



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

THURSDAY, THE 23RD DAY OF OCTOBER 2025 / 1ST KARTHIKA, 1947

WA NO. 2110 OF 2025

AGAINST THE JUDGMENT DATED 27.03.2025 IN WP(C) NO.2008 OF 2019

APPELLANT/PETITIONER:

M/S.TAJ GARDEN RETREAT,
KUMARAKOM, (A UNIT OF TAJ KERALA HOTELS AND
RESORTS LIMITED), KOTTAYAM - 686566,
REPRESENTED BY MAYANK MITTAL, GENERAL MANAGER.

BY ADVS.
SMT.SREELEKSHMI BEN
SRI.JOSE JACOB
SHRI.JAZIL DEV FERDINANTO
SMT.ANNE MARIA MATHEW
SMT.ANJALY ANN JOSEPH

RESPONDENT/RESPONDENT:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY,
COMMERCIAL TAXES, GOVT OF KERALA, TRIVANDRUM,
KERALA, PIN - 695002.
- 2 STATE TAX OFFICER (INTELLIGENCE),
STATE GOODS AND SERVICE TAX DEPARTMENT,
SQUAD NO.V, PUBLIC LIBRARY BUILDING,
SASTRI ROAD, KOTTAYAM- 686001.

BY GOVERNMENT PLEADER, SMT.THUSHARA JAMES

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 23.10.2025, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Harisankar V.Menon, J.

The appellant is an assessee under the provisions of the Kerala General Sales Tax Act, 1963 (for short, the 'Act'), with respect to its transactions in Indian Made Foreign Liquor (IMFL) and Foreign Made Foreign Liquor (FMFL). Pursuant to an inspection carried out in its premises on 08.03.2012, Ext.P1 show cause notice proposing imposition of penalty under the provisions of Section 45A of the Act was issued on 20.12.2018 by the 2nd respondent. The appellant challenged the notice issued as above, essentially as time-barred by filing W.P.(C) No.2008 of 2019. This Court initially admitted the said writ petition ordering stay against further proceedings based on the show cause notice. However, by the impugned judgment dated 27.03.2025, a learned Single Judge of this Court, taking note of the averments contained in the counter affidavit filed, held that the petitioner is to approach the statutory authority with respect to the notice at Ext.P1. It is aggrieved by the judgment



as above, this intra-court appeal is instituted by the appellant.

2. Heard Sri.Jose Jacob, the learned counsel for the appellant and Dr.Thushara James, the learned Government Pleader for the respondents.

3. The main contention raised by the learned counsel for the appellant is to the effect that insofar as the show cause notice at Ext.P1 was issued admittedly on 20.12.2018, the proceedings were hopelessly barred by limitation. He would contend that though no period of limitation has been prescribed with reference to the provisions of Section 45A of the Act, such proceedings have to be initiated/finalized atleast within a reasonable period of time, as held by the Division Bench of this Court in W.A.No.344 of 2017 and W.P(C) No.2253 of 2017. He would also contend that since limitation is a jurisdictional issue, the writ petition ought to have been decided on the merits.

4. Per contra, the learned Government Pleader seeks to place considerable reliance on the various notices issued, directing production of books of accounts, subsequent to the inspection on 08.03.2012, to contend that the Department had



taken sufficient steps and it is solely because the petitioner had been repeatedly seeking adjournments that ultimately the show cause notice came to be issued as evidenced by Ext.P1. In other words, the learned Government Pleader contends that the judgment of this Court in W.A.No.344 of 2017 would not have any application, in the facts and circumstances of the case at hand.

5. We have considered the rival submissions as well as the connected records.

6. The first issue arising for consideration in this writ appeal is as to whether the appellant is justified in approaching this Court under Article 226 of the Constitution of India with respect to the show cause notice at Ext.P1. We note that the petitioner has challenged Ext.P1 notice, contending that the same is hopelessly barred by limitation. The Apex Court in **State of Punjab and Others v. Bhatinda District Coop. Milk P. Union Ltd. [(2007) 10 VST 180 (SC)]**, had held that the challenge against a notice on the ground of limitation is maintainable before a writ court. In such circumstances, we



are of the opinion that the appellant was justified in challenging the notice under the exceptional circumstance pointed out as above.

