16

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/10 /2009 - CU[DB] Date 04/10/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C. LUCKNOW
5TH AND 11TH FLOOR, KENDRIYA BHAWAN,
SECTOR -H, ALIGANH, LUCKNOW 226024.
C.C. LUCKNOW Appellant
Vs
SMT. SALMA SHAKIL, PROPRIETOR OF Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/151/ 2010 CU[DB]** dated 30.09.2010 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
   SMT. SALMA SHAKIL, PROPRIETOR OF M/S ATLANTIC LOGISTICS,
   305/D-3, SABA APARTMENT, SECTOR-44, NOIDA.
2. Adv. / Consult M.A. Niyazi,
   465, Lawyer's Chamber,
   Delhi High Court, New Delhi.
3. S.D.R
4. J.C.D.R.
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.IV

C/Appeal No. 10/2009

(Arising out of order in appeal No.153/Cus/Lko/08 dated 31.10.2008 passed by the Commissioner of Central Excise (Appeals), Allahabad)

Date of Hearing: 28.9.2010

For approval and signature:

Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri M. Veeraiyan, Member (Technical)

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

CCE, Lucknow — Appellants

Vs

Smt. Salma Shakil — Respondent

Appeared for the Appellant: Shri S.R. Meena, DR
Appeared for the Respondent: Shri Shakeel Ahmed, Rep.

Coram: **Hon'ble Shri M.V. Ravindran, Member (Judicial)**
Hon'ble Shri M. Veeraiyan, Member (Technical)

Final ORDER No C/151/10

Per M. Veeraiyan:

This appeal by the Department is against the order of the Commissioner (Appeals) dated 31.10.2008.

2. Heard both sides.

3. The respondent applied for grant of Customs House licence contending that she has the necessary qualifications having passed the written examination and interview. The Additional Commissioner of Customs (Preventive) Lucknow issued letter dated 26.5.2008 holding that the appellant did not possess any of the qualifications prescribed under Regulation 6(a) of Customs House Agent License Regulation 2004 and therefore, the application could not be considered. Against the said communication, the respondent filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) noting that the appellant has necessary qualification for grant of CHA licence under the erstwhile CHALR 1984 , held that respondent has not become ineligible for grant of CHA licence and accordingly allowed the appeal of the respondent. The Department is in appeal against the same.

4. The learned SDR reiterated the grounds of appeal.

5. The learned Authorized Representative for the respondent strongly supports the order of the Commissioner (Appeals).

6. On perusal of the record and on hearing the submissions of both sides, we find that the matter relates to eligibility or otherwise of the respondent for issue of a CHA licence. It is not disputed that the matter relating to CHA licence should have been dealt with by the Jurisdictional Commissioner. Under these circumstances, the communication dated 26.5.2008 by the Additional Commissioner holding that the respondents were not eligible for being considered for issue of CHA licence is not proper. This communication directly affects

the right of the respondent. The order of the Commissioner (Appeals) in effect, means that the application should be considered by the jurisdictional Commissioner. We do not find anything wrong with such decision and therefore, we do not find any reason to interfere with the order of the Commissioner (Appeals). Needless to say that the jurisdictional Commissioner shall consider the application of the respondent and pass order in accordance with law.

7. The appeal of the Department is rejected.

(M.V. RAVINDRAN)
Judicial Member

(M. VEERAIYAN)
Technical Member

MPS*