2025:AHC-LKO:84608-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT TAX No. - 1607 of 2025

M/S Victoria Hardware And Paints Thru. Prop.
Osama Ateeq Siddiqui
.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of State Tax
Lko. And 2 Others
.....Respondent(s)

Counsel for Petitioner(s)	:	Manas Shukla, Anurag Srivastava, Ishan Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE MANJIVE SHUKLA, J.

1. Heard counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has prayed for the following reliefs:-

> *"i) Issue a writ, order or direction in the nature of Certiorari to quash the impugned order dated 10.02.2025 passed u/s73 of the CGST/SGST Act by opp. Party No2 i.e. Assistant Commissioner, State Tax, Sector-08 Lucknow contained as* ***ANNEXURE NO.1*** *to this writ petition.*
>
> *ii. Issue a writ, order or direction in the nature of CERTIORARI to quash the impugned FORM-DRC 13 dt 21.06.2025 issued by O.P. No.-3 Deputy Commissioner, State Tax, Sector-3, Lakhimpur Kheri contained as* ***ANNEXURE NO.2*** *to this writ petition."*

3. Counsel on behalf of the petitioner relies on a coordinate Bench judgment of this Court in the case of **Mahaveer Trading Company vs. Deputy Commissioner State Tax** reported in **2024 U.P.T.C. (117) 734**. Paragraphs 8, 9, 10, 11 and 12 of the said judgment are delineated below:-

> *"8. Thus, it is established on record that on all three dates, the petitioner had been called to file its reply on the points specified*

in the respective show-cause notice issued. The petitioner submitted its reply on each occasion. Those replies have been extracted in the impugned order. After recording the reply submitted on 27.10.2022, the adjudicating authority has chosen to deal with the merits of the replies submitted and passed a merit order.

9. It transpires from the record, neither the adjudicating authority issued any further notice to the petitioner to show cause or to participate in the oral hearing, nor he granted any opportunity of personal hearing to the petitioner.

10. On query made, the learned Additional Chief Standing Counsel fairly submits, in light of similar occurrences, noticed in other litigation, he had apprised the Commissioner, Commercial Tax. In turn, the Commissioner, Commercial Tax, Uttar Pradesh, has issued Office Memo No. 1406 dated 12.11.2024. The same has been addressed to all Additional Commissioner to be communicated to all field formations for necessary compliance. A copy of the same has been made available to this Court. It reads as below:

> *"1. The column in which date of personal hearing has to be mentioned, only N.A. is mentioned without mentioning any date.*
>
> *2. The column in which time of personal hearing has to be mentioned, only N.A. is mentioned without mentioning time of hearing.*
>
> *3. In some cases, the date of personal hearing is prior to which reply to the Show Cause Notice has to be submitted this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.*
>
> *4. In some cases, the date of personal hearing is on the same date to which reply to the Show Cause Notice has to be submitted-this is non-est and this practice*

has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

5. In all cases observed, the date of passing order either u/s 73(9)/74(9) etc. of the Act is not commensurate to the date of personal hearing. It is trite law that the date of the order has to be passed on the date of personal hearing. For eg.,the date of furnishing reply to SCN is 15.11.2023 and date of personal hearing is 17.11.2023, then the date of order has to be 17.11.2023."

11. In view of the facts noted above, before any adverse order passed in an adjudication proceeding, personal hearing must be offered to the noticee. If the noticee chooses to waive that right, occasion may arise with the adjudicating authority, (in those facts), to proceed to deal with the case on merits, ex-parte. Also, another situation may exist where even after grant of such opportunity of personal hearing, the noticee fails to avail the same. Leaving such situations apart, we cannot allow a practice to arise or exist where opportunity of personal hearing may be denied to a person facing adjudication proceedings.

12. Thus, the impugned order cannot be sustained in the eyes of law. It has been passed in gross violation of fundamental principles of natural justice. The self imposed bar of alternative remedy cannot be applied in such facts. If applied, it would be of no real use. In fact, it would be counter productive to the interest of justice. Here, it may be noted, the appeal authority does not have the authority to remand the proceedings."

4. Counsel on behalf of the petitioner submits that very initiation and the first show cause notice was improper, and therefore, the entire initiation was wrong. He further submits that in reminder the date of reply was 07.02.2025 whereas the date of personal hearing was also the same and was 07.02.2025. In light of the same, he submits that as the authorities have not issued a proper notice, any proceeding taken thereunder is bad in law.

5. We have perused the judgment in the case of **Mahaveer Trading**

Company (supra) and, in our view, the principles laid down therein would apply in the present case. Since the show cause notice at the time of initiation itself was wrong, it was the duty of the authorities to once again issue a fresh show cause notice to the petitioner in accordance with law. Since the same has not been done, we are of the view that principles of natural justice have been violated. In spite of the fact that the writ petition has been filed after the period of limitation as prescribed under the Statute for filing of appeal, we are of the view that in exceptional cases where there is violation of principles of natural justice, this Court may intervene.

6. In light of the above, the *ex-parte* order dated 10.02.2025 is quashed and set-aside. The Department shall be at liberty to issue fresh show cause notice and proceed in accordance with law.

7. With the above directions, the writ petition is **disposed of.**

December 16, 2025
akhilesh/-

(Manjive Shukla,J.) (Shekhar B. Saraf,J.)