GOODS AND SERVICES TAX APPELLATE TRIBUNAL
THIRUVANANTHAPURAM BENCH
Division Bench :: Court No. I
(e-hearing)

APPEAL NO: APL/2/TVP/2026

SIDDHI VINAYAK AUTOMOBILES **.............Appellant**

Versus

THE COMMISSIONER OF KERALA STATE GST, THIRUVANANTHAPURAM **.............Respondent**

Counsel for Appellant	**Counsel for Respondent**
Unnikrishnan M, CA	Mansur M I, JC, AR

CORAM:
Hon'ble Shri Subramanya V Rayaprol, Member (Judicial)
Hon'ble Shri Ramamoorthi Sriram, Member (Technical)

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FINAL ORDER NO: 02/TVP/KERALA/2026

Date of Hearing: 31-7-2026
Date of Order: 14-8-2026

Per: Shri Subramanya V Rayaprol, Member (Judicial)

1.0 Mr M Unnikrishnan, Ld Chartered Accountant appeared for the appellant, and Mr M. I. Mansur, Ld Joint Commissioner, appeared as the Authorised Representative for the Commissioner of Kerala State GST.

2.0 The Brief facts of the case is that the appellant M/s. Siddhi Vinayak Automobiles, is a registered assessee with GST Department holding GSTIN 32AAIFS7558K1ZP, with their principal place of business in Thiruvananthapuram District, Kerala State. The appellant are engaged in the business of trading of automobiles and spare parts thereof. On 18-4-2022, the appellant had supplied automobile parts and spare parts in a transport vehicle bearing registration No. KL22N0394. The vehicle was intercepted by the Assistant State Tax Officer, Mobile Squad IV, Kollam at Punalur at 03.30 PM. It was observed that the goods were accompanied by two Tax e-Invoices G-168 dated 16.04.2022 for value of Rs. 3,41,952/- and G-169 dated 16.04.2022 for value of Rs. 4,498/-, in favour of their buyers M/s. J.B.S. Automotive, Thadikkad, who was also a registered person holding GSTIN 32AWPPJ2895R1ZL. However, the driver of the vehicle could not produce the e-way bill for the said transport of goods. The goods were therefore detained and a Notice in MOV-07 dated 18-4-2022 was issued to the appellant and a penalty of Rs. 138706/- equal to 100% GST was imposed under Section 129 (1) of the CGST/KGST Act, 2017. The said goods and the conveyance was released on 20-4-2022, on furnishing of Bond and Bank Guarantee valid upto 18-4-2027 for an amount of Rs. 138706. The Summary DRC-01 dated 20-4-2022 was issued after release of goods and the electronic summary in Form GST DRC-01 - Ref No. ZD3204220165040 was uploaded on the GST Portal on 20.04.2022. However, the Order in Form GST MOV-09 was passed on 04.06.2022, confirming the Penalty of Rs. 1,38,706/-, [CGST penalty of Rs. 69,353/- and SGST penalty of Rs. 69,353/-], under Section 129(3) of the CGST/KGST Acts, 2017. Aggrieved by the said imposition of Penalty the appellant filed an appeal before the First Appellate Authority. The First Appellate Authority vide impugned OIA No. GSTA No. 81/2022 dated 4-11-2022 and confirmed the penalties and passed the order as below:

"I have examined the contentions. Section 68 of the GST Acts read with Rule 138 A of the GST Rules stipulates that the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs.50,000/- should carry a copy of invoice

/ bill of supply/ delivery chalan/ bill of entry as the case may be and e-way bill. The appellant transported automobile spare parts with two e-invoices for values Rs.3,41,952 and Rs. 4498/- without e-way bill as stipulated under the Act. Therefore, transaction is not genuine as per GST Act and Rules and it will amount to an act in contravention of the provision of the Act and attracts penalty. So imposition of penalty is proper as per law."

