BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	PRONOUNCED ON
21.11.2024	06.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.26481, 25801, 25855, 25979, 25773, 25952, 27362, 27363, 27357 to 27361 27869 & 27190 of 2024 and
W.P.(MD).Nos.25376, 6147 & 20755, 28788 to 28790, 28780, 28792, 28981, 29132, 29232, 5204 to 5207, 29492, 29493, 29565, 29983, 30104, 30212-30214, 28672, 30499, 30501, 30628, 30810, 30845, 30824, 30825 & 30891 of 2024 and connected M.Ps

W.P.(MD).No.26481 of 2024

Udumalpet Sarvodaya Sangham,
Represented by its Secretary,
S.Thirumanasampandam,
Udumalpet,
Tiruppur District. ... Petitioner

Vs

1.The Authority,
Under Shop and Establishment Act/
Deputy Commissioner of Labour,
Coimbatore – 18.

2.V.Swaminathan ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records from the 1st respondent made in TNSE 1/2005 dated 21.10.2010 and quash the same and pass such further orders.

For Petitioner : Mr.M.Iniyavan in W.P.(MD).No.26481/2024
Mr.C.Gangaiamaran in W.P.(MD)No.5204 –5207/24
M/s.R.Hemalatha in W.P.(MD)Nos.29565,30499/24
M/s.G.Vardini in W.P.(MD).No.30628 of 2024
M/s.P.Subathra Devi in W.P.(MD).No.25773/2024
Mr.T.R.Ramesh in W.P.(MD).No.28792/ 2024
Mr.T.Bashyam in W.P.(MD).No.28780/ 2024
Mr.B.Rooban in W.P.(MD).Nos.28981, 29132/2024
Mr.J.Adithya Reddy in W.P.(MD).No.29232/2024
Mr.N.Raja Karthikeyan in W.P.(MD).Nos.25801 & 6147 of 2024
Mr.M.V.Manibabu in W.P.(MD).No.29983/2024
Mr.S.Karunakar in W.P.(MD).Nos.28672, 29492, 25979, 25376, 30104, 30501 & 25855 of 2024
Mr.P.Selva Kumar in W.P.(MD).No.30891/2024
M/s.Lakshmi Gopinathan in W.P.(MD)No.25773/24
Mr.A.Satheesh Murugan in W.P.(MD).Nos. 30845, 30810 & 25952 of 2024
Mr.M.N.Bharathi in W.P(MD).Nos.27362, 27363 of 2024 and 27357 to 27361 of 2024
Mr.W.Cleetus in W.P.(MD).No.27190 of 2024
Mr.R.Aravindan in W.P(MD).No.27869 of 2024
Mr.N.Sudalai Muthu in W.P(MD).Nos.30212, 30214, 30824, 30825, 28788- 28790 & 20755/2024

For Respondents : Mr.R.Suresh Kumar, AGP for respondents in all W.Ps
Mr.J.K.Jeyaseelan G.A for respondents in all W.Ps

COMMON ORDER

The common issue raised in all these Writ Petitions is with regard to compliance of Section 169 of the Tamil Nadu Goods and Services Tax Act 2017, (in short, 'the Act').

2. It is the contentions of the learned counsels for the petitioners that the respondents in each of the cases had uploaded only the notices/ orders in the web portal and not by any other modes as prescribed under Section 169 of the Act.

3. It is their case that most of the petitioners are not well aware about the portal of the Department and due unawareness of the information technology, they had relied upon the practitioners for filing their returns in the portal of the Department. It is also their case that the practitioners have uploaded their phone numbers and e-mail IDs for receipt of alerts and that in most of the cases, the practitioners have not informed the assesses either the updation in the portal or the receipt of the e-mails which have kept the assesses in dark.

4. In that context, they would submit that even though the provisions under Section 169 (1) (a) to (f) are disjunctive, they should be read conjunctively, failing which, the basic principles of natural justice would be violated. They would all submit that Clauses (a) to (c) of sub section (1) of Section 169 should be read as alternative.

