CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85990 of 2023

(Arising out of Order-in-Appeal No. 425(CEAC)/2023 (JNCH)/Appeals dated 18.04.2023 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Sigma Exports **.... Appellant**
Pocket A-8/98, LGF, Kalkaji Extension,
New Delhi- 110 019.

Versus

Commissioner of Customs, NS-General, JNCH Nhava Sheva-II **.... Respondent**
Jawaharlal Nehru Customs House,
Dist. Raigad, Maharashtra- 400 707.

Appearance:

Ms Vidushi Shubham, Advocate for the Appellant

Shri Ram Kumar, Authorized 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/85444/2024

Date of Hearing: 29.04.2024
Date of Decision: 29.04.2024

Per: S.K. MOHANTY

Heard both sides.

2. The appellant in the present case, had sought for amendment of the Shipping Bills in terms of Section 149 of the Customs Act, 1962. The request letter dated 29.03.2022 of the appellant was responded to by the Assistant Commissioner of Customs, Nhava Sheva vide letter dated

09.06.2022, stating that the Commissioner of Customs, Nhava Sheva-II, JNCH, Mumbai Customs Zone-II had already rejected the request for conversion of shipping bills from Customs Scheme Code 19 to 60. It had further been stated therein that in terms of Para 3(a) of CBIC circular No.36/2010 dated 23.09.2010, the request for conversion is required to be made within three months from the date of Let Export Order (LEO) and that since the request for conversion has not been made within such time limit, such request is liable to be rejected as time barred. Feeling aggrieved with the communication dated 09.06.2022, the appellant had preferred appeal before the learned Commissioner of Customs (Appeals), Mumbai-II, which was disposed of vide the impugned order dated 18.04.2023 by way of rejection of appeal. In support of rejection of the appeal, he has held that the impugned order was passed by the Commissioner of Customs and as such, appeal against such order cannot be filed before the Commissioner of Customs (Appeals) in view of the provisions of Section 128 ibid; and thus, the appeal is not maintainable, being beyond the jurisdiction of the First Appellate Authority. Feeling aggrieved with the impugned order dated 18.04.2023, the appellant has preferred this appeal before the Tribunal.

3. On perusal of the letter dated 09.06.2022 addressed by the Assistant Commissioner of Customs to the appellant, we find that though the said letter was signed by him, but the views of the Administrative Commissioner of Customs was conveyed that the request for amendment/conversion of shipping bills cannot be adhered to. Thus, we are of the considered opinion that the decision for rejection of the letter of appellant, seeking amendment of shipping bills was taken by the Commissioner of Customs and not by the officer lower in rank than him.

4. The "proper officer" referred to in various provisions under the Customs Statute, for performing any functions, means the officer of customs, who is assigned those functions by the Central Board of Indirect Taxes & Customs (CBIC) or the Commissioner of Customs, as

defined in clause (34) of Section 2 ibid. The provisions regarding appointment of officers of Customs and powers of officers of Customs have been spelt out in Section 4 and 5 ibid, respectively. The CBIC has been empowered under the Statute to appoint the class of officers to be the officers of Customs for performing various tasks. In terms of Section 5 *ibid*, the CBIC vide Notification No. 26/2022-Cus.(N.T.) dated 31.03.2022 has assigned the powers and functions of the officers of Customs to be performed by a "proper officer". It has further been clarified that the assigned functions under different situations can either be exercised by the designated officer(s) or the officer(s) above in rank to them for performing such acts and deeds. Clause (3) appended in the Table to Notification dated 31.03.2022 (supra) has provided the designation of officers and the assigned tasks to be performed by them. Sub-clause (xxxix) of Clause (3) in the Table has provided the reference of the officers, who can amend the documents. It has been specifically provided that such officer(s) can amend the document under Section 149 ibid in respect of the goods, after grant of order for clearance under Section 47 or 51 ibid. On reading of the header to the Notification dated 31.03.2022 read with clause (3) in the Table attached thereto, it makes the position clear that the named officer(s) i.e., the Deputy Commissioner of Customs or the Assistant Commissioner of Customs can perform the activities or their superior officer(s), who can also perform such activities.

5. In the present case, it is an admitted fact on record that amendment/conversion of the shipping bills were rejected by the Commissioner of Customs and that the Assistant Commissioner of Customs in his letter dated 09.06.2022 has simply conveyed such decision of the Administrative Commissioner of Customs to the appellant. Thus, under such circumstances, it cannot be said that the decision for non-consideration of amendment/conversion was of the Assistant Commissioner of Customs and not of the Commissioner of Customs. Since, the Administrative Commissioner has communicated the view regarding non-entertainment of the application for amendment

of the Shipping Bills, the order or decision passed by him cannot be appealed against before the Commissioner (Appeals) in terms of Section 128 *ibid*, wherein, it has been mandated that decision or order passed by an officer of Customs, lower in rank than a Commissioner of Customs, can only be appealed against before the Commissioner (Appeals) and not otherwise.

6. Therefore, we are in agreement with the order passed by the learned Commissioner (Appeals) that he has no jurisdiction to entertain the appeal against the decision of the Administrative Commissioner. Accordingly, we do not find any infirmity in the impugned order, and thus dismiss the appeal filed by the appellant.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM