IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30526 of 2016

Sri Ramakrishna Yarn Carriers Ltd.,
Rep. by its Director, N.M.Ethirajan,
No.1, Avarampalayam Road,
Sidhapudur, Coimbatore – 641 044. ... Petitioner

Vs.

1.The Senior Divisional Manager (Retail),
Indian Oil Corporation Limited,
Avinashi Road, Coimbatore.

2.The Commissioner of Customs,
Central Excise and Service Tax,
6/7, A.T.D.Street, Race Course Road,
Coimbatore – 641 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the first respondent to reimburse the service tax paid by the petitioner to the tune of Rs.36,63,071/- as on 30.06.2016 to the petitioner.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.R.Ravi, Standing Counsel (For R1)
Mr.S.R.Sundar, (For R2)
Senior Panel Counsel

O R D E R

Heard Mr.S.Doraisamy, learned counsel for the petitioner, Mr.R.Ravi, learned Standing Counsel for the Indian Oil Corporation and Mr.S.R.Sundar, learned Senior Central Government Standing counsel for the second respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner was appointed as a maintenance and handling contractor to operate a retail outlet for the Indian Oil Corporation (IOC) under the scheme Company Owned Company Operated Bunk (COCO Bunk). According to the agreement between the parties, the Service Tax charged by the COCO Bunk operators/service provider shall be reimbursed by the IOC at actual against service tax invoices. In terms of the same, a policy circular was issued by the Retail Sales Department of the first respondent on 20.04.2017, which reads as follows;

"__State Retail Heads__

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 imput service tax credit for Service Tax reimbursed to the service provider, wherever eligible, against Service Tax Invoice".

3.In terms of the above circular, the first respondent has to reimburse the service tax which was paid by the maintenance and handling operator such as the petitioner herein. The petitioner has submitted the invoices and requested for reimbursement by their representation dated 15.10.2010. Subsequently, a reminder was given on 08.12.2010, further representations on 10.05.2011, 10.06.2011 and 24.06.2011 followed by a legal notices dated 14.07.2014 and 24.11.2014 and after the policy circular, dated 20.04.2016, the petitioner has produced the receipts and the remuneration details, copy of the Bank passbook, debit note and sent a reminder on 28.07.2016. None of these representations and reminders have evoked any response from the first respondent which necessitated the petitioner to approach this Court.

4.The learned counsel for the first respondent on instructions would submit that the respondent Corporation is yet to take stand in the matter.

However, this submission cannot be accepted for the simple reason that, already a policy circular has been issued as referred supra.

5.In the light of the same, there will be a direction to the first respondent to consider the petitioner's representation, dated 28.07.2016 and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. The first respondent is entitled to direct the petitioner to appear in person and to produce records, if the same are required for verification.

6.With the above direction, the writ petition stands disposed of. No costs.

14.07.2017

Index:Yes/No
abr/pbn

To

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2. The Commissioner of Customs,
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   6/7, A.T.D.Street, Race Course Road,
   Coimbatore – 641 018.

T.S.SIVAGNANAM, J.

abr/pbn

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