

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

Date of decision: 05th DECEMBER, 2022

IN THE MATTER OF:

+ **LPA 607/2022 & CM APPL. 46041/2022**

SMT. SHEELA DEVI

..... Appellant

Through: Mr. Devesh Pratap Singh, Mr. Alok
Kumar and Ms. Rachana Dalal,
Advocates

versus

OFFICE OF COMMISSIONER EXCISE GOVT. OF N.C.T. OF
DELHI. Respondent

Through: Mr. Santosh Kr. Tripathi, Standing
Counsel for GNCTD with Mr. Arun
Panwar, Ms. Mehak Rankawat,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The instant LPA has been filed by Smt. Sheela Devi, i.e. the Appellant herein, assailing the Order dated 07.10.2022 passed by the Ld. Single Judge in W.P.(C) No. 14219/2022 titled as 'Smt. Sheela Devi v. Office of Commissioner (Excise) ('Impugned Judgment'). *Vide* the Impugned Judgment, the Ld. Single Judge has dismissed the aforementioned Writ Petition while allowing the Appellant to avail other remedies.

2. The relevant facts, in short, are as follows: -

- a. The appellant's car i.e. Kia Seltos ('said vehicle') was apprehended by the police when it was being driven by the appellant's husband and he was found with 192 Nips of impacted grain Whisky 240 nips

of Episode Whisky and 1000 Nips of Asli Santra Masaledar Desi Sharab (Annexure P-2), which was being carried for sale in Haryana without any valid transport permit from the Excise Department.

- b. The said vehicle was taken into possession *vide* FIR No. 275/2020 dated 5.04.2020 registered under Section 33, 38, 58 of Delhi Excise Act, 2009 ('Delhi Excise Act') with Police Station Nangloi.
- c. The said vehicle was produced before Ld. Assistant Commissioner, in accordance with the Section 59 of the Delhi Excise Act, who ordered confiscation of the vehicle *vide* Order dated 14.01.2021, considering that the driver was purportedly found with 29 cases of illicit liquor during lockdown.
- d. The Order dated 14.01.2021 was challenged before Excise Commissioner. This was dismissed *vide* Order dated 18.03.2021, with the following observations:

“9. The act of carrying liquor without Excise duty being paid is not disputed. It is also an undisputed fact that the driver of the vehicle is the husband of the owner of the vehicle. The quantity of liquor is such that it is not possible for the driver of the vehicle to fake ignorance of the contents. It is also a fact that the release of the vehicle has nothing to do with the trial of the case before the competent court which will decide the merits/demerits of FIR already registered on its own.

10. In such a case, this Court finds no reason to interfere in the impugned orders dated 18.03.2021 passed by the Excise Commissioner. The present appeal is accordingly dismissed. No order as to costs.

11. Pronounced in the open Court on 15th September, 2022”

- e. The Order dated 14.01.2021 and 18.03.2021 was challenged before the Ld. Financial Commissioner in Case No. 87/2021. Vide Order dated 15.09.2022, the Ld. Financial Commissioner was also pleased to dismiss the Orders and uphold the confiscation of the said vehicle.
 - f. This Order of the Ld. Financial Commissioner was challenged before the Ld. Single Judge in W.P.(C) No.14219/2022. However, by placing reliance upon the judgment of the Hon'ble Supreme Court in State (NCT of Delhi) Vs. Narender, (2014) 13 SCC 100, the Writ Petition was dismissed with liberty to the Appellant herein to avail other remedies.
 - g. Aggrieved by the Impugned Judgment passed by the Ld. Financial Commission, the Appellant was constrained to file the instant LPA.
3. In sum and substance, the Appellant has argued that the Ld. Single Judge failed to appreciate that the judgment of the Hon'ble Supreme Court in State (NCT of Delhi) Vs. Narender, (2014) 13 SCC 100, is entirely distinguishable on facts.
4. *Per contra*, the counsel for the Respondent has sought to show the propriety of the Impugned Judgment by reiterating that since the Supreme Court in *Narender* has laid down the law with regards to the applicability of the Delhi Excise Act.
5. The short question that arises before us is that the Ld. Single Judge has rightly placed reliance upon the judgment of the Supreme Court in State State (NCT of Delhi) Vs. Narender, (2014) 13 SCC 100, to dismiss the Writ Petition filed by the Appellant herein.
6. To answer this question, one must first examine the scheme of the Delhi Excise Act.

