C.V. Karunakaran Vs The Chairman, Central Board of Excise and Customs, The Commissioner of Customs and The Assistant Commissioner of Customs, Custom House Agent Unit
V. Rajendran Vs The Commissioner of Customs (Imports) and The Chairman, Central Board of Excise and Customs, Ministry of Finance, Department of Revenue

Court: Madras High Court

Date of Decision: Nov. 27, 2009

Acts Referred: Constitution of India, 1950 â€" Article 14
Customs Act, 1962 â€" Section 146(1), 146(2), 158, 159A
Customs House Agents Licensing Regulations, 1984 â€" Regulation 9, 9(3)
Customs House Agents Licensing Regulations, 2004 â€" Regulation 8, 8(6), 9, 9(1)
General Clauses Act, 1897 â€" Section 6
Motor Vehicles Act, 1988 â€" Section 101, 102, 217(2), 81, 87

Citation: (2009) 171 ECR 254 : (2010) 249 ELT 324 : (2010) 1 MLJ 323

Hon'ble Judges: H.L. Gokhale, C.J; N. Paul Vasanthakumar, J

Bench: Division Bench

Advocate: Joseph Prabakar, in W.A. Nos. 498 and 1125/2009, P. Saravanan, in W.P. 13366/2009 and Hari Radhakrishnan, in W.P. Nos. 10330 and 12250/2009, for the Appellant; K. Ravi Anantha Padmanaban, for the Respondent

Final Decision: Dismissed

Judgement

N. Paul Vasanthakumar, J.
The above writ appeals are directed against the common order passed in W.P. Nos. 336 and 341 of 2009,

dismissing the writ petitions filed by the appellants herein.

2. In W.P. Nos. 10330, 12250 and 13366 of 2009, the petitioners seek to quash the public notice No. 140/2008 dated 31.12.2008 and to direct

the first respondent therein to accept the candidature of the petitioners for the grant of licence under Regulation 9(1) of the CHARL, 2004 so as to

act as Customs House Agent.

3. Since the issues involved in the writ petitions as well as in the writ appeals are identical, both the writ petitions and writ appeals are heard

together and this Common Judgment is passed.

4. (i) The case of the appellants and the writ petitioners is that they are engaged in the work of clearance of goods through Customs for the past

several years and they are claiming that they have all passed the examination prescribed as per Regulation No. 9 of the Customs House Agent

Licensing Regulations (CHALR), 1984, which was framed u/s 146(2) of the Customs Act, 1962. According to the appellants/petitioners, regular

licences are to be issued only to those persons, who are qualified as per the examinations referred to in Regulation 9 of 1984.

(ii) The Central Board of Excise and customs made a new regulation called ''Customs House Agent Licensing Regulations, 2004'' pursuant to the

recommendations of the High Power Committee to simplify the processes and procedures for the grant of CHA licences. Under Regulation 9 of

2004, a candidate applying for licence must pass the examination in terms of Regulation 8 thereof for getting licence and the 1984 procedures for

the grant of licence viz., first granting a temporary licence before passing the qualifying examinations, and then granting a regular licence after

passing qualifying examinations within a year, has been done away with. A clarificatory circular was issued on 10.6.2004 and the Board also

issued instructions on 31.10.2007. In Public Notice No. 140 of 2008 dated 31.12.2008, the second respondent invited applications for the grant

of licence only from the persons qualified under Regulation 8 and as per the said notification, the persons qualified under Regulation 9 of 1984

were rendered ineligible.

(iii) According to the appellants/petitioners, between the years 1998 and 2004, the second respondent did not invite new applications and

therefore they could not apply for issuance of licence, even though they have passed the examinations under Regulation No. 9 of 1984. According

to the appellants/petitioners the syllabus or subject for the examinations provided under Regulation 9(3) of 1984 and Regulation No. 8(6) of 2004

are almost same. The new subjects added are Online filing of Electronic Shipping Bills or Bills of Entry and Indian Customs and Central Excise

Electronic Commerce/Electronic Date Interchange Gateway (ICEGATE) and Indian Customs Electronic Date Interchange Systems (ICES) and

the provisions of Prevention of Corruption Act, 1988. According to the appellants/petitioners, the preamble of Regulations, 2004, gives protection

to the appellants/petitioners since it provides that actions which had been taken or omitted to be taken are saved. However, the second respondent

is not giving effect to this beneficial provision and therefore the appellants are affected. It is submitted that the appellants are entitled to be treated

on par with other persons, who had passed the examinations conducted under Regulation 8 of the Regulations, 2004, while granting licence

pursuance to the issuance of Public Notice No. 140 of 2008, dated 31.12.2008. By making the above averments the appellants/petitioners filed

the writ petitions.

