Shipping and Clearing (Agents) Vs. C.C. (Admn/Estt.)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Mar-12-2004

Reported in : (2004)(170)ELT210Tri(Kol.)kata

Judge : A Wadhwa

Appellant : Shipping and Clearing (Agents)

Respondent : C.C. (Admn/Estt.)

Judgement :

1. The present appeal is against the order of the Commissioner of Customs vide which he has not renewed the appellants' Customs House Agents Licences under Regulation 12(2)(a) of Customs House Agents Licensing Regulation (CHALR), 1984, on the ground that they have not fulfilled the norms laid down by the Commissioner vide Public Notice No. 94/99, dated 20-7-1999 for the purposes of renewal of licence.

2. As per facts on record, the appellant is a Customs House Agent and was holding a licence valid up to 26-10-2001. Vide their letter dated 4-10-2001, they requested the Commissioner for renewal of the said licence. It was noticed that the appellant had not fulfilled the norms laid down by the Commissioner in the above referred Public Notice and his performance was not satisfactory. However, the licence was renewed for a period of two months. Thereafter, they were given further opportunity to show their performance by way of renewal of the licence for another one year on ex-gratia basis. However, during this period of one year also,

the appellant's performance was not in accordance with the norms. As such, they were issued a show cause notice proposing denial of their request to renew the licence. The Commissioner of Customs also appointed the Inquiry Officer to enquire the case and submit report accordingly in terms of the provisions of Regulation 23 of CHALR, 1984.

3. The appellant's contention before the authorities, was that they are one of the oldest CHAs in Kolkata; that the business of import/export has come down abruptly in Kolkata, as such, they could not met the obligatory norms fixed by the Commissioner that their record as CHA was clear and unblemished; that the average of their performance for the last five years should have been considered; that the market is bound to improve and their business will also increase. As such, the appellant contested that their request for renewal be considered favourably.

4. The Commissioner while adjudicating the case took into consideration the Inquiry Report and the submissions made by the appellants in the representations against the inquiry as also at the time of personal hearing. Dealing with each and every contention of the appellant, the Commissioner of Customs observed that the appellant was granted renewal for one year on ex-gratia basis with the caution that performance within the said period should be satisfactory, failing which, further renewal will not be considered. Even during this period of one year, the appellant has not been able to fulfil the norms. The Commissioner also observed that the decline in the business of import/export at Kolkata, was equally applicable to all the CHAs and the same does not have any bearing upon the operation of the Public Notice. He further observed that if one criteria of norms in the said Public Notice was not fulfilled, the CHA was entitled to renewal on the basis of other norms, for example, if the norms of documents per year was not fulfilled, the CHA could prove eligibility by way of clearance of packages in number or by value of clearance or by payment of duty. The present CHA has not fulfilled any one of the parameters. He also rejected the appellant's request to take average of the last five years performance. Accordingly, he rejected the request of the appellant for renewal of the licence. The said order of the Commissioner is impugned before the Tribunal.

5. Shri B.N. Pal, ld. Advocate appearing for the appellants has fairly agreed that the norms as prescribed under the Public Notice have not been fulfilled by the appellant but submits that they should be given a further chance to improve their performance. He drew my attention to the Tribunal's decision in the case of R.S. Movers v. C.C.Ex., New Delhi reported in 2001 (129) E.L.T. 222 (Tri.-Del.) wherein after taking into consideration the facts of the case, it was observed that the appellants should be given some more chance and accordingly the Department was directed to renew the licence for one year and thereafter reviews their performance.

6. Opposing the above contention, Shri N.K. Mishra, ld. JDR, submits that the above decision of the Tribunal is not applicable to the present case inasmuch as the Commissioner has already granted one year renewal on ex-gratia basis. Even during this period, the appellant could not show any improvement in the business performance. He also submits that in the above referred decision, the Tribunal has taken into account the facts of sickness of parents of working partner as also the fact that after the working partner joined, the business of Rs. 9 crores was done. He submits that the said factors are missing in the present case. He also refers to the Tribunal's decision in the case of VAZ Forwarding Limited v. Commr. of Customs, New Delhi reported in 2001 (128) E.L.T. 90 (Tri.-Del.) wherein after taking into account the facts that the appellant's performance was not up to the mark and in accordance with the norms laid down by the Commissioner, the request for renewal of the licence was rejected.

7. I have considered the submissions made from both the sides. There is no dispute about the fact that the appellant's performance is not up to the mark and in accordance with the norms laid down by the Commissioner vide his above Public Notice issued in terms of Regulation 12(2)(a) of Customs House Agents Licensing Regulations, 1984 which gives him the power to set out the norms for renewal of the licence of CHA. The appellants have pleaded that one more chance be given to them in accordance with this Tribunal's decision in the case of K.S. Movers.

However, I find that the above request is not justified inasmuch as, firstly, the facts of the case are distinguishable and secondly, the Commissioner has already granted one year extension to the appellant on ex gratia basis during which they could not show any improvement in their performance. On the other hand, the Division Bench's decision in the case of M/s. VAZ Forwarding Limited is applicable to the facts of the instant case, inasmuch as the appellants have not been able to perform in accordance with the Commissioner's norms laid down in the Public Notice. As such, I do not find any merits in the appeal and reject the same.