
(1992) 03 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 13722 of 1989

Sugesan and Co. (P) Ltd.

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 19-03-1992

Acts Referred:

Customs Act, 1962 — Section 146(2)

Citation : (1993) 41 ECC 5 : (1993) 45 ECR 214 : (1992) 62 ELT 10

Hon'ble Judges : Raja, J

Bench : Single Bench

Advocate : Shri N.R. Chandran and T. Sreedharan, for the Appellant; Shri P. Narasimhan, Principal C.G.S.C., for the Respondent

Judgement

Raja, J.—The above writ petition has been filed for a writ of mandamus directing the respondent or his subordinates to renew the C.K.A.

Licence No. R-64 of the petitioner for a period of 3 years from 14-7-1989 to 13-7-1992.

2. The petitioner is a Custom House Clearing Agent and has been carrying on business of clearing and shipment by virtue of the licence No. R-64,

as is claimed by the petitioner for past 65 years. On 30-10-1984, his licence has been suspended pending enquiry and that ultimately the licence

was also revoked on 8-1-1986. The said licence had its due term till 13-7-1986. In March, 1986, the petitioner filed WP 1453/86 to quash the

order of revocation and by an order dated 3-4-1987, the said writ petition was allowed. The respondent herein who was the respondent in the

writ petition filed writ Appeal 768 of 1987 and also filed C.M.P. 8676/87 for stay. The Division Bench by its order dated 4-8-1987 rejected the

said application. In such circumstances, the respondent issued a circular dated

12-8-1987 under which the petitioner was permitted to act under the licence already issued subject to the result of the writ appeal filed. It may be noticed even at this stage, that on 25-7-1987, WA 768/87 filed by the respondent also was dismissed. Even during the pendency of the writ appeal, it appears that the respondent renewed the licence of the petitioner on 7-5-1988 by making endorsement in the licence that it was renewed upto 13-7-1989. In such circumstances, the petitioner filed an application on 11-7-1989 of renewal for a further term of three years. The respondent, by his communication dated 26-9-1989 informed the petitioner that they are permitted to act as Custom House Clearing Agents till 12-8-1990 and if the petitioner did not meet the required standards for renewal in the year pending 12-8-1990, the licence may not be renewed beyond that period. Aggrieved, the petitioner has come before this court.

3. Mr. N. R. Chandran, learned Senior Counsel appearing for the petitioner while reiterating the stand taken in the affidavit filed by the petitioner contended -

(a) that under the relevant regulations namely the Customs House Agents Licensing Regulations, 1984, the renewal had to be for 3 years and the respondents had no choice or authority to restrict the normal period of 3 years and impose any further conditions for considering further renewal and;

(b) that the stipulation regarding the volume of business in a particular year has to be confined to the initial grant of regular licence and cannot be insisted upon at the renewal stage.

The submission of the learned Senior Counsel in that the respondents have no power outside the regulations to impose any such conditions since the provision for renewal does not contemplate reconsideration of the matter afresh regarding the eligibility of the petitioner at the stage of renewal.

4. Mr. P. Narasimhan, Principal Standing Counsel for the Central Government while reiterating the stand taken in the counter affidavit, contended

that though generally regular licences of the nature are renewed for 3 years on fulfilling the minimum prescribed business, since the petitioner firm

could not fulfil the minimum business standards prescribed for a year, the same was renewed only upto 12-8-1990, giving an opportunity to show

improvement in their business outturn and the respondents have every right to impose such condition for further renewals. The learned counsel also submitted that in the absence of any prohibition, the authority was well within its powers to renew the licence even for one year to watch the performance of the petitioner during that year before further renewals could be accorded. It is also contended that the respondents had a duty to be cautious in granting the Customs House Clearing Agency Licence in renewing the same as such holders of licence perform responsible duties in handling third parties funds and goods besides paying Customs duty from out of the funds entrusted to them by the importers. The further submission of the learned counsel for the respondent was that having regard to the volume of the trade passing through the Madras Port and the number of licensed Customs House Clearing Agents and such other factors, the Collector of Customs has notified by Public Notice the reasonable business out turn in terms of regulation number 10 and that such norms are obliged to be taken into account even in respect of renewals with effect from 1-1-1986. It is contention for the respondents that no exception could be taken to the limited order of renewal subject to the condition imposed and consequently, the writ petition does not merit acceptance.

