Circular No.9 /2010-Customs

F.No.502/5/2008-Cus.VI
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

159A, North Block,
New Delhi - 110001.
8th April, 2010.

To

All Chief Commissioners of Customs / Customs (Prev).
All Chief Commissioners of Customs & Central Excise.
All Commissioners of Customs / Customs (Prev).
All Commissioners of Customs & Central Excise.

IndiaCode

Subject: Issue of Custom House Agent License - Reference from field formations - regarding.

***

Sir / Madam,

It has been brought to the notice of the Board by certain field formations that they are facing difficulties in issuance of Custom House Agents (CHA) License for eligible persons and in implementation of the Custom House Agents Licensing Regulations (CHALR), 2004.

2. These issues were examined by the Board in consultation with customs field formations and in the Board meeting. Further, a meeting was also held with the Chief Commissioners of Customs having jurisdiction over major Custom Houses. Accordingly the following decisions have been taken on the issues listed below:-

(i) Minimum number of CHAs required in a Customs station:

3. Regulation 4 of the CHALR, 2004 provides the process of issue of CHA licences whereby the Commissioner of Customs may invite applications for the grant of such number of licences as assessed by him, to act as Customs House Agents in a customs station. The CHALR, 2004 do not provide for any restrictions on the number of CHAs. Board is of the view that, ideally, no restriction should be placed on the number of CHAs operating in the Custom Houses and the market forces should govern the number of proficient and qualified persons required to carry out the job of CHA commensurate with the volume of import / export cargo. The Board also did not find any justification in prescribing a turnover based criteria for ascertainment of the number of CHA licenses required to be issued at a particular Custom House / Station, in as much as the practice of undertaking CHA services on the basis of Form 'C' intimation was already in vogue and would render such exercise meaningless. The Board, therefore, has decided against fixing a numeric criterion governing the number of CHA licenses being issued. Board has also decided that the examination under Regulation 8 shall be conducted on an annual basis instead of twice a year, by suitably amending the sub-regulation (1) to Regulation 8.

(ii) Employment of person by a CHA:

4. In the present scheme of CHALR, 2004 under regulation 19(1), the Custom House Agent may employ any person who shall have a minimum educational qualification of 10+2 School education. However, appointment of such person shall be made only after obtaining approval of the Deputy Commissioner / Assistant Commissioner (DC/AC) designated by the Commissioner of Customs, who shall take into consideration the antecedents and character of the person as provided in regulation 19(2) of CHALR, 2004. In this regard, Board has decided that the DC/AC concerned, may ensure that individuals involved in any fraudulent activity (i.e., individuals suspended or blacklisted or denied permission to work in any section of the Custom House) shall not be allowed to be employed by a CHA for transacting business with Customs. Necessary undertaking in this

regard may also be taken from the CHA at the time of submission of application giving details of the person who are proposed to be employed by them.

4.2. CHALR, 2004 do not provide for any restriction on the number of persons a CHA can employ as it would depend upon the workload and requirements of a CHA. However, under the regulation 19(3), any person employed by CHA is required to appear through an examination conducted by DC/AC designated or a Committee of officers to ascertain the adequacy of the knowledge of such persons about the provisions of the Customs Act, 1962 before they are granted 'G' Card. Hence, it is reiterated that it is only those persons who have qualified themselves in the examination conducted under regulation 19(3) and who have been authorized by CHA in terms of regulation 19(5) alone are allowed to sign the declarations filed before Customs for transacting the work at any Custom station. Those persons who have not qualified in the examination but who are still in employment with CHA are being given 'H' card for assisting the CHA in his work. However, the Commissioner of Customs in a Custom House / Station shall undertake an annual review of such 'H' Cardholders with each CHA to ensure that discredited individuals are not being allowed to work as 'H' Cardholders. The examination under Regulation 19(3) shall also be conducted by Commissionerate of Customs on annual basis.

(iii) Suspension or revocation against CHAs operating on 'C' form intimation basis:

5.1. CHALR, 2004 provide a facility for the CHAs who have been issued a license from a particular customs station to operate under Form 'C' intimation at another customs station. In case of such CHAs, who are found to have violated any provision of the CHALR, 2004 at any customs station, it is clarified that the suspension action against CHA's operations may be taken by the Commissioner of Customs at the station who issued the CHA license and such action would either be limited to a particular customs station where a violation has been noticed or action against the CHA in general, applicable at all customs stations where the CHA operates, depending upon the gravity and seriousness of the violation. Where the CHA licence is suspended, all 'G' and 'H' cards issued in respect of that licence would become non-operational.

5.2. Further, it is also clarified that the Commissioner of Customs at a customs station who had authorised a CHA to operate on 'C' form intimation, should inform the details of violations to the Commissioner of Customs at the customs station from where the CHA licence was issued for such CHA, so that necessary action for suspension or revocation of CHA licence, could be initiated by him. This would avoid duplication and ensure uniformity in adjudication of a case against a CHA in suspension or revocation proceedings by the Customs field formations. However, the Commissioner of Customs, who had authorised a CHA to operate on 'C' form intimation at a customs station, may take action in deserving cases under regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Customs Station.

