(1992) 10 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 2469 of 1988

Heena Shipping Agency APPELLANT

Vs

Collector of Customs RESPONDENT

Date of Decision : 20-10-1992

Acts Referred:

Customs Act, 1962 — Section 146

Citation : (1993) 44 ECR 1 : (1993) 63 ELT 230

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : Mr. Pankaj K. Parsurampuria, for the Appellant; Mr. M.I. Sethna, Mr. H.V. Mehta and Mr. S.M. Shah, instructed by Mr. K.C. Sidhwa, for the Respondent

Judgement

Sujata Manohar, J.—The first petitioner is a partnership firm, carrying on business as Customs House Agents in Bombay. The second petitioner is a partner of the first petitioner-firm.

2. The first petitioner-firm was granted a temporary licence under the Customs House Agents Licensing Regulations, 1984 on 21st of May 1986 which was valid for a period of one year. This licence was revalidated for a further period of one year. It was to expire on 20th of May 1988.

3. Under Regulation 9 at least one of the partners of the petitioner-firm was required to qualify in the written and oral examinations to be conducted by the respondents under the said Regulations within a period of two years from the date of grant of a temporary licence before they could be granted a regular licence. None of the partners of the first petitioner-firm qualified in the examination during this period. The first petitioner-firm however, had an employee who had passed this examination. This qualified employee, however, left the services of the first petitioner-firm on 20th of March 1988. As a result, the respondents issued a Circular dated 27th of April 1988, which was served on the petitioners on 3rd of May 1988, notifying for the information of all concerned, that the Custom House Agents Licence held by the petitioner-firm had been

cancelled with immediate effect, as their employee who had qualified in an examination under Regulation 9 was on longer in their service and their partners had also failed to qualify in the examination. The Circular stated that the petitioner-firm shall not be allowed to transact business in the Custom Premises thereafter.

4. Prior to the receipt of the circular the petitioners had addressed a letter dated 2nd of May 1988 in which they had informed the respondents that they had appointed one Satischandra T. Parekh, who had passed the said examination, as their Manager, who would be authorised to transact business at the customs and the docks on behalf of the petitioners. The letter, inter alia, requested the respondents to approve the appointment of Satischandra T. Parekh as their Manager. This letter is in view of Regulation 20(2) under which appointment of a person to assist the licensee in his work as Customs House Agent can be made only after obtaining the approval of the Assistant Collector of Customs designated by the Collector for this purpose. This Regulation further provides that in the matter of granting approval the Assistant Collector of Customs shall take into consideration the antecedents and any other information pertaining to the character of such person. The Assistant Collector of Customs by his letter dated 20th of May 1988 has replied to the letter of 2nd of May 1988 and has stated that after a careful consideration of the request for inclusion of Shri Satischandra T. Parekh as Manager of the first petitioner-firm, the request was rejected by the Collector of Customs. Thereafter the petitioners addressed a letter dated 25th of May 1988, again setting out all the circumstances and requesting the respondents to approved the appointment of Shri S. T. Parekh as their Manager. The respondents by their reply dated 8th of July 1988 have reiterated that this request was already rejected vide their office letter of 20th of May 1988. The respondents further stated that they were unable to accept the contention of the petitioners that Shri S. T. Parekh was appointed as their Manager on 17-3-1988, prior to the cancellation of their licence, because Shri S. T. Parekh had not been issued any Customs Pass in the petitioner-firm''s name in the period between the supposed appointment and the date of cancellation of licence.

5. Mr. Sethna, who appears for the respondents, has also produced before us an attestation form dated 2-4-1990 which is signed by Satischandra T. Parekh as a partner of M/s. Mercury Impex for the purpose of issue of a Customs Pass in favour of Shri S. T. Parekh. The attestation form which is singed by Shri S. T. Parekh gives particulars about his previous employment. As per the particulars so furnished, from 1-7-1987 to 30-3-1990 Shri S. T. Parekh was Manager, not holding a Customs Pass, of one Best Apparel Consultancy. He has also described himself as a partner of Mercury Impex. In this attestation form he has not stated anything about his employment with the petitioner-firm from March 1988. Mr. Sethna has submitted that in view of the facts, as set out in the application signed by Shri Satischandra T. Parekh, the respondents had rightly rejected the application of the petitioners for approval of Shri Satischandra T. Parekh as their

Manager as from 17-3-1988. There is considerable force in the contentions of Mr. Sethna. Even the subsequent affidavit which is filed by the second petitioner and which is dated 20th of October 1992 does not set out the period during which Satischandra T. Parekh was employed by the petitioners during the relevant period. The second petitioner has merely made a vague statement that "in view of not being allowed access to customs areas Shri S. T. Parekh was not in firm for a short period but Shri S. T. Parekh who had passed the examination under Rule 9 is presently working with the petitioner-firm since almost last 3 months." These averments do not inspire much confidence.

6. In the premises, we do not see any reason why we should exercise our jurisdiction under Article 226 of the Constitution in the present case. The petition is therefore dismissed with costs.

The petitioners apply for continuation of interim orders for some time. We find that the interim order in this writ petition was obtained in the same terms as in Writ Petition No. 1484 of 1988 which was a part of a group of matters. When the group matters were taken up for hearing the petitioners submitted that this petition was on an entirely different basis and did not form a part of the group matters. Hence, we have heard this petition and found that the interim orders were clearly obtained on a wrong basis. We do not see any reason for continuing the interim orders. Hence application is rejected.