IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20275 of 2021

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Sarwar Ali @ Md. Sarvar Ali, Son of Samimuddin, Resident of C/o Samimuddin, 13/A/H/5, Marcus Square, VTC Barabazar, P.O. and P.S.-Bara Bazar, District-Kolkata, West Bengal.

... ... Petitioner/s

Versus

1. The State of Bihar Bihar
2. The Additional Chief Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar Prohibition and Excise Department, Bihar, Patna.
4. District Magistrate Cum Collector, Vaishali.
5. The Additional Collector, Vaishali.
6. The Superintendent of Police, Vaishali.
7. The Superintendent of Excise, Vaishali.
8. The Station HOuse Officer, Kathara O.P., Vaishali.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Abhishek Kumar, Adv
For the Respondent/s : Mr.Vikash Kumar (SC11)

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(The proceedings of the Court are being conducted by Hon’ble the Chief Justice /Hon’ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

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

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

Date : 22-04-2022

Heard learned counsel for the parties.

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

> "(i) For issuance of writ in the nature of certiorari to quash the order dated 26.10.2021 (Annexure P/7) in Excise Appeal Case no. 193/2021 passed by the Learned Additional Chief Secretary of Excise and Prohibition Department, (Respondent no. 2) by which the order dated 05.03.2021 (Annexure P/5) and the order dated 13.07.2021

(Annexure P/6) was confirmed.

(ii) For issuance of writ in the nature of certiorari to quash the order dated 13.07.2021 (Annexure P/6) in Excise Appeal Case no. 356/2021 passed by the Learned Commissioner of Excise and Prohibition, (Respondent no. 3) by which the order dated 05.03.2021 (Annexure P/5) passed by the Learned Additional Collector, Vaishali in Confiscation Case No-218/2021-21 was confirmed.

(iii) For issuance of writ in the nature of certiorari to quash the order dated 05.03.2021 (Annexure P/5) passed by the Learned Additional Collector, Vaishali in Confiscation Case No-218/2021-21 by which the vehicle of the Petitioner namely Truck (Tata Company) bearing Registration No WB-23F-1418 (hereinafter referred to as "Petitioner's Vehicle") has been confiscated under Section 58(2) of the Bihar Prohibition and Excise Act 2016 and direction has been issued to the Circle Officer, Mahua to complete the process of auction of the vehicle and submit the proceeds to the treasury of the Government.

(iv) For a direction to the respondent authorities to release petitioner's vehicle, which has been seized under the Confiscation Case No- 218/2021-21 by order dated 05.03.2021 (Annexure P/5), registered for the offences under Section 30(a) and 41 of Bihar Prohibition and Excise Act 2016.

(v) Further prayed for issuance of a consequential writ in the nature of a writ of mandamus or any other appropriate writ order or direction commanding the Respondent Authorities to not to take any coercive steps against the vehicle during the pendency of this writ application.

(vi) For reading down Section 56 (b) of the Bihar Excise and Prohibition Act, 2016 to the effect that the vehicle of the Petitioner's vehicle cannot be confiscated unless the liability of the owner is proved in a trial in a court as designated under section 83 or section 84 of the Act.

(vii) For holding that the respondent no. 5 erred in not releasing the petitioner's vehicle given the fact that the vehicle was already "deemed to be released" in terms of the order dated 21.09.2020 passed by this Hon'ble Court in CWJC 7866 of 2020 as the confiscation proceedings were not completed withing 90 days from the appearance of the parties.

(viii) For holding that the Respondent erred in

> confiscating the Petitioner's Vehicle in connection with Kathara O P P.S Case no 179/2020 dated 25.05.2020 given the fact that the FIR and Seizure List has not yet been proved to be true in a Competent Court of Law."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 2160 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) 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.
>
> 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.]

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.]
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> [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)

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