

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.19247/2016 & WMP.No.16798/2016

The National Small Industries Corporation
Limited, rep.by its Senior Branch Manager
No.422, Anna Salai, Chennai 600 006. ..

Petitioner

Vs

1.The Chairman, Micro, Small Enterprises
[MSE] Facilitation Council & Industries,
Commissioner & Director of Industries
and Commerce, SIDCO Corporate
Building, Guindy, Chennai 600 032.

2.M/s.Mozhini Packing Industries
No.214,1A1, Katrambakkam Village
Sriperumbudur Taluk,
Irunkattukottai Post,
Kancheepuram District 602 105.

3.The Controller of Stores
Southern Railway, Ayanavaram
Chennai 600 023. ..

Respondents

***R3 impleaded as per order
dated 23.06.2016 in WMP.
No.17832/2016 in WP.No.19247/2016

Writ petition filed under Article 226 of the Constitution
of India praying for issuance of a writ of certiorari calling
for the records relating to the order dated 24.02.2016 passed in
OP.No.MSEFC/CR/26/2013 on the file of the 1st respondent herein
and to quash the same.

For Petitioner : Mr.Ajoy Kumar Gnanam
For R2 : Mr.Rohan Cherian
For R3 : Mr.P.T.Ramkumar

ORDER

Heard Mr.Ajoy Kumar Gnanam, learned counsel appearing
for the petitioner and Mr.Rohan Cherian, learned counsel
appearing for the 2nd respondent and Mr.P.T.Ramkumar, learned
counsel appearing for the 3rd respondent.

2 The petitioner impugnes the order passed by the 1st respondent / Council, which is the Micro Small Enterprises Facilitation Council. By the said order, the Council has directed the petitioner herein to pay a sum of Rs.1,47,341/- together with compounded interest, on a claim petition filed by the 2nd respondent herein. The 2nd respondent went before the 1st respondent / Council stating that they are engaged in the business of manufacturing of corrugated boxes and it supplied to the writ petitioner and they have defaulted in payment of consideration. This appears to be the basis claim before the 1st respondent / Council. The petitioner's stand is that they cannot be made liable since the 2nd respondent raised invoices in the name of the petitioner, who in turn, raised invoices on the Controller of Stores, Southern Railway, Ayanavaram, Chennai, the 3rd respondent herein [impleaded] and a running account was maintained for the said transaction and the total covered under the invoices are payable by the 3rd respondent herein. It is submitted that in terms of section 2[d] of the Act, the definition of a buyer has been given to mean that "whoever buys any goods or receives any service from a supplier for consideration" and in the instant case, it is the Controller of Stores, Southern Railway, who is the buyer. However, the Southern Railway was not a party before the Council and this issue has not been properly addressed by the Council while passing the impugned order. Therefore, this Court is of the view that the matter should be remanded to the 1st respondent for fresh consideration and the Southern Railway should also be heard in the matter and thereafter, the 1st respondent should take a decision in accordance with law.

3 Accordingly, the writ petition stands allowed and the impugned order passed by the 1st respondent dated 24.02.2016 is set aside and the matter is remanded to the 1st respondent for fresh consideration with a direction to implead the Controller of Stores, Southern Railway as a respondent and after hearing the parties, by affording an opportunity of personal hearing, fresh orders shall be passed on merits and in accordance with law, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AP

To

1.The Chairman, Micro, Small Enterprises
[MSE] Facilitation Council & Industries,
Commissioner & Director of Industries
and Commerce, SIDCO Corporate
Building, Guindy, Chennai 600 032.

2.M/s.Mozhini Packing Industries
No.214,1A1, Katrambakkam Village
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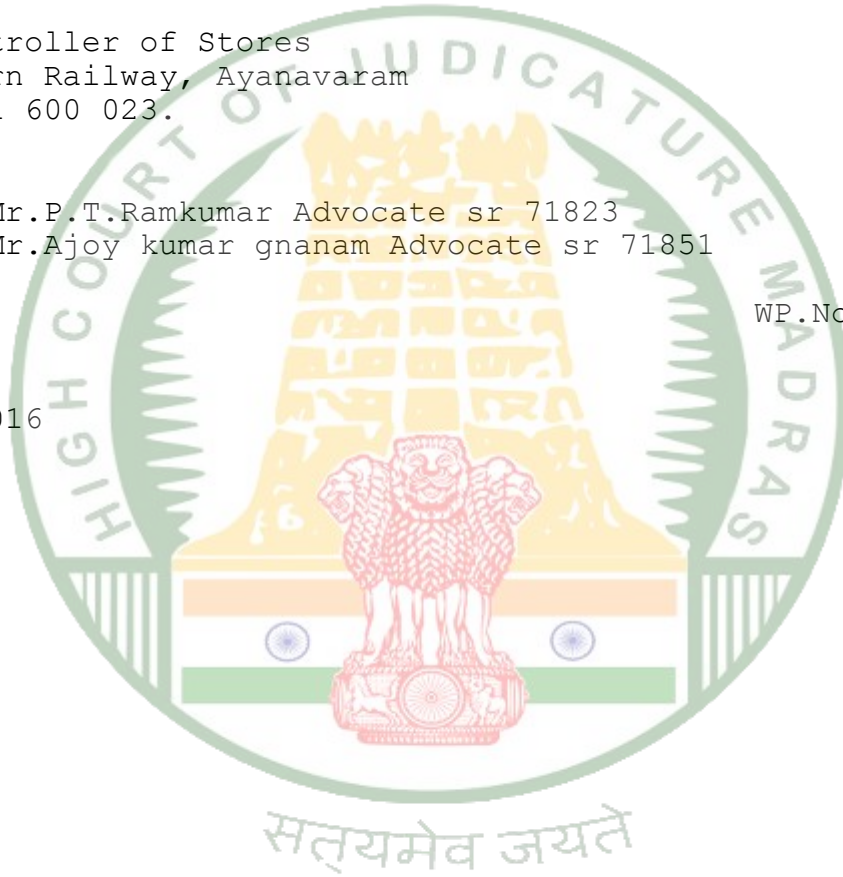
3.The Controller of Stores
Southern Railway, Ayanavaram
Chennai 600 023.

+1 cc to Mr.P.T.Ramkumar Advocate sr 71823

+1 cc to Mr.Ajoy kumar gnanam Advocate sr 71851

WP.No.19247/2016

aa23/12/2016



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