IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9083 of 2026

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M/s S and H Manufacturing and Trading Pvt. Ltd. a private limited company, having its registered principal place of business in Kalyani at 43B and 55 Kalyani Industrial Estate Phase I, P.O.- Kalyani and P.S.- Kalyani, District-Nadia, Pin- 741235, through its Director cum authorised signatory namely Sourajit Ghosh, male, aged about 37 years, S/o Moloy Kumar Ghosh, residing at B-11/190, Kalyani Ward No.-12, Kalyani, Nadia, P.O.- Kalyani and P.S.- Kalyani, District- Nadia, West Bengal.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Commercial Tax Department, Government of Bihar, Kar Bhawan, Veerchand Patel Marg, Patna-800001, Bihar.
2. The Joint Commissioner of State Tax, Bhagalpur Circle-1, Bhagalpur, Bihar.
3. The Deputy Commissioner of Commercial Tax, Bhagalpur Circle, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Rastogi, Sr. Advocate
Mr.Rohan Verma, Advocate
Mr. Anubhaw K., Advocate

For the Respondent/state : Mr. Ravish Chandra, Advocate
Mr. Ajit Ranjan, Jt. Commissioner State Tax

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE VIKASH KUMAR

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 21-08-2026

1. Heard the parties.

2. The present application has been filed for a direction to the respondent no. 2- Joint Commissioner of State Tax, Bhagalpur Circle-1, Bhagalpur to refund a sum of Rs. 1,69,017 /- as penalty paid by the petitioner vide challan no. 205 dated 06.06.2024 in compliance of the judgment of

Commercial Taxes Tribunal, Patna (hereinafter referred to as the "Tribunal") passed in Appeal Case No. BH-224 / 2015 whereby penalty order dated 02.06.2014 and the order of Joint Commissioner of Commercial Taxes (Appeals), Bhagalpur Division, Bhagalpur dated 28.02.2015 confirming the penalty has been set aside and the copy of the Tribunal's order was forwarded to the respondent no. 2 for information and necessary action on 20.01.2023 by the Tribunal vide Memo No. 1120.

3. Mr. Ajay Rastogi, learned senior counsel for the petitioner argued that the petitioner is a private limited company incorporated under the Companies Act, 2013 and is engaged in business of manufacturing of tyres. The commercial vehicle of the petitioner's company bearing registration no. WB-41D/5208 was being driven by its driver Ramesh Yadav for transportation of goods from Nadia, West Bengal to Sitamarhi. On 01.06.2014 a team of Commercial Tax Authorities intercepted and inspected the aforesaid truck at Bhagalpur, seized the vehicle and imposed a penalty of Rs. 1,69,017 /- under Section 61(3) read with Section 56(4)(b) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as "VAT Act") by issuing a penalty order in Case No. 53 / 2014-15. The petitioner filed an Appeal and subsequently the matter went before the Tribunal in Case No.

BH-224 / 2015 and the learned Tribunal has set aside the order passed by Joint Commissioner of Commercial Taxes, Bhagalpur Division, Bhagalpur. The order passed by Tribunal was communicated for information and necessary action to respondent no. 2 on 20.01.2023 vide Memo No. 1120.

4. The petitioner submitted an application under Form A-VIII for refund of penalty amount pursuant to the order passed by the Tribunal on 21.05.2024 but the Tribunal failed to refund the penalty amount along with interest to the petitioner on technical and frivolous ground. It has been pointed out by learned senior counsel that as per Section 68 of the VAT Act the prescribed authority is duty bond to refund the amount of tax, penalty and interest paid by any person in excess of the amount due from him in such manner as may be prescribed. Section 70 of the VAT Act has been pointed out by learned senior counsel with regard to interest on delayed refund and it has been submitted that as per Section 70 after expiry of the period of sixty days from the date of receipt of the order of the Tribunal or the High Court or the Supreme Court by the Officer whose order forms the subject matter of the proceeding before the Tribunal, the person is entitled for interest after expiry of sixty days till the date of refund. Another submission in this regard

