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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15107 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

==

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SITARAM ROADWAYS (URP) THROUGH PROPRIETOR VASHRAMBHAI ARJANBHAI DANGAR
Versus
STATE OF GUJARAT

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Appearance:
MR.D K.PUJ(3836) for the Petitioner(s) No. 1
MR TRUPESH KATHIRIYA, ASSISTANT GOVERNMENT PLEADER(1) for the Respondent(s) No. 1
NOTICE SERVED BY DS(5) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

Date : 10/10/2019

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

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1. **Rule.** Mr. Trupesh Kathiriya, learned Assistant Government Pleader, waives service of notice of rule on behalf of the respondents.

2. By this petition under article 226 of the Constitution of India the petitioner has challenged the order dated 24.8.2019 passed by the second respondent in Form GST MOV-11 whereby he has ordered confiscation of the conveyance as well as the goods contained therein.

3. The petitioner is a transporter and conveyance bearing number GJ-04-AT-9932 belongs to the petitioner. The conveyance in question was intercepted by the second respondent on 6.8.2019 at 6.45 p.m. at Vagharol, Taluka Dantiwada. It appears that the person in charge of the conveyance was not in a position to produce the mandatory documents in the nature of invoice and e-way bill.

4. Vide an order dated 6.8.2019 issued in Form GST MOV-02, the person in charge of the conveyance was directed to station the conveyance carrying goods at Vagharol at his risk and responsibility. Thereafter, a notice dated 21.8.2019 came to be issued in Form GST MOV-10 for confiscation of the goods or conveyance and levy of penalty under section 130 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act') read with the

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relevant provisions of other related statutes. In terms of the said notice, the petitioner was directed to appear before the second respondent on 28.8.2019 at 11 a.m. Thereafter, without waiting for the petitioner to appear before him, the second respondent vide order dated 24.8.2019 passed an order of confiscation under section 130 of the CGST Act in Form GST MOV-11 computing the tax, penalty, fine in lieu of confiscation of goods and fine in lieu of confiscation of conveyance. Being aggrieved, the petitioner has filed the present petition.

5. Mr. Kavi Patel, learned advocate for Mr. D.K. Puj, learned advocate for the petitioner submitted that after the conveyance with the goods came to be intercepted and detained, petitioner has deposited the amount of fine and penalty on 5.9.2019. A copy of the payment receipt of CGST Act has been brought on record. It was submitted that while the notice in Form GST MOV-10 called upon the petitioner to appear before the second respondent on 28.8.2019, the impugned order came to be passed on 24.8.2019 without affording any opportunity of hearing to the petitioner. Referring to the provisions of section 130 of the CGST Act it was submitted that sub-section (4) thereof provides that no order of confiscation of goods or conveyance or imposition of penalty shall be issued without giving the person an opportunity of being heard. It was submitted that therefore, the impugned order has

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been passed in contravention to the provisions of sub-section (4) of section 130 of the CGST Act. Hence, the petition requires to be allowed by granting the reliefs as prayed for therein.

6. On the other hand, Mr. Trupesh Kathiriya, learned Assistant Government Pleader, submitted that the person in charge of the conveyance was not in a position to produce either the invoice or the e-way bill. It was submitted that the impugned order has been passed after due notice to the petitioner and hence, there is no warrant for interference by this court. He, however, was not in a position to dispute the fact that while by the notice dated 21.8.2019, the petitioner was called upon to remain present before the second respondent on 28.8.2019, the impugned order had been passed on 24.8.2019.

7. From the facts as noted hereinabove it is evident that though by the notice dated 21.8.2019 issued in Form GST MOV-10 for confiscation of goods or conveyance and levy of penalty under section 130 of the CGST Act, the petitioner was called upon to appear before the second respondent on 28.8.2019, the second respondent without waiting till that date, has in undue haste, passed the impugned order on 24.8.2019. While it appears that the petitioner has given a kabulatnama (declaration) to the effect that he is voluntarily taking the responsibility of paying the outstanding taxes in respect of the

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goods and is ready to pay the amount shown in the GST memo and has requested that upon payment of such amount the conveyance be released, such fact does not absolve the second respondent from granting an opportunity of hearing to him before passing the order under section 130 of the CGST Act.

8. Section 130 of the CGST Act provides for confiscation of goods or conveyances and levy of penalty. Sub-section (4) thereof provides that no order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard. In the present case, on a perusal of the documents annexed along with the petition it appears that pursuant to the notice dated 21.8.2019 issued by the respondent, the petitioner appeared before the respondent on 24.8.2019 and showed willingness to pay the amount of tax and penalty for the purpose of securing release of the vehicle in question. Thereafter, the second respondent, without affording any opportunity of hearing to the petitioner as contemplated under sub-section (4) of section 130 of the CGST Act, has proceeded to pass the impugned order on 24.8.2019. It appears that merely because the petitioner appeared before the respondent and showed willingness to pay the tax and penalty for the purpose of securing release of the vehicle in question, the second respondent has proceeded to pass the

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impugned order without hearing the petitioner on the question of confiscation of the goods and conveyance.

