

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.05.2010

+ **CEAC 3/2010 & CEAC 4/2010**

+ **CEAC 3/2010**

SATISH BHALLA Petitioner

versus

CUSTOMS EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL Respondent

+ **CEAC 4/2010**

SANGEETA BHALLA Petitioner

versus

CUSTOMS EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL Respondent

Advocates who appeared in this case:

For the Petitioner : Mr G.L.Rawal, Sr Advocate with Mr Rajesh Rawal
For the Respondent : Mr Mukesh Anand

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

CM 9160/2010 in CEAC 3/2010

Allowed, subject to just exceptions.

CM 9161/2010 in CEAC 3/2010
CM 9203/2010 in CEAC 4/2010

The delay in re-filing the appeals is condoned.

The applications stand disposed of.

CEAC 3/2010 & CEAC 4/2010

1. These appeals are directed against the order dated 21.05.2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Custom Appeal Nos. 538/2008, 539/2008, 540/2008 and 557/2008. The said appeals had been filed by M/s Novamet Industries, Smt Sangeeta Bhalla, Shri Satish Bhalla and Shri Vinay Jain, respectively. It is an admitted position that Smt Sangeeta Bhalla is the wife of Shri Satish Bhalla and that Smt Sangeeta Bhalla is also a partner in the firm - M/s Novamet Industries along with Shri Vinay Jain. All the four said persons had filed the above appeals being aggrieved by the order-in-original No 14/Commissioner/Noida/2008 dated 19.03.2008 passed by the Commissioner, Central Excise & Customs, Noida.
2. By virtue of the impugned order dated 21.05.2009, the appeals filed, *inter alia*, by the appellants herein, namely, Smt Sangeeta Bhalla and Shri Satish Bhalla, were dismissed on account of non-compliance of the pre-deposit order.
3. Initially when the said four appeals before CESTAT were filed, the appellants therein had also filed separate stay applications being C/Stay/1413-1415/2008 and 1554/2008 in the said appeals. All the four

applications were taken up for hearing together and were disposed of by a common order No C/308-311/2008 dated 13.10.2008 by CESTAT. The very first paragraph of the said order dated 13.10.2008 clearly indicates that the applications had been filed by M/s Novamet Industries, Shri Vinay Jain partner, Smt Sangeeta Bhalla partner and Shri Satish Bhalla husband of Smt Sangeeta Bhalla who was also working for the said firm (M/s Novamet Industries), for waiver, under Section 35F of the Central Excise Act, 1944 and Section 129E of the Customs Act, 1962, of the requirement of pre-deposit of duties demanded and penalties imposed by the impugned order in original and also for staying the recovery of these amounts.

4. After detailed consideration of the facts and circumstances of the case, CESTAT, by virtue of its said order dated 13.10.2008 passed the following order:-

“We, therefore, direct the appellant company to deposit an amount of Rs.Fifteen crores within a period of eight weeks from the date of this order. This amount is in addition to Rs.One crore fifty lakhs already deposited by them. On depositing this amount within the stipulated period, the requirement of pre-deposit of the balance amount of duties and penalties shall stand waived and the recovery thereof shall be stayed. Compliance to be reported on 19.11.08.”

5. Being aggrieved by the said order passed by CESTAT, the appellants herein, namely, Smt Sangeeta Bhalla and Shri Satish Bhalla along with the firm M/s Novamet Industries filed a common appeal being Central, Excise and Customs Appeal No 9/2009 before the Allahabad High Court. The appeal itself indicated that it was directed against the order dated 13.10.2008 passed by the CESTAT, New Delhi in stay application

Nos C/Stay/1413-1415/2008 and 1554/2008-CU in Appeal No C/538-540, 557/2008-CU[BR], titled M/s Novamet Industries and others vs. Commissioner, Central Excise and Custom Noida directing the appellants therein to deposit a sum of Rs 15 crores. The said appellants also prayed for a direction that CESTAT be directed to hear the appeals on merits by granting complete waiver of pre-deposit. The said appeal was disposed of by the Allahabad High Court with, *inter alia*, the following observations and directions:-

“Considering over all facts and circumstances, we find that interest of justice would be met if the appellant in total deposits a sum of Rs.Ten crores out of which, as stated by the Tribunal Rs.1.5 cores it has already deposited, and, therefore, if it deposits a sum of Rs.8.5 crores within a period of six weeks from today, the requirement of pre-deposit of balance amount of duty and penalty shall stand waived and recovery thereof shall be stayed till the appeal is decided by the Tribunal. The order of the Tribunal impugned in this appeal is modified to the aforesaid extent. We also direct that in case this order be complied with by the appellants and the amount, as aforesaid directed, is paid, the appeal shall also be heard and decided expeditiously by the Tribunal, if possible, within a period of four months from the date of production of certified copy of this order.

