IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14649 of 2016

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Muzzaffarpur Vidyut Vitran Limited [formerly Essel Vidyut Vitaran (Muzzaffarpur) Limited, having its registered and corporate office at 513/A, 5th Floor, Kohinoor City Mall, Kirol Marg, Off. L.B.S. Marg, Kurla (W), Mumbai and its local office at Maripur, Muzaffarpur P.S.- Kazimohammadpur, through its authorised representative, Shri Sunil Kumar Thakur, Senior Executive Legal, Muzzaffarpur Vidyut Vitran Limited, resident of Mohalla- Bibiganj, P.S.- Sadar, P.O.- Bibiganj, District- Muzaffarpur.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner of Commercial Taxes, Bihar, Patna.
2. The Principal Secretary-cum-Commissioner of Commercial Taxes, Bihar, Patna.
3. The Joint Commissioner of Commercial Taxes, Central Division, Patna.
4. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.
5. The Assistant Commissioner of Commercial Taxes, Special Circle, Patna
6. The Deputy Commissioner of Commercial Taxes, West Circle, Muzaffarpur.
7. The North Bihar Power Distribution Company Ltd. through its Managing Director, Second Floor, Vidyut Bhawan, Bailey Road, Patna-800001.
8. The Chief Engineer (Commercial), the North Bihar Power Distribution Company Ltd., Second Floor, Vidyut Bhawan, Bailey Road, Patna-800001.
9. The Deputy General Manager-cum-Nodal Officer, Franchisee Cell, Electric Supply Area, Tirhut Division.

... ... Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 14649 of 2016)

For the Petitioner	:	Mr.Binod Kumar Singh, Advocate Ms. Vagisha Pragya Vacaknavi, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
For the Respondent-NBPDCL	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Vijay Kumar Verma, Advocate Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)
Date : 21-11-2019

Heard learned counsel for the parties.

2. This writ petition has been filed by the petitioner for quashing the *ex parte* order dated 28.07.2016 passed by respondent no. 4, the Deputy Commissioner Commercial Taxes, Special Circle, Patna under Section 6A(5) of the Bihar Electricity Duty Act, 1948 whereby a demand notice of Rs.9,52,29,525.00/- has been issued to the petitioner for the period 2014-2015. The petitioner has also prayed for quashing of the notice of demand contained in Process No. 2959 dated 28.07.2016 whereby it has been directed to deposit the aforesaid amount for the period 2014-15 in the Government Treasury.

3. The petitioner is a company and is registered in Patna Special Circle in VAT and GST and is engaged in the business of electricity distribution. The Company has been receiving electricity from North Bihar Power Distribution Company Limited and dispensing the same to the consumers in Muzaffarpur area.

4. Mr. Binod Kumar Singh, learned counsel appearing for the petitioner submitted that the impugned order and the impugned notice have been issued without considering the fact that the petitioner is neither engaged in selling nor in consuming electrical energy. It is a distribution franchisee and is

engaged in the work of distributing electricity on behalf of distribution licensee, i.e. North Bihar Power Distribution Company Limited. He has contended that the impugned order has been passed *ex parte* without affording any opportunity of hearing to the petitioner. According to him, no liability can be made out on the petitioner for payment of electricity duty in view of explicit terms in the distribution franchisee agreement whereby the liability of payment of electricity duty rests totally upon the distribution licensee.

5. A preliminary objection regarding maintainability of the writ petition has been taken on behalf of the State of Bihar.

6. Mr. Vikash Kumar, learned Standing Counsel-11 appearing for the State has submitted that the contention of the petitioner that he was not afforded any opportunity of hearing is fallacious. He has produced the original records of the assessment proceedings in order to substantiate his submission that in spite of due service of notice, the petitioner chose not to contest the matter before the assessing authority.

7. He has contended that in view of Section 9A of the Bihar Electricity Duty Act and Rule 14 of the Bihar

Electricity Duty Rules, an appeal against an order of assessment would be maintainable before the Joint Commissioner Commercial Taxes Department. He has contended that the petitioner has a remedy of appeal against the order of assessment. Since the petitioner has failed to avail of statutory remedy, it would not be proper for this Court to entertain the present writ petition.

8. We have heard the parties and perused the original record of the assessment proceedings.

9. We find that in spite of repeated notice having been served upon the petitioner, he did not appear before the assessing authority to contest the matter. We further find that Section 9A of the Bihar Electricity Duty Act provides for an appeal against an order of assessment. It states that any licensee or other person objecting to an order of assessment with or without penalty passed under this Act, or the rules made thereunder may, within the prescribed period and in the prescribed manner, appeal to the prescribed authority against such order of assessment or penalty or both. Further, Rule 14 of the Bihar Electricity Duty Rules provides for an appeal against an order of assessment with or without penalty.

10. In view of the availability of remedy of

appeal, we are not inclined to entertain the present writ petition on merit.

11. Accordingly, the writ petition is disposed of with liberty to the petitioner to avail of the statutory remedy of appeal. In case, an appeal is filed by the petitioner within four weeks from today, the appellate authority shall consider and decide the same on merit in accordance with law.

12. Let original records of the assessment proceeding be handed over to Mr. Vikash Kumar, learned Standing Counsel-11 for the State.

(Ashwani Kumar Singh, J)

(Anil Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.11.2019
Transmission Date	NA