Form No. J(2)

In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Om Narayan Rai

FMA 97 of 2026
in
WPA 991 of 2026
IA No: CAN 1 of 2026

M/s. Garg Enterprises
Vs.
The Additional Commissioner, Central Goods and Services Tax and Central Excise, Siliguri Commissionerate and another

With

MAT 105 of 2026

Joint Commissioner (HAEU) and others
Vs.
M/s. Rathi Cement House

For the appellant in FMA 97 of 2026	:	Mr. Jatin Harjai, Mr. Abhilash Mittal
For the respondents in FMA 97 of 2026 & for the appellants in MAT 105 of 2026	:	Mr. Ratan Banik, Mr. Bishwa Raj Agarwal
Heard on	:	27.11.2026
Judgment on	:	27.11.2026

Sabyasachi Bhattacharyya, J.:-

Re: MAT 105 of 2026

1. The learned Advocate-on-record for the appellants is directed to remove the defects in the memorandum of appeal. Since the respondent in MAT 105 of 2026 is not represented by counsel today, let the same be de-tagged and listed separately in the next Circuit.

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2. The present challenge has been preferred against an order whereby the learned Single Judge dismissed a writ petition filed by the present appellant assailing an order imposing GST on the appellant.

3. Learned counsel for the appellant argues that there are several jurisdictional errors hitting at the root of the order, in view of which this Court, under writ jurisdiction, ought to have invoked its powers under Article 226 of the Constitution and undertaken a judicial review despite the availability of an alternative remedy. However, the learned Single Judge, it is argued, overlooked this aspect of the matter and turned down the writ petition merely on the premise that an equally efficacious alternative remedy was available, *inter alia* observing that the appellant was not agreeable to put in the statutory amount for preferring an appeal.

4. Learned counsel hits at the foundational facts upon which the authority could invoke its jurisdiction by contending that neither the

pre-show cause notice and the show cause notice nor their electronic copies contained any valid signature. Learned counsel places reliance on the annexures to the interlocutory application filed in the present appeal to substantiate his point that the digital copy of the show cause notice clearly indicates that the digital signature put thereon was not verified. The DRC01A accompanying the notice clearly indicates that the digital signature appearing thereon was invalid.

5. Learned counsel places reliance on a coordinate Bench judgment of this Court in the matter of *Commissioner of Income Tax vs. Aparna Agency Pvt. Ltd.,* reported at *MANU/WB/0014/2004,* where it was observed by the coordinate Bench that existence of a valid notice is a jurisdictional requirement and an unsigned notice is a "body without a soul". Such notice, it was held, is equivalent to "no notice".

6. Learned counsel also places reliance on *DBS Tradelink and Advisors Pvt. Ltd. Vs. The State of Maharashtra and Ors.*, reported at *(2022) 64 GSTL 389 (Bom),* where it was held that a digital signature which itself says "signature not verified" has to be treated as an unsigned document.

7. Learned counsel also refers to a judgment of a Division Bench of the Rajasthan High Court in the matter of *Star Raison Landmarks vs. Chief Commissioner State Tax Commercial Taxes Department*, reported at *(2026) 190 taxman.com 506 (Rajasthan),* on the self-same proposition.

8. Learned counsel further elaborates on the other grounds of challenge such a block/bunch assessment having been made, which is contrary to the jurisprudence governing the field of GST.

9. That apart, there was complete absence of any taxable event, as no goods were found at all in the custody of the appellant, nor was any proof on record to indicate that any such good as alleged was ever sold by the appellant.

10. The order impugned before the writ court, it is contended, was on the basis of borrower satisfaction**.** Even otherwise, it is argued that the order imposed penalty which was almost double the amount indicated in the show cause notice itself, thus, having traversed beyond the show cause notice, rendering the impugned order bad on such count as well.

11. The Court invites the respondent authorities to address the issue of validity of the show-cause notice first since, in the eye of law, a show cause notice without a valid signature is *non est*.

12. Learned counsel for the respondents seeks to place reliance on a signature of the order of the adjudicating authority which was assailed before the writ court.

13. Learned counsel also submits that if so directed, the respondents can produce the original signed document. Learned counsel further argues that since the notices-in-question were uploaded on the portal,

it should be deemed that there was a valid signed notice without which such uploading could not have taken place.

14. However, on a perusal of the pre-show cause notice, the show cause notice, as well as the connected DRC01A form, we find that none of those carried a valid digital signature. The manual copies of the notices served on the appellant were also unsigned and/or unauthenticated.

15. It is trite law that issuance of a notice is a foundational fact, on the basis of which the authorities derive jurisdiction in the first place to undertake an adjudication under the relevant provisions of the GST Act. In the present case, we find that there is nothing on record to show that any such validly signed notice, either manual or digital, was served on the appellant either at the show cause stage or in the pre-show cause stage.

16. Even if we assume that a notice were to be produced before this Court for the first time which is validly signed, it would be inappropriate for this Court to arrogate to itself the jurisdiction of the first authority, thereby depriving both the parties of at least three forums of challenge.

17. Be that as it may, no validly signed notice has been produced before either the authority or Court at any point of time. As such, going by the principles laid down in the cited judgments and the tenor of the CGST Act as well as the SGST Act, in the absence of a validly signed notice, the very initiation of the proceeding, which is a foundational

fact to assume jurisdiction, is vitiated. It is well-settled that in the event a proceeding is bad at the inception due to absence of jurisdictional and foundational facts, the entire proceeding is invalid in the eye of law.

18. The Court takes note of the provisions of Section 160 of the CGST Act, 2017 (for short "the 2017 Act"), which is relied on by the respondents to argue that an assessment order shall not be set aside merely by reason of any mistake, defect or omission therein, if such assessment is in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any existing law.

19. However, the reliance of the respondents on the said judgments does not come to their aid, since the issuance of the show cause notice and the pre-show cause notice without valid signatures is itself contrary to the intents, purposes and requirements of the Act.

20. Even otherwise, the mistake, defect or omission contemplated in Section 160 of the 2017 Act evidently pertains to a factual error and/or a mistake of a lesser order than a foundational fact hitting at the very root of issuance of the notice.

21. In the event Section 160 is construed to cover mistakes which hit at the very jurisdictional requirements of a notice, the provisions of challenge in the CGST Act and the SGST Ac would be rendered nugatory.

22. In view of the above, this Court is of the opinion that in the absence of the basic foundational facts required for the respondent authorities to assume jurisdiction, the order which was impugned before the learned Single Judge was vitiated by utter lack of jurisdiction.

23. In such circumstances, the writ court had ample power to assume jurisdiction for the purpose of judicial review. Instead of relegating the appellant to a further appeal and unnecessarily embroiling the parties to futile litigation, it would only be appropriate if the order of the learned Single Judge is interfered with and the order passed by the respondent authorities, which was assailed in the writ petition, is itself set aside.

24. Accordingly, FMA 97 of 2026 is allowed on contest, thereby setting aside the impugned order dated September 02, 2026 passed in WPA 991 of 2026 as well as the order of the respondent authorities dated March 27, 2026, and quashing the show-cause notice dated August 08, 2025 as well as pre-show cause notice dated July 28, 2025, on the basis of which the said proceeding was initiated.

25. It is made clear that nothing in the above judgment shall preclude the respondent authorities from issuing a fresh valid notice in accordance with the appropriate provisions of law in the event the respondent authorities are otherwise so legally entitled.

26. CAN 1 of 2026 is consequentially disposed of as well.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Om Narayan Rai, J.)

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