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

Customs Appeal No. 42475 of 2015

(Arising out of Order-in-Appeal C. Cus. I No. 377/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals – I), Chennai)

FedEx Express Transportation and Supply Chain Services (India) Pvt. Ltd. **Appellant**
No. 138, 5th Floor, Raheja Paramount
Residency Road, Bangalore – 560 025.

Vs.

Commissioner of Customs **Respondent**
Chennai – IV Commissionerate
Customs House, 60, Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

Shri T. Viswanathan, Advocate and
Shri D. Santhana Gopalan, Advocate for the Appellant
Smt. Rajini Menon, Authorised Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NO. 41016/2026

Date of Hearing: 12.03.2026
Date of Decision: 09.09.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order-in-Appeal C. Cus. I No. 377/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals – I), Chennai (impugned order).

Factual Matrix

2. M/s. TNT India Pvt. Ltd. (TNT), an authorised courier under the Courier Imports and Exports (Clearance) Regulations, 2010, filed Courier Shipping Bill No. 21109 dated 22.12.2012 for export of three packages containing 106 Churidhar Tops, declaring Shri A. Thameem

Ansari as consignor and Shri Bala, Malaysia as importer. Examination revealed white crystalline powder concealed in the stitched/embroidered portions of the garments. While the initial test indicated Methaqualone (16,500 grams), the Central Revenue Laboratory, Chennai subsequently identified the substance as pseudoephedrine hydrochloride, export of which required a ‘No Objection Certificate’ (**NOC**) from the Central Bureau of Narcotics. In its absence of the NOC, it appeared that the goods were liable to confiscation under Section 113(e), (d) and (h)(i) of the Customs Act, 1962. Investigation further alleged that the consignment had not been directly booked with TNT. It was booked with M/s. Universal Worldwide Express Courier & Cargo, Egmore, and routed through M/s. Worldwide Express, Ashok Nagar, Chennai, which had an account and business arrangement with TNT. The Appellant had not obtained any permission from the Commissioner of Customs for sub-contracting/outsourcing the services to M/s. Worldwide Express and M/s. Universal Worldwide Express. The consignor’s address was also found to be false. Searches of the premises of the courier intermediaries did not yield any contraband or incriminating documents. The SCN alleged that TNT had accepted the parcels from Worldwide Express on the basis of only one identity document and had permitted sub-contracting/outsourcing without obtaining the Commissioner’s permission. The Appellant has hence allegedly not fulfilled the obligations as an Authorised Courier under KYC norms as per Public Notice No. 32/2010 dated 23.09.2010 and Circular No. 33/2010-Cus dated 07.09.2010 ("Circular 33/2010") requiring collection of 2 IDs. TNT was accordingly alleged to have violated Regulations 13(i) and 13(j) of the Courier Imports and Exports

(Clearance) Regulations, 2010 (**CIER**). After due process, the Adjudicating Authority in the Order-in-Original (**OIO**), imposed penalties of Rs 40 lakhs under Section 114(i) and Rs 60 lakhs under Section 114AA of the Customs Act, 1962 on TNT. The Commissioner (Appeals) rejected TNT's appeal. Pursuant to the Business Transfer Agreement dated 02.02.2022, TNT's operations were transferred to FedEx Express Transportation and Supply Chain Services (India) Pvt. Ltd.**,** which has consequently pursued the present appeal.

Public Hearing

3. The Ld. Advocates Shri T. Viswanathan and Shri D. Santhana Krishnan appeared on behalf of the Appellant and Smt. Rajini Menon, Ld. Authorized Representative appeared for the Respondent-Revenue. The submissions made by them are examined as a part of the discussions below.

Issues raised by the Appellant

4. We have heard the parties and perused the appeals. The following issues have ben raised by the Appellant:

A. Impugned Order Travels Beyond the SCN

B. No Contravention of Regulations 13(i) and 13(j)

C. Courier Not Liable for Concealed Contents and Penalties Under Sections 114(i) and 114AA Are Unsustainable. Breach of CIER Does Not Attract Sections 114(i) and 114AA.