5. It is their contention that Section 169 (1) of the Act should be read in such a manner that it effectively complies with the principles of natural justice. A reading of the same, which do not effectively comply the said principles, would only be a disadvantage to the assesses.

6. Countering their arguments, Mr.R.Suresh Kumar, learned Additional Government Pleader would contend that service of notice through portal had already been held to be a valid service by the learned Single Judge of this Court in a judgment reported in ***2022 SCC online Mad 8986***. He would submit that the learned Judge while considering Section 144B of the Income Tax Act, which mandates that E-mail IDs or a phone numbers given by the assessee for SMS alerts at the time of registration would not obliterate a notice issued through portal, as the assessee is required to visit the portal once in a month for filing its returns. Hence, the said obligation of the assessee would cover the principles of natural justice. When the assesses have obligated to visit the portal, it is their duty to also look at the notices that had been issued through the portal and reply properly.

7. He had also placed reliance upon the judgment of the Hon'ble Apex Court in the case of ***M.Satyanarayana Vs State of Karnataka and another*** reported in ***1986 (2) SCC 512,*** to contend that Section 169 should be read only disjunctively and not conjunctively and therefore, any modes that have been prescribed under Clause (a) to (f) if had been complied with by the Department, there can be no complaint of violation of principles of natural justice. He would also draw attention of this Court to Rule 149 of the GST Rules, to contend that what has been provided is for updation of the notices by any electronic mode and not by registered post.

8. He had also drawn the attention of this Court to Rule 52 of the TNGST Rules 1959, which deals with service of notices under 52 (1) (a) to (d). He had also relied upon the Division Bench judgment of this Court in interpreting Rule 52, as it stood then and further affirmed by a Division Bench of this Court in the case of ***Singaravelar Spinning Mills (P) Lts., Vs State of Tamil Nadu & Another*** reported in ***2010 SCC Online Mad 6454***. He had also relied upon the judgment in the case of ***Pee Bee Enterprises Vs Assistant Commissioner and Another*** reported in ***2020 SCC Online Ker 3331***, ***2020 SCC Online MP 4650***, a judgment of learned Single Judge of

Punjab and Haryana High Court made in ***CWP 10560 & 10568 of 2021,*** *dated* ***30.01.2021*** in support of their contention that a notice served through portal is a sufficient notice.

9. He had further relied upon the Division Bench of this Court in the case of ***V.N.V. Builders Pvt., Ltd., Vs State Tax Officer & Other*** reported in ***2024 SCC Online Mad 4927*** to contend that these issues can also be raised before the Appellant Authority where there is an efficacious alternative remedy that is available to the respective assesses.

10. Before adverting to Section 169 (1) of the GST Act and Rule 149 of the GST Rules, I propose to deal with various judgments relied upon by the respective counsels appearing on either side.

11. It is to be noted that Rule 52 of the TNGST Rule 1959 had provided for service of notices on the assesses. The same had been considered by the two Division Bench of this Court. Firstly, in the judgment reported in ***1972 SCC Online Mad 347***, a Division Bench of this Court had rejected the contentions that Section 52(a), (b) & (c) all have to be complied

with independently before compliance of Section 52 (d). The Division Bench had held that the authority would have to comply with any of the three modes under (a), (b) & (c) of Rule 52 and if found such service was not effective, then the Clause (d) of Rule 52 would have to be complied.

12. A similar view had been taken by a subsequent Division Bench in a judgment in the case of ***Singaravelar Spinning Mills (P) Ltd., Vs State of Tamil Nadu and Another*** reported in ***2010 SCC Online Mad 6454***. The Division Bench in the said judgment had also taken note of the earlier Division Bench indicated supra, wherein, the Division Bench had held that the mode of service referred to under Clause (a) to (c) are only alternative and not cumulative and that any one of the modes have to be exhausted before proceeding under Rule 52 (d). For better appreciation, relevant paragraphs are extracted hereunder:-

