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2026:AHC:64107-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1614 of 2026

Shiva Enterprises

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Aditya Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and Sri Ankur Agarwal, learned Standing Counsel for the Revenue.

2. Present petition has been filed for the following reliefs:

> *"A. Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the impugned proceedings initiated under section 129 of the CGST, Act read with section 20 of the IGST, Act.*
>
> *B. Issue a writ, order or direction in the nature of certiorari calling for the records and quash the demand of penalty order dated 24.2.2026 in Form GST MOV-09 passed by respondent no.2 (Annexure- 1 to the writ petition).*
>
> *C. Issue a writ, order or direction in the nature of certiorari calling for the records and quash the detention order in the Form GST MOV-06 dated 16.02.2026 and consequential notice in Form GST DRC-01 dated 16.02.2026 passed by the respondent no.2 (Annexure- 8 & 9 to the writ petition).*
>
> *D. Issue a writ, order or direction in the nature of mandamus directing the respondents to release the goods and vehicle forthwith without demanding any security.*

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E. Issue a writ, order or direction in the nature of mandamus directing the respondent authorities not to take coercive steps against the petitioner pursuant to the impugned order."

3. The facts in brief are, the petitioner is a partnership firm registered in the State of Bihar, under the Bihar GST Act, 2017. It claims to have entered into a transaction for supply of walnuts to M/s G.M. Enterprises, New Delhi, another firm registered under the Delhi GST Act, 2017. According to the petitioner, the goods were being transported on vehicle bearing registration no. RJ 14 GT-2755. They were accompanied with Tax Invoice and the E-way bill. The goods were to transit through the State of Uttar Pradesh. In that circumstance, respondent no. 2 intercepted the goods loaded on the said vehicle, on 10.02.2026, at about 1.34 PM. MOV-02 for physical verification of the goods, was issued on 11.02.2026 itself. However, the physical verification of the goods was conducted on 14.02.2026 and report on form MOV-04 was issued then. Thereafter, on 16.02.2026, detention memo of form MOV-06 was issued to the petitioner with respect to the above consignment of walnuts. Also, that day, show cause notice on form MOV-07 read with DRC-01 was issued to the petitioner proposing penalty under section 129(1) of the U.P.G.S.T. Act, 2017 (hereinafter referred to as 'the Act'), requiring appearance before the said authority, on 23.02.2026, i.e. on the 7th day. At that stage, the notice was issued in the name of driver of the truck, treating him to be the person-in-charge. According to the petitioner, he filed its reply on 22.02.2026. Disputing that, learned Standing Counsel would contend that such reply was filed on 24.02.2026, through offline mode. That day itself, order on form MOV-09 being the penalty order under section 129(3) of the Act, was passed-demanding penalty under section 129(1)(b) of the Act.

4. In such facts, the present petition has been filed.

5. Primarily, it has been submitted that the impugned order dated 24.02.2026 is without jurisdiction for reason of it being passed after the expiry of limitation of 7 days from the show cause notice. In fact, the show cause notice itself was issued outside limitation i.e. after 7 days from the interception of the goods.

6. Merit submissions have also been advanced to contend that no ground for

detention was made out and the penalty demanded is wholly unfounded. In any case, in face of clear evidence of the goods being traceable to a registered firm, if at all, security at lesser rate should be demanded under section 129(1) of the Act.

7. In support of the first submission advance, Sri Pandey has relied on decision of the Supreme Court in ***Govindlal Chhaganlal Patel vs. Agricultural Produce Market Committee, Godhra and Others, (1975) 2 SCC 482***, on the general proposition that the word "shall" clearly implies mandatory effect of law.

8. Relying on the amended made to section 129 of the Uttar Pradesh Goods and Services Tax (Amendment) Act, 2021, it has been further stressed that prior to that amendment, there was no limitation prescribed. Concept of reasonable time may have existed under the unamended law, to pass orders. However, the legislature has consciously departed from that pre-existing statutory provision. It has provided a rigid/fixed time line to issue show cause notice- within 7 days from detention and to pass penalty orders within 7 days from issuance of such show cause notice. Relying on ***ASP Traders vs. State of Uttar Pradesh and Others, 2025 INSC 890***, it has been submitted that by use of words "and thereafter" under sub-section (3) of section 129 of the Act, the legislature has clearly provided that the order be passed within 7 days from the show cause notice.

