

(2019) 05 MP CK 0006
In the Madhya Pradesh High Court
Case No : Writ Petition No. 14968 Of 2018

Sanjay Kumar Joshi

APPELLANT

Vs

Commissioner, Customs, Central Excise, Indore

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Customs Act, 1962 — Section 146

Customs Broker Licence under Customs Broker Licence Regulation, 2013 — Regulation 4, 6, 6(1), 7, 7(1), 8

Customs House Agent Licence Regulation, 1984 — Regulation 9

Customs House Agent Licence Regulation, 2004 — Regulation 4, 6(1)

Citation : (2019) 05 MP CK 0006

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Alok Barthwal, Prasanna Prasad

Final Decision : Allowed

Judgement

1. The petitioner has filed the present petition finally n being aggrieved by order dated 22.07.2016 (annexure P/1) and 18.05.2017 (annexure P/2) whereby his application for grant of Customs Broker Licence under Customs Broker Licence Regulation, 2013 (in short "CBLR, 2013") has been rejected.

2. The petitioner being a partner of M/s ASTUTE Business Solutions having its registered office at 86, Royal Banglow City, Sukhliya, Indore had applied for grant of "Customs House Agents License" under the provision of Customs House Agent Licence Regulation, 2004 (In short "Regulation, 2004"). Regulation no.8 provides for written as well as oral examination. After passing the examination under Regulation no. 9 the Commissioner of Customs on payment of Rs.5,000/- shall grant licence in Form-B.

3. The petitioner was permitted to appear in the written as well as oral examinations. The results of the above both the examinations were declared vide Circulars dated 19.03.2013 and 30.12.2014 respectively. Meanwhile, new

regulation called Custom Broker License Regulation, 2013 (in short "CBLR, 2013") came into force w.e.f. 21.06.2013 in which nomenclature of the "Customs House Agents" has been changed by "Customs Brokers", That under proviso to Regulation 6(1) an applicant who has already passed the examination under Regulation, 2004 shall not be required to appear for any further examination and he can apply for grant of licence to the Commissioner of Customs under Regulation 7 of the CBRL 2013 . In view of the above, the petitioner filed an application dated 29.03.2016 alongwith necessary documents before the Principal Commissioner, Customs, Central Excise and Service Tax, Indore for grant of Customs Broker Licence. Vide order dated 22.07.2016, Dy. Commissioner (T), Central Excise, Indore has rejected the application on the ground that petitioner did not file application within a period of two months from the date of declaration of the results. The result of oral examination was declared on 28.02.2015 whereas the application has been submitted on 29.03.2016 i.e beyond the period of two months. Hence, the application has been rejected.

4. The petitioner again approached the respondent by filing a fresh application dated 16.08.2016 placing reliance over proviso 2 of Regulation 6(1) of CBLR, 2013. Again, vide letter dated 28.08.2016, the respondent has rejected the application. Again, the petitioner submitted an application on 23.01.2017 by submitting that Regulation 7(1) is not applicable to the candidate who had passed the written examination under Regulation, 2004. Again, the respondent has turned down his request. The petitioner once again submitted a detailed representation to the Chief Commissioner (Bhopal Zone), Customs, Central Excise and Service Tax on 09.02.2017 who has rejected the same vide letter dated 09.02.2017 with an advise to prefer an appeal against the order passed by Principal Commissioner, Indore before the appellate Tribunal. By letter dated 18.04.2017 and 04.05.2017 the petitioner requested the Chief Commissioner for passing a reasoned and speaking order so that he can prefer an appeal before the Tribunal.

5. The petitioner preferred an appeal to CESTAT, New Delhi which has been dismissed vide order dated 23.01.2018 as not maintainable. The learned tribunal has held that the appeal lies only against the judicial order but not against the order passed on administrative side. Hence, the petitioner has approached this Court by way of this writ petition.

6. The respondents filed a preliminary reply to the writ petition by submitting that action of the respondents while rejecting the application of the petitioner is justified and is in accordance with the provisions of para no.4.1 Chapter 29 of CBEC's Customs Manuals of Instructions as well as in accordance with the Regulation 7(1) of CBLR, 2013. It is further asserted that the petitioner submitted the application after expiry of two months, therefore, the licence has rightly been denied to him as the Principal Commissioner is not having any authority to issue licence beyond the period of two months from the date of declaration of the results, hence, the petition is liable to the dismissed sans merit.

7. Shri Alok Barthwal, learned counsel for the petitioner urged that the petitioner applied for grant of Customs House Agent License under Regulation, 2004 in which there was no time limit for submitting the application by an applicant who has passed the examination referred in the Regulation 8. By that time, the result of written examination was declared , CBLR, 2013 came into force and the respondent declared the petitioner passed in the oral examination under CBLR, 2013. Thereafter, he submitted an application under Regulation 7 to the Commissioner for grant of licence but he has wrongly rejected whereas Regulation 7(1) provides two months time to the Commissioner for issuance of license to the applicant who has passed the examination on deposit of the fees of Rs.5,000/-. He further submitted that the respondent has wrongly denied the licence to the petitioner by giving wrong interpretation to Regulation 7. The petitioner is highly qualified person having the Degree of Civil Engineering and MBA and secured the highest marks in written and oral examination conducted by the Directorate of General, Customs and Central Excise Act, New Delhi. There can not be time limit in respect of validity of the result. Once the licence is issued its valid for the period of 10 years which is renewable for further period of 10 years. Therefore, there can't be a period of two months for filing an application for grant of licence.