(iv) Know Your Customs (KYC) norms for identification of clients by CHAs:

6. In the context of increasing number of offences involving various modus-operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders etc., it has been decided by the Board to put in place the "**Know Your Customer (KYC)" guidelines** for CHAs so that they are not used intentionally or unintentionally by importers / exporters who indulge in fraudulent activities. Accordingly, Regulation 13 of CHALR, 2004, has been suitably amended to provide that certain obligations on the CHAs to verify the antecedent, correctness of Import Export Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information. In this regard, a detailed guideline on the list of documents to be verified and obtained from the client/ customer is enclosed in the Annexure. It would also be obligatory for the client/ customer to furnish to the CHA, a photograph of himself/herself in the case of an individual and those of the authorised signatory in respect of other forms of organizations such as company/ trusts etc., and any two of the listed documents in the annexure.

(v) Time limit for completion of suspension proceedings against CHA licensee under regulation 22:

7.1. The present procedure prescribed for completion of regular suspension proceedings takes a long time since it involves inquiry proceedings, and there is no time limit prescribed for completion of such proceedings. Hence, it has been decided by the Board to prescribe an overall time limit of nine months from the date of receipt

of offence report, by prescribing time limits at various stages of issue of Show Cause Notice, submission of inquiry report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs recording his findings on the issue of suspension of CHA license, and for passing of an order by the Commissioner of Customs. Suitable changes have been made in the present time limit of forty five days for reply by CHA to the notice of suspension, sixty days time for representation against the report of AC/DC on the grounds not accepted by CHA, by reducing the time to thirty days in both the cases under the Regulations.

7.2. In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs under regulation 20(2), there is no need for following the procedure prescribed under Regulation 22 since such an action is taken immediately and only in justified cases depending upon the seriousness or gravity of offence. However, it has been decided by the Board that a 'post-decisional hearing' should be given in all such cases so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, Board has also prescribed certain time limits in cases warranting immediate suspension under Regulation 20(2). Accordingly, the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license (Licensing authority), within thirty days of the detection of an offence. The Licensing authority shall take necessary immediate suspension action within fifteen days of the receipt of the report of the investigating authority. A post-decisional hearing shall be granted to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him.

(vi) CHA licenses in respect of individuals who had passed the examination under CHALR, 1984:

8.1. The issue of granting CHA license in respect of persons who had already passed the written and oral examinations held under Regulation 9 examination of Customs House Agents Licensing Regulations (CHALR), 1984 and are yet to be considered for issue of CHA license, was examined by the Board. On this issue, the Board in its earlier meeting had held that with the introduction of CHALR, 2004, there was no generalized case for grant of CHA licence to such applicants having passed Regulation 9 examination under CHALR, 1984 as the requirements of educational qualification and also examination curriculum were different in the two regulations. Considering the hardships experienced by such persons and in order to remedy the situation by providing one time opportunity to qualify them for grant of CHA license, It has been decided by the Board to conduct written examination for these persons on the following additional subjects: (a) The Patents Act, 1970 and Indian Copy Right Act; 1957 (b) Central Excise Act, 1944 (c) export promotion schemes (d) Procedure on appeal and revision petition (e) Prevention of Corruption Act, 1988 and (f) online filing of electronic Customs declarations, (g) Narcotic Drugs and Psychotropic Substances Act, 1985 and (h) Foreign Exchange Management Act, 1999. The aforesaid examination would be conducted by the Directorate General of Inspection after giving due notice to these candidates. Accordingly, persons who qualify in the aforesaid examination shall be deemed to have passed under the Regulation 8 of Customs House Agents Licensing Regulations, 2004, and would be considered for grant of CHA license in terms of Regulations 9 of CHALR, 2004 by the concerned Commissionerate from where they had earlier passed the CHA examination held under CHALR, 1984.

8.2. Board also took note of the fact that these candidates had passed the CHA examination held under CHALR, 1984 based on the qualification prevailing at that relevant point of time, and that a precedent existed wherein a dispensation was prescribed vide Board's Circular No.48/2000-Customs dated 22.5.2000 for a specific period. Accordingly it was also decided by the Board that in case of Regulation 9 examination passed candidates under the CHALR, 1984, the relaxation provided in respect of educational qualifications vide Board's Circular No. 48/2000-Customs shall be extended on similar basis.

9. The aforesaid decisions of the Board involving change in the CHALR, 2004, has been implemented by issue of Notification No.30/2010-Customs (NT) dated 8.4.2010.

10. These instructions may be brought to the notice of the trade by issuing suitable Trade / Public Notices. Suitable Standing orders/instructions may be issued for the guidance of the field officers.

11. Difficulties faced, if any, in implementation of this Circular, changes made in the CHALR, 2004 may be brought to the notice of the Board immediately.

Yours faithfully,

(M.M. Parthiban)
Director (Customs)

IndiaCode