**THE HON'BLE SHRI JUSTICE SANJAY KUMAR**

**WRIT PETITION NO.39335 OF 2015**

**<u>O R D E R</u>**

The petitioner assails the action of the excise authorities in not returning the security deposit remitted by him for release of his Toyota Qualis vehicle bearing Registration No. AP 28AL 2979. He seeks a consequential direction for release of the said security deposit forthwith along with the interest accrued thereon.

The petitioner's vehicle was seized on the ground that it was involved in the illegal transportation of rectified spirit. The petitioner claimed that he had no knowledge of this and filed a petition before the Commissioner, Prohibition and Excise, State of Telangana, for release of his vehicle. However, this petition was dismissed on 26.05.2005. Aggrieved thereby, he filed an appeal contending that the order was arbitrary and wholly unreasonable. This appeal was dismissed on 14.06.2005. Questioning the same, the petitioner filed W.P.No.13979 of 2005 before this Court. In the meanwhile, the Deputy Commissioner, Prohibition and Excise, Nizamabad, passed confiscation order dated 22.06.2005. Thereupon, the petitioner withdrew W.P.No.13979 of 2005 on 04.07.2005 reserving liberty to pursue his statutory remedies. He then filed an appeal before the Commissioner, Prohibition and Excise, Andhra Pradesh, on 05.07.2005 assailing the confiscation order. He sought suspension of the order pending the appeal and also release of his vehicle. However, as the appellate authority did not consider either of his pleas, he filed W.P.No.16583 of 2005 before this Court. By interim order dated 29.07.2005, this Court directed release of the petitioner's vehicle on furnishing security to the satisfaction of the appellate authority. The said writ petition was thereafter disposed of on 26.09.2005. It was brought to the notice of this Court that pursuant to the interim order, the petitioner had deposited security to the tune of R.3,20,000/- on 09.09.2005, but the vehicle was not released. The excise authorities were therefore directed to release the vehicle after verifying whether the security furnished by the petitioner was in order and upon the petitioner furnishing an undertaking that he would not alienate the vehicle or create any third party interest over the same till the disposal of the appeal. The appeal was also directed to be disposed of within a time frame. The vehicle was thereafter released but the petitioner's appeal was dismissed by order dated 19.04.2008. He then filed W.P.No.23231 of 2008 before this Court against the said order. This writ petition was dismissed on 29.06.2015. Consequent thereto, the Commissioner, Prohibition and Excise, State of Telangana, issued notice dated 20.08.2015 directing the petitioner to produce the vehicle before the excise authorities failing which the security furnished in the shape of a fixed deposit for a sum of Rs.3,20,000/-, together with interest accrued thereon, would stand forfeited to the Government. The petitioner surrendered the vehicle to the excise authorities under intimation dated 20.08.2015. He requested release of the security deposit along with accrued interest. His complaint before this Court presently is that no action has been taken thereupon and on the other hand, when he approached the Commissioner, Prohibition and Excise, State of Telangana, he was informed that the amount would not be returned.

The Deputy Commissioner, Prohibition and Excise, Medak Division at Sangareddy, filed a counter-affidavit admitting that the vehicle of the petitioner was confiscated under the order dated 22.06.2005 which was confirmed in appeal. He further admitted that after dismissal of W.P.No.23231 of 2008 filed by the petitioner, a notice was issued to him to deposit his vehicle. He stated that upon such production, the condition of the vehicle was found to be very bad and its value was assessed at Rs.1,90,000/- as against Rs.3,20,000/- which was the assessed value at the time its custody was given to the petitioner. He further stated that as the petitioner had breached the condition imposed at the time of giving him such custody that he would keep the vehicle in the same condition as it was then, the security amount deposited along with the interest accrued thereon, aggregating to Rs.6,33,327/-, was confiscated and remitted to the Government Treasury on 23.11.2015.

The Written Instructions dated 03.12.2015 furnished by the Deputy Commissioner of Prohibition and Excise, Medak Division, to the Office of the learned Government Pleader for Prohibition and Excise, reflect that the petitioner's vehicle was released into his custody on 14.10.2005. This was upon production of the Fixed Deposit Receipt bearing No.338957 issued by the Andhra Bank, JNTU Campus Branch, Hyderabad, for a sum of Rs.3,20,000/-. After dismissal of W.P.No.23231 of 2008, notice dated 20.08.2015 was issued to the petitioner to deposit his vehicle at the Prohibition and Excise Station House, Sangareddy, to assess its condition and to obtain a fresh valuation. The vehicle was accordingly deposited with the Station House Office, Sangareddy, on 02.09.2015. The evaluation certificate dated 03.09.2015 put the value of the vehicle at Rs.1,90,000/-. As the petitioner had failed to comply with the condition that he should maintain the vehicle in the same condition as it was at the point of time its custody was given to him, his security stood forfeited and the fixed deposit along with the interest thereon, aggregating to Rs.6,46,742/-, was remitted to the Treasury.

