



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

TUESDAY, THE 18TH DAY OF NOVEMBER 2025 / 27TH KARTHIKA, 1947

WP(C) NO.18245 OF 2008

PETITIONER:

M/S.ESCAPADE RESORTS PVT. LTD.,
UNIT: KALARI KOVILAKAM, KOVILAKAM MUKKU, KOLLENGODE,
PALAKKAD - 678 506, REPRESENTED BY ITS DIRECTOR,
MR.MICHAEL DOMINIC.

BY ADVS.
SRI.JOSEPH KODIANTHARA (SR.)
SRI.MATHEWS K.UTHUPPACHAN
SHRI.TERRY V.JAMES

RESPONDENTS:

- 1 THE COMMERCIAL TAX OFFICER (WC & LT) ,
COMMERCIAL TAXES, PALAKKAD.
- 2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES, TRIVANDRUM.

BY DR.THUSHARA JAMES, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11.11.2025, THE COURT ON 18.11.2025 DELIVERED THE FOLLOWING:



JUDGMENT

Harisankar V. Menon, J.

This writ petition is at the instance of a private limited Company, contending that it has set up a full-fledged Ayurvedic hospital by obtaining on lease the 'Kollengode Palace', offering specified therapeutic Ayurvedic treatment. Proceedings were taken under the provisions of the Kerala Tax on Luxuries Act, 1976 (hereinafter referred to as the 'Luxury Tax Act'), proposing to demand tax thereunder, treating the activity of the petitioner as that of a 'hotel', with respect to the period 2004-05 to 2007-08. The petitioner contended that it does not come within the definition of 'hotel', since it does not provide accommodation to anyone except those who are ready to undergo treatment for a minimum period of 14 days and are admitted. The petitioner also highlighted that there is no restaurant, no separate tariff for food, and only dietary food available; that there is no swimming pool or shops provided, etc. However, by Ext.P16



assessment order, the first respondent in the writ petition finalised the assessment under the statute with respect to the period 2004-05 to 2007-08, both on 'room rent' and 'treatment charges' levying tax at the rate of 15%. It is seeking to challenge the afore order that the petitioner instituted the captioned writ petition.

2. Heard Sri. Joseph Markose, the learned senior counsel for the petitioner, and Dr. Thushara James for the respondents.

3. Sri. Joseph Markose would contend that the petitioner was only a 'hospital' and the assessment as a 'hotel' by the impugned order is without justification. He would place considerable reliance on the judgment of a Division Bench of this Court in OP (Tax) No.1 of 2015 dated 23.11.2020 to contend that the status of the petitioner as a 'hospital' is concluded and therefore the order at Ext.P16 requires to be *set aside* for that reason.

4. *Per contra*, Dr. Thushara James would contend that



the order at Ext.P16 has considered the issue with specific reference to the activities carried on in the petitioner's unit, and the assessment of 'treatment charges' along with 'room rent' is perfectly in order. She would further contend that the Division Bench judgment relied on by the petitioner is with reference to the factual position considered therein and would not apply to the case at hand.

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

6. Straight away, we may notice the amendment made to the Luxury Tax Act pursuant to the Finance Act, 2008, by which 'luxury provided in the hospital' has been made subject to tax under the Luxury Tax Act. When that be so, there cannot be any dispute as regards the petitioner's liability to luxury tax for the period subsequent to the amendment as above. However, the impugned order at Ext.P16 is for periods anterior to the amendment as above.

7. In the impugned order at Ext.P16, we notice that



the first respondent had made reference to the 'treatment program' as well as the comment/review by the so-called 'guest' of the petitioner. For ease of reference, the following observation made by the first respondent in Ext.P16 order needs to be extracted, which reads as under: -

"In short, M/s. Kalarikovilakom is not a hospital and what is offered therein to the guests is not treatment in true medical sense. What is offered therein, according to the brochure cited above, can, to the most extend be termed as better caring or wellness treatment, which a healthy man can avail to better his body and mind. That type of better care treatment or wellness treatment cannot be treated at par with true treatment that is offered to a patient to combat diseases in a full-fledged hospital. The relation between the occupants and Kalarikovilakom is not that like a patient to hospital but like guest to hotel.

