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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 03rd February, 2023

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W.P.(C) 872/2023

MARG ERP LIMITED THROUGH ITS AUTH.
REPRESENTATIVE MR. MAHENDER SINGH

..... Petitioner

Through: Mr. A.K. Babbar &
Mr. B.K. Tripathi, Advs.

versus

COMMISSIONER OF DELHI GOODS AND SERVICE
TAX, DELHI & ANR. Respondents

Through: Mr. Rajeev Aggarwal,
ASC, GNCTD with Ms.
Divyanshi Bansal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 3390/2023 (for exemption from filing certified copies of orders)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 872/2023 & CM APPL. 3391/2023 (for stay of demand)

3. Issue notice.
4. Learned Counsel for the respondent accepts notice.
5. The petitioner has filed the present petition, impugning an order dated 07.06.2022, under Section 73 of the Central Goods and Services Tax Act, 2017, passed by the Adjudicating Authority (Assistant Commissioner), raising a total demand of ₹ 49,26,623/-.
6. Prior to the said order, the respondent had issued a Show Cause Notice dated 06.02.2021, calling upon the petitioner to furnish a reply along with supporting documents as evidence in

support of its claim.

7. The allegation made in the said Show Cause Notice is set out below:

“It has come to my notice that tax due has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed or utilized by you or the amount paid by you through the above referred application for intimation of voluntary payment for the reasons and other details mentioned in annexure for the aforesaid tax period”

8. It is apparent that the Show Cause Notice does not spell out the allegation which is required to be addressed by the petitioner.

9. The purpose of Show Cause Notice is to enable the noticee to respond to the allegations. In the present case, it is seen that it is a general notice stating that tax has not been paid or short paid or refund has been released erroneously or Input Tax Credit has been wrongly availed or utilised. This, obviously, provides no clue as to the reasons for proposing any action.

10. It is pointed out that, neither the impugned order dated 07.06.2022 nor the Show Cause Notice is signed by the concerned Officer.

11. Learned Counsel for the respondent states that, prior to the Show Cause Notice dated 06.02.2021, the concerned authority had issued a notice dated 01.01.2021, pointing out that there was some differences/ excess ITC and calling upon the petitioner to attend the office on 15.01.2021.

12. It is noted that this notice is also unsigned.

13. According to the learned Counsel for the respondent, the Show Cause Notice is relatable to the details as provided in the notice dated 01.01.2021.

14. Concededly, the impugned order cannot be sustained as it is unsigned. This issue is covered by the decision of a coordinate Bench of this Court in ***Railsys Engineers Private Limited & Anr. v. The Additional Commissioner of Central Goods and Services Tax (Appeals-II) & Anr.: W.P.(C) 4712/2022; decided on 21.07.2022.***

15. An unsigned notice or an order cannot be considered as an order as has been held by the Bombay High Court in ***Ramani Suchit Malushte v. Union of India and Ors.: W.P.(C) 9331/2022; decided on 21.09.2022.***

16. In view of the above, the impugned order dated 07.06.2022 is set aside.

17. Since it is stated that the Show Cause Notice dated 06.02.2021 should be confined to the discrepancies as pointed out in the notice dated 01.01.2021, this Court does not consider it apposite to set aside the said Show Cause Notice but to provide an opportunity to the petitioner to file a reply to the notice dated 01.01.2021 and 06.02.2021. The said reply be filed within a period of two weeks from today.

18. The concerned authority shall pass an order afresh after affording the petitioner, an opportunity to be heard.

19. The petition along with other pending applications stands disposed of in the aforesaid terms.

VIBHU BAKHRU, J



AMIT MAHAJAN, J

FEBRUARY 3, 2023/“SS”