IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10975 of 2022

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Raushan Lal Son of Shiv Narayan, resident of Village Bharthipur P.S. Purakalander District - Faizabad Ayodhya (U.P)

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Excise Prohibition and Registration Bihar, Patna.
2. The Additional Chief Secretary Govt. of Bihar, Patna.
3. The Excise Commissioner Bihar, Patna.
4. The District Magistrate, Madhubani.
5. The Superintendent of Police, Madhubani.
6. The Sub-Divisional Magistrate, Madhubani.
7. The Officer in Charge Andhratharhi Police Station District Madhubani.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Ratanakar Jha, 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)

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

Date : 05-08-2022

Heard learned counsel for the parties.

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

1. That the instant writ petition has been filed invoking the extra writ Jurisdiction interalia for the following relief/s

(i) To issue an appropriate order /s, direction/s including a writ preferably in the Nature of CERTIORARI for quashing the order dated 11-6-2022 passed in Excise Revision No. 143 of 2022 passed by the Additional Chief Secretary Bihar Patna (Hereinafter referred to as Revisional Authority under the Bihar Excise and Prohibition Act as amended 2018) has disposed of the Revisional Case No. 143 of 2022 directing the Sub-Divisional Officer Jhajharpur (Madhubani) that he may be proceed with Auction in the confiscation proceedings as per the Act.

ii) To quash the order dated 25-03-2022 passed in Excise Appeal case No. 176 of 2022 passed by the Excise Commissioner Patna whereby and whereunder he has dismissed the said Excise appeal and affirmed the order dated 12-11-2021 passed in Confiscation case No. 78/2021 passed by the Sub-Divisional Magistrate, Madhubani Confiscating Authority under the Bihar Prohibition and Excise Act as amended 2018.

iii) To Direct the Sub-Divisional Magistrate, Jhanjharpur District

Madhubani to release the petitioner's Vehicle Truck having registration No. UP42BT4152 seized and confiscated in connection with Andhrathadi P.S. case No. 71 of 2021 registered for the offences punishable under section 272,273 of Indian Penal Code read with section 30(a) of the Bihar Prohibition and Excise act 16 as amended 2018 in terms of section 57 B of the Bihar Prohibition and Excise Amendment Act 2022 vide Act 3 of 2022.

iv) To any other relief/s to which the petitioner may be found entitled in the facts and circumstances of the case.

Petitioner claims to be the owner of the seized truck.

Allegation is recovery of 583.875 litres of illicit liquor from the seized vehicle of the petitioner.

It is submitted by learned 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) as well as 57B have 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.
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> 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.
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> (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.
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> (5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.
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> (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.]

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

[Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.]

[Explanation 2: The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.]

[Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]**”**

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) and 57B 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	