

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.01.2020

+ **W.P.(C) 4760/2014 & CM APPL. No.9475/2014**

DEEPAK HOODA

..... Appellant

versus

THE EXCISE COMMISSIONER AND ANR.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Vimal Puggal.
For the Respondent : Mr. Gautam Narayan, ASC for
: GNCTD with Ms. Shivani Vij and D.
: Shahi.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 11.04.2014 passed by the Financial Commissioner, whereby the appeal preferred by the petitioner against an order dated 21.02.2013 passed by the Commissioner of Excise under Section 73(2) of the Excise Act, 2009 (hereafter 'the Excise Act'), was rejected. By the said order dated 21.02.2013, the Commissioner of Excise had rejected the petitioner's appeal against an order dated 12.01.2012 passed by the Deputy Commissioner of Excise under Section 59 of the Excise Act, whereby the petitioner's vehicle

was confiscated on account of being used in commission of an offence punishable under Section 33 of the Excise Act. The abovementioned orders are hereafter referred to as the impugned orders.

2. The petitioner contends that prosecution proceedings are pending and he has not been convicted of committing any offence under Section 33 of the Excise Act as yet. Therefore, confiscation of his vehicle is pre-mature. The respondents contend that the proceedings for confiscation under Section 59 of the Excise Act are independent of the prosecution proceedings and thus, pendency of the said proceedings do not preclude confiscation of his vehicle under Section 59 of the Excise Act. Thus, the principal question to be addressed is whether the proceedings for confiscation under Section 59 of the Excise Act can be maintained and proceeded with independent of the prosecution for committing an offence under Section 33 of the Excise Act.

Factual Background

3. The petitioner is a resident of Rohtak, Haryana and claims to be a student of B.A. Pass College Rohtak. On 29.05.2011 at about 5.15 a.m., the police officials of Police Station Kanjhawala arrested the petitioner while he was allegedly transporting one hundred and fifty-two cartons of Murthal No.1 Desi *Sharab* and twenty-two cartons of Besto Whisky from Haryana into Delhi, without any valid permission or license. The said liquor was being transported in a vehicle (Trux Cruiser) bearing registration No. HR-33E-0547. The said liquor and

the vehicle in question was seized on the spot. An FIR was registered (FIR No. 129/2011 under Section 279/337 of the IPC and Section 33 of the Excise Act) with Police Station Kanjhawala. The said FIR records that the vehicle in question was being driven by the petitioner.

4. During the course of investigation, the petitioner was granted bail by the Court of learned Metropolitan Magistrate. Thereafter, the petitioner filed an application for release of the vehicle on *Superdari*. The said application was allowed by the learned Metropolitan Magistrate by an order dated 10.01.2012 and the vehicle in question (Trux Cruiser bearing No. HR-33E-0547) was directed to be released to the petitioner on his on furnishing *Superdaranama* for a sum of ₹3,00,000/-, which was stated to be the market value of the said vehicle. In its order, the Court also observed that the vehicle had been seized by the police officials and had not been confiscated by the Delhi Excise Commissioner.

5. In the meantime, a show cause notice dated 12.08.2011 was issued by the Deputy Commissioner, Excise under Section 59 of the Excise Act, *inter alia*, calling upon the petitioner to show cause as to why the vehicle in question (Trux Cruiser bearing No. HR-33E-0547) and the seized liquor (one hundred forty two cartons of Murthal No.1 Desi *Sharab* and twenty two Cartons of Besto Whisky), not be confiscated. The petitioner was called upon to furnish his reply within a period of seven days from the date of the issuance of the said notice. He was further provided an opportunity for being heard at a hearing scheduled on 13.09.2011 at 3.00 p.m.

