CNR : KLHC010275442025

2026:KER:82756

WP(C) No.12460/2025

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 29TH DAY OF OCTOBER 2026 / 7TH KARTHIKA, 1948

WP(C) NO. 12460 OF 2025

PETITIONER/S:

**P. I MARKETING PRIVATE LIMITED
DESAMANGALAM, THRISSUR, KERALA, REPRESENTED BY ITS FINANCE DIRECTOR, MR. MOHAMED AZARAF, PIN - 679532**

**BY ADVS.
SMT.S.K.DEVI
SHRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.SHANMUGHAM D. JAYAN**

RESPONDENT/S:

1 **THE DEPUTY COMMISSIONER (ARREAR RECOVERY)
O/O THE JOINT COMMISSIONER, TAX PAYER SERVICES STATE GOODS AND SERVICE TAX DEPARTMENT POOTHOLE, THRISSUR, PIN - 680004**

2 **THE STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY, DEPARTMENT OF TAXES, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001**

3 **THE DISTRICT COLLECTOR,
CIVIL STATION, AYYANTHOLE, THRISSUR, PIN - 680003**

SMT.SINDHU SANTHALINGAM, SR. GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29.07.2026, THE COURT ON 29.10.2026 DELIVERED THE FOLLOWING:

CNR : KLHC010275442025

2026:KER:82756

JUDGMENT

This Writ Petition is filed by the petitioner, being aggrieved by the denial of benefit of the Amnesty Scheme, 2024 claimed by the petitioner, pertaining to the assessment years 2009-2010 and 2010-2011.

2. The reliefs sought by the petitioner are as follows:

> *(i) to issue a writ of certiorari to quash the Exhibits P1,P2 and the circulars relied on in Exhibit P12 and P13 reply, to the extent it is against the provisions of the Scheme.*
> *(ii) to issue a writ of mandamus to the 1st respondent to give deduction of the payments evidenced by Exhibits P3, P4 and P5.*
> *(iii) to direct the respondents to lift the attachment on the immovable properties as per Exhibit P8.*
> *(iv) to grant such other relief as this Honourable Court may deem fit and proper to grant in the facts and circumstances of the case.*

3. The facts that led to the filing of the writ petition are as follows:

3.1. For the assessment years, 2009-2010 and 2010-2011, the petitioner was imposed with penalty on the basis of an inspection conducted by the Intelligence Wing, under the provisions of the Kerala Value Added Tax Act. The orders of penalty were

challenged in appeal before the First appellate authority. Pending the aforesaid appeal, the petitioner was directed to remit an amount of 50% of the disputed amount of penalty demanded in both the orders.

3.2. Since the petitioner could not comply with the directions, garnishee proceedings were initiated and accordingly, amounts in the bank accounts of the petitioner were recovered. The amount, thus, realised from the bank accounts comes to Rs.66,75,240/- as evidenced by Ext.P3. Subsequently, the petitioner remitted the remaining amount towards 50% of the demand by two instalments totalling to Rs.75,12,706/- as evidenced by Exts. P4 and P5. Thus, the total amount realized from the petitioner, by way of recovery from the bank account and the payment affected by the petitioner, comes to Rs.1,41,87,946/-.

3.3. Later, the appellate authority interfered with the penalty orders, and directed the assessing authority to modify penalty in tune with the findings in the appellate order. Based on the said appellate order, Exts.P6 and P7 revised orders of penalty were issued. In Ext.P6, the total tax plus cess determined comes to Rs.1,20,26,381/- and the penalty imposed was Rs.2,40,52,762/- being double the amount of tax sought to be evaded. Similarly, in Ext.P7, the total tax

liability was determined as Rs.14,10,012/- and the penalty equivalent to twice the amount of tax sought to be evaded was determined as Rs 28,20,024/-. Even though the petitioner filed a further appeal against the order of the 1st appellate authority, the same was rejected.

3.4. While so, the Government introduced Amnesty Scheme 2024, as per the Kerala Finance Act, 2024, where, an opportunity was extended to the assessees under the KVAT Act, for settling the liabilities under the Act, pertaining to the assessment years up to 2017-2018. The petitioner submitted applications as prescribed under the Amnesty Scheme, as evidenced by Exts.P9 and P10. According to the petitioner, what was to be paid as the settlement amount, is certain percentage of the tax element involved in the penalty proceedings. According to the petitioner, when the settlement amount was calculated as per the rates prescribed in the Scheme, the amount already paid by the petitioner, was in excess of the amount to be paid. Thus, after adjusting the amount already paid by the petitioner towards the settlement amount, there was no further amount to be paid for availing the Amnesty Scheme. Therefore, while submitting Exts.P9 and P10 applications, the amount to be paid along with the settlement for availing the Amnesty Scheme was shown as ‘Nil’.

