

**HIGH COURT OF TRIPURA
AGARTALA
W.P.(C) 549/2022**

M/S Gemini Distilleries (Tripura) Pvt. Ltd.

Having its registered office at:- Industrial Growth Centre, Khayerpur,
Agartala, West Tripura, 799008. CIN-U15520TR1999PTC013559,
represented by its General Manager (Operation) and Authorized Signatory
Shri Nawal Mishra, S/o Shri Yugeshwar Mishra

.....**Petitioner**

-VERSUS-

1. The State of Tripura, represented by the Secretary, Government of Tripura, Department of Finance, Civil Secretariat, P.O. Agartala Secretariat, District- West Tripura, PIN-799010.

2. The Superintendent of Taxes, Government of Tripura, Charge VIII, Kar Bhawan, Palace Compound, Agartala, West Tripura, PIN- 799001.

....**Respondents**

For Appellant (s) : Mr. SM Chakraborty, Sr. Advocate

Ms. A. Pal, Advocate, Advocate

For Respondent(s) : Mr. D. Bhattacharjee, GA

Mrs. NC Saha, Advocate

Date of hearing & delivery

of judgment & order : **02.05.2023**

Whether fit for reporting: **Yes**

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (ORAL)

Heard learned counsel for the parties.

2. The writ petitioner is aggrieved by the penalty of Rs. 2,73,800.30 imposed under Section 53 of the TVAT Act, 2004, by the impugned order of assessment dated 30.03.2022 passed by the respondent no. 2, Superintendent of Taxes, Charge VIII, Agartala, Tripura (W).

3. The instant proceedings were initiated under Section 31(1) of the TVAT Act, 2004, for the assessment year 2016-17. It is not in dispute that

the petitioner's turnover was above Rs. 40 lakhs, and the accounts were to be audited in terms of Section 53 of the TVAT Act, 2004, but it is the contention of the petitioner that in the absence of a prescribed format as per Section 53(1) of the Act, 2004, the petitioner could not be made liable for penalty on failure to submit the audited report within the prescribed time. Reliance is placed on a decision of this court in **WP(C) 1106 of 2019** and other analogous writ petitions of the same petitioners [**Pankaj Behari Saha vs. State of Tripura & ors**] vide judgment dated 26.04.2021. The other ground urged by learned senior counsel for the writ petitioner is absence of notice before imposition of penalty which is in teeth of the provisions of Section 53(3) of the Act, 2004, and in violation of principles of natural justice as well.

4. Learned GA for the respondents-State, Mr. D. Bhattacharjee, has at the outset drawn the attention of this court to the letter dated 15.12.2020 (Annexure A to the counter affidavit) submitted by the Director of the petitioner-company before the respondent no. 2 regarding submission of audit reports for the year 2015-16 to 2018-19. It is pointed out from the said letter that the petitioner did not take any plea of absence of prescribed format under the Rules for delayed submission of the audited reports for the relevant assessment years 2015-16 to 2018-19, which includes the present assessment year in question 2016-17. The petitioner has also not shown that for previous assessment years such a plea was taken and that no audited returns were submitted in absence of a prescribed format. However, learned

GA has not been able to dispute that the imposition of penalty has been without any notice or reasonable opportunity to the petitioner-dealer of being heard. Learned GA has informed that such a format has been prescribed in the year 2021 vide notification dated 07.12.2021 issued by the Finance Department, (Taxes and Excise) State of Tripura.

5. Learned senior counsel for the petitioner has in reply pointed out from the assessment order that the Assessing Officer has clearly recorded that the company had filed all returns under Section 24 of the TVAT Act, 2004 on monthly basis but return for the month of April, 2016 was submitted after a delay of 1 day for the A.Y. 2016-17 (detail in return statement). It is submitted that had an opportunity been granted to the petitioner by issuing proper show-cause notice, delay, if any, could have been well explained. He has summarized the grounds of challenge to violation of principles of natural justice and absence of prescribed format for filing the audited returns in terms of Section 53(1) of the Act, 2004. It is further pointed from the judgment rendered by this court in WP(C) 1106 of 2019, that such plea of filing of audited report without a prescribed format for the subsequent year 2018-19 in the said case has not been treated as an estoppel being a purely legal contention. Learned senior counsel for the writ petitioner has categorically submitted that the petitioner accepts the rest of the assessment order and is ready to pay the tax liability imposed upon him.

6. Having heard the submissions of learned counsel appearing for the parties, and having gone through the relevant materials pleaded from the

record, we are of the considered view that the penalty imposed upon the petitioner for violation of Section 53(1) of the TVAT Act, 2004 suffers from lack of proper notice and absence of reasonable opportunity of being heard, as is required under Section 53(3) of the Act, 2004. A perusal of the assessment order clearly shows that the proceedings were initiated under Section 31(1) of the TVAT Act, 2004, but no separate notice was issued under section 53(1) of the Act, 2004 before imposition of penalty.

7. As such, without going into the other issue of absence of prescribed format for submission of audited return in terms of Section 53(1) of the Act, 2004, the impugned penalty imposed upon the petitioner amounting to Rs. 2,73,800.30 vide order dated 30.03.2022 (Annexure 3 to the writ petition) is quashed. However, it is made clear that except the penalty part, the rest of the assessment order remains intact. Liberty is granted to the respondent no. 2, to take a fresh decision on the question of imposition of penalty after proper notice and opportunity of being heard to the petitioner in accordance with law.

8. The writ petition stands allowed in the manner and to the extent indicated above.

(ARINDAM LODH),J

(APARESH KUMAR SINGH), CJ