6. The petitioner responded to the said show cause notice. He stated that he had given the vehicle in question to his friend (one Devender Kumar) resident of village Sunaria, District Rohtak, Haryana in order to enable him to attend to the last ceremonies of one of his relatives. He stated that he had received the telephone call on 29.05.2011 informing him that the vehicle had met with an accident and calling upon him to reach the police station. The petitioner stated that on arriving at the police station, he became aware that liquor had been found in the vehicle and a false and frivolous case had been lodged against him. In view of the above, he requested that the vehicle be released to him. The petitioner also attended the hearing held on 13.09.2011 and made oral submissions to a similar effect.

7. The Deputy Commissioner of Excise considered the petitioner's response as well as other material on record and passed the impugned order dated 12.01.2012, confiscating the vehicle in question and seizing the liquor in exercise of powers under Section 59 (2) of the Excise Act. He further directed that it would be expedient in public interest that the vehicle be auctioned and the seized liquor be destroyed, as per the procedure laid down in Chapter IX of the Delhi Excise Rules, 2010. He also directed that photographs of the confiscated vehicle and the samples of the confiscated liquor be preserved to meet the evidentiary requirements as provided under Section 60 of the Excise Act.

8. Aggrieved by the aforesaid order, the petitioner preferred an appeal before the Excise Commissioner (*Appeal No. 16/2012*

captioned Deepak Hooda v. Deputy Commissioner (Excise). The petitioner contended that the impugned order dated 12.01.2012 was erroneous as it had been passed without considering the fact that the trial for the offence under Section 33 of the Excise Act was pending before learned Metropolitan Magistrate, Delhi. He contended that the vehicle in question could not be confiscated or disposed of without prior permission of the learned M.M. The said appeal was rejected by the Commissioner, Excise by the impugned order dated 21.02.2013.

9. Aggrieved by the impugned order dated 21.02.2013 passed by the Commissioner (Excise), the petitioner preferred an appeal before the Financial Commissioner. The petitioner challenged the aforesaid impugned order dated 21.02.2013, essentially, on three grounds. First, that the liquor was being brought by the appellant from the State of Haryana and therefore, the case was not covered under Section 33 of the Excise Act. Second, that the vehicle had been released on *Superdari* by the Court of learned Metropolitan Magistrate and, therefore, the vehicle could not be confiscated without prior permission of the concerned M.M. And third, that the appellant had been falsely implicated under the Excise Act.

10. The Financial Commissioner rejected the contention that the Excise Act was not applicable, as he found that the petitioner was involved in transporting liquor to Delhi from Ladpur Village, which falls on the border of Haryana. Since the liquor had been imported into Delhi from another State without necessary licence/permission, the same fell foul of the provisions of Section 33 of the Excise Act. The

Financial Commissioner also rejected the petitioner's contention that any prior permission of the learned M.M. was required before confiscating the vehicle under Section 58 and 59 of the Excise Act. He reasoned that the confiscation proceedings were independent of the prosecution for commission of an offence under Section 33 of the Excise Act. And, therefore, no such permission was necessary. The Financial Commissioner also found no merit in the petitioner's contention that he had been falsely implicated.

11. In view of the above, the Financial Commissioner rejected the petitioner's appeal by the impugned order dated 11.04.2014 (which is impugned in the present petition).

Submissions

12. Mr. Vimal Puggal, learned counsel appearing for the petitioner assailed the impugned orders, essentially, on two fronts. First, he submitted that the concerned authorities had failed to appreciate that the provisions of the Excise Act required the impounded/seized vehicle to be brought before the Excise Commissioner without any delay. He submitted that in the present case, the vehicle was not produced before the Deputy Commissioner (Excise) and was released on *Superdari* to the petitioner. He submitted that since the provisions of the Excise Act regarding production of the vehicle had not been complied with, the vehicle could not be confiscated. Second, he submitted that the vehicle could not be confiscated unless it is established that the petitioner was guilty of an offence punishable

under Section 33 of the Excise Act. He submitted that since the criminal trial relating to the said offence is pending, the vehicle could not be confiscated till the conclusion of the criminal trial. He relied on the decision of this Court in ***Dr Varunveer v. Financial Commissioner, Delhi and Ors: 2018 (167) DRJ 158*** in support of his contention.

