

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1992 OF 2017

Shahji Bhanudas Bhad of Pune

.... Petitioner

Vs.

The Union of India & Anr.

.... Respondents

Mr. Prakash Shah with Mr. Prasad Paranjpe & Mr. Jas

Sanghavi i/by M/s. PDS Legal for the Petitioner.

Ms P.S. Cardozo with Mr. Vipul Bajpayee for Respondent

No.2.

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

DATE : FEBRUARY 27, 2017

P.C:

1. Having heard Mr. Shah, appearing on behalf of the petitioner, we are of the opinion that the petitioner has an alternate equally efficacious remedy of approaching the Appellate Tribunal.

2. The petitioner pointing out several factual aspects of the matter has also relied on an order, dated 1-10-2008, passed

by a Division Bench of this Court in *The Commissioner of Central Excise, Pune-II Commissionerate V/s. M/s. S.S. Engineers* {Central Excise Appeal No.207 of 2008} which, according to the petitioner is delivered in identical circumstances. It would show that we are called upon to go into several factual matters to decide what, according to the petitioner's counsel, is a pure question of law. We do not think the position to be so. Secondly, the petitioner has to deposit 7.5% of the amount demanded before the right of appeal to the Tribunal can be availed of is no ground to interfere in writ jurisdiction. We have already held that this condition cannot be said to be onerous or excessive negating a right of appeal or making it illusory. We do not wish to encourage this tendency of the assessee approaching this Court in writ jurisdiction when a mixed issue is involved. Hence, relegating the petitioner to the alternate remedy of approaching the Tribunal, we dismiss this petition. No costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)