

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE D.KRISHNA KUMAR

C.M.A.No.2969 of 2010
M.P.No.1 of 2010

Commissioner of Customs (Exports),
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

Appellant

versus

1. M/s.Aren Shipping Agents (P) Ltd.,
No.92 (Old No.225), 1st Floor,
Linghi Chetty Street,
Chennai 600 001.

2. Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Shastri Bhavan Annexe, 1st Floor,
No.26, Haddows Road, Chennai 600 006. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 35G of Central Excise Act, 1944, against the Final Order No.838 of 2009, dated 14.07.2009, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant : Mr.Sundareshwaran

For 1st Respondent : Mr.S.Murugappan

For 2nd Respondent : Tribunal

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeal is directed against the Final Order No.838 of 2009, dated 14.07.2009, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006, dismissing the appeal filed by the revenue.

2. Facts leading to the appeal are that M/s.Aren Shipping Agents Pvt. Ltd., Chennai, 1st respondent herein, has applied for renewal of licence, issued by the Chennai Commissionerate. They were issued with a licence at Visakapatnam and their branch licence is registered with Chennai Customs. The licence granted at Vizag has expired on 16.03.2006. Customs House Agent (In short "CHA")/1st respondent has sought for renewal of Chennai licence. It is the case of the appellants that on examination, it was found that they were allowed to operate as CHA in Chennai Customs under Regulation 10(2) of the Customs House Agents Licensing Regulations (CHALR), 1984, on the basis of CHA licence issued to them, under Regulation 10(1) of the said Regulations, by Visakapatnam Customs.

3. CHA/1st respondent herein has submitted a letter, dated 14.06.2006, narrating their claim for renewal of the licence issued by the Chennai Commissionerate. In support of their claim, they relied on a Tribunal's decision in M/s.Auro Trans Maritime Services Pvt. Ltd., v. Commissioner of Customs, Chennai reported in ELT 130 (Tribunal), wherein, it has been held that a branch CHA licence issued under Regulation 10(2) of the CHALR, 1984, has to be treated as an independent licence and therefore, the same has to be adjudged on its own merits. They also submitted that there was no allegation of mala fide or fraud against the CHA and prayed for renewal.

4. After considering the oral submissions and the norms prescribed to measure the performance of a CHA, when an application is filed for renewal of CHA licence, the Commissioner of Customs"(Seaport-Import), on 24.07.2006, ordered, as hereunder:

"Applying the ratio laid down by the Hon'ble CESTAT in the Auro Trans Case, and also after analysis of their performance indicators for Chennai, it therefore emerges that the CHA/Applicant is very much eligible for renewal of their licence issued under Regulation 10(2) of the erstwhile CHALR, 1984 read with Public Notice No.59/94, dated 17.05.94, subject to fulfillment of other procedural requirements that may be required to be complied with as per Customs Act, 1962 and the Rules and Regulations made thereunder."

5. In exercise of the powers conferred on the Committee of Chief Commissioners, under Section 129(D) (1) of the Customs Act, 1962 r/w. Notification No.46/2005 - Customs (NT), dated 08.06.2005, the said Committee has examined the records of proceedings, in which, the Commissioner of Customs (Seaport - Import), Chennai, has passed an Order-in-Original No.5349/2006, dated 24.07.2006 and by observing that the abovesaid order of the Commissioner (Seaport - Import), Chennai, dated 24.07.2006, as not proper and deserve to be reviewed, ordered as follows:

"3. On examination of the above Order in Original, it appears that the above order of the Commissioner (Seaport -

Import), Chennai, is not proper and merits review in view of the following:

(a) the ratio laid down by the Hon'ble CESTAT in the Auro Trans case would be applicable only in cases where the issue of renewal had come up before the enactment of the CHALR, 2004 and

(b) in terms of the clarifications issued under Regulation 10, Sl.No.2 of Annexure I of Circular No.42/2004-Cus, dated 10.06.2004 in F.No.502/4/2004-Cus.VI (PL.I) of the CBEC, MoF, for licences issued under regulation 10(2) of CHALR 1984 and renewed for 5 years just before issue of CHALR, 2004, renewal can be done only till the validity period of the main licence.