5. The third respondent in the writ appeals filed counter affidavit before the learned single Judge by contending that mere passing the examination

conducted under Old Regulation No. 9, without obtaining a permanent licence under the said regulation will not confer any right to the appellants

merely because the second respondent did not call for any application for issuing such licence till 31.12.2008, and the appellants having not been

issued with licences and the new regulation having come into force, which prescribed a new syllabus/subject for the examination, anybody intending

to get licence shall pass the same. It is also stated that with the advent of Intellectual Property Sector and other Global Evolution towards

Technology, Medicine, etc, the Government of India appointed a High Power Committee and based on its recommendations new regulation was

issued with effect from 23.2.2004. The appellants having not been issued or possessed with permanent licence, they are bound to apply, if they are

qualified and undergo the process of selection and then only they can be given the licence under the present regulation. The contention of the

appellants that 2004 Regulations protects their rights cannot be accepted as they were not granted licence till 23.2.2004 and the decisions of the

Delhi High Court reported in Sunil Kohli and Others Vs. Union of India (UOI) and Another, is not applicable to the facts of these cases as the

applications were invited for the grant of licence under Regulation 1984 in June, 2003. Here in this case, no application was invited under the old

regulation and only in the year 2008 applications were invited. It is further stated that it is the policy decision of the Government of India that

petitioners who were intending to get licence are bound to comply with the provisions under the 2004 Regulations.

6. The learned single Judge accepted the contentions of the respondents and dismissed the writ petitions filed by the appellants along with other

connected writ petitions. The said order is challenged in these writ appeals by contending the very same grounds raised in the writ petitions.

7. The learned Counsels for the appellants/writ petitioners M/s. Joseph Prabakar, P. Saravanan and Hari Radhakrishnan, submitted that the

appellants/writ petitioners having passed the examinations held under the 1984 Regulations and the respondents having failed to invite applications

for issuing licence from 1994 onwards, the appellants/writ petitioners are entitled to get the licence under 1984 Regulations and they have got a

vested right and legitimate expectation to get licence. The Preamble of 2004 Regulations gives protection to the persons, who have already passed

the examinations and the omission to invite applications and issue licence by the respondents cannot be put against the appellants. The learned

Counsel also submitted that only two papers are added from the earlier subjects for the examinations, and the appellants having got long

experience, they shall not be treated as fresh candidates. The examinations passed under Regulation 9 of 1984 can be treated as the examinations

passed under Regulation 8 of 2004. The learned Counsels also submitted that the Delhi High Court and Punjab & Haryana High Court have

extended the benefit to similarly placed persons and depriving the same to the appellants is in violation of Article 14 of the Constitution of India.

The learned Counsels also submitted that the learned single Judge having noted the said fact, ought to have granted the benefits to the appellants

instead of directing the Central Board of Excise and Customs to examine the matter and come up with a scheme to remove the difficulties of the

appellants while implementing 2004 Regulations as in other areas in Delhi and Punjab.

8. Mr. K. Ravi Anantha Padmanaban, learned Counsel appearing for the respondents submitted that merely because the appellants/writ petitioners

have passed the examination under the old regulations and they having not been issued with licence under the said regulations, they cannot claim to

seek a relief to treat the said examination as the examination conducted under Regulation No. 8 of 2004. The appellants/ writ petitioners are bound

to pass the examination under Regulation No. 8 of 2004, which contains new subjects as per the present requirement. The appellants cannot

contend that the examination they have passed earlier is saved as per the preamble of 2004 Regulations. The learned Counsel also submitted that

the learned single Judge was perfectly right in dismissing the writ petitions as it is a policy decision taken by the Government of India, pursuant to

which the new regulation was issued. The learned Counsel also submitted that pursuant to the direction issued by the learned single Judge to

consider the claim of the appellants, as it was extended to Delhi and Punjab, the matter was discussed by the Central Board of Excise and

Customs and the Board took a decision that the appellants shall pass the examination under the new regulations. In the Judgment of the Delhi and

Punjab & Haryana High Courts, the facts are entirely different, where the notification was issued inviting applications prior to the coming into force

of the 2004 Regulations and took a decision stating that it is not possible to issue licence to the appellants without passing the examination under

the new regulations with new subjects like Export Oriented Scheme, Computerisation and Prevention of Corruption Act, 1988, and there will be

large number of candidates throughout India similar to the appellants/writ petitioners.

