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IN THE HIGH COURT OF KERALA AT ERNAKULAM



Present:

THE HONOURABLE MR.JUSTICE AMIT RAWAL

Tuesday, the 1st day of December 2020/10th Agrahayana, 1942

WP(C)No.24210/2020(A)

PETITIONER

SOURA NATURAL ENERGY SOLUTIONS INDIA PVT. LTD.,
X/126G, CHIRANGARA, KORATTY, THRISSUR, KERALA - 680308, (REPRESENTED BY
ITS DIRECTOR MR.KRISHNAN P.K)

RESPONDENTS

1. UNION OF INDIA
(REPRESENTED BY SECRETARY, FINANCE DEPARTMENT DELHI), DEPARTMENT OF
REVENUE, MINISTRY OF FINANCE, NORTH BLOCK NEW DELHI - 110 001.
2. THE CENTRAL BOARD OF INDIRECT TAX AND CUSTOMS
DEPARTMENT OF REVENUE, MINISTRY OF FINANCE,
NORTH BLOCK NEW DELHI - 110 001. (REPRESENTED BY ITS CHAIRMAN).
3. GOODS AND SERVICE TAX NETWORK
WORLDMARK 1, AEROCITY, INDIRA GANDHI INTERNATIONAL AIRPORT,
NEW DELHI 110 037, (REPRESENTED BY ITS CHAIRMAN)
4. THE STATE TAX OFFICER -1
CHALAKKUDY, STATE GOODS AND SERVICE TAX DEPARTMENT,
MINI CIVIL STATION, CHALAKKUDY 680 307.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of condition(b) in Para 3 of Ext.P4 Circular pending disposal of writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S.M.P.SHAMEEM AHAMED & CYRIAC TOM, Advocates for the petitioner, ASSISTANT SOLICITOR GENERAL OF INDIA for R1, SRI.P.R.SREEJITH, STANDING COUNSEL for R1 & R3, and of GOVERNMENT PLEADER for R4, the court passed the following:

P.T.0



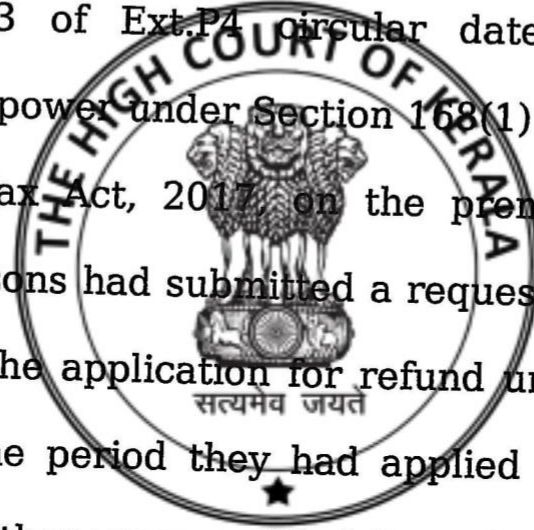
AMIT RAWAL, J.

W.P(C).No.24210 of 2020

Dated this the 1st day of December, 2020

ORDER

This writ petition pertains to challenge of condition No. (b) of para 3 of Ext.P4 circular dated 3.10.2019 by exercising the power under Section 168(1) of Central Goods and Service Tax Act, 2017, on the premise that certain registered persons had submitted a request for the purpose of processing the application for refund under a particular category for the period they had applied for nil. In other words, in fact, they were entitled for refund but the portal did not envisage such provisions whereby they could submit an application for refund for the period already declared as nil. On the basis of the aforementioned representation the Government of India, Ministry of Finance, Department of Revenue through aforementioned circular clarified that the registered person who filed a nil refund claim in FORM GST for a given period under a particular category can again submit for refund for the said period under the same



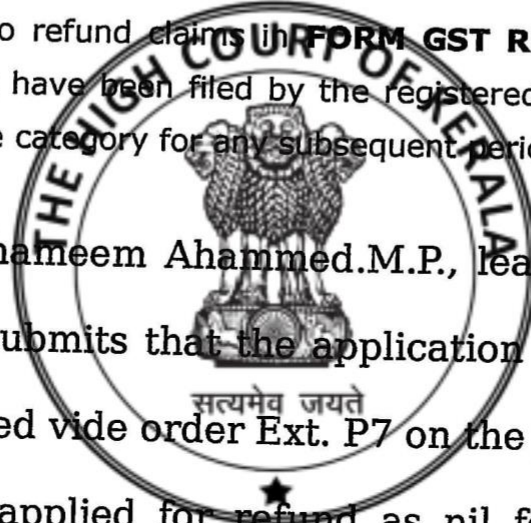
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category only if the following two conditions are satisfied:

- a. The registered person must have filed a NIL refund claim in **FORM GST RFD-01A/RFD-01** for a certain period under a particular category; and
- b. No refund claims in **FORM GST RFD-01A/RFD-01** must have been filed by the registered person under the same category for any subsequent period."

2. Sri.Shameem Ahammed.M.P., learned counsel for the petitioner submits that the application of the petitioner has been rejected vide order Ext. P7 on the premise that the petitioner had applied for refund as nil for the month of June, 2019 till October, 2019 on 30.12.2019 on the same date and also applied for refund by taking the benefit of the circular but the same has been rejected by taking aid of sub-clause (b) of Clause 3 of the circular, on the premise that no claim should have been filed by the person under the same category for subsequent period; but it had not envisaged the situation where a person had applied for nil and refund on the same date.

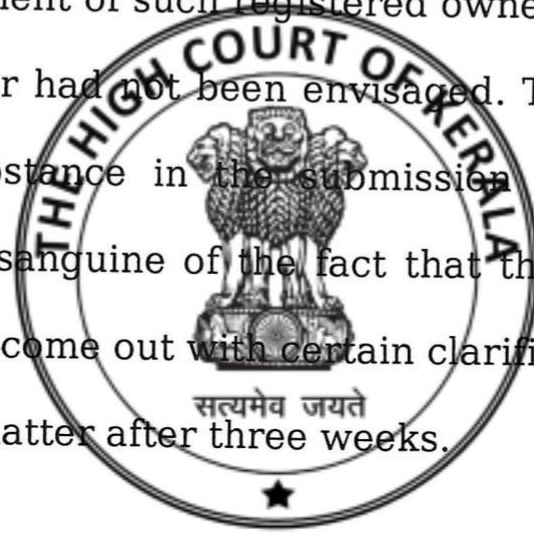


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3. On the other hand, Sri.P.R.Sreejith for respondents 2 and 3 submits that he had already submitted a request to the department for clarification of the circular as the predicament of such registered owners including that of the petitioner had not been envisaged. This Court *prima facie* finds substance in the submission of Sri.Shameem Ahammed and sanguine of the fact that the department of Revenue would come out with certain clarification.

Post this matter after three weeks.



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Sd/- AMIT RAWAL, JUDGE


ASSISTANT REGISTRAR

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4/12/20

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EXHIBIT P4 - COPY OF THE CIRCULAR NO.110/29/2019-GST DATED 3.10.2019
EXHIBIT P7 - COPY OF THE ORDER 20.08.2020.

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