

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 32325 of 2015 (M)

PETITIONER(S) :

**MGM MANAL VARAL THOZHILALI CO-OPERATIVE SOCIETY E-1183,
MALLIYANKARA P.O., MALLIYANKARA, ERNAKULAM DISTRICT
REPRESENTED BY ITS SECRETARY, SHAIJU, AGED 40 YEARS,
S/O.GEORGE,MALIEKKAL HOUSE, KUZHUPILLY VILLAGE,
PALLI PORT P.O., COCHIN TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

- 1. COMMISSIONER OF CENTRAL EXCISE (APPEALS),
CENTRAL REVENUE BUILDING,
I.S.PRESS ROAD, COCHIN - 18.**
- 2. DEPUTY COMMISSIONER,
CENTRAL EXCISE, ERNAKULAM - II DIVISION.**

BY SRI.SASTHAMANGALAM AJITHKUMAR, SC FOR CUSTOMS

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

AMV

: 2 :

WP(C).No. 32325 of 2015 (M)

APPENDIX

PETITIONER(S) EXHIBITS :

**EXT.P1: COPY OF THE ASSESSMENT ORDER ISSUED BY THE SECOND
RESPONDENT DATED 26.11.2014.**

RESPONDENTS EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 32325 of 2015

Dated this the 26th day of October, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P1 assessment order, that is passed by the 2nd respondent confirming a demand of service tax and penalty on the petitioner. In the writ petition it is stated that against Ext.P1 order, the petitioner could not prefer an appeal before the 1st respondent appellate authority, within the time permitted under the Statute. The prayer in the writ petition is therefore, for this Court to direct the 1st respondent to accept the appeal to be preferred by the petitioner against Ext.P1 order, without considering the delay in filing the appeal.

2. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the relief sought for in the writ petition cannot be granted, since the statutory period of limitation prescribed under the Finance Act, 1994 as amended, for filing an appeal against Ext.P1 order, has expired and there is no power in the appellate authority to condone

the delay in filing the appeal. It is trite that, when there is no power, provided in the statute, to condone the delay, then this Court cannot, in exercise of powers under Article 226 of the Constitution of India, ignore the said statutory scheme and direct the appellate authority to consider the appeal, which is filed beyond the time granted under the Statute. I therefore, find that the writ petition is devoid of any merit, and hence, it is dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE