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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

11

Dated: 09/11/2015

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. C/A/53378-53379/2015-CU[DB] dated 14/10/2015

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/MISC/51594/2015, C/Stay/51440/2015	C/52257/2015	**Akshey Gupta** 4q; 4th Floor; D.c.m Building 16, Barakhamba Road, Connaught Place NEW DELHI-110001
2	C/MISC/51595/2015, C/Stay/51441/2015	C/52258/2015	**Akshey Gupta** 4q, 4th Floor, D.c.m Building, 16 Barakhamba Road, Connaught Place NEW DELHI-110001
			Name and Address of Respondent
3			C.C.-New Delhi(import & General) NEW CUSTOM HOUSE,NEAR IGI AIRPORT, NEW DELHI, DELHI-

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Puneet kumar rai
416, new chamber complex,
patiala house courts,
New Delhi,
110001

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

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IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:14.10.2015

Customs Appeals Nos.C/52258 & 52257/2015

[Arising out of Order-in-Original No.61/NK/POLICY/2015 dated 23.04.2015 and Order-in-Original No.60/NK/POLICY/2015 dated 23.04.2015 passed by the Commissioner of Customs (General), New Delhi]

Shri Akshey Gupta — Appellants

Vs.

CC, New Delhi (Import & Export) — Respondent

Appearance:
Rep. by Shri Puneet Kumar Rai, Advocate and Shri Akshey Gupta, Prop. for the appellant.
Rep. by Shri Amresh Jain, DR for the respondent.

For approval and signature:

Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri B. Ravichandran, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Coram: Hon'ble Shri Justice G. Raghuram, President
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53378-53379/2015 dated:14.10.2015

Per B. Ravichandran:

These are two appeals filed by M/s.Akshey Gupta, holder of CHA licence, against orders-in-original nos.60/2015 and 61/2015, both dated

23.04.2015. As both deal with similar subject matter they are considered together for disposal.

2. Brief facts common to both the appeals are that M/s.Akshey Gupta are holders of CHA licence issued by the Commissioner of Customs (I&G), New Customs House, New Delhi. Proceedings were initiated against the appellant for violation of various provisions of Customs House Agents Licensing Regulations, 2004/Customs Brokers Licensing Regulations, 2013. After due process, the two impugned orders have been issued by the Commissioner ordering revocation of appellant's licence and forfeiture of whole amount of bank guarantee furnished by the appellant.

Appeal No.C/52257/2105:

3. The case against the appellant is that as a CHA they have failed in discharging their obligations as per Regulation 13 (e) & 13(o) of the CHALR, 2004 (Regulation 11(e) & 11(o) of CBCR, 2013. These provisions of CHALR, 2004 are as below:-

> "**Regulation :13 (e) :** A Customs House Agent 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;
>
> **Regulation :13(o):** A Customs House Agent shall verify antecedent, correctness of the Importer Export Code (IEC) Number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents date or information."

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4. A case involving one Shri Paramjeet Singh Gulati and his associates were investigated by the officers of DRI, Delhi. It was revealed that illicit export of contraband were done using IECs of various firms which were either not in existence or without the knowledge of IEC holders. Four such IECs/Exporters Firms were used. During investigations, it was also noticed that one such export in the name of M/s.Durga International was intercepted by Canadian Authorities and found to contain 30 Kgs. of Ketamine, a prohibited item, declared as chat masala. All these consignment were processed and handled by the appellant for Customs clearances.

5. The licence of appellant was suspended vide order dated 6.9.2013 and later the suspension was confirmed vide order dated 31.10.2013. The suspension was challenged by the appellant before CESTAT. The Tribunal vide order dated 11.03.2015 directed the department to complete the proceedings under Regulation 22 of CHALR, 2004 within 45 days. A show cause notice dated 19.03.2014 was earlier issued to the appellant for revocation of licence. The enquiry officer submitted his report. After personal hearing the impugned order dated 23.04.2015 was issued by the ld. Commissioner.

6. The ld. Counsel for the appellant, Shri Puneet Kumar Rai, Advocate and Shri Akshay Gupta, Proprietor of appellant firm mainly argued on one point, namely, that the appellant followed normal business practice in accepting the work from exporters. The impractical duties in terms of CHALR, 2004, as opposed to general business practice cannot held against them. The KYC norms have been followed by them and the details have

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been taken over by the investigating officers during initial stage of investigation itself.

