HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

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WP(C) no.2434/2025
CM no.6459/2025

Reserved on: 02.07.2026
Pronounced on: 23.07.2026
Uploaded on: 23.07.2026

Whether the operative part or full judgment is pronounced: Full

1. Mohd Hazzak Lohar, aged about 23 years S/o Sh Gulam Mohd R/o Tukson Tehsil Reasi, J&K
2. Dheeraj Gupta Authorized signatory of JMC Transport Company aged about 39 years S/o Sh. Satish Kumar R/o H.No.30, SEC 1-A South Extn. Trikuta Nagar, J&K

…….Appellant(s)

Through: Mr. M. Tufail, Advocate

Versus

1. Commissioner State Tax, Excise & Taxation Complex, Kashmir, J&K
2. State Taxes Officer, Enforcement South, H.Q. Lower Munda, South Kashmir, J&K

……Respondent(s)

Through: Mr Mohsin Qadri, Sr. AAG with Ms. Maha Majeed, assisting counsel

CORAM:

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGEMENT

1. Petitioners have invoked extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India, to throw challenge to the following orders issued by the State Taxes Officer – respondent no.2: -

   (i) Notice in Form GST MOV-02 dated 11th September 2025 (Annexure I);
   (ii) Notice in Form GST MOV-06 dated 11th September 2025 (Annexure II);

(iii) Notice in Form GST DRC – 01 dated 11th September 2025 – Summary of Show Cause Notice (Annexure III);

(iv) Summary of Order issued under Section 129 (3) dated 22nd September 2025 (Annexure IV).

2. The impugned notices, which are purportedly issued under Section 129 of the J&K Goods and Services Tax, 2017 ["*Act of 2017*"], particularly the Order dated 22nd September 2025, have been assailed by petitioners primarily on the ground that the order dated 22nd September 2025 has been passed by respondent no.2 after expiry of seven days stipulated in Section 129(3) of the Act of 2017 for passing the order of payment of penalty in terms of clause (a) or clause (b) of Subsection (1) of Section 129 of the Act.

3. Briefly put, the facts leading to filing of this petition are that on 11th September 2025, vehicle bearing registration no.JK02CS-0580, belonging to petitioners was intercepted at Heerpora, Shopian by respondent no.2. One, Mohammad Shafi, claiming to be representative of the transporter and owner of goods carried in the vehicle, appeared before respondent no.2, but failed to provide any document relating to consignment loaded in the vehicle. A show cause notice in terms of Section 129(3) of the Act of 2017 was issued on 11th September 2025, proposing penalty to the tune of Rs.15,05,746/-. The notice was aimed at affording an opportunity to petitioner no.1, the tax payer, to furnish the reasons as to why penalty under Section 129(3) of the Act of 2017 may not be imposed on him for transporting the goods without proper documents.

4. On 14th September 2025, petitioner no.1 filed his reply and agreed to furnish bank guarantee equivalent to the amount of penalty under

Section 129(1) (c) of the Act of 2017, and requested for providing him the details of authority in whose favour bank guarantee was to be executed. The petitioner no.1 was provided the requisite but instead of furnishing the bank guarantee as offered by him in his reply dated 14th September 2025, he along with Mohammad Shafi appeared before respondent no.2 on 15th September 2025, disputing valuation of goods seized and asked for revaluation of the cost of the goods and for re-determining the amount of penalty. On the request of petitioners, the revaluation team was constituted on 17th September 2025. The team verified the prevalent market rate of the commodities and submitted its report.

5. On 18th September 2025, the officials from J&K Pollution Control Board ["JKPCB"] intervened and after conducting inspection, declared the polythene seized as contraband item and requested to defer issuance of final order till a formal communication of clearance from JKPCB. The State Taxes Department's jurisdiction over the seized goods became the subject to the JKPCB's action.

6. It seems that a formal communication from JKPCB was received on 20th September 2025, declaring the seized goods as contraband under the Plastic Waste Management Rules, 2016 with a request to hand over the goods along with carrying vehicle.

7. In the backdrop of aforesaid development, respondent no.2 came to the conclusion that the contraband goods could not be taxed as it cannot be sold in the open market. The State Taxes Officer, thus, gave a go-by to the penal proceedings in respect of contraband and, accordingly, issued final order of penalty on 22nd September 2025 and excluded the penalty

relating to the contraband carry bags. The penalty in respect of the rest of the goods was imposed.

8. Obviously, the order of penalty as envisaged under Section 129(3) of the Act of 2017 could not be passed by respondent no.2 within seven days from the date of service of notice of proposed penalty. Indisputably, the notice of show cause for imposing penalty in terms of Section 129 (3) of the Act of 2017 was served upon petitioner on 14th September 2025, on which date the petitioner not only appeared before respondent no.2 but also filed his reply. Going strictly by provisions of Section 129(3) of the Act of 2017, the final order for payment of penalty was to be passed by respondent no.2 within a period of seven days from the date of service of such notice.

9. If we take service of notice upon petitioner no.1 on 14th September 2025, the last date by or before which the order for payment of penalty under Section 129(1) of the Act, could have been passed, was 21st September 2025. However, in the instant case, the order imposing penalty was passed on 22nd September 2025, i.e., after expiry of statutory period stipulated under Section 129 (3) of the Act of 2017.

