CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 52724 of 2019

[Arising out of Order-in-Original No. 65/MK/Policy/2019 dated 22/05/2019 passed by The Commissioner of Customs, (Airport & General), New Delhi.]

M/s Fle Fast Line Express Pvt. Ltd. **…Appellant**
A-173, Road No. 4, Gali No. 9,
Mahipalpur Extension,
New Delhi – 110 037.

Versus

The Commissioner of Customs, **…Respondent**
(Air Cargo Export),
New Custom House,
New Delhi.

APPEARANCE:

Shri Akhil Krishna Maggu, Advocate for the Appellant
Shri Sunil Kumar, Authorised Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 19.03.2021
DATE OF DECISION: 25.05.2021

FINAL ORDER No. 51516/2021

P.V. SUBBA RAO

This appeal has been filed by the appellant to assail the order dated 22/05/2019 passed by the Commissioner of Customs (Airport & General), New Delhi. By this order, the registration of the appellant under the Courier Imports and Exports (Electronic Declaration & Processing) Regulations, 2010[1] has been revoked and the entire amount of security deposit of Rs. 10 lakhs furnished by the appellant has been forfeited. Further, a penalty of Rs. 50,000/- has been imposed upon the appellant.

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1 . the Regulations

2. The appellant is an authorized courier under the Regulations. These Regulations apply to assessment and clearance of imported or export goods carried by an authorized courier by air on behalf of a consignee or consignor at Customs airports. Whenever any goods are imported through courier instead of the normal procedure in which the importer or a Customs Broker files a bill of entry for the imported goods, in courier imports, the authorized courier or his agent files an electronic manifest of the imported goods prior to its arrival with the proper officer in express cargo manifest – import (ECM – I) form. The courier packages containing the imported goods cannot be dealt with in any manner except as directed by the Commissioner of Customs and no person shall, except with the permission of proper officer, open any packages of imported goods. The authorized courier shall present the imported goods to the proper officer for inspection, screening, examination and assessment. Thereafter, the authorized courier pays the import duty, if any, applicable on the imported goods and after clearance by the customs delivers the goods to the consignees and collects the customs duties from them.

3. Since this is a sensitive job involving clearance of imported goods, the permission to operate as courier for import and export goods requires registration which is granted after ensuring that the necessary qualifications and conditions are made. Regulation 12 places some obligations on the authorized courier. Regulation 13 provides for the suspension and revocation of the registration of the authorized courier and forfeiture of security deposit on some grounds including failure of the authorized courier to comply with any of the provisions of the Regulations. Regulation 14 provides for imposition of penalty upto Rs. 50,000/- upon the authorized courier.

4. Regulation 12, 13 and 14 are reproduced:-

"12. Obligations of Authorised Courier.

(1) An Authorised Courier shall -

(i) obtain an authorisation, from each of the consignees or consignors of the imported goods for whom or from whom such Courier has imported such goods; or consignees or consignors of such export goods which such Courier proposes to export, to the effect that the Authorised Courier may act as agent of such consignee or consignor, as the case may be, for clearance of such imported or export goods by the proper officer;

Provided that for import of documents, gifts and samples, and low value dutiable consignments for which declaration have been filed in, Form-B or the Courier Bill of Entry-XI (CBE-XI), Form C or the Courier Bill of Entry-XII (CBE-XII) or Form-D or Courier Bill of Entry- XIII (CBE-XIII) respectively, the authorization may be obtained at the time of delivery of the consignment to consignee subject to the production of consignors authorisation at pre-clearance stage and retention of authorisation obtained from the consignee for a period of one year or date of Audit by Customs, whichever is earlier.

(ii) file electronic declarations, for clearance of imported or export goods, through a person who has passed the examination referred to in regulation 8 or regulation 19 of the Customs House Agents Licensing Regulations, 2004 and who are duly authorized under section 146 of the Act;

Provided that a transition period upto 31st December, 2011 shall be allowed to the Authorised Courier for fulfillment of the obligation in so far as it relates to examination referred to in regulation 8 of the Customs House Agents Licensing Regulations, 2004.