What is provided in the institution, as it is evident from the brochure of petitioner and comments of guests is not specific disease oriented treatment but only betterment or wellness treatment associated with holiday tourism.

Comment dated: 13.12.2006 of guest named Dr.R.J.Fernado reads as "very touched and leaving with a healthier mind, body and soul".

Another guest named Karen Zebety says my family recognizes me as a thinner, vegetarian, decaffeinated, meditating woman". Yet another lady guest named Plilppa says that "I feel 100% better than when I arrived.



Another guest: says "Privileged to learn much from my yoga teacher, the doctors, the massagers and also from the chef whose soups are to die for".

These comments do not originate from patients having any specific diseases, or at least persons having symptoms of specific disease. If the persons were really patients, there would have been reference of diseases they were having at the time of admission in their comments. Reference is of betterment or wellness treatment. There is no treatment as administered in a full-fledged hospital to patients to combat diseases.

All these show what type of treatment was being offered to guest and it is different from the nature treatment by a full-fledged hospital."

Therefore, according to the first respondent, the amount collected by the petitioner attracts tax under the statute. However, in our opinion, the reference to the comment/review by the 'guest' definitely goes on to show that the petitioner is to be treated as a hospital alone. This is especially so, since the comments specifically make reference to the involvement of the Doctors, which has improved the general health and well-being of the guests. We may also notice Ext.R1(i) produced along with the counter affidavit, which shows that different types of ayurvedic treatment are



extended for anti-ageing, stress relief, etc., for various durations at different rates depending on the suite/room category. Similarly, a perusal of the comments/reviews again produced by the respondent, along with their counter affidavits as Ext.R1(j), would show that what is extended is ayurvedic treatment. To be considered along with the afore is the subsequent reference made by the first respondent to the charges levied/collected as recorded in the assessment order, in the following lines: -

“Residential accommodation is provided by way of business for monetary consideration as charges for rooms are accounted in the books of accounts under the head room rent. Only difference is that a consolidated amount is collected from guests for all expense including to and fro journey.

This all inclusive package tariff does changes depending upon the type of suite the prospective person selects.

For example, for availing stress relief (Manshanthy) guest has to pay Rs.2,65,650/- if he stays in Kovilakom suites but he has to pay Rs.3,54,200/- if he stays in Vengunad Suites even if the treatment is same.

Likewise, guest has to pay Rs.4,42,750/- if he stays in Kovilakom Suite but for the same treatment he has to pay Rs.6,19,850/ if he stays in Vengunad Suites for 28 days programme.”



The afore extracted portion also shows that the guest is required to stay for the required period of time in tune with the 'package' for the 'room' granted. There is a difference in the amount being collected depending on the 'accommodation'. This also shows that it is not as if a tourist obtains a reservation and goes to the hotel for a stay. To be read along with afore is the fact that the treatment charges collected are more than the room rent, as is evident from the assessment order at Ext.P16. The combined room rent for the 4 years were to the extent of Rs.3,33,23,102/-, and the treatment charges were to the extent of Rs.4,98,47,420/-.

