IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1254 of 2024

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PCC Logistics Private Ltd. (Formerly PCC Logistics Ltd.) a private limited company having its registered office at 128, M.G. Road, Kolkata 700007 through its constituted attorney cum Marketing and Operation Manager, Shri Ajit Sharma, Male, aged about 61 years, son of Late Lalu Sharma, resident of 2/1 Kali Das Lane, Raja Ram Mohan Sarani, P.S.- Amar Street, Kolkata, West Bengal - 700009.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Senior Superintendent of Police, Muzaffarpur.
5. The Station House Officer, Excise Police Station, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
	:	Mr. Abhishek Anand, Advocate
	:	Ms. Kanupriya, Advocate
For the Respondent/s	:	Mr. Standing Counsel (25)

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

Date : 06-03-2024

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

> *i) Issuance of writ of mandamus, directing the respondents to forthwith release 335 cases of Foreign Liquor, which has been seized in connection with Muzaffarpur Excise P.S. Case No.1777 of 2023 dated 11.09.2023, instituted under Section 30(a), 32(2) and 48 of the Bihar Prohibition and Excise Act, 2016, which was being lawfully transported on the strength*

of valid statutory documents/permits issued by the Excise Authorities of Sikkim and Maharashtra;

ii) To restrain the respondents from initiating any proceeding for confiscation of the aforesaid consignment of beer, seized in connection with Muzaffarpur Excise P.S. Case No.1777 of 2023 dated 11.09.2023, as the consignment was lawfully transported;

iii) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.

2. The petitioner is stated to have been engaged in transportation services. In this regard, he had stated to have hired vehicles from various parties to transport goods. The petitioner was in the custodian of liquor and it being transported in the Vehicle No. JH10CR7100 from Maharashtra to Sikkim. The driver of the truck is stated to have loaded 136 tower fans without the knowledge of the transporter/petitioner who is the owner of the vehicle No. JH10CR7100. Policy of the State of Bihar is in respect of certain Digital locking system in transportation of any liquor in the State of Bihar territorial jurisdiction. Such Digital locking system was installed by the competent authority in the excise department / police department at the entry point of State of Bihar. It has to be de-locked/de-sealed at other end of the State of Bihar

territorial jurisdiction whereas in Muzaffarpur the driver of the motor vehicle is stated to have tampered the Digital locking system in the guise of removal of tower fans. Excise Department, State of Bihar intercepted the vehicle and found that locking system was tampered and resulted in registration of Excise P.S. Case No. 1777/2023 dated 11.09.2023 for the offences registered under Section 30 (a), 32(2) and 48 of the Bihar Prohibition and Excise Act, 2016. Hence, the aforementioned prayer.

3. Learned counsel for the petitioner vehemently contended that there is no tamper of lock system adopted by the State of Bihar. The driver of the motor vehicle was removing the tower fans without disturbing the locking system and it is disputed by learned State counsel to the extent that locking system was tampered by the driver therefore, it is alleged that transportation of Johny Walker Whisky totaling 335 cases was to be removed in certain quantity in Muzaffarpur or not is the matter of investigation and other enquiry like confiscation proceedings.

4. Heard learned counsel for the respective parties.

5. Question of releasing of subject matter of liquor in favour of the petitioner is not warranted at this juncture for the reasons that while liquor was in transit from Maharashtra to Sikkim it has entered into the Bihar territorial jurisdiction, though,

there is a system of Digital locking and it has been tampered. In the result, case has been registered for the offences under the Excise Act. There are certain disputed issues to the extent that learned counsel for the petitioner submitted on instruction that there is no tampering of locking system. On the other hand, State counsel on instruction submitted that lock was tampered. Therefore, one cannot draw inference to the extent that driver of the motor vehicle was removing only tower fans. Even for removal of tower fans in the territorial jurisdiction of Bihar, in that event, certain permission should have been sought from the concerned department like Excise /Police Department, since vehicle was carrying liquor from Maharashtra to Sikkim. No such permission has been sought, on the other hand, suo moto, lock was opened or tampered within the territorial jurisdiction of Bihar. Such removal of lock or tempering lock in the territorial jurisdiction of the State of Bihar is in violation of the policy decision of the State Government and prima facie violation of Bihar Prohibition of Excise Act.

