In the High Court of Judicature at Madras

Dated : 06.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.31556 of 2017

Sri.Ramakrishna Yarn Carriers
Limited, rep.by its Director
N.M.Ethirajan ...Petitioner

Vs

1.The General Manager (Retail Sales),
Retail Sales Department, HO,
Indian Oil Bhavan, G-9, All Yavar
Jung Marg, Bandra (East),
Mumbai-51.

2.The Senior Divisional Manager
(Retail), Indian Oil Corporation
Ltd., Avanashi Road, Coimbatore.

3.The Commissioner of Customs,
Central Excise & Service Tax,
6/7, A.T.D.Street, Race Course
Road, Coimbatore-18. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in REF:CBEDO/COCO-Avarampalayam dated 02.11.2017 on the file of the second respondent, quash the same and direct the second respondent to reimburse the service tax paid by the petitioner to the tune of Rs.44,49,218/- as on 30.6.2017 to the petitioner with interest as per the Policy Circular No.240-04/2016 dated 20.4.2016 on the file of the first respondent.

For Petitioner : Mr.S.Doraisamy
For Respondents 1 & 2 : Mr.R.Ravi
For Respondent-3 : Mr.A.P.Srinivas, SPC

ORDER

Mr.R.Ravi, learned Standing Counsel accepts notice for respondents 1 and 2. Mr.A.P.Srinivas, learned Senior Panel Counsel accepts notice for the third respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the order passed by the second respondent rejecting the petitioner's request for reimbursement of the service tax paid by them to the third respondent.

3. The petitioner is a company owned company operated petroleum retail outlet after having been appointed on 26.5.2006 by the second respondent as a maintenance and handling contractor to operate the outlet. The case of the petitioner is that so far as service tax is concerned, the Indian Oil Corporation issued a circular dated 20.4.2016 with regard to applicability of service tax to the service provider for operation of the permanent company owned company operated outlets. In terms of the said circular, it was clarified that the applicable service tax charged by the company owned company operator/service provider be reimbursed by the Indian Oil Corporation at actual against service tax invoice.

4. The petitioner would contend that the second respondent, without referring to the said policy circular, rejected the petitioner's claim by way of the impugned communication.

5. The learned Standing Counsel appearing for the Indian Oil Corporation, on instructions, submits that respondents 1 and 2 are willing to consider the petitioner's claim in terms of the said policy circular as directed by this Court in the other writ petitions filed by other dealers and one such case being W.P.No.25403 of 2017 by order dated 15.11.2017.

6. In the said writ petition also, which was decided along with W.P.No. 25404 of 2017, an identical issue was raised and an order passed by the Indian Oil Corporation was challenged. The said writ petitions were disposed of by issuing the following directions :

> "3. The petitioners have challenged the said communications in these writ petitions on the primary ground that it violates the Policy Circular No.240-04/2016 dated 20.04.2016. The said Circular reads as follows:
>
> 'Sub: Service Provider for operation of Permanent COCOs -Applicability of Service Tax.
>
> As per prevailing Service Tax Law, Service tax would be applicable on all payments/ reimbursements to the Service provider for COCO operation except reimbursements to the Service Provider in the capacity of pure agent where contractual obligation/bills are in the name of IOC.
>
> In view of the above, it is clarified that applicable Service Tax charged by the COCO operator/Service Provider be reimbursed

by IOC at actual against Service Tax invoice. IOC to ensure availment of input service tax credit for Service Tax reimbursed to the Service Provider, wherever eligible, against Service Tax invoice.'

4. The petitioners' case is that in terms of the above circular, the applicable service tax charged by the COCO-Operator/Service Provider will be reimbursed by the Indian Oil Corporation at actual against Service Tax Invoice. Therefore, it is submitted that the impugned communications sent by the 2nd respondent violates the Policy Circular issued by the Indian Oil Corporation and therefore, the impugned communications have to be set aside and the Indian Oil Corporation should be directed to deposit the service tax amount to the 3rd respondent.

5. The learned standing counsel appearing for the Indian Oil Corporation, on instruction, would submit that the impugned communications dated 12.10.2016 and 26.10.2016 issued by the 2nd respondent have been issued without noticing the Policy Circular and therefore submits that the same may be set aside. With regard to the consequential relief sought for by the petitioners, it is submitted that the same is premature. Apart from that, the petitioners cannot seek for a direction to the Indian Oil Corporation to pay the service tax directly to the 3rd respondent as even in terms of the Policy Circular. It is only a case of reimbursement in accordance with the Policy Circular and the question of payment of service tax by the Indian Oil Corporation directly to the 3rd respondent does not arise.

6. The learned counsel for the petitioner would submit that though the petitioners have sought for a prayer to direct the Indian Oil Corporation to directly remit the service tax to the 3rd respondent, the petitioners are ready and willing to pay the service tax demanded and submit their reimbursement claim to the 2nd respondent, which may be directed to be considered in accordance with the Policy Circular dated 20.04.2016.

7. The learned standing counsel appearing for the respondents 1 & 2 submits that such reimbursement claim will be considered in accordance with the Policy Circular subject to eligibility as the type of Contractual Obligation entered into between the parties will govern their status.

8. In the light of the above discussion and the concession made before this Court, these Writ Petitions are partly allowed and the impugned communications dated 12.10.2016 26.10.2016 are set aside with a direction to the petitioners to pay service tax as demanded by the 3rd respondent and after payment, produce the invoice to the 2nd respondent for reimbursement, which shall be considered by the 2nd respondent strictly in accordance with Policy Circular No.240-04/2016 dated 20.04.2016. Such consideration shall be made within a period of three weeks from the date on which such application is filed for reimbursement alone with all requisite connections."

7. In the light of the above, the writ petition is allowed, the impugned communication is set aside and respondents 1 and 2 are directed to consider the petitioner's request for reimbursement of service tax paid by them strictly in accordance with the policy circular dated 20.4.2016, within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

To
1.The General Manager (Retail Sales),
Retail Sales Department, HO,
Indian Oil Bhavan, G-9, All Yavar Jung Marg,
Bandra (East), Mumbai-51.

2.The Senior Divisional Manager (Retail), Indian Oil Corporation Ltd.,
Avanashi Road, Coimbatore.

3.The Commissioner of Customs,
Central Excise & Service Tax, 6/7,
A.T.D.Street, Race Course Road, Coimbatore-18.

+1cc to Mr.R.RAVI Advocate, S.R.No. 87134
+1cc to Mr.A.P.SRINIVAS Advocate, S.R.No. 86708
+1cc to Mr.S.DORAI SAMY Advocate, S.R.No. 86506

WP.No.31556 of 2017

PVS(CO)
TR(26/12/2017)