

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II**

**Customs Misc. Application No. 50597 of 2021
in
Customs Appeal No. 50785 of 2021 (SM)**

(Arising out of Order-in-Original No. 23/MK/POLICY/2021 dated 26/27.03.2021 passed by the Commissioner of Customs, (Airport and General), New Delhi)

**M/s FedEx Express Transportation &
Supply Chain Services India Private Ltd**

New Courier Terminal,
Near IGI Airport, New Delhi-110037

Appellant

VERSUS

**Commissioner, Customs-New Delhi
(Airport And General)**

New Customs House, Near IGI Airport,
New Delhi-110037

Respondent

APPEARANCE:

Ms Jyoti Pal, Advocate for the Appellant

Mr. Mahesh Bhardwaj, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO . 50435/2023

Date of Hearing: 17.01.2023

Date of Decision: 16.03.2023

ANIL CHOUDHARY:

This is an appeal against Order-in-Original dated 27.03.2021 passed by the Commissioner of Customs (Airport and General), New Delhi, have ordered forfeiture of the whole amount of security deposit of Rs. 10 lakhs, alongwith penalty of Rs. 50,000/- under Regulation 14 of Courier Import and Export Regulations, 2010 on the Appellant a Courier Agency, duly licensed by the Customs department.

2. The Appellant provides courier services under Courier Registration No. DEL/POL/COUR/09/2013 (valid upto 18.11.2028) issued under Courier Import and Export (Clearance) Regulations, 2010. The brief facts are that the Respondent Commissioner received an offence report dated 22.05.2020 from the Deputy Commissioner, SIIB, Air Cargo Export Commissionerate, New Delhi, informing seizure of 'psychotropic drugs' at M/s FedEx Express, New Courier Terminal on 23.10.2019. Further, in this report it had been stated that there was a delay in examination of the export consignments lying at FedEx Customs Terminal covered under Airway Bill Nos. 788651806211, 788657429210 and 788656981200, and after examination, these consignments had been lying unattended at the New Courier Terminal till the visit of DRI, DZU on 23.10.2019.

3. Regarding CSB No. 788651836211 – shipment was booked on 25.07.2019 by the Consignor- Navya Creations, wherein the goods were declared to be wall hanging statues. It is pertinent to mention that Navya Creations are the regular clients of the Appellant and Appellants maintain their proper KYC records. As the said consignment was not marked for examination either by the Customs, the Appellant presented the consignment for x-ray screening. At the time of x-ray screening which is done by the authorised agency of the Airport Authority, there appeared to be something stuffed inside the wall hanging statues. Accordingly, the Appellant on the very same day, informed the proper officer - Deputy Commissioner of Customs in writing. The Deputy Commissioner marked the matter to the Superintendent of Customs for examination. On the very same

day, the Appellant also sent an email to Navya Creation informing about the suspected stuffing in the goods which appears to be a case of mis-declaration. In reply, on the same day by email, Navya Creation informed that actually this was not their consignment but this consignment was booked through them at the request of one of the staff of FedEx, namely Mr. Mahendra Singh Pareek, who had been interacting with them for the past 2-3 years, on behalf of FedEx for booking of their consignments. Mr. Mahendra Singh Pareek had told them that a new client was to send goods but was to pay by cash, as so far they have not opened account with M/s FedEx. Initially, Navya Creation had denied but on 2nd persuasion by Mr M.S. Pareek, they agreed to book the consignment under their IEC. Navya Creation had not opened and checked the contents of the goods relying on Mr. M.S. Pareek. Accordingly, Navya Creations had booked through the electronic system, they logged into the portal and booked. On such booking M/s FedEx collected the parcel from the office of Navya Creation. They further stated that they do not know or have never met the actual Consignors can only Mr. M.S. Pareek and give details about the same.

