

(1986) 06 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 1995 of 1986

Chinubhai Kalidas and Brothers

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-06-1986

Acts Referred:

Customs Act, 1962 — Section 107, 108, 123, 123(1), 123(2)

Citation : (1995) 77 ELT 814 : (1987) 1 GLR 147

Hon'ble Judges : G.T. Nanavati, J;B.K. Mehta, J

Bench : Division Bench

Advocate : S.B. Vakil, for the Appellant; S.D. Shah, for the Respondent

Judgement

Mehta, J.—The Petitioner firm by this Petition under Arts. 226 and 227 of the Constitution of India has moved this Court for appropriate

writs, orders and directions to quash and set aside the order of the Collector, Customs, Ahmedabad-respondent No. 2 herein dated February

25/27, 1986 rejecting the Petitioner's application for grant of licence under Regulation No. 5 of the Customs House Agents Licensing Regulations,

1984 and cancelling the temporary Customs House Agents Licence issued to the petitioner with effect from the date of the said order, and also

praying for directions enjoining respondent No. 2 to renew the said temporary licence in favour of the Petitioner so as to enable the Petitioner to

carry on business of customs house agents till the applications of the petitioner for permanent licence are finally decided according to law.

2. A few facts need be noticed in order to appreciate the contentions raised in this petition. The firm of M/s. Chinubhai Kalidas & Brothers as

constituted from time to time carried on business of clearing, forwarding and shipping agents since the year 1917 A.D. at Bombay Port. The firm

consisted originally of four partners, namely, S/Shri Arvind Surendrabhai, Ashwin Surendrabhai, Kantilal N. Patel and Smt. Purnima Atual Sheth.

This firm was constituted under a deed of partnership dated September 15, 1978. It appears that the said firm made in application dated August 1,

1984 to respondent No. 2 for issue of Customs House Agents Licence to work as Customs House Agents at Ahmedabad. The Collector of

Customs, Ahmedabad respondents No. 2 herein granted temporary licence being Licence No. 3 of 1984 dated September 14, 1984 to the said

firm authorising the firm to transact business as Customs House Agents at Ahmedabad Customs House for a period of one year on the condition

that the said work would be transacted through either Shri Arvind Surendrabhai or Shri Ashwin Surendrabhai. The said firm was also granted

licence to act as Customs House Agents for the port of Bombay dated August 25, 1984. It appears further that Shri Kantilal Nagindas Patel, a

partner of the said firm, expired on June 4, 1985. Clause 8 of the aforesaid partnership deed provided that the death, retirement or insolvency of

any partner would not dissolve the partnership as to other partners and the partnership business would be continued as hitherto in the same name

and style until the new partnership is formed subject to the right to carry on such business would not be effective after a period of six months. The

fact of the demise of Kantilal N. Patel was intimated to the Collector of Customs-Respondent No. 2 herein by letter of the firm dated June 6,

1985. A fresh deed of partnership was executed on June 15, 1985 reconstituting the firm so as to include over and above Shri Arvind

Surendrabhai and Shri Ashwin Surendrabhai, Shri Harsh Kantilal Patel, Smt. Purnima Atual Sheth and Shri Anand Arvind Seth as partners of the

firm effect from 5-6-1985. The new firm was called upon by the Superintendent (Technical) Customs & Excise Collectorate, Ahmedabad by his

letter dated June 18, 1985 to furnish the death certificate of Kantilal N. Patel from the competent authority. The Petitioner firm, therefore, by its

application dated July 29, 1985 addressed to the Assistant Collector of Customs, Ahmedabad applied for confirmation of the charge in the

constitution of the firm and stated that the new partnership deed has been submitted for registration to the Registrar of Firms and no sooner the

same was received, the petitioners would submit the same to the Assistant Collector. The application for confirmation of the change was returned

by the Assistant Collector under the cover of his letter dated August 8, 1985 stating that the same was required to be submitted in the prescribed form together with the certified copies of the partnership deeds of the original firm and the new firm. Since the temporary licence was expiring on September 13, 1985 the petitioner firm made an application on August 10, 1985 for renewal of temporary licence for a further period of one year.

The Superintendent of Customs by his letter dated August 20, 1985 intimated the petitioner-firm that since the firm has undergone a change in constitution on account of the death of a partner and as application for fresh licence would be required to be submitted under Regulation 16 and therefore the question of renewal of temporary licence did not arise. The petitioner firm vide its letter of September 2, 1985 submitted an application in Form A for fresh licence and also requested the Additional Collector that the Petitioner firm be allowed to continue to work under the old licence till such time as the Additional Collector's office might take for grant of fresh licence. The request was again reiterated in the reminder dated September 10, 1985. The Assistant Collector, Kundla by his letter of September 13, 1985 requested the Petitioner to furnish the registration certificate of the firm by return of post. The Petitioner firm by its letter of September 25, 1985 informed the Assistant Collector, Kundla that the amended registration certificate would be available only after three or four months and, therefore, forwarded the photo copies of Form E intimating the change in the constitution of the firm to the Registrar of Firms. It appears that the Superintendent of Customs, Ahmedabad by his letter dated September 23, 1985 called for an explanation from the petitioner for delay which has taken place in making the application for fresh licence under Regulation 16(1) which required the intimation as to the change in the constitution of the firm to be sent within 30 days thereof.

