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When "Shall" Is Not Mandatory And "May" Is Not Directory: The Law Of Statutory Interpretation In The GST Context



ASHWARYA SHARMA

Advocate, Co-Founder & Legal Head, RB LawCorp

I. INTRODUCTION

One of the most enduring and deceptively complex questions in statutory interpretation is the legal character of a provision — whether it is mandatory or merely directory. Practitioners and adjudicators alike tend to reach instinctively for the language of the provision: if the legislature said "shall", the provision must be mandatory; if it said "may", it must be directory. This linguistic shortcut, while convenient, is legally imprecise and has been emphatically and repeatedly rejected by courts at the highest levels.

The question has acquired renewed and practical significance in the context of the GST, where time limits, procedural requirements, and prescribed forms abound — and where the consequences of treating a provision as mandatory or directory can be the difference between a demand being upheld or quashed, goods being released or confiscated, and an assessee being penalised or absolved. A recent and important decision of the Hon'ble Allahabad High Court in *Shiva Enterprises v. State of U.P.* [(2026) 42 Centax 316 (All.)] has brought this question into sharp focus in the context of Section 129(3) of the SGST Act, holding — against the view taken by the Patna, Gujarat, and Orissa High Courts — that the seven-day time limit prescribed therein is directory and not mandatory. This article examines the legal principles governing the mandatory/directory distinction, traces the evolution of the doctrine through Supreme Court jurisprudence, and analyses the High Court's reasoning and its implications for GST proceedings.

II. THE FOUNDING PRINCIPLE: LANGUAGE IS THE BEGINNING, NOT THE END

The orthodox starting point is that the word "shall" creates a mandatory obligation, while "may" confers a discretion. But courts have long recognised that this is, at best, a prima facie rule of thumb rather than a rule of law. As the Supreme Court observed in *State of U.P. v. Babu Ram Upadhyaya* [(1960) SCC Online SC 5]:

"When a statute uses the word 'shall', prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute."

The inquiry, therefore, does not end with the word used. It begins there. The court must look beyond the linguistic form and examine the nature and design of the statute, the consequences that would follow from construing it one way or the other, whether non-compliance is visited by any penalty or consequence, and above all — whether the object of the legislation would be defeated or furthered by the construction adopted. This multi-factorial approach has been consistently affirmed by the Supreme Court across decades and across different legislative contexts.

The classic treatises on statutory interpretation reflect the same position. Maxwell on the Interpretation of Statutes states that while an absolute enactment must be obeyed exactly, it is sufficient if a directory enactment be obeyed substantially, and that no universal rule can be laid down for determining whether a provision is imperative or merely directory.

Similarly, Justice G.P. Singh, in his authoritative *Principles of Statutory Interpretation* (9th Edn., 2004), synthesises the case law to the same effect: language alone is most often not decisive, and regard must be had to the context, subject matter, and object of the statutory provision. The synthesising principle is this: if holding a provision directory would defeat the object of the enactment, it will be construed as mandatory; conversely, if holding it mandatory would create serious general inconvenience without meaningfully advancing the legislative purpose, it will be construed as directory.

III. THE GOVERNING TESTS: WHAT COURTS LOOK FOR

Over a long line of decisions, the Supreme Court has distilled a set of practical tests that guide the mandatory/directory inquiry. These may be summarised as follows.

The Consequence Test. The most reliable indicator is whether the statute prescribes a consequence for non-compliance. Where the legislature has expressly provided that non-adherence shall render an act void, ineffective, or liable to penalty, the provision is ordinarily mandatory. The absence of any prescribed consequence is a strong, though not conclusive, pointer toward directory character. As the Court emphasised in *Shiva Enterprises*, the absence of any provision rendering proceedings void or time-barred upon breach of the timeline was central to its conclusion that Section 129(3) was directory.

The Object and Purpose Test. A provision will not be read as mandatory if doing so would produce results so absurd, oppressive, or disproportionate that the legislature could not have intended them. Equally, a provision will not be reduced to a mere directory requirement if doing so would frustrate the very object of the legislation. In *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur* [(1964) SCC Online SC 119], the Supreme Court held that the purpose for which the provision was made, the intention of the legislature, and the serious general inconvenience or injustice that would result from one construction or the other must all be taken into account.

The Procedural/Substantive Distinction. Procedural provisions — particularly those prescribing timelines for the performance of functions — are more readily construed as directory. In *P.T. Rajan v. T.P.M. Sahir* [(2003) 8 SCC 498], the Supreme Court held that where a statutory functionary is required to perform a duty within a prescribed time, that requirement would ordinarily be directory and not mandatory. The court further held that a procedural provision employing the word "shall" may still be directory if non-compliance causes no prejudice to the affected party.

