

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20563 of 2021

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Uttam Kumar S/o Late Ishwari Singh R/O Mohalla - Near Patna Dairy Project
Fulwari Sharif, P.S. Fulwari Sharif, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise Department, Bihar, Patna, New Secretariat, Bailey Road.
2. The Excise Commissioner, Bihar, Patna, New Secretariat Bihar, Patna.
3. The Divisional Commissioner, Excise Department, Purnea.
4. The District Magistrate, Purnea.
5. The Superintendent of Police, Purnea.
6. The Station House Officer, Dalkola, Purnea.
7. The A.S.I, Excise Arm Forces Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ram Shankar Das, Advocate
For the Respondent/s	:	Mr.Kumar Manish (SC5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

i. To Quash the order dt. 13.03.2020 passed in Excise Case No.54/2020 whereby the learned Collector, Purnea without perusing the show-cause filed by the petitioner and without perusing the records passed the order by saying that the material ,s as kept for transportation whenever no transportation was made from one place to another place.

ii. To Quash the order dt. 23.09.2020 passed

in Appeal Case No.66 of 2020 whereby the learned Excise Commissioner, Bihar Patna rejected the Appeal without perusing the material available on records by conforming the order of Collector whenever the order of confiscation is unjust, improper otherwise bad in law.

iii. To Quash the order dt. 24.08.2021 passed in Excise Revision Case No.83 of 2021 whereby the learned Additional Chief Secretary, Prohibition Excise & Registration Department, Bihar, Patna rejected the revision without perusing the material available on records by conforming the order of Collector as well as Appellate order and repeated the same passed by above authorities without considering that only little quantity of three litters of liquor, not meant for transportation, having nit case against the vehicle.

iv. To direct the Respondents audio! ity to release forthwith the vehicle private Car Skoda Octiva with loss & damage bearing its registration No BROICF0009 having Engine No. CJS094950 and Chesis No. TMBBDCNE9FA006448 to the petitioner to which has been seized in C.I. Case No. 256 of 2019 and pending in the Court of Sub-Judge Excise Act, Purnea, in C.I. Case No. 256 of 2019, which has been kept in open sky at Purnea.”

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 3 litres of illicit liquor

from the seized vehicle of the petitioner.

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.

(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.]”**

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	