



2025:AHC:175903-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT TAX No. - 3747 of 2025**

M/S Shri Kishori Ji Machinery Store

.....Petitioner(s)

Versus

The State Of U.P. And Another

.....Respondent(s)

Counsel for Petitioner(s)

: Vishwjit

Counsel for Respondent(s)

: C.S.C.

**Court No. - 3**

**HON'BLE SAUMITRA DAYAL SINGH, J.**

**HON'BLE INDRAJEET SHUKLA, J.**

1. Heard Sri Vishwjit learned counsel for the petitioner and Sri Arvind Mishra learned counsel for the revenue.

2. Challenge has been raised to the order dated 23.04.2024 passed by the Deputy Commissioner, State Tax, Kosikalan Mathura for the tax period April 2018 to March 2019 (F.Y. 2018-2019) under Section 73 of the UPGST Act, 2017(hereinafter referred to as the 'Act').

3. Grievance is, single date for filing reply and for hearing was communicated to the petitioner vide notice dated 27.01.2024 and the same mistake was repeated in the reminder notice dated 08.04.2024 and single date 12.04.2024 was fixed for the purpose of filing reply and hearing. Second, no order came to be passed on that date fixed. Consequently, the impugned order has been passed on 23.04.2024 for which date there was no earlier notice.

4. Objection raised by the State is that the petitioner has not participated in the proceedings. Therefore, no prejudice may have been caused to the petitioner.

5. While, there may be some merit in the objection being raised, in the first place a coordinate bench in **Mahaveer Trading Company Vs. Deputy Commissioner State Tax And Another, Neutral Citation No.- 2024:AHC:38820-DB** took note of the Office Memo No. 1406 dated

12.11.2024, issued by the Commissioner Commercial Tax, Uttar Pradesh and observed as below:

*"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" "*

6. Thus, the date of filing reply and date of hearing should have been different as per the instructions issued by the Commissioner. Though an

administrative decision, at the same time that decision having been made by the highest administrative authority under the Act, there is no reason and circumstance shown to exist as may have allowed the respondent authority to fix single date for filing reply and for hearing.

7. On the second aspect, again in an earlier order passed by a coordinate bench in **M/S Shubham Steel Traders Vs. State of U.P. and Another, Neutral Citation No.- 2024:AHC:31108-DB**, it has been observed as below:

*"9. While learned Standing Counsel has submitted that petitioner has the remedy of appeal and that the petitioner is itself to blame in as much he did not comply with the notice dated 31.10.2023, we are not impressed by the objection being raised.*

*10. Rules of natural justice ensure fairness in proceedings. Once the authority had fixed the matter for hearing on 06.11.2023 it was incumbent on that authority either to pass the order or to fix another date and communicate the same to the petitioner. Communication of the other date was necessary as according to the assessing authority the petitioner failed to appear before it on the date fixed on 06.11.2023.*

*11. By not passing the order on 06.11.2023 and not communicating the next date fixed in the proceedings, the assessing authority forced the ex-parte nature of the order on the petitioner, by its own conduct."*

8. In that view of the matter, we find that the order passed by the adjudicating authority is in the teeth of the earlier orders passed by this Court. Those orders are shown to have attained finality. Accordingly, the impugned order dated 23.04.2024 is set aside. Present writ petition is **disposed of** with the following directions:

(i) Petitioner shall file reply, if any, on or before 17.10.2025.

(ii) Thereupon the respondent No. 2 shall fix appropriate date for hearing and communicate the same to the petitioner in the manner prescribed by law.

(iii) Petitioner undertakes to cooperate and participate in the proceedings and not seek any undue or long adjournment.

9. It is expected that the proceedings thus remitted would be concluded on or before 30.11.2025.

**October 6, 2025**  
Faraz

**(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)**