3.0 The appellant has filed the appeals on the grounds that the said supplies were covered by valid e-invoices, and that the omission to generate e-way bill occurred in the context of the newly applicable e-invoicing system, and they believed that on generating the e-invoice, the transaction had been disclosed to the GST Department, through the e-invoice system in real time, and that there was no intention to evade tax as they have already filed GST Returns and paid appropriate GST also. The appellant has also submitted that the MOV-07 Notice was issued on 18-4-2022, and the Order MOV-09 under Section 129 (3) was issued on 4-6-2022, after 47 days from the date of Notice, whereas the time limit given to pass an order within a period of seven days from the date of service of such notice, for payment of penalty. No such order was issued imposing or confirming the penalty within the seven days from 18-4-2022. Hence, the Order is time barred and is not legally sustainable, and cannot be enforced. He also placed reliance on the judgements cited in (2023) 3 Centax 37 (Mad.) in the case of Deepam Roadways vs Deputy State Tax Officer, Chennai, (2024) 16 Centax 405 (Pat.) in the case of Pawan Carrying Corporation vs State of Bihar, (2026) 38 Centax 110 (Guj.) in the case of Allcargo Logistics Ltd vs State of Gujarat.

4.0 The Ld Joint Commissioner, appearing as Authorised Representative on behalf of the Commissioner of State Tax, Kerala, submits that the Appellant's first appeal (GSTA No. 81/2022) was confined only to two contentions: (i) that the lapse was clerical/ technical in nature, relying on Satyam Shivam Papers and Hindustan Steel Ltd; and (ii) that the adjudicating officer and the investigating officer being the same person violated natural justice. He submits that the they had never raised the ground of limitation under Section 129(3) of the CGST / KGST Act, 2017, even though the dates now relied upon i.e. the MOV-07 dated 18.04.2022 and MOV-09 dated 04.06.2022 were always available to the Appellant. They are raising this ground for the first time before the Hon'ble Tribunal regarding limitation and jurisdiction. He also submits that a ground that was available but consciously not taken cannot ordinarily be permitted to be raised for the first time at a further appellate stage, particularly where the ground is not a pure question of law but requires an assessment of facts and consequences and the delay in passing the Order MOV-09 under Section 129(3) of CGST/KGST Act, 2017 has not caused any prejudice, as the goods and the vehicle were released in two days on furnishing the Bond and Bank Guarantee. Therefore, permitting the ground to be raised for the first time in second appeal stage deprives both the Department and the first appellate forum of that opportunity.

5.0 Heard both sides. We find that the issue to be decided by us is

Whether the order in Form GST MOV-09 dated 04.06.2022, passed 47 days after service of Form GST MOV-07, is time-barred and void under Section 129(3) of the CGST/KGST Act?

5.1 The Ld Joint Commissioner for the Respondent has raised this contention that this issue is raised for the first time before GSTAT and was never raised before the First Appellate Authority. Before we delve into the issue of the limitation, we would answer the question of raising this issue for the first time by the appellant as alleged. As regards the contention of the Ld Joint Commissioner that the appellant has raised this ground of limitation of 7 days for issuing Order under Section 129 (3) of the CGST / SGST Act, 2017, for the first time before the GSTAT, without raising it before the First Appellate Authority, we find that it is a fact that the notice for detention MOV-07 was issued on 18-4-2022, and the Order for penalty MOV-09 was issued on 4-6-2022, and not within the prescribed mandatory 7 days under Section 129(3) ibid. We find that since this is an undeniable fact, which is on record, bringing out the same by the appellant before us, does not make it an additional ground made for the first time, which was not raised or discussed before the first appellate authority. Hence, the contention of the Ld Joint Commissioner is not correct as the this fact was always on record, and the first appellate authority was always aware of the dates of issue of MOV-07 and MOV-09 and has also recorded the dates in his impugned order-in-appeal. The first appellate authority has grossly failed to look into this legal aspect. Hence, we do not agree that this issue is raised for the first time.

5.2 Before discussing further, we deem it appropriate to reproduce Section 129 of the CGST/ KGST Act, 2017 which reads as below:

129. Detention, seizure and release of goods and conveyances in transit

(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,—

(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;

(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.

(2) deleted. . .

(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."

5.3 It is quite evident that the 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.

5.4 We find that the Sub-section 3 of Section 129 supra, 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 Sub-section (1) of Section 129 of the CGST / KGST Act, 2017. From the plain reading of Sub-section (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 CGST / KGST Act, 2017 is a fiscal statute and, therefore, required to be construed strictly. It is true that Sub-section (3) of Section 129 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 Sub-section (3) of Section 129, is not mandatory in nature.

6.0 We find support in the decisions of various High Courts to our observations in the judgements below:

6.1 In the case of Mohd Hazzak Lohar & Others vs Commissioner of State Tax, J&K cited in 2026 (7) TMI 1769 – J&K and Ladakh HC, it is held that

. . .

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 assessee;

(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.

