IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9875 of 2025

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M/s. Aaria Enterprises, a Partnership Firm, having its office at 40 Kamar Bandha Road, Babupatty, Jorhat, Assam-785001 through its authorized signatory Sanjay Kumar Goyal (Male), (aged about 42 years) S/o Ramotar Goyal, R/o Sarvodaya Apartment, Block- B2, 23/6, N.S. Road, Bally (M), P.S.- Howrah, Distt. - Howrah, West Bengal, Pin- 711204.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Assistant Commissioner of State Tax, Supaul Circle, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D V Pathy, Sr. Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Mr. Roshan Jha, Advocate Mr. Riddhiman Mukherjee, Advocate
For the Respondent/s	:	Standing Counsel (11)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-08-2025

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

> *" i) A writ in the nature of Mandamus/Certiorari against the respondent authorities for set aside the order dated 22.05.2025 passed by Respondent No. 2 in summary of order issued under Section 129(3) along with DRC-07 and FORM-GST-MOV-09, quantifying amount of penalty Rs. 8,17,766/- for the tax period May 2025.*

ii) A writ in the nature of Mandamus/Certiorari against the respondent authorities for set aside the show-cause notice in form of DRC-01 dated 14.05.2025, FORM-GST-MOV-01 dated April 26th, 2025, FORM-GST-MOV-02 dated May 07th, 2025, FORM-GST-MOV-04 dated May 07th , 2025 FORM-GST-MOV-06 dated May 08th , 2025 & FORM-GST-MOV-07 dated May 14th , 2025.

iii) A writ in the nature of Mandamus for release of Truck containing goods which was intercepted/detained by respondent, is wholly illegal and without jurisdiction.

iv) A writ in the nature of Prohibition be issued commanding the Respondent Authorities by restraining them for proceeding any further in terms of order dated 22.05.2025 in DRC-07, DRC-01 dated 14.05.2025, FORM-GST-MOV-01 dated April 26th , 2025, FORM-GST-MOV-02 dated May 07th, 2025, FORM-GST-MOV-04 dated May 07th , 2025, FORM-GST-MOV-06 dated May 08th , 2025 & FORM-GST-MOV-07 dated May 14th , 2025 till the disposal of the Writ Petition.

v) For granting any other relief(s) to which the petitioner is otherwise found entitled to."

2. Preliminary issue is relating to whether petitioner is required to exhaust remedy of appeal before the appellate authority or not ?

3. Learned counsel for the petitioner submitted that officer who has invoked Section 129 (3) of the CGST Act, 2017 has no power to evaluate the value of the goods. It is necessary to reproduce Section 129, which reads as under:-

> *" 129. Detention, seizure and release of goods and conveyances in transit.-(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, -*
>
> *[1][(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*
>
> *(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;]*
>
> *(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b)*

in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

2[***]

[3][(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).]

(4) [1][No penalty] shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

[2][(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):

Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:

(under line supplied)

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.]

This clause provides for provisions relating to detention, seizure and release of goods and conveyances in transit. This clause also provides for penalty which shall be payable for release of such goods. (Notes on Clauses)."

This Section shall be applicable where any person transports any goods or stores any goods while goods are in transit in contravention of GST Laws. Section 129 of the CGST Act empowers tax authorities to detain and seize goods and conveyance during transit if they suspect non-compliance. However, the law also provides for due process, including issue of notices, hearing representations, and releasing of goods upon payment of tax and penalty. Failure to comply with these provisions can result in penalties and even the sale of detained goods.

Ingredients of Section 129 are**:-**

(1) Detention of goods and conveyance

(2) Notice and order

(3) Release of goods

(4) Provisional release

(5) Final order

(6) Penalty on owner or person incharge.

Sub-Section 3 of the Section 129 of the CGST Act, 2017, the Proper Officer has been entrusted with the power of specifying the penalty payable. It could be undertaken only after evaluation of the goods read with the corroborative material evidence like invoice, E-way bill and other material evidence, therefore, petitioner's contention that author of the action taken under Section 129(3) of the CGST Act has no power to evaluate the value of the goods is not tenable.

