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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 9269/2016 & CM 27428/2016

KAMAL JIT SINGH ..... Petitioner

Through : Dr. Sarbjit Sharma, Adv. with Ms. Amita Phuja, Adv.

versus

GOVT. OF NCT OF DELHI THROUGH COMMISSIONER OF EXCISE ..... Respondent

Through : Mr. Anuj Aggarwal, ASC with Mr. Deboshree Mukherjee, Mr. Kanishk Rana, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% **16.02.2018**

1. This is a petition in which the following substantive prayers have been made:

> *(i) To quash/set aside the impugned orders dated 01.12.2015/18.12.2015, passed by Commissioner (Excise) and orders of confiscation dated 17.11.2014, passed by the Deputy Commissioner (Excise) and*
>
> *(ii) Direct the respondents to release the car Swift Dzire DL4CL 0465 to the petitioner.*

2. Mr. Aggarwal, who appears for the respondent, has taken a preliminary objection that a remedy by way of a statutory appeal is available qua the impugned order dated 17.11.2014. Mr. Aggarwal says that an appeal can be filed with the Financial Commissioner

3. Dr. Sarbjit Sharma, who appears for the petitioner, says that he has no difficulty in approaching the Financial Commissioner by way

of an appeal, however, given the period of time which has elapsed and the medical condition of the petitioner, relief may be granted in terms of prayer clause (ii), whereby release of subject car is sought.

4. It may be noted that the subject car was seized along with a huge quantity of liquor. At the time when the vehicle was confiscated and the liquor was seized, the driver of the petitioner was apparently driving the subject vehicle. Based on these circumstances, an FIR bearing No.124/2013 was registered not only against the driver but also against the petitioner. It, however, transpires that when the charge-sheet was filed, the petitioner was not arrayed as an accused.

5. It is in these given circumstances that a confiscation order was passed both vis-a-vis the subject vehicle as well as the liquor found in it by the Commissioner (Excise) in exercise of powers under Section 59(2) of the Delhi Excise Act, 2009.

5.1 Being aggrieved, the petitioner preferred the first appeal with the Commissioner (Excise), which was numbered as: 50/2015.

6. The First Appellate Authority, however, was not persuaded to set aside the order of confiscation at the behest of the petitioner herein. The operative directions as contained in paragraphs 6 to 10 of the said order read as under:-

> *6. I have carefully gone through the grounds of appeal, impugned order passed by Deputy Commissioner Excise and arguments put forth by the advocate on behalf of appellant. I have also gone through section 58 of the Delhi Excise Act, 2009, which expressly makes a provision that whenever an offence has been committed, which is punishable under this Act, the vehicle or any other conveyance used for carrying the same shall be liable to*

confiscation.

7. As per section 52(2) of the Delhi Excise Act, 2009, which states that "where any animal, vessel, cart or other vehicle is used in the commission of an offence under this Act, and is liable to confiscation, the owner thereof shall be deemed to be guilty of such offence and such owner shall be liable to be proceeded against and punished accordingly, unless he satisfies the court that he had exercised due care in the prevention of the commission of such an offence." There is nothing in record which proves that being the owner of the vehicle the appellant has taken due care to prevent the commission of such an offence.

8. It is an established fact that the vehicle Maruti Dzire DL 6CL 0465 has been used in commission of offence u/S 33 of Delhi Excise Act, 2009 and hence liable for confiscation as per Section 58 of the said Act.

9. There was no evidence which can lead to the assumption that Driver did not have any consent of the owner or he is working independently. The liquor seized is imported and of very special brands. It seems driver alone would not be in a position to trade or deal in such brands, as the customer of such brands will be people of influence. Hence, the owner cannot be presumed to be free from 'mens rea' of the misuse.

10. In view of the above facts, I am convinced with the confiscation order passed by the Deputy Commissioner (Excise) and uphold the order as just and proper.

7. Given this background, the petitioner approached this Court via the instant writ petition.

8. As noted above, Dr. Sarbjit Sharma has indicated at the very outset that he will take recourse to a statutory remedy by preferring a

second appeal with the Financial Commissioner. This takes care of relief as sought in prayer clause (i).

8.1 In so far as prayer clause (ii) is concerned, I am required to examine as to whether in the given facts and circumstances of the case, the respondent should be directed to release the subject vehicle on *superdari*.

8.2. The facts on record reveal that the petitioner is approximately 65 years of age. The petition was filed as far back as in 2016 when his stated age was 63 years. The petitioner also says that he is ailing since 2008 and has been under treatment.

8.3. Given the aforesaid circumstances and the fact that case has passed through two stages, I am of the view that the subject vehicle can be released to the petitioner on *superdari*. It is made clear that the petitioner will produce the subject vehicle as and when so directed by the authorities concerned during the pendency of the second appeal.

8.4. Consequently, the relief sought in prayer (ii) is allowed.

9. The writ petition is disposed of in terms of the aforesaid directions. Liberty is given to the petitioner to file a second appeal before the Financial Commissioner. Needless to say the petitioner will file the second appeal at the earliest, though, not later than four weeks from today.

10. Pending application shall stand closed.

11. *Dasti*.

RAJIV SHAKDHER, J

FEBRUARY 16, 2018

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