8. It is with reference to the afore factual position as available in the impugned order that the judgment of this Court in OP (Tax) No. 1 of 2015 requires to be analysed. The afore judgment was with respect to the assessment of the petitioner herein, admittedly for the subsequent years (2008-09 onward). The assessment was completed by treating the petitioner as a 'hotel', brushing aside its contention that it is



a 'hospital', as in the case at hand. The Tribunal held that the petitioner can only be a 'hospital' and liable to tax as such. The order of the Tribunal was challenged by the revenue. This Court considered the issue with reference to reliance by revenue in the judgment of the Division Bench in OP (Tax) No. 33 of 2016, as under: -

"6. O.P.(Tax) No.33/2016 was a case in which the facts with reference to an assessee; prior to the amendment of the Luxury Tax Act in 2008, incorporating the definition of 'hospital' and providing a different rate of tax for the same, was looked into. Therein the facilities provided in the establishment, the guest registration cards and connected documents were looked into. The documents revealed declaration of majority of the guests as to the purpose of visit, being holiday, vacation, sight seeing etc. The license obtained from the Panchayat also enabled the assessee therein to run a canteen. The Doctors were also found to have no role in the procedure carried out. It is based on these facts that the assessee therein was found to be a hotel and not a hospital.

7. In the present case, we do not see any such factual aspects having been detected from the records of the assessee. The assessee admittedly carries on an ayurvedic care centre which is included in the definition of a hospital. The mere fact that there is luxury provided which normally a hospital would not, does not warrant a departure from the categorisation made by the department itself at the time of registration. The legislature also by incorporating an inclusive definition for 'hospital', included within it, all categories of



establishments where wellness or holistic treatment is carried out. This reveals the intention of the legislature to include such categories also within the definition of a 'hospital'; which takes in even a beauty care centre. There is no requirement that there should be therapeutic treatment carried out in such 'hospital' as defined under the Luxury Tax Act.”

Thus, it has been categorically found by the Division Bench of this Court that on the basis of the factual aspects, the assessee can only be considered to be a 'hospital' and assessed accordingly. As already noticed, the judgment was with reference to the year 2008-09, and in the case at hand, we are called upon to consider the position up to the year 2007-08. Going by the findings in Ext.P16 order as already noticed, we are of the opinion that the findings of this Court in OP (Tax) No. 1 of 2015 concludes the issue as regards the treatment of the petitioner as a 'hospital'. We do not see any reason to order a remit as contended by the learned Government Pleader for the afore reason.

Resultantly, this writ petition would stand allowed, setting aside Ext.P16 order issued by the first respondent and



directing the first respondent to pass a fresh order treating the petitioner as a 'hospital'.

Sd/-

**A.MUHAMED MUSTAQUE
JUDGE**

Sd/-

**HARISANKAR V. MENON
JUDGE**

Skk

APPENDIX OF W.P. (C) NO.18245 OF 2008PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF REGISTRATION CERTIFICATE DATED 30-05-2007 ISSUED BY KOLLANGODE PANCHAYAT
EXHIBIT P1 (A)	TRUE COPY OF THE CORRECTED REGISTRATION CERTIFICATE DATED 10.07.2007
EXHIBIT P2 (A)	SAMPLE COPY OF CERTIFICATE OF DOCTORS
EXHIBIT P2 (B)	SAMPLE COPY OF CERTIFICATE OF THERAPISTS
EXHIBIT P3	SAMPLE SET OF PROCEDURE FOR ADMISSION IN KALARIKOVILAKAM
EXHIBIT P4	TRUE COPY OF RULES & REGULATIONS OF KALARIKOVILAKAM
EXHIBIT P5	SAMPLE COPY OF REGISTRATION AT KALARIKOVILAKAM
EXHIBIT P6	SAMPLE COPY OF QUESTIONNAIRE, DAILY STATEMENTS ETC. GIVEN ON DISCHARGE
EXHIBIT P7	TRUE COPY OF AFFIDAVIT OF ONE OF THE DOCTORS IN KALARIKOVILAKAM
EXHIBIT P8	TRUE COPY OF NOTICE DATED 15-6-2007 ISSUED BY THE 1 ST RESPONDENT
EXHIBIT P9	TRUE COPY OF REPLY DATED 28-06-2007 SUBMITTED BY THE PETITIONER TO THE 1 ST RESPONDENT TOGETHER WITH ANNEXURES
EXHIBIT P10 (A)	TRUE COPY OF ORDER DATED 12-7-2007 OF THE 1 ST RESPONDENT FOR THE YEAR 2004-05
EXHIBIT P10 (B)	TRUE COPY OF ORDER DATED 12-7-2007 OF THE 1 ST RESPONDENT FOR THE YEAR 2005-06
EXHIBIT P10 (C)	TRUE COPY OF ORDER DATED 12-7-2007 OF THE 1 ST RESPONDENT FOR THE YEAR 2006-07
EXHIBIT P10 (D)	TRUE COPY OF ORDER DATED 12-7-2007 OF THE 1 ST RESPONDENT FOR THE YEAR 2007-08
EXHIBIT P11	TRUE COPY OF NOTICE DATED 25-10-2007 ISSUED BY 1 ST RESPONDENT
EXHIBIT P12	TRUE COPY OF PETITIONER'S OBJECTION DATED 9-4-2008
EXHIBIT P13	TRUE COPY OF NOTICE DATED 5-5-2008 ISSUED BY 1 ST RESPONDENT
EXHIBIT P14	TRUE COPY OF NOTICE DATED 12-5-2008 ISSUED BY 1 ST RESPONDENT
EXHIBIT P15	TRUE COPY OF PETITIONER'S OBJECTIONS DATED 18-6-2008