7. The fact that the proceedings came to be initiated, as evidenced by Ext.P1, pursuant to the inspection on 08.03.2012, is not in dispute. The provisions of Section 45A of the Act provide for the imposition of penalty, when the tax is sought to be evaded by an assessee. True, the provisions do not provide the time period within which proceedings have to be taken under the statute. W.A.No.344 of 2017, relied on by the learned counsel for the appellant, considered the issue as regards the time limit within which a penalty under the provisions of Section 45A of the Act and Section 67 of the Kerala Value Added Tax Act, 2003 (for short, 'KVAT Act'), was to be taken/completed. This Court noticed that while Section 45A of the Act did not provide any period of limitation, Section 67 of the KVAT Act originally provided for a period of one year from the date of detection of the offence for imposition of penalty. This period of one year was later enhanced to three years from the date of



detection of the offence, and by the Finance Act, 2014, the prescription of the time limit itself was omitted. This Court held with reference to the principles laid down by the Apex Court in **Bhatinda District Coop. Milk P. Union Ltd.** (*supra*), that even when no limitation is prescribed under the statute, the proceedings are required to be initiated/completed within a reasonable period of time. As to what is the reasonable period of time, this Court made reference to the other provisions of the statute – Section 19, etc. Section 19 of the statute provided for the assessment of the escaped turnover, which has to be initiated within a period of five years from the expiry of the year. Section 17 of the Act provided for the manner in which the assessment under the statute is to be completed, and subsection (6) further provided for the period of five years from the expiry of the year for completion of the assessment. In other words, the Act prescribes a time limit of five years, whether it be the original assessment or the escaped assessment, as the period within which the steps are to be taken. In such circumstances, going by the dictum of this Court in W.A.No.344



of 2017, the reasonable period of time has to be with reference to the period of five years as prescribed under the afore provisions. When that be so, since Ext.P1 notice was issued with reference to the assessment year 2011-12, the period of five years has come to an end on 31.03.2017. The notice at Ext.P1 was issued admittedly only on 20.12.2018. The above notice is beyond the reasonable period of time of five years, in such circumstances.

8. In this connection, the contention raised by Dr.Thushara James, with reference to the various notices issued by the assessing authority, is to be noticed. True, as contended by her, the notices have been issued on 16.3.2012 (Ext.R2(b)), 13.04.2012 (Ext.R2(d)), 01.02.2013 (Ext.R2(f)), 06.10.2015(Ext.R2(g)), etc. The appellant had sought further time, as evidenced by various letters produced along with the counter affidavit. However, in our opinion, even assuming for a moment that there was no non-cooperation on the part of the assessee pursuant to the notices issued as above, the Department was under an obligation to proceed in accordance



with law within a reasonable period of time. This is especially so, when Ext.P1 notice was issued, noticing that the steps were required to be taken on the basis of the available documents, even when the appellant did not respond to the notices. We are of the opinion that the 2nd respondent cannot take refuge under the afore notices, to save the limitation, in such circumstances. We are fortified in taking this view, in view of the observations made by the Division Bench of this Court in W.P(C) No.2253 of 2017 dated 02.11.2018, which reads as under:-

"7. In the present case, the inspection was conducted in June, 2010. The first summons was issued on 06.12.2011 within the limitation period of three years as the provision stood from 2009 onwards. There was absolutely no reason why the Officer did not finalise the proceedings on the basis of the materials recovered without waiting for the assessee to produce the books for almost five years. Even now the Officer has finalised the proceedings in 2016 without any books of accounts being produced by the assessee. The mere non-cooperation of the assessee did not at all hamper the Department from finalising the proceedings, since they could have deemed the non-co-operation to be a cause for assuming that there is no maintenance of proper books of accounts. We hence reject the contentions of the Department and find the repeated summons a mere ruse to



save limitation.”

In the light of the afore, the contention raised by Dr.Thushara James is only to be recorded and rejected.

9. Though the counter affidavit also makes reference to the extension for completion of assessment under the provisions of Section 17(7) of the Act, we note that the extension has been ordered only on 28.03.2018, after the expiry of the period noticed as above. Therefore, the extension as above is also not relevant to the case at hand. In such circumstances, we are of the opinion that the appellant is entitled to succeed.

In the result, this appeal would stand allowed, setting aside the judgment of the learned Single Judge and quashing Ext.P1 notice issued by the 2nd respondent herein.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE

In

**HIGH COURT OF KERALA
AT ERNAKULAM**

Number and Year of the Case : WA 2110/2025
Name Of Applicant : ADVOCATE GENERAL
: KERALA
Number and Date of Application : B 9155/2025 , 25-10-2025
Date when the copy was delivered : 29-10-2025

Examiner



ONLINE COPY APPLICATION