IN THE HIGH COURT OF MADRAS

DATED : 22.08.2017

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A. No.42 of 2013
and
M.P. No.1 of 2013

1.The Chairman
Central Board of Excise and Customs
North Block
New Delhi

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

3.The Assistant Commissioner of Customs
Customs House Agent Unit
Customs House
No.60, Rajaji Salai
Chennai 600 001 ... Appellants

Vs.

R.Chandrasekaran ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.10.2012 made in W.P. No.24210 of 2012

For Appellants : Mr.V.Sundareswaran

For Respondent : Mr.P.Saravanan

JUDGMENT

(Made by **S.Manikumar, J.)**

Challenge in this appeal is to an order made in W.P. No.24210 of 2012 dated 01.12.2012, by which, the Writ Court, directed the Commissioner of Customs (Imports), Chennai-1 and the Assistant Commissioner of Customs, Chennai-1, appellants 2 and 3 herein, to issue necessary certificate, granting Customs House Agent Licence to the respondent, as per Regulation 9 of the Customs House Agent Licence Regulation, 2004, on the respondent complying with the requirements prescribed under Regulation 10 of the said regulation, within a period of 8 weeks from the date of receipt of a copy of the order made in the writ petition.

2. Short facts leading to the appeal are that, the respondent appeared in Customs House Agent written examination and oral examination held under Regulation 9 of the Customs House Agents Licensing Regulation, 1984. He was declared qualified in the examination, by a communication issued by the Office of the Commissioner of Customs.

3. Central Board of Excise and Customs made a new Regulation for Customs House Agents in the year 2004, in short referred to as CHALR, 2004. Regulation 9 of CHALR 2004 prescribes passing of an

examination, in terms of Regulation 8 of the new Regulation 2004, as a condition precedent for grant of licence under Regulation 9 of CHALR 2004. Subsequent to the formulation of CHALR 2004, appellants denied grant of licence on the grounds inter alia that the respondent cleared the examination only under the 1984 Regulation.

4. Before Writ Court, respondent has contended that rights accrued to him for getting licence under Regulation 10 of CHALR 1984, after passing the examinations conducted under Regulation 9 of 1984, cannot be extinguished by the subsequent regulation formulated in the year 2004. Reliance was also placed on a decision of the Hon'ble Apex Court in ***Mangalore Chemicals and Fertilisers Ltd vs Deputy Commissioner of Commercial Taxes & Ors*** reported in ***AIR 1992 (SC) 152*** and ***Mahabir Vegetable Oils Pvt. Ltd & Anr vs. State of Haryana & Ors*** reported in ***(2006) 3 SCC 620,*** wherein, the Hon'ble Supreme Court, had an occasion to consider, as to whether the subsequent challenge in the eligibility criteria, would undo the eligibility stipulated in the earlier notification and answered the same in negative.

5. Reliance was also placed on the decision of a judgment of Delhi High Court in ***Sunil Kohli vs. Union of India*** reported in ***2006***

(195) ELT 15 (Del), wherein, the Delhi High Court, applying certain principles of reasonableness, held that the persons, who had passed the examination under the Regulation 9 of CHALR 1984, have legitimate expectation of enjoying the fruits of success in the examination and directed the respondents therein, to grant licence. Though the Hon'ble Division Bench of the Delhi High Court, set aside the order of the learned single Judge, on further appeal, the Hon'ble Supreme Court in C.A.Nos.4053-4061/2012, answered the issue in favour of, those who successfully qualified the examinations conducted under 1984 Regulation.

6. Before the writ court, contention has also been made that a learned single Judge of the Madurai Bench of the Madras High Court in W.P. No.10355 of 2012 dated 14.08.2012, granted relief to the petitioner therein, for issuance of licence, who had passed the qualifying examination under Regulation 9 of CHALR 1984. Further, contention has also been made that though a representation has been made to the Assistant Commissioner of Customs, Chennai - 1/2nd appellant herein, there was no response and hence the prayer for Mandamus, as stated supra.

