(1982) 11 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 40330 of 1982

Peirce Leslie India Ltd. APPELLANT

Vs

Collector of Central Excise and Customs RESPONDENT

Date of Decision : 26-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Customs Act, 1962 — Section 146
Customs House Agents Licensing Regulations, 1965 — Regulation 11, 13 (3)

Citation : (1984) 3 ECC 360 : (1983) 3 ECR 706D : (1992) 61 ELT 427 : (1983) 1 KarLJ 543

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : U.L. Narayana Rao, for the Appellant;

Judgement

P. Chandrakantaraj Urs, J.—The petitioner, a public limited company is a licensed importer. The licence expired on 3rd February, 1981. On 24th March, 1981 that is, nearly two months after the expiry of the licence, it applied for renewal of the licence in accordance with the Custom House Agents Licensing Regulations of 1965 (hereinafter referred to as "the Regulations"), to the first respondent-Collector of Central Excise and Customs in Karnataka, Bangalore. That application for renewal came to be rejected by an order made on 3rd March, 1982, but issued on 15th March, 1982. After setting out in detail the facts of the case, the first respondent-Collector, took the view that on the date of application there was no valid licence which could be renewed by him and therefore rejected the application. Aggrieved by the same, the petitioner-company preferred an appeal to the second respondent-Central Board of Excise and Customs, Government of India, New Delhi. The second respondent has confirmed the order of the first respondent and rejected the appeal. Aggrieved by the said two orders, true copies of which are at Annexures C and D to the petition, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India for an order quashing the said two orders as they are illegal, amounting to failure to exercise jurisdiction vested in the respondents and praying for a writ of mandamus directing grant of licence which admittedly expired on 3rd February, 1981.

2. Custom House Agents Licence is governed by the Regulations framed under the Customs Act (Central Act) (hereinafter referred to as "the Act"). The relevant Regulations are framed under the power conferred on the Central Government by Section 146 of the Act. Among other things, the Regulations provide for the mode of making applications, its rejection, grant and renewal. Provisions are also made to call upon the applicant to furnish security, etc. Under the scheme of the Regulations, on an application in the first instance or in the initial stage licence is granted for one year only and thereafter before the lapse of that one year applicant is required to apply for renewal which may be granted for a further period of three years. Thereafter, it has to be kept renewed if the licensee so wishes. Regulation 13 of the Regulations reads as follows :

"Regulation 13. Period of validity of licence. - (1) A licence granted under Regulation 11 shall be valid for a period of one year.

(2) where a licence has been granted under Regulation 11, the Collector of Customs may, notwithstanding anything contained in sub-regulation (6), on an application made to him in this behalf before the expiry of that licence, extend the period for a further period not exceeding one year.

(3) A licence granted under Regulation 11 may, on an application made in this behalf before the expiry of the period of one year referred to in sub-regulation (1) or the extended period, if any, under sub-regulation (2), be renewed for a period of three years and thereafter every three years.

(4) The fee for renewal of a licence granted under these regulations shall be Rs. 5.

(5) Before a licence is renewed, the Collector of Customs shall satisfy himself about the financial solvency of the applicant and shall require the production of an Income Tax clearance certificate.

(6) The Collector of Customs may refuse to renew a licence if on such inquiry as he deems fit he finds that the volume of the business transacted by the applicant as Custom House Agent during the period to which that licence relates is less than the minimum prescribed by the Assistant Collector of Customs in this behalf."

3. Sri U. L. Narayana Rao, learned counsel for the petitioner, drew my attention to sub-clause (3) of Regulation 13 of the Regulations which provides for licence granted u/s 11, being renewed in the manner earlier stated and contended that the application need be made before the expiry of the period specified in the initial first year and not in respect of licence which has been subsequently renewed for a period of three years, as in the case of the petitioner. It was also his contention that a licence renewed once may be renewed after the expiry of

the period specified at the time of the first renewal. In support of this proposition, he relies upon the language employed in sub-clause (3) of Regulation 13 of the Regulations where is failure to state "before the expiry of the period" in respect of applications to be renewed after the three years period. That, in my opinion, does not clearly lend any support to the contention advanced. The regulation properly understood on its grammatical constitution first fixes the period for which licence is valid and thereafter provides for renewal only on an application being made. It is not that every licence is renewed automatically after the first renewal. What that sub-clause provides for is the first and subsequent renewals shall be for a period of there years. In other words, it determines the period of validity of the first and subsequent renewals and no more. The view taken by the respondents appears to be correct inasmuch as the regulations do not provide for the contingency of the application being made beyond the period of the licence which has already been renewed once. That lacuna cannot be cured by construing the provision in sub-clause (3) of Regulation 13 of the Regulations in the manner in which the learned counsel wants to construe the same. That would be rewriting the regulation and also would amount to conferring jurisdiction on the first respondent which the regulation have not conferred expressly.

4. In this view of the matter, the only alternative left for the petitioner is to seek a fresh licence in accordance with the aforementioned Regulations and therefore this writ petition is misconceived and the impugned orders do not call for interference.

5. I reject the writ petition without rule being issued for the reasons aforementioned.

