

Custom House Agents

1. Introduction:

- 1.1 Section 146 of the Customs Act, 1962 states that no person shall carry on business as an agent relating to entry or departure of a conveyance or the import or export of goods at any Customs station unless such person holds a licence granted in this behalf in accordance with regulations made in this regard by the Board. Thus, any person desirous to carry on business as a Custom House Agent relating to entry or departure of a conveyance or import or export of goods at any Customs station is required to obtain a licence, which is referred to as the CHA licence and the person concerned as the Custom House Agent (CHA).
- 1.2 Section 146 of the Customs Act, 1962 read with the Custom House Agents Licensing Regulations (CHALR), 2004 governs all legal and procedural aspects of the grant of CHA licence as well as the obligations and responsibilities of a CHA.

2. Application for CHA licence and eligibility:

- 2.1 Regulation 4 of CHALR, 2004 provides for invitation of applications for grant of CHA licence by the concerned Commissioner of Customs for grant of a such licences as assessed by him in the month of January every year by means of a Public Notice and also through publications in at least two newspapers. Ideally no restriction should be placed on the number of CHAs operating in the Custom Houses and 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. There is no justification in prescribing a turnover based criteria for ascertaining the number of CHA licences required to be issued at particular Custom House / station. No numeric criterion has also been fixed governing the number of CHA licences being issued.

[Refer Circular No.9/2010-Cus., dated 8-4-2010]

- 2.2 The eligibility condition as per Regulation 6 of CHALR, 2004 is that an applicant should be a citizen of India having a financial viability supported by a certificate issued by a scheduled bank or such other proof acceptable to Commissioner of Customs evidencing possession of assets of value of not less than 2 lakhs. Further, the applicant or his authorized employee should be a graduate from a recognized University or possesses a professional degree i.e. C.A., M.B.A., L.L.B., Diploma in Customs clearance work from any institute or University recognized by the Government with a working knowledge of Computers and Customs procedure, or is a graduate having three experience in transacting CHA work as 'G' card holder, or a person who has passed the examination referred to in Regulation 8 or is retired Group A officer from Indian Customs and Central Excise Service having a minimum of 10 years of experience in Group A.

- 2.3 MBA degree or the equivalent degree PGDM, granted by an institute or university recognized by Government / AICTE under Ministry of HRD shall be acceptable qualification for the degree holders to appear in the examination under CHALR, 2004.

[Refer Circular No.16/2010-Cus., dated 29-6-2010]

3. Qualifying examinations:

- 3.1 Any applicant who satisfies the criteria of Regulations 5 and 6 of CHALR, 2004 and has applied for grant of licence under Regulation 4 shall be required to appear in the written as well as the oral examination conducted by the Directorate General of Inspection (Customs & Central Excise) at select centers annually for which intimation will be sent in advance. The applicant who has passed the written examination will be called for oral examination and has to pass the same within 2 years of passing of related written examination without any limitation of chances and in the event of failing to do so, he shall be treated as having failed in the examination. An applicant will however be allowed a maximum period of seven years within which he shall pass both the written and oral examination. The examination may include questions on the following:

- (a) preparation of various kinds of bills of entry and shipping bills;
- (b) arrival entry and clearance of vessels;
- (c) tariff classification and rates of duty;
- (d) determination of value for assessment;
- (e) conversion of currency;
- (f) Nature and description of documents to be filed with various kinds of bills of entry and shipping bills;
- (g) procedure for assessment and payment of duty;
- (h) examination of merchandise at the Customs Stations;
- (i) provisions of the Trade and Merchandise Marks Act, 1958, the Patents Act, 1970 and the Copy Rights Act, 1957;
- (j) prohibitions on import and export;
- (k) bonding procedure and clearance from bond;
- (l) re-importation and conditions for free re-entry;
- (m) Drawback and export promotion schemes;

- (n) offences under the Act;
- (o) the provisions of allied Acts including the Foreign Trade (Development and Regulation) Act 1992, the Central Excise Act, 1944, Foreign Exchange Management Act, 2000, the Indian Explosives Act, 1884, the Arms Act, 1959, the Narcotics Drugs and Psychotropic Substances Act, the Drugs and Cosmetics Act, 1940, Destructive Insects and Pests Act, 1914, the Dangerous Drugs Act, 1930, in so far as they are relevant to the clearance of goods through Customs;
- (p) provisions of the Prevention of Corruption Act, 1988;
- (q) procedure in the matter of refund of duty paid, appeals and revision petitions under the Act; and
- (r) on-line filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise Electronic Commerce/Electronic Data interchange Gateway (ICEGATE) and Indian Customs Electronic Data Interchange Systems (ICES).