13. In addition to the above, Mr Vimal Puggal, learned counsel also submitted that certain provisions of the Excise Act, including Section 61, were *ultra vires* the constitution of India. He also submitted that vehicles used in committing other serious offences are as a matter of course released on *Superdari* till the final decision and, therefore, confiscation of a vehicle allegedly used in committing an offence under the Excise Act pending criminal trial, is wholly arbitrary and unreasonable.

14. However, he fairly conceded that the petitioner had not challenged the constitutional validity of any provision of the Excise Act, in the present petition.

15. Mr Gautam Narayan, learned counsel appearing for the respondent countered the aforesaid submissions. He contended that the confiscation proceedings under the Excise Act are independent and a vehicle used in committing an offence under Section 33 of the Excise Act could be confiscated, notwithstanding that prosecution proceedings were not launched. He relied on the decision of the Supreme Court in ***Divisional Forest Officer & Anr. v. G.V. Sudhakar***

Rao & Ors.: (1985) 4 SCC 573 in support of his contention. He also referred to the decision of the Supreme Court in ***State of West Bengal & Ors. v. Sujit Kumar Rana: (2004) 4 SCC 129***.

16. He contended that Section 59(1) of the Excise Act contains a *non obstante* proviso and therefore, the power of the Deputy Commissioner to confiscate property under Section 59(2) of the Excise Act would not be subject to the proceedings before the learned M.M.; consequently, no prior permission for exercising such power was necessary. He relied on the decision of the Supreme Court in ***State (NCT of Delhi) v. Narender: (2014) 13 SCC 100*** in support of his contention.

Reasons and Discussion

17. At the outset, it would be necessary to refer to the relevant provisions of the Excise Act. Section 33, *inter alia*, provides for penalty for unlawful import, export, transport and manufacture, possession and sale, etc. of intoxicant. Section 33 of the Excise Act is set out below:-

“33. Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.-

(1) Whoever, in contravention of provision of this Act or of any rule or order made or notification issued or of any licence, permit or pass, granted under this Act-

(a) manufactures, imports, exports, transports or removes any intoxicant;

(b) constructs or works any manufactory or warehouse;

(c) bottles any liquor for purposes of sale;

(d) uses, keeps or has in his possession any material, still, utensil, implement or apparatus, whatsoever, for the purpose of manufacturing any intoxicant other than toddy or tari;

(e) possesses any material or film either with or without the Government logo or logo of any State or wrapper or any other thing in which liquor can be packed or any apparatus or implement or machine for the purpose of packing any liquor;

(f) sells any intoxicant, collects, possesses or buys any intoxicant beyond the prescribed quantity, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees.”

18. Section 58 of the Excise Act provides for confiscation of specified things when an offence which is punishable under the Excise Act, is committed. Section 59 of the Excise Act empowers the Deputy Commissioner to confiscate certain property as specified under Section 58 of the Excise Act. Section 58 and 59 of the Excise Act are set out below:-

“58. Certain things liable to confiscation.-

Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

(a) any intoxicant, material, still, utensil, implement,

apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause (a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause (b), is found, and the other contents, if any, of such receptacle, package, or covering;

(d) any animal, vehicle, vessel, or other conveyance used for carrying the same.

59. Confiscation by Deputy Commissioner in certain cases.- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under section 58 is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay, produce the said seized property before the Deputy Commissioner.

2) On production of the said seized property under sub-section (1), the Deputy Commissioner if satisfied that an offence under this Act has been committed may, whether or not prosecution is instituted for the commission of such an offence, order confiscation of such property, otherwise he may order its return to the rightful owner.

(3) While making an order of confiscation under sub-section (2), the Deputy Commissioner may also order that such of the properties to which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has

to be destroyed in conformity with these provisions, it shall be destroyed in the presence of the excise officer not below the rank of an inspector.

