



प्रधान आयुक्त सीमाशुल्क (सामान्य) कार्यालय
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
(GENERAL)**
कस्टमब्रोकरअनुभाग, नवीनसीमाशुल्कभवन,
CUSTOMS BROKER SECTION, NEW CUSTOM HOUSE,
बेलार्डइस्टेट, मुंबई - I
BALLARD ESTATE, MUMBAI - I

संचिका सं./ F. No. S/6-50/16-17 CBS

आदेश दिनांक/Date of order: 05.03.2021

CAO No: CA0196/CAC/PCL(W)/08(CA) जारी दिनांक/Date of issue: 08.03.2021

DIN : 20210327 000 000 555 F59

Issued By : **PRACHI SAROOP**

Pr. Commissioner of Customs (General),
New Custom House,
Mumbai-I, 400 001.

मूल आदेश

1. यह प्रति व्यक्ति के उपयोग के लिए निशुल्क: स्वीकृत है, जिसके लिए यह जारी किया जाता है।
2. इस आदेश के विरुद्ध अपील क्षेत्रीय पीठ, केंद्रीय उत्पाद, सीमाशुल्क एवं सेवा कर अपीलीय अधिकरण को की जा सकती है।
3. अपील सीमाशुल्क (अपील) नियमों, 1982 के नियम 6 में उपलब्ध एवं साथ संलग्न फॉर्म सी ए. 3.
)C.A.(3 में प्रस्तुत की जानी चाहिए। अपील चार प्रतियों में इन प्रपत्रों के साथ होनी चाहिए।
 - i. अपील के आधार और तथ्यात्मक विवरणों के साथ अपील को आदेश की प्रतियों की समान संख्या के साथ चार प्रतियों में दायर किया जाना चाहिए (जिनमें से) न्यूनतम किसी एक को प्रमाणित होना चाहिए।
 - ii. अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के तहत निर्धारित फीस के साथ प्रस्तुत हो और उस स्थान पर स्थित किसी भी राष्ट्रीयकृत बैंक की शाखा पर अधिकरण पीठ के सहायक पंजीयक के पक्ष में तैयार एक रेखांकित बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा, जहां पीठ स्थित है।
4. अपीलपीठ के पंजीयक अथवा इस हेतु उनके द्वारा प्राधिकृत किसी अधिकारी के समक्ष व्यक्तिगत रूप से अथवा पंजीयक या उस अधिकारी को संबोधित पंजीकृत डाक से प्रस्तुत की जा सकती है।

ORDER-IN-ORIGINAL

- 1) This copy is granted free of charge for the use of persons to whom this is issued.
- 2) An appeal against this Order lies with the Regional Bench, Customs Excise & Service Tax Appellate Tribunal, Mumbai.
- 3) An appeal is required to be filed as provided in the Rule 6 of the Customs Appeal Rules, 1982 in form C.A. (3) appended to those Rules. An appeal should be in quadruplicate and shall be accompanied by:
 - i) The appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate accompanied by equal no of copies of the order (any of which at least should be certified).
 - ii) The appeal shall be accompanied by such fees as prescribed under section 129 A(6) of the Customs Act, 1962 and shall be paid through a crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalised Bank located at the place where the Bench is situated.
- 4) An appeal shall be presented in person to the Registrar of the Bench or any Officer authorized in this behalf by him or sent by Registered Post addressed to the Registrar of such Office.

BRIEF FACTS OF THE CASE:

M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] (hereinafter referred to as the 'Customs Broker' or 'the CB') having Head Office at Rizvi House. Ground Floor, Church Pakhadi Road No. 1, Near Buddha Vihar, Sahar Village, Andheri (East), Mumbai-400 099, had applied, vide letter dated 16.08.2016, for grant of a Customs Broker License under Regulation 7(1) of the erstwhile Customs Broker Licensing Regulation, 2013 (now Regulation 7(2)(b) of CBLR, 2018). The company had two designated directors; Mr. Shri Prakash R. Pandey and Mrs. Rekha Shri Prakash Pandey. The authorized signatory for the firm was Shri Nimesh J. Joshi who had qualified Regulation 9 Examination of erstwhile Customs House Agents Licensing Regulation, 1984 from Pune Customs Commissionerate (now Regulation 6 Examination of CBLR, 2018). The license to M/s. Anwita Logistics Pvt. Ltd. was issued on vide Notification No. 10/2017 dated 02.01.2017 by Mumbai Customs Commissionerate under Regulation 7(1) of CBLR, 2013. Presently, the License of M/s. Anwita Logistics Pvt. Ltd. is inoperative since 08.08.2019 in absence of any Regulation 9 examination of CHALR 1984, Regulation 8 examination of erstwhile CHALR 2004 or Regulation 6 examination of CBLR, 2013 or 2018 qualified person from Mumbai Commissionerate as mandated under Regulation 7 (1) of CBLR 2018.

2. At the time of submission of the above application by M/s. Anwita Logistics Pvt. Ltd. to the Principal Commissioner of Customs (General), Mumbai Customs Zone-I, the provisions of Customs Broker Licensing Regulations (CBLR), 2013 were in force. Further, vide Notification No. 41/2018-Customs (N.T.) dated 14.05.2018, the provisions of Customs Broker Licensing Regulations, (CBLR), 2018 came into force superseding CBLR, 2013.

3. *Relevant Provisions of CBLR, 2013 and CBLR, 2018, read as below:*

Relevant Regulations	CBLR, 2013	CBLR, 2018
4. Invitation of application.	Reg. 4(1): The Directorate General of Inspection of Customs and Central Excise (DGICCE) shall in the month of April of every year invite applications for conducting examination and subsequent grant of license to act as Customs Broker in Form A by publication in two leading national daily newspapers in English and Hindi.	Reg.4(1): The Directorate General of Performance Management (DGPM)s hall in the month of April of every year invite applications for conducting examination and subsequent grant of license to act as Customs Broker in Form A by publication in two leading national daily newspapers in English and Hindi in addition to disseminating the information on the web portal.
	Reg. 4(2): The application for a license to act as a Customs Broker in a Customs Station in Form A shall be made to the Commissioner of Customs having jurisdiction over the area where the applicant intends to carry on his business.	Reg.4(2): The application for a license to act as a Customs Broker in a Customs Station in Form A along with a fee of five hundred rupees shall be made to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the area where the applicant intends to carry on his business.
7. Grant of License. -	Reg. 7(1): The Commissioner of Customs shall, on payment of fee of five thousand rupees	Reg.7(1): The applicant who has passed the written as well as oral examination shall make a payment

	<p>grant license in Form B to an applicant who has passed the oral examination within two months of the date of declaration of the said results.</p>	<p>of a fee of five thousand rupees within two months of the declaration of the results of the oral examination and inform the payment particulars to the Principal Commissioner or Commissioner of Customs referred to in sub-regulation (2) of regulation 4 and the said Principal Commissioner or Commissioner shall, on verification of the payment particulars grant license to the applicant within one month of the payment of the said fee:</p>
	<p>Reg. 7(2): The applicant who has been granted license under sub-regulation (1) shall be eligible to work as Customs Broker in all Customs Stations subject to intimation in Form C to the Commissioner of Customs of the Customs Station where he intends to transact business. A copy of this intimation shall also be sent to the Commissioner of Customs who has issued the license in Form B.</p>	<p>Reg. 7(2): The applicant who has paid the fee referred to in sub-regulation (1) shall be granted a license by the Principal Commissioner or Commissioner of Customs, as below: —</p> <p>(a) An individual shall be granted the license in Form B1 if that individual has passed the examination referred to in regulation 6.</p> <p>(b) A customs broker's license may be granted to any company, firm or association in Form B2 if at least one director, partner, or an authorized employee, as the case may be, has passed the examination referred to in regulation 6:</p>
		<p>Reg. 7(3): The applicant who has been granted license under sub-regulation (2) shall be eligible to work as Customs Broker in all Customs Stations subject to intimation in Form C to the Principal Commissioner or Commissioner of Customs of the Customs Station where he intends to transact business and a copy of this intimation shall also be sent to the Principal Commissioner or Commissioner of Customs who has issued the license in Form B1 or Form B2, as the case may be.</p>
		<p>Reg. 7(4): A customs broker shall be eligible to transact business under these regulations at a customs station which requires intimation under the said Form C, subject to the condition that such customs broker shall be able to transact such business only after a period of two years from the date of issue of license in Form B1 or Form B2:</p>

4. Whereas, as per Regulation 4(1) of CBLR, 2013 issued vide Notification No. 65/2013-Cus(N.T.) dated 21.06.2013, the Directorate General of Inspection of Customs & Central Excise (DGICCE) [now Regulation 4(1) of CBLR, 2018 issued vide Notification No. 41/2018-Cus(N.T.) dated 14.05.2018, the Directorate General of Performance Management (DGPM)] would invite applications for conducting examination and subsequent grant of license to act as Customs Broker in Form A. Presently, NACIN is conducting the examination under Regulation 6 of CBLR, 2018 vide Board Notification No. 8/2019-Customs (N.T.) dated 06.02.2019. As per Regulation 4(2) of CBLR, 2013, the application in Form A is to be submitted to the Commissioner of Customs having jurisdiction over the area where the applicant intends to carry his business.