Legal Framework

5. The impugned Order has used the provisions of both the Regulation of 1988 and that of 2010, almost interchangeably. Regulation 13 of the **Courier Imports and Exports (Clearance)**

Regulations, 1998 sets out the obligations of an Authorized Courier.

The said relevant obligations are set out below :

> **"13. Obligations of Authorised Courier.** An Authorised Courier shall -
> (i) 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;
>
> (j) not sub-contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person, without the written permission of the Commissioner of Customs."

5.1 Regulation 12 of the **Courier Imports and Exports (Electronic Declaration and Processing) Regulations**, 2010, also provides for the obligations of Authorized Courier in more or less similar terms as Regulation 13 of the 1998 Regulations.

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

5.2 Provisions of the **Customs Act, 1962**

> (A) **114. Penalty for attempt to export goods improperly, etc.** - Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,-
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> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act. . . . .
>
> (B) **Section 114AA. Penalty for use of false and incorrect material. -** 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 this Act, shall be liable to a penalty not exceeding five times the value of goods.

Analysis and Findings

A. Impugned Order Travels Beyond the SCN

6. Shri T. Viswanathan the ld. Advocate for the Appellant has stated that the allegations in the Show Cause Notice were confined to non-obtaining of permission from the Commissioner of Customs for sub-contracting/outsourcing services to M/s. Worldwide Express Pvt. Ltd., Chennai and M/s. Universal Worldwide Express and Cargo, and alleged non-compliance with KYC obligations prescribed under Public Notice No. 32/2010 dated 23.09.2010. Neither the Show Cause Notice nor the Order-in-Original disputed that the Appellant filed CSB-II only in its capacity as an authorised courier; it was never alleged that the Appellant was the consignor. The impugned order has travelled beyond the scope of the Show Cause Notice by holding:

(i) that the Appellant had not obtained authorisation from Shri Thameem Ansari and had thereby contravened Regulations 13(a) and 13(c) of the CIER, 1998.

(ii) the finding that it had knowingly prepared the CSB by suppressing facts thereby aiding/abetting smuggling and that it had shown itself as consignor in CSB-II and was, therefore, the exporter responsible for the contraband is beyond the case set up in the Show Cause Notice.

(iii) the finding that the Appellant was liable for the consequence of attempted export of prohibited goods, based on declarations in CSB-II, is also outside the allegations in the Show Cause Notice.

(iv) the Order-in-Original also exceeded the Show Cause Notice by holding that the Appellant knowingly prepared the CSB, presented the goods for export without proper verification and aided or abetted the attempted smuggling of narcotics.

(v) the Show Cause Notice contains no allegation that the Appellant knowingly mis-declared the consignment or aided and abetted the attempted smuggling of narcotics.

These findings are beyond the SCN and are unsustainable, as an adjudication order cannot travel beyond the show cause notice. Reliance is placed on **Manikya Plastichem Pvt. Ltd. Vs Commissioner of C. Ex., Bangalore-III** [2003-160-E.L.T. 273-Tri-Bang.]; **Saci Allied Products Limited Vs Commissioner of C. Ex. Meerut** [2005 (183) ELT 225 (SC)] and **Vikram Jain Vs Commissioner of Customs** [2006-205-ELT-735-Tri-Bang].

6.1 The principal contention of the Appellant is that the adjudicating authority travelled beyond the Show Cause Notice in his OIO, by resting its findings on grounds and material which were never put to the Appellant. The question that therefore arises is whether the findings in the impugned order are merely particulars, inferences or evidentiary material flowing from the case set out in the Show Cause Notice, or whether the OIO introduces for the first time new material facts which constitute a different foundation for the proposed liability. The principle involved has been stated by a Coordinate Bench of this Tribunal in **M/s. ABK-AOTS-DOSOKAI Vs Commissioner of GST & Central Excise**, [2026 (8) TMI 1398 - CESTAT CHENNAI], wherein, it was held that the relevant test is not whether every piece of evidence or every particular ultimately relied upon by the adjudicating authority was expressly set out in the Show Cause Notice, but whether the notice disclosed the essential factual and legal foundation of the charge, so as to enable the noticee to reasonably defend itself. A material fact which constitutes the very foundation of the proposed liability, however, cannot be supplied for the first time in the Order-in-Original. The Bench, held as under:

