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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 14928/2022 and CM APPL. Nos. 45950-51/2022**

VIJAY KUMAR

..... Petitioner

Through : Mr. S. Vijay Kanth, Advocate.

versus

**CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS**

..... Respondent

Through: None.

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Date of Decision: 20th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 45951/2022 (for exemption)

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) 14928/2022 and CM APPL. 45950/2022 (for interim directions)

1. The Petitioner herein is aspiring to become a licensed Customs Broker and has filed the present petition seeking quashing of Clause 6 of Regulation 6 of Customs Brokers Licensing Regulations, 2018 ('CBLR, 2018'), insofar as it permits an eligible applicant a total of six (6) attempts to clear the prescribed written and oral examination for obtaining the Customs Broker License. The Petitioner further seeks a direction to the Respondent to permit

seven (7) attempts to an applicant for clearing the said examination.

2. Learned counsel for the Petitioner states that the Petitioner is currently working as a consultant in the trade industry of import and export and has more than two years of experience in transacting customs broker work as a G-Card holder. He states that the Petitioner is qualified for appearing in Customs Broker's Licensing Examination held by the Department of the Respondent but the Petitioner admittedly failed all six (6) attempts to clear the examination between 2017 to 2022. In the 3rd attempt in the year 2019, for the first and only time the Petitioner cleared the written examination but failed to qualify in the oral examination. He however could not clear the written examination again in the subsequent years i.e., 2020, 2021 and 2022. The Petitioner has filed the present petition being aggrieved by the existing regulations which disentitle him from taking any further examination i.e. the 7th attempt.

3. He states that the Respondent under Section 146(2) of the Customs Act, 1962, ('the Act') is given power to make regulations in respect of the said examination. The said regulations govern issuance of Customs Broker License to the eligible applicants. He states that the Customs Broker is licensed to act as an agent on behalf of the importer or an exporter for transacting any business relating to entry or departure of conveyances or the import or export of goods at any Custom's station.

4. He states that the Respondent notified CBLR, 2018 in supersession of the Customs Brokers Licensing Regulation, 2013, ('CBLR, 2013'). The CBLR, 2013 was notified by the Respondent by repealing an earlier regulation i.e., Custom House Agents Licensing Regulation, 2004. He states that the Petitioner is aggrieved by the action of the Respondent in reducing

the allowable number of attempts for clearing the said examination from seven (7) in CBLR, 2013 to six (6) in the existing CBLR, 2018. The relevant provision of Regulation, 2013 and 2018 are as under:

CBLR, 2013	CBLR, 2018
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 DGICCE: xxx xxx xxx <u>(6) An applicant shall be allowed a maximum period of seven years from the date of original application within which he shall pass both written and oral examinations and no further extension shall be granted.</u>	6. Examination of the applicant.- (1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written (preferably online) as well as oral examination conducted by the Directorate General of Performance Management: xxx xxx xxx <u>(6) An applicant shall be allowed a maximum of six attempts to clear the examination.</u>

(Emphasis Supplied)

5. He states that as per Clause 6 of Regulation 6 of CBLR, 2013, an applicant was allowed a maximum period of seven (7) years from the date of his/her original application for clearing both the written and oral examination with the stipulation that no further extension shall be granted. He states that if the applicant elected to appear for the exam held every year he/she could make seven (7) attempts under the CBLR, 2013.

6. He states that as per Clause 6 of Regulation 6 of CBLR, 2018, the

total number of attempts to appear for the aforesaid examination is restricted to six (6) attempts, which were effectively seven (7) in the *erstwhile* CBLR, 2013.

7. He states that the reduction in the number of attempts under CBLR, 2018, is arbitrary and that the Petitioner is aggrieved by the same since he would have wasted the valuable time spent by him in the past six (6) years preparing for the said examination.

8. Learned counsel for the Petitioner states that the Petitioner is desirous of appearing for the exam scheduled in the month of March, 2023, but since it would be his 7th attempt, he is debarred from appearing as per the provisions of the impugned Clause 6 of Regulation No. 6 of CBLR, 2018. Therefore, in these circumstances the Petitioner is seeking a direction to Respondent that he may be permitted to make a 7th attempt.

