

IN THE COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

**CENTRAL EXCISE APPEAL NO. 9/2012**

(The Commissioner of Central Excise and Customs vs. M/s Bharat Heavy Electrical Limited  
and another )

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders  
of directions and Registrar's orders

Court's or Judge's order

.....  
Mr. S.N. Bhattad Advocate for the appellant  
Ms. Harshita Bondre, Adv.h/for Mr M. Anil Kumar, Counsel for the respondent no.1

**CORAM : SMT. VASANTI A. NAIK &  
MRS. SWAPNA JOSHI, JJ.**

**DATED : 21<sup>st</sup> April, 2017.**

Miss Harshita Bondre, the learned counsel holding for Shri Anilkumar, the learned counsel for the respondent no.1 raises a preliminary objection to the tenability of the Central Excise Appeal in this Court. It is stated that in view of the law laid down by the Bombay High Court in the judgment, reported in **2015 (38) STR 473 (Bom.) : (Commissioner of C.Ex. & S.T. Pune vs. Credit Suisse Services (I) Pvt Ltd.)**, since the case of the appellant would fall in Explanation (d) to Section 35E (5) of the Central Excise Act, the Appeal would lie before the Hon'ble Supreme Court.

In view of the objection raised by the learned counsel for the respondent no.1, the learned counsel for the appellant-Department states that the appellant would file an Appeal before the Hon'ble Supreme Court. It is stated that the points raised in this Appeal may be kept open.

In view of the aforesaid statements, we dispose of the

Appeal with no order as to costs. The appellant-Department is permitted to take up appropriate proceedings, if so advised. Order accordingly. No costs.

**JUDGE**

**JUDGE**

*safare*