9. We have considered the rival submissions of the respective counsels.

10. The appellants/writ petitioners are graduates and authorised employees of a Licensee actually engaged in the clearance of goods or

conveyance through the Customs Department. As the appellants are employees of the Licensees, they need not obtain temporary licence.

However, they are required to get licence under Regulation 9 of 1984 and they have to pass the qualifying examinations. The syllabus/subjects in

which they were to pass the written examination was also stated in Regulation 9(3) (a) to (p), which read as follows:

9(3) The examination may include questions on the following:

(a) preparation of various kinds of bills of entry and shipping bills;

(b) arrival entry and clearance of vessels;

(c) tariff classification and rates of duty;

(d) determination of value for assessment;

(e) conversion of currency;

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

(g) procedure for assessment and payment of duty;

(h) examination of merchandise at the Customs Stations;

(i) provisions of the Trade and Merchandise Marks At, 1958 (43 of 1958);

(j) prohibitions on import and export;

(k) bonding procedure and clearance from bond;

(l) re-importation and conditions for free re-entry;

(m) drawback;

(n) offences under the Act;

(o) the provisions of allied Acts including Imports and Exports (Control) Act, 1947 (18 of 1947), Foreign Exchange Regulation Act, 1973 (46 of

1973), Indian Explosives Act, 1884 (4 of 1884), Arms Act, 1959 (54 of 1959), Opium Act, 1978 (1 of 1878), Drugs and Cosmetics Act, 1940

(23 of 1940) Destructive Insects and Pests Act, 1914 (2 of 1914), Dangerous Drugs Act, 1930 (2 of 1930) in so far as they are relevant to the

clearance of goods through customs;

(p) procedure in the matter of refund of duty paid, appeals and revision petitions under the Act.

After passing the said examinations one has to apply for the grant of regular licence under Regulation 10 in Form "B". Regular licences are issued

for the Customs House Agents on the basis of the applications invited, depending upon the necessity to issue number of licences. The licences

issued under Regulation 10 would be valid for a period of five years subject to renewal.

11. Admittedly the appellants/writ petitioners have passed their written examinations based on the subjects/syllabus mentioned under 1984

Regulations. No notification inviting applications for issuing regular licences was issued after 1998 till 2008, as there was no necessity to issue any

more licence during the said period. Section 146(1) of the Customs Act, 1962, provides that no person shall carry on business as Customs House

Agent, unless he holds a licence granted in this behalf in accordance with the regulations. Section 146(2)(a) provides that the Central Board of

Excise and Customs may make regulations providing for the authority, by which a licence may be granted under this section and the period of its

validity. Regulation 4 of 1984 provides inviting applications for the grant of such number of licences as assessed by the Commissioner, to act as

Customs House Agents in the month of January every year by means of a notice affixed on the notice board of each Customs Station as well as

through publication in at least two newspapers having circulation in the area of his jurisdiction specifying therein the last date of receipt of

application. Thus, the respondents were not bound to invite application for regular licences. Regulation 4 of 2004 also provides for inviting

applications for the grant of such number of licences as assessed by the Commissioner, to act as Customs House Agents in the month of January

every year by means of a notice affixed on the notice board of each Customs Station as well as through publication in at least two newspapers

having circulation in the area of his jurisdiction, specifying therein the last date of receipt of application.

12. Due to the practical difficulties experienced by the respondents, the Government of India, constituted a High Power Committee on reduction of

transaction cost on Indian Exports to suggest measures. The same was followed by another Committee called ""Kelkar Committee"" on indirect

taxes, which suggested measures for simplifying the processes and procedures for the grant of licences to Customs House Agents. In order to

implement the recommendations of the said Committees, the Central Board of Customs and Excise issued Regulations in the year 2004 and the

said regulations came into force with effect from 23.2.2004. Circular No. 42 of 2004 was also issued on 10.6.2004 by way of clarification. As per

the regulations issued in Notification No. 21 of 2004 dated 23.2.2004, discretion is vested with the Commissioner of Customs to invite

applications for the grant of such number of licences as assessed by him to act as Customs House Agents.

