

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application No. 85036 of 2023
(on behalf of Appellant/Respondent)

In

Customs Appeal No. 87165 of 2022

(Arising out of Order-in-Original No. 34/CAC/PCC(G)/SJ/CBS Adj dated 19.07.2022 passed by the Principal Commissioner of Customs (General), Mumbai Zone-I)

Commissioner of Customs (General), Mumbai Appellant
New Custom House, Ballard Estate,
Mumbai-400 001.

Versus

M/s Classic Clearing & Forwarding Respondent
Pvt. Ltd.
B-507, Pranik Chambers, Saki Vihar Road,
Sakinaka Junction, Andheri East, Mumbai-400 072.

Appearance:

Shri Mohit Raval, Advocate for the Appellant
Shri Ram Kumar, Auth. Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86096/2023

Date of Hearing: 26.06.2023

Date of Decision: 26.06.2023

Per: S.K. Mohanty

Heard both sides and perused the records.

2. The respondent herein has filed the miscellaneous application, seeking dismissal of appeal on the ground that in case of Custom Brokers Licensing Regulations, 2018 ("CBLR 2018" for short), the Principal Commissioner or the Commissioner of Customs are not permitted in the statute to file appeal against the adjudication order before the Tribunal in terms of Section 129A of

the Customs Act, 1962. Since the issue lies in a narrow compass and involve substantial question of law, we are allowing the miscellaneous application and take up the appeal for final disposal with the consent of both sides. In so far as filing of appeal before the Tribunal is concerned, we find that the provisions of sub-section (2) to Section 146 empowers the Board to make regulations for the purpose of Customs Brokers licensing and the manner of carrying their business with Customs department. The CBLR, 2018 have been made in exercise of the provisions given under the said Section 146 (2), *ibid*. The sub-section (2) (g) of Section 146 specifically provide for the manner of filing the appeals, if any, against the order of suspension or revocation of a license, and the period within which such appeal may be filed, under the CBLR, 2018. Regulation 19 of the CBLR, 2018 provides as under:-

“A Customs Broker or F card holder, who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act:

Provided that a G card holder aggrieved by any order passed by the Deputy Commissioner or Assistant Commissioner of Customs under these regulations may prefer an appeal under section 128 of the Act to the Commissioner of Customs (Appeals) against the orders of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, who shall proceed to decide the appeal expeditiously within two months of the filing of the appeal.”

3. On perusal of the said statutory provision, we find that the Custom Broker or F Card holder can prefer appeal before the Tribunal against the order passed by the Principal Commissioner or the Commissioner of the Customs. Since the appeal provision is confined only to the Custom Broker or to the F card holder, Revenue cannot file any appeal against the order passed by the Commissioner of Customs or Principal Commissioner of Customs as the case may be. Thus, we are of the considered view that the appeal filed by the Revenue is not maintainable before the Tribunal. We find that, in an identical case, in the case of *Commissioner of Customs (G) Mumbai v/s Venkatesh Agencies*

vide Final Order no. A/88289/2018 dated 14.08.2016 has taken a similar view. The relevant paragraph in the said order is extracted herein below:-

“4. The preliminary issue involved in this appeal for consideration is whether, appeal is maintainable before the Tribunal under Section 129A of the Customs Act, 1962 in respect of the matters decided under the CHALR, 2004. The issue arising out of the present dispute is no more open for any debate in view of the decisions of this Tribunal in the case of Commissioner of Customs (General), Mumbai Vs. Mukadam Freight Systems Pvt. Ltd. 2018 (359) E.L.T. 612 (Tri.- Mumbai). The Tribunal has held that the right to prefer an appeal to the Tribunal under Section 129A of the Act against an order passed under CHALR, 2004 is only available to the CHA and Revenue cannot question maintainability of the order passed under such Regulations.”

4. Further, we find that by applying the Rule of harmonious construction of legal provisions under Section 129 A and Section 146 (2), *ibid* read with Regulation 19 of CBLR, 2018, persons specified under this Regulation alone may prefer appeal before the Tribunal, as a person aggrieved by the order of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

5. In view of foregoing discussions, we are of the view that the appeal filed by the Revenue is not maintainable before this Tribunal in terms of Section 129 A *ibid*. Therefore, the appeal of the Revenue is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)