has been made referring to Rule 43 of the Bihar Value Added Tax Rules, 2005 (for short "the Rules") that as per Rule 43(2) an application in form A-VIII shall be filed for refund of tax only and not penalty inasmuch as the prescribed authority is obliged to refund penalty amount soon after expiry of sixty days from the date of communication of the order passed by the Tribunal. In the present case the Tribunal passed the order on 20th January, 2023 and communication was made to the prescribed authority by the Tribunal vide Memo No. 1120 on the same day, as such, the petitioner is entitled for interest on the principal amount from the date of communication of the order by the Tribunal. Without prejudice to the aforesaid it has been submitted by learned counsel that though the petitioner has filed refund application in Form A-VIII on 21.05.2024 before the Joint Commissioner of State Tax, Bhagalpur (for short "J.C.S.T.") but on one technical ground or the other refund has not yet been made to the petitioner.

5. On the other hand, Mr. Ravish Chandra, learned counsel for the respondent - State submits that Section 68 of the VAT Act specifically prescribes that refund shall be made in such a manner as has been prescribed for making refund in Rule 43(2) which says that application for refund of excess tax paid

shall be made to the authority specified in sub-rule (1) in Form A-VIII and shall clearly specify the grounds upon which refund is claimed. He also placed Form A-VIII prescribed under Rule 43(2) of the Rules to submit that from perusal of Form A-VIII it appears that for refund of the amount the application in Form A-VIII is to be filed for refund of excess tax / penalty.

6. Thus, it is evident that intention of the legislature is clear that for refund of excess amount including penalty, a person / Dealer has to submit an application in Form A-VIII. With regard to other contention regarding payment of interest is concerned, it is submitted that the petitioner at best is entitled for payment of interest from the date the application for refund is filed under Form A-VIII. The petitioner filed the application in Form A-VIII on 21.05.2024 but the same was not filed before the prescribed authority i.e. Additional Commissioner of State Tax and further the application was defective one to the extent that in place of TIN No. Case No. has been provided, in place of name of the Dealer the name of driver has been mentioned and in place of location of business the vehicle no. has been mentioned. A declaration has been signed by the Director of the Company but his details are not available. Accordingly, J.C.S.T. vide his order dated 18.06.2025 directed the petitioner to

remove the defects but instead of removing the defects the petitioner has approached this Court by way of filing the present writ application. The order for removal of defects in Form A-VIII was seen by learned Advocate appearing for the petitioner on 18.06.2025 itself.

7. We have heard learned counsel for the parties and have gone through the material on record including the legal provisions.

8. The dispute involved in the present case is for refund for a sum of Rs. 1,69,017 /- and interest for delayed payment. Insofar as refund of principal amount is concerned, there appears to be no dispute between the parties. The only dispute which has been raised by the respondent- Revenue is that firstly the refund application under Form A-VIII was not filed before the Additional Commissioner of State Tax as per judgment of this Court rendered in Swati Sinha versus The State of Bihar & Ors (C.W.J.C. No. 3170 of 2024) and M/s Milith Karv Engineering & Trading Pvt. Ltd. versus The State of Bihar & Ors. (C.W.J.C. No. 17690 of 2014) and the same has been filed before the Joint Commissioner of State Tax, Bhagalpur Circle-1.

9. The prescribed authority for passing the order of refund according to the respondents is the Additional Commissioner of

State Tax. Another objection raised by Revenue is that the defects have not been removed by the petitioner in Form A-VIII despite the specific order passed by J.C.S.T. on 18.06.2025 and seen by the Advocate.

10. Insofar objection of respondent-State regarding non-filing of refund application in Form A-VIII before the prescribed authority i.e. Additional Commissioner (State Tax), which has now been re-designated as Additional Commissioner of State Tax, it is relevant to note the provision prescribed in Rule 43(1) of the Rules which says that for the purpose of Section 68 the prescribed authority for refund shall be Joint Commissioner, if the amount to be refunded exceeds Rs. 50,000/- .

11. A Division Bench of this Court in the case of M/s Milith Karv Engineering & Trading Pvt. Ltd. (Supra) has considered Rule 43 of the Rules and has decided that an application for refund has to be made before the Joint Commissioner if the amount of refund exceeds Rs. 50,000/-. In the present case admittedly amount of refund exceeds Rs. 50,000/- and the Dealer / petitioner has filed application for refund before the Joint Commissioner of State Tax. After coming into force of the BGST Act, 2017 designation

of Officers changed and Joint Commissioner of Commercial Taxes has now been re-designated as Additional Commissioner of State Tax.

