

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.678 of 2023

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The State of Bihar through the Deputy Commissioner of State Taxes, Central Investigation Bureau, Government of Bihar through Anju Kumari, D/o Krishna Dev, R/o Near Royal Colony, Gaya, Gaya- 823002.

... .. Appellant

Versus

M/s Ankur Career, 107, First Floor, Suryaprabha Mention Exhibition Road, P.S.Gandhi Maidan, Patna through its Proprietor Sri Ram Ujagar Yadav, Son of Sri Ramdeo Yadav R/o 203A, Hari Om Apartment, Exhibition Road, Near Narmada Apartment, GPO, Patna-800001.

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr.Vivek Prasad (GP 7)
	:	Ms. Supriya, Advocate
For the Respondent/s	:	Mr. Gautam Kumar Kejriwal, Advocate
	:	Mr. Mukund Kuamr, Advocate
	:	Mr. Akash Kumar, Advocate
	:	Mr. Aditya Raman, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 02-04-2025

I.A. 1 of 2023

This is an Interlocutory Application seeking condonation of delay of 397 days in filing of the present appeal.

2. We find from the records that the office had pointed out one of the defects that learned counsel for the appellant should disclose the date of receipt of the copy of the order dated 07.06.2022 and thereafter, the period of limitation would be calculated.



3. Since the matter has been listed under heading 'For Admission' today, we heard the whole matter on merit, thereafter it has been pointed out that an order on the application seeking condonation of delay is required to be passed. We have been informed that there is a delay of 397 days in filing of the present appeal.

4. Learned counsel for the sole respondent does not oppose the prayer for condonation of delay.

5. We, therefore, condone the delay.

6. Accordingly, I.A. No. 1 of 2023 stands allowed.

MA No. 678 of 2023

7. Heard Mr. Vivek Prasad, learned GP- 7 for the appellant and Mr. Gautam Kejriwal, learned counsel for the respondent.

8. This Miscellaneous Appeal has been preferred under Section 79 of the Bihar Value Added Tax Act, 2005 (hereinafter called 'the Bihar VAT Act' or 'Act of 2005') since repealed. The State of Bihar is aggrieved and dissatisfied with the order dated 07.06.2022 (hereinafter referred to as the 'impugned order') passed by the Commercial Taxes Tribunal Bihar, Patna (in short 'The Tribunal') in the Appeal Case No. PT- 99/2017. By the impugned order, the Tribunal has been pleased to set aside the



penalty order dated 05.09.2014 and the order dated 27.02.2017 passed by the Joint Commissioner (Appeal), Patna.

Brief Facts of the Case

9. From the narration of facts present on the records, it appears that on 30.08.2014 at about 11 P.M., a team of Sales Tax Officers inspected and verified the truck bearing Registration No. BR-01GC-8831 at Buxar. The Sales Tax Officers were of the view that in the said truck, the goods were being transported in violation of Section 61(1) of the Act of 2005, therefore, show cause notice was issued to the transporter and finally a penalty of Rs. 2,01,170.00/- under section 61(3) read with section 56(4) (b) of the Act of 2005 were imposed.

10. The sole respondent herein paid the said amount of penalty and got the release of goods but at the same time being aggrieved by the order imposing penalty and the demand notice, he raised his grievances before the Joint Commissioner of Commercial Tax (Patna Division) giving rise to Appeal Case No. S.T./I.B.(C)-04/14-15 for the relevant period 2012-13.

11. A number of pleas were raised before the Joint Commissioner of Commercial Tax (Patna Division) but were rejected. The order passed by the Joint Commissioner of Commercial Tax (Patna Division) was challenged before the



learned Tribunal where a plea was taken on behalf of the sole respondent that the inspection, verification and seizures itself appear to be illegal and unauthorized as no letter of authorization had been issued as mandatorily required in terms of Section 56(2) (b) of the Bihar VAT Act read with Rules 35(4) and (5) of the Bihar Value Added Tax Rules, 2005 (hereinafter referred to as the 'Rules of 2005') framed thereunder. It was contended that on account of this legal infirmity, the initiation of penalty proceeding and imposition of penalty would be illegal as the same was passed without jurisdiction.

