IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3134 of 2023

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Raushan Kumar Singh @ R.K. Singh son of Shivshankar Singh, resident of Mohallah- Kisunpur Mohani, Police Station- Kudhni, District- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
2. The Excise Commissioner, Prohibition Excise and Registration Department, Bihar, Patna.
3. The Excise Superintendant, Muzaffarpur.
4. The District Magistrate, Muzaffarpur.
5. The Deputy Collector of Land Revenue, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mr. Kumar Manish (S.C.5)
		Mr. Kumar Pankaj, A.C. to S.C. 5

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

14   18-01-2024   In the instant petition, petitioner has prayed for the following reliefs:

> *(i) For issuance of a writ in the nature of Certiorari or any other appropriate writ or order for quashing of order dated 12/01/2023 passed by the respondent no. 1 i.e. the Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna in Excise Revision Case No. 01/2023 [Excise Superintedent (Prohibition), Muzaffarpur v/s Raushan Kumar Singh @ R.K. Singh and Excise Commissioner] whereby the order dated 22/11/2022 passed by the learned*

Excise Commissioner, Bihar, Patna in Excise Appeal No. 506/2022 [Raushan Kumar Singh @ R.K.Singh vs. The District Magistrate, Muzaffarpur and ors] has been set aside.

(ii) For affirming the order dated 22/11/2022 passed by the learned Excise Commissioner, Bihar, Patna in Excise Appeal No. 506/2022 [Raushan Kumar Singh @ R.K. Singh vs. The District Magistrate, Muzaffarpur and ors], and directing the respondents to release to car of the petitioner i.e. Creta car having registration no. BR 06 CK 4784, chassis no. MALPC813LLM045470, Engine no. D4FALM044864, on payment of penalty which has been allowed by the learned Excise Commissioner vide his order dated 22/11/2022.

(iii) For directing for provisional release of the aforesaid car of the petitioner on such terms and conditions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iv) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case.

(v) For issuance of writ in the nature of Certiorari or any other appropriate writ or order for quashing of the consequential order dated 06/02/2023 passed by the Excise Commissioner, Patna, Bihar passed in Excise Appeal case No. 15 of 2023, which is communicated to the petitioner for the first time as Annexure D to the counter affidavit in the present case.

2. Petitioner is the owner of vehicle bearing Registration No. BR 06 CK 4784 (Creta) wrongly mentioned as Swift Dezire instead of Creta Car. In the F.I.R. known person of petitioner by name 'Kanhai' who was driving the aforementioned vehicle carrying 36 liter of IMFL. He was intercepted and both vehicle as well as liquor was seized and P.S. Case No. 629 of 2020 was registered for the offences under Sections 272, 273 414/34 of IPC, Section 25(1-b)a and Section 26 of the Arms Act read with Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. Confiscation proceeding was concluded on 19.07.2021, thereafter it was affirmed by the Excise Commissioner in Appeal No. 493 of 2021 by his order dated 31.08.2021. Thereafter, Excise Revision No. 194 of 2021 was dismissed. Faced with these proceedings, petitioner preferred CWJC No. 818 of 2022 which was decided on 01.04.2022 and the following observations are recorded:

> *"Learned counsel for the State undertakes to communicate the order to all concerned, including the District Magistrate and no certified copy of the order shall be required to be placed on the file of proceedings pending or initiated under the Act, for such order is available on the official website of the High Court & can be downloaded and / or verified from there, in*

the times of current Pandemic Covid – 19.

We only hope and expect that the Authorities under the Act shall take appropriate action at the earliest and in accordance with law, within the time schedule fixed, failing which the vehicle/property/things liable for confiscation shall be deemed to have been released without any further reference to this Court.

In view of amendment in the Excise Act, and same being applicable in pending cases, it shall be open for the petitioner to get his/her vehicle released after making payment of penalty in terms of notification issued by the State Government.

Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law if the need so arises subsequently.

Petition stands disposed of with the aforesaid observations / directions.

4. Thereafter, matter was taken up under Rule 12 - A of Rules 2021 and order was passed on 17.10.2022 while dismissing application. Petitioner preferred Appeal No. 506 / 2022 and it was allowed in part to the extent of release of subject matter of vehicle while paying penalty in terms of order dated 22.11.2022.

5. Feeling aggrieved by the order of Appellate authority, the Superintendent of Excise, preferred a revision and revision was allowed on 12.01.2023. Revisional Authority

remanded the matter to the Excise Commissioner. In other words, appeal preferred by the petitioner and revision preferred by the Superintendent of Excise were remanded to the Excise Commissioner for deciding afresh.

6. On 06.02.2023, the Excise Commissioner proceeded to decide Excise Appeal Case No. 15 of 2023 and dismissed the appeal.

7. In this backdrop, it is necessary to take note of relevant provisions of Section 93 and it relates to revision. It reads as under:

> *"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."*

8. Reading of the aforementioned provision reveals that who can file revision. It is to be noted that suo motu

revision is permissible on behalf of the State. In other words, Revisional authority can invoke suo motu power and the second option is aggrieved person like petitioner can file application. There is no provision for filing of revision on behalf of the official respondents like Superintendent of Excise against Excise Commissioner's order in appeal. In the absence of such power and to entertain such revision by the official respondents like Superintendent of Excise, the Revisional Authority has committed error.

9. The order dated 12.01.2023 passed by revision is not maintainable in view of the fact that there is no provision for the Superintendent of Excise to prefer revision against the appellant authority – Excise Commissioner's order. Therefore, the aforementioned order dated 12.01.2023 stands set aside.

10. In the result, order of the Appellate Authority dated 22.11.2022 holds good. In other words, petitioner is liable to pay penalty as ordered by the Appellate Authority.

11. Annexures – 11 and 13 dated 12.01.2023 and 06.02.2023 are set aside. The Petitioner is hereby directed to remit the determined penalty by the appellate authority within a period of 2 weeks from today. On receipt of such penalty amount, the concerned authority is hereby directed to release the

subject matter vehicle after due identification of petitioner and he is the registered owner of the subject matter of motor vehicle.

12. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

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