IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 28923 of 2026
CNR No.ODHC010669772026

(An application under Articles 226 and 227 of Constitution of India)

Umesh Patra ..... **Petitioner**

-**Versus**-

State of Odisha & Ors. ..... **Opposite Parties**

For Petitioner : Ms. Namita Pattnaik, Advocate

For Opp. Parties : Mr. G. Mohanty, Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
06.11.2026.

SASHIKANTA MISHRA, J. The petitioner seeks to challenge the order dated 13.08.2026 passed by the Commissioner of Excise, Odisha, Cuttack, in Excise Appeal Case No.31 of 2025, whereby the appeal preferred by the petitioner against the order dated 16.07.2025 passed by the Authorised Officer-cum-Superintendent of Excise, Mayurbhanj, in

Excise Confiscation Case No.01 of 2025-26, directing confiscation of the vehicle bearing Registration No.OD-11-AD-1256, was dismissed and consequently, the order of confiscation was affirmed.

2. The facts of the case, briefly stated, are that the petitioner is the registered owner of a Maruti Suzuki Celerio ZLX bearing Registration No. OD-11-AD-1256, purchased with bank finance. On 11.04.2025, while he was driving the vehicle near Gohira Bridge under Jamda Police Station, Excise officials intercepted it and on search, found two bags containing 68 PET bottles of alleged non-duty-paid Indian-made foreign liquor, measuring approximately 51 litres, from the rear dicky.

Pursuant to the seizure, P.R. No.03 of 2025-26 was registered and confiscation proceedings were initiated under Section 71 of the Odisha Excise Act, 2008. The Authorised Officer-cum-Superintendent of Excise, Mayurbhanj, by order dated 16.07.2025 in Excise Confiscation Case No.01 of 2025-26, ordered confiscation of the vehicle. The petitioner's appeal was dismissed by the

Commissioner of Excise on 02.12.2025. The petitioner thereafter filed W.P.(C) No.37604 of 2025, which was disposed of on 09.02.2026 by remitting the appeal to the Commissioner of Excise for fresh consideration, after hearing the parties and by passing a reasoned order. On rehearing, the Commissioner, passed order dated 13.08.2026, again dismissing the appeal. Said order is impugned in the present writ application.

3. Counter affidavit has been filed by the Superintendent of Excise, Mayurbhanj stating that the petitioner has an alternative statutory remedy of revision under Section 6(3) of the Odisha Excise Act, 2008 against the impugned order. On merits, it is stated that the vehicle was being driven by the petitioner when the intoxicants were recovered from its rear dickey and he failed to establish that the vehicle had been used without his knowledge or connivance or any reasonable and necessary precautions had been taken against such use.

4. Rejoinder has been filed by the petitioner in reply to the Counter stating that the petitioner's signature

on the seizure list cannot, by itself, be treated as an admission of knowledge of the contents of the bags and the chemical examination of the seized substance does not establish such knowledge.

5. Heard Ms. N. Pattnaik, learned counsel for the petitioner and Mr. G. Mohanty, Standing Counsel for the State.

6. Ms. Pattnaik would argue that impugned order has been passed without proper compliance with the directions issued by this Court in W.P.(C) No.37604 of 2025. She submits that the Commissioner has failed to consider the petitioner's specific defence that the bags belonged to the co-passenger, Kartika Gope, and the petitioner had no knowledge of their contents. She also submits that the Chemical Examination Report was produced during the appellate proceedings and its subsequent production does not cure the deficiencies in the confiscation proceeding. She also argues that the mere recovery of the alleged intoxicants from the vehicle and the petitioner's signature on the seizure list do not, by themselves, establish his knowledge or

connivance. The Commissioner has also failed to consider the statutory requirements under Section 71 of the Odisha Excise Act, 2008, and the previous excise cases, which are stated to have ended in acquittal, cannot be relied on to sustain the confiscation.

