
(2016) 10 MAD CK 0053

In the Madras High Court

Case No : Writ Petition Nos. 27499-27500 of 2016

D. Thimmeswara Rao

APPELLANT

Vs

Commissioner of Customs, Chennai-VIII

RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Citation : (2017) 346 ELT 177 : (2017) 1 WritLR 415

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri S. Murugappan, Counsel, for the Petitioner; Shri Raj Kumar Jhabakh, Sr. Panel Counsel, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—Heard Mr. S. Murugappan, learned Counsel appearing for the petitioner and Mr. Raj Kumar Jhabakh learned Senior Panel Counsel for Central Government, appearing for the respondent, and with consent on either side, the writ petitions are taken up for final disposal.

2. In W.P. No. 27499 of 2016, the petitioner has challenged the order, dated 1-4-2016, rejecting their application for renewal of Customs Broker Licence under Regulation 7(1) of the Customs Broker Licensing Regulation, 2013 (CBLR).

3. In W.P. No. 27500 of 2016, the petitioner, who is also a customs broker has challenged the rejection of their application for renewal of licence.

4. Since the factual aspects relating to both the writ petitions are identical in nature, and more particularly, in the light of the earlier round of litigation, these writ petitions were tagged together, heard and are disposed of by this common order.

5. The licence granted to the petitioners under CBLR were suspended, by orders dated 25-4-2012, under Regulation 20(2) of the erstwhile Customs House Agents Licensing Regulation, 2004 (CHALR). The power granted under Regulation 20(2)

of CHALR was to place a licence under suspension with immediate effect and a post-decisional opportunity to be granted the licences to show cause. Pursuant to the opportunity granted in the order of suspension, the petitioners made their written submissions on 9-5-2012, and the respondent, by order dated 23-5-2012, under Regulation 20(3) of CHALR ordered that the suspension of the petitioners' licence shall continue. This order was put to challenge by the petitioners in W.P. Nos. 15002 & 15001 of 2012 respectively, and those writ petitions were disposed of by a common order dated 2-7-2012, along with two other connected matters with a direction to the respondent to follow the procedure contemplated under Regulation 22(2) of the CHALR, and till the matters are disposed of as per Regulation 22(7) of the CHALR, the order of suspension was directed to be kept in abeyance.

6. The respondent filed writ appeals as against the said order in W.A. Nos. 2809 and 2810 of 2012, which were disposed of by common order dated 4-1-2013, acceding to the request of the petitioners to file an appeal under Section 129A(1) of the Customs Act, 1962 (hereinafter referred to as "Act"), against the order dated 23-5-2012, continuing the order of suspension. Pursuant to which, the petitioners filed appeal before the CESTAT, and the CESTAT allowed the appeals, by order dated 12-11-2013 [2014 (313) E.L.T. 147 (Tribunal)]. This was challenged by the respondent by filing Civil Miscellaneous Appeals in CMA Nos. 1423 & 1424 of 2014, which were heard by the Hon'ble Division Bench of this Court, and by judgment, dated 27-6-2014, the appeals filed by the Revenue were dismissed. Thus, the order of suspension passed on 25-4-2012, continued further by order dated 23-5-2012, were set aside. In the mean time, the petitioners' customs broker licence were due to expire and therefore, the petitioners submitted applications for renewal of licence on 23-12-2014 and 6-8-2014, respectively, since by then CBLR came into force, the applications had to be considered, in terms of the new Regulation. These applications have been rejected by orders dated 1-4-2016 and 8-4-2016, respectively, which are impugned in these writ petitions.

7. The dispute in the instant cases lies in a very narrow compass. The petitioners' case is that the order of suspension and continuation of suspension were set aside by the Tribunal, and affirmed by the Hon'ble Division Bench and for the same set of reasons, the petitioners' applications for renewal of customs broker licence cannot be rejected. In other words, the petitioners cannot be penalised twice for the same reason.

8. The case of the Revenue as projected by the learned Standing Counsel for the respondent, and as seen from the counter affidavit filed on behalf of the respondent, is that the proceedings pertaining to the suspension of licence can have no bearing, as the order of suspension was set aside by the Tribunal on procedural and technical grounds pertaining to the issuance of notice under Regulation 22(2) of CHALR. Therefore, it is submitted that the respondent is entitled to exercise his powers while considering the applications for renewal of

licence, and if it is found that the performance of the licensee is not satisfactory in the past and/or the obligations contained in the Regulations are not adhered to, renewal of licence can be denied.

9. Therefore, it is submitted that in the impugned order, reasons have been assigned and when the order of suspension of licence was challenged, the CESTAT did not give any findings as regards the reasons for suspension. That apart, the renewal of licence was never questioned before CESTAT, or before this Court and therefore, the contention raised by the petitioner is totally unacceptable and the order rejecting the application for renewal of licence is proper and justified, as it has been passed after following due procedure of law.