However, the said application was rejected, and Exts.P1 and P2 demands were made for the remaining amount. Even though, the petitioner submitted an objection to the said demand, highlighting the fact that, the petitioner had already remitted the amounts by way of recovery from the bank accounts of the petitioner and the voluntary payments, which exceeds the amounts to be paid towards settlement amount, the said objections were rejected as per Exts.P12 and P13. As per the finding in the said orders, the amounts deposited by the petitioner were before issuance of the specified orders, which are Exts.P6 and P7. Therefore, the said amount cannot be taken into account, while determining the amounts payable towards the settlement amount. This Writ Petition is submitted by the petitioner in such circumstances challenging those orders.

4. A detailed counter affidavit has been submitted by the respondents, wherein, the circumstances under which, the determination of the amount payable towards the settlement amount in respect of the applications submitted by the petitioner was made, were explained. They have also incorporated the averments in the counter affidavit justifying the stand taken in the impugned orders and thus the respondents sought for dismissal the writ petition.

A reply affidavit has been submitted by the petitioner in response to the averments contained in the writ petition.

5. I have heard Smt. S.K. Devi, the learned counsel for the petitioner and Smt. Sindhu Santhalingam, the learned Senior Govt. Pleader appearing for the respondents.

6. Learned counsel for the petitioner pointed out that, going by the statutory scheme contemplated under the Amnesty Scheme, 2024, the petitioner has already affected the payment towards the settlement amount and there are ample provisions in the Scheme, which provide for the deduction of the amount already recovered or paid by the assessee, towards the amount included in the specified order, while determining the total amount to be paid towards settlement. To substantiate the said contention, various provisions in the Amnesty Scheme, 2024 were referred to by the learned counsel for the petitioner. On the other hand, the learned Senior Govt. Pleader reiterated the contentions in the counter affidavit and also the findings and observations in the impugned orders.

7. Before proceeding to consider the issues involved in this writ petition, it is profitable to refer to the relevant statutory provisions contained in the Amnesty Scheme, 2024 which was

introduced as per the Kerala Finance Act, 2024. Section 6(1)(a) of the said Act deals with the admitted tax which reads as follows:

> *"6(1)(a): "Admitted tax" means the arrears of tax or surcharge payable as per the returns, books of accounts, tax or surcharge assessed by the assessing authority under the relevant Act, but does not include disputed tax or disputed surcharge:*
>
> *Provided that in the case where the evidence, details and records pertaining to the penalty levied under the relevant Act are not utilized or not liable to be utilized for any best judgment assessment under the relevant Act, the tax or surcharge demand relating to such penalty shall be deemed to be the admitted tax, but does not include the disputed tax or disputed surcharge;"*

8. Going by the aforesaid provision, it can be seen that, as per the proviso referred to above, the tax or surcharge demand relating to penalty shall be deemed to be the admitted tax. Therefore, in this case, since the liability that is sought to be settled is the penalty, the tax element involved in such penalty proceedings is deemed to be the admitted tax. Here, the case falls within the definition of admitted tax in view of the fact that, as on the date of commencement of the scheme, no challenge by way of appeal or revision was pending at the instance of the petitioner before any forum or court.

9. Section 11 deals with the rate applicable in determining the amount payable, which reads as follows:

> *"11. Rate applicable in determining the amount payable.—*
> *(1) The amount payable by the applicant and the amount*

waived shall be determined as follows:––

(a) where the arrears of tax or surcharge in a specified order is above rupees fifty thousand and up to rupees ten lakhs on the date of application for settlement under the scheme, the amount payable shall be thirty percentage of such arrears of tax or surcharge, and on payment of the amount payable by the applicant, the remaining arrears of tax, surcharge, interest or penalty payable under that specified order shall be the amount waived;

(b) where the arrears of tax or surcharge in a specified order is above rupees ten lakh and up to rupees one crore on the date of application referred to in sub-section (1) of section 9,—

(i) the amount payable by the applicant for the settlement of the admitted tax shall be fifty percentage of the arrears of tax or surcharge, and on payment of such amount, the remaining arrears of tax, surcharge, interest or penalty payable under the relevant Act shall be the amount waived;

(ii) the amount payable by the applicant for the settlement of the disputed tax shall be forty percentage of the arrears of tax or surcharge, and on payment of such amount, the remaining arrears of tax, surcharge, interest or penalty payable under the relevant Act shall be the amount waived;

(c) where the arrears of tax or surcharge in a specified order is above rupees one crore on the date of application under the scheme,—

(i) the amount payable by the applicant for the settlement of the admitted tax shall be eighty percentage of the arrears of tax or surcharge, and on payment of such amount, the remaining arrears of tax, surcharge, interest or penalty payable under the relevant Act shall be the amount waived; (ii) the amount payable by the applicant for the settlement of the disputed tax shall be seventy percentage of the arrears of tax or surcharge, and on payment of such amount, the remaining arrears of tax, surcharge, interest or penalty payable

> *under the relevant Act shall be the amount waived:*
>
> *Provided that, in the case where the evidence, details and records pertaining to the penalty levied are not utilized or not liable to be utilized for any best judgment assessment under the relevant Act, the tax or surcharge demand relating to such penalty shall be deemed to be the arrears of tax or surcharge, and the amount payable shall be calculated accordingly.*
>
> *(2) Notwithstanding anything contained in the scheme, if an applicant has remitted or deposited any amount towards the demand in the specified order, or if any amount or its equivalent has been recovered as part of arrear recovery towards the demand in the specified order, such amount already received by the Government shall be deducted from the amount payable, and the applicant shall, along with the application, furnish the proof of payments made in this regard:*
>
> *Provided that any amount paid towards the penalty or interest shall be appropriated towards the amount payable.*
>
> *(3) Notwithstanding anything contained in the relevant Act, interest accrued at the time of payment of amount payable under the scheme, shall also stand waived.*
>
> *(4) The amount payable by an applicant for applying under the scheme under subsection (2) of section 9 shall be calculated in such manner as may be notified by the Government."*

10. Going by Section 11(1)(b), where the arrears of tax or surcharge in a specified order is above Rs.10 lakhs and up to Rs.1 Crore, the amount payable by the applicant for the settlement of the admitted tax shall be 50% of the arrears of tax or surcharge. Similarly, Section 11(1)(c) provides for the rate where, the arrears of tax or surcharge in a specified order is above Rs.1 crore and the settlement amount in such case shall be 80% of the arrears of tax or surcharge. Thus, going by the figures mentioned in Exts.P6 and P7, the rate applicable pertaining to the demand in Ext.P6 would be, 80%

of the arrears of tax and the rate applicable to Ext.P7 demand would be, 50% of the arrears of tax.

11. Sub section (2) of Section 11 provides that, if an applicant has remitted or deposited any amount towards the demand in the specified order, or if any amount or its equivalent has been recovered as part of arrear recovery towards the demand in the specified order, such amount already received by the Government, shall be deducted from the amount payable and the applicant shall along with the application, furnish the proof of payments made in this regard. Thus, the payment affected towards the liability pertaining to the specified order or the amount recovered pursuant to the said order, shall be deducted, while determining the settlement amount payable by the applicant for availing benefit under the Amnesty scheme. It is to be noted that, sub section (2) of section 11 referred to above, contains a non obstante clause with respect to the other provisions of the Scheme as such, and therefore it would override the other provisions.

12. The term, "specified order", is defined under Section 6(1)(p) of Kerala Finance Act, 2024 and it means *any order raising demand of tax, surcharge, interest or penalty under the relevant Act*. The contention of the learned counsel for the petitioner is that, going

by proviso to Section 6(1)(a) of the Kerala Finance Act, 2024, the tax or surcharge demand relating to such penalty shall be deemed to be the admitted tax. Of course, the said stipulation is subject to the condition that, the penalty levied under the relevant Act, are not utilized or not liable to be utilized for any best judgment assessment under the relevant Act and in this case, such contingency has not arisen and therefore the tax element involved in Exts. P6 and P7 penalty orders are to be treated, as the admitted tax, for the purpose of settlement. The arrears of tax or surcharge, which is relevant for determining the rate applicable in determining the amount payable, is defined under Section 6(1)(e)(i) of the Kerala Finance Act, 2024, which reads as follows:

> *"6(1)(e)(i) 'arrears of tax or surcharge' means the tax or surcharge payable by an applicant under the relevant Act in a specified order, pertaining to the assessment years up to 2017-2018, for which assessment or reassessment has been made under the relevant Act and pending collection on the date of filing of the application under the scheme."*

13. Thus, from a joint reading of the aforesaid provisions, the following aspects are evident:

(a) In respect of settlement of penalty, the tax element involved in the penalty shall be deemed to be the admitted tax;

(b) While determining the settlement amount for the

purpose of Amnesty, going by sub section (2) of Section 11, if an applicant has remitted or deposited any amount towards the demand in the specified order, or if any amount or its equivalent has been recovered as part of arrear recovery towards the demand in the specified order, such amount already received by the Government shall be deducted from the amount payable;

(c) The amount payable for settlement in respect of arrears of tax and surcharge for an amount above Rs.10 Lakhs and upto 1 crore is 50% of the arrears of tax or surcharge;

(d) In respect of the cases where the arrears of tax or surcharge is more than Rs.1 crore, the amount payable for settlement shall be 80% of the arrears of tax or surcharge.

14. When the above parameters are applied in the facts of this case, it can be seen that, in Ext.P6, the total penalty imposed is Rs.2,40,52,762/- and the tax element involved is Rs.1,20,26,381/-. Thus the admitted tax for the purpose of Amnesty Scheme is Rs.1,20,26,381/. Similarly, in Ext.P7, the total penalty imposed is Rs.28,20,024/- and the tax component comes to Rs.14,10,012/-. When applying the rate as specified in Ext.P11, the settlement amount

towards the demand in Ext.P6 is 80% of the tax amount, which comes to Rs.96,21,105/- being the 80% of the tax. Similarly, in respect of Ext.P7 demand, the amount would comes to Rs.7,05,006/- being the 50% of the tax component involved in the aforesaid penalty. Thus, the total amount payable towards the settlement for availing Amnesty in respect of Exts.P6 and P7 was Rs.1,03,26,111/-.

15. The specific case of the petitioner is that, an amount of Rs.1,41,87,946/- is already recovered from the petitioner from his bank account and also by way of payment affected by the petitioner, as evidenced by Exts.P3, P4 and P5. Thus, the petitioner had fulfilled the obligations and therefore the stand taken by the respondents that additional amounts are to be paid by the petitioner is not justifiable.

16. After carefully going through the statutory scheme revealed as per the provisions referred to above, I find merits in the said contention. This is particularly because, sub section (2) of Section 11, which commences with a non obstante clause, specifically provides that, the amount remitted by the applicant or recovered from the applicant as part of arrear recovery, towards the demand in the specified order, has to be deducted from the amount payable for the purpose of settlement. Of course, it is true that, the said payments as

evidenced by Exts.P3,P4 and P5 were affected by the petitioner, before issuance of Exts.P6 and P7 orders, which are treated as the specified orders by the respondents, while rejecting the application submitted by the petitioner for Amnesty. It is to be noted that, the reason stated in Exts.P11 and P12 is that, as those payments were prior to Exts.P6 and P7, the deductions of the same cannot be permitted while determining the settlement amount.

17. However, the crucial aspect to be noticed in this regard is that, the payments as evidenced by Exts.P3,P4 and P5 were affected by the petitioner, towards the liability assessed pertaining to the assessment years 2009-2010 and 2010-2011, as per the original assessment orders. The same was challenged in appeal and the payment of Rs.1,41,87,946/- was remitted by the petitioner while the challenge against the said assessment orders were pending in appeals. The said appeals were allowed by modifying the original assessment orders, and Exts.P6 and P7 are the revised assessment orders passed in compliance of the directions in those appellate orders. Although, the amounts specified in Ext P6 and P7, reflect the total amount of penalty imposed upon the petitioner, without referring to the payments already affected by the petitioner towards the

demand, while initiating the proceedings for recovery based on the said orders, necessarily, the respondents will have to give due credit of the payments already affected by the petitioner as evidenced by Exts.P3,P4 and P5. Thus, the payment already effected, as per Exts.P3,P4 and P5 were towards the demands stipulated in Exts.P6 and P7 orders itself and hence the same would squarely fall under sub section (2) of Section 11 of the Act. Thus, those amounts are deductible from the total amount, while determining the settlement amount for the purpose of Amnesty.

