IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4838 of 2018

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Roushan Kumar Yadav, Son of Baijnath Yadav, Resident of Mohalla- Okhla, Phase-1, A 488 P.S.- Okhala, District- Mehrauli, New Delhi- 110020.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise Prohibition (Amendment) Act, 2016, Govt. of Bihar, Patna.
2. The Collector-cum-District Magistrate, Bhabhua, District- Bhabhua.
3. The Superintendent of Police, Bhabhua, Dist- Bhabhua.
4. The Superintendent of Excise, Gaya, Dist- Gaya.
5. The Officer-in-charge of Rail, Sasaram (Bhabhua), District- Bhabua.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 3705 of 2018

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M/s Pernod Ricard India Pvt. Ltd. a company duly incorporated under the provisions of the Companies Act, 1956 bearing Corporate Identity Number (CIN) U74899DL1993PTC055062, having its registered office at 5th Floor, D - 3, District Centre, Saket, New Delhi - 110017 and Warehouse at C/o : Veritas Logistics Pvt. Limited A 136/1, Okhla Industrial Area Phase II, New Delhi 110020 through its Authorized Signatory Mr. Manoj Barik, son of Mr. Basant Kumar Barik.

.... 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 Secretary, Prohibition, Excise and Registration Department, Patna.
4. The Deputy Commissioner, Excise, Magadh Division.
5. The Superintendent of Excise, Bhabua.
6. The District Magistrate-cum-Collector, Bhabua.
7. The Superintendent of Railway Police, Gaya Division, Gaya.
8. The SHO Railway Police Station at Bhabua Road, Bhabua, Sasaram.

.... Respondent/s

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Appearance :

(In CWJC No.4838 of 2018)

For the Petitioner/s : Mr. Sudhir Kumar Sinha, Adv.

For the Respondent/s : Mr. Vikash Kumar- SC11

(In CWJC No.3705 of 2018)

For the Petitioner/s : Mr. Rohitabh Das, Adv.

For the Respondent/s : Mr. Lalit Kishore -AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 26-04-2018

Petitioner in C.W.J.C No.4838/2018 has moved this Court seeking a Writ of Mandamus directing respondent nos.2 to 5 to release the vehicle bearing Isar Company Truck Model No.1110 (container) bearing Registration No.HR55X-1086, Chassis No.MC2F7HRC0GD115743 and Engine No.E413CDGD079600 in favour of the petitioner.

2. It is stated that the vehicle in question has been seized by the Assistant-sub-Inspector of Rail Sasaram (Bhabhua) in connection with Rail Sasaram (Bhabhua) P.S.Case No.119 of 2017 registered on 04.12.2017 under Sections 30 (a) and 56 (D) of Bihar Excise Act, 2016.

3. It appears that the petitioner had earlier moved before the learned Special Judge (Excise), Gaya, for release of the container but the prayer made by the petitioner for such release was rejected vide order dated 25.01.2018. The order dated 25.01.2018 passed by the learned Special Judge (Excise), Gaya, is impugned in the present writ application.

4. Learned counsel representing the petitioner submits that at present no confiscation proceeding has been initiated even

though the prosecution report has been sent for initiation of such a proceeding. It is submitted that the seizure in question is wholly illegal, arbitrary and bad in law. Learned counsel for the petitioner submits that if the truck (container) in question is not released at this stage, considering the fact that the criminal case is not likely to be concluded in near future, the vehicle of the petitioner will lose its road worthiness and there is every chance of its getting damaged standing under open sky without use over the years. It is submitted that this Court is considering an issue as to whether the District Magistrate who is an executive may be conferred with the power of confiscation. Such an issue is pending consideration in L.P.A No.1647 of 2017 which arises out of a case under the provisions of the Essential Commodities Act. Learned counsel submits that the petitioner is ready and willing to provide sufficient surety for the purpose of provisional release of the vehicle in question.

