(2012) 04 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No''s. 4042 and 4043-4051 of 2012

Sunil Kohli APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Customs Act, 1962 — Section 146(1), 146(2)
Customs House Agents Licensing Regulations, 1984 — Regulation 10, 10(1), 11, 14, 20
Customs House Agents Licensing Regulations, 2004 — Regulation 6, 8, 8(8)

Citation : (2012) 285 ELT 481

Hon'ble Judges : Sudhansu Jyoti Mukhopadhaya, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : U.U. Lalit, Pallav Shishodia and V. Shekhar, Piyush Kumar, Abhinav Jain, Abha R. Sharma and Ranjan Kumar, for the Appellant; R.P. Bhatt K. Swami, A.K. Sharma and B. Krishna Prasad, A.O.R., for the Respondent

Final Decision : Allowed

Judgement

1. Civil Appeal No. 4043 of 2012 (Arising out of SLP (C) No. 14131 of 2010), Civil Appeal No. 4044 of 2012 (Arising out of SLP (C) No. 5132 of 2011), Civil Appeal Nos. 4045-4050 of 2012 (Arising out of SLP (C) Nos. 7796-7801 of 2010) and Civil Appeal No. 4051 of 2012 (Arising out of SLP (C) No. 7802 of 2010) : Whether the Appellants, who successfully cleared the examinations held under the Customs House Agents Licensing Regulations, 1984 (for short, 'the 1984 Regulations') are entitled to get regular licences to work as Custom House Agents is the question which arises for consideration in these appeals filed against the judgment of the Division Bench of the Delhi High Court which allowed the appeal filed by Respondent No. 1 and modified the direction given by the learned Single Judge for grant of licences to the Appellants. The Appellants were initially employed by the Custom House Agents, who were having regular licences. They were granted G-Cards under Clause 20(6) of the 1984 Regulations. They qualified the examinations conducted by the competent authority between 1995 and 2003 under Clause 9 of the 1984 Regulations. In

response to Public Notice No. 25/2003, dated 20-6-2003 issued by the Commissioner of Customs, Delhi (for short, 'the Commissioner') for grant of temporary licences under Clause 8 of the 1984 Regulations, the Appellants submitted applications in the prescribed proforma along with the required Documents. The relevant portions of Notice dated 20-6-2003 are extracted below :

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT AND GENERAL) NEW CUSTOM HOUSE : NEW DELHI

C.No. VIII(H)13/72/2002/Pt.

Dated : 20-6-2003

PUBLIC NOTICE NO. 25/2003

Subject : Inviting applications for temporary Customs House Agents Licenses under CHA Licensing Regulations, 1984 - Regarding.

Attention of the Trade and all public is invited to Regulation 4 of Customs House Agents Licensing Regulations, 1984. In terms of the provisions contained therein, fresh applications are invited, in the prescribed proforma, for grant of temporary Licenses under Regulation 8 of CHALR' 1984 to act as Custom House Agent at Delhi, so as to reach Policy Branch, office of the Commissioner of Customs (Import & General) New Custom House, New Delhi latest by 11-7-2003.

2. The Applicants should fulfill the conditions stipulated in the aforesaid Regulations. The Applicants should ensure their eligibility before applying for such License and in the absence of the same their applications will be summarily rejected.

3. The application should be made in the Form 'A' as per Regulation 5 of CHALR' 1984 shall, inter alia, contain the following information -

(i) If the Applicant is an individual all details should be given as per the format along with his residential address.

(ii) If the Applicant is a partnership firm, the name and address of every partner of the firm along with name and other particulars of the firm. The name of the parties or the authorized employee who will be actually engaged in the clearance of the goods from Customs should be separately shown.

(iii) If the Applicant are a company registered under Companies Act, 1956 the following shall be shown separately -

(a) Name and address of the Directors Managers, Managing Directors etc.

(b) Name and address of the persons who shall be actually engaged/transacting the business at Custom House.

