(2018) 02 MAD CK 0268

In the Madras High Court

Case No : 2898 of 2012

The Chairman, Central Board of Excise and Customs & Ors. APPELLANT

Vs

K.P.Prem Ananth RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Citation : (2018) 02 MAD CK 0268

Hon'ble Judges : S.Manikumar, V.Bhavani Subbaroyan

Bench : Division Bench

Advocate : T.R.Senthil Kumar

Final Decision : Dismissed

Judgement

1. Writ appeal is directed against the order made in W.P.No.24401 of 2012 dated 01.10.2012, by which the writ Court directed the appellants to

issue necessary certificate granting Customs House Agents to respondent/writ petitioner, as per Regulation 9 of the Customs House Agents

Licencing Regulations, 2004 to the writ petitioner, complying with the requirements prescribed under Regulation 10 of the said regulations, within a

period of eight weeks from the date of receipt of a copy of the order, made in writ petition No.24401 of 2012.

2. While doing so, writ Court has considered a Hon''ble Division Bench judgment of the Gujarat High Court, which has quashed the new

regulations issued in the year 2004 vide order dated 01.10.2010 in Ravindra K. Joshi Vs. Union of India, reported in 2011 (267) ELT 337 (Guj.).

3. Writ Court has also considered a decision of the Hon''ble Supreme Court dated 27.04.2012 in Sunil Kohli Vs. Union of India and others,

reported in 2012-TIOL-45-SC-CUS, wherein, the Hon''ble Supreme Court upheld the decision of the Delhi High Court, which held that those

who had cleared the examinations under the regulations issued in the year 1984, would be eligible for the grant of licence, subject to their

qualifying, other conditions of eligibility.

4. Though, in the instant appeal, reliance has been made on the decision of Bombay High Court in W.P.No.1522 of 2011 dated 07.12.2011 and

Mr.T.R.Senthil Kumar, learned counsel for the appellant drew the attention of this Court that in similar circumstances, in W.A.No.410 of 2012, a

Hon''ble Division Bench of this Court has granted interim order and prayed to entertain the instant appeal, this Court is not inclined to accept the

said contentions for the reason that W.A.No.410 of 2012, has already been disposed of.

5. Following the judgment of the Hon''ble Supreme Court in Sunil Kohli Vs. Union of India and others, reported in 2012 (285) ELT 481 (SC),

Government of India, Ministry of Finance (Department of Revenue) Central Board of Excise and Customs, New Delhi, have issued circular dated

06.02.2013.

6. After considering the submissions of the Revenue, decisions in Sunil Kohli''s case [cited supra] and the circular dated 06.02.2013, this very

same Bench, vide order dated 22.08.2017 in W.A.No.42 of 2013, at paragraph Nos.21 to 27, ordered as hereunder:

21. From the material record, it could be deduced that the decision made in W.P. No.5472/2010, dated 31.03.2010, came to be

challenged by the Department of Customs, by filing Writ Appeal No.1182/2011, and that the same has been dismissed by a Hon''ble

Division Bench of this court on 26.09.2011.

22. A Hon''ble Division Bench of Gujarat High Court, has quashed the new Regulations issued in the year 2004 by order dated

01.10.2010. Bombay High Court in W.P. (L) No.1522/2011 reported in 2012 (280) ELT 353 (Bom) had taken a different view.

Aggrieved by the judgment of the Bombay High Court, one of the appellants, Sunil Kohli, has approached the Hon''ble Supreme

Court in C.A. No.4053-4061 of 2012. The Hon''ble Apex Court, accepted the stand of the appellants therein, set aside the

judgments and orders, passed by the Delhi High Court, against the Custom

House Licensing Agents and allowed the Civil Appeals.

23. In Union of India vs. Ravindra K. Joshi reported in 2013 (291) E.L.T. 481 (S.C.), taking note of the communication dated

05.04.2013, that the view of the Sunil Kohli''s case has been acceptedby the Department and that the Revenue has issued Circular

No.06/2013 dated 06.02.2013, the Hon''ble Supreme Court has ordered here under:

8. By the communication dated 5-4-2013, the Central Board of Customs and Excise has informed Shri Prasad, that

the revenue has accepted the view expressed by this court in Sunil Kohli''s case and accordingly they have issued a

Circular NO.06/2013 dated 6.2.2013.

9. The instructions so received by Shri Prasad reads as under:

Now, subsequent to order in C.A. Nos.4053-4061 of 2012 in the case of Sunil Kohli & Ors. v. Union of India and

Ors., vide order dated 27-4-2012, C.B.E. & C. has issued Circular No.06/2013 thereby deleting para 8.1 and 802 of

Circular No.09/2010- Customs dated 8.4.2010. Thus need of passing a special examination for Regulation 9

candidates of earlier regulation (CHAIR, 1984) no more exists for consideration of fresh licence. Hence, it is stated that

the issues involved in both the cases viz. SLP (C) Nos.6026/2012 and 5143/2012 are similar and Circular No.06/2013

which addresses the concern of the appellants may be brought to the notice of the Apex Court during the hearing of the

appeals.