4. The Appellant constituted enquiry in their office and immediately suspended Mr. M.S. Pareek by order dated 29.07.2019 and chargesheet was issued to Mr. M.S. Pareek on 05.08.2019. Thereafter, the enquiry committee met on 08.08.2019, wherein the detailed statement of Mr. M.S. Pareek was recorded. Mr. M.S. Pareek *inter alia* stated that he has been working with FedEx for the last 4 years and this is the 1st time that such a mistake have happened. He informed that the shipment related to one Mr. Rakesh Jangid. He has

earlier also booked shipments for Mr. Rakesh Jangid as cash booking. Mr. Rakesh Jangid had approached him that he wants to ship decorative marble pots. They also wanted to book the consignment on cash payment, but the cash payment was not accepted by FedEx. Thus, Mr. Jangid persuaded Navya Creation to book the parcel through their client code with FedEx. When booking through a regular client code, a regular customer of FedEx gets some discount. In this way, Mr. Rakesh Jangid got a discount of about 2000/- out of which, he paid Rs. 500/- to Mr. M.S. Pareek at his own free will. Mr. Jangid also stated that he had been persuading Mr. Rakesh Jangid to open an account with FedEx to avail discount. He also stated that there is no element of connivance with Mr. Rakesh Jangid, as there was no consideration. Further, he was not aware about the illegal goods being attempted to be sent or exported by Mr. Rakesh Jangid.

5. The Customs examined the said consignment on 21.08.2019, and it was found that marble pot have been stuffed with medicines – psychotropic substance. Accordingly, the consignment was detained for further proceedings. Thereafter, the Appellant received an email from the DRI, Delhi dated 23.10.2019 and they also visited the warehouse of the Appellant for physical examination. The DRI also took custody of the shipments after preparing punchnama on the same day. The Appellant immediately informed the development and seizure of the goods by DRI vide punchnama dated 23.10.019 to the Deputy Commissioner, Customs. The Deputy Commissioner duly permitted Appellant to handover the consignment to DRI for further examination. After few days, on 03.12.2019 the

Appellant received summons from special investigation Branch customs (SIIB) for hearing on 04.12.2019. The Appellant appeared before the SIIB customs. Statement of Mr. Deepal Singh Khati- Clearance Specialist of FedEx was recorded on 06.12.2019, wherein he *inter alia* stated that they collect the KYC documents of the client at the time of booking along with invoice. In case of walk customer the shipment is physically checked on the basis of invoice. As this consignment had been booked through their regular client, Navya Creation, the same was accepted without physical examination. After booking, the manifestation of the shipment is done on the basis of invoice and then the shipment is transported from the booking office to their hub – NCT. After arrival of the consignment at their hub, scanning is done so that the shipment is reflected in their system. Thereafter, they filed Courier Shipping Bill (CSB) on the basis of data available in the invoice. The CSB is then checked by the customs officers and may be marked for examination, if they think it fit. Normally 10% of shipments are marked for detailed examination. Further, 100% outgoing consignments are screened through x-ray. As this shipment was not marked for examination, the Appellant came to know about some stuffing in the statues/pot at the time of x-ray, and they immediately took steps by informing the customs and also their client. It is only after x-ray, on being satisfied, the customs officers grant let export order. He further stated that the Consignor of the concerned shipment under AWB No. 788651806211, pertains to Navya Creation who is their regular client - account holder.

6. Two other shipments had been booked through the authorised service provider (AST – Allied Aviation Private Limited) at Madho pur Rajasthan, in the name of consignor Mr. Munshi Jogi, under Airway Bill No. 7886574210 and AWB-788656981200. The goods were declared to be marble pot. On presentation of CSB, these goods were not marked for examination, they were thereafter screened on the x-ray and at the time of screening some tablets were seen to be stuffed, accordingly, on finding suspicious goods stuffed in bulk quantity, the matter was immediately reported to the customs on the same day 25.07.2019. These goods were also marked for further examination to the Superintendent of Customs and the goods were detained. These consignments were also examined on 21.08.2019, and it was found that the decorative pot were stuffed with bulk medicines and accordingly, these goods were intercepted and detained by the customs for further examination. The Appellant had immediately informed their ASP regarding the mis-declaration found. However, the ASP– Allied Aviation, did not respond in spite of reminders. Further, Mr. Deepal Khati was questioned regarding the delay in presenting the shipment for examination by the customs. To this, Mr. Khati replied that due to shortage of customs officers, there is a normal backlog of about 10 days in the examination process. Further, this consignments got further delayed by about 3 weeks or so, due to shortage of the customs officers and there being several consignments for examination. He further reiterated that there is no delay on their part in presenting the consignment for examination.