4. The Applicant should prove to the satisfaction of the Commissioner that-

(i) The Applicant is a graduate from recognized University, and

(ii) The Applicant is an employee of a CHA licensee and that he possesses a permanent pass in Form 'G' (prescribed under Regulation 20) and has the experience of Customs clearance work for a period of not less than three years in the capacity of such a pass holder (attach documentary proof), and

(iii) the Applicant has financial viability supported by a certificate issued by a Scheduled Bank evidencing possession of assets of the value of Rs. 50,000/-.

2. However, before the process for grant of licences could be completed, the Government of India, Ministry of Finance issued letter dated 8-12-2003 to all the Chief Commissioners of Customs and other authorities to keep the process of fresh recruitment of Custom House Agents in abeyance because the Central Board for Excise and Customs (for short, 'the Board') had initiated the process for amendment of the 1984 Regulations in the light of the recommendations made by the High-powered Committee on Reduction of Transaction Costs of Indian Exports and the Kelker Committee on Indirect Taxes.

3. After three and a half months, the Board framed new regulations titled the Customs House Agents Licensing Regulations, 2004 (for short, 'the 2004 Regulations'), which were notified on 23-2-2004. The Commissioner then issued Circular dated 21-5-2004 for conducting, examinations under Clause 8 of the 2004 Regulations for holders of temporary licence under the 1984 Regulations and also for authorised employees/partners/directors as mentioned in Clause 8(8) of the 2004 Regulations. That circular reads as under :

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT AND GENERAL) NEW CUSTOM HOUSE : NEW DELHI

C.No. VIII(H)13/66/04/1151

Dated 21-5-04

CIRCULAR

It has been directed to hold the written examination under Regulation 8 of the CHA Licensing Regulation, 2004 on 14-6-2004 from 10.00 Hrs. to 13.00 Hrs. at New Customs House near IGI Air Port Complex, New Delhi-37. The examination is for holders of Temporary Licence under Regulation 8 of the CHALR 1984, and also for authorized employees/partners/Directors as mentioned in Regulation 8(8) of CHALR' 04.

The Customs House Agents holding regular Licence may sponsor the name of one or more of their employees/partners/directors for the purpose of appearing in the above mentioned written examination. The conditions to be fulfilled by such Applicant/authorised employees are specified in Regulation 6 of the CHALR 04.

The applications may be submitted on the letter head of the CHA and should be accompanied by the following :

(i) Two recent photograph of the candidate duly attested by the CHAs.

(ii) Certified copy of the CHA Licence.

(iii) Certified copies of proof of educational qualification.

(iv) Salary slip/certificate in case the candidate is employee of the CHA.

All the applications must be received this office positively by .... this on 3-6-04.

Sd/- Joint Commissioner (Policy)

4. With a view to clarify the doubts raised by field formations the Board issued Circular dated 10-6-2004, the relevant portions of which are extracted below:

Circular No. 42/2004 10th June, 2004.

F. No. 502/4/2004-Cus. VI (Pt.I) Government of India Ministry of Finance Department of Revenue Central Board of Excise and Customs

Subject: Clarifications on CHALR 2004 Regarding

I am directed to refer to the above subject and to say that references have been made by field formations to the Board seeking clarifications on various provisions of the Customs House Agents Licensing Regulations, 2004.

2. These have been examined by the Board, and necessary clarifications are given at Annexure-I enclosed.

3. These may kindly be brought to the notice of all concerned through appropriate public notices.

4. Hindi version will follow.

(V. Kezo) Under Secretary to the Government of India Tel. No. 23094610

5. Some of the Appellants made representations to the Chairman of the Board for issue of a clarification that those who had qualified the examinations conducted under the 1984 Regulations are not required to appear in the examination being conducted under the 2004 Regulations, but they did not get any response. Therefore, the Appellants filed Writ Petition (C) Nos. 12808-73 of 2004 in the Delhi High Court Sunil Kohli and Others Vs. Union of India (UOI) and Another, for issue of a mandamus to the Respondents to grant permanent licences to them to work as Custom House Agents. They also prayed for quashing of clarification dated 10-6-2004 issued by the Board in relation to Clause 9 of the 1984 Regulations and Clause 8 of the 2004 Regulations. These prayers were founded on the assertions that by having qualified the examinations conducted under the 1984 Regulations, the Appellants had acquired a right to get licences to work as Custom House Agents and that they cannot be asked to again appear

in the examination being held under the 2004 Regulations.

