

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:29.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38359 of 2015

and

M.P.No.1 of 2015

CMA CGM Agencies (India) Pvt. Ltd.,
636/1, Seshachalam Centre,
Anna Salai, Nandanam,
Chennai - 600 035.

Represented by its Branch Manager ... Petitioner

Vs.

1.The Commissioner of Customs (Import)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Deputy Commissioner of Customs (Import)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents herein and/or the Officers of the Customs Department to forthwith renew the license issued to them under the Custom House Agents Licensing Regulations 2004 and now under the Customs Brokers Licensing Regulations, 2013 for a period of 10 years as contemplated under the Regulations or at least for a period of 3 years so as to enable the petitioner to carry on its business activities without any interruption.

For Petitioner : Mr.S.Raghunathan

For Respondents : Mr.V.Sundareswaran
Standing Panel Counsel

ORDER

Heard Mr.S.Raghunathan, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Standing Counsel appearing for the respondents and with their consent, the writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition praying for issuance of a writ of mandamus to direct the respondents to renew the license issued to them under the Custom House Agents Licensing Regulations, 2004 and at present superseded and known as the Customs Brokers Licensing Regulations, 2013 for a period of 10 years as contemplated under the said Regulations or at least for a period of three years so as to enable the petitioner to carry on its activities.

3.The petitioner is a Steamer Agent representing M/s.CMA CGM S.A., France, ANL Container Line Private Limited, Singapore and Cheng Lie Navigation Company Limited, CNC, Taiwan. The petitioner was incorporated in the year 2009 and has been holding a license to act as a Steamer Agent which has issued under 2004 Regulations. Prior to 2009, the agency of the CMA CGM S.A. France was handled by the petitioner's Associate Companies i.e. for a period of 1999-2009. In the year 2009 as well as in October 2012, the petitioner was granted a license by the 2nd Respondent each for a period of two years. However, when they applied for renewal in October/November 2015, the 2nd respondent decided to grant only a temporary renewal of license for a month upto 04.12.2015. The reason being that a show cause notice is pending adjudication and that the petitioner had filed a writ petition before this Court for release of 75 containers and the writ petition is still pending. During the pendency of the writ petition, the license has been temporarily renewed upto 04.07.2016 by proceedings of the 2nd respondent dated 31.12.2015. With these facts, the petitioner is before this Court.

4.Counter affidavit filed by the 2nd respondent reiterates the same stand and stating that because of the pendency of the writ petition as well as pending adjudication of show cause notice, the license is being renewed for a temporary period. The allegation in the show cause notice dated 15.02.2012 is with regard to short landing of cargo and on the said ground, the Additional Commissioner of Customs (MCD), Customs House, Chennai proposed as to why the imported goods viz., 31.69 Mts. of High Melting Scrap having an invoice value of Rs.57,546,62/- should not be held liable to confiscation under Section 111(f) of the Customs Act, 1962; why the 75 x 20" feet containers used to carry the aforesaid goods should not be confiscated under Section 118(a) of the Customs Act; and why penalty should not be imposed under Section 116 of the Customs Act. There are two other co-noticees viz., OPG Metals Private Limited and M/s.Kanishk Steel Industries Limited. The petitioner has submitted their reply on 06.03.2012. A personal hearing was afforded on 21.06.2012 and till date, the said authority has not passed orders. So far as the 75 containers is concerned, there

is a proposal in the show cause notice to confiscate the same under Section 118(a) of the Act. Therefore, the petitioner has approached this Court and filed a writ petition in W.P.No.14944 of 2011 for release of the containers and the said writ petition is pending. Thus, as on date, the allegation against the petitioner is only in the stage of a show cause notice and no adverse orders have been passed till date. That apart, mere pendency of a writ petition wherein the petitioner sought for release of 75 containers can hardly be a reason to refuse to renew the petitioner's Custom House Agents License.

5.The learned Standing Counsel for the respondents referred to Regulation 9 of the 2013 Regulations and submitted that in terms of sub-regulation (2) of Regulation 9, the renewal will be considered and granted in the absence of instances of any complaints of misconduct.

6.In my view, the pendency of a show cause notice for adjudication that too for a period of three years cannot be a sole ground to grant temporary renewal to the petitioner. That apart, it is not known as to why the Officer, who had adjudicated the show cause and given a personal hearing on 21.06.2012, has not passed any orders on the petitioner's application. As already observed, merely because the petitioner has approached this Court seeking certain relief and the writ petition is pending does not mean that the petitioner is charged with a misconduct. Therefore, the reason assigned by the respondents in the counter affidavit for not granting renewal for a longer period and renewing the license temporarily is not sustainable.

7.Accordingly, the Writ Petition is allowed and the 2nd respondent is directed to consider the petitioner's application dated 18.11.2015 and renew the petitioner's license for a period of one year with effect from 05.07.2016 and within the said time, the concerned authority viz., the Additional Commissioner of Customs (MCD), Customs House, Chennai shall complete the adjudication of the show cause notice dated 15.02.2012 after affording a fresh opportunity of personal hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner of Customs (Import)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.
- 2.The Deputy Commissioner of Customs (Import)
Customs House, No.60, Rajaji Salai,
Chennai - 600 001.

+lcc to Mr.S.Ragunathan, Advocate Sr.36511

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