10. As noticed above, the petitioners' licences were placed under suspension with immediate effect by order dated 25-4-2012, and continued by order dated 23-5-2012, after opportunity to the petitioners. These orders were put to challenge before the CESTAT, and the CESTAT, while examining its correctness, was pointed out that the orders of suspension were issued under Regulation 20(2) and 20(3) respectively on the ground that an enquiry is pending or contemplated against the Customs House Agent. After taking into consideration Regulation 22, which prescribes the procedure to be followed in such cases, the CESTAT pointed out that the Commissioner of Customs upon receipt of the reply to the notice issued under Regulation 22(1), would direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to enquire and despite a direction of this Court in its order dated 2-7-2012, to follow the procedure under Regulation 22(2), no notice was issued to the petitioner till the date of consideration of the appeals by the CESTAT. After referring to various decisions of the CESTAT in other similar matters, it was observed that for the purpose of enquiry under Regulation 22 of CHALR, issuing a show cause notice is a pre-requisite condition. By taking note of a decision of the Delhi High Court in the case of Falcon Air Cargo and Travels (P) Ltd. v. UOI reported in 2002 (140) E.L.T. 3 (Del.), it was held that when no notice was issued even for two years, the order of suspension cannot be sustained. On a perusal of the impugned orders in these writ petitions, it is seen that there are six allegations made against the petitioners alleging violation of Regulations 11(a), (b), (d), (e) and 17(6), 16 of the CBLR, what is interesting to note is that these were the very same allegations based on which the order of suspension was passed on 25-4-2012. In terms of Regulation 22, the procedure for suspension or revocation of licence under Regulation 20 has been stipulated and the same reads as follows :-

(1) The Commissioner of Customs shall issue a notice in writing to the Customs House Agent stating the grounds on which it is proposed to suspend or revoke the licence and requiring the said Customs House Agent to submit, within such time as may be specified in the notice, not being less than forty-five days, to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said

statement whether the Customs House Agent desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs House Agent, or where no such statement has been received within the time limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs House Agent.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs House Agent, for the purpose of ascertaining the correct position.

(4) The Customs House Agent shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

(5) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs shall prepare a report of the inquiry recording his findings.

(6) The Commissioner of Customs shall furnish to the Customs House Agent a copy of the report of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, and shall require the Customs House Agent to submit, within the specified period not being less than sixty days, any representation that he may wish to make against the findings of the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(7) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs House Agent, pass such orders as he deems fit.

(8) Any Customs House Agent aggrieved by any decision or order passed under regulation 20 or sub-regulation (7) of regulation 22, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.

11. The respondents had complied with the procedure under Regulation 22(1) and placed the petitioners' licences under suspension with immediate effect. When these orders of immediate suspension was put to challenge by filing writ petitions, the Court directed the respondent to follow the procedure under Regulation 22(2). This was not followed resultantly the orders of continuation of suspension dated 23-5-2012 were quashed by the CESTAT. Thus, the allegations, which were the basis for suspending the licence continues to remain as an

allegation and has not been substantiated by the Department by conducting an enquiry as required to be done under the Regulations by following the procedure contemplated under Regulation 22(2) to 22(7).

12. In such circumstances, the CESTAT, rightly set aside the order of suspension and such orders were confirmed by the Hon''ble Division Bench of this Court. Therefore, it would be wholly untenable on the part of the respondent to state that they will once again rely on the unsubstantiated allegations for refusing to renew the petitioner's licence. If on the other hand, by following the proper procedure, if the order of suspension had been made after establishing the guilt on the part of the petitioner, it would have been a different matter. Therefore, the Revenue is not justified in stating that the order of suspension was quashed only on technical grounds, forgetting that the technical ground is that procedure under Regulation was not followed. Consequently, the allegations remain unsubstantiated, as no enquiry was conducted and the same allegations cannot be put against the petitioner, when their applications for renewal of licence comes up for consideration. The order of suspension having been quashed in its entirety, the respondent cannot state that they will accept the ultimate result of the CESTAT in quashing the suspension order, but would proceed against the petitioner based on the allegations contained in the order of suspension. Such interpretation, if allowed to be accepted, would lead to disastrous consequence and would violate the very rudimentary principles of law. No person can be vexed twice on the same set of facts, which remain unsubstantiated. Therefore, on the allegations set out in the impugned order, the petitioners' applications for renewal of licence could not have been rejected. However, it is a different matter, if there are any other allegations duly substantiated, then the authority while considering the applications for renewal can exercise jurisdiction and while doing so, should strictly adhere to the procedure under CBLR.

13. In the result, the writ petitions are allowed and the impugned orders are quashed and the matter is remanded to the respondent for fresh consideration with a direction to consider the petitioners' applications for renewal of customs broker licence in terms of the provisions of the CBLR, without reference to the six unsubstantiated allegations mentioned in the impugned order. A decision be taken by the respondent on the applications in terms of the above direction, within a period of eight weeks from the date of receipt of a copy of this order. No costs.