IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 21356 of 2016 (O&M)
Date of decision: 10.11.2016

M/s Jai Shree Ispat Udyog ..... Petitioner

vs

State of Punjab and others ..... Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

Rajesh Bindal, J.

Reply filed on behalf of the respondents in Court is taken on record. Copy furnished to counsel for the petitioner.

The grievance of the petitioner is that without supplying copies of the orders levying penalty to the petitioner, the bank guarantees furnished at the time of release of goods, were encashed. Unless copy of the order is supplied and a demand notice is issued to the petitioner, no recovery could be effected. Learned counsel for the petitioner further referred to an order passed by this Court in CWP No.20878 of 2016 –M/s Bhavika Overseas vs. State of Punjab and another, decided on 4.10.2016, where the Excise and Taxation Commissioner, Punjab accepted the above procedure to be followed by the Department.

Learned counsel for the State submitted that copies of the orders were sent to the petitioner by post, however, those could not be served, as envelop was received back unserved. Certified copies thereof have been supplied to the counsel for the petitioner in Court today. He did not dispute the fact that the demand notices were not issued in pursuance to the orders levying penalty for deposit of demand raised.

After hearing learned counsel for the parties, in our opinion, as far as the grievance of the petitioner regarding non-supply of copies of the orders levying penalty is concerned, the same stands satisfied, as the copies have been supplied to counsel for the petitioner in Court today.

As far as encashment of bank guarantees furnished by the petitioner at the time of release of goods is concerned, in our opinion, neither copies of the orders levying penalty were supplied nor any demand notices were served requiring the petitioner to deposit the amount within certain specific time.

The Excise and Taxation Commissioner while appearing in this Court in M/s Bhavika Oversea's case (supra) had stated that after the order is passed, demand notice shall be issued to the parties concerned and only after the time granted for payment thereof as per the notice will expire that process for recovery shall be initiated. In the case in hand, the procedure is totally reverse. The copies of the orders are lying in the file of the Department and no demand notice was issued. As a result, the petitioner was not able to pursue the remedy of appeal and pray for interim stay. However, bank guarantees were encashed.

For the reasons mentioned above, we allow the writ petition. The respondents are directed to refund the amount of bank guarantees encashed on petitioner's furnishing fresh bank guarantee for the same amount. The amount shall be refunded immediately after the furnishing of fresh bank guarantee by the petitioner. The department shall be at liberty to follow due process of law for recovery of the amount due.

(Rajesh Bindal)
Judge

10.11.2016
sharmila

(Harinder Singh Sidhu)
Judge

Whether speaking /reasoned Yes/No

Whether Reportable Yes /No