5. I have carefully considered the submission of the learned counsel appearing on either side. It is relevant and necessary to refer to some of the regulations governing the grant of renewal licence. The Customs House Agents Licensing Regulations, 1984 amended from time to time are statutory regulations made by the Central Board of Excise and Customs, in exercise of its powers u/s 146(2) of the Customs Act of 1962. Regulation 4, provides for inviting applications for the grant of licence, thereas, regulation 5 provides the requirements of an application and regulation 6 provides the conditions to be fulfilled by the applicant. The further regulations provide for scrutiny of applications for licence and regulation 8 provides for the grant of temporary licence and examination of the holder of such temporary licence. The details regarding the examinations to be undertaken are also prescribed in regulation 9. Regulation 10, provides for grant of regular licence and stipulates and conditions to be satisfied and the basis on which regular licence can be issued. Regulation 10(1)(a) provides that one such condition to be satisfied is with

reference to the quantity or value of cargo cleared by licensee confirming to norms as may be prescribed by the Collector. Regulation 12 deals

with the period of validity of the licence and its renewal in the following terms :

12 Period of validity of a regular licence - (1) A licence granted under regulation 10 shall be valid for a period of three years.

(2) On an application made in this behalf to the Collector before the expiry of the period referred to in sub-regulation (1), he may renew the same

for further period of three years.

(3) The fee for renewal of a licence under sub-regulation (2) shall be Rs. 100/.

6. It could be seen from regulation 10 that a regular licence granted under regulation 10 shall be valid for a period of 3 years and on an application

made before the expiry of such licence, the Collector may renew the same for a further period of 3 years. Thus it could be seen that a renewal

when decided, has to be for 3 years, that is for the very duration of the period for which the regular licence is issued. The regulations do not

provide for the licence being renewed for a lesser period when the duration of the licence granted initially or to be renewed is fixed by the

regulations themselves. It is not given to an authority functioning under the regulations to adopt its own term or duration of the period of licence

even at the stage of renewal. What cannot be done at the initial stage, cannot be permitted to be done, even at the renewal stage. If the stand of the

respondent that there could be a renewal for a lesser period is to be countenanced, it would in substance be accepting the position that the period

of grant or renewal would be at the will or discretion of the concerned authority. Such a position, cannot be approved since it would run counter to

the specific provisions contained in the statutory regulations themselves. The renewal therefore if once granted, has to be for a further period of 3

years and could not have been for a lesser period.

7. The next question for consideration would be, as to whether at the stage of renewal, the condition visualised in regulation 10(1)(a), could be

insisted upon once over again. In my view, it cannot be, for the simple reason, that there is nothing in the regulations which leaves such absolute

discretion with the authority concerned, to impose any conditions of its choice or to insists upon all or any of the conditions required for the grant of

regular licence even at the stage of renewal. 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 licensee 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. There is yet another reason on which it could be safely assumed that the requirement under regulation 10(1)(a) cannot be insisted upon at the stage or renewal. The requirement of quantity or value of cargo to be cleared by a licensee under the regulation referred to above, was to screen the applicants before the grant of regular licence and once licence is granted, fortunes or misfortunes in business, or quantum of business should not result in permanent liquidation or elimination of the licensee concerned from the field of business. If any such right is to be claimed, it should be specifically provided for, in the regulations themselves and there cannot be any scope for implying such a power, either in the licensing authority to impose such conditions or infer an obligation and responsibility on the part of the licensee. Having regard to the nature of the problem involved, the mere laudability of the purpose or object to insist upon such a condition alone, cannot justify the legality or propriety of such imposition. For all the reasons stated above. I am of the view, that the licensing authority committed an error, in not only restricting the period of renewal to one year but also imposing the condition visualised under regulation 10(1)(a) read with the Notification No. 307 of 1985 dated 4-12-1985 for further renewal. Consequently there shall be a direction as prayed for in the writ petition, directing the respondents to accord renewal of the licence for a period of three years from 14-7-1989 to 13-7-1992. Writ Petition allowed. No costs.