IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.26066 of 2017
and
W.M.P.Nos.27679 & 27680 of 2017

Syed Shah Samruddin,
(M&H Contractors Kundarapalli),
Indian Oil Service Station COCO,
S.No.215/2, Erikarai, Bangalore Main Road,
Kundarapalli, Krishnagiri - 635 115. ...Petitioner

Vs.

1. The General Manager,
(Retail Sales),
Retail Sales Department, HO,
Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg,
Bandra (East), Mumbai-400 051.

2. The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
No.234, 1st Floor, NH-7,
Salem-Bangalore Byepass Road,
Kondalampatti, Salem-636 010.

3. The Superintendent of Central Tax,
O/o the Superintendent of GST & Central Excise,
Hosur Range, Hosur I Division,
Hosur, Krishnagiri District ..Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in Ref:IOC/Salem/2 dated 14.10.2016 on the file of the 2nd respondent quash the same and direct the 2nd respondent either to pay the service tax to the 3rd respondent directly or direct the 2nd respondent to deposit the demanded amount by the 3rd respondent to the account of the petitioner to enable to pay the service tax to the 3rd respondent and in the meanwhile to direct the 3rd respondent not to take any action against the petitioner.

For Petitioner	:	Mr.S.Doraisamy
For RR 1 and 2	:	Mr.R.Ravi
For R 3	:	Mr.V.Sudareswaran Senior Panel Counsel

O R D E R

Heard Mr.S.Doraisamy, learned counsel for the petitioner; Mr.R.Ravi, learned Standing Counsel for respondents 1 & 2 and Mr.V.Sundareswaran, learned Senior Standing counsel for the 3rd Respondent. By consent on either side, the writ petition is taken up for final disposal.

2.The 2nd respondent/Indian Oil Corporation established the petroleum retail outlet in the lands in question and appointed the petitioner as Maintenance and Handling Contractor to operate the outlet and an agreement to the said effect was executed. In terms of the agreement, the petitioner was paid the monthly compensation at the rates specified in Clause 28 of the agreement. While so, the petitioner received summons from the 3rd respondent, the Superintendent of GST and Central Excise calling upon the petitioner to provide all details of the commission received by them from the Indian Oil corporation and pay service tax. The petitioner immediately addressed the 2nd respondent on 27.09.2016 and sought for their advise. The 2nd Respondent, by the impugned communication dated 14.10.2016, by referring to Clause 28 of the Contract for Maintenance and Handling Agreement, stated that the commission paid to the petitioner includes all taxes and Indian Oil Corporation will not be liable to pay any amount on account of Service Tax on commission received by the petitioner and he was directed to deposit the same with the Service Tax Department from the amount of commission paid to the petitioner.

3.The petitioner has challenged the said communication in this writ petition 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 petitioner's 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 communication sent by the 2nd respondent violates the Policy Circular issued by the Indian Oil Corporation and therefore, the impugned communication has 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 communication dated 14.10.2016 issued by the 2nd respondent has 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 petitioner, it is submitted that the same is premature. Apart from that, the petitioner 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 petitioner has sought for a prayer to direct the Indian Oil Corporation to directly remit the service tax to the 3rd respondent, the petitioner is 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, this Writ Petition is partly allowed and the impugned communication dated 14.10.2016 is set aside with a direction to the petitioner 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. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

Sgl

To

1. The General Manager,
   (Retail Sales),
   Retail Sales Department, HO,
   Indian Oil Bhavan,
   G-9, Ali Yavar Jung Marg,
   Bandra (East), Mumbai - 400 051.

2. The Chief Divisional Retail Sales Manager,
   Indian Oil Corporation Limited,
   No.234, 1st Floor, NH-7,
   Salem-Bangalore Byepass Road,
   Kondalampatti, Salem-636 010.

3. The Superintendent of Central Tax,
   O/o the Superintendent of GST & Central Excise,
   Hosur Range, Hosur I Division,
   Hosur, Krishnagiri District

+1cc to Mr.R.Ravi, Advocate SR.No.81422
+1cc to Mr.S.Doraisamy, Advocate SR.No.81430

W.P. No.26066 of 2017

GN(21/12/2017)