(4) Where the Deputy Commissioner, after passing an order of confiscation under sub-section (2), is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose it of otherwise.

(5) When an order for confiscation of any property has been passed under section 59 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

(6) The Deputy Commissioner shall submit a report of all particulars of confiscation to the Excise Commissioner within one month of such confiscation.

(7) Any intoxicant, mahua flowers or molasses and any other property if confiscated in a case compounded under section 57 of the Act or in respect of which an offence has been committed and the offender is not known or cannot be found, shall be disposed of in the manner as prescribed.”

19. Section 60 of the Excise Act provides that an order of confiscation under Section 58 of the Excise Act shall not prevent imposition of any other punishment under the Excise Act. Section 60 of the Act is set out below:-

“60. Order of confiscation and destruction not

to interfere with other punishment.-

(1) The order of confiscation under section 58 shall not prevent imposition of any other punishment to which a person is liable under this Act.

(2) Notwithstanding anything contained in any other law for the time being in force, the disposal of confiscated goods in the manner, thereby non-production of case property before the trial court, shall not affect the conviction for an offence under this Act:

PROVIDED that the samples of the intoxicants and the photographs of the confiscated property may be preserved to meet the evidentiary requirements.”

20. Section 67 of the Excise Act provides that all major offences under the Act shall be cognizable and the provisions of the Code of Criminal Procedure, 1973 shall apply to them. Section 69 of the Excise Act provides that all offences under the Excise Act, which are punishable with fine or with imprisonment for a term not exceeding three years, shall be tried summarily by a M.M. and the provisions of Section 262 to 265 of the Code of Criminal Procedure, 1973 shall, as far as may, be applied to such trial.

21. It is clear from the scheme of the Excise Act that it contemplates a separate procedure for confiscation of certain things, whenever an offence under the Excise Act is committed. In terms of Clause (a) of Section 58 of the Excise Act, any intoxicant, material, still, utensil, implement, the apparatus in respect of or by means of

which such offence is committed, is liable for confiscation. Clause (d) of Section 58 also provides that any animal, vehicle, vessel or other conveyance used for carrying such intoxicant is also liable for confiscation.

22. In the present case, it is alleged that the vehicle in question was used for unlawfully importing/transporting liquor into Delhi. Thus, the said liquor as well as the vehicle used in commission of such offence is liable to be confiscated in terms of Section 58 of the Excise Act.

23. It is also apparent that the proceedings for confiscation are independent of the prosecution for such an offence. The opening sentence of Section 59 of the Excise Act – which empowers the Deputy Commissioner to confiscate things that are liable for confiscation under Section 58 of the Excise Act – contains a non obstante provision. Section 59(1) of the Excise Act expressly provides that where anything liable for confiscation under Section 58 of the Excise Act is seized or detained, the officers seizing or detaining the property is required to produce the same before the Deputy Commissioner, notwithstanding anything contained in the Excise Act or any other law for the time being in force.

24. A non obstante provision is to ensure that the provisions covered under the non obstante clause override other statutory provisions and the conflict between the statutes is resolved in favour of the provision falling under the non obstante clause. Thus, provisions of Section 59 of the Act would override not only the other

provisions of the Excise Act but also other laws. It follows that the power of the Deputy Commissioner to confiscate things that are liable for confiscation under Section 58 of the Excise Act, is not circumscribed by any provision of the Excise Act or any other law in force. Thus, if the Deputy Commissioner is satisfied that an offence under the Excise Act has been committed, he is empowered to order confiscation of such property on the same being produced.

25. Sub-Section (2) of Section 59 of the Excise Act makes it expressly clear that a Deputy Commissioner can exercise its powers for confiscation of property, if any offence under the Excise Act has been committed irrespective of whether the prosecution has been instituted for commission of such an offence. The language of Sub-Section (2) of Section 59 of the Excise Act leaves no room for any doubt that the confiscation proceedings under Section 58 and 59 of the Excise Act are wholly independent of the prosecution proceedings, which are required to be tried by the M.M.