5. Whereas the CB, M/s. Anwita Logistics Pvt. Ltd., vide application dated 16.08.2016, applied to Mumbai Commissionerate for the issuance of new Customs Broker license in Form-A under Regulation 7(1) of the erstwhile CBLR, 2013 (now Regulation 7(2)(b) of CBLR, 2018), the authorized signatory, Shri Nimesh J. Joshi had appeared for the examination by submitting Form-A under Regulation 9 of CHALR, 1984 at Pune Customs Commissionerate. They should have then followed due procedure as per Regulation 7(2) of erstwhile CBLR, 2013 to transact business in Mumbai.

6. Consequently, a SCN No. 63/2020-21 dated 20.10.2020 was issued and ask for the applicant "as to why the license bearing no. 11/2265 issued to them should not be withdrawn for their failure to comply with the procedure laid down under provisions of CBLR, 2018, within 30 days from the date of issue of this notice.

RECORD OF PERSONAL HEARING AND WRITTEN SUBMISSIONS BY THE CUSTOMS BROKER:

The Advocates, Shri Ashwani K. Prabhakar on behalf of the CB M/s Anwita Logistics Pvt Ltd. [CB No. 11/2265, PAN No. AAOCA3011A] vide their written submission dated 24.11.2020 received in e-office on dated 13.12.2020, requested to be heard in person before the case is adjudicated. Accordingly, the personal hearing was fixed for 21.01.2021 at 15.00 hrs. which was attended by Shri Ashwani K. Prabhakar, Advocate on behalf of the CB through virtual mode. The CB vide their submissions has requested to *inter alia* consider the following points:

2. In reply to the captioned Show Cause Notice dated 20.10.2020, their client Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265) state as under:

3. On the outset the allegation made in the subject SCN are completely denied as the same are devoid of facts. The allegations leveled are also not sustainable in law as they have not contravened any provisions of the Customs Act, 1962 or any other law. However before, refuting each of the allegations in details, brief facts of the case, as stated in the aforesaid SCN, are summarized as under for the case of ready appraisal.

4. Brief facts of the case as per SCN:

(i) Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265 & PAN No. AAOCA3011A) (hereinafter referred to as the 'Noticee') having office at Rizvi House, Ground Floor, Church Pakhadi Road No.1, Near Buddha Vihar, Sahar Village, Andheri (East), Mumbai - 400 099 had applied vide their letter dated 16.08.2016, for grant of a Customs Broker License under Regulation 7(1) of the erstwhile Customs Broker Licensing Regulation, 2013 (now Regulation 7(2)(b) of CBLR, 2018). The company had two designated directors Mr. Shri Prakash R. Pandey and Mrs. Rekha Shri Prakash Pandey. The authorized signatory for the firm was Shri Nimesh J. Joshi who had qualified Regulation 9 examination of the Customs House Agents Licensing Regulation, 1984 from Pune Customs Commissionerate (now Regulation 6 Examination of CBLR, 2018). The License to M/s Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265) was issued on vide Notification no. 10/2017 dated 02.01.2017 by Mumbai Customs Commissionerate under Regulation 7(1) of CBLR 2013. Presently, the License of M/s Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265) has been made inoperative on 08.08.2019 in absence of any Regulation 9 examination of CHALR, 1984, Regulation 8 examination of CHALR 2004 or Regulation 6 examination of CBLR, 2013 or 2018 qualified person from Mumbai Commissionerate as Mandated under Regulation 7(1) of CBLR 2018.

(ii) The authorized signatory, Shri Nimesh J. Joshi had appeared for the examination by submitting Form-A under Regulation 9 of CHALR, 1984 at Pune Customs Commissionerate and also passed Regulation 9 Examination of CHALR, 1984 from Pune Customs Commissionerate.

(iii) M/s Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265 & PAN No. AAOQCA3011A) instead of Pune Commissionerate had applied for Customs Broker License from Mumbai Customs Commissionerate and got Customs Broker License No.11/2265 with validity period upto 22.12.2026.

(iv) But, since the Noticee Anwita Logistics Pvt. Ltd. have not followed due procedure as per Regulation 7(2) of the erstwhile CBLR, 2013 (now Reg. 7(3) and 7(4) of CBLR, 2018) to transact business in Mumbai, the issuance of the license in Mumbai Customs Commissionerate is void ab-initio and hence the license should be withdrawn and not be permitted to be operative under Regulation 7(1) of the erstwhile CBLR, 2013 (now Regulation 7(2) of CBLR, 2018) in Mumbai Commissionerate.

(v) M/s Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265) is hereby called upon to show cause as to why the license bearing No.11/2265 issued to them should not be withdrawn for their failure to comply with the procedure laid down under provisions of CBLR, 2018.

5. The issues involved in this case: Whether it is mandatory that Customs Broker License should only be issued to an applicant (after clearing written as well as oral examination) by the same Customs Commissionerate where the candidate had submitted Form A to appear in the examination and the Noticee M/s Anwita Logistics Pvt. Ltd. (Customs Broker No.11/2265) should be legally allowed to get Customs Broker License from Mumbai Customs General Commissionerate, Mumbai Zone-1.

6. The CB submitted that Shri Nimesh Joshi passed the Examination under Regulation 9' of Customs House Agents Licensing Regulations, 1984, conducted by Director of Inspection (Admn.). D.G.1.C.C.E, New Delhi in

1997. Thereafter, he joined Dakor Clearing & Shipping Pvt Ltd in the year 1997 as a Managing Director Rule "9" Authorised Signatory Holder and was working till 2016. Customs Broker License was granted by the office of the Principal Commissioner of Customs (General), Customs Broker Section, New Custom House, Ballard Estate, Mumbai-1 to M/s Anwita Logistics Pvt Ltd on 21.01.2017 after careful consideration of the applications for the grant of New Custom Broker License under Regulation 7(1) of CBLR, 2013 with the approval of the then Hon'ble Principal Commissioner of Customs (General), New Custom House, Mumbai-1, vide New Custom House, Public Notice No.10/2017 issued under F. No. S/6 50/2016-17 CBS dated 02.01.2017. In the case of RAVINDRA KAMALAKANT SHUKLA Versus COMMR. OF CUS. (AIRPORT & ADMN.) the Hon'ble High Court of Calcutta has held that it is immaterial that the examination may have been taken pursuant to a notification issued by Pune Commissionerate or Mumbai Commissionerate. It makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirement such as payment of requisite fees, etc. This view of the Calcutta High Court was affirmed by the Hon'ble Supreme Court in its judgment dated 27-4-2012 in Union of India & Anr. v. Sunil Kohli & Ors. - 2012 285 E.L.T. 481 (S.C.). The Court held that it makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirement.

Case Laws:

i) RAVINDRA KAMALAKANT SHUKLA Versus COMMR. OF CUS. (AIRPORT & ADMN.) [2016 (343) E.L.T. 86 (Cal.)]

Customs House Agent's License- Application for license under CHALR, 2004 whether could be rejected on the ground that petitioner had cleared the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 from Mumbai and not from Kolkata - HELD : Both under CHALR, 1984 and CHALR, 2004 once a license is granted, business might be transacted in any Customs Stations in India - it is immaterial that the examination may have been taken pursuant to a notification issued by Pune Commissionerate or Mumbai Commissionerate. It makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirement such as payment of requisite fees, etc. - Petitioner deemed to have passed the examination under Regulation 8 of Customs House Agents Licensing Regulations, 2004 if he has passed the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 irrespective of the Commissionerate from which he might have cleared the examination. [paras 19, 20, 21, 22]

Customs House Agent's License - Person who passed the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 is to be deemed to have passed the examination under Regulation 8 of Customs House Agents Licensing Regulations, 2004.

ii) SALMA SHAKIL Versus COMMR. OF CUS. (PREVENTIVE), LUCKNOW [2012 (280) E.L.T. 113 (Tri. - Del.)]

