
(2001) 10 DEL CK 0138

In the Delhi High Court

Case No : Customs Act Case No. 11 of 2001

Premier Clearing Agency

APPELLANT

Vs

Commissioner of Cus. (Gen.)

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Customs House Agents Licensing Regulations, 1984 — Regulation 10, 12, 12(2), 14, 21

Citation : (2002) 79 ECC 161 : (2001) 99 ECR 13 : (2001) 133 ELT 533

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : V.K. Gupta, for the Appellant; Jayant Bhushan, for the Respondent

Judgement

1. Though this is an application for reference, we feel that, in view of the limited nature of the controversy, it would be desirable to dispose of the application at the admission stage after hearing learned Counsel for the parties.

2. We have heard learned counsel for the parties.

3. The present petition involves a very interesting question as to whether the authorities under the Customs House Agents Licensing Regulations, 1984 (in short the "Regulations") have any discretion to take a liberal view in case it is shown that the performance of the Custom House Agent was not deficient as to the facts of a case as to warrant revocation of the license.

Factual position is almost undisputed and is as follows :

4. A license was issued to the petitioner under Regulation 21 of the Regulations which was valid up to 18th June, 1999. Same was not renewed on the ground that the performance of the petitioner was not found to be satisfactory regarding the quantity or value of cargo cleared, as per the norms fixed by the Public Notice 33/96, dated 5th July, 1996. With reference to Regulation 12(2), it was noticed that though the fall in business was due to medical problems faced by the petitioner, yet there was no prescription in the Regulations of any leniency of

sufficient grounds being shown in the Regulation. The order in this regard was challenged before the Customs, Excise and Gold (Control) Appellate Tribunal (in short Tribunal"), which upheld the views of the Licensing Authority.

3. Learned Counsel for the petitioner submitted that Regulation 12(2) is permissive in nature. It is not impermissible for the concerned authority to renew the license even though there was unintended deficiency in meeting the requirements of the Public Notice. Learned Counsel for the respondent on the other hand submitted that there was no scope for any departure from the requirements of the public notice.

4. Regulation 12 reads as follows :

(1) A license granted under Regulation 10 shall be valid for a period of five years, but may be renewed from time to time in accordance with the procedure provided in sub-regulation (2).

(2) The Commissioner of Customs may on an application made by the licensees, before the expiry of the validity of the license under sub-regulation (1), renew the license for a period of five years from the date of expiration of the original license granted under Regulation 10 or of the last renewal of such license, as the case may be, if the performance of the licensee is found to be satisfactory with reference, inter alia, to the following :

(a) quantity or value of cargo cleared by such licensee conforming to norms as may be prescribed by the Commissioner.

(b) absence of instances of delay either in the clearance of goods or in the payment of duty for any reason attributable to such licensee and any complaints of misconduct including non-compliance of any of the obligations specified in Regulation 14.

(3) The fee for renewal of a license under sub-regulation (2) shall be Rs. 3000/-.

5. As the language of said Regulation (2) of Regulation 12 shows, the Collector has the discretion to renew the license for a further period as indicated in the provisions itself. There seems to be no statutory bar on the Collector taking a liberal view when he is satisfied that the applicant, for reasons beyond his control, was unable to meet the requirements indicated in the public notice. In the case at hand the authorities have accepted the fact that the petitioner could not meet the requirements on account of difficulties beyond his control. It has not been found by the authorities that the Explanation offered by the petitioner was vague or fanciful. On the contrary they have found it to be acceptable. In these circumstances, we feel that the Tribunal was not justified in its view that there was no scope for even condoning the deficiency, if any, in meeting the requirements as stipulated in the public notice. The Regulations are in the nature of guide-lines which have to be tested in the background of what has been stated by the Apex Court in Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, , more particularly, at paragraphs (106) and (107). We accordingly direct

the Licensing Authority to consider the application of the petitioner for renewal and pass necessary orders within three weeks from today, keeping in view our observations made above.

Application is accordingly disposed of.