12. The learned Tribunal has discussed the relevant provisions of the Bihar VAT Act. It has ultimately concluded that there is a mandatory provision of law to get authorisation from the Competent Authority before conducting inspection or in case, where it is in the interest of revenue, the Officer may, for reasons would be recorded in writing, proceed to inspect all the places of business of the dealers, transporting goods or the owner of warehouse or godown without obtaining such authorization which may be granted subsequently. In paragraph '13' of its order, the Tribunal observed as under:-

"13. In the impugned case no authorization letter is available on the record of the lower court and in spite of many opportunities the learned counsel for the Government has not produced any evidence regarding authorisation of inspections as provided



in Section 56(2) of the Bihar Value Added Tax Act, 2005. In the absence of such authorization the inspection, search and seizure are illegal, without jurisdiction and void ab initio.”

Submissions on behalf of the State

13. While assailing the impugned order of the learned State Tribunal within the scope of Section 79 of the Bihar VAT Act, Mr. Vivek Prasad, learned GP-7 has submitted that this appeal involves a substantial question of law as to whether an authorization letter in terms of Sub-Rule (5) of Rule 35 of the Rules of 2005 would be mandatorily required for purpose of conducting search of any goods carrier as envisaged under Sub-Section (2) of Section 61 of the Bihar VAT Act? It is his submission that the case in hand would be governed by Section 61 and Section 56(2)(b) of the Bihar VAT Act read with Rules 35(4) and (5) of the Rules of 2005.

14. Learned counsel submits that in this case a *post facto* approval was taken on 3rd of September, 2014 which is available in the official file. Referring to the notings in the file, copy of which has been enclosed as part of Annexure ‘1’ to the memo of appeal, Mr. Vivek Prasad, learned GP-7 submits that a proposal was mooted on 03.09.2014 for authorizing *Sri K.K. Sinha*, Deputy Commissioner Commercial Taxes, Patna, *Sri A.K. Pandey*, Additional Commissioner Commercial Taxes, Patna of the



Central Investigation Bureau and *Sri A.K Upadhayay*, Commissioner Tax Officer of the Central Investigation Bureau. This proposal was placed before the Joint Commissioner of Commercial Taxes (Patna Division) as the Joint Commissioner was the duly authorized Officer in terms of Sub-Rule (4) of Rule 35 of the Rules of 2005 who may further delegate the power of inspection, search and seizure, to any officer not below the rank of a Deputy Commissioner. In this case, the Joint Commissioner agreed with the proposal and recommended the file to the Additional Commissioner Commercial Taxes, Patna of the Central Investigation Bureau for approval. On the same day, the Additional Commissioner approved the proposal in the file. Learned GP-7 submits that once the approval was obtained in the file, though *post facto* on 13.09.2014, the mandate of law in this regard has been duly complied with. Thereafter, there would be no need to issue a letter of authorization.

Submissions on behalf of Respondent

15. On the other hand, Mr. Gautam Kejriwal, learned counsel for the sole respondent submits that from bare reading of Sub-Section (3) of Section 61 of the Bihar Value Added Tax Act, 2005, it would appear that the provisions of Section 56 has to be applied *mutatis mutandis* in the matters relating to seizure, penalty,



security, release and confiscation of goods. Learned counsel submits that Section 61 deals with the restriction on movement of goods. Under sub-Section (2) of Section 61 any authority or officer who may be authorized by the State Government in this behalf may, for the purpose of verifying whether any goods are being transported in contravention of the provisions of Sub-Section (1) intercept, detain and search any goods carrier, vehicles or vessels and may also search the warehouse or godown or any other such place of transit storage, where goods are kept in course of transportation and if the said authority is satisfied on such verification and search that transportation of goods is being made in contravention of the provision of Sub-Section (1), he may seize any such goods together with any container or material for the packing of such goods. It is submitted that proviso to Sub-Section (2) of Section 61 describes the procedures which are required to be followed at the time of seizure of goods. According to him, what is important to take note of under Sub-Section (2) of Section 61 is that it talks of any authority or officer who may be authorized by the State Government. This provision has to be read keeping in view the provision of Section 56.