6.2 In the case of M/s. Allcargo Logistics Limited vs State of Gujarat cited in 2025 (12) TMI 1732 – Gujarat HC it is held that,

14. Thus, in the present case, there is violation of provisions of Section 129(3) of the CGST Act as the order dated 19.11.2025 has been passed beyond the period of 7 (seven) days from the date of service of notice. In present case, the notice in Form GST MOV-07 was issued on 10.11.2025 and the order dated 19.11.2025 and hence the present petition succeeds only on this sole ground. The impugned order in Form GST MOV-09 dated 19.11.2025, notice in Form GST MOV-07 dated 10.11.2025 under section 129 of the CGST/GGST Act, 2017 and order of detention in Form GST MOV-06 dated 09.11.2025 under section 129(1) of the CGST/GGST Act, 2017 are quashed and set aside.

15. Rule is made absolute. No order as to cost.

6.3 In the case of Khatu Enterprises vs State of Gujarat cited in 2025 (10) TMI 1341 – Gujarat HC it is held that:

"11. Having heard learned advocates for the respective parties and having considered the facts of the case, it would be germane to refer to provisions of Section 129(3), which reads as under:

"129(3): The proper officer detaining or seizing goods or conveyances shall issue 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)"

12. On perusal of the above provision, it is incumbent upon the respondent authority after detaining or seizing of the goods or conveyance, to issue a notice *within 7 days from such detention or seizure, specifying the penalty payable and pass an order within a period of 7 days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1) of Section 129 of the GST Act.*

xxx xxx xxx

15. In view of the above dictum of law, we are in respectful agreement with the above proposition of law laid down by various High Courts and when the respondent authority has failed to issue notice as required under sub-section (3) of Section 129 of the GST Act, the detention order dated 6.5.2025 is liable to be quashed and set-aside.

6.4 In the case of Deepam Roadways vs Deputy State Tax Officer, Chennai, cited in (2023) 3 Centax 37 (Mad.) it is held that

4. As seen from section 129(3) of the Central Goods and Services Tax Act, 2017, the proper officer after detaining the goods or conveyance shall issue a notice 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) of section 129.

5. In the instant case, after detaining the petitioner's vehicle and the goods on 26.10.2022, notice was issued by the respondents on 31.10.2022 within seven days from the date of detention. However, the consequential order for payment of penalty was passed only on 10.11.2022 which is beyond the period of seven days from the date of service of notice on the petitioner. Having passed the impugned order beyond the period of seven days from the date of service of *notice on the petitioner which is contrary to section 129(3) of the CGST Act, 2017, the impugned orders have to be necessarily quashed and the writ petitions will have to be allowed.*

6. The very same view was taken by two other learned Single Judges of this Court in the case of Udhayam Steels (P.) Ltd. v. Deputy Tax Officer (Int.) dated 28-12-2022 in W.P.No.34268 of 2022 and in the case of D.K. Enterprises v. Assistant/Deputy Commissioner (ST) 2023 (70) G.S.T.L. 277 (Mad.) = [2022] 143 taxmann.com 201 (Mad.) dated 29-8-2022 in W.P.No.22646 of 2022. It is brought to the notice of this Court by the learned Special Government Pleader appearing for the respondents that no appeals have been filed against the aforesaid orders passed by two learned Single Judges of this Court and therefore, the said orders have also attained finality.

7. For the foregoing reasons, the impugned detention order dated 31-10-2022 as well as the impugned consequential order dated 10-11-2022 are hereby quashed and the writ petitions are allowed and a direction is issued to the respondents to release the detained goods and conveyances of the petitioner within a period of one week from the date of receipt of a copy of this Order. No costs. Consequently, connected miscellaneous petitions are closed.

6.5 In the case of Pawan Carrying Corporation vs State of Bihar, cited in (2024) 16 Centax 405 (Pat.) it is held that,

7. Be that as it may, even if the detention is stated to be on 28.12.2023, the notice was only issued on 05.1.2024, after the seven day period provided in section 129(3) CGST Act. Likewise, when the petitioner had been informed at the time of verification, if the petitioner had sought for time on the seventh day *from the date of serving of notice, there was nothing preventing the tax authority from rejecting the said prayer and passing the order, especially since, if the matter is kept pending, the proceedings would be barred by limitation.*

8. Section 129(3) of the CGST Act as substituted by Act 13 of 2021 is extracted hereunder:- "129(3) the proper officer detaining or seizing goods or conveyances shall issue 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)" (underlining by us for emphasis)

9. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in accordance with the provisions, we hence find no reason to sustain the demand raised. We set aside the orders passed for detention of the vehicles. The vehicle with the goods would be released immediately. Ordered, accordingly.

