Value Added Tax Act, 2003

Section 53 - Establishment of Check Posts and Inspection of Goods in Movement

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(1) If the Government or the Commissioner considers it necessary, with a view to prevent or check evasion of tax under this Act in any place or places in the State, it or he may, by notification, direct the establishment of a check post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person in charge of a goods vehicle or a boat, ship or similar vessel shall:

(a) carry with him a goods vehicle record, a trip sheet or a log book, as the case may be; and

(b) carry with him a tax invoice or a bill of sale or a delivery note or such other documents as may be prescribed, in respect of the goods carried in the goods vehicle or boat, ship or similar vessel; and

(c) produce the documents referred to in sub-clauses (a) and (b) before any officer-in-charge of check post or barrier, or any other officer as may be empowered by the Government in this behalf, and obtain the seal of such officer affixed thereon, and, in respect of a bill of sale, give one copy thereof and, in respect of a delivery note, give a copy marked as original, to such officer and carry and retain with him the other copy until termination of movement of the goods; and

(d) on entering the State limits, report at the first situated check post or barrier and, on leaving the State limits, report at the last situated check post or barrier and give a declaration containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or boat, ship or similar vessel, before any officer-in-charge of the check post or barrier or any other officer as may be empowered by the Government in this behalf; and

(e) stop the vehicle or boat, ship or similar vessel, as the case may be, and keep it stationary as long as may be required by the officer-in-charge of the check post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle or boat, ship or similar vessel and inspect all records relating to the goods carried, which are in the possession of such driver or other person-in-charge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat, ship or similar vessel.

(3) Where any goods vehicle is intercepted by the officer empowered at any place other than a check post or barrier, such officer may, if he deems it necessary, direct the owner or person-in-charge of the goods vehicle to take it to the nearest check post or police station, and such owner or person-in-charge of the goods vehicle shall comply with such direction.

(4) (a) Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Where, before delivery is taken from him, a carrier or bailee to whom goods are delivered for transmission keeps the said goods in any office, shop, godown, vessel, receptacle, vehicle, any other place of business or any building or place, any officer empowered as aforesaid shall have power to enter into and search such office, shop, godown, vessel, receptacle, vehicle, other place of business or building or place and to examine the goods and inspect all goods relating to such goods.

(b) The carrier or bailee or the person-in-charge of the goods and records shall give all facilities for such examination or inspection and, if so required, produce the bill of sale or delivery note or other documents referred to in sub-section (2), giving a declaration containing such particulars as may be prescribed regarding the goods, together with his name and address and the name and address of the carrier or the bailee and the consignee.

(c) The power conferred by clause (a) shall also include.-

(i) the power to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or taxable goods are suspected to be kept or stored, where the carrier or bailee or person in charge of the place of business either leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so; and

(ii) the power to break open any box or receptacle, godown or building or part of the godown or building where the carrier or bailee or the person in charge of the place of business leaves the premises or, after an opportunity has been given to him to do so, fails to open the box, receptacle, godown or building or part of the godown or building.

(d) The officer acting under item (ii) of sub-clause (c) shall prepare a list of the goods and documents found in such box, receptacle, godown or building or part of the godown or building.

(5) (a) If any officer, empowered to enter into and search any office, shop, godown, vessel, receptacle, vehicle, any other place of business or any building or place where a carrier or bailee keeps the goods delivered to him for transmission, has reason to suspect that such carrier or bailee has colluded with the owner of the goods in evading payment of any tax, he may, for reasons to be recorded in writing, seize accounts, registers, records or other documents of the bailee or carrier as he may consider necessary and shall give a receipt for the same. The account, registers, records and other documents seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(b) The accounts, registers, records and other documents so seized shall not be retained by such officer for a period exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him in writing and the approval of the next higher authority is obtained, and such approval in any case shall not be for more than sixty days at a time.

(c) Where such officer, upon examining the accounts registers, records or other documents seized under clause (a), has reason to believe that any dealer has attempted to evade payment of any tax, he may issue a protective assessment on such dealer in accordance with sub-section (5) of Section 38.

(6) All searches and seizures under sub-section (4) or (5) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(7) No person shall tamper with any seal put under sub-clause (i) of clause (c) of sub-section (4).