13. Under Regulation 8 of 2004 it is stated that a person, who applies for the issuance of licence shall be required to apply for written as well as

oral examinations conducted by the Director General of Inspection at the specified centres and specified dates and an applicant shall be allowed a

maximum period of seven years within which he should pass both written as well as oral examinations. Regulation 8(6) contain syllabus/subjects for

the examinations to be passed under 2004 Regulations, which reads as follows:

8(6) The Examination may include questions on the following:

(a) preparation of various kinds of bills of entry and shipping bills;

(b) arrival entry and clearance of vessels;

(c) tariff classification and rates of duty;

(d) determination of value for assessment;

(e) conversion of currency;

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

(g) procedure for assessment and payment of duty;

(h) examination of merchandise at the Customs Stations;

(i) provisions of the Trade and Merchandise Marks Act, 1958 (43 of 1958), the Patents Act, 1970 (39 of 1970) and the Copy Rights Act, 1957

(14 of 1957).

(j) prohibitions on import and export;

(k) bonding procedure and clearance from bond;

(l) re-importation and conditions for free re-entry;

(m) drawback and export promotion schemes;

(n) offences under the Act;

(o) the provisions of allied Acts including the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), the Central Excise Act, 1944

(1 of 1944), Foreign Exchange Management Act, 2000 (42 of 1999), the Indian Explosives Act, 1884 (4 of 1884), the Arms Act, 1959 (54 of

1959), the Narcotics Drugs and Psychotropic Substances Act, the Drugs and Cosmetics Act, 1940 (23 of 1940), Destructive Insects and Pests

Act, 1914 (2 of 1914), the Dangerous Drugs Act, 1930 (2 of 1930), in so far as they are relevant to the clearance of goods through customs;

(p) provisions of the Prevention of Corruption Act, 1988 (49 of 1988);

(p) procedure in the matter of refund of duty paid, appeals and revision petitions under the Act.

(q) on-line filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise Electronic Commerce/Electronic Date

interchange Gateway (ICEGATE) and Indian Customs Electronic Date Interchange Systems (ICES).

After passing the above examinations licence would be granted under Regulation 9. The issuance of Temporary licence, which was prevailing

under Regulations of the year 1984 is not contained in 2004 Regulations. As can be seen, the subjects/syllabus are also changed and new subjects

are added. Thus, there is change in the conduct of examinations for the issuance of licence for Customs House Agents.

14. The appellants/writ petitioners'' contention that they having passed the examinations under Regulations, 1984, they should be treated as passed

the examination under Regulation No. 8 of 2004 for the grant of licence cannot be accepted in view of the fact that pass in the examinations of

1984 Regulations is only an eligibility to apply for the grant of regular licence. The eligibility for the grant of licence under Regulation No. 9 of 2004

has been changed viz.,

''must have passed graduation from a recognised University and possess a professional degree viz., C.A., M.B.A., L.L.B. or Diploma in Customs

Clearance Work from any Institute or University recognised by the Government with working knowledge of computers and customs procedures,

(or)

a graduate having at least three years experience in transacting customs House Agents, work as ""G"" card holder,

(or)

a person who has passed the examinations referred to in Regulation 8

(or)

a retired Group-A Officer of the Indian Customs and Central Excise Service having minimum of ten years experience in Group-A, apart from

having financial viability and he should be a citizen of India.''

From the above qualifications prescribed for applying for written examinations, it is evident that the entire eligibility requirement is changed and

there is no provision for issuing temporary licence and the only licence contemplated is the regular licence.

15. The issue as to whether a person, who passed examination under the 1984 Regulations, is automatically entitled to get licence under the 2004

Regulation was considered by the Ministry of Finance Central Excise and Customs, New Delhi, in the circular dated 10.6.2004 and it is clarified

as follows:

Issue Raised

Comments

Regulation 8

1. Regulation 8 passed persons are eligible as applicants for the licence. Can the applicant be a Regulation 8 passed person from a different

commissionerate ?