9. Further, reliance has been placed on the decision of the Gujarat High Court in ***M/s All Cargo Logistic Limited Vs. State of Gujarat and Others, R/Special Civil Application No. 16748 of 2025*** decided on 22.12.2025 after following earlier division bench decision of that High Court, in ***Khatu Enterprises vs. State of Gujarat and Others, 2025:GUJHC:62863-DB***.

10. Also, reliance has been placed on a decision of the Patna High Court in ***Pawan Carrying Corporation vs State of Bihar and Another, (2024) 85 NTN DX 121***. Further reliance has been placed on a decision of Orissa High Court in ***M/s RSL Overseas LLP, Kolkata and Another vs. State of Odisha and Others, W.P. (C) No. 21541 of 2024***, decided on 03.09.2024. Reliance has also been placed on the order of coordinate bench in ***Ankit Kamboj vs. State of U.P. and Another, (2024) 84 NTN DX 9***. Last, reliance has been placed on a decision of the ***Madras High Court in M/s D.K. Enterprises vs.***

Assistant/District Commissioner and Another, W.P. No. W22646 of 2022 decided on 29.08.2022, whereby it has been held by the Madras High Court that for the purpose of computation of time, concept of time "working days" would not exist. It would imply calendar days only.

11. On the other hand, learned counsel for the revenue would submit that the use of word "shall" does not cause mandatory effect in law. It is a settled principle in interpretation of statutes, that before such inference may be drawn, amongst others the consequence(s) must be seen to have been provided by the legislature. Thus, reliance has been placed on the ***State Of Uttar Pradesh And Others vs Babu Ram Upadhya, 1961 AIR 751, Sharif-Ud-Din vs Abdul Gani Lone, 1980 AIR 303, Lakshmanasami Gounder v. C.I.T, Selvamani And Others, (1992) 1 SCC 91, P.T. Rajan vs T.P.M. Sahir And Ors, 2003 (8) SCC 498***.

12. Further, it has been submitted, in the present case the order has been passed within reasonable time from the date of issue of notice dated 16.02.2026. Thus the order dated 24.02.2026 has been passed on the 8th day from the issuance of show cause notice. It may not be faulted, on that count.

13. On facts, it has been submitted, penalty has rightly been demanded under section 129(1) of the Act.

14. Having heard the learned counsel for the parties and having perused the record, in the first place we may first take note of the provisions of section 129 of the Act, as it existed prior to its amendment by the Uttar Pradesh Goods and Services Tax (Amendment) Act, 2021. Before deletion of sub-section (2) of section 129 of the Act, and before amendment made to section 129(3) of the Act, those provisions read as below:

> *"(2) The provisions of sub-section (6) of Section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances."*
>
> *"(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under Clause (a) or Clause (b) or Clause (c)."*
>
> *(emphasis supplied)*

15. After the amendment, sub-section (2) has been initiated and section 129(3) reads as below:

> *"(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)."*
>
> *(emphasis supplied)*

16. A bare perusal of that statutory provision clearly brings out that the legislature has still not provided for any consequence that may follow inaction on part of the "proper officer", if he fails to issue show cause notice within 7 days from detention or seizure of goods or conveyance or if he fails to pass an order within 7 days from the date of issuance of such notice.

17. Therefore, it falls for our consideration- if by the use of words "shall" and by employing the phrase "and thereafter pass an order within a period of seven days", the legislature has caused a mandatory effect in law that such show cause notice must be issued (without fail) within 7 days from the date of detention etc., the penalty order must necessarily be passed within 7 days from the issuance of such notice or not at all. Consequently, it requires to be answered if non-adherence to such rigid timelines, would render the proceedings time barred.

18. Clearly, the Patna High Court, the Orissa High Court and the Gujarat High Court have ruled in favour of the petitioner. Consistently, it has been held by those High Courts that the provision of section 129(3) of the Act, is mandatory, in entirety. The decision of this Court in ***Ankit Kamboj (supra)***, does not hold that the timeline prescribed under section 129(3) of the Act, is mandatory. The order appears to have been passed on the own facts of that case. According to the opinion of the coordinate bench, transportation of a chassis of a motor vehicle (upon it being driven), without any goods loaded thereon, did not amount to transportation of goods. On that fact consideration, the coordinate bench observed as below:

> *"1….*

2. Present petition under Article 226 of the Constitution of India has been filed by the petitioner being aggrieved by the proceedings initiated under Section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "Act") read with Section 20 of the Integrated Goods and Services Tax Act, 2017.

