

Orders Should Speak - Loud and Clear

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By Vijay Kumar

IN a recent order *Sing Traders Vs State of Gujarat* - [2022-TIOL-480-HC-AHM-GST](#), the Gujarat High Court held:

On bare perusal of the contents of the show cause notice as well as the impugned order, we find that the said show cause notice is absolutely vague, bereft of any material particulars and the impugned order is also vague and a non-speaking order.

Long ago, I conducted a survey in a social gathering as to what [speaking orders](#) were. These are some of the replies I received:

1. They are other than adjudication orders.
2. They are given when there is no offence case.
3. They are orders relating to refunds.
4. They are orders when no SCN is issued.
5. They are issued when demanded by the party.
6. THEY ARE ORDERS THAT SPEAK FOR THEMSELVES.

The main principles of natural justice are:

1. No man shall be a judge in his own case.
2. Hear the other side.
3. The party must be made known the reasons for the decision.

It is for this requirement of the party being told the reasons for the decision that [speaking orders](#) are required to be passed by adjudicating authorities.

In simple terms a [speaking order](#)

is an order that speaks for itself. The order should stand the test of legality, fairness, and reason at all the higher appellate forums. That is, the order should contain all the details of the issue, clear findings and reasons. Such an order that speaks for itself is called a [speaking order](#). Even the courts are required to give speaking orders except perhaps when the appeal is dismissed as the court agrees with the lower court.

Quasi-judicial authorities are bound to give [speaking orders](#). Now the courts have no hesitation in striking down an order if it is not a [speaking order](#).

The Administrative authorities having a duty to act judicially cannot decide on consideration of policy or expediency and so a [speaking order](#) will bring out the factors that weighed in favour or against a particular decision.

[Speaking orders](#) are necessary if judicial review is to be effective. One basis of this requirement is to exclude or minimise arbitrariness. If reason is absent, the appellant forum is in the dark. [Speaking orders](#) are orders, which tell their own story.

In the words of Chief Justice Koka Subba Rao, in **MP Industries v UOI** (AIR 1966 SC 671):

The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness. It gives satisfaction to the party against whom the order is made.

Even in the case of appellate courts, invariably reasons are given, except when they agree with the reasoned judgement of the subordinate court.

If reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard.

Sometimes adjudicating authorities called upon to adjudicate a case **de novo** say, "I agree with the findings of the original adjudicating authority and therefore confirm the demand".

In **Siemens Engg & manufacturing Company V UOI, (1976, SC 1785)** the Supreme Court held

Where an authority in exercise of a quasi-judicial function, makes an order, it must record its reasons.

In fact, it would be desirable that in cases arising under Customs and Excise laws, an independent quasi judicial tribunal is set up which would finally dispose of appeals and Revision applications under these laws, instead of leaving those appeals to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind.

And perhaps that is how the CEGAT was born.

The law Commission in its Fourteenth report suggested, "**in the case of administrative decisions, provision should be made that they should be accompanied by reasons.**"

In USA, The Administrative Procedure Act, stipulates a speaking order. It reads,

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of "â€œ"

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

Well, perhaps nobody could have expressed it better than the American Law.

[Summary dismissal by Supreme Court - effect?](#)

In F.No. 164/5/2004-CX.4, September 2005 the CBEC stated,

Mere rejection by Hon'ble Supreme Court would mean that the Apex Court refused to exercise its jurisdiction and therefore could not by itself be considered as the decision of the Apex Court on merit on the correctness of the decision sought to be appealed against. The short order passed by the Hon'ble Supreme Court in the matter of CCE Chennai - III vs. Greaves Ltd. cannot be treated as a declaration of law by the Hon'ble Supreme Court.

Board does not mind if the Commissioners and other officers do not pass [speaking orders](#), but Board is not prepared to spare the Apex Court if it does not pass speaking orders. So, Board does not consider the short order of the Supreme Court as declaration of law.

Dismissal of an appeal by a short summary order is good enough law and the Board certainly cannot subvert the Supreme Court order by a circular.