4. The Committee, therefore, under the provisions of Sec. 129(D)(1) of the Customs Act, 1962, directs the Commissioner of Customs, Chennai to apply to the Customs, Excise and Service Tax Appellate Tribunal, Chennai, for determination of the following points arising out of the impugned order of the Commissioner of Customs (Seaport - Import):

(i) Whether, in the facts and circumstances of the case, the order of the Commissioner is legal and proper and whether the said order should be set aside."

6. Thereafter, the Commissioner of Customs (Seaport-Import), Chennai, has filed an appeal, under Section 129(D)(4) of the Customs Act, 1962, before the CESTAT, Chennai. Going through the order and placing reliance on the decisions in A.S.Vasan & Sons v. Commissioner of Customs (General), Mumbai [2008 (230) ELT 374] (Mum.)], M.Dutta Agency v. Commissioner [1998 (1) LCX 77 (Cal.)], P.Cawasji and Co's case [2000 (119) ELT 606] and G.P.Jaiswal's case [2008 (226) ELT 707], the CESTAT, Chennai, on 14.07.2009, has passed the following orders,

"2. I have heard both sides. It has already been held by the Tribunal in the case of A.S.Vasan & Sons v. Commissioner of Customs (General), Mumbai [2008 (230) ELT 374], that an order relating to renewal of CHA licence is administrative in nature and not a quasi-judicial order against which an appeal is maintainable before the Tribunal. The Tribunal has held that an appeal does not lie before the Tribunal following the judgment of the Hon'ble Calcutta High Court in M.Dutta Agency v. Commissioner [1998 (1) LCX 77] and Tribunal's decision in P.Cawasji and Co [2000 (119) ELT 606] and G.P.Jaiswal [2008 (226) ELT 707]. The Tribunal's order in A.S.Vasan & Sons cited supra has been upheld by the Bombay High Court as seen from 2009 (238) ELT 217.

3. Following the ratio of the above decisions and also following the ratio of the Tribunal's order in Tass Clearing Service (P.) Ltd., v. Commissioner of Customs,

Hyderabad - 2009 (238) ELT 671, I reject the appeal of the Revenue as not maintainable before the Tribunal."

7. Being aggrieved by the aforesaid order, the Commissioner of Customs (Exports), Chennai, has filed the instant Civil Miscellaneous Appeal, on the following substantial questions of law:

(1) Whether the order of CESTAT in the matter of CHALR, 2004 under the Customs Act, 1962, considering it as an administrative matter, is correct as per law?

(2) "Is not the order of the tribunal passed in Auro Trans case merged with the order of this Hon'ble Court passed in W.P.No.5678 of 2010 and cannot be a precedent?

8. Supporting the above substantial questions of law and inviting the attention of this Court to a decision of Calcutta High Court in Assistant Collector of Customs for Appraisement v. Soorajmull Nagarmull reported in AIR 1952 Cal 656 = 56 CWN 453 = 2000 (125) ELT 328 (Cal.), Mr.Sundareswaran, learned counsel appearing for the appellant submitted that exercise of power by the Commissioner of Customs (Seaport - Import), in the matter of renewal of licence is quasi-judicial in character and therefore, when any decision or order is made by the licencing authority, as an adjudicating authority, such decision or order, can be assailed by way of an appeal, under Section 129(D)(1) of the Customs Act, 1962, to CESTAT, Chennai. He also submitted that even if there is no need for the presence of two parties, for adjudicating an issue and if an authority acts quasi-judicially to decide the right of an individual, an appeal can be preferred to the Commissioner of Customs (Appeal). In this context, he also referred to few paragraphs of the judgment in Soorajmull Nagarmull's case (cited supra), more particularly, Paragraphs 88 and 89, which are reproduced hereunder:

"88. The Customs authorities are not a 'court' in the strict sense of the term. The question is - did they act quasi-judicially. If they did, certainly, the writ may go.

89. This is the main point debated before us. The difference between an executive and a judicial or a quasi judicial act has been pointed out by the Supreme Court in the Province of Bombay v. K.S.Advani and Ors. (1950) SCR 621 Kenai, C. J., after a review of the cases, said at p. 633:

"It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well recognised principles of approach are required to be followed. In my opinion, the conditions laid down by Slessor, L. J., in his judgment correctly bring out the distinction between a judicial or quasi-judicial decision on the one hand and a ministerial decision on the other"

