

IN THE COURT OF THE FINANCIAL COMMISSIONER, DELHI

Case No. 255/2015

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

In the matter of :-

**Sh. Sanjay
S/o Sh. Partap Singh
R/o H.No. 187, Singhal Pur Village
Delhi.**

**...Appellant
(Represented by Ms. A.
Shingal, Counsel for
Appellant)**

VERSUS

**Excise Commissioner
Excise, Entt. & Luxury Tax,
NCT (Delhi), L-Block,
Vikas Bhawan, New Delhi.**

**...Respondent
(Represented by Shri Amit
Gupta, Counsel for
Respondent)**

JITENDRA NARAIN, FINANCIAL COMMISSIONER

Order dated 1st March, 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 02.07.2015 in Appeal No. 26/2013 Sanjay Kumar Vs. Dy. Commissioner (Excise), whereby the Commissioner (Excise), upheld the order dated 14.11.2012 of Dy. Commissioner (Excise).

2. Brief facts of the case are that on January 31, 2012 one Sh. Pratap Singh R/o H.No. 187 Singhal Pur Village Shalimar Bagh New Delhi, was apprehended by officials of Police Station Shalimar Bagh while transporting the liquor (288 Nips Besto Whisky and 29 Nips of Narangi special Masaledar Desi Sharab and 150 Nips of Desi Sharab), for sale in Haryana only, in vehicle Maruti ECCO No. DL5CH9212. Police officials seized and detained the said property and registered an FIR No. 28/2012 under Section 33 Delhi Excise Act at PS : Shalimar Bagh, New Delhi and intimated the Excise Department. Dy. Excise Commissioner vide order dated November 14, 2012 confiscated the said vehicle and liquor and further ordered to auction the vehicle and disposed of the seized liquor.

3. Appellant filed an appeal before Commissioner (Excise) who vide order dated August 21, 2013 upheld the order dated November 14, 2012 of Dy. Excise Commissioner.

4. Subsequently Appellant filed appeal under Section 72 (3) of Delhi Excise Act 2009, before this Court. The predecessor of this court heard the matter and remanded the case back to Commissioner (Excise) for fresh application of mind. Commissioner (Excise) reconsidered the matter and vide his impugned order dated 02.07.2015 again upheld the order dated 14.11.2012 of Dy. Commissioner (Excise). Commissioner (Excise) vide his impugned order made the following observation:

"I am of the considered view that nothing substantial has been submitted either through written or oral submissions by the appellant. As such there is no reason to interfere with the order of Dy. Commissioner (Excise).

5. Subsequently, appellant filed the present appeal before this court. Reply from the respondent received and rejoinder thereon from the appellant has also been received.

6. The appellant has submitted that his father Sh. Pratap Singh, who is accused of transporting the illegal liquor in matter does not know driving and also does not have a driving license. Appellant has alleged that Police officials planted the liquor in the vehicle and as such appellant has been implicated in this case under Excise Act. Further a case is pending before a trial Court of M.M. Delhi and vehicle has already been released on superdari to the applicant.

7. In reply, Excise Department, the respondent has submitted that vehicle Maruti ECCO having registration No. DL5CH9212 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. The appeal, reply, rejoinder, impugned order and written submission were considered and read over during the hearings.

9. In view of the submissions of Appellant and respondent, I am of the considered view that the excuse/alibi and ground that he was a victim of police planting of liquor in his vehicle is a bit too unsubstantiated. He has options against such action, if true. Further if the liquor was planted and not his at all, as he claims, then he should not be worried about whether it is seized or disposed or produced before excise officials, as mentioned in the appeal. He should have only been worried about the vehicle. Blanket and generalized pleadings cannot entail specific relief. He has remedies against his allegation against the police before Hon'ble designated Competent Court. Nonetheless, the copy of order be sent to the Commissioner of Police. The Appeal is dismissed, accordingly.

10. Pronounced in open Court on 1st March, 2016.

(JITENDRA NARAIN)
FINANCIAL COMMISSIONER, DELHI
1st March, 2016