

W.A(MD)No.1411 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 24.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

W.A.(MD)No.1411 of 2021

and

C.M.P(MD) Nos. 5849 of 2021 & 1337 of 2022

The Commissioner of Customs,
Customs House,
New Harbour Estate,
Tuticorin – 628 004.

... Appellant /Respondent

Vs.

P.Saravanan

... Respondent/ Petitioner

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.11621 of 2020 dated 01.02.2021 on the file of this Court.



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For Appellant : Mr.R.Nandakumar

For Respondent : Mr.R.S.Sivaram

JUDGMENT

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

The writ appeal is filed by the Customs Department being aggrieved by the order passed by the learned Single Judge who had allowed the writ petition filed by the petitioner/respondent herein seeking Mandamus in the nature of direction to the respondent/appellant herein to give 'G' card license to the petitioner within a time frame fixed by the Court.

2. The present intra Court appeal is filed stating that the learned Single Judge has miserably failed to properly interpret the provisions of the Regulation and has substituted his own interpretation. Without taking note of the latches and prejudice caused to the Department given undue weightage for the writ petitioner for reasons best known who has come the Court with delay and unclean hands.



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3. The writ petitioner is the respondent herein. He applied for Customs Brokers Licence as contemplated under Customs Brokers Licensing Regulations, 2013. Though he cleared the written examination, he was not able to clear the viva-voce even after two attempts. This was over by the year 2016. Thereafter, the Customs Department has brought in Customs Brokers Licensing Regulations, 2018 superseding the earlier Regulation of the year 2013. Thereafter, the writ petitioner has thought fit to approach the Court by way of Mandamus seeking the relief extracted above.

4. The learned Single Judge has held that the expression used in Regulation 17(3) is only a pass an examination conducted by the Deputy Commissioner of Customs or Assistant Commissioner of Customs it means only one examination. Since the writ petitioner has cleared the written examination he need not be asked to take up a oral examination.

5. The contention of the Department is that the examination includes both oral and written and that is the reason why Clause 6 of the



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Regulations, 2013 as well as the notification inviting application has made clear that the license will be granted to the candidates who clear both written examination and viva-voce successfully. 50 marks fixed as an eligibility cut off marks in the written examination to participate in viva-voce.

6. However, the learned counsel appearing for the respondent/writ petitioner would submit that the learned Single Judge had took the assistance of Oxford Advanced Learner's Dictionary to understand the term “an examination” and rightly said that it is singular in nature and therefore, when Regulation 17(3) talks about pass in “an examination”, it can only mean one examination.

7. This Court on perusing the Customs Brokers Licensing Regulations, 2013 in entirety, find that the participation of the respondent in the selection process, only after having fully understood that the examination will be in two part. The scheme and selection explicitly says first written examination and on clearing the written examination, there will be a viva-voce. The respondent/writ petitioner after clearing the written examination and after participating in the viva-voce, cannot



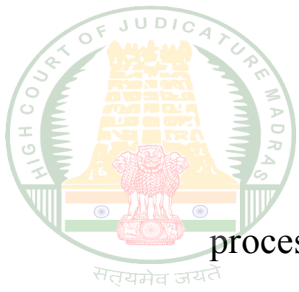
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now turn around and say that Oxford Dictionary says “an examination” is only one examination, therefore, having cleared one examination, he need not take up the viva-voce.

8. The record indicates that the respondent had participated in the selection process and written examination result was released on 29.09.2014, his name finds place in Sl.No.52. He had secured 51 marks in the written examination. The communication also indicates that the candidates who have obtained 50 and above marks in the written examination are qualified to appear for the oral examination. The date and time intimated later to all the eligible candidates. A Public Notice No.42/16 being issued by the Assistant Commissioner of Customs on 10.09.2016 intimating all the eligible candidates who have applied for examination (G card), to attend oral examination on 06.10.2016 and 07.10.2016. It appears that the writ petitioner has participated in the oral examination on 07.10.2016, but he could not clear the oral examination even in the 2nd attempt.

9. After the Customs Brokers Licensing Regulations, 2018 came into force superseding the earlier Regulations of the year 2013, the



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process of conducting examination in two parts i.e., one written and another viva-voce is given up. Thereafter, the writ petition filed and the same allowed by the learned Single Judge without proper understanding of the provisions of Law as in the Statute Book, but borrowing the general Dictionary meaning of the article 'an'. The golden principle of interpretation of any Statute should be reading the text in the context it is made. While interpreting the other provisions of the Act should also be taken into account for a harmonious and meaningful interpretation.

10. In this case, when there is specific notification that the selection will be based on the performance in the written examination and in the viva-voce, the writ petitioner having participated not once, but twice had come to the Court after 5 years of his first attempt, without clearing the viva-voce.

11. The Regulation 17(7) (ii) of Customs Brokers Licensing Regulations, 2013 clearly states that Form 'G' card will be issued only incase a person pass examination referred to in Sub Regulation (3) of Regulation 17.



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12. Sub Regulation (3) of Regulation 17 speaks about

employment of a person as a Customs Brokers obtaining license on clearing examination conducted by the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be.

13. The Public Notice No.7 of 2014, dated 15.07.2014

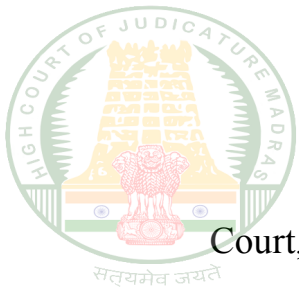
inviting application for 'G' card examination without any ambiguity intimates that the public with the caption **“Form 'G' examination (written and oral examination) under Regulation 17(3) of Customs Brokers Licensing Regulations, 2013.”**

14. While so, having knowingly participated in the process

that the examination will be in two parts i.e., written and oral, the attempt of the writ petitioner to change the game rule by way of a writ petition cannot be entertained. The learned Single Judge erred in allowing the writ petition which is contrary to Law and Statute.

15. Therefore, we are constrained to interfere with the order

of the learned Single Judge which has been passed against the Regulation and ignoring the principles of Law laid down by the Hon'ble Supreme



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Court, that there cannot be any change in the game rule, after the commencement of the game.

16. The writ petitioner who had participated in the viva-voce twice, 1st time on 29.10.2014 and 2nd time on 07.10.2016 and both time failed to secure the minimum marks required. He cannot have the advantage of nullifying the provisions to suit his convenience after participating in the process of selection.

17. Accordingly, this Writ Appeal stands allowed. The order of the learned Single Judge in W.P.(MD)No.11621 of 2020 dated 01.02.2021 is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

[G.J., J.] [R.P., J.]
24.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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DR.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

RM

Judgment made in
W.A.(MD)No.1411 of 2021

24.04.2025