

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI.**

**PRINCIPAL BENCH - COURT NO. II**

**Customs Appeal No. 51742 of 2021-SM**

(Arising out of order-in-original No. 57/MK/POLICY/2021 dated 17.06.2021 passed by the Commissioner (Airport & General), New Custom House, IGI Airport, New Delhi).

**M/s FedEx Express Transportation & Supply  
Chain Services (India) Private Limited**

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

**Appellant**

VERSUS

**Commissioner of Customs  
(Airport & General),**

Air Cargo Complex, Near IGI Airport  
New Delhi-110037.

**Respondent**

**APPEARANCE:**

Ms. Kruti Parasar & Ms. Jyoti Pal, Advocates for the appellant  
Sh. Mahesh Bhardwaj, Authorised Representative for the respondent

**CORAM:**

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

**FINAL ORDER No. 51174 / 2022**

**DATE OF HEARING: 15.06.2022  
DATE OF DECISION: 09.12.2022**

**ANIL CHOUDHARY:**

This appeal has been filed by FedEx Express Transportation and Supply Chain Services (India) Pvt. Limited who are engaged in provision of Courier Services and are registered as Authorised courier under the Courier Imports and Exports (Electronic Declaration & Processing) Regulations, 2010 (Courier Regulations in short).

2. This appeal has been filed against the impugned order-in-original dated 17.06.2021 whereby the respondent Commissioner has

ordered for forfeiture of security deposit (of Rs. 10 lakh as tendered by the appellant at the time of obtaining license) and further imposed penalty of Rs. 50,000/- under Regulation 14 by relying upon the 'enquiry report' and thus have held that the identity proof of the consignee was required to be collected at the time of delivery at all different locations (as the said address was different than the address mentioned on the KYC documents).

3. Learned Counsel for the appellant urges, the general procedure adopted by the appellant for providing the services is – appellant accepts bookings from consignor / consignee for movement of goods from abroad to India and vice-versa. The appellant collects authorisation from consignor/ consignee at the time of booking and/or on arrival of the goods in India as per Regulation 12(i) of Courier Regulations. The appellant collects such authorisation alongwith KYC (Know your Customer) documents, such as Aadhar Card, PAN Card etc., in advance, i.e., prior to delivery of the goods. Where appellant received consignment on behalf of such account holder / customer whose KYC documents /authorisation are already in the appellant's records, in such case KYC documents / authorisation are not collected repeatedly. In such case KYC is simply verified at the time of delivery. In case KYC address is different from that of the actual address for delivery, then appellant records the actual address of delivery.

4. Brief facts of the case are that S. Roway Technology Co. Ltd., (shipper) booked a consignment to be sent to Sh. Sunirmal Mondal (Consignee) in West Bengal vide Air Way Bill No. 788020515933 (subject consignment). The appellant filed Courier Bill of Entry dt.

26.06.2019 by declaring the subject consignment as 'Electric Toys' classifiable under CTH 8526. The description / details of the subject consignment were declared as per the invoice dt. 20.06.2019 issued by the Shipper.

4.1 On the basis information received from DRI, DZU, Delhi, the Department intercepted the consignment and subjected it to examination. Several summons were also issued to the consignee, Sh. S. Mondal, however he failed to appear before the authorities. Statement of appellant's representative was recorded, wherein with reference to the subject consignment it was stated that the declarations were made on 'said to contain basis' as per the invoice of the shipper. On Department's request, the appellant aided in delivering summons for appearance before Customs authorities to the consignee on 06.11.2019.

4.2 The subject consignment was opened and examined by the Customs authorities (recorded in panchnama on 12.12.2019), wherein it was found to contain "Baoefeng –Transreceiver Walkies Talkie Two Way Radio set" and not electric toys as declared by the shipper in the invoice. The goods were seized and handed over to appellant for safe custody.

4.3 Department sought various details/ documents regarding past consignments cleared in the name of the said consignee - Sh. Sunirmal Mondal. Appellant provided the same, along with other documents, such as authorisation letter, copy of his PAN & Aadhar Card etc. wherein the address of Purba Chandibari, Kauragacchi, North 24 Parganas, West Bengal was mentioned. The Department noticed that

deliveries had been made to various different addresses (other than what mentioned above on the KYC documents), and requested to confirm if the appellant had used the same KYC documents for the past 22 consignments cleared for the consignee Sh. Sunirmal Mondal. The appellant informed the department that it had used the same KYC documents from their database and such KYC documents were not repeatedly collected.

