



C/SCA/13597/2022

ORDER DATED: 25/11/2022

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 13597 of 2022**

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MAHENDRA JANUBHAI ZALA

Versus

OFFICE OF THE DEPUTY COMMISSIONER, STATE TAX

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Appearance:

MRS YOGINI V PARIKH(2163) for the Petitioner(s) No. 1

MS NOOPUR V PARIKH(11248) for the Petitioner(s) No. 1

for the Respondent(s) No. 2

MS POOJA ASHAR, ASST.GOVERNMENT PLEADER for the Respondent(s)

No. 1

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**CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI**

and

**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 25/11/2022

**ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. The petitioner is a sole proprietor having the GST registered office at the address given in the cause title. He is challenging the action of the respondent authority essentially on the ground of violation of principle of natural justice and thereby cancelling the registration of the petitioner with the following reliefs:



*“5...*

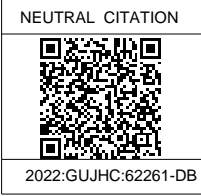
*A. Admit and allow this petition;*

*B. The Hon’ble Court be pleased to issue writ of mandamus or in nature of mandamus, or any other appropriate writ or direction and Order, directing Respondent authorities to revoke the cancellation of registration of Petitioners and directing Respondent authorities to grant access of GST Portal by restoring the registration number of Petitioners in order for Petitioners to file their tax liabilities and pay their dues accordingly;*

*C. The Hon’ble Court be pleased to issue writ of mandamus or in nature of mandamus, or any other appropriate writ or direction and order, directing Respondent authorities to permit the Petitioner to apply for revocation of cancellation of GST Registration of Petitioners in Order for Petitioners to file their tax liabilities and pay their dues accordingly.*

*D. The Hon’ble Court be pleased to direct Respondent No.2 to accept and consider the Application for revocation of registration by the writ applicant within a period of 14 days from the date of application and thus, order accordingly;*

*E. The Hon’ble Court be pleased to quash and set aside:  
i. impugned Show Cause Notice vide order dated 15.05.2018 bearing Reference No.ZA240518029032W passed by*



*Respondent No.(Assistant Commissioner);*

*ii. and revoke impugned order of order for cancellation of Registration vide Order dated 13.08.2018 bearing reference No.ZA240818024302S passed by the Respondent No.2(Assistant Commissioner);*

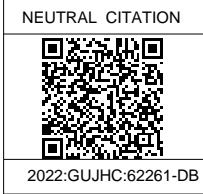
*iii. Impugned Order dated 31.05.2022 passed by Respondent authority rejecting the Appeal No.GST/524/11/21-22 bearing reference No.24AADFM2385D1ZL filed on 26.11.2021 for restoration of cancellation of registration;*

*F. The Hon'ble Court be pleased to grant Ad-interim relief in terms of Para 5(b) and/or Para 5(c) and/or Para 5(d);*

*G. Direct Respondent No.2 to consider the Appeal for Revocation the cancellation of Respondent dated 12.11.2021 filed by the writ applicant on merits;*

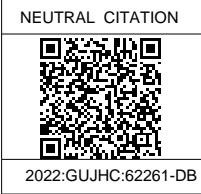
*H. Award costs of the writ application and orders thereon.”*

2. A show cause notice came to be issued bearing Reference No.ZA24058029032W by the respondent No.1-Assistant Commissioner. The order for cancellation of registration was passed on 13.08.2018 by the very officer.



The request on the part of the petitioner for restoration of cancellation of the registration was rejected on 26.11.2021.

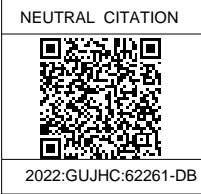
3. According to the petitioner, it is a small-scale contractor in construction business. He is hailing from the rural background and unfamiliar with the technology including the use of computers. The petitioner had taken the service of hiring and dealing with the accountants. It is his case that the local accountant had not filed the GST returns and his father due to his poor health condition could not look-after the business since from the inception of the proprietary firm, he had taken various responsibility. It is only after newly appointed accountant passed away on 06.05.2021 that he realized that



the GST returns had not been filed. Again, on the grounds that the GST provisions are comparatively new to the Indian business persons, the show cause notice dated 15.05.2018 which had been updated by a GST on portal, the petitioner was completely unaware.

4. Essential ground taken is of the cryptic notice and also the cryptic order leading to the cancellation of the registration.

