**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.7979 of 2024**

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Shivangi Batra Wife of Hardik Batra, House No.H-06, Faridabad Sector -16, Kotwali, Faridabad, District- Fridabad (Hariyana).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Excise Commissioner-cum-Appellate Authority, Bihar Prohibition and Excise Amendment Act-2018, Bihar, Patna.
3. The District Magistrate-cum-Confiscation Authority, Rohtas at Sasaram.
4. The Superintendent of Police, Rohtas at Sasaram.
5. The S.H.O., Darihat, Dehri, District- Rohtas.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Babu Nandan Prasad, Adv. |
| For the Respondent/s | : | Mr.G. P. 2 |

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

**Date : 03-07-2024**

This writ petition has been filed by the petitioner against the order dated 28.02.2023 (Annexure-P/3) passed by the District Magistrate-cum-Collector, Rohtas at Sasaram (respondent no. 3) in Confiscation Case No. 376 of 2022, which has been affirmed by Excise Commissioner (respondent no. 2) vide order dated 08.06.2023 9 (Annexure-P/4) passed in Excise Appeal No. 65 of 2023 arising out of Darihat P.S. Case No. 125 of 2022 dated 11.06.2022.

2. By filing the present writ petition, the

petitioner has prayed for the following relief(s):-

> *(i). For issuance of writ/writs, order/orders, direction/directions including a writ in the nature of certiorari for quashing the order dated 08.06.2023 passed in Excise Appeal No. 65 of 2023 arising out of Darihat P.S. Case No. 125 of 2022 dated 11.06.2022 by the Excise Commissioner (as contained in Annexure-P/4) whereby and whereunder he has dismissed the memo of Appeal and affirmed the order of respondent District Magistrate, Rohtas as also to quash the order dated 28.02.2023 passed in Excise Confiscation Case No. 376 of 2022 by the respondent-District Magistrate, Rohtas whereby he has confiscated the container Truck bearing Registration No. HR-38AC-2395 of the petitioner without considering the facts and circumstances of the case of the petitioner in proper perspective.*
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> *(ii). For issuance of writ/writs, order/orders, direction/directions including a writ in the nature of mandamus directing the respondent to release the aforesaid Container Truck bearing Registration No. HR- 38AC-2395 in favour fo the petitioner.*
>
> *(iii). For grant of any other relief/ reliefs to which the petitioner may be found entitled in the facts and circumstances of the case.*

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

4. Briefly stated the facts of the case is that petitioner's vehicle is said to have been seized for recovery of 2232 liters of illicit foreign liquor. On the basis of aforesaid fact, Darihat P.S. Case No. 125 of 2022 dated 11.06.2022 had registered case under Sections 272, 273, 419, 420, 467, 468, 471, 120B/34 of the Indian Penal Code and sections 30(a), 31, 32(i) (ii), 36, 41 and 45 of the Bihar Prohibition and Excise Amendment Act, 2018.

5. Learned counsel for the petitioner submitted that on the basis of the report of the S.H.O. Excise Confiscation Case No. 276 of 2020 was initiated by the respondent-District Magistrate, Rohtas and after hearing the parties the District Magistrate, Rohtas confiscated the vehicle bearing Registration No. HR-28AC-2395 vide order dated 28.02.2023 passed in Excise Confiscation No. 376 of 2022 arising out of Darihat P.S. Case No. 125 of 2022 dated 11.06.2022 without considering the facts and circumstances of the petitioner in proper perspective

and the same was affirmed by the Excise Commissioner under Section 92 of the Bihar Prohibiton and Excise Act, 2018 and the petitioner is further ready to avail the remedy under **Rule- 12(A)** of the Bihar Prohibition and Excise (Amendment) Rule, 2021 read with later amendment and the petitioner is further ready to deposit the admitted amount of the insurance value before the confiscating authority. Learned counsel for the petitioner further submits that the order passed by the respondent authority is quite arbitrary as the seizure list has been prepared without following the provisions of the section 100 Cr. P.C. as both the witnesses of the seizure are police personnel. Petitioner is the *bona fide* owner of the seized vehicle and he has no concern with the seized illicit liquor. Petitioner belongs to Haryana whereas the aforesaid vehicle has been seized by Darihat police which is in the State of Bihar, and as such, the petitioner is entitled to get release of the seized vehicle as per the provisions provided under the Bihar Prohibition and Excise (Amendment) Act, 2018 read with Rules, 2021 read with amended Rules.

Hence, the petitioner has filed the present writ petition challenging the orders passed by the respondent-authorities.

6. From perusal of the record, it is evident that

there is recovery of illicit liquor from the seized vehicle. There is a provision under the Bihar Prohbition and Excise (Amendment) Rules, 2021. Sub rule (2) of Rule 12A, which was amended by which the concerned authority is empowered to impose fine from Rs. 1,00,000 to Rs. 5,00,000/-. The aforementioned provision could have been invoked instead of confiscation of subject matter of the vehicle.

7. The sub-rule (2) of Rule 12A (Release of Vehicles, Conveyance etc on Payment of Penalty) of Bihar Prohibition and Excise Rules, 2021 has been amended by Bihar Prohibition and Excise (Amendment) Rules, 2023, which is quoted hereinbelow for ready reference :

> *"(2) The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs. 5 lakhs. 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."*

8. Having regard to the facts and circumstances of the case, the impugned orders dated 08.06.2023 (Annexure-P/4) passed in Excise Appeal No. 65 of 2023 and 28.02.2023 (Annexure-P/3) passed in Excise Confiscation Case No. 376 of 2022 are, hereby, set aside. The concerned authorities are hereby directed to revisit the case and proceed to passed order under Rule-12(A) of Bihar Prohibition and Excise Rules, 2021 read with the Rules of 2022 and 2023 wherein there is a provision for maximum penalty of Rs. 5,00,000/-. Petitioner is directed to file an application in light of the aforesaid provision within a period of two weeks from today. If such application is submitted, the concerned authority is directed to invoke sub-rule 2of Rule 12A of Bihar Prohibition and Excise Rules, 2021 read with amended Rules 2022 and 2023 in imposing fine while analysing factual aspects of the matter like quantity of liquor and whether vehicle owner was involved in any other similar offence or is it an isolated case. Such order shall be passed within a period of one week from the date of petitioner's application under Rule 12A of Bihar Prohibition and Excise Rules, 2021. If the determine fine is remitted in the State Government treasury, in that event taking note of remittance of fine and proceed to release the subject matter of the vehicle in

favour of the petitioner. The same shall be completed within a period of two months from the date of receipt of this order.

9. Writ petition allowed in part.

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

**( Alok Kumar Pandey, J)**

mcv/-

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| **AFR/NAFR** | AFR |
| **CAV DATE** | 28.06.2024 |
| **Uploading Date** | 03.07.2024 |
| **Transmission Date** | 03.07.2024 |