9. Inviting the attention of this Court to Paragraph 4 of the order of the Commissioner of Customs, dated 24.07.2006 and the issue adjudicated by him, as to whether, the 1st respondent was entitled to get the licence issued by the Commissionerate, Chennai, renewed under Regulation 10(2), irrespective of the fact that the original licence at Vizag Customs was not renewed and the findings rendered by the Commissioner of Customs, dated 24.07.2006, Mr.Sundareswaran, learned counsel for the appellant submitted that when the 1st respondent was given a personal hearing and oral submissions were made on the plea of renewal of licence, any order or decision passed by the Commissioner of Customs (Seaport-Import), is appealable to CESTAT, Chennai, under the provision of Section 129(D) of the Customs Act, which reads as follows:

"129D. Powers of Board or Commissioner of Customs to pass certain orders:-

(1) The Committee of Chief Commissioners of Customs may, of its own motion, call for and examine the record of any proceeding in which a Commissioner of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners of Customs in its order.

(2) The Commissioner of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Commissioner of Customs in his order.

(3) The Committee of Chief Commissioners of Customs or the Commissioner of Customs, as the case may be, shall, where it is possible to do so, make order under sub-section (1) or sub -section (2), within a period of six months, but not beyond a period of one year, from the date of the decision or order of the adjudicating authority.

(4) Where in pursuance of an order under sub-section (1) or sub -section (2), the adjudicating authority or any officer of customs authorised in this behalf by the Commissioner of Customs, makes an application to the Appellate Tribunal or the

Commissioner (Appeals) within a period of three months from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of section 129A shall, so far as may be, apply to such application "

10. Per contra, inviting the attention of this Court to Regulations 6 to 11 and 21 to 23 of the Customs House Agents Licensing Regulations (CHALR), 1984, applicable to the facts of the case, Mr.S.Murugappan, learned counsel appearing for the 1st respondent submitted that grant of licence is an administrative order. He also submitted that renewal of licence is as good as, grant of fresh licence and therefore, whatever conditions required to be complied with, by the 1st respondent for grant of licence, equally applies for renewal of licence and therefore, when there is no substantial difference between a fresh licence and renewal, the order of the Commissioner of Customs (Seaport-Import), dated 24.07.2006, granting renewal of licence, should be treated only as an administrative order and that the correctness of the same, cannot be adjudicated before the CESTAT, Chennai, by way of an appeal, under Section 129(D)(4) of the Customs Act.

11. Inviting the attention of this Court to Regulation 22(8) of the Customs House Agents Licensing Regulations (CHALR), 2004, dealing with the procedure for suspending or revoking licence, under Regulation 20, learned counsel for the 1st respondent further submitted that as per the abovesaid Regulations, if any Customs House Agent is aggrieved by any decision or order passed under Regulation 20 or sub-regulation (7) of regulation 22, he may prefer an appeal under Section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-Section (1) of Section 129 of the Act. In this context, he also drew the attention of this Court to Regulation 20, which deals with suspension or revocation of licence and the same is extracted hereunder:

"(1) The Commissioner of Customs may, subject to the provisions of regulation 22, revoke the licence of a Customs House Agent and order for forfeiture of part or whole of security, or only order forfeiture of part or whole of security, on any of the following grounds, namely :-

(a) failure of the Customs House Agent to comply with any of the conditions of the bond executed by him under regulation 10;

(b) failure of the Customs House Agent to comply with any of the provisions of these regulations, within the

jurisdiction of the said Commissioner of Customs or anywhere else;

(c) any misconduct on his part, whether within the jurisdiction of the said Commissioner of Customs or any where else which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

(2) Notwithstanding anything contained in sub-regulation (1), the Commissioner of Customs may, in appropriate cases where immediate action is necessary, within fifteen days from the date of receipt of a report from investigating authority, suspend the licence of a Customs House Agent where an enquiry against such agent is pending or contemplated.

(3) Where a licence is suspended under sub-regulation (2), notwithstanding the procedure specified under regulation 22, the Commissioner of Customs may, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs House Agent whose licence is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs House Agent."

According to the learned counsel appearing for the 1st respondent, the power exercised by the Commissioner of Customs, for suspending or revoking the licence, under Regulation 20, is quasi-judicial nature, whereas, the power exercised for grant of licence or renewal is administrative.