Customs House Agent's License - Qualifications of candidate - Regulation 6(a) of Customs House Agents Licensing Regulations, 2004 prescribes necessary qualifications - As per appellant, she has required qualification as she is a graduate and has passed examination prescribed under Regulation 9 of Customs House Agent's Licensing Regulations, 1984 which is equivalent to examination prescribed under Regulations 8 *ibid* - According to Department, she cannot be treated as having passed examination under Regulation 8 of CHALR, 2004 and as per condition 6(a) *ibid* she does not have 3 years of transacting Customs House work as G card holder, she has to pass examination under Regulation 8 *ibid* - Provisions of Regulation 8 *ibid* correspond to provisions of Regulation 9 *ibid* - Difference between Regulation 9 of CHALR, 1984 and Regulation 8 of CHALR, 2004 is some extra papers regarding online filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise electronics commerce/electronic data exchange gateway and Indian Electronic Data Interchange System, provisions of Prevention of Corruption Act, 1988, etc. - Board's Circular No. 9/2010, dated 8-4-2010 has clarified that those applicants who have passed examination under Regulation 9 of CHALR, 1984 but were not given license were required to appear in examination and qualify under Regulation 8 *ibid* in respect of additional subjects - Those who qualify shall be deemed to have passed examination under Regulation 8 *ibid* and shall be considered for grant of CHA license - Circular of Board has not been considered in impugned order - Commissioner's other objection that applicant who had passed examination from one Custom House cannot be considered for grant of CHA license from any other Custom House is baseless as examination is conducted by Directorate General of Inspection - Impugned order set aside- Matter remanded for de-novo decision - Section 129B of Customs Act, 1962. [para 7].

iii) MAVIN CLEARING & FORWARDING SERVICES Versus COMM. OF CUS., CHENNAI [2018 (359) E.L.T. 506 (Mad.)]

Customs Broker's License- Requirement of passing examination conducted by authority within whose jurisdiction broker would be functioning - Exemption from - Change of employer by person who passed examination as required under erstwhile Regulation - HELD : Person employed under Customs Brokers and who has passed examination referred to in Regulation 17(3) of Customs Brokers Licensing Regulations, 2013 may, on his appointment under any other Customs Brokers, with approval of Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination - Rights of petitioner not fully foreclosed and even assuming that identity card in Form-G issued to petitioner on earlier occasion while he was working under previous employer was said to be an error, that cannot be ground to deny relief to petitioner - Regulation 17(4) *ibid* empowers Department to exempt employee who has already passed such examination - Department directed to consider petitioner's application for Issuance of identity card in Form-G and consider same by applying Regulation 17(4) *ibid* - Regulations 15 and 17 of Customs Brokers Licensing Regulations, 2013. [paras 11, 12, 13, 14, 15, 16, 17]

"15. This view of the Calcutta High Court was affirmed by the Hon'ble Supreme Court in its judgment dated 27-4-2012 in Union of India & Anr. v. Sunil Kohli & Ors, - 2012 285 E.L.T. 481 (S.C.). The Court held that it makes little difference whether the examination is taken by one Commissionerate or

the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirement.

16. Though the above decision arises out of a rejection of Customs House Agents License, the legal principles laid therein can very well be made applicable to the facts of the case on hand.

17. Thus, taking note of Regulation 17(4) and the facts and circumstances of the case, the writ petition is allowed by directing the respondents to consider the petitioner's application for issuance of identity card in Form-G dated 25-5-2015 and 12-10-2015 and consider the same by applying Regulation 17(4) and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs."

7. No Provision for withdrawal of License in CBLR 2013/2018: The Noticee would like to submit that License for Customs Brokers is being issued under Section 146 of the Customs Act, 1962. The content of Section 146 of the Customs Act, 1962 is as under:

SECTION [146. License for customs brokers. — (1) No person shall carry on business as a customs broker relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a license granted in this behalf in accordance with the regulations.

(2) The Board may make regulations for the purpose of carrying out the provisions of this section and, in particular, such regulations may provide for —

- (a) the authority by which a license may be granted under this section and the period of validity of such license;
- (b) the form of the license and the fees payable therefor;
- (c) the qualifications of persons who may apply for a license and the qualifications of persons to be employed by a licensee to assist him in his work as a customs broker;
- (d) the manner of conducting the examination;
- (e) the restrictions and conditions (including the furnishing of Security by the licensee) subject to which a license may be granted;
- (f) the circumstances in which a license may be suspended or revoked; and
- (g) the appeals, if any, against an order of suspension or revocation of a license, and the period within which such appeal may be filed.]

It can be seen that as per the provisions of Section 146(2) of the Customs Act, 1962 even the Board has no power to make any regulation to withdraw the Customs Broker License once it has been issued unless there is some fraud, forgery of the documents submitted for the license.

In this case, the CB M/s Anwita Logistics Pvt. Ltd had applied for the Customs Broker License in the office of the Principal Commissioner of Customs (General), Customs Broker Section, New Custom House, Ballard Estate, Mumbai-1 by submitting all the requisite documents and fees for getting the Customs Broker license. Subsequently, Customs Broker License was granted by the office of the Principal Commissioner of Customs(General), Customs Broker Section, New Custom House, Mumbai-1 to M/s Anwita Logistics Pvt. Ltd on 21.01.2017 after careful consideration of the

applications for the grant of New Custom Broker License under Regulation 7(1) of CBLR, 2013 with the approval of the then Hon'ble Principal Commissioner of Customs (General), New Custom House, Mumbai-1, vide New Custom House, Public Notice No.10/2017 issued under F. No. S/6-50/2016-17 CBS dated 02.01.2017. There was no fraud, forgery or manipulation of documents submitted for getting the Customs Broker License by M/s Anwita Logistics Pvt. Ltd.

Since, once a CB License is issued by any Commissionerate, there is no legal provision in the Customs Act, 1962 as well as in the Customs Broker Licensing Regulation (CBLR) for withdrawal of Customs Broker License or making the License void ab initio, the impugned show cause notice is not legally sustainable and it is liable to be dropped.

8. Passing Examination under Regulation '9' of Customs House Agents Licensing Regulations, 1984, conducted by Director of Inspection (Admn.). D.G.I.C.C.E, New Delhi is a Qualification valid for Any Customs House in PAN India:

The Noticee would like to submit that at present the Examination under Regulation '9' of the Customs Broker Licensing Regulations, 2018 is being conducted by DGPM, New Delhi; that earlier, it was Customs House Agents Licensing Regulations, 1984 conducted by the Director of Inspection (Admn.). D.G.I.C.C.E, New Delhi. The Noticee would also like to submit that passing Examination under Regulation '9' of Customs House Agents Licensing Regulations, 1984, conducted by Director of Inspection (Admn.). D.G.I.C.C.E, New Delhi is a Qualification valid for Any Customs House in PAN India, it should not be restricted to a particular Customs House. It is immaterial that the examination may have been taken pursuant to a notification issued by Pune Commissionerate or Mumbai Commissionerate. It makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirement such as payment of requisite fees, etc. The Noticee relies on the following case laws:

i) RAVINDRA KAMALAKANT SHUKLA Versus COMMR. OF CUS. (AIRPORT & ADMN.) [2016 (343) E.L.T. 86 (Cal.)]

Customs House Agent's License - Application for license under CHALR, 2004 whether could be rejected on the ground that petitioner had cleared the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 from Mumbai and not from Kolkata - HELD : Both under CHALR, 1984 and CHALR, 2004 once a license is granted, business might be transacted in any Customs Stations in India - It is immaterial that examination may have been taken pursuant to a notification issued by Mumbai Commissionerate - It makes little difference whether the examination is taken by one Commissionerate or the other - If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirements such as payment of requisite fees, etc. - Petitioner deemed to have passed the examination under Regulation 8 of Customs House Agents Licensing Regulations, 2004 if he has passed the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 irrespective of the Commissionerate from which he might have cleared the examination. [paras 19, 20, 21, 22]

Customs House Agent's License - Person who passed the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 is to be deemed to have passed the examination under Regulation 8 of Customs House Agents Licensing Regulations, 2004. [para 18]

"19. Be it noted that both under CHALR, 1984 and CHALR, 2004, once a license is granted, business might be transacted in any Customs Station in India. It is true that when license is granted by a particular Commissionerate, control over the license, can be exercised by that Commissionerate alone. Similarly, an application for renewal would also have to be made before that Commissionerate.