The Prejudice Test. Even where a provision appears mandatory in form, courts have held that it will not be treated as mandatory in effect if no prejudice flows from non-compliance. This principle — reflected in *P.T. Rajan* and a series of earlier decisions — recognises that the ultimate purpose of procedural law is to advance justice, not to create technical traps.

The Fundamental Protection Test. Conversely, where the requirement in question constitutes the only or primary protection afforded to a person against an arbitrary or unreasoned exercise of power, courts have held it to be mandatory regardless of the absence of an express penal consequence. In *Collector of Monghyr v. Keshav Prasad Goenka* [(1962) SCC Online SC 93], the Supreme Court held that the requirement of recording reasons before fastening pecuniary liability was mandatory, because the recording of reasons was the sole protection available to the affected person to ensure that the authority acted within the scope of its jurisdiction.

IV. THE ALLAHABAD HIGH COURT'S DECISION IN SHIVA ENTERPRISES

A. The Statutory Provision

Section [129](#) of the CGST Act deals with the detention, seizure, and release of goods and conveyances in transit. Subsection (3), as amended, prescribes that upon detention of goods, the proper officer shall issue a notice within seven days specifying the penalty payable, and that the order for release of goods shall be passed within seven days from the date of receipt of such notice. The question before the High Court was whether these twin seven-day time limits — both expressed using the word "shall" — were mandatory, such that breach thereof would render the proceedings void or time-barred.

B. The Divergence Among High Courts

Prior to the Allahabad High Court's decision, the Patna, Gujarat, and Orissa High Courts had taken the view that the seven-day time limit in Section 129(3) was mandatory, holding that non-compliance would vitiate the proceedings. The Allahabad High Court considered this position and respectfully but expressly disagreed with it.

C. The Court's Reasoning

The Allahabad High Court's analysis proceeded along the following lines.

First, the court examined the consequences of non-compliance prescribed by the statute. It found that Section 129(3) does not contain any provision stating that no show-cause notice may be issued beyond seven days from detention, or that proceedings may not be continued beyond seven days from issuance of notice. The absence of any such consequence of lapse of jurisdiction was treated as a strong indicator of directory character.

Second, the court examined the object and purpose of the amendment that introduced the seven-day timeline. Noting that the pre-amended provision contained no time limit at all — thereby vesting unbridled discretion in the authorities — the court reasoned that the legislature's introduction of a seven-day timeline was aimed at introducing efficiency and discipline into quasi-judicial proceedings, not at creating mandatory invalidity that would operate by force of law upon any breach of the timeline. The amendment moved from no time limit to a strongly recommended one; it did not move from a recommended timeline to an inviolable jurisdictional bar.

Third, the court characterised the timelines as procedural rather than substantive. The issuance of a notice under Section 129 is an *ex parte* action on the part of the proper officer and forms part of procedural law. Procedural timelines that do not condition the assumption of jurisdiction or provide for lapse of jurisdiction upon breach are ordinarily directory. The court saw no reason why the issuance of notice should be invalidated by law merely because it was issued outside the seven-day window, provided there was no lapse of jurisdiction.

Fourth, and significantly, the court did not treat directory as meaning inconsequential. It held expressly that any violation of the timeline may invite departmental action and judicial scrutiny. Officers must remain vigilant and ensure that notices are issued within the prescribed timelines. Unjustified delays must be explained on the strength of order sheet entries alone, and the concerned officers should be made answerable departmentally for unexplained delays. The court thus preserved the discipline and purpose of the timeline while declining to treat its breach as automatically fatal to the proceedings.

The court summarised its conclusion thus: the time limits in Section 129(3) are part of the procedural law; keeping in mind the object and purpose of the provision, and in the absence of any consequence of lapse of jurisdiction, they remain directory only.

V. IMPLICATIONS FOR GST PROCEEDINGS

The decision in *Shiva Enterprises* has several important implications for practitioners and assessee engaged in GST litigation.

For Transit Detention Proceedings. The immediate implication is that the seven-day timeline in Section 129(3) cannot be used as an absolute technical defence to invalidate detention and seizure proceedings. An assessee cannot succeed merely by showing that the notice or order was issued beyond seven days, without more. The proceedings must be challenged on their merits.

For Departmental Officers. The court's direction that officers must be made departmentally answerable for unexplained delays is significant. While the timeline is directory, it is not toothless. Delays must be justified and explained on the order sheet. Courts and appellate authorities retain the power to examine unexplained delays in individual cases and draw appropriate consequences.

