

Case No. 262/2012

**Sh. Romi Dua Vs. Commissioner, Excise, Ent &
Luxury Tax & Anr.**

10.07.2014 :

Present: Proxy Counsel for the Appellant
Sh. Rajesh Ranjan, Assistant Commissioner, for
Respondents.

1. This Appeal No 262/12 has been filed by Sh. Romi Dua to set aside order No. 411/2011/2788-93 dated February 23, 2012 passed by the Dy. Commissioner (Excise) and order No. PA (EC)/Appeal/Con.15/2012/141-143 dated May 08, 2012 passed by Commissioner (Excise) and to issue direction that the vehicle No. DL 13 C 0987 (Honda City Car) be not auctioned till the pendency of the FIR No. 311/2011 U/s 33/38/10/10 Excise Act P.S. Amar Colony pending in the Court of Sh. Sanjay Sharma, ACMM, Saket Court.

2. Facts leading to the impugned order, in brief, are that on August 21, 2011 at around 08:20 P.M. two persons namely Sh. Sunny, S/o Sh. Prem Kumar Dua, R/o C-5/118-119, Sector-11, Rohini, Delhi and Sh. Sanjeev Kumar Sharma, S/o Sh. Laxmi Narain, Village Mehrauli, Kavinagar, Ghaziabad, U.P. were apprehended by a team of Police officials of Police Station Amar Colony while transporting the liquor (15 quarts of Black Lebel Johnnie Walker Old Scotch Whisky (2Lt.), 06 quarts Volare Italian Liquor, 02 quarts of Smran off, 02 Shivas Regal Scotch and 02 quarts of Black Lebel Johnnie Walker Whisky, 1Lt.), illegally in the vehicle (Honda City Car). A case vide FIR No. 311/2011 was registered under section 33 of the Delhi Excise Act, 2009 for transporting intoxicants in contravention of the provisions of the Delhi Excise Act. The Dy. Commissioner (Excise) vide his order dated February 23, 2012 confiscated the said vehicle bearing

registration No. DL 13 C 0987 (Honda City Car) and seized the aforesaid liquor being carried therein. The Dy. Commissioner further ordered to auction the said vehicle and to dispose of the seized liquor.

3. Petitioner filed appeal before Commissioner (Excise) who vide order dated May 08, 2012 upheld the order dated of Dy. Excise Commissioner.

4. Subsequently, petitioner filed appeal under section 72 (3) of Delhi Excise Act, 2009, before this Court.

5. I have heard both the parties and considered the reply filed.

6. Appellant has submitted that the vehicle was driven by Sh. Sunny and Sh. Sanjeev Kumar at the time of seizure of liquor by the police officials of police station of Amar Colony, Delhi and not by the owner Sh. Romi Dua, the petitioner. The petitioner was neither driving the vehicle at the time of seizure of liquor nor he had any knowledge of transporting the liquor in the said vehicle. The petitioner has also not been named in the aforesaid FIR. Court of Ld. ACMM has released the vehicle on superdari to the petitioner vide order dated May 04, 2012. The Court of Ld. ACMM vide order dated January 11, 2013 has observed that no offence U/s 33 of Delhi Excise Act is made out against accused person, in connection with FIR No. 311/2011 PS Amar Colony. Petitioner has therefore prayed that impugned order dated May 08, 2012 may be set aside and aforesaid confiscated vehicle may not be auctioned.

7. The respondent, Excise Department in its reply has submitted that vehicle (Honda City Car) having registration No. DL 13 C 0987 was confiscated for illegally carrying a large amount of liquor which was meant for sale in

Haryana. As per section 59 (2) of Excise Act, where any vehicle is used in the commission of an offence under the Act, the same is liable to confiscation. The provisions of confiscation under Section 58 & 59 of Delhi Excise Act prevents the misuse of the vehicle again in the same offence.

8. In view of the submission of petitioner and respondents, I am of the considered view that the case be remanded back to Commissioner (Excise) for fresh application of mind and to go into the merits of the case and points raised by the appellant before this Court as well as before the appellate authority. Further, the vehicle of the appellant be not auctioned during the pendency of the case before the Excise Commissioner.

9. File be consigned to record room after completion.

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(D.M. Spolia)
Financial Commissioner
Delhi