**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.19652 of 2021**

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Binod Kumar Son of Surendra Mahto Resident of Sector-4E, Block-9, Jhopri, P.S.- Sector-4, District- Bokaro (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Excise Commissioner, Excise Department, Government of Bihar, Patna.
2. The Excise Commissioner Bihar, Patna.
3. District Magistrate-cum- Collector Bhagalpur.
4. The Excise Superintendent Bhagalpur.
5. The Sub. Divisional Officer Bhagalpur.
6. The Superintendent of Police Bhagalpur.
7. The Station House Office (S.H.O.) Jagdishpur P.S., District- Bhagalpur.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr.Mithilesh Kr. Arya, Advocate
For the Respondent/s : Mr.Kumar Manish ( SC 5 )

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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) A writ in the nature of Certiorari or any other appropriate writ/s, order/s, direction/s quashing the following:-
>
> i) The order dated 14.09.2021 passed in Excise Revision Case No. 127/2021 by the Additional Chief Secretary-cum- Principal Secretary, Department of Excise, Govt. of Bihar, Patna holding that the impugned confiscation order passed by the learned Collector, Bhagalpur and the appellate order passed by the learned Excise Commissioner

do not suffer from any illegality, Therefore, this revision petition is rejected.

ii) The order of confiscation dated 16.12.2000 passed by the District Magistrate-cum-Collector Bhagalpur in Confiscation (Excise) Case No. 381/2019-20 arising out of Jagdishpur P.S. Case No. 286/2019 dated 21.12.2019 u/s 30(a) of Bihar Prohibition and Excise Act, 2016 confiscating the seized Mahendra Pickup vehicle of petitioner bearing Registration No. JH-09AL-6661 having Chasis No. MA1ZN2TBKJ1D35785, Engine No. TBJ1D45395 and further directed to the Excise Superintendent, Bhagalpur to conduct the auction of the aforesaid vehicle of the petitioner and deposit the auctioned amount in the treasury.

iii. The appellate order dated 05.03.2021 vide Exercise Appeal no. 132/2021 passed by Excise Commissioner, Bihar, Patna by which he had mechanically upheld the order of confiscation passed by Colector, Bhagalpur.

B) A writ in the nature of Certiorari or any other appropriate writ/s, order/s, direction/s quashing the following:-

i) To hold the order/decision contained in Annexure- 1, 2 & 3 to the petition to be nullity and non-est in the eye of law.

ii) To stay the auction proceeding of the aforesaid vehicle of the petitioner.

iii)To grant ad-interim relief to release the aforesaid vehicle of the petitioner in question in favour of the petitioner, during pendency of this writ petition.

C) To any other relief/reliefs to which the petitioner is found entitled to.”

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, 822.6 litres of country made liquor was recovered and the illicit liquor and vehicle was seized by the police giving rise to Excise Case No.286/19 under Section 30(a) of the Bihar Prohibition of Excise Act 2016.

On the recommendation made by the police, a confiscation case being confiscation case no. 351 of 2019-20 was initiated against the vehicle of petitioner in which final order dated 16.12.2020 (Annexure-1) was passed by the confiscating authority, Bhagalpur 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.

(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 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 transportation/carrying 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)**

K.C.Jha/-

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 03.01.2022 |
| **Transmission Date** | |