3. On bare perusal of the record and the submissions made by learned counsel for both the parties, it appears that the order was not passed within seven days of service of notice. It further appears that it was a chassis that was being transported from one place to another for refurbishment and renovation. There were no goods in the vehicle and the vehicle was being driven from one place to another.

4. In light of the above, the entire proceedings initiated under Section 129 of the Act are invalid. The same are quashed.

5. The Department to return the bus to the petitioner within four days from date.

6. The writ petition is allowed in above terms."

19. To us, the principle in law is far too well settled, and it has been consistently applied and reiterated, both by the Supreme Court and this Court, from inception. To determine if the words "shall" and "may", create a mandatory or a directory effect, by way of a rule to interpret a statute, the Courts have consistently looked beyond the plain grammatical sense of those words employed by the legislature, to rule when and under which circumstance is those words may create a mandatory or a directory effect in law.

20. Two discernible tests exist - one based on 'object and purpose' of the statutory provision, and also based on the 'consequence' of non-compliance of that statutory provision and third applicable to procedure.

21. In ***State of U.P. Vs. Babu Ram Upadhya; 1960 SCC Online SC 5***, the Supreme Court observed as below:

"29.The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall", prima facie, it is mandatory, <u>but the Court</u>

may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

(emphasis supplied)

22. Then, in ***Collector of Monghyr and Others vs. Keshav Prasad Goenka and Others, 1962 SCC OnLine SC 93***, the Supreme Court observed as below :

"12. Let us now examine the provision with reference to the several relevant matters we have just set out. Firstly, on the main scheme of the Act and what one might term the normal procedure, is that indicated by Sections 3 to 5 where there is ample opportunity afforded to persons affected to put forward their objections and prove them before any pecuniary liability is fastened upon them. Section 5-A constitutes a departure from this norm. It is obviously designed to make provision for cases where owing to an emergency it is not possible to comply with the requirements of Sections 3 to 5 of affording an opportunity to affected persons to make out a case that there is no justification for burdening them with any pecuniary obligation or pecuniary obligation beyond a particular extent. It is in the context of this consideration that the court has to consider whether the requirement that reasons should be recorded by the Collector is mandatory or not. If the question whether the circumstances recited in Section 5-A(1) exist or not is entirely for the Collector to decide in his discretion, it will be seen that the recording of the reasons is the only protection which is afforded to the persons affected, to ensure that the reasons which impelled the Collector were those germane to the content and scope of the power vested in him. It

could not be disputed that if the reasons recorded by him were totally irrelevant as a justification for considering that an emergency had arisen or for dispensing with notice and enquiry under Sections 3 to 5, the exercise of the power under Section 5-A would be void as not justified by the statute. So much learned counsel for the appellant had to concede. But if in those circumstances the section requires what might be termed a "speaking order" before persons are saddled with liability, we consider that the object with which the provision was inserted would be wholly defeated and the protection afforded nullified, if it were held that the requirement was anything but mandatory."

(emphasis supplied)

23. In ***Raza Buland Sugar Co. Ltd Vs. Municipal Board, Rampur; 1964 SCC Online SC 119***, that rule was applied - determine if the provision was mandatory or directory. In that regard, it was observed as below:

"7. We shall first consider the ground as to publication and three questions fall to be decided in that behalf : (firstly) is publication as provided in Section 13(3) mandatory or directory, for it is contended on behalf of the respondent that publication under Section 131(3) is merely directory; (secondly), was the publication in this case strictly in accordance with the manner provided in Section 94(3); and (thirdly), if the publication was not strictly in accordance with the manner provided in Section 94(3), is the defect curable under Section 135(3)?

8. The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word "shall" as in the present case — is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account

in arriving at the conclusion whether a particular provision is mandatory or directory."

(emphasis supplied)

24. Next, in ***Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar; (2005) 2 SCC 188***, in the context of procedural provision, it was observed as below:

"74. In this case it is not necessary for us to go into the question as to whether Section 83 is imperative in character or not inasmuch it is settled law that even where the expression "shall" is used, the same may not be held to be mandatory. Even a mandatory provision having regard to the text and context of the statute may not call for strict construction."

(emphasis supplied)

25. Again, in ***Kailash Vs. Nankhu; (2005) 4 SCC 480,*** in the context of procedural provision, it was observed as below :

"28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [(1975) 1 SCC 774] are pertinent:

> *"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.*

The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex

debito justitiae where the tragic sequel otherwise would be wholly inequitable. … Justice is the goal of jurisprudence — processual, as much as substantive."

(emphasis supplied)

26. Further, in ***Dove Investments (P) Ltd. Vs. Gujarat Industrial Investment Corporation; (2006) 2 SCC 619***, the purpose of the statutory provision was examined to determine if its non-compliance would render the whole exercise futile.

27. Next, in ***Ram Deen Maurya (Dr.) Vs. State of U.P., (2009) 6 SCC 735***, it has been observed as below :

"52. While considering the non-compliance with procedural requirement, it has to be kept in view that such a requirement is designed to facilitate and furthers its ends and, therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory."

(emphasis supplied)

28. Last, in ***Mahadev Govind Gharge Vs. LAO, (2011) 6 SCC 321***, it was observed that procedure should be construed as directory unless there exists a condition precedent.

29. Then, in ***Sharif-ud-Din Vs. Abdul Gani Lone, (1980) 1 SCC 403***, the 'consequence' test was applied to determine whether the statutory provision was directory or mandatory. There it was observed as below:

"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the

court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

(emphasis supplied)

30. Then, in ***Topline Shoes Ltd. Vs. Corpn. Bank, (2002) 6 SCC 33***, in the event of non-compliance were found to be directory. In that regard, it was observed as below :

"12. We would like to observe that the decision of this Court in the cases of National Sewing Thread Co. [(1953) 1 SCC 794 : AIR 1953 SC 357] and Vasantlal Maganbhai Sanjanwala [AIR 1961 SC 4] would not be applicable to the case in hand. In those cases it was held that a power which is vested in the court can be exercised repeatedly in the absence of intention to the contrary contained in the statute. Such a question is not involved in the present case. The power to extend time under clause (a) is with a rider that the extension may not exceed 15 days. We have, however, already held that the provision saying that extended time may

not exceed 15 days is directory in nature. It does not mean that orders extending the time to file reply may be passed repeatedly unmindful of and totally ignoring the provision that the extension may not exceed 15 days. This provision has always to be kept in mind while passing an order extending the time to file a reply to the petition. It is another matter, as we have found that in case time is extended exceeding 15 days, it may not be a kind of illegality which may deny or deprive the respondent to file his reply within the time granted by the Forum/Commission."

(emphasis supplied)

31. Then, in ***SCG Contracts (India) (P) Ltd. Vs. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210***, only against provision of specific consequence to be visited in the event of non-compliance, the provision was found to be mandatory. It was thus observed:

"8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

> *"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."*

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

> *"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be*

allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

"10. Procedure when party fails to present written statement called for by court.— *Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:*

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days."

(emphasis supplied)

32. In ***Rama Devi vs. State of U.P. And Others, 2018 SCC OnLine All 7700***, the issue was considered by a coordinate bench in the context of U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 and the power to bring a no-confidence motion. The coordinate bench applied the above principle, both on the strength of the decisions of the Supreme Court and also on the strength of a Full Bench decision in ***Vikas Trivedi vs. State of U.P. and Others, (2013) 2 UPLBEC 1193***. In that case, pertinent to the present, it was reasoned as below:-

> *"15. In this regard we may, at the outset, refer to Maxwell On the Interpretation of Statutes while considering "Imperative And Directory Enactments". In this regard Maxwell reads as under:-*
>
> > *"The first such question is: when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, is the requirement to be regarded as imperative (or mandatory) or merely as directory (or permissive)? In some cases the conditions or forms prescribed by the Statute have been regarded as essential to the act or thing regulated by it, and their omission has been held fatal to its validity. In others, such prescriptions have been considered as merely directory, the neglect of them involving nothing more than liability to a penalty, if any were imposed, for breach of the enactment. An absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.' It is impossible to lay down any general rule for determining whether a provision is imperative or directory. 'No universal rule', said Lord Campbell, L.C., 'can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.' And Lord Penzance said: 'I believe as far as any rule is concerned, you cannot safely go*

> *further than that in each case you must look to the subject matter; consider the importance of the provisions that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.'*
>
> .....
>
> *37. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve its end object of just, fair and expeditious justice to parties without seriously prejudicing the rights of any of them."*
>
> *(emphasis supplied)*

33. Further, yet another coordinate bench in ***Vivek Kumar Sharma and Another vs. High Court of Judicature At Allahabad And 16 Others, 2023:AHC:159984-DB***, had the occasion to consider the same issue. Dealing with the same, it was observed as below:-

> *"48. Insofar as challenge has been raised that the petitioners had not been granted interview for the desired duration of 25-30 minutes, we find while making the Rules, a maximum time limit has been prescribed to assess a candidates' suitability to appointment, by the Committee. It may only be by way of an indication. Currently, it is pegged to 25-30 minutes. However, there is absolutely no stipulation under the Rules and there is complete absence of any law compelling the Interview Board/s to, necessarily spend a minimum of 25-30 minutes with every candidate - to judge his suitability to the appointment sought. Moreover, there is*

absolutely no prescription in law providing for the consequence of invalidation of any Interview test, if that indicated time limit of 25-30 minutes were to be breached i.e., if the Interview board may proceed to assess the merit of any candidate, in a shorter time. As summarized, in State of Bihar and Others Vs. Bihar Rajya Bhumi Vikas Bank Samiti (supra)[1], the consistent law on the subject has remained - in absence of any consequence prescribed, a provision may not be inferred to be mandatory rather, it may remain directory."

(emphasis supplied)

34. Justice G.P. Singh, the great jurist notes in Principles of Statutory Interpretation (9th Edn., 2004):

"The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: 'No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.' " (p. 338)

"For ascertaining the real intention of the legislature, points out Subbarao, J. 'the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very

much furthering the object of enactment, the same will be construed as directory." (pp. 339-40)"

(emphasis supplied)

35. In ***Commissioner, Customs and Central Excise vs. Sri Ram Piston & Rings, 2019 (369) ELT 631 (All.)***, a coordinate bench had the occasion to consider the issue in the context of CENVAT Rules. In that regard, it was discussed as below:

"19. In this background it needs to be examined whether the requirement of Rule 4A of Service Tax Rules read with Rules 7 & 9 of CENVAT Rules is imperative/ mandatory or directory. If the said Rules are found to be mandatory then obviously the assessee did not comply with the same and it would therefore have to be held not entitled to claim transfer of CENVAT credit to its manufacturing unit. Consequently the order reversing the same would be valid. If however, the said Rules are found to be directory, it would further be required to examine if substantial compliance of the same had been found to have been made by the assessee. If substantial compliance is found to have been made and no prejudice is shown to the revenue on that count then, the assessee may be held to have correctly availed the CENVAT credit.

20. In the case of Sainik Motors v. State of Rajasthan, AIR 1961 SC 1480 a purposive approach was adopted by the Supreme Court to interpret the word "shall" appearing in Rules 8 & 8A of the Rules framed under Rajasthan Passengers and Goods Taxation Act and in related notification issued under that Act. They were held to be directory looking at the context or intention of the Rules and notification in which word 'shall' was used. The same were harmonized with the language used in Section 4 of the parent Act that used the words "may accept". It was thus held that while levy itself remained non-mandatory, if imposed, the same was to be computed only in the manner laid down in the Rules. In this regard, the Supreme Court held:

> *"12. It is, however, contended that though the section creates an option, the Rules and the notification make the payment compulsory, and attention is drawn to the word "shall" used*

both in Rules 8 and 8-A and the notification whereas the words in the two provisos to Section 4 are "may accept". The word "shall' is ordinarily mandatory, but it is sometimes not so interpreted if the context or the intention otherwise demands. In In re Lord Thurlow Ex Parte Official Receiver [1895 1 QB 724] Lord Esher, M.R. observed at p. 729 that "the word "shall' is not always obligatory. It may be directory", and Lopes, L.J. at p. 731 added:

"It is clear that the word "shall' is not always used in a mandatory sense. There is abundance of authority to the contrary in cases where it has been held to be directory only."

13. It was thus that the word "shall" was held to be directory only, in that case, by Coutts Trotter, C.J., in Manikkam Pattar v. Nanchappa Chettiar [(1928) MWN 441] by Russel, J., in In re Rustom [(1901) ILR 26 Bom 396 : (1901) 3 Bom LR 653] by Venkatasubba Rao, J., in Jethaji Peraji Firm v. Krishnayya [(1929) ILR 52 Mad 648, 656] and by the Judicial Committee in Burjore and Bhavani Pershad v. Mussumat Bhagana [(1883) LR II IA 7] .

21. Then, in the case of P.T. Rajan v. T.P.M. Sahir, (2003) 8 SCC 498, the Supreme Court considered the purpose and object of the relevant provision and whether the provision itself was part of a procedural/machinery provision or substantive provision-to interpret whether the word 'shall' appearing therein was imperative/mandatory or directory. Further, it was found that procedural provision would not be mandatory despite word 'shall' being employed, unless prejudice was caused.

22. In that case a dispute had arisen whether the word 'shall' used in section 23(3) of the Representation of the Peoples Act, 1950 was imperative/mandatory or merely directory. Under that provision if satisfied, the Electoral Registration Officer shall direct the name of an applicant to be registered in the electoral roll. However that exercise was to be completed before close of time for filing nomination to the election proposed to be held for any constituency. Though, the Supreme Court found that prima facie, due to use of the word 'shall' the provision in

question was worded as an imperative provision, yet, it did not conclude so on that consideration alone. The purpose and object of the Act and the particular provision were examined and in that light. The Supreme Court found that it was imperative/mandatory for the Electoral Registration Officer to finalise the electoral roll before lapse of time for filing nomination to the election as it had a direct bearing on the elections, their conduct and outcome. Therefore, that provision was held to be mandatory. At the same time publication of the electoral list that was also required to be made within prescribed time was held to be directory for the reason that an electoral list though published after that time did not have any bearing on the rights of the person whose name may have been either included or excluded from that list. It was thus explained:

> *"45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.*
>
> *46. .....*
>
> *47. The construction of a statute will depend on the purport and object for which the same had been used. In the instant case the 1960 Rules do not fix any time for publication of the electoral rolls. On the other hand Section 23(3) of the 1950 Act categorically mandates that direction can be issued for revision in the electoral roll by way of amendment in inclusion a nd deletion from the electoral roll till the date specified for filing nomination. The electoral roll as revised by reason of such directions can therefore be amended only thereafter. On the basis of direction issued by the competent authority in relation to an application filed for inclusion of a voter's name, a nomination can be filed. The person concerned, therefore, would not be inconvenienced or in any way be prejudiced only because the revised electoral roll in Form 16 is published a few hours later. The result of filing of such nomination would become known to the parties*

concerned also after 3:00 p.m.

48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. District Magistrate of Monghyr [AIR 1966 Pat 144 : ILR 45 Pat 436 (FB)] , Nomita Chowdhury v. State of W.B. [(1999) 2 Cal LJ 21] and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana [(1997) 1 CHN 189] .)

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. (See Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur [AIR 1965 SC 895 : (1965) 1 SCR 970] , State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] , Venkataswamappa v. Special Dy. Commr. (Revenue) [(1997) 9 SCC 128] and Rai Vimal Krishna v. State of Bihar, (2003) 6 SCC 401."

23. Then in Dove Investments (P) Ltd. v. Gujarat Industrial Investment Corpn., (2006) 2 SCC 619 the Supreme Court again dealt with this issue in the context of the word 'shall' appearing in sections 108 and 111 of the Companies Act. In that case the company Dove Investments had obtained finance of Rs. 4.5 crores from Gujarat Industrial Investment Corporation against pledge of 25 lakhs shares. However, when the latter sought to enforce such security, the debtor Dove Investments (P) Ltd. resisted the claim and set up a defence in respect of 22 lakh shares pleading that the creditor could not enforce the security against those shares because the same had not been registered under section 108 & 111 within two months time stipulated under those sections. It was submitted in view of the word 'shall' used in those sections the time stipulation of two months was

mandatory.

