# IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT – III

**Customs Appeal No. C/51407/2018-[SM]**

[Arising out of Order-in-Original No. 1607 dated 14.05.2018 passed by the Commissioner of Customs (ACC Export), New Delhi]

**M/s FLE Fast Line Express Pvt. Ltd ....Appellant**

**Vs.**

**Commissioner of Customs (ACC Export), New Delhi ... Respondent**

Present for the Appellant : Mr. Akhil Krishan, Advocate
Present for the Respondent: Mr. H.C. Saini, D.R.

**Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)**

**Date of Hearing : 28.06.2018**
**Pronounced on : 05.07.2018**

**FINAL ORDER NO. 52424/2018**

**PER: RACHNA GUPTA**

Present is an Appeal against the Order-in-Original of Commissioner of Customs (ACC Export) dated 14.05.2018 where the period of issuance of the Show Cause Notice has been extended for a further period of six months after the expiry of six months from the date of seizure i.e. 15.11.2017.

2. The appellant herein is an authorised courier who had filed 15 courier bills of entry on behalf of three importers and

declared the goods as sample shoes. The goods were seized under Section 110 of the Customs Act, 1962, being a case of mis-declaration and were being liable for confiscation under Section 111 of Customs Act. Goods were accordingly seized on 15.11.2017 and a Show Cause Notice dated 08.05.2018 was issued but the investigation could not be completed within the period of six months w.e.f. the date of seizure i.e. 15.11.2017. Accordingly, vide the Show Cause Notice of concerned were called upon to explain as to why the said period may not be extended for a period of another six months after expiry of six months from the date of said seizure.

3. While adjudicating the said Show Cause Notice, the Order under challenge has directed the said extension of time. Being aggrieved, the present Appeal has been filed.

4. I have heard Shri Akhil Krishan, Ld. Advocate for the appellant and Shri H.C. Saini, DR for the Department.

5. It is submitted on behalf of the appellant that the declared goods were Nike Zoom Pegasus 33 and every AWB has 30 pairs totalling to 450 pairs. After a case of mis-declaration was alleged by the Department, the statement of Shri Balvinder Singh, proprietor of M/s BS Imports was recorded on 22.11.2017 where he accepted his mistake of mis-declaration and also agreed that he was aware about the subject goods to have come under the purview of IPR Act. He also admitted about his intention for mis-declaration so as to

save the customs duty. It is submitted that despite the said admission, the Department failed to conclude the investigation and the Adjudicating Authority below while ignoring the unexplained delay on the part of the Department without any sufficient cause for the same has been apparently wrong while extending the period of Show Cause Notice. It is also impressed upon that extension of time may not be an objection as far as the Show Cause Notice is issued to the importers only. The appellant being the courier agent has no such liability for which he may be made to feel the repercussions and the pinch as may be caused during the extended period. While relying upon **Commissioner vs Parminder Singh Sabharwal 2017 (356) ELT A83 (Bombay – High Court)** it is submitted on behalf of the appellant that in absence of any sufficient reason especially when the investigating officer has done very little or nothing during the period of six months after the date of detention of goods, the Order extending the time for issuance of Show Cause Notice is not sustainable. Accordingly, impugned order is prayed to be set aside and Appeal to be allowed.

6. While rebutting these arguments, Ld. DR has impressed upon para 8 of the impugned order submitting that the reasons for giving time extension are clearly been mentioned in the Order. It is further impressed upon that despite more than 3 notices to Shri Balvinder Singh, proprietor of M/s BS Imports during investigation, he did not turn up on the ground of being sick and hospitalised that the investigation could not be

finalised as from the statement of Shri Rajesh Mehta, Director of FLE Fast Line Express Pvt. Ltd. / the appellant herein who mentioned about receiving the KYC alongwith the letter of authorisation of M/s Personal Creations and M/s Legend Creations in their name by Mr. Balvinder Singh, proprietor of M/s BS Imports. It is impressed upon the subsequent statement of Mr. Balvinder Singh to rule out the involvement of the appellant herein is utmost necessary which could not be recorded due to Shri Balvinder Singh being hospitalised during the period of six months as mentioned under Section 110 of the Customs Act. Hence, the Adjudicating Authority below has rightly extended the period. While justifying the said Order the Appeal is prayed to be dismissed.

