidence that during examination of the goods no discrepancy was noticed in regard to description and quantity.

9.12 As regards alleged non-existence of the importer it is further submitted that importer, in the instant case was not a fake one. The importer has always participated in investigation. Thus, the mere fact of existence/non-existence of address of the importer cannot be ground to penalize the CB.

9.13. In view of the submissions made herein above and considering the fact that continuing of suspension will adversely affect livelihood and business of the Customs Broker. It is therefore, humbly prayed to kindly reconsider the issue and revoke the suspension of the Custom Broker.

DISCUSSIONS AND FINDINGS:

10. I have carefully gone through the records of the case, rules, regulations & the written submissions by the Customs Broker. The facts of the case and findings of the investigation have been mentioned in above paras and are not being repeated for brevity.

11. The issue before me at present is limited to determining whether the continuation of suspension of CB license is warranted or otherwise, in the instant case, in the light of the material on record.

12. The power under Regulation 16(1) of the CBLR, 2018 confers power to the Principal Commissioner of Customs/Commissioner of Customs to suspend the license of the Customs Broker where an inquiry against such Customs Broker is pending or contemplated. In the instant case, since an inquiry was contemplated against the said CB as intimated by the investigating agency, hence, I found it an appropriate case for suspension where immediate action was necessary. In terms of Regulation 16(2) of CBLR, 2018, an opportunity of hearing was granted to the CB on 12.06.2025 at 12:15 PM and same has been availed by the said Customs Broker. Further, orders issued under Regulations 16(1) and 16(2) of the CBLR, 2018 are temporary measures and final order is to be issued under Regulation 17 of CBLR, 2018 after issuance of Show Cause Notice and due inquiry.

13. I find that, the representative of the CB, vide their submission dated- 12.06.2025, has quoted Regulation 20 (2), which is reproduced here as below:

"Regulation 20 (2): Notwithstanding anything contained in sub- regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated."

In this regard, I find that the Regulation 20 (2) of the CBLR, 2018, states as

"(2) No Customs Broker shall enroll himself in more than one Association at a given time."

Further, I find that the regulation 20 (2) quoted by the CB, forms a part of, CHALR (Custom House Agent Licencing Regulation), 2004.

I find that the Suspension order has been issued under Regulation 16 (1) of the CBLR, 2018, as the Bill of entry is dated- 28.10.2023 and offence of the CB falls under violation of CBLR, 2018. In this regard Regulation 16 (1) of the CBLR, 2018, is reproduced as under

"16. Suspension of license.— (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations."

I find that the offense report (Order in Original dated- 06.11.2024) was received on 07.11.2024. I find that it has been mentioned in the suspension order dated- 03.06.2025, that the RUDs for the Offence Report have been received on 03.04.2025. I find that, an Offence Report is incomplete without the Relied Upon Documents, and that on receipt of the RUDs proceedings have been initiated well within the timeline prescribed by CBLR, 2018.

14. Further, vide the submission dated- 12.06.2025, the definition of Offence report has been quoted as under.

"Explanation. — Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations."

In respect of the Order in Original, passed, it is submitted such order passed by the adjudicating authority cannot fall within the ambit of definition of "Offence Report". Hence, suspension order dated 03.06.2025 passed under Regulation 16 (1) of Customs Broker Licensing Regulation, 2018 is not legally and therefore not sustainable. As far as taking cognizance of O-I-O dated 08.11.2024 passed by the adjudicating authority is concerned it is submitted that as per para 35, the adjudicating authority has only held that the Customs Broker's role is to be examined vis-à-vis Regulations 10 (d), 10 (e), 10 (f), 10 (n) of CBLR, 2018 and that there is no prima facie framing of charges necessitating immediate suspension of CB Licence.

In this regard, I find that the Order in original includes the findings of the Investigation conducted. Also, vide, the O-I-O no- 990(L)/2024-25/ADC/Gr.I &IA/NS-I/CAC/JNCH dated- 06.11.2024, Para 35, the adjudicating authority has stated that the Customs Broker's role is to be examined vis-à-vis Regulations 10 (d), 10 (e), 10 (f), 10 (n) of CBLR, 2018 and copy of the Order in original has been marked to the CB section with respect to para 35. I find that the Adjudication Authority has mentioned to examine role of CB regarding violation of four regulations specifically. And, thus, I find that the Order in original falls well within the definition of an Offence Report.

15. Further, a copy of Order-in-Appeal 329 (Gr. I & IA)/2025(JNCH)/Appeals dated 10.03.2025, has been provided, whereby the penalties imposed on the CB M/s Sai Dutta Clearing Pvt Ltd., under Section- 112 (a) (i) & (b) (i), of The Customs Act, 1962 and Section 114 AA of The Customs Act, 1962, have been set aside. In this regard, I find that the proceedings under CBLR, 2018, are separate, distinct and independent of proceedings under The Customs Act-1962.

16. In respect of Regulation 10 (d) of the CBLR, 2018, it is responsibility of the customs broker to 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; and i.r.o. Regulation 10 (e), the CB shall, "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";

Vide their submission dated- 12.06.2025, has stated that CB had advised the Importer regarding provision of the act and rules and regulations thereof. In regard of observation/allegation that Customs Broker did not verify the claim that the goods were for sale to embassy and duty-free shop and did not ask for purchase order before filing Bill of Entry, the CB has submitted that the CB is not obliged to do such verification under the provisions of CBLR, 2018.

