

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**  
**CUSTOMS APPEAL BRANCH**

Appeal No. C/538 /2008-540 /2008,557 /2008 - CU[DB]

Date 25/05/2009

Assistant Registrar  
C.E.S.T.A.T, New Delhi

To :  
1. M/S NOVAMET INDUSTRIES, 2. SH. STISH BHALLA, 3. SANGEETA BHALLA  
842/20,  
JAIPURIA BUILDING,  
S.P.MUKERJEE ROAD,  
DELHI-110006.  
M/S NOVAMET INDUSTRIES

Appellant

Vs  
Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No. C/192-195** 2009 CU[DB] dated 21.05.09  
passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax

  
Assistant Registrar  
(Customs Appeal Branch)

**Copy to :**

1. Respondent  
C.C.E. NOIDA  
C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult  
MR.V. LAXMIKUMARAN  
B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029
- 3 S.D.R
- 4 J.C.D.R.
- 5 Bar association, CESTAT, New Delhi
- 6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
- 7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
- 8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai -17
- 9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT. U.P.
- 10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
- 11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
- 12 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070
- 13 Taxmann Allied Service Pvt Ltd., 21/35, West Puniabi Bagh, New Delhi - 110026
- 14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
- 15 LAWCRUX Advisors Pvt Ltd, LAW House, 1-8, Sector - 10, Faridabad 121003 (Haryana)
- 16 Office Copy
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Assistant Registrar  
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI

COURT NO. II

**Custom Appeal No. 538 of 2008**

(Arising out of Order-in-Original No.  
14/Commissioner/Noida/2008 dated 19.3.2008 passed  
by the Commissioner, Central Excise & Customs, Noida)

M/s Novamet Industries

Appellant

Vs.

CC, Noida

Respondent

**Custom Appeal No. 539 of 2008**

Arising out of Order-in-Original No.  
14/Commissioner/Noida/2008 dated 19.3.2008 passed  
by the Commissioner, Central Excise & Customs, Noida)

Smt. Sangeeta Bhalla

Appellant

Vs.

CC, Noida

Respondent

**Custom Appeal No. 540 of 2008**

Arising out of Order-in-Original No.  
14/Commissioner/Noida/2008 dated 19.3.2008 passed  
by the Commissioner, Central Excise & Customs, Noida)

Shri Satish Bhalla

Appellant

Vs.

CC, Noida

Respondent

**Appearance :**

Appeared for Appellant : None

Appeared for Respondent : Shri Sumit Kumar, DR

**AND**

**Custom Appeal No. 557 of 2008**

(Arising out of Order-in-Original No.  
14/Commissioner/Noida/2008 dated 19.3.2008 passed  
by the Commissioner, Central Excise & Customs, Noida)

Shri Vinay Jain

Appellant

Vs.

CC. Noida

Respondent

**Appearance:**

Appeared for Appellant : Shri Piyush Kumar, Advocate  
Appeared for Respondent: Shri Sumit Kumar, DR

**Date of Hearing: 8.5.2009**

CORAM: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER  
HON'BLE MR. RAKESH KUMAR, TECHNICAL MEMBER

Final Order No. C/199 to 195/09 dated.....

**Per D.N. Panda :**

None present for the Appellants, M/s Novamet Industries, Smt. Sangeeta Bhalla and Shri Satish Bhalla. Ld. Counsel Shri Piyush Kumar appears for the Appellant Shri Vinay Jain who is partner of M/s Novamet Industries. Shri Piyush Kumar submits that his client Shri Vinay Jain faced a penalty of Rs.27,10,90,863/-. A common stay order was passed in respect of all the four litigants on 13.10.08. According to him, there was no direction by Tribunal to Shri Vinay Jain for making a pre-deposit.

2. Ld. DR Shri Sumit Kumar submits that all the four litigants were dealt by a common stay order dated 13.10.08. That stay order was before the Hon'ble High

Court of Allahabad. Partial relief was granted by Hon'ble High Court. In spite of that order, the litigants did not comply to the order of Hon'ble High Court. They went to Hon'ble Supreme Court in SLP (Civil) Appeal No. 6544/09. Hon'ble Supreme Court by order dated 30.3.09 extended time by four weeks for making pre-deposit. It was also further ordered by Hon'ble Court that if the amount is not pre-deposited, Tribunal would be entitled to dismiss the appeal. Shri Sumit Kumar, Ld. DR further submits that Shri Vinay Jain was before Hon'ble High Court of Allahabad. But Ld. Counsel Shri Piyush Kumar opposes such submission stating that his client Shri Vinay Jain was neither before the Hon'ble High Court of Allahabad nor before the Apex Court.

