

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.P(MD)No.16112 of 2017

K.K.Ramesh

... Petitioner

Vs.

- 1.The Union of India,
Rep. By its Principal Secretary to Prime Minister,
Prime Minister's Office,
South Block, Raisina Hill,
New Delhi – 110 001.
- 2.The Union of India,
Rep. By its Principal Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
New Delhi.
- 3.The Union of India,
Rep. By its Principal Secretary Ministry
of Law and Justice,
New Delhi.
- 4.The Union of India,
Rep. By its Chairman,
Central Board of Direct,
Taxes, New Delhi.
- 5.The Commissioner,
Commercial Tax Officer,
Cheupakkam,
Chennai – 5.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, a) directing all traders to use E-way bill an electronic way bill for movement of goods/selling of goods which can be generated on the GSTN (Common Portal), for value more than Rs.5,000/- by a registered person, b) W-Way bill will also be allowed to be generated or cancelled through SMS, c) When an E-way bill is generated a unique E-way bill number (EBN) is allocated and is available to supplier, recipient and the transporter, d) Increase the flying squad in State Level, District Level, Zonal Level to monitor the movement of goods and E-way bills and e) by considering the petitioner's representation, dated 02.08.2017.

For Petitioner	: Mr.K.K.Ramesh (Party-in-Person)
For RR 1 & 3	: Ms.S.Logeshwari for M/s.L.Victoria Gowri
For R – 2	: Mr.B.Vijay Karthikeyan
For R – 4	: No appearance
For R – 5	: Mr.R.Karthikeyan, Additional Government Pleader.

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ORDER

(Order of the Court was made by
M.SATHYANARAYANAN,J.)

By consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner seems to have been aggrieved by the improper implementation of Integrated Goods and Services Tax Act and the Central Goods and Services Tax Act, which were passed during the year 2017.

3.The writ petition was entertained on 28.08.2017 and the learned Additional Government Pleader, who accepts notice on behalf of the fifth respondent, has undertaken to file counter-affidavit.

4.When the matter was listed on 12.12.2017, on that day, on behalf of the second respondent, the Commissioner, Central GST and Central Excise, Madurai, has filed his counter-affidavit. This Court has taken note of the contents of the counter-affidavit and in paragraph No.3 observed that "in view of the fore-goings, it is represented on behalf of the second respondent/the Union of India that the petitioner's prayer No.(a) to (d) have been complied with. However, the petitioner, who appeared in person, informs this Court that the prayer No.(d) for increasing the flying squad in State Level, District Level, Zonal Level to monitor the movement of goods and E-Way Bills has not been answered in a proper manner by the second respondent/the Union of India".

5.This Court, while passing the order has also taken note of the

Notification No.27/2017-Central Tax, New Delhi, dated 30.08.2017 and with regard to the said aspect, directed the petitioner/party-in-person to go through the same and submit his response and directed to list the matter today ie., 03.01.2018.

6.The petitioner/party-in-person would submit that notification takes care of prayer No.(d) also and the concerned respondent may be directed to scrupulously comply with the terms of the said Notification, dated 30.08.2017.

7.Mr.B.Vijay Karthikeyan, learned Standing Counsel appearing for the second respondent has drawn the attention of this Court to Section 138B of the Central Goods and Services Tax Rules, 2017 and as per the said Rules, the Commissioner or an officer empowered by him on his behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods and as such, no further orders are necessary in this Writ Petition.

8.This Court has carefully considered the rival submissions and also perused the materials available on record.

9.It is relevant to extract hereunder Section 138B of the Central Goods and Services Tax Rules, 2017:-

"138B.Verification of Documents and Conveyances.- (1) The Commissioner or an officer empowered by him on his behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods and as such, no further orders are necessary in this Writ Petition.

(2) The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

(3) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf."

10.This Court vide order, dated 12.12.2017 passed in W.P(MD)No.16112 of 2017 is as follows:-

"It is represented on behalf of the Second Respondent/The Union of India that the Petitioner's following prayers:

(a) directing all Traders to use E-way bill an electronic way bill for movement of goods/selling of goods which can be generated on the GSTN(Common Portal) for value more than Rs.5,000/- by a registered person.

(b)W-Way bill will also be allowed to be generated or cancelled through SMS.

(c)When an E-Way bill is generated a unique E-way bill number(EBN) is allocated and is available to supplier, recipient, and the transporter;

were answered in the Gazette of Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs(Notification No.27/2017-Central Tax), New Delhi, dated 30.08.2017.

