

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

Appeal No. C/198 /2011 - CU[DB], C/STAY/1355/2011

Date 20/12/2011

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

To :
SMT SALMA SHAKIL,PROP
M/S ATLANTIC LOGISTIC,
305#D-3, SABA APARTMENTS, SECTOR 44,
NOIDA, GAUTAM BUDH NAGAR, UP
SMT SALMA SHAKIL,PROP

Appellant
Vs
Respondent

C.C. LUCKNOW

STAY ORDER C/452/2011

I am directed to transmit herewith a certified copy of **Final order No.C/525/ 2011 CU[DB]** dated 15.12.2011
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
C.C. LUCKNOW
HALL NO. 3,5TH AND 11TH FLOOR,
KENDRIYA BHAWAN, SECTOR -H,
ALIGANH, LUCKNOW 226024.
2. Adv. / Consult
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,
Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House.1-8.Sector - 10, Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road,
Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file


Assistant Registrar
(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. III

**Customs Stay Application No. 1355 of 2011 in Appeal No.
198 of 2011**

[Arising out of the Order-in-Original No. 01/Commissioner/
Lucknow/2011 dated 10/01/2011 passed by The Commissioner
Customs (Preventive), Lucknow.]

For Approval and signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Shri Rakesh Kumar, 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 would 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 :
Department Authorities?

Smt. Salma Shakil, Proprietor	]	
M/s Atlantic Logistic	]	Appellant

Versus

CC (Preventive), Lucknow

Respondent

Appearance

Shri Shahi Nawab Khan, Representative – for the appellant.

Shri Sunil Kumar, Authorized Representative (SDR) - for the
Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 29/09/2011.
DATE OF DECISION : 29/09/2011.

Final Order No. 4525/11 Dated : 15.12.11
 Stay order No. C/452/11

Per. Rakesh Kumar :-

The appellant had applied for grant of CHA licence in terms of Public Notice No. 1/08 dated 4/1/08 issued by the Commissioner of Customs, Lucknow under regulation 4 of the Customs House Agents Licensing Regulations, 2004 (hereinafter referred to as CHA LR-04). The appellant had passed the examination under Regulation 4 of the Customs House Agents Licence Regulation 1984 (hereinafter referred to as CHA LR-84). The appellant's application for issue of CHA licence was rejected by the Commissioner on the ground that since she is only a graduates not having a professional degree i.e. CA/MBA/LLB/Diploma in Customs clearance work, or a G-Card, in terms of Regulation 6(a) of CHA LR-04 she was required to have passed the examination as prescribed under Regulation 8 of CHA LR-04 and since she has not passed this examination, but has passed the examination as prescribed under Regulation 9 of the CHA LR-84, and that too from Delhi Commissionerate, she is not eligible for the grant of the licence. The decision for rejecting of her application was communicated by the Additional Commissioner. The appellant filed an appeal before the Commissioner (Appeals) against the Additional Commissioner's order and the Commissioner (Appeals) vide order-in-appeal No. 153/CUS/LKO/08 dated 31/10/08 set aside the Additional Commissioner's order and allowed the appeal observing that the

provisions of CHA LR-04 do not disqualify those persons who had passed the prescribed examination under Regulation 9 of CHA LR-84 and therefore the appellants are entitled for the grant of CHA licence. The department filed an appeal before the Tribunal against the above order of the Commissioner (Appeals). The Tribunal disposed of their appeal vide final order dated 30th December 2010, wherein the Tribunal observed as under :-

"On perusal of the records and on hearing the submissions of both sides, we find that the matter relates to the 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 26/5/08 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."

1.1 In pursuance of the Tribunal's final order dated 30/12/2010, the matter was adjudicated by the Commissioner vide order-in-original dated 04/1/11 by which the Commissioner after hearing the appellant rejected the application for grant of CHA licence. The grounds for rejection are as under :-

(a) The qualification of the appellant does not meet the requirement, as prescribed under Regulation 6 (a) of CHA LR-04, as she is only an ordinary graduate and she has not passed the examination prescribed under Regulation 8 of CHA LR-04.

(b) Passing the examination under Regulation 9 of CHA LR-84 does not make her a person who has passed examination under Regulation 8 of CHA LR-04.

(c) The appellant's contention that the rejection of her application on the basis of the Board's Circular No. 42/2004 dated 10/6/04, is not applicable in her case, is not tenable.

