(2026) 02 OHC CK 1712

In the Orissa High Court

Case No : Writ Petition (C) No. 37604 Of 2025

Umesh Patra APPELLANT

Vs

State Of Odisha And Others RESPONDENT

Date of Decision : 09-02-2026

Acts Referred:

Orissa Excise Act, 1915 — Section 47(1)(a), 47(1)(b), 47(1)(c), 52(a)(i), 55, 58, 59, 63(1), 67, 71, 71(1)(a), 71(3)(2), 71(5), 73, 75

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 60, 60(3), 63

Citation : (2026) 02 OHC CK 1712

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : Namita Pattanaik, Goutam Tripathy

Final Decision : Disposed Of

Judgement

B.P. Routray, J

1. The writ petition has been filed challenging the impugned orders of the Appellate Authority dated 2nd December 2025 and the Original Confiscating Authority dated 16th July 2025 in Annexures-2 & 1 respectively.

2. I have heard Ms.Pattnaik, learned counsel for the Petitioner and Mr.Tripathy, learned Additional Government Advocate for State-Opposite Parties.

3. The Petitioner is the owner of the car bearing Registration No.OD-11AD-1256 (Maruti Suzik Celerio ZLX) and the vehicle was seized and confiscated in terms of the proceeding initiated under Section 71 of the Odisha Excise Act.

4. It is submitted on behalf of the Petitioner that the order of confiscation passed by the Authorized Officer under Annexure-1 and then confirmed by the Appellate Authority under Annexure-2 are suffering from material errors as there is lack of evidence in support of transportation of alleged excisable article, i.e. 51 liters of illicit NDP IMFL from possession of the Petitioner in the vehicle, and secondly, there was no material to satisfy that the same was transported deliberately by

the Petitioner in the vehicle in question.

5. The facts of the case are that when the Petitioner was driving his vehicle as the owner of the same on 11th April 2025 at about 5:00 AM along with one Kartika Gope, the same was detected by Excise Officers at Gohira Bridge under Jamda Police Station and found containing 51 liters of NDP IMFL carried in two bags kept in the dickey of the car. As such, the illegal liquor was seized and the Petitioner along with Kartika Gope was arrested for commission of offences under Sections 52(a)(i), 59 and 63(1) of the Odisha Excise Act, 2008. Upon taking cognizance of the matter by the competent court, proceeding for initiation of confiscation of the vehicle bearing Registration No.OD-11AD-1256 was started and notice was sent to the Petitioner to submit his reply. The Petitioner submitted his reply stating that such amount of liquor found in the dickey of the vehicle does not belong to him and it was belonging to the other accused namely, Kartika Gope. It is stated by the Petitioner that on the alleged date and time when he was returning to his house situated at village Tiring, on the way at village Badadalima, said Kartika Gope requested him to give him lift up to his village and loaded two bags in the dickey telling that the same are marriage articles required to be handed over to his relatives. Believing his words, the Petitioner gave lift to said Kartik Gope in his vehicle along with the containers, which were subsequently detected to be carrying 51 liters of illicit NDP IMFL leading to registration of the case and his arrest. It is also the case of the Petitioner that he bought the vehicle in question prior to seven/eight months back on finance and if the same would be confiscated, he would loss his livelihood.

6. Admittedly, the Petitioner is the registered owner of the vehicle bearing registration no.OD-11AD-1256 (hereinafter referred to as "offending vehicle") and the said vehicle has been seized vide P.R.No.03/25-26 dated 11th April 2025 and 2(a) CC Case No.165 of 2025 has been registered in respect of the alleged commission of offences on the file of the S.D.J.M., Rairangpur for illegal possession and transportation of 51 liters of illicit Non-Duty Paid IMFL (NDP IMFL). Further, the Petitioner was the alleged driver of the offending vehicle detected at the time of seizure of the contraband. He is also an accused along with other co-accused namely, Kartika Gope to stand his trial in the criminal case registered against them. Section 71 of the Odisha Excise Act, 2008 authorizes the competent authority to seize and confiscate all such intoxicant, materials, stills, utensils, implements, apparatus, receptacles, package, coverings, animals, carts, vessels, rafts, vehicles, or any other conveyances or articles or materials used in commission of such offence under the Act. For better appreciation, the relevant provisions contained in the Excise Act, 2008 are reproduced below:

"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) xxx xxx

xxx

(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.

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(11) Where the Collector or the authorized officer after passing an order of confiscation under sub-section (3) is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof to be sold by public auction or dispose of departmentally.

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(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.

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73. Result of criminal proceeding not to affect the order of confiscation-The result of criminal proceeding, either acquittal or conviction or otherwise, under the provisions of this Act, will have no bearing on the order of confiscation passed under this Act.

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75. Compounding of offences and releasing property liable to confiscation :– (1) The Collector or any Excise Officer specially empowered by the State Government in this behalf, not below the rank of Superintendent of Excise may, subject to any restrictions as may be prescribed, accept from any person whose exclusive privilege, licence, permit or pass is liable to be cancelled or suspended under clause (a), (b) or (c) of Sub-section (1) of Section 47 or who is reasonably suspected of having committed an offence punishable under any section of this Act other than Sections 55, 58, 59 and 67, payment of a sum of money as may be prescribed in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be, and in any case in which any property has been seized being liable to confiscation under Section 71, may release the property on payment of equal sum of the prevailing market value thereof as estimated by the Collector or such Excise Officer :

Provided that where such person intended to evade excise revenue, the sum to be paid by such person in lieu of cancellation or suspension or by way of composition for such offence as aforesaid shall in no case be less than five times of such revenue intended to be evaded :

Provided further that where the property so seized is a liquor manufactured in contravention of this Act, such liquor shall not be released but shall be disposed of in such manner as may be prescribed.