97. It is important to note that in Crawford on Statutory Construction at p. 539, it is stated:

> *"271. Miscellaneous implied exceptions from the requirements of mandatory statutes, in general.--Even where a statute is clearly mandatory or prohibitory, yet, in many instances, the courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in considerations of justice. It is a well-known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient caliber to excuse or justify a technical violation of the law."*

15. In Mohan Singh v. International Airport Authority of India [(1997) 9 SCC 132] this Court observed: (SCC p. 144, para 17)

> *"17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word "shall' or "may' depends on conferment of power. In the present context, "may' does not always mean may. May is a must for enabling compliance with provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In Craies on Statute Law (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The*

> *scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy(generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word "shall' is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration."*
>
> *(emphasis supplied)*

36. Consequently, we have no hesitation to hold that keeping in mind the object of the provision and in absence of any consequence provided under the Act - the procedural requirement to be met within that strongly recommended time indicated by the legislation, the provision of section 129(3) of the Act (to that extent)would remain directory and not mandatory.

37. The fact that the unamended provision did not provide for and it did not suggest any time limitation, may not lead us to conclude that by indication of time under the amended law, the entire provision has been rendered mandatory. While, learned counsel for the petitioner may be right in his submission that the pre-amended law may be relevant to be examined to interpret the amended provision, it would be an over simplified reasoning- to therefore reach a conclusion that the amended provision, is mandatory. From pre-amended Act to the amended law, the legislature has moved to provide for more efficient initiation and disposal of proceedings under section 129 of the Act. Thus, against unbridled discretion- of time, granted to the authorities (earlier), the legislature has strongly indicated that these proceedings must be conducted and concluded, efficiently. Thus, the notice

is required or strongly recommended to be issued within 7 days from detention and similarly the order is required to (preferably) be passed within 7 days from issuance of such notice. However, these time limits may not be read as mandatory as may lead to further conclusion that the proceedings would be rendered time barred solely on such timeline being breached. The object and purpose of the legislative action appears to be to introduce efficiencies in quasi-judicial proceedings without introducing mandatory invalidity in such proceedings, by way of operation of law.

38. Also, to the timelines appearing in Section 129(3), are procedural. They do not provide hard/inflexible time lines, for assumption of jurisdiction or completion of actions pursuant to assumption of that jurisdiction. The object and purpose of the amendment made is to ensure that proceedings are initiated and concluded, expeditiously. To the extent, issuance of notice under Section 129 is an ex-parte action on part of the Proper Officer, and is part of the procedural law, without providing for a 'consequence' of lapse of jurisdiction, if the prescribed timeline is violated/non-adhered, we see no reason why issuance of such notice may be biased (by law), if it is issued outside that timeline indicated by the statute i.e. 7 days from detention. To that extent, the statutory timeline only emphasizes procedural efficiencies and discipline, to be maintained by the Proper Officer.

39. However, any violation of that timeline may invite departmental action and judicial wrath, in appropriate facts. To that extent, the concerned officers must ever remain vigilant and must ensure that such notices are issued within the timelines indicated by the statute. Failing that, they should be first made answerable, departmentally - for causing any unwarranted/unexplained delay. If any action is brought before the departmental and appellate authorities and Courts, the issue may be examined in individual facts of each case.

40. Insofar as the second stipulation of time of 7 days - to complete the action is concerned, that period of time is also procedural and clearly directory. However, keeping in mind object and purpose of that prescription of time, wherever any delays may arise, those may be explained (to appellate authorities as also Courts), on the strength of order sheet entries, alone.

41. At that stage, and in such situations, it would not be permissible to the

Proper Officers to explain their conduct in any manner except through order sheet entries and formal communications, but not through subsequent affidavits or non-formal communications. To the extent proceedings are quasi judicial in nature, the order sheet entries and formal communications alone may be relied by way of evidence, to establish genuine/bona fide reasons for any delay beyond 7 days.

