

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 228/2015

**Appeal under Section 72(3), (5)
& (5) of the Delhi Excise Act, 2009**

In the matter of :-

Gaurav Chauhan

S/o Shri Surender Chauhan

R/o House No. 325, Kumar Mohalla,

Badarpur Village, New Delhi

...Appellant

VERSUS

State (Govt. of NCT of Delhi)

Through the Commissioner of

Excise, Entt. & Luxury Tax

Department, L & N Block,

Vikas Bhawan, I.P. Estate,

New Delhi

...Respondent

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Order dated 14th January, 2016

1. This order shall dispose of the Appeal under section 72 (3) (5) & (6) of the Delhi Excise Act, 2009, filed against the impugned order dated 30.6.2015 in Appeal No. 47/2014 M/s Gaurav Chauhan Vs Dy. Commissioner (Excise) passed by Commissioner (Excise).
2. The case of the appellant is that on 23.06.2014 at about 3:00 P.M. the Appellant stationed his vehicle Tata Ace bearing No. DL 1 LS 5577 near Jatpur Mod near Badarpur, Delhi when one Shri Ajay called the Appellant with the request to transport cartons from Gurgaon to Noida and Shri Ajay had agreed to pay Rs. 1000/- as transportation charges. The Appellant has also paid toll fee of Rs. 65/- at the toll gate of the MCD. The vehicle along with loaded goods when reached near Mahipalpur on Jaipur Highway when excise officials stopped the vehicle.
3. That thereafter the excise officials asked the Appellant to open 4 cartons which were contained Nips of Impact Grain Whiskey. The Appellant alleged that he tried immediately contacting Ajay on his mobile and conveyed the seizure of goods by the excise officials and had also given the mobile No. of Ajay to the excise officials.

4. That thereafter an FIR No. 601/2014 was registered against the appellant the P.S. Vasant Kunj South on 24.06.2014 u/s 33 of Delhi Excise Act, 2009.

5. That on 25.6.2014 Appellant was remanded to judicial custody and thereafter he was released on bail.

6. That Dy. Commissioner Excise issued the notice under section 59 of Delhi Excise Act, 2009 vide its Notice dated 09.07.2014. In pursuance of the aforesaid, the appellant had appeared before the Deputy Commissioner and also filed his detailed reply in response to the notice under section 59 of the Act. Thereafter, Deputy Commissioner passed the order of confiscation under section 59 of the Act vide its order dated 17.11.2014.

7. That aggrieved by the aforesaid order dated 17.11.2014 passed by the Dy. Commissioner, the appellant herein preferred an appeal before the Commissioner (Excise) who upheld the said order dated 17.11.2014.

8. Subsequently the Appellant filed an appeal before this court u/s 72(3)(5)(6) of Delhi Excise Act, 2009 and prayed for setting aside of order Dated 17.11.2014 of Dy. Commissioner (Excise) along with impugned order 03.06.2015 of Excise Commissioner. Appellant has also prayed for ordering release of his vehicle and arrest of Shri Ajay, alleged owner of the seized liquor.

9. A notice was given to Respondent i.e. Excise Department. Respondent has submitted its reply and the appellant has also submitted rejoinder to the reply of the Department.

10. Appellant submitted that he is only a petty transporter owning the vehicle in question purchased on loan amount of Rs.5.5 Lacs and has to repay the loan amount to the financier. He has submitted that he was doing various transportation works like delivering goods to different locations and other items of goods from one place to another for earning livelihood.

11. Appellant has further submitted that Sh. Ajay owner of goods misled this Appellant saying that the cartons of 85 consignments were contained crockery items only and he did not open and shown the contents of the same to this Appellant.

12. Appellant has also submitted that the correct facts and circumstances of the case could not be presented in the correct perspective by the earlier counsel who represented the Appellant before the Deputy Commissioner and Commissioner of Excise.

13. Appellant has further submitted that the trial of the FIR registered has not yet started and it would take long time to conclude the trial and most likely that the Appellant will be acquitted from the offence.

14. The Respondent, Excise Department has denied all averments, submissions, statements and allegation made in the appeal against the answering Respondent.

15. Respondent submitted that proper opportunity was given to Appellant by the Dy. Commissioner (Excise) and the Commissioner Excise before passing orders dated 17.11.2014 & 03.06.2015 respectively.

16. Respondent further submitted that vehicle owner himself was driving the vehicle carrying the illicit liquor. It was further submitted that section 58 of Act expressly states that whenever an offence is committed which is punishable under this Act, the vehicle or any other conveyance used for carrying the same shall be liable to confiscation. Therefore, Commissioner dismissed the appeal of the appellant.

17. That Respondent further submitted that it is not the case of the appellant that the Adjudicating authorities had failed to appreciate the evidence and relevant materials adduced by the appellant herein while adjudication of the case. It was submitted that the Adjudicating authorities had adhered all the ingredients of fair hearings in full senses and appropriate opportunity was duly granted to the appellant. Hence, the contention of the appellant is not tenable and present application is liable to be rejected.

18. That Respondent further submitted that Authorities had given the proper opportunities to the appellant and conducted the hearing in adherence of openness, fairness and impartiality. It has been duly established during the course of hearing that the vehicle in question has been used in illegal transportation of large quantities of liquors, hence the vehicle in question has been used in the commission of offence punishable under section 33 of the Delhi excise Act, 2009. In view of section 61 of the Act ibid, the relief sought by the appellant is not maintainable.

19. I have heard both the parties at length and have also considered the reply and rejoinder placed on the file.

20. I find that the owner of the vehicle failed to establish why he should not be liable for the consequence of the transportation of illegal goods. It is for the appellant/owner and driver of the vehicle to produce sufficient evidence that he had exercised due care to prevent the misuse of vehicle for any offence in the instant case, specially since the driver of the vehicle and the owner of the vehicle is one and the same person namely, Sh. Gaurav Chauhan. It is, therefore, difficult to accept the alibi of ignorance of the contents and law as an excuse to escape the consequence of the illegal transportation of liquor. The Appellant's only excuse was that he was innocent as he had no knowledge of goods or the law. Further, he could not identify the said Ajay who was the alleged owner of the seized liquor. As far as prayer of getting Sh. Ajay on record/tried, it is open for the Appellant to make necessary prayers before the concerned Trial Court.

21. In the light of the above, the appeal is dismissed and the impugned order dated 03.06.2015 of the Commissioner, Excise is upheld.

22. Pronounce in open court on 14th January, 2016.

**(JITENDRA NARAIN)
FINANCIAL COMMISSIONER, DELHI
14.01.2016**