IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19384 of 2021

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Sahid son of Kundan Khan Resident of Village- Gundwas Aligarh P.S.- Hasanpur, District- Palwal (Hariyana). ... ... Petitioner/s

Versus

1. The State of Bihar through Secretary of the Excise Department, Bihar at Patna.
2. The Excise Commissioner, Bihar Patna.
3. The District Magistrate, Kaimur at Bhabua.
4. The Superintendent of Police, Kaimur at Bhabua.
5. The Superintendent of Excise, Kaimur at Bhabua.
6. The Investigating Officer of Police Station Chand, District- Kaimur at Bhabua.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dharmendra Kumar Singh, Advocate

For the Respondent/s : Mr.Vikash Kumar (Sc11)

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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 following relief:-

i) To issue an appropriate writ, order or directions including a writ in the nature of certiorari to quash the order dated 29-09-2021 as passed by lerned court of Additional Chief Secretary, Bihar, Patna in Excise Revision No. 156 of 2021 and issuance a writ order or direction including a writ in the nature of mandamus commanding the respondents to release the seized vehicle bearing its Registration no **HR73-8035 (TRUCK)** arising out of EXCISE case No. **132 of 2020** relates to the petitioner has been confiscated without proper reason .

(ii) To issue an appropriate writ/order/direction directing the respondents not to take any coercive measures against the petitioner.

Briefly stated the facts of the case is that informant who is an Excise officer has alleged that on 18.12.2019 while checking the vehicle, a Truck coming was stopped and on its search, 2376 litres of illicit foreign liquor was recovered and thereafter the illicit liquor and the vehicle were seized and seizure memo was prepared and the driver/cum-owner and cleaner were arrested giving rise to Excise Case No.849/2019 instituted under Sections 30(a), of the Bihar Prohibition and Excise Act and on recommendation of the police, confiscation case being confiscation case no.198/2019 was initiated against the owner of the vehicle.

Show cause was filed on behalf of owner of the vehicle and thereafter by a cryptic and unreasoned order, the vehicle has been confiscated and appeal and revision preferred were dismissed.

The procedure to be followed by the Confiscating Authority has been enumerated under Rule 13 of Bihar Prohibition and Excise Rules, 2021 which reads as follows:-

> "13.(A) Seizure of animal/vehicle/vessel/other conveyance.- (i) On interception and search, if an officer within the meaning of Section 73 of the Act finds that any animal, vehicle, vessel or other conveyance is being used for carrying any intoxicant or liquor, then the same shall be seized and forwarded to the nearest police station/Excise Office within whose jurisdiction the seizure has been affected along with seizure list for institution of case.
> (ii) Upon institution of the case, the proposal for

> confiscation of animal/vehicle/vessel/other conveyance shall be sent to the Collector along with due verification report of the District Transport Officer or any authority authorized for the purpose of registration of the conveyance and the report of chemical examination within 30 days of seizure. In case of delay in submission of the proposal for confiscation, the police/Excise Officer will have to explain the delay.
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> (B) Confiscation of Vehicles, Vessels or other Conveyance.- (i) The Collector, on receipt of proposal for confiscation of any vehicle(s) or other conveyance from Police Officer/Excise Officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance.
>
> (ii) Such notice issued by the Collector shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.
>
> (iii) the Collector shall provide reasonable opportunity of hearing to the owner. The Investigating Officer/Inquiry Officer shall also be given opportunity to participate in such hearing.
>
> (iv) If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order *ex-parte.*
>
> (v) The Collector, after hearing the parties, on satisfaction that an offence has been committed in terms of the Act, shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be.
>
> (vi) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these Rules."

It is true that Excise Act carries a reverse burden of proof but initial burden lies upon the department to prove the FIR, search, seizure and recovery of the illicit liquor from the seized vehicle and the report of the chemical analyst and thereafter only the initial burden of the department stands satisfied and burden shifts upon the owner of the vehicle to account for satisfactory explanation in respect of illicit liquor recovered from his vehicle. In absence of which, order for confiscation of the vehicle can be passed.

In present case, none of the procedures, as prescribed under the Excise Rules, has been followed by the confiscating authority and department has failed to discharge its initial burden to prove search, seizure and recovery of the illicit liquor from the seized vehicle, as no documentary or oral evidence has been led by the department. Even the report of chemical analyst does not find mention in the order passed by the confiscating authority and the order has been passed in a most cryptic and mechanical manner and does not contain the necessary ingredients required in an order passed by quasi judicial authority discharging its statutory function, if the original order is not sustainable, the appellate and revisional order also falls flat.

For the reasons, as stated above, the impugned orders are not sustainable either in law or on fact and accordingly set aside. The case is remanded to the confiscating authority, Bhabua to hold a de novo proceeding and to pass a fresh order in accordance with law following the procedure rule, as enshrined under the Excise Rules. It is made clear that department has to discharge its initial burden to prove the content of FIR, search, seizure memo as well as report of chemical analyst by producing oral as well as documentary evidence before the confiscating authority with a right of cross-examination by the owner of the seized vehicle. Once it is prima facie established that recovery has been made from the seized vehicle of the owner then onus shifts upon the owner of the vehicle to account satisfactorily of illicit liquor recovered from his vehicle and in absence of which, the vehicle becomes liable for confiscation. Owner shall also be given opportunity to lead defence by producing oral and documentary evidence. Confiscating proceedings are quasi judicial proceeding and confiscating authority should discharge his statutory function as independent adjudicator.

With aforesaid observations and directions, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2022
Transmission Date	NA