3.2 The Commissioner of Customs shall also satisfy whether the applicant who is an individual possesses in case of a company or firms, the directors or partners of the company / firm, possess satisfactory knowledge of English and local language of the Customs station. In case of person deputed to work exclusively in the docks, knowledge of English will not be compulsory. Knowledge of Hindi will be considered as desirable qualification.

3.3 Before granting the licence under the Regulation 9 of CHALR, 2004, the Commissioner of Customs shall require the applicant to enter into a bond prescribed in this regard for due observance of these regulations and shall also require to furnish a bank Guarantee, Postal Security or National Saving Certificate in the name of Commissioner of Customs for an amount of Rs.75,000/- for carrying out the business as a Custom House Agent. The licence granted under Regulation 9 shall be valid for a period of 10 years from the date of issue and shall be renewed from time to time if the performance of the licensee is found to be satisfactory with reference *inter alia* to (1) the quantity or value of goods cleared by such licensee conforming to norms as may be specified by the Commissioner (2) absence of instances of any complaints of misconduct including non compliance of any obligations as mandated in the said regulations. Every Licence granted or renewed under CHALR, 2004, shall be deemed to have been granted or renewed in favour of the licensee and no licence shall be transferred or sold otherwise.

4. Obligations of CHA:

4.1 Regulation 13 of the CHALR, 2004 casts certain obligations on a CHA. Some of the important obligations enjoin the CHA to:

- (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as CHA and produce such authorisation whenever required by the Assistant/Deputy Commissioner of Customs;

- (b) transact business in the Customs Station either personally or through an employee duly approved by the Assistant/Deputy Commissioner of Customs;
- (c) not represent a client before an officer of Customs in any matter to which he, as an officer of the Department of Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;
- (d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Assistant/Deputy Commissioner of Customs;
- (e) 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;
- (f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;
- (g) Promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;
- (h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;
- (i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;
- (j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a CHA which is sought or may be sought by the Commissioner of Customs;
- (k) maintain records and accounts in such form and manner as may be directed from time to time by a Assistant/Deputy Commissioner of Customs and submit them for inspection to the said Assistant/Deputy Commissioner of Customs or an officer authorised by him whenever required;
- (l) ensure that all documents, such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter, as the case may be, and the name of the CHA, prominently at the top of such documents;

- (m) in the event of the licence granted to him being lost, immediately report the fact to the Commissioner of Customs;
- (n) ensure that he discharges his duties as CHA with utmost speed and efficiency and without avoidable delay.

4.2 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, it has been provided that KYC (Know Your Customers) Guidelines should be followed by CHA so that they are not used intentionally or unintentionally by importers/ exporters who indulge in fraudulent activities. Regulation 13 of CHALR, 2004 is suitably modified to provide certain obligations on the CHA to verify the antecedent, correctness of IEC code, identity of his client and the functioning of his client at declared addresses by using reliable, independent, authentic documents, data or information. It is also made obligatory on the part of client/ Customer to furnish to the CHA, a photograph of himself/ herself in the case of an individual or those of authorized signatory in respect of other forms of organizations such as Company / trusts etc. and any two of prescribed documents.

[Refer Notification No.30/2010-Cus.(NT), dated 8-4-2010; and Circular No.9/2010-Cus., dated 8-4-2010]

- 4.3 A CHA can employ any number of person to assist him depending upon the work subject to the minimum qualification of such person being 10+2 or equivalent. Under Regulation 19 of the CHALR, 2004 such persons will be appointed by Assistant/Deputy Commissioner of Customs designated by the Commissioner of Customs for this purpose who will also take into account the antecedent and any other information pertaining to the character of such person. Such person shall within four attempts pass an examination conducted by Assistant/Deputy Commissioner of Customs or by Committee of officers of Customs appointed by him for this purpose. This examination will ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs. Any person who has passed the examination in terms of Regulation 19 of the CHALR 2004 and is employed under a CHA will be exempted to pass the examination if he is appointed to work under any CHA, with the approval of Assistant/Deputy Commissioner of Customs. Also, only those persons who are qualified in the Regulations 8 or 19(3) examinations are authorized to sign the declarations filed before the Customs.
- 4.4 The examination under Regulation 19(3) shall be conducted by Commissionerate of Customs on annual basis.
- 4.5 The Assistant/Deputy Commissioner of Customs shall issue photo identity card to every person employed by a CHA who at all times while transacting the work at the Custom Station, shall carry such card with him and produce the same on demand by any officer of Customs. The identity cards shall be as follows:

- a. In Form 'F', if he has passed the Regulation 8 examination.
- b. In Form 'G', if he has passed the Regulation 19(3) examination.
- c. In Form 'H', if he has not passed the Regulation 19(3) examination.

