



Tax alert: Mandatory to issue reasoned orders in cases of goods detained under GST law: Supreme Court

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The Supreme Court (SC) has held that the proper office is mandatorily required to issue a final reasoned order in respect of detention of goods under GST law, regardless of payment of tax / penalty by the taxpayer to preserve the right to appeal.

In a nutshell



A consignment of goods of the appellant was detained by the mobile squad alleging deficiencies.

A show cause notice (SCN) was issued by the authorities, to which the appellant filed a detailed reply. In view of pressing business exigencies, the appellant made the payment of tax amount under protest and thus, the goods were released. However, no final order was passed by the authorities despite multiple follow-ups.



The Petitioner filed a writ petition before the High Court (HC) seeking a direction to the authorities to issue speaking order.

The HC dismissed the writ petition, stating that the proceedings were concluded upon payment of tax.

Aggrieved, the appellant filed an appeal before the Supreme Court (SC).



SC held that, it is mandatory for the authorities to pass reasoned order, regardless of payment, particularly where protest or dispute has been raised.

As per the constitutional mandate, no tax can be levied or collected except with the authority of law.

An appeal can lie only against an 'order'. In the absence of a reasoned order passed, the taxpayer is effectively deprived of the statutory remedy of appeal.



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Background

- The appellant¹ is a registered dealer of red arecanut operating from the state of Karnataka.
- A consignment of dry arecanut was dispatched to a company in Delhi through vehicle, accompanied by an e-waybill.
- During transit, the goods were transhipped and loaded onto another vehicle for onward journey to Delhi. However, lesser number of bags were loaded onto the new vehicle.
- The vehicle was detained by the mobile squad in Uttar Pradesh. The driver's statement was recorded, and a physical inspection report was generated, alleging deficiencies. A detention order was also issued.
- Subsequently, a SCN was issued highlighting the discrepancy of missing bags and alleging that the consignee was non-existent, and the consignor's address was incorrect. The appellant submitted a detailed reply denying the allegations. However, due to business exigencies, the appellant paid the amount towards IGST through Form GST DRC-03. Accordingly, the detained goods were released.
- However, no final order was passed by the mobile squad as per section 129(3) of the Central Goods and Services Tax Act, 2017 (CGST Act).
- The appellant sought such an order to pursue statutory remedies, but the authorities informed that no further proceedings were necessary as the representative of appellant had orally requested withdrawal of appellant's earlier reply and sought release of goods.
- The appellant denied having made any such oral request and followed up with the authorities for the order copy.
- The appellant approached the HC seeking a direction to the authorities to furnish a copy of the speaking order. The HC dismissed the writ petition, stating that the proceedings were concluded upon payment of tax, as per Section 129(5) of the CGST Act.
- Aggrieved by the HC's decision, the appellant filed an appeal before the SC, arguing that the proper officer is obligated to pass a final, reasoned order under Section 129(3) of CGST Act, even after payment, to preserve the right to appeal.
- The issue for consideration before the SC is whether, upon payment of tax and penalty by the appellant within the time stipulated in the notice, the proper officer is still mandatorily required to pass a final order, or whether the deeming fiction under section 129(5) of CGST Act dispenses with such requirement.

Supreme Court judgement

- **Circular No. 41/15/2018-GST dated 13 April 2018** mandates that, upon payment of tax and penalty, after issuance of the release order, the proper officer needs to issue a formal order of demand.
- Though section 129(5) of CGST Act provides for conclusion of proceedings upon payment of tax and penalty, the same does not absolve the responsibility of the proper officer to pass a final order nor does it imply that the taxpayer has waived the right to challenge the levy. The term 'conclusion' merely signifies that no further proceedings for prosecution will be initiated.
- The language of section 129(3) of CGST Act is categorical in stating that the officer "shall issue a notice, and thereafter, pass an order. The use of the words "and thereafter" reinforces the mandatory nature of passing a reasoned order, regardless of payment, particularly where protest or dispute is raised.

¹ M/s. ASP Taders v. State of Uttar Pradesh 2025-VIL-52-SC

- As between a written reply and an oral submission contrary to such written submission/reply, the written reply would prevail, and the authorities are duty-bound to consider that reply and pass speaking orders addressing every contention.
- The Court observed that GST portal permits payments only through Form GST DRC-03, which is automatically classified as a voluntary payment, and does not provide any mechanism for an assessee to indicate that the payment is being made under protest. In the absence of such an option, the written objections become significant to understand the intention of the assessee.
- The Court held that once payment is made under protest and objections are filed, it becomes imperative for the proper office to pass speaking order to justify demand of tax and penalty, to safeguard the right of appeal under Section 107 of the CGST Act.
- The payment, by itself, cannot be treated as a waiver or abandonment, especially when the appellant has clearly objected to the demand and when there is a statutory mandate to pass an order and a corresponding right to appeal.
- By the constitutional mandate under Article 265 of the Constitution, no tax can be levied or collected except with the authority of law. There is not only a bar against levy but also against collection. In case of failure to issue a speaking order, any consequential action including imposition of tax or penalty would be unsupported by authority of law thereby violative of Constitutional provisions. It emphasized that there can be no acquiescence in tax.
- The Court reinforced the principles of natural justice holding that, when a taxpayer submits response to SCN, the adjudication authority is required to consider such response and render a reasoned and speaking order. Every SCN must culminate into a final, reasoned order.
- Passing of order is not a mere procedural formality, but a substantive safeguard ensuring fairness in quasi-judicial proceedings. An appeal can lie only against an 'order'. In the absence of a reasoned order passed, the taxpayer is effectively deprived of the statutory remedy of appeal.
- The SC set aside the order passed by HC and directed the proper officer to pass a reasoned final order under section 129(3) of the CGST Act after granting an opportunity of being heard to the appellant.

Deloitte comments

The decision underscores the importance of legal principles governing tax adjudication and procedural fairness, highlighting the taxpayer's right to appeal in GST detention cases. When dealing with detention and seizure of goods under the GST regime, certain safeguards may be taken by the taxpayers, such as filing detailed reply to notices, indicating payment of demand, if any, made under protest, insisting on issuance of a reasoned order, exercising the right to appeal in case the order is to be contested, etc.

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