

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18026 of 2017

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M/s Global Trading Concern Pvt Ltd., a company registered in Nepal under the Companies Act, 2006 having its registered office at Lalchan Tower, Lal Durbar, Hattisar- 1, Kathmandu, Nepal, through its Authorised Representative Sri Hom Narayn Shah Teli, son of Sri Ram Narayan Teli, holding Nepalese Citizenship No. 80260623, resident of Village- Sabaila, Ward No. 6, Zone- Janakpur, District- Dhanusha, Nepal.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Prohibition, Excise and Registration Department, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department, Patna.
3. The Excise Commissioner, Prohibition, Excise and Registration Department, Patna.
4. The Deputy Commissioner, Excise, Magadh Division.
5. The Superintendent of Excise, Nawada.
6. The District Magistrate-cum- Collector, Nawada.
7. The Superintendent of Police, Nawada.
8. The SHO, Kadamkuan Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Nikhil Kumar Agrawal, Advocate Mrs. Aditi Hansaria, Advocate
For the Respondent/s	:	Mr. Lalit Kishore - AG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-02-2018

Petitioner has filed this writ petition and the grievance of the petitioner is with regard to seizure of certain consignment and goods belonging to the petitioner in P.S. Case No. 35 of 2017 registered by Police Station Kashichak in the district of Nawada.



Facts in brief which are relevant for deciding the issue in question indicates that petitioner is a company incorporated in the country of Nepal under the provisions of the Companies Act, 2006 having its registered office in Kathmandu, Nepal. The petitioner is engaged in business of import and export of various goods including import of foreign liquor in Nepal.

It is said that after obtaining due clearance, registration, excise duties, licence and certificates, as are detailed in Paragraph 5 of the writ petition, the petitioner was granted permission to export certain liquor from an Australian company named Accolade Wines Australia Ltd. and, accordingly, based on the letter of credit and other documents, as are indicated in Paragraph 6 of the writ petition, petitioner was transporting the liquor in question from Australia and it was in the process of being transported to Nepal when a vehicle bearing Registration No. WB-03-C-8379, in which the liquor was being transported in a container bearing No. APZU-3353422, the liquor was seized. By producing documents and the treaty of trade and transit between the Government of India and the Government of Nepal, executed in the year 1960, petitioner has tried to demonstrate before this Court that



petitioner is a genuine exporter and was transporting the liquor in question in the course of his business. There was no illegality or irregularity in the same, no offence under the Prohibition Act has been committed and contending that for certain acts of commission and omission said to have been committed by the driver of the vehicle in which the liquor was being transported the entire consignment of the petitioner has been seized. Seeking release of the consignment, the writ petition in question was filed.

We may, for the sake of clarifying the position, indicate herein that the vehicle bearing Registration No. WB-03-C-8379 has also been seized and the owner and driver of the said vehicle have also filed writ petition C.W.J.C. No. 13764 of 2017 for release of the vehicle which is being dealt with separately.

As far as the present writ petition pertaining to release of the liquor consignment of the petitioner is concerned, we heard the matter on various dates and during the course of hearing, we had requested the learned Advocate General as to what is the difficulty in release of the consignment of the petitioner in case it is found to be a genuine transaction and the consignment was coming from Australia and going to Nepal



passing through the State of Bihar and as the documents produced were, prima facie, found to be genuine, we had requested the Advocate General to verify the same.

Today, during the course of hearing we are informed that the State has found that the petitioner is a genuine registered company with a registered office in the country of Nepal and normally carries out with the aforesaid business of export.

That being so, we are of the considered view that the consignment of the petitioner, which was in the course of transit from Australia to Nepal, and was passing through the State of Bihar, should be released in the interest of justice and merely because the driver and owner of the vehicle in question in which the liquor was being transported had committed certain acts of commission and omission, it is not necessary to retain the consignment of the petitioner.

Keeping in view the totality of the circumstances, we allow this petition in part and direct that the consignment of the petitioner shall be released to the petitioner on the petitioner furnishing a Bank Guarantee issued from a Bank in Nepal to the tune of the amount equivalent to Rs. 8 lacs in Indian Currency to the satisfaction of the District Magistrate, Nawada. The



consignment shall be carried in the same container and the vehicle from the place where it is kept today and delivered to the office of the petitioner by the authorities of the State of Bihar and for transporting the consignment from the place where it is presently placed to the establishment of the petitioner in Nepal, the entire expenses shall be met by the petitioner and the same shall be reimbursed by the petitioner to the authorities of the State of Bihar. After the vehicle reaches Nepal and the consignment is unloaded, the vehicle in question shall be brought back and kept in the custody of the District Magistrate, Nawada in connection with the case instituted against the owner and driver of the vehicle and subject to order that may be passed in C.W.J.C. No. 13764 of 2017.

The aforesaid order for delivery of the consignment shall be given effect to within a period of 15 days from the date of furnishing of Bank Guarantee by the petitioner to the District Magistrate, Nawada. At the first instance, the Bank Guarantee shall remain alive for a period of six months and thereafter it would be extended subject to orders passed by this Court.

With the aforesaid, this petition stands disposed of. However, we may clarify that release of the consignment in question, ordered by us today, is a provisional order subject to



any right available to the State of Bihar to proceed against the
petitioner in accordance with law.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.02.2018
Transmission Date	

