

CWP-21628-2025

2026:PHHC:014263-DB



103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-21628-2025

Date of Decision: January 31, 2026

M/S DEUTSCHE CARS PVT LTD

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI**

Present: Mr. Sandeep Goyal, Senior Advocate with
Mr. Rishab Singla, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

LISA GILL, J.

1. Primary prayer in this writ petition reads under:

“ Issue a writ in the nature of certiorari for quashing of order in Form GST MOV-09 dated 06.05.2025 (Annexure-14) passed by respondent No. 3:

(a) In violation of the principles of natural Justice as the order has been passed even before expiry of the date of filing of the reply given in the Show Cause Notice Issued on 06.05.2025 for 13.05.2025.

(b) Reply dated 13.05.2025 (Annexure P-12) filed by the petitioner in response to the Show Cause Notice in Form GST MOV-07 dated NIL (Annexure P-11) has not even been considered in the impugned order and to the contrary, it has been observed that the petitioner has not filed any objections;

(c) No reasoning has been assigned in the impugned order for confirming the penalty which is in contravention to the law laid down by the Hon'ble Apex Court in the case **Kranti Associates (P) Ltd. versus Masood Ahmed Khan, (2010) 9 SCC 496;**

CWP-21628-2025

(d) The detention in pursuance to which the impugned order has been passed itself was in contravention to the provisions of the Central GST Act/State GST Act read with IGST Act, 2017; and
 (e) There is no tax evasion in the transaction in question and the goods were accompanied by proper and genuine documents.”

2. It is submitted that petitioner is a Dealer duly registered under provisions of Central Goods and Services Tax Act, 2017 and Delhi Goods and Services Tax Act, 2017. Petitioner is engaged in the business of trading of cars and is an authorized dealer of BMW. On 03.05.2025, petitioner had sent one car for the purpose of its exhibition/display at its Faridabad Branch. Car was duly accompanied with delivery challan and e-way bill, mentioning the purpose of transportation as ‘Display’. It was intercepted at Badarpur border at Faridabad. Documents of this vehicle were produced by the driver. Statement of driver was recorded in Form GST MOV-01 by respondent No. 3. Vehicle was detained. Order of detention in Form GST MOV-6 was also issued on the ground that goods (car) are not covered by valid documents as transaction in question is interstate stock transfer within related parties without proper invoice.

3. Learned counsel for petitioner submits that petitioner got the vehicle released after paying the penalty amount under protest vide DRC-03 dated 06.05.2025. Release order dated 06.05.2025 was issued by respondent No. 3 and goods released. Show cause notice in Form GST MOV-07 was issued on 06.05.2025 itself with the proposal as to why penalty may not be imposed and petitioner was asked to file reply by 13.05.2025 and appear on the said date. Petitioner visited the office of respondent No. 3 on 13.05.2025 but he was not available. Detailed reply was filed on 13.05.2025. However, to the surprise of petitioner, penalty was imposed vide impugned order purportedly passed on 06.05.2025 itself though it was served upon petitioner on 19.05.2025. Learned

CWP-21628-2025

counsel for petitioner vehemently argues that order dated 06.05.2025 has been passed in an absolutely illegal and arbitrary manner. Once the petitioner had got the vehicle released after depositing the penalty amount under protest on 06.05.2025, there was no occasion for passing the order on 06.05.2025 itself with show cause notice GST MOV-07 being issued on the said date itself with time being afforded to petitioner to file reply and appear on 13.05.2025. Specific order, with proper reasoning should have been passed in this regard after taking in account the stand of petitioner. In case, proposed penalty etc. had to be accepted by petitioner there was no question of depositing the amount vide DRC-03 under protest. Reliance is placed on the judgment of the Hon'ble Supreme Court in **ASP Traders V. State of Uttar Pradesh and others 2025 SCC Online SC 1507**. It is, thus, prayed that this writ petition be allowed.

4. Learned counsel for respondents, on advance notice, was called upon to seek instructions in respect to specific averment of petitioner that tax and penalty was deposited under protest on 06.05.2025; as per show cause notice, time was afforded uptill 13.05.2025 to submit objections, which were in fact submitted on 13.05.2025 but authorities passed the order on 06.05.2025 itself much prior to 13.05.2025.

5. Affidavit dated 14.01.2026 of concerned official has been filed wherein it is stated that as petitioner had deposited the amount of penalty imposed in MOV-07 on 06.05.2025 itself, impugned order GST MOV-09 was passed on the same day, after conclusion of proceedings in view of Section 129(5) of HGST Act, 2017. It is further stated that it is due to a technical glitch that this order could not be uploaded on BO-WEB portal and notice was manually served on the authorized representative of the petitioner.