No, because the exam is to be taken only in respect of persons who have applied after the notice is published by the Commissioner of customs for

work within his jurisdiction under regulation 4.

6. Can the provisions of CHALR 1984 relating to licence holders, regulation 9 qualified persons, "H" and "G" card holders be treated at par with

holders of the same under CHALR 2004?

They will be governed by the corresponding provisions of CHALR 2004.

Thus, the very same issue raised by the appellants were considered and rejected by the Central Board of Excise and Customs, as early as in the

year 2004.

16. The contention of the appellants/writ petitioners that they being eligible for issuance of licence under the 1984 Regulations, they should be

issued with licence treating them as passed the examinations conducted under Regulation 8 of 2004, cannot be countenanced in view of the change

of eligibility criteria as well as the subject/syllabus for the examinations. The respondents are justified to change the eligibility criteria, particularly

after the Committees have recommended, and the same is given effect to taking note of the present day intricacies of law, which the Customs

House Agents are bound to have knowledge. It is also not the case of the appellants that the respondents are not having jurisdiction to change the

eligibility criteria for the issuance of licence. The respondents having taken a policy decision to change the eligibility condition as well as procedures

for issuance of the CHA Licence, the policy decision cannot be questioned by the appellants and in any event the said policy decision is not

unreasonable or arbitrary in any manner.

17. The contention of the appellants that they have got a vested right to get licences after passing the examinations under the old regulation is also

unsustainable in view of the fact that though they had passed the test, no licence as required under Regulation 10 of 1984 was issued and not even

applications were called for, for issuance of the said licence prior to 2008. The learned Judge has considered the said aspect elaborately and we

concur with the findings of the learned single Judge.

18. In the decision reported in High Court of Delhi and Another Vs. A.K. Mahajan and Others, the issue considered was as to whether by altering

the promotion rule, the vested rights of an employee were taken away. The Supreme Court in the above decision held that a mere right to be

considered will not give any vested right, unless actual promotion is given. In the above judgment the Supreme Court held that unless the right is

crystalized, the question of taking away the vested right will not arise. In the said judgment, the Supreme Court upheld the rule, which was given

effect to retrospectively. It is also to be noted that in the said judgment the respondent therein appeared in the interview for the promotion post and

no final decision was taken. In the meanwhile the rule was retrospectively amended. The Supreme Court set aside the judgment of the Delhi High

Court and held that the said respondent cannot challenge the giving effect of amendment retrospectively, as no vested right was taken away.

19. The appellants/writ petitioners at best were having liberty to apply for licence. The same cannot be treated as a vested right. The appellants

have not even applied for licence under Regulation of the year 1984 and the eligibility condition having been changed drastically in the year 2004

due to the intricacies of the procedures to be followed by the Customs House Agents, the respondents cannot be found fault with.

20. Whether the delay in consideration of application for renewal of mining lease could be pleaded for not applying the amended rule, was the

issue considered by the Apex Court in the decision reported in State of Tamil Nadu Vs. Hind Stone and Others, and in paragraph 13 it held thus,

13. ...The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending

for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date

on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account

be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application

disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a

lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying

particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules

in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are,

therefore, unable to accept the submission of the learned Counsel that applications for the grant of renewal of leases made long prior to the date of

G.O. Ms. No. 1312 should be dealt with as if Rule 8-C did not exist.

The said decision was followed in the subsequent decision of the Supreme Court in M.P. Ram Mohan Raja Vs. State of Tamil Nadu and Others, .

21. The regulations issued in the year 2004 is also having statutory force. It is well settled proposition of law that there cannot be any estoppel

against statute. The same is explained by the Supreme Court in the decision reported in Pune Municipal Corporation and Another Vs. Promoters

and Builders Association and Another, , which read thus,

6. DCR are framed u/s 158 of the Act. Rules framed under the provisions of a statute form part of the statute. (See General Officer Commanding-

in-Chief v. Dr. Subhash Chandra Yadav, SCC para 14.) In other words, DCR have statutory force. It is also a settled position of law that there

could be no "promissory estoppel" against a statute. (A.P. Pollution Control Board II v. Prof. M.V. Nayudu, SCC para 69, STO v. Shree Durga

Oil Mills, SCC paras 21 and 22 and Sharma Transport v. Govt. of A.P., SCC paras 13 to 24.) Therefore, the High Court again went wrong by

invoking the principle of "promissory estoppel" to allow the petition filed by the respondents herein.