6. The official Respondents contested the writ petition and pleaded that after coming into force of the 2004 Regulations, the examinations conducted under the 1984 Regulations became redundant and those who qualified the examinations held earlier do not have the right to get the licences de hors the provisions of the 2004 Regulations.

7. During the pendency of the writ petition the Commissioner issued letter dated 3-3-2005 and declared that 563 applications received pursuant to Public Notice No. 25/2003 cannot be processed after enforcement of the 2004 Regulations and the Applicants are free to apply for grant of licences under the new regulations. That letter reads as under :

Public Notice No. 06/2005 Dated 24 February, 2005

Subject : Invitation of applications for grant of temporary Custom House Agents under CHA Licensing Regulations, 1984, C/Reg.

Attention of the trade and all public is invited to Public Notice No. 25/2003 dated 20-6-2003, whereunder applications were invited from the eligible candidates for grant of temporary Custom House Agents licenses under the Custom House Agents Licensing Regulation 1984.

Pursuant to the issuance of the above stated Public Notice, 563 applications were received for grant of temporary Custom House Agents Licenses under Regulation 4 of the Custom House Agents Licensing Regulations, 1984.

The applications called and received under Public Notice No. 25/2003 were ordered to be kept pending and not to be processed further by an order dated 8th December, 2003 issued under F.No. 502/9/2002-Cus. VI (Pt.II) by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, New Delhi. Since the new regulations for the purpose were being formulated by the Ministry Pursuant to the recommendations of the high powered committee on reduction of Transaction Costs of Indian Exports and the recommendations of the Kelker Committee on indirect taxes. As the process of making amendments to the Said CHALR' 1984 have been initiated, the Board has directed that the process of fresh recruitments of Customs House Agents be kept in abeyance till the time new regulations are notified.

Whereas, now the Custom House Agent Licensing regulations' 1984 have been rescinded w.e.f. 23-2-2004 and new Custom House Agent Licensing Regulation 2004 have been promulgated w.e.f. 23-2-2004 vide Notification No. 21/2004 - Cus. (N.T.), dated 23-2-2004 issued by the Ministry of Finance, Department of Revenue, New Delhi. As the Custom House Agent Licensing Regulations of 2004 notified by the Ministry vide Notification number mentioned supra does not contain any provision for grant of temporary licenses for appointment of custom house agents, it is not possible to process further with regard to 563 applications received under Public Notice No. 25/2003 dated 20-6-2003.

All the applications pending with the department received under the Public Notice No. 25/2003 cannot be considered for the intended purpose and therefore stand disposed of accordingly. This Custom House shall, however, call for fresh applications for grant of Custom House Agent license as and when may be warranted. The present Applicants are free to file their applications at that time and the same shall be considered on merits as per the CHALR 2004.

This Public Notice is issued without prejudice to the contentions raised by the Petitioners in the Writ Petition No. W.P. (C) No. 2919/2003 in Transair International v. UOI and Ors. and C.M. No. 7673/2003 under CWP No. 2137/2002 in Eminent Cargo v. UOI already disposed by the Hon'ble Delhi High Court and Writ Petition No. 12808-73/2004 in Sunil Kohli and Others v. UOI still pending for disposal before the Hon'ble High Court of Delhi.

Sd/- (Suman Nayar) Commissioner

8. The learned Single Judge of the High Court referred to the relevant clauses of the two sets of regulations and held that failure of the concerned authorities to process the applications received pursuant to Public Notice dated 20-6-2003 cannot be made a ground to deprive the Appellants of their right to get licences merely because in the meanwhile the Board framed the 2004 Regulations. The learned Single Judge further held that in view of the prefatory statement contained in the 2004 Regulations, the rights of those who had qualified the examination held under the 1984 Regulations are saved and they are entitled to get licences subject to fulfillment of other conditions. The learned Single Judge accordingly directed that the Appellants be granted licences under the 2004 Regulations by treating them to have cleared the examinations held under Clause 8 of those regulations, subject to fulfillment of the conditions specified in Clauses 6 and 9 thereof.

