

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23465 of 2016 (O&M)

Date of Decision: 17.11.2016

M/s Alpha Design Technologies Private Limited

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. J.S. Bedi, 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 issuing demand notice after levy of penalty. Copy of the order levying penalty was served, against which the petitioner preferred statutory appeal. At the time of release of goods, the petitioner had furnished two bank guarantees of the value of ₹ 12,16,348/- and ₹ 4,05,450/-being 75% and 25% of the amount of penalty which could be levied. As deposit of 25% of the amount of demand is pre-condition for entertainment of appeal, though such a condition can be waived off, the petitioner does not dispute encashment of bank guarantee to that extent. However, being without any demand notice, encashment of bank guarantee to the tune of ₹ 12,16,348/- is illegal.

On the other hand, learned counsel for the State did not dispute the fact that without issuing demand notice to the petitioner for recovery of the amount of penalty levied, the bank guarantees were encashed.

After hearing learned counsel for the parties and considering the submissions noticed above, we are of the view that the encashment of bank guarantee furnished by the petitioner to the tune of ₹ 12,16,348/- i.e. 75% of the demand raised cannot be legally sustained, as admittedly there was no demand notice issued to the petitioner to deposit the penalty levied, only copy of the order was supplied, against which the petitioner had filed statutory appeal. Encashment of bank guarantee to the tune 25% of demand raised is not disputed, as that amount was required to be paid for entertainment of appeal.

For the reasons stated above, the present petition is allowed. The respondents are directed to refund the amount of ₹ 12,16,348/- to the petitioner subject to its furnishing of fresh bank guarantee for the same amount. The amount shall be refunded immediately after furnishing of 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

(HARINDER SINGH SIDHU)
JUDGE

17.11.2016
reema

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No