

TAX INFO

Dated 11/01/2023

Latest update on GST Law: **Voluntary payment of tax/penalty u/s. 129 does not deprive him of his right to file an appeal u/s.107** as given in judgement by **Kerala High Court**.

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Name of Petitioner	Hindustan Steel and Cement
Name of Respondent	Assistant State Tax Officer, 24 X 7 Mobile Squad
Court	Kerala High Court
Date of Judgement	18.07.2022
Appeal No.	WP(C) No. 17454 Of 2022

Brief Facts of the Case Law:

That goods of the petitioner were the subject matter of detention/seizure under Section 129 of the CGST/SGST Acts and the petitioner opted to pay amount in terms of the pre-amended provisions of Section 129(1)(a) of the CGST/SGST Acts, to get the goods released pending finalisation of proceedings. On payment of the amount, the goods and the conveyance were released by issuing Form MOV-05. While an order was issued in Form MOV-09 (a corresponding summary of order/demand in form MOV-07 was not issued. As a result, the petitioner was not in a position to approach the appellate authority by filing an appeal under Section 107 of the CGST/SGST Acts.

Contention of the Petitioner:

The order under Section 129(3) issued in Form MOV-09 should have been accompanied by a summary of the order in Form MOV-07 as without a summary of the order in Form MOV-07, the petitioner was disabled from filing an appeal as the system accepts an appeal only if there is a summary of an order issued in Form MOV-07.

Contention of the Department:

A person who is the subject matter of proceedings under Section 129 CGST/SGST Acts, opting to make payment of tax and penalty in terms of Section 129(1)(a), the proceedings under Section 129 come to an end. The payments made under Section 129(1)(a) are paid and accepted in Form DRC-03, which is a form for voluntary payment and such payments cannot be the subject matter of any refund or adjudication at a later point of time. On payment of the amount under Section 129(1)(a), the entire proceedings should be treated as having concluded and the payment represents an acceptance of the fact that the discrepancies noted by the intercepting officer and leading to the initiation of proceedings under Section 129 were well founded.

The provisions of Rule 142 of the CGST Rules deal with the situation where the person concerned seeks to continue with the proceedings by opting to provide a Bank guarantee under Section 129(1)(c) and the proceedings cannot be treated as concluded. But once payment is made under Section 129(1)(a), there is no way in which a summary of order/demand can be generated in Form MOV-07. Unless there is a demand for tax or interest or penalty, there cannot be a proceeding under DRC-07 and when a summary of order/demand is issued under DRC-07, the proper officer can, on being already satisfied that the demands have been paid, issue proceedings in Form DRC-08.

Decision of the Court:

The only point that arises for consideration in these cases is whether a person who opts to make payment in terms of Section 129(1)(a) of the CGST/SGST Acts to get goods/conveyance/documents detained or seized in proceedings under Section 129 released is deprived of his right to file an appeal against the proceedings.

Section 129(1)(a) provides that where the person who suffers the order on detention makes payment of tax and penalty, the goods shall be released. Section 129(1)(c) gives an option to a person suffering an order of detention to provide security instead of making payment of tax and penalty as provided for in Section 129(1)(a). However, the provisions of Section 129(3) contemplate the issuance of a notice and the passing of an order. A reading of sub-section (3) suggests that whether the person suffering the detention chooses to make payment under Section 129(1)(a) or chooses to provide security in terms of Section 129(1)(c), the officer detaining or seizing the goods or conveyance has to issue a notice specifying the tax and penalty payable.

Whether or not a person opts to make payment under section 129(1)(a) or to provide security under Section 129(1)(c), there exists the responsibility of the officer to pass an order under Section 129(3) and to upload a summary of the order/demand in Form MOV-7 continues. It is always open to the person who suffers proceedings under 129 of the CGST/SGST Acts to challenge those proceedings if he feels that the demand has been illegally raised on him. Any other interpretation would clearly violate Article 265 of the Constitution of India.

It is fairly pointed out that Section 107 provides an opportunity to a person aggrieved to challenge any order or any proceedings issued under any provision of the Act and the wording of that Section does not really make a distinction between persons who opt to make a payment under Section 129(1)(a) and persons who opt to provide security as provided for, in Section 129(1)(c). Further, Section 107 of the CGST Act is widely worded and provides that any person aggrieved by any decision, or order passed under the CGST/SGST Acts or Union Territory Goods and Services Tax Act, by an adjudicating authority, may appeal to such appellate authority as may be prescribed, within three months from the date on which such decision or order is communicated to such a person.

Thus, the person who is the subject matter of proceedings under section 129 of the CGST Act has the right to challenge those proceedings, culminating in an order under sub-section (3) of Section 129, before the duly constituted Appellate Authority under Section 107 of that Act. The fact that the culmination of proceedings in respect of a person who seeks to make payment of Tax and Penalty under Section 129(1)(a) does not result in the generation of a summary of an order under Form DRC-07 cannot result in the right of the person to file an appeal under Section 107 being deprived. The fact that the system does not generate a demand or that the system does not contemplate the filing of an appeal without a demand does not mean that the intention of the legislature was different. Thus, the appeal was allowed.

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