9. In compliance of the order of the learned Single Judge, the Commissioner issued Notice Nos. 54 of 2005, dated 17-10-2005 and 56 of 2005, dated 16-11-2005, entertained the applications filed by the Appellants and granted licences to all those who satisfied the conditions prescribed under the 2004 Regulations.

10. After about 3 months, the official Respondents filed letters patent appeal along with an application for condonation of 182 days' delay. The Division Bench of the High Court condoned the delay, introduced the concept of vacancies in what it thought to be the cadre of Customs House Agents and disposed of the appeal by directing that the concerned authority shall process the case of the Appellants, who had qualified the examinations for grant of licence under the 1984 Regulations with the rider that such of the Appellants, who could not have been granted licence under the 1984 Regulations on account of the vacancies which existed till 2004 would be governed by the new regulations. This is evident from the following text of the impugned judgment :

learned Counsel for the Appellants contend that the only plea, which they seek to advance now, is that such of the persons who had cleared the exam were only entitled to consideration for grant of licence under the 1984 Regulations, subject to their fulfilling the other requirements including the number of licences declared to be available and in that eventuality those of the original Petitioners who were so found eligible would be entitled to their status as a licencee under the 2004 Regulations. It was thus contended that without such scrutiny, all the original Petitioners could not have been declared as successful for grant of licence under the 1984 Regulations.

The effect of the aforesaid submission is that such of the candidates who cleared the examination and fulfilled all other requirements under the 1984 Regulations, would be eligible for grant of licence under the 1984 Regulations but not the others. Thus, those who were granted licence under the 1984 Regulations would continue to hold the licence in view of the provisions of the 2004 Regulations but the remaining would have to satisfy the requirements of 2004 Regulations including appearing for the examination in terms of the 2004 Regulations.

We find force in the aforesaid contention for the reason that the grievance of the Respondents herein was that pursuant to the declaration of their results, their applications were liable to be processed under the 1984 Regulations. This would have been the position had the issuance of licences not been kept in abeyance or if 2004 Regulations had not come into force. The Respondents cannot get a larger relief than that because this is their best case. The direction thus to the Appellants ought to be to process the case of the Respondents for grant of licence under the provisions of the 1984 Regulations and such of the persons who are found eligible be issued the licence under those Regulations. This would imply that those Respondents would then be entitled to a continuous licence as per provisions of 2004 Regulations. However, the other set of Respondents who could not have been granted the licence under the 1984 Regulations on account of vacancies as existed till 2004 Regulations were promulgated or any other parameter would have to be governed by the 2004 Regulations. The directions of the learned Single Judge stand modified to that extent.

11. We have heard learned Counsel for the parties. Section 146(1) of the Customs Act, 1962 declares that no person shall carry on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs station unless such person holds a licence granted for the purpose in accordance with the regulations. Section 146(2) empowers the Board to make regulations for the purpose of carrying out the provisions of that section including the grant of licence. In exercise of that power the Board has, from time to time, framed regulations. Since we are concerned with the 1984 and the 2004 Regulations, it will be useful to notice the relevant clauses thereof. The same are as under :

Customs House Agents Licensing Regulations, 1984

4. Invitation of application. - The Commissioner may invite applications for the

grant of such number of licences as assessed by him, to act as Customs House Agents in the month of January every year by means of a notice affixed on the notice board of each Customs Station as well as through publication in at least two newspapers having circulation in the area of his jurisdiction specifying therein the last date of receipt of application. Such application shall be for clearance work within the jurisdiction of the said Commissioner.

5. Application for licence. - (1) An application for a licence to act as a Custom House Agent in a Customs Station shall be made in Form A (See Form No. 47 in part 5) and shall inter alia contain the name and the address of person applying; and

(2) If the Applicant is a firm -

(a) The name and address of every partner of the firm, the firm's name, and

(b) the name of the partner or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs.

(3) If the Applicant is a company

(a) the name of each director, manager, managing director, and

(b) the names of director, manager or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs.

