CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Single Member Bench - Court No. – I

Customs Appeal No. 646 of 2012

(Arising out of Order-in-Appeal No.37/2011 (H-II) Customs dt.23.12.2011 passed by Commissioner of Customs & Central Excise (Appeals-II), Hyderabad)

Zain Bilgrami .... **Appellant**
H.No.8-2-316/A/7, Road No.14, Banjara Hills,
Hyderabad, Telangana – 500 034

VERSUS

Commissioner of Customs .... **Respondent**
Hyderabad - Customs
Kendriya Shulk Bhavan, LB Stadium Road,
Basheerbagh, Hyderabad – 500 004

Appearance
Shri P. Sai Makrandh, Advocate for the Appellant.
Shri A. Rangadham, AR for the Respondent.

Coram: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER NO. A/30103/2025

Date of Hearing: 28.03.2025
Date of Decision: 28.03.2025

Mr. Zain Bilgrami (hereinafter referred to as the appellant) is in appeal against Order dt.23.12.2011 (impugned order) passed by the Commissioner (Appeals), wherein, inter alia, he has upheld the imposition of penalty of Rs.25,000/- on the appellant.

2. The issue, in brief, is that the DRI found an imported motorcycle from the possession of one Mr. K.A.V.S. Ramakrishna Raju, where they had doubt that the said vehicle has been imported illegally into the country without following proper procedure. On subsequent investigation and recording of statement Mr. Raju, he informed that the said vehicle was purchased from the appellant. On further investigation, the appellant stated that the said motorcycle was purchased by him from one Mr. Ali Raza. Subsequent investigation revealed that bill of entry submitted to the RTA at Maharashtra for obtaining temporary registration was itself fake and therefore, entire documentation in relation to the said imported motorcycle was fake and based on fraudulent obtainment of documents by one Mr. Ali Raza, who has

sold to the appellant. It is also on record that the department could not trace the said Mr. Ali Raza and left a remark in the SCN that action would be taken against him for the said offence of smuggling, once he is traced.

3. As far as the confiscation of the motorcycle is concerned, the same has been upheld in the impugned order by the Commissioner (Appeals), however, the appellants, though, initially came for relief on account of valuation, confiscation of the motorcycle as well as imposition of penalty under section 112(b) of the Customs Act, 1962, subsequently, in the course of hearing on 05.03.2025, learned Advocate for the appellant submitted that they are now contesting only the penalty imposed on them and no other issues are being pressed in terms of the said appeal filed by them. Learned Advocate submits that in this case, the appellant is a victim as he has taken all precautions while purchasing the motorcycle from Mr. Ali Raza and therefore, there was no malafide intent or he had no reason to believe that it was liable for confiscation, etc., and therefore, in the facts of the case, penalty imposed on them should be set aside.

4. On the other hand, learned AR points out that it is a fact that motorcycle has been rightly confiscated absolutely by the Original Adjudicating Authority and upheld by the Commissioner (Appeals) because the motorcycle was in the nature of prohibited/smuggled goods. Once confiscation is not being contested by the appellant, nature of goods as smuggled goods is established qua appellant. Insofar as the imposition of penalty is concerned, he submits that the appellant has not only purchased the motorcycle from Mr. Ali Raza, who is still untraceable and who is alleged to be the importer/smuggler for the said motorcycle, for his self use and in fact was further sold by the appellant to Mr. Raju. Therefore, the plea of not having any malafide intent or reasons to believe is not sustainable.

5. Heard both sides and perused the records.

6. Since the appellants are no longer contesting the issue of confiscation of imported motorcycle, the short question, which is to be decided, is whether in the factual matrix of the case, penalty imposed on the appellant is sustainable or otherwise. I find that in this case, admittedly the appellant has purchased the motorcycle from one Mr. Ali Raza under the cover of temporary registration issued by Maharashtra RTA and subsequently, Mr. Ali

Raza also got the vehicle permanently registered with Telangana RTA for which the appellant had to pay an additional amount of Rs.50,000/-. Therefore, the argument that they had acted bonafide has some force. However, I find that it is not that they have purchased it for own use but in fact, they subsequently sold and at that time on selling also, they did not exercise due diligence. The penalty has been imposed for their dealing with imported/smuggled motorcycle and therefore, it is obvious that he has acquired possession and was also engaged in selling of the said motorcycle.

7. The other aspect is whether he knew or had a reason to believe that the said motorcycle was liable for confiscation. This aspect can be culled out of the context in which the sales and purchase have taken place. I find that he has not been able to give any details or whereabouts in relation to the person from whom he had admittedly bought the said motorcycle. Secondly, he has made entire transaction in cash and therefore, there is no trail also to locate the said so called seller Mr. Ali Raza. Subsequently, he has again sold the motorcycle to Mr. Raju. Therefore, it is difficult to accept the argument that he has exercised due diligence while buying an imported motorcycle, which is not like any other imported household good where there may not be any need for exercising due diligence to such a large extent. However, when one is buying commodities like car or motorcycle, it is expected that buyer would exercise greater degree of due diligence. Therefore, I find that in the given factual matrix, it does not appear that the appellant has exercised due diligence to the extent required to be exercised by a purchaser of an imported motorcycle and to that extent he has definitely failed. Accordingly, I do not find any infirmity in the impugned order passed by the Commissioner (Appeals) upholding the imposition of penalty under section 112(b) of the Customs Act, 1962 on the appellant. However, I find that penalty of Rs.25,000/- is not proportionate to the offence committed by the appellant inasmuch as there was also a proposal to impose penalty, both under section 112 as well as under section 114AA, in the SCN against the appellant. However, on adjudication, the penalty has been imposed only under section 112. In other words, the provision of section 114AA was not found tenable in the factual matrix by the Adjudicating Authority, which, obviously, indicates that the appellant had not knowingly or intentionally made, signed or used any declaration, statement or document etc., which is false or incorrect in any material

particular, in the transaction of any business for the purposes of this Act. This is the mitigating factor. Therefore, in view of the same, I find that penalty of Rs.10,000/- under section 112(b) is more than justified. The impugned order is accordingly modified to that extent.

8. Accordingly, Appeal allowed partly.

(Dictated and pronounced in the open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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