IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.11710 of 2018

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

-vs-

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

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

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of rejection passed in Ref.IOC/COCO/Service Tax dated 19.04.2018 on the file of the 2nd respondent, quash the same and direct the 2nd respondent to reimburse the service tax paid by the petitioner as on 30.06.2017 to the petitioner as per the Policy Circular No.240-04/2016 dated 20.04.2016 on the file of the 1st respondent.

For petitioner : Mr.S.Doraisamy

For Respondent : Mr.R.Ravi for R1 and R2

Mr.A.P.Srinivas
Standing Counsel for R3

O R D E R

Heard Mr.S.Doraisamy, learned counsel for the petitioner, Mr.R.Ravi, learned counsel for respondents 1 and 2 and Mr.A.P.Srinivas, learned standing counsel for the third respondent.

2. The petitioner has filed this writ petition challenging the impugned communication dated 19.04.2018, wherein the respondent has rejected the petitioner's request for reimbursement of Service Tax and interest paid by them on the ground that the petitioner has been appointed as Maintenance and Handling contractor / Job contractor and not as a service provider. Prima facie this Court finds that the stand taken in the impugned order is unsustainable in terms of the Policy Circular of the respondent Oil Corporation dated 20.04.2016, which clarified that applicable service tax charged by the COCO operator/Service Provider be reimbursed by Indian Oil Corporation as actual against Service Tax invoice.

3. A COCO operator is a Company Owned and Company Operated Unit and invariably private persons are nominated as COCO operators. So far as the petitioner is concerned, he has been characterized as an Maintenance and Handling Contractor / Job Contractor. This Court finds that there is no marked difference between COCO operator and Maintenance and Handling contractor / Job contractor, since in both the cases it is the Indian Oil corporation, which has authorized operators. During the pendency of the writ petition, it appears that the respondent corporation has taken a pragmatic stand that out of the total amount of reimbursement to be paid, namely Rs.44,49,218/- a sum of Rs.29,10,255/- has been paid to the petitioner or reimbursed to the petitioner. The balance amount is Rs.15,38,963/-. The learned counsel for the respondent Corporation would submit that the matter is pending consideration of the Head Quarters at Mumbai for a decision. In my considered view, the petitioner, having been treated on par with the service provider and a COCO operator and reimbursed 50% of the amount reimbursable, now the respondent Corporation would not be justified in taking a different stand.

4. Hence, for the above reasons, taking note of the subsequent developments, this writ petition is allowed and the impugned communication is set aside and respondents 1 and 2 are directed to settle the balance amount of reimbursement claimed, within four weeks from the date of receipt of a copy of this order.

5. After the above order was dictated, the learned Standing Counsel for the respondent Corporation has pointed that if there is any other valid reason, then the Authority should be at liberty to take a decision in the matter. In my considered view, no other reason has been disclosed in the impugned communication. However, if there is any legally sustainable reason to do so, it is open to the Authorities to take a decision in accordance with law.

No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy//

Sub Assistant Registrar

To

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

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Indian Oil Corporation Limited
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Central Excise and Service Tax
6/7, A.T.D.Street, Race Course Road
Coimbatore - 641 018

+1cc to Mr.A.P.SRINIVASAN, Advocate SR.No.53024
+1cc to Mr.S.DORAISAMY, Advocate SR.No.52771
+1cc to Mr.R.Ravi, Advocate SR.No.52770

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NRL(CO)
SMI/24.08.2018