For the Broader GST Framework. The GST legislation is replete with time limits — for issuance of SCNs, passing of orders, filing of appeals, and exercise of various statutory powers. The principles articulated in *Shiva Enterprises* and the broader body of Supreme Court jurisprudence on mandatory and directory provisions will continue to be relevant

whenever the consequences of non-adherence to such timelines fall for consideration. The key inquiry in each case will be: does the statute prescribe a consequence for non-compliance? What is the object of the provision? Would construing it as mandatory advance or frustrate the legislative purpose? Is the provision procedural or substantive? Has any prejudice been caused?

For Assesseees. The decision should not be read as an open licence for delays by the department. Where delays in exercise of statutory powers have caused demonstrable prejudice — as might arise, for instance, where goods are detained and perishable, or where detention amounts to an unreasonable deprivation of property — courts retain ample jurisdiction to intervene, even where the timeline is technically directory.

VI. CONCLUSION AND THE COURT'S DIRECTIONS TO GST OFFICERS

The Court's Operational Directions:

(i) Physical Verification and Issuance of Notice Within Seven Days of Interception . Wherever goods are intercepted, all preliminary inquiry — including physical verification and examination — must be completed strictly within the timeline indicated by the statute, so that the show cause notice is issued within seven days from the date of interception.

(ii) Conclusion of Proceedings Within Seven Days of Notice . Upon issuance of the show cause notice within seven days of interception, all efforts must be made by the proper officer to conclude the proceedings within seven days from the date of issuance of notice, as strongly recommended by the statute.

(iii) Three Days for the Assessee to File Written Reply . Recognising that proceedings under Section 129 must be concluded after affording an opportunity to the assessee, the court directed that a margin of three days be granted to the assessee or objector to file a written reply or objection to the show cause notice.

(iv) Hearing Within Two Days Thereafter — Order Within Seven Days of Notice . Following the filing of the written reply, the proper officer must hear the objector or assessee within the next two days and thereafter pass the appropriate order within seven days from the date of the show cause notice. The court has thus mapped out a clear internal timeline: three days for reply, two days for hearing, and the order to be passed within the overall seven-day window from notice.

(v) Requests for Extension to be in Writing — Minimal Reasonable Time Only . Where the objector or assessee seeks time either to file an objection or to be heard, such a request must be received in writing by the proper officer, and specific order sheet entries must be recorded. Any extension granted must be for minimal and reasonable time only.

(vi) Order to Deal with Objections — Passed at the Earliest . The order ultimately passed must deal substantively with the objections raised by the assessee and must be passed at the earliest, within seven days of the issuance of the show cause notice.

(vii) Full Recital of Reasons for Any Delay — In the Order Sheet and in the Order . Where the statutory timeline recommended by Section 129(3) is breached — whether in issuance of the notice or in conclusion of the proceedings — for reasons attributable to the objector or assessee, or for any other circumstance, the order sheet and the final order must contain a full and explicit recital of the reasons that led to the delay. A bare delay without recorded justification will not be countenanced.

(viii) Habitual Delays — Suo Moto Action by Superior Authorities . Where delays are caused habitually or regularly by any proper officer, the matter must be taken up by the appropriate superior authority suo motu, for administrative guidance and action where required.

The mandatory/directory distinction is not a matter of magic words. It is a question of statutory intent, discerned from the text, context, purpose, and practical consequences of a provision. In *Shiva Enterprises* by holding the seven-day timeline in Section 129(3) to be directory — against the grain of several other High Courts — the court appears to have applied the legal test: the absence of a consequence for non-compliance, the procedural character of the provision, and the object of introducing efficiency rather than mandatory invalidity, together point decisively toward directory character.

For assesses and practitioners, the directions provide a concrete checklist against which the conduct of any Section 129(3) proceeding may be tested. An assessee whose goods have been detained and who has been denied a written notice within seven days, denied an opportunity to file a written reply, denied a hearing, or who has received an order without reasons, now has clear judicial authority — from the High Court— to challenge such proceedings before appellate authorities and courts, even if the breach of the timeline alone is not fatal.

For the department, the directions serve as a firm reminder that directory does not mean discretionary, and that procedural discipline in the exercise of coercive statutory powers is a non-negotiable obligation. The decision strikes to balance between the flexibility needed to give effect to the legislative purpose of Section 129 and the accountability required of officers exercising intrusive powers over the property and livelihoods of taxpayers.

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