
(2009) 02 CAL CK 0084
In the Calcutta High Court
Case No : Writ Petition No. 1260 of 2007

Confederation Overseas Clearing	Vs	APPELLANT
Commissioner of Customs (Admn.) and Others		RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Citation : (2009) 02 CAL CK 0084

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Sudhir Kr. Mehta, for the Appellant;

Final Decision : Allowed

Judgement

Soumitra Pal, J.

The Judgment of the Court was as follows:

1. The petitioner No. 1, a registered partnership firm, is a Customs House Agent having licence and the petitioner nos. 2,3 & 4 are its partners.
2. In this writ application they have challenged the action of the respondent in revalidating the licence on piecemeal basis and in not renewing it for a period of ten years from 15th March, 2007 under Regulation 11 of the Customs House Agents Licensing Regulations, 2004 (for short "the Regulations"). The matter was moved on 6th December, 2007 when directions were issued for filing of affidavits. Affidavits have since been exchanged and are on record. From the affidavit-in-opposition filed by the respondents I find that certain proceedings were initiated against the petitioner and a penalty of Rs. 1 lakh was imposed. Aggrieved the petitioner filed an appeal before the learned Customs, Excise and Service Tax Appellate Tribunal. It appears from the affidavit-in opposition that the order passed by the adjudicating authority was set aside by the Tribunal. Thereafter, the department has filed a ROM application before the Tribunal. I find from paragraph 7 of the said opposition that as "adjudication order to the show

cause notice dated 17.10.2003 is yet to be passed by this department", the respondent "is not allowing normal renewal under Regulation 11(2) of the CHALR,04 for a period of ten years". However, the department has allowed the agent to continue their business by "revalidating" the Customs House Agent Licence "on piecemeal by issuing" "circulars".

3. Learned advocate appearing on behalf of the petitioner submits that in view of the provisions contained in the Regulations and Circulars and Public Notices issued by the Customs authorities renewal of such licence in all cases should be for a period of ten years.

4. The issue in question is whether the authorities have the power to revalidate the licence of an agent on a piecemeal basis.

5. From a reading of Regulation 11 of 2004 Regulations it appears that licence granted under Regulation 9 is valid for a period of ten years from the date of its issue. Under Regulation 11(2) on an application made by the licensee before the expiry of validity of the licence, the Commissioner of Customs may renew the licence for a further period of ten years from the date of expiration of the original licence granted under Regulation 9 or from the date of the last renewal of such licence, subject to the satisfactory performance by the licensee.

6. Therefore, Regulation postulates that licence has to be renewed for a period of ten years and not on the piecemeal basis as has been done by the respondents. Customs Circulars and Public Notices also support the contention of the petitioner. It has to be borne in mind that though proceedings may be pending, as the authorities have been empowered to take action in case of unsatisfactory performance by an agent, renewal cannot be on a piecemeal basis. Hence, as the petitioner had applied for renewal of licence on 6th December, 2004 and as renewal was granted on piecemeal basis which is contrary to the Regulations, such revalidation by the Commissioner of Customs (Administration), Kolkata, respondent No. 1 cannot be supported and is, thus, set aside and quashed. As the respondents have already renewed the licence though for a shorter period, the concerned authority in the Customs Department is directed to renew the same for a period of ten years from the date of its expiry in accordance with the Regulation 11(2) and shall accordingly pass appropriate orders within a fortnight from the date of presenting the certified copy of this order.

7. Hence, the writ petition is allowed.

8. No order as to costs.

9. All parties concerned are to act on a signed copy of the minutes of the operative portion of this order on the usual undertakings.