12. Placing reliance on the order of the Calcutta High Court in M.Dutta Agency v. Commissioner of Customs reported in 1998 (101) ELT 581, learned counsel for the 1st respondent submitted that when an application for renewal is rejected, Customs Act, 1962 and the Regulations do not provide for an appeal, but the only remedy available to the licensee is to invoke the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India. Conversely, when renewal is granted, the appellant cannot approach CESTAT, by filing an appeal, under Section 129(D)(4) of the Customs Act.

13. Reiterating that the order of renewal is only an administrative order, learned counsel for the 1st respondent submitted that the well considered decision of CESTAT, Chennai, does not require any interference in this appeal, as no substantial question of law is involved. For the abovesaid reasons, he prayed for dismissal of the appeal.

Heard the learned counsel for the parties and perused the materials available on record.

14. On the facts and circumstances of this case, we deem it fit to address the issue, as to whether, merely because, the Commissioner of Customs (Seaport-Import), the licencing authority, has acted as an adjudicating authority, to adjudge an issue, as to whether, the 1st respondent is entitled to get the licence, issued by the Commissionerate, Chennai, renewed under Regulation 10(2), irrespective of the fact that when the original licence, at Vizag Customs has not been renewed, whether the duty to be discharged by him, at the time of considering a renewal application is adjudicatory or administrative, in nature?

15. On facts, the licencing authority has exercised his powers, as an adjudicating authority and therefore, an argument can be advanced that an order or decision made therein is appealable. But the issue to be decided is, under the scheme of Regulations, governing grant or renewal of licence, whether the power is administrative or adjudicatory?

16. Question of law framed by the appellant is whether, the order of CESTAT, in the matter of CHALR, 2004 under the Customs Act, 1962, considering it as an administrative matter, is correct as per law.

17. Before advertng to the rival submissions, this Court deems it fit to consider the relevant Regulations. Licence has been granted under the Customs House Agents Licensing Regulations (CHALR), 1984. Regulations 4 to 10 reads as follows:

"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 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, 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 he possesses 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 Stations, 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 than 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 Regulations, 1965 have been operating in the said Customs Stations on the basis of one licence, it shall be open to such Agents to obtain a temporary licence under Regulation 8 from the Commissioner, other than 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.

7. Scrutiny of applications for licence.-

On receipt of application under Regulation 5, the Commissioner may make enquiries for verification of the particulars set out in the application and also such other enquiries as he may deem necessary including enquiries about the reliability and financial status of the applicant.

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 Regulations 5 and 6, shall be permitted to operate as Custom House Agent at the Customs Station for which the application is made initially for the period of one year against temporary licence granted by the Commissioner in this regard in Form B.

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 applicants 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 on 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 for 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 and Merchandise Marks Act, 1958 (43 of 1958);

(j) prohibitions on import and export;

(k) bonding procedure and clearance from bond;

(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, 1878 (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 to 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 licensee in Form B, See Form 48 in Part 5, if he is an individual, possesses, or in the case of a firm or 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 an 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.-

The Commissioner shall, on receipt of an application in Form C, grant a regular licence in Form D 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 payment of duty for any reason attributable to such licensee and any complaints of misconduct including non-compliance of any of the obligations specified in Regulation 14.

(2) The Custom House Agents who are granted regular licences under Regulation 10, shall be eligible to work in all Customs Stations subject to fulfilment 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 fulfils 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 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 of the local language of the Customs Stations, at which he wishes 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" 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.

(4) Any person aggrieved by the order of the Commissioner passed under sub-regulation (3) of regulation 10 may represent to [the Chief Commissioner of Customs or Chief Commissioner of Customs and Central Excise, as the

case may be against such order within 30 days of the communication of the impugned order.

(5) The Chief Commissioner may, on his own motion or otherwise call for and examine the records of any proceedings in which the Commissioner has passed any order under sub-regulation (3) for the purpose of satisfying himself "as to the legality, propriety or correctness of such order and may pass such orders as he may deem fit. No order under this sub-regulation shall be made so as to prejudicially affect any person unless such person is given reasonable opportunity for making a representation and being heard in his defence, if he so desires."

(6) No order shall be made under sub-regulation (5) or sub-regulation (2) of regulation 8 in relation to an order passed by Commissioner under sub-regulation (3) or sub-regulation (1) of regulation 8, as the case may be, after the expiry of one year from the date on which such order was passed by the Commissioner."