We further clarify that any observation in this order shall not be construed as opinion expressed by this Court on merit of the issues subjudice before the Tribunal and it shall decide the matter independently on the basis of the material available before it and applicable law.

With the aforesaid modification/direction this appeal stands disposed of.”

6. Still being aggrieved by the said order passed by the High Court of Judicature at Allahabad, the appellants herein, namely, Smt Sangeeta

Bhalla and Shri Satish Bhalla along with the firm M/s Novamet Industries filed a Special Leave Petition (Civil) No 6344/2009 in respect of the judgment and order dated 06.02.2009 passed by the High Court of Judicature at Allahabad in CECA No.9/2009. The Special Leave Petition came up for hearing before the Supreme Court on 30.03.2009 when the Supreme Court pleased to dismiss the same. However, the Supreme Court granted some time for making the pre-deposit. The Supreme Court's order and direction is as under:-

“Special Leave Petition is dismissed.

Time to make pre-deposit is extended by four weeks.
If the amount is not pre-deposited, the Tribunal would be entitled to dismiss the Appeal.”

7. It appears that the appellants herein has also filed a review petition before the Supreme Court seeking review of the order dated 30.03.2009. However, counsel for the appellants is unable to tell us as to what happened to the review petition.

8. From the above order dated 30.03.2009 passed by the Supreme Court, it is absolutely clear that the Supreme Court had declined to entertain the appeal from the order passed by the Allahabad High Court. However, the Supreme Court had granted further four weeks' time to make the pre-deposit. The Supreme Court order is categorical that in case the pre-deposit is not made, the Tribunal would be entitled to dismiss the appeal.

9. It is a fact that the pre-deposit had not been made and, therefore, it was open to the Tribunal to dismiss the appeals. The appeals were listed before the CESTAT on 08.05.2009 for considering compliance of the

directions of the Supreme Court. The Tribunal noted that although the petitioner had stated that a review petition has been filed before the Supreme Court, since no order had been placed before the CESTAT, the latter was bound to follow the order of the Supreme Court passed on 30.03.2009. The Tribunal, therefore, by its impugned order dated 21.05.2009, noting the fact that the pre-deposit had not been made, dismissed all the four appeals including that of the appellants herein.

10. Before us, Mr Rawal, the learned senior counsel appearing on behalf of the appellant submitted that the requirement of pre-deposit of duties was only in respect of the firm, i.e., M/s Novamet Industries and the said direction of making the pre-deposit had no application to the case of the appellants against whom there were only penalty orders. According to him, the application for pre-deposit and waiver filed by the present appellants had not even been considered by CESTAT in the first round, i.e., on 13.10.2008. However, Mr Rawal was unable to give a satisfactory answer to the question – “if that were to be so, then why did the appellants move the Allahabad High Court by way of an appeal and subsequently to the Supreme Court?” All that they needed to do was to make a request for disposal of their applications. But, that is not what they did. On the contrary, they filed an appeal before the Allahabad High Court on the clear understanding that the applications had been disposed of by the common order dated 13.10.2008 passed by CESTAT. The contention raised by Mr Rawal is clearly untenable.

11. All the four appellants had filed appeals before CESTAT. The

said Tribunal had disposed of all the applications by a common order dated 13.10.2008. Three of the parties including the present appellants had filed appeals before the Allahabad High Court in which they did not make any averment that their applications had not been disposed of on merits. Similarly, even before the Supreme Court, they did not make any such averment. In fact before the Supreme Court the plea taken was a joint plea on behalf of the four appellants before CESTAT requesting that the direction to deposit a sum of Rs 15 crores be withdrawn and they be granted waiver of pre-deposit not only for duties but also for the penalties. As mentioned above, the order dated 13.10.2008 was a common order in respect of the four applications and it was specifically mentioned therein that if the pre-deposit was made within the stipulated period, the requirement of the pre-deposit of the balance amount of duties and “penalties” would stand waived and the recovery thereof would be stayed. It is obvious that on making the payment of the pre-deposit amount of duties, the penalties which were imposed on all the four appellants including the present appellants would have been stayed. Therefore, the plea taken by Mr Rawal that appellants’ applications were not considered by CESTAT is clearly untenable.

12. In any event, after the clear direction given by the Supreme Court by virtue of its order dated 30.03.2009, there can be no debate on the issue. The Supreme Court had made it clear that if the pre-deposit is not made within the extended period, it would open to the Tribunal to dismiss the appeal. The Tribunal has examined the matter and the pre-deposit not

having been made, the Tribunal has dismissed the appeals. The said order cannot be faulted. In any event, no question of law is involved.

13. In view of the facts and circumstances indicated above, these appeals ought not to have been filed by the appellants because of the clear direction given by the Supreme Court. Consequently, these appeals are dismissed with costs of Rs 25,000/- each.

BADAR DURREZ AHMED,J

V.K. JAIN, J

MAY 17, 2010/’sn’