

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.No.14936 of 2015
MP.No.2 of 2015

Streamline Forwarders represented by its
Managing Partner B.Srividhya Priya
Chennai-1

Petitioner

Vs

1. The Commissioner of Customs, Customs House
Chennai-1

2. The Deputy Commissioner of Customs,
Customs Broker Section, Customs House,
Rajaji Salai, Chennai-1

Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records of 1st Respondent in proceedings in F.No.R-602-CHA, dated 29.04.2015 and to quash the same and to direct the 1st Respondent to issue the renewal of Customer Broker License in favour of the Petitioner.

For Petitioner : Mr.D.Ravichander

For Respondents : Mr.K.Mohanamurali, SCCG

ORDER

This Writ Petition has been filed against the order dated 29.04.2015 of the 1st Respondent, rejecting the renewal application of the Petitioner to renew the Customs Broker Licence.

2. The case of the Petitioner is that the Managing Partner of the Petitioner Firm, entered into a registered partnership deed 21.2.1997 with four

other persons to carry on Shipping, Clearing and Forwarding Business. The said firm was initially issued with Temporary Custom House Agent Licence under the Custom House Agents Licensing Regulation 1984. Thereafter, permanent CHA licence was issued and the partnership firm had undergone various reconstitutions from time to time. On 1.1.1998 one K.Manuvel was inducted into the firm and thereafter, on 18.2.2000 all other partners, except the Petitioner and Manikandan, have retired from the firm. Thereafter, the partnership was reconstituted by inducting Suresh Kumar Sain, Pradeep Kumar Sain and Amit Manchanda and then, one more partner S.Balachandran. Thereafter, all the partners went out of the firm and finally the Managing Partner of the firm and her husband were running the firm as Partners. All the above said reconstitutions were duly informed to the Respondents, which was endorsed in the licence by proceedings dated 22.4.2014. As there has been some delay in bringing the reconstitution to the knowledge of the Respondents, the Petitioner paid a penalty of a sum of Rs.40,000/- on 19.12.2014, as directed by the Respondents. The licence was to expire on 29.12.2014. The Petitioner applied renewal on 8.9.2014 for a further period of ten years as per Customs Broker Regulation 2013 along with necessary fee. As directed by the Respondents, the Petitioner paid a further sum of Rs.50,000/- and submitted solvency certificate to the tune of Rs.5,00,000/- and again, paid another sum of Rs.4,50,000/- on 5.12.2014. Later, the Petitioner came to know that on the grievance made by one of the erstwhile partners, the licence was not processed. Then, on further representation of the Petitioner, the 1st Respondent renewed the licence for three months upto 29.3.2015. Thereafter,

the Petitioner made representations dated 17.2.2015 and 9.3.2015, seeking renewal of licence. As there was no progress, the Petitioner filed WP.No11764 of 2015, wherein it was directed to pass orders on the renewal application and till that time, the Petitioner was permitted to carry on their business. After passing of the orders of this court, the 1st Respondent passed the impugned order, rejecting the renewal application for license. Hence, this Writ Petition has been filed for the relief as stated above.

3. The Respondents filed a counter affidavit, wherein it is averred as follows:-

It is the bounden duty of the 1st Respondent to verify the documents submitted by the Petitioner, in order to take a decision under Regulation 9(2) of CBLR 2013. Statements were recorded from Srividhya Priya, S.Balachandran, Suresh Kumar Sain, P.Manikandan and Amit Manchanda and no statement was recorded from Pradeep Kumar Sain. A summon dated 30.12.2014 was issued to the Managing Partner of the Petitioner firm. On verification, the partnership deed dated 22.4.2012 and the resignation letters of Suresh Kumar Sain and Amit Manchanda were found to be forged documents and hence, it was concluded that the licence of the Petitioner did not merit renewal under the said Regulation 9(2), as there was misconduct by way of forgery by the Petitioner firm. Further, the Petitioner has got an alternative remedy of filing an appeal before the appropriate forum under Regulation 21. In these circumstances, to convert the conclusion under Regulation 9(2) to a partnership dispute is not correct. Therefore, this Writ Petition is liable to be dismissed.

4. The learned counsel for the Petitioner contended that the 1st Respondent has no jurisdiction to reject the licence on the ground of disputes on partnership and if at all the erstwhile partner has some grievance, his remedy is to approach the civil court and the said person never approached the civil court and gave a complaint to the Respondents and that the power given under the statute to grant licence cannot be used for settling the business rivalry and that the 1st Respondent is not empowered to enquire into the partnership dispute and hence, the impugned order is liable to be quashed and the Petitioner may be permitted to carry on the said business.