6. Conditions to be fulfilled by the Applicant. - The Applicant or the person referred to in clause (b) of Sub-regulations (2) and (3) of Regulation 5 as the case may be, shall prove to the satisfaction of the Commissioner that :

(a) the Applicant is a graduate from a recognised University and is an employee of a licensee and that the possessed a permanent pass in Form G prescribed under Regulation 20 and has the experience of work relating to clearance of goods through the Customs, for a period of not less than three years in the capacity of such a passholder :

Provided that the Commissioner may relax the possession of permanent pass in Form G to one year for reasons to be recorded in writing.

(b) the Applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner evidencing possession of assets of the value of not less than Rs. 1 lakh in the case of Applicants for the grant of licence in respect of any one of the Customs Stations at Bombay, Calcutta, Madras, Cochin, Kandla, Goa, Mangalore, Tuticorin or Visakhapatnam and not less than Rs. 50,000/- in the case of each of the other Customs Station, situated at places other than those specified above :

Provided that in cases where a Commissioner's jurisdiction extends to more than one Customs Station, the Commissioner may issue one licence for all the Stations or more that one such Station to be specified in the licence, waiving the need for separate compliance of the provisions of clauses (a) and (b) above for such additional Customs Stations. The Commissioner may also waive the need for separate compliance of the requirement of Regulation 11 in such cases :

Provided further that in places where there is more than one Commissioner exercising jurisdiction over different Customs Stations and Custom House Agents licensed under the Custom House Agents Licensing Regulation 8 from the Commissioner, other that the one who has issued them the existing licence, without being required to comply with the requirements of Regulation 6 in regard to financial viability or the requirements as to fresh deposit in terms of Regulation 11.

8. Grant of temporary licence. - (1) Any Applicant whose application is received within the last date specified in Regulation 4 and who satisfies the requirements of Regulation 5 and 6, shall be permitted to operate as Custom House Agent at the Customs Station for which the applications made initially for the period of one year against temporary licence granted by the Commissioner in this regard in Form B (See Form No. 48 in Part 5).

Provided that when evidence is produced to the Commissioner that the Applicant has already availed of two chances for qualifying in the written or oral examination prescribed in these regulations and would like to avail of the third chance as soon as the next examination is held in terms of Regulation 9 and that the Applicant has been able to account for the minimum volume of work prescribed for such agents in the course of one year's working, the Commissioner may extend the aforesaid period of one year for which the temporary licence has been granted by another six months or such further period not exceeding one year to enable the Applicant to avail of the third chance for qualifying in the examination in terms of Regulation 9. While granting such extension, the Commissioner of Customs shall satisfy himself that the requirements of Regulations 10(1)(a) and 10(1)(b) had been fully met by the Applicant.

(2) Any person, whose application for grant of temporary licence under Sub-regulation (1) of regulation 8 is rejected by the Commissioner of Customs may represent to the Chief Commissioner of Customs or Chief Commissioner of Customs and Central Excise, as the case may be against such order rejecting the grant of a temporary licence, within 30 days of the communication of the impugned order.

(3) In case the number of Applicant fulfilling the conditions prescribed under Regulation 6 is more than the number of licences to be issued as assessed under Regulation 4, the Commissioner may adopt seniority in experience as 'G' pass holder of such Applicants as the criterion to give precedence to the Applicants :

Provided that if more than one Applicant has the same period of experience, the Applicant who is older in age shall get precedence.

9. Examination of the Applicant. - (1) The holder of a temporary licence in the

case of an individual and the person or persons who will be actually engaged in the work of clearance of goods through customs on behalf of the firm or company holding a temporary licence, as the case may be, shall be required to qualify in examination, at the earliest opportunity. Such person or persons shall be eligible to appear in the examination as soon as a temporary licence is granted and shall be permitted to avail of three chances within a period of 2 years from the date of issue of the temporary licence of payment of prescribed examination fee of (Rs. 500/-) for each examination.

(2) The examination referred to in Sub-regulation (1) shall include a written and oral examination and will be conducted twice every year. Each Applicant would be permitted to avail of a maximum of three chances to qualify in the said examination but all such chances should be availed of within a maximum period of 2 years from the date of grant of temporary licence.