8. Shri Prasanna Prasad, learned counsel for the respondents argued in support of the impugned orders passed by the respondents by submitting that impugned the orders have been passed in accordance with the provision of the Regulation, 2014. therefore, the petitioner is liable to be dismissed.

9. I have heard learned counsel for the parties and perused the records.

10. In exercise of power conferred by Sub-Section of Section 146 of Customs Act, 1962, the Central Board of Excise and Customs made the Regulation called Customs House Agent Licence Regulation, 2014. Under clause 3, no person shall carry on business as an Agent unless such persons holds a licence granted under these Regulations. Under Regulation 4, the Commissioner of Customs invites application for grant of such licence in the month of January of every year by means of notice affixed on the notice board. Individual, Firm or Company can applier for issuance of licence of Customs House Agent subject to fulfillment of the condition given in the Regulation 6. The Regulation 8 provides that the candidate shall be required to appear in the written as well as in oral examination at the specified center and specified dates twice every year. The applicant is permitted to pass both the written and oral examination in maximum period of 7 years . After declaration of the result, the Commissioner grants the licence on payment of fees of Rs.5,000/- to the applicant who has passed the examination referred in Regulation 8.

11. Vide Notification dated 21.06.2013, the Regulation 2004 has been suppressed and new Regulation called CBRL, 2013. The nomenclature of regulation has been changed to Customs Agent Licence Regulation, 2004 to Customs Broker Licence Regulation, 2013 with certain minor changes. There is

no changes specially in respect of provisions of inviting application , eligibility conditions to get licence ,passing of written and oral examination and license fee of Rs. 5000/- etc.. Under Proviso 2 of Regulation 6(1) of CBRL,2013, the applicant who has passed the examination under Regulation 9 of Customs House Agent Licence Regulation, 1984 and 8 of Regulation 2004 shall not be required to appear for any further examination ,it means that there is no period of validity of the examinations passed under Regulation, 1984 as well as under Regulation, 2004. Regulation 6(1) is reproduced below:-

"6. Examination of the applicant.-

(1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written as well as oral examination conducted by the DGICCE:

Provided that an applicant who has already passed the examination referred to in regulation 9 of the Customs House Agents Licensing Regulation, 1984 and Regulation 8 of the Customs House Agents Licensing Regulation, 2004 shall not be required to appear for any further examination."

12. The petitioner applied for licence under Regulation, 2004 and passed the written examination vide result dated 19.03.2013. thereafter he had appeared in the oral test and the result was declared on 13.12.2014 under Regulation, 2013.

13. The only controversy between the parties is in respect of interpretation of Regulation 7(1) of CBLR, 2013. For the ready reference, the provision is reproduced below:-

"7. Grant of Licence.-

(1) The Commissioner of Customs shall, on payment of fee of five thousand rupees grant licence in Form B to an applicant who has passed the oral examination within two months of the date of declaration of the said results.

14. It is clear from the aforesaid provision that after passing written as well as oral examination for obtaining the licence in Form-B, the candidate is required to deposit Rs.5,000/- fee and on deposit of such fee, the Commissioner of Customs shall issue a Licence within a period of two months. The respondents are giving wrong interpretation for those applicants who have passed the examination and did not submit an application for grant of licence within a period of two months. The examinations passed under Regulations 1984 and 2004 have been treated to be a valid by virtue of proviso-2 of Regulation 6(1) of CBRL,2013 hence there can't be a two months period for submitting the applicant for grant of licence.

15. The applicant is not required to apply for grant of licence under Regulation 7. He is only required to deposit the fees of Rs.5,000/-because an application for grant of licence has already been submitted under Regulation 4 of Regulation, 2013 and thereafter, the candidate is required to appear in the examination. After declaration of the result, the candidate is required to deposit the fees of Rs.5,000/- for issuance of licence. The Language of Regulation 7 is plain and

simple and according to which, the Commissioner of Customs shall grant a licence in Form-B within a period of two months on payment of fees of Rs.5,000/- by an applicant who has passed the oral examination.

16. Therefore, the Commissioner is liable to grant the licence in Form -B within two months from the date of deposit of fee Rs 5000/-by the applicant who has passed the oral examination. The applicant is not required to submit an application for grant of licence under Regulation 7(1).

17. In view of the above, the impuged action of the respondents can not be upheld. The petition is allowed and the impugned orders are hereby quashed.

18. The respondents are directed to issue Customs Broker Licence to the petitioner forthwith .

No order as to cost.