IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.328 of 2019
Date of decision: 19.3.2019

Ambala Foods Private Limited

……Petitioner

Vs.

The State of Haryana and others

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.K.Yadav, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the order dated nil Annexure P.9 whereby the representation of the petitioner-company dated 12.10.2018, has been rejected. Further prayer has been made for a direction to the respondents to pay back/refund ₹ 5 lacs alongwith interest at the rate of twelve percent per annum which had been got released from the bank account of the petitioner company.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a private limited company. It is having a manufacturing unit in Industrial Estate Ambala Cantt. The petitioner company had an overdraft account with Kotak Mahindra Bank Limited through which it was availing and managing requirement of working capital for its business wherein payments from

customers were being received and thereafter the same were being made to its vendors. On 5.10.2018, Annexure P.2, the petitioner company received an email from the Bank that status of company's account had been changed from 'No Freeze' to 'Debt Freeze' on account of Government order. The company contacted the Bank and requested for conveying the reasons. The Bank informed the company vide letter dated 10.10.2018, Annexure P.5 that it had taken the action on the basis of letter dated 3.10.2018, Annexure P.4 from Excise and Taxation Officer, Ambala City wherein the Bank was directed not to release the payment from the account of the petitioner company as the company had stood surety of a dealer Gayatri Steel Traders against which dues of VAT and CST of a sum of ₹ 7,87,550/- were outstanding. Since the petitioner company had never given any surety for the said Trader, it submitted a representation to respondent No.2 to withdraw his direction issued vide letter dated 3.10.2018 to the Bank as no such resolution was ever given by the Company to the Excise and Taxation department. Since the petitioner company was suffering business losses daily due to seizure of its bank account and the Excise and Taxation Officer was not deciding its representation, the petitioner company filed CWP No.28937 of 2018 in this Court. Vide order dated 16.11.2018, Annexure P.7, the said writ petition was disposed of with a direction to respondent No.2 to take a decision on the representation of the petitioner company by passing a speaking order and affording an opportunity of hearing to it. Thereafter, respondent No.2 vide letter dated 22.11.2018 asked the petitioner company to appear with written submissions. Accordingly, the petitioner company submitted written submissions stating that it had never given any surety for M/s Gayatri Steel Traders, Ambala City and no resolution in this regard was ever given to the department. Thereafter, respondent No.2 vide order dated nil, Annexure P.9

rejected the representation of the petitioner company and got released an amount of ₹ 5 lacs from its account. According to the petitioner company, the said payment from its bank account had been got made by invoking the alleged surety submitted by Shri Vinod Kumar in his individual and personal capacity. Shri Vinod Kumar was one of the directors of the petitioner company. He might have stood surety in his personal capacity and without being authorized to give surety by resolution of the petitioner company. Hence the instant writ petition by the petitioner company.

3. In the written statement filed on behalf of respondent Nos. 1 and 2, in para 9 on merits, it has been categorically stated that Shri Vinod Kumar stood surety for ₹ 5 lacs for M/s Gayatri Steel Traders, Ambala City which was duly verified by the Taxation Inspector and accepted by the Excise and Taxation Officer.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner-company submitted that the recovery which had been made from the bank account of the company is arbitrary and illegal.

6. On the other hand, learned counsel for the State tried to justify the action of the respondents by submitting that Shri Vinod Kumar who was Director of the petitioner-company, had stood surety in respect of the liability of M/s Gayatri Steel Traders and it was on this ground that the amount was recovered.

7. After perusing the averments made in the petition, written statement and hearing learned counsel for the parties, we find that the petitioner company itself did not stand surety for M/s Gayatri Steel Traders, Ambala City nor any resolution was given by it to the Excise and Taxation Department. Infact, one of its Directors Shri Vinod Kumar stood surety for

the said firm in his individual and personal capacity for which the petitioner-company cannot be held liable. Moreover, learned counsel for the State was unable to justify the action taken by respondents No.1 and 2 with reference to any statutory provision or to place on record any material in support of its claim. Further, it is well settled that in the absence of any specific provision in the statute, company cannot be held liable for the surety given by its director in his individual and personal capacity. In ***Subhash Goyal vs. State of Haryana and others,*** 2014(4) PLR 7, it was held by this Court that where the petitioner being a director stood surety, the amount can be recovered from him after issuing notice and affording an opportunity of hearing to him in accordance with law.

8. In view of the above, the present petition is allowed and the impugned order dated nil, Annexure P.9 passed by respondent No.2 is set aside. The amount recovered by respondent Nos. 1 and 2 from the petitioner-company on account of the liability of the assessee-M/s Gayatri Steel Traders or the surety Shri Vinod Kumar, Director of the company, be refunded to the petitioner-company forthwith. However, it shall be open to respondents No.1 and 2 to recover the amount from the person liable i.e. M/s Gayatri Steel Traders or its surety Shri Vinod Kumar personally, in accordance with law.

(Ajay Kumar Mittal)
Judge

March 19, 2019
'gs'

(Manjari Nehru Kaul)
Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**