7. Before the writ court, the Assistant Commissioner of

Customs, Chennai-1/the third respondent herein, in the counter affidavit, filed on behalf of appellants 2 and 3 herein, submitted that CHALR 1984, has been superseded by CHALR 2004 with effect from 23.02.0204, in which, it has been clearly mentioned that persons, who qualified under Regulation 8 of CHALR 2004 alone are eligible for grant of CHALR licence. Regulation No.8 of CHALR 2004 was amended by Notification No.30/2010 dated 08.04.2010, by which clause (9) has been added to the said regulation, which states *"Notwithstanding anything contained in these regulations, any person who had passed the examination conducted in regulation 9 of the Custom House Agents Licensing Regulation, 1984 and has not yet been granted licence under these regulations, upon declaring successful in a written examination conducted on the following subjects, shall be deemed to have passed the examination referred to in regulation 8 for the purpose of these regulations.*

a) Patents Act, 1970

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, 1984 and *h) Foreign Exchange Management Act, 1999"*

8. Before the writ court, appellants have further contended that for obtaining Customs House Agent Licence, one has to either pass Regulation 8 of CHALR, 2004 or qualify the special examination under Clause 9 of Regulation 8 of CHALR, 2004, if he had already passed the examination under Regulation 9 of CHALR 1984. Appellants have contended that, said clause has overriding effect over other regulations.

9. Reference was also made to a decision in W.P. No.1522/2011 dated 07.12.2011, wherein, ***Bombay Custom House Agents Association and others***, challenged the constitutional validity of clause 9 of Regulation 8 of CHALR, 2004, and writ petition filed against ***Union of India and others***, was dismissed, wherein, the Bombay High Court has observed that, mere passing of an examination under 1984 Regulation would not confer the vested right to grant licence.

10. The Bombay High Court further held that upon enforcement of Regulations of 2004, every applicant, for grant of a new licence, must comply with the regulations, which were made in exercise of the statutory power conferred by Section 146(2). Requirement of passing

of examination in additional subjects, is based on an intelligible consideration, which is to upgrade the skills and competencies of persons, who seek to apply for a licence as CHAs. A person who seeks licence after the enforcement of the Regulation of 2004, must therefore, comply with the requirements of the new regulations".

11. Contention has also been made that the Hon'ble Supreme Court, in ***Mangalore Chemicals and Fertilisers Limited's case***, had taken cognizance of clauses 1 to 5 of Regulation 8 of CHALR, 2004, but clauses 6 to 9 of Regulation 8 of CHALR, 2004, were subsequently added by Notification No.30/2010 dated 08.04.2010, which the Hon'ble Supreme Court, did not have an occasion, to consider. Appellants have further contended that the decision of the Hon'ble Supreme Court in ***Mangalore Chemicals and Fertilisers Limited's case*** was based on the legal position, which existed at that point of time and clause 9 of Regulation 8 of CHALR, 2004, was not introduced, which begins, with an opening sentence "***Notwithstanding anything contained in these Regulations"***. Therefore, the appellants have contended that clause 9 of Regulation of CHALR, 2004, has overriding effect.

12. However, before the Writ Court, appellants have submitted

that licences were issued to the appellants in W.P. No.472 of 2010, based on the order dated 31.03.2010, passed by this court and further added that, at the time of passing of the said order, clause 9 of Regulation of CHALR, 2004, was not in existence. Said clause came into effect only on 08.04.2010, after the passing of an order by this court, and in the above said circumstances, issuance of licence to those who had qualified in CHALR, 1984, cannot be cited as a precedent.

13. On the aspect of an order passed by this court in W.P. No.11699/2011, dated 28.09.2011, directing grant of licence to one G.Saravanan, qualified under Regulation 9 of CHALR, 1984, appellants have contended that the above said decision has been challenged in W.A. No.410/2012 before this court.

