

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 141 of 2023**

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M/S SIDDHARTH ASSOCIATES

Versus

STATE TAX OFFICER, GHATAK 103 (GANDHIDHAM)

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Appearance:

MR D K TRIVEDI(5283) for the Petitioner(s) No. 1,2

for the Respondent(s) No. 2

ADVANCE COPY SERVED TO MS POOJA ASHAR, ASST. GOVERNMENT
PLEADER/PP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 11/01/2023

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner is before this Court seeking to challenge the action of the respondent authority essentially on two counts firstly, because the order of cancellation of registration is in breach of principle of natural justice being very cryptic and non-reasoned order and secondly, the appellate authority on the ground of its not having powers to condone

the delay has chosen not to decide the matter on merit.

2. The prayers sought for are as follow:

“A. Your Lordships may be pleased to admit this petition;

B. Your Lordships may be pleased to allow this petition;

C. Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside order bearing No.498 Dispatch No.3977/78 dtd. 22.09.2022 (Annexure ‘D’ hereinabove) being passed by the respondent No.1 herein;

D. Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order quashing and setting aside the order bearing Reference No.ZA240322119279Q dtd.25.03.2022 (Annexure ‘C’ hereinabove) being passed by the respondent No.2 herein;

E. Your Lordships may be pleased to issue writ of mandamus or writ in the nature of mandamus or any other appropriate writ or order directing the Respondent NO.2 to revoke GST registration of petitioner bearing No.24AACCK2846B2ZZ;

F. Your Lordships may be pleased to grant such

other and further relief/(s) that may be deemed fit and proper in the interest of justice in favour of the Petitioner.”

3. The petitioner company engaged in the business of civil construction work is registered with the Goods and Service Tax Department and was holding the GST Registration No.24AACCK2846B2ZZ which was cancelled by issuance of show cause notice dated 29.11.2021 and the order impugned is dated 25.03.2022.

4. The appeal was preferred before the respondent No.2 which came to be rejected on the ground of the same having been filed after 75 days. The time limit for condonation of delay beyond 30 days, the appellate authority had shown its inability to condone the same and hence this

petition.

5. The statutory appeal is provided before the GST Tribunal, which so far has not been constituted. In absence of any efficacious remedy, the petitioner is before this Court.

6. On advanced notice, the learned AGP, Ms.Pooja Ashar has appeared. She has pointed out to this Court that in absence of any reasonable ground, the delay cannot be condoned and even if, that be the case the statutory limit provides for the delay be condoned by the appellate authority for the period of 30 days which is way beyond the stipulated time period and hence, there is no error in the order of the appellate authority.

7. Having heard the learned advocate, Mr.D.K.Trivedi for the petitioner and learned AGP, Ms.Ashar for respondent, in our opinion, the matter is covered by the decision of this Court rendered in case of ***Aggarwal Dyeing and Printing Works vs. State of Gujarat***, reported in ***[2022] 137 Taxmann.com 332 (Gujarat)***.

8. In the decision of ***Aggarwal Dyeing and Printing Works (supra)*** this Court after considering the scheme of Act as well as the procedure contemplated under the provisions of the Act for cancellation of registration has held as under:

“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.

12. At this stage, it would be germane to refer to observations made by the Andhra Pradesh High Court in the case of MRF Mazdoor Sangh v. Commissioner of Labour 2014 (3) ALT 265, wherein the matter of cancellation of registration of trade union, it was held that:

“The show cause notice should reflect the jurisdictional facts based on which the final order is proposed to be passed. The person proceeded

against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues.”

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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.”

9. We also further notice that the issue with regard to the power to condone the delay beyond the statutory time period prescribed under Section 107 is pending

before this Court, without opining on that and concluding this issue to be decided at a future date, the show cause notice and the impugned order of the Appellate Authority requires to be quashed and set aside.

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 dated 29.11.2021 and the impugned orders dated 25.03.2022 and 22.09.2022 passed by the respondent-authorities 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 and decide the matter by following the procedure of law.

(SONIA GOKANI, J)

(SANDEEP N. BHATT, J)

M.M.MIRZA