I find that as per the offence report the CB failed to verify the claim of the Importer that the goods are for sale to embassies and duty free shop. The CB did not ask for purchase order for the same. And has stated that the CB is not obliged to such verification under the provisions of the CBLR, 2018. I find that the statement that CB is not obliged to verify the same is incorrect and substantiates that they acted in a non-diligent way. The CB has dealt with the Importer for the first time, and Import of Cigarettes without the pictorial warning is a violation of the Customs Act and various allied acts. The CB has to act in a diligent way regarding any work related to clearance and more so when a sensitive commodity is being imported. The CB ought to have acted in a diligent way and verified the claim of the Importer that the goods are meant for sale to embassies, and duty free shop. On non-verification/ or non-receipt of such documents, the CB ought to bring the matter to the Customs Authorities. Further, it was the duty of the CB to declare that the goods are meant for such purpose, while filing the Bill of entry itself. But it is clear from the offense report that no such declaration has been made by the Customs Broker.

Thus the CB failed to properly advise its client properly and also failed to bring the matter to Customs Authorities and failed to act in diligent way, as mandated under regulation 10 (d) and 10(e) of the CBLR, 2018.

17. In respect of Regulation 10 (f) of the CBLR, 2018, it is responsibility of the customs broker *"not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information;"*

Here, I find that, the CB has failed to inform the Importer about the CBIC instruction F. No 450/160/2009-Cus.IV dated- 29.12.2009, CBIC Circular no- 09/2017-Customs dated- 29.03.2017. The CBIC instructions mandates that distribution and sale to Duty Free Shops shall be subject to compliance of the Cigarettes and other Tobacco Products (Packaging and Labelling Rules), 2008. The Imported goods should have pictorial warnings for sale to DFS, but the CB has failed to inform the Importer regarding the same. Hence, it appeared that CB has violated the regulation 10(f) of CBLR, 2018.

18. In respect of Regulation 10 (n) of the CBLR, 2018, it is the responsibility of the CB *to verify the accuracy of the IEC number, GST Identification Number (GSTIN), the identity of their clients, and the operational status of clients at the declared address using reliable documents.*

In his regard, the is submitted that the CB had verified the KYC documents of the Importer and also verified address of the Importer physically.

I find that, as per the offense report, a letter dated 30.04.2024 was forwarded to the Principal Commissioner of Customs (Preventive), New Delhi with a request to search premises of the Importer M/s Vegas International located at "21st Century Business Centre, D-1/6 Shakarpur Extension, Delhi- 110092". Deputy Commissioner of Customs (Gr-V), Customs Preventive, New Delhi, vide letter dated 10.05.2024 informed that said address was not traceable. The claim of the CB that they had verified the address physically is not substantiated by the fact that the address of the Importer was not traceable, as per the Customs Preventive. I find that the CB failed to verify the functioning of his client as the declared address.

19. Considering the observations made above, it is to mention that the CB has a very important role in Customs clearance and lot of trust has been placed by the department on the CB. In the context of trade facilitation, where an increasing number of goods are processed through RMS without Customs examination, the role of the Customs Broker (CB) has become even more critical in ensuring that the country's economic borders are effectively protected. But in the instant case, by their acts of omission and commission, it appears that

CB was actively involved and rented his license on some monetary benefits which is against the regulations of CBLR, 2018. In the instant case, CB appears to have violated the provisions of Regulation 10(d), 10(e), 10(f), and 10(n) of the CBLR, 2018 and rendered themselves for penal action under CBLR, 2018.

In this regard, I rely on the judgement of the Hon'ble Supreme Court in case of the 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 Customs. The importer would find it impossible to clear his goods through its agencies 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..."

Further, I rely on the judgement of the Hon'ble High Court of Madras in case of Cappithan Agencies vs. Commissioner of Customs, Chennai-VIII, 2015 (326) E.L.T. 150 (Mad.), has held that:

"...Therefore, the grant of license to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of license to act as a CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such a position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed."

In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 05/2025-26 dated 03.06.2025 under regulation 16 of the CBLR, 2018 was just and proper. The said regulation reads as: -

"16. Suspension of license. - (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated."

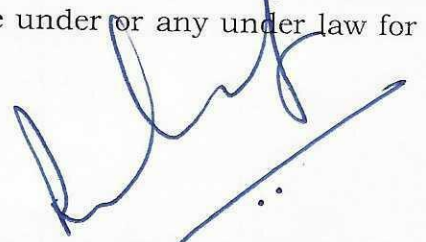
20. From the above facts, prima-facie, the Customs Broker M/s. Saidutta Clearing Agency Pvt Ltd (CB Code No. AAFCS5286ACH001) (CB No. 11/978) appeared to have failed to fulfil their obligations under Regulations 10(d), 10(e), 10(f), & 10(n) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as above, CB M/s. Saidutta Clearing Agency Pvt Ltd. appears to be liable and guilty.

21. Accordingly, I pass the following order: -

ORDER

21.1 I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16 (2) of CBLR, 2018 order that the suspension of the Customs Broker Licence of M/s. Saidutta Clearing Agency Pvt Ltd (CB Code No. AAFCS5286ACH001) (CB No. 11/978) ordered vide Order No. 05/2025-26 dated 03.06.2025 shall continue pending inquiry proceedings under Regulation 17 of CBLR, 2018.

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



(RAJAN CHAUDHARY)

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

To,

M/s. Saidutta Clearing Agency Pvt Ltd (CB License No. 11/978),
(EDI License No AAFCS5286ACH001)

Address: - Mr Ashwanii Dham, Saidutta Clearing Agency Pvt Ltd,
201, Madhuban Building 23, Chochin Street Fort,
Mumbai - 400001

Copy to:

1. The Pr./Chief Commissioner of Customs, Mumbai Zone I, II, III.
2. CIU's of NCH, ACC & JNCH.
3. The Commissioner of Customs, Mumbai Zone I, II, III.
4. EDI of NCH, ACC & JNCH.
5. BCBA.
6. Office copy.
7. Notice Board.