



2025:KER:3342

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
THURSDAY, THE 16TH DAY OF JANUARY 2025 / 26TH POUSHA, 1946
WP(C) NO. 1602 OF 2025

PETITIONER:

M/S. NEO CLASSIC CRUISE AND TOURS (P) LTD
GF-6, 67/4323, SWAPNIL ENCLAVE,
SHANMUGHAM ROAD, ERNAKULAM DISTRICT,
KOCHI, PIN - 682031
REPRESENTED BY ITS MANAGING DIRECTOR,
NISHAYJITH.K.JOHN

BY ADVS.
K.J.ABRAHAM
ARAVINDAKSHAN K.R.
NIKHIL JOHN

RESPONDENTS:

- 1 DEPUTY COMMISSIONER (INTELLIGENCE),**
STATE GST DEPARTMENT, 2ND FLOOR,
KURIEKAL BUILDING, EDAPPILLY P.O,
ERNAKULAM DISTRICT, KOCHI, PIN - 682024

- 2 DEPUTY COMMISSIONER**
ADJUDICATION-1, STATE GST DEPARTMENT,
STATE TAX COMPLEX, PERUMANNOR P.O,
THEVARA, ERNAKULAM DISTRICT, PIN - 682015

BY ADV. JASMIN M.M.
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 16.01.2025, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:



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W.P.(C). No.1602 of 2025

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BECHU KURIAN THOMAS, J.

W.P.(C). No.1602 of 2025

Dated this 16th day of January, 2025

JUDGMENT

Petitioner challenges Exhibit-P5 order issued under Section 74 of the Central Goods and Services Tax Act, 2017 (for short, 'the Act').

2. Petitioner is a company engaged in providing tour packages like breakfast cruises, lunch and dinner cruises through the back waters. Various specialised packages are also offered by the petitioner. While classifying the services, petitioner classified itself as a tour operator. However, a show cause notice was issued on 29.07.2024, alleging that the petitioner ought to have classified itself as a 'houseboat service operator' taxable at the rate of 18% and had instead classified itself as a tour operator to be taxed at the rate of 5%. It was alleged that the said suppression was revealed only through an investigation. Consequent to a detailed objection filed by the petitioner as Exhibit-P2, the impugned order was issued under Section 74 of the Act, which is produced as Exhibit-P5.

3. Sri. Abraham K.J., the learned counsel for the petitioner, vehemently contended that neither the show cause notice nor the impugned order reflect any circumstance for initiating proceedings



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under Section 74 of the Act, as there is no fraud, willful misstatement or suppression. It was also submitted that Section 74 of the Act has been invoked solely for the purpose of avoiding the restriction on the period of limitation, and there is nothing to indicate any fraud, willful misstatement or suppression. It was further submitted that, the impugned order was passed without verifying the records and has proceeded in a unilateral manner, thereby violating the principles of natural justice.

4. Smt. Jasmin M.M., the learned Government Pleader, on the other hand, contended that the impugned order is appealable under Section 107 of the Act. It was also submitted that considering the specific factual findings of the assessing authority in the impugned order at paragraph 8 indicating the reasons for invoking of Section 74 of the Act, this Court ought not to exercise the jurisdiction under Article 226 of the Constitution of India.

5. On a consideration of the rival contentions, this Court notices that the impugned order refers to specific reasons for invoking the powers under Section 74 of the Act. The correctness or otherwise of those reasons cannot be gone into in this proceeding under Article 226 of the Constitution of India, as those are disputed facts. The normal remedy for an aggrieved person against an order issued under Section



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74 of the Act is to prefer an appeal under Section 107 of the Act.

6. Though the learned counsel for the petitioner vehemently relied upon instruction No.05/2023 issued by the Central Board of Indirect Taxes & Customs, which indicates that proceedings under Section 74 of the Act can be invoked only when there is fraud, willful misstatement or suppression of facts to evade tax. Bearing in mind the Explanation to Section 74, I am of the view that the contentions now urged are matters which will have to be agitated in an appeal provided under the statute and not take recourse to the extraordinary remedy under Article 226 of the Constitution of India.

7. In such circumstances, I find no merit to exercise the jurisdiction under Article 226 of the Constitution of India and relegate the petitioner to pursue his statutory remedies.

The writ petition is dismissed with the above observations.

Sd/-

BECHU KURIAN THOMAS
JUDGE

Jka/16.01.25.



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APPENDIX OF WP(C) 1602/2025

PETITIONER'S EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE CLARIFICATION ISSUED BY THE CHIEF COMMISSIONER NO.IV/16/06/2017-CO(TVPM) DATED 16.08.2017 |
| Exhibit P2 | TRUE COPY OF THE DETAILED SHOW CAUSE NOTICE IN CASE ID:AD321123005976C DATED 29.07.2024 ISSUED BY THE 1ST RESPONDENT |
| Exhibit P3 | TRUE COPY OF THE SUMMARY SHOW CAUSE NOTICE IN FORM DRC-01 DATED 31.07.2024 IN REF NO:ZD320724032518H |
| Exhibit P4 | TRUE COPY OF THE REPLY DATED 26.08.2024 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT |
| Exhibit P5 | TRUE COPY OF THE ORDER U/S.74 AND SUMMARY OF ORDER IN FORM GST DRC-07 WITH ANNEXURE DATED 30.11.2024 PASSED BY THE 2ND RESPONDENT |