IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3046 of 2024

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Md Niyaz Ahmad S/o-Md. Ghulam Samdani R/o-Chhatiauna, P.S.-Rani Ganj, District-Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Excise Commissioner, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Kishanganj.
4. The Superintendent of Police, Kishanganj.
5. The SHO, Excise Police Station, Kishanganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anupam Bahadur, Adv.
		Mr.Vikash Kumar, Adv.
For the Respondent/s	:	Mr.Standing Counsel-21

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

Date : 08-04-2024

This writ petition has been filed by the petitioner against the order dated 26.08.2023 passed by the District Magistrate-cum Collector, Kishanganj in Confiscation Case No. 923 of 2023, which has been affirmed by Excise Commissioner vide order dated 21.11.2023 passed in Excise Appeal No. 156 of 2023.

2. By filing the present writ petition, the petitioner has prayed for the following relief(s):-

(i). For issuance of writ/s in the nature of certiorari quashing the order of learned Excise commissioner, passed in Excise Appeal No.156 of 2023 Dated 21-11-2023 Bearing Memo No. 156/2023-149 dated 21.11.2023.

(ii). For issuance of writ/s in the nature of certiorari quashing the order dated 26-08-2023 passed by the District Magistrate- cum- Collector, Kishanganj, passed in Confiscation Case No. 923 of 2023 in respect of release of the vehicle/Maruti Zen in question stands seized since 23-07-2023.

(iii). For issuance of writ/s in the nature of mandamus directing and commanding the respondents to release the vehicle/ Maruti Zen bearing registration no. BRIAF-7537 which stands seized since 23-07-2023 in connection with Kishanganj Excise P.S Case No. 1051 of 2023 registered under section 30(a), 32(3) and 37 of the Bihar Prohibition & Excise Act 2016 (For short "The Excise Act").

(iv). For issuance of writ/s in the nature of mandamus directing and commanding the respondents not to put the seized vehicle of the petitioner on public auction.

(v). Any other relief/

reliefs to which the petitioner is found to be entitled.

3. The petitioner has further remedy of filing Revision under Section 93 of Act, 2016, he has not exhausted such remedy for the reasons that Appellate and Revisional authority post was manned by one officer. Therefore Revision would be ineffective or impracticable to exhaust.

4. Briefly stated the facts of the case is that petitioner's vehicle is said to have seized for recovery of 5 litres of beer. On the basis of aforesaid fact, FIR No. 1051 of 2023 dated 23.07.2023 was registered in Excise P.S. Kishanganj under Sections 30(a), 32(3) and 37 of Bihar Prohibition and Excise Act, 2016.

5. Learned counsel for the petitioner submitted that on the valuation fixed by the Transport Inspector, Kishanganj, the District Magistrate-cum-Collector, Kishanganj passed order on 26.08.2023 in Confiscation Case No. 923 of 2023 arising out of Excise P.S. Case No. 1051 of 2023 and imposed a fine of Rs. 1,00,000/- for the seized vehicle i.e. Maruti Suzuki-Zen of the petitioner and in addition to Rs. 3,000/- for maintenance. He further submitted that said order of District Magistrate was affirmed by the Excise Commissioner

by passing order dated 21.11.2023 in Excise Appeal No. 156 of 2023. Learned counsel further submitted that seized vehicle i.e. Maruti Suzuki-Zen was registered on 03.08.2007 bearing Registration No. BRIAF-7537 in the name of the petitioner. He further submitted that vehicle in question was purchased by the petitioner in the year 2007 and the market value at the relevant time was less than four lakhs. Practically it is impossible that after calculation, the valuation of said vehicle would be Rs. 2,50,000/- after 16 years beyond any stretch of imagination. He further submitted that there is meagre amount of recovery of 5 litres of beer and imposition of fine is disproportionate to the offence committed and it is against the mandate of equity and justice.

6. Counter affidavit on behalf of respondent nos. 3 and 5 has been filed. In para 13 it has been narrated that Rs. 2,50,000/- valuation was assessed by the Motor Vehicle Inspector, District Transport Office, Kishanganj and considering the provision of Section 12(A) of Bihar Prohibition and Excise (Amendment) Rules, 2023, a penalty of forty percent amount of valuation i.e. Rs. 1,00,000/- has been imposed on 26.08.2023 and additional fine of Rs. 3,000/- has been imposed for maintenance of vehicle. In para-9 of the counter affidavit it has

been submitted that in compliance of order dated 20.02.2024, the vehicle in question has not been auctioned.

7. Having gone through the material available on record, it is crystal clear that there is meagre amount of recovery of 5 litres beer and imposition of fine is disproportionate to the offence committed and conscious of this court does not allow to impose harsh penalty for meagre amount of recovery of 5 litres beer. Such disproportionate fine should not be allowed to impose. Imposition of fine also does not commensurate with the offence committed regarding recovery of 5 litres beer. Valuation of the vehicle is not supported by any material information like valuation from the authorized valuer like Insurance Company.

8. Keeping in view the discussions made above, order dated 26.08.2023 passed by the District Magistrate-cum Collector, Kishanganj in Confiscation Case No. 923 of 2023, which has been affirmed by Excise Commissioner vide order dated 21.11.2023 passed in Excise Appeal No. 156 of 2023, are hereby quashed.

9. In the above circumstances, we are of the opinion that model of the vehicle, considering the minimal quantity of beer recovered, fine of Rs. 1,00,000/- would be too harsh and it is reduced to a sum of Rs. 25,000/-, on deposit of

Rs. 25,000/- motor vehicle be released. Certified copy of this judgment shall be produced within two weeks before the District Magistrate-cum- Collector, Kishanganj and within two weeks from then if the modified fine as provided herein is deposited, the vehicle shall be released. If the fine is not remitted, the District Magistrate-cum- Collector, Kishanganj shall continue with the confiscation proceedings.

10. With the above observation/direction, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	02.04.2024
Uploading Date	08.04.2024
Transmission Date	N.A.