IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15048 of 2016

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Arun Kumar s/o Lt. Siyaram Singh, resident of Shivpuri Barhiya Kothi, Road No.-2, Near Panch Mukhi Mandir, Patna.

... ... Petitioner/s

Versus

1. The Managing Director, Bihar State Power Transmission Company Ltd. Bidhut Bhawan, Bailey Road, Patna.
2. The Director (Project), Bihar State Power Transmission Company Ltd. Bidhut Bhawan, Bailey Road, Patna.
3. The Chief Engineer, Bihar State Power Transmission Company Ltd. Bidhut Bhawan, Bailey Road, Patna.
4. The Senior Manager (Finance & Accounts) Bihar State Power Transmission Company Ltd. Bidhut Bhawan, Bailey Road, Patna.
5. The Accountant Bihar State Power Transmission Company Ltd. Bidhut Bhawan, Bailey Road, Patna.
6. The Chairman, Cental Board of Excise & Customs Deptt of Revenue Ministry of Finance, Govt. of India, New Delhi.
7. The Chief Commissioner, Central Excise and Service Tax, 3rd Floor, C.R. (Annexi) Building, B.C. Patel Path, Patna-1.
8. The Commissioner, Central Excise and Service Tax, 3rd Floor, C.R. (Annexi) Building, B.C. Patel Path, Patna-1.9
9. The Addl. Commissioner, Central Excise and Service Tax, 3rd Floor, C.R. (Annexi) Building, B.C. Patel Path, Patna-1.

... ... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Rakesh Kumar Singh
For the Respondent/s	: Mr. Satya Prakash Tripathy, Sr. S.C. Gst & Central Excise
For the BSPTCL	: Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

4 08-01-2019 Heard Mr. Rakesh Kumar Singh, learned counsel appearing on behalf of the petitioner, learned counsel for the Central Excise and Mr. Ritesh Kumar, learned counsel

appearing for the Bihar State Power Transmission Company Ltd.

The petitioner is a civil contractor who was entrusted with the contract of erection of the boundary wall of Bihar State Power Transmission Company Ltd, at Biharshariff, District- Nalanda.

The grievance of the petitioner is that the respondent- Bihar State Power Transmission Company Ltd. while making payment of the dues of the petitioner has deducted an amount of Rs. 3,24,238/-by way of service tax and deposited it with respondent No. 8, the Commissioner, Central Excise and Service Tax, 3rd Floor, C.R. (Annexi) Building, B.C. Patel Path, Patna.

Mr. Rakesh Kumar Singh, learned counsel appearing for the petitioner submits that in view of the stipulation present in the Circular No. 80/10/2004 S.T. dated 17.09.2004 of the respondent-Central Excise Department, the petitioner was not liable to service tax and the deduction has wrongly been made by the Bihar State Power Transmission Company Ltd.

Mr. Ritesh Kumar, learned counsel appearing for the Bihar State Power Transmission Company Ltd. in reference to paragraph-6 of the counter affidavit informs that in view of the stipulations present in the notification dated 20.06.2012, the deductions have been made which is to the tune of Rs. 3,24,238/- and which amount has been deposited by way of service tax with the Central Excise Department.

The situation as it stands is that although the pleadings on record show that a claim has been raised by the petitioner before the Bihar State Power Transmission Company Ltd. but no such claim has been raised before the concerned department in the Central Excise even when the petitioner was aware that the amount so deducted had been deposited by way of service tax with the respondent-Central Excise and Service Tax Department.

The matter was taken up for consideration and when the counsel for the Central Excise and Service Tax Department was directed to seek instruction but the same has not been forthcoming despite lapse of more than six months.

In the circumstances, we are not persuaded to keep this writ petition pending but then we also note that in absence of any claim being raised by the petitioner before the Central Excise Department, we cannot issue any direction to the Department concerned as well.

In such view of the matter and since the amount deducted from the Bill admissible to the petitioner by way of service tax stands deposited with the Central Excise and Service Tax Department by Bihar State Transmission Company Ltd., we deem it proper to accord liberty to the petitioner to raise his claim before the respondent No.7, the Commissioner, Central Excise and Service Tax Department, who according to the learned counsel for the respondent-department would be the appropriate authority to consider and dispose of the claim so made by the petitioner. It goes without saying that on such claim being raised by the petitioner supported with facts and documents, the respondent No.7, the Commissioner, Central Excise and Service Tax Department or the authority competent to do so, would consider and dispose of the grievance in accordance with law, by a speaking order to be passed after giving opportunity of hearing to the petitioner, expeditiously and preferably within three months of raising of grievance.

With the observations and directions, as above, this writ petition is disposed of.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/Sen

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