6. Be that as it may having regard to the fact that there are disputed issues in the present matter in such circumstance, the writ court has no jurisdiction to decide the disputed issues in the light of Hon’ble Supreme Court decision in the case of ***Thansingh***

Nathmal v Superintendent of Taxes, Dhubri reported in AIR 1964 SC 1419 the Hon'ble Supreme Court explained the nature of jurisdiction exercised by the High Court under Article 226 of the Constitution of India and held in paragraph 7 as under:

> *7………… The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : It is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demands an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will*

leave the party applying to it to seek resort to the machinery so set up.

7. The petitioner grievance could be redressed in the alternative statutory remedy like subjecting himself under Section 58 of Bihar Prohibition Act, 2016 read with amendment Act, 2018. Further remedy under Sections 92 and 93 of Act, 2016. Even under Rules 12-A of Bihar Prohibition Rules, 2021 read with amended Rules, 2022 and 2023. It is necessary to reproduce the aforementioned statutory provision which are as under:

> ***Section 58. Confiscation by District Collector**.-(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act. The officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;*
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> *(2) On receipt of the report under sub-section (1), the District Collector it satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;*
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> *(3) The Collector shall, before passing an order under sub-section(2), give a reasonable opportunity to the person concerned, of being heard;*
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> *(4) While making an order of confiscation under sub-section(2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall*

be destroyed in the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub-section(2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.

***Section 92**. **Appeals**.- (1) All final orders passed by any Excise Officer other than the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.*

(2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government respectively within ninety days from the date of the order complained of.

Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.

(3) The State Government may make rules in this behalf.

***Section 93. Revision**.- The State Government may, on its own motion or on an application made to it, call for and examine the records of any proceeding before any Excise Officer or any document, including that relating to renewal or refusal of license or grant of permit, pass etc under this Act, for the purpose of satisfying itself as to the correctness and legality of any order passed in, and as to regularity of, any such proceeding and may,* *when calling for such record, direct that the order be not given effect till the pendency of the examination of the record, so called for. After examining the record, the State Government may annul, reverse, modify or confirm such order, or pass such other order as it may deem fit.*

12. Sealing of Premises.-(A) *(i) If any offence is or has been committed in any premises (whole or part thereof) under the Act, any officer within the meaning of Section 73 of the Act immediately seal the premises (whole or part thereof). Immediately here means that sealing should be done in the course of the raid itself. In any case, sealing shall be done within 24 house of the institution of First Information Report.*

(ii) Sealing shall be reported to the Collector within 24 hours of the sealing.

(iii) If the premises used, is a temporary structure which cannot be effectively sealed, the Police Officer/Excise Officer shall, as soon as possible after obtaining the order of the Collector, demolish the temporary structure.

(iv) Where any intoxicant is or has been manufactured, bottled, distributed, collected, stored, sold, purchased, imported, exported or transported in any premises or part thereof, such premises shall be fully sealed.

(v) As far as possible, only that portion of private residential premises which has been used for committing offence shall be sealed and not the whole premises or entire residence.

(vi) Where any residential premises or part thereof is being used to provide facility to consume intoxicant(s) to other persons, such premises shall be compulsorily sealed.

"12A. (Amended) Release of Vehicle, 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."

8. Prayer no. 2 namely restraining the respondent from initiating any proceedings for confiscation in connection with Muzaffarpur Excise P.S. Case No.1777/2023 dated 11.09.2023 has not been made out. In other words, the consignment was lawfully transported by the petitioner is required to be examined in the confiscation proceedings by the confiscating authority and it is not for this court to examine disputed issues. Even assuming that consignment was lawfully transported still there was no occasion for the petitioner's driver of the motor-vehicle resorted to illegally tampering the digital lock system which was installed by the Excise/Police Authorities of the State of Bihar. It is to be noted that such digital lock system scheme was introduced by the State of Bihar to avoid any utilization of liquor in the prohibition area like State of Bihar, when the object of State is to not to utilize liquor in the territorial jurisdiction of the State of Bihar and it was alleged to have been misutilized insofar as downloading the liquor

while tampering the digital lock. These are all disputed issues which are required to be adjudicated in the confiscation proceeding. Therefore, second prayer is also not maintainable.

9. Accordingly, the present writ petition stands disposed of as not maintainable. Disposal of the present petition would not be a hurdle for the petitioner to appear in the confiscation proceedings and cooperate. The concerned confiscating authority is hereby requested to decide the confiscation proceedings within a period of three months from today.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Amitkumar/
Shahzad-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21.03.2024
Transmission Date	N/A