18. Licence has been issued to the 1st respondent/CHA at Visakapatnam and their branch licence is stated to be registered with Chennai Customs. The said licence has expired on 16.03.2006. Customs House Agent has sought for permission, for renewal of licence issued in Chennai. The Commissioner of Customs, Chennai, as Licencing Authority, has found that the 1st respondent was allowed to operate as CHA in Chennai Customs under Regulation 10(2) of the Customs House Agents Licensing Regulations (CHALR), 1984, on the basis of CHA licence issued to them, by Visakapatnam Customs, under Regulation 10 (1) of the said Regulations. At this juncture, we place on record that perusal of the licence granted in Chennai Commissionerate, does not impose any condition that if the licence granted by Vizag Customs, is not renewed, then the respondent is not entitled to seek for renewal of licence, granted by the Chennai Commissionerate.

19. Perusal of the Order-in-Original, dated 24.07.2006, shows that the 1st respondent/CHA submitted an application for renewal of licence and along with the application, the 1st respondent/CHA has submitted a letter, dated 14.06.2006, stating that as per M/s.Auro Trans Maritime Services Pvt. Ltd., v. Commissioner of Customs, Chennai reported in ELT 130 (Tribunal), a branch CHA licence issued under Regulation 10(2) of the CHALR, 1984, has to be treated as an independent licence from the main licence issued elsewhere. While considering the application for renewal, the Licencing Authority has been granted personal hearing and that the Consultant has made also oral submissions.

20. Order of the Commissioner of Customs, dated 24.07.2006, indicates that the Department has sought to negate the request for renewal of licence, issued by the Customs House, Chennai, under Regulation 10(1), by relying on the decisions of this Court in

W.P.No.5678 of 2000, dated 30.03.2000 and W.P.No.402 of 2003, dated 17.04.2006. In the abovesaid circumstances, the Commissioner of Customs (Seaport-Import), Licencing Authority, has framed an issue for adjudication, as to whether, the 1st respondent is entitled to get the licence, issued by the Customs House, Chennai, renewed under Regulation 10(2), irrespective of the fact that the original licence at Vizag Customs was not renewed.

21. While advertng to the material on record, proceedings of CESTAT, Madras and writ proceedings, the Commissioner of Customs (Seaport-Import), has observed that as per CHALR, 1984, more specifically in terms of Regulation 12(2)(a) and Public Notice No.59/94, dated 17.05.1994, the following norms have been prescribed, to be satisfied to measure the performance of the Custom House Agents, whenever an application for renewal of the Custom House Agent licence;

"(1) 150 documents (e.g., Bills of Entry, shipping Bills and baggage forms) per year.

OR

(2) Clearance or shipment of 2000 packages per year.

OR

(3) Clearance or shipment of packages of value not less than Rs.10 Crores per year.

(4) Payment of duty not less than Rs.2 Crores per year."

22. Besides, the Commissioner of Customs (Seaport-Import)/Licencing Authority, has also observed that the 1st respondent has not come to adverse notice that there was no due in respect of any Bond executed or any demand pending against the CHA and that the CHA has also furnished the details of the Service Tax, Income Tax payment particulars, etc. After considering the norms and other particulars, stated supra, the Commissioner of Customs, vide order, dated 24.07.2006, at Paragraph 14, ordered as follows:

"Applying the ratio laid down by the Hon'ble CESTAT in the Auro Trans Case, and also after analysis of their performance indicators for Chennai, it therefore emerges that the CHA/Applicant is very much eligible for renewal of their licence issued under Regulation 10(2) of the erstwhile CHALR, 1984 read with Public Notice No.59/94, dated 17.05.94, subject to fulfillment of other procedural requirements that may be required to be complied with as per Customs Act, 1962 and the Rules and Regulations made thereunder."

23. Regulation 8 of the said Regulations, empowers the Licencing Authority to grant temporary licence. Rejection of request for temporary licence, can only be represented to the Chief Commissioner of Customs or Chief Commissioner of Customs and Central Excise, as the case may be. As per Regulation 10 of CHALR, 1984, the

Commissioner of Customs shall grant regular licence. As per Regulation 10(2), Custom House Agents, granted regular licences under Regulation 10, shall be eligible to work in all Customs Stations, subject to fulfilment 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 fulfils 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 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 of the local language of the Customs Stations, at which he wishes 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" 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.

24. Here again, it could be deduced from the regulations, the applicant has to satisfy the conditions, set out in the above clauses (a), (b), (c) and (d) of Regulation 10. Thus, reading of Regulation 10 makes it clear that while granting renewal, the applicant has to satisfy the above conditions, besides a pass in the examination. As per Regulation 10(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.

