



W.A.(MD)No.1604 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.1604 of 2021

and

C.M.P(MD)No.6842 of 2021

The Assistant Commissioner of Customs
(CBLR) Section,
Customs House,
New Harbour Estate,
Tuticorin – 628 004.

... Appellant /
Respondent

Vs.

M.Muniasamy

... Respondent /
Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 23.06.2021 made in W.P(MD)No.18201 of 2020.

For Appellant : Mr.R.Nandakumar
Senior Standing Counsel

For Respondent : Mr.N.Anandhakumar



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JUDGMENT

(Judgment of the Court was made by G.R.SWAMINATHAN J.)

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Heard both sides.

2.The writ petitioner Thiru.M.Muniasamy was employed by a customs broker attached to Tuticorin Commissionerate of Customs. While a customs broker shall be issued with photo-identity card in Form-F, every person employed by him shall carry a photo-identity card at all times when he transacts work at the customs station. The photo identity cards of the persons employed by customs broker will be either in Form-G or Form-H. The Deputy Commissioner of Customs/Assistant Commissioner of Customs is the issuing authority. During the relevant time, Customs Brokers Licensing Regulations, 2013 was in force. Regulation 17 is the applicable provision. It reads as follows:

“17. Employment of persons. -

*(1) A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons to assist him after verifying their antecedent and identity at the declared address by using reliable, independent, authentic documents, data or information :
Provided that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent.*



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(2) ...

(3) *The person referred to in sub-regulation (1) shall, within four attempts from the date of his appointment, pass an examination conducted by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and the examination shall be such as to ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs.*

(4) ...

(5) ...

(6) ...

(7) *The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall issue a photo-identity card to every person employed by a Customs Broker, —*

(i) in Form F in case he has passed the examination referred to in regulation 6;

(ii) in Form G , in case he has passed the examination referred to in subregulation (3);

(iii) in Form H , in case he has not passed the examination referred to in subregulation (3);

and every such person shall, at all times when he transacts the work at the Customs Station, carry photo identity card with him and produce it for inspection on demand by any officer of the Customs Station.”



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(8) ...

(9) ...”

Muniasamy was holding only “H” Card. He aspired to obtain “G” Card. Tuticorin Commissionerate conducted a written examination under Regulation 17(3) on 09.04.2016. The results were announced on 20.05.2016. The writ petitioner was declared to have passed in the said examination. However, “G” card was not immediately issued to the writ petitioner. He was instead called for an interview. Ultimately, the writ petitioner was informed that “G” card will not be issued to him since he did not clear the oral examination. Challenging the stand taken by the authority, M.Muniasamy filed WP(MD)No.18201 of 2020. The learned single Judge vide order dated 23.06.2021 disposed of the writ petition in the following terms:

“10. In view of the above facts and circumstances of the case, a direction is issued to the respondent to consider the petitioner's representation, dated 02.07.2020, seeking 'G' Card Licence to the petitioner, under Regulation 17(3) of Customs Brokers Licensing Regulations, 2013 and to pass necessary orders, in the light of the order passed by this Court in W.P(MD)No. 14425 of 2019, dated 11.03.2020, within a period of eight weeks from the date of receipt of a copy of this order. No costs.”



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Challenging the said order, this Writ Appeal has been filed.

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3.The learned Senior Standing Counsel for the appellant reiterated all the contentions set out in the memorandum of grounds of Writ Appeal and called upon this Court to set aside the impugned order and allow this Writ Appeal.

4.Per contra, the learned counsel appearing for the writ petitioner submitted that the impugned order is well reasoned. He added that the order dated 11.03.2020 made in WP(MD)No.14425 of 2019 relied on by the learned single Judge has been confirmed by the Hon'ble Division Bench in W.A(MD)No.456 of 2021 dated 24.01.2025. He pressed for dismissal of the writ appeal.

5.We carefully considered the rival contentions and went through the relevant provisions as well as the materials on record.

6.The operative portion of the order dated 11.03.2020 in W.P(MD)No.14425 of 2019 referred to in the order impugned in this Writ Appeal reads as follows:



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“8. It is clear that the respondent authorities have conducted the examination not with a view to upgrade the licence holder, but with a view to reject the upgradation from “H” to “G”. The object of any examination is to ensure that the qualified candidate is promoted to the next post. If an examination is conducted with the object to reject candidates, then the examination itself has to be struck down. In this case, the respondent had no right to conduct any oral examination. It is not provided in the Rules. The Rules stipulate that written examination alone must be conducted. Other State authorities have conducted only written examination and they have not called upon the qualified candidates to again appear for an oral examination. The reasons are obvious. During oral examination, an element of bias can always take place. To eliminate such bias, it has been consistently held that the marks allotted for oral examination should be less than 25% of the total marks.