5. A counter affidavit has been filed by the D.S.P (H.Q), Rail, Patna. In the counter affidavit it is stated that the First Information Report has been lodged by the Rail Police that too at Bhabhua, therefore, the petitioner has wrongly added District Magistrate, Gaya, instead of District Magistrate, Kaimur (Bhabhua), and therefore, due to the mistake on the part of the petitioner filing of the counter affidavit has been delayed. It is submitted that Rail Police,

Bhabhua, comes within the jurisdiction of Superintendent of Rail Police, Patna, therefore, he ought to have been made party respondent in the present writ application.

6. On merit of the allegations, it is stated that the Truck(container) bearing Registration No.Hr 55X-1086 was found standing in the compound of Bhabhua Road Rail Station, upon search 500 cartoons of foreign liquor, each cartoon containing 12 bottles of 750 ml wine was recovered and, accordingly, First Information Report has been registered under Sections 30 (a) and 56 (D) of the Bihar Excise Act, 2016. It is also submitted that steps have been taken for confiscation of the seized truck in the light of the provisions of the Excise Act and a Confiscation Case No.32 of 2018 has been registered. It is the submission of learned counsel representing the State that the vehicle carrying the liquors was required to have digital locks at the first check-post while entering into the territory of the State of Bihar but in the present case no digital lock was there and the customs seal was also lying in a broken condition.

7. This writ application has been heard along with C.W.J.C No.3705 of 2018 filed by M/s Pernod Ricard India Pvt. Ltd. who has moved this Court for a direction to release the 500 cases of Jameson Irish Whisky which has been seized in connection with the same case. Learned counsel representing the petitioner in C.W.J.C

No.3705 of 2018 has contended before this Court that the petitioner is a company duly incorporated under the provisions of Companies Act and for the purpose of storing liquor beverage and dispatching the same to the distributors and other buyers, they have appointed M/s Vertias Logistics Pvt. Limited, as its clearing and forwarding agent to do the said work from its Bonded Warehouse situated at A 136/1, Okhla Industrial Area Phase II, New Delhi, vide agreement dated 05.01.2008 with effect from 01.07.2007. A copy of the C & F Agency agreement dated 05.01.2008 has been annexed as Annexure P/1.

8. It is the case of the writ-petitioner that for the purpose of transportation of its goods the writ-petitioner has engaged amongst others M/s Green Freight Carrier, a proprietorship firm of New Delhi vide Transport Service Agreement dated 12.01.2017 for transportation on the routes as mentioned in Schedule R.15 which includes transportation from Delhi to Kolkata. The transport agreement contains a specific term which casts a duty on the Transporter to comply all statutory obligations of each State pertaining to movement of liquor and excise and it was their sole responsibility to ensure successful delivery.

9.On merit of the contention, learned counsel for the petitioner in C.W.J.C No.3705 of 2018 submitted that consignment of the said goods comprising of 500 cases of Jameson Irish Whisky for the value of Rs.37,08,720/-(Rupees Thirty Seven Lakhs Eight Thousand Seven Hundred and Twenty Only) was being transported by Vehicle No.HR-55X-1086 provided by the above mentioned Transport Service Provider in course of business transaction of sale between the writ-petitioner and M/s United Wines, Howrah, after obtaining clearance from the Customs Authority as per the Customs Act and Regulations and also after being sealed by the Customs Authority vide Seal No.000396, also in terms of the valid road permit in From 42 issued under the West Bengal Sales Tax Act. True photocopies of From 42 under the West Bengal Sales Tax Act, form of removal under Customs Regulations duly stamped by the Customs Authority, invoice, consignment note/LR have been annexed as Annexure P/3 series to the writ application.

