

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 28TH DAY OF FEBRUARY 2017/9TH PHALGUNA, 1938

WA.No.340 of 2017 IN WP(C)38544/2016

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AGAINST THE JUDGMENT IN WP(C) 38544/2016 of HIGH COURT OF  
KERALA DATED 05-12-2016

APPELLANT/APPELLANT/PETITIONER:

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M/S. U WE COATS,  
MARIAPALLY, KOTTAYAM DISTRICT,  
REPRESENTED BY ARJUN E.VASUDEVAN, MANAGING PARTNER.

BY ADVS.SRI.HARISANKAR V. MENON  
SMT.MEERA V.MENON

RESPONDENTS/RESPONDENTS/RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER (WC)  
KOTTAYAM-686 001.
  2. THE INTELLIGENCE OFFICER,  
SQUAD NO.1, DEPARTMENT OF COMMERCIAL TAXES,  
KOTTAYAM-686 001.

R BY SR. GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON  
28-02-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.**

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**W.A.No.340 of 2017**  
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**Dated this the 28<sup>th</sup> day of February, 2017**

**JUDGMENT**

**Antony Dominic, J.**

The writ petition is filed by the firm represented by its Managing Partner. The firm was the dealer under the KVAT Act. Writ petition was filed challenging Exts.P1 and P1(a) orders levying penalty under Section 67 of the KVAT Act, for the assessment years 2011-2012 and 2012-2013. Contention raised before the learned Single Judge was that the firm stopped business prior to the assessment years in question and that the stoppage of business was intimated to the first respondent, the Assessing Officer. However, considering the submissions made by both sides, learned Single Judge declined to interfere with the penalty orders and left the matter to be agitated in revision to be filed in accordance with the Act. It is this judgment, which is challenged before us.

2. We heard the learned counsel for the appellant and the learned Government Pleader appearing for the respondents.

3. The materials produced before this court show that before Exts.P1 and P1(a) orders are passed, notices were sent to the address of the firm and also the residences of the partners and that these notices were returned by the postal authorities with the endorsement 'addressee left/out of station'. It is also seen that in such circumstances, notices were affixed at the last known address of the dealer. Despite all that, there is no response from the dealer and it was in such circumstances, ex parte order as evidenced in Exts.P1 and P1(a) were passed. In such circumstances, we are not persuaded to think that the second respondent committed an illegality in passing the order without affording an opportunity to the dealer.

4. Still, the fact remains that according to the appellant the firm has ceased to have any business and as per the pleadings that the partners are also residing abroad. Therefore, we are not

persuaded to think that this is a case there was deliberate refusal on the part of the partners to either accept the notice from the postal authorities or to respond to the notice. We cannot also ignore the fact that by the issuance of Exts.P1 and P1(a) orders, substantial liability is fastened on the partners.

5. In such circumstances, on equitable considerations, we are inclined to think that the petitioner should be given an opportunity so that they can place their records before the second respondent and contest the matter on merits. However, the same shall be only on terms.

Accordingly, we dispose of this writ appeal with the following directions:

- i) The judgment under appeal and Exts.P1 and P1(a) will stand set aside.
- ii) Appellant will treat Exts.P1 and P1(a) orders as notices issued under Section 67 of the KVAT Act, file its reply along with the documents substantiating its contentions, within three weeks from today.

iii) Once the reply to the notices are filed as above, appellant will appear before the second respondent for personal hearing at 11 a.m. on 22.3.2017. Thereupon or any day immediately thereafter, the second respondent shall afford an opportunity of hearing to the appellant and pass fresh orders in the matter.

iv) This shall, however, be subject to the appellant remitting Rs.50,000/- to the Kerala Mediation Centre within ten days from today and on producing memo thereof before the Registry of this court.

v) In case, the appellant does not comply with any of the aforesaid directions, this judgment will stand automatically recalled.

*Sd/-*  
**ANTONY DOMINIC**  
**JUDGE**

*Sd/-*  
**DAMA SESHADRI NAIDU**  
**JUDGE**

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