(iii) advise his consignor or consignee to comply with the provisions of the Act, rules and regulations made there under and in case of non-compliance thereof, he shall bring the matter to the notice of the Assistant Commissioner of Customs or Deputy Commissioner of Customs;

(iv) verify the antecedent, correctness of Importer Exporter Code (IEC) Number, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information;

(v) 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;

(vi) 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;

(vii) not withhold any information relating to assessment and clearance of imported goods or of export goods, from the Assessing Officer;

(viii) not attempt to influence the conduct of any officer of Customs in any matter pending before such officer or his subordinates by the use of threat, false accusation, duress or offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing or value;

(ix) maintain records and accounts in such form and manner as may be directed from time to time by an Assistant Commissioner of Customs or Deputy Commissioner or Customs for a period of five years and submit them for inspection to the Assistant Commissioner of Customs or an officer authorised by him, wherever required; and

(x) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under.

13. Suspension or revocation of registration of authorised courier.

(1) The Commissioner of Customs may revoke the registration of an Authorised Courier and also pass an order for forfeiture of security on any of the following grounds namely:-

(a) failure of the Authorised Courier to comply with any of the conditions of the bond executed by him under regulation 11;

(b) failure of the Authorised Courier to comply with any of the provisions of these regulations;

(c) misconduct on the part of Authorised Courier whether within the jurisdiction of the said Commissioner or anywhere else, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs airport:

Provided that no such revocation shall be made unless a notice has been issued to the Authorised Courier informing him the grounds on which it is proposed to revoke the registration and he is given an opportunity of making a representation in writing and a further opportunity of being heard in the matter, if so desired:

Provided further that, in case the Commissioner of Customs considers that any of such grounds against an Authorised courier shall not be established *prima facie* without an inquiry in the matter, he may conduct an inquiry to determine the ground and in the meanwhile pending the completion of such inquiry, may suspend the registration of the Authorised Courier:

Provided also that if no ground is established against the Authorised Courier, the registration so suspended shall be restored.

(2) **Any Authorised Courier** or the officer of the Customs authorised by the Chief Commissioner of Customs in this behalf, **if aggrieved by the order of Commissioner of Customs passed under sub-regulation (1), may represent to the Chief Commissioner of Customs in writing against such order within sixty days of communication of the order to the Authorised Courier, and the Chief Commissioner of Customs shall, after providing the opportunity of being heard to the parties concerned, dispose of the representation as expeditiously as may be possible.**

14. Penalty. -

An Authorised Courier, who contravenes any of the provisions of these regulations or abets such contravention or who fails to comply with any provision of these regulations with which it was his obligation to comply, shall be liable to a penalty which may extend to fifty thousand rupees.

5. The appellant filed declarations in respect of the following airway bills.

S.No.	HAWB No.	Importer's name	Description of the goods found during examination	No. of pairs
1	86575442519	M/s. B S Imports	Nike Zoom Pegasus 33	30
2	86575442140	M/s. B S Imports	Nike Zoom Pegasus 33	30
3	86575442559	M/s. B S Imports	Nike Zoom Pegasus 33	30
4	86575442563	M/s. B S Imports	Nike Zoom Pegasus 33	30
5	86575442517	M/s. B S Imports	Nike Zoom Pegasus 33	30
6	86575442553	M/s. B S Imports	Nike Zoom Pegasus 33	30
7	86575442558	M/s. Legend Creations	Nike Zoom Pegasus 33	30
8	86575442564	M/s. Legend Creations	Nike Zoom Pegasus 33	30
9	86575442510	M/s. Legend Creations	Nike Zoom Pegasus 33	30
10	86575442562	M/s. Legend Creations	Nike Zoom Pegasus 33	30
11	86575442141	M/s. Legend Creations	Nike Zoom Pegasus 33	30
12	86575442138	M/s. Legend Creations	Nike Zoom Pegasus 33	30
13	86575442560	M/s. Personal Creations	Nike Zoom Pegasus 33	30
14	86575442518	M/s. Personal Creations	Nike Zoom Pegasus 33	30
15	86575442139	M/s. Personal Creations	Nike Zoom Pegasus 33	30

6. The declared goods were 'Sample Shoes' and every airway bill had 30 pairs totalling 450 pairs. Information was received by customs authorities that branded shoes were being imported by some importers in the guise of 'sample shoes' in association with the appellant. So, they opened and examined the above 15 consignments of shoes of 30 pairs each and seized them under Section 110 of the Customs Act. Subsequent investigations showed that these were counterfeit goods and, therefore, they were confiscated under Section 111 of the Customs Act, 1962[2] for violation of intellectual property rights of the brand owner M/s. Nike.

