



2025:AHC:163127

Reserved on 11.9.2025

Delivered on 15.9.2025

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT – TAX No. 4253 of 2025**

M/S Mahesh Fashion

.....Petitioners(s)

Versus

State Of U.P. And 2  
Others

.....Respondents(s)

---

Counsel for Petitioners(s)	:	Mr. Aditya Pandey, Mr. Akhil Agnihotri
Counsel for Respondent(s)	:	Mr. Ravi Shanker Pandey, ACSC

---

**Court No. - 7**

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Mr. Akhil Agnihotri along with Mr. Aditya Pandey for the petitioner and Mr. Ravi Shanker Pandey, learned ACSC for the State-respondents.
2. By means of present petition, the petitioner is assailing the order dated 9.4.2025 passed by respondent no. 2 and the order dated 24.8.2024 passed by respondent no. 3 (F.Y. 2019-20).
3. Learned counsel for the petitioner submits that the petitioner is a proprietorship concern having GSTIN 09AENPG4743F1ZE. He submits that a show cause notice has been issued under Section 73 of GST Act to which the petitioner has submitted reply on 17.8.2024 and the date of personal hearing was fixed as 20.8.2024 but being not satisfied with the

reply as well as without giving any opportunity of personal hearing to the petitioner an *ex parte* order has been passed by respondent no. 3 on 24.8.2024 by which liability of tax, interest and penalty has been imposed to the tune of Rs. 5,40,914/-. Learned counsel for the petitioner further submits that the said order has neither been communicated to the petitioner nor the same has been uploaded in the 'notice and order' tab but the same has been uploaded in the wrong tab i.e. 'additional notices and orders', therefore, the petitioner was not aware about the same. Learned counsel for the petitioner further submits that on coming to know about the said order, the petitioner preferred an appeal before respondent no. 2, which has also been dismissed by an *ex-parte* order dated 9.4.2025, without affording opportunity of personal hearing to the petitioner as well as opportunity for rebutting the material relied upon against the petitioner. He submits that the last notice was issued fixing date as 3.3.2025 but instead of passing the order on the date fixed, the impugned order has been passed on the later date i.e. 9.4.2025.

4. Learned counsel for the petitioner further submits that under the provisions of the GST Act, the order has to be passed within three days from the date fixed for final hearing but in the present case, the order has been passed beyond that prescribed period, which is not permissible under the law.

5. In support of his submission, learned counsel for the petitioner has relied upon the judgments of this Court in the cases of **M/s Videocon D2h Ltd. Vs. State of UP and others (Neutral Citation NO. 2016:AHC:51382-DB)**, **M/s Wonder Enterprises Vs. Additional Commissioner Grade-2 and another (Neutral Citation No. 2024:AHC:149222)** and **Dilip Kumar Gupta Vs. Additional Commissioner Grade -2(Appeal) and another (Neutral Citation No. 2025:AHC:71562)**.

6. *Per contra*, learned ACSC supports the impugned order and submits that due opportunities of hearing, on various occasions, have been given to the petitioner but instead of appearing before the

respondent authority, the petitioner neither sought adjournment nor appeared before the respondent authority on the date fixed for personal hearing, therefore, the impugned orders have rightly been passed.

7. After hearing learned counsel for the parties, the Court has perused the records.

8. A short submission has been made by learned counsel for the petitioner that impugned order has been passed on the date to which the petitioner was never put to notice, hence, the same is *ex parte*.

9. This Court, on various occasions, has categorically held that on the date fixed for hearing, the order must be passed and in case the order is to be passed on the later date fixed for hearing, the petitioner should be put to notice of the same.

10. The issue involved in the present case is squarely covered with the decisions of this Court in the cases of **M/s Videocon D2h Ltd. (supra)**, **M/s Wonder Enterprises (supra)** and **Dilip Kumar Gupta (supra)**.

11. This Court in the case of **M/s Wonder Enterprises (supra)** has held as under:

*“4. Learned counsel for the petitioner submits that on the date of hearing of appeal, the order was not passed by the and therefore, the order impugned is bad. He further submits that pursuant to said argument, on 30.07.2024, a counter affidavit was called by the Court from the State duly sworn by respondent no.3, which was filed on 14.08.2024, wherein State-respondent no.3 has placed reliance on the First Appeal Manual dated 20.03.2015 issued by the Commissioner, Commercial Tax, mentioning therein that after hearing the appeal, order can be passed on the later date, this fact has seriously been opposed by the counsel for the petitioner on the ground that no such circular/power or provision under the GST Act, which could empower the authority not to pass the order on the later date of hearing, the said fact is mentioned in para no.4 of counter affidavit filed by the Commissioner, State Tax U.P., Lucknow which reads as under:-*

*".....*

*It is clear that first appeal manual dated 20.03.2015 issued by the Commissioner, Commercial Tax is not covered by the above mentioned saving clause in relation to the filing of the appeals*

*under the GST Act. Hence, it is not applicable in the matters relating to GST"*

*5. Once the higher authority under the GST Act and the counsel appearing for the State has accepted the fact that there is no such provision for passing an order on a later date of hearing, the impugned order 07.03.2024 passed by respondent no.1 in Appeal No.GST AD0905220410341/2022, F.Y. 2018-19 cannot sustain in the eyes of law and the same is liable to be dismissed.*

*6. In view of the above facts as stated the impugned orders are hereby set aside.*

*7. The writ petition is allowed, accordingly.*

*8. The matter is remanded to the Additional Commissioner Grade-2, (Appeal)-5th, State Tax, Kanpur for deciding afresh by passing a reasoned and speaking order, after affording opportunity of hearing to all the stakeholders, within a period of three months from the date of production of certified copy of this order, without granting any unnecessary adjournment to either of the parties."*

12. Learned ACSC could not dispute the legal proposition of the said judgments.

13. In view of the facts and circumstances of the case as well as law laid down by this Court as referred herein above, the impugned order dated 9.4.2025 passed by the first appellate authority cannot be sustained in the eyes of law and same is hereby quashed.

14. The matter is remanded to the first appellate authority, respondent no. 2, who shall decide the case after giving due opportunity of personal hearing to the petitioner, expeditiously, preferably within a period of three months from the date of production of a certified copy of this order.

15. The writ petition is **partly allowed** accordingly.

16. The original record shall be returned by the learned ACSC forthwith.

**(Piyush Agrawal,J.)**

**September 15,2025**

Rahul Dwivedi/-