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

Customs Appeal No. 50173 of 2021-SM

(Arising out of Order-in-Original No.36/MK/POLICY/2020 dated 06.08.2020 passed by the Commissioner of Customs (Airport & General), New Customs House, Near IGI Airport, New Delhi).

M/s.Fedex Express Transportation **Appellant**
And Supply Chain Services (India) Private Limited,
New Courier Terminal, Near IGI Airport,
New Delhi-110 037.

VERSUS

Commissioner of Customs (Airport & General), **Respondent**
Air Cargo Complex, Near I.G.I. Airport,
Terminal 3, Indira Gandhi International Airport,
New Delhi-110 037.

APPEARANCE:

Ms. Lakshmi Menon, Advocate for the appellant
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO.50872/2022

DATE OF HEARING:09.03.2022
DATE OF DECISION:07.09.2022

ANIL CHOUDHARY:

The issue in this appeal is whether the respondent Commissioner has rightly ordered for forfeiture of the whole amount of security deposit of Rs.10 lakhs, which has been furnished by the appellant, a Registered Courier, under Registration No.DEL/POL/COUR/09/2013 (AABCF6516A) valid up to 18th November, 2028, issued under Courier Imports and Exports (Clearance) Regulations, 2010. Further, penalty of

Rs. 50,000 been imposed under Regulation 14 of Courier Imports Exports Regulations, 2010 (CIER, 2010 for short).

2. The brief facts are that the appellant filed a courier bill of entry, dispatched from USA by the consignor - Edvin Donaldson, declared to be the books, to consignee – Mr. Kofo Richard, having passport No.G1482638 (Ghana) under Airway Bill No.450849715125, stated to be containing books. The appellant filed courier bill of entry No. CBEXII_DEL_ DL_2018–2019_0409_13290 by declaring the consignment as school books, 10 in nos., having assessable value as Rs.711, as per the declaration made by the consignor, through the Authorised Courier, which was filed at the New Courier Terminal, near IGI Airport, New Delhi-1110 037. On examination by the Shift Officers of NCT, the goods were found to be I-Phone-X 256 GB (7 pieces) and 14 foreign currency notes, each of denomination USD 100. On summons, the consignee, Mr. Kofo Richard appeared on 12th September, 2018 and in his statement recorded under the Customs Act, *inter-alia,* stated that he was on tourist visa in India, which was valid for 6 months up to 1st October, 2018, that he came to India – Goa on 3rd August 2018, he had ordered for 7 I-Phones and few books, which were meant to be shipped to India

by his cousin, Edwin Donaldson, who is resident of California, CA 92507 (USA), that she made 2 different packets, one containing I-Phones and the other containing books, that at the time of booking the shipment with FedEx, she thought that it is the packet, which contained books and hence, she gave description of goods as books to FedEx, that he came to know that the shipment has been held by customs, that he checked it with FedEx and came to know about the mis-declaration of description of the goods, that he had purchase invoices on his whatsapp, and hard copy of the same will be provided within a week, that one IPhone will cost double if he buys it in his native country (Ghana), that the amount was transferred by his family members prior to his coming to India, that these I Phones were purchased in USA and as he was in India, he was supposed to collect the IPhones on behalf of his family members, that foreign currency of USD 1400 belongs to him, that the shipment was sent in his name, C/o FedEx, as he was in transit – moving from Goa to Bangalore and thereafter to Delhi and had no permanent address, that the pickup arrangement and place was decided as per the convenience, that the shipment containing books were meant to be received in India on 6th September, 2018 and the parcel containing I-Phones was meant to be sent on 12th September, 2018, that when he enquired about the consignment on the other day, on which, he came to know about holding of his shipment by customs i.e on 5th September 18, that he didn't have any address in India as he was a tourist on tourist visa and it was not certain when he will be going back in the period of validity of his visa, but during that duration, he will be available on his mobile phone.

3. As Revenue found it a case of mis-declaration and also a case of prohibited goods (foreign currency), the same appeared to be liable to confiscation under Section 111 and 118 of the Customs Act and accordingly the goods including the foreign currency were seized vide seizure memo dated 24th October, 2018. The foreign currency was seized as it appeared to be in violation of the provisions of FEMA read with notification of RBI being No. FEMA 6 (R)/RB-2015 dated 29th Dec., 2015 read with the provisions of the Customs Act. The said currency was deposited in Central Bank of India at T-3, IGI Airport, New Delhi vide TR-6 challan on 26th November, 2018.

