

(2016) 06 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16016 of 2016 (B)

CAFCO Freight Systems Pvt. Ltd.

APPELLANT

Vs

Commissioner of Customs, Cochin

RESPONDENT

Date of Decision : 01-06-2016

Acts Referred:

Citation : (2016) 338 ELT 21

Hon'ble Judges : P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : S/Shri P.A. Augustian, M.A. Baby and Ms. Linda. M.J, Advocates, for the Petitioner; S/Shri Saiby Jose Kidangoor, Advocate and Thomas Mathew Nellimoottil, SC, for the Respondent

Final Decision : Allowed

Judgement

P.B. Suresh Kumar, J.—The petitioner is a Customs Broker operating under the Commissioner of Customs, Kochi. The term of the licence issued to them under the Customs Brokers Licensing Regulations, 2013 ("the Regulations" for short) expired during February, 2016. According to the petitioner, though they had applied for renewal of their licence in accordance with Rule 9 of the Regulations, their application for renewal of the Customs Broker licence is not being considered by the first respondent. The Managing Director of the petitioner, namely, Mr. Bethusami Bethuraj is the Managing Director of another company called M/s. Indam Recycling Company (P) Limited. The said company holds an Import Export Code. One Rafeek Ahamed had imported a consignment through Cochin Port making use of the Import Export Code of the said company. The Directorate of Revenue Intelligence, Kochi initiated proceedings against Rafek Ahamed as also the Managing Director of the petitioner under the Customs Act in respect of the said consignment and imposed a penalty on them under Section 112(a) of the Customs Act. The Managing Director of the petitioner though challenged the order imposing penalty on him before the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, the proceedings initiated by him

before the Tribunal was dismissed for default. Later, an application has been filed by the Managing Director of the petitioner before the Tribunal for restoration of the proceedings and the same is pending. It is stated by the petitioner that it is on account of the said reason that the licence granted to the petitioner under the Regulations is not being renewed. According to the petitioner, they are entitled to get their Customs Broker licence renewed as per the Regulations and that the refusal on the part of the respondents in renewing the licence on the ground that a penalty was imposed on its Managing Director is unsustainable. The petitioner, therefore, seeks directions to the respondents to renew the Customs Broker licence as requested for by them.

2. A counter affidavit has been filed on behalf of respondents 1 and 2. The contention raised in the counter affidavit is that in the light of Regulation 5(e) of the Regulations, a person against whom penalty is imposed under the Customs Act is not entitled to get his licence renewed.

3. Heard the learned counsel for the petitioner as also the learned Central Government Counsel for the respondents.

4. The petitioner is a company incorporated under the Companies Act. Ext.P1 is the order imposing penalty relied on by the respondents to withhold the application for renewal of licence submitted by the petitioner. Ext.P1 indicates that penalty is imposed on its Managing Director in relation to his conduct as Managing Director of another company, namely, M/s. Indam Recycling Company (P) Limited. Regulation 5(e) and (f) of the Regulations dealing with the conditions to be fulfilled by the applicants for Customs Broker licence reads thus :

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 :

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(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;

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Regulation 5 of the Regulations only provides that the applicant for a licence to act as a Customs Broker in a Customs Station, shall not be a person on whom penalty has been imposed under the Customs Act, Central Excise Act and the Finance Act. The respondents have no case that any penalty has been imposed on the petitioner company. Mr. Bethusami Bethuraj on whom penalty was imposed as per Ext.P1 order is the Managing Director of the company. Mr. Bethusami Bethuraj is only an officer of the company. As such, refusal to deny renewal of the licence sought by the petitioner on the ground that penalty was imposed on its Managing Director cannot be sustained. Further, Regulation 5(f) of the Regulations as extracted above indicates that if the applicants for Customs Broker licence are firms or companies, disqualifications are prescribed only for the authorised representative of the firm or company as the case may be, who is handling the customs work. In other words, the regulations do not prescribe any qualification or disqualification for the officers of companies/firms other than the partner or director or the authorised employee who is handling the customs work. In the said view of the matter, according to me, the petitioner has to succeed.

5. In the result, the writ petition is allowed. There will be a direction to the first respondent to consider the application for renewal of licence submitted by the petitioner and grant the renewal sought by the petitioner if their application is otherwise in order. This shall be done within four weeks from the date of receipt of a copy of this judgment. The petitioner is at liberty to produce the certified copy of this judgment for compliance before the respondents.