9. In the present case, for the written examination, the maximum mark was 100 and the qualifying mark was 50 and separately, for oral examination 100 marks were allotted as a maximum and the qualifying mark was given as 50. It is not known what is the nature of oral examination, which was conducted and how the candidates were assessed. Those details are absent in the counter affidavit. Except merely stating that only two candidates passed in the oral examination, no other



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specific details have been given in the counter affidavit. The counter affidavit has to be rejected. The conducting of the examination on 30.01.2019 and the Public Notice No. 1 of 2019, wherein both the written examination and the oral examination were stipulated, has to be struck down and accordingly struck down. A direction is issued to the respondent, insofar as the petitioner is concerned, since he has passed the written examination, to appoint him as “G” card licence holder on or before 31.03.2020, if he is otherwise eligible. Accordingly, the writ petition is allowed.”

This order has been confirmed by the Hon'ble Division Bench vide order dated 24.01.2025 in WA(MD)No.456 of 2021. The Hon'ble Division Bench had held as follows :

“10.Admittedly, when the notification had not prescribed the procedure beyond the educational qualification and the written examination, conducting viva for the selected persons in the written examination conducted by the appellant is per se illegal. Even as per Clause-VI of the 2018 Regulation, the mode of examination do not contemplate for conducting viva. The 2018 Regulation stated supra governs the entire country. The appellant cannot pick and choose on their own method of conducting viva after written examination. The appellant had specifically implanted such a procedure to pick and choose the people, to whom they wish to be selected for



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grant of 'G' card licence. Clause 13(5) and 13(6) and 13(7) of the 2018 Regulation clearly stated that the qualification for getting 'G' card holder is pass in the examination alone. In the absence of any proviso in the regulation for conducting viva, the viva conducted by the appellant is without jurisdiction and without any power conferred under the Regulation.”

7.In fact, citing the aforesaid Division Bench order, we can straightaway dismiss this writ appeal also. However, we are conscious of the fact that in WP(MD)No.14425 of 2019, the Customs Brokers Licensing Regulations, 2018 were applicable. The case on hand concerns the applicability of 2013 Regulations. Regulation 17(3) of the 2013 Regulations employs the expression “pass an examination”. On other hand, Regulation 13(5) of 2018 Regulations employs the expression “pass a written examination”. The language employed in the respective provisions of the Regulations are not in pari materia. We are therefore of the view that the learned Single Judge erred in directing the authority to dispose of the writ petitioner's representation in the light of the order dated 11.03.2020 made in WP(MD)No.14425 of 2019.



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8.However, that will not make a difference. This writ appeal has to

fail for other reasons. Sub-regulation 3 of Regulation 17 states that the applicant must pass “**an**” examination conducted by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. In P.Ramantha Aiyar's Advanced Law Lexicon “an” is defined as equivalent to “one” or “any” and is seldom used to denote plurality. If the intention of the rule maker was that apart from written examination, an oral examination should also be conducted, then, the expression “an” would not have been employed. In that case, the authority could have conducted either a written examination or a oral examination but not both. Once the written examination was conducted, it could not have been followed by a oral examination.

9.The scheme set out in Regulation 17 can be compared with the scheme set out in Regulation 6. Regulation 6 deals with the application for appointment as customs broker. Regulation 6(4) states that the applicant who wants to be enrolled as a customs broker shall be required to clear written examination as well as oral examination. When Regulation 6 talks about two examinations ie., written and oral, Regulation 17(3) talks only about “**an**” examination, the inference is that Regulation 17(3) envisages only one examination.



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10.The learned Senior Standing Counsel appearing for the appellant submitted that in the public notice issued by the Commissionerate, it had been specifically stipulated that the applicant must write not only written examination but also participate in the interview and secure 50 marks. According to the appellant, the doctrine of estoppel will operate against the writ petitioner. This is all the more so because the writ petitioner voluntarily participated in the selection process without any demur or protest.

11.We are not impressed with this argument. It is well settled that there can be no estoppel against statute. 2013 Regulations were issued in exercise of powers conferred by Sub Section (2) of Section 146 of the Customs Act, 1962. The notification issued by the authority cannot run counter to the mandate of the Regulations. By insisting that the applicant must attend an interview also, the authority had gone against their own statutory regulations. Hence, we reject this argument put forth by the learned Senior Standing Counsel.



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WEB COPY 12. For the foregoing reasons, this Writ Appeal stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
17.03.2025

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

M.JOTHIRAMAN, J.

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