

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2259 of 2018**

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Bihar Industrial Area Development Authority, having its office at 1<sup>st</sup> Floor, Udyog Bhawan, P.O. Bankipure P.S.Gandhi Maidan, Patna through its Law Officer Rajesh Kumar Son of Shri L.N. Sahay resident of 104/B Laxmi Kant Niketan Parisar, Jamal Road, P.S. Gandhi Maidan and P.S. Bannkipore, District- Patna.

... .. Petitioner/s

Versus

1. Commissioner of Central Excise and Service Tax, Bihar, Patna having its office at Central Revenue Building Bir Chand Patel Marg, Patna
2. Assistant Commissioner, CGST, Patna, Central Division II having its Office at Ground Floor, Chandpura Place, Opp.Dadi Maa Temple, Bank Road West Gandhi Maidan, Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.D.V.Pathy, Adv.

For the Respondent/s : Mr.Satya Prakashtrpathy, Adv.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 02-07-2019**

Heard Mr. D.V. Pathy, learned counsel for the petitioner and Mr. Rajesh Kumar Verma, learned counsel for the Central Excise and Service Tax Department, the respondents herein.

The petitioner is aggrieved by the order dated 06.10.2017 passed by the Assistant Commissioner, G.S.T., Patna Central, Patna whereby the claim for refund of service tax made by the petitioner under the provisions of Finance Act, 1994 (hereinafter referred to as 'the Act') has been rejected on merits as well as on grounds that the burden has been shifted by the petitioner on



the customers i.e the service recipient. The Assistant Commissioner has relied upon the Constitution Bench judgment of the Supreme Court rendered in the case of **Mafatlal Industries versus Union of India** since reported in (1997) 5 SCC 536 to hold that the claim raised by the petitioner the burden of which has been shifted to the service recipient if allowed, would amount to unjust enrichment.

The claim relates to the service tax deposited by the petitioner for the period 2007-16 and the reason for such belated raising of grievance as advocated by Mr. Pathy is, that in view of the provisions of Section 104 of 'the Act', the services provided or agreed to be provided for a long term lease of 30 years or more was not taxable but the observations of the statutory authority in the order impugned mentions that the petitioner did not submit documentary evidence to espouse his cause.

Be that as it may, the fact remains that the service tax for the period in question was deposited by the petitioner but after realizing it from its customers. This fact is not disputed. It is also not in dispute that no refund application was filed by these customers.

In such circumstances noted, we find no infirmity in the opinion recorded by the statutory authority to hold that if the



burden of the service tax has been shifted on the customers in view of the legal position settled by the Supreme Court in the case of **Mafatlal** (supra) the petitioner can not be a beneficiary thereof as any refund to the petitioner would amount to unjust enrichment.

For the discussions above and finding no infirmity in the order impugned of the statutory authority put to challenge we dispose of this writ petition.

**(Jyoti Saran, J)**

**( Partha Sarthy, J)**

Bibhash/-

AFR/NAFR	NAFR
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