7. After hearing both the Counsels and perusing the record as well as the relevant legal provisions, the present case prima facie is observed to be a case of mis-declaration of the goods and accordingly the same are liable to confiscation in accordance of Section 111(f) of the Customs Act. Section 112(a) of the Act makes any other person who even abats doing or omitting to do any such Act/ making the good liable for confiscation, also liable for same penalty. Section 114(aa) of the Customs Act, 1962 states as under:

> "if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of his Act, shall be liable to a penalty not exceeding five times the value of goods."

8. Since the appellant herein is an authorised courier agent, the procedure summarised in Chapter 17 of CBEC's Customs manual perusal thereof shows that in case of postal import including import through courier, the postal parcel as received by the postal service has to be handed over to the Customs alongwith such documents as are mentioned in Rule 8.1(b). In case, the Customs officer doubts any mis-declaration, he may require the postal authority/ courier to detain the same with him. In such circumstances, it becomes the duty of the postal service to get the parcels opened and scrutinised under the supervision of Customs and then to be sealed with a distinctive seal. However, throughout the entire procedure the imported parcels have to remain in the custody of the postal officials. If in case contents of any such parcel or packet are found mis-declared or value understated or consisting of prohibited goods, the postal authority/ courier is duty bound to not to allow such packets to go forward without the Customs orders. Adjudicating proceedings shall be initiated in such cases by the competent officer and the parcel shall be released after payment of final penalty if any levied by the Adjudicator. It is also mentioned in Rule 8.1(k) of Chapter 17 of the Manual that the duties as assessed shall be recovered by the postal authorities from the addressee and the credit for the total amount of duty is given by the postal authority to the Customs Department in accordance with the procedure settled between the two Departments. From the entire above discussion it becomes clear that the role of the courier/ the appellant herein

is important till the stage of finalisation of the adjudication and even beyond the stage of final adjudication.

9. Now coming to the facts of the present case, the matter is still at the stage of investigation. No doubt, it is apparent that Shri Balvinder Singh, proprietor of one of the importers has admitted the intentional mis-declaration on his part vide his initial statement dated 22.11.2017. It is after his statement that the statement of the proprietors of remaining two importers was recorded who tried to shirk their responsibility on the ground of handing over of KYC and other documents to the appellant on their behalf also but through M/s BS Imports. Accordingly, to finally conclude the investigation, the subsequent statement of Shri Balvinder Singh is important. His unavailability on account of being hospitalised, to my opinion is a sufficient cause of delay in not concluding the investigation within the span of six months is required under Section 110 of the Customs Act. It is rather opined to be a non cooperation on the part of the importer with the investigation agency. I draw my support from **M/s Durga Trading Co. Vs Commissioner of Customs (Imports), Chennai 2016 (332) ELT 125 (Tri.–Chennai)**. No doubt the non cooperation at this stage is not apparent on the part of the appellant but keeping in view his duties as discussed above and the apparent admission of mis-declaration by the importers on the postal parcels to be imported by the appellant, the appellant cannot absolutely be absolved from facing the investigation and the subsequent adjudication.

10. In view of the entire above discussion, I opine that the Commissioner Customs has rightly invoked Section 124 of the Act while considering the absence of Shri Balvinder Singh as a sufficient cause for permitting the extension of six months, beyond the period of six months expiring from the date of seizure. The Order accordingly is upheld and Appeal is hereby rejected.

[Pronounced in the open Court on 05.07.2018]

**(RACHNA GUPTA)**
**MEMBER (JUDICIAL)**

D.J.