
(1993) 06 CAL CK 0027
In the Calcutta High Court
Case No : Matter No. 2327 of 1991

Independence Transport Shipping Agency	APPELLANT
Vs	
Collector of Customs	RESPONDENT

Date of Decision : 15-06-1993

Acts Referred:

Customs House Agents Licensing Regulations, 1984 — Regulation 18, 26, 5, 9

Citation : (1993) 67 ELT 472

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Sunil Chatterjee and O.P. Choudhary, for the Appellant; Sunil K. Mitra, for the Respondent

Judgement

Ruma Pal, J.—This matter has come up for reconsideration after it was disposed of on 20th April, 1993 in favour of the writ petitioners. On 20th April, 1993 the order had been passed in the absence of the respondents. The respondents then made an application for recalling the order which was allowed. I have now heard the submissions of the parties afresh.

2. The question in issue before this Court is whether the persons who have been granted a licence under the Customs House Agents Licensing Regulations, 1965 could be called upon to apply anew for a fresh licence under the Customs House Agents Licensing Regulations, 1984.

3. The facts of this case briefly are that the petitioner-firm was originally constituted by one K.C. Mullick and P.N. Mullick. Both K.C. Mullick and P.N. Mullick were licensed to carry on business as Customs House Clearing Agents. Kishore Mullick being petitioner No. 2 was inducted into the firm. In 1979 an "A" Class licence was granted to Kishore Mullick a copy of which has been annexed to the petition. The licence was renewed from time to time. The licence, granted to the firm under the 1965 Regulations, originally showed K.C. Mullick and P.N. Mullick as the persons authorised to transact business as Customs House Clearing Agents on behalf of the firm. K.C. Mullick died in 1989. His name was

deleted from the licence and the licence was renewed showing P.N. Mullick as the only authorised person to transact business on behalf of the firm. In the meantime, reconstitution of the firm was intimated to the Customs Authorities. Such reconstitution was approved on 20th July, 1989 and the firm was allowed to carry on business with the surviving partners. After Kishore Mullick obtained the licence in his favour, an application was made before the Customs Authorities to incorporate the name of Kishore Mullick along with P.N. Mullick as the persons authorised to transact business on behalf of the firm as Customs House Clearing Agents. This application was not allowed by the Customs Authorities and hence, this writ application.

4. It has been contended by the Customs Authorities that under the 1984 Regulations every person, irrespective of whether he was holding a licence or not, would have to take an examination under Regulation 9 before he could be allowed to work on behalf of the firm. Reference has also been made to Regulation 18 of the 1984 Regulations. It is also contended by the Customs Authorities that this issue was pending adjudication before the Appellate Court and that by way of an interim relief the Appellate Court had merely allowed the grant of a temporary licence. It is, therefore, submitted that no order should be passed in favour of the petitioners directing the petitioner No. 2's name to be incorporated in the licence as an authorised person.

5. The submissions of the Customs Authorities are not acceptable to this Court. Regulation 26 of the Customs House Agents Licensing Regulations, 1984 which repeals 1965 Regulations provides,

"Notwithstanding such repeal anything done or any action taken under the Customs House Agents Licensing Regulations, 1965, shall be deemed to have been done or taken under the corresponding provisions of these regulations."

6. Therefore, the grant of licence under the 1965 Regulations to Kishore Mullick would be deemed to have been taken or done under the 1984 Regulations. There is nothing in the Regulations which shows that licence-holders under the 1965 Regulations would be required to apply afresh for grant of licences. Regulation 9 refers to an examination to be taken by the holder of a temporary licence. A temporary licence under the 1984 Regulations is granted to a person who applies for a licence under Regulation 5. There is nothing in the Regulations to show that the persons who are already holding regular licences would be required to apply afresh. In fact, it is significant that no such contention has been made in this case that P.N. Mullick, who is also the holder of a regular licence under the 1965 Regulations, is being asked to apply afresh for a fresh licence or to take an examination under Regulation 9. The only objection to the petitioner No. 2's name being incorporated in the licence is that he is not the holder of a regular licence. For the reasons aforesaid, this submission cannot be sustained.

7. The second submission on behalf of the respondents, namely, that the issue was pending adjudication before the Court of Appeal in this Court is also not

correct. The issue before the Court of Appeal is the constitutionality of Regulation 9. In this case that question is not at all germane.

8. Under the circumstances, I see no reason to differ with the order passed on 29th April, 1993. The writ application is, therefore, allowed. The respondent-Authorities are directed to incorporate the name of Kishore Mullick, Petitioner No. 2, in the licence of the petitioner No. 1 as the person authorised to transact business of Customs House Clearing Agents on behalf of the petitioner No. 1.

9. It may, however, be noted that the earlier order dated 20th April, 1993, in so far as it directed the incorporation of the names of all the existing partners of the petitioner No. 1, could not stand. It is the admitted case that the present existing partners of the petitioner No. 1 include one Amalesh Mullick who is not a holder of licence either under the 1965 Regulations or under 1984 Regulations. The name of Kishore Mullick, however, will be incorporated within 10 days from the date of receipt of the signed copy of this Dictated order.

10. There will be no order as to costs.

11. The Learned Counsel appearing for the respondents prayed for stay of operation of this order. There will be a stay of operation of this Dictated order for a period of 10 days from date.

12. All parties concerned are to act on a signed copy of this Dictated order on the usual undertaking.