"20. In this case, the petitioner is not seeking renewal. The petitioner has applied pursuant to a notification. The petitioner contends that the petitioner having passed the examination under Regulation 9 of the CHALR, 1984, is to be treated as having passed the examination under Regulation 8 of CHALR, 2004.

"21. It is immaterial that the examination may have been taken pursuant to a notification issued by Mumbai Commissionerate. It makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirement such as payment of requisite fees, etc.

"22. The impugned orders cannot be sustained and the same are set aside and quashed. The application of the license shall be disposed of within 60 days from the date of communication of this order in the light of the observations made above. It is made clear that the petitioner shall be deemed to have passed the examination under Regulation 8 of CHALR, 2004 if, as contended by the petitioner, he has passed the examination under Regulation 9 of CHALR, 1984 irrespective of the Commissionerate from which he might have cleared the examination. I hardly need be mentioned that the petitioner will have to be granted a license if he is otherwise entitled and there are no cogent reasons in law for withholding the license."

9. Violation of Fundamental Rights: The Noticee would like to submit that as per the Constitution of India any person is free to practice any profession, or to carry on any occupation, trade or business anywhere in India. The Noticee would also like to mention that there is catena of judgments that It makes little difference whether the examination is taken by one Commissionerate or the other - If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfilment of other requirements such as payment of requisite fees, etc. Therefore, they are very much eligible for the getting the licence of Customs Broker and carry out work under Mumbai Commissionerate. Denial of granting permission in the form of CB License to carry out business under Mumbai Commissionerate is tantamount to violation of Fundamental Rights envisaged under Article 14, Article 19 (1) (g) and Article 19(6) of the Constitution of India.

Therefore, the denial of granting Customs Broker License, even after the requisite examination has been passed and fees has been paid, is completely the violation of Fundamental Right as envisaged in the Constitution of India. Hence, the impugned Show Cause Notice is not legally sustainable and it is liable to be dropped.

10. In view of the above it is requested that charges against the Noticee may kindly be dropped.

11. The Noticee craves leave to amend/ alter/ delete/ modify any or all of the above submissions before the case is finally adjudicated.

12. The Noticee wishes to be heard in person before the case is adjudicated.

In addition to the last submission made on 24/25.11.2020 the CB M/s Anwita Logistics Pvt. Ltd. is submitting the following submission for your kind consideration. The same may kindly be taken on record.

13. Case laws relied upon in the matter of M/s. Anwita Logistics and other statutory provisions of CBLR and action 146 of the Customs Act.

i) 2012 (285) a 481 (8.C.) SUNIL KOHLI Versus UNION OF INDIA -

Customs House seen license - Grant of - Examinations held under Customs House Agents Licensing Regulations, 1984 - HELD : Candidates who had qualified thereunder are not required to again qualify examination under Customs House Agents Licensing Regulations, 2004 ~ They are eligible for grant of license subject to their fulfilling other conditions of eligibility - Language of opening para of 2004 Regulations and proviso to Regulation 8(1) ibid thereof makes this clear - Actions already taken under earlier 1984 Regulations are saved - It was more so as Section 146(2) and other provisions of Customs Act, 1962 do not indicate that CBEC is empowered to make delegated regulations with retrospective effect, and in that view, 2004 Regulations could operate only prospectively - Also, nature of examinations envisaged under the two sets of Regulations is substantially similar - In that view, clarification issued by C.B.E.&C. Circular No. 42/2004, dated 10-6-2004 and decision of Commissioner of Customs, Delhi to dump applications received pursuant his Public Notice No. 25/2003, dated 20-6-2003 found to be unsustainable and could not be relied upon for denying licenses - High Court was right in issuing direction for grant of licenses subject to fulfillment of conditions specified in Regulations 6 and 9 of Customs House Agents Licensing Regulations, 2004. [paras 13, 15, 16]

Customs House Agents license - Grant of - Procedure prescribed in 1984 and 2004 Customs House Agents Licensing - It is substantially similar - Significant difference is that while 1984 Regulations postulated grant of temporary license as condition of eligibility for appearing in examination, 2004 Regulations did not envisage so. [para 13]

“13. An analysis of above reproduced clauses makes it clear that the procedure prescribed in the 1984 Regulations and the 2004 Regulations for grant of license to act as Custom House Agent is substantially similar. In terms of Clause 4 of the 1984 as also the 2004 Regulations, the Commissioner is empowered to invite applications in the month of January every year for grant of the specified number of licenses as assessed by him, to act as Custom House Agents. An application for grant of license to carry the business as Custom House Agent is required to be made in the prescribed form along with the necessary documents. If the Competent Authority is satisfied that the applicant fulfills the prescribed eligibility conditions, then he can be considered for grant of license. However, there

was a significant difference in the schemes of the two sets of regulations inasmuch as while the 1984 Regulations postulated grant of temporary license and prescribed holding of such license as a condition of eligibility for appearing in the examination conducted for grant of regular license, the 2004 Regulations do not envisage grant of temporary license and possession of such license is not sine qua non for participating in the process of grant of license under Clause 9 of the 2004 Regulations. Of course, the applicant is required to clear the written as well as oral examinations to be held in terms of Clause 8 of those regulations. At the same time, the language of the opening paragraph of the 2004 Regulations and proviso to Clause 8(1) there of make it clear that those who have already passed the examination are not required to appear in any further examination. It is also evident from the plain language of the opening paragraph of the 2004 Regulations that the actions already taken under the earlier regulations, that is, the 1984 Regulations were saved. In other words, the examinations held under the 1984 Regulations did not get nullified with the enactment of the 2004 Regulations and the candidates who had qualified the examinations held under the 1984 Regulations are not required to again qualify the examination which may be held under the 2004 Regulations. As a corollary, it must be held that those who had cleared the examinations held between 1995 and 2003 under the 1984 Regulations would be eligible for grant of license subject to their fulfilling other conditions of eligibility.

16. The matter deserves to be considered from another angle. The Regulations framed by the Board under Section 146(2) of the Customs Act are in the nature of delegated legislation. The language of that section and other provisions of the Customs Act do not indicate that the Board is empowered to make Regulations with retrospective effect. Therefore, the 2004 Regulations would operate prospectively and would not in any manner affect the eligibility and entitlement of those who had qualified the examination held under the 1984 Regulations - for grant of licenses to act as Custom House Agents. The saving clause contained in the opening paragraph of the 2004 Regulations unmistakably show that while enacting the new Regulations, the Board did not want to adversely impact the right of those who had qualified the examination held under the 1984 Regulations because the nature of the examinations envisaged under the two sets of Regulations is substantially similar."

14. ii) 2013 (291) E.L.T. 177 (Mad.) V. PITCHIYYA Versus CHAIRMAN, C.B.E. & C., NEW DELHI - Customs House Agents - Examination for - Qualified before coming into force of Customs House Agents Licensing Regulations, 2004- Department unable to show that CHAs were ineligible for License as per new regulations - Hence, Department directed to issue licenses. -There is no dispute that the petitioner had passed the written, as well as the oral examination under Regulation 9 of the Customs House Agents Licensing Regulations, 1984, which were existing prior to the coming into force of the new regulations in the year, 2004. [paras 11, 12]

"9. It is also noted that the Supreme Court, by its decision, dated 27-4-2012, in Sunil Kohli v. Union of India and Others, 2012-TIOL-45-SC-CUS = 2012 (285) E.L.T. 481 (S.C.), had upheld the decision of a learned Single Judge of the Delhi High Court. The Delhi High Court had held that all those who had cleared the examinations, under the regulations issued in the year, 1984, would be eligible for the grant of the custom house agents license, subject to their fulfilling the other conditions of eligibility.

10. Further, this Court had also passed an order, dated 1-10-2012, in W.P. No. 24210 of 2012 and in other similar matters, holding that the candidates, who had passed the examinations under the regulations issued in the year, 1984, would be entitled for the grant of customs house agents license, if they were otherwise eligible to obtain the said license. Even otherwise, the Division Bench of the High Court of Bombay, in its decision, reported in *The Bombay Custom House Agents Association and Other v. The Union of India and Others* [2011-TIOL-830 HC-MUM-CUS = 2012 280 E.L.. 353 (Bom.)] has only stated that a mere passing of the examinations, under the 1984 Regulations, did not confer any vested right for the grant of the license to the candidates concerned. As such, there is no doubt that the candidates concerned ought to be otherwise 'qualified for the grant of such license, as held by this Court, in its earlier orders.