25. As per Regulation 10(4), any person aggrieved by the order of the Commissioner passed under sub-regulation (3) of regulation 10 may represent to the Chief Commissioner of Customs or Chief Commissioner of Customs and Central Excise, as the case may be, against such order, within 30 days of the communication of the impugned order. As per Regulation 10(5), the Chief Commissioner may, on his own motion or otherwise call for and examine the records of

any proceedings in which the Commissioner has passed any order under regulation 10(3) for the purpose of satisfying himself "as to the legality, propriety or correctness of such order and may pass such orders as he may deem fit. No order under this sub-regulation shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity for making a representation and being heard in his defence, if he so desires.

26. Though Regulation 10(5) does not specifically indicate that the department can also make a representation to the Chief Commissioner, against an order of renewal of licence, but the said authority, on his own, examine the legality, propriety or correctness of an order, passed under Regulation 10(3), which means that in a given case, the Commissioner of Customs has granted a regular licence, the Chief Commissioner of Customs, can suo-motu examine the legality, propriety or correctness of the same. The power exercised by the Chief Commissioner, at this stage, is suo-motu or otherwise. An administrative power is conferred on the Chief Commissioner to examine and pass appropriate orders.

27. In *Province of Bombay v. Khushaldas S.Advani* reported in AIR 1950 SC 222, the Hon'ble Apex Court has laid down a test, to find out, as to whether, an authority making an order, under an Act, is required to act as a quasi-judicial authority or in the administrative capacity. At Paragraph 7, the Hon'ble Apex Court held as follows:

"Every decision of the executive generally is a decision of fact and in most cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari.

.....It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

28. In *Moti Miyan v. Commissioner, Indore Division* reported in AIR 1960 MP 157, the Madhya Pradesh High Court, at Paragraph 7, held as follows:

"7. It will thus be seen that a quasi-judicial decision is nothing but an administrative decision,

some stage or some element of which possesses judicial characteristics. The decision, whether quasi-judicial or administrative, is taken by the competent authority in the exercise of its discretion. But the distinguishing feature of the two kinds of acts is the mode or manner in which the opinion on the basis of which the act is done by the authority in the exercise of its discretion, is formed. The decision would be quasi-judicial if in reaching that decision the authority is required first to ascertain certain facts by means of evidence and is then free to take such action as it may think fit on the facts so ascertained."

29. In Chingleput Bottlers v. Majestic Bottling Company reported in 1984 (3) SCC 258, at Paragraphs 32, 35 and 39, held as follows:

"There are no inflexible rules of natural justice of universal application. Each case depends on its own circumstances. Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they have to act. An authority or body need not observe the rules of natural justice where its decision, although final, relates not to a 'right' but to a grant of 'privilege or licence'. An applicant for grant of licence has neither a right to such a grant nor a reasonable expectation that such grant would be made in his favour."

Dealing with grant of licence under the Tamil Nadu Arrack (Manufacture) Rules, 1981, a privilege, at Paragraph 40, the Hon'ble Apex Court, held as follows:

"40. There is nothing in the language of Rule 7 of the Rules to suggest that in refusing to grant the privilege, the Commissioner is obliged to act 'judicially'. The order refusing a licence under Rule 7 is purely an administrative or executive order and is not open to appeal or revision. There is no lis between the Commissioner and the person who is refused such privilege. The power of refusal of licence unlike the power to grant is not subject to any pre-condition."

30. In M.Dutta Agency v. Commissioner of Customs reported in 1998 (101) ELT 581, a writ petition was filed, challenging the correctness of an order, rejecting renewal of licence. Revenue has raised a primary objection, on the maintainability of the writ petition, contending that the Tribunal is vested with the powers to hear a Custom's appeal, against the order of an adjudicating authority, and inasmuch as the Additional Collector of Customs therein, had exercised the powers invested on him, under the Customs Act, 1962, as an Adjudicating Authority, an appeal would lie to the

Tribunal. Per contra, on behalf of the licensee, contentions have been made, against an order, refusing to renew the licence, there is no provision to file an appeal and therefore, the Tribunal would not be a competent authority to hear an appeal. Having heard the learned counsel for the parties therein and after considering the relevant provisions of the Act, 1962 and Regulations, governing licence, a learned single Judge of Calcutta High Court held as follows:

"I am of the view that the argument of Mr. Banerjee that an appeal lies under Section 129A(1)(a) of the Customs Act against the decision of the Additional Collector of Customs cannot be supported."