3. On 30<sup>th</sup> April 2009 we had occasion to hear Shri Satish Bhalla and Smt. Sangeeta Bhalla appeared in person. They are in Appeal Case No. C/539 and C/540 respectively. On that day, we required both sides to produce certified copy of the order passed by the Apex Court on 30<sup>th</sup> March 09 and passed an order accordingly. We noticed on that day  that 3 (three) Misc. applications were filed by M/s Novamet Industries, Mrs. Sangeeta Bhalla and Shri Satish Kumar Bhalla, before Tribunal after the order dated 30<sup>th</sup> March 09 was passed by Apex Court. These Misc. applications were registered

in Tribunal as M.A. No. 329, 393 and 394 of 2009. These applications were praying for waiver of pre-deposit and to hear the appeals on merit. While passing an order on 30.4.09 we made it clear in terms of para-3 of our order that Tribunal has no scope to consider these applications in view of order of Apex Court passed on 30.3.09.

3.1 Heard both sides and perused the record.

3.2 In absence of certified copy of order passed by Apex Court on 30.3.09, we waited for such copy. We have noticed that the above three Appellants except Shri Vinay Jain had filed review petition before the Hon'ble Supreme Court. In view of the prayer by the three appellants except Shri Vinay Jain on 30<sup>th</sup> April 09, we adjourned the matter to 8.5.09 to ascertain status of the review application before the Hon'ble Supreme Court. There is an application filed by Smt. Sangeeta Bhalla before Tribunal verifying the same on 6<sup>th</sup> May 2009 stating that on receipt of the order dated 30.4.09 passed by Tribunal as aforesaid *by* M/s Novamet industries on 5.5.09, *the* appellant filed an application on 6.5.09 before Apex Court vide Diary No. 35735 for early hearing of its review application. It was also stated in the said application before Tribunal that on 7.5.09 being the day of Election and there were holidays thereafter, there was no scope

to have any order against review petition from Apex Court. There is also no scope for coming up of the review application today (i.e. 8.5.2009) before the Apex Court.

4. The matter having been listed before us today for compliance of the direction of the Hon'ble Supreme Court, noticing that no review order was placed before us, we are bound to follow order of Apex Court passed on 30.3.09. We have extensively gone into the matter while we heard the matter on 30<sup>th</sup> April 2009 and noticed various facts including aforesaid facts brought out before us by an application verified on 6.5.2009 as aforesaid. We have found that order of adjudication was passed on 19.3.08. In the mean time, one year has already passed. But the litigants are before various forums challenging pre-deposit order passed by Tribunal on 13.10.2008. They have not succeeded anywhere so far. Even today also there is no order on the review application filed by the appellants although we granted them time till today (i.e. 8.5.09) after hearing on 30.4.09 following due process of justice.

5. The right of appeal granted to a litigant is conditional under the law. There is no absolute right on the appellant to press for hearing the appeal on merit without

fulfilling condition of pre-deposit. The facts and circumstances of the cases does not suggest whether they have fulfilled the conditions. On this ground alone their appeals call for dismissal. We have noticed that three appellants as aforesaid have been approaching this Tribunal for modification applications after order dated 30.3.2009 was passed by the Hon'ble Supreme Court as aforesaid. We are helpless at this stage to consider prayer of the appellants to hear their appeal on merit. We have also noticed that even case of Shri Vinay Jain does not require any lenient consideration in absence of the condition being fulfilled by the principal appellants as per order passed by Tribunal on 30.10.08. We are not able to trace any material whether Shri Vinay Jain was granted waiver of pre-deposit. Ld. Counsel Shri Piyush Kumar has no evidence to this regard.

6. All the aforesaid observations compels us to dismiss all the four appeals following the ratio laid down by the Apex Court in the case of Vijay D. Meheta - 1988 (4) SCC 402. We order accordingly.

7. While dismissing all these appeals, we make it clear to both sides that we shall be guided by the order or direction of the apex court, if any, that may be passed on the review application before the Hon'ble Court. We shall

carry out such direction as that may be given to us by the Apex Court.

8. When we were in process of completing our dictation of this order, Smt. Sangeeta Bhalla and Shri Satish Bhalla caused their appearance. In view of an order passed on 30.4.09 expressing no scope to entertain Misc. applications filed after Apex Court <sup>order,</sup> those three Misc. applications have also become infructuous in the mean time.

(Dictated & pronounced in open Court)

(D.N. PANDA)  
JUDICIAL MEMBER

(RAKESH KUMAR)  
TECHNICAL MEMBER

RM