IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1911 of 2017

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Deepak Kumar, S/o Late Triveni Prasad Verma, proprietor of M/S Vikash Electric Works resident of Mohalla - Sikandarpur, Kundal, Post - H.P.O., P.S. - Town, District - Muzaffarpur.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Finance, New Delhi.
2. The Superintendent (Anit Erosion) Central Excise and Service Tax Division, Muzaffarpur.
3. The Executive Engineer (Electrical), Bharat Sanchar Nigam Ltd., Electrical Division, Muzaffarpur.
4. The Accounts Officer, Office of the Executive Engineer (Electrical), Bharat Sanchar Nigam Limited (BSNL), Telecom Electrical Division, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. K. Shahi, Sr. Adv.
		Mr. Arvind Kumar Verma, Adv.
For the Respondent- GST& C. Excise:		Mr. Satya Prakash Tripathy, Sr. Adv.
For the Respondent-BSNL	:	Mr. Harendra Pd. Singh, Adv.
		Ms. Archana Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 19-06-2019

Heard Mr. P.K. Shahi, learned senior counsel appearing for the petitioner with the assistance of Mr. Arvind Kumar Verma, Advocate, Mr. S. P. Tripathy, learned Senior Counsel for GST and Central Excise, Mr. Harendra Prasad Singh, learned counsel appearing for the BSNL assisted by Ms. Archana Sinha, Advocate.

In the nature of the order that we propose to pass we do not intend to express anything as regarding inter party dispute.

Suffice it to say that since according to the respondents the petitioner is liable to payment of service tax that after making enquiry, summon was issued on 02.12.2016 which aggrieved the petitioner to move this Court impugning the said summons at Annexure-15 to the writ petition.

Counter affidavits have been filed. Now while it is the case of the petitioner that as a contractor appointed by BSNL for execution of certain contracts as per the agreement, whatever was the liability towards the service Tax has been discharged by the petitioner, the position is contested by the BSNL by filing a counter affidavit and registering appearance through Mr. Singh who while espousing the cause of BSNL shifts the liability on the petitioner. It is this inter party dispute which led to the issuance of summons by the competent authority i.e. the respondent Superintendent, Central Excise and Service Tax Division, Muzaffarpur which has been impugned in the writ petition and the sole ground that is raised by Mr. Shahi to question the summons is that it is premeditated because it is preceded by a letter dated 08.04.2015 of the same authority imputing short deposit of service tax payable by the petitioner.

We have gone through the counter affidavit filed on behalf of the respondents, Central Excise and Service Tax

Department which is supplemented by a rejoinder to the supplementary affidavit filed by the petitioner and we are of considered view that the submissions present at paragraphs 24 to 28 of the counter affidavit initially filed as well as in the pleadings present in the rejoinder to the supplementary affidavit, subsequently filed, in no manner indicates a pre-judgment to the issue in contest rather paragraph 27 of the counter affidavit very clearly explains that notice has been issued to the two contesting parties i.e. the petitioner and BSNL for producing their documents in support of their respective claims but the petitioner instead of responding to the summons and producing documents for vindicating its stand, has rushed to this Court and with the submissions as noted above.

Having heard learned counsel for the parties and in the nature of the enquiry initiated which obviously is founded on a prima facie impression gathered by the competent authority which has led to the enquiry, we are certainly not persuaded to interfere with the matter at this stage and would direct both the petitioner as well as BSNL to register their appearance before the Superintendent, Central Excise and Service Tax Division, Muaffarpur on or before 25th of June, 2019, whereafter he shall proceed to dispose of the matter in accordance with law after giving opportunity of hearing to the contesting parties. We clarify that any default either by the petitioner or the BSNL would entitle the Superintendent to dispose of the matter on the basis of materials on record.

With the observations above, we dispose of the writ petition.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Anjula/Surendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.06.2019
Transmission Date	NA