9. As can be seen from the impugned order, it is in the format provided therefor, viz. in FORM GST MOV-11. In paragraph 1 of the impugned order all the blanks have been filled up which indicate the registration number of the conveyance and the time, place and date and by whom the conveyance came to be intercepted. Paragraphs 3 and 4 thereof do not contain any details in the blank spaces meant to be filled in. One of the significant paragraphs in the statutory form is paragraph 5, which reads thus:

> *"The person in charge has not filed any objections/the objections filed were not acceptable for the reasons stated below:*
> *a)…*
> *b)….*

Thus, in terms of the statutory format provided for passing an order under section 130 of the CGST Act, the officer adjudging is required to provide the reasons for confiscating the goods and conveyance. Reference may also be made to paragraph 6 of the statutory form, which reads thus:

> *"6. In view of the above, the following goods and conveyance are confiscated by the*

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undersigned by exercising powers vested under section 130 of the Central Goods and Services Tax Act ……"

On a conjoint reading of paragraphs 5 and 6, it is clear that the officer adjudging the case passed the order confiscating the goods and conveyance described in paragraph 6, for the reasons set out in paragraph 5.

10. In this regard a perusal of the impugned order of confiscation, shows that column 5 wherein the officer adjudging it is required to set out the reasons for concluding that the goods and conveyance are required to be confiscated, is totally blank. As a necessary corollary it follows that the goods and conveyance have been ordered to be confiscated without disclosing the reasons therefor. The impugned order is, therefore, a non-speaking order, which is totally bereft of any reasons whatsoever.

11. At this stage, it may be apposite to refer to the legislative scheme contained in section 130 of the CGST Act. Sub-section (1) of section 130 thereof, reads thus:

130. Confiscation of goods or conveyances and levy of penalty.*— (1) Notwithstanding anything contained in this Act, if any person—*

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

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(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

12. Thus, in terms of clauses (i) and (iv) of sub-section (1) section 130 of the CGST Act, the goods can be confiscated provided that the person supplies or receives goods in contravention of the provisions of the Act or the rules made thereunder with the intent to evade payment of tax; or contravenes any provisions of the Act and the rules made thereunder with the intent to evade payment of tax respectively. Insofar as clauses (ii) and (iii) are concerned, the very fact that the person does not account for the goods on which he is liable to pay tax under the Act; or supplies any goods which are liable to tax under the Act without having applied for registration, would be sufficient for ordering

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confiscation of the goods. Therefore, while making an order of confiscation under section 130 of the CGST Act, the officer adjudging it will have to state as to which clause of sub-section (1) of section 130 of the CGST Act is attracted in the facts of the said case. If it is the case of the officer adjudging it that the case falls under clauses (i) or (iv) of sub-section (1) of section 130 of the CGST Act, then for the purpose of making an order of confiscation, he will have to come to the conclusion that the goods were supplied or received in contravention of the provisions of the Act or the rules made thereunder with the intent to evade payment of tax. In other words, the officer adjudging the case, while making an order of confiscation under clauses (i) or (iv) of sub-section (1) of section 130 of the CGST Act, has to record twin satisfaction: firstly that there is a contravention of the provisions of the Act or the rules made thereunder, with specific reference to the provision of the Act or the rules that has been contravened; and secondly, that such contravention is with the intent to evade payment of tax. Therefore, in a case falling under clauses (i) and (iv) of sub-section (1) of section 130 of the CGST Act, the proper officer is required to record a specific finding as to why he has come to the conclusion that the contravention is with the intent to evade payment of tax. In cases falling under clause (ii) of sub-section (1) of

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section 130 of the CGST Act, the proper officer will be required to record a finding that the person concerned has not accounted for the goods in respect of which is he liable to pay tax; and in cases falling under clause (iii) thereof, he would be required to record a finding that the person concerned has supplied goods which are liable to tax under the Act without having applied for registration.

13. In the present case, the impugned order is totally silent as regards which provision of the Act or the rules has been contravened; which clause of sub-section (1) of section 130 of the CGST Act is attracted in the present case; and as to why the officer adjudging it has come to the conclusion that there is contravention of the provisions of the Act and the rules made thereunder with the intent to evade payment of tax.

14. Moreover, a perusal of the impugned order reveals that fine determined in lieu of confiscation of goods is equal to the market value of the goods viz. Rs.6,81,556/-. Reference may therefore be made to sub-section (2) of section 130 of the CGST Act, which reads thus:

> *"(2) Whenever confiscation of any goods or conveyance is authorised by the Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:*

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PROVIDED that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.

PROVIDED FURTHER that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129.

PROVIDED ALSO that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon."