7. The goods were imported in the name of three companies- M/s. B.S. Imports, M/s. Legend Creations and M/s. Personal Creations. Statements of Ram Bilas Gupta – Authorized Representative of M/s Personal Creations was recorded under Section 108 of the Customs Act. He categorically stated that they had not imported shoes and the consignments covered by the aforesaid airway bills were not imported by them. They were into business of exporting readymade garments. Similarly, statement of Rajeev Kumar Chadha of M/s Legend Creations Pvt. Ltd. was also recorded. He also said that they never imported the shoes covered by the aforesaid airway bills. Statements of Balvinder

2 . Customs Act

Singh, Proprietor of M/s B.S. Imports statements were recorded under Section 108. He confessed to have imported the shoes covered by six airway bills which were filed in the name of B.S. Imports. He said that he was aware that the goods were covered under IPR Act and that he accepted his mistake of mis-declaration and undertook to pay duty and penalty, as applicable. Subsequent investigations showed that in fact, all the 15 consignments were imported by Balvinder Singh- six in the name of his firm and rest in the names of M/s Legend Creations and M/s. Personal Creations using their IEC without their knowledge.

8. Statement of Rajesh Mehta, Director of the appellant firm was recorded wherein he inter-alia stated that he was well conversant with the rules and procedures related to import and export; that he knew that a case of mis-declaration had been booked; that his company had filed Bills of Entry with the description of goods as 'sample shoes' whereas on examination the consignment was found to be of commercial quantity of shoes; and that he was shown the statement of Balvinder Singh who had accepted having mis-declared the goods. He further said that it was a case of mis-declaration on the part of importer and that the Bills of Entry has been filed on the basis of the documents provided by the shippers and submitted signed copies of Bills of Entry in respect of the 15 airway bills pertaining to the case.

9. Further statement of Mehta was recorded on 10/03/2018 in which he said that he would get copies of manifest, invoices and KYC by E-mail. He disputed the statements of Rajeev Kumar Chadha of M/s Legend Creations and Ram Kumar Gupta of Personal Creations that they did not import the goods. On being asked about how he got the necessary documents, such as, manifest, invoice and KYC to file the bills of entry, he said that the KYC was handed over to him along with letter of authorization by Balvinder Singh of M/s B.S. Imports and that he received the invoice by E-mail.

10. In view of the above, an enquiry was conducted against the appellant and the enquiry officer concluded that the appellant had violated Regulation 12 (1) (v). The portion relevant for this appeal reads as follows :-

> **"12. Obligations of Authorised Courier.**
>
> (1) An Authorised Courier shall -
>
> (i) ….

(ii) ….

(v) 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"

11. Therefore, a suspension cum show cause notice dated 29/11/2018 was issued to the appellant. The Adjudicating Authority revoked the licence and forfeited the security deposit under Regulation 13(1), and imposed a penalty of Rs. 50,000/- under Regulation 14.

12. The Adjudicating Authority found that the Import Export Code[3] of M/s Legend Creations and M/s Personal Creations was being mis-utilized by Balvinder Singh to import goods in their names. Instead of confirming with the original IEC holders and obtaining their Know Your Customer[4] documents, authorization and other documents from them, the appellant filed the declarations obtaining the documents from Balvinder Singh who is not related to these firms. Therefore, the Adjudicating Authority rejected the contention of the appellant that it had obtained KYC documents in respect of all the imports as not tenable. In this connection reliance was placed on the order of the Tribunal in **Baraskar Brothers** vs. **Commissioner of Customs (General), Mumbai – 2009 (244) E.L.T. 562** that placed reliance on the judgment of the Supreme Court in Civil Appeal No. 2940 of 2008 filed by M/s K.M. Gantra & Co., defines the role of the responsibility of Customs House Agent. The observation are as follows:-

> "Apex Court vide order dated 14/01/2016 has observed that, "The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. **Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in Regulation ……"**

13. The Adjudicating Authority further held that the authorized courier being a key person between the customs officers and the

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3 . IEC

4 . KYC

importer/exporter has a very similar role to play to that of the CHA and rejected the appellant's argument that they had obtained the KYC.