4.4 One of the summons issued to the consignee was received by his Mother, who confirmed that the consignee had died on 01.01.2020.

4.5 Show cause notice No. 28/KRM/ADC/ACE/2020 dt. 02.12.2020 was issued to the consignee Sh. S. Mondal, by raising a demand on account of alleged mis-declarations/ undervaluation etc. w.r.t. the subject consignment and the past-consignment(s) cleared to him. Show cause notice dt. 02.12.2020 also proposed for imposition of various penalties on the appellant under Section 112(b), Section 114AA read with Regulation 14 of the Courier Regulations, and for appropriate actions under Regulation 13 of Courier Regulations, by alleging inter alia that the appellant-

Did not collect KYC, address proof and authorisation for past shipments cleared to the consignee except for the one on record.

Did not collect the KYC, and address proof for the shipments cleared to the consignee at different addresses all over India and thus did not comply with Regulation 12(1)(iv) of Courier Regulations.

4.6 On the basis the allegations contained in show cause notice dt. 02.12.2020, the present show cause notice was issued, containing the following proposals-

- i) That the appellant should be held responsible for contravention of Regulation 12(1)(i), (iv) and (v) of Courier Regulations.
- ii) Revocation of the appellant's Courier Registration and forfeiture of whole/ part of the security furnished at the time of issuance of registration in terms of Regulation 13(1).
- iii) Imposition of penalty under Regulation 14.
- iv) The Deputy Commissioner (ACC-Imports), New Delhi was appointed as the Inquiry Officer for the case.

4.7 The appellant filed detailed written submissions before the Inquiry Officer, submitting inter-alia that as per Circular No. 13/2016-Cus. dt. 26.04.2016 and Circular No. 2/2018 dt. 12.01.2018, in cases of individuals, courier - parcel can be delivered at addresses apart from those mentioned on KYC documents. When delivering to another address as mentioned on KYC document – the proof of identity should be checked and the record of delivery address should be maintained for 5 years. Since the appellant has complied with the above two requirements, it was submitted that all proposals were liable to be dropped.

4.8 The Deputy Commissioner issued the Inquiry Report on 07.04.2021, wherein it was observed:-

(i) The appellant had obtained authorisation, and thus allegation of violation of Regulation 12(1)(i) was not substantiated.

(ii) Circular No. 2/2018-Cus. does not prescribe the KYC done once completes the process; the appellant did not collect the identity proof of the consignee at all the different locations of delivery, and hence had not conducted proper due diligence. Thus, contravention of Regulations 12(1)(iv) and Regulation 12(1)(v) was substantiated.

5. The appellant filed the detailed objection/ submissions in response to the enquiry report on 08.06.2021. Learned Commissioner observed that the consignee - Sh. Sunirmal Mondal did not appear before the Customs on 14.11.2019 in response to summons. Thereafter the consignee aforementioned appeared and was examined on 12.12.2019 in presence of witnesses and representative of the appellant. The four carton boxes comprising the consignment, the goods instead of electronic toys as declared, were found to be Baofeng Transreceiver Walkie Talkie Two way Radio set total 90 sets, Baofeng Radio (NT) six sets and SMA Female Connector - 2 pcs., Nagoya antenna -12 pcs. connecting wire -1 pair. Accordingly, the goods were found to be mis-declared and seized. It further appeared that the consignee (S. Mondal) attempted to import by submitting forge license/ documents. Further, on enquiry with Sh. Nalnish Srivastava - the signing authority of the Amateur Wireless Station License dt. 10.07.2017 issued by the DoT, WPC Wing, New Delhi, confirmed that the said license was fake and the same was not issued by him. The

consignee failed to appear before the Customs inspite of four-five summons were issued to him. Thereafter Sh. Ashutosh Kumar, Assistant Manager (clearance) of the appellant appeared on 20.07.2019 and his statement was recorded under Section 108 of the Customs Act, 1962 wherein he inter-alia stated that the said consignment was sent from Hong Kong by J. Roway Technology Co. Ltd., and was consigned to Ms. Sreya Bose, all the shipments were accepted by them on 'said to contain basis' based on the declaration provided by the shipper. The said consignment was booked by their regular customer having FedEx No. S 213410121 and shipper has submitted commercial invoice dt. 12.06.2019, that the declaration of goods as – Electronic Toy –HSN 8526920, Super cop Toy Game Communication Set Intercom for Child Entertainment – 60 quantity total value 300 USD. The shipment was accepted on "said to contain basis" which means that if there is no reasonable doubt, they accept the declaration of the shipper and considered that the declaration of shipper is bonafide. In the present case they sought ten days time to provide the customs a copy of proof of delivery and the signature of the person who received the shipment bearing No. 787879158303. Further, as regards the KYC details / confirmation of importer, he submitted that he needs to check the details and will also check the details of previous consignment delivered to Sh. S. Mondal.