The petitioner firm by its letter of September 25, 1985 explained the delay in making the application. The Additional Collector, Customs fixed the hearing of the case on October 23, 1985 which intimation was received by the petitioner firm on October 26, 1985 and, therefore, requested the Additional Collector by its letter of even date to fix some other date. Accordingly next hearing was fixed on November 5, 1985. The Petitioner firm submitted a written representation inter alia explaining the position of Shri Anand Arvindbhai Sheth and requested for permission for change in

constitution of the firm by including him as a partner. It is claimed by the petitioners that Collector of Customs and Central Excise, Rajkot had

approved the change in the constitution of the firm as per the partnership deed dated June 16, 1985 and necessary endorsement had been made in

the Customs House Agents Licence for the Port of Kundla. The Petitioner firm had forwarded true copy of the certificate for approval of the

change in the constitution by the Registrar of Firms. The grievance of the petitioner is that in spite of complying with all the formalities respondent

No. 2 has passed the impugned order without giving any opportunity of hearing. The petitioners, have therefore moved this Court for the reliefs as

stated hereinabove.

3. Pursuant to the Rule issued by this Court, the respondents have filed reply affidavit of the Additional Collector Ahmedabad justifying inter alia

the impugned order on the ground that the petitioner firm was not entitled to the licence since the conditions prescribed in Regulation 16(2) and (3)

have not been fulfilled and Regulation No. 16(1) would not be applicable. The Collector has also found that the petitioner firm misrepresented to

the Collector at the time of the personal hearing that the Bombay and Kundla Customs Ports have approved the changes in the constitution of the

firm and corrections have been made in the licence accordingly. In that view of the matter, the Collector rejected the application and also cancelled

the temporary licence granted to petitioner firm.

4. Two questions, therefore, arise in this petition. Firstly, what is the width and scope of Regulation 16 of the Customs House Agents [Licensing]

Regulations, 1984 and, secondly, on true construction thereof, whether the impugned order is warranted.

5. In order to answer the above questions, we may shortly refer to the scheme as contained in the Regulations. Under Regulation 4 licence for

customs house agents can be granted pursuant to the invitation of applications as prescribed in the said Regulation. Under Regulation 5 an

application for licence to act as a customs house agent is to be made in Form A and where the applicant is a partnership firm, the names and

addresses of every partner and the name of the partner or his duly authorised employee who are to be actually engaged in the clearance of goods

or consignments through the customs are required to be stated. Regulation 8

deals with the grant of temporary licence which is granted in Form B.

Regulation 16 which is a material regulation for purposes of this petition reads as under :

16. Change in constitution of a firm. - (1) In the case of any firm being a licensee any change in the constitution thereof shall be reported to the

Collector as early as possible and any such firm indicating such change shall make a fresh application to the said Collector within thirty days for the

grant of licence under Regulation 5 or Regulation 10 as the case may be. On scrutiny of such application the Collector may grant to the firm a fresh

licence of the category held by the applicant prior to the change in the constitution, if there is nothing adverse against him :

Provided that the existing firm, if it makes an application to that effect, may be allowed to carry on the business of Customs House Agent till such

time as a decision is taken on the fresh application of the firm.

(2) Where a licence granted or renewed under these Regulations in favour of a firm ceases to be in force because of the death of a partner and the

partnership deed provides that the firm will continue with the surviving partners, with or without the legal heir of the deceased who has been

employed under Regulation 20, a licence may be granted to such firm, if there is nothing adverse against the firm or its partners.

(3) When a firm to which a licence has been granted or renewed under these Regulations requests change in the constitution thereof for taking as

partner a person who has been employed under Regulation 20 in the firm or concern for a period of not less than five years immediately preceding

the date of such request, such change may be approved by the Collector, if there is nothing adverse against such person.

6. Regulation 20 is also another Regulation which has some bearing on this petition.

7. It is in this legal back-drop that we have to decide the two questions set out above. It should be recalled that the Customs House Agents

Licence dated August 25, 1984 was granted to the original firm of M/s. Chinubhai Kalidas & Brothers which constituted of four partners. One of

the partners, namely, Kantilal N. Patel died on June 4, 1985. Clause 8 of the partnership deed of the old firm provided, inter alia, that the death of