26. It is also important to refer to the provisions of Section 61 of the Excise Act, which expressly states that no court would have jurisdiction to make any order with regard to any specified property that is seized or detained under the provisions of the Excise Act. It is important to note that Section 61 of the Act also contains a non obstante provision and, thus, other courts are proscribed from exercising any jurisdiction in respect of property that is seized or detained under the Excise Act. Section 61 of the Excise Act is set out below:-

“61. Bar of jurisdiction in confiscation.-

Whenever any intoxicant, material, still, utensil, implement, apparatus or any receptacle, package, vessel, animal, cart, or other conveyance used in committing any offence, is seized or detained under this Act, no court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, have jurisdiction to make any order with regard to such property.”

27. In *Divisional Forest Officer & Anr. v. G.V. Sudhakar Rao & Ors.* (*supra*), the Supreme Court considered the question whether proceedings for confiscation of any timber or forest produce could proceed simultaneously with the criminal case instituted for commission of a forest offence. The said question arose in respect of the Andhra Pradesh Forest Act, 1967. The relevant provisions of the said Act are set out below:-

44. Seizure of property liable to confiscation and procedure thereupon:-

(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing, any such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this Section shall place on such property or the receptacle, if any, in which it is contained a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded, without any

unreasonable delay, either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorized by the Government in this behalf by notification (hereinafter referred to as the authorized officer) or make a report of such seizure to the Magistrate:

Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.

(2-A) Where an authorized officer seizes under Sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under Sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such offence.

(2-B) No order of confiscating any property shall be made under sub-section (2-A) unless the person from whom the property is seized is given,-

- (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;
- (b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and
- (c) a reasonable opportunity of being heard in the matter.

(2-C) Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope, chain, boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-D) Any forest officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may within thirty days from the date of the order of confiscation by the authorised officer under sub-section (2-A) either suo motu or on application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit:

Provided that no order, prejudicial to any person, shall be passed without giving him an opportunity of being heard.

(2-E) Any person aggrieved by an order passed under sub-section (2-A) or subsection (2-D) may, within thirty days from the date of communication to him of such order, appeal to the District Court having jurisdiction over the area in which the property has been seized, and the District Court shall after giving an opportunity to the parties to be heard, pass such order as it may think fit and the order of the District Court so passed shall be final.

(3) Any forest officer not below the rank of a Forester, who or whose subordinate has seized any

tools, ropes, chains, boats, vehicles or cattle under sub-section (1) and where he makes a report of such seizure to the Magistrate under sub-section (2) may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required before the Magistrate.

(4) Upon the receipt of any report under sub-section (2), the Magistrate shall, except where the offence is compounded, take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

(5) The property seized under this section, shall be kept in the custody of the forest officer not below the rank of a Forest Guard or the Village Headman until the compensation for compounding the offence is paid or until an order of the Magistrate directing its disposal is received.

45. Timber, forest produce tools, etc., when liable to confiscation:-

Where a person is convicted of a forest offence, the court sentencing him shall order confiscation to the Government of timber or forest produce in respect of which such offence was committed and of any tool, boat, vehicle, vessel or other conveyance or any other article used in committing such offence except where an order of confiscation has already been passed In respect thereof under Section 44.

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58-A. Order of confiscation not to bar imposition of other penalty:-

An order of confiscation under Sub-section (2A) or Sub-section (2D) of Section 44 shall not be deemed

to bar the imposition of any other penalty to which the person from whom the property is seized is liable under this Act.”

28. The Supreme Court interpreted the aforesaid provisions and observed as under:-

“12. A close, careful and combined reading of the various subsections of Section 44, Section 45 and Section 58-A of the Act as introduced or amended by Act 17 of 1976 leaves no doubt that the intendment of the Legislature was to provide for two separate proceeding before two different forums and there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in terms curtails the power conferred on the Magistrate to direct confiscation timber or forest produce on conviction of the accused. The conferral of power of confiscation of seized timber or forest produce and the implements etc. on the Authorized officer under Sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of S. 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized timber before the Authorized Officer along with a report under Section 44(2) the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act.”

