IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.30426 of 2016

M/s.Paragon Logistics
Represented by Partner Shri.E.Rajendran
having office at New No.79, Old No.38,
1st Floor, Angappa Naicken Street,
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 (CBS)
O/o.The Commissioner of Customs (Chennai VIII)
Custom House, No.60, Rajaji Salai,
Chennai-600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records pertaining to the impugned order dated 21.07.2016 issued in F.No.R/671-CHA of the 2nd respondent and quash the same and further directing the respondents to allow the inclusion of the petitioner's name as the sole authorized signatory/power of attorney holder of the petitioner firm having licence No.R/671-CHA at Chennai Customs.

For Petitioner : Mr.G.Derrick Sam

For Respondents : Mr.S.R.Sundar
standing counsel

O R D E R

This writ petition is filed challenging the order of the second respondent dated 21.07.2016 in refusing to renew the Custom House Agent Licence to the petitioner on the reason that the partner of the petitioner-Firm viz., E.Rajendran has not qualified the examination conducted by Chennai Customs House Agents as per the Board Circular No.42 of 2004 dated 10.06.2004.

2. The case of the petitioner in short is as follows:-

The partner of the petitioner-Firm E.Rajendran had passed the examination conducted under Regulation 9 of the erstwhile Custom House Agents Licensing Regulations, 1984. The petitioner-Firm was issued with the Custom House Agents Licence bearing No.R-671/CHA by the first respondent. The petitioner-Firm had filed Form-C under Regulation 9 of the Custom House Agents Licensing Regulations, 2004 before the Assistant Commissioner of Customs and the Deputy Commissioner of Customs, Tuticorin, seeking permission for transacting their business in Tuticorin Customs and the same has been accepted. The licence has also been extended to Cochin and Mumbai. The petitioner-Firm made an application on 25.12.2015 for renewal of the licence showing that the said E.Rajendran is the sole Power of Attorney Holder and that he had qualified the examination conducted under Regulation 9 of the Custom House Agents Licensing Regulations, 1984. At that time, one P.S.Ranganathan who qualified the examination conducted under Regulation 9 of the Custom House Agents Licensing Regulations, 1984, from the Chennai Custom House, was also included as the authorized signatory of the firm. Thus, the renewal was granted by the Assistant Commissioner of Customs (CBS), Chennai, vide renewal order dated 26.02.2016. On 26.04.2016, the said E.Rajendran made a representation to the first respondent to permit him to operate as the sole authorized signatory/Power of Attorney of the petitioner-Firm, since the said P.S.Ranganathan had expressed his intention to resign from the firm. However, the said request was rejected, by the impugned order only on the ground that the said E.Rajendran is not qualified, under Regulation 9 of the Custom House Agents Licensing Regulations, 1984, from the Chennai Custom House.

3. The respondents filed a counter affidavit. After reiterating the contention raised in the impugned order, the respondents in the counter affidavit specifically admitted that Regulation 6 of the Customs Broker Licensing Regulation, 2013, exempts the persons who have already passed the examination conducted under Regulation 9 of the CHALR, 1984 or Regulation 8 of CHALR 2004, from appearing for any further examination. It is further admitted that the said Regulation, though not specific about the jurisdiction in which the qualified person can operate, clarifications given by the Board is taken into consideration under the Board's Circular No.42 of 2004 dated 10.06.2004.

4. The learned counsel for the petitioner submitted that the sole proprietor of the petitioner-Firm viz., E.Rajendran has admittedly, passed the examination conducted under Regulation 9 of CHALR, 1984 and therefore, in view of the clarification given under CBLR, 2013, more particularly, Regulation 6, the sole

proprietor is not required to take or appear for any further examination. Therefore, he contended that the rejection on that ground is unsustainable. In support of his contention, the learned counsel relied on a decision made by this Court in WP.No.3909 of 2016 dated 09.10.2017 reported in 2018 (359) E.L.T. 506 (Mad.).

5. On the other hand, the learned standing counsel for the respondents submitted that in view of the Board Circular No.42 of 2004 dated 10.06.2004 the rejection of the petitioner's request is justifiable. However, he fairly accepted the position that the issue involved in this case is squarely covered by the recent decision of this Court reported in 2018 (359) E.L.T. 506 (Mad.).

6. Heard both sides.

7. There is no dispute to the fact that the sole proprietor of the petitioner-Firm viz., E.Rajendran has already passed the required examination conducted under Regulation 9 of the CHALR, 1984. The Customs Broker Licensing Regulation, 2013, more particularly, Regulation 6, specifically exempts the persons who have already passed the examination conducted under Regulation 9 of the CHALR, 1984 and Regulation 8 of CHALR, 2004 from appearing for any further examination. The relevant portion of Regulation 6 of the Customs Brokers Licensing Regulations, 2013 reads as follows:-

> "6. Examination of the applicant:
> (1) An applicant, who satisfies the requirements of Regulation 5, shall be required to appear for a written as well as oral examination conducted by the DGICCE:
> Provided that an applicant who has already passed the examination referred to in Regulation 9 of the Custom House Agents Licensing Regulation, 1984 and Regulation 8 of the Custom House Agents Licensing Regulation, 2004 shall not be required to appear for any further examination.
> (2) The written examination shall be conducted on specified dates in month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination and the result of the said examination shall be declared by end May each year."

8. There is no dispute to the fact that as per Regulation 6 of the Customs Brokers Licensing Regulation (CBLR) 2013, the

sole proprietor of the petitioner who has admittedly undergone the examination successfully, under Regulation 9 of the CHALR 1984, is not required to appear for any further examination. In other words, the qualification already acquired by the sole proprietor of the petitioner holds good even as on today and therefore, with that qualification, the petitioner-Firm is entitled to get the renewal. The only reason stated for rejection of the petitioner's request in the impugned order is based on the Circular No.42 of 2004 dated 10.06.2004. This Court has already considered the identical issues and also the scope of the said Circular reported in 2018 (359) E.L.T. 506 (Mad.), wherein, Paragraph Nos.8 to 17 has been observed as follows:

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

9. Hence, I find that the above decision of this Court is squarely applicable to the facts and circumstances of the case and in favour of the petitioner. Thus, by applying the said decision to the present case, I find that the petitioner is entitled to succeed. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the respondent is directed to consider the claim of the petitioner and pass appropriate orders in terms of Regulation 6 of the Customs Brokers Licensing Regulation (CBLR) 2013, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//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 (CBS)
O/o.The Commissioner of Customs (Chennai VIII)
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.Hari Radhakrishnan, Advocate SR.No.72244
+1cc to Mr.S.R.Sundar, Advocate Sr.No.72064

W.P.No.30426 of 2016

GJ(CO)
CSL/08.11.2018