10. It is in the backdrop of aforesaid admitted factual position that the learned counsel for petitioner contends that the notice impugned dated 22nd September 20-25 is not sustainable in law. He places reliance upon the judgement of the Gujarat High Court in the case of ***Allcargo Logistics Limited through its Distribution Manager Vijay Kumar v. State of Gujarat and others, 2025 SCC OnLine Guj 5875***, and couple of other judgements rendered by the High Court of Madras and Patna, to contend that the timeline prescribed under Section 129(3) of the Act of

2017 is mandatory in nature and failure to adhere thereto vitiates the order for payment of penalty whether passed under clause (a) or clause (b) of Subsection (1) of Section 129 of the Act of 2017.

11. *Per contra*, Mr. Mohsin Qadri, learned Sr. AAG, appearing for respondents, would contend that the delay in issuing the order for payment of penalty under Section 129 of the Act was occasioned due to reasons beyond the control of respondent no.2 and, therefore, the petitioner cannot be permitted to take the benefit of events which were not foreseen and encountered during the course of proceedings.

12. Having heard learned counsel for parties and perused the record, we are of the considered opinion that the timelines for issuance of show cause notice and imposition of penalty under Section 129(3) of the Act of 2017, are mandatory in character.

13. Before we proceed to elaborate, we deem it appropriate to set out Section 129 of the Act of 2017 in extenso:

> "129. Detention, seizure and release of goods and conveyances in transit. —
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> (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, —
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> (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;
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> (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.

[***]

(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) 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.

(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:

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."

14. As is evident, Section 129 deals with detention, seizure and release of goods and conveyances in transit. It provides that if any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the Act of 2017 or rules made thereunder, all such goods and conveyance used as a means of transport as also documents relating to such goods and conveyance shall be liable to detention or seizure. The Section further provides that goods, conveyance or documents so seized shall be released only on payment of penalty equivalent 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 percent of the value of goods or Rs.25,000/- whichever is less, where owner of the goods comes forward for payment of such penalty.

However, where the owner of goods does not come forward for payment of penalty, he shall be liable to pay penalty equal to fifty percent of the value of goods or two hundred percent of the tax payable on such goods whichever is higher, and in case of exempted goods, on payment of an amount equal to five percent of the value of goods or Rs.25,000/- whichever is less and it is only payment of such penalty that the goods, conveyance or the documents as the case may be shall be released.

15. Subsection 3, which is relevant for the purpose of our discussion, lays down that the proper officer, who detains or seizes 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 form the date of service of such notice for payment under clause (a) or clause (b) of Subsection (1) of Section 129 of the Act of 2017.

16. From the plain reading of Subsection (3) of Section 129 of the Act of 2017, it is abundantly clear that the legislature by using the expression "**shall**" in respect of show cause notice as well as notice for payment of penalty has signified its intent that adherence to timeline is mandatory. Otherwise also, the Act of 2017 is a fiscal statute and, therefore, required to be construed strictly. It is true that Subsection (3) of Section 129 of the Act of 2017 does not provide for consequence of non-adhering to the timelines but that alone cannot be a determining factor to come to a conclusion that seven days' period stipulated in Subsection (3) of Section 129, is not mandatory in nature.

17. We are, thus, inclined to concur with a view taken by various High Courts and the High Court of Gujarat that the timelines under Section 123 of the Act are mandatory. This is so primary for the following reasons:

(i) The provision regulates exercise of coercive statutory power;

(ii) It protects valuable primary rights;

(iii) The legislature has prescribed timelines using the word "shall";

(iv) Treating timelines in Section 129(3) as directory would defeat the legislative purpose of preventing prolonged detention and seizure of goods, conveyance or documents of the transporter or the assesee;

(v) The absence of express consequences of a mandatory provision is not always decisive.

(vi) The legislative intent, object of provision and the nature of right affected are governing tests.

(vii) Whenever the statute authorizes coercive action, like seizure or detention, the Courts insist on strict compliance with the statutory procedure.

18. It is, thus, beyond any pale of discussion that whether the provision is mandatory or not, depends upon the legislative intent, context, object and the consequences of non-compliance.

19. From the perusal of the provision in question in the context of the scheme of the Act of 2017, it is axiomatic that the timelines have been introduced to prevent arbitrary detention, prolonged seizure and harassment to the trader. It is in keeping with the aforesaid intention that the legislature has used the expression "**shall**" at two places in Section 129 (3) of the Act.

20. The view, which we have taken on the interpretation of Section 129(3) finds support from the judgements rendered on the point by various

High Courts. The High Court of Gujarat in *Allcargo Logistics Limited* (supra) and couple of other judgements, has held the provisions of Section 129(3) mandatory and held that failure to adhere to the timelines prescribed therein would vitiate order of detention.

21. We are aware that in the instant case there is only delay of one day in passing the order of penalty by respondent no.2 and that there were some intervening circumstances contributing to such delay, yet in view of the clear provisions of Section 129 (3) of the Act, respondent no.2 was under an obligation to pass the order of payment of penalty within a period of seven days from the date of service of show cause notice of proposed penalty and this the respondent no.2 could have done with respect to the goods other than the banned contraband, i.e., polythene.

22. In view of the aforesaid, we are left with no option but to accept this petition. Accordingly, writ petition is allowed and impugned notice/order dated 22nd September 2025, issued to petitioner for payment of penalty, having been issued beyond the period of seven days, is quashed.

23. We, however, make it clear that notwithstanding the quashing of the notice dated 22nd September 2025, the proceedings, if any, permissible under the other provisions of the Act of 2017 can still be pursued by respondents.

24. **Disposed of**.

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (Acting)

<u>Srinagar</u>
23.07.2026
Ajaz Ahmad, Secy

Whether approved for reporting? Yes/No