10. The petition is allowed.

6.6 In the case of K.P. Sugandh Ltd vs Chief Commissioner of CT & GST, Odisha cited in (2025) 26 Centax 62 (Ori.) it was held that

4. Sub-section (3) in section 129 provides for a specific period of seven days for passing of an order. The seven days is to be reckoned from date of service of the notice, specifying the penalty payable. Issuance and receipt of the penalty notice is not in dispute. For us to take a view that mere passing of the order within the time prescribed is sufficient for compliance with the provision in section 129(3) would imply that the order could thereafter be communicated at any later date. This view would then effectively enlarge the period prescribed.

Indian Contract Act, 1872 provides for communication. Communication of a proposal is said to be complete, under section 4, in said Act, when it comes to knowledge of the person to whom it is made. Here the order is to be taken to be the proposal and communication of it can only be complete, when it comes to knowledge of the person against whom it is made. Revenue has not been able to satisfy us about the communication made on 26th September, 2024, by mail sent to e-mail address of petitioner on fulfilling the requirement under section 169(1)(c). Communication of the order was complete the next day, when it was uploaded in the portal as in compliance with requirement under section 169(1)(d).

5. To us it appears the print of sent mail is doubtful because petitioner filed appeal on Form GST APL-01 giving date of order as 27th September, 2024. The appeal was successfully uploaded. There is also said letter dated 18th October, 2024 written by Assistant Commissioner of State Tax to petitioner, in which there is clear mention of 27th September, 2024 as date of the order. Furthermore, sub-rule (5) in rule 142 of Odisha Goods and Services Tax Rules, 2017 requires summary of the order issued, inter alia, under section 129, to be uploaded electronically in Form GST DRC-07. There is no dispute that this was done on 27th September, 2024.

6. In view of aforesaid, impugned order is found to have been made on the 8th day from date of service of the notice specifying penalty. It does not meet the requirement under sub-section (3) of section 129. It is therefore liable to be and is set aside and quashed. 7. Mr. Kar submits, the goods have been sold in the meantime. His client is also entitled to refund of pre-deposit on the appeal withdrawn. Petitioner must find its remedy on consequences of this judgment.

8. The wit petition is disposed of.

7.0 We find that the appellant had supplied the goods under the cover of two tax invoices which were generated as e-invoices from the e-invoice portal, and subsequently had filed GST returns and paid appropriate GST. It is also a known fact that once the GST e-Invoice is generated it is auto populated in the GSTR-1 which is a periodical return for arriving at the correct tax payable. Therefore, the appellant has not made any attempt to evade tax, as it is also a fact that the tax has been paid on those two relevant invoices in the GST return filed for the Month of April-2022. Therefore, we do not find any mens rea on the part of the appellant to evade the tax payment only because e-way bill was not prepared, along with e-invoice.

8.0 In view of the above, we find that the Hon'ble High Courts have consistently held that the timelines of Section 129 (3) have to be adhered to mandatorily. We find that the Sub-section (3) in section 129 provides for a specific period of seven days for passing of an order. The seven days is to be reckoned from date of service of the notice, specifying the penalty payable. Issuance and receipt of the penalty notice and the Order is not in dispute. The Limitation is clear and definite. The facts of the case indicate that the officers did not act in time in accordance with the provisions, we hence find no reason to sustain the penalties imposed. There was nothing preventing the Respondent state tax authority from passing the order within 7 days, especially since, if the matter is kept pending, the proceedings would be barred by limitation.

9.0 We find that the Respondent has failed to issue the Order for imposing penalty under Section 129(3) of the CGST/KGST Act, 2017, within the mandatory time limit of

7 days. Therefore, the Order MOV-09 dated 4-6-2022 issued after 47 days from the date of Notice MOV-07 dated 18-4-2022 is illegal and without jurisdiction. The First Appellate Authority has failed to look into this basic fact which was apparent on record. The impugned OIA is therefore liable to be set aside.

10.0 The impugned Order-in-appeal is set aside and the appeals are allowed with consequential relief. The Respondent is directed to release the Bank Guarantee to the appellants immediately on receipt of this Order.

Order pronounced in open court on 14.08.2026.

Subramanya V Rayaprol
Member (Judicial)

Ramamoorthi Sriram
Member (Technical)

Dated: 14.08.2026