10. In view of the information received by Shri Prasad, he would submit that the issues raised in these appeals are

squarely covered by the decision of this Court in Sunil Kohli''s case (supra).

11. Following the judgment and decision of this Court in Sunil Kohli''s case (supra) all these appeals are disposed of in

the same terms, observations and directions.

12. In view of the decision of this Court in Sunil Kohli''s case (supra), the judgment(s) and order(s) passed by the

Bombay High Court are set aside.

13. Ordered accordingly.

24. Circular No.6/2013-Cus., dated 6.2.2013 of the Central Board of Excise & Customs, New Delhi, Ministry of Finance

(Department of Revenue), on the issue of Custom House Agent License, is reproduced here under:

Circular No.6/2013-Cus., dated 6-2-2013

F.No.494/4/2012-Cus.VI

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject : Issue of Custom House Agent Licence.

Attention is invited to Board''s Circular No.9/2010- Customs, dated 8.4.2010 [2010 (252) E.L.T. T29] on the above

said subject.

2. The Hon''ble Supreme Court in Civil Appeal Nos.4053-4061 of 2012 [arising out of SLP (C) Nos.19124-19132 of

2010] in the case of Sunil Kohli and others v. Union of India and others vide order dated 27-4-2012 [2012 (285)

E.L.T. 481 (S.C.)] has held that those who had passed the examination under Customs House Agents Licensing

Regulations, 1984 not have to again appear for examination under the Customs House Agents Licensing Regulations,

2004 (CHALR 2004).

3. In order to implement the aforementioned decision of Hon''ble Supreme Court, Board has decided to delete Para 8.1

and Para 8.2 of Circular No.9/2010- Customs, dated 8.4.2010. The implication of this modification of Board Circular

No.9/2010-Customs, dated 8.4.2010 is that the Custom shall no longer insist that persons who have passed the

examination under the 1984 Regulations have to additionally qualify in the new subjects given below.

(a) The Patents Act, 1970 and Indian Copyright Act, 1957;

(b) Central Excise Act, 1944

(c) Export Promotion Schemes

(d) Procedure on appeal and revision petition

(e) Prevention of Corruption Act, 1988

(f) Online filing of electronic Customs declarations

(g) Narcotic drugs and Psychotropic Substances Act, 1985; and

(h) Foreign Exchange Management Act, 1999

Thus, subject to fulfillment of all others requirements such persons will now be directly eligible for grant of CHA

Licence.

4. These instructions may be brought to the notice of the trade by issuing suitable Trade/Public Notices. Suitable

Standing orders/instructions may be issued for the guidance of the field officers. Pending court cases, if any, may also be

suitably handled.

5. Difficulties faced, if any, may be brought to the notice of the Board immediately.

25. Thus reading of the above circular, makes it abundantly clear that, those who have passed the examination under 1984 Scheme,

need not have to appear for examination again for CHALR, 2004. Added further, W.A. No.410/2012 relied on by the department,

has been tagged along with W.A. Nos.2359 and 2636 and 2638 of 2012. On the basis of the submissions of the learned counsel

appearing for both parties, a Hon''ble Division Bench of this Court vide common judgment in W.A. No.410/2012 dated 10.06.2013,

dismissed all the appeals, as here under:

The respective learned counsel appeared for the parties would submits that in view of the subsequent development and

in view of the common judgment dated 2.5.2013 passed by the Honourable Supreme court of India in Civil Appeal

Nos.5715-5723 of 2011 etc. reported in 2013-TIOL-28-SC-CUS (Union of India vs. Ravindra K. Joshi) and that the

Department has also issued a Circular : 6/2013-Cus., dated 6.2.2013, the writ appeals may be closed. Accordingly, these writ Appeals are closed.

2. After the disposal of the Writ Appeals, the learned counsel for the respondents would submit that subject to

fulfillment of other conditions, the Customs House Agents Licence may be issued to the respective respondents.

3. In the light of the above said development, the appellants, are directed to consider the respective case of the

respondents, as expeditiously as possible and not later than six weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petitions are closed.

26. When Government of India, have decided to delete para 8.1 and 8.2 of Circular No.9/2010-Customs, dated 8.4.2010, with an

implication that Customs shall no longer insist that persons who have passed the examination under the 1984 Regulations have to

additionally qualify in the subjects contained in the said circular dated 06.02.2013, contentions to the contra, made in the instant writ

appeal, do not merit any consideration. Further W.A. No.410/2012, relied on by the department is also dismissed by this court on

16.06.2013 on the submissions of the learned counsel for the parties.

27. There are no merits in the instant appeal warranting interference. Writ Appeal is dismissed.

7. Decision in W.A.No.42 of 2013, is squarely applicable to the facts of this case, and applying the same, there are no grounds to interfere with

the order of the writ Court. Hence, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

