**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.15479 of 2023**

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Manoj Tiwari S/o Muktinath Tiwari, R/o Flat No. B/603, Veena Vihar Apartment, Adarsh Vihar Colony, Nitibagh, Rukunpura, P.S.-Rupaspur, Dist- Patna, Permanent Address-R/o Shastrinagar, Ward No. 7, Mohalla Shastrinagar, P.S. Kalibagh, Distt-West Champaran, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Secretary cum Commissioner, Department of Excise, Government of Bihar, Patna.
3. Collector cum District Magistrate, Betiah.
4. The Superintendent of Excise, Betiah.
5. The Sub Inspector of Excise, Betiah.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Ritik Shah, Advocate<br>Ms. Pallavi Pandey, Advocate<br>Mr. Madan Mohan, Advocate |
| For the Respondent/s | : | Mr. Kumar Manish (SC 5) |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**
**and**
**HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**
**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 08-11-2023**

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

> *"For issuance of appropriate writ/order/direction to the Respondent to quash the order dated 25.07.2023 whereby the Ld. Excise Commissioner/ Secretary dismissed the Confiscation Revision filed by the Petitioner, against the order dated 29.05.2023 passed by the Ld. Excise Commissioner who has dismissed the Appeal filed by the Petitioner while*

*observing that the property of the Petitioner shall be confiscated, upholding the order dated 24.03.2023 passed by the Ld. ADM (Excise), West Champaran, Bettiah, whereby and whereunder the Petitioner was directed to pay a sum of Rs. 10,00,000/-".*

2. The petitioner is owner of the house situated in Ward No. 7, Mauza Bhanuchapar, Khata No. 146, Khesra No. 62/16/1, Rakwa 4 Dhur 19 ½ Dhurki which was confiscated in Kalibagh P.S. Excise Case No. 55 of 2021 dated 31.08.2021 registered for the offences under Section 30(a) of the Bihar Prohibition and Excise Act, 2016. 57.80 litres of India made foreign liquor is alleged to have been seized from the aforementioned premises and resulted in confiscation proceedings. In the confiscation proceedings, petitioner suffered an order whereas the Additional District Magistrate (Excise), West Champaran, Bettiah imposed penalty of Rs. 10,00,000/-. Feeling aggrieved and dissatisfied with the imposition of penalty petitioner preferred Appeal No. 64 of 2023 before Excise Commissioner in which also he has suffered an order. Consequently, he has invoked the remedy of revision before the revisional authority. The revisional authority being the Excise Commissioner-cum-Secretary, in other words, same official is holder of the two posts, in this regard the order has been passed on

29.05.2023 to the effect that he cannot exercise the power of revision once he has exercised the appellate powers.

3. Learned counsel for the petitioner submitted that petitioner is the owner and he had rented the aforementioned premises in favour of Santosh Mahto and Manoj Yadav. During their stay in the aforementioned premises respondent authorities have raided the premises and seized 57.80 litres of Indian made foreign liquor and proceeded to register Excise Case No. 55 of 2021 on 31.08.2021, Kalibagh P.S. Therefore, there is no involvement of the petitioner. On the other hand, the involvement is of the tenant. In such circumstances, the authorities were not permitted to seize the premises and proceed to auction the subject matter of premises on the other hand they have the remedy of taking action against tenant like in the present case Santosh Mahto and Manoj Yadav. It is also submitted that there is no material information to the effect that petitioner who is owner of the premises is involved in respect of liquor storage of 57.80 litres of Indian made foreign liquor in the subject matter of premises. Therefore, imposition of penalty of Rs. 10,00,000/- would be too harsh. In this regard, it is submitted that there is non-application of mind on behalf of the Additional District Magistrate, West Champaran, Bettiah and appellate authority and Excise

Commissioner while passing orders on 24.03.2023 and 29.05.2023 respectively. Valuation of the premises was not assessed before imposition of penalty.

4. *Per contra*, learned counsel for the respondents resisted the aforementioned contentions and submitted that petitioner has not apprised with any material information to the extent that subject matter of premises was rented out to Santosh Mahto and Manoj Yadav. Therefore, there is no infirmity insofar as confiscation proceedings and its affirmation by the appellate authority, hence, no interference is called for.

5. Heard learned counsels for the respective parties.

6. The petitioner is owner of the subject matter of premises. It is stated that it has been the subject matter of premises which was rented out to Santosh Mahto and Manoj Yadav. In this regard, no material information has been placed on record so as to draw inference with the petitioner involvement is existing in respect of excise offences. Further, we have noticed that there is no iota of material evidence against the petitioner directly or indirectly that he is involved in the excise offence which has been registered for Kalibagh P.S. Excise Case No. 55 of 2021 on 31.08.2021. In the absence of any material evidence against the petitioner's involvement for the aforementioned excise offences

there is a total non-application of mind on behalf of the Additional District Magistrate (Excise), West Champaran, Bettiah and so also the appellate authority, Excise Commissioner while passing orders on 24.03.2023 and 29.05.2023 respectively. Further, one of the contention raised by the petitioner is that Minimum Value Register (MVR) of subject matter of premises is worth about a sum of Rs. 3,00,000/- and penalty is a sum of Rs. 10,00,000/- penalty is not commensurate with the subject matter of premises read with the premises valuation.

7. Taking note of these facts and circumstances, petitioner has made out *prima facie* case on the score that there is no involvement of the petitioner either directly or indirectly insofar as the alleged offences under the Excise Act. Further, imposition of penalty of Rs. 10,00,00/- read with the market value of the subject matter of premises the concerned authorities have not apprised these material information while imposing penalty of Rs. 10,00,000/- Accordingly, impugned orders dated 25.07.2023, 29.05.2023 (Annexure- 3) and 24.03.2023 (Annexure- 2) are set aside. Matter is remanded to the Additional District Magistrate (Excise)), West Champaran, Bettiah to proceed afresh. He is hereby directed to examine the role played by the petitioner insofar as illegal storage of 57.80 litres of Indian made foreign liquour. If

there are no material evidence either directly or indirectly in such circumstances it is not a case for imposition of penalty. If any role is played by the petitioner in that event certain penalty could be imposed and not a sum of Rs. 10,00,000/- which is not commensurate with the subject matter of premises and its market value. Before imposition of penalty, the concerned authority is required to take note of all attending circumstantial evidence for imposition of particular penalty in the form of money and also it was required to examine whether is it reasonable or not? In this regard, Co-ordinate Bench of this Court passed a detailed order in the case of **Sunita Sinha vs. The State of Bihar & Ors. (CWJC No. 17894 of 2022)** dated 14.09.2023 is required to be taken note of while passing fresh order of the confiscation proceedings. The above exercise shall be completed within a period of three months from the date of receipt of this order. In the meanwhile, petitioner is permitted to produce additional material information to the extent that subject matter of the premises on rent to Santosh Mahto and Manoj Yadav and further market value of the premises. On receipt of any material to be produced by the petitioner, the Additional District Magistrate (Excise), West Champaran, Bettiah is hereby directed to pass detailed speaking order in the confiscation proceedings. In the meanwhile, not to precipitate insofar as any auction proceedings of the subject matter of premises till afresh decision is taken by the Additional District Magistrate (Excise) West Champaran, Bettiah.

8. With the above observations, the present writ petition stands allowed.

**(P. B. Bajanthri, J)**

**(Ramesh Chand Malviya, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | N/A |
| **Uploading Date** | |
| **Transmission Date** | N/A |