CWP-21628-2025

6. Learned counsel for respondents submits that once the amount of penalty had been deposited, there was no question of awaiting reply or objections on the part of petitioner, keeping in view the specific provisions of Section 129(5) which provides that, on payment of the amount referred to sub-section (1) all proceedings in response of notice specified in sub-Section (3) shall be deemed to be concluded. Dismissal of writ petition is sought.

7. We have heard learned counsel for parties and have perused the file with their able assistance.

8. Interception of vehicle in question on 04.05.2025 at Badarpur border, Faridabad; recording of statement of driver in form GST MOV-01; physical verification, inspection of conveyance goods and documents in form MOV-02; order of detention in form GST MOV-06; deposit of penalty amount under protest vide DRC-03 dated 06.05.2025 for amount of Rs.45,19,422/-; release order dated 06.05.2025; issuance of show cause notice dated 06.05.2025 and passing of order dated 06.05.2025 itself despite affording an opportunity of filing reply and of being heard to petitioner on 13.05.2025, are all matter of record. Plea taken by respondent – Department is that once petitioner deposited the amount in question, proceedings stood concluded in view of Section 129(5) of HGST Act, therefore, order MOV-09 dated 06.05.2025 itself was passed and there was no requirement of awaiting any reply from petitioner on 13.05.2025 as is mentioned in show cause notice dated 06.05.2025 (GST MOV-07). It is the case of Department that transaction in question is in clear violation of Section 31 read with Rule 46 and Section 80 read with Rule 138 of GST Act. Once amount in question had been deposited by petitioner accepting its liability, penalty was correctly imposed and order dated 06.05.2025 passed.

CWP-21628-2025

9. At this stage, it is useful to refer to Section 129 of HGST Act, which reads as under:-

“Section 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 the applicable tax and penalty equal to one 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 tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon 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 tax and 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) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

CWP-21628-2025

(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).

(4) No tax, interest or 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 the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided 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 seven days may be reduced by the proper officer.”

10. It is pertinent to note that in the instant case, petitioner admittedly deposited the amount in question vide form GST DRC-03 dated 06.05.2025 under protest. Said form GST DRC-03 dated 06.05.2025 is annexed as Annexure P-9 with writ petition, wherein at serial No. 8, it is specifically mentioned as under:-

“ 8. Reasons, if any –

Payment UNDER PROTEST against MOV-01/Sr.no./HR-19/01/48009 dated 04.May-2025.”

11. It is apparent that petitioner made deposit of amount under protest with a view to have the vehicle released at the earliest without prejudice to its

CWP-21628-2025

right to contest the proceedings. As per show cause notice, which was issued on 06.05.2025 itself, it is specifically stated therein that petitioner may appear before concerned Officer on 13.05.2025 at 11.00 a.m. and that reply if any, should be filed within the stipulated date. However, impugned order was passed on 06.05.2025 itself under Section 129(3) of HGST Act alongwith the observation that no objection has been filed by the noticee and penalty proposed has been agreed to and paid vide DRC-03 dated 06.05.2025. In view of the fact that it is specifically mentioned in DRC-03 that payment was being made under protest, there was no occasion for Proper Officer to have passed order dated 06.05.2025 with the observations as above. It is opposed to record that penalty proposed has been accepted and thus paid. It was clearly deposited under protest. We also take note of the fact that it is the case of Department itself that order dated 06.05.2025 could not be uploaded purportedly due to some technical glitch but it was manually served upon authorized representative of petitioner.

12. Learned counsel for petitioner while referring to documents attached with short reply dated 14.01.2026, pointed out that all other documents are reflected to have been received by authorized representative of petitioner namely Vipin Kumar Kalia. His name appears on order dated 06.05.2025 but his signatures are not reflected thereon. Be that as it may, without delving into this aspect at all, we take note of the admitted fact that amount, proposed penalty etc. was deposited vide DRC-03 on 06.05.2025 under protest. This factum is not denied by respondent.

