

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28-9-2012

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.23761 of 2012

P.Suresh Kumar

.. Petitioner.

Versus

1. The Chairman,  
Central Board of Excise and Customs,  
North Block, New Delhi.

2. The Commissioner of Customs (Imports)  
Custom House, No.60, Rajaji Salai,  
Chennai-1.

3. The Assistant Commissioner of Customs,  
Custom House Agent Unit,  
Custom House,  
No.60, Rajaji Salai, Chennai-1.

.. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein to issue a CHA license in terms of Regulation 9 of CHALR 2004 to the petitioner who had qualified the examinations conducted under the CHALR 1984.

For Petitioner : Mr.P.Saravanan

For Respondents : Mr.K.Mohana Murali

O R D E R

Heard the learned counsel appearing for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. It has been stated that the petitioner had appeared in the Customs House Agent written examination and the oral examination, held under Regulation 9 of the Customs House Agents Licensing Regulations, 1984. It had been declared that the petitioner had qualified in the examinations by the communication issued by the office of the Commissioner of Customs.

3. It had been further stated that the grant of licence to the petitioner, as customs house agent is governed by the Customs House Agents, Licencing Regulations, 1984. The Regulations had been issued, originally, in the year, 1965. The said regulations had been repealed by the subsequent regulations issued in the year, 1984, vide Notification No.85-Cus, dated 19.3.1984. Thereafter, the Regulations issued in the year, 1984, had been superceded by the Customs House Agents Licencing Regulations, 2004, vide Notification No.21/2004-Cus, dated 23.2.2004. The new regulations issued in the year, 2004, had specifically saved the things done or omitted to be done under the old regulations, as well as those which had been omitted to be done before the introduction of the new regulations. However, the regulations issued in the year, 2004, contains a condition that those who had passed the examinations under the regulations issued in the year, 1984, would be required to pass another examination, in respect of the additional papers introduced under the new regulations issued in the year, 2004.

4. It has been further stated that this Court had passed an order, dated 31.3.2010, in W.P.No.5472 of 2010, directing the Commissioner of Customs (CHA Section) Chennai, to issue Customs House Licence to the petitioners therein, who had qualified in the written examination, prior to the coming into force of the regulations issued in the year, 2004. The said petitioners had qualified in the oral examination after the new regulations had come into force. The writ appeal filed against the said order, by the Department of Customs, in W.A.No.1182 of 2011, had been dismissed by this Court, by its order, dated 26.9.2011.

5. It had been further stated that a Division Bench of the Gujarat High Court had quashed the new regulations issued in the year, 2004, by its order, dated 1.10.2010, in Ravindra K.Joshi Vs. Union of India (2011 (267) E.L.T 337 (Guj.)). It had been further stated that, in G.Saravanan Vs. Union of India and others, this Court, by its order, dated 28.9.2011, made in W.P.No.11699 of 2011, had directed the Commissioner of Customs (CHA Section) Chennai, to issue Customs House Agents Licence to the petitioner therein. In the said writ petition, the petitioner had passed the written as well as the oral examination, prior to the coming into force of the new regulations issued in the year, 2004. The petitioner in the present writ petition is also a similarly placed person, who had qualified in the written and the oral examinations, before the new regulations had come into force.

6. The learned counsel appearing on behalf of the petitioner had also relied on the decision of the Supreme Court, dated 27.4.2012, in Sunil Kohli Vs. Union of India and others, 2012-TIOL-45-SC-CUS, wherein the Supreme Court had upheld the decision of a

learned Single Judge of the Delhi High Court. The Delhi High Court had held that those who had cleared the examinations under the regulations issued in the year, 1984, would be eligible for the grant of licence, subject to their fulfilling the other conditions of eligibility, as the actions already taken under the earlier regulations issued in the year, 1984, had been saved by the new regulations issued in the year 2004. Therefore, the learned counsel appearing on behalf of the petitioner had submitted that the petitioner is eligible for the grant of Customs House Agents Licence, as he had passed the written, as well as the oral examination, held prior to the coming into force of the new regulations in the year, 2004.

7. The learned counsels appearing on behalf of the respondents had not been in a position to show that the petitioner is ineligible for the grant of the Customs House Agents Licence, as per the new regulations issued in the year, 2004. There is no dispute that the petitioner had passed the written, as well as the oral examination under Regulation 9 of the Customs House Agents Licensing Regulations, 1984, which were existing prior to the coming into force of the new regulations in the year, 2004.

8. In such circumstances, in view of the contentions raised on behalf of the petitioner and in view of the decisions cited supra, this Court finds it appropriate to direct the respondents to issue the necessary certificate granting the Customs House Agents Licence to the petitioner, as per Regulation 9 of the Customs House Agents Licensing Regulations, 2004, on the petitioner complying with the requirements prescribed under Regulation 10 of the said regulations, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.

सत्यमेव जयते Sd/-

Deputy.Registrar.(J)

/true copy/

Sub Asst.Registrar.

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To

1. The Chairman,  
Central Board of Excise and Customs,  
North Block, New Delhi.

2. The Commissioner of Customs (Imports)  
Custom House, No.60, Rajaji Salai,  
Chennai-1.

3. The Assistant Commissioner of Customs,  
Custom House Agent Unit,  
Custom House,  
No.60, Rajaji Salai, Chennai-1.

1 cc to Mr.P.Saravanan, Advocate, Sr. 61181  
1 cc to Mr.K.Mohana Murali, Advocate, Sr. 60829

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BVR(CO)  
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