(Explanation : A person who qualifies in the written examination, but fails in the oral test linked to it, shall be treated as having failed in that chance; but he will not be required to appear in the written examination in the subsequent chances.)

(3) The examination may include questions on the following :-

a. preparation of various kinds of bills of entry and shipping bills;

b. arrival entry and clearance of vessels;

c. tariff classification and rates of duty;

d. determination of value of assessment;

e. conversion of currency;

f. nature and description of documents to be filed with various kinds of bills of entry and shipping -bills;

g. procedure for assessment and payment of duty;

h. examination of merchandise at the Customs Stations;

i. provisions of the Trade of Merchandise Marks Act, 1958 (43 of 1958);

j. prohibitions of import and export;

k. bonding procedure and clearance from band;

l. re-importation and conditions for free re-entry;

m. drawback;

n. offences under the Act,

o. the provisions of allied Acts including Imports and Exports (Control) Act, 1947 (18 of 1947), Foreign Exchange Regulation Act, 1973 (46 of 1973), Indian Explosives Act, 1884 (4 of 1884), Arms Act, 1959 (54 of 1959), Opium Act, 1879

(1 of 1878), Drugs and Cosmetics Act, 1940 (23 of 1940), Destructive Insects and Pests Act, 1914 (2 of 1914), Dangerous Drugs Act, 1930 (2 of 1930) in so far as they are relevant go the clearance of goods through customs;

p. procedure in the matter of refund of duty paid, appeals and revision petitions under the Act.

(4) The Commissioner shall also satisfy himself whether the licencsee in Form B (See Form 48 in para 5) if he is an individual, possesses, or in the case of a firm of company, the persons who will be actually engaged in the work relating to clearance of goods through customs on behalf of that firm or company, possess satisfactory knowledge of English and the local language of the Customs Station :

Provided that in the case of persons deputed to work exclusively in the docks, knowledge of English will not be compulsory. Knowledge of Hindi will be considered as a additional or desirable qualification.

(5) The holders of a regular licence under Regulation 10 may authorise one of their employees or partners or directors, to appear for the examination referred to in Sub-regulation (1), on behalf of such holders of regular licence in addition to the person of their agency who has passed the examination referred to in Sub-regulation (1).

10. Grant of regular licence. - (1) The Commissioner shall, on receipt of an application in Form C (See Form No. 49 in Part 5), grant a regular licence in Form D (See Form 50 in Part 5) on payment of a fee of (Rs. 5000/-) to such holder of a temporary licence who qualifies in an examination referred to in Regulation 9 and whose performance 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 complaints of misconduct including non-compliance of any of the obligations specified in Regulation 14.

(2) The Customs House Agents who are granted regular licencee under Regulation 10, shall be eligible to work in all Customs Stations subject to fulfillment of the following requirements :

a. the licensee shall make an application to the Commissioner of the concerned Customs Station where he intends to transact business for purposes of registering himself and his authorised staff;

b. he fulfills the conditions stipulated in clause (b) of Regulation 6 relating to financial soundness and possesses the ability to provide adequate warehousing and transport facilities at the place of clearance of goods and production of evidence relating to availability of sufficient clientele at his disposal;

c. he shall also be required to enter into a separate bond in Form D (See Form 50 in part 5) for due observation of these regulations and to furnish a separate Bank Guarantee for each Customs Stations as stipulated under Regulation 11; (he shall produce evidence of knowledge for the local language of the Customs Station, at which he wished to conduct business;).

d. On fulfilment of the aforesaid conditions, the Commissioner of the Customs Station at which the licensee intends to transact business shall grant a licence in Form 'D' (See Form No. 50 in part 5) authorising him to transact business at that Customs Station :

Provided that no separate licence would be required in places where in addition to a Custom House handling imports by sea, there is also an international airport to handle imports by air even if under the jurisdiction of a different Commissioner.

(3) The Commissioner may reject an application for the grant of regular licence to act as Custom House Agent if the holder of the temporary licence fails to qualify in the examination in terms of Regulation 9, or the holder of temporary licence on evaluation of his performance in terms of Regulation 10 is not considered suitable due to any other reason to be stated in the order passed by the Commissioner.

