

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7106 OF 2017

M/s. Vibgyor Paints Pvt. Ltd.

.. Petitioner

v/s.

The Union of India & Ors.

..Respondents

Mr. Bharat Raichandani a/w Ms. Ankita Vashistha I/b UBR Legal for the petitioner

Ms. P.S. Cardozo I/b Mr. Joel Cardozo for respondent nos. 2 and 3

**CORAM : M.S. SANKLECHA &
RIYAZ I. CHAGLA, J.J.**

DATED : 14th SEPTEMBER, 2018.

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 12th February, 2016 passed by the Commissioner of Central Excise (Appeals). By the impugned order the petitioner's appeal from the order dated 28th November, 2008 of the Assistant Commissioner of Central Excise was dismissed.

2. At the very outset, we informed Mr. Raichandani, learned Counsel in support of the petition that there is an efficacious alternative remedy of filing an appeal under Section 35B of the Central Excise Act, 1944 to the Customs, Excise and Service Tax Appellate Tribunal

(Tribunal). Therefore, we are not inclined to entertain the petition.

3. At this, Mr. Raichandani pointed out that the impugned order is without jurisdiction as it has been passed on 12th February, 2016 in an appeal filed in the year 2009 without grant of any personal hearing. Therefore, this Court should interfere.

4. We find that the impugned order dated 12th February, 2016 records the fact that personal hearing was held on 4th November, 2015, 18th November, 2015 and 9th December 2015 but none appeared on behalf of the petitioner. This led to the passing of the impugned order, which is admittedly appealable to the Tribunal under the Act.

5. We are of the view that the issue in this petition revolves on the issue of determination of whether hearing was granted before the passing of the impugned order dated 12th February, 2016. Therefore, the same will be appropriately dealt by the Authorities under the Act. Therefore, there is no warrant to exercise extra-ordinary jurisdiction in the facts of this case.

6. Accordingly, the petition is dismissed. However, the petitioner is

at liberty to file an appeal to the Tribunal along with delay condonation application. Needless to state if such an appeal is filed, the same would be dealt with on its own merits. All contentions are left open.

(RIYAZ I. CHAGLA, J.)

(M.S. SANKLECHA, J.)