IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18362 of 2021

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Santosh Kumar, Son of Shri Lakhi Rajak, Resident of Village-Dan Nagar, Ward No. 06, Police Station and District-Khagaria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secreary, department of Registration, Excise ad Prohibition, Government of Bihar, Patna.
2. The Additional Chief Secretary, Government of Bihar, Patna.
3. The Excise Commissioner, Government of Bihar, Patna.
4. THe District Collector Cum District Magistrate, Jamui.
5. The State of Bihar through the Director Genral of Police, Bihar.
6. The Superintendent of Police Station, District-Jamui.
7. The S.H.O. of Chakia Police Station, District-Jamui.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amar Anand, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP7)

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-05-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

. That this civil writ is being filed on behalf of the Petitioner for issuance of direction/directions, order or orders commanding upon the respondents to set aside the order of the Revisional Authority Additional Chief Secretary, Govt. of Bihar, Patna in Revision Excise Case No. 59 of 2021 and also of Excise Commissioner Bihar, Patna in appeal No. 167 of 2020, against the confiscation order of the vehicle of the Petitioner vide Hyundai i10 four wheeler Engine No. G4LAHM-524326 and Chasis N. MALA-851CLHM684349 which has been seized by the Chakia Police Station Case District-Jamui in connection with First Information Report No. 35 of 2018 dated 17.03.2018, G.R. No. 800/18 J.M. Jamui which has been instituted on the basis of the written report of Ram Prakash Ram, A.S.I. Chakia Police Station Under sections 273/34 of the Indian Penal Code and Section 30 (a) of the Bihar Excise Act, 2016.The appeal has been filed before the Excise Commissioner Bihar, Patna in Jamui Confiscation Case No. 99 of 2018 of the District Magistrate cum Collector Jamui who has passed the order dated 08.11.2019 to confiscate the above said vehicle which has been was challenged in the appellate court of Excise Commissioner, Bihar, Patna vide Appeal Case No. 167 of 2020 and dismissed the appeal on 22.12.2020. Thereafter, by the order of the Hon'ble High Court in CWJC No. 5594 of 2021, to avail the statutory provision of revision authority who has rejected the same without considering the facts and circumstances of the case.

The Photo / Typed Copy of the Order dated 22.12.2020 passed in Appeal No. 167 of 2020 as well as the order of Excise Revision Case No. 59 of 2021 are being annexed herewith and marked as **Annexure-1 and 1/A** to this Petition.

Allegation is recovery of 80 litreS of beer from the seized vehicle of the petitioner.

Petitioner claims to be the owner of the seized vehicle.

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.
>
> 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18.05.2022
Transmission Date	