10. Learned counsel further submits that a certificate dated 28.11.2017 was also issued by the Bonded Warehouse Manager addressed to all police, RTO FST/VAT and other authorities about the consignment being a bond to bond transfer from one Custom Warehouse to another Custom Warehouse as per Customs Act, 1962 after fulfilling all statutory compliance. It is stated that the said certificate also indicates that the consignment was sealed by the warehouse keeper which seal should not be broken by anyone

including an authority or agency except as authorized by Department of Customs. Copy of the certificate dated 28.11.2017 has been annexed as Annexure P/4.

11. It is submitted that it is not known to the company as to how the vehicle in question came to be parked at the parking lot at Bhabhua Road Railway Station. It is contended that from the First Information Report itself it would transpire that the owner of the vehicle presented himself before the respondent authorities within a day of getting telephonic information from the respondent authorities and made available before them all the concerned documents about the consignment being transported in the said vehicle.

12. In the said counter affidavit filed on behalf of the D.S.P (H.Q) Rail, Patna, the respondents while answering the statements of the writ-petitioner in Paragraph Nos.4, 5, 6, 8 and 9 of the writ petition submits that the onus lies on the petitioner to prove the statements made by them and no comment is required. On perusal of the counter affidavit, it appears that the genuineness of the documents enclosed with the writ application has not been challenged by the respondent. It is alleged that the customs seal of the consignment was found broken and the driver of the vehicle was absconding.

13. Having heard learned counsel for the petitioner and

learned counsel representing the State and upon perusal of the counter affidavit filed by the D.S.P (H.Q) Rail, Patna, it appears to this Court that the vehicle in question was engaged in transferring of the liquor in question from one custom warehouse to another custom warehouse. The petitioner in C.W.J.C No.3705 of 2018 has brought on record Annexures P/1, P/2 and P/3 series which are all documents the genuineness of which are not under challenge.

14. The case of the writ-petitioners in both these writ applications is that the driver of the vehicle had left the vehicle unattended and as soon as the owner of the vehicle was informed by the respondent authorities about the seizure of the vehicle lying in abandoned condition he had made available all the relevant documents to satisfy the respondent authorities that it was not a case of illegal or unlawful transportation or movement of liquor from one State to another. The Form 42 under the West Bengal Sales Tax Act and Form of Customs Regulations duly stamped by the Customs Authority, invoice, consignment note/LR which are annexed as Annexure P/3 series lend credence to the submissions of the writ-petitioners.

15. The submission of learned counsel representing the State and the contesting respondent who has filed a counter affidavit in this case is based on the allegations made in the First Information

Report but the documentary evidences brought on the record by the petitioners to make out a prima facie case for provisional release of the vehicle and release of goods in question have not been controverted.

16. In the given facts and circumstances, we would direct provisional release of the vehicle Truck(container) bearing Registration No.HR 55X-1086, Chassis No.MC2F7HRC0GD115743 and Engine No.E413CDGD079600 in favour of the petitioner of C.W.J.C No.4838 of 2018 on his furnishing bank guarantee to the satisfaction of the District Magistrate, Bhabhua (respondent no.2) within one week from the date of submission of the bank guarantee. The petitioner of C.W.J.C No.4838 of 2018 shall undertake that he will not transfer the vehicle in question in favour of third party and shall not create any encumbrance over the truck (container) in question adverse to the interest of the State of Bihar and as and when required he will produce the vehicle in question before the authority concerned.

17. The C.W.J.C. No.4838 of 2018 is allowed accordingly.

18. So far as, C.W.J.C No.3705 of 2018 is concerned, the prayer made in the writ application for release of 500 cases of Jameson Irish Whisky which has been seized in connection with the

present case is also allowed subject to the petitioner of C.W.J.C No.3705 of 2018 submitting a bank guarantee to the satisfaction of the District Magistrate, Bhabua, which will be the subject to the result of the confiscation proceeding. The District Magistrate, Bhabua (respondent no.2), shall issue release orders within one week from the date of submission of the Bank guarantee & the undertakings by the petitioners of both the writ applications.

19. Both the writ applications are allowed to the extent indicated herein.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.05.2018
Transmission Date	