7. Show cause notice dated 27.10.2020 was issued as it appeared to the customs that delay have been caused in the examination, due to slackness on the part of the Appellant and after examination, these consignments had been lying unattended at the New Courier Terminal, till the visit of DRI on 23.10.2019. As regards, shipment of Navya Creation, it appeared that they had booked the consignment on the request made by employee of FedEx - Mr. M.S. Pareekh, whereas the shipment actually belongs to one Mr. Rakesh Jangid (a cash customer). Further, Appellant have under the circumstances terminated the service of Mr. M.S. Pareek, on their charges of violation of the companies rules and procedures, among others. Further, the Appellant failed to intimate the termination of their employee to the customs department. Thus, there appeared to be failure on the part of the Appellant in fulfilling their obligations under the Courier Import Export (Electronic Declaration and Processing) Regulations (CIER), 2010.

8. As regards the other two consignments booked in the name of Consignor Mr. Munshi Jogi which has booked through their ASP – Allied Aviation Private Limited, though Appellant made efforts to contact their ASP, in view of the proceedings for mis-declaration in S. Bill, however, the exporter was never contacted. Further, as no one turned up or replied to the mails of FedEx, they closed the enquiry without intimation to the customs department. Thus, it appeared that Appellant failed to fulfil their obligations under CIER, 2010. Further appeared that the Appellant failed to give timely information to the Department and it was only at the time of recording of statement of their officer, Mr. D.S. Khati, on 6.12.2019

that details of the booking with respect to the three consignments in question were given. Thus, it appeared that FedEx themselves had not made proper efforts to communicate with regard to the illegal booking of export consignments covered in the aforementioned CSB. It further appeared that Appellant have failed to abide by the provisions of Regulations 6, 12 (iv, v, vi & viii) of CIER, 2010. Further it appeared they have not exercised due diligence in the instant case to ascertain the correctness and completeness of information submitted by them to the customs authority.

9. Accordingly, the SCN proposed as to why not the appellant be held responsible for contravention of the aforementioned violation of CIER, 2010 and further proposing to revoke the courier registration and also proposed to confiscate part or whole of their security deposit submitted at the time of registration of Rs. 10 lakhs under Regulation 13 (1) of CIER 2010, for failure to comply with the aforementioned provisions. Further, penalty was also proposed under Regulation 14 of CIER, 2010. The SCN was adjudicated on contest vide impugned O-I-O dated 27.03.2021, whereby the learned Commissioner of Customs passed the following order: –

“(a) In exercise of powers conferred under Regulation 13A read with 13(1) of CIER, 2010, I refrain from revoking the Authorised Courier Licence No. DEL/POL/COUR/09/2013(AABCF6516A) valid upto 18.11.2028 of M/s FedEx. However, the Authorized Courier is warned to be careful in performing their duties, in future as time and again such matters are coming to the notice of Department, hence it require strengthening of their procedure and

due diligence in their operation to avoid repetition of such events.

(b) I order for forfeiture of the whole amount of security deposit of Rs. 10,00,000/- (Rupees Ten Lakhs only) furnished by them.

(c) I impose a penalty of Rs. 50,000/- under the provisions of Regulation 14 of CIER, 2010.”

10. Being aggrieved the Appellant is in appeal before this Tribunal. The learned counsel inter alia urges that Regulation 6 of CIER, 2010 under sub-Regulation 4 provides for – the authorised courier shall present the export goods to the proper officer, in such manner as to the satisfaction of the proper officer or as per instructions issued by the Board or public notice issued by principal Commissioner of Customs or Commissioner of Customs, as the case may be, from time to time, for inspection, screening, examination and assessment thereof.

