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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 372 OF 2017

M/s. Man Infraconstruction Ltd ...Petitioner
Versus
Union of India & Ors. ...Respondents

Dr. Milind Sathe, Senior Counsel with Dr. Birendra Saraf, Dr. Abhinav Chandrachud, Mrs. Monisha Bhangale, Mrs. Trisha Mehta & Mr. Devashish Godbole, i/b ALMT Legal for Petitioner.

Mr. Swapnil Bangur with Mr. Sham Walve & Mr. Joel J. Carloz for Respondents.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 27th September 2017

PC:-

1. Heard learned counsel appearing for the Petitioner. By this Petition under Article 226 of the Constitution of India, the Petitioner has taken an exception to the Order-in-original dated 15th November 2016 passed by the Commissioner, Service Tax, Mumbai by which demands made by a show cause notice have been confirmed by the Commissioner and penalties have been imposed.

2. The learned senior counsel appearing for the Petitioner

has not disputed that a remedy of statutory appeal before the CESTAT is available to the Petitioner. His submission is that the remedy is not an efficacious remedy in the facts of the case.

3. His first contention is that as the adjudication is made by the Commissioner himself, the Petitioner has lost an opportunity of preferring a statutory appeal before the Commissioner (Appeals). His submission is that the Petitioner is required to make pre-deposit as a condition for entertaining the Appeal. His second contention is that substantial part of the demand on the basis of the two show cause notices was time barred and there is no specific finding recorded regarding the explanation for delay. The second contention is that there is a factual error committed by the Commissioner by observing that Petitioner has not produced any material, when in fact, necessary material was produced. He submitted that there are several other gross illegalities committed. He submitted that without noticing that accounting system of the Petitioner has been changed from ordinary approval system, the Commissioner has proceeded on the

footing that the accounts were maintained on the basis of approval system. He submitted that works contract was also produced by the Petitioner. His submission is that as the Order-in-original is passed in breach of principles of natural justice and it is vitiated for non-consideration for material on record, an order of remand may be passed. He submitted that if Appeal is to be preferred before the CESTAT, the Petitioner will have to deposit an amount of 7.5% of the impugned demand.

4. We find that every single contention raised by the Petitioner on merits of the impugned order can be adjudicated upon in a statutory appeal which can be preferred by the Petitioner. The Appellate Tribunal can go into the issue of facts after perusal of the record. The fact that the Petitioner will be required to deposit certain amount as a condition precedent for entertaining the Appeal is no ground to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. Therefore, we decline to entertain this Writ Petition under Article 226 of the Constitution of India. The Writ Petition is disposed of. However, the statutory remedy of the Petitioner is kept open.

6. If the remedy is availed, the concerned Appellate Forum will note that the present Petition was filed on 3rd February 2017 which remained pending till today.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)