

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9034 of 2023

Shivpujan Yadav @ Shivpujan Singh, S/O - Doman Singh, Resident of
Village - Alampur, P.S.- Shivsagar, District-Rohtas, Bihar- 821113.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar.
2. The Excise Commissioner, Patna, Bihar.
3. The Assistant Excise Commissioner, Rohtas, Bihar.
4. The Collector-cum-District Magistrate, Rohtas, Sasaram, Bihar.
5. The Excise Superintendent, Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Priyajeet Pandey, Advocate Mr. Abhinav Alok, Advocate Ms. Shrishti Pandey, Advocate
For the Respondent/s	:	Mr. Kumar Manish (SC5)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-08-2023

With the consent of the learned counsel for the respective parties, matter is taken up for final disposal.

2. In compliance of our previous order dated 03.08.2023, Sanjay Kumar Sinha, ADM, Rohtas is present in the Court.

3. A supplementary affidavit has been filed on behalf of respondent nos.3 and 4 which is taken on record.

4. In the instant petition, petitioner has prayed for the following reliefs:-



- (i) For issuance of writ in the nature of Certiorari for setting aside the order dated 06.04.2023 in Excise Revision Case No. 12 of 2023 whereby and where under the Learned Principal Secretary, Excise Department, Government of Bihar imposed penalty of Rs. 5,00,000/- (reducing it from Rs. 7,00,000/- to Rs. 5,00,000/-) against the petitioner for release of the confiscated premises and upheld the order of learned Collector-cum-District Magistrate, Rohtas, Sasaram dated 13.12.2022 in Excise confiscation case No. 320 of 2022 arising out of Sasaram (town) P.S. Case No. 161 of 2022 dated 28.02.2022 under Rule 12B of Bihar Prohibition and Excise (Amendment) Rules, 2022.
- (ii) For directing the respondent authorities to furnish the details pertaining to the basis of calculation while imposition of penalty against the petitioner as the same is in contravention of Sub clause 2 of Rule 12B of Bihar Prohibition and Excise (Amendment) Rules, 2022 in the instant matter.
- (iii). For passing of any order(s), directions(s) which this Hon'ble Court deems fit and proper.

5. In the confiscation order dated 13.12.2022, the Confiscating Authority has imposed fine of Rs. 7,00,000/-. Such imposition of penalty of Rs. 7,00,000/- is in the absence of reasoning. That apart, it is reliably learnt that the Collector is stated to have taken certain material information in respect of value of the subject matter of the premises and thereafter, proceeded to impose penalty of Rs. 7,00,000/-. Appellate authority confirmed the orders of confiscating authority.



Thereafter, it was reduced to Rs. 5,00,000/- by the revisional authority.

6. We have perused the order dated 13.12.2022 read with Sub-rule (2) of Rule 12B of Bihar Prohibition and Excise Act, 2021. Confiscating Authority's order dated 13.08.2022 is not in terms of Sub-rule (2) of Rule 12B of Bihar Prohibition and Excise Rules, 2021. Therefore, impugned confiscation order and consequential order of appellate authority and revisional authority are set aside. Matter is remanded to the Confiscating Authority to re-determine the penalty after giving ample opportunity of hearing to the petitioner.

7. The above exercise shall be completed within a period of three months from the date of receipt of this order.

8. The Collector is hereby directed to re-assess the penalty in the light of Sub-rule (2) of Rule 12B of Bihar Prohibition and Excise Rules, 2021.

9. Accordingly, the writ petition stands disposed of.

10. Invariably we have come across identical orders being passed by the competent authority insofar as imposition of penalty under the confiscation proceedings without due consideration of Rule 12-B (2) of Bihar Prohibition and Excise Rules, 2021. Therefore, the competent authorities are hereby



directed to take note of Sub-rule (2) of Rule 12 of Bihar Prohibition and Excise Rules, 2021 before determining the penalty.

11. Let a copy of this order be forwarded to the Additional Chief Secretary, Prohibition and Excise, Govt. of Bihar to guide the respective Collectors who are handling confiscation proceedings.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/-
Balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2023
Transmission Date	

