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

**CUSAP-12-2022 (O&M)**

**Reserved on: 17.09.2024**

**Date of Pronouncement: 20.09.2024**

COMMISSIONER OF CUSTOMS LUDHIANA

. . . . Appellant

Vs.

ROYAL INDUSTRIES LTD.

. . . . Respondent

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**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Sourabh Goel, Sr. Standing Counsel, Advocate  
for the appellant/Revenue.

Mr. Anil Mehta, Advocate  
for the respondent/assessee.

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**SANJEEV PRAKASH SHARMA, J.**

1. Present appeal has been preferred under section 130 of the Customs Act, 1962 against the order passed dated 03.01.2022 passed by Customs, Excise and Service Tax Appellate Tribunal (CESTAT), whereby it has allowed the restoration of appeal after the respondent (appellant therein) has complied with the condition of pre-deposit.
2. Learned counsel, Mr. Sourabh Goel, submits that the Tribunal has erred in restoring the appeal. He submits that vide stay order dated 04.06.2012, the respondent was asked by the CESTAT, Principal Bench, New Delhi to make a pre-deposit of Rs.3.30 crores as a condition for



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hearing of their appeal against the order passed by the Commissioner of Customs and Excise whereby the Commissioner had confirmed the demands of duties and imposed penalties as against the company as well as its directors. The CESTAT had, after considering the submissions raised by both the parties, directed the respondent-company to deposit Rs.80 lakhs towards demand within period of 08 weeks from that day. The penalty imposed upon the Managing Director Harbhajan Singh Sandhu was dispensed with, and the other two parties, namely Harman Fashions Pvt. Ltd. and Vinod Garg were directed to deposit amount of Rs.1.25 lakhs and Rs.2 lakhs respectively as a condition of hearing their appeals.

3. On 13.10.2014, the appeal was again taken up for hearing. The Tribunal noticed that the Royal Industries had not deposited the amount as was directed vide order dated 04.06.2012. It was also pointed out that the company was declared sick and BIFR proceedings had been initiated. It also noticed that one of the Director Vinod Garg had deposited the amount. At the same time, it was informed that the interim order dated 04.06.2012 was challenged before the High Court. However, all the appeals were dismissed on 13.10.2014 for non-compliance of the provisions of section 35F of the Central Excise Act and non-compliance of the interim order dated 04.06.2012.
4. The company Royal Industries filed a Custom Appeal.10 of 2016 before the High Court of Punjab and Haryana challenging the order



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dated 13.10.2014, which too was dismissed on the ground of delay of 450 days.

5. On 20.08.2020, the respondent made a deposit of Rs.4 crores in compliance of the interim order passed by the Tribunal dated 04.06.2012, and filed an application for restoration of appeal on 18.05.2021 and also filed application for condonation of delay. The CESTAT, after considering the case of *Kirtikumar Jawaharlal Shah vs. UOI- 2014 (304) ELT 641 (SC)* and the decision of the Tribunal in *S.B. Packaging Ltd. vs. CCE 2019 (370) ELT 552*, condoned the delay in filing application for restoration of appeal as the amount of Rs.4 crores was deposited as a pre-deposit.
6. Learned counsel appearing for the Revenue submits that once the High Court in writ petition had upheld the order of dismissal of appeals, there was no reason to allow the restoration of the said appeal on the basis of interim order dated 04.06.2012.
7. Learned counsel has relied on judgments in *Commissioner of Customs vs. Lindt Exports, 2012(278)ELT 587 Del*, *Lindt Exports vs. Commissioner, 2013(9) TMI 1102 SC*, *Picaso Overseas Mumbai vs. CESTAT, 2016(4) TMI 183 Madras*, *Jai Bharat Steel Co. vs. Commissioner of Customs, 2013(10) TMI 124 Gujrat*, and *Kissan Gramudyog Sansthan vs. Commissioner of Central Excise, 2014(11) TMI 538 Allahabad*.
8. We have considered the submissions. It is a case where the respondent-company was admittedly declared as sick company under the Sick



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Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred as SICA) by the Board of Industrial and Financial Reconstruction (BIFR) vide order dated 12.09.2005.

9. Thus, when the interim order was passed on 04.06.2012, the company was a sick company under BIFR. It appears to have restored its position and had become functional much later, and therefore it could not have deposited the amount while under control of BIFR. The judgments cited by the appellant will therefore have no application to the present case.
10. This Court also notices that one of the Directors had been exempted from pre-deposit, and similarly another Director Vinod Garg was found to have made the pre-deposit. Their appeals therefore could not have been dismissed on the ground of non-deposit. This Court also finds that there is no decision on merits by the appellate body i.e. CESTAT with regard to the demand raised by Commissioner of Customs, nor the same has been adjudicated at any level.
11. The next contention of learned counsel for the appellant that the Tribunal was *functus officio* after 2014, is noted to be rejected. The Tribunal can be said to become *functus officio* only after it decides any appeal on merits. If the appeal has been only dismissed on account of being defective, i.e. due to lack of pre-deposit, it means that the appeal has not been entertained, and therefore such an appeal would have to be treated as lying dormant. While the factum of appeal having been filed would remain on record, since it was not taken up to be heard



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before the condition of pre-deposit being fulfilled, we cannot say that the Tribunal has become *functus officio*, and it would have the jurisdiction to hear the appeal on merits. In fact, the appeal filed by the appellant would be treated to be a stillborn, and it would only become alive after the pre-deposit is made.

12. In this case, we are satisfied that the company was declared as a sick company under the SICA, and therefore its account could not have been operated upon. The earlier order passed by this Court did not take into account the said aspects. We also find that the delay in filing application for restoration of an appeal after 07 years by the company was maintainable before the Tribunal as the company was earlier sick and restored only later.

It also did not take into account that the appeals of the Directors could not have been dismissed on the ground of non-compliance of section 35F of the Act as appeal of Harbhajan Singh was to be heard on merits as pre-deposit had been exempted, and the appeal of Vinod Garg could not have been dismissed as the pre-deposit amount had already been deposited. Be that as it may, even after the pre-deposit was made, the appeal of Vinod Garg was not taken up and would be treated to be pending. Since the appeal of respondent-Royal Industries Ltd. has been dismissed on the ground of non-payment which they have made now and also the same as having been accepted by the appellant, the Revenue cannot be allowed to turn around and challenge the restoration.

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13. Taking into consideration all the aforesaid aspects and after considering the judgments cited supra, we find that the order passed by the CESTAT, Chandigarh dated 03.01.2022, whereby it restored the original appeal for hearing on merits after condition under section 35F of the Act was complied with, does not warrant any interference of this Court, and the same is upheld.
14. The appeal No. CUSAP-12-2022 filed by the Commissioner of Customs, Ludhiana is accordingly dismissed with direction to the appellate authority to decide the appeal on merits.
15. All pending applications also stand dismissed.
16. No costs.

**(SANJEEV PRAKASH SHARMA)**  
**JUDGE**

**(SANJAY VASHISTH)**  
**JUDGE**

**September 20, 2024***Mohit goyal*

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| 1. Whether speaking/reasoned? | <i>Yes/No</i> |
| 2. Whether reportable?        | <i>Yes/No</i> |