

**IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI**

**Case No. 31/2014**

**Appeal under section 72(3)  
of the Delhi Excise Act, 2009**

**In the matter of :-**

**M/s Pawa International Pvt. Ltd.  
Having its registered office at:  
M-102, Greater Kailash-I,  
New Delhi-110048**

**...Appellant**

**VERSUS**

**1. State**

**2. Mr. B.K. Arora**

**S/o Mr. Puran Chand Arora,  
R/o 198/9, Subash Nagar,  
Opposite Reliance Fresh,  
Near DSD College, New Railway Road  
Gurgaon, Haryana**

**Also at:**

**C/o Sikka Hyundai,  
B-88/1, Mayapuri Industrial Area, Phase-I,  
New Delhi-110064.**

**3. Sh. I.S. Mishra**

**Ld. Dy. Commissioner,  
Excise, Entt. & Luxury Tax,  
Government of National Capital Territory of Delhi,  
L-Block, Vikas Bhawan,  
New Delhi.**

**4. Sh. A.K. Singh, Commissioner**

**Excise, Entertainment & Luxury Tax,  
Government of National Capital  
Territory of Delhi.**

**...Respondents**

**JITENDRA NARAIN, FINANCIAL COMMISSIONER**

Order dated 28<sup>th</sup> January, 2016

1. This order shall dispose of the Appeal under section 72 (3) of the Delhi Excise Act, 2009, filed against the impugned order dated 13.01.2014 in Appeal No. 28/2013 M/s Pawa International Pvt. Ltd. Vs. Dy. Commissioner (Excise), passed by Commissioner (Excise).

2. Brief facts of the case are that Shri Sunil Kumar Paswan, S/o Sh. Tharai Paswan and Sh. Pankaj Pahwa S/o Sh. Satish Kumar Pahwa were apprehended by a team of Vasant Kunj Police Station while transporting the liquor bottle (Eight Cartons Liquor) in the vehicle (Car) DL 1 TAF 2557. A

case vide FIR No. 290/2011 was registered under section 33 of the Delhi Excise Act, 2009 for transporting intoxicants in contravention of the provisions of the Act. Deputy Commissioner (Excise) vide his order dated 05.03.2013 ordered that vehicle Tata Aria bearing Registration No. DL1TAF 2557 be sold by public auction and seized liquor be disposed off. In his order the Dy. Commissioner (Excise) observed that the driver of the vehicle from whose possession the illegal consignment of liquor was seized was unable to give an account thereof satisfactorily. The appellant herein challenged the said orders of Deputy Commissioner before Commissioner Excise who upheld the said orders dated 05.03.2013 of Deputy Commissioner vide his order dated 10.01.2014. Aggrieved by the order of Commissioner Excise the appellant has filed the present appeal before this Court.

3a. Appellant has submitted the following amongst the other submissions that the appellant M/s Pawa International Pvt. Ltd. Having its registered office at: M-102, Greater Kailash-I, New Delhi-110048 in its appeal has submitted that the appellant was a authorised dealer of Tata Motors Ltd. and engaged in business of selling of Tata Vehicles non-commercial passenger vehicles. Appellant received two notices from Dy. Commissioner (Excise) under section 59 to show cause as to why the unsold Car TATA Aria bearing registration No. DL 1T AF 2557 and liquor i.e. 24 Quarts Royal Stag, 24 Quarts Chivas Regal, 12 Quarts Block Dog, 12 Quarts Johnnie Walker Black Label, 12 Quarts Seagram, 100 Pipers and 12 Quarts Seagram Blender Pride, be not confiscated u/s 58 of Delhi Excise Act, 2009, in connection with FIR No. 290/2011 dated 19.10.2011 under section 33 of said Act, registered at P.S. Vasant Kunj, N. Delhi.