7. Per contra, Mr. G. Mohanty submits that the Commissioner, pursuant to the remand order dated 09.02.2026, afforded opportunity of hearing to the parties and passed a reasoned order after considering the circumstances of the seizure, the nature and quantity of the seized intoxicants, and the petitioner's defence. He argues that the petitioner was driving the vehicle when 51 litres of the intoxicants were recovered from its rear dickey and he failed to establish that the vehicle had been used without his knowledge or connivance or any reasonable and necessary precautions had been taken against such use, as required under Section 71(5) of the Act.

8. It would first be apposite to refer to Section 71 of the Odisha Excise Act, 2008, which provides for seizure of property liable to confiscation and prescribes the procedure

to be followed by the authority before passing order of confiscation. Section 71 reads as follows: -

> *"Section 71 - Seizure of property liable to confiscation*
>
> *(1) (a) When there is reason to believe that any offence under this Act has been committed, the intoxicant, materials, stills, utensils, implements, apparatus, receptacles, package, coverings, animals, carts, vessels, rafts, vehicles, or any other conveyances or articles or materials used in committing any such offence may be seized by the Collector or any officer of the Excise, Police, Customs or Revenue Departments.*
>
> *(b) any intoxicant lawfully imported, transported, manufactured in possession or sold along with, or in addition to, any intoxicant which is liable to seizure under clause (a) and the receptacles, packages and coverings in which any such intoxicants as aforesaid, or any such materials, stills, utensil, implement or apparatus as aforesaid, is found and the other contents, if any, of such receptacles or packages, and the animals, carts, vessels, rafts, vehicles or other conveyances used in carrying the same, shall likewise be liable to seizure.*

(2) Every officer seizing any property under this section shall, except where the offender agrees in writing to get the offence compounded under section 75, produce the property seized before the Collector, or an officer, not below the rank of a Superintendent of Excise, authorized by the State Government in this behalf by notification (hereinafter referred to as the 'authorized officer').

(3) Where the Collector or the authorized officer seized any property under sub-section (1) or where the property seized is produced before him under sub-section (2) and he is satisfied that an offence under this Act has been committed in respect thereof, he shall, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of the property so seized or produced together with all other materials, articles, vehicles or conveyances used in committing such offence, whether or not a prosecution is instituted for the commission of such an offence.

(4) No order confiscating any property shall be made under sub-section (3) unless the person from whom the property is seized is given?

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice; and

(c) a reasonable opportunity of being heard in the matter.

(5) Without prejudice to the provisions of sub-section (4), no order of confiscation under sub-section (3) of any articles, materials, vehicles or conveyances shall be made if the owner thereof proves to the satisfaction of the Collector or the authorized officer, as the case may be, that it was used without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of such property, in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

xx xx xx

(13) The Collector or the authorized officer shall, for the purposes of this Act, have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908(5 of 1908), while making inquiries under this section in respect of the following matters namely:--

(a) receiving evidence on affidavit;

(b) summoning and enforcing the attendance of any person and examining him on oath; and

(c) compelling the production of documents."

9. A plain reading of Section 71(1) of the Act indicates that where there is reason to believe that an offence under the Act has been committed, the intoxicants, materials, vehicles or other conveyances used in committing such offence may be seized by the authorities. However, the power of seizure under sub-section (1) is distinct from the power of confiscation under sub-section (3), which requires the Collector or the authorised officer to arrive at the satisfaction that an offence under the Act has been committed in respect of the property seized or produced before him. While seizure is an interim measure based on the reason to believe, confiscation entails deprivation of property and can be ordered only on fulfilment of the conditions prescribed under the Act.

10. An order of confiscation results in deprivation of a citizen's property and, therefore, the power must be exercised strictly in accordance with law. Article 300-A of the Constitution of India mandates that no person shall be deprived of his property save by authority of law. Thus, mere

seizure of a vehicle in connection with an alleged excise offence cannot, by itself, justify its confiscation. The competent authority must satisfy itself that the conditions under Section 71 have been fulfilled by recording reasons. The requirement of independent satisfaction under Section 71(3) is, therefore, fundamental, as it constitutes the legal basis for depriving the owner of his property.

