(1992) 10 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 1134 of 1992

Sylvester And Company APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-10-1992

Acts Referred:

Customs Act, 1962 — Section 146

Citation : (1993) 1 BomCR 299 : (1993) 44 ECR 41 : (1993) 63 ELT 53

Hon'ble Judges : Sujata V. Manohar, J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : Dr. N.R. Kantawala and Mr. S.N. Kantawala, instructed by M/s Kantawala and Co, for the Appellant; Shri M.I. Sethna, Shri S.M. Shah and K.C. Sidhwa, for the Respondent

Judgement

Srikrishna, J.—This writ petition under Article 226 of the Constitution of India, impugns an order of the Collector of Customs, Bombay dated 29th April 1992.

2. The petitioners are a partnership firm, carrying on business as Licensed Clearing Agents. The petitioner hold a valid licence issued under the Customs House Agents Licensing Regulations, 1984 (hereinafter referred to as the Regulations). The petitioners hold a valid licence since the year 1945, which has been renewed from time to time under the Regulations in force. Under Regulation 8, a temporary licence to act as Customs House Agents may be granted upon fulfilling the conditions stipulated Regulations 6. Examinations are held in accordance with Regulation No. 9 and, if a partner of a partnership firm, or any full-time employee employed by a partnership firm or a company, or any individual carrying on business by himself, qualifies by passing the said examination, then a regular licence is granted under Regulation 10. The Customs House Agents, who are granted a licence under Regulation 10, are entitled to work as such in all customs stations upon their fulfilling the requirements prescribed in sub-regulation (2) of Regulation 10. So far as the petitioners are concerned, they have been holding a regular licence which has been renewed

from time to time. In view of the fact that all their partners are qualified, they having passed the examination conducted under Regulation 9, the regular licence issued to the petitioners was last renewed upto 31st of December 1991. The petitioners made an application on 6th September 1991 to the Assistant Collector of Custom (Respondent No. 3), seeking renewal of their licence for a further period of three years. The annexed the required documents to their application. By his memorandum dated 7th November 1991, the 3rd respondent called upon the petitioners to furnish information and documents as detailed in his memorandum. This was complied with by the petitioners'' letter dated 28th November 1991. By the letter dated 19th December 1991, the 3rd respondent pointed out to the petitioners that their four working partners, Alex Paul Fernandes, Francis Claver Fernandes, Alex Bosco Agnel Fernandes and Mark Savio Fernandes, through whom the Customs House Agents business was transacted on behalf of the firm, were also working directors in M/s. Sylvester Forwarders Pvt. Ltd., an associate company carrying on business as Customs House Agents and holding Licence CHA No. 11/648. The 3rd respondent, therefore, requested the petitioners that they should clarify as to under which CHA Licence the aforesaid persons would be actually transacting Customs House Agents business, i.e. signing of documents, etc. in connection with the work of the customs department.

Wednesday, 21st October 1992.

3. The petitioners pointed out by their letter dated 26th December 1991, that their business was a family business, which comprised of family members as working partners, each one of whom was duly qualified to operate as Customs House Agent. The petitioners stated that all the partners would be actively involved in transacting business of the firm. By his letter dated 22nd January 1992, the 3rd respondent informed the petitioners that the Collector of Customs had decided that one person only should sign in respect of one CHA Licence. In view of this decision communicated to the petitioners, the petitioners were called upon to inform the names of the persons who would be transacting the business on behalf of their firm. The petitioners submitted an application dated 5th February 1992, justifying how every one of their partners was entitled to operate on behalf of their firm. The Collector of Customs then passed the impugned order dated 29th April 1992, rejecting the application. The only reason for the order, contained in the operative part, is that in view of the fact that both the units of the petitioner-firm were essentially family units and all the four persons who were Partners/Directors were qualified in the examination under Regulation 9, the respondent No. 3 was of the view that they needed to insist on applying the restriction of signing the documents by only one person for one unit. It is this restriction imposed upon their operations that the petitioners seek to challenge by the present petition.

4. The learned counsel for both sides have taken us through the Customs House Agents Licensing Regulations, 1984. We notice that there is no provision under

which such a restriction could have been validly imposed upon a Customs House Agent. As long as the Customs House Agent holds a regular licence, which would be issued only upon his proprietor/partner/director or employee being qualified in the examination conducted under Regulation 9, and he complies with the other stipulations contained in Regulation 10, there does not appear to be any provision in the Regulations which provides that such an authorised Customs House Agent must operate through only one qualified person in each business with which he is connected.

5. Mr. Sethna, learned counsel for the respondents, faintly attempted to justify the action of the Collector of Customs on the basis of the affidavit filed at the time of admission of the petition. The only reasons given in justification are contained in paragraphs 5 and 6 of the affidavit dated 14th May 1992 filed on behalf of the respondents, which vaguely speak of ensuring that there would be no fraud committed and to prevent growth of monopolies in the business. While both objects may be laudable, we see no power in the Collector of Customs under the Regulations to impose such a restriction upon the Customs House Agent holding a valid licence. Mr. Sethna was frank enough to admit that there was no such power vested in the Collector of Customs under the Regulations, but submits that it was wholesome practice which had been developed. Wholesome or otherwise, there cannot be a practice which is not supported by the Regulations. If the Regulations are wanting in any aspect of the matter, the remedy is to have them appropriately amended. As long as the Regulations stand as they are, we are of the view that it is not open to the Collector of Customs to impose such a restriction upon the petitioners as done by the impugned order. The impugned order of respondent No. 3 is clearly illegal and unwarranted by the Regulations and is, therefore, liable to be quashed and set aside.

6. In the result, the order of the Collector of Customs dated 29th April 1992 (Exhibit ''J''), is hereby quashed and set aside. Rule is made absolute in terms of prayer (a). Rule is also made absolute in terms of prayer (b) (iii), subject to the provisions of the Regulations as in force from time to time.

The respondents are directed to pass appropriate orders on the application of the petitioners for renewal of their Customs House Agents Licence, in the light of the observations made herein, and in accordance with the law.

The respondents to pay the costs of the petition.

Certified copy to be expedited.

