

Customs Brokers Licensing Regulations, 2013

CONTENTS

1. Short title and commencement
2. Definitions
3. Customs Brokers to be licensed
4. Invitation of application
5. Conditions to be fulfilled by the applicants
6. Examination of the applicant
7. Grant of licence
8. Execution of bond and furnishing of security
9. Period of validity of a licence
10. Licence not transferable
11. Obligations of Customs Broker
12. Change in directors of company, etc
13. Change in constitution of any firm or a company
14. Change in the constitution of a concern
15. Engagement of persons qualified in the examination referred to in regulation 6, etc
16. Inspection of accounts
17. Employment of persons
18. Revocation of licence or imposition of penalty
19. Suspension of licence
20. Procedure for revoking licence or imposing penalty
21. Appeal by Customs Broker
22. Penalty
23. Prohibition
24. Membership of associations

Customs Brokers Licensing Regulations, 2013

In exercise of the powers conferred by sub-section (2) of section 146 of the Customs Act, 1962 (52 of 1962), and in supersession of the Customs House Agents Licensing Regulations 2004 , except as respect things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely:-

1. Short title and commencement :-

(1) These regulations may be called the Customs Brokers Licensing Regulations, 2013.

(2) They shall come into force on the date of their publication in

the Official Gazette.

2. Definitions :-

In these regulations, unless the context otherwise requires,

- (a) "Act" means the Customs Act, 1962 (52 of 1962);
- (b) "company" means a company as defined in the Companies Act, 1956 (1 of 1956);
- (c) "Customs Broker " means a person licensed under these regulations to act as agent for the transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station;
- (d) "firm", "firm name", "partner" and "partnership" shall have the same meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932), but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership;
- (e) "Form" means form appended to these regulations;
- (f) "Schedule" means the schedule annexed to these regulations;
- (g) "section" means a section of the Act; and
- (h) the words and expressions used herein and not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the said Act.

3. Customs Brokers to be licensed :-

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 licence granted under these regulations:

Provided that no licence under these regulations shall be required by

- (a) an importer or exporter transacting any business at a Customs Station solely on his own account;
- (b) any employee of any person or a firm transacting business generally on behalf of such person or firm, and holding an identity card or a temporary pass issued by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be,; and
- (c) an agent employed for one or more vessels or aircrafts in order solely to enter or clear such vessels or aircrafts for work incidental to his employment as such agent.

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 licence 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 licence 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.

5. Conditions to be fulfilled by the applicants :-

The applicant for a licence to act as a Customs Broker in a Customs Station, shall prove to the satisfaction of the Commissioner of Customs, that :-

(a) he is a citizen of India;

(b) he is a person of sound mind;

(c) he is not adjudicated as insolvent;

(d) he has neither been convicted by a competent court for an offence nor any criminal proceeding is pending against him in any court of law; and

(e) he has not been penalised for any offence under the Act, the Central Excise Act, 1944 and the Finance Act, 1994.

(f) an individual applicant or in case the applicant is a firm or company its partner or director or an authorised employee who may handle the Customs work shall:

(i) be a graduate from a recognised University, and

(ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/MBA/LLB or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years experience in transacting Customs Broker work as G-Card holder;

(g) he is a retired Group A officer from the Indian Customs and Central Excise Services having a minimum of five years experience in Group A service;

(h) the applicant has financial viability as evidenced by a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner of Customs in terms of possession of assets of value

of not less than five lakhs rupees:

Provided that for the purpose of his satisfaction, the Commissioner of Customs may make enquiries as may be deemed fit.

6. Examination of the applicant :-

(1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written as well as oral examination conducted by the DGICCE:

Provided that an applicant who has already passed the examination referred to in regulation 9 of the Custom House Agents Licensing Regulation, 1984 and regulation 8 of the Custom House Agents Licensing Regulation, 2004 shall not be required to appear for any further examination.

