**(2012) 07 KL CK 0037**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 15535 of 2012 (N)

Cemex Projects — APPELLANT

Vs

Intelligence Officer, Squad No. 1, Commercial Taxes, Mattancherry at Mini Civil Station, Aluva, Ernakulam District, Pin - 683101 and Asst. Commissioner (Works Contract), Commercial Taxes, Old Railway Station Road, Kochi - 682018 — RESPONDENT

**Date of Decision :** 17-07-2012

**Acts Referred:**

Kerala Value Added Tax Act, 2003 — Section 67(1)

**Citation :** (2012) 07 KL CK 0037

**Hon'ble Judges :** P.R. Ramachandra Menon, J

**Bench :** Single Bench

**Advocate :** S. Anil Kumar Trivandrum, Sri. K.S. Hariharan Nair and Sri. K. Umamaheswar, for the Appellant; Shoba Annamma Eapen, Sr. Government Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

Justice P.R. Ramachandra Menon

1. The petitioner is challenging Ext.P3 order, whereby penalty has been imposed upon the petitioner u/s 67(1) of the KVAT Act, pursuant to the adverse circumstances brought to light in the course of ''shop inspection'' and the Report dated 24.11.2006. The case of the petitioner is that, there was an ''inspection'' in the premises of the petitioner on 20.11.2006 as borne by Ext.P2 ''shop inspection report''. Absolutely nothing was heard for nearly six years and on a fine morning, the petitioner was served with Ext.P3 order imposing the penalty, which made the petitioner to make further enquiries. It was revealed to the petitioner that the notice before passing Ext.P3 was sent to the petitioner in a wrong address and it was observed in Ext.P3 that, despite the sending of notice, it was returned by the postal authorities stating as ''not known''., thus leading to Ext.P3 order imposing the punishment.

2. The learned counsel for the petitioner submits that, in the course of time, the petitioner''s establishment which was situated at Panampilly Nagar was sought to be shifted to Kakkanad and the correct address was furnished by the petitioner to the second respondent as borne by Ext.P1 communication dated 06.09.2011. Such change in address is very much known to the departmental authorities, submits the learned counsel, with reference to Ext.P4 which is a photocopy of the postal cover in which the Ext.P3 order was forwarded to the petitioner in the correct address. This obviously is the address of the petitioner at Kakkanad and the learned counsel contends that in spite of the awareness of the correct address, the notice sent to the petitioner before imposing the punishment was in the erstwhile address, where no establishment was there.

3. The learned Government Pleader appearing for the respondents submits on instructions that Ext.P1 change in address was communicated by the petitioner to the second respondent, whereas Ext.P3 order has been passed by the first respondent. It was after passing the order by the first respondent, that the file was forwarded to the second respondent for further steps; who forwarded a copy of the order along with the demand notice in the ''correct address'' of the petitioner, as borne by Ext.P4.

4. This Court finds that the, change in address was very much communicated by the petitioner to the second respondent vide Ext.P1. It also remains a fact that the ''shop inspection'' was conducted in the year 2006 and the proceedings have been sought to be finalised by the first respondent only after a gap of nearly six years. In spite of service of the memo regarding the change in address to the second respondent, what prevented the second respondent from having it forwarded to the first respondent for further action is not known. In the above facts and circumstances, this Court finds that, there is considerable lapse on the part of the departmental authorities, denying an effective opportunity to the petitioner to defend the case. Ext.P3 order is set aside and the first respondent is directed to pass fresh orders, after serving notice to the petitioner in the changed address as given in Ext.P1. The proceedings as above shall be finalised, in accordance with law, as expeditiously as possible, at any rate, within two months, from the date of receipt of a copy of this judgment.

Writ petition is allowed. No cost.

 