11. The learned counsels appearing on behalf of the respondents had not been in a position to show that the petitioner is ineligible for the grant of the Customs House Agents License, as per the new regulations issued in the year, 2004. There is no dispute that the petitioner had passed the written, as well as the oral examination under Regulation 9 of the Customs House Agents Licensing Regulations, 1984, which were existing prior to the coming into force of the new regulations in the year, 2004."

15. iii) 2013 (291) E.L.T. 481 (S.C.) UNION OF INDIA Versus RAVINDRA K. JOSHI - Customs House Agents - Examination for - Applicants who have already passed examinations under erstwhile Regulation 9 of Customs House Agents Licensing Regulations, 1984 are entitled to be considered for grant of licenses without examination in additional subjects required under Customs House Agents Licensing Regulations, 2004. [paras 10, 11]

"10. In view of the information received by Shri Prasad, he would submit that the issues raised in these appeals are squarely covered by the decision of this Court in Sunil Kohlis case (supra).

11. Following the judgment and decision of this Court in Sunil Kohlis case (supra) all these appeals are disposed of in the same terms, observations and directions."

iv) 2014 (300) E.L.T. 235 (Mad.) K. SIVAKUMAR Versus UNION OF INDIA - Customs House Agents License - Respondent unable to show that petitioner ineligible for grant of CHA License- Having passed written and oral examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 existing prior to new regulation coming into force in 2004, department directed issue licenses. [paras 7, 8]

"7. The learned counsels appearing on behalf of the respondents had not been in a position to show that the petitioner is ineligible for the grant of the Customs House Agents License, as per the new regulations issued in the year, 2004. There is no dispute that the petitioner had passed the written, as well as the oral examination under Regulation 9 of the Customs House Agents Licensing Regulations, 1984, which were existing prior to the coming into force of the new regulations in the year, 2004.

8. In such circumstances, in view of the contentions raised on behalf of the petitioner and in view of the decisions cited supra, this Court finds it

appropriate to direct the respondents to issue the necessary certificate granting the Customs House Agents License to the petitioner, as per Regulation 9 of the Customs House Agents Licensing Regulations, 2004, on the petitioner complying with the requirements prescribed under Regulation 10 of the said regulations, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs."

16. iv) 2014 (305) E.L.T. 379 (Cal) C.C. (AIRPORT & ADMIN.) Versus RAVINDRA RAMALAKANT SUKLA @ RAVINDRA K. SUKLA - Customs House Agents - Examination of - Petitioner obtained requisite qualification under CHALR, 1984 in the year 1991, but could not get license from Mumbai Commissionerate despite being a resident of Mumbai - Petitioner applied pursuant to notice of vacancy issued by Calcutta Commissionerate- Petitioner cannot be refused © on the specific plea that he is qualified under the Customs House Agents Licensing Regulations, 1984 and not under the Customs House Agents Licensing Regulations, 2004. [paras 8, 9]

"7. Mr. Bhattacharjee submitted that it has authoritatively been laid down that by framing Regulations 2004, the Board did not want to adversely impact the right of those who had qualified themselves in the examination held under the Regulations, 1984. He submitted that this law laid down by the Hon'ble Supreme Court was sought to be violated by the appellants and the learned Trial Court had directed the authorities to treat him as a person duly qualified to apply. He submitted that the order under challenge is as such unexceptionable.

8. We have considered the rival submissions advanced by the learned advocates and are of the opinion that considering the views expressed by the Hon'ble Supreme Court in the case of Sunil Kohli (supra), it is not possible for the appellants to refuse to give license to the writ petitioner-respondent No. 1 on the specific plea, that he is qualified under the Regulations, 1984 and not under the Regulations 2004.

9. For the aforesaid reasons, we are of the opinion that this appeal is without any substance and is, therefore, dismissed."

17. v) 2016 (344) E.L.T. 136 (Mad.) G. VENKATESAN Versus CHAIRMAN, C.B.E. & C., NEW DELHI - Customs House Agents License - Examinations held under Customs House Agents Licensing Regulations, 1984 - Grant of license under Customs House Agents Licensing Regulations, 2004 - Permissibility - Undisputedly, petitioner had passed written and oral examination under Regulations of 1984 - In view of law settled in catena of decisions including decision by Apex Court in 2012 285 E.L.T. 481 (S.C.), Department directed to issue license to petitioner within 8 weeks, subject to petitioner fulfilling other conditions - Regulations 6 and 9 of Customs House Agents Licensing Regulations, 2004. [para 8]

"3. It had been further stated that the grant of license to the petitioner, as customs house agent is governed by the Customs House Agents, Licensing Regulations, 1984. The Regulations had been issued, originally, in the year, 1965. The said regulations had been repealed by the subsequent regulations issued in the year 1984, vide Notification No. 85-Cus., dated 19-3-1984. Thereafter, the Regulations issued in the year, 1984, had been superceded by the Customs House /Agents Licensing Regulations, 2004, vide Notification

No. 21/2004-Cus., dated 23-2-2004. The new regulations issued in the year, 2004, had specifically saved the things done or omitted to be done under the old regulations, as well as those which had been omitted to be done before the introduction of the new regulations. However, the regulations issued in the year, 2004, contains a condition that those who had passed the examinations under the regulations issued in the year, 1984, would be required to pass another examination, in respect of the additional papers introduced under the new regulations issues in the year, 2004.

4. It has been further stated that this Court had passed an order, dated 31-3-2010, in W.P. No. 5472 of 2010, directing the Commissioner of Customs (CHA Section) Chennai, to issue Customs House License to the petitioners therein, who had qualified in the written examination, prior to the coming into force of the regulations issued in the year, 2004. The said petitioners had qualified in the oral examination after the new regulations had come into force. The writ appeal filed against the said order, by the Department of Customs, in W.A. No. 1182 of 2011, had been dismissed by this Court, by its order, dated 26-9-2011.

8. In such circumstances, in view of the contentions raised on behalf of the petitioner and in view of the decisions cited supra, this Court finds it appropriate to direct the respondents to issue the necessary certificate granting the Customs House Agents License to the petitioner, as per Regulation 9 of the Customs House Agents Licensing Regulations, 2004, on the petitioner complying with the requirements prescribed under Regulation 10 of the said regulations, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs."

18. vii) 2018 (359) E.L.T. 506 (Mad.) MAVIN CLEARING & FORWARDING SERVICES Versus COMMR. OF CUS., CHENNAI - Customs Brokers License - Requirement of passing examination conducted by authority within whose jurisdiction broker would be functioning - Exemption from - Change of employer by person who passed examination as required under erstwhile Regulation - HELD : Person employed under Customs Brokers and who has passed examination referred to in Regulation 17(3) of Customs Brokers Licensing Regulations, 2013 may, on his appointment under any other Customs Brokers, with approval of Deputy Commissioner of Customs of Assistant Commissioner of Customs, be exempted from passing of such examination - Rights of petitioner not fully foreclosed and even assuming that identity card in Form-G issued to petitioner on earlier occasion while he was working under previous employer was said to be an error, that cannot be ground to deny relief to petitioner - Regulation 17(4) ibid empowers Department to exempt employee who has already passed such examination - Department directed to consider petitioners application for issuance of identity card in Form-G and consider same by applying Regulation 17(4) ibid - Regulations 15 and 17 of Customs Brokers Licensing Regulations, 2013. [paras 11, 12, 13, 14, 15, 16, 17]

"11. In terms of the above regulation with the approval of the Deputy Commissioner or Assistant Commissioner and as of now the Commissioner, a person who is employed under a Customs Brokers and who has passed the examination referred to sub-regulation (3) may, on his appointment under any other Customs Brokers, with the approval of the Deputy Commissioner

of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.

12. Thus, the rights of the petitioner are not fully foreclosed and even assuming that the identity card in Form-G issued to Mr. R. Nandan on a earlier occasion while he was working in M/s. Green Channel is said to be an error, that cannot be a ground to deny the relief to the petitioner. Regulation 17(4) of the New Regulation empowers the respondents to exempt the employee who has already passed such examination.

13. While on this issue, it is beneficial to refer to the decision of the Calcutta High Court in the case of Ravindra Kamalakant Shukla v. Commissioner of Customs (Airport & Admn.) reported in' 2016 343 E.L.T. 86 (Cal.). The said case arose under the Old Regulations where the application for grant of license under the Customs House Agent Licensing Regulations, 1984 (CHALR) was rejected on the ground that the applicant had passed the examination from Mumbai and not from Calcutta.