EXHIBIT P16	TRUE COPY OF ORDER DATED 5-8-2008 ISSUED BY THE 1 ST RESPONDENT
EXHIBIT P17	TRUE COPY OF RESOLUTION DATED 29-11-2004 TOGETHER WITH REGISTRATION OF SAME
EXHIBIT P18	TRUE COPIES OF VARIOUS LITERATURE ON AYURVEDA
EXHIBIT P19	TRUE COPY OF STATEMENT SHOWING DIAGNOSIS WITH RESPECT TO PATIENTS ADMITTED
EXHIBIT P20	TRUE COPY OF SAMPLE E-MAIL CORRESPONDENCE WITH A PATIENT
EXHIBIT P21	TRUE COPIES OF THE PETITIONER'S APPLICATION AND CERTIFICATES ISSUED BY THE AUTHORITIES IN ENGLISH AND MALAYALAM
EXHIBIT P22	TRUE COPY OF SOME COMMENTS RELATING TO AYURVEDIC TREATMENT.

RESPONDENTS' EXHIBITS:

EXHIBIT R1 (A)	A TRUE COPY OF THE MEMORANDUM OF ASSOCIATION OF THE PETITIONER COMPANY
EXHIBIT R1 (B)	A TRUE COPY OF THE COMMUNICATION DATED 27.8.2003 OF DEPARTMENT OF TOURISM
EXHIBIT R1 (C)	A TRUE COPY OF THE CERTIFICATE DATED 7.9.2004 OF DR.MAHADEVAN PILLAI, N.S.S. COLLEGE OF ENGG. PALAKKAD
EXHIBIT R1 (D)	A TRUE COPY OF THE LETTER DATED 18.9.2004 OF THE GENERAL MANAGER OF THE FIRM
EXHIBIT R1 (E)	A TRUE COPY OF THE STATEMENT DATED 16.11.2006 OF THE PETITIONER
EXHIBIT R1 (F)	A TRUE COPY OF THE BROCHURE OF THE PETITIONER
EXHIBIT R1 (G)	TRUE COPIES OF THE CERTIFICATES (5 IN SERIES) ISSUED BY THE KOLLANGOD GRAMA PANCHAYAT
EXHIBIT R1 (H)	A TRUE COPY OF THE BROCHURE OF KERALA TOURISM DEVELOPMENT CORPORATION
EXHIBIT R1 (I)	TRUE COPY OF THE E MAIL REPLY DATED 17.7.2008 OF THE PETITIONER
EXHIBIT R1 (J)	TRUE COPY OF THE COMMENTS OF THE RESIDENTS