(d) Passing of the examination from Customs House, New Delhi does not make her eligible to apply for CHA licence in Lucknow, Commissionerate.

1.2 Against this order of the Commissioner, this appeal alongwith stay application has been filed.

2. Heard both the sides.

3. Though this matter was listed for hearing of the stay application, after hearing the same for some time, we are of the view that the same can be taken up for final disposal. Accordingly, the matter was heard for final disposal.

4. Shri Shahi Nawab Khan, representing the appellant, pleaded that the Commissioner while rejecting the application for issue of CHA licence has not considered the Board's Circular No. 25/2011-Customs dated 22nd June 2011, and that on the basis of this Circular, the appellant would be eligible for the CHA licence.

5. Shri Sunil Kumar, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner in it.

6. We have carefully considered the submissions from both the sides and perused the records.

7. The main point of dispute in this case is as to whether the appellant is qualified to be issued a CHA licence or not in terms of CHA LR-04. The Public Notice inviting applications for issue of CHA licence has been issued by Commissioner of Customs, Lucknow under Regulation 4 of the CHA LR, 04, Regulations 6 of the CHA LR-04 prescribes the conditions to be fulfilled by the applicants and Regulations 6 (a) prescribes the necessary qualification. There is no dispute about the fulfilment of the conditions 6 (b) regarding financial ^{viability} and 6 (c) regarding citizenship. The dispute is regarding fulfilment of condition 6 (a). According to the appellant, she has the required qualification in terms of conditions 6 (a) as she is graduate and has passed the examination as prescribed under Regulation 9 of the CHA LR-84, ^{which,} according to her, is equivalent to examination prescribed under Regulation 8 of CHA LR-04. However, according to the department, just because she has passed the examination under Rule 9 of CHA LR-84, she cannot be treated as having passed the examination under Regulation 8 of the CHA LR-04 and in terms of ^{as a person who is only an ordinary graduate and} conditions 6 (a), ^{who does not has three years} experience of transacting, Customs House work as G Card holder,

she has to pass the examination referred to in Regulation 8. The provisions of Regulation 8 of CHA LR-04 correspond to the provisions of Regulation-9 of CHA LR-84 and only difference between Regulation 9 of CHA LR-84 and Regulation 8 of CHA LR is some extra paper, regarding online filing of electronic shipping bills or bill, of entry and Indian Customs and Central Excise electronics commerce/electronic data exchange gateway and Indian Electronic Data Interchange System (ICES), provisions of Prevention of Corruption Act, 1988 etc. We find ^{if a/c} in this regard the Board's Circular No. 9/10 dated 8/4/10 has clarified that those applicants who have passed the examination referred to ⁱⁿ Regulation 9 of CHA LR-84, but were not given licence under the said regulation, were required to appear in the examination and qualify the same under Regulation 8 of CHA LR-04 in respect of additional subjects as provided in Notification No. 30/10-CUS (NT) dated 8/4/10 and the persons who qualify in the aforesaid examination shall be deemed to have passed the examination under Regulation 8 of CHA LR-04 and would be considered for grant of CHA licence in terms of Regulation-9 of CHA LR-04. These instructions of the Board have been reiterated in the Circular No. 25/2011-CUS dated 22/6/11, wherein the Board has also clarified that the requirement of number of licences in a Customs House/Customs Commissionerate charge would be determined by the market forces and no numeric criteria can be fixed and accordingly the board directed that all the eligible candidates should be granted licences. We find that the above circular of the board has not been considered in the impugned

order. If the appellant have passed the examination in the additional subjects as referred to in the Board Circular No. 9/2010 dated 8/4/2010, she will be deemed to have passed the examination under Regulation 8 of CHA LR-04. The Commissioner's other objection that an applicant who had passed examination from one Custom House cannot be considered for the grant of CHA licence from another Customs House is without any basis as the examination under Regulation 8 of the CHA LR-04 and earlier under Regulation 9 of the CHA LR-84 is conducted by Directorate General of Inspection and it would not be correct to refuse the CHA licence on the ground that the examination has been passed from some other Commissioner's jurisdiction. In view of this, the impugned order is set aside. The matter is remanded for denovo decision in the light of our above observations. *The stay application also stands disposed off.*

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

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