

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CEA-46-2014

Date of decision:- 23.03.2015

M/s S.B. Packaging Ltd., Rohtak

...Appellant

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Rajiv Agnihotri, Advocate,
for the appellant.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This is an appeal against the order dated 13.08.2013 of the Customs, Excise and Service Tax Appellate Tribunal (in short CESTAT) dismissing the petitioner's (appellant herein) application for recalling the order of the CESTAT dated 31.08.2005 by which the petitioner's appeal was dismissed for non-compliance of an order dated 23.06.2005 directing the petitioner to deposit the entire amount of duty. The order dated 31.08.2005 was challenged by the petitioner by filing CEA No. 144 of 2006. The said CEA was dismissed by an order and judgement dated 30.01.2007. The Division Bench of this Court held that the order of the CESTAT did not suffer from any legal infirmity and that the petitioner had been able to delay compliance of the order dated 23.06.2005 directing it to deposit the amount payable. The petition for special leave against this order and judgement was dismissed by an order of the Supreme Court dated 12.07.2007.

2. Thereafter, the BIFR sanctioned a scheme in respect of the petitioner. The petitioner contends that the BIFR had directed the CESTAT to restore the said appeal and to hear the same on merits without insisting on any pre-deposit of dues and to exempt the petitioner from payment of any

interest or penalty. The petitioner further contends that the BIFR also directed the CESTAT to exempt it from payment of any interest or penalty in the case pending before it.

3. It is important to note that the order of the BIFR merely records that the petitioner had requested the BIFR for issuing the said directions to the CESTAT. The order does not grant the petitioner's request. There is nothing on record that indicates that the BIFR had granted the request. In other words there is nothing on record to suggest that the BIFR directed the CESTAT in terms of the request of the petitioner. The appeal is, therefore, liable to be dismissed on this ground itself.

4. The order sought to be recalled attained finality by virtue of the appeal against the said order having been dismissed by the order and judgement of the Division Bench of this Court and by virtue of the petition for special leave against that order having been dismissed by the Supreme Court.

5. The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

23.03.2015

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