IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18262 of 2021

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Mukesh Kumar Raja, son of Ram Nath Sah, resident of Ward No. 7, Lalganj, P.S.-Kishanpur, District-Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Special Superintedent Prohibition, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector-cum-District Magistrate, Supaul.
5. The Senior Superintendent of Police, Supaul.
6. The Officer-in-Charge of Ratanpura Police Station, District-Supaul.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pramod Mishra, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 23-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

> “ A) To issue a writ in the nature of certiorari, setting aside order dated 10.08.2021 (Annexure-6) passed by Respondent No.2, Additional Chief Secretary-cum-special Superintendent Prohibition, Bihar, Patna, in Excise Revision Case No. 74/2021 affirming the order dated 18.12.2020 passed by Excise Commissioner in Excise Appeal Case No.125 2020 (Annexure-4) affirming the order dated 05.09.2020 passed by Collector-cum-District Magistrate, Supaul

> in Confiscation Case No. 457/2018 (Annexure-3) by which the Respondent Collector directed to confiscate the Mahndra Scorpio vehicle of the petitioner bearing Registration No. BR-11Y-3157 and rejecting the excise revision case of the petitioner for release of his vehicle which was filed in compliance of order dared 27.05.2021 passed by this Hon'ble Court in C.W.J.C. No. 5947 of 2021.
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> B) To issue a writ in the nature of certiorari, setting. aside order dated 05.09.2020 passed by the Collector-cum-District Magistrate, Supaul in Confiscation Case No. 457/2018 (Annexure-3) and also the order dated 18.12.2020 passed in Excise Appeal caw No.125/2020 (Annexure-4) by the Excise Commissioner. Bihar, Patna.
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> C) To issue a writ in the nature of mandamus directing/commanding the Respondents to release Mahndra Scorpio vehicle bearing, Registration No. BR-11Y-3157, in favour of petitioner which has been seized in connection with Ratanpura P.S. Case No. 65/2018 registered under Section 420 I.P.C. and Section 30(a) of Bihar Prohibition and Excise Act.
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> D)) Any other relief or reliefs, which this Hon'ble Court may deem lit and proper in the facts and circumstances may also he granted."

It is submitted on behalf of learned counsel for the petitioner that he has exhausted all the remedies provided under the Excise Act against the order passed by the confiscating authority and said order being upheld by the appellate authority and revisional authority.

It is an admitted fact that from vehicle of petitioner, 77 bottles each containing 300 ml. and 101 bottles each containing 300 ml. of illicit liquor was recovered and the illicit liquor and vehicle was seized by the police giving rise to Ratanpur P.S. Case No.65/18 registered punishable offence under Section 30(a) of the Bihar Prohibition of Excise Act 2016 and Section 420 of Indian Penal Code.

On the recommendation made by the police, a confiscation case being confiscation case no. 457 of 2018 was initiated against the vehicle of petitioner in which final order dated 10.08.2021 (Annexure 6) was passed by the confiscating authority, Patna by which, the vehicle of the petitioner was directed to be confiscated. The confiscating authority has held that in spite of granting several opportunities, petitioner did not produce any evidence in support of his defence that the vehicle of the petitioner was not used for transportation of illicit liquor and accordingly, passed the order to confiscate the vehicle of the petitioner. Appeal and revision preferred by petitioner were also dismissed and thereafter, petitioner has assailed the order passed by the confiscating authorities by filing this writ petition.

Section 32 of the Bihar Prohibition and Excise Act reads as follows:-

> **"32. Presumption as to commission of offence in certain cases.** - (1) In prosecution of an offence under this Act, the accused person would have to account for

> the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.
>
> (2) In the event of a failure to offer a satisfactory explanation, there shall be a presumption that the accused person is guilty of the commission of such offence, unless proved otherwise.
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> (3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise."

As there is presumption against the accused of committing offence under the Excise Act, once from his possession, illicit liquor has been recovered and the vehicle becomes liable for confiscation and exception of which is provided under Section 32 (3) of Excise Act.

Onus lies on the petitioner to establish, as mandated under Section 32(3) of the Excise Act, that the liquor which was recovered from the vehicle, there was no connivance of petitioner with respect to transportation of illicit liquor from his vehicle and he had no knowledge or information about it. However, petitioner has not led any evidence to discharge such onus, as such, presumption will be that the vehicle was being used for transpiration of illicit liquor and liable for confiscation.

Having heard learned counsel for the parties and considering the material available on record, we don't find any error or infirmity in the order passed by the confiscating authorities confiscating the vehicle of petitioner.

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

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