IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17841 of 2021

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Maidul Shaikh @ Maidul SK S/o Late Bellah Shaikh @ Late Bellal Sk R/o Village- Nurpur, Ramakantapur, P.S.- Suti, District- Murshidabad (West Bengal).

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Excise Department.
2. The Secretary, Department of Excise, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate, Darbhanga.
5. The Superintendent of Police, Darbhanga.
6. The Officer in charge of Bahadurpur Police Station, District- Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Binod Murari Mishra, Advocate
For the Respondent/s	:	Mr.Kumar Manish (Sc5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 10-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

> "(i) For setting aside the order dated 27.7.2021 passed in Excise Revision Case No.54 of 2021 by the learned Addl. Chief Secretary, Bihar, Patna by which he has rejected the revision application filed by the petitioner against the order dated 19.1.2021 passed by the learned Commissioner in Excise Appeal No.226 of 2020 (Annexure 6 to this petition).
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> (ii) For setting aside the appellate order dated 19.1.2021 passed in Excise Appeal No.226 of 2020 by the learned Excise Commissioner, Bihar, Patna (Annexure 5) and also setting aside the order dated 28.1.2020 passed by the learned Collector, Darbhanga in Confiscation Case No.24 of 2019 (Annexure4).

(iii) Further for direction to the respondent concerned to release the vehicle of the petitioner bearing registration No.WB57 D 2161, Engine No.TBJ1D47067, Bolero Pick up goods carrier vehicle in favour of the petitioner which has been seized in connection with Bahadurpur P.S. Case No.423 of 2018 (G.O. Case No.852 of 2018) lodged on 23.9.2018 for the offences under Section 272/273/420/467/120(B) of the I.P.C. and Section 30(a)/32(2)/33/36/41(1) of the Bihar Prohibition and Excise Act.

(iv) For any other relief/reliefs for which the petitioner is found entitled in the fact and circumstances of the case."

Briefly stated the facts of the case is that on 23.9.2018 on a secret information received by the police, the vehicle, in question, was searched and huge quantity of illicit liquor was recovered from it and thereafter, a proposal was sent by Sr. Superintendent of Police, Darbhanga vide letter dated 7.1.2019 for confiscation of the present vehicle. The sample collected of the seized liquor was sent to the Forensic Lab and it was reported that the seized liquor is intoxicant. It has been observed by the confiscating/appellate/revisional authorities that no evidence was put forth by the petitioner in order to establish that the seized vehicle was not used for transportation of illicit liquor and, thereafter, passed order of confiscation of the vehicle which was affirmed by the appellate as well as revisional authorities. There is presumption in law that if any intoxicant is recovered from possession of accused, he has committed the offence and the vehicle becomes liable for confiscation, if same was used for carrying intoxicant, if not otherwise proved by the accused/owner.

At this stage, learned counsel for the petitioner submitted that he wants to re-purchase the confiscated vehicle in auction and, as such, a direction may be given to the authorities to permit petitioner to participate in the auction of the vehicle. Rule 14 of Bihar Prohibition and Excise Rules, 2021 deals with procedure of auction to be followed while auctioning the confiscated vehicle, which reads as follows:-

> **"14.Disposal of seized/confiscated things.**- The things seized/confiscated by the Collector may be disposed of by the order of Collector in the following manner:-
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> (I) If the Collector, is satisfied that any seized article, is liable to speedy and natural decay or is of trifling value or can be put to misuse, he may, in exercise of power under Section 57 of the Act, order for destruction of the same at any time before passing the order of confiscation.
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> (2) The confiscated Animal/vehicle/vessel/other conveyance/ premises or part thereof shall be put to public auction and sold to the highest bidder within a period of one month from the date of attainment of finality of order of the confiscating authority or such extended period as deemed fit by the Collector or may be put for government use in the manner prescribed.
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> **Explanation:** the word "finality" connotes the date of order of Excise Commissioner passed under Section 92 of the Act."

The writ petition is dismissed with liberty to petitioner to participate in the auction process and re-purchase his auctioned vehicle, if he is found to be the highest bidder in terms of above Rules.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2021
Transmission Date	NA