

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 1571 of 2022**

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M/S MILAP ENTERPRISE THROUGH PROP. ROOPA MILAP VASANI  
Versus  
UNION OF INDIA & 3 other(s)

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Appearance:

DEV D PATEL(8264) for the Petitioner(s) No. 1  
DELETED for the Respondent(s) No. 1  
NOTICE SERVED for the Respondent(s) No. 5  
MS POOJA ASHAR for Respondent no.2,3  
NOTICE SERVED BY DS for the Respondent(s) No. 2,3,4

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**  
and  
**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

**Date : 12/01/2023**

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

1. Petitioner has preferred this petition seeking to challenge the action of the respondent authority with the following prayers:

“7. In view of the above facts and submissions, the petitioner most respectfully pray as under:

A) That Your Lordships may be pleased to issue a writ of certiorari or Mandamus or any other appropriate writ, order or direction thereby directing the Respondents by themselves and/or their subordinate officers, to forthwith restore the GST registration bearing No. 24ACUPV1570C1ZF with immediate effect **(Annexure-A)**.

B) That Your Lordships may be pleased to issue a writ of certiorari or Mandamus or any other appropriate writ, direction or order quashing and setting aside order having reference No.ZA2409180458252 dated September 28, 2018 passed by the Commercial Tax Officer, Ghathak 17, Ahmedabad.

C) Pending the notice, admission and final hearing of this petition, Respondent Authorities be directed to permit Petitioner to file appropriate returns and apportion the amount already deposited by the petitioner through Challan dated 30.07.2021 **(Annexure-C)**.

D) Such other and further order or orders as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted."

2. This Court (Coram: J.B.Pardiwala, J., as he then was) has issued notice dated 03.02.2022 for final disposal. Affidavit-in-reply on behalf of respondent No.3 is filed on the ground that he has preferred the appeal after a lapse of long time and particularly after the statutory time period was over. The challenge is to the appealable order. The appeal preferred by the petitioner seeking revocation of registration was also time barred and hence, the respondent authority was right in not acceding to the request.

3. We have heard Mr. Dev Patel, learned advocate appearing for the respondents and Ms.Pooja Ashar, learned Assistant Government Pleader for the respondent No.2 and 3.

4. Both the sides have not insisted on the issue of limitation to be adjudicated at this stage as group of

petitions is also pending for this Court's consideration.

The only ground raised is the cryptic notice, which is of 26.09.2018. Cancellation of registration dated 28.09.2018 is on the ground that there is no reasoning and nothing has been stated. It is decided in one line saying as under:

"The effective date of cancellation of your registration is 01/08/2017"

5. The show cause notice has been submitted and hence the tax effect shown is also zero.

6. This Court in the case of *Aggarwal Dyeing and Printing Works vs. State of Gujarat*, [2022] 137 taxmann.com 332 (Gujarat), held and observed 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.”

7. Keeping in view the aforesaid peculiar position of law and facts, we believe that it would serve the ends of justice in the event the petitioner is provided a fresh opportunity to respond to the fresh show cause notice. Resultantly, the writ petition deserves to be allowed and is accordingly allowed. The order dated 28.09.2018 of cancellation of registration of the petitioner passed by Commercial Tax Officer, Ghathak

17, Ahmedabad is hereby quashed and set aside. The registration of the petitioner is restored forthwith. The respondent authority is directed to permit the petitioner to file the returns and is also permitted to issue fresh show cause notice within four weeks of receipt of copy of this order and avail an opportunity to the petitioner in accordance with law.

8. The petition stands disposed of accordingly.

**(MS. SONIA GOKANI, J. )**

SUDHIR

**(SANDEEP N. BHATT,J)**

