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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 3172/2011**

**FORTIS EMERGENCY SERVICES LIMITED** ..... Plaintiff

Through: Appearance not given.

versus

**BAFNA HEALTHCARE PVT LTD** ..... Defendant

Through: Mr. Sumeet Lall & Ms. Ashmi  
Mohan, Advocates.

**CORAM:**

**SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR**

**ORDER**

% **23.02.2017**

**IA No.504/2017 under order 16 Rule 2 CPC filed by defendant.**

Defendant has prayed that summon be issued to the Central Excise Department for production of indemnity bond dated 12.01.2010 which has been denied by the plaintiff. There is no list of witnesses filed by the defendant. Learned counsel for defendant submits that plaintiff mentioned the concerned officer from Central Excise Department as a witness in the list of witnesses but did not examine the said witness. Learned counsel for plaintiff submits that plaintiff paid the excise duty under protest. The fact that the plaintiff paid the excise duty was not disputed by the defendant and therefore there was no need for the plaintiff to summon the letters dated 16.01.2010 and 20.01.2010 which the witness from Central Excise Department would have produced. Learned counsel for plaintiff



further submits that no indemnity bond was submitted by the plaintiff.

Plaintiff wanted to summon the witness from Excise Department for limited record pertaining to the issue of payment of excise duty. If there is any indemnity bond, it would be there in the file regarding the adjudication of the excise duty. Had plaintiff summoned the witness as mentioned in the list, Defendant could have examined the record to see whether the indemnity bond is there. If the document was there, it would have been brought out in the cross examination of the witness. Defendant has lost that opportunity because plaintiff did not examine the witness. Therefore, for fair adjudication of the suit as well as in the interest of justice, defendant should be permitted to summon the record as prayed.

In view of above discussion, IA is allowed. Summon be issued to the witness on filing of PF by the defendant. Diet money be paid on spot. Witness be directed to appear before Learned Local Commissioner on a date to be fixed by him. Defendant shall mention the date in the PF form.

**RAJESH KUMAR SINGH (DHJS)**  
**JOINT REGISTRAR**

**FEBRUARY 23, 2017/sk**