4. Petitioner could not apprise this Court what is the meaning of 'specifying the penalty payable' under Section 129(3) in other words, under what circumstances the concerned authority was required to specify the penalty payable by the petitioner without assessing the goods and its valuation. Therefore, the contention of the petitioner that author of the action taken under Section 129(3) of the CGST Act has no jurisdiction, is not tenable. Moreover, perusal of the impugned order dated 22.05.2025, prima facie it is evident that petitioner has not co-operated in the proceedings initiated under Section 129 of the CGST and it is relevant to quote the following findings of the Proper Officer:

During the course of disposal of the case, the *proprietors of the firms (both supplier and recipient) were contacted over the mobile nos. given in their registration application. Given 4 mobiles nos.was not in services/use. Prima facie It seems that neither supplier nor the recipient are genuine taxpayer.*

6. Therefore, it can be concluded that there is a syndicate of firms which are being operated for illicit transportation of goods. As per EWB of UP12BT7201 (EWB No. 891521554976 & 831524055634), the vehicle was loaded from Assam. But the same is not corroborated by the E-way bill integrated with Fastag RFID SYSTEM available on NIC Portal. The vehicular movement shows that the place of its origin is West Bengal with Ghogarkuthi Fee Toll Plaza as the first toll plaza crossed by it. The vehicle was not loaded from Mankachar (Assam) as the actual loading point (West Bengal) is different from that what is mentioned in the EWB (Assam).

7. Also, the goods are highly undervalued as per the details mentioned in its invoice i.e Rs.130/kg. This is a common modus operandi of tax evasion in which the taxable value is lowered in the invoice in order evade tax upon it. The market value of this commodity is as high as Rs. 600 per kg. Even Campco, which is a multi state co-operative that procures, markets, sells and processes areca nut also bills it @ Rs. 380/kg. It proves that this undervaluation has been done with an intent of tax evasion.

An Authorization letter received from supplier, M/s AARIA ENTERPRISES (18ACCFA3030G1ZX) on official mail ID of undersigned on dated 13-05-2025 from registered mail ID mentioned in registration details *of the supplier. Hence, penalty is being calculated UNDER CLAUSE (a) OF SUB-SECTION (1) OF SECTION 129 on payment of penalty equal to two hundred percent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*

Valuation of the goods in Transit (Dry Arecanuts): -

Since taxable value given in Invoice and E-way Bill is undervalued. So to determine best market price below mechanism is used.

Dry Arecanuts price is followed as per given in famous Website India Marthttps://dir.indiamart.com/as a Wholesaler Business type. Different 4 listed Priceis taken as a samplewith this office andaverage of 4 price list is taken under best judgement Process. After Best Judgement, taxable value of the Arecanut is being calculated at the rate of Rs.358/- per Kg. (4 Different Price list is enclosed with this order).

Calculation of Tax and Penalty to be imposed:-

1. 775kgs difference in weight of goods (Difference in weight of goods as per Invoice/ F-way Bill and Quantity/Weight found during Physical Verification)

Difference in Stock of Value of goods = 775 358 = Rs. 2,77,450*

Taxable Value = Rs 2,77,450.

*GST@5%=5*2,77,450/100 = Rs, 13,873.*

2. Difference in Valuation as per E-way

Bill/Invoice and Value of the goods as per market rate

Valuation of the goods as per E-way Bill/Invoice = Rs 130

Valuation of the goods as per Best judgement explained above = Rs 358.

Difference in Valuation=358-130 = Rs 228.

*Suppression in Taxable Value= 228*34,650 =79,00,200*

*GST Evasion = 5*7900200/100 = 3,95,010*

Total GST Evasion=13,873+3,95,010=4,08,883.

CALCULATION OF APPLICABLE PENALTY UNDER CLAUSE (a) OF SUB-SECTION (1) OF SECTION 129

*Penalty Imposed = 2 times of Tax payable = 2*408883=8,17,766*

1) CALCULATION OF APPLICABLE TAX												
					RATE OF TAX			PENALTY AMOUNT				
SI. No.	Description of goods	HSN Code	Quantity	Total Value (Rs.)	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12	13
1	As per invoice Dried Arecanut	80280	34650 Kg	7900200	--	--	5%	-	-	-	395010	
2	Arecanut Excess Stock as per Physical Verification	80280	775 Kg	277450	--	--	5%	-	-	-	13873	-
			35425 Kg	8177650					0	0	408883	0