29. It is also relevant to refer to the decision of the Supreme Court in ***State of West Bengal v. Gopal Sarkar: (2002) 1 SCC 495***. In that case, the Supreme Court had considered the import of Section 59-A of the Indian Forest Act, 1927. Sub-Section (3) of Section 59-A of the Indian Forest Act, 1927 (as amended by the West Bengal Amendment, 1988) empowered the authorized officer to confiscate any timber or other forest produce along with all tools, ropes, chains, boats, vehicles and cattle used in commission of the offence, if he was satisfied that a forest offence had been committed. Section 59-A(3) of the said Act reads as under:-

“(3) Where any timber or other forest produce which is the property of the State Government is produced before an Authorised Officer under Sub-section 1 and Authorised Officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence.”

30. It is clear that the import of Section 59-A(3) is similar to the import of Section 59(2) of the Excise Act. The Supreme Court had considered the aforesaid provision and had held as under: -

“10. On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass

order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed. This position is manifest from the Statute and has also been held by this Court in *Divisional Forest Officer and Anr. v. G.V. Sudhakar Rao and Ors.*: 1985 4 SCC 573.”

31. This Court is of view that the *ratio decidendi* of the aforesaid decisions are squarely applicable in this case as well. Section 33 of the Act, *inter alia*, provides that the offence for importing and transporting any intoxicant in contravention to the provisions of the Excise Act would be punishable with imprisonment, which shall not be less than six months but which may extend to three years and a fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees. Thus, the person, who is alleged to have committed that offence, is required to be tried by the Metropolitan Magistrate in terms of Section 69 of the Excise Act. The said proceedings are completely independent of the confiscation proceedings as contemplated under Section 58 and 59 of the Excise Act. The decision whether any thing is required to be confiscated in terms of Section 58 and 59 of the Excise Act depends on whether the Deputy Commissioner of Excise is satisfied whether an offence under the Excise Act has been committed.

32. Even in cases where certain minor offences are compounded in terms of Section 57 of the Excise Act, it is expressly provided that the seized material shall not be released but would be disposed of in the

manner as may be prescribed. Further, Section 61 expressly provides that no court would have the jurisdiction to make any further order in respect of the specified property, which is used in committing any offence as contemplated under the Excise Act.

33. It is, however, necessary to clarify that the order of confiscation would not, in any manner, prejudice the person accused in any criminal case instituted for prosecuting him for committing an offence under the Excise Act.

34. The standard of proof required to be met in criminal proceedings is also not the same as is required for confiscation under Section 59 of the Act. It is well settled that confiscation proceedings are in the nature of civil proceedings and the standard of proof is preponderance of probabilities. [See: ***State of West Bengal and Ors. vs. Sujit Kumar Rana (supra), Enquiry Officer -Forest Range Officer v. Md Saheb: (2016) 4 CHN 713, Shiv Baba Industry Lalpur vs. State of U.P. and Ors.: Civil Misc. Writ Petition (Matters Under Article 227) No. 3626 of 2018, The Divisional Forest Officer, Kothamangalam and Ors. vs. Biju: CRP No. 407 of 2016, Gunwantlal Godawat v. Union of India & Anr.: (2018) 12 SCC 309***]

35. In view of the above, the contention that the Deputy Commissioner (Excise) was required to take prior permission of the learned M.M. before confiscating the vehicle in question by passing the impugned order dated 12.01.2012, is unmerited.

