

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

WP(C).No. 17090 of 2015 (I)

PETITIONER:

**M/S. HANA FASHION CENTRE,
MARKET ROAD, ALUVA, REPRESENTED BY IBTHISHAM KOYA,
PARTNER.**

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

RESPONDENTS:

- 1. THE COMMERCIAL TAX OFFICER-1,
ALUVA 683101.**
- 2. THE KERALA VALUE ADDED TAX APPELLATE TRIBUNAL,
ADDITIONAL BENCH, SALES TAX COMPLEX, M G ROAD,
ERNAKULAM, REPRESENTED BY ITS SECRETARY, PIN 682015.**

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- COPY OF ORDER ISSUED BY THE 1ST RESPONDENT**
- P2:- COPY OF ORDER ISSUED BY THE ASST COMMISSIONER(APPEALS)II,
ERNAKULAM**
- P3:- COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND
RESPONDENT DTD 8/8/2011**
- P4:- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD 16/12/2013**
- P5:- COPY OF RESTORATION PETITION FILED BY THE PETITIONER BEFORE THE
2ND RESPONDENT DTD 29/4/2014**
- P6: -COPY OF DELAY PETITION FILED BY THE PETITIONER, DTD.29/4/13**
- P7:- COPY OF ORDER ISSUED BY THE 2ND RESPONDENT DTD.6/2/15**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.17090 of 2015

Dated this the 9th day of June, 2015

J U D G M E N T

Aggrieved by Exts.P1 and P2 orders, the petitioner preferred Ext.P3 second appeal. The same was rejected by Ext.P4. Consequently, the petitioner has filed Ext.P5 petition for restoration along with delay condonation petition. By Ext.P7, the 2nd respondent dismissed the restoration petition for default. The petitioner has filed this writ petition challenging Ext.P7 order.

2. The petitioner's case is that, they have not received the notice of posting of the case before the Tribunal and that, for the said reason, they could not appear on that date.

3. One of the reasons stated in the impugned order is that, appeal was filed by the Manager through authorised representative and whereas the restoration application is filed by a partner who is not competent to prefer the petition. The restoration application appears to have been filed after 14 days expiry of the period of filing application under Regulation 50 of KVAT Appellate Tribunal Regulations, 2009.

4. The learned counsel for the petitioner submits that, in terms of Rule 33 of KVAT Rules, 2005, a partner of the firm is competent to sign and verify returns of the business of the partnership firm. Therefore, the competency of partner to initiate

action under the Act and Rules cannot be doubted. Merely, a reason that the appeal was filed by the authorised representative does not mean the right of a partner is foreclosed. Further, the firm is the appellant before the Tribunal.

5. In law, a compendious personality like a firm will be treated as entity for limited purpose for the juridical identity and representation of such entity through the competent person identifiable or verifiable as per the law. It is astonishing that, the Tribunal dismissed the restoration application for such a simple reason that, the same has been filed by the partner, who is not competent to file such an application. The Tribunal ought not have adopted such a hyper-technical approach, while dealing with an appeal which require substantial redressal warranting meritorious consideration. Nothing has been adverted, as to complaint of the petitioner regarding the non receipt of the communication by them on the date on which this case was posted before the Tribunal. In such circumstances, holding that there was no sufficient cause by the petitioner is erroneous.

Accordingly, the impugned order Ext.P7 is set aside. The appeal is restored on file. The Tribunal shall consider the application only after issuing necessary notice to the petitioner.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV