IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.25016 of 2021

Exterran Energy Solutions India Private Limited,
Represented by its Director,
5B1, 5th Floor, J.P.Tower,
7/2, Nungambakkam High Road,
Chennai 600 034.

..Petitioner

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Finance,
New Delhi – 110 001.

2. The Principal Chief Commissioner of GST
& Central Excise, Tamil Nadu and Puducherry,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

3. The Assistant Commissioner of GST & Central
Excise, Triplicane Division,
26/1, 6th Floor, (Annex Building),
Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to refund the CENVAT credit totaling an amount of Rs.1,34,40,553/- to the petitioner company.

For Petitioner : Mr.B.Chandrasekaran

For Respondents : Mr.V.Sundareswaran
Senior Standing Counsel

ORDER

The writ petition is filed praying for a writ of Mandamus to direct the respondents to refund the CENVAT credit to the extent of Rs.1.34 crores.

2. The petitioner company had obtained service tax registration certificate on 18.12.2009. The petitioner company obtained approval from STPI as 100% EOU and had exported services. It is submitted that Rule 5 of the CENVAT Credit Rules permits the petitioner to file a refund of the CENVAT credit taken by the petitioner of the service tax paid on the input services used for export of services. It is submitted that the petitioner had filed close to 9 refund applications from August 2010

to March 2013.

3. A deficiency memo was issued wherein it was stated that the petitioner claim for refund also included claims relating to the period prior to registration. The registration having been obtained only on 18.12.2009 in respect of the services provided prior to 18.12.2009 the petitioner may not be entitled to claim refund. The deficiency memo was responded to by the petitioners vide letter dated 22.06.2011 followed by 29.08.2011 wherein reliance was sought to be place on a circular issued by CBED in Circular No.120 of 2010 S.No.3.3 to suggest that they were entitled to claim refund of the input tax credit even for the period prior to the date of registration.

4. To the contrary it is submitted by the learned counsel for the respondent that the petitioner had not filed copies of all documents before the Respondent and that there has been change in the assessment jurisdiction office.

5. It was submitted by the learned counsel for the petitioner if that be the case they may be permitted to submit the relevant documents in support of their claim for refund.

6. The learned counsel for the respondent also submitted that with the introduction of GST, there has been bifurcation of Jurisdiction. In view of change in the jurisdictional circle some of the papers are not available with the concerned authority and would therefore request that the petitioner may submit a fresh set of applications along with relevant documents to process the refund application.

7. To which, the learned counsel for the petitioner undertakes to re-submit copy of the refund application along with the supporting documents within a period of 4 weeks from the date of receipt of copy of this order.

8. In view thereof, the petitioner shall re-submit/ furnish copy of the refund application along with supporting documents if any within a period of 4 weeks from the date of receipt of a copy of this order. On

receipt of such application the same shall be processed and orders shall be passed within a period of 4 months thereafter on merits. It is made clear that I had not examined the claim for refund on merits nor expressed any opinion with regard thereto.

9. The writ petition stands disposed of on the above terms. No costs.

07.03.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To:
1.The Secretary,Ministry of Finance,
New Delhi – 110 001.

2. The Principal Chief Commissioner of GST
& Central Excise, Tamil Nadu and Puducherry,
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