(8) Where the officer-in-charge of the check post or barrier, or the officer empowered as aforesaid, on interception of the goods vehicle or on inspection of any godown, is of the opinion that further verification is necessary with respect to either the accuracy of the particulars furnished in the documents accompanying the goods under transport or in transit, or as to the sufficiency and the cause adduced in respect of any contravention of sub-section (2), he may verify the particulars himself or, if it is necessary to cause it to be verified by referring the matter to any other officer and if such verification is not likely to be completed within a reasonable time, he may direct, in writing, the carrier or the person in charge of the goods vehicle or the godown not to deliver the goods until permitted to do so by him or such other officer to whom the matter is referred for verification, and allow the intercepted vehicle, if any, to pass through.

(9) The verification under sub-section (8) shall be completed within a period of fifteen days from the date of the direction issued under that sub-section and, where such verification cannot be completed within the aforesaid period, the officer who has issued such direction or, as the case may be, the officer to whom the matter is referred for verification, shall obtain the permission in writing of the next higher authority to extend such period for completion of the verification. However, such extension shall not be permitted for a period exceeding fifteen days at a time.

(10) Where such officer or other officer to whom the matter is referred, upon such verification, is of the opinion that there is a non-compliance with sub-section (2), punishable under sub-section (12), he may proceed, in respect of such goods in the custody of the carrier or the person-in-charge of the vehicle or the godown, in accordance with sub-sections (12) and (14).

(11) Where the officer-in-charge of the check post or any empowered officer has issued a notice for contravention of any of the provisions of this Section, further proceedings in pursuance to such notice

may, subject to such conditions and in such manner as may be prescribed, be continued by any other officer empowered by the Commissioner in this behalf, from the stage at which it is pending.

(12) (a) The officer in charge of a check post or a barrier or any other officer in respect of any contravention of, or noncompliance with, the provisions of sub- section (2), for which sufficient cause is not furnished, levy a penalty which, -

(i) shall not be less than the amount of tax leviable but shall not exceed one and half of the amount of tax leviable in respect of the goods under transport in contravention of clause (e) and clause (d) of sub-section (2), if a dealer registered under the Act accepts that he is the consignor or consignee of the goods,

(ii) in cases other than those falling under item (i), shall not be less than double the amount of tax leviable but not exceed three times the amount of tax leviable in respect of the goods under transport .

(b) Where the amount of penalty leviable is more than the value of the goods, the amount of penalty leviable shall be restricted to such value.

(c) In proceedings under sub-section (10), where the penalty levied is not paid, the carrier or bailee or person-in-charge of the goods vehicle shall jointly and severally be liable to pay such penalty.

(d) Before levying any penalty under this sub-section, the officer shall give the person-in-charge of the goods vehicle or boat, ship or similar vessel, the carrier, the bailee, or dealer registered under the Act, as the case may be, a reasonable opportunity of being heard.

(13) Where the destination of the goods to be delivered in the State is not less than one hundred kilometers from the check post or barrier or any other place at which the goods vehicle or boat, ship or similar vessel is intercepted, a period of not less than ten days shall be given to the person concerned to show cause against the proceedings initiated under sub-section (12).

(14) (a) Where the penalty levied is not paid, the officer levying the penalty shall have power to take possession of so much of the goods as in his opinion would be sufficient to meet the amount of penalty levied and retain the same with him until the penalty levied is paid or for ten days, whichever is earlier.

(b) Where it is not practicable to take possession of only so much of the goods as would be sufficient to meet the amount of penalty levied for the reason that the goods vehicle is a tanker carrying goods in liquid or gaseous form or that the goods form a single unit not separable into any part or parts thereof, the officer levying the penalty shall have power to take possession of the goods vehicle or the entire goods, as the case may be, and retain the same with him until the penalty levied is paid or for ten days, whichever is earlier.

(c) After the expiry of the period of ten days, if the penalty is not paid, the officer shall dispose of the goods in public auction and adjust the sale proceeds towards penalty, and the excess amount shall, after deducting the charges incurred by the State Government, be refunded in the manner prescribed.

(d) Before taking possession, or within ten days after taking possession, of the goods or the goods vehicle, as the case may be, if the owner or person-in-charge of the goods vehicle or the dealer registered under the Act, furnishes for the amount of penalty a Bank Guarantee, having validity until realization of the penalty or disposal of an appeal, if any, made under Section 62, the officer taking such possession shall forthwith return the goods or the goods vehicle to the person furnishing such Bank Guarantee.

(e) In the case of perishable goods, the officer may dispose of the same before the expiry of the period of ten days, if in his opinion such disposal is necessary.

(15) Any person aggrieved by the levy of penalty under this Section may appeal within thirty days from the date on which the order of penalty was served on the person to the prescribed authority.