18. The mere fact that, the payments already affected towards the liability of the petitioner, are not reflected in Exts.P6 and P7, by itself cannot be a reason to deny the benefits of the Amnsety. As mentioned above, the said payments form part of the discharge of liability determined as per Exts.P6 and P7, and hence, the credit of the same, is the entitlement of the petitioner, for the purpose of availing the Amnesty scheme. As mentioned above, it is evident from the provisions that, in respect of settlement of penalty orders, what is relevant is the tax component involved therein. Going by the documents, it is evident that, as far as the liability of the petitioner is considered, the total amount towards settlement of arrears of tax

comes to Rs.1,03,26,111/-, whereas, the amount already recovered towards the amount demanded as per Exts.P6 and P7 comes to Rs.1,41,87,946/-. Thus, the petitioner has already discharged the liability for availing the Amnesty scheme and hence the petitioner is entitled to get the remaining liability towards penalty and interest, waived, in tune with the stipulations contained in the Amnesty Scheme, 2024 and therefore an interference is required.

Accordingly, this writ petition is disposed of quashing Exts.P1,P2, P12 and P13, declaring that the petitioner has fulfilled the obligation to pay the amount for availing the settlement as per the Amnesty Scheme, 2024, by virtue of payment affected as evidenced by Exts. P3, P4 and P5. Therefore, the competent among the respondents shall issue necessary certificates to the petitioner, evidencing the settlement of liability pertaining to Exts.P6 and P7, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
ZIYAD RAHMAN A.A.
JUDGE

pkk

APPENDIX OF WP(C) NO. 12460 OF 2025

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE DEMAND NOTICE, NUMBER DMND3201251949123 DATED 13/01/2025 FOR THE YEAR 2009-10**
EXHIBIT P2	**DEMAND NOTICE NUMBER DMND3201251599176 DATED 13/01/2025 FOR THE YEAR 2010 - 11**
EXHIBIT P3	**TRUE COPY OF THE LETTER NO. ITC 43/10-11 DATED 13/08/2010 (RELEVANT PAGE)**
EXHIBIT P4	**TRUE COPY OF THE PAYMENT FOR RS. 37,56,353 VIDE 2 CHEQUES DATED 20/11/2010**
EXHIBIT P5	**TRUE COPY OF THE PAYMENT FOR RS. 37,56,353 VIDE CHEQUE DATED 07/03/2011**
EXHIBIT P6	**TRUE COPY OF THE MODIFIED ORDER FOR THE YEAR 2009 – 10 DATED 23/02/2013 PASSED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, THRISSUR**
EXHIBIT P7	**TRUE COPY OF THE MODIFIED ORDER FOR THE YEAR 2010 – 11 DATED 23/02/2013 PASSED BY THE INTELLIGENCE OFFICER, SQUAD NO. II, THRISSUR**
EXHIBIT P8	**TRUE COPY OF NOTICE NO. D1- 23290/2012 DATED 23/09/2013 ISSUED BY THE VILLAGE OFFICER, TALAPPILLY TALUK, WADAKAANCHERRY ALONG WITH TYPED COPY**
EXHIBIT P9	**TRUE COPY OF THE APPLICATION IN FORM NSTY 1 WITH APPLICATION REFERENCE NUMBER (ARN) AM3210242378960 DATED 10/10/2024 FOR THE YEAR 2009 -10**
EXHIBIT P10	**TRUE COPY OF THE APPLICATION IN FORM NSTY 1 WITH APPLICATION REFERENCE NUMBER (ARN) AM3210247330254 DATED 10/10/2024 FOR THE YEAR 2010 -11**
EXHIBIT P11	**TRUE COPY OF THE REPLY AGAINST EXHIBIT. P1**
EXHIBIT P12	**TRUE COPY OF THE LETTER NO. 2024-25 DATED 14/02/2025**
EXHIBIT P13	**TRUE COPY OF THE LETTER NO. 2024-25 DATED 14/02/2025**

RESPONDENT EXHIBITS

EXHIBIT R1 (A)	**LETTER NO, 32080794693/2009-10/2010-11 DATE 19-11-2024**
EXHIBIT R1 (B)	**LETTER NO, 32080794693/2009-10/2010-11 DATED 13-12-2024**