

**IN HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No.1088 of 2018 (M/S)

Hitesh Singh

.....Petitioner

Vs.

State of Uttarakhand

...Respondent

Advocate: Mr. Maneesh Bisht, Advocate for the petitioner.

Mr. Yogesh Tiwari, Brief Holder for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J.

The petitioner before this Court is the owner of Pickup Vehicle bearing Registration No.UK 02 CA-0646, which is said to have been confiscated under Section 72 of the U.P. Excise Act of 1910; on the ground that it is allegedly involved in commission of the offence covered under Section 60 of the Excise Act of 1910.

2. The contention of the petitioner at this stage is that there had been a corresponding criminal proceedings, which were drawn against the Driver of the vehicle, who was said to be involved in commission of the offence under Section 60 of the Act of transporting illicit liquor, without a valid permission, on the date and time when the vehicle was apprehended by the police party and was said to have been found carrying illicit liquor. It had been argued by the learned counsel for the petitioner, that for the purposes of attracting Section 72 of the Act, in order to justify the confiscation of the vehicle there has had to be a satisfaction to bring an action under Section 60 of the Act. The counsel for the petitioner submits that the Sessions Court in its judgment rendered in Criminal Appeal No.10 of 2017 Bhuwan Chandra vs. State on 18.08.2017, particularly in the light of the findings which has been recorded in para 10, 11 & 12 and para 17 of the judgment, in fact, it does not establish the fact at all that the police team ever had apprehended the vehicle alongwith the Driver, as well as the illicit liquor having being carried and no inventory as such was prepared or produced before the criminal court, in order to rope up the Driver of the vehicle for commission of the offence under Section 60 of the Excise Act. As a

consequence thereto, the learned District and Sessions Judge by the judgment of 18.08.2017 had acquitted the Driver of the vehicle, Bhuwan Chandra by observing, that the prosecution has failed to establish that the Driver of the vehicle, was at all involved in commission of the offence which are covered under Section 60 of the Excise Act and the benefit of doubt has been extended to him, while passing an order of acquittal, on the ground that the prosecution has failed to establish the alleged recovery of the illicit liquor as per the provisions of the Excise Act and no inventory for confiscation or even the movement of the police party could be established by record, who are said to have been apprehended the vehicle alleged to be involved in carrying the illicit liquor. In that eventuality when the matter was taken up before this Court, the Coordinate Bench of this Court on 11.11.2021, the Coordinate Bench of this Court in its para 3 and 4 of its order dated 11.11.2021, had called upon the Standing Counsel to satisfy the Court, as to why and how Section 72(1) of the Excise Act, would be attracted under the changed circumstances, particularly when the Driver of the vehicle has been acquitted since the offence under Section 60 of the Excise Act, was not shown to have been established against him beyond reasonable doubt and if the confiscation itself was not established beyond doubt, the seizure of the vehicle under Section 72 Sub Section (1) of the Excise Act of 1910 would not be sustainable.

3. During the course of hearing, the reference has been made by the counsel for the petitioner to the judgment of acquittal, the findings recorded in its judgment, establishes the fact beyond doubt that in fact, the theory of the alleged confiscation of carrying for illicit liquor by the vehicle which was confiscated under Section 72 of the Excise Act, was not made out nor could have been established to be made out, because the offence under Section 60 of the Excise Act itself was failed to be established by the prosecution, if that be the situation, where Section 60 of the Excise Act, has not been established to have been commissioned and the Driver has been acquitted, then under the garb of the alleged theory raised by the respondents in the order passed under Section 72 of the confiscating vehicle on ground of carrying illicit liquor, itself cannot be sustained in view of the judicial pronouncement and the findings recorded by the District & Sessions Judge, after appreciating the evidence, which was placed before it. Hence, once the Driver itself has been acquitted of the offence under

Section 60 of the Excise Act by the judgment of 18.08.2017, then quite obviously it goes beyond doubt, that it cannot be said that the finding, which has been recorded to justify confiscation of the vehicle under Section 72 of the Excise Act, was at all engaged in carrying an illicit liquor, which is the foundation of its confiscation. Consequently, this Court is of the view that for the purposes of constituting of allegation for the confiscation of the vehicle under the garb of the implications of Section 72 of the Act, it could be only possible for the prosecution or respondent in the present case, if they are able to establish a commission of offence under Section 60 of the Excise Act and having failed to do so, the impugned order under challenge of confiscating the vehicle and the appellate order passed by the District Judge, Bageshwar on 07.04.2018, affirming the order of confiscation of the vehicle, by the Collector dated 01.11.2017, cannot be sustained. They are hereby quashed and the Collector, Bageshwar is directed to forthwith release the vehicle i.e. Pickup bearing Registration No. No.UK 02 C.A.-0646 the ownership of which vests with the petitioner within a period of one month from the date of the receipt of the certified copy of this judgment.

4. Subject to the aforesaid, the writ petition stands allowed.

(Sharad Kumar Sharma, J.)
25.02.2022