36. In this regard, it is also relevant to refer to the decision of the

Supreme Court in *State (NCT of Delhi) v. Narender* (*supra*). In that case, a vehicle carrying liquor unlawfully was seized. The owner of the said vehicle (one Narender) filed an application before the Metropolitan Magistrate for release of the vehicle on security. The learned M.M. passed an order rejecting the said application and held that it had no power to release the vehicle seized in connection with an offence under the Excise Act. Narender filed another application claiming similar relief, which was also rejected by the learned M.M. on the ground that it would amount to reviewing the earlier order rejecting a similar application. Narender challenged the said order by filing an application under Section 482 of the Code of Criminal Procedure before this Court. It is important to note that this Court allowed the said application, *inter alia*, on the ground that the vehicle in question had been seized by police and not confiscated and, therefore, Section 58 of the Excise Act would not apply. Aggrieved by the same, the State preferred a Special Leave Petition before the Supreme Court. The Court granted leave and allowed the appeal. The relevant extract of the said decision is set out below:-

“9. From a plain reading of Section 33(1)(a) of the Act, it is evident that the transportation of any intoxicant in contravention of the provisions of the Act or of any rule or order made or notification issued or any licence, permit or pass, is punishable and any vehicle used for carrying the same, is liable for confiscation under Section 58(d) of the Act.

10. Section 59 of the Act deals with the power of confiscation of the Deputy Commissioner in certain cases. Section 59(1) thereof provides that

notwithstanding anything contained in any other law where anything liable for confiscation under Section 58 is seized or detained, the officer seizing and detaining such thing shall produce the same before the Deputy Commissioner. On production of the seized property, the Deputy Commissioner, if satisfied that the offence under the Act has been committed, may order confiscation of such property. Therefore, under the scheme of the Act any vehicle used for carrying the intoxicant is liable to be confiscated and on seizure of the vehicle transporting the intoxicant, the same is required to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation.

11. Section 61 of the Act puts an embargo on jurisdiction of courts, the same reads as follows:

“61. Bar of jurisdiction in confiscation.—

Whenever any intoxicant, material, still, utensil, implement, apparatus or any receptacle, package, vessel, animal, cart, or other conveyance used in committing any offence, is seized or detained under this Act, no court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, have jurisdiction to make any order with regard to such property.”

According to this section, notwithstanding anything contrary contained in any other law for the time being in force, no court shall have jurisdiction to make any order with regard to the property used in committing any offence and seized under the Act.”

12. It is relevant here to state that in the present case, the High Court, while releasing the vehicle on security has exercised its power under Section 451 of the Code.

True it is that where any property is produced by an officer before a criminal court during an inquiry or trial under this section, the court may make any direction as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, as the case may be. At the conclusion of the inquiry or trial, the court may also, under Section 452 of the Code, make an order for the disposal of the property produced before it and make such other direction as it may think necessary. Further, where the property is not produced before a criminal court in an inquiry or trial, the Magistrate is empowered under Section 457 of the Code to make such order as it thinks fit.

13. In our opinion, the general provision of Section 451 of the Code with regard to the custody and disposal of the property or for that matter by destruction, confiscation or delivery to any person entitled to possession thereof under Section 452 of the Code or that of Section 457 authorising a Magistrate to make an order for disposal of property, if seized by an officer and not produced before a criminal court during an inquiry or trial, however, has to yield where a statute makes a special provision with regard to its confiscation and disposal.

14. We have referred to the scheme of the Act and from that it is evident that the vehicle seized has to be produced before the Deputy Commissioner, who in turn has been conferred with the power of its confiscation or release to its rightful owner. The requirement of production of seized property before the Deputy Commissioner under Section 59(1) of the Act is, notwithstanding anything contained in any other law, and, so also is the power of confiscation. Not only this, notwithstanding anything to the contrary contained in any other law for the time being in force, no court, in terms of Section 61 of the Act, has jurisdiction to make any order with regard to the

property used in commission of any offence under the Act.

15. In the present case, the legislature has used a non obstante clause not only in Section 59 but also in Section 61 of the Act. As is well settled, a non obstante clause is a legislative device to give effect to the enacting part of the section in case of conflict over the provisions mentioned in the non obstante clause. Hence, Sections 451, 452 and 457 of the Code must yield to the provisions of the Act and there is no escape from the conclusion that the Magistrate or for that matter the High Court, while dealing with the case of seizure of vehicle under the Act, has any power to pass an order dealing with the interim custody of the vehicle on security or its release thereof.”

