

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23347 of 2016 (O&M)

Date of Decision: 17.11.2016

M/s Sus Agro Foods India Pvt. Ltd.

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. J.S. Bedi, Advocate,
Mr. Chetan Jain, Advocate and
Mr. Ashutosh Vaid, Advocate
for the petitioner.

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

RAJESH BINDAL,J.

The grievance of the petitioner is that the bank guarantees furnished by the petitioner at the time of release of goods have been encashed without even supplying copy of the order after levy of penalty. At the time of release of goods, the petitioner had furnished two bank guarantees of the value of ₹ 3,11,475/- and ₹ 1,03,825/- being 75% and 25% of the amount of penalty which could be levied. He submitted that recovery could be effected only after supply of order and service of demand notice.

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.

On the other hand, learned counsel for the State submitted that copy of the order was sent to the petitioner. However, the same was not served. He further submitted that copy shall be supplied to the petitioner. He did not dispute the fact that demand notice was not issued in pursuance to the order levying penalty, for deposit of the demand raised.

After hearing learned counsel for the parties, we are of the opinion that the grievance of the petitioner regarding non supply of the copy of the order is satisfied as the counsel for the State submitted that copy shall be supplied to the petitioner.

As far as encashment of bank guarantees furnished by the petitioner at the time of release of goods is concerned, in our opinion, as neither copy of the order levying penalty was supplied nor any demand notice was served requiring the petitioner to deposit the amount within certain specific time, encashment of bank guarantees cannot be justified.

The Excise and Taxation Commissioner while appearing in this Court in M/s Bhavika Overseas' 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 followed is totally reverse. Copy of the penalty order is yet to be supplied to the petitioner but the bank guarantees furnished have already been encashed. As a result the petitioner was even unable to avail of his remedy of appeal and seek interim stay.

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 guarantees for the same

amount. The amount shall be refunded immediately after the furnishing of fresh bank guarantees by the petitioner. The department shall be at liberty to follow due process of law for recovery of the amount due.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

17.11.2016
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Whether speaking/reasoned	Yes/No
Whether Reportable:	Yes/No