4.5 The Assistant/Deputy Commissioner of Customs 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 CHA for transacting business with Customs. Necessary undertaking in this regard may also be taken from the CHA. Further, for this purpose the Commissioner of Customs shall undertake an annual review of 'H card' holders.

[Refer Circular No.9/2010-Customs dated 8-04-2010]

4.6 Under Regulation 9(3) of the CHALR, 2004, the Commissioner of Customs may reject an application for grant of licence to act as CHA if the applicant is convicted for fraud or forgery, or any criminal proceedings are pending before any court of law against him or he has been convicted in any court of law. The applicant aggrieved by such order can file an appeal before the Chief Commissioner of Customs within thirty days from the communication of such order and the same shall be decided by the Chief Commissioner of Customs/Customs and Central Excise within one year.

4.7 For granting CHA license in respect of persons who had already passed the written and oral examinations held under Regulation 9 examination of Custom House Agents Licensing Regulations (CHALR), 1984 written examination shall be held for these persons on additional subjects viz. (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 examination would be conducted by the Directorate General of Inspection (DGICCE) and persons who qualify shall be deemed to have passed under the Regulation 8 of CHALR, 2004, and be considered for grant of CHA license in terms of its Regulations 9 by the concerned Commissionerate from where they had earlier passed the CHA examination held under CHALR, 1984.

[Refer Circular No.9/2010-Cus., dated 9-4-2010]

4.8 Regulation 9(2) of the CHALR, 2004 allows the CHA to operate in all Custom Houses in the country subject to intimation in Form 'C' to the Commissioner of Customs of the concerned Customs station where he intends to transact business.

5. Revocation and suspension of CHA licence:

5.1 The Commissioner of Customs may revoke the licence of a CHA and order for forfeiture of part or whole of security subject to provision of Regulation 22 on any of the following grounds:

- (i) If the CHA has failed to comply with any of the conditions of Bond executed by him under Regulation 10.

- (ii) If the CHA has failed to comply with any of the provisions of these regulation, within the jurisdiction of the said Commissioner of Customs or anywhere else.
 - (iii) Any misconduct on his part, whether within jurisdiction of the said Commissioner of Customs or anywhere else which in opinion of the Commissioner renders him unfit to transact any business in the Custom House.
- 5.2 In cases where Commissioner of Customs is of the opinion that immediate action is necessary, he may suspend the licence of CHA within fifteen days from the date of receipt of a report from investigating authority where an enquiry against such agent is pending or contemplated.
- 5.3 Where a licence is suspended, the Commissioner of Customs, may, within 15 days give an opportunity of the hearing to the CHA and may pass such order as he may deem fit either revoking the suspension or continuing it.
- 5.4 When a CHA operates under Form 'C' intimation at another Customs station has violated any provision of the CHALR, 2004 at any Customs station, the suspension action 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.
- 5.5 Where the CHA licence is suspended, all 'G' and 'H' cards issued in respect of that licence would become non-operational. Also, 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.
- 5.6 For completion of regular suspension proceedings an overall time limit of nine months from the date of receipt of offence report is prescribed. This limit takes into account the time limit of thirty days each for reply by CHA to the notice of suspension and for representation against the report of Assistant/Deputy Commissioner of Customs on the grounds not accepted by CHA.
- 5.7 In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs a 'post-decisional hearing' should be given so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, in cases warranting immediate suspension under Regulation 20(2) of CHALR, 2004 the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license within thirty days of the detection of an offence; the Licensing authority shall take immediate suspension

action within fifteen days thereof and grant a post-decisional hearing 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.

[Refer Circulars No.42/2004-Cus., dated 10-6-2004; No.9/2010-Cus., dated 8.4.2010;
No. 6/2010-Cus., dated 29-6-2010]