14. The Hon'ble Court after elaborately referring to the relevant provisions of the CHALR took note of an unreported decision of the Calcutta [High Court] in the case of A.P. Clearing Agency Put. Ltd. v. Union of India and Ors., wherein it was holding that a temporary license-holder, who has passed the examination under Regulation 9 of CHALR, 1984 was not required to clear the examination under Regulation 8 of the 2004 Regulations for grant of permanent license.

15. This view of the Calcutta High Court was affirmed by the Hon'ble Supreme Court in its judgment dated 27-4-2012 in Union of India & Anr. v. Sunil Kohli & Ors. - 2012 (285) E.L.T. 481 (S.C.). The Court held that it makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfillment of other requirement.

16. Though the above decision arises out of a rejection of Customs House Agents License, the legal principles laid therein can very well be made applicable to the facts of the case on hand.

17. Thus, taking note of Regulation 17(4) and the facts and circumstances of the case, the writ petition is allowed by directing the respondents to consider the petitioners' application for issuance of identity card in Form-G dated 25-5-2015 and 12-10-2015 and consider the same by applying Regulation 17(4) and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

19. viii) 2016 (343) E.L.T. 86 (Cal.) RAVINDRA KAMALAKANT SHUKLA Versus COMM. OF CUS. (AIRPORT & ADMN.) - Customs House Agents License - Application for license under CHALR, 2004 whether could be rejected on the ground that petitioner had cleared the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 from Mumbai and not from Kolkata - HELD : Both under CHALR, 1984 and CHALR, 2004 once a license is granted, business might be transacted in any Customs Stations in India-It is immaterial that examination may have been taken pursuant to a notification issued Mumbai Commissionerate - It makes little difference whether the examination is taken by one Commissionerate or

the other - If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfillment of other requirements such as payment of requisite fees, etc. - Petitioner deemed to have passed the examination under Regulation 8 of Customs House Agents Licensing Regulations, 2004 if he has passed the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 irrespective of the Commissionerate from which he might have cleared the examination. [paras 19, 20, 21, 22]

Customs House Agents License - Person who passed the examination under Regulation 9 of Customs House Agents Licensing Regulations, 1984 is to be deemed to have passed the examination under Regulation 8 of Customs House Agents Licensing Regulations, 2004. [para 18]

"2. The petitioners have also challenged the order F. Nos. S/45-28/2009 Estt., dated May 22, 2012 informing the petitioners that the application for grant of CHA license had already been disposed of by a letter dated May 12, 2011, since the petitioners were qualified under Regulation 9 of the Customs House Agents Licensing Regulations, 1984 (hereinafter referred to as the CHALR, 1984) from the Mumbai Commissionerate and not from the Calcutta Commissionerate.

17. The view of this Court has been affirmed by the Supreme Court by its judgment dated 27th April, 2012 in Union of India & Anr, v. Sunil Kohli & Ors. in Civil Appeal Nos. 4053-4061 of 2012 [Arising out of SLP(C) Nos. 19124-19132 of 2010] (2012 (285) E.L.T. 481 (8 C.)).

18. Mr. Bharadwaj, learned Counsel appearing on behalf of the respondents, submitted that this case is distinguishable in facts inasmuch as Shukla had cleared the examination under Regulation 9 of CHALR, 1984 from Mumbai. However, the factual distinction has no bearing on the proposition of law that a person who has passed the examination under Regulation 9 of CHALR, 1984 is to be deemed to have passed the examination under Regulation 8 of CHALR, 2004.

19. Be it noted that both under CHALR, 1984 and CHALR, 2004, once a license is granted, business might be transacted in any Customs Station in India. It is true that when license is granted by a particular Commissionerate, control over the license, can be exercised by that Commissionerate alone. Similarly, an application for renewal would also have to be made before that Commissionerate.

20. In this case, the petitioner is not seeking renewal. The petitioner has applied pursuant to a notification. The petitioner contends that the petitioner having passed the examination under Regulation 9 of the CHALR, 1984, is to be treated as having passed the examination under Regulation 8 of CHALR, 2004.

21. It is immaterial that the examination may have been taken pursuant to a notification issued by Mumbai Commissionerate. It makes little difference whether the examination is taken by one Commissionerate or the other, If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfillment of other requirement such as payment of requisite fees, etc.

22. The impugned orders cannot be sustained and the same are set aside and quashed, the application of the license shall be disposed of within 60 days from the date of communication of this order in the light of the observations made above. It is made clear that the petitioner shall be deemed to have passed the examination under Regulation 8 of CHALR, 2004 If, as contended by the petitioner, he has passed the examination under Regulation 9 of CHALR, 1984 irrespective of the Commissionerate from which he might have cleared the examination. It hardly need be mentioned that the petitioner will have to be granted a license if he is otherwise entitled and there are no cogent reasons in law for withholding the license."

20. ix) 2012 (280) E.L.T. 113 (Tri. - Del.) SALMA SHAKIL Versus COMMR. OF CUS. (PREVENTIVE), LUCKNOW - Customs House Agents License-Qualifications of candidate - Regulation 6(a) of Customs House Agents Licensing Regulations, 2004 prescribes necessary qualifications- As per appellant, she has required qualification as she is a graduate and has passed examination prescribed under Regulation 9 of Customs House Agents Licensing Regulations, 1984 which is equivalent to examination prescribed under Regulations 8 ibid - According to Department, she cannot be treated as having passed examination under Regulation 8 of CHALR, 2004 and as per condition 6(a) ibid she does not have 3 years of transacting Customs House work as G card holder, she has to pass examination under Regulation 8 ibid - Provisions of Regulation 8 ibid correspond to provisions of Regulation 9 ibid - Difference between regulation 9 of CHALR, 1984 and Regulation 8 of CHALR, 2004 is some extra papers regarding online filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise electronics commerce/electronic data exchange gateway and Indian Electronic Data Interchange System, provisions of Prevention of Corruption Act, 1988, etc. - Boards Circular No. 9/2010, dated 8-4-2010 has clarified that those applicants who have passed examination under Regulation 9 of CHALR, 1984 but were not given license were required to appear in examination and qualify under Regulation 8 ibid in respect of additional subjects - Those who qualify shall be deemed to have passed examination under Regulation 8 ibid and shall be considered for grant of CHA license - Circular of Board has not been considered in impugned order - Commissioners other objection that applicant who had passed examination from one Custom House cannot be considered for grant of CHA license from any other Custom House is baseless as examination is conducted by Directorate General of Inspection -Impugned order set aside - Matter remanded for de novo decision - Section 129B of Customs Act, 1962. [Para 7]

7. The main point of dispute in this case is as to whether the appellant is qualified to be issued a CHA license or not in terms of CHALR-04. The Public Notice inviting applications for issue of CHA license has been issued by Commissioner of Customs, Lucknow under Regulation 4 of the CHALR-04, Regulations 6 of the CHALR-04 prescribes the conditions to be fulfilled by the applicants and Regulations 6(a) prescribes the necessary qualification. There is no dispute about the fulfillment of the conditions 6(b) regarding financial viability and 6(c) regarding citizenship. The dispute is regarding fulfillment of Conditions 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 CHALR-84, which according to her, is equivalent to examination prescribed under Regulation 8 of CHALR-04. However, according to the department, just because she has passed the examination under Rule 9 of CHALR-84, she cannot be treated as

having passed the examination under Regulation 8 of the CHALR-04 and in terms of Conditions 6(a), as person who is only an ordinary graduate and who does not have three year 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 CHALR-04 correspond to the provisions of Regulation 9 of CHALR-84 and only difference between Regulation 9 of CHALR 84 and Regulation 8 of CHALR is some extra papers regarding online filing of electronics shipping bills or bills of entry and Indian Customs and Central Excise electronics commerce/electronic data exchange gateway and Indian Electrons Data Interchange System (ICES), provisions of Prevention of Corruption Act, 1988 etc. We find in this regard the Boards Circular No. 9/10, dated 8-4-2010 has clarified that those applicants who have passed the examination referred to Regulation 9 of CHALR-84, but were not given license under the said regulation were required to appear in the examination and qualify the same under Regulation 8 of CHALR-04 in respect of additional subjects as provided in Notification No. 30/10-Cus. (N.T.), dated 8-4-2010 and the persons who qualify in the aforesaid examination shall be deemed to have passed the examination under Regulation 8 of CHALR-04 and would be considered for grant of CHA license in terms of Regulation 9 of CHALR-04. These instructions of the Board have been reiterated in the Circular No. 25 2011-Cus., dated 22-6-2011, wherein the Board has also clarified that the requirement of number of licenses in a Customs House/Customs Commissionerate charge would be determined by the market forces and no numeric criteria be fixed and accordingly the board directed that all the eligible candidates should be granted licenses. 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 CHALR-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 license from another Customs House is, without any basis as the examination under Regulation 8 of the CHALR-04 and earlier under Regulation 9 of the CHALR-84 is conducted by Directorate General of Inspection and it would not be correct to refuse the CHA license on the ground that the examination has been passed from tome other Commissioner's jurisdiction. In view of this, the impugned order is set aside. The matter is remanded for de novo decision in the light of our above observations. The stay application also stands disposed off.