> "5.1 A submission that the adjudicating authority has travelled beyond the scope of the Show Cause Notice requires us to first examine the charge as set out therein and whether the Notice disclosed the material facts constituting the foundation of the proposed demand, so as to enable the appellant to effectively defend itself. **A distinction must be maintained between "material facts" and "particulars". Material facts are those primary facts which constitute the foundation of the cause of action or defence; particulars are the details by which such facts are elaborated or established.** Different consequences may follow from the omission of material facts and material particulars. Failure to plead a material fact renders the case incomplete, as it omits an essential element of the cause of action or charge and is liable to be set aside on this ground. Such omission is fundamentally different from the omission of a particular or piece of evidence. Material particulars on the other hand are the details necessary to amplify, elaborate and refine the material facts already alleged in the Show Cause Notice. They cannot, however, in themselves be a substitute for a material fact which constitutes the very foundation of the charge. As held by the Hon'ble Supreme Court in **Sopan Sukhdeo Sable Vs Assistant Charity Commissioner** [(2004) 3 SCC 137], the basic rule of pleadings requires the material facts necessary to constitute a complete cause of action to be stated, and there is a distinction between material facts and particulars. [Also see: **Udhav Singh Vs Madhav Rao Scindia** - 1976 AIR 744, 1976 SCR (2) 246 / AIR 1976 SUPREME COURT 744]. The same principle assumes greater significance in tax adjudication, where the Show Cause Notice is the foundation of the proceedings.
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> 5.2 Thus, the test is not whether every piece of evidence or every particular ultimately relied upon was expressly set out in the Notice, but whether the Notice disclosed the essential factual and legal foundation of the charge—the taxable activity, the basis on which it was alleged to be taxable and the material facts necessary to enable the assessee to meet that charge. While particulars and supporting evidence may, in an appropriate case, be developed during adjudication, a material fact which

> constitutes the very foundation of the proposed liability cannot be introduced for the first time in the adjudication order. Relief cannot be founded upon, nor a demand confirmed on, a case which the assessee was never called upon to answer. **The core test**, **therefore, is: Was the assessee put on notice of the essential factual foundation and legal basis of the particular demand, such that it could reasonably defend itself? If not, the adjudicating authority cannot cure that defect by supplying the missing material facts in the Order-in-Original."**
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> (emphasis as in original)

6.2 In the present case, the SCN proceeded against the Appellant as an Authorised Courier. The allegations were confined to alleged unauthorised outsourcing/sub-contracting of courier activity and failure to comply with KYC requirements, including acceptance of the consignment on the basis of only one identity document. The alleged contraventions were under Regulations 13(i) and 13(j) of the CIER, 2010.

6.3 The SCN did not allege that the Appellant had failed to obtain authorisation from Shri A. Thameem Ansari, nor did it allege contravention of Regulations 13(a) and 13(c) of the CIER, 1998. The said finding in the impugned order, therefore, rests on a distinct factual and legal foundation not contained in the SCN.

6.4 Similarly, the SCN identified Shri A. Thameem Ansari as the consignor and proceeded against the Appellant only in its capacity as Authorised Courier. It did not allege that the Appellant was itself the consignor/exporter or liable in that capacity for the prohibited goods. The finding that the Appellant was the consignor/exporter merely on the basis of CSB-II therefore travels beyond the SCN.

6.5 The impugned order further attributes knowledge and knowing involvement of the Appellant by holding it responsible for attempted export of prohibited goods on the basis of declarations in CSB-II.

However, the SCN did not allege that the Appellant knew of the concealed pseudoephedrine hydrochloride, knowingly prepared or adopted a false declaration, or knowingly aided or abetted the attempted export.

