CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. 2

Customs Appeal No. 56284 of 2013

(Arising out of Order-in-Appeal No. CC (A) CUS/472/2012 dated 15.10.2012 passed by the Commissioner of Customs (Appeals), New Delhi.)

Mr. Rajeev Khanna **...Appellant**
R/o M-168, Greater Kailash Part-II
New Delhi

Versus

Commissioner of Customs,(Prev.) **...Respondent**
New Customs House,
New Delhi

APPEARANCE:

Mr. T. Chakrapani, Consultant & Mr. Anil Kumar, Advocate for the Appellant
Mr. Arun Sheoran, Authorised Representative of the Department

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

Date of Hearing/ Decision: February 02, 2024

FINAL ORDER NO. 55741/2024

S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the Directorate of Revenue Intelligence (DRI) had received specific intelligence that certain importers have been fraudulently importing certain super bikes of international brands such as Honda, Suzuki, Yamaha etc., by first dis-assembling them in abroad and then importing such disassembled bikes by declaring them as bike parts, with intention to evade payment of Customs Duty. Based on the Intelligence, the officers of DRI proceeded against various importers, including the appellant herein and initiated show cause proceedings for confiscation of the imported bikes and for

imposition of penalties under Section 112 of the Customs Act, 1962. The Show Cause Notice dated 25.8.2011 issued to the appellant herein was adjudicated vide order dated 26.03.2012, wherein the original authority had determined the assessable value of the imported motorbike at Rs.10,86,496/- and also confirmed the customs duty demand of Rs. 16,21,053/- alongwith interest. Besides, the said original order had also confiscated the bike having Registration No. DL-3S-BB-3603 under Section 111(d) *ibid* and also imposed penalty of Rs. 1 lakh on the appellant under Section 112(a) and (b) *ibid*. On appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 15.10.2012 has modified the adjudication order and reduced the quantum of penalty from Rs. 1 lakh to Rs. 15,000/-. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Appellant in this appeal has prayed for setting aside the impugned order, insofar as it has upheld confirmation of the penalty on it. The provisions for imposition of penalties for improper importation of goods are contained in Clause (a) & (b) of Section 112 of the Custom Act, 1962. The said statutory provisions are extracted herein below:

"**Section 112. Penalty for improper importation of goods, etc.**-Any person,

(a) 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 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(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 the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;]

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest."

4. On perusal of the case records, more specifically the impugned order dated 15.10.2012, I find that the learned Commissioner (Appeals) has made the observation that the appellant is no way connected to the import of the subject goods in question and also had never colluded and connived with the importer in fraudulent importation of the bikes. The relevant paragraph in the impugned order is extracted herein below:

"6. ……… If these are the accepted facts, the issue stands clear that the Appellant was never the importer and there is nothing on record to say that he had any culpability in the said imports at the time of import and that he had any collusion or connivance with the said Sh. Rishi Sood and Sh.

> Nadir Ali in the said illegal import. Accordingly, the penalty imposed, under Section 112(a) and (b) of the Act ibid, is reduced to Rs. 15,000/- only, since due diligence has not been exercised by him, in this case, and only for owning a smuggled bike.”

5. On careful reading of the impugned order, I find that the appellant herein had only purchased the imported bike from some other person. Since the appellant had not involved himself into the activities of the fraudulent importation of the bike in question and had never intended to defraud the Government revenue, I am of the considered view that the provisions of Section 112 *ibid* cannot be invoked on it for imposition of penalty.

6. In view of above, the impugned order, to the extent, it has imposed penalty of Rs. 15,000/- on the appellant under Section 112 *ibid* is set aside and the appeal to such extent is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

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