

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21092 of 2021

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Raushan Kumar Mishra, Son of Late Naresh Mishra, Resident of Village-Benipatti Sarisab Tole, P.O. and P.S.-Benipatti, Dist.-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Bihar Prohibition and Excise Act, Govt. of Bihar, Patna.
2. The Revisional Authority-Cum-Additional Chief Secretary Bihar, Patna.
3. The Appellate Authority-Cum-Excise Commissioner, Bihar, Patna.
4. The Collector-Cum-District Magistrate, Darbhanga.
5. The Senior Superintendent of Police, Darbhanga.
6. The Excise Superintendent, Darbhanga.
7. The Sub-Inspector Police Station, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar, 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 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 : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

- I) To quash the order dated 26.10.2021 passed by learned Revisional Authority-cum-Additional Chief Secretary, Bihar, Patna in Excise Revision No. 190/2021 whereby he has without considering the merit of the case, rejected the revision application of the petitioner.

- II) To quash the order dated 31.08.2021 passed by learned Appellate Authority-cum-Excise Commissioner, Bihar, Patna in Excise Appeal Case No. 498/2021 by which the learned appellate authority on the basis of surmises and conjectures affirmed the order 11.10.2017 passed by the learned Collector, Darbhanga in Confiscation Case No. 75 of 2017.
- III) To quash the order dated 11.10.2017 passed by the learned Collector, Darbhanga in Confiscation Case No. 75 of 2017 whereby the learned court without considering the show-cause and without examining the material available on record assumed that the vehicle in question is being used for transportation of illicit foreign liquor and passed an order to confiscate the vehicle bearing Reg. No. BR07GA-3882.
- IV) For any other relief/reliefs for which the petitioner is entitled to.

Allegation is recovery of 24 cartoons of illicit liquor from the seized vehicle of the petitioner.

Petitioner claims to be the owner of the seized vehicle.

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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2022
Transmission Date	NA