

Chief Justice's Court

Case :- WRIT TAX No. - 1406 of 2025

Petitioner :- Merino Industries Ltd.

Respondent :- State of Uttar Pradesh and another

Counsel for Petitioner :- Anil Prakash Mathur

Counsel for Respondent :- Ankur Agarwal (S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition has been filed by the petitioner aggrieved of the order dated 04.02.2025 passed by Joint Commissioner, SGST, Corporate Circle -1, Ghaziabad (Annexure-1) under Section 74 of Goods and Services Tax Act, 2017 (for short, 'the Act') wherein, a demand of Rs. 5,82,67,589.12/- has been created.
2. It is *inter alia* indicated in the petition that the petitioner is engaged in manufacture and supply of potato flakes besides other items. A show cause notice dated 03.08.2024 for the period July 2017 to March 2018, proposing to classify the product in question i.e. potato flakes under tariff heading 2005-2000 instead of 1105-2000 was issued. In the notice, date by which the reply was required to be submitted was indicated as 19.08.2024 and in column pertaining to date of personal hearing 'NA' was indicated and the same was the position pertaining to column pertaining to time of personal hearing.
3. A reply to the notice dated 03.08.2024 was filed by the petitioner through counsel on 19.08.2024 contesting the allegations made therein. In the reply, a specific prayer was made on behalf of the petitioner that no adverse order to the prejudice of the petitioner be passed without affording him an opportunity of hearing.
4. However, by the order impugned dated 04.02.2025, without affording any opportunity of hearing, the demand has been created.

5. It is submitted by learned counsel for the petitioner that the action of the respondents in passing the order impugned, without affording any opportunity of hearing to the petitioner is *ex-facie* contrary to the provisions of Section 75(4) of the Act. It was emphasized that the section which pertains to general provisions relating to determination of tax under sub-Section (4) clearly provides that 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.

6. Despite the mandatory requirement of law, the show cause notice in the column pertaining to the date of personal hearing indicated 'NA' and despite specific prayer made in response to the show cause notice for providing personal hearing, no opportunity of personal hearing was provided which action besides being contrary to the provisions of the Act, is contrary to the Circular dated 13.06.2024 issued by the Additional Commissioner Law, Commercial Tax, U.P. specifically referring to the judgement of this Court in the case of **Laskin Engineering Pvt. Ltd. Vs. State of U.P. and Another : Writ Tax No. 674 of 2024**, decided on 16.05.2024. The respondent has indulged in violation of provisions of law as well as the directions given by this Court and the State and, therefore, the order impugned deserves to be quashed and set aside.

7. Learned Standing Counsel has produced instructions wherein comments have been offered on the merit of the dispute and not a word has been indicated as to why the mandatory provisions of Section 75(4) of the Act have not been complied with.

8. This Court in the case of **Laskin Engineering Pvt. Ltd. (supra)** *inter alia* observed and directed as 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:

"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. 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.

8. 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. 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"

9. 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.

10. 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.

11. Accordingly, the writ petition is disposed of with the following observations/directions :

(i) The impugned order dated 19.08.2021 passed by the respondent no. 2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar, is hereby set-aside.

(ii) The matter is remitted to the respondent no.2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar to pass a fresh order, in accordance with law, after affording due opportunity of hearing to the petitioner.

12. While, we proposed to impose heavy costs for the conduct offered by the respondent no. 2, we have been assured by the learned Additional Chief Standing Counsel, such occurrences will not be repeated in future.

13. Accordingly, we direct the Commissioner, Commercial Tax, Uttar Pradesh to undertake remedial measures including providing for disciplinary proceedings against erring officials, where fundamental principles of natural justice may be violated by the adjudicating authorities, without justifiable reason. ”

9. It appears that pursuant to the direction issued by this Court, the office of the Commissioner issued Circular to all Additional Commissioners, Commercial Taxes quoting paragraph nos. 9 to 13 of the judgement in the case of **Laskin Engineering Pvt. Ltd. (supra)** and directed as under:

