

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22859 of 2022

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M/S RANDHAWA CONSTRUCTION CO.

Versus

UNION OF INDIA

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Appearance:

MR ARJUN M JOSHI(11247) for the Petitioner(s) No. 1

MR DHAVAL SHAH(2354) for the Petitioner(s) No. 1

MS HETVI H SANCHETI(5618) for the Respondent(s) No. 1,2

NOTICE SERVED BY DS for the Respondent(s) No. 3,4

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 07/12/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner seeks to challenge the cancellation of registration No.24AACRF0752L1Z9 and the Order-in-Appeal passed by respondent No.3 dated 22.8.2022 rejecting the Order-in-Original dated 9.12.2021 passed by respondent No.4, on account of the appeal being time-barred. Petitioner is a registered partnership firm engaged in equipment erection, underground and above ground piping, unit piping, structural fabrication and erection in the petroleum and chemical fields since 1968. It also provides service in construction projects and supplies tangible goods and service, as also supplies manpower and transportation services. It had more than 1200

employees in different projects and held GST registration.

2. Respondent No.2 is the officer of respondent No.1 exercising powers and discharging duties conferred upon them under the erstwhile Central Excise Act, 1944 and the Rules made thereunder. Respondent No.3 is the first Appellate Authority which passed the order on the appeal filed by the petitioner.

3. The petitioner has averred that it was adversely impacted due to Covid-19 and the business was seriously affected. One of the partners and the father of the surviving partner passed away in 2017. The family dispute erupted and the surviving partner had to pay Rs.8 crores to other family members and the said payment was made from 2019 to August, 2022.

4. Yet another reason for the serious financial crunch according to the petitioner was entire business plans of the firms and funds being disturbed by this and therefore it could not fulfill the obligation to discharge tax liabilities on time.

5. On 15.11.2021, the petitioner received a show cause notice with reference No. ZA2411210462644 issued by respondent No.4 stating that GST registration is liable to be cancelled for the reasons that “any taxpayer other than

composition taxpayer has not filed return for a continuous period of six months'. Petitioner was asked to reply within seven working days from the date of service of the said notice and was also directed to appear on 23.11.2021 but before the scheduled date, its registration stood suspended from 15.11.2021.

6. The petitioner filed its letter dated 22.11.2021 stating that he was trying to arrange the funds so as to pay the balance GST dues of Rs.1,43,08,993/-. The reply was received by the Superintendent (Prev.), CGST, Vadodara and on 25.11.2021 the petitioner could not submit any reply to respondent NO.4 due to lack of proper knowledge and advise.

7. On 9.12.2021, respondent NO.4 issued cancellation of GST registration as the petitioner had not filed GSRT-3B since February 2021. No amount was determined to be payable on account of such cancellation. No details given in the said order except one line that the registration was being cancelled.

8. It is the say of the petitioner that though there was no specification of the amount in an order of 9.12.2021, the petitioner attempted to arrange funds to pay the duties, which it could not arrange due to severe financial crisis and the DRC-13 proceedings were initiated by the respondents. Petitioner

paid Rs.5,24,47,777/- by way of DRC-03 over a period of time and discharged its obligations of tax, more than what is payable.

9. The petitioner fulfilled its obligation to discharge the tax dues. Aggrieved by the cryptic order and non-availability of the opportunity of hearing, the petitioner is before this court seeking the following reliefs:

“6. The Petitioner prays that this Court may:

(A) Issue a writ in the nature of mandamus, or any other appropriate writ, order or direction quashing and setting aside the Order-in-Appeal, with F. No. V2 (APL-01)/123/VDR-I/2022-23 dated 22.08.2022 (Annexure-B) passed by the Respondent and revoke the cancellation of the Petitioner's GST registration no. 24AACGR0752L1Z9;

(B) Issue a writ of mandamus and in the nature of mandamus and direct Respondents to revoke the cancellation of Petitioner's GST Registration No 24AACGR0752L1Z9;

(C) In the pendency of the present proceedings, until final disposal, revoke the cancellation of the Petitioner's GST registration vide Order-in-Original No. ZA241221035883T dated 09.12.2021;

(D) Pass ad-interim orders in terms of Paragraphs 6B & 11C;

(E) Pass any other orders deemed appropriate in the interests of justice.”

10. The Court on 24.11.2022 issued notice by following order:

“1. This Court on 17.11.2022 while issuing notice passed the following order.