(2) The written examination shall be conducted on specified dates in month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination and the result of the said examination shall be declared by end May each year.

(3) The applicant who is declared successful in the written examination shall be called for an oral examination on specified dates in month of June of each year, the result of which shall be declared in the month of July of each year.

(4) The applicant shall be required to clear written examination as well as oral examination.

(5) An applicant who fails to clear the oral examination within two years from date of declaration of result of the related written examination, shall be treated as having failed in the examination.

(6) An applicant shall be allowed a maximum period of seven years from the date of original application within which he shall pass both written and oral examinations and no further extension shall be granted.

(7) The examination may include questions on the following :

(a) preparation of various kinds of bills of entry, bills of export, shipping bills, and other clearance documents;

(b) arrival entry and clearance of vessels;

(c) tariff classification and rates of duty;

(d) determination of value of imported and export goods;

(e) conversion of currency;

(f) nature and description of documents to be filed with various kinds of bills of entry, shipping bills and other clearance documents;

- (g) procedure for assessment and payment of duty including refund of duty paid;
- (h) examination of goods at Customs stations;
- (i) prohibitions on import and export;
- (j) bonding procedure and clearance from bond;
- (k) re-importation and conditions for free re- entry;
- (l) drawback and export promotion schemes including Special Economic Zone scheme;
- (m) offences under the Act;
- (n) provisions of the allied Acts including the Indian Explosives Act, 1884 (4 of 1884), Destructive Insects and Pests Act 1914 (2 of 1914), Dangerous Drugs Act, 1930 (2 of 1930), Drugs and Cosmetics Act, 1940 (23 of 1940), Central Excise Act, 1944 (1 of 1944), Copy Right Act, 1957 (14 of 1957), Trade and Merchandise Marks Act 1958 (43 of 1958), Arms Act 1959 (54 of 1959), Patents Act, 1970 (39 of 1970), Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985), Foreign Trade (Development and Regulations) Act, 1992 (22 of 1992), Foreign Exchange Management Act, 1999 (42 of 1999), Design Act, 2000 (16 of 2000) and Food Safety and Standard Act, 2006 (No. 34 of 2006) in so far as they are relevant to clearance of goods through customs;
- (o) provisions of Prevention of Corruption Act , 1988 (49 of 1998);
- (p) procedure for appeal and revision applications under the Act; and
- (q) on line filing of electronic bills of entry and shipping bills vide the Indian Customs and Central Excise Electronic Commerce or Electronic data interchange gateway (ICEGATE) and Indian Customs Electronic data Interchange System (ICES).

(7) The Commissioner of Customs shall satisfy himself that the individual applicant or in cases where applicant is a firm or company its partner or Director or authorised employees who may be engaged for handling the customs work shall possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in case of a person deputed to work extensively in the docks, knowledge of English shall not be compulsory. Knowledge of Hindi shall be considered as desirable qualification.

7. Grant of licence :-

(1) The Commissioner of Customs shall, on payment of fee of five thousand rupees grant licence 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 licence 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 licence in Form B.

8. Execution of bond and furnishing of security :-

(1) Before granting the licence under regulation 7, the Commissioner of Customs shall require the successful applicant to enter into the bond in Form D and where specified a surety bond in Form E for due observance of these regulations and furnish a bank guarantee, a postal security or National Saving Certificate in the name of Commissioner of Customs for an amount of five lakhs rupees for carrying out the business as Customs Broker.

(2) In cases where a postal security or National Saving Certificate is furnished, the benefit of interest accruing thereon shall accrue to the Customs Broker concerned.

9. Period of validity of a licence :-

(1) A licence granted under regulation 7 shall be valid for a period of ten years from the date of issue and shall be renewed from time to time in accordance with the procedure specified in sub-regulation (2):

Provided that a licence granted to a Customs Broker, authorised under the Authorised Economic Operator Programme referred to in Boards Circular No. 28/2012-Customs dated 16.11.2012, shall not require renewal till such time the said authorisation is valid.