13. At this juncture, it is useful to refer to judgment of Hon'ble the Supreme Court in case of **ASP Traders**, supra. In the said case, goods in question therein were intercepted. Notice under Section 129(3) of CGST Act

CWP-21628-2025

was issued in form GST MOV-07. Reply was filed by the assessee but in view of pressing business exigencies, amount as indicated in the show cause notice was deposited through GST DRC-03 with detained goods being released. Final order under Section 129(3) of CGST Act was not passed. In this scenario, assessee submitted representation seeking an order in form GST MOV-09 to enable it to pursue its statutory remedies. Similar stand, as in the instant petition was taken by the Department that once amount of proposed penalty was deposited, authorities are not required to pass any order under Section 129(3) of CGST Act as such. Hon'ble the Supreme Court in the case of **ASP Traders**, supra, rejected such stand of Department while holding that it is imperative for the authority to pass a speaking order to justify the demand of tax and penalty to safeguard the right of appeal under Section 107 of CGST Act. It was held as under:-

“ 14. It is a well settled principle that every show cause notice must culminate in a final, reasoned order. While Section 129(5) of the CGST Act, 2017 provides that proceedings shall be deemed to be concluded upon payment of tax and penalty, this deeming fiction cannot be interpreted to imply that the assessee has agreed to waive or abandon the right to challenge the levy – a right that is protected by the very enactment itself. The term “conclusion” as used in Section 129(5) merely signifies that no further proceedings for prosecution will be initiated. It does not absolve the responsibility of the proper officer to pass an order concluding the proceedings. Therefore, the proper officer is duty-bound to pass a formal order in Form GST MOV-09 and upload a summary thereof in Form GST DRT 07 as mandated under Rule 142(5) and the Circular dated 13.04.2018, so as to enable the taxpayer to avail the appeal remedy as per law.

15. In the present case, payment was made under protest, and objections had already been filed by the appellant. Once objections are filed, adjudication is not optional, it becomes imperative to pass a speaking order to justify the demand of tax and penalty, to safeguard the right of appeal under Section 107 of the CGST Act, 2017. The language of section 129(3) is categorical in stating that the officer “shall issue a notice... and thereafter, pass an order”. The use of the words “and thereafter” reinforces the mandatory

CWP-21628-2025

nature of passing a reasoned order, regardless of payment, particularly where protest or dispute is raised.”

14. It was further held by Hon’ble the Supreme Court in **ASP Traders**, supra, that mere payment by assessee does not absolve Proper Officer of his responsibility to pass an order justifying demand of tax and penalty. It was observed as under:-

“ 16.1. Further, the payment by an assessee will not absolve the responsibility of the proper officer to pass an order justifying the demand of tax and penalty. The assessee, even by election, cannot be treated to have waived his right against the illegality committed by the proper officer or acquiesced to the demand, as by the constitutional mandate under Article 265 of the Constitution, no tax can be levied or collected except with the authority of law. There is not only a bar against levy but also against collection. Therefore, the action of the proper officer must always be justifiable and fall within the four corners of law, as it is well settled that there can be no acquiescence in tax.

16.2. A waiver, as settled, is an abandonment of a right by express terms or by implication. It is an act by which a party elects to abandon his right to pursue a particular remedy with full knowledge of its existence, making the other party 22 to alter his position or legal status. Acquiescence, on the other hand, will imply the conduct of a party, who refrains from taking any action for a long period of time, despite the knowledge of the violation of his right, thereby precluding his future right to agitate the issue, as it would be hit by laches.

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Therefore, it is clear that there must be much more than an abandonment of a right to plead waiver or acquiescence. The payment, by itself, cannot be treated as a waiver or abandonment, especially when the appellant has clearly objected to the demand and when there is a statutory mandate to pass an order and a corresponding right to appeal.

17. Furthermore, the respondents’ reliance on section 129(5) to avoid issuing a final order under section 129(3), in our view, is a non-starter and overlooks the statutory scheme. Where objections are filed or payment is made under protest or compulsion, adjudication is indispensable. The invocation of the decision in **Dilip Kumar & Co.** (regarding strict interpretation of exemption) by the respondents is entirely misplaced, as the issue involved herein pertains not to tax exemption, but to compliance with due process and procedural safeguards.”

CWP-21628-2025

15. It is an admitted position that assessee in this case has deposited the amount in question under protest, therefore, it cannot be said that it has agreed to the proposed penalty or accepted the same.

16. Keeping in view the facts and circumstances as above and authoritative pronouncement of Hon'ble the Supreme Court in case of **ASP Traders**, supra, order dated 06.05.2025 is not sustainable. Same is, accordingly, set aside and the matter is remanded to Proper Officer to be decided afresh after taking into consideration the reply/objection filed by petitioner and after giving an opportunity of hearing in accordance with law.

17. No other argument has been addressed.

18. Writ petition is, accordingly, disposed of.

19. Pending applications, if any, also stand disposed of accordingly.

(LISA GILL)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

January 31, 2026
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No