

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No. 9176 of 2016 (O&M)

Date of Decision: 13.06.2016

Adhunik Crop Care Private Limited

--Petitioner

Versus

Union of India & others

--Respondents

**CORAM:- HON'BLE MR.JUSTICE M.JEYAPPAUL.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. Jagmohan Bansal, Advocate for the petitioner.

Mr. Sukhdev Sharma, Advocate for respondents.

M.JEYAPPAUL.J

This writ petition is filed praying for modification of the communication dated 13.4.2016 (Annexure P-14) and communication dated 25.4.2016 (Annexure P-16), whereby respondent no.4 has issued a direction to the writ petitioner to furnish cash security/bank guarantee equivalent to 25% of the value of goods apart from furnishing B-11 bond.

Learned counsel appearing for the petitioner referring to a decision of this Court in ***Century Metal Recycling Pvt. Ltd. Vs. Union of India, 2009 (234) E.L.T. 234 (P&H)*** submitted that similar condition imposed by the Central Excise & Customs Department was nullified by a Division Bench of this Court. The operative portion of the above decision reads as follows:-

“17. Accordingly, we partly allow this petition and direct the respondent No.2 to forthwith return the amount deposited by the petitioners and to release the goods on furnishing undertaking in terms identical to the terms in Form B-11 prescribed under Rule 20 of the Central Excise Rules without any bank guarantee or cash security.”

The learned counsel appearing for the petitioner also

brought to our notice that as bank guarantee for future final penalty was insisted upon by the department, the writ petitioner could not take custody of the goods and as a result of which, part of the goods, namely insecticides have become time barred.

Learned counsel appearing for the respondent department vehemently submitted that there was a total evasion of duty by the petitioner and therefore the above decision will not apply to the case in hand.

Firstly we find that part of the goods seized by the department has become trash on account of the fact that the petitioner could not furnish the bank guarantee as sought by the department. For evasion of duty, the department is at liberty to initiate both criminal as well as civil action as per law.

Relying upon the decision of this Court in ***Century Metal Recycling Pvt. Ltd.*** (supra), we are pleased to modify the directions issued by the department.

The goods which are lying seized in the factory premises/godown of the petitioner be released to the petitioner on deposit of the duty in advance and on furnishing B-11 bond towards future final penalty. We make it clear that the department shall not insist for bank guarantee of 25% of the value of goods.

Writ petition is disposed of accordingly.

(M.JEYAPPAUL)
JUDGE

13.06.2016
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(TEJINDER SINGH DHINDSA)
JUDGE