

(2011) 08 AHC CK 0145

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 14959 of 2011

Samundra

APPELLANT

Vs

State of U.P. Through Home Secretary U.P., Lucknow and
others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 72

Citation : (2011) 08 AHC CK 0145

Hon'ble Judges : S.C. Agarwal, J

Final Decision : Disposed Of

Judgement

S.C. Agarwal, J.

Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

This writ petition has been filed with a prayer to quash the order dated 1.2.2010 passed by District Magistrate/Collector, Budaun in case no.4 of 2009 under section 72 Ga Excise Act, P.S. Wazirganj, District Budaun as well as order dated 27.5.2011 passed by District Judge, Budaun in appeal no.7 of 2010, Samundra Vs. State of U.P.

By impugned order dated 1.2.2010, Collector, Budaun has confiscated the Bolero Vehicle No.HR99 DQ HQ Temp.7865 under section 72 (1) of the U.P. Excise Act (hereinafter referred to as "the Act"). Appeal filed by the petitioner (owner of the vehicle) has been dismissed.

Learned counsel for the petitioner submitted that at the time of confiscation, the Collector has not fixed any amount as fine to be paid in lieu of confiscation, as provided under section 72 (2) of the Act and has left the matter to be decided by District Excise Officer, Budaun with a direction to ascertain the market value of the vehicle and to auction the same and first right to purchase has been granted to the vehicle owner. The contention is that this is not the exact compliance of

section 72 (2) of the Act.

Learned A.G.A. is also unable to support the impugned order in this respect, but maintained that the vehicle has been rightly confiscated.

Section 72 subclause (2) of the U.P. Excise Act provides as under :

72. What things are liable to confiscation ? (2) Where anything or animal is seized under any provision of this Act and the Collector is satisfied for reasons to be recorded that an offence has been committed due to which such thing or animal has become liable to confiscation under subsection (1), he may order confiscation of such thing or animal whether or not a prosecution for such offence has been instituted :

Provided that in the case of anything (except an intoxicant) or animal referred to in subsection (1), the owner thereof shall be given an option to pay in lieu of its confiscation such fine as the Collector thinks adequate not exceeding its market value on the date of its seizure.?

As per the provisions of section 72 (2) of the Act, at the time of confiscation of the vehicle, the Collector is obliged to pass an order regarding payment of a fixed sum fine to be paid by the owner in lieu of confiscation and such amount cannot exceed the market value of the vehicle on the date of its seizure. Therefore, the exercise of ascertaining the market value of the vehicle has to be done before passing the order for confiscation. Moreover, it is not necessary that the fine should be equivalent to the market value of the vehicle, but it shall not exceed the market value of the vehicle. The Collector is empowered to impose a lesser amount of fine in lieu of confiscation and such discretion should be exercised in a judicious manner. The maximum fine should be imposed only in extreme cases and not in a routine manner.

In these circumstances, the impugned order cannot be sustained and the matter deserves to be remanded to the District Magistrate, Budaun for passing a fresh order in accordance with law. It is however made clear that this Court has not expressed any opinion on the merits of the case regarding forfeiture of the vehicle as to whether it was rightly forfeited or not.

Revision is allowed.

Impugned orders dated 1.2.2010 and 27.5.2011 are quashed.

The District Magistrate, Budaun, on receipt of a copy of this order, shall decide the matter afresh after giving an opportunity to the petitioner and take a fresh decision under section 72 of the Act expeditiously. It is made clear that Collector, while exercising powers under section 72 of the Act, cannot delegate his authority to any subordinate officer or official.