**(2002) 09 P&H CK 0030**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.W.P. No. 13629 of 2002

Modgill Hosiery Export Private Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

**Date of Decision :** 05-09-2002

**Acts Referred:**
Punjab General Sales Tax Act, 1948 — Section 14B(6)

**Citation :** (2003) 129 STC 52

**Hon'ble Judges :** Virender Singh, J;N.K. Sodhi, J

**Bench :** Division Bench

**Advocate :** Avneesh Jhingan and P.C. Garg, for the Appellant; Salil Sagar, A.A.G., for the Respondent

**Final Decision :** Allowed

## Judgement

N.K. Sodhi, J.—Reply on behalf of respondents Nos. I and 2 has been filed in court today.

2. Petitioner is a registered dealer under the Punjab General Sales Tax Act, 1948 (for short "the Act"). Goods belonging to it were detained by the detaining authority u/s 14-B(6)(i) of the Act. It is not in dispute that the petitioner has furnished a surety bond which was not accepted by the detaining officer. Feeling aggrieved by this order, the petitioner filed an appeal before the Deputy Excise and Taxation Commissioner who dismissed the same. It is against these orders that the present petition has been filed under Article 226 of the Constitution with a grievance that the detaining officer has no jurisdiction to continue with the detention of the goods once a surety bond is furnished. The prayer made in the writ petition is for a mandamus directing the Excise and Taxation Officer, Shamboo (respondent No. 2) to release the goods forthwith.

3. In response to the notice of motion, the respondents have put in appearance through the learned Additional Advocate-General, Punjab. It is admitted by the respondents that the petitioner had furnished a surety bond but that bond was

not accepted because according to the learned Additional Advocate-General the department usually requires the dealers to furnish a bank guarantee because experience of the department is that the dealers after furnishing surety bonds do not appear before the detaining authority.

4. We have heard counsel for the parties and are of the view that the stand taken by the respondents is wholly untenable. It is common case of the parties that the goods were detained u/s 14-B(6)(i) of the Act. This section reads as under :

"If the officer in-charge of the check-post or information collection centre or any other officer as mentioned in Sub-section (2), has reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in Sub-section (2) or Sub-section (4), or the driver has not stopped the vehicle as required under Sub-section (3) or that the person transporting the goods is attempting to evade payment of tax, he may, for reasons to be recorded in writing and after hearing the person concerned, order the detention of the goods along with the vehicle for such period, as may reasonably be necessary. Such goods shall be released on furnishing a security or executing a bond with sureties in the prescribed form and manner by the consignor or consignee, if registered under the Act to the satisfaction of the officer detaining the goods and in case the consignor or the consignee is not registered under the Act, then on furnishing a security in the form of cash or bank guarantee or crossed bank draft, which shall be thirty per cent of the value of the goods, rounded up to the nearest hundred."

5. A plain reading of the aforesaid provisions makes it clear that the detaining officer is duty bound to release the goods when the registered dealer furnishes a surety bond. The detaining officer cannot compel a registered dealer to furnish bank guarantee or cash security. Such securities are only to be obtained from persons who are not registered as dealers under the Act. In this view of the matter, the impugned orders cannot be sustained.

6. In the result, the writ petition is allowed and the orders dated August 14, 2002 and August 21, 2002 (annexures P-3 and P-4 with the writ petition) quashed. Respondent No. 2 is directed to release the goods forthwith.

 