7. The ld. AR, Shri Amresh Jain submitted that the violations of provisions of CHALR, 2004 have been well brought out in the impugned order, as such, the appeal deserves to be dismissed.

8. We have heard both the sides. The case mainly deals with failure of appellant to discharge his obligations as licensed CHA. Such failure contributed to the contrabands being exported out of country. In one specific case 30 kgs of Ketamine, prohibited under NDPS Act, was found to be exported to Canada. The plea of the appellant that the duties prescribed under the Regulations are impractical and against general business practice is not acceptable. It has been established that no verification of genuineness/existence of exporters have been made by the appellant before accepting the work of handling the consignment for documentation and clearance through customs. The failure of the appellant, apparently, is one of the contributing factors in the illicit exports. As such, we find no reason to interfere with the findings of the original authority and accordingly dismiss the appeal.

Appeal No.C/52258/2015:

9. This appeal is against order No.61/2015 dated 23.04.2013 of Commissioner of Customs (General), New Delhi. The case against the appellant is that as CHA they failed to discharge their obligation in verifying the credentials of the exporters before handling their work with Customs. The

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case relates to a consignment of red-senders attempted for illicit export misdeclaring as rice. The shipping bill was filed in the name of M/s. Shri Radhey Corporation, New Delhi. On investigation, it was found that no such firm existed in the given address. The proprietor was not traceable and his address was fictitious. Inquiry revealed that the appellant received the invoice on mail and a person named Shri Sumit, ex-employee of the appellant gave letter of authority. Though the appellant is said to have received KYC documents like driving licence, MTNL telephone bill, Pan card of Shri Sarvesh Kumar, the purported owner of the exporting firm, no cross verification was done by the appellant before filing shipping bill.

10. Proceedings were initiated against the appellant. The licence was suspended on 2.5.13 and later the suspension was confined on 10.05.2013. A show cause notice was issued on 28.05.2014 and the enquiry officer submitted his report on 13.04.2015.The suspension of licence was challenged before CESTAT. The CESTAT vide order dated 11.03.2015 directed the department to complete the proceedings within 45 days. The impugned final order dated 23.04.2015 was issued by the Commissioner revoking the CHA licence and forfeiting the bank guarantee for Rs.50,000/- given by the appellant. The present appeal is against this order.

11. Ld. Counsel for the appellant, Shri Puneet Kumar Rai and Shri Akshey Gupta, Proprietor argued that the appellant followed normal business practice in entertaining new client for customs wok. They have not violated any provisions of CHALR, 2004 by their act. Further, they have pleaded that they

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have not presented the cargo for customs and never followed up for any export related work of the disputed cargo with contraband.

12. Ld. AR, Shri Amresh Jain stated that the ld. Commissioner is correct in revoking the licence in view of the failure of the appellant in discharging his basic duties as CHA.

13. We find that though the appellant did file electronically the shipping bill, thereafter they did not do any further work relating to the export cargo. We find that ld. Commissioner's observations in his order as below, is relevant:-

> "31. However, from the facts it is clear that the CHA had only acted at the first stage whereby they based on the documents received filed the shipping bill and all the later actions were taken by the other conspirators and the CHA was at no stage involved with the presentation or clearance of goods. In fact, the investigations also show that M/s.Akshey Gupta was given the KYC papers but the same were fraudulently acquired by Shri Sumit.Shri Sumit had supplied forged invoice and a forged authorization letter to the CHA. I tend to agree with the CHA's submissions to the extent that since they were not involved in the process of presenting and clearing of the goods, the Check List alone should not make them the CHA in the case. The Check List was submitted to Sumit for verification and confirmation of the contents as is the normal practice. It is also on record that Shri Akshey Gupta, CHA, had produced KYC documents during the investigations and has cooperated in the investigation. There appears to be no doubt that M/s. Akshey Gupta were made fool of by Shri Sumit by getting the Check List generated and thereafter getting the clearing done at

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ICD, Loni by presenting himself as the representative of the exporter."

14. Considering the above factual position, we find revocation of CHA licence is too harsh a consequence for the omission of appellant as they were not involved in any act of entering and presenting the cargo and processing the document with the customs. Hence, for the failure to cross check the KYC papers, we find the forfeiture of bank guarantee of Rs.50,000/- will be sufficient penalty. This case does not warrant revocation of CHA licence itself. Accordingly, the appeal is allowed partly to the above extent.

15. Both the appeals are disposed of as stated above.

(Justice G. Raghuram)
President

(B. Ravichandran)
Member (Technical)

Ckp.