21. Customs Brokers Licensing Regulations, 2018

"14. Revocation of license or imposition of penalty. The Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following grounds, namely :

- (a) failure to comply with any of the conditions of the bond executed by him under regulation 8;
- (b) failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;
- (c) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;

- (d) adjudicated as an insolvent;
- (e) of unsound mind; and
- (f) convicted by a competent court for an offence involving moral turpitude or otherwise.”

There is no provision in the Customs Act that empowers the board to make regulations for cancellation the license except provided as above. From the above case laws, the provisions of Customs Brokers Licensing Regulations, 2018, and Section 146 of the Customs Act it is clear that the charges leveled in the Show Cause Notice are not legally sustainable and may kindly be dropped.

DISCUSSION AND FINDINGS:

1. I have carefully gone through the records of the case and the oral and written submissions made during the personal hearing. I find that M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] vide application dated 16.08.2016, had applied to the Principal Commissioner of Customs (General), Mumbai Customs Zone-I for grant of a Customs Broker License under Regulation 7(1) of Customs Broker Licensing Regulation (CBLR), 2013 to transact customs business in Mumbai Customs Zone-I, II & III, on the strength of appointment of Shri Nimesh J. Joshi as an authorized signatory, in Form-A. The partner & authorized signatory is a Regulation 9 qualified person of CHALR, 1984, from Pune Customs Commissionerate. M/s. Anwita Logistics Pvt. Ltd. is a partnership firm and Shri Prakash R. Pandey and Smt. Rekha Prakash Pandey are two designated directors of the firm. Presently, the license of M/s Anwita Logistics Pvt. Ltd. is inoperative since 08.08.2019 in absence of any person who had qualified Regulation 9 examination of CHALR 1984, Regulation 8 examination of CHALR 2004 or Regulation 6 examination of CBLR, 2013 or 2018 from Mumbai Commissionerate as mandated under Regulation 7(1) of CBLR 2018.

2. I find that at the time of submission of the above application by CB to the Principal Commissioner of Customs (General), Mumbai Customs Zone-I, the provisions of Customs Broker Licensing Regulation (CBLR), 2013 were in force. Relevant Provisions of CBLR, 2013 are reproduced below:

4. Invitation of application-

(1) *The Directorate General of Inspection of Customs and Central Excise (DGICCE) shall in the month of April of every year invite applications for conducting examination and subsequent grant of license to act as Customs Broker in Form A by publication in two leading national daily newspapers in English and Hindi.*

(2) *The application for a license to act as a Customs Broker in a Customs Station in Form A shall be made to the Commissioner of Customs having jurisdiction over the area where the applicant intends to carry on his business.*

7. Grant of license. –

(1) *The Commissioner of Customs shall, on payment of fee of five thousand rupees grant license in Form B to an applicant who has passed the oral examination within two months of the date of declaration of the said results.*

(2) *The applicant who has been granted license under sub- regulation (1) shall be*

eligible to work as Customs Broker in all Customs Stations subject to intimation in Form C to the Commissioner of Customs of the Customs Station where he intends to transact business. A copy of this intimation shall also be sent to the Commissioner of Customs who has issued the license in Form B.

3. I find that Shri Nimesh J. Joshi, the authorized signatory and the Regulation 09 qualified person under Customs House Agents Licensing Regulations (CHALR), 1984, had passed the examination from Pune Customs Commissionerate. Shri Nimesh J. Joshi applied to Pune in form-A under regulation 4(2) of CBLR, 2013. Thus it is reasonable to assume that his intention was to carry out his business in Pune.

4. I find that a license was granted by the Commissioner of Customs (General), Mumbai Zone-I to M/s Anwita Logistics Pvt. Ltd. in Form B and the applicant was issued a Custom Broker License No. 11/2265 on 02.01.2017 vide Public Notice No. 10/2017 under F. No. S/6-50/2016-17-CBS by the Commissioner of Customs (General), Mumbai Zone-I under Regulation 7(1) of Customs Broker Licensing Regulation (CBLR), 2013 to transact customs business in Mumbai Customs Zone-I, II & III on the strength of appointment of Shri Nimesh J. Joshi as authorized signatory. The authorized signatory being a Regulation 9 qualified person under Customs House Agents Licensing Regulations (CHALR), 1984 from Pune Customs. The Principal Commissioner of Customs (General) sought clarification from the Board wherein the authorized signatories had passed the required examination from other Commissionerates but had applied for a regular Customs Broker license at Mumbai Customs Commissionerate. The clarification sought as below:

"Whether the person who cleared the examination referred to in Regulation 9 of CHALR, 1984 or Regulation 8 of CHALR, 2004 or Regulation 6 of CBLR, 2013 or Regulation 6 of CBLR, 2018 are eligible to avail license under Regulation 7(2) of CBLR, 2018 in Custom Stations other than the place where he had cleared examination."

5. I find that this office was in receipt of an Office Memorandum F. No. 502/7/2013-Cus-VI dated 09.08.2019 from the Central Board of Indirect Taxes & Customs. Vide the Board Office Memorandum it was clarified that:

i) As per Regulation 4, DGPM would invite applications for conducting examinations and subsequent grant of license to act as Customs Broker in Form A. Form A is to be submitted along with a fee of five hundred rupees to the Principal Commissioner/Commissioner of Customs having jurisdiction over the area where the applicant intends to carry his business. Therefore, a Customs Broker License would be issued to an applicant (after clearing written as well as oral examination) by the Principal Commissioner/Commissioner of Customs to whom the candidate had submitted Form A as an application to appear in the examination.

ii) Moreover, in regulation 7(1) it has been made amply clear that the license would be issued by the Principal Commissioner/Commissioner referred to in regulation 4(2) i.e., before whom the applicant had applied initially.

6. I find that the Board vide Office Memorandum dated 09.08.2019 vide F. No. 502/7/2013-Cus VI has clarified that in Regulation 7(1) of the CBLR, 2013 it has been made amply clear that the license would be issued by the Principal Commissioner/Commissioner referred to in Regulation 4(2) i.e. before whom

the applicant had applied initially. It has been further clarified that a new provision has been introduced in terms of Regulation 7(4) of CBLR 2018, by virtue of which a Customs Broker shall be able to transact business in a Customs station falling outside the jurisdiction of the Principal Commissioner/Commissioner of Customs who granted the license, only after a period of two years from the date of issue of license in Form B1 or Form B2.

7. I find that the issuance of license was void ab-initio and it was opined not to permit the CB operate and that the permission so given required to be withdrawn. However, the CB was offered the sufficient time to appoint the F-category as envisaged by "*the Principle of Estoppel*" as livelihood of many were at stake

8. I find that, this office, vide letter F. No. S/6-50/2016-17 CBS dated 08.08.2019, communicated the above to Customs Broker and informed that the CB license No. 11/2265 granted, on strength of Shri Nimesh J. Joshi as an authorized signatory who was later replaced by Shri Amber A. Mufti (Kardex No. M-64), on being a Regulation 9 qualified person under CHALR, 1984, from Mumbai Customs Commissionerate. The CB Section, Mumbai Customs requested to appoint one Regulation 6 qualified person as CBLR, 2018 who had qualified the relevant examination from Mumbai within one-week time due to retirement of Shri Amber A. Mufti, failing which there would be withdrawal of the permission to carry on business in Mumbai. In this regard, it is to state that the examination in Regulation 9 of CHALR, 1984 or Regulation 8 of CHALR, 2004 or Regulation 6 of CBLR, 2013 is now referred to as Regulation 6 as per new Customs Brokers Licensing Regulations (CBLR), 2018.

9. Further, I find that while M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] had, vide application dated 16.08.16, applied in Form A to the Principal Commissioner of Customs (General), Mumbai Customs Zone-I, for the grant of new Customs Broker license under Regulation 7(1) of the erstwhile CBLR 2013 (now 7(2)(b) of CBLR, 2018) with the authorized signatory of the firm was Shri Nimesh J. Joshi, who had qualified Regulation 9 examination under Customs House Agents Licensing Regulations (CHALR), 1984 (now Regulation 6 of CBLR, 2018) from Pune Customs Commissionerate and not from Mumbai, the area where the applicant intended to carry on his business.