11. The learned Counsel refers to the findings in the impugned order, that according to the enquiry officer, it have been observed that as per Regulation 6 (4) of CIER 2010, it is the responsibility of the authorised courier to present the goods to the proper officer for inspection, screening, examination etc. Further, as per statement of Mr Deepal Khati – Clearance Specialist of Appellant, there appears to be delay attributable to the Appellant, to put up the consignments in question for examination, which had been put up on hold. Mr. Deepal Khati have accepted the delay in presenting the consignment for examination. The consignments were detained

pursuant to x-ray and marked for examination on 25.07.2019 and the consignment for examined by the customs only on 21.08.2019.

12. Assailing these findings, the learned counsel inter alia urges that there is normal backlog of 10 days in examination by the customs officers due to pressure of work and there being less number of officers in the Customs House. Further, there is neither any allegation nor any finding against the Appellant that due to any act of omission or commission on their part the examination was delayed. Thus, this charge is frivolous and fit to be set aside.

13. So far the next charge is concerned under Regulation 12 (iv) of CIER, wherein the obligation on the authorised courier is – to verify that antecedent, correctness of IEC number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data information. The learned Commissioner observed that Navya Creation was there regular client and, thus the Appellant did not have any pre-emptive check. However, the Appellant being a reputed courier is expected to have a mechanism for robust procedures. Further, on perusal of email exchanged between FedEx and Mr. Govind Sony of Navya creations on and after 25.07.2019, FedEx have not put in place any mechanism for enforcing standards via seeking authorisation from top-level management of Navya Creations, thereby preventing the staff of the client to engage in wrong practices and hide the actual consignor/consignee. Accordingly, Appellant have been held to have contravened the provisions of Regulation 12(4) of CIER 2010 by holding that they failed to verify the genuineness of the said

consignment received from the Navya Creation.

13.1. Assailing these findings, learned Counsel states that it is evident from record that Appellant have taken immediate measures by detaining and informing their client the illegality on the same day, when they found the stuffing of medicines pursuant to screening on 25.07.2019 itself. Further they also received reply of Navya Creation with regard to the facts and circumstances of booking of the said consignment. Thereafter, they have initiated domestic enquiry against their employee Mr. M. S. Pareek and ascertained the facts and on finding him to have violated the business norms and internal control procedures, Mr. M.S. Pareek have been dismissed from service. Further, the Appellant brought to notice of the customs from time to time and particularly, when they were summoned to give the details and their officer Mr. Deepal Khati appeared and tendered his statement. Even prior to 06.12.2019, the Appellant had informed the Deputy Commissioner of Customs with regard to the inspection etc. made by the DRI officers. Further, Deputy Commissioner of Customs had permitted the Appellant to handover the possession of the disputed consignments to the DRI officers for further examination.

14. Further, with regard to the other consignments booked through their ASP–Allied Aviation, for the consignor Mr. Munshi Jogi, as the consignment was received and introduced through their agent or ASP, they had filed the CSB. However, when medicines were found stuffed at the time of screening, they made all possible attempts to contact their ASP. However, the said ASP did not

respond. In the circumstances, the Appellant did not make any further correspondence with the said consignor Mr. Munshi Jogi and closed the enquiry at their end.

15. The next allegation made against the Appellant is under Regulation 12(v) of CIER, 2010 which provides- the authorised courier shall exercise due diligence to ascertain the correctness and completeness of any information which he submits to the proper officer, with reference to any work related to the clearance of imported goods or of export goods.

16.1. The learned counsel stated that the learned Commissioner have recorded the findings that the Appellant have immediately on 25.07.2019 sent emails to their client Navya Creation, and also to their ASP – Allied Aviation and they also came to know on the same day regarding the booking of consignment by Navya Creation for Mr Rakesh Jangid, as informed by their employee Mr. Mahendra Singh. The learned Commissioner have observed that it was only after a gap of about 3 months, when the statement of Mr. Deepal Khatri was recorded on 06.12.2019, that he brought all these detailed facts to the knowledge of the customs, regarding fraudulent booking through Navya Creation and by Mr. Munshi Jogi. Hence, although FedEx correctly informed about the suspicious nature of the consignment, but grossly failed to convey the complete information to the proper officer of Customs, regarding the fraudulent booking aspect and associated communication.

