2026:AHC:230655

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4286 of 2026

M/S Kanha Mentha Traders

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Niraj Kumar Singh, Praveen Kumar Srivastava
Counsel for Respondent(s)	:	C.S.C.

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Niraj Kumar Singh, learned counsel for the petitioner as well as Sri N.P. Singh, learned Standing Counsel for the State/Revenue.

2. A statement has been made by the learned counsel for the parties that they do not propose to file any affidavit and the petition be decided on the basis of the documents available on record. With the consent of the parties, the petition be decided at the fresh stage.

3. The case of the writ petitioner is that it happens to be a partnership firm which is registered under the Uttar Pradesh Goods and Service Tax Act, 2017 bearing GSTIN No. 09CRLPA9941C1ZP, which is engaged in business of Mantha Oil. According to the writ petitioner, it had purchased on 18.01.2021 goods from M/s VishnuTraders which is also registered under the Act, for taxable value of Rs. 55,26,000/-. The petitioner availed CGST of Rs. 3,31,560/- and SGST of Rs. 3,31,560/- aggregating to Rs. 6,63,120/-. According to the writ petitioner on 03.10.2020 & 05.10.2020, the supplier filed both GSTR-1 and GSTR-3B for the tax period January 2021. The supplier's registration was cancelled suo moto with effect from 09.04.2021. Thereafter, the Deputy Commissioner, State Tax, Sector-1, Budaun issued an intimation in Form GST DRC-01A bearing Reference No. 16 dated 08.09.2021 purporting to be under Section 73(5)/74(5) read with Rule 142(1A) of the GST Rules, requiring the objections to be submitted by the writ petitioner by 14.09.2021. A notice was also issued to the respondents based upon the documents available with them, issue invoked Section 16(2)(c) of the Act and proposed to disallow petitioner's ITC of Rs.

6,63,120/-. The writ petitioner tendered its reply to the intimation in Form GST DRC-01A. However, a show cause notice was issued under Section 73 by the second respondent on 26.10.2021 to which the writ petitioner claims to have submitted his reply. However, according to the writ petitioner, in the notice dated 26.10.2021, the date of submission of reply was mentioned to be 10.11.2021 and the date of personal hearing was stated to be of the same date, i.e., 10.11.2021 and thereafter, the second respondent proceeded to pass an order on 04.01.2022 under Section 73 of the Act. The writ petitioner came to know about the said order only in the month of December 2025 and thereafter preferred an appeal on 03.01.2026 which has been rejected by virtue of the order dated 30.04.2026 by the third respondent, Additional Commissioner Grade-II (Appeals-I), State Tax, Bareilly.

4. Questioning the order in original as well as the appellate order, the writ petition has been filed.

5. Learned counsel for the writ petitioner has sought to argue that the orders in question cannot be sustained for the simple reason that, first of all, the discrepancy and procedural irregularities stood crept for the very first time before the second respondent, particularly when in the show cause notice dated 26.10.2021, the date of submission of the reply to the show cause notice was 10.11.2021 and the date of hearing was fixed on 10.11.2021. Submission is that the said procedure so adopted by the second respondent is in teeth of the circular issued by the Commissioner, Commercial Tax being Office Memo No. 1406 dated 12.11.2024, which has been relied upon and interpretation has been made in Writ Tax No. 303 of 2024, (M/s Mahaveer Trading Company Vs. Deputy Commissioner, State Tax and another), decided on 04.03.2024. Further submission is that though the appeal has been rejected on the ground of delay, but the doctrine of merger will not apply, particularly when the appeal had been dismissed on latches. Submission is that though there was no separate delay condonation application, but the facts and the circumstances which necessitate invocation of extraordinary jurisdiction under Article 226 would be a good ground so as to enable the writ petitioner to get the matter revisited in this regard.

6. Countering the submissions so made by the learned counsel for the writ petitioner Sri Singh, learned Standing Counsel submits that whatever might be, first of all, the petitioner did not actively participate before the respondent No. 2, that is the authority in original, and in appeal itself there

was no delay condonation application preferred. However, he could not dispute the fact that in view of the judgment in the case of Mahaveer Trading Company (supra), the date of show cause notice and the date of the hearing cannot be the same, particularly when the date of show cause notice should be anterior and prior to the date of reply to the show cause notice.

7. I heard the submissions so made across the bar and perused the record carefully.

8. Apparently, the bone of contention between the parties boils down to a contingency wherein whether the recital contained in the show cause notice dated 26.10.2021 regarding the date of the reply to be submitted to the show cause notice should be same vis-a-vis the date of hearing or not. The said issue is no more res integra as in Mahaveer Trading Company (Supra), the Division Bench of this Court held as under.-

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. Thus, the irregularity crept from this stage itself. As regards, the appellate order is concerned, the appeal has been dismissed on the ground of delay. At this stage, learned counsel for the submits that the petitioner is agreeable to a condition which may be imposed for remitting the matter back for revisiting the issue in question by the authority in original.

10. To such a submission, Sri N.P. Singh, learned Standing Counsel submits that he has no objection but this time, a time-bound direction be issued.

11. Considering the submissions made by the respective parties, in the background of the law laid down in Mahaveer Trading Company (Supra), without further delving into the issue, the petition is being decided in the following terms:-

(a) The order dated 04.01.2022 passed by the Deputy Commissioner, State

Tax, Sector-1, Budaun under Section 73 of the Act, as well as the appellate order dated 30.04.2026 under Section 107 of the Act, rejecting the appeal on delay, passed by the Additional Commissioner Grade-II (Appeals-I), State Tax, Bareilly, are set aside;

(b) The matter stands remitted back to the Deputy Commissioner, State Tax, Sector-1, Budaun to pass a fresh order;

(c) Since the petitioner is in full knowledge about the show cause notice and the allegations contained therein, the petitioner shall submit its reply by 18.11.2026 before the second respondent;

(d) The second respondent shall fix a date of hearing in the 2nd week of December, 2026 and thereafter proceed to pass an order strictly in accordance with law without any delay;

(e) The benefit of the order will stand attracted and applicable to the petitioner, in case, the petitioner deposits Rs. 5,000/- as a cost to the respondents through the usual and the normal method which is applicable by 13.11.2026.

12. Any observations made in this order would not be construed to be on merits and the respondent No. 2 shall pass an order strictly in accordance with law, without being obsessed or influenced by any of the observations made hereinabove.

13. The orders so passed today on the basis of the consent of the parties, thus, it would not be treated to be a precedent.

14. With the said observations, the present petition stands **disposed of**.

November 5, 2026
Rajesh

(Vikas Budhwar,J.)

Digitally signed by :-
RAJESH KUMAR
High Court of Judicature at Allahabad