16. Learned counsel further submits that Section 56 (2) (b) clearly talks of “the prescribed authority” who has to proceed



to inspect all the places of business of dealer or the forwarding agent or the person engaged in the business in transporting goods after making inquiries. It is submitted that the proviso to clause (b) of Sub-Section (2) of Section 56 of the Bihar VAT Act provides that if the prescribed authority is satisfied that delay in obtaining such authorization may be pre-judicial to the interest of revenue, he may, for reasons to be recorded in writing, proceed to inspect all the places business of the dealer or the clearing or forwarding agents or the persons engaged in the business of transporting goods or the owner of warehouse or godown without obtaining such authorization which may be granted subsequently. It is submitted that in terms of proviso to clause of (b) of Sub-Section (2) of Section 56, no doubt a *post facto* authorization may also be obtained but the requirement of Sub-Rule (5) of Rule 35 of the Rules of 2005 is mandatory and it has to be followed by issuing an authorization letter. It is his submission that since the learned Tribunal was satisfied that on record there is no authorization letter, it has rightly been concluded that in absence of the authorization letter, the initiation of the proceeding was bad in law. For this reason, the entire exercise of inspection, search and seizure are liable to be held illegal. It is submitted that the law being settled that if the statute provides for a particular thing to be



done in a particular manner that thing must be done in that manner or not at all. This being the position of law, according to him no substantial question of law arises in the present appeal, hence, the appeal is liable to be dismissed.

Consideration

17. We have heard learned counsel for both the parties and perused the records. In order to appreciate the contentions of the parties, it would be appropriate to take note of Sections 56 and 61 of the Bihar VAT Act as under:-

“56. Production of books of account, inspection, search and seizure. – (1) Subject to such rules as may be made by the State Government under this Act, any authority appointed under sub - section (1) of section 10 may, either before or after assessment, require any dealer to produce before it or him any accounts, registers or documents or to furnish any information relating to the details of his purchases and sales and the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer, and the dealer shall comply with such requirement.

(2) If reasonable grounds exist to suspect that -

- (a) a dealer, with an intention to reduce his tax liability under the Act, has suppressed any financial transaction, element of value addition implicit in the transaction or the stock of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer or has claimed input tax credit in excess of his entitlement; or
- (b) any clearing or forwarding agent or a person engaged in the business of transporting goods or owner of a warehouse or a godown is keeping or has kept his accounts in such a manner as is likely to cause evasion of tax payable under this Act, the prescribed authority shall, after making such further inquiries as may be deemed fit and after obtaining such authorisation in the manner prescribed,



proceed to inspect all the places of business of the dealer or the clearing or forwarding agent or the person engaged in the business of transporting goods or the owner of warehouse or godown :

Provided that if the prescribed authority is satisfied that delay in obtaining such authorisation may be prejudicial to the interest of revenue, he may, for reasons to be recorded in writing, proceed to inspect all the places of business of the dealer or the clearing or forwarding agent or the person engaged in the business of transporting goods or the owner of warehouse or godown without obtaining such authorisation which may be granted subsequently.

(3) The prescribed authority shall have the powers to enter into and search the premises, including the place of business, of such dealer or the person and, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer or the person as may be necessary, in the manner prescribed, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for a prosecution under any law :

Provided that if the dealer or person whose accounts, registers or documents have been seized, applies for a copy of the same, he shall be supplied with a photo - copy of the same on payment of appropriate cost into a Government Treasury or a bank authorised in this behalf by the State Government :

Provided further that such authority or inspector may take or cause to be taken such copies of or extracts from, the accounts, registers or documents, as such authority or inspector may consider necessary.

(4) (a) Any authority referred to in sub - sections (1) and (2) shall have the powers to seize any goods not properly accounted for in the books, accounts, registers and other documents of the dealer or the *dalal* as defined in clause (a) of the Explanation to Section 59, or the owner of the warehouse, or the clearing, booking or forwarding agent, or the person engaged in the business of transporting goods in the manner prescribed.

