IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.881 of 2022

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Ramadhar Ram Son of Yamuna Ram, Resident Kushwaha Mela Dildarnagar, P.S. - Dildarnagar, District - Gazipur, Uttar Pradesh, PIN - 232326.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Department of Liquor Prohibition and Excise, Government of Bihar, Patna.
2. The Additional Chief Secretary Excise, Patna.
3. The Commissioner, Office of Excise, Secretariat, Patna.
4. The District Magistrate - Cum - Collector, Aurangabad, Bihar.
5. The Additional District Magistrate - Cum - Collector, Aurangabad, Bihar.
6. The Superintendent of Police, Aurangabad, Bihar.
7. The S.H.O., Aurangabad Town Police Station, Aurangabad, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Satish Kumar Pandey, Advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 5)

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

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

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

> “ (i) To issue an appropriate writ/writs, order/orders direction/directions including a writ in the nature of Certiorari to quash the order dated 11.12.2021 passed by the learned Additional Chief Secretary Excise, Bihar in Revision Case No. 154/2021 by which the learned Additional Chief

Secretary Excise, Bihar (OP no. 2) confirmed the order dated 22.02.2021 passed by the learned Commissioner, Excise, Patna (OP no. 3) in Excise Appeal No. 84/2021 in which the learned Commissioner (OP no. 3) has confirmed the order dated 22.12.2020 passed by the Additional District Collector, Aurangabad (OP no. 5) in Excise Confiscation Case No. 621/2019 (in connection with Aurangabad Town P.S. Case No. 261/2019 dated 01.08.2019 registered under Section 30(a)/37(b) of Bihar liquor Prohibition and Excise Act, 2018) in which the Additional District Collector, Aurangabad (OP no. 5) has confiscated the Scorpio jeep bearing Registration no. UP-61AH-6262,Chassis no. MAITA2WR2H2M11862, Engine no. WRH4M17042 passed by the Hon'ble Chief Justice and the Hon'ble Justice S. Kumar of Patna High Court in C.W.J.C. NO. 3835 of 2020 filed by the petitioner.

(ii) To issue an appropriate writ or direction or order/orders to give direction to the respondents to take no coercive measures against the vehicle of the petitioner.

(iii) To grant any other writs/orders/directions to give relief/reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 750 ml. of illicit liquor from the seized vehicle of the petitioner.

It is further submitted that a meagre quantity of 750 ml. of liquor has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

It is submitted on behalf of counsel for the State that during pendency of writ petition, there has been amendment in the Bihar Prohibition and Excise Rules, 2021 and a new Rule 12(A) has been inserted which reads as under:-

> **“12. A. Release of Vehicles, Conveyance etc. on payment of Penalty:-** (1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of section -57B(1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.
>
> Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.
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> (2) The penalty shall be 50% of the latest insured value of vehicle/conveyance. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer and 50% of that value shall be the amount of penalty.
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> In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction.
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> (3)Notwithstanding above, if on a report by police

officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction / disposal.

(4) Where the conveyance is such that its valuation / insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle / conveyance shall, after the release of the vehicle / conveyance, produce the vehicle/ conveyance as and when required by the authorities.

[Explanation:- **In all pending / ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released.]”**

In said view of the matter, the writ petition is disposed of with liberty to petitioner to avail the remedy of the amended provision 12(A) of the Bihar Prohibition & Excise (Amendment) Rules, 2022. It is made clear that this Court has not expressed any opinion with respect to merit of case.

Equally, liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if so arises.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	