16.2. Assailing the findings of the learned Commissioner, it is stated that there is no lack of diligence on the part of the Appellant, either in making the enquiry with their clients who had booked the consignment or in informing to the customs. Whatever apparent delay have taken place is due to the fact that initially, the goods were detained by the Deputy Commissioner of the Customs House, thereafter enquiry was initiated by the DRI Delhi Zonal Unit and subsequently, the matter was taken up by the SIIB, Customs. The Appellant had also been cooperating with the various agencies of the customs and had kept the concerned Deputy Commissioner of Customs informed of this development, which is evident from the fact that the D.C. of customs had permitted the Appellant to handover the consignments under dispute to the DRI officers for further examination and investigation. Further, this is not the case that Appellant have withheld any information which had come to their knowledge from the Custom department. There may be a delay of few days which is wholly unintentional. Though, the information was given to one of the agencies of Customs, that the other agency may have felt that they did not get the information in time. Thus, there is no deliberate violation of the provisions of the Regulation 12(v) of CIER, 2010.

17. The next allegation made against the appellant is under Regulation 12 (vi) of CIER, 2010, which provides that the appellant as authorised courier shall not withhold information communicated to him by an officer of customs, relating to assessment and clearance of imported goods as well as inspection, examination and clearance of export goods, from a consignor or consignee, who is entitled to

such information. The findings in this regard recorded by the learned Commissioner are that on perusal of email exchanged by the appellant with Navya Creation etc., it is seen that nowhere specifically, it is mentioned that customs have put the consignment on hold or that customs have examined the consignment. Thus the appellant have contravened the provisions of Regulation 12(vi) of CIER, 2010.

17.1. Assailing this finding, the learned Counsel states that they were regularly in touch with M/s Navya Creation and they were responding to their enquiries and emails. So far, the booking through their ASP by Mr. Munshi Jogi is concerned, as there were no response from the said ASP, they could hardly do much in the matter. Thus, the allegation does not stand, accordingly, prayed for setting aside the findings of the learned Commissioner.

18. The next allegation upheld by the learned Commissioner is under Regulation 12 (vii) of CIER, 2010, which provides –an authorised courier shall not withhold any information relating to assessment and clearance of imported goods or of export goods from the assessing officer. The learned Commissioner have recorded the finding relying on the report of enquiry officer that Appellant have not disclosed details or kept the customs informed about its findings of fraudulent booking of shipment at instance of M.S. Pareek, using account of Navya Creation. Further, they also not intimated the customs regarding the internal enquiry and termination from service of Mr. M.S. Pareek. It was only during the recording of statement of Mr. Deepal Khatri on 06.12.2019, that the custom came to know

about these facts. Thus, FedEx withheld these vital information and thus they contravened Regulation 12 (vii) of CIER, 2010.

18.1. Assailing the findings, the learned counsel states that the appellant was in regular touch with the customs. As the Appellant handle several consignments, they are visiting the offices of the customs almost everyday. It is not the case of the customs that any information or co-operations sought from the Appellant was not given. As the matter was in the enquiry stage itself and the Appellant at the first instance, when they were called to give the details informed the customs on 06.12.2019, when a detailed statement have been recorded. It is nowhere alleged that in spite of summons, the Appellant withheld any information from the customs. Accordingly, urges that the allegation is not made out and the findings of the learned Commissioner are fit to be set aside. Learned counsel further urges that the domestic enquiry in respect of their employee Mr. M.S. Pareek was an internal matter of the Appellant, they did not inform immediately, but did disclose all the facts when they were required to disclose on 06.12.2019.

19. Accordingly, she prays for allowing the appeal and setting aside of the impugned order.

20. Opposing the appeal, learned AR for revenue relies on the findings in the impugned order. He further states that the Appellant was irresponsible for the misgivings on the part of their employee Mr M.S. Pareek, who persuaded Navya Creations to introduce the consignment of an outsider without informing or taking permission of the competent officer of the Appellant. Thus, there

appeared to be lack of internal control procedures at the end of the Appellant. Further, customs came to know about the details of such bookings, when the statement was recorded of Mr. Deepal Khati, the competent officer of the Appellant. Thus, it is evident that the Appellant - courier had not verified the details of actual exporter and of record his functioning at the given address. Further, with respect to their two consignments booked through their ASP for Mr. Munshi Jogi, though Appellant made enquiry at their end, but they never made sufficient effort to contact their client namely Munshi Jogi. That it is apparent that the Appellant as an authorised courier has failed to verify the details of actual exporter and its functioning at the given address. Thus, there is failure to comply with the obligation under Regulation 12(iv) of CIER, 2010.

