

(2012) 08 MAD CK 0056

In the Madras High Court

Case No : Writ Petition No. 2919 of 2012

Customs Authorised Signatories (Regulation-9) Association APPELLANT

Vs

The Union of India, The Central Board of Excise and Customs and The Commissioner of Customs RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Customs Act, 1962 — Section 146(2)

Citation : (2012) 08 MAD CK 0056

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : Joseph Prabakar, for the Appellant; K. Ravi Anantha Padmanabhan, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren

1. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents. At this stage of the hearing of the

writ petition, the learned counsels appearing for the parties concerned had placed before this Court the decision of the Supreme Court, in SUNIL

KOHLI & ORS Vs. UNION OF INDIA & ORS (2012 TIOL 45 SC CUS). The relevant portion of the said decision reads as follows:

An analysis of above reproduced clauses makes it clear that the procedure prescribed in the 1984 Regulations and the 2004 Regulations for grant

of licence to act as Custom House Agent is substantially similar. In terms of Clause 4 of the 1984 as also the 2004 Regulations, the Commissioner

is empowered to invite applications in the month of January every year for grant of the specified number of licences as assessed by him, to act as

Custom House Agents. An application for grant of licence to carry the business as Custom House Agent is required to be made in the prescribed

from along with the necessary documents. If the Competent Authority is satisfied that the applicant fulfills the prescribed eligibility conditions then

he can be considered for grant of licence. However, there was a significant difference in the schemes of the two sets of regulations inasmuch as

while the 1984 Regulations postulated grant of temporary licence and prescribed holding of such licence as a condition of eligibility for appearing in

the examination conducted for grant of regular licence, the 2004 Regulations do not envisage grant of temporary licence and possession of such

licence is not sine qua non for participating in the process of grant of licence under Clause 9 of the 2004 Regulations. Of course, the applicant is

required to clear the written as well as oral examinations to be held in terms of Clause 8 of those regulations. At the same time, the language of the

opening paragraph of the 2004 Regulations and proviso to Clause 8(1) thereof make it clear that those who have already passed the examination

are not required to appear in any further examination. It is also evident from the plain language of the opening paragraph of the 2004 Regulations

that the actions already taken under the earlier regulations, that is, the 1984 Regulations were saved. In other words, the examinations held under

the 1984 Regulations did not get nullified with the enactment of the 2004 Regulations and the candidates who had qualified the examinations held

under the 1984 Regulations are not required to again qualify the examination which may be held under the 2004 Regulations. As a corollary, it

must be held that those who had cleared the examinations held between 1995 and 2003 under the 1984 Regulations would be eligible for grant of

licence subject to their fulfilling other conditions of eligibility.

Although, the language of Clause 4 of the 1984 Regulations and the 2004 Regulations suggest that every year the Commissioner is required to

make an assessment of the number of licences proposed to be granted and then invite applications for grant of such licences, Public Notices dated

20.06.2003 and 24.02.2005 do not contain any indication of such an assessment having been made by the Commissioner before inviting

applications for grant of licences. Therefore, the Division Bench of the High Court was not justified in introducing the concept of vacancies in what

it thought to be the cadre of Custom House Agents and limit the number of licences to be granted to the candidates, who successfully qualified the examinations conducted under the 1984 regulations.

The clarification issued by the Board vide Circular dated 10.6.2004 and the decision of the Commissioner to dump 563 applications received

pursuant to Public Notice dated 20.6.2003 are contrary to the language of proviso to Clause 8 of the 2004 Regulations and the prefatory

statement contained in those regulations and, therefore, the same cannot be relied upon for denying licences to the appellants. The matter deserves

to be considered from another angle. The Regulations framed by the Board u/s 146(2) of the Customs Act are in the nature of delegated

legislation.

The language of that section and other provisions of the Customs Act do not indicate that the Board is empowered to make Regulations with

retrospective effect. Therefore, the 2004 Regulations would operate prospectively and would not in any manner affect the eligibility and entitlement

of those who had qualified the examination held under the 1984 Regulations for grant of licences to act as Custom House Agents. The saving clause

contained in the opening paragraph of the 2004 Regulations unmistakeably show that while enacting the new Regulations, the Board did not want

to adversely impact the right of those who had qualified the examination held under the 1984 Regulations because the nature of the examinations

envisaged under the two sets of regulations is substantially similar. In view of the above, we hold that the learned Single Judge was right in issuing

direction for grant of licences to the appellants subject to their fulfilling the conditions specified in Clauses 6 and 9 of the 2004 Regulations and the

Division Bench of the High Court committed an error by modifying the order of the learned Single Judge. In the result, the appeals are allowed, the

impugned judgment is set aside and order dated 23.7.2005 passed by the learned Single Judge in Civil Writ Petition Nos.12808-73 of 2004 is

restored. The parties are left to bear their own costs.

2. In view of the decision of the Supreme Court cited supra, the learned counsel appearing for the petitioner had submitted that the writ petition

ought to be allowed by this Court.

3. The learned counsel appearing for the respondents had not refuted the

submission made by the learned counsel appearing for the petitioner. In view of the submissions made by the learned counsels appearing for the parties concerned and in view of the decision of the Supreme Court cited *supra*, the writ petition is allowed. No costs. Connected M.P.Nos.1 and 2 of 2012 are closed.