(b) The authority referred to in clause (a) shall, in a case where the dealer or the person in - charge of goods as mentioned in clause (a) fails to produce any evidence or fails to satisfy the said authority regarding the proper accounting of goods, impose a penalty, after allowing an



opportunity of hearing in the prescribed manner to the dealer or such person, which shall be equal to three times the amount of tax calculated on the value of such goods and the goods shall be released as soon as the penalty is paid.

(c) If the dealer or the person in-charge of the goods mentioned in clause (a) requests for time for production of necessary documents in support of proper accounting, the authority referred to in clause (a) shall release the goods on the condition that the dealer or such person deposits a security equivalent to three times the amount of tax calculated on the value of the goods, either in the form of cash, to be deposited in the Government Treasury, or in the form of bank guarantee acceptable to the authority.

(d) If the goods seized under clause (a) are not claimed by any person, the authority referred to in the said clause shall arrange for the safe custody of goods.

(e) In case the penalty imposed under clause (b) is not paid or the goods remain unclaimed for a period of thirty days or more from the date of seizure, the goods so seized shall be sold by auction in the prescribed manner and the sale proceeds shall be appropriated towards the amount of penalty imposed under clause (b); and the balance of the sale-proceeds, if any, shall be deposited in the Government Treasury and shall be refunded to the lawful claimant in the prescribed manner :

Provided that in the case of goods of a perishable nature, the prescribed authority may decide to sell the goods by auction before a period of thirty days.

(f) In case where the goods have been released on the deposit of a security as mentioned in clause (c) and evidence regarding proper accounting of goods, to the satisfaction of the authority referred to in clause (a), is not produced within thirty days from the date on which the security is deposited, the amount of security shall stand forfeited to the State Government :

Provided that in case evidence or document to the satisfaction of the authority mentioned in clause (a) regarding the proper accounting of goods is produced within the said period of thirty days, the security shall be released in the prescribed manner.

(5) (a) The power conferred under sub-sections (3) and (4) shall include the power to break open the lock of any box or receptacle or door of any other place or premises



where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept.

(b) The powers conferred under sub-sections (3) and (4) shall also include the power to seal any box or receptacle, godown or building where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept.

(6) An authority appointed under Section 10 may require the assistance of any person, public servant or police officer in making a search and a seizure or for safe custody of goods seized under this Section, and such person, public servant or police officer shall render necessary, assistance in the matter.

(7) Where any books of account, other documents, money or goods are found in the possession or control of any person in the course of any search under sub-section (2) or sub-section (3), it shall be presumed, unless it is proved to the contrary, that such books of account, documents, money or goods belong to such person.

(8) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under this Section.

61. Restriction on movement of goods. – (1) A person transporting goods –

(a) from any place outside the State of Bihar to any place inside the State of Bihar, or

(b) from any place inside the State of Bihar to any place outside the State of Bihar, or

(c) from any place within the State of Bihar to any other such place, shall carry a declaration in such form as may be prescribed supported by a cash memo, retail invoice, bill or tax invoice, as the case may be, in case the movement is as a result of sale or a challan in case the movement is otherwise than as a result of sale, in respect of goods which are being transported on a goods carrier, vehicle or a vessel or is otherwise in transit or in transit storage and shall produce such cash memo or bill or tax invoice or challan, as the case may be, along with the aforesaid form of declaration on demand before the prescribed authority:

Provided that the Commissioner may exempt, by notification in the Official Gazette, consignments below a particular value or quantity from the requirement of this



sub-section in so far as it relates to carrying of a declaration.

(2) Any authority or officer who may be authorised by the State Government in this behalf may, for the purpose of verifying whether any goods are being transported in contravention of the provisions of sub-section (1) intercept, detain and search any goods carrier, vehicle or vessel and may also search the warehouse or godown or any other such place of transit storage, where goods are kept in course of transportation and if the said authority is satisfied on such verification and search that transportation of goods is being made in contravention of the provision of sub-section (1), he may seize any such goods together with any container or material for the packing of such goods:

Provided that a list of all the goods seized under this sub-section shall be prepared by such officer and be signed by the officer, the dealer or the person in-charge of goods and not less than two witnesses and a copy of the seizure list shall be made over to the dealer or the person in charge of the goods, as the case may be.