7. Section 33 of the Delhi Excise Act deals with penalty for unlawful import, export, transport, manufacture, possession, sale of any intoxicant; indulging in any manufactory or warehouse or bottling any liquor for purposes of sale. Section 38 lays down a penalty for possession of any liquor knowing the same to have been unlawfully imported, transported or manufactured or knowing the prescribed duty not to have been paid thereon. These Sections must be read along with Section 58, which prescribes things liable to confiscation. Section 59 deals with the power of the Deputy Commissioner to order confiscation of seized goods.

8. Further, upon seizure such goods are produced before the Deputy Commissioner, as provided under Section 59(1) of the Delhi Excise Act. If the Deputy Commissioner is satisfied that an offence has occurred under the contours of the Delhi Excise Act, he may order for confiscation of the property under Section 59(2). This Order is appealable before the Excise Commissioner under Section 72(2) and then the Financial Commissioner under Section 72(3) of the Delhi Excise Act.

9. Pertinently, Section 60 deals with a bar on jurisdiction by stating that no court shall have the jurisdiction to make any order with respect to goods seized under the Act. This embargo operates on the powers of a court, such as a Magistrate or a High Court to exercise its powers under Section 451 of the Code of Criminal Procedure, 1973 (CrPC) to order the release of a seized good as well.

10. The law on this is no longer res judicata and has been squarely dealt with by the Supreme Court in State (NCT of Delhi) Vs. Narender, (2014) 13 SCC 100. The question before the Hon'ble Supreme Court in State (NCT of Delhi) Vs. Narender, (2014) 13 SCC 100, was only with regards to the scope of Section 60 of the Delhi Excise Act. Similar to the instant case, in

the facts of that case as well the Respondent's vehicle, containing unaccounted alcohol, was seized. However, the similarity ends here. Pursuant to the registration of a FIR, during investigation, the Respondents therein had filed several applications before a Magistrate seeking a release of their vehicle. All of these applications were rejected in light of the embargo placed by Section 60. Assailing these Orders passed by the Magistrate, the Respondents therein filed a Petition under Section 482 of the CrPC seeking quashing of the orders passed by the Magistrate, and thereby a release of their seized vehicles. As the High Court had in fact set aside the orders passed by the Magistrate, and released the seized vehicles exercising its power under Section 451 of the CrPC, the Hon'ble Supreme Court had the occasion to examine Section 60 of the Excise Act and certain provisions of the CrPC.

11. On the contrary, as stated earlier, the facts of the case at hand are entirely different. In the instant case, the Appellants have in fact availed of the multi-pronged Appellate remedies provided under the Delhi Excise Act.

12. In the instant case, after the vehicle was confiscated by the Order *vide* the Ld. Assistant Commissioner, the Appellants approached the Excise Commissioner, under Section 72(2) of the Excise Act. Upon getting an unfavorable order from the Ld. Assistant Commissioner, the same was appealed before the Financial Commissioner under Section 72(3) of the Excise Act. Thereafter, as the Financial Commissioner also upheld the order of confiscation, the Appellants herein filed the WP(C) No. 14219/2022 before the Ld. Single Judge.

13. It appears that the Ld. Single Judge has simply placed reliance upon Narendra (supra) to dismiss the Writ Petition. In Narendra (supra), the Writ Petitioner (Respondent before the Supreme Court) claiming to be the owner

of the vehicle, filed an application for its release on security, before the Metropolitan Magistrate, who, *vide* dated 24.05.2011 rejected the same holding that he has no power to release the vehicle seized in connection with the offence under the Delhi Excise Act. Aggrieved by the said rejection, Respondent therein again filed an application for the same relief i.e. for release of the vehicle on security before the Metropolitan Magistrate but the said application also met with the same fate. Aggrieved by the same, the Respondent therein approached the High Court, under Section 482 Cr.P.C and the High Court *vide* the Order impugned before the Supreme Court directed for the released in favour of the Respondent therein, i.e. Narendra, on furnishing security to the satisfaction of the Metropolitan Magistrate. The State challenged the Order in the Apex Court and the Apex Court relying on Section 61 of the Delhi Excise Act set aside the Order of the High Court. In the facts of the present case, the Appellant has approached the authorities under the Delhi Excise Act. The vehicle was first produced before the Assistant Commissioner in accordance with Section 59 of the Delhi Excise Act who ordered confiscation of the vehicle. This Order was challenged before the Excise Commissioner who dismissed the challenge. The Order of the Excise Commissioner was challenged before the Financial Commissioner who upheld the Order of the Excise Commissioner. The Order of the Financial Commissioner was challenged before the learned Single Judge.

