IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8873 of 2023

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Rajan Kumar S/o-Vinod Patel Resident of Village-Ekdari Manglpur, P.O.-Bahri Bankatwa, P.S.-Sikta, District-West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The Principal Secretary, Transport Department, Government of Bihar, Patna.
4. The District Magistrate, Patna District
5. The Senior Superintendent of Police, District-Patna.
6. The District Transport Officer, Muzaffarpur, District-Muzaffarpur.
7. The District Transport Officer, Patna, District-Patna.
8. The Officer-in-Charge, P.S.-Agamkuan District-Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gauri Shankar Thakur, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP- 7)
		Ms. Supragya, AC to GP-7

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

Date : 25-08-2023

Heard learned counsels for the parties.

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

> "1. That the petitioner is filing this present writ application for setting aside the order dated 23.02.2022 passed by Respondent No. - 4, in Confiscation Case

No. 4110/2021-22 whereby and where under the Respondent No. - 4 has directed to confiscate the Vehicle bearing Regd. No. - BR06GD7170 Seized in connection with Agam Kuan P.S. Case No. 574/ 21 instituted U/S 467, 468, 471, 414, 120 (B) I.P.C. and 30(a), 41(1) of Bihar Prohibition & Excise Act against the Owner of the aforesaid vehicle and other accused persons further the authorities namely D.T.O. Muzaffarpur be directed to except payment of Road Tax for a dues period from 29.10.2022 without any Penalty in respect of Vehicle No.- **BR06GD7170**, **Chesis No. - MAT764011K7B02435 Engine No. - 5LNGDICRR17 APY4501204** and for issuance of any writ, writ, order, orders for which the petitioner found entitled the facts and circumstances of the case."

3. The petitioner is a registered owner of the motor vehicle bearing Registration No. BR06GD7170 which is stated to have been involved for the offences under the Excise Act. In this regard an F.I.R. was registered bearing Agamkuan P.S. Case No. 574 of 2021 dated 20.07.2021. Parallelly, confiscation proceedings were initiated and it was concluded on 23.02.2022.

4. Feeling aggrieved by the confiscation proceedings petitioner has filed this writ petition.

5. Even though petitioner has statutory remedy of appeal before the appellate authority and further revision under Sections 92 and 93 of the Bihar Prohibition & Excise Act, 2016 respectively, he has rushed to this Court. Ordinarily, this Court

will not entertain without exhausting the remedy of appeal and revision. However, we are compelled to interfere with the confiscation proceedings on the score that subject-matter of motor-vehicle which was referred in the F.I.R. and confiscation proceeding, is alleged to be a stolen motor-vehicle with fake Registration Number which was same to that of the petitioner's motor-vehicle. In fact, petitioner's case is that his motor-vehicle was not plying on the road with reference to the date of F.I.R. and the alleged incident, time and place. On the other hand, the motor-vehicle was in front of the residence of the petitioner. The same has not been appreciated by the confiscating authority. In fact, confiscating authority should have further examined the documents with the Transport Department or with the jurisdictional Regional Transport Officer before proceeding with the confiscation. Further, the seized motor-vehicle is stated to have been auctioned. Thereafter, the concerned respondents realized that subject-matter of motor-vehicle involved is alleged to be a stolen vehicle and it is a different motor-vehicle than the petitioner's motor-vehicle. In the result, auction purchaser has been asked to hand over the alleged stolen motor-vehicle and he has been paid the auction price. Taking note of these facts and circumstances, the Deputy Secretary, Prohibition and Excise Act

Department proceeded to pass order on 19.08.2023 clarifying that the petitioner's motor-vehicle was not involved in the case. With these facts and circumstances, the confiscating authority or any competent authority should have apprised this Court before taking such a decision on 19.08.2023. Even order dated 19.08.2023 is in the absence of any statutory provision on the other hand confiscating order at Annexure-1 is a statutory function exercise under Section 56 of the Excise Act. Therefore, next remedial measure was opened only under Sections 92 and 93 of the Bihar Prohibition & Excise Act, 2016, namely appeal before the appellate authority and further revision before the revisional authority. Further it is noticed that even to this day Annexure-1 confiscation proceedings has not been withdrawn insofar as petitioner's motor-vehicle is concerned. The petitioner has been unnecessarily harassed in the confiscation proceedings and further he was compelled to approach this Court in presenting this writ petition. Therefore, the petitioner has made out a case so as to interfere with Annexure-1 (Confiscation proceedings) dated 23.02.2022. Hence, Annexure-1 dated 23.02.2022 stands set aside.

6. Accordingly, the present writ petition stands allowed with cost of Rs. 50,000/-. Cost has been imposed for the

reasons that petitioner is law abiding citizen and he had been unnecessarily harassed to face proceedings under the Excise Act, 2016. The cost shall be paid to the petitioner within a period of eight weeks from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01.09.2023
Transmission Date	N.A.