4. Show cause notice No. AP/DC/ACA/05/2019 dated 26th October 2019 was issued by the Dy. Commissioner Customs (SSIB), Air Cargo Customs, New Delhi, against Mr.Kofo Richard,

wherein this appellant was also made a co-noticee with proposal to impose penalty. A copy of the show cause notice was forwarded to the office of Commissioner of Customs (Airport and General), New Customs House, near IGI Airport, New Delhi-37. This was treated as ‘offence report’ and accordingly, show cause notice dated 16th December, 2019 was issued to the appellant as it appeared to Revenue that the appellant have failed to perform their duties, in as much as they have not physically verified the goods at the time of booking and the declaration related to consignee’s name and address has also been found incorrect. Further, alleged that the Authorized Representative of the appellant have also accepted this shortcoming in his statement. Moreover, the consignor and the consignee in the instant case is the appellant – M/s. FedEx (as per AWB). However, in the consignee section, the address mentioned is – M/s. FedEx, hold for Kofo Richard, Sector-15 A, Faridabad. Further, the consignee’s address mentioned in CBE is, Sector-15 A, Faridabad, but FedEx has no such office at Faridabad, where they could hold the shipment for Kofo Richard. The Authorised Representative of the appellant has also accepted the same in his statement.

5. It is further alleged that Shri Ashutosh Kumar,

Authorised Representative of Fedex in his statement has, *inter alia,* stated that it is the responsibility of the authorised courier to check the goods physically with the declaration given by the shipper, but in the case of shipment covered under Airway Bill in question, FedEx origin office (in USA) has not checked the goods physically with the declaration given by the shipper. It was further stated that the details are mentioned in the courier bill of entry on the basis of invoices/declaration provided by the shipper. He accepted that the name of shipper – Edwin Donaldson was mentioned as C.I. Reference, but not mentioned in the shipper column, which is a mistake. Thus, it appeared that appellant - FedEx have failed to fulfill its obligation under Regulation 12 of Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. Thus, the appellant failed to take notice that the consignee is importing mis-declared/undervalued/restricted goods.

6. Regulation 12 (iii) provides that the appellant is required to advice the consignor/consignee to comply with the provisions of the Act, Rules and Regulations made thereunder and in case of non-compliance thereof, he shall bring the matter to the notice of the Assistant/Dy. Commissioner of Customs. Accordingly show cause notice dated 16th December, 2019 was issued on the

appellant by the Commissioner of Customs (Airport & General), New Delhi, requiring to show cause as to why they should not be held responsible for contravention of the provisions of Regulation 12 (iii), (iv) and (v) of Courier Import and Export (Electronic Declaration and Processing) Regulations, 2010 in respect of courier bill of entry in question filed on behalf of Mr.Kofo Richard and further as to why their courier registration should not be revoked and part or whole of the security deposit submitted, should not be forfeited in terms of Regulation 13 (1) of CIER, 2010. Further, penalty was proposed under the provisions of Regulation 14 of CIER, 2010.

7. The SCN was adjudicated on contest, whereby the ld. Commissioner refrained from revoking the 'Authorised Courier Licence'. However, he was pleased to order forfeiture of the whole amount of security deposit of Rs.10 lakhs furnished by the appellant and further imposed penalty of Rs.50,000 under the provisions of Regulation 14 of CIER 2010.

8. Being aggrieved, the appellant is before this Tribunal.

9. Ld. Counsel, Ms. Lakshmi Menon appearing for the appellant assailing the impugned order urges as follows: –

9.1 That the law including CIER, 2010 does not envisage physical examination of consignment by the authorised courier. Thus, any such inspection would violate the express prescription in the Regulations. Appellant have not violated any of the provisions of CIER, 2010, that the appellant carried out their responsibilities and duties diligently and have made substantial contributions to the exchequer in terms of the customs duty, etc.

9.2 That the appellant went by the description contained on the import consignment, which was in accordance with the provisions of Regulation, 4 (2) of CIER, 2010. The customs bill of entry was filed after collecting the KYC from the consignee in the form of valid passport with visa, as the consignee was a foreign tourist in India. Since the consignee was not having permanent address in India, the consignment was to be held in the facility of the appellant at a location chosen by the consignee/consignor. The consignee was to come to the facility of the appellant and collect the shipment after confirming his identity once again.

9.3 That the appellant could not have examined the shipment once it was received in India as Regulation 5 (2) of the CIER 2010 prohibits the same. The circulars/instructions issued by the CBEC, the public notices issued by the customs house, does not mandate nor permit that the shipments are to be physically examined by the authorised courier.

9.4 Every shipment, which is imported into India through courier mode is mandatorily screened before clearance for home consumption by the customs authorities. Thus, mandatory physical examination is undertaken by the Customs Authorities. Thus, the duty of examination-verification is cast only on the proper officer of customs.