Thus, sub-section (2) of section 130 of the CGST Act provides that the fine leviable shall not exceed the market value of the goods, less the tax chargeable thereon. It is, therefore, clear that the fine provided under the first proviso to sub-section (2) of section 130 of the CGST Act is the maximum fine leviable. Consequently, the proper officer adjudging the case is required to examine the seriousness of the contravention and impose fine accordingly. It is not as if in every case the proper officer should levy the maximum fine. The order of confiscation should, therefore, reflect due application of mind on the part of the proper officer to the quantum of fine imposed by him.

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15. A perusal of the impugned order reveals that the proper officer has levied more than the maximum fine leviable in terms of the first proviso to sub-section (2) of section 130 of the CGST Act, inasmuch as, he has levied fine equal to the market value of the goods without deducting the tax chargeable thereon. Moreover, there is nothing in the order to reflect application of mind to the quantum of fine.

16. At this juncture reference may be made to the decision of the Supreme Court in ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan,*** *(2010) 9 SCC 496*, wherein the court in the context of necessity to give reasons, has held thus:

> ***"47.*** *Summarising the above discussion, this Court holds:*
> *(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*

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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 lifeblood 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. (See David Shapiro in Defence of Judicial

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Candor.)

(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 of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain, (1994) 19 EHRR 553 and Anya v. University of Oxford, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments 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"."

17. In ***CCT v. Shukla & Bros.,****(2010) 4 SCC 785,* the Supreme Court held thus:

"14. *The principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Such rule being applicable to the administrative authorities certainly requires that the judgment of the court should meet with this requirement with higher degree of satisfaction. The order of an administrative authority may not provide reasons like a judgment but the order must be supported by the reasons of rationality.*

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The distinction between passing of an order by an administrative or quasi-judicial authority has practically extinguished and both are required to pass reasoned orders."

18. In ***Tata Engineering & Locomotive Co. Ltd. v. Collector of Central Excise, Pune***, *2006 (203) ELT 360 (SC)*, the Supreme Court was dealing with a case where by a cryptic and non-speaking order, the Tribunal had upheld the order passed by Commissioner by applying the ratio of the decision of the Larger Bench in TISCO Ltd., without recording any findings of fact. The court held that it is not sufficient in a judgment to give conclusions alone but it is necessary to give reasons in support of the conclusions arrived at. The court, set aside the order of the Tribunal as the findings recorded by the Tribunal were cryptic and non-speaking, and remitted the matter back to the Tribunal for taking a fresh decision by a speaking order in accordance with law after affording due opportunity to both the parties.

19. In ***State of Punjab v. Bhag Singh***, *2004 (164) ELT 137 (SC)*, the Supreme Court was considering a case where the High Court had dismissed the appeal without giving any reasons. The court held that reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of mind, all the more when its order is amenable

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to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. The court further held that right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out.

20. Thus, the Supreme Court has consistently held that a quasi-judicial authority must record reasons in support of its conclusions and that reasons are an indispensable component of a decision making process. In ***CCT v. Shukla & Bros*** (supra) the Supreme Court has held that giving reasons in support of the conclusions arrived at is an ingredient of the principles of natural justice.

21. Viewed in the light of the principles enunciated in the decisions referred to hereinabove, the impugned order is in breach of the principles of natural justice on two counts: firstly, that though the matter was kept for hearing on 28.08.2019, the second respondent passed the impugned order on 24.08.2019 without affording any opportunity of hearing to the petitioner; and secondly, because the impugned order is a totally non-speaking order which does

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not reflect the reason as to why the proper officer has come to the conclusion that the goods and the conveyance are liable to be confiscated, which renders the order unsustainable. The impugned order, therefore, deserves to be set aside and the matter is required to be remitted to the proper officer to decide the matter afresh in accordance with law, keeping in mind the principles discussed hereinabove, after affording reasonable opportunity of hearing to the petitioner.

22. The record further reveals that subsequently, on 5.9.2019, the petitioner has deposited the amount of tax and penalty. Therefore, pending the proceedings before the proper officer, the court deems it fit to direct the respondents to release the conveyance with the goods contained therein, subject to the final outcome of the proceedings under section 130 of the CGST/GGST Act.

23. In the light of the above discussion, the petition succeeds and is accordingly allowed. The impugned order dated 24.8.2011 passed by the second respondent is hereby quashed and set aside. The matter is restored to the file of the second respondent to decide the same afresh in accordance with law, after affording a reasonable opportunity of hearing to the petitioner. Needless to state that the second respondent shall pass a reasoned order keeping in mind the statutory provisions as discussed hereinabove.

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24. In view of the fact that the petitioner has already deposited the amount of tax and penalty as computed by the second respondent, the conveyance as well as the goods in question shall be forthwith released by the second respondent subject to the final outcome of the proceedings under section 130 of the CGST Act. Rule is made absolute to the aforesaid extent.

25. Direct service, is permitted.

(HARSHA DEVANI, J)

(SANGEETA K. VISHEN,J)

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