11. In the present case, the circumstances leading to the seizure of the vehicle have been documented in Form C-2, pursuant to P.R. No.03 of 2025-26 dated 11.04.2025. Said seizure document bears the signatures of the official witnesses, namely, Binay Prakash Tirkey, Inspector of Excise, Rairangpur Range; Bipalab Kumar Malik, E/C, Rairangpur Range; Arun Kumar Muduli, E/C, Rairangpur Excise Station; and one Rameshwar Mohanta of village Kanki. The signatures of the petitioner and the co-accused also appear in the said document. Subsequently, Form C-5 and other connected records were prepared in relation to the seizure by the officer who conducted the search and seizure.

12. The seizure of the vehicle gives rise to a criminal proceeding and a confiscation proceeding. It is, however, well evident from the scheme of Section 71(3) that the confiscation proceeding is independent of the criminal prosecution, as the authority is empowered to order confiscation whether or not a prosecution has been instituted in respect of the offence. Therefore, the outcome of the criminal proceeding, whether by way of conviction or acquittal, would not, by itself, determine the issue of confiscation. The competent authority is required to independently examine the materials placed before it and arrive at the satisfaction contemplated under Section 71(3) of the Act.

13. Perusal of the impugned order shows that the vehicle was produced before the authorised officer under Section 71(2) of the Act. The question is therefore, whether the Commissioner independently examined the materials on record and arrived at the requisite satisfaction under Section 71(3) before affirming the confiscation.

14. The satisfaction required under Section 71(3) is a statutory precondition to confiscation and cannot be presumed only from the seizure of the property or the opinion of the seizing officer. The competent authority must independently examine the materials and arrive at its own satisfaction. This Court, in its earlier order in W.P.(C) No.37604 of 2025, had noticed the deficiency in consideration of this requirement and remitted the matter to the Commissioner for fresh consideration in accordance with Section 71(3).

15. However, the impugned order dated 13.08.2026 substantially relies on the seizure records and reports of the seizing officer, particularly the recovery of 68 PET bottles containing approximately 51 litres of alleged non-duty-paid IMFL from the rear dickey and the fact that the petitioner was driving the vehicle. Though relevant, these circumstances have not been subjected to adequate independent assessment nor does the order examination of the seizure witnesses was done. The petitioner's defence that the bags belonged to co-passenger Kartika Gope, who had

requested for a lift representing that they contained marriage articles, has not been properly examined against the materials on record.

16. This Court is conscious of the fact that Section 71(13) of the Act does not make the examination of every seizure witness mandatory in each and every confiscation proceeding. However, the said provision confers on the Collector or the authorised officer the powers of a Civil Court for the purpose of conducting an inquiry, including the power to summon and examine witnesses and receive evidence. These powers assume significance where the owner disputes the circumstances of recovery and specifically denies knowledge of the contents of the bags allegedly carried in the vehicle, thereby raising a specific factual defence requiring consideration. In such circumstances, the authority is required to consider whether examination of the relevant witnesses is necessary to ascertain the circumstances of recovery and test the owner's defence. This is because Section 71(5) of the Act places the burden on the vehicle owner to establish that the vehicle

was used without his knowledge or connivance, or that of his agent or the person in charge thereof, and that reasonable and necessary precautions had been taken against such use. The authority must, therefore, first examine the circumstances establishing the alleged use of the vehicle and thereafter consider the owner's defence. In the present case, the petitioner’s defence is that the two bags belonged to co-passenger Kartika Gope, who had requested a lift and represented that they contained marriage articles, and that he himself was unaware of their actual contents. This defence required consideration in light of the evidence available on record. The object of Section 71(13) would be frustrated if the authorised officer were to pass an order of confiscation on the basis of the seizure records, while placing the burden on the owner to establish his bonafides without considering whether further evidence was necessary. In the present case, even the official seizure witnesses were not examined, although their evidence could have assisted in ascertaining the circumstances in which the vehicle was allegedly used in the commission of the offence