7. For the foregoing reasons, the view adopted by the High Court cannot be sustained.

22. The learned Counsel for the appellants/writ petitioners submitted that the preamble of 2004 Regulations saves the claim of the appellants/writ

petitioners and that there was omission to invite application for the issuance of licence on the part of the respondents and therefore their rights are

protected as per the Preamble. For proper appreciation of the same, preamble in Customs House Agents Licensing Regulations, 2004, is

extracted hereunder:

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, 1984, 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.

23. As stated in paragraph 11 above, these regulations to issue Customs House Agents Licence are framed u/s 146(2) of the Customs Act, 1962.

Section 159A of the Customs Act, 1962, also deals with the effect of amendment, etc., on rules, regulations, notifications or orders, which reads

as follows:

159-A. Effect of amendments, etc., of rules, regulations, notifications or orders.- Where any rule, regulation, notification or order made or issued

under this Act or any notification or order issued under such rule or regulation, is amended, repealed, superseded or rescinded, then, unless a

different intention appears, such amendment, repeal, supersession or rescinding shall not-

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, regulation, notification or order so amended, repealed, superseded or rescinded or anything duly done

or suffered there under; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, regulation, notification or order so amended,

repealed, superseded or rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, regulation, notification

or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment

as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may

be imposed as if the rule, regulation, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

On combined reading of Section 159A of the Customs Act, 1962, and the Preamble of 2004 Regulations, it is evident that every later enactment,

which supersedes an earlier one, or put an end to the earlier state of law, is presumed to intend the continuance of only the rights accrued and

liabilities incurred under the superseding enactment.

(a) The Apex Court in the decision reported in State of Orissa Vs. M.A. Tulloch and Co., considered the issue as to whether on the enactment of

Mines and Minerals (Regulation and Development) Act, 1957, the demand notice issued on 1.8.1960 under the Orissa Mining Areas

Development Fund Act, (Act 27 of 1952) is valid after the supersession of the Act. It is held that every later enactment which supersedes an

earlier one or puts an end to an earlier state of the law is presumed to intend the continuance of rights accrued and liabilities incurred under the

superseded enactment, unless there were sufficient indications-express or implied-in the later enactment designed to completely obliterate the

earlier state of the law. It is further held that the notices were valid and the amounts due there under could be recovered notwithstanding the

disappearance of Orissa Act, 27 of 1952.

(b) In the decision reported in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., the question arose as to whether the

renewal of the permit of the appellant granted under the repealed Motor Vehicles Act, 1939, is a permit under the Motor Vehicles Act, 1988, and

its operation was saved by Section 217(2)(a) read with Sub-section (4) thereof. In paragraph 51 it is held as follows:

51. After giving careful and anxious consideration to the respective contentions, we find that there is some force in the contention of the respective

counsel for the appellants. It bears repetition to state that the approved scheme under the Repealed Act or in the Act is a self-contained and self-

operative scheme. It is a law by itself. The schemes published under the Repealed Act, as held earlier, are saved by Section 217(2)(a) of the Act.

Therefore, until they are modified or cancelled u/s 102, the scheme should continue to be in operation in the notified area, route or part thereof.

The right to apply for and obtain permit in the notified scheme was totally frozen to the private operators giving exclusive right to the STU to apply

for and obtain permits to run the stage carriages or additional service u/s 101 of the Act on the notified area, route or a part thereof and none else.