3b. In response, the Appellant herein submitted its reply and prayed that the seized car and liquor should not be disposed of by auction for the fair trial of case FIR and also prayed for release of the said vehicle to the appellant as the appellant having first charge over the same because the car was financed by the appellant, who was the registered owner at the time of impounding of the same by the Police at the time of registration of F.I.R. against Sh. B.K. Arora, Ex employee (Respondent no. 2 herein) the said car was only available security or collateral with the appellant who had financed it.

3c. Dy. Commissioner (Excise) vide order dated 5.3.2013 confiscated the said car and ordered for selling the same by public auction. Dy. Commissioner vide his said order also ordered for disposal of seized liquor. Appellant filed an appeal before the Commissioner (Excise) against the said order of Dy. Commissioner, but he upheld the said impugned order of Dy. Commissioner (Excise). Thereafter appellant filed present appeal before this court praying for setting aside the impugned order dated 13.1.2014 of Commissioner (Excise) and releasing the seized car TATA Aria DL-1T-AF-2557 to the appellant.

3d. On 16.10.2015, the appellant took the plea of Section 72(7) and according to him the present appeal was filed before this Court on 21.02.2014 and section 72(7) of Delhi Excise Act 2009 states that if an appeal is not decided within one year the relief prayed for in the appeal shall be deemed to have been granted. Counsel for Petitioner stated that the Appeal was filed on 21.02.2014 and the statutory period to dispose of the appeal came to end on 20.02.2015. The respondent, Excise Department was noticed in May 2014. The Appellants have taken only two adjournments. The reply of the Department was filed on 07.04.2015. The Appellant filed Rejoinder in August, 2015 after seeking adjournment on the date of hearings in July and August, 2015.

3e. The Counsel for Appellant further stated that he is a dealer and not required to register vehicle in his name under Section 39 of Motor Vehicle Act, 1988 but can allow the vehicle to run on the road.

3f. The Counsel for appellant admitted that the ownership of vehicle fallen back to the company.

4a. Respondent 1, 3 & 4 i.e. State, Dy. Commissioner (Excise) and Commissioner (Excise) respectively, have submitted amongst other submissions stated that the Appellant i.e. M/s Pawa International Pvt. Ltd. has no locus standi in the matter of release of vehicle involved in the offence because vide a written submission filed by the appellant before Dy. Commissioner (Excise), the appellant stated that after purchase of the vehicle in question it has remained in use occupation and possession of Sh. B.K. Arora through all times.

4b. Respondent 1, 3 & 4 further submitted that on 19.10.2011, Sh. Sunil Kumar Paswan S/o Tharai Paswan and Sh. Pankaj Pahwa S/o Sh. Satish Kr. Pahwa apprehended by the police personnel while transporting the liquor meant for "Harayana Sale only" through vehicle TATA Aria No. DL-1T AF 2557 (Temporary Registration) without any valid transport permit. Thereafter, a FIR No. 290/2011 was registered at PS : Vasant Kunj under section 33 of the Excise Act.

4c. That proceedings u/s 59 of Delhi Excise Act were initiated under the Delhi Excise Act against the Driver and owners of the vehicle in question and notice to show cause were issued to driver and registered owner of the vehicle in question.

4d. Counsel for R-1, 3 and 4 further submitted that after appreciating all the submissions, Competent authority had held that vehicle in question was used in the illegal transporting of the liquor and the said vehicle has been used in commission of the offence under the Delhi Excise Act and pleased to pass the order for confiscating the vehicle and liquor in question under sub section (2) of section 59 of the Delhi Excise Act and further directed that vehicle in question be sold through public auction and seized liquors be disposed off as per the provision contained in Rule 132 (2) of Chapter-IX of Delhi Excise Rules 2010 vide its order dated 05.03.2013.

4e. Counsel for Respondent 1, 3 & 4 has further submitted that the vehicle which has been seized is not owned by the Appellant. Therefore, has no locus to file the appeal. No document has been filed which shows that vehicle is in the name of the Appellant.

4f. The Commissioner (Excise) dismissed the appeal by holding that the said vehicle in question was used in commission of offence punishable under section 33 of the Delhi Excise Act and moreover appellant is not the registered owner of the vehicle in question.