2) CALCULATION OF APPLICABLE PENALTY UNDER CLAUSE (A) OF SUB-SECTION (1) OF SECTION 129												
					RATE OF TAX				PENALTY AMOUNT			
SI. No.	Description of goods	HSN Code	Quantity	Total Value (Rs.)	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess	Central Tax	State Tax/ Union Territory Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9	10	11	12	13
1	As per invoice Dried Arecanut	80280	34650 Kg	7900200	--	--	5%	-	-	-	790020	
2	Arecanut Excess Stock as per Physical Verification	80280	775 Kg	277450	--	--	5%	--	--	--	27746	
			35425 Kg	8177650					0	0	817766	0

8. Incorporating the above points, a notice in FORM GST MOV-07 was issued and duly served on the person in charge of the conveyance, providing him an opportunity to show cause against the demand of tax and penalty as applicable and make payment of same and to get goods and conveyance released.

9. As per Authorisation application given by, Proprietor of M/s AARIA ENTERPRISES (18ACCFA3030G1ZX) has claimed the ownership of goods loaded in truck no.-UP128T-7201 on dated 13-05-2025 via e-mail-aaria.enterprises3030g@rediffmail.com.

In connection of the above e-mail, the department has sent a reply on 13-05-2025 to M/s AARIA ENTERPRISES on its registered e-mail with seeking his reply on following points:

1. Providing purchase order details, regarding supply of the goods.

2. Providing sale details of the goods.

But till date taxpayer M/s AARIA ENTERPRISES not submitted reply regarding above mentioned points.

(Under line supplied)

Although on 20-05-2025 supplier M/s AARIA ENTERPRISES again sent a mail regarding intimation about matter/case challenged before the Hon'ble High Court, Patna. Facts of the mail is as follow: -

With reference to your MOV-07 date-14-05-2025 under Case Id-AD1005250016820 of DRC-01 date-14-05-2025 would like to inform you that we have challenged your above noted show cause notice and related proceeding under writ 226 application being E filling registration no.-ABR20230003491CR202500017 dete-20-05-2026 has been filed before the Hon'ble High Court At-Patna.

We request you kind not to proceed further any action/pass any order till matter heard by the Hon'ble High Court At-Patna.

As per CGST/BGST Act. 2017 section 129(3) the proper officer shall pass and order with in a period of seven days from the date of service of such notice. Therefore in favour of revenue it has been decided to pass an order (GST MOV-09) as per CGST/BGST Act. 2017 section 129(3).

The objections filed by him were perused and found acceptable/not acceptable for the following reasons:

As per CGST/BGST Act. 2017 section 129(3) the proper officer shall pass and order with in a period of seven days from the date of service of such notice. Therefore in favour of revenue it has been decided to pass an order (GST MOV-09) as per CGST/BGST Act. 2017 section 129(3).

Since owner of the goods came forward and claimed ownershipof goods which is loaded on *conveyance bearing no. UP12BT-7201 therefore, calculation of penalty will be as per section 129(1)(a) of CGST/BGST Act-2017.*

*Total Penalty Imposed = 2 times of Tax payable 2*408883=8,17,766*

10. You are hereby directed to make the payment forthwith/not later than seven days from the date of the issue of the order of detention in ***FORM GST MOV-06,*** *failing which action under section 130 of the Central/State Goods and Services Tax Act/section 21 of the Union Territory Goods and Services Tax Act or section 20 of the Integrated Goods and Services Act shall be initiated.*

sd/-
22/05/2025
Signature
Designation of the Proper Officer
राज्य कर सहायक आयुक्त वाणिज्य कर विभाग
बिहार, पटना

Shri Mohit Kumar (Driver)
Vehicle/Conveyance No:UP12BT7201
Address: S/o- Manga Ram House No 665, Pinna, Muazaffarnagar, UP, PIN 251306 ”

Taking note of these facts and circumstances, the petitioner has to invoke remedy of appeal before the appellate authority. Accordingly, the present petition stands disposed of reserving liberty to the petitioner to invoke remedy of appeal before the appellate authority within a period of one month from the date of receipt of this order, thereafter, the appellate authority is requested to decide the petitioner's memorandum of appeal within a reasonable period of time of three months from date of receipt of the memorandum of appeal.

(P. B. Bajanthri, J)

(Shailendra Singh, J)

Maynaz/Rajiv-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.08.2025
Transmission Date	NA