



Government of Kerala



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**Circular No. : 10/2022**

Sub : Kerala State Goods & Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances U/s 129 of the SGST / CGST Act, 2017- - instructions issued - reg:  
Ref: 1. Circular No. 41/15/2018-GST dated 13.04.2018 of CBIC  
2. Judgement dated 20/07/2022 in WP(C) No. 17454/2022 and 17463/2022

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I). It has been brought to notice that a person who opts to make payment in terms of Clause (a) of Sub Section (1) of Section 129 of the State Goods & Services Tax Act, 2017 becomes unable to file appeal under Section 107 of the said Act in situations where online statutory orders in Form GST MOV 9 is not issued. The legal aspects as to whether a person who opts to make payment in terms of Clause (a) of Sub-Section (1) of Section 129 of the Central Goods & Services Tax Act, 2017 and State Goods & Services Tax Act, 2017 to get goods/conveyance released is deprived of their right to file an appeal against the proceedings, has been examined in the light of the provisions in the CGST and KSGST Act 2017, Rules, Forms and relevant notifications thereunder.

II). The notice in Section 129(3) is provided for under FORM GST MOV-07 and the order is given in FORM GST MOV-09. The order in FORM GST MOV-09 raises a demand for penalty, and this demand is reflected as FORM GST DRC-07. The issuance of statutory MOV forms for the detention and release of goods in transit is a fully online process. During the night hours and in situations owing to technical and connectivity issues, the field formations may issue manual statutory forms and release the goods and vehicles without resorting to any online procedure. In such cases, the officers are not uploading the FORM GST MOV-09

order on the ground that the same is not necessary in cases where tax and penalty are paid in full by the party voluntarily in FORM GST DRC 03. The operation of the online appeal module is linked to the FORM GST MOV-09 order, and taxpayers who are not issued with the FORM GST MOV-09 order cannot file an appeal.

III). It is found that the proceedings referred to in Sub Section 5 of Section 129 only relate to the proceedings as far as the notice is concerned, and this cannot be interpreted to defeat the right of a party to file an appeal against the action taken by him or proceedings said to be concluded against him. The party may have made the entire payment of tax and penalty, under the exigencies of a particular case. This payment may be one made under protest, under urgent circumstances, and since it is voluntary in nature, that is even before the raising of a demand in FORM GST MOV-09, it can only be paid under FORM GST DRC-03. However, the fact that a party has made a voluntary payment under the peculiar circumstances of a case and sought the release of goods and conveyance, cannot be used against him to prohibit him from filing an appeal against the proceeding as such.

IV). The practical inconvenience, network issues, portal fixations, or software problems are not valid grounds to prevent a party from pursuing their statutory appellate remedies. When Section 107 of the Act confers a right on any party or any person aggrieved by any order or decision under the Act to pursue an appeal, the same cannot be curtailed on grounds of convenience, duplication of demand or portal/software issues.

V). The option to permit physical filing of appeals in such cases has also been examined. As per Rule 113(1) of the KGST and CGST Rules, 2017 the Appellate Authority shall issue a summary of the order in FORM GST APL-04 indicating the final amount of demand confirmed. As per the Standard Operating Procedure (SOP) for M2 back office module, FORM GST APL-04 can only be issued against an Application Reference Number (ARN) which is generated at the time of electronic filing of an application for appeal in FORM GST APL-01 on the common portal. Hence manual filing of appeals may create practical issues while processing and finalizing the appeal by the appellate authorities.

VI). Under the above circumstances, the following instructions are issued for strict compliance.

1. Issuance of manual forms for detention, seizure and release of goods and conveyances under section 129 of the KSGST and CGST Act of 2017, may be avoided as far as possible.

2. In all cases of detention, seizure, and release of goods and conveyances in transit under Section 129 of the KSGST and CGST Act of 2017, final orders in FORM GST MOV -09 shall invariably be provided online, regardless of whether the party has made a voluntary payment of tax and penalty in FORM GST DRC-03.
3. In all previous instances where no final orders in FORM GST MOV -09 have been provided online and the taxpayer/party intends to file an appeal, FORM GST MOV-09 order shall be electronically issued immediately.
4. The field formations are directed to strictly follow the due procedures prescribed as per Circular No. 41/15/2018-GST dated 13.04.2018 of the CBIC in this regard.

VII). The directions of the Hon'ble High Court of Kerala in WP(C) No. 17454 of 2022 and 17463 of 2022 dated 20/07/2022 are complied herewith.

Sd/-  
**COMMISSIONER**

To

All concerned.