(2) The Commissioner of Customs may, on an application made by the licensee before the expiry of the validity of the licence under sub-regulation (1), renew the licence for a further period of ten years from the date of expiration, if the performance of the licensee is found to be satisfactory with reference, inter alia, to the obligations specified in this regulation including the absence of instances of any complaints of misconduct.

(3) The fee for renewal of a licence shall be five thousand rupees.

10. Licence not transferable :-

Every licence granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no licence shall be sold or otherwise transferred.

11. Obligations of Customs Broker :-

A Customs Broker shall -

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

(b) transact business in the Customs Station either personally or through an employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(c) not represent a client in any matter to which the Customs Broker, as a former employee of the Central Board of Excise and 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 Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(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 Customs Broker which is sought or may be sought by the Commissioner of Customs;

(k) maintain upto date records such as bill of entry, shipping bill, transshipment application, etc. and all correspondence and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemised manner as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and keep them current;

(l) immediately report the loss of licence granted to him to the Commissioner of Customs;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(n) verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information; and

(o) inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be within one month of such change.

12. Change in directors of company, etc :-

In case a company holding a licence under regulation 7 undergoes any change in the directors, or managing director, such change shall forthwith be communicated by such licensee to the Commissioner of Customs within one month of such change.

13. Change in constitution of any firm or a company :-

(1) In the case of any firm or a company, holding a licence under these regulations, any change in the constitution thereof shall be reported by such firm or company, as the case may be, to the Commissioner of Customs as early as possible, and any such firm or a company indicating such change shall make a fresh application to the said Commissioner of Customs within a period of sixty days

from the date of such change for the grant of licence under regulation 7, and the Commissioner of Customs may, if there is nothing adverse against such firm or company, as the case may be, grant a fresh licence :

Provided that if the existing firm or company moves an application for such changes, then such firm or company may be allowed to carry on the business of Customs Broker with the approval of the Commissioner of Customs till such time as a decision is taken on the fresh application of such firm or company.

(2) Notwithstanding anything contained in sub-regulation (1), in case of any firm or a company where a licence has ceased to be in force because of the death or retirement of any partner or director or an authorised employee has passed the examination referred to in regulation 6, the firm or the company may apply for replacement of the name of the demised person by the name of another partner, director or authorised employee who has passed the examination referred to in regulation 6:

Provided that if there is no such person in the firm or company, then such firm or company, as the case may be, may authorise any other partner, director or authorised employee who is a G card holder, referred to in sub-regulation (7) of regulation 17, to pass the examination referred to in regulation 6 within a period of two years from the date of the demise or retirement of such person, and the firm or company may be permitted to carry on the business of a Customs Broker with the approval of the Commissioner of Customs till such time such partner, director or authorised employee passes the said examination.

14. Change in the constitution of a concern :-

(1) Where a licence granted or renewed under these regulations in favour of a person, not being a firm or a company, changes the constitution of his concern to a firm or a company, such new firm or new company may, pending the grant of a licence in accordance with these regulations, be permitted to act as Customs Broker through an employee duly qualified as per regulation 6, with the approval of the Commissioner of Customs.

(2) Notwithstanding anything contained in sub-regulation (1), where a licence granted or renewed under these regulations in favour of a person who has ceased to be in force because of the death of that person, his legal heir, who is a major and a H card holder, referred to in sub-regulation (7) of regulation 17, may be

permitted to work as a Customs Broker with the approval of the Commissioner of Customs, and such legal heir shall be required to pass the examination referred to in regulation 6 within a period of two years from the date of demise of the original licensee.

15. Engagement of persons qualified in the examination referred to in regulation 6, etc :-

(1) A person who has qualified in the examination referred to in regulation 6 may engage himself in the work relating to the clearance of goods through customs on behalf of a firm or a company licenced under regulation 7, provided that at any given time he shall not engage himself on behalf of more than one such firm or company.