> ***9.****Having heard the learned counsel for the respective parties and having perused section 31 of the TNGST Act and and rule 52(1) of the Rules made thereunder, we are not inclined to accede to the submissions of the learned counsel for the petitioner that only after resorting to the service of notice in person, service through registered post was*

permissible. A reading of rule 52(1), makes it clear that the set of expressions in the first part of rule 52(1), viz., "may be effected in any of the following ways" makes it amply clear that the service of notice on a dealer can be resorted to by any one of the modes specified in rule 52(1)(a), (b), (c). Only sub-rule 52(1)(d) specifies that if none of the modes provided under rule 52(1)(a), (b), (c) is practicable, the alternative mode of affixing notice in some conspicuous place at the last known business or residence can be resorted to. As far as the modes of service specified in rule 52(1)(a), (b), (c) are concerned, it is for the authorities concerned to resort to anyone of the modes specified therein.

10.*In fact, the decision in State of Tamil Nadu v. Blue Mountain Hosieries reported in [2003] 133 STC 80 (Mad) fully supports the above said view, wherein the earlier decision of this court in A. Sanjeevi Naidu v. Deputy Commercial Tax Officer [1973] 31 STC 377 (Mad.) has been referred to, wherein it has been held as under (page 378 in 31 STC) :*

> *".. . The modes of service referred to in clauses (a) to (c) are only alternative and not cumulative and, therefore, it cannot be said that all the above three modes have to be exhausted before the service by affixture can be effected under clause (d). It is not in dispute that one of the modes of service contemplated under clause (c) is service of notice by registered post,*

and such service has been found to be ineffective in this case. Therefore, the assessing authority was justified in proceeding to serve the assessment order by affixing it in the petitioner's place of business under rule 52(d).. .".

13. Coming to Section 169(1), it is to be noted that a learned Single Judge of this Court in a judgment in the case of ***Pandidorai Sethupathi Raja Vs Superintendent of Central Tax, Chennai*** reported in ***2022 SCC Online Mad 8986*** had held that it is the obligation of the assessee to visit the portal and therefore, posting of summons and orders through portal is a sufficient compliance of notice on the assessee and therefore, there is no necessity for any alert. The learned single Judge had also compared the explanation of (r) to (u) of Section 144B of the Income Tax Act which had mandated an alert either to the registered e-mail ID of the assessee or by way of SMS to the registered mobile number of the assessee.

14. The judgment of the learned Single Judge relied upon by the learned counsel for the respondents reported in ***2020 SCC Online Ker 3331*** relates to an order of assessment not only served through web portal, but also to the registered e-mail ID and thereafter, by registered post. Hence, the

said judgment is factually distinguishable and therefore, the same cannot be of any help to the respondents.

15. Similarly, the Division Bench of the Madhya Pradesh High Court in the case of ***Ram Prasad Sharma Vs Chief Commissioner & Another*** reported in ***2020 SCC Online MP 4650*** also does not deal with Section 169, but had referred to Rule 142 of the GST Rules which was also found to be violative in the said facts of the case. The further reliance on the Division Bench judgment to convince this Court that the assesses have an efficacious alternative remedy where the service of notice can also be raised does not persuade me to relegate the parties to effacious alternative remedy, for the simple reason that it is not a solitary case of allegation of violation of principles of natural justice, but have been a day to day affair, where such complaints are being made.

16. It is also to be noted that the Courts have not dealt with Section 169 of the GST Act in its entirety before coming to the conclusion that posting in portal itself is a sufficient compliance. For better appreciation, the entire provision of Section 169 of GST Act is extracted hereunder:-

Section 169. Service of notice in certain circumstances.-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

17. Before proceeding any further, it would also be useful to compare Rule 52 of the then TNGST Rules, 1959 and Section 169 of the GST Act.