9. We have heard the submissions made by the learned counsel for the Petitioner.

10. As per Clause 6 of Rule 6 of CBLR, 2013, an applicant was permitted a maximum period of seven (7) years from the date of his/her original application to pass both the written as well as oral examinations. Thus, an applicant was allowed a '*period*' for passing his/her written and oral examinations. The said clause makes no reference to '*attempts*'. For instance, as per the Notice for Customs Broker Examination, which was to be held on 20th January, 2017, an applicant could've applied for the said examination, at the latest by 18th November, 2016. Therefore, as per the aforesaid provision of CBLR, 2013, an applicant would've been eligible for further attempts till 18th November, 2023 i.e., seven (7) years from the date of original application, effectively resulting in a maximum of seven (7)

attempts, if the applicant chose to appear in the exam every single year.

11. In contrast, in the same illustration, under the existing Clause 6 of Regulation 6 of CBLR, 2018, what is permissible to an applicant is six (06) 'attempts'. In other words, if an applicant makes his first (1st) attempt on 20th January, 2017, there is no stipulation that he must complete his six (06) 'attempts' on or before 18th November, 2023, which was a condition of CBLR, 2013. In fact, existing Regulation 6 CBLR, 2018, gives more flexibility to an applicant in clearing the exam as the six (6) *attempts* are not required to be attempted in six (6) years but may be attempted in a longer *period*.

12. However, notwithstanding the aforesaid, the issue raised in the present petition stands squarely covered by a decision of the predecessor bench of this Court in ***Manish Rishishwar v. Union of India & Anr., 2020 SCC Online Del 381***, wherein the Petitioner, *inter alia*, sought quashing of the Clause 4, 5 & 6 of Regulation 6 of CBLR, 2018 on identical pleas. The relevant extracts of the aforesaid judgment are as under: -

“2. The petitioner has preferred the present writ petition to assail clause 5(1)(h)(ii) of the Customs Brokers Licensing Regulations, 2018 framed vide notification No. 41/2018-Customs (N.T.) dated 14.05.2018, amended by notification No. 08/2019- Customs (N.T.) dated 06.02.2019. The petitioner also seeks the quashing and setting aside of clauses 6.4, 6.5 and 6.6 of the Customs Brokers Licensing Regulations, 2018 framed vide notification No. 41/2018-Customs (N.T.) dated 14.05.2018, amended by notification No. 08/2019-Customs (N.T.) dated 06.02.2019.

XXX XXX XXX

7. Further, the grievance of the petitioner is that under the 2013

regulations, the petitioner was entitled to seven attempts, whereas, under the 2018 regulations, he is entitled to only six attempts to clear the examination. The challenge to the 2018 regulations is premised on the foundation that the petitioner had a vested right to seven attempts, since the petitioner had appeared on five occasions under the 2013 regulations and that the vested right could not be taken away while framing the 2018 regulations. Similarly, the petitioner is entitled to two attempts at interview, under the 2013 regulations, which has been curtailed to one attempt under the 2018 regulations. In this respect also, a vested right has been claimed by the petitioner.”

13. This Court while deciding the aforesaid case has held as under:

“13. The main thrust of the arguments of Mr. Qadri, is premised on a well recognised principle of law that a vested right, which inheres in a party, could not have been taken away. Indeed, the Courts in several judgments have protected the vested rights which accrue in favour of a party, say under a legislation or by way of a promise given by the other party. However, we are completely perplexed as to how the petitioner is claiming that a vested right has accrued in his favour. The contention of the petitioner is completely misplaced, in our understanding. It seems that the petitioner comprehends that merely because under the 2013 regulations, the petitioner was entitled to seven attempts to clear the examination for getting custom broker license, he has a vested right to claim such number of attempts, and the respondents could not have brought in the 2018 regulations which reduced the number of attempts only to six. Similarly, the petitioner is under a misconception that merely because under the 2013 regulations, he is entitled to two attempts at interview, the same could not have been cut down. His submission that-since under the 2018 regulations, a candidate has to clear the interview in a single attempt, the same violates his fundamental rights enshrined under Article 14, 19(1)(g) and 21 of the Constitution of India is completely untenable. Petitioner cannot question the curb put by the respondents in respect of the number of attempts for clearing the interview. In our considered

