

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41936 of 2014

(Arising out of Order-in-Original 25905/2014 dated 23.05.2014 passed by the Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

Commissioner of Customs

: Appellant

Import Commissionerate
Custom House, No. 60, Rajaji Salai,
Chennai – 600 001

VERSUS

M/s. King Shipping Services Private Limited

: Respondent

No. 112 (203), Angappan Naicken Street,
Chennai – 600 001

APPEARANCE:

Shri R. Rajaraman, Assistant Commissioner for the Appellant

Shri S. Ganesh Aravindh, Advocate for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40082 / 2024

DATE OF HEARING: 29.11.2023

DATE OF DECISION: 24.01.2024

Order : [Per Hon'ble Mr. P. Dinesha]

This is a Departmental Appeal filed against the Order-in-Original No. 25905/2014 dated 23.05.2014 passed by the Commissioner of Customs, Custom House, Chennai and the Department is aggrieved by the above said order wherein the Commissioner has dropped the proceedings initiated for revocation of

suspension of the Licence of the Customs Broker-respondent.

2. Shri R. Rajaraman, Ld. Assistant Commissioner arguing for the appellant-Revenue, relied upon the grounds-of-appeal and also contended that there was a clear wrong classification by the importer and the respondent-Customs Broker failed in its duty to advise the importer / their clients to appropriately classify the imported goods, for which reason the Show Cause Notice dated 20.09.2013 was issued to the respondent-Customs Broker proposing to revoke their Licence apart from forfeiting the security deposit made by them. He would take us through the various allegations made in the Show Cause Notice as well and hence, it is his case that the Commissioner of Customs ought not to have dropped the proceedings against the respondent-Customs Broker.

3. *Per contra*, Shri S. Ganesh Aravindh, Ld. Advocate, defended the respondent-Customs Broker. He would also contend that the Customs Broker-respondent, in response to the said Show Cause Notice, did file a very detailed reply denying *inter alia* any failure on its part to comply with the requirements of the Customs Brokers Licensing Regulations (CBLR), the alleged wrong classification was never as per the

advice of the respondent since, in the first place, the importer did never consult the respondent as regards the appropriate classification and secondly, Regulation 11 of the CBLR would only require a Customs Broker to advise its client as regards the provisions of the Act and the compliance thereto are concerned and further to exercise due diligence insofar as the correctness of any information with reference to any work related to clearance of cargo is concerned and therefore, the classification, valuation, etc., are the domains of the importer alone; thus, the Customs Broker having no role at all in the alleged wrong classification, the order of the Commissioner is just and proper.

3.2 He would rely on an Order of the Chennai Bench of the CESTAT in the case of *M/s. Top Notch Infotronics (India) Pvt. Ltd. v. Commissioner of Customs, Chennai-IV [Final Order Nos. 42306 to 42309 of 2018 dated 03.08.2018 in Customs Appeal No. 40736 of 2016 & ors.=2018 (9) TMI 1734 – CESTAT, Chennai]* in support.

4. We have heard the rival contentions and perused the documents placed on record. We find that the only issue to be decided by us is: whether the impugned order is sustainable in law?

5.1 The Show Cause Notice issued by the Commissioner appointed the Assistant Commissioner of Customs, Custom House, Chennai as the Inquiry Officer, to conduct inquiry under Regulation 20 of the CBLR, 2013. It is a fact borne on the record that the said Inquiry Officer had reported, after examining the records, "that the Customs Broker had not on his own classified the goods under Heading 8518. They had classified the goods as per the prevalent practice and as per the directions of the importer." The above report was accepted by the Commissioner of Customs (Imports) in the impugned Order-in-Original No. 25905/2014 dated 23.05.2014.

5.2 Further, in the impugned order, the Commissioner has also observed that it was not the case of the Department that the Customs Broker had given a different description than what was given in the import invoice. The above observation is of utmost relevance since the import invoice is issued by the vendor / foreign supplier to the importer. Further, the Commissioner has also accepted the pleading of the respondent-Customs Broker that the classification under CTH 8518 was made as per the directions of the importer, which fact stood duly supported by the Show Cause Notice issued by the DRI to the importer. The Commissioner has thus concluded that there was

no violation of any of the Regulations, as alleged in the Show Cause Notice, by the respondent-Customs Broker and being satisfied, has proceeded to drop the proposed proceedings. Other than filing the present appeal, the Revenue has not been able to dislodge the above findings of the lower authority, nor has it even denied the said findings as incorrect.

6.1 In the relied upon case of *M/s. Top Notch Infotronix (India) Pvt. Ltd. (supra)*, we find that the appellant herein was one of the co-noticees along with the importer of the goods impugned, and this Bench in the above Order has, after following the orders of various judicial fora, felt it proper to set aside the impugned order thereby upholding the classification declared by the importer.

6.2 By the above, it is clear that the classification declared by the importer itself has been accepted and thus, there is no reason still to hold that there was wrong classification, any more. Hence, the charge against the respondent-Customs Broker for being hand in glove with the importer inviting such a hugely disproportionate action of suspension of its very Customs Broker Licence and forfeiture does not hold water.

7. For the above reasons, we do not find any infirmity in the impugned order of the Commissioner of Customs (Imports) and hence, the appeal filed by the Revenue is dismissed.

(Order pronounced in the open court on **24.01.2024**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd