

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No. 1203 of 2017**

Arising out of PS.Case No.-null Year-null Thana-null District-MUZAFFARPUR

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Vishal Prasad Gupta, Son of Sri Shivji Shah, Resident of Maripur Chowk, P.S. Kaji Mohammadpur, District Muzaffarpur

.... .... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise, Government of Bihar, Patna
2. District Magistrate, Muzaffarpur
3. Superintendent of Excise, Muzaffarpur
4. Sub divisional Officer, East, Muzaffarpur
5. Anchal Adhikari, Musahari, District Muzaffarpur
6. Excise Inspector, Muzaffarpur
7. Sub-Inspector of Excise, Sadar Anchal, Muzaffarpur

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate  
Mr. Shashank Shekhar, Advocate  
Mr. Pravin Kumar, Advocate  
For the Respondents : Mr. Anil Kumar Sinha, G.A. 1

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

**ORAL JUDGMENT**

**Date: 04-08-2017**

Heard learned counsels for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court for setting aside the order dated 23.12.2016 whereby the District Magistrate, Muzaffarpur has confiscated two vehicles of the petitioner in Confiscation Case No. 15 of 2016-17.

3. The vehicles are Mahindra Pick-up Van bearing registration no. BR06R-4753 and a tempo bearing registration no. BR06PC-3069. The vehicles were seized for alleged violation of the



Excise Law.

4. Submission of the learned counsel for the petitioner is that the issue whether the Executive Authority can exercise power, of a judicial authority to confiscate the vehicle, is under sub-judice before a Larger Bench of this Court in L.P.A. No. 1647 of 2015 (**Baleshwar Roy vs. The State of Bihar & Ors.**). Hence, till disposal of the L.P.A. aforesaid, further proceeding in pursuance of the impugned order be stayed and the vehicles be released as ad interim custody in favour of the petitioner as no purpose is going to be served by its continued detention.

5. Learned counsel for the State-respondent submits that there is provision of appeal under Section 92(2) of the Bihar Prohibition and Excise Act, 2016 against the impugned order before the Commissioner, hence, the petitioner has got statutory remedy to ventilate his grievance.

6. Since the jurisdiction of the authority concerned (Executive Authority) to confiscate the vehicle is sub-judice before this Court, there is no reason to not grant the interim relief to the petitioner till adjudication of the aforesaid issue.

7. Hence, it is ordered that the operation of the impugned order shall remain stayed and shall be subject to the result of the L.P.A. aforesaid.



8. Let the referred vehicles be released in favour of the petitioner by way of ad interim custody on execution of surety bond (not in the form of bank guarantee or cash) of Rs.4,00,000/- (rupees four lakhs) for Mahindra Pick-up Van and Rs.1,00,000/- (rupees one lakh) for tempo along with two sureties of the like amount each with condition that the petitioner shall not dispose of the same without permission of the Court and shall produce as and when required.

9. With the aforesaid observation, this writ application stands disposed of.

**(Birendra Kumar, J)**

Kundan/-

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