opinion, the arguments of the petitioner are inherently flawed. The petitioner has concededly not cleared the examination whilst the 2013 regulations were in force. He did make five attempts, but was unsuccessful. Therefore, in that sense of the matter, no right whatsoever, much less vested right can be said to have accrued in favour of the petitioner under the said regulations. Thereafter, the 2018 regulations were framed, superseding the earlier regulations and petitioner made yet another attempt to clear the examinations for the 6 time. Though the petitioner qualified the same, however, he could not clear the oral interview. Now, since the 2018 regulations do not afford multiple opportunities to the candidates to clear the oral interview, the petitioner who has failed in this endeavour, has filed the present petition questioning the limiting of chances of clearing the oral interview under the 2018 regulations. In our view, since the petitioner did not clear the examinations whilst the 2013 regulations were in operation, the same cannot be the basis of impugning the fresh regulations, even if the same superseded certain clauses of the 2013 regulations, that enabled the Petitioner better opportunities. The principle of law being pressed into service that a vested right cannot be taken away, is not attracted in the present case. Merely because 2013 regulations provided for seven opportunities to clear the written examination, and two for oral examination, does not mean that such regulations have to remain effective in perpetuity, and that the respondents cannot introduce fresh regulations. If we were to construe that a right would accrue or vest in favour of a person merely because a particular rule, regulation or a legal provision enables him/her to avail of an opportunity as provided, and that the same cannot be modified or altered, it would amount to holding that no rule or regulation can be superseded or modified under any circumstances. The respondents are at freedom to bring a change in the regulations, if the circumstances and the need so arises, and the same has to be done in accordance with law. The provisions of such regulations cannot be declared to be ultra vires only for the reason that certain clauses which existed prior thereto have been modified. The respondents have the discretion to restrict the number of attempts for clearing the

written as well as oral examination. Law is dynamic and the Central Board of Excise Customs is empowered by Sub Section (2) of Section 146 of the Custom Act, 1962 to frame regulations in supersession of the previous ones, having regard to the prevalent circumstances. Thus, reducing the number of attempts to clear the oral examination for the candidates who have passed the written examination, in our view, cannot be said to be arbitrary or violative of Article 14 of the Constitution of India. In absence of any arbitrariness and any cogent legal proposition advanced to impugn the notifications, except for raising the plea that a vested right cannot be taken away, which we have rejected in the preceding paragraphs, we find no ground whatsoever to exercise our jurisdiction under Article 226 of the Constitution of India.

14. The judgments relied upon by Mr. Qadri, learned senior counsel for the petitioner, which have been extracted above have no application to the facts of the present case. As discussed above, the proposition of law relating to protection of “vested rights” or “accrued rights”, is well recognized, however accrual or vesting of such rights is a sine qua non for the Courts to protect the same. The factual position in each of the cases cited by Mr. Qadri is distinguishable. The same have been passed in the context of a right flowing under the relevant rules which were to be sought to be altered with effect from an anterior date, thereby taking away the benefits available under the rule in force at that time. The courts have looked down upon the retrospective operation of the amendments that take away a benefit which is already available to a person. However in the present case, no right whatsoever has accrued in favour of the petitioner that permits him to avail seven attempts to crack the examination in question, and two chances to appear in the interview, even though the Rules have changed. Examinations held under the regulations of 2018 cannot be treated as those undertaken under the 2013 Regulation. They are strictly governed by their own regulations. The 2018 Regulations are prospective in their nature and have been applied prospectively.

15. In view of aforesaid reasons, we find no merit in the present

petition. Accordingly the present petition and the pending application are dismissed."

(Emphasis Supplied)

14. Further, it is evident from the record that the Petitioner himself has appeared for four (4) written examinations starting from 2019 to 2022 as per CBLR, 2018 and was not aggrieved by the said Regulations at the relevant time.

15. The notification inviting applications for examinations was issued on 24th August, 2022, and the applications for appearing in the written examination are to be filed from 18th October, 2022. The present petition has been filed on the eve of 18th October, 2022, and it is a speculative attempt to appear in the said examination for the seventh (7th) time.

16. In light of the aforesaid facts and judgment of this Court in ***Manish Rishishwar*** (Supra), since the challenge sought to be raised in the present petition has already been negated by our Predecessor Bench, accordingly, the present petition and the pending application are dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

OCTOBER 20, 2022

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