

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7374 of 2023

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M/s Zenith Corporation, 5-A, Jain Nagar, Meerut, U.P.- 25002, through its proprietor Kapil Maheshwari (male) aged about 39 years, S/o Late J.L. Maheshwari, Resident of 221, New Premपुरi, Railway Road, Meerut, U.P- 250002

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
2. The Additional Chief Secretary, Prohibition Excise and Registration Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Excise and Prohibition Department, Govt. of Bihar, Patna.
4. The Assistant Excise Commissioner, Excise and Prohibition Department, Govt. of Bihar, Patna.
5. The District Magistrate, Sitamarhi.
6. The Senior Deputy Collector, Sitamarhi.
7. The Superintendent of Police, Sitamarhi.
8. The Excise Superintendent, Sitamarhi.
9. The Excise Inspector, Sitamarhi.
10. The Station Head Officer, P.S.- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shambhu Sharan Singh, Advocate
Mr.Rohit Singh, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP-7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-05-2023

The petitioner is concerned with the confiscation of articles seized in the course of inspection conducted by the Excise Officials on 28.02.2022. During inspection, 2193.450 litres of IMFL was recovered. A truck bearing Registration No. UP21CN-7847 was confiscated. The contraband was hidden behind the surgical hospital items which were transported in the truck. The petitioner approached this Court with CWJC No. 6889 of 2022 seeking release of the 217 Nag of surgical items along with other items used in the hospital for the patients like Fabric Bundles, Gauze Than, Bandage Than, Pillow cover, Mosquito net, Blanket, Bedsheets and Bed Cover etc. A Division Bench of this Court by judgment dated 10.05.2022 directed the petitioner to approach the Special Court Excise under Section 451 of the Cr.P.C. The following direction was issued by the Division Bench:-

“As recovered and seized surgical items along with other items used in the hospital for patients, like Fabric Bundles, Gauze Than, Bandage Than, Pillow cover, mosquito net, blanket, bed sheets and bed cover is not liable for confiscation under section 56 of the Excise Act, as such, bar of jurisdiction in confiscation under section 60 of the



Excise is not applicable and the special court excise has jurisdiction to pass order for release of aforesaid seized materials during pendency of trial.

The Exclusive Special Excise Court -II, Sitamarhi however, rejected the prayer for release as per Annexure-7; which according to us is a clear contempt of the order passed by this Court. Again in appeal, the Appellate Authority dismissed the appeal filed against the confiscation order (Annexure-5) produced as Annexure-8. A further revision carried was also unsuccessful as per Annexure-9.

Learned Government Advocate specifically refers to Section 56 of the Excise Act where confiscation of seized items also included any other items having bearing with the case. It is the submission of the learned Government Advocate that when the vehicle was inspected, the contraband was hidden under the surgical items seized by the Seizing Officer. In fact, there was a direct nexus with the crime of transportation of contraband since the contraband was transported in the garb of surgical items which were placed on top to hide the contraband.

We are inclined to agree with the learned Government Advocate in so far as the interpretation of Section 56 is concerned, however, we notice that a Division Bench of



this Court had held otherwise looking at the facts and also Section 56. The finding of the Division Bench is extracted hereinabove. In the above circumstances, we are of the opinion that in so far as the specific surgical hospital items referred to by the Division Bench, there cannot be any confiscation proceedings under Section 56 of the Excise Act. Though, we hasten to add that it is not a declaration of law as such, we also notice that the Government has not chosen to file any further proceedings from the order of the Division Bench at Annexure-6 and hence it has attained finality. We are hence of the view that the surgical hospital items recovered on seizure of the contraband has to be released to the petitioner as per the order passed at Annexure-6.

We are, however, distressed by the fact that the Special Judge, Exclusive Special Excise Court-II, Sitamarhi and also the Additional Chief Secretary, Bihar, Patna who passed the revisional order (Annexure-9) having noticed the order in CWJC No. 6889 of 2022 (Annexure-6) refused to follow the same. We are of the opinion that *prima facie*, there is contempt of the orders of this Court by both the said Officers. We hence direct the Registry to issue *suo motu* contempt proceedings against the Officer who passed Annexure-7 order and the



Officer who passed Annexure-9 order, after verifying their details and *suo moto* contempt shall also contain the annexures produced in the above case.

The writ petition stands disposed of with the above directions.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Anushka/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	19.05.2023
Transmission Date	