“Learned advocate Mr.Dhaval Shah assisted by learned advocate Mr.Arjun Joshi for the petitioner has relied upon the decision dated 24/02/2022 rendered by this Court in the case of Aggarwal Dyeing and Printing Works V/s. State of Gujarat & 2 others reported in 2022(4) TMI 864, wherein, liberty is reserved to the respondent to issue fresh notice with particulars of reasons and provide opportunity of hearing to all the respective parties and pass the order on merits. Request is made to show indulgence considering the said order.

We have heard learned advocate Mr.Dhaval Shah for the petitioner. Notice for final disposal, returnable on 24/11/2022. On the returnable date, let the instructions or

affidavit-in-reply made available to the court. Direct service is permitted for respondent Nos. 2 to 4 through e-mail.”

2. Today, the urgency is made by Mr. Dhaval Shah, learned advocate for the petitioner considering the fact that registration has been cancelled and the matter is covered by the decision in the case of **Aggarwal Dyeing and Printing Works V/s. State of Gujarat & 2 others** reported in **2022(4) TMI 864**.

3. Ms. Hetvi Sancheti, learned standing counsel requires time today, as she needs to file the reply.

4. Reply, if any, be filed on or before 1st December, 2022 with a copy to other side atleast 24 hours before.

5. Post the matter on 1.12.2022.”

11. Affidavit-in-reply is filed on behalf of respondent Nos. 1, 2 and 4. Manoj Kumar Shrivastava, Principal Commissioner of Central Goods and Service Tax, Commissionerate, Vadodara-1, Vadodara has stated on oath that the registration is cancelled of the present petitioner. It is not disputed that there is an order of the appellate authority which is being passed considering all the aspects. It is also the say of the petitioner that almost after a delay of eight months filed the form GST

REG-21. During the suspension period, the petitioner could have very well filed GSTR-3B forms, however, it chose not to file it and sat over the matter. In Section 30 of CGST Act read with Rule 23 related to, the revocation of cancellation of registration as he had not discharged his liability nor filed his due return till the cancellation of registration. His request was not acceded to.

11.1. It was further contended that the petitioner has not filed GSTR-3B returns since February-2021 and did not bother to furnish a proper explanation to the show cause notice issued to the petitioner despite being given an opportunity therefore, the respondent No.4 assigned proper reason for cancellation of GST registration that petitioner has not filed GSTR-3B since February 2021. The petitioner had filed GSTR-1 for the period from February 2021 to August 2021 which shows that liability towards payment of GST for the relevant period was well in their knowledge which was required to be discharged by filing GSTR-3B, however the same was not filed till the date of cancellation of registration. He has not filed the returns till the effective date of cancellation i.e. 9.12.2021 till date.

11.2. It is further contended that the GST dues for the period August 2018 to October 2019 including the payment for the period February 2021 and March 2021 amounts to

Rs.30,51,542/- which was paid by third party and not by the petitioner. The leviable interest is pending and the petitioner claimed out of the total sum of Rs.5,24,47,777/- paid as contended in the para in relation to the cancellation of registration is not correct as that was the liability for the previous period and the payment for the relevant period was only Rs.30,51,542/-. It is further the say of the respondent that the facts of the present case are not disputed, however, the petitioner has not chosen to give an explanation for not filing the GSTR-3B returns, he has no right to challenge the order passed by respondent No.4 on 9.12.2021 at a belated stage on 22.7.2022. It is a consistent stand that also further shows the laxity and no equity has accrued in favour of the petitioner. After following the due procedure, the show cause notice has been issued and the cancellation order under Section 30 of the CGST Act, 2017 is justifiable.

12. We have extensively heard learned advocates on both the sides. Details of their submissions are not necessary to be dilated as the only point which this Court needs to make is that the order passed by this Court in **Aggarwal Dyeing and Printing Works v. State of Gujarat [2022] 137 taxmann.com 332** has not been followed. Why we say so can be demonstrated quite easily by pointing out that the contents of show cause notice which says this,

“Whereas on the basis of information which has come to my notice, it appears that your registration is liable to be cancelled for the following reasons:

Any taxpayer other than composition taxpayer has not filed returns for a continuous period of six months.

You are hereby directed to furnish a reply to the notice within seven working days from the date of service of this notice.”

