IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.3909 of 2016

M/s.Mavin Clearing & Forwarding Services,
Represented by its Proprietor
Mr.M.A.Hameed Khan
No.216, (Old No.226), Thambu Chetty Street,
3rd Floor, Chennai - 600 001. ... Petitioner

Vs

1. The Commissioner of Customs,
   Chennai VIII Commissionerate,
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

2. The Deputy Commissioner of Customs (CHA-Unit),
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001. ... Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the second respondent to include the name of Mr.R.Nandanan as the 'G' card holder in the Custom Broker License of the Petitioner.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Ms.R.Hemalatha
Senior Panel Counsel

O R D E R

Heard Mr.Hari Radhakrishnan, learned Counsel for the petitioner and Mrs.R.Hemalatha, learned Senior Panel Counsel appearing on behalf of the respondents. Since the learned Senior Panel Counsel for the respondents has been given the brief history of the case and the para-wise comments by the department, the matter was heard and being disposed of finally.

2.The petitioner seeks for issuance of Writ of Mandamus to direct the second respondent to include the name of Mr.R.Nandanan as a 'G' card holder in the Customs Broker Licence of the petitioner. The petitioner is a Customs Broker holding a valid Licence bearing No.10/01-HYD,Hyderabad-II Commissionerate, Hyderabad, which was extended to Chennai, vide intimation dated 14.07.2001.

3.The petitioner has employed one Mr.R.Nandanan, who had passed the examination as required under the erstwhile Customs House Agent License Regulation, 2004 [Old Regulation], this examination was conducted by Commissionerate of Customs, Cochin. The said Mr.R.Nandanan having been successful in the examination and based on the results, was given a card in Form -G as he was employed by a Customs House Agent at Chennai viz., M/s.Green Channel Inter-Port Services Pvt. Ltd.

4.The said Mr.R.Nandanan has resigned the services of the said company, which has been communicated to the department by letter dated 15.05.2014 and the card in Form-G issued in the name of the said Customs Agency's has been surrendered, which has been acknowledged.

5.The said Mr.R.Nandanan, has joined services of the petitioner on 07.01.2015 and by application dated 25.05.2015, the petitioner made a request to the respondents to issue a fresh Identity card in Form-G to the said Mr.R.Nandanan. Since there was no response, the petitioner is before this Court.

6.The learned counsel for the petitioner submitted that those persons who have qualified the examination conducted under Section 19(3) of the Old Regulation and those persons who have passed the examination conducted under Regulation No.17 (3) of the Customs Brokers Licensing Regulation, 2013 [New Regulation] can sign the declaration filed before the Customs for transacting works at any customs station. There is no requirement that the persons must have passed the examination conducted by Chennai Customs Commissionerate, more particularly, when the said Mr.R.Nandanan was given a card in Form-G by the respondents while he was working with M/s.Green Channel Inter-Port Services Pvt. Ltd., at Chennai based on the examination conducted by the Cochin Customs Commissionerate. Further it is submitted that the nature of work is identical and as the petitioner has passed the examination in Cochin, it would be sufficient for the respondents to grant a card in Form-G.

7.The respondents, in the written instructions given to the learned standing counsel, have stated that the identity card given to the petitioner in Form-G, when he was working in M/s.Green Channel Inter-Port Services Pvt. Ltd., at Chennai, is an error committed by the department and such a card being erroneously given cannot be claimed as a matter of right. Further, by referring to Regulation 4 (2) of the new Regulation, it is submitted that an application for Licence to act as customs broker in a customs station in Form 'A' shall be made to the Commissioner of Customs having jurisdiction over the area where the applicant's intends to carry on his business.

8.Thus, the respondents would submit jurisdiction restriction for the petitioner to get a License under Regulation 7 from the Commissionerate would be equally applicable to the person who is employed by them under Regulation 17 (1) in this regard. The respondents has referred to a clarification issued by the CBLR in circular No.42/2004 dated 10.06.2004 and it is submitted that if the petitioner is to work at Chennai, he must have passed the examination conducted by the Chennai Customs Commissionerate.

9.The relevant Regulation which would have been applicable to the case on hand is Regulation No.17 of the New Regulations. Sub regulation 3 of Regulation 17 places an embargo on the candidate and the candidate is required to pass the examination conducted by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs. This would mean that the candidate should pass the examination conducted by the authority within whose jurisdiction he would be functioning.

10.However, sub-regulation 4 of Regulation 17 provides an exemption as it commences with non-obstante clause and reads as follows:-

> “17.Employment of persons:
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> 1............
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> 2............
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> 3............
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> 4.Notwithstanding anything contained in sub-regulation (3),a person who is employed under a Customs Broker and who has passed the examination referred to sub-regulation (3) may,on his appointment under any other Customs Broker, with the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.”

11.In terms of the above regulation with the approval of the Deputy Commissioner or Assistant Commissioner and as of now the Commissioner, a person who is employed under a Customs Broker and who has passed the examination referred to sub-regulation 3 may, on his appointment under any other Customs Broker, with the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.

12.Thus, the rights of the petitioner are not fully foreclosed and even assuming that the identity card in Form-G issued to Mr.R.Nandanan on a earlier occasion while he was working in M/s. Green Channel is said to be an error, that cannot be a ground to deny the relief to the petitioner. Regulation 17(4) of the New Regulation, empowers the respondents to exempt the employee who has already passed such examination.

13.While on this issue, it is beneficial to refer to the decision of the Calcutta High Court in the case of Ravindra Kamalkant Shukla Vs. Commissioner of Customs (Airport & Admn.) reported in 2016 (343) E.L.T. 86 (Cal.). The said case arose under the Old Regulations where the application for grant of license under the Customs House Agent Licensing Regulations 1984 [CHALR] was rejected on the ground that the applicant had passed the examination from Mumbai and not from Calcutta.

14.The Hon'ble Court after elaborately referring to the relevant provisions of the CHALR took note of an unreported decision of the Calcutta regulation in the case of A.P. Clearing Agency Pvt. Ltd V. Union of India and Ors., wherein it was holding that a temporary license holder, who has passed the examination under Regulation 9 of CHALR, 1984 was not required to clear the examination under Regulation 8 of the 2004 Regulations for grant of permanent license.

15.This view of the Calcutta High Court was affirmed by the Hon'ble Supreme Court in its Judgment dated 27.04.2012 in Union of India & Anr. V. Sunil Kohli & Ors. The Court held that it makes little difference whether the examination is taken by one Commissionerate or the other. If the examination is cleared, the examinee qualifies for license anywhere in India subject to fulfillment of other requirement.

16.Though the above decision arises out of a rejection of Customs House Agents License, the legal Principles laid therein can very well be made applicable to the facts of the case on hand.

17.Thus, taking note of Regulation 17(4) and the facts and circumstances of the case, the writ petition is allowed by directing the respondents to consider the petitioner's application for issuance of identity card in Form-G dated 25.05.2015 and 12.10.2015 and consider the same by applying Regulation 17(4) and pass appropriate orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Customs,
   Chennai VIII Commissionerate,
   Custom House, No.60, Rajaji Salai,
   Chennai - 600 001.

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

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.72543
+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.72426

W.P.No.3909 of 2016

RR(CO)
CA(14/11/2017)