5. The learned standing counsel for central Government for the Respondents submitted that the impugned order has been rightly passed on the ground that there is no consensus among the partners of the Petitioner firm and on the ground of forgery found in the partnership deed dated 2.4.2012, which would amount to misconduct and prayed for dismissal of this Writ Petition.

6. This court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

7. At the outset, before adverting to the merits and demerits of the case, it is absolutely necessary to point out that while admitting this Writ Petition, after hearing both sides, since there was a partnership dispute raised by the Petitioner, it was directed to implead the partners as necessary parties, by order dated 21.5.2015. As per the said direction, MP.No.3 of 2015 was filed to implead the Respondents 3 to 6 therein as the Respondents 3 to 6 in the Writ Petitions has been filed. However, by the other learned Single Judge of this

Court, by order dated 31.7.2015, the said impleading petition has been dismissed, as withdrawn, on the endorsement made by the learned counsel for the Petitioner. It is not known as to why the impleading petition has been withdrawn. Hence, the Petitioner deserves no consideration.

8. The main ground, on which the learned counsel for the Petitioner has assailed the impugned order, is that renewal of licence cannot be denied on the ground of partnership dispute and the 1st Respondent is not empowered to enquire into the partnership dispute. On the other hand, it is the case of the Respondents that the renewal application of licence was rejected on the ground of misconduct and forgery, by invoking Regulation 9(2) of CBLR, 2013.

9. At this juncture, it is relevant to refer to Regulation 9(2) of CBLR, 2013, based on which, the renewal of licence was denied, as under:-

“9. Period of validity of a licence.-

(2) The Commissioner of Customs may, on an application made by the licensee before the expiry of the validity of the licence under sub-regulation (1), renew the licence for a further period of ten years from the date of expiration, if the performance of the licensee is found to be satisfactory with reference, *inter alia*, to the obligations specified in this regulation including the absence of instances of any complaints of misconduct.”

10. According to the Petitioner, after various reconstitutions, only the Managing Partner and her husband were running the Firm as Partners, by partnership deed dated 2.4.2012, by deleting the erstwhile partners, viz. Manikandan, Suresh Kumar Sain, Pradeep Kumar sain and Amit Manchanda from the partnership. The said change in constitution was intimated to the Department only on 22.4.2014. When the Petitioner applied for renewal on 8.9.2014, it was not processed by the Respondent Department on the

grievance made by one of the erstwhile partners Suresh Kumar Sain. Thereafter, in order to find out the genuineness of the grievance and enquire into the matter, the erstwhile partners, P.Manikandan, Amit Manchanda, Suresh Kumar Sain, Pradeep Kumar Sain and Balachandran and the Managing Partner were summoned and their statements were recorded on 29.12.2014, 30.12.2014 and 9.1.2015. All the erstwhile partners, in their respective statements, have categorically stated that they are not aware of the reconstituted partnership deed dated 2.4.2012 and the signatures contained in the said reconstituted partnership deed and their resignation letters dated 31.3.2012 were forged. Hence, on the suspicion that their signatures were forged, the said partnership deed dated 2.4.2012, the resignation letters dated 31.3.2012 and the statements were sent to the Forensic Department for expert opinion.

11. After analysis, the Forensic Department submitted a report dated 26.3.2015, opining that the signatures in question have been imitated and differ significantly from the standard in the handwriting characteristics and there was forgery of signatures. On the other hand, the Petitioner failed to disprove the forgery and the misconduct, by producing valid evidence. Therefore, ultimately it was held that there was no consensus among the partners of the Petitioner firm and the performance or act of the Petitioner was rightly held to be not satisfactory in terms of Regulation 9(2), inasmuch as the Petitioner contravened the said regulation, by submitting forged documents, which was proved by the forensic report and that claiming change in the constitution by forgery document would amount to misconduct and accordingly, the renewal

application of the Petitioner was rejected and there is no illegality or infirmity in the impugned order.

12. In view of the reasons and in the light of the relevant provisions and rules, as discussed above, since the Petitioner has violated the Regulations, the seal of licence cannot be granted in their favour. For somebody's benefit, the Government authorisation cannot be utilised. Since the Petitioner is not able to disprove the alleged misconduct and forgery and the Petitioner failed to implead the necessary parties, in spite of the specific directions of this court, this Writ Petition does not deserve consideration and accordingly, the same is dismissed, with a cost of Rs.10,000/- which shall be paid by the Petitioner to the Chief Justice Flood Relief Fund, within a period of two weeks. Consequently, the connected MP is closed.

14.12.2015

Index:Yes/No
Web:Yes/No
Srcm

To:

1. The Commissioner of Customs, Customs House
Chennai-1
2. The Deputy Commissioner of Customs,
Customs Broker Section, Customs House,
Rajaji Salai, Chennai-1

R.MAHADEVAN, J.

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