Confiscation of the petitioner's vehicle was on the ground that it was involved in an excise offence. Power to effect such confiscation is traceable to Section 45 of the Andhra Pradesh Excise Act, 1968 (for brevity, 'the Act of 1968'). This provision reads thus:

> '**45. Liability of certain things to confiscation:-** Whenever any offence has been committed, which is punishable under this Act, following things shall be liable to confiscation namely:-
>
> (1) any intoxicant, materials, still, utensil, implements or apparatus in respect of or by means of which such offence has been committed;
>
> (2) any intoxicant lawfully imported, transported, or manufactured, had in possession, sold or bought along with, or in addition to, any intoxicant liable to confiscation under clause (1); and
>
> (3) any receptacle, package, or covering in which anything liable to confiscation under clause (1) or clause (2) is found, and

the other contents, if any, of such receptacle, package or covering and any animal, vehicle, vessel, raft or other conveyance used for carrying the same;

[1][xxx]'

It is relevant to note that prior to 26.11.1993, there was a Proviso to sub-section (3) of Section 45 which stated as under:

'Provided that, if anything specified in clause (3) is not the property of the offender, it shall not be confiscated if the owner thereof had no reason to believe that such offence was being or was likely to be committed.'

This Proviso was omitted from the statute by Andhra Pradesh Act 4 of 1994 with effect from 26.11.1993. Considering the import of this omission in ***COMMISSIONER, PROHIBITION AND EXCISE, ANDHRA PRADESH V/s. SHARANA GOUDA***[2], the Supreme Court held that after this change in the statute, *mens rea* on the part of the owner of the vehicle was no longer required to be established by the authorities concerned for confiscating the vehicle. It was in the light of this legal position that this Court dismissed W.P.No.23231 of 2008, confirming the confiscation of the petitioner's vehicle. However, before dismissal of this writ petition, custody of the vehicle had been handed over to the petitioner by virtue of the orders passed in W.P.No.16583 of 2005. This was upon the petitioner producing security in the form of a fixed deposit for a sum of Rs.3,20,000/-, being the assessed value of the vehicle at that point of time. However, after dismissal of the petitioner's final writ petition, thereby confirming the confiscation order, the petitioner had to surrender his vehicle but having found that the value of the vehicle had decimated to a great extent, the excise authorities appropriated the security furnished by the petitioner and remitted the proceeds thereof to the Government Treasury.

Thus, on the one hand, the confiscation order in relation to the petitioner's vehicle stands confirmed but, on the other hand, the excise authorities no longer wish to act upon it and seek to justify their action in appropriating the security deposit furnished by the petitioner for interim custody of the vehicle.

At the outset, it may be noted that the stand of the excise authorities that the subject vehicle was handed over to the petitioner with the condition that he should maintain it in the same condition as it was at that point of time is wholly unreasonable. The vehicle was returned to the petitioner to be used and not to be preserved, so as to maintain its condition as existing on the date of its release. Once the vehicle was put to use, there was bound to be depreciation in terms of its value and its condition. Holding the petitioner to the condition that he should have kept the vehicle in the same condition as on the date of its release is therefore unrealistic and wholly arbitrary.

That apart, the scheme of Section 45(3) of the Act of 1968 indicates that it is by way of a penal measure that the vehicle used in the commission of the excise offence is subjected to confiscation. It is not for the enrichment of the excise authorities or to provide them with a new viable vehicle. They cannot therefore claim now that the vehicle had a higher value at the time of its release as compared to its present value and refuse to give effect to the confiscation order. Once the statute provided remedies against the order of confiscation and the petitioner availed such statutory remedies and thereafter invoked the extraordinary jurisdiction of this Court, the excise authorities cannot seek to backtrack from the action taken by them in terms of Section 45(3) of the Act of 1968 after such confiscation has become final and seek to appropriate the assessed value of the vehicle, which was furnished by way of a fixed deposit, at the time of its interim release. As the order confiscating the petitioner's vehicle has attained finality, the same has to be given effect to as it stands and it is not open to the excise authorities to take a new stand and seek to return the vehicle to the petitioner and appropriate the proceeds of the security furnished by him for interim release of the vehicle during the pendency of the litigation. The said security was furnished by the petitioner for such interim release of the vehicle, pending adjudication of the validity of the confiscation order, and as the petitioner emerged unsuccessful in this litigation, he necessarily has to return the vehicle. The amount furnished by him by way of a fixed deposit for interim release of the vehicle was only to safeguard the interest of the excise authorities, who were prevented from giving effect to the confiscation pending the adjudication of the validity of the confiscation order. As the confiscation order now stands confirmed, the excise authorities must give effect to the same and cannot seek to appropriate the security amount furnished by the petitioner for interim release of the vehicle, which must now come to an end. The stand of the excise authorities that the value of the vehicle has fallen and they are entitled to appropriate the security deposit furnished by the petitioner cannot therefore be countenanced.

The writ petition is accordingly allowed. The respondents shall remit the security deposit of Rs.3,20,000/-, along with interest thereon, aggregating to Rs.6,46,742/- to the petitioner within two weeks from the date of receipt of a copy of this order. In the event there is delay beyond two weeks in such remittance, the excise authorities shall pay interest on the sum of Rs.6,46,742/- at 6% per annum. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

------------------------------------

**SANJAY KUMAR, J**

**9th FEBRUARY, 2016**

**PGS/Svv**

---

[1] Proviso omitted by Act 4 of 1994 w.e.f. 26.11.1993

[2] (2007) 6 SCC 42