4g. With regard to plea taken by the appellant u/s 72 (7) of Delhi Excise Act, 2009, the Respondent 1, 3 & 4 have submitted that the appellant is not entitled to take benefits from his own wrong. Therefore, the benefit of clause 7 of Section 72 is not available to the appellant. It is further submitted that the appeal of the appellant is not maintainable in view of Section 61 of the Delhi Excise Act. The Section 61 of Delhi Excise Act put

embargo upon the Court not to entertain such applications for release of vehicle which has been used in the transportation of the intoxicant illegally in contravention of Section 33 of the Act. Hence, *prima facie* the appeal is not maintainable and is hit by Section 61 of the Delhi Excise Act.

5. In pursuant to the notice, Sh. B.K. Arora, ex employee of the Appellant (registered owner of the vehicle in question) and Sh. Anup Kumar Advocate on behalf of Sh. Pankaj Pawha, Sh. Sunil Kumar and Sh. Sant Kumar General Manager of the appellant appeared and filed their written statement. It is further submitted that Sh. B.K. Arora has contended that he is not the owner of the vehicle in question and the same has been illegally/falsely registered in his name and stated that this vehicle belongs to the appellant only to cover his illegal activity of transporting liquor in an unregistered vehicle or only to make him scapegoat.

6. The Court has observed that the appellant has not come to the Court with clean hands as the R-2 i.e. Sh. B.K. Arora (the Ex- Employee of the appellant company) has stated that the TATA Aria Car DL 1T AF 2557 which got confiscated in this case, does not belong to him i.e. Respondent No. 2. The aforesaid has been clearly mentioned in the statement dated 16.11.2011 made by the Respondent No. 2 Shri B. K. Arora further submitted that the car belongs to Appellant and he does not have any knowledge, involvement or concern with respect to any offence against which the FIR No. 290/2011, PS : Vasant Kunj was registered. Counsel for R-2 has stated that the R-2 has got an FIR registered against the appellant vide FIR No.22/2013 PS : Ashok Vihar.

7. I have considered documents placed on records by all the parties as well as the oral submissions during the hearing of the case. It is clear that the truth of the acts of the Appellant and its ex-employee are in the realm of FIR no.290/2011 and FIR No.22/2013, it is however, not denied that, an unregistered vehicle of Tata Dealership was used for illegally transporting liquor. The Appellant said that they transferred it to Shri B.K. Arora, Ex employee (R-2) who denied it and lodged complaint against them vide FIR No. 22/2013 under Section 420/468/471, at PS Ashok Vihar against Shri Varun Pawa and Pankaj Pawa, both Directors of M/s. Pawa International Pvt. Ltd.(Appellant herein). The Excise Department says that the appellant M/s. Pawa International Pvt. Ltd. has no right to file the present appeal because they had claimed immunity on grounds of proposed sale of vehicle to avoid prosecution but now do a u-turn when the vehicle is to be confiscated to

claim ownership. Shri B.K. Arora says that he is not the owner of said vehicle and he is just being implicated as a scapegoat to cover the illegalities of the Appellant and he has never signed any documents to buy the said vehicle nor intended to and his signature is also not on the agreement for sale. The Appellant claimed ownership of said vehicle before the alleged act and after the act but not during the alleged act. This shows either the appellant has no locus standi or he has not come with clean hands especially in the fact of arrest of one of its director Shri Pankaj Pawa. Be that it may the Appellant are either making a false alibi or have no locus. Therefore people not coming with clean hand do not get remedy from law and also not get any benefit of delay of Section 72(7) of Delhi Excise Act.

8. In the light of the above, the appeal is dismissed being devoid of merits and the impugned order dated 13.01.2014 of Commissioner, Excise is not interfered with.

9. Announce in open court on 28<sup>th</sup> January, 2016.

**JITENDRA NARAIN,  
FINANCIAL COMMISSIONER, DELHI  
28<sup>th</sup> January, 2016**