6.6 The case in the SCN was thus one of alleged breach of obligations as an Authorised Courier. The impugned order, however, proceeds on additional grounds of failure to obtain consignor authorisation, consignor/exporter status, and conscious participation in attempted export of prohibited goods. These are not mere particulars or evidentiary inferences; they are new material facts going to the foundation of liability.

6.7 We therefore hold that the impugned findings, to the extent they rest upon alleged violation of Regulations 13(a) and 13(c), treatment of the Appellant as consignor/exporter, and attribution of knowledge or conscious participation in the attempted export, travel beyond the SCN and cannot be sustained.

B. No Contravention of Regulations 13(i) and 13(j)

7. Smt. Rajini Menon, Ld. Authorized Representative appeared for the Respondent-Revenue and submitted that M/s TNT India Pvt. Ltd. accepted the impugned parcels from the staff of M/s Worldwide Express Pvt. Ltd., Chennai, on the basis of only one identity document. The parcels had, in turn, been received by Worldwide Express from M/s Universal Worldwide Express Courier & Cargo (UniEx Worldwide Express Courier & Cargo). No permission of the Commissioner of Customs had been obtained for such sub-contracting or outsourcing. Accordingly, she submitted that TNT had violated Regulations 13(i) and 13(j) of the CIER.

7.1 The Appellant submits that there was no contravention of Regulations 13(i) and 13(j) of the CIER. As regards Regulation 13(i), it is contended that the Appellant had verified the consignor's identity and antecedents on the basis of his driving licence, which appeared genuine and contained both proof of identity and address. The requirement of obtaining two identity documents was not prescribed by Regulation 13(i) itself but only by Circular No. 33/2010, and was subsequently relaxed by Circular No. 7/2015-Cus., which accepted one document if it contained both identity and address particulars. The Appellant submits that the aforesaid condition imposed vide the Circular is not binding on it, as it is only a clarification issued by the Board. Therefore, obtaining only one ID proof instead of two cannot be held to be contravention of Regulation 13(i) of CEIR, 1998. The Appellant further points out that the same consignor had earlier exported similar goods to the same consignee without any adverse finding, and the present consignment also did not arouse suspicion on examination.

7.2 With respect to Regulation 13(j), the Appellant submits that the prohibition on sub-contracting applies only to functions required to be performed by an authorised courier under the Regulations, namely assessment and clearance-related functions. The mere collection or pick-up of export consignments from the consignor is not such a core statutory function, as also recognised in Circular No. 59/2016-Cus., which provides that prior permission is not required for pick-up or local delivery of courier packages and that prior intimation would suffice. Reliance in this regard is placed on **Bombino Express Pvt. Ltd. v. CC, Mumbai** [2016 (11) TMI 903 - CESTAT MUMBAI] affirmed by the

Hon'ble Bombay High Court in PCC v. Bombino Express Pvt. Ltd. [2018 (13) G.S.T.L. 52 (Bom.)], to contend that Regulation 13(j) cannot be extended to non-clearance activities such as collection of goods. Accordingly, the Appellant submits that the findings of violation of Regulations 13(i) and 13(j) are unsustainable and the impugned order is liable to be set aside.

7.3 We find merit in the appeal. Regulation 13(i) requires an authorised courier to verify the antecedents, identity and functioning of its client through reliable, independent and authentic material. It does not mandate two identity documents. The requirement for two documents arose only from the Board's KYC instructions. Non-production of a second document may be a procedural lapse, but, absent evidence that the consignor's identity or address could not be verified from the undisputedly genuine driving licence, it does not establish breach of Regulation 13(i). Circular No. 7/2015-Cus., though prospective, supports this distinction by recognising that one prescribed document may serve as proof of both identity and address.

7.4 Regulation 13(j) prohibits outsourcing, only a function required or permitted under the CIER without the Commissioner's written permission. The outsourced activity must first be a function which the Regulations themselves contemplate as a function of the Authorised Courier. It does not prohibit all commercial outsourcing. The Department therefore had to establish that the Appellant without permission, entrusted such a regulatory function, which it was obliged to do, to M/s. Worldwide Express or M/s. Universal Worldwide Express.