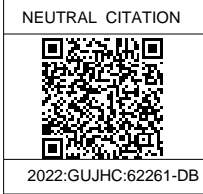
5. Affidavit-in-reply is filed by the Deputy State Tax Commissioner (Appeals)-11, Rajkot denying all allegations. According to the respondent, there is a huge delay of four years in challenging the impugned notice and the order passed in the year



2018 the time period of appeal is also over. However, it is not being disputed that the petitioner has deposited sum of Rs.37,43,714/- as tax and the interest amount during the relevant period. It is lying in cash ledger, the liability is yet to be finalized.

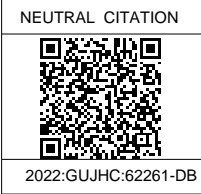
6. We have heard the learned advocate, Ms.Nupur Parikh appearing for the petitioner and learned AGP, Ms.Ashar for the State. They have argued extensively on the strength of their respective stands.

6.1 Learned advocate, Ms.Nupur Parikh submits that the High Court of Orissa at Cuttack also taking recourse to the decision of ***Aggarwal Dyeing and Printing Works vs. State of Gujarat and others***



passed in Special Civil Application No.18660 of 2021 and allied matters dealt with the issue of limitation so also the non-availability of the GST Tribunal.

7. Noticing the cryptic notice as also the order which again is very cryptic and impugned in this petition applying the decision of this Court Aggarwal Dyeing and Printing Works (supra) and the directions issued by this Court, according to us, challenge deserves to be entertained. This amounts to violation of principle of natural justice as the person concerned would have no opportunity to deal with the matter as otherwise required of him. Again, the very purpose of issuance of show cause notice is to avail an opportunity to the parties and if the matter can be addressed

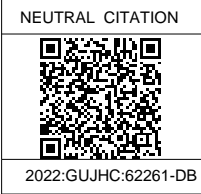


at that stage, the very purpose of the notice get frustrated once there is such cryptic notice which makes hardly any sense. It would not require further dilation of the issue since in case of Aggarwal Dyeing and Printing Works (supra) the Court had extensively and elaborately dealt with the same and also given the directions extensively for the authority to follow. Apt would be to reproduce those findings and observations as well as the directions:

*“10. Thus, upon appreciation of the scheme of Act, where specific forms have been prescribed at each stage right from registration, cancellation and revocation of cancellation of registration, the same are to be strictly adhered too. At the same time, it is equally important that the Proper Officer empowered under the said Act adheres to the principles of natural justice.*

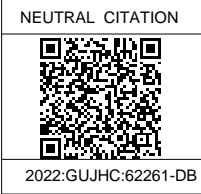
*11. At the outset, we notice that it is settled legal position of law that reasons are heart and soul of the*





*order and non communication of same itself amounts to denial of reasonable opportunity of hearing, resulting in miscarriage of justice. This Court is bound by the said judgments hereinafter referred to. The necessity of giving reason by a body or authority in support of its decision came for consideration before the Supreme Court in several cases. Initially, the Supreme Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the supreme Court in A.K. Kraipak v. Union of India [1970] 1 SCR 457. The Hon'ble Supreme Court vide judgments in the cases of Ravi Yashwant Bhoir v. District Collector, Raigad [2012] 4 SCC 407, Sant Lal Gupta v. Modern Cooperative Group Housing Society Ltd. [2010] 13 SCC 336; Kranti Associates (P) Ltd. vs. Masood Ahmed Khan [2010] 9 SCC 496; Abdul Ghaffar vs. State of Bihar [2008] 3 SCC 258, has expanded the horizon of natural justice and reasons have been treated part of the natural justice. It has gone to the extent in holding that reasons are heart and soul of the order. The absence of reasons renders an order indefensible/unsustainable particularly when it is subject to appeal/revision. It is to be noted that in the case of Kranti Associates (P) Ltd. (supra), the Hon'ble Supreme Court after considering various judgments formulated certain principles which are set out below:*

*“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.*

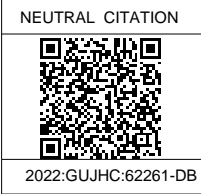
*d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

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

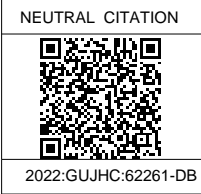
*j. Insistence on reason is a requirement for both judicial accountability and transparency.*