31. In A.S.Vasan v. UOI reported in 2009 (238) ELT 217 (Bom.), application of the licensee for renewal has been rejected. Licensee preferred an appeal before the Chief Commissioner, which came to be disposed of, by informing that there is no statutory provision in CHALR, 2004, for filing an appeal. Thereafter, the licensee filed a further appeal to the Tribunal, which held that the order passed by the Commissioner, rejecting renewal, is administrative in nature and against which, an appeal is not maintainable. So saying, the Tribunal dismissed the appeal. A writ petition has been filed. At Paragraph 6, the Hon'ble Division Bench of Bombay High Court, posed a question, as to whether, how an appeal, regarding renewal, is maintainable. After considering the statutory provisions, at Paragraph 8, the Hon'ble Division Bench held as follows:

"8. On the other hand, so far as Regulation 11(2) is concerned, it provides for renewal and while considering renewal, what has to be considered is, if the performance of the licensee is found to be satisfactory in terms set out under Regulation 11(2). These are the requirements after the licence has been granted. Application for grant of licence and for revocation of that licence are distinct and different. No appeal is provided under Section 11 whereas, an appeal is provided under Regulation 9(4) in those cases, where an application for licence is rejected under regulation 9(3). We are, therefore, clearly of the opinion that no appeal lies against the order of the Commissioner rejecting an application for renewal. It may be mentioned that in case of Customs House Agent licence, our attention was invited to the judgment of Calcutta High Court in M.Dutta Agency Commissioner of Customs 1998 (101) E.L.T. 581 (Cal.). It was contended before Calcutta High Court that the appeal would lie against the refusal to renew CHA licence. Considering the language of Section 129A (1)(a) of Customs Act, 1962, the learned Judge held that an appeal is provided against the suspension or revocation but not for refusal to renew CHA licence. We are clearly of the opinion that no appeal lies against the order rejecting an application for renewal. In absence of any other remedy it is open to this Court to exercise its extraordinary

jurisdiction in case where an application for renewal is rejected."

32. Going through the Regulations, 1984 or 2004, as the case may be, it could be deduced that order, revoking or suspending the licence is likely to affect the CHA and therefore, regulations have been framed, making a provision for filing an appeal. But as regards, an order, refusing to grant renewal, through the CHA is likely to be affected, scheme of the regulations, only grants a right to the licensee to make a representation to the Chief Commissioner. Thus, it could be seen that if an application for renewal is rejected, the CHA can only make a representation and if his grievance is not addressed, he can only approach the High Court under Article 226 of the Constitution of India. The licensee cannot move the Tribunal, as no adjudication is involved.

33. Regulation 12 of the CHALR, 1984, states that a licence granted under regulation 10 shall be valid for a period of five years, but may be renewed, from time to time in accordance with the procedure provided in sub-regulation (2), which states that the Commissioner of Customs, may, on the application made by the licensee, before the expiry of the validity of the licence under sub-regulation (1), renew the licence for a period of five years from the date of expiration of the original licence granted under regulation 10 or of the last renewal of such licence, as the case may be, if the performance of the licensee 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 payment of duty for any reason attributable to such licensee and any complaints of misconduct including non-compliance of any of the obligations specified in regulation 14.

Regulation 12(3) states that the fee for renewal of a licence under sub-regulation (2) shall be Rs.3,000/-.

34. Renewal of licence is as good as granting a new licence, granted under the provisions of an Act. It has the effect of continuation of licence already granted. In *Gajraj Singh v. State Transport Appellate Tribunal* reported in 1997 (1) SCC 650, the Hon'ble Supreme Court considered a case for renewal of licence, under the Motor Vehicles Act, 1988 and held that renewal of licence means a new licence, granted by way of renewal. The Hon'ble Apex Court held that while considering an application for renewal, all the conditions required to be complied with, under the statutory provisions, rules or regulations, as the case may be, for grant of fresh licence and any other conditions, imposing performance of the conditions of licensee, have to be complied with. Procedure set out in CHALR, 2004,

does not provide for any adjudication, either for grant of fresh licence or renewal.