any partner would not dissolve the partnership firm and in such an event a

partnership business would be continued as hereto in the same name and style until new partnership is formed. Accordingly the new partnership was formed with effect from June 5, 1985 under a fresh deed of partnership dated June 15, 1985. Two new partners were sought to be added, namely Shri Harsh K. Patel and Shri Anand Arvind Sheth. The former is the son of the deceased partner Kantilal Patel and the latter is the son of partner Arvind Surendra. The new firm applied on July 29, 1985 to the Collector of Customs at Ahmedabad for confirmation of the change in the constitution of the firm. It should be recalled that the Collector of Customs had granted temporary licence being Licence No. 3 of 1984 dated September 14, 1984 to the old firm authorising the firm to transact the business as Customs House Agents at Ahmedabad Customs House for a period of one year on the condition that the work would be transacted through either Arvind Surendra or Ashwin Surendra. The petitioner firm had, therefore made an application dated August 10, 1985 for renewal of the said temporary licence for a further period of one year. This application was rejected since in the opinion of the Customs Authorities, an application for fresh licence would be required as the old firm had undergone a change in the constitution on 4th June, 1985 on account of the death of its one of the partners and the temporary licence was not capable of being renewed. The petitioner, therefore, under the cover of the letter of September 2, 1985 forwarded to the Additional Collector of Customs, Ahmedabad an application in Form A duly filled in and signed by all the five partners and requested that they may be allowed to continue to work as clearing agents at Ahmedabad Customs House under the old licence till such time as the Additional Collector required for in the matter of grant of fresh licence. We have to bear in mind this fact situation also in dealing with the questions set out above.

8. In our opinion, the Collector of Customs, Ahmedabad has clearly erred in construing Regulation 16. The Collector of Customs has, with respect, clearly misconstrued the said Regulation. On plain reading of Regulation 16, it provides for three contingencies. Clause (1) of Regulation 16 is a general provision applicable in case whenever a change occurs in the constitution of a firm. A change in the constitution of firm may occur as a result of the death, retirement or insolvency of any partner. Clause (2) of

Regulation 16 deals with a specific case for granting licence to a continuing firm as prescribed under its partnership deed in spite of the death of its partner. Clause (3) deals with another type of specific case of grant of licence by approving the change in the constitution of the firm arising as a result of inducting its employee who has been under the employment of the firm for a period of not less than five years immediately preceding the date of such a request. On reading the impugned order it is manifestly clear that the learned Collector has overlooked that clause (1) is not controlled by either clause (2) or clause (3). Clause (1) operates independently and de hors the contingencies stipulated in clause (2) or clause (3). As stated above, clause (1) applies where a change in the constitution of a firm takes place either by the death, retirement or insolvency of its partner. If a partnership deed provides for continuation of the partnership business in spite of the death of one of its partners with or without the legal heirs of the deceased who might have been employed under Regulation 20 in the firm, the licence can be granted to such a firm if there is nothing adverse against the firm or its partners. Similarly clause (3) deals with another kind of situation where the change in the constitution of a firm arises as a result of induction of an employee with a prescribed period of standing in the employment. In other words, Clause (2) deals with change in the constitution of a firm arising as a result of continuation of the firm by surviving partners after the death of a partner while clause (3) deals with a change in the constitution of a firm arising as a sequel to induction of an employee as a partner. On the recognised principles of interpretation of statute, provisions dealing with the specific contingencies apply strictly on those contingencies arising and would not control or circumscribe the general provision made in that behalf. The specific contingencies provided for in clauses (2) and (3) would not thus control the general provision made in clause (1). It is no doubt true that all these three provisions made in the respective clauses have been made in respect of the general topic of a change occurring in the constitution of a firm. It would not be correct to construe clauses (2) and (3) as over-riding clause (1). If an applicant firm is not precisely covered under either clause (2) or clause (3), it would lose its right of making an application for securing the licence for business under clause (1). The interpretation which has

found favour with the authorities would make clause (1) totally redundant and otiose. The cases are not difficult to conceive when a partnership firm continuing business with the surviving partners after the death of a partner seeks to reconstitute the firm by inducting the heir of the deceased partner as well as a new partner in the firm. The fact that the heirs of the deceased partner or the new partners are employees is not a factor which would conclude as to which clause would apply. In any case, in the particular case before us, the case of the petitioner firm is neither covered by clause (2) nor by clause (3) since the new firm was reconstituted by inducting the heir of the deceased partner as well as the son of a partner in the old firm. In the present case before us, therefore, clause (1) squarely applies. It is not merely the case of induction of an heir of a deceased partner or an employee of the firm as a new partner in the reconstituted firm. The present case is a typical illustration which clarifies the real scope and width of Regulation 16 and particularly clause (1) thereof. To recall the present case is a change in the constitution of the firm by induction of the heir of the deceased partner as well as the heir of one of the partners of the old firm. The fact that the heir of the deceased partner was not a person employed under Regulation 20 or was not an employee with five years standing cannot be a matter of such consequences that it would tend to derogate the generality of the provision contained in clause (1). To put it tersely the reconstituted firm can apply for licence under the general provision contained in clause (1) notwithstanding its case not falling squarely within clauses (2) and (3). If it is interpreted otherwise, not only the generality of clause (1) is stultified but as stated above the provision becomes otiose. In the circumstances, therefore, we are of the opinion that the impugned order is bad in law and should be quashed and set aside and the matter be remanded back to the Collector of Customs Ahmedabad for deciding about the grant of licence afresh on the application made by the petitioner firm in Form A according to the correct legal principles and what we have stated in this order. It is further directed that the Collector of Customs shall grant temporary licence to the petitioner firm till he decides the question of grant of licence on the substantive application as aforesaid.

9. In the result, Rule is made absolute accordingly with no order as to costs.