Customs House Agents Licensing Regulations, 2004.

G.S.R. No. 132(E). In exercise of the powers conferred by Sub-section (2) of Section 146 of the Customs Act, 1962 (52 of 1962), and in supersession of the Customs House Agents Licensing Regulations, 1984, except as respect things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely :-

1. Short title and commencement. - (1) These regulations may be called the Customs House Agents Licensing Regulations, 2004.

(2) They shall come into force on the date of their publication in the Official Gazette.

4. Invitation of application. - The Commissioner of Customs may invite applications for the grant of such number of licences as assessed by him, to act as Customs House Agents in the month of January every year by means of a notice affixed on the notice board of each Customs Station as well as through publication in at least two newspapers having circulation in the area of his jurisdiction, specifying therein the last date of receipt of application. Such application shall be for clearance work within the jurisdiction of the said Commissioner of Customs.

5. Application for licence. - (1) An application for a licence to act as a Customs House Agent in a Customs Station shall be made in Form A and shall, inter alia, contain the name and the address of the person applying; and

(2) If the Applicant is a firm -

(a) the name and address of every partner of the firm, the firm's name, and

(b) the name of the partner or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs.

(3) If the Applicant is a company -

(a) the name of each director, managing director, manager, and

(b) the names of director, managing director, manager or the duly authorised employee, who will actually be engaged in the clearance of goods or conveyances through the customs.

6. Conditions to be fulfilled by the Applicant. - The Applicant referred to in clause (b) of Sub-regulations (2) and (3) of Regulation 5, as the case may be, or a person who has passed the examination referred to in Regulation 8, shall prove to the satisfaction of the Commissioner of Customs, that -

(a) the Applicant or his authorized employee, is a graduate from a recognized University and possesses a professional degree viz. C.A./M.B.A./L.L.B./Diploma in Customs Clearance work from any Institute or University recognized by the Government with a working knowledge of computers and customs procedures, or is a graduate having at least three years experience in transacting Custom House Agent work as a G-Card holder, or a person who has passed the examination referred to in Regulation 8, or is a retired Group 'A' officer from the Indian Customs and Central Excise Service (IC & CES) having a minimum of ten years experience in Group 'A'.

(b) the Applicant has financial viability supported by a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner of Customs evidencing possession of assets of value of not less than Rs. 2 lakhs;

(c) the Applicant is a citizen of India.

8. Examination of the Applicant. - (1) Any Applicant whose application is received within the last date specified in the notice or publication, as the case may be, referred to in Regulation 4 and who satisfies the requirements of Regulations 5 and 6, shall be required to appear for the written as well as oral examination conducted by the Director General of Inspection at specified centers and specified dates, twice every year, for which intimation shall be sent individually in advance before the date of examination.

Provided that an Applicant who has already passed the examination referred to in Regulation 8 will not be required to appear for any further examination.

(2) The Applicants declared successful in written examination shall be called for oral examination.

(3) It shall be necessary for the Applicant to clear written as well as oral examinations separately. An Applicant who clears the written examination but fails in the oral examination linked to it, shall have to clear the oral examination

within two years of the related written examination irrespective of the number of chances, and if he fails do so, he shall be treated as having failed in the examination.

(4) An Applicant shall be allowed a maximum period of seven years within which he shall pass both the written and oral examinations. No further extension of time shall be granted.

(5) Notwithstanding anything contained in Sub-regulation (4), any person who holds a temporary licence granted under regulation 8 of the Customs House Agents Licencing Regulations, 1984, shall be allowed to pass the examination within a period of two years from the date of commencement of these regulations.

9. Grant of licence. - (1) The Commissioner of Customs shall on payment of a fee of Rs. 5,000/- grant a licence in Form B to an Applicant who has passed the examination referred to in Regulation 8.

(2) The Customs House Agents who are granted licences under Sub-regulation (1) shall be eligible to work in all Customs Stations within the country subject to intimation in Form C to the Commissioner of Customs of the concerned Customs Station where he intends to transact business. No separate licence shall be required in places where in addition to a Customs House handling imports by sea, there is also an International airport to handle imports by air, even if under the jurisdiction of a different Commissioner of Customs.

