(2015) 10 MAD CK 0165

In the Madras High Court

Case No : W.P. No. 14450 of 2015 and M.P. No. 1 of 2015

Chella Cargo Wings APPELLANT

Vs

The Commissioner of Customs RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Citation : (2015) 10 MAD CK 0165

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : S. Senthilnathan, for the Appellant; A.P. Srinivas, Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R. Mahadevan, J.—Seeking to quash the order of the respondent dated 01.04.2015 and for a direction to the respondent to issue the order of renewal of CHA licence, the petitioner has filed the present writ petition.

2. The case of the petitioner is that it is a registered firm having licence to carry on the business in Customs House Agency since 22.04.2004 and the licence was issued in terms of Customs House Agent Licence Regulations 2004 initially for a period of ten years. Before the period to expire on 21.04.2014, the petitioner made a renewal application on 14.03.2014 and said application was returned on 29.03.2014 stating that customs clearance activities at Internal Container Depot (ICD) Salem stood closed since 2009 and as a result petitioner was not carrying out any activities at Salem. The petitioner has submitted that he has been carrying on his activities at Chennai, Tuticorin, Trichy and Bangalore apart from Salem. He contended that the closure of activities at Salem ICD has not caused any prejudice to the petitioner as the licence issued by particular Commissionerate has been used for carrying out business in Customs Agency of other Commissionerates. Since the original licence was issued at Salem, renewal application was made to the first respondent at Salem. Since the application for renewal of licence has not been disposed of, the petitioner filed a writ petition in

W.P. No. 31028 of 2014 before this Court. By order dated 28.01.2015, this Court directed the authority at Chennai, to consider the application of the petitioner after affording an opportunity of hearing. It is relevant to extract paragraphs 4 and 5 of the said order, which read as under:

"4. In reply, the respondents submitted that the petitioner is not carrying on activities in 2009 as Salem ICD has been closed with effect from 01.01.2009 and the renewal sought for by the petitioner is not possible at this distance of time, more particular the period of ten year has also already expired. Further, the respondent has stated that the petitioner has filed the petition with the Commissioner of Customs Chennai seeking early disposal of the renewal application filed by the petitioner and that the same is pending. In paragraph 32 of the counter it is stated that the application for licence to act as Customs Broker in a Customs Station in Form-A shall be made to the Commissioner of Customs having jurisdiction over the area where applicant intends to carry on his business. In the instant case, the petitioner having been well aware of the fact that ICD has been closed with effect from 01.01.2009, he cannot carry on the business at Salem Commissionerate as there was no Customs Station requiring the service of the Customs Brokers, Salem. Further, the respondents went on to submit that there is no restriction for the petitioner to apply for CHA license afresh with the jurisdictional Commissioner of Customs of their choice where they are doing business at present and the proviso to Regulation 6(1) of CBLR, 2013 provides exemption from appearing the written/oral examination to such CHA. This fact is also reiterated by the respondent in paragraph 35.

5. It is no doubt the petitioner has submitted application for renewal before the expiry date and the same has got to be disposed of. Non passing of the order before the expiry of the period contending that the period is already over may not be correct. It is open to the respondent either to treat renewal application as a renewal application or as a fresh application, since in the counter it has been stated that the proviso to Regulation 6(1) of CBLR, 2013 provides exemption from appearing the written/oral examination to such CHA. The Commissioner of Customs, Customs House, Chennai, the respondent at Chennai where the application is pending is directed to consider the same and in case the petitioner is eligible, the benefit may be extended to the petitioner without insisting on written/oral examination."

3. Instead of considering the application, as directed by this Court, the Chennai Authority viz., the respondent, passed the order, which is impugned in this writ petition. Para 9 of the said order reads as under:

"9. Period of validity of a licence:--

....

As regards the renewal of licence, the term "the Commissioner of Customs" referred to in Regulations 9(2) is the same authority who has granted licence under regulation 7(1). Therefore, the proper authority for renewal of licence will be the same authority who has granted licence. In this case it is the Commissioner of Customs & Central Excise, Salem who has originally granted licence to the Customs Broker on 22.04.2004 under the erstwhile Regulation 9(1) of CHALR, 2004 (now Regulation 7(1) of CBLR, 2013).

As per Regulation 9(2), the Commissioner of Customs 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 regard including the absence of instances of any complaints of misconduct. Therefore, the Commissioner of Customs & Central Excise, Salem will be the appropriate authority to consider the request of the Customs Broker for renewal of the licence. Hence, the request of the Customs Broker for renewal of licence before me is liable to be rejected.

As regards the issuance of fresh licence to the Customs Broker, it is pertinent to note that Smt. G. Vasantha on whose Regulation 9 of 1984 qualification the Customs Broker is seeking licence, has qualified Regulation 9 of the CHALR, 1984 examination in Coimbatore Commissionerate, thereby restricting her intention to work as a Customs Broker in a place under the jurisdiction of Coimbatore Commissionerate, in the light of the following Regulation."

4. Further, as per Regulation 7 for the grant of licence, it is obligatory on the part of the petitioner to intimate the Commissioner of Customs of the Customs Station where he intends to transact business. Admittedly, the petitioner submitted his renewal application to the Chennai authority, as directed by this Court by order dated 28.01.2015 made in W.P. No. 31028 of 2014. Contrary to the same, the present order has been passed touching the jurisdiction of the authority so as to consider the application of the petitioner which is available at page 8 of the order. The said stand taken by the respondent cannot be countenanced.

5. In view of the above, the impugned order is set aside and the matter is remitted back to the Chennai Authority viz., the respondent for passing appropriate orders as directed by this Court in the order dated 28.01.2015 made in W.P. No. 31028 of 2014. Said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order, after affording due opportunity to the petitioner.

6. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