With a non obstante clause in Section 101, the right to apply for and obtain temporary permits u/s 87 by private operators was taken away. There

is no need for STU to obtain such permits as an intimation to RTA concerned of its providing such additional service on special occasions like fair

or religious gatherings for conveyance of passengers, is sufficient. Yet the scheme itself saved and preserved the rights of the named existing

operators in respect of overlapping routes in the specified permits, subject to the corridor restrictions of picking up and setting down the

passengers en route the prescribed prohibited route. They became entitled to run their stage carriages subject to the law. Though, their permits are

saved, the named operators being private operators, Parliament appears to have thought that there was no necessity to expressly retain in Chapter

VI itself their right of renewal as the same was already provided in Section 81 of the Act corresponding to Section 68F(1-D) of Chapter IV-A of

the Repealed Act. The reason appears to be obvious. Every private operator falls within the field covered by Chapter V of the Act. It would seem

that Parliament is of the view that the named operators, being saved under the schemes, are entitled to apply for and obtain necessary permit or

renewal thereof to ply their stage carriages only on overlapped routes subject to the corridor restrictions mentioned in the scheme itself. It may be

stated that we do not find any express indication of their rights being taken away under the Act; nor do we find it by necessary implication in that

behalf and to that effect. This view does justice also to all concerned.

(c) Both the above decisions were considered in the decision reported in Gammon India Ltd. Vs. Spl. Chief Secretary and Others, and in

paragraph 61 the Supreme Court held thus,

61. In Gajraj Singh case the Court observed that the proceedings under the repealed Act would be continued and concluded under the Act as if

the Act was not enacted. The Court observed that four things would emerge from its operation. One, there must exist a corresponding provision

under the Act in pari materia with the repealed Act; two, the order of permit granted must exist and be in operation on the day on which the Act

had come into force; three, it must not be inconsistent with the provisions of the Act and, fourth, the positive act should have been done before 1-

7-1989. Positive act should have been done before the repeal of the Act to further secure any right. All the four conditions should be satisfied as

conditions precedent for application of Section 6 of the General Clauses Act.

In paragraph 73 it is further held as follows:

73. On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there

is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of

the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible

with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant

provisions of the re-enacted enactment and the mere absence of the saving clause is, by itself, not material for consideration of all the relevant

provisions of the new enactment. In other words, a clear legislative intention of the re-enacted enactment has to be inferred and gathered whether it

intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.

24. A bare perusal of the Regulations of the year 1984 and of the year 2004 it is clear that the respondents were not bound to issue applications

for issuing regular licences and it depends on the local necessity to have licenced Customs House Agent and the respondents having found that

there was no necessity to issue licence to any Customs House Agent from 1998 to 2008, the appellants/petitioners cannot contend that there is

omission to invite applications for the issuance of licence. If the contention of the appellants/petitioners are to be accepted, there must be a

statutory duty to issue licence irrespective of the requirements. Hence the preamble of 2004 Regulations relied on by the appellants to sustain their

arguments is unsustainable. The action taken or omitted to be taken under 1984 Regulations can be relied on only for continuance of actions

already initiated like suspension or revocation of licence or pendency of any appeal against any order passed, etc. and only to continue the

proceedings, such a clause was added in the Preamble.

25. In the light of the above decisions and having regard to the findings given by us, we are of the view that the appellants/writ petitioners cannot

derive any right based on the Preamble of 2004 Regulations.

26. The learned Counsel for the appellants further submitted that the learned single Judge failed to apply the Judgments of the Delhi High Court

reported in Sunil Kohli and Others Vs. Union of India (UOI) and Another, and Punjab & Haryana High Court in the case of Union of India v.

Shree Narendra M. Prabhakar in CWP. No. 15463 of 2005 to the present case. The issue decided by the Delhi High Court and Punjab &

Haryana High Court are that after inviting applications under the old regulations for issuing licence whether the Department was justified in applying

new regulations. The facts in these cases are entirely different as admittedly in the present case the applications were invited by the respondent only

in the year 2008 i.e, about four years after coming into force of 2004 Regulations on 23.2.2004.

27. We have also taken note of the decision taken by the Central Board of Excise and Customs on 10.8.2009, pursuant to the order passed by

this Court in the impugned Judgment i.e., 2004 Circular has to be applied on All India basis and there are large number of applicants having passed

the examination under Regulation 9 of 1984, presently seeking CHA licence and therefore unless the candidates are eligible and passed the

examinations prescribed under 2004 Regulations, they cannot be treated to have passed examinations under 2004 Regulations.

28. In the light of the above findings we are of the view that no case is made out by the appellants/writ petitioners and we confirm the order of the

learned single Judge dated 15.4.2009 made in W.P. Nos. 336 and 341 of 2009. Consequently, both the writ appeals and writ petitions are

dismissed. There will be no order as to costs. Connected miscellaneous petitions