

(1993) 03 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 2648 of 1993

Raman and Co.

APPELLANT

Vs

The Collector of Customs

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Citation : (1993) 42 ECC 311

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanakaraj, J.—By consent, the main writ petition itself is taken up for final disposal.

2. The prayer in the writ petition is to issue a writ of certiorari to quash the order dated 5.2.1993. A few facts may be noticed before the writ petition is disposed of.

3. The petitioner is a Custom House Agent and he has been functioning for the last ten years. His agency comes to end by 31.1.1993. He filed an application for renewal on 4.12.1992. Since no orders were passed, W.P. No. 1823 of 1993 was filed and a direction was given by

Bakthavatsalam, J. to pass orders on the renewal application on or before 5.2.1993. It is under such circumstances, the impugned order was passed on 5.2.1993. The said order is attacked on the following grounds:

- (1) The order does not give any reason for the refusal to renew.
- (2) No opportunity was given to the petitioner before passing the order.
- (3) In the counter-affidavit certain norms prescribed by the Collector have been referred to. The contention of the respondent is that the petitioner

does not satisfy any one of these norms and that is why the licence was not renewed. The contention of the petitioner is that he had no opportunity

to contend otherwise and that in any event he satisfies the norms.

(4) The grant of renewal is automatic as per the judgment of this Court in W.P. No. 13722 of 1989 dated 19.3.1992 reported in Sugesan and Co.

(P) Ltd. Vs. Collector of Customs, .

4. It cannot be disputed that the impugned order does not give any reasons. It cannot also be disputed that no opportunity was given to the

petitioner to explain as to whether he satisfies the norms issued by the Collector under Public Notice 307/85. Only in the counter-affidavit it is

stated for the first time that the renewal was not granted on the basis of the said norms. I, therefore, find considerable force in the contention, that

the order is vitiated for the violation of the principles of natural justice and on the ground that it is not a speaking order. I do not think that under

such circumstances I will be justified in going into the facts of the case and rendering a finding whether the petitioner does satisfy the fourth segment

of the norm relating to payment of duty, being not less than Rs.2 crores in any particular year in the preceding three years. Learned counsel for the

petitioner seeks to satisfy the court on the basis of his reply affidavit. I am not inclined to render any finding on the aspect because of the fact that

no opportunity was given to the petitioner before the impugned order was passed.

5. Lastly, I have perused the judgment of Raju, J. in Sugesan and Co. (P) Ltd. Vs. Collector of Customs, . Learned Judge holds that there is

nothing in Regulation 12 which enables the authority to reject a renewal application. According to the learned Judge, the conditions prescribed

under Regulation 10 cannot be invoked while considering the application under Regulation 12. The learned Judge says:

It may be pointed out that wherever any particular law in respect of any permit or licence provides for renewal and it also postulates

reconsideration of the eligibility of the licence concerned once over again at the stage of renewal, it is always specifically provided for. In the

absence of any such specific stipulation, it may not be wrong to assume that the renewal is a matter of course unless in the meantime, the licence is

either suspended or revoked.

Learned counsel for the respondent no doubt, argues that at the time of exercising a discretion while granting a renewal, it is well open to the authority to consider the norms prescribed for the grant of licence itself. He also referred to the fact that any licence is valid only for a period of three years under Regulation 12(1). Therefore, at the time of renewal, the authority should consider whether the conditions for the grant of a licence is satisfied before he exercises his discretion to grant the renewal. The argument no doubt is attractive, but in view of the judgment of the learned Judge, with which I am in entire agreement, I am not inclined to accept the stand of the respondent.

6. Consequently, the writ petition is allowed. There will be no order as to costs.