2025:KER:15654

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946

WP(C) NO. 7269 OF 2025

PETITIONER:

M/S KRISHNA THEERAM AYUR HOLY BEACH RESORTS PV. LTD
AGED 58 YEARS
THIRUVAMBADI BEACH,
VARKALA P.O., VARKALA, PIN - 695141
REPRESENTED BY V. KRISHNAKUMAR, MG.
DIRECTOR

BY ADVS.
P.S.SOMAN
T.RADHAMONY
S.VEENA

RESPONDENTS:

1. **STATE TAX OFFICER-II**
   OFFICE OF THE JOINT COMMISSIONER,
   TAX PAYER SERVICES,
   STATE GOODS & SERVICES TAX DEPARTMENT
   KARAMANA P O., THIRUVANANTHAPURAM, PIN - 695002

2. **JOINT COMMISSIONER**
   TAX PAYER SERVICES, STATE GOODS & SERVICES TAX
   DEPARTMENT KARAMANA P O.,
   THIRUVANANTHAPURAM, PIN - 695002

3. **THE STATE OF KERALA**
   REPRESENTED BY THE SECRETARY,
   TAXES DEPARTMENT, GOVT. SECRETARIAT,
   THIRUVANANTHAPURAM, PIN - 695001

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C). No.7269 of 2025

Dated this the 24th day of February, 2025

JUDGMENT

Petitioner challenges Exhibit-P6 order of assessment issued by the first respondent.

2. Petitioner is a private limited company registered under the Kerala Tax on Luxuries Act, 1976. For the year 2016-17, initially, an assessment was completed on 22.12.2020. The said order was challenged in appeal before the 2nd respondent, and by Exhibit-P2 order, the assessment was set aside and a fresh consideration was directed after granting an opportunity to the petitioner to produce the records. The Appellate Authority further observed in its order that if the appellant does not avail the opportunity to produce records, the assessing authority is at liberty to restore the impugned order. Despite the aforesaid direction, petitioner did not avail the opportunity to produce records. Since the impugned order was set aside, the assessing officer passed a fresh assessment order, which is impugned in this writ petition.

3. Sri. P. S. Soman, the learned counsel for the petitioner, contended that the impugned order of assessment has entered into areas that were not part of the original assessment order, and hence,

the period of limitation will apply. According to the learned counsel, in the meantime, petitioner had availed the benefit of Amnesty Scheme as per Exhibit-P3 on 28.09.2024, and even paid the amount as evident from the challan of the same date, and thereafter the assessing authority was not entitled to issue the impugned order.

4. Smt. Jasmin M. M., the learned Government Pleader, on the other hand, contended that the earlier assessment order was completely set aside as per Exhibit-P2 and a fresh consideration was directed. Though the assessing officer was given the liberty to restore the earlier assessment order, it was an option given to the assessing authority. Therefore, the impugned order does not warrant any interference under Article 226 of the Constitution of India. Even as regards the question of limitation, the learned Government Pleader pointed out that it is a matter which could be considered by the Appellate Authority.

5. On a perusal of Exhibit-P2, this Court notices that the assessment order was completely set aside for a fresh consideration. As rightly pointed out by the learned Government Pleader an option was given to the assessing authority to restore the impugned order. However, the said authority did not opt for that choice and instead issued a fresh order. The order of the Appellate Authority was on 09.01.2024, and until the present impugned order was issued, there

was no amount quantified to avail the Amnesty Scheme. Exhibit-P3 application dated 28.09.2024 and the e-challan paid by the petitioner are all unilateral actions, which cannot bind the assessing authority or the Department from issuing Exhibit-P6 order of assessment. Therefore, the contentions based on the Amnesty Scheme allegedly availed by the petitioner are not of any assistance to the petitioner.

6. As far as the question of limitation is concerned, since the matter requires to be appreciated on the basis of the documents available and since the petitioner has the remedy of appeal, I am of the view that this is not a fit case to exercise the jurisdiction under Article 226 of the Constitution of India.

Accordingly, this writ petition is dismissed, reserving the liberty of the petitioner to pursue the statutory appeal against Exhibit-P6. If any such appeal is filed, the same shall be considered by the Appellate Authority untrammelled by any observations made in this judgment.

Sd/-

BECHU KURIAN THOMAS
JUDGE

Jka/24.02.25.

APPENDIX OF WP(C) 7269/2025

PETITIONER'S EXHIBITS

Exhibit-P1	**TRUE COPY OF THE ASSESSMENT ORDER NO.32015271532/2016-17 DATED 22-12-2020.**
Exhibit-P2	**TRUE COPY OF THE APPELLATE ORDER NO. LTA.25/2023 DATED 09-01-2024.**
Exhibit-P3	**TRUE COPY OF THE APPLICATION IN FORM NSTY-1 DATED 28-09-2024 FILED BY THE PETITIONER ALONG WITH PAYMENT CHALLAN.**
Exhibit-P4	**TRUE COPY OF THE NOTICE NO. LT.32015271532/2016-17 DATED 30-01-2025 ISSUED UNDER SECTION 6(2) OF THE KTL ACT BY THE 1ST RESPONDENT TO THE PETITIONER.**
Exhibit-P5	**TRUE COPY OF THE REPLY DATED 05-02-2025 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**
Exhibit-P6	**TRUE COPY OF THE MODIFIED ORDER NO. TIN. NO. 32015271532/2016-17 DATED 14-02-2025 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**