7.5 The outsourced activity was only collection or pick-up of the export consignment, which the CIER does not treat as an assessment or clearance function of an authorised courier. As held in **Bombino Express Pvt. Ltd. Vs CC, Mumbai** [2016 (11) TMI 903 - CESTAT MUMBAI] and affirmed by the Bombay High Court, activities outside those functions do not attract Regulation 13(j). Circular No. 59/2016-Cus., though prospective, likewise recognises pick-up as a non-core activity not requiring prior permission, subject to intimation and due diligence.

7.6 Installation of the Appellant's software at the agent's premises may show knowledge of the arrangement but does not prove that a regulatory function was outsourced. Mere outsourcing of physical pick-up therefore does not violate Regulation 13(j).

7.7 Accordingly, the findings of contravention under Regulations 13(i) and 13(j), based respectively on non-collection of a second identity document and outsourcing of physical pick-up, merit to be set aside.

C. Courier Not Liable for Concealed Contents and Penalties Under Sections 114(i) and 114AA Are Unsustainable

8. The impugned order held that TNT's software was installed at Universal Worldwide Express for generating TNT Airway Bills, despite the absence of a direct contract between them. This established TNT's knowledge and approval of Universal Worldwide Express as an unauthorised booking agent, without the requisite permission of the Commissioner of Customs. TNT prepared and filed the CSB without carrying out the required verification and, having knowingly used a false or incorrect declaration, was liable to penalty under Section 114AA of the Customs Act, 1962. Accordingly, TNT could not escape liability by relying on the alleged concealment of the narcotic substance.

8.1 Per contra the Appellant, has stated that they can’t be held liable merely because the consignor had incorrectly declared the contents of the consignment, which was subsequently found to contain narcotic substance concealed ingeniously inside the embroidery designs stitched onto the Chudidhar Tops. They further stated that as held in **Patel Parcel Service Private Limited Vs Commissioner of Customs** [2018 (363) E.L.T. 401 (Tri-All.) (SM) and **TNT India Private Limited Vs Commissioner of Customs** [2016 (340) E.L.T. 542 (Tri. - Del.) (SM)], a courier cannot be held liable for concealed contents in the absence of knowledge, connivance or collusion.

8.2 We agree with the Appellant and find no evidence in the impugned Order that the Appellant knew of, participated in, or facilitated the misdeclaration or the ingenious concealment of the narcotic substance in pouches embedded within the embroidery, which could be detected only by cutting it open. Mere filing of the courier declaration on the consignor's information, followed by discovery of prohibited goods, does not establish a knowing false declaration. Installation of the Appellant's software at another entity's premises, or receipt of the consignment through an intermediary, does not by itself establish the nature of the Agency arrangement, the Appellant's knowledge and control, or failure to discharge a specific regulatory obligation. No such cogent evidence has been produced. As submitted by the Appellant, Section 114(i) of the Customs Act, 1962, requires an act or omission rendering goods liable to confiscation, while Section 114AA ibid, requires use of false material with knowledge or intent. Neither ingredient is present. The penalties under Sections 114(i) and 114AA of the Customs Act, 1962, insofar as founded on that basis, are therefore unsustainable. Accordingly, the findings of contravention under Sections 114(i) and 114AA merit to be set aside.

Conclusion

9. In view of the foregoing discussion and findings, we find that Revenue has failed to establish, by cogent evidence, that the Appellant had knowledge of, or was in any manner privy to, the export of pseudoephedrine hydrochloride. Revenue has also failed to establish that the Appellant acted in breach of the obligations cast upon it under the EICR. The essential ingredients necessary to sustain the alleged contravention and the consequent penal action have, therefore, not been established. Accordingly, the impugned order, insofar as it relates to the Appellant, is set aside. The Appellant shall be entitled to consequential relief, if any, in accordance with law. The appeal is disposed of accordingly.

(Order pronounced in open court on 09.09.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Sd/-
(**P. DINESHA**)
Member (Judicial)

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