(3) The provisions of Section 56 shall, mutatis mutandis, apply in matters relating to such seizure, penalty, security, release and confiscation of goods.

Further, Rule 35 of the Rules of 2005, which prescribes the manner in which the authorization is to be issued, is being quoted hereunder for a ready reference:-

“35. Inspection, Search and Seizure. – (1) When any accounts, registers or documents are inspected or examined by any authority or Inspector appointed under Section 10, or any officer empowered under Section 86, such officer, authority or inspector shall affix his signature and official seal at one or more places thereon. (2) Where any authority or an Inspector appointed under Section 10 or any officer empowered under Section 86, conducts a search under sub-section (3) of Section 56 or, as the case may be, a seizure of goods under sub-section (4) of Section 56, he shall, so far as applicable, follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Act 2 of 1974):



Provided that a list of all the goods seized shall be prepared by the authority specified in sub- rule (1) and be signed by the said authority, the dealer or the person in charge of the goods or the person incharge of the premises, and not less than two witnesses.

(3) When any accounts, registers or documents of a dealer seized by any authority appointed under Section 10 or any officer empowered under Section 86, have to be returned to the dealer, such return may be made after taking such extracts therefrom as may be considered necessary. The authority making the return shall affix its signature and official seal on such accounts, registers or documents and the dealer shall give a receipt, in acknowledgment, which shall mention the number and particulars of the places where the signature and the seal have been affixed on the accounts, register or documents returned to him.

(4) The Commissioner may, by an order in writing, empower any officer, ordinarily not below the rank of a Deputy Commissioner, to authorise the conduct of any inspection, search or seizure.

(5) The authority empowered under sub-rule (4) shall examine the information available and after such further enquiry, as may be deemed fit, and upon being satisfied that it is in the interest of revenue so to do, issue the letter of authorization.

¹[(6) The notice under clause (b) of sub-section (4) of Section 56 shall be in form N-XVI.”

18. Having gone through this statutory provisions as recorded hereinabove, we are of the considered opinion that sub-Rule (5) of Rule 35 of the Rules of 2005 is crystal clear. It clearly provides that the authority empowered under Sub-Rule (4) shall examine the information available and after such further inquiry, as may be deemed fit, and upon being satisfied that it is in the interest of revenue so to do, issue the letter of authorization.

1. Sub-rule (6) Ins. By S.O. 41 dated 4. 5. 2006.



19. In this case since no issue has been raised with regard to the power of the Joint Commissioner of Commercial Taxes (Patna Division) in terms of sub rule (4) of Rule 35, we have proceeded to consider the matter taking it that the Joint Commissioner of Commercial Taxes (Patna Division) has been duly empowered by the Commissioner, to authorize the conduct of any inspection, search or seizure as envisaged under Sub-Rule (4) of Rule 35.

20. To us, it appears that sub-Rule (5) imposes a duty upon the authority empowered under Sub-Rule (4) to examine the information available but in this case, when the proposal was placed before the Joint Commissioner, Commercial Taxes, Patna, he simply wrote “कृपया उपरोक्त कार्यालय टिप्पणी अंश 'क' अनुमोदनार्थ।।”.

21. Apparently, there is no examination of the information available and no further inquiry has been held. The Additional Commissioner, Central Investigation Bureau did no better. He has simply put his signature and thereby the proposal has been taken to be approved.

22. In our considered opinion, the mandate of Sub-Rule (5) of Rule 35 is something much more than what have been appearing for the records. It is evident that this provision



specifically talks of issuance of ‘letter of authorization’. The words of the statues are clear, hence, there is no difficulty in taking a view that the authorization should be issued in form of a letter. A *post facto* approval in the file cannot be taken as a compliance with the mandate of Sub-Rule (5) of Rule 35 of the Rules of 2005.

23. We are, therefore, of the considered opinion that no illegality or infirmity may be found in the impugned order. No substantial question of law is arising out of the impugned order.

24. This appeal has no merit. Accordingly, it is dismissed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Jyoti/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2025
Transmission Date	

