IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9978 of 2019

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Raushan Jamir, Son of Riyajuddin Resident of Village-Digghi, P.S.-Bashila, District-Chandauli (U.P.).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Patna
2. The District Magistrate, Kaimur at Bhabhua, District-Kaimur at Bhabhua.
3. The Officer In-Charge, P.S.-Bashila, District-Kaimur at Bhabhua.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sumeet Kumar Singh
For the Respondent/s	:	Mr.(Ga1)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 05-12-2019

Heard learned counsel for the petitioner and learned A.C. to S.C.-11 for the State.

This writ application has been preferred with a prayer for quashing the order dated 31.07.2018 passed by Collector-cum-District Magistrate, Kaimur at Bhabhua in Vehicle Confiscation Case No.59 of 2018 whereby Three Wheeler Tempo bearing Registration No.UP-67-T-8670 has been confiscated. Further prayer has been made to release the vehicle so confiscated.

The relief claimed by the petitioner in paragraph No.1 of the writ application reads as follows :-

"(i) That the present writ application is being filed in the nature of Certiorari for quashing the order dated 31.07.2018 passed by the Collector-cum-District Magistrate, Kaimur at Bhabhua in Vehicle Confiscation Case No.59 of 2018 by which the vehicle No.UP-67-T-8670 (Tempo) has been confiscated by the Collector, Bhabhua; on the ground that the case of the petitioner has not been appreciated properly, the due process of law has not been followed, the collector has not considered that it is a tempo and the petitioner is not having any antecedent;

(ii) That the present writ application is being filed in the nature of Mandamus for a direction to the Collector, District Magistrate, Kaimur at Bhabhua to release the vehicle bearing No.UP-67-T-8670 in relation to Excise Case No.R-400 of 2018 pending before the Special Court; on the ground that the said vehicle is lying under the open sky;

(iii) For issuance of an appropriate writ/order or directions for which the petitioner is entitled for."

The prosecution case got initiated on submission of prosecution report of Satendra Kumar, Sub Inspector, Excise, Mohania is to the effect that on 04.05.2018 at the check post of

Samekin, Mohania, one tempo bearing Registration No.UP-67T-8670 was put to check. The driver was apprehended and the other person escaped from the scene. The driver disclosed his name as Abhimanyu Sah. The driver conveyed the name of the persons escaped from the scene as Raushan Jamir (the petitioner) being the owner of the tempo. On search being made, 14.40 litres of country-made illicit liquor was recovered, leading to registration of Excise Case No.R-400 of 2018 under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter called the 'Act'). Subsequently, a proposal for initiation of confiscation proceeding was made and ultimately the Collector-cum-District Magistrate, Kaimur at Bhabhua vide order dated 31.07.2018 passed in vehicle Confiscation Case No.59 of 2018, as contained Annexure-P/3 to the writ application on being satisfied that the offence under the Bihar Prohibition and Excise Act, 2016 has been committed, confiscated the vehicle and directed the Superintendent, Excise, Kaimur at Bhabhua to get the vehicle auctioned and to deposit the consideration amount in the treasury through Challan.

Learned counsel for the petitioner submits that the vehicle, in question, has illegally been confiscated without any notice to the petitioner.

It is submitted by learned counsel for the respondent that since the final order in confiscation case has been passed, hence the writ application is not maintainable, since there is statutory provision of Appeal under Section 92 of the Act.

We find substance in the submission of learned counsel appearing for the respondent-State though from the pleadings either of the writ application or of the counter affidavit filed on behalf of the respondent No.1, 2 and 3, it does not appear as to when the proposal for initiation of confiscation proceeding was made under Section 58 by the seizing authority. It appears that final order has been passed by the Collector on 31.07.2019 in confiscation proceeding, as contained Annexure-3 whereas the counter affidavit has been duly sworn on 31.08.2019 but there is nothing on record to suggest whether the vehicle, in question, has actually been auctioned or not.

Considering the fact that the tempo, in question, has already been confiscated, the present application is maintainable in view of the final order having been passed in confiscation proceeding which is appealable. Moreover, the petitioner is now no longer the owner of the vehicle as in view of the provision under Section 61 of the Bihar Prohibition and Excise Act, the property has already been vested in the State of Bihar. There is a provision of Appeal under Section 92 under Chapter IX of the Act stipulates the provision of Appeal. Section 92(1) of the Act stipulates that all final orders passed by any Excise Officer other than the Excise Commissioner or Collector under the Act, shall be appealable to the Collector within sixty days from the date of the order whereas Section 92(2) of the Act stipulates that all final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government, respectively, within ninety days from the date of the order complained of. In the present case the final order in confiscation proceeding has been passed by the Collector, hence it is appealable before the Excise Commissioner.

The Supreme Court in the case of C***ommissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal*** reported in ***(2014) 1 Supreme Court Cases 603*** has held that the discretion under Article 226 of the Constitution of India should not be exercised when there alternative efficacious remedy is available to the petitioner. Paragraph nos.15 and 16 of the judgment read as follows :

> *"15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in*

question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/ re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

In the circumstances, since efficacious alternative remedy of appeal is available to the petitioner, we are not inclined to interfere in the matter.

Accordingly, the writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks along with application for condoning the delay before the appellate authority when the appellate authority is expected to decide the appeal expeditiously within a period of ten weeks of its filing. Let the learned appellate authority consider the condonation of delay in view of the fact that the writ application was pending before this Court.

It is made clear that we have not expressed any opinion with regard to the merit of the case.

(Dinesh Kumar Singh, J)

sanjeev/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
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