2.In respect of Clause (d) prayer in the main Writ Petition to the effect that 'increase the flying squad in State Level, District Level, Zonal Level to monitor the movement of goods and E-Way Bills", the Learned Counsel for the Second Respondent/The Union of India, refers to paragraph 8 of his Counter, which runs as under:

"8.It is submitted that the Chapter XIV of the CGST

Act, 2017 has provided Sections 67 to 72 for inspection, search, seizure, arrest, issuance of summons etc., to protect the interest of Revenue. The apprehension of the Petitioner that irregularities may be committed by the traders in the collection of GST is unfounded and cannot be sustained. The illustration of petitioner about Hotels collection of 18% of GST(9% CGST + 9% TNGST) has been now modified to 12% for hotel/restaurant not having air-conditioning central heating facility at any time and not having license to serve liquor and the GST Council depending upon the situations and also considering the practical difficulties faced by the public and as well as traders, issuing appropriate recommendations to the Union and the State Governments and in-turn, the Union and State Governments are issuing suitable notifications in accordance with the recommendations given by the GST Council."

3. In view of the fore-goings, it is represented on behalf of the Second Respondent/The Union of India that the Petitioner's prayer No.(a) to (d) have been complied with. However, the Petitioner, who appeared in person, informs this Court that the (d) prayer for increasing the flying squad in State Level, District Level, Zonal Level to monitor the movement of goods and E-Way Bills has not been answered in a proper manner by the Second Respondent/The Union of India.

4. At this stage, the Learned Counsel for the Second Respondent/The Union of India has given a copy of Notification No.27/2017-Central Tax, New Delhi, dated 30.08.2017 of

Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs to the Petitioner(party-in-person). The Petitioner(party-in-person) is directed to look into the entire gamut of the Notification No. 27/2017-Central Tax, New Delhi, dated 30.08.2017 and to appear before this Court on 03.01.2018.

11.We find that the counter-affidavit of the second respondent has answered the prayer Nos.(a) to (d) and in the light of the stand taken by the petitioner, this Court directed him to submit his response to the Notification, dated 30.08.2006. In the considered opinion of this Court, so far as prayer No.(d) is concerned, the above said provision takes care of interest of the Revenue and as such, no further orders are necessary in this Writ Petition. Therefore, this Writ Petition is closed and the order, dated 12.12.2017 passed in this Writ Petition, as extracted below, shall form part of order. No costs.

[M.S.N., J.]

[R.H., J.]

03.01.2018

Index : Yes / No
Internet : Yes / No
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To

- 1.The Union of India,
Rep. By its Principal Secretary to Prime Minister,
Prime Minister's Office,

South Block, Raisina Hill,
New Delhi – 110 001.

- 2.The Union of India,
Rep. By its Principal Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
New Delhi.
- 3.The Union of India,
Rep. By its Principal Secretary Ministry
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- 4.The Union of India,
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Central Board of Direct,
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- 5.The Commissioner,
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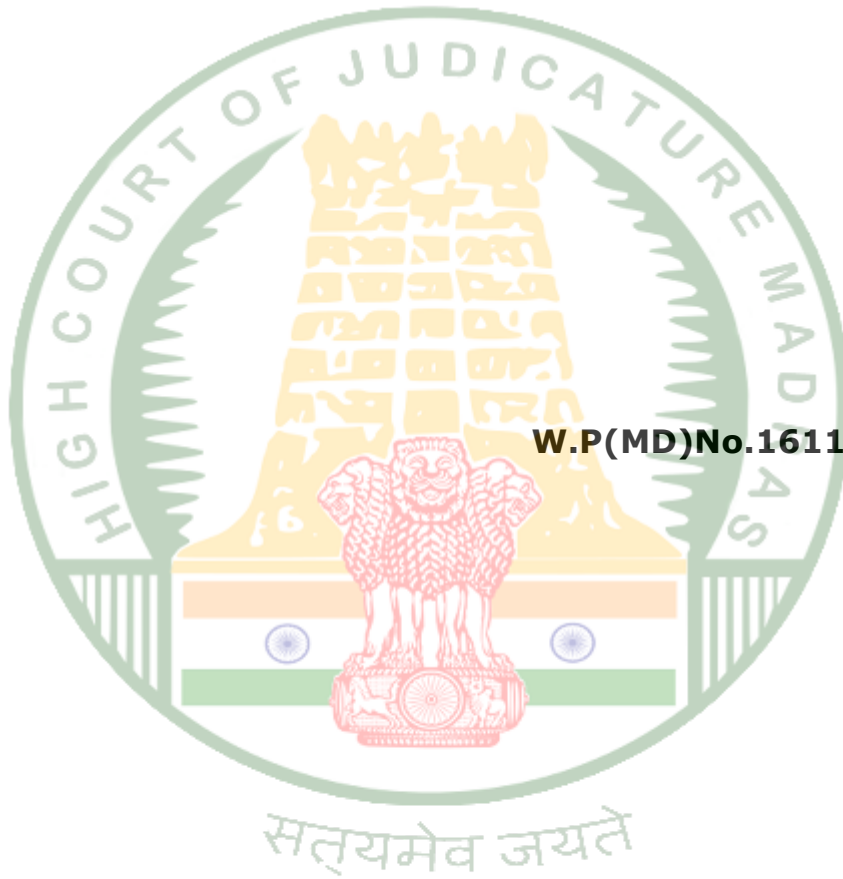


M.SATHYANARAYANAN,J.

and

R.HEMALATHA,J.

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W.P(MD)No.16112 of 2017

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