*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.*

*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 to human rights and was*



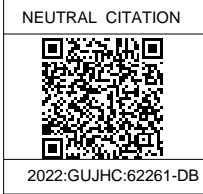
*considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553 at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions.”*

*o. In all common law jurisdictions judgment 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”.*

*Thus, the position of law that emerges from the decisions mentioned above, is that assignment of reasons is imperative in nature and the speaking order doctrine mandates assigning the reasons which is the heart and soul of the decision and said reasons must be the result of independent re-appreciation of evidence adduced and documents produced in the case.*

*xxx*

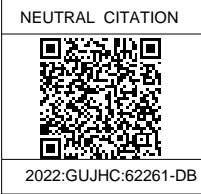
*19.. In the result, all the writ applications deserve to be allowed solely on the ground of violation of principles of natural justice and, accordingly, the writ applications are allowed. We quash and set aside the respective show cause notices of all the writ applications, seeking cancellation of registration as well as the consequential respective impugned orders cancelling registration with liberty to the respondent*



*No. 2 to issue fresh notice with particulars of reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicants, and to pass appropriate speaking orders on merits. It is needless to mention that it shall be open for the writ applicants to respond to such notices by filing objections / reply with necessary documents, if relied upon. We clarify that we have not gone into merits of the case.”*

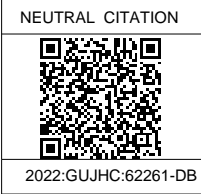
8. While allowing this petition by quashing the order impugned and also quashing the notice which is cryptic, we take note of the fact that it is after four years that the petitioner has approached the appellate Court putting forth the reasons of the negligence of the accountant and passing away of some of the persons.

9. Without endorsing to any of those aspects only on the very basis of the hollow foundation, the notice and the



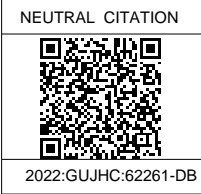
impugned order need to be interfered with.

10. Resultantly, following the Coordinate Bench's decision in case of Aggarwal Dyeing & Printing Works (supra), this petition is **ALLOWED** solely on the ground of violation of the principles of natural justice. The show cause notice and the impugned order are quashed and set aside granting a liberty to the respondent No.2 to issue a fresh show cause notice with particular reasons incorporated with details and thereafter to provide reasonable opportunity of hearing to the writ applicant and to pass appropriate speaking order on merit which shall be done physically as directed in the very decision. With the aforesaid, the GST Registration Number of the applicant stands



restored forthwith.

11. We choose not to initiate any action against the concerned officer since he has already uploaded the notice and the same along with accompanied documents have not been reflected on portal. However, after filing of the petition and having come to know of the limitation of the portal, the department could have immediately rectified its action and withdrawn the notice what it has chosen to do in the month of November. We deem it appropriate not to, therefore, saddle the officer concerned with the cost, however, this repetitive action surely will require imposition of cost which the department must bear. The cost is quantified to the sum of Rs.25,000/- (Rupees Twenty-Five Thousand) which shall



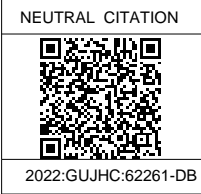
be borne by the department to be paid to the Gujarat High Court Advocates Association Welfare Fund, at the earliest, within a period of eight weeks from the date of receipt of a copy of this order.

"A/c. No.404001000655  
Account Holder's Name:Gujarat High Court  
Advocates Association Welfare Fund  
Contact: 98241 25353  
IFSC Code:ICIC0004040  
Email Address:[ghaal960@gmail.com](mailto:ghaal960@gmail.com)  
PAN:AABAG4338D"

11.1. We are also persuaded by the learned AGP that the kind of error which has been noticed in the present case is coming up for the first time and therefore, no cost should be imposed. The fact remains that the portal has not been amended till date and this matter has consumed substantial judicial time as the issue has dragged almost for six months and again with fresh notice, it is going to take a lot much time of all concerned only because of the technical glitches need to be amended at the end of the authority concerned.

12. Our attention is also drawn by learned





AGP to the order of this Court in Aggarwal Dyeing (supra) particularly paragraph 7, where the learned Additional Solicitor General had ensured the department to resolve the issue within a short period. Let respondent No.1 take up with the GSTN at the earliest. GSTN not being the party before this Court, the direction of cost cannot be imposed upon any administrative officer of the GSTN and let the State work out that modality.

**(SONIA GOKANI, J)**

**(MAUNA M. BHATT, J)**

M.M.MIRZA