

Court No. - 3

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 38246 of 2017

Petitioner :- U.P. Kar Adhivakta Sangthan (Regd.) Thru' Gen. Secy.

Respondent :- State Of U.P. & 2 Others

Counsel for Petitioner :- Naveen Chandra Gupta

Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Pankaj Mithal,J.

Hon'ble Umesh Chandra Tripathi,J.

Heard Sri Naveen Chandra Gupta, learned counsel for the petitioner, Sri Krishna Agarwal, learned counsel appearing on behalf of respondent no.1 and Sri C.B. Tripathi, learned Special Counsel for the State of U.P.

The petitioner is an association of advocates and has preferred this petition in public interest.

The petition has been placed before us after nomination by the Hon'ble The Chief Justice.

The petitioner by means of this petition has assailed the government notification dated 21.07.2017 and the circulars dated 09.08.2017 and 10.08.2017 issued in pursuance of the above notification prescribing various documents and the forms of the documents liable to be carried along with the goods in transit for a temporary phase till the E-Way bill system is developed and approved by the council.

The petitioner is not challenging the validity of any provision of U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') or the Rules framed thereunder, namely, Section 165 of the Act or Rule 138 of the Rules.

The submission of Sri N.C. Gupta, learned counsel for the petitioner is that in view of Article 279A added to the Constitution of India, a council has been constituted and therefore, until and unless the council recommends the documents and the format of the various forms, the State Government has no authority or jurisdiction in law to prescribe the documents to be carried with the goods in transit or even the forms in which the said documents should exist.

Section 165 of the Act empowers the government, i.e. the State Government to make regulations consistent with the Act and the Rules to carry out the provisions of the Act by issuing a notification thereof.

Simultaneously, Rule 138 of the Rules provides that till such time E-Way bill system is developed and approved by the council, the Government may, by notification, specify the documents that the person in charge of conveyance carrying any consignment of goods shall carry while the goods are in movement or transit storage.

The aforesaid Rule is clear and there is no ambiguity therein. It provides that until and unless an E-Way bill system is developed and approved by the council, the Government of U.P. may prescribe the documents which are supposed to be carried with the goods in movement or in transit storage and this can be done by issuing a notification.

The notification referred to Rule 138 of the Rules aforesaid is distinct from the notification contemplated under Section 165 of the Act.

The State Government in exercise of its power under Rule 138 of the Rules as the E-Way bill system has not been developed and approved by the council for the interim period has prescribed certain documents which are supposed to be carried with the goods in movement or transit storage. The prescription of such documents as per the notification dated 21.07.2017 is not in contravention of any provision of the Act or the Rules. It is rather in consonance with Rule 138 of the Rules.

The next submission of Sri N.C. Gupta is that by the circulars issued under the said notification, the existing Form 38 and Form 21 prescribed under the U.P. VAT Act have been made applicable for the purposes of movement of goods.

The aforesaid notification has prescribed E-Way Bill 01, E-Way Bill 02, E-Way Bill 03, etc. as the documents which are to be carried along with the goods in movement or transit storage.

The formats of Form 38 and Form 21 have been adopted and prescribed as a format for E-Way Bill 01 and E-Way Bill 02. This has been done and permitted as an interim measure so that the trading activity and the transit of

goods may not be affected till E-Way bill system is developed and approved by the council which is likely to take some time.

In view of above, the prescription of the forms under the impugned notification is only for temporary purpose and the notification itself is for an interim period till E-Way bill system is developed and approved by the council.

The notification as stated earlier is not in violation of any statutory provision or Rule 138 of the Rules. The challenge to the notification and the circulars therefore has no merit.

The petition is devoid of merit and is accordingly **dismissed.**

Order Date :- 24.8.2017

I. Batabyal