

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 79/2013

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

In the matter of:

Sh. Deepak Hooda
S/o Sh. Ved Prakash,
R/o Jhajjar Chungi,
Sheetal, Rohtak,
Haryana.

Appellant

Versus

Excise Commissioner,
Govt. of NCT of Delhi,
L-Block, Vikas Bhawan,
New Delhi.

Respondent

D.M. SPOLIA, FINANCIAL COMMISSIONER

Order dated April 11, 2014.

1. This order will dispose of the appeal filed by Sh. Deepak Hooda S/o Sh. Ved Prakash, owner/driver of vehicle No.HR-33E-0547 (Cruiser Jeep) which was confiscated by the Dy. Commissioner, Excise vide order dated January 11, 2012. The vehicle in question was allegedly used for carrying intoxicants in contravention of the provisions of the Delhi Excise Act, 2009; unauthorizedly and illegally carrying 22 Cartons of Besto whisky and 142 Cartons of Murthal No. 1 Desi Sharab, both for alleged sale within Delhi without any valid transport document/permit issued by the Excise Department, Government of NCT of Delhi. While carrying the aforesaid consignment, the vehicle was apprehended by a team of police officials of Police Station,

Kanjhawala, Delhi under provisions of Delhi Excise Act, 2009. The main ground of confiscation by the Dy. Commissioner, Excise was that the driver of the vehicle failed to produce any valid transport permit for transport of such goods in Delhi and also failed to give a satisfactory account of the illegal consignment of liquor which he was in possession of. Thereafter Sh. Deepak Hooda moved an appeal before the Excise Commissioner which was rejected on February 21, 2013. The operative paragraphs of the Appellate Authority/Commissioner (Excise) read thus:

"6. I have carefully gone through the grounds of appeal. I have also gone through the impugned order passed by the Dy. Commissioner (Excise). In the impugned order the Dy. Commissioner (Excise) has specifically mentioned that the appellant/driver of the vehicle has failed to produce any valid transport permit for transport of such goods into Delhi. Moreover, the I.O. in FIR has reiterated that Sh. Deepak was previously involved in such incident. Not only that in spite of affording sufficient opportunity for pursuing his case, the appellant had appeared only for seeking adjournment on one pretext or the other. Even in the grounds of appeal, he has not made any substantial evidence for proving his innocence and for acceptance of his appeal.

7. In view of the above facts, particularly the fact that the appellant had sought adjournment 10-11 time without any rhyme or reason it is to be presumed that the appellant is not serious at all in pursuing his appeal. Moreover as per Delhi Excise Act, 2009 the appeal has to be decided within one year of filing of appeal, i.e. before 22/02/2013, I have no other option than to reject the appeal. Hence appeal is rejected."

2. The appellant has now challenged the order dated 21.02.2013 of the First Appellate Authority, i.e., Commissioner (Excise) before this Court by way of present appeal.

3. As per the appeal as well as oral pleadings, the main contentions of the appellant are as under:

- 1) The alleged liquor was being brought by the appellant from the state of Haryana to Delhi, hence the present case is not covered under Section 33 of Delhi Excise Act, 2009.
- 2) The said vehicle was released on 'superdari' by the Court of Metropolitan Magistrate to the appellant/owner vide order dated January 10, 2012 and therefore the said order of confiscation of the vehicle by the Excise Department cannot be passed without prior permission of the concerned Metropolitan Magistrate.
- 3) The appellant has been wrongly implicated under the Excise Act, 2009 by the police officials and the alleged recovery of the liquor has been planted upon by the police officials upon the appellant.

4. On the other hand, the Excise Department through their written reply as well as oral arguments have countered the above submissions of the appellants in the following manner:

- 1) The liquor seized from the appellant was for sale in state of Haryana only but the appellant was caught while transporting this liquor in Delhi, coming from the side of Ladpur village which falls on the border of Haryana. Since the liquor was being brought from Haryana to Delhi it is well

covered under the provisions of Section 33 of Delhi Excise Act, 2009 because Section 33 also contains the word "import" which as per definitions provided in Section 2 (37) means "to bring into Delhi from any other state of the country".

- 2) The proceedings being carried out in the Court of Metropolitan Magistrate and the confiscation proceedings being carried out by the Excise Department are entirely independent from each other. The Excise Department does so under the provisions contained in Section 58 and Section 59 of the Delhi Excise Act, 2009.
- 3) The allegation of the appellant that he has been wrongly implicated by the police seems to be an afterthought as he could not produce any strong ground, reasoning or evidence in support of his allegation. Even otherwise if the appellant relies on this theory, then he ought to have initiated remedial cause of action by moving the criminal court in this regard.
5. The Court agrees with the contention of the Excise Department and finds no infirmity either in the confiscation order dated January 11, 2012 of Dy. Commissioner, Excise or in the order dated February 21, 2013 of First Appellate Authority/Commissioner (Excise).

6. Furthermore, there are two leading cases of Hon'ble High Court on the subject of confiscation of vehicles under Excise Act, 2009 which have a direct bearing on this case. The Hon'ble High Court of Delhi in W.P. (C) No.8898 of 2011 and W.P. (C) No.1012 of 2012, titled "Manoj Kumar Singh Vs NCT of Delhi & Ors." and "Rita Sharma Vs NCT of Delhi & Ors." respectively, vide their common order dated May 29, 2012 has gone into the issues and provisions relating to confiscation of vehicle under the Delhi Excise Act, 2009. Their Lordships have conclusively held in paragraph 10 of the said judgement that:

"10. On a plain reading of Section 33, 58 and 59 supra, we find ourselves unable to hold that a vehicle, merely for the reason of having been used in commission of an offence, would be liable to be confiscated, naturally to the detriment of the owner thereof, even if the owner had no role in commission of offence and had merely parted with the vehicle to the offender for use for lawful purposes. Such confiscation and sale of the vehicle is undoubtedly a punishment and the law does not punish an innocent. For confiscation of vehicle, the elements of mens rea i.e. of intent to use or allow use or knowledge of likelihood of use, of the vehicle for commission of offence appears to be essential. The counsel for respondents (Department of Excise, GNCT of Delhi, who is also the sole respondent before this court) has been unable to satisfy us as to why mens rea be not read as an essential ingredient in the provisions aforesaid, even in the absence of any express words to that effect..." (Words have been added in parenthesis for clarity).

7. Also in paragraph 23 of the forementioned order their lordships have held that :

"We therefore hold that confiscation of vehicle cannot be affected without giving an opportunity to the owner of the vehicle to

establish that use of vehicle in commission of offence was without his knowledge/permission/intent..."

8. It is explicit from the above that for confiscation of vehicle the elements of *mens rea* i.e of intent to use or allow use or knowledge of likelihood of use of the vehicle for commission of offence are necessary. However, onus is on the owner of the vehicle to establish that the element of *mens rea* was not there i.e. use of vehicle in commission of offence was without his knowledge/permission/intent. It is for the appellant/owner of the vehicle to produce sufficient evidence that there was no intention/knowledge/permission of the offence committed on his part and that he had exercised due care to prevent the misuse of vehicle for any offence. In the instant case, since the driver of the vehicle and the owner of the vehicle is one and the same person namely, Sh. Deepak Hooda, appellant herein, so the vital element of *mens rea* stands proven in this case, thereby justifying the confiscation of vehicle by the respondent Excise Department.

9. In the light of the above, the appeal is dismissed being devoid of merits and the impugned order dated February 21, 2013 of Commissioner, Excise is upheld.

Announced in the open Court.


(D.M. SPOLIA)
Financial Commissioner, Delhi.
April 11, 2014.