10. The CBLR 2013 has laid down the procedure, very clearly, that is needed to be followed for obtaining a CB license. Not following the same is fraught with risk as it is bound to lead to an inefficient administration and will only add in creating chaos which can jeopardize the interests of the trade. The rigor of erstwhile CBLR, 2013 (now CBLR, 2018) procedure becomes pointless if CB firms are allowed to engage services of authorized employees from anywhere in the country for CB license to be issued in Form B2. The potential for mischief is so vast that the screening afterwards or the post mortem analysis is pointless. It is only by following the scheme of licensing as laid down in CBLR, 2013 (now CBLR, 2018) properly, that can we be on guard against those who take unfair advantage. This system of subverting the procedure is illogical when the other CBs have followed the due procedure and were screened thoroughly before the grant of license. This being the case, M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] should have either had a partner or a director who had qualified the required examination from Mumbai or engaged the services of such authorized employee who has successfully passed/ clear the exam as prescribed in Regulation 6 of

the CBLR, 2013 from Mumbai or should have applied to Pune Customs to be granted a license to transact business in Pune. They could have then followed due procedure as per Regulation 7(2) of the erstwhile CBLR 2013 or Regulations 7(3) and 7(4) of CBLR, 2018 to transact business in Mumbai. Thus, the issuance of license to the CB in the instant case was faulty and is void ab initio.

11. In light of the above discussion M/s. Anwita Logistics Pvt. Ltd. should have applied for regular CB license under Regulation 7(1) of CBLR, 2013 at Pune Customs Commissionerate in Form A as the authorised signatory of M/s. Anwita Logistics Pvt. Ltd., Shri Nimesh J. Joshi passed Regulation 9 Examination of CHALR, 1984 from Pune Customs Commissionerate. They should have then followed due procedure as per Regulation 7(2) of CBLR 2013 to transact business in Mumbai. Thus, it is evident from the above discussions that the prescribed procedures have not been followed in case of M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] and thus, P.N. No. 10/2017 dated 02.01.2017, permitting Custom Broker License No. 11/2265 to M/s. Anwita Logistics Pvt. Ltd., with validity period upto 22.12.2026 had to be acted upon.

12. I find that the CB has relied on the following case laws:-

12.1 RAVINDRA KAMALAKANT SHUKLA Versus COMMR. OF CUS. (AIRPORT & ADMN.) [2016 (343) E.L.T. 86 (Cal.)]

12.2 SALMA SHAKIL Versus COMMR. OF CUS. (PREVENTIVE), LUCKNOW [2012 (280) E.L.T. 113 (Tri. - Del.)]

12.3 2012 (285) a 481 (8.C.) SUNIL KOHLI Versus UNION OF INDIA –

12.4 2016 (344) E.L.T. 136 (Mad.) G. VENKATESAN Versus CHAIRMAN, C.B.E. & C., NEW DELHI

12.5 2014 (300) E.L.T. 235 (Mad.) K. SIVAKUMAR Versus UNION OF INDIA

12.6 2013 (291) E.L.T. 177 (Mad.) V. PITCHIYYA Versus CHAIRMAN, C.B.E. & C., NEW DELHI

Decision in case of Ravindra Kamalakant Shukla Vs. Commr. of Cus. (Airport & Admn.) reported in 2016 (343) E.L.T. 86 (Cal.) wherein it is decided that if the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfillment of other requirements such as payment of requisite fees etc. I find, it is true and also say that once the license is granted, business might be transacted in any Customs Station in India subject to the conditions mentioned as per 7(2) of erstwhile CBLR 2013 (now as per Regulation 7(3) and 7(4) of 2018). Hence, from the statements mentioned above I find that the CB should have applied for license in Pune Customs Commissionerate as per Regulation 7(1) and they should have then followed due procedure as per Regulation 7(2) of erstwhile CBLR, 2013 (Now Regulation 7(3) and 7(4) of CBLR, 2018) to transact business in Mumbai.

As per the judgement above: In case of Salma Shakil Versus Commr. Of Cus. (Preventive), Lucknow [2012 (280) E.L.T. 113 (Tri. - Del.)], the main point of dispute in the case referred in supra para 12.2 is as to whether the appellant is qualified to be issued a CHA licence or not in terms of CHALR-04. The dispute is regarding fulfilment of Conditions 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 CHALR-84, which is equivalent to examination prescribed under Regulation 8 of CHALR-04. The case talks about required qualification and examination of CB License and the same is not disputed in the instant case.

I find that the case laws relied upon by the CB in the matter of *Sunil Kohli and other Vs. Union of India* is not germane to the instant case, as the said case law deals with Examinations held under Customs House Agents Licensing Regulations, 1984 and eligibility for grant of license subject to fulfilling other conditions under CHALR, 2004 while the present case is related to jurisdictional issues for grant of a Customs Broker license.

In the instant case there is no dispute that the petitioner had passed the written, as well as the oral examination under Regulation 9 of the Customs House Agents Licensing Regulations, 1984, which were existing prior to the coming into force of the new regulations in the year, 2004. Hence, I find that the case mentioned above in paras 12.4, 12.5 and 12.6 are not germane to the instant case.

12.7 I find that the erstwhile CBLR, 2013 (now CBLR, 2018) also provides the same opportunity to a CB who have cleared the required examination to transact business in India under provisions of Regulation 7(2) of erstwhile CBLR, 2013 (now 7(3) and 7(4) of CBLR 2018). In the instant case, the request of the applicant M/s. Anwita Logistics Pvt. Ltd. to transact business in Mumbai Commissionerate does not hold water as their application was under provisions of Regulation 7(1) of the erstwhile CBLR, 2013 (now regulation 7(2)(b) of CBLR 2018) and not under Regulation 7(3) and 7(4) of the CBLR, 2018. I find that as discussed in foregoing paras the Board vide Office Memorandum dated 09.08.2019 vide F. No. 502/7/2013-Cus VI has clarified that in Regulation 7(1) of the CBLR, 2018 it has been made amply clear that the license would be issued by the Principal Commissioner/Commissioner referred to in Regulation 4(2) i.e. before whom the applicant had applied initially.

13. In view of above discussions and findings, I find that the CB, M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] have failed to follow the procedures as per Regulation 7(2) of erstwhile CBLR, 2013 and (now Regulation 7(3) and 7(4) of CBLR, 2018) while taking permission to transact business in Mumbai. I arrive at the conclusion that the issuance of this license in Mumbai Commissionerate is void *ab-initio* being violative of Regulation 7(2)(b) of CBLR, 2018 (Regulation 7(1) of erstwhile CBLR 2013) and hence this license should be revoked and not be permitted to be operative under Regulation 7(2)(b) of CBLR, 2018 (Regulation 7(1) of erstwhile CBLR 2013) in Mumbai Commissionerate.

14. Accordingly, I pass the following order.

ORDER

1. I, Principal Commissioner of Customs (General), hereby withdraw/ revoke the CB License No.11/2265 for not following the procedure as laid down in CBLR, 2018.

2. The CB M/s. Anwita Logistics Pvt. Ltd. [Customs Broker No. 11/2265 & PAN No. AAOCA3011A] is hereby directed to surrender the CB License and Customs Passes issued to them. They are however, free to apply to the Mumbai Customs following the proper procedure laid down in the CBLR, 2018.

3. This order is passed without prejudice to any other action which may be taken against the Customs Broker and their employees under the Customs Act, 1962, or any other act for the time being in force in the Union of India.


5/3/21
(PRACHI SAROOP)

PRINCIPAL COMMISSIONER OF CUSTOMS (GENERAL)
MUMBAI ZONE-I

To,

M/s. Anwita Logistics Pvt. Ltd. (CB No. 11/2265)
Rizvi House. Ground Floor, Church Pakhadi Road No. 1,
Near Buddha Vihar, Sahar Village, Andheri (East),
Mumbai-400 099.

Copy to:

1. The Pr. Chief /Chief Commissioner of Customs, Mumbai I, II, III Zone
2. All Pr. Commissioners/ Commissioner of Customs, Mumbai I, II, III Zone.
3. CIU's of NCH, ACC & JNCH.
4. EDI of NCH, ACC & JNCH.
5. ACC (Admn), Mumbai with a request to circulate among all departments.
6. JNCH (Admn) with a request to circulate among all concerned.
7. Cash Department, NCH, Mumbai.
8. Notice Board.
9. Office Copy.
10. Guard File/CBS Admn.