6. Thereafter Revenue wrote letter dt. 28.08.2019 to FedEx to submit the required documents i.e. previous consignment and PoD etc. in the said matter. In response, FedEx by letter dt. 17.10.2019, that as the present consignment has been detained by customs and has not

been cleared. Further, submitted copy of airway bill, commercial invoice, Aadhar Card of consignee, PAN card of consignee, KYC declaration form, authorisation, PAN card verification of the consignee and Aadhar card verification of the consignee. As regards past consignment further time was sought for correlating documents.

7. It was alleged in the show cause notice that appellant has contravened Regulation 12(i), (iv) and (v) of the Courier Regulations as they have not collected KYC, address proof and authorisation for past shipments cleared to Sh. S. Mondal, except the one address as mentioned in Aadhar Card i.e. of Porva Chandibari, Kaugachhi North, 24 Pargana, West Bengal-743127. It was further alleged that appellant have not verified and collected the KYC and address proof for the shipment(s) cleared to Sh. S. Mondal at different address all over India. It was also alleged that appellant have not verified the antecedents and identity of his client as in the declared address and not exercised due diligence to collect the authorisation and KYC for past shipment. Thus, it was observed that appellant rendered themselves liable to be penalised under Regulation 14 of the Courier Regulations. It was also proposed to revoke courier license of the appellant.

8. Learned Commissioner has recorded the following findings:-

- "31. I find that the inquiry officer has rightly observed in the reply filed by the noticee regarding requirement of collecting KYC that the authorised courier has obtained authorisation from the consignee. In respect of following the KYC norms, I find that the noticee in its reply had relied on the Circular 02/2018 wherein KYC norms have been issued/ amended. The circular specifies KYC norms for individuals who possess proof of identity in the form of prescribed document but their address of present stay is not mentioned in the proof of identity. Basically, in general, these would be cases where individual would have got the KYC document at a particular address but subsequently moved to a different address. For such cases, these individuals would have difficulty to produce present/ current proof of address. In order to overcome such cases, the said circular specifies as follows:-

“for such cases, it was decided that proof of identity collected by the representative of the authorised courier at the time of delivery of such consignments to an individual consignee alongwith recording of address of the place where such consignments would be delivered to the consignee by the authorised courier companies, would suffice for KYC verification.”

9. Further observing that in view of pandemic, taking a lenient view, as the appellant employs several workmen and contribution to the Government exchequer by way of customs duty, the Id. Commissioner refrained from revoking the courier license of the appellant but imposed penalty under Rule 14 and also forfeited security amount of Rs. 10 lakhs and warned to be careful in performing their duties in future.

10. Assailing the impugned order, Id. Counsel for the appellant inter-alia urges that the appellant has duly abided by the prescribed KYC norms and also conducted requisite due diligence. Ld. Commissioner have erred in agreeing with the Inquiry Officer that the appellant was obligated to collect the identity proof of the same consignee each time before the delivery. Admittedly, appellant have collected and kept proper records of the proof of identity and address as per the KYC norms, as per the Regulations read with the Board circular. It is meaningless to collect the same document again and again, which is already in possession and properly maintained in the records of the appellant. It is further urged that Regulation 12 of the Courier Regulation obligates the appellant to verify the antecedent, correctness of Importer Exporter Code, identity of the client and functioning of the client at the declared address by using reliable, independent, authentic documents, data or information under clause (iv). Ld. Commissioner has held that the appellant have procured proper authorisation and also

