



2025:KER:21952

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 14TH DAY OF MARCH 2025 / 23RD PHALGUNA, 1946

WP(C) NO. 9680 OF 2025

PETITIONER(S) :

M/S TABASCO HINDUSTAN INFRA DEVELOPERS PRIVATE LIMITED
AGED 61 YEARS
II ND FLOOR, MALL OF INDIA, KANHANGAD, KASARAGOD
REPRESENTED BY ITS MANAGING DIRECTOR,
BASHEER MALIKAYIL, S/O KALINGAL MALIKAYIL ABDULLA,
RESIDING AT KALINGAL HOUSE, MADATHIL,
PALLIKKARA, KASARAGOD, PIN - 671 315.

BY ADVS.
RAJESH NAMBIAR
SINDHU K.NAMBIAR

RESPONDENT(S) :

- 1 THE ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL
EXCISE,
KANNUR DIVISION, CENTRAL REVENUE BUILDING,
KUKHIKUNNU, KANNUR, PIN - 670 001.
- 2 THE COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE
KOZHIKODE COMMISSIONERATE C.R. BUILDING , MANANCHIRA,
KOZHIKODE, PIN - 673 001.
- 3 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.

SR.GP DR.THUSHARA JAMES,
SRI.V.GIRISH KUMAR,SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
14.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



2025:KER:21952

BECHU KURIAN THOMAS, J......
W.P.(C) No.9680 of 2025.....
Dated this the 14th day of March, 2025**JUDGMENT**

Petitioner challenges Ext.P1 order of assessment to the extent it imposes penalty on the petitioner under Section 74 of CGST/SGST Act.

2. Petitioner is a company engaged in the construction of residential apartments as well as commercial complexes. Pursuant to a show cause notice issued under Section 74(1), the impugned order was issued as early as on 27.09.2023, imposing a tax liability of Rs.30,42,916/- and a penalty for an equivalent amount. Though, petitioner paid the tax imposed therein, the penalty was not paid. No appeal was also preferred against the impugned order as contemplated by law. After more than 17 months, petitioner has preferred this writ petition challenging the Ext.P1 order, to the extent it imposed penalty.
3. I have heard Sri.Rajesh Nambiar, the learned counsel for the petitioners as well as Dr.Thushara James, the learned Senior Government Pleader and Sri.V.Girish Kumar, the learned Standing Counsel.
4. It is a settled proposition of law that once the statutory time limit for preferring an appeal, as provided under the Statute, has expired recourse to the extraordinary remedy under Article 226 of the Constitution of India



2025:KER:21952

cannot be resorted to. The statutory scheme cannot be ignored by this Court, even while exercising the discretionary jurisdiction under Article 226. Though, in exceptional circumstances, if the impugned order is *ex facie* without jurisdiction or was issued in violation of the principles of natural justice, the power under Article 226 of the Constitution of India can be exercised. Reference to the decisions in **Assistant Commissioner of Central Excise v. Krishna Poduval** 2005 (4) KLT 947, **Sathish Murthi v. Member Secretary Art and Heritage Commission, TVM and Others.** 2016 KHC 684 and **Assistant Commissioner of State Tax and others v. Commercial Steel Ltd.** (2022) 16 SCC 447, are relevant in this context. However, such a situation does not arise in the instant case.

5. Moreover, petitioner had clearly acquiesced to the order of determination, by paying the tax imposed in Ext.P1 and omitted to prefer any appeal within the time prescribed under Section 107 of CGST Act. In such circumstances, I do not find any cause to interfere under Article 226 of the Constitution of India.

Therefore, this writ petition is dismissed.

sd/-
BECHU KURIAN THOMAS
JUDGE



2025:KER:21952

APPENDIX OF WP(C) 9680/2025

PETITIONER EXHIBITS

**EXHIBIT P1 TRUE COPY OF THE ASSESSMENT ORDER DATED
27.09.2023 ISSUED BY THE 1ST RESPONDENT**

**EXHIBIT P2 TRUE COPY OF THE GUIDELINES DATED 22.02.2021
OF THE COMMISSIONER OF STATE TAX,
THIRUVANANTHAPURAM**

