
(2025) 12 BOM CK 1665
In the Bombay High Court
Case No : Writ Petition No. 15775 Of 2025

JKC General Trading Company

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Constitution Of India, 1950 — Article 265
Customs Act, 1962 — Section 17(5)

Citation : (2025) 12 BOM CK 1665

Hon'ble Judges : M.S. Sonak, J; Advait M. Sethna, J

Bench : Division Bench

Advocate : Channdi Tanna, Karan Adik

Final Decision : Disposed Of

Judgement

M.S. Sonak, J

1. Heard Mr Prathamesh Chavan, learned counsel for the Petitioner and Ms Sangeeta Yadav, for the Respondent.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. Even otherwise, on 24 November 2025, we had made the following order posting this matter for final disposal: -

"1. Heard the learned Counsel for the parties.

2. Mr. Chavan submits that in this case the Respondents are not passing any 'speaking order' under Section 17(5) of the Customs Act even though the Petitioner paid the customs duty 'under protest'.

3. Mr. Chavan submits that the issue raised in this Petition is covered by the case of Canon India Private Limited Vs. Union of India in Writ Petition No.9937 of 2025.

4. Accordingly, we post this matter on 01 December 2025 for directions/disposal."

4. The Petitioner vide Exh. 19 Bills of Entry imported dates through different exporters. However, during the assessment, the proper officer increased the value of the imported goods and demanded additional customs duty. The Petitioner contend that this exercise was arbitrary, because no valid or cogent reasons were supplied for such enhancement.

5. The Petitioner has pleaded that notwithstanding the arbitrariness involved, since the imported goods were perishable in nature, the Petitioner, under protest, paid the enhanced levy amounting to Rs.46,01,000/-.

6. The Petitioner also appealed to the Commissioner (Appeals) against the enhanced assessment and leave of duty on the imported goods. By order of 23 July 2021, the Commissioner (Appeals), allowed the Appeal and remanded the matter to the proper officer for passing speaking orders under Section 17(5) of the Customs Act.

7. The Petitioner's grievance is that despite the remand order and the clear legal position of the subject, the second Respondent, who was directed to pass the speaking order, has, to date, failed to pass such speaking order.

8. The Petitioner, by letter dated 12 January 2022, requested a personal hearing from the second Respondent so that a speaking order could be issued. On 1 November 2022, the Petitioner was granted a personal hearing and permitted to file written submissions. Such written submissions were filed on 1 November 2022, but to date, no speaking order has been made.

9. On 28 November 2022, the Petitioner addressed reminders. This was followed by repeated reminders dated 18 May 2023, 1 April 2024, 6 January 2025 and 18 August 2025. Still, no speaking order has been made by the second Respondent.

10. The Respondents' not passing any speaking orders in this matter is a gross dereliction of their duty. Firstly, the Commissioner (Appeal)'s remand order binds these Respondents, in terms of which the speaking order should have been made within some reasonable period. In any event, this Court, in the case of Canon India Private Limited Vs. Union of India 2025 (35) STR 137 Bom, this Court has held that it is the duty of the Customs Authorities to decide the importer's claim by passing a speaking order. This Court has further held that by not passing such speaking orders or by delaying their passing, the Customs Authorities cannot frustrate the importers' right of an effective redressal to appeal or other remedies.

11. Very recently, the Hon'ble Supreme Court in the case of M/s. ASP Traders vs. State of Uttar Pradesh Civil Appeal 9764 of 2025 in the precise context of passing speaking orders, has made the following observations at paragraphs 18, 19 and 20 under the CGST Act, 2017:-

"18. The principles of natural justice mandate that when a taxpayer submits a response to a show cause notice, the adjudicating authority is required to consider such response and render a reasoned, speaking order. This is not a

mere procedural formality, but a substantive safeguard ensuring fairness in quasi-judicial proceedings. The right to appeal under Section 107 of the CGST Act, 2017, is predicated upon the existence of a formal adjudication. An appeal can lie only against an 'order', and in the absence of a reasoned order passed under Section 129(3) of the Act, the taxpayer is effectively deprived of the statutory remedy of appeal. Such a deprivation undermines the foundational principles of fairness, due process, and access to justice, rendering the right of appeal illusory or nugatory. It is now settled law that failure to issue a speaking order in response to a show cause notice creates a legal vacuum. Any consequential action including imposition of tax or penalty, would then be unsupported by authority of law, thereby potentially violating Article 265 of the Constitution of India, which prohibits the levy or collection of tax except by authority of law.

18.1. In this context, useful guidance may be drawn from the decision in *M/s. Kranti Associates (P) Ltd & Anr. v. Masood Ahmed Khan & Ors.*⁶, wherein, this Court emphasized that fairness, transparency, and accountability are inseparable from the duty to provide reasons. The Court held that failure to furnish reasons violates the principles of natural justice and renders the right of appeal or judicial review illusory. In paragraph 51 of the judgment, the Court distilled the following key principles:

"a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been

6 (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852 : 2010 SCC OnLine SC 987 at page

50429 objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the

judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

19. Therefore, even assuming that the payment was made by the appellant, voluntarily or otherwise, the proper officer could not be absolved of the statutory obligation to pass a reasoned order in Form GST MOV-09 and upload the corresponding summary in Form GST DRC-07. Compliance with these procedural requirements is essential not only for ensuring transparency and accountability in tax administration, but also for safeguarding the taxpayer's appellate rights under the CGST Act, 2017. Such adherence is in consonance with the constitutional mandate under Article 265 of the Constitution of India.

20. In view of the foregoing discussion, and taking into account that objections were filed, payment was stated to have been made under protest due to business exigencies, and the appellant seeks to challenge the levy, the proper officer was under a clear statutory obligation to pass a final order under section 129(3) in Form GST MOV-09 and DRC-07. The refusal by the High Court to direct the passing of such an order, has the effect of frustrating the appellant's

statutory right to appeal and is contrary to well established legal principles governing tax adjudication and procedural fairness.”

12. The above observations apply to the factual situation in the present case. There is no justification for the Respondents either not to pass the speaking orders or to delay their passing unreasonably. This is more so because apart from the statutory duty, the Respondent Nos. 2 to 6 were bound by the remand order made by the Commissioner (Appeals). Accordingly, this is a fit case to impose costs upon the Respondents for dereliction in the discharge of their statutory duty and for failing to comply with the remand order directions issued by the Commissioner (Appeals).

13. Accordingly, we direct the Respondent Nos 2 to 6 to grant the Petitioner a personal hearing, [in case the officers who had given a personal hearing earlier are no longer seized of these matters], and to pass speaking orders as expeditiously as possible and in any event within two months from the Petitioner communicating an authenticated copy of this order to the Respondents. We clarify that the speaking orders must be communicated to the Petitioner within these 2 months.

14. The Respondents shall collectively pay the costs of Rs.25,000/- to the Petitioner within four weeks from today. The cost of Rs.25,000/- must first be paid by the second Respondent to the Petitioner within the timeline now indicated, and thereafter it will be open to the second Respondent to recover proportionate costs from the Respondent Nos. 3 to 6.

15. Insofar as the Petitioner’s prayer for waiver of Detention-cum-Demurrage Waiver Certificate, we are afraid that we may not be able to consider such prayer in this Petition. However, if the Petitioner has prayed for such a waiver, we direct the concerned authorities to consider it in accordance with law and on its own merits. The rule is made partly absolute in the above terms.

16. All concerned must act upon an authenticated copy of this order.