37. In view of the law as authoritatively explained by the Supreme Court in *NCT of Delhi v. Narender* (*supra*), the petitioner’s contention that prior permission of the learned M.M. was required by the Deputy Commissioner (Excise) before confiscating the vehicle in question, is rejected.

38. It is also relevant to refer to the Delhi Excise Rules, 2010. Rule 132 of the Delhi Excise Rules, 2010 provides for the manner of disposal of confiscated goods. In terms of Sub-Rule (3) of Rule 132 Vehicles and Animals are required to be put to auction and sold to the highest bidder within a period of one month for such extended period as deemed fit by the Excise Commissioner. Rule 134 of the said Rules also expressly provides that if the order of confiscation is reversed on an appeal, the sale proceeds thereof after deduction of the necessary expenditure incurred in its maintenance would be returned along with

interest @ 6% per annum. Rule 134 of the said Rule is set out below:-

“134. Action when order of confiscation of goods and its sale is reversed in appeal.- If an order of confiscation and sale of liquor, animal or vehicle be reversed on appeal, such liquor, animal or vehicle or the sale proceeds thereof, if sold and the balance of the amount, if any, deposited for feeding upkeep or safe custody thereof after deduction of the expenditure, if any, incurred in its maintenance shall be returned along with interest at the rate of six per cent per annum, to the owner thereof, or his duly authorised agent, if claimed within two months from such order.”

39. Thus, even in cases where the order of confiscation has not attained finality on account of it being challenged, the seized vehicle can be sold and it is not necessary to withhold the sale. In the present case, the proceedings for confiscation have attained finality and the petitioner has exhausted all his remedies of appeal against the impugned order of confiscation.

40. The decision of this Court in ***Varunveer v. Financial Commissioner, Delhi & Ors.*** (*supra*) is of little assistance to the petitioner. The said decision turned on its own facts. The principal question involved in the said case was whether the involvement of a vehicle in an offence under Section 33 of the Excise Act was sufficient to warrant its confiscation. This Court answered the question in the negative and held that the mere fact that the vehicle was used to transport liquor would not be sufficient for confiscating the same, if the owner of the vehicle is able to establish that he/she is not involved

in the said offence. In that case, there appeared to be no dispute that the petitioner was not involved in commission of the offence under Section 33 of the Excise Act and had no knowledge that his vehicle was used in transporting liquor from Haryana.

41. At this stage, it is also relevant to refer to Section 52 of the Excise Act, which reads as under:-

“52. Presumption as to commission of offence in certain cases

(1) In prosecution under section 33, it shall be presumed, until the contrary is proved, that the accused person has committed the offence punishable under that section in respect of any intoxicant, still, utensil, implement or apparatus, for the possession of which he is unable to account satisfactorily.

(2) 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.”

42. A plain reading of Section 52(2) of the Excise Act indicates that it provides a rebuttable presumption that the owner, of a vehicle which is used in commission of an offence under the Excise Act, is guilty of such an offence. It is open for the owner of such a vehicle to satisfy the concerned Court that he had exercised due care in prevention of commission of the offence.

43. In the facts of the present case, the petitioner has been unable to satisfy the Deputy Commissioner (Excise) that he was not involved in the offence. The Deputy Commissioner has not accepted the petitioner's explanation that he had lent the vehicle to his friend to enable him to attend the last ceremonies of his relative. It was noted that the petitioner had not even provided the complete address and details of the said friend. Moreover, the FIR indicated that the petitioner was driving the vehicle in question when it was seized.

44. In view of the above, this Court finds no reason to interfere with the impugned orders. The petition is unmerited and is, accordingly, dismissed. The pending application is also disposed of.

JANUARY 09, 2020

pkv

VIBHU BAKHRU, J

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