HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT TAX No. - 1565 of 2025

M/S Shivam Enterprises Thru. Partner Pankaj Sachan

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. Commercial Tax Deptt. Lko. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Mukesh Kumar Tewari
Counsel for Respondent(s)	:	C.S.C.

Court No. - 6

HON'BLE JASPREET SINGH, J.

1. Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.

2. Present petition has been filed challenging the order dated 13.12.2023 passed under Section 73 of the U.P. Goods and Services Tax Act, 2017 (for short, 'the GST Act') as well as the order dated 24.10.2025 whereby the appeal was dismissed as being beyond limitation.

3. Contention of learned counsel for the petitioner is that no opportunity of hearing was granted while passing the order under Section 73 of the GST Act. It has also contended that date of personal hearing was prior to the date of filing of reply. It has also pointed out that in absence of any opportunity the order impugned cannot be sustained and this issue was dealt by the Division Bench of this Court passed in Writ Tax No.303 of 2024 **[Mahaveer Trading Company vs. Deputy Commissioner, State Tax and Anr; 2024:AHC:38820-DB].**

4. Learned Additional Chief Standing Counsel, on the basis of the instructions, states that the date of personal hearing was prior to the date of filing of reply.

5. Before adverting to the aforesaid submissions it will be appropriate to notice the observations made by the Division Bench of this Court in **Mahaveer Trading Company (supra)** wherein in paras-5 to 11 it was

held that under:

> "5. It is basic to procedural law under taxing statutes that opportunity of personal hearing must be provided to an assessee before any assessment/adjudication order is passed against him. Thus, we find it strange and wholly unacceptable merely because the substantive law has changed, the revenue authorities have changed their approach and are failing to observe that mandatory requirement of procedural law. They have thus denied opportunity of hearing to the assessee.
>
> 6. Section 75(4) of the Act reads as below:
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> > "An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."
>
> 7. Perusal of the impugned order reveals, the petitioner appeared before the competent authority on three dates. With respect to those dates, the impugned order reads as below:
>
> > (i) "जारी नोटिस के अनुपालन में दिनांक 23/9/2022 को श्री एफ०सी० चौहान (राजू चौहान) अधिवक्ता फर्म उपस्थित हुए। नोटिस का स्पष्टीकरण प्रस्तुत किया गया जो निम्न
> >
> > (ii) "जारी नोटिस के अनुपालन में दिनांक 07/10/2022 को पुनः श्री एफ०सी० चौहान (राजू चौहान) अधिवक्ता फर्म उपस्थित हुए। नोटिस का स्पष्टीकरण प्रस्तुत किया गया जो निम्न है...
> >
> > (iii) "जारी नोटिस के अनुपालन में दिनांक 27/10/2022 को पुनः श्री एफ०सी० चौहान (राजू चौहान) अधिवक्ता फर्म उपस्थित हुए। नोटिस का स्पष्टीकरण प्रस्तुत किया गया जो निम्न है.....
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> 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. "

6. Since the aforesaid dictum is applicable in the present facts and circumstances, accordingly, the impugned orders cannot be sustained and the orders dated 13.12.2023 & 24.10.2025 are accordingly quashed.

7. With the aforesaid, the present petition is **allowed**.

8. Matter is remanded to the assessing authority to pass fresh order after giving an opportunity of hearing to the petitioner.

(Jaspreet Singh,J.)

December 12, 2025
Rakesh/-

Digitally signed by :-
RAKESH PRAJAPAT
High Court of Judicature at Allahabad,
Lucknow Bench