“अतः रिट टैक्स संख्या-672/2024, सर्वश्री एन0एस0 एगो एण्ड इंजीनियरिंग प्रोडक्ट्स एवं रिट टैक्स संख्या-674/2024, सर्वश्री लास्किन इंजीनियरिंग प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य के वाद के सम्बन्ध में मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 16.05.2024 की प्रति प्रेषित करते हुए निर्देशित किया जाता है कि अपने अधीनस्थ समस्त अधिकारियों को उक्त से अवगत कराएं तथा मा0 न्यायालय के उक्त आदेश के अनुसार उ0प्र0 माल और सेवाकर अधिनियम की धारा-75(4) के प्राविधानों का कड़ाई से पालन किया जाय तथा प्राकृतिक न्याय के सिद्धान्त को अनिवार्यतः सुनिश्चित किया जाये। उपरोक्त के उल्लंघन पर कठोर कार्यवाही की जायेगी।

यह पत्र कमिश्नर, वाणिज्य कर, उ0प्र0 के अनुमोदनोपरान्त जारी किया जा रहा है।”

10. From the above, it would be observed that this Court referring to office memo dated 12.11.2023 (wrongly typed as 12.11.2024) has found that Court cannot allow a practice to arise or exist where opportunity of personal hearing has been denied to a person facing adjudication proceedings. The Court also observed, that it proposed to impose heavy cost for the conduct of the officer, however, on an assurance given by the Additional Chief Standing Counsel that such occurrences will not be repeated in future, it was directed that remedial measures including disciplinary proceedings against erring officials would be taken by the respondents.

11. It is observed that besides the above, numerous petitions are being filed every day reflecting the gross violation of principles of natural justice by the officers wherein apparently as the entire procedure is online, the officers working in a wholly mechanical manner without advertng to the material available on record i.e. in their own system in electronic form, orders are being passed wherein in show cause notices, opportunity of hearing is being denied, the same dates are being fixed of filing reply and that of personal hearing, date of personal hearing is being fixed prior to the date of filing reply, cases where the reply has been filed, in the orders passed, it is indicated that no reply has been filed, if in a show cause notice, a date of hearing is fixed, in the reply filed by the assessee, the column pertaining to 'option for personal hearing' invariably, on account of the system, indicates 'No' i.e. opportunity of personal hearing is refused by the assessee, even in cases where reply specifically requires providing opportunity of personal hearing, the same is being ignored and orders are being passed in a wholly mechanical manner without advertng to the facts of the case i.e. only referring to the date of show cause notice and confirming the demands. Innumerable cases have come before this Court where show cause notices have been issued and ex-parte assessments made after the cancellation of the GST registration of the firm, based on uploading of notices on the portal, without ensuring personal service of the notices. Such conduct of the officers in dealing with matters, besides resulting in huge loss of time on the part of the State Government, the same unnecessarily increases burden of this Court wherein numerous petitions every day, underlying violation of principles of natural justice, are being filed and as violations are so glaring, this Court is left with no option but to allow the petitions and remand back the matters to the authorities

12. The present case provides a glaring example of such conduct on the part of the officers of the State wherein besides denying opportunity of personal hearing in the show cause notice by indicating 'NA' in the column pertaining to date of personal hearing, despite specific prayer made for providing opportunity of hearing in reply, the

order impugned has been passed without affording any opportunity of hearing.

13. In view of above fact situation, we are left with no option but to allow the petition filed by the petitioner with costs.

14. Consequently, the writ petition is **allowed**. The order impugned dated 04.02.2025 (Annexure-1) is quashed and set aside. The matter is remanded back to the Joint Commissioner SGST, Corporate Circle-1, Ghaziabad, respondent no. 2 for passing a fresh order after affording an opportunity of personal hearing to the petitioner.

15. A cost of Rs. 20,000/- is imposed on the Joint Commissioner SGST, Corporate Circle-1, Ghaziabad, who had issued the show cause notice dated 03.08.2024 and had passed the order dated 04.02.2025.

16. The cost shall be deposited by the officer with the High Court Legal Services Committee, High Court Allahabad within a period of four weeks.

17. It will be the responsibility of learned Standing Counsel to communicate this order to the officer concerned as well as to the Commissioner, Commercial Tax, U.P., who is further directed to ensure that a proper training is imparted to the officers to deal with the matters in a proper manner as apparently circulars issued to the said officers have been ignored and/or have not been adverted to.

18. Further, as already suggested in the case of **Laskin Engineering Pvt. Ltd. (supra)**, disciplinary proceedings may be initiated against erring officials failing which it is apparent that the State would continue to suffer on account of such acts of omissions and commissions by the officers, which position should not be tolerated by the State.

Order Date :- 2.4.2025

Sandeep

(Kshitij Shailendra, J) (Arun Bhansali, CJ)