12. An analysis of above reproduced clauses makes it clear that the procedure prescribed in the 1984 Regulations and the 2004 Regulations for grant of licence to act as Custom House Agent is substantially similar. In terms of Clause 4 of the 1984 as also the 2004 Regulations, the Commissioner is empowered to invite applications in the month of January every year for grant of the specified number of licences as assessed by him, to act as Custom House Agents. An application for grant of licence to carry the business as Custom House Agent is required to be made in the prescribed form along with the necessary documents. If the Competent Authority is satisfied that the Applicant fulfills the prescribed eligibility conditions then he can be considered for grant of licence. However, there was a significant difference in the schemes of the two sets of regulations inasmuch as while the 1984 Regulations postulated grant of temporary licence and prescribed holding of such licence as a condition of eligibility for appearing in the examination conducted for grant of regular licence, the 2004 Regulations do not envisage grant of temporary licence and possession of such licence is not sine qua non for participating in the process of grant of licence under Clause 9 of the 2004 Regulations. Of course, the Applicant is required to clear the written as well as oral examinations to be held in terms of Clause 8 of those regulations. At the same time, the language of the opening paragraph of the 2004 Regulations and proviso to Clause 8(1) thereof make it clear that those who have already passed the examination are not required to appear in any further examination. It is also

evident from the plain language of the opening paragraph of the 2004 Regulations that the actions already taken under the earlier regulations, that is, the 1984 Regulations were saved. In other words, the examinations held under the 1984 Regulations did not get nullified with the enactment of the 2004 Regulations and the candidates who had qualified the examinations held under the 1984 Regulations are not required to again qualify the examination which may be held under the 2004 Regulations. As a corollary, it must be held that those who had cleared the examinations held between 1995 and 2003 under the 1984 Regulations would be eligible for grant of licence subject to their fulfilling other conditions of eligibility.

13. Although, the language of Clause 4 of the 1984 Regulations and the 2004 Regulations suggest that every year the Commissioner is required to make an assessment of the number of licences proposed to be granted and then invite applications for grant of such licences, Public Notices dated 20-6-2003 and 24-2-2005 do not contain any indication of such an assessment having been made by the Commissioner before inviting applications for grant of licences. Therefore, the Division Bench of the High Court was not justified in introducing the concept of vacancies in what it thought to be the cadre of Custom House Agents and limit the number of licences to be granted to the candidates, who successfully qualified the examinations conducted under the 1984 Regulations.

14. The clarification issued by the Board vide Circular dated 10-6-2004 and the decision of the Commissioner to dump 563 applications received pursuant to Public Notice dated 20-6-2003 are contrary to the language of proviso to Clause 8 of the 2004 Regulations and the prefatory statement contained in those regulations and, therefore, the same cannot be relied upon for denying licences to the Appellants.

15. The matter deserves to be considered from another angle. The Regulations framed by the Board u/s 146(2) of the Customs Act are in the nature of delegated legislation. The language of that section and other provisions of the Customs Act do not indicate that the Board is empowered to make Regulations with retrospective effect. Therefore, the 2004 Regulations would operate prospectively and would not in any manner affect the eligibility and entitlement of those who had qualified the examination held under the 1984 Regulations for grant of licences to act as Custom House Agents. The saving clause contained in the opening paragraph of the 2004 Regulations unmistakeably show that while enacting the new Regulations, the Board did not want to adversely impact the right of those who had qualified the examination held under the 1984 Regulations because the nature of the examinations envisaged under the two sets of Regulations is substantially similar.

16. In view of the above, we hold that the learned Single Judge was right in issuing direction for grant of licences to the Appellants subject to their fulfilling the conditions specified in Clauses 6 and 9 of the 2004 Regulations and the Division Bench of the High Court committed an error by modifying the order of

the learned Single Judge. In the result, the appeals are allowed, the impugned judgment is set aside and order dated 23-7-2005 passed by the learned Single Judge in Civil Writ Petition Nos. 12808-73 of 2004 Sunil Kohli and Others Vs. Union of India (UOI) and Another, is restored. The parries are left to bear their own costs.