42. Yet, in absence of any consequence provided under the Act either that no show-cause notice may be issued beyond 7 days from the date of detention of goods or that proceedings initiated on the strength of any such notice, may not be continued beyond 7 days from the date of issuance of such notice, we are not in a position to hold that the provisions of Section 129(3) are mandatory. They are part of the procedural law. Keeping in mind the object and purpose of the provision as discussed above, in absence of any consequence of lapse of jurisdiction provided, they remain directory, only.

43. For the above reasons, we are unable to subscribe the view taken by the Patna High Court, the Gujarat High Court and the Orissa High Court. We respectfully, disagree with the same.

44. As to facts, we note- while the goods were intercepted on 11.02.2026, the show cause notice under section 129 of the Act was issued on 16.02.2026. Therefore, the said notice was issued within 7 days from the interception/detention. It was wholly within time. As to the reply, the petitioner appears to have filed two replies, first on 19.02.2026 and second on 12.02.2026. Learned Standing Counsel would contend that only an objection as to the limitation was filed. Whatever be the true purport of such reply, computed from 16.02.2026, the order has been passed on the 8th day i.e. 24.02.2026. On the face of it, substantial compliance of the directory provision of law contained under section 129(3) of the Act has been made. Therefore, in facts of the present case, we do not find any defect as may prompt us to offer interference in exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India on those counts, or to examine the conduct of the Proper Officer.

45. Insofar as the merit issue is concerned, here the petitioner claims, he was a registered dealer on the date of transaction being initiated and the Tax Invoice being issued. His registration in the State of Bihar has been

suspended subsequently i.e. after interception of the goods. Therefore, the petitioner is a bonafide owner of the goods, as claimed. Resultantly, he is entitled to claim release of the goods against security to be furnished (against penalty under section 129(1)(a) of the Act). To that relief, we find the petitioner is entitled. Accordingly, leaving it open to the petitioner to avail other statutory remedy against penalty, in the entirety of the facts, let goods and the vehicle of the petitioner be released against the deposit of amount equal to penalty (under protest) in terms of section 129(1)(a) of the Act. Subject to such compliance, the goods and the vehicle may be released, forthwith.

46. Before we part, we may also note that similar petitions do arise before the Court, time and again. To the extent, the legislative intent to conduct and conclude the proceedings efficiently, exists, we feel there need to issue necessary directions to ensure that the spirit of the amendment made to section 129 of the Act, is given full effect. Consequently, we provide as below:

(i) Wherever goods are intercepted, preliminary inquiry as may be necessary including physical verification etc, may be completed, strictly within timeline indicated by the statute such that show cause notice may be issued within 7 days from interception. To the extent that action is fully ex-parte at the instance of the proper officer, no undue margins may exist for delays.

(ii) Upon issuance of the show cause notice within 7 days from interception, all efforts should be made by the Proper Officer- to conclude the proceedings within 7 days, as strongly recommended by the statute.

(iii) Considering the fact that such proceedings may conclude only after granting opportunity to file objection and of hearing, we consider it appropriate to give a margin of 3 days to the assessee to file his written reply/objection, to such notice.

(iv) Thereafter, the Proper Officer may hear objector/assessee within the next 2 days, and pass appropriate order within 7 days from the date of show cause notice.

(v) Where the objector/assessee may seek time either to file objection etc, or

to be heard, that request should be received in writing by the Proper Officer, and specific ordersheet entries should be recorded to allow for minimal reasonable time to such person/s.

(vi) Thereafter, the order should be passed dealing with such objection, at the earliest i.e. within 7 days from issuance of the show cause notice.

(vii) If for reasons of attributable to the objector/assessee or for any other circumstances the statutory timeline recommended is to be breached, the ordersheet and the order to be passed should contain full recital of the reasons- that may have attributed to that delay, either as to issuance of notice or in concluding the proceedings.

(viii) Where delays are caused habitually or regularly, by any Proper Officer, the matter should be taken up by the proper superior authority (of such Proper Officer), *suo-moto,* for administrative guidance and action, where required.

47. Let a copy of this order be communicated to the Commissioner, State Tax for issuance of appropriate directions - for strict compliance of this order, by all field units and their superior administrative officers and appellate authorities.

48. The present writ petition stands ***partly allowed*** accordingly. No order as to costs.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

March 26, 2026

#Vikram/-