and whether the petitioner had knowledge of the contents of the bags. This is particularly significant because the petitioner's mere signature on the seizure list cannot, by itself, be treated as an admission of knowledge of the contents of the bags or connivance in their transportation. The evidentiary value of such signature was required to be assessed along with the other circumstances of the case. The burden under Section 71(5), therefore, cannot dispense with the statutory obligation of the authority to independently examine the materials and arrive at the satisfaction contemplated under Section 71(3). Further, the Chemical Examination Report may establish the nature and composition of the seized substance, but cannot, by itself, establish the petitioner's knowledge or involvement in its transportation. Since the petitioner contends that the report was introduced during the appellate proceeding, the Commissioner was also required to afford him a reasonable opportunity to examine and controvert the same before placing reliance on it. Thus, the seizure records, the Chemical Examination Report and the petitioner's specific

defence were required to be assessed together, with such further inquiry as the circumstances warranted, before imposing the consequence of confiscation

17. Another significant aspect of the matter is the following observation made by the Commissioner in the impugned order that:

> *"The absence of an independent witness does not by itself render the evidence of departmental officials unreliable. The credibility of official witnesses is required to be assessed on the basis of consistency and reliability of the contemporaneous records. The seizure documents and other records have therefore been independently examined while considering the evidentiary value of the materials on record."*

The aforesaid observation shows that the Commissioner claims to have assessed the credibility of the departmental officials on the basis of the consistency and reliability of the contemporaneous records. However, on a perusal of the impugned order, this Court is unable to discern the actual assessment undertaken in that regard. The Commissioner has not identified the material circumstances which lend

assurance to the version recorded by the seizing officer as no examination of witnesses was conducted, nor has he explained how the petitioner's specific objections to the circumstances of recovery were evaluated. The conclusion that the records have been examined cannot substitute reasons demonstrating such examination. A quasi-judicial authority is required to disclose the reasoning which connects the materials available on record with the conclusion arrived at.

18. It is also relevant to notice that the earlier order of this Court had specifically taken note of the deficiency in the confiscation order concerning the reliance placed on the report of the investigating/seizing officer and the absence of adequate discussion regarding the satisfaction required under Section 71(3). The remand was intended to ensure that the Commissioner undertook a fresh and meaningful consideration of the matter in accordance with the statutory requirements. However, even in the present proceeding, the Commissioner has substantially relied upon the seizure records, including Form C-2 and Form C-5, and other

reports prepared by the same officer, without demonstrating any further meaningful inquiry into the disputed circumstances. The fact that the Commissioner has elaborately discussed the petitioner's submissions would not, by itself, amount to compliance with the earlier direction if the fundamental deficiency noticed by this Court remains unaddressed.

19. The Commissioner, while passing the impugned order dated 13.08.2026, failed to independently assess the materials on record, the petitioner's specific defence and the necessity of further inquiry, as required under Section 71(3) of the Odisha Excise Act, 2008. The impugned order, therefore, does not conform to the principles of natural justice, which encompass the right to a fair and meaningful investigation and inquiry. Since the fundamental requirement of fairness in any proceeding has been vitiated by the non-examination of witnesses, this Court deems it appropriate not to remit the matter for fresh consideration and to quash the confiscation proceedings.

20. In the result, the order dated 13.08.2026 passed by the Commissioner of Excise, Odisha, Cuttack, in Excise Appeal Case No.31 of 2025, as well as the order dated 16.07.2025 passed by the Authorised Officer-cum-Superintendent of Excise, Mayurbhanj, in Excise Confiscation Case No.01 of 2025-26, directing confiscation of the vehicle bearing Registration No. OD-11-AD-1256, are hereby set aside. Consequently, the confiscation proceedings initiated in respect of the aforesaid vehicle stand quashed. The competent authority is directed to take necessary steps for release of the vehicle in favour of the petitioner.

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Sashikanta Mishra
Judge

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