Adhunik Crop Care Private Limited Through Its Director. Vs Union Of India & Ors.

Civil Writ Petition No. 28353 Of 2018(O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 19, 2019

Acts Referred:

Constitution Of India, 1950 â€" Article 226

Hon'ble Judges: Jaswant Singh, J; Sant Paraksh, J

Bench: Division Bench

Advocate: Jagmohan Bansal, Anshuman Chopra

Final Decision: Allowed

Judgement

Jaswant Singh, J

1. The Petitioner, a private limited company, through instant petition under article 226 of Constitution of India is seeking disposal of goods lying seized

in its factory and direction to Respondents to pay value of goods, which have expired and could not be sold due to seizure.

2. The brief facts necessary to adjudicate controversy involved as emerging from record are that the Petitioner is manufacturing insecticides. On

01.10.2015 a team of officers of Directorate General of Central Excise Intelligence (for short Ã¢â‚¬ËœDGCEIÃ¢â‚¬â„¢) searched various premises of

Petitioner and on 17.11.2015 seized stock worth MRP Rs.3.60 Crore which was lying in different godowns as well Ambala Factory of Petitioner. The

Petitioner time and again requested Respondent to release seized stock and Respondent vide letter dated 13.04.2016 ordered to provisionally release

goods subject to payment of duty, furnishing of bond of Rs.2.52 Crore i.e. 70% of MRP and bank guarantee of ` 63,00,688/- i.e. 25% of bond value.

The Petitioner preferred CWP No. 9176 of 2016 challenging said conditions of provisional release and this Court vide order dated 13.06.2016 modified

conditions of provisional release.

3. Mr. Bansal, counsel for the Petitioner contended that on account of seizure and delayed release, the goods in question expired. There was expiry

date of seized goods and on account of seizure, the season for sale was over and before the next season goods became unfit for sale. The Petitioner

to avoid rent after seeking permission from Respondent shifted seized goods from godown to factory and as on today are lying in the factory. The

Petitioner could not sell goods worth MRP Rs.3.2 Crore and Respondent is a responsible for the loss of goods and thus prayer is for awarding market

value of seized goods. Petitioner supported his contention with the judgment of this Court in the case of Grosons Marketing (P) Ltd. Vs Joint Director,

D.G.C.E.I., Ludhiana 2007 (218) ELT 325 (P&H).

4. Mr. Chopra, counsel for the Respondent contended that there was no delay on the part of department. The goods were seized on 17. 11.2015 and

thereafter at the earliest ordered to be released on 13. 04.2016. The Petitioner did not take release and filed writ before this Court and even after

modification of conditions by this court did not avail release and sell goods. There is no lapse on the part of Respondent; and show cause notice dated

9.5.2016 qua confiscation is pending before Adjudicating Authority.

5. Having scrutinized record of the case and heard arguments of both counsel, we find that Respondent-DGCEI seized insecticides which are having

shelf life on account of expiry date. The goods were seized on 17.11.2015 and provisional release order was passed on 13.4.2016 i.e. after the expiry

of 5 months. The release conditions were onerous which this court vide order dated 13.6.2016 modified. The value of goods and the fact that goods

have become unfit for sale is not in dispute. This Court in Grosons case (supra) having noticed judgments of HonÃ¢â‚¬â„¢ble Supreme Court in the case

of Shilps Impex Vs. Union of India 2002 (140) ELT 3 (SC)and Sunderbhai Ambalal Desai Vs. State of Gujarat AIR 2003 SC 638h as held that

Petitioner subject to liability of goods to confiscation will be entitled to payment of value of goods.

6. In our considered view, the Respondent is not solely at fault and responsible for loss of goods as alleged by Petitioner, whereas we find that

Petitioner is also partially responsible. The Respondent like in the case of Grosons Marketing (Supra) cannot be made liable to pay full value of the

goods as Petitioner to some extent is responsible for loss of goods. The Petitioner should and must have sold goods by availing the release as soon as

provisional release order was passed. Thus, we find that Petitioner and Respondent must equally bear loss of value of goods. The Respondent issued

Show Cause Notice dated 09.05.2016 for confiscation of goods which may be still pending for adjudication. We find that determination of question of

confiscation and liabilities in terms of fine/penalty is inevitable prior to payment of value of goods. As per Petitioner goods valued MRP Rs.3.2 Crore

are still lying in the factory. It is apt to notice that the Respondent after granting abatement of 30% has calculated taxable value of goods. Thus, value

of goods in question for determination of loss would be 70% of 3.2 Crore.

7. In view of above findings, we hold that Petitioner is entitled to 50% of value of goods, as aforesaid determined, which are lying in the factory

premises of the Petitioner. The Respondent shall refund in cash 50% of value of goods within one month from the date of receipt of copy of this order

failing which the petitioner shall be entitled to payment of interest at the rate of 9% on the aforesaid amount due from the date of present order till the

date of payment, which the Department would be free to recover from the sanctioning/competent Authority.

It is further directed that the Respondent shall remove and dispose of goods in question (insecticides) lying within the factory premises of the petitioner

within one month from the date of receipt of certified copy of this order and if Respondent fails to do so, the Petitioner shall be at liberty to dispose of

goods in the manner as deemed fit.

Allowed in the above terms.