12.1. The contention on the part of the petitioner is that he has not given any reply. The communication of 22.11.2022 is not in relation to the show cause notice assuming that it was reply to the show cause notice the order passed by the officer concerned on 9.12.2021 is as follows. It is half a line order,

“Not filed GSTR-3B since February 2021, the effective date of cancellation of your registration is 9.12.2021”.

12.2. There is no figure mentioned as to what is the demand. It is also admitted that now by a separate detailed figure which comes in the affidavit-in-reply has not been conveyed to the party concerned. It is an emphatic contention on the part of the respondent that the person concerned though has paid the amount of Rs.5,24,47,777/- it was a GST

due from August, 2018 to October, 2019. Hence liability was of the previous period and not for the period for which the cancellation is the result. Even in paragraph 7 of the affidavit-in-reply there is no clarity as to how after the payment of Rs.30,51,542/- given by the third party from whom the petitioner needed to receive the payment, there is a outstanding liability of Rs.21,74,178/-. It is not disputed that GSTR-1 has already been filed and he has not filed GSTR-3B. The fact remains that the payment of earlier dues to the extent of Rs.5,24,47,777/- is already been made and thereafter also Rs.30,51,542/- for the period from February 2021 to March, 2021 also been paid by the third party. It is not the concern of the State whether it has been paid by the third party or by the petitioner, when otherwise there are no questions concerning income of the third party. This is just to demonstrate that till date there is no clarity with regard to the demand raised by the State in wake of the failure on the part of the petitioner concerned to file the GSTR-3B. This cryptic order has been frowned upon by this Court as that is in clear and gross violation of principles of natural justice. In fact, we proposed to the learned counsel this wise that, we were inclined to send a message to the respondents loud and clear by allowing this petition in half a line ***“Breach of violation of principle of natural justice and hence petition succeeds”***. We were wondering whether that would demonstrate our

annoyance when not only such auto-generated orders are being passed but, they are being defended vehemently by the learned counsel for the respondents. Atleast that defense is not permissible in wake of specific and unequivocal directions of this Court. We would like to reiterate the findings, observations and directions issued by this Court in *Aggarwal Dyeing and Printing Works (supra)* :

“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.

(emphasis supplied)

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.

12.1. We find that the aforesaid observation would squarely apply to the present facts of the case on hand . Thus, the sum and substance of various judgments on the principles of natural justice is to the effect that wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision.”

13. In the instant case also not only the civil but the penal consequence pursuant to the impugned order of cancellation of certificate of registration, the petitioner would be liable. This judgment has come in the month of February 2022, the petition has been preferred on 14.11.2022 and the reply of the respondent has come before this Court on 28.11.2022. There is not a whisper of *Aggarwal Dyeing and Printing*

Works (supra) nor the officer concerned has taken note of the fact that this Court has in *Aggarwal Dyeing and Printing Works (supra)* and in subsequent decisions has emphatically disapproved this conduct on the part of the officers. This unpalatable apathy to the principle of natural justice would need surely quick rectificational approach on the part of the officers concerned. We would expect in all the matters wherever there is absence/dearth of any reasonings, let in future this aspect be remembered that if from the date of the decision of this Court any mistakes have been committed, let that correction be made at the end of the officer concerned. If due to excessive dependence on artificial intelligence, the respondent would continue to defend its actions in total disregard to the ratio laid down in the said decision, the Court shall need to adopt stringent approach case wise.

14. Resultantly, this petition is allowed on the ground of principle of natural justice. We quash and set aside the show cause notice and the order of cancellation of registration with consequential order with a liberty to the respondent to issue a fresh notice with particulars of reasons incorporated with details and to provide reasonable opportunity of hearing to the petitioner and to pass appropriate speaking order on merits. It shall be open to the petitioner to response to such show cause notice in accordance with law.

15. We are inclined to impose the cost, however, learned standing counsel Ms. Hetvi Sancheti has made an earnest request to this Court and ensured that she would convey to the senior most officer concerned about this decision and there shall be no repetition of such orders. We would be expecting in all those matters where there are cryptic orders leading to the breach of principle of natural justice, the fair stand will be taken by the authorities henceforth and on that assurance, we have not quantified the cost to be imposed or recover from the respondents.

16. Petition is accordingly disposed of.

सत्यमेव जयते (SONIA GOKANI, J)

THE HIGH COURT
OF GUJARAT

(MAUNA M. BHATT,J)

NAIR SMITA V.

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