14. Aggrieved, the appellant filed this appeal under Section 129A of the Customs Act.

15. It needs to be pointed out that as per Regulation 13(2), the appellant could have represented to the Chief Commissioner of Customs, if aggrieved. However, the jurisdiction of the Tribunal under Section 129A has not been restricted with respect to these Regulations.

16. We, therefore, proceed to decide this appeal.

17. This appeal is filed on the following grounds:

(i) the impugned order was passed mechanically and arbitrarily

(ii) the appellant was only a courier agent who filed bills of entry of the importers and acted in bonafide manner

(iii) there is no case that the appellant has committed the fraud

(iv) Balvinder Singh has confessed that he had committed the fraud to safe customs duty

(v) the appellant never dealt with the subject goods there is not even an allegation or a piece of evidence to show that the appellant was aware of the intention of Balvinder Singh

(vi) the KYC was done duly by the appellant

(vii) they rely on the judgment of High Court of Delhi in the case of **Kunal Travels (Cargo) versus CC (I&G), IGI Airport, New Delhi – 2017 (354) E.L.T. 447 (Del.)** in which it was held that "there can be no presumption of CHAs deliberate intention to defraud and no *mens rea* could be inferred.

(viii) The appellant was not aware of any irregularity in the import consignments and hence it cannot be held to have contravened Regulation 12 (1) (v). The statements of the appellant recorded by the customs also do not indicate any knowledge of the fraud

(ix) The KYC documents were taken by the appellant on the letter of authorization issued by the importers. It is true that they have received these KYC documents under the letterheads of M/s Personal Creations and M/s Legend Creations through Balvinder Singh, but it received them under the cover of letters duly signed.

18. Learned Counsel for the appellant made the following submissions:

(a) They are not required to verify the KYC everyday for every consignment. Having received the KYC documents they verified them with the data available on the official websites, etc. and found the KYC documents to be genuine. Thereafter, the invoices and other documents were received by email and they field the necessary airway bills to clear the consignments;

(b) As a courier, they are not authorized to open and examine the goods. Only the customs officers have the right to do so. Regulation 5(2)(v) specifically states "no person shall, except with the permission of proper officer, open any package of imported goods";

(c) After opening and inspecting the goods and getting them further examined by the brand owner M/s Nike, the customs officer came to the conclusion that they were counterfeit goods. Balvinder Singh was the person involved in these fraudulent imports and he has confessed to the crime. Nothing in his statement or in the statement of the appellant or of anyone else suggests that they were aware of the nature of the goods; and

(d) Regulation 12(1)(v) requires the appellant to "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". They had verified the KYC documents which were received, though through Balvinder Singh, but under the cover of letters of the three importer firms. They have verified the KYC documents. Thereafter, when the invoices were received along with imported goods they have filed bills of entry as per the invoices which were received. They had no mechanism whatsoever of checking whether the invoices which were received match with the imported goods or otherwise. This can only be known when the imported consignments are opened, examined and compared with the invoices. The appellant had no authority to do this; only the proper officer could do that and he did. Therefore, there is no evidence on record to show that the appellant has not exercised due diligence to ascertain the correctness and completeness of the information.

(e) Learned Counsel relied on the following decisions:-

(i) **Kunal Travels (Cargo) versus CC (I&G), IGI Airport, New Delhi – 2017 (354) E.L.T. 447 (Del.)**

(ii) **Krishna Shipping Agency versus CC (Airport & Admn.), Kolkata – 2017 (348) E.L.T. 502 (Tri. – Kolkata)**

(iii) **G.M. Enterprises versus Commissioner of Cus. (Export), Nhava Sheva – 2010 (262) E.L.T. 796 (Tri. – Mumbai)**

(iv) **V. Esakia Pillai versus Commissioner of Customs, Chennai – 2001 (138) E.L.T. 802 (Tri. – Chennai)**

(v) **Adani Wilmar Ltd. versus Commissioner of Customs (Prev.), Jamnagar – 2015 (330) E.L.T. 549 (Tri. – Ahmd.)**

(vi) **Him Logistics Pvt. Ltd. versus Commissioner of Customs, New Delhi – 2016 (338) E.L.T. 725 (Tri. – Del.)**

(vii) **Commissioner of Customs versus Him Logistics Pvt. Ltd. – 2017 (348) E.L.T. 625 (Del.)**

(viii) **Perfect Cargo and Logistics versus Commissioner of Customs (Airport & General), New Delhi –** Final order No. **51641 of 2020** dated December 17, 2020.