21. Having considered the rival contentions, I find that there is no failure on the part of the Appellant under Regulation 6 (4) of CIER, 2010, as no case is made out of any violation of any instructions or public notice issued by the customs. Further, there is no allegation that the export consignments in question were not presented properly to the proper officer or to the satisfaction of the proper officer. Accordingly, the allegation and finding under Regulation 6(4) are set aside.

22. So far allegation under Regulation 12 (iv) of CIER is concerned with regard to compliance of KYC norms, I find that in the case of booking of consignment through Navya Creations for one Mr. Rakesh Jagid, there is no violation of the provision, as both Navya Creation and Rakesh Jagid have responded in the course of enquiry

and cooperated in the matter. However, so far the booking of the 2 consignments through their ASP- Allied Aviation Private Limited for one Mr. Munshi Jogi is concerned, it is evident that the Appellant did produce the relevant KYC documents (Aadhar card) of their client, but there is lack of sufficient efforts to trace and produce the said Mr. Munshi Jogi before the customs for enquiry and investigation. Thus, I hold that there is no violation of Regulation 12 (iv) of CIER with regard to the 2 consignments booked for the consignor - Mr. Munshi Jogi. The Appellant had urged that as the consignment was booked through their ASP, they had accepted the consignment relying on their ASP.

23. It is evident from the letter dated 25 .07.2019, which was written to the customs at the very first instance, wherein it is mentioned that KYC documents with regard to all the three consignments are enclosed along with other details. Further, it is evident from the body of the shipping bill itself with respect to Mr. Munshi Jogi, wherein the Aadhar number is mentioned, thus, the Appellant had definitely collected sufficient documents to comply with the KYC norms in case of Munshi Jogi. Accordingly, the findings of the learned Commissioner in the impugned order for Regulation 12(iv) are set aside.

24. So far, allegation under Regulation 12(v) is concerned, the only allegation is that there is delay of about 3 months in bringing details/ information to the knowledge of the customs. I find that the Appellant was in constant touch and had kept the customs informed. The apparent contravention is only due to involvement of

three agencies, the Customs House, thereafter, the DRI and thereafter the SIIB. Thus, there is only few days gap in informing the particular agency but there is no deliberate keeping back of any information or giving or withholding any information whenever asked for. Accordingly, this ground is allowed and the findings of Id. Commissioner is set aside.

25. So for the allegation under Regulation 12 (vi) and (vi) are concerned, there is no apparent violation. The learned Commissioner observed that on perusal of email exchanged between the Appellant and Navya Creation, although appellant have mentioned that that customs have examined the consignment but have nowhere mentioned presence of bulk quantity of medicine. Further, it is not required to mention that customs has put their consignment on hold or that customs has examined the consignment. Learned counsel urges that the said allegation does not stand as it is not complaint from their client, that they were not given proper information or timely information. Similarly, there is no specific allegation as to any failure on the part of the Appellant to keep the customs department informed of any developments in the matter. Neither, there is any allegation of having held back any information from the customs department in the matter. Accordingly, I hold that there is no violation of Regulation 12(vi) & (vii) of CIER, 2010.

26. However, I find that there is lack of control and proper administration on their ASP. Further, appellant should have immediately informed the customs on termination of their employee

– M.S. Pareek with his future correspondence address and contact phone numbers. I also find that the illegal activity was found by customs, there being no complicity of the appellant.

27. In view of my observations and findings, I set aside the order of forfeiture of security deposit of Rs. 10 lakhs, which shall be restored forthwith. The amount of penalty under Regulation 14 of CIER is reduced to Rs. 20,000/- (Rupees twenty thousand only).

28. Appeal allowed in part. Miscellaneous application also stands disposed of.

(order pronounced in the open Court on 16.03.2023).

(Anil Choudhary)
Member (Judicial)