12. From perusal of the notification regarding designation of Officers dated 10th August, 2018 issued by the Government of Bihar it is clear that Joint Commissioner of Commercial Taxes has been re-designated as Additional Commissioner of State Tax under the BGST Act, 2017. The petitioner has filed his application for refund before Joint Commissioner of State Tax, Bhagalpur Circle -1 instead of Additional Commissioner of State Tax. Thus objection of the respondent-authority that Form A-VIII seeking refund has not been filed before the prescribed authority after re-designation is concerned, the same is noted for rejection by us for the reason that it has been filed before the Joint Commissioner of State Tax and the same could have been forwarded by the respondent / Joint Commissioner of State Tax, Bhagalpur Circle-1 to the Additional Commissioner of State Tax. The technical objection taken by respondents refusing penalty amount on the ground of non- filing of application before Additional Commissioner of State Tax after re-designation cannot be accepted by this Court.

13. With regard to submission of learned counsel for the

petitioner for payment of interest from the date of communication of the Tribunal's order to the prescribed authority, we have examined the provision of Section 68, 70 as well as Rule 43(2) including the Form A-VIII. Upon harmonious reading of the aforesaid provisions we come to the conclusion that payment of interest is not automatic after expiry of sixty days from the date of communication of the order but the Dealer / petitioner has to file an application for refund in terms of Section 68, Rule 43(2) and Form A-VIII prescribed under Rule 43(2).

14. Upon going through provision of Section 68 and Form A-VIII including Section 70 of the VAT Act and after harmonious construction of all these provisions, this Court finds that refund has to be made in a prescribed manner and the manner has been prescribed under Rule 43 and Form A-VIII. From close scrutiny of Form A-VIII it is apparent that Form A-VIII talks about refund of excess tax as well as penalty. Thus, submission of learned senior counsel that form A-VIII is for refund of tax only and not for penalty is rejected.

15. With regard to claim of interest by the petitioner is concerned, after examining the facts and the documents submitted by the petitioner, it appears that petitioner has filed

application under Form A-VIII for refund on 21.05.2024 and the respondent authority passed order on 18.06.2025 for making certain corrections in Form A-VIII and for one year the petitioner did not make any correction in Form A-VIII and thereafter approached this Court by way of the present writ application for refund as well as interest on 07.05.2026. Section 70(2) of the VAT Act says that if delay in granting refund is attributable to the said person / Dealer, whether wholly or in part, the period of delay attributable to him shall be excluded from the period for which interest is payable.

16. The facts of this case indicates that defective Form A-VIII was filed by the petitioner on 21.05.2024 and that despite direction by J.C.S.T. for correction / removal of defects in Form A-VIII, the petitioner failed to make necessary correction for one year and approached this Court on 07.05.2026, therefore, in our opinion, the amount is not yet refundable to the petitioner.

17. On consideration of the aforesaid discussions and the conspectus of facts and law as discussed hereinabove, the petitioner is directed to make fresh application in Form A-VIII before the Additional Commissioner of State Tax within ten days from the date of receipt / production of a copy of this order

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and if such an application under Form A-VIII is filed by the petitioner, the Additional Commissioner of State Tax is directed to make refund in favour of the petitioner / Dealer within a period of ten days from the date of receipt of Form A-VIII by the Authority.

18. It is made clear that if payment is not made within the aforesaid period of ten days, the Authority shall be liable to pay interest to the petitioner @ 6% P.A. for delay in payment from his own pocket.

19. In compliance of this Court's order dated 14.08.2026, Mr. Ajit Ranjan, Joint Commissioner of State Tax (Incharge), Bhagalpur Circle -1, Bhagalpur, Bihar (respondent no. 2) is present before this Court. The personal appearance of the respondent no. 2 is dispensed with.

20. With the aforesaid observation and direction, this writ application is disposed of.

(Anil Kumar Sinha, J)

(Vikash Kumar, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27-08-2026
Transmission Date	NA