14. A perusal of the above would show that unlike the facts of Narender (supra), the Appellant herein has availed of all the remedies which were available to her and she approached this Court by filing a Writ Petition under Article 226 of the Constitution of India, challenging the Order of the Financial Commissioner whereas in Narender (supra), the Respondent

therein, i.e. Narender, had straightway approached the Magistrate which he could not have under Section 61 of the Delhi Excise Act.

15. It is trite law that this Court is exercising its discretionary powers under Article 226 of the Constitution. It is settled law that such discretionary remedy ought not to be exercised if the Petitioner has an alternate remedy in law. Illustratively, the Hon'ble Supreme Court in K.S. Rashid and Son v. Income Tax Investigation Commission, 1954 SCR 738, has held as under:-

“4. So far as the second point is concerned, the High Court relies upon the ordinary rule of construction that where the legislature has passed a new statute giving a new remedy, that remedy is the only one which could be pursued. It is said that the Taxation on Income (Investigation Commission) Act, 1947, itself provides a remedy against any wrong or illegal order of the Investigating Commission and under Section 8(5) of the Act, the aggrieved party can apply to the appropriate Commissioner of Income Tax to refer to the High Court any question of law arising out of such order and thereupon the provisions of Sections 66 and 66-A of the Indian Income Tax Act shall apply with this modification that the reference shall be heard by a Bench of not less than three Judges of the High Court. We think that it is not necessary for us to express any final opinion in this case as to whether Section 8(5) of the Act is to be regarded as providing the only remedy available to the aggrieved party and that it excludes altogether the remedy provided for under Article 226 of the Constitution. For purposes of this case it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion, to refuse to grant any writ if it is satiated that the aggrieved party can have an adequate or suitable relief elsewhere. So far as the present case is concerned, it has been brought to our notice that the appellants before-us

have already availed themselves of the remedy provided for in Section 8(5) of the Investigation Commission Act and that a reference has been made to the High Court of Allahabad in terms of that provision which is awaiting decision. In these circumstances, we think that, it would not be proper to allow the appellants to invoke the discretionary jurisdiction under Article 226 of the Constitution at the present stage, and on this ground alone, we would refuse to interfere with the orders made by the High Court. Dr Tek Chand argues that the Income Tax authorities have not referred all the matters to the High Court which the appellants wanted them to do. But for this there is a remedy provided in the Act itself and in case a proceeding occasions a gross miscarriage of justice, there is always the jurisdiction in this court to interfere by way of special leave. In the result, we dismiss the appeals but in the circumstances of the case make no order as to costs.”

[Also refer to: Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, AIR 1969 SC 556; Nivedita Sharma vs. Cellular Operators Association of India & Ors., (2011) 14 SCC 337]

16. Further, in Than Singh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors, AIR 1964 SC 1419, a Constitution Bench of the Hon’ble Supreme Court observed that:-

“7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary

jurisdiction of the High Court under Article 226 and sought to reopen the decision of the Taxing Authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

17. The facts indicate that the Appellants had exhausted their appellate remedy under Delhi Excise Act, having appealed to the Ld. Financial

Commissioner as a last resort as well. Hence, there is no alternate efficacious remedy available to the Appellant herein. Considering this, this Court finds the case of the Appellant fit for the exercise of the discretionary powers under Article 226.

18. Pertinently, previously as well, single benches of this Court have adjudged the propriety of the Orders delivered by the Ld. Financial Commissioner under the Delhi Excise Act. [Refer to: Manoj Kumar Singh Vs. Govt. of N.C. T. of Delhi, W.P. (C) No.8898/2011 and Dr. Varun Veer v. Financial Commissioner & Other, W.P.(C) 574/2017.]

19. Considering this, this Court finds that State (NCT of Delhi) Vs. Narender, (2014) 13 SCC 100, is distinguishable on facts. As the Ld. Single Judge did not have the occasion to pass a detailed judgments appreciating the facts, the instant matter is remanded to the Ld. Single for his consideration.

20. In light of this, the instant Appeal is allowed. The matter is remanded back to the learned Single Judge to decide the correctness or otherwise of Order dated 15.09.2022 passed by the learned Financial Commissioner upholding the confiscation of the vehicle. Pending applications, if any, stands disposed of.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

DECEMBER 05, 2022

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