14. After considering the rival submissions and taking note of the decision of a Division Bench of this court in W.A. No.1182 of 2011 dated 26.09.2011 confirming the directions issued in W.P. No.5472 of 2010 dated 31.03.2010, decision of the Hon'ble Division Bench of the Gujarat High Court, which quashed the new Regulations issued in the year 2004 by order dated 01.10.2010, in ***Ravindra K.Joshi vs.***

Union of India reported in ***2011 (267) E.L.T. 337 (Guj.)***, decision of the writ court made in W.P. No.11699/2011, dated 28.09.2011, wherein, the writ court directed the Commissioner of Customs (CHA Section), Chennai, to issue Customs House Agents Licence, and the decision of the Hon'ble Supreme Court in ***Sunil Kohli vs. Union of India and others*** dated 27.04.2012 reported in ***2012-TIOL-45-SC-CUS***, wherein the Hon'ble Supreme Court, upheld the decision of the learned Single Judge of the Delhi High Court, stated supra, and taking note of the fact that the respondent had passed written as well as oral examination of Regulation 9 of CHALR, 1984, which existed prior to coming into force new Regulation in the year 2004, at paragraph 8 in W.P. No.24210/2012 dated 01.10.2012, writ court ordered, as hereunder:

> *"8. In such circumstances, in view of the contentions raised on behalf of the petitioner and in view of the decisions cited supra, this court finds it appropriate to direct the respondents to issue the necessary certificate granting the Customs House Agents Licence to the petitioner, as per Regulation 9 of the Customs House Agents Licensing Regulations, 2004, on the 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 this order. The writ*

petition is ordered accordingly. No costs."

15. Being aggrieved by the order made in W.P. No.24210 of 2012 dated 01.10.2012, instant appeal has been filed on the very same grounds made in W.A. No.410/2012.

16. Before us, contention has been made that the grounds of appeal, in W.A. No.410/2012, are similar to the contentions made in W.P. No.24210/2010, said writ appeal has been admitted by a Division Bench and there was an absolute order of stay against the order made in W.P. No.11699/2011 dated 28.09.2011.

17. At the time when the instant appeal came up for further hearing, we directed Mr.V.Sundareswaran, learned counsel for the appellants, to furnish the details of W.A. No.410 of 2012.

18. Reverting, Mr.V.Sundareswaran, learned counsel for the appellants, filed a typed set of papers dated 10.08.2017 and reiterated the very same objections, made in the counter affidavit, filed before the writ court, as to the date of coming into force of Regulation, 2004 and also the interpretation of Clause 9 of Regulation 8 of 2004, which began with a Notwithstanding clause. Contention has

also been made that when the decision in W.P. No.5472/2010 dated 31.03.2010, was made, clauses 6 to 9 of Regulation 8 of CHALR, 2004, subsequently amended by Notification No.30/2010 dated 08.04.2010, were not in existence and therefore, decisions rendered prior to the coming into force of the amendment, would not be made applicable to the case on hand.

19. He submitted that CHALR, 2004 has been amended by inserting sub-regulation 9 under Regulation 8 of the CHALR, 2004. A special exam was conducted on 15.07.2010. Those who have qualified the special exam, were considered at par with qualified persons under Regulation 8 of the CHALR, 2004 and many of them have obtained CHA licence, after applying for the same.

20. Contention has also been made that the Board, vide its letter in F. No.1191/02/2010-Confl. dated 11.10.2011 decided to provide another opportunity to the persons, who had qualified under Regulation 9 of CHALR, 1984, to pass the Special Exam and decided to conduct the Exam on 13.02.2012. Accordingly, Public Notice No.152/2011 dated 03.11.2011 was issued by Chennai Commissionerate inviting applications from eligible candidates. Before

the commencment of the exam, Customs Authorized Signatories (Regln. 9) Association filed W.P. No.2919 of 2012 before this High Court praying to quash the Public Notice. This Court denied any stay on conducting the examination but restricted the publication of results until further orders. Now this Court, vide order dated 08.08.2012, has quashed the Public Notice No.152/2011 dated 03.11.2011, against which, a writ appeal has also been filed. In addition to the above, reliance was also made to few decisions.

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 accepted by 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 dted 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.

(S.M.K., J.) (V.B.S., J.)
22.08.2017

Internet : Yes
Index : Yes
asr/

S.MANIKUMAR, J.
and
V.BHAVANI SUBBAROYAN, J.

Asr.

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