IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14797 of 2023

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1. Anjali Agrawal @ Anjali Wife of Dhirendra Kumar Agrawal, Resident of Mohallah - Chakki Bazar, Hathsah, P.S. - Hathras Kotwali, District - Hathras, Pin Code - 204101 (U.P.).
2. Gaurav Agrawal, Son of Dhirendra Kumar Agrawal, Resident of Mohallah - Chakki Bazar, Hathsah, P.S. - Hathras Kotwali, District - Hathras, Pin Code - 204101 (U.P.).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The District Magistrate, Gopalganj, District - Gopalganj (Bihar).
5. The Superintendent of Excise, Gopalganj, District - Gopalganj (Bihar).
6. The Superintendent of Police, Gopalganj, District - Gopalganj (Bihar).
7. The Station House Officer Hathwa Police Station, Gopalganj, District - Gopalganj (Bihar).
8. The Investigating Officer of Hathuwa Police Station Case No. 05 of 2023, Gopalganj, District - Gopalganj (Bihar).

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. R. H. Sinha No.2, Advocate Mr. Gazindra Nath Ojha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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

Date : 03-01-2024

In the instant petition, petitioner has prayed for the following relief(s):

"i. For quashing and setting aside the Order dated 24.07.2023 passed in Excise Appeal 93 of 2023 passed by the Excise Commissioner, Patna by which the learned Excise Commissioner, Patna has been pleased to affirm the Order dated 13.03.2023 passed in Confiscation (Excise) Case No.175 of 2023 passed by the Collector, Gopalganj on the basis of Memo No.371 dated 31.01.2023 forwarded by the Superintendent of Police Gopalganj by which the Respondent was pleased to confiscate the Maruti Vitara Breeza VDI having Registration No.UP86Y0361, Engine No. D13A-5627605, Chassis No. MA3NYFB1SJD370122 under the Bihar Prohibition and Excise Act, 2016 in connection with Hathuwa Police Station Case No.05 of 2023 for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016. The District Magistrate-cum-Collector, Gopalganj in violation of the Hon'ble Patna High Court's Order as well as in direction the time schedule fixed by the Hon'ble Court for initiation / conclusion of proceeding has

passed in Order impugned illegally and arbitrarily.

ii. For issuance of appropriate writ or writ for quashing and setting aside the Order dated 13.03.2023 passed in Confiscation (Excise) Case No.175 of 2023 passed by the Collector, Gopalganj by which he has passed the Confiscation Order.

iii. For issuance of direction to release the Maruti Vitara Breeza VDI having Registration No. UP86Y0361, Engine No.D13A-5627605, Chassis No. MA3NYFB1SJD370122 in favour of the Petitioner and entitle of possession.

iv. For any other relief or reliefs for which the petitioner is found entitled in the eye of law."

2. Petitioner is owner of the subject matter of vehicle bearing registration no.UP86Y0361, Maruti Vitara Breeza VDI. It is stated to have been theft by unknown person on 01.09.2022, in this regard an FIR bearing Hathras P.S. Case No.321 of 2022. However, the vehicle was involved in the offences under Excise Act on 07.01.2023. Thereafter, confiscation proceedings was conducted by the competent authority and proceed to confiscate

the subject matter of vehicle and it was subject matter of appeal before appellate authority, in which confiscation proceedings have been confirmed. The petitioner has not preferred revision in view of the fact that it is not efficacious remedy in view of the fact that appellate authority and revisional authority-officer is one and the same.

3. Learned counsel for the petitioner submitted that the petitioner being the owner of the vehicle is not at all involved in the offence under Excise Act mentioned in the FIR dated 07.01.2023. In fact for theft of the subject matter of vehicle, he had registered an FIR on 01.09.2022. These factual matrix reveals that the petitioner is not involved in the offence under Excise Act and the same has not been appreciated by the confiscating and appellate authority. Therefore, the impugned order passed is liable to be set aside and direction be given to release the subject matter of vehicle.

4. Per contra, learned counsel for the respondent resisted the aforementioned contention and submitted that confiscating authority has taken note of theft of the subject matter of vehicle before proceedings to pass confiscating order. Therefore, there is no infirmity in the confiscating authority order as well as appellate authority order. Hence, the petitioner

is not entitled to any relief.

5. Heard learned counsel for the respective parties.

6. Undisputed facts are that the petitioner is owner of the aforementioned subject vehicle. In respect of theft of the aforementioned vehicle he had registered an FIR on 01.09.2022. Thereafter, the subject matter of vehicle was involved in the offence under Excise Act on 07.01.2023. The respondents have not apprised this Court about the role of the petitioner in the subject matter of vehicle, whether directly or indirectly in respect of the offence under Excise Act, so as to apprise the confiscation proceedings and its affirmation by the appellate authority.

7. Having regard to these facts and circumstances, both the confiscating authority as well as appellate authority have not applied their mind before proceeding into confiscation and affirmation. Thus, the petitioner has made out *prima facie* case. Accordingly, the impugned order dated 24.07.2023 passed in Excise Appeal Case No.93 of 2023 passed by the Excise Commissioner, Patna stands set aside. Subject matter of motor vehicle be released in favour owner of the vehicle after due verification of record. Writ petition is allowed with cost of Rs.50,000/-. Cost shall be paid to the petitioner within a period

of eight weeks from the date of receipt of this order, for the reasons that the petitioner has been unnecessarily subjected to confiscation proceedings, appellate proceedings and the present writ petition.

8. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

S.Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2024
Transmission Date	NA