was in possession of proper documents as per the KYC norms as required by law. But the Id. Commissioner have erred in observing that FedEx has not verified the KYC as required by law, which is erroneous. None of the documents in possession of the appellant which were received from the consignee like Aadhar Card, PAN Card, Aadhar Card verification of the consignee, PAN Card verification of the consignee were found to be false or untrue. As the appellant have duly abided by the prescribed KYC norm, there was no requirement to separately collect the identity proof each time before delivery. The appellant have duly complied the KYC norm as clarified by the Department vide Circular No. 33/2010 and 9/2010. Further, Circular No. 7/15/Cus. dt. 12.02.2015 clarifies that in case of individuals, one document which contains both the proof of identity and proof of address shall be sufficient. In this circular Aadhar Card was specified as a proper KYC documents for individuals. Ld. Counsel further urges that the Board again vide Circular No. 13/2016-Cus. dt. 26.04.2016, in view of the difficulty faced by the concerned people as many time individuals possess the proof of identity in the form of prescribed document(s) but the address mentioned in the document is not the address where the individual is staying. Individuals often find difficult to produce present/current proof of address. After examining the Board clarifies that in case where the proof is not available with the individuals, the proof of identity collected at the time of delivery alongwith address recorded for the delivery purpose by the courier companies would suffice for KYC clarification. The courier company can keep a record of the address where the goods are delivered and the same would be treated as proof of address of the individuals. However, courier companies which show

due diligence in maintaining the record of proof of address, this dispensation for proof of address would be available only in respect of individuals for import of documents, gifts/ samples/ low value dutiable consignment upto a maximum CIF value limit of Rs. 50,000/-.

11. Thus, applying the clarificatory Circular No. 13/2016-Cus. an authorised courier in case where the current address or address of delivery is different than the address mentioned on the ID proof are firstly required to collect the identity proof at the time of delivery and secondly record the delivery address. Subsequently, the Board vide Circular No. 2/18-Cus., referring to its earlier circular further clarified – that in case of import or export through courier by an individual, either Aadhar Card or Passport or PAN Card or Voter Id. Card shall suffice for KYC verification, however recording of address of place of delivery as mentioned in the earlier circular would continue. Admittedly, in the facts and circumstances, as the appellant is in possession of the PAN Card and Aadhar Card of the consignee (S. Mondal) and have also duly recorded the address of delivery as and when made, thus there is no violation of clause (iv) of Regulation 12(1) nor there is any case made out that appellant have not exercised due diligence to ascertain the correctness of any information which he submits to the proper officer as required under clause (iv) of Regulation 12(1). These facts have not been disputed in the inquiry report.

12. The appellant further relies on the following rulings:-

- (i) CIT vs. Tara Agencies-2007 (214) ELT 491 (SC)
- (ii) FLE Fast Line Express Pvt. Ltd., vs. CC (Air Cargo Export), New Delhi – 2021 (5) TMI 835 (Tri. New Delhi).

- (iii) M.K. Saha and Co. Vs. CC (Airport & ACC) – 2021 (12) TMI 350 (Tri. Kolkata).
- (iv) BN Thakkar & Company vs. CC, Kandla -2020 (6) TMI 145 (Tri. Ahm.).

13. It is also urged that as the Commissioner had dropped proposal of revocation of the license, the order for forfeiture of the security deposit is bad in law and on facts. Further, in the facts and circumstances as the appellant have not violated any of the provisions of the Courier Regulations read with the Circular, no penalty is attracted under Regulation 14. Accordingly, Id. Counsel prays for allowing the appeal with consequential benefits.

14. Learned Authorised Representative appearing for the Revenue relies on the impugned order.

15. Having considered the rival contentions, I find that the appellant authorised courier under the Courier Regulation have duly obtained the proof of identity cum proof of address by collecting the Aadhar and PAN as well as verification report of both the cards. Further, admittedly the appellant have recorded the place/ address of delivery each time they have delivered the goods to the consignee (S. Mondal). Further, I find that there is no violation of the provisions of Regulation 12(i), (iv) and (v) as the appellant has obtained the prescribed documents for identity and have maintained proper records. Further, there is no case of lack of due diligence made out, as the appellant has kept a proper record of address of delivery as the same was different from the address contained in the Aadhar Card. Thus, I hold that appellant have not violated any of the provisions of the

Courier Regulations read with the provisions of the Customs Act read with Explanatory Circular as discussed hereinabove.

16. In this view of the matter, the impugned order is set aside and the appeal is allowed. The appellant is entitled to consequential benefits, in accordance with law.

(Order pronounced on 09.12.2022).

(Anil Choudhary)  
Member (Judicial)

Pant