Serial No. 32
REGULAR CAUSE LIST

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2538/2024

DANISH HASSAN **…Petitioner(s)**

Through: Mr. Zaffer Qadri, Advocate

Vs.

UT OF J&K & ORS. **...Respondent(s)**

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

CORAM:

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

ORDER
07.09.2026

01. Impugned in this petition filed by the petitioner under Article 226 of the Constitution is an order dated 28.10.2024, passed by the Appellate Authority Appeals I-State Taxes Department Kashmir in appeal titled as ***"M/s Stage Trading Pvt. Ltd. Srinagar Vs. UT of J&K & Ors."***, whereby the Appellate Authority has confirmed the order of Deputy Commissioner, State Taxes Enforcement (Central) Kashmir dated 17.09.2024 passed under Section 129 (3) CGST 2017 ["the Act].

02. The impugned order passed by the Deputy Commissioner, State Taxes Enforcement (Central), Kashmir and order in appeal passed by the Appellate Authority are assailed by the appellant primarily on the ground that the Proper Officer having failed to serve upon the petitioner a notice within a period of seven days from the date service of notice of detaining/seizing of goods or conveyance has acted in violation of provisions of Section 129(3) of the Act, and,

therefore, the orders impugned are vitiated in law. Reliance is placed by the learned counsel appearing for the petitioner on a judgment rendered by this Court on 23.07.2026 in WP (C) No. 2434/2025 titled as ***<u>"Mohd. Hazzak Lohar & Anr. Vs. Commissioner State Taxes and Anr."</u>*** whereby this Court has held the provisions of Sub Section 3 of Section 129 of CGST Act, mandatory in nature.

03. Heard learned counsel for the parties and perused material on record.

04. What is held by this Court is set out in para 17, 18 and 19 which for facility of reference are set out below:-

> *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.*

05. When we examine the case on hand in the light of law laid down in Mohd. Hazzak Lohar (supra), we find that in the instant case the Proper Officer detained the goods along with conveyance on 02.09.2024, and, therefore, was under an obligation to issue notice of show cause within seven days of such seizure and detention.

06. The notice intimating order of detention and seizure and specifying the penalty payable was issued on 11.09.2024 and uploaded on 12.09.2024. The Proper Officer was further under an obligation to pass an order for payment of penalty within a period of seven days from the date of service of such notice.

07. The notice dated 11.09.2024 admittedly was uploaded on 12.09.2026 i.e beyond a period of seven days. In that view of the matter, the mandate of Sub Section 3 of Section 129 of the Act was violated by the Proper Officer. There was a delay of one day in issuing the notice, which vitiates the entire proceedings.

08. For the foregoing reasons, the writ petition is allowed. The impugned order of the appellate Authority dated 28.10.2024 and order of Proper Officer dated 17.09.2024 are set aside, having been issued in violation of the mandatory provisions of Sub Section 3 of Section 129 of the Act. We, however, make it clear that notwithstanding the quashing of the notice/order dated 11.09.2024 uploaded on 12.09.2024 the proceedings, if any, permissible under the provisions of the

Act of 2017 can still be pursued by the respondents if required.

09. Let the amount of penalty which has been deposited before this Court in terms of order dated 17.12.2024, be released in favour of the petitioner after due verification.

10. Disposed of.

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (A)

<u>SRINAGAR:</u>
07.09.2026
"S. NUZHAT"

"Whether approved for reporting? Yes/No"