(2) When the payments referred to in Sub-Section (1) have been duly made, the person, if in custody, shall be discharged, and the property seized if any, shall be released and no further proceedings shall be taken against such person or property."

7. According to the Petitioner, he does not deny his presence and detection of intoxicant at the time of seizure by the excise officials.

But what is contended on his behalf is that such presence or transportation of the intoxicant of 51 liters of illicit NDP IMFL was without his knowledge being carried by the passenger namely, Kartika Gope.

It is submitted on behalf of the Petitioner that he was completely unaware of such possession of illicit intoxicant by the co-accused by Kartika Gope in the offending vehicle when he under good faith lifted said Kartika Gope on the way to drop at his destination. Thus taking the ground that as it was without his knowledge or connivance, it is submitted that the commission of alleged offences cannot be attributed to his guilt and the offending vehicle being the sole source of livelihood of the Petitioner should be released in his favour.

8. It needs to mention here that 2(a)CC Case No.165 of 2025 pending on the file of the learned S.D.J.M., Rairangpur is yet to be adjudicated and the innocence as contended by the Petitioner is yet to be substantiated in the criminal trial. As per sub-section 5 of Section 71 of the Odisha Excise Act, the onus comes on the parties seeking release of the vehicle to prove to the satisfaction of the Authorized Officer that the vehicle in question was used without knowledge or connivance of the parties seeking its release and that he has taken all reasonable and necessary precautions against such use of the vehicle.

9. Sub-section 1(a) and sub-section 3(2) of Section 71 require that, when there is reason to believe that any offence under the Act has been committed and the Authorized Officer is satisfied that an offence under the Act has been committed in respect thereof, he shall without prejudice to any other punishment liable to the offender, may order for confiscation of the vehicle or such other properties, regardless of any prosecution instituted. Further, Section 73 stipulates that the result of such criminal proceeding ended either in acquittal or conviction or otherwise will have no bearing on the order of confiscation passed under the Act.

10. Thus, the mandate of the Act prescribes that the order of confiscation of the property used in commission of the offence including the vehicle would be independent of the criminal liability established by the competent court of law on the offender. The difference is that irrespective of the criminal liability on the offender the liability for confiscation of such property used in commission of the offences under the Act is to be determined by the Confiscating Authority up to his satisfaction with reasons to believe that such offences under the Act has been committed.

11. In Nathulal vrs. State of Madhya Pradesh, 2010 SCC Online MP 822, the Hon’ble Supreme Court has observed that though a statue may exclude the element of mens rea, but it is a sound rule of consideration to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excludes means rea. It was further held that mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Means rea was held to be permitted to be excluded from a statute by necessary implication only where it was absolutely clear that the implementation of the object of the statute would otherwise be defeated.

12. The Hon’ble Supreme Court in Bishwajit Dey vrs. State of Assam,(2025) 3

SCC 241, while dealing with Sections 60 & 63 of the Narcotic Drugs or Psychotropic Substances Act, 1989 relating to confiscation of seized conveyance held that the criminal law has not to be applied in a vacuum to the facts of the each case. Further, in Danish vrs. State of Tamilnadu, 2025 SCC Online 2276, the Hon'ble Supreme Court has observed that the power of confiscation is coupled with a duty to observe procedural fairness and to ensure that no prejudice is caused to an innocent owner who had neither knowledge nor willfully participated or connived to commit the offence under the NDPS Act.

It needs to be mentioned here that the power of confiscation has vested on the competent authority under the NDPS Act engrafted in Sections 60(3) and 63 of the said Act. The NDPS Act requires grant of opportunity of hearing to rightful claimant of the property along with his right to prove use of the conveyance without his knowledge or connivance and that he had taken all such reasonable precautions against such used of the conveyance. It is the same requirement that is engrafted in sub-section 5 of Section 71 of the Odisha Excise Act.

13. Thus, on analysis of the provisions contained in Section 71 read with Section 73 & Section 75 of the Odisha Excise Act, it mandates that for confiscation in respect of property or conveyance for use of the same in committing the offence under the Act, the authority must be satisfied with reason to believe that such offence under the Act has been committed by use of such conveyance and secondly, for release of the same, the claimant has to prove to the satisfaction of authority that the conveyance was used without his knowledge or connivance and that he had taken all such reasonable and necessary precautions against such use.

14. In the present facts of the case, to see as to the satisfaction of the authority with regard to confiscation of the offending vehicle that the satisfaction to believe use of the offending vehicle in committing the offences are not reasonably discussed either in the original order of the authorized officer or by the appellate authority. Both the authorities without discussing about their satisfaction to believe use of the offending vehicle in committing such offences, particularly pending adjudication of the criminal proceeding before the competent court of law, have held that the Petitioner has failed to prove his innocence and he has not proved about all reasonable and necessary precautions taken by him against use of the vehicle for committing such offence. It needs to be mentioned here that the confiscating authority has the power as a quashi judicial body to receive evidence and enforcing attendance of any person to examine him on oath or regarding production of necessary documents. The order of the authorized officer under Annexure-1 does not reveal examination of any witness except relying on the report of the investigating officer. Though the Petitioner contested the case appearing through his lawyer, but has not adduced any such evidence to discharge the onus on his part, except producing the documents of the vehicle. In such circumstances, it is felt appropriate to remand the matter back to the appellate authority to reconsider the appeal afresh.

15. So in the result, the writ petition is disposed of by remanding back Excise Appeal Case No.31 of 2025 to the Commissioner of Excise, Odisha, Cuttack to re-hear the matter afresh granting opportunity of hearing to the Petitioner and prosecution and pass such order, in accordance with law, speaking the reasons thereof.