19. Learned Departmental Representative supported the impugned order and asserted that the appellant had failed to exercise due diligence in ascertaining the correctness and completeness of the authorization handed over by the third party in respect of two importers who were not related to him and thereby contravened Regulation 12(1)(v) of the Regulations. *Mens rea* is not required for suspension or revocation of licence and imposition of penalty under the Regulations as has been held in the following decisions:

(i) **Commissioner of Customs versus K.M. Ganatra & Co. – 2016 (332) E.L.T. 15 (S.C.)**

(ii) **Millenium Express Cargo Pvt. Ltd. versus Commissioner of Customs, New Delhi – 2017 (346) E.L.T. 471 (Tri. – Del.)** affirmed by High Court of Delhi – **2017 (354) E.L.T. 467 (Del.)**

(iii) **Rubal Logistics Pvt. Ltd. versus Commissioner of Customs (General), New Delhi – 2019 (368) E.L.T. 1006 (Tri. – Del.).**

20. We have considered the arguments of both sides and have perused the record.

21. The job of an authorized courier agent is somewhat similar to the job of a customs broker. He is required to file declarations before the customs officers in respect of all the consignments, which were imported by him based on the documents. He has no authority to open the consignment. Further he is also required to verify the identity of the

importers through KYC documents. In other words, he needs to verify whether the importer actually exists or otherwise which is part of the due diligence process. In this case, the appellant received the KYC documents of all the three alleged importers under the cover of their letters but they were received through Balvinder Singh. Having received the documents, the appellant verified the KYC documents and found the importers to be genuine. There is no dispute that all the three importers in whose name the imports were made exist.

22. The second set of documents which the appellant received is in the form of invoices along with the consignments. These are received from the overseas exporter. Based on these documents, the appellant filed declarations with the customs. On investigation, customs officers found that the shoes which were imported were counterfeit Nike shoes. The fact that they were counterfeit was ascertained after an expert evaluation by Nike Creations, the brand holder. It is inconceivable that somebody could have, without opening the packages understood that contents were counterfeit shoes. It would have been impossible for the appellant or even the customs officers or even for the experts to determine that the contents were counterfeit goods without opening the packages. The appellant, as an authorized courier, is prohibited from opening the packages. It would have been a difference case, if there was sufficient evidence that the appellant was aware that the goods were counterfeit shoes or if the appellant had a role to play in the scheme to import them.

23. The only fault of the appellant is that instead of receiving the KYC documents directly from the hands of the owners of M/s Legend Creations and M/s. Personal Creations, it received the documents with covering letters handed over by Balvinder Singh. In our considered view, this action of the appellant does not constitute not exercising due diligence to ascertain the correctness and completeness of any information which he submitted to the proper officer with reference to any work related to the clearance of imported goods as required under Regulation 12(1)(v). Had the Customs officers waited for sometime before acting on their intelligence, it would have become evident whether the appellant was involved in the mis-declaration because, as courier, it would have had to take the goods and deliver them to M/s. Legend Creations and M/s. Personal Creations. If the appellant had, instead, delivered the goods to Balvinder Singh or someone else, it would have

proven their involvement in the mis-declaration. But from the facts of this case, we find that:

(a) the importers were genuine importers and they existed;

(b) the KYC documents were not fake;

(c) the Bills of Entry were filed as per the invoices;

(d) there is no evidence that the appellant was aware of the real contents of the consignments;

(e) the appellant had no authority to even open and verify the contents of the imported consignments; and

(f) there is no evidence that the appellant was aware that the goods were actually imported by Balvinder Singh and not by the importers declared in the invoices.

24. We, therefore, find that the appellant has not violated Regulation 12(1)(v) and therefore, revocation of the registration and forfeiture of security deposit under Regulation 13(1) and imposition of penalty under Regulation 14 cannot be sustained.

25. For these reasons, the impugned order dated May 22, 2014 cannot be sustained and needs to be set aside and is set aside. The appeal is, accordingly, allowed with consequential relief, if any.

(Order pronounced in open court on 25/05/2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK/SHREYA