**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

MONDAY, THE TWENTY FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE P. SAM KOSHY

THE HONOURABLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION NO: 12527 OF 2023

Between:

M/s. Haritha Bio Products India Pvt Ltd, 8-2-603/1/27, Road No.10, Raghava Pride, Krishna puram Street , Banjara Hills, Hyderabad-500001 Rep. by its Managing Director Mr. K. Srinivas Reddy.

...PETITIONER

AND

1. The Assistant Commissioner (ST), Hyderguda -Ashok Nagar Circle, Abids Division, Hyderabad.
2. The Chief Commissioner of State Tax, Government of Telangana. Commercial Taxes Complex, M.J.Road, Nampally, Hyderabad.
3. State of Telangana, Rep. by its Principal Secretary (Revenue)(CT) Department, Secretariat Buildings, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Mandamus or any other appropriate writ or order or direction declaring the impugned penalty order passed by the 1st respondent in Form VAT 203 dated 6-4-2023 invoking power under Section 51(1) of TVAT Ac 2005 and the order in Form VAT 205 dated 6-4-2023 demanding penal interest invoking power under Section 22(2) of TVAT Act 2005, as illegal, arbitrary, high handed, contrary to the provisions of the Act and in violation of principles of natural justice and set aside the same and declare that the petitioner is not liable for the disputed penalty and penal interest as demanded by the 1st respondent since the delay in payment of tax cannot be attributed to the petitioner.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings including any recovery proceedings through coercive measures in pursuance of the impugned proceedings of the 1st respondent in Form VAT 203 dated 6-4-2023 and the order in Form VAT 205 dated 6-4-2023 pending disposal of the Writ Petition, as otherwise the Petitioner will be put to severe loss and hardship.

Counsel for the Petitioner: SRI V. SIDDHARTH REDDY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION No. 12527 of 2023

O R D E R: (per Hon'ble Sri Justice ***P.SAM KOSHY***)

The instant writ petition has been filed assailing two orders, which were passed on 06.04.2023. One being an order of payment of penalty under Section 51(1) of the T.V.A.T. Act, 2005 (for short 'the Act of 2005') and the other being a demand of penal interest under Section 22(2) of the Act of 2005.

2. So far as the challenge to the penalty part under Section 51(1) of the Act of 2005, the learned counsel for the petitioner out rightly assails the same to be in direct contravention to the requirement of law under Act of 2005. The learned counsel for the petitioner took us through the provision of Section 51(1) of the Act of 2005. The proviso clause to the said Section requires that before levying penalty, the authority prescribed shall give the dealer a reasonable opportunity of being heard. It is necessary at this juncture to emphasize the word "shall" in the proviso clause which makes issuance of a notice before imposing penalty mandatory.

3. Upon instructions, the learned counsel for the department submits that since there was a delay in the payment of tax by the petitioner, the penalty part became automatically applicable and it was under said circumstances that the order under Section 51(1) of

the Act of 2005 for payment of penalty was invoked. Nonetheless, the learned counsel for the State submits that upon instructions, it reveals that the notice as is required under proviso clause (2) under Section 51(1) of the Act of 2005 does not seems to have been issued.

4. As has been held earlier, once when the law makers have used the terminology "shall" in the proviso clause requiring the prescribed authority for issuance of a notice before an order of penalty is passed, it becomes mandatory for the authority concerned to issue notice. Non-issuance of notice and passing an order of penalty, thus, perse would be in contravention to the aforesaid statutory provisions, and the order of raising a demand for penalty, therefore, would be unsustainable in the eye of the law.

5. Coming to the second order under challenge i.e., order, dated 06.04.2023 for payment of penal interest, invoking the provision under Section 22(2) of the Act of 2005. The learned counsel for the petitioner has in addition to the same being in contravention to the principles of natural justice, submits that it is a case in fact there has been no deliberate delay on the part of the petitioner in payment of tax. According to the petitioner on account of the introduction of the G.S.T law, the petitioner and similarly placed other tax payers were finding it difficult in depositing of the tax.

According to the petitioner, it is not a case where the petitioner at any point of time had tried to evade the payment of tax, rather, they had made the representations before the authorities concerned expressing their inability in making payment for tax. It was only thereafter that the respondents had passed an order facilitating the petitioner to deposit the tax, and immediately the petitioner had made all the requisite deposits. Therefore, the non-payment of tax within time was not on account of fault of the petitioner, but was on account of the new system that was introduced and for which the petitioner should not be fastened with the liability of payment of interest.

6. To this, the learned counsel appearing for the State submits that under the new Act itself, it is specifically mentioned that in case the payment of tax is not made within the stipulated period, then the demand of interest on the said tax amount automatically stands added hence, the petitioner would be required to pay interest also on the tax amount. He further contends that before issuance of the demand notice for payment of interest, the law itself does not stipulate for issuance of notice, therefore, it cannot be said that the non-issuance of the said notice of payment for demand of interest is violation of principles of natural justice.

7. All said and done, if we look into the contentions and the pleadings of the Writ Petition, there is categorical and specific averment on the part of the petitioner that because of the introduction of the G.S.T. Law, the petitioner and other similarly placed tax payers were having difficulty in making payments under the previous law i.e., V.A.T. Act, and that the petitioner had been pursuing the representations before the authorities concerned seeking their intervention facilitating the petitioner for the payment of tax lying with the petitioner. There was no response to the same and finally it was the department which had passed necessary orders facilitating the petitioner to make payments towards tax.

8. Under the given factual circumstances of the case, the petitioner was liable to pay the interest also on the delayed payment was accepted which ought to have been considered by the authorities by issuance of notice, so that the petitioner would have got an opportunity to render their explanation. In the absence of any such steps, the issuance of the order for payment of interest under Section 22(2) of the Act, 2005 also warrants interference by this Court under the Writ jurisdiction. We are of the considered opinion that since for the penalty part when the matter already has been ordered to be remanded back, let the authorities to issue a notice to the petitioner also so far as why the interest should not be levied on them for the delayed payment of tax under the Act of

2005 and after calling upon explanation of the petitioner, appropriate decision on its own merits be taken at the earliest.

9. The Writ Petition, thus, stands allowed and the impugned orders, dated 06.04.2023, both under Section 51(1) of the T.V.A.T. Act, 2005 and under Section 22 of T.V.A.T. Act, 2005 are set aside. The authorities concerned are directed to grant an opportunity of hearing to the petitioner on both counts and pass fresh orders in accordance with law.

10. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

Miscellaneous applications pending, if any, shall stand closed.

SD/- MOHD. SANAULLAH ANSARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner (ST), Hyderguda -Ashok Nagar Circle, Abids Division, Hyderabad.
2. The Chief Commissioner of State Tax, Government of Telangana. Commercial Taxes Complex, M.J.Road, Nampally, Hyderabad.
3. The Principal Secretary (Revenue)(CT) Department, State of Telangana, Secretariat Buildings, Hyderabad.
4. One CC to SRI V. SIDDHARTH REDDY, Advocate [OPUC]
5. Two CCs to GP FOR COMMERCIAL TAX, High Court for the State of Telangana. [OUT]
6. Two CD Copies

BN
GJP
Pmc.

HIGH COUR"

DATED:21/08/2023

ORDER

WP.No.12527 of 2023

ALLOWING THE WRIT PETITION
WITHOUT COSTS

(9) PMG,
5/9/23.