IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16073 of 2023

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Manjeet Singh son of Late Tara Singh, Proprietor of M/S Blus Horses of Tenth Master, Resident of K111A, Krishna Park Ext. Tilak Nagar, New Delhi-110018, through his authorized representative Mr. Yogendra (Male), aged about 27 Years Son of Sri Veerpal Singh, resident of Village Saraiya, P.O.-Aram Saray, Police Station-Bhongaon, Distt.-Mainpuri, Uttar Pradesh-Pin-Code-205262.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
3. The Excise Commissioner, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
4. The District Magistrate-Cum-Collector, Kishanganj.
5. The Superintendent of Police, Kishanganj (Bihar)
6. The SHO-Cum-Officer-in-Charge, Bahaduarganj Police Station, District-Kishanganj (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sushil Jhunjhunwala, Advocate
For the Respondent/s	:	Mr. Kumar Manish, S.C. 5
		Mr. Kumar Pankaj, AC to SC 5

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

Date : 11-01-2024

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

(i) In the nature of certiorari quashing the

order of learned Excise Commissioner without his signature, passed in Excise Appeal No. 105 of 2023 on dated (illegible) 07.08.2023 bearing Memo No. bearing Memo No. Utpad Appeal wad sankhya - 105 / 2023 - / 07 Patna, Dated 07.08.2023.

(ii) In the nature of certiorari quashing the order dated 21.03.2023 passed by the District Magistrate – cum – Collector, Kishanganj in Confiscation Case No. 252 of 2023 in respect of release the vehicle / Container Truck in question stands seized since 01.02.2023.

(iii) In the nature of mandamus directing and commanding the respondents to release the Container Truck bearing registration number NL01-AB 6678 which stands seized since 01.02.2023 in connection with Bahadurganj P.S. Case No. 36 of 2023 registered under Section 30(a) of the Bihar Prohibition & Excise Act 2016 (For short " The Excise Act.") alleging that upon interception of the aforesaid container truck in the Cabin, where the Driver and Khalasi were having Indian Made Foreign Liquor of quantity 750 ml. And 375 ml. Totaling 1.125 Liter foreign liquor kept in a black bag, was recovered.

(iv) In the nature of mandamus directing and commanding the respondents not to put the seized container truck of the petitioner on public auction.

(v) Other relief or reliefs to which the petitioner is found to be entitled.

2. A Truck bearing No. NL01 – AB 6678 was involved in excise offences and P. S. Case No. 36 of 2023 was registered on 01.02.2023 for the offences under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short Excise Act). The quantum of the seizure of the liquor is 750ml and 375ml of 2 bottles of liquor. In this regard truck driver and Khalasi were involved for the aforementioned offences. The official respondents proceeded to initiate confiscation proceedings and it was concluded in confiscation of the aforementioned motor vehicle. The petitioner – owner has remedy of invoking Rule 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Rules in the year 2022 and 2023. In these proceedings, the concerned District Magistrate imposed fine of a sum of Rs. 8 lakhs on 21.03.2023. Still aggrieved by the order of the Collector, petitioner preferred appeal before the Appellate Authority in which the Appellate Authority has modified the fine order of the Collector to the extent of Rs. 5 lakhs from Rs. 8

lakhs on 07.08.2023, hence the present petition.

3. Learned counsel for the petitioner submitted that quantum of fine or penalty of sum of Rs. 5 lakhs read with the quantity of liquor seized, namely, 750ml and 375ml would be too harsh and it is not commensurate with the quantity. It is also submitted that while determining and imposing fine the concerned authority was required to take note of quantum of the liquor, 10 per cent of the insurance value of involved motor vehicle. The insured value of the vehicle cannot be taken into consideration for the purpose of determining and imposing fine. It is submitted that if the insurance value is taken into consideration for the purpose of determination and imposition of fine, it would be arbitrary for the reasons that if the same quantity is seized alongwith two wheeler vehicle in that event if the value of the insurance of the two wheeler is taken in that event determination of fine would be lessor than what has been imposed in the present case. Therefore, modification of fine of Rs. 8 lakhs to that of Rs. 5 lakhs by the appellate authority is arbitrary and illegal.

4. Per contra, learned counsel for the respondent resisted the aforementioned contention and submitted that Collector has taken note of criteria under Rule 12A. Further, appellate

authority has applied his mind in modifying the penalty from Rs. 8 lakhs to that of 5 lakhs, therefore, the petitioner has not made out a case so as to interfere with the action of the respondents which is the subject matter of the present petition.

5. Heard the learned counsels for the respective parties.

6. Undisputed facts are that subject-matter of vehicle – truck read with the fact that Indian Made Foreign Liquor of quantity of 750ml and 375ml was seized from the aforementioned vehicle when the driver of the truck and khalasi were involved in the matter.