9.5 That the moment investigation was started by the customs, the consignee was identified and brought before the officers of the Department and his statement was admittedly recorded. Whatever misdeclaration have been found, the same is wholly attributable to the consignor/consignee in the country of origin. Therefore, the appellant are not liable to be penalised for mistake of consignor/consignee. The appellants are a leading Express/Logistics Operator serving in about 220 countries and destinations. The appellant handles huge volume of shipments on a daily basis. The shortcoming is found in less than 0.01% of the total volume of consignments handled by them. The appellant handles -about Rs.7 lakh consignments each financial year during the last few years.

9.6 That the appellants regularly train their employees and have also designed internal control procedures for checks and balances and have also their own code of conduct for their employees and personnel.

9.7 Ld. Counsel further urges that pursuant to issue of show cause notice, inquiry proceedings were initiated by the Inquiry Officer. The inquiry report was submitted by the Inquiry Officer on 11.03.2020, categorically giving the findings that the appellant has not contravened the provisions of Regulation 12 (1)(iii)(iv) and (v) of CIER, 2010. That thereafter, the ld. Respondent Commissioner issued disagreement note observing that the findings of the Inquiry Officer are not based on facts and according to him, the appellant have violated the provisions of Regulation 12 (1)(i)(iii) (v) and (v) of CIER 2010. Such disagreement note was issued without providing any opportunity of hearing. It is further urged that so far Regulation 12 (i) (iii) of CIER is concerned, it is alleged in the show cause notice that the appellant failed to physically check the contents of the package before the same was shipped /exported from the origin located in USA. The Inquiry Officer has recorded the finding that the appellant is not empowered to physically check contents as they are located in India, in the country of the consignee. Further, whatever shortcomings, if any, on the part of the courier office located in USA, the same will be governed by the applicable law in USA.

9.8 Ld. Commissioner has erred in holding that the appellant failed to advice the consignor/consignee to comply with the Act and the Rules and Regulations, which is wholly unfounded and vague under the facts and circumstances.

9.9. So far the allegation under Regulation 12(1)(iv) of CIER is concerned, it has been alleged that the address of the appellant office was wrongly mentioned (Faridabad) and thus, the appellant failed to check the authenticity of the antecedents of his consignee, his data, etc. The Inquiry officer has reported that the appellant has duly complied with the existing KYC norms formulated by CBEC by referring to CBEC Circular No.13/2016-Cus, which is in context of KYC norms. The Inquiry Officer further observed that the consignee was readily available and was brought before the Customs Authorities by the appellant for necessary inquiry, etc. The ld. Commissioner has observed that the appellant should take more vigilant approach in case of Foreign Nationals on tourist visa, and also by using their own IEC Number for clearance of consignment, which they have not done in the present case.

9.10. So far the allegation under Regulation 12(1)(v) is concerned, it has been alleged that the appellant failed to physically check the import consignment, both at the time of origin and also with reference to its proper office address at Faridabad. The Inquiry

Officer has given categorical finding that the appellant is bound to act as per the description provided by the consignor, as is mandated in Regulation 5(2). The appellant could not have done an open check of the consignment and is bound to act on the basis of the declaration by the consignor. Further, 100% scanning of import consignment is done at the end of customs/custodian and there is no provisions under the Act or Regulations mandating the courier agent or empowering the courier agent to do the same. In actual practice, the package, pursuant to import, comes in the hands of the appellant only after that the same is cleared by the Customs. Ld. Commissioner in the impugned order has simply observed that the appellant has not exercised due diligence while booking of the consignment.

9.11 Ld. Counsel further urges that it is further evident that the impugned order is passed mechanically without application of mind. The ld. Commissioner has failed to appreciate the facts and circumstances and the limitations imposed on the scope and powers of the appellant under the Customs Act read with CIER Regulations. Accordingly, she prays for setting aside the impugned order with consequential relief.

10. Ld. Authorised Representative for the respondent/Department relies on the impugned order.

11. Having considered the rival contentions, I find that there is no violation by the appellant, of any provisions of the Customs Act read with Regulations and the instructions issued from time to time by CBEC vide its Circulars, and the only finding of the ld. Commissioner is that the appellant should have been more vigilant and careful. I find that there is no act of omission or commission done by the appellant, which is in defiance of the provisions of the law or duties cast upon them under the Customs Act read with the CIER Regulations. Accordingly, I allow this appeal and set aside the impugned order. The ld. Commissioner is directed to restore the security deposit of the appellant. The appeal is allowed.

[Order pronounced on 07.09.2022]

(Anil Choudhary)
Member (Judicial)

Ckp.