

**Court No. - 39**

Neutral Citation No. - 2024:AHC:75434-DB

**Case :-** WRIT TAX No. - 693 of 2024

**Petitioner :-** M/S Kalidas Medical Store

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Ajay Kumar Yadav, Siddharth Yadav

**Counsel for Respondent :-** C.S.C.

**Hon'ble Saumitra Dayal Singh, J.**

**Hon'ble Donadi Ramesh, J.**

1. Heard Shri Ajay Kumar Yadav along with Shri Siddharth Yadav, learned counsel for the petitioner and Shri Ankur Agarwal, learned Standing Counsel for the State.

2. Challenge has been raised to the adjudication order dated 28.12.2023 passed under Section 73(9) of the U.P. G.S.T Act, 2017. Two objections have been raised. First, it has been submitted that the adjudicating authority has traveled beyond the scope of adjudication notice inasmuch as against show cause notice issued proposing to create demand of GST Rs.14,45,845.98/-, the impugned order has created demand of Rs.16,50,391.95/-.

3. That is described as a clear violation of Section 75(7) of the Act. Second, it has been submitted, the essential requirements of rules of natural justice have been violated inasmuch as the petitioner was not given reasonable opportunity of personal hearing. The date fixed for personal hearing was the same as the date fixed for filing of reply. In that regard reliance has been placed on **Writ Tax No.303 of 2024, Mahaveer Trading Company Vs. Deputy Commissioner State Tax and Another.**

4. The above facts are not in dispute. Therefore, no useful purpose may be served either in keeping the present petition or calling for a

counter affidavit or relegating the petitioner to the forum of appeal. Once the Act requires by way of a mandatory provision that the demand arising under an adjudication order may not exceed the demand for which show cause notice may have been issued, there is no room to entertain any doubt as to that. Also, rules of natural justice are far too well established to allow any exception to be made in that regard. Unless, the petitioner had been put to notice with respect to the demand proposed to be created by the adjudication order and unless he had been given adequate opportunity to present his case, the order that may arise may remain procedurally defective.

5. Accordingly, the writ petition stands **disposed of** with the following directions:-

(i) The order dated 28.12.2023 is set aside.

(ii) The petitioner may treat the impugned order as the final notice.

(iii) It may submit its further reply thereto within a period of three weeks. In that regard, it may remain open to the petitioner to raise all jurisdictional and merit issues. Subject to such compliance made, the adjudicating authority may fix a date for personal hearing with at least 15 days notice to allow the petitioner to be prepared on all counts. The petitioner undertakes to appear before the adjudicating authority on the dates that may be fixed. Accordingly, appropriate reasoned order may be passed thereafter.

**Order Date :- 29.4.2024**

A Gautam

**(Donadi Ramesh,J.) (S.D. Singh,J.)**