IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19775 of 2021

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Pappu Giri @ Pappu Kumar Giri Son of Kishore Giri, Resident of Village - Bherhawa, P.S. - Runnisaidpur, District - Sitamarhi.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate - Cum - Collector, Sitamarhi, District - Sitamarhi.
5. The Superintendent of Police, Sitamarhi, District - Sitamarhi.
6. The Excise Superintendent, Sitamarhi, District - Sitamarhi.
7. The District Transport Officer, Sitamarhi, District - Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pushpendra Kumar Singh, Adv
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 THE CHIEF JUSTICE)

Date : 01-04-2022

Heard learned counsel for the parties.

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

> "(I) For issuance of an appropriate writ in the nature of of **CERTIORARI** for quashing the order dated 05.08.2021 passed by the Additional Chief Secretary, Respondent no.2 in Excise Revision No.58 of 2021 and communicated to all concerned vide memo no. 659 dated 05.08.2021 whereby and where under the Respondent no.2 has been pleased to dismiss the revision application filed by the petitioner and affirm the order passed by the learned Collector, Sitamarhi and the appellate order passed by the learned Excise Commissioner.

(II) For issuance of an appropriate writ in the nature of **CERTIORARI** for quashing the order dated 29.09.2020 passed by the learned Excise Commissioner, Respondent no.3 in Excise Appeal Case No.94 of 2020 and communicated under memo no.3929 dated 11.12.2020 whereby and where under he has been pleased to dismiss the appeal filed by the petitioner and affirm the order dated 10.02.2020 passed by the Respondent no.4 in Confiscation Case No. 555 of 2019.

(III) For issuance of an appropriate writ in the nature of For **CERTIORARI** for quashing the order dated 10.02.2020 passed by the Respondent no.4 in Confiscationm Case No.555 of 2019 arising out of Excise Case No. GO- 69/2019 ,whereby and where under he was pleased to confiscate **the Hero Honda Splendor** Motorcycle of the petitioner on the ground that the said order was passed by the Respondent no. 4 in gross violation of Section -58 of the Bihar Prohibition Excise Act as also the principles of NATURAL JUSTIE since it was passed by the Respondent no. 4 without any valid notice or providing any opportunity of hearing to the petitioner.

(IV) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to release the Splendor Motorcycle bearing Reg No. BR-06CA-0757 Chassis MBLJHAW082KHF17977, Engine No. HA10AGKHF27137 in favour of the petitioner which was illegally seized in connection with Excise Case No. GO-69/2019 interalia on the ground that in fact there is no recovery from the conscious possession of the petitioner."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 61 litre 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) 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.
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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.

(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)

ranjan/-

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