7. No doubt petitioner had suffered an order with reference to confiscation proceedings under Section 56 and in appeal under Section 92. Thereafter, he has simultaneously exhausted remedy under Rule 12A of the Bihar Prohibition and Excise Rules, 2021 read with amended Rules 2022 and 2023 respectively. He has invoked rule 12A and it is the Collector who has passed an order while imposing fine of Rs. 8 lakhs on 21.02.2023. The petitioner aggrieved by such imposition of penalty, preferred the appeal before the appellate authority. Appellate authority modified the penalty of Rs. 8 lakhs to that of Rs. 5 lakhs, hence the present petition. It is necessary to reproduce sub-

Rule (2) of Rule 12A and it reads as under:-

> ***Substitution of sub-rule (2) of Rule 12A (Release of Vehicles, Conveyance etc on Payment of Penalty) of Bihar Prohibition and Excise Rules, 2021: -*** *The sub-rule (2) of Rule 12A (Release of Vehicles, Conveyance etc on Payment of Penalty) of Bihar Prohibition and Excise Rules, 2021 shall be substituted with the following: -*
>
> ***"(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.*
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> *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."*

underline supplied.

8. No doubt the Collector has taken note of the criteria mentioned under Rule 12A for the purpose of imposition of penalty of Rs. 8 lakhs. However, it was not commensurate with the quantum of liquor seized. The same has been taken note of by the appellate authority and he has modified from Rs. 8 lakhs to that of Rs. 5 lakhs. It is to be noted that neither of the authority has noticed that "<u>involvement of the vehicle owner</u>" on the other hand quantum of intoxicant recovered and latest insurance value of the vehicle has been taken. What would be effect of non-involvement of the vehicle owner has not been decided.

9. We are of the view that even imposition of Rs. 5 lakhs would be too harsh for the reasons that quantum of liquor is 750 ml to 375 ml. Merely, it was recovered from a truck i.e. heavy motor vehicle. The concerned authorities were not required to rely on insured value of the truck. We are posing question ourselves, suppose the same quantity of 750 ml and 375 ml was seized by the concerned officials from two wheeler vehicle in that event insured value would be too low in thousands and the yardstick in so far as imposition of fine would be different like in thousands, therefore impugned order is arbitrary. Therefore, quantum of liquor seized is material

information which is required to be taken note of. For example in the present case itself. It may be for the purpose of consumption of driver of the truck and khalasi and they must have stored 750 ml and 375 ml. In other words, we can draw inference that the aforementioned 750ml and 375ml cannot be for commercial purpose so as to impose exemplary fine on the owner of the truck. These material information is required to be taken note of by the concerned authorities like appellate authority; simply they cannot resort to 10 per cent of the insured value of the motor vehicle read with the quantum of liquor seized while ignoring another criteria of involvement of the vehicle owner.

10. Having regard to these facts and circumstances, we are of the view that imposition of modified fine of Rs. 5 lakhs by the appellate authority is also on higher side in view of the fact that 750 ml 375 ml of liquor was seized from a driver and khalasi of the truck. Therefore, the impugned order dated 07.08.2023 is set aside and matter is remanded to the appellate authority for a fresh consideration to impose lessor fine in commensurate with quantum of liquor seized of 750ml and 375ml. He has to take note of the fact that seized liquor may be for consumption of personal use of driver and khalasi and not

for commercial. Therefore, reasonable fine may be imposed while modifying the order of the Collector dated 21.03.2023. The above exercise shall be completed while passing a fresh order in the appeal within a period of 2 months from the date of receipt of this order. In the meanwhile, the concerned authorities are hereby directed to not to proceed with any auction proceedings for non-remittance of fine of Rs. 5 lakh ordered by the appellate authority. Accordingly, Excise appeal No. No. 105 of 2023 stands restored on the file of the Excise Commissioner's office and matter is remanded to proceed afresh in the Excise Appeal No. 105 of 2023 within a period of 2 months from the date of receipt of this order.

11. The writ petition stands allowed in part.

12. At this stage, learned counsel for the State submitted that appellate authority hands are tied in view of the statutory provision under Rule 12A. Rule 12A in respect of criteria of 10 per cent of the insured value of the vehicle shall not be taken into consideration in the present case and only quantity of liquor, since yet another criteria of involvement of the vehicle owner is not forth coming.

13. Having regard to the factual aspects of the matter, the

aforesaid facts shall be taken note of and the appellate authority is hereby directed to impose reasonable lessor fine and order for release of subject matter of motor vehicle at the earliest, since vehicle is seized from 01.02.2023.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

saurabhkr/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	