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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 621 OF 2021

Godrej Properties Ltd. … Petitioner
Vs
State of Maharashtra & Ors ...Respondents

…..

Mr. Prithviraj Choudhuri i/by Mr. P. K. Shetty for Petitioner.
Ms. Jyoti Chavan, AGP for State – Respondent.

…..

CORAM : NITIN JAMDAR &
ABHAY AHUJA, JJ.

DATE : 28 FEBRUARY 2023

<u>P.C.</u> :-

By this petition, the Petitioner has sought following prayers:

> *"...(c) i. stay the operation of the Impugned Summary Order dated 09.06.2020 passed by the Respondent No.4(Exhibit "K" hereto);*
>
> *ii. restrain the Respondents themselves, their officers, subordinates, servants and agents from taking any steps pursuant to the impugned Summary Order dated 09.06.2020 passed by the Respondent No.4 (Exhibit "K" hereto)..."*

and has sought to challenge the order dated 9 June 2020 passed by the Respondent No.4 – State Tax Officer. One of the main contentions of the Petitioner was that the order and the show cause notice are issued without giving an opportunity and without accompanying reasoned adjudication order i.e. only summary, is not only violative of the principles of natural justice but the statutory provisions i.e. under Section 73 of the Maharashtra Goods and Services Tax Act, 2017 (for short 'MGST Act') and Rule 142 of the MGST Rules.

2. The Writ Petition came up on board on 2 January 2023. It was adjourned to find out whether any remedial action can be taken.

3. The learned AGP had stated that a meeting can be held to find out whether dispute can be resolved. Thereupon, on 24 January 2023 following order came to be passed:

> *"1. Heard learned counsel for the parties.*
>
> *2. The learned counsel for the Petitioner informs that a joint meeting took place, however, resolution to the dispute has not been achieved. Apart from the technical ground that has been urged in this petition, one of the ground is that the summary order dated 9 June 2020 does not give any reasons at all and the reasoned order of which summary is received is not communicated to the Petitioner. The learned counsel for the Petitioner submits that since the same is not*

> *supplied, Petitioner cannot file an appeal as the position whether any reasoned order preceded the impugned summary order was not communicated to the Petitioner.*
>
> *3. The Respondents will file a reply affidavit on this aspect.*
>
> *4. Stand over to 30 January 2023 under the caption "For Directions".*

4. The learned AGP tendered reply affidavit filed by Nitin Chakor Shaligram, Joint Commissioner of State Tax (Nodal – 13) dated 20 February 2023.

5. Despite direction that the reply affidavit should only deal with the aspects of unreasoned order, still 20 pages reply has been filed various contentions taking. In the reply affidavit, in para 5 (iv), it is accepted that only summary of the order is issued without mentioning the reasons for dis-allowance. It is stated that hearing was given and reasonable opportunity was granted. However, it is clear the officer has not passed a detailed order, and hence, the grievance of the Petitioner that without detailed order remedy of appeal is illusory, will have to be accepted.

6. In light of this error committed by the Respondent No.4 we have no option but to set aside the impugned order dated 9 June 2020 and restore the proceedings.

7. There was particular reason why we have directed that reply affidavit be filed on the limited ground of breach of principles of natural justice, because if proceedings have to be remanded, then upon remand, the authority can apply his mind after giving an opportunity. Therefore, the contentions raised in the reply affidavit, which seek to comment on the merits of the claim, shall be treated as *prima facie*.

8. The Writ Petition is disposed of setting aside the impugned order with the above observations.

9. The learned AGP states that the Petitioner can appear before the jurisdictional officer on 8 March 2023. Thereafter, upon giving an opportunity to the Petitioner, the concerned jurisdictional officer would pass appropriate order in accordance with law.

10. All contentions of the parties are kept open, including the issue of jurisdiction, raised by the Petitioner.

ABHAY AHUJA, J. **NITIN JAMDAR, J.**