(2) Any change in the persons qualified in the examination referred to in regulation 6 and actually engaged in the work in the Customs Station on behalf of a licensee firm or company shall be communicated forthwith by the firm or the company, as the case may be, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and no new person other than F, G or H card holders, referred to in sub-regulation (7) of regulation 17, shall be allowed to work in the Customs Station as a duly authorised employee on behalf of that firm or company.

16. Inspection of accounts :-

All records and accounts that are required to be maintained under these regulations shall be preserved for at least five years and shall be made available at any time for inspection of officers authorised for this purpose.

17. Employment of persons :-

(1) A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons to assist him after verifying their antecedent and identity at the declared address by using reliable, independent, authentic documents, data or information :

Provided that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent.

(2) Appointment of a person referred to in sub-regulation (1) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as

the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person.

(3) The person referred to in sub-regulation (1) shall, within four attempts from the date of his appointment, pass an examination conducted by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and the examination shall be such as to ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs.

(4) Notwithstanding anything contained in sub-regulation (3), a person who is employed under a Customs Broker and who has passed the examination referred to sub-regulation (3) may, on his appointment under any other Customs Broker, with the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.

(5) Where the Customs Broker has authorised any person employed by him to sign documents relating to his business on his behalf, he shall file with the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, a written authority in this behalf and give prompt notice in writing if such authorisation is modified or withdrawn.

(6) A Customs Broker shall authorise only such employee who has passed the examination referred to in regulation 6 of these regulations to sign declaration on the bills of entry, shipping bills and annexure thereof.

(7) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall issue a photo-identity card to every person employed by a Customs Broker,

(i) in Form F in case he has passed the examination referred to in regulation 6;

(ii) in Form G , in case he has passed the examination referred to in sub-regulation (3);

(iii) in Form H , in case he has not passed the examination referred to in sub-regulation (3);

and every such person shall, at all times when he transacts the work at the Customs Station, carry photo identity card with him and produce it for inspection on demand by any officer of the Customs Station.

(8) The photo identity card in Form H shall not be withdrawn from a n employee of a Customs Broker even if he fails to pass the examination referred to in sub-regulation (3).

(9) The Customs Broker shall exercise such supervision as may be necessary to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.

18. Revocation of licence or imposition of penalty :-

The Commissioner of Customs may, subject to the provisions of regulation 20, revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding fifty thousand rupees on a Customs Broker on any of the following grounds, namely :

- (a) failure of 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) committing any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station;
- (d) adjudicated as an insolvent;
- (e) of unsound mind; and
- (f) has been convicted by a competent court for an offence involving moral turpitude :

Provided that the imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against the Customs Broker or his employee under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

19. Suspension of licence :-

(1) Notwithstanding anything contained in regulation 18, the Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated.

(2) Where a licence is suspended under sub-regulation (1), the Commissioner of Customs shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker :

Provided that in case the Commissioner of Customs passes an order for continuing the suspension, the further procedure thereafter shall be as provided in regulation 20.

20. Procedure for revoking licence or imposing penalty :-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

(4) The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days

from the date of issue of a notice under sub-regulation (1).

(6) The Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty not exceeding the amount mentioned in regulation 22 within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5) :

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs.

21. Appeal by Customs Broker :-

A Customs Broker, who is aggrieved by any order passed by the Commissioner of Customs under these regulations, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.

22. Penalty :-

A Customs Broker, who contravenes any provisions of these regulations or who fails to comply with any provision of these regulations shall be liable to a penalty which may extend to fifty thousand rupees.

23. Prohibition :-

Notwithstanding anything contained in these regulations, the Commissioner of Customs may prohibit any Customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under regulation 11 in relation to work in that section or sections.

24. Membership of associations :-

Each Customs Broker shall enroll himself as a member of the Customs Brokers Association, if there is one registered in the Customs Station and recognised by the Commissioner of Customs.