[If Supreme Court can pass one-line orders, can High Courts do the same?](#)

“No”, said the Supreme Court [2008-TIOL-14-SC-MISC](#), because

1. The Supreme Court is the final Court in the hierarchy of our courts.
2. The orders passed by this Court are final and no appeal lies against them.
3. Besides, orders without a reasoned judgment are passed by this Court very rarely, under exceptional circumstances.
4. Orders passed by the High Court are subject to the appellate jurisdiction of this Court.
5. One of the main reasons for disclosing and discussing the grounds in support of a judgment is to enable a higher court to examine the same in case of a challenge.
6. It is, of course, desirable to assign reasons for every order or judgment, but the requirement is not imperative in the case of this Court.
7. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar to the impugned order, the High Court can also do so.

[Deaf, Dumb and Blind](#)

A taxpayer wrote to us on [Speaking Orders](#) :

[Speaking order](#) is a rare commodity these days. Most of the orders are dumb and the submissions during the personal hearing fall on deaf ears. Finally, the show cause notices are confirmed blindly resulting in senseless orders. The first few pages of the adjudication order, you find the show cause notice repeated, the next few pages contain the submissions in reply filed and finally the order confirming the allegations without any discussion of the points raised in reply.

In letter F. No. [275/55/2008-CX.8A](#) dated 23.02.2009 addressed to all the Chief Commissioners, the Board said, [Recurrence of passing of non-speaking orders has to stop.](#)

IN a letter - CBEC DG, Vigilance F.No.V.500/39/2015, Dated: April (no date) 2015 to all the Chief Commissioners, the Director General Vigilance, CBEC emphasised that:

The adjudicating and appellate authorities are required to pass fair, judicious and legally sustainable [speaking orders](#) which can withstand judicial scrutiny at higher appellate fora.

[Departmental Adjudication- a farce;](#)

CESTAT former President Justice Raghuram once said,

This is a compulsive evidence of a deep pathology in departmental adjudication. Two interpretations are possible - one that the judges are not able to understand the law as well as the commissioners are able to - one interpretation, which is comfortable for the departmental familyâ€â€. If the pro-family interpretation is to be assumed as hallucinatory, then we are left with the inescapable conclusion that something is pathologically, terminally and seriously wrong with our departmental adjudication.

Departmental adjudication is a blasphemy. If a revenue collecting Chief Commissioner is writing the confidential report of an adjudicating Commissioner or Superintendent something seriously wrong has taken place in the adjudication process of our country.

What makes brilliant officers, who have passed the toughest examination in the world and who are imparted the most expensive training including a couple of foreign trips at State expense, act so strangely while passing adjudication orders?

In Instruction in F No [390/CESTAT/24/2016-JC](#)., Dated: April 13, 2016, CBEC told the adjudicators:

Justice has not only to be done but seem to have been done in the performance of quasi-judicial functions.

The quasi-judicial orders subject to judicial review have to be necessarily a [speaking order](#) recording every fact and reason leading to the final decision in the matter.

Though there is no specific law in India on this, the courts have made speaking orders mandatory.

By the time we reached GST, it must have been very clear to the adjudicators that they will have to pass speaking orders. But in the last five years, we have seen several high courts setting aside orders for the simple reason that they were non-speaking orders. In a recent case, ***Rajnandini Metal Ltd Vs Union of India and Others*** - [2022-TIOL-810-HC-P&H-GST](#), the High Court observed,

It is trite law that a speaking order has to be self sustainable and respondents at this stage cannot be allowed to justify the same by adding reasons to it by filing additional affidavits.

In an order passed by a GST Additional Commissioner (Appeals), one of the questions framed by the learned appellate authority was - ***Whether impugned order is non-speaking order?*** And he held,

In this regard, I am **agree**

with the contention of the appellant that the order is non-speaking order. However, I am also in the view that "Licensing services for right to use other natural resources including telecommunication spectrum" is specified in HSN sub-heading 997338, whereby taxability of said service has been fastened as per Notification No. [11/2017-Central Tax \(Rate\)](#), dated 28-6-2017. Since, taxability of service in question has been specified in the Act, then it cannot be interpreted that it will not be taxed and refund will be issued for the GST payment in this regard. Further, all the submissions/averment of the appellant have been taken up for discussion in the instant appeal case. Therefore, I do not find any merit of the appellant in this context.

Thus, he upheld the order of the adjudicating authority without knowing why the adjudicating authority came to such a conclusion!

Will orders start speaking?

Until Next week