IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.129 OF 2005

The Commissioner of Central Excise,
Thane-I .... Appellant
Vs.
M/s. Khemee Dyeing & Bleaching
Works .... Respondent

Mr. Jitendra B. Mishra for the Appellant.
Ms Aparna Hirandagi i/by Mr. M.H. Patil for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : OCTOBER 24, 2016

P.C:

1. This appeal was listed for direction essentially to find out whether the controversy is concluded by a Judgment of the Hon'ble Supreme Court of India.

2. Since for a considerable period of time it was stated that the issue is pending before the Hon'ble Supreme Court, we did not list this appeal.

3. Now it is listed, for the Hon'ble Supreme Court of India has rendered a Judgment in the case of **M/s. Shree Bhagwati Steel Rolling Mills V/s. The Commissioner of Central Excise**, reported in 2015 (326) E.L.T. 209 (SC).

4. The penalty levied under Rule 96ZQ(5)(ii) of the Central Excise Rules, 1944 cannot survive once the Rule itself has been struck down by the Hon'ble Supreme Court of India. It is conceded, therefore, that the Revenue's appeal would have to be dismissed in the light of this authoritative pronouncement. It is accordingly dismissed by answering all questions in terms of the Supreme Court Judgment.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)