35. In the case on hand, while considering the renewal application, the licencing authority has acted as an adjudicating authority. The need, according to him, was, whether the licensee, who had not renewed the licence, issued at Vizag, is entitled to get the licence issued by the Chennai Commissionerate, renewed? If there was any such pre-condition, in our view, he should be answered the issue administratively, but in the case on hand, the licencing authority, seemed to have taken a decision that the abovesaid question requires adjudication. In the light of Gajraj Singh's case (cited supra), it is our considered opinion that adjudication is not required, while considering a renewal application. Grant or renewal of licence, is administrative in nature. Scheme of Regulations, 1984 or 2004, as the case may be, does not envisage an adjudicatory process. If the argument of the appellant is accepted, then, even granting licence should be held as adjudicatory, which is not the intent.

36. Section 129 of the Customs Act, 1962, provides for an appeal. Bare reading of the abovesaid Section may indicate that any decision or order passed by the adjudicating authority, can be appealed to the Tribunal. The Regulations dealing with grant of licence for renewal should be harmoniously read with the provisions of the Customs Act, 1962 and should be given the effect, in conformity with the legislative intent.

37. Provisions of the Customs Act, cannot be read in isolation and the same have to be read harmoniously with the Regulations framed thereunder. Thus, on the principle of harmonious construction and going through the entire Regulations, we are of the considered view that an order, rejecting an application for renewal, is administrative in nature.

38. Perusal of the order of CESTAT, Chennai, dated 14.07.2009, shows that by following the orders, extracted supra, the Tribunal has held that the appeal filed against the order, on the application to renew the licence issued to the Customs House Agent, under the CHALR, 1984 or 2004, as the case may be, is not maintainable. In the light of our discussion and decisions, stated supra, we are not inclined to interfere with the order of the Tribunal. Accordingly, we answer the substantial questions of law, as against the revenue.

39. Hence, the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

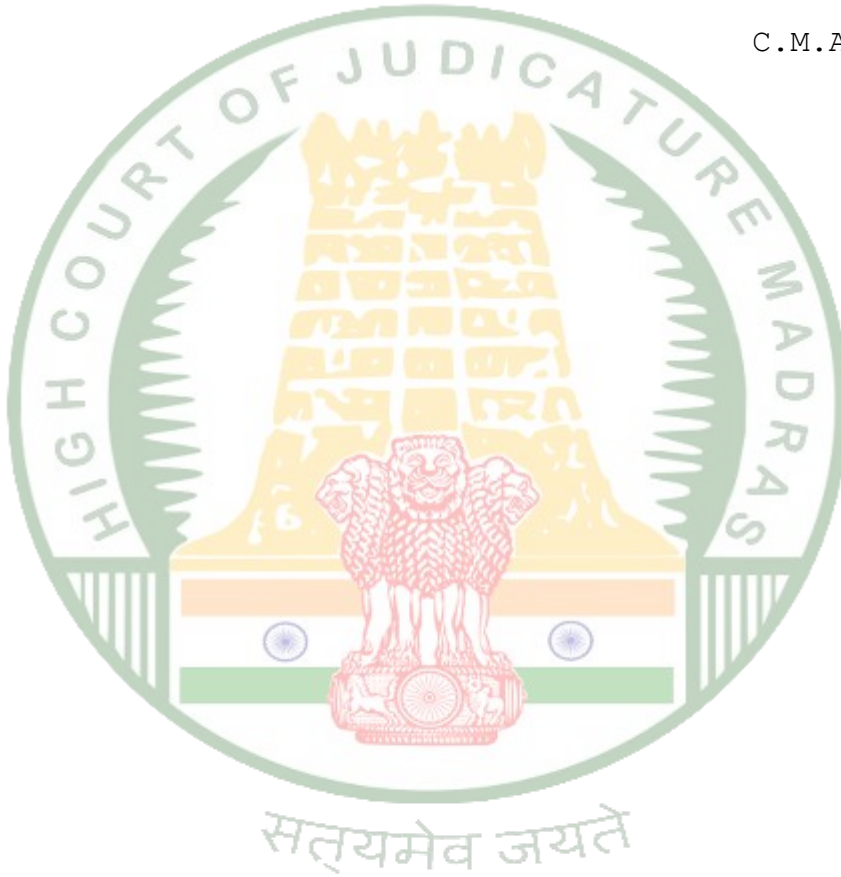
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C.M.A.No.2969 of 2010



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