52 of the TNGST Rules, 1959	Section 169 of respective GST Enactment, 2017
Rule 52(1). Service of notices – The service on a dealer of any notice, summons or order under the Act or these rules may be effected in any of the following ways, namely: – (a). by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative, or Explanation.- Endorsement by person who derlivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule. (b). if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; (c). if the address of such dealer is known to the assessing authority, by sending it to him by registered post; (d). if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.	(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or (b) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or (d) by making it available on the common portal; or

52 of the TNGST Rules, 1959	Section 169 of respective GST Enactment, 2017
52(2). Where any Hindu undivided family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summons or orders issued under the Act or these rules may be served on any member of the Hindu undivided family, any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before such partition, dissolution or discontinuance.	(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice. (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1). (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

18. It is to be noted that Clause (d) of Rule 52 and Section 169(1)(f) are *pari materia*. Rule 52 had been dealt with by a Division Bench of this

Court as early as in the year 1972 and had held that Clauses (a), (b) & (c) are alternative and that if any of the aforesaid modes is not practicable then Clause (d) ought to have been followed.

19. An application of the said Division Bench to Sub-Section (1) of Section 169 would mean that Clauses (a) to (c) would be alternative and if it was not practicable, then Clauses (d) to (f) would have to be followed. Only interpreting Section 169 in such a manner would effectively comply with the principles of natural justice and also condition stipulated by Sub-section (3) to Section 169 which mandates that when such decisions, orders, summons, notices or any communication sent by the Registered Post or speed post, it shall be deemed to have been received by the assessees, unless the contrary is proved. A conjoined reading of Sub-Section (1)(2) & (3) of Section 169 would amply make it clear that the State is obliged to comply with the Clauses (a) to (c) alternatively and thereafter, comply with Clauses (d) to (f). Further, even though Clause (f) has also been proceeded with the word 'or' indicating it to be disjunctive / an alternative mode of services, a reading of the Clause (f) would indicate that Clause (f) could be resorted to by the State, if any of the Clauses preceding it, was not practicable. Here

also, Clause (f) makes it imperative that such affixure shall be in a conspicuous place and the last known business or residence of the asseesse. Therefore, the object of Section 169 is for strict observance of the principles of natural justice.

20. A persuasive argument was made on behalf of the respondent that Rules 149 of the GST Rules only provides for electronically issuing of notices/ summons/ orders. It is to be noted that the Rules are creature of a Statute and the Rules cannot circumscribe the mode that had been provided under the Statute. When the Statute had also mandated issuance of notice in person/ registered post/ e-mail, etc., the Rules cannot be limited to only serving it through electronic modes. Therefore, the contention that the Rules will prevail over the Statute cannot be accepted.

21. It is to be noted that in the judgments relied upon by the learned counsel for the respondents have not dealt with Section 169 in its entirety When the modes of service have been prescribed, such services should be effectively done as prescribed.

22. In such view of the matter, I am inclined to hold that Section 169 mandates a notice in person or by registered post or to the registered e-mail ID alternatively and on a failure or impracticability of adopting any of the aforesaid modes, then the State can, in addition, make a publication of such notices/ summons/ orders in the portal/ newspaper through the concerned officials.

23. In view of the aforesaid findings and reasoning, I am inclined to set aside the orders of assessment impugned in these Writ Petitions. The respective petitioners shall file their replies to the show cause notices, based upon which, the impugned assessment had been made, on or before 31.01.2025 and thereafter, the respective respondents shall afford an opportunity of hearing to the respective petitioners as provided under law and pass appropriate orders on merits and in accordance with law.

24.Before parting with these cases, I place my appreciation on Mr.Suresh Kumar, learned Additional Government Pleader for ably assisting this Court.

25.In fine, the Writ Petitions are allowed and setting aside the impugned assessment orders and remitting the same back to the respective respondents to comply with the directions indicated supra. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No

gba

To

The Authority,
Under Shop and Establishment Act/
Deputy Commissioner of Labour,
Coimbatore – 18.

K.KUMARESH BABU.,J.

gba

A Pre-delivery order made in
W.P.(MD)Nos.26481, 25801, 25855, 25979, 25773, 25952, 27362, 27363, 27357 to 27361 27869 & 27190 of 2024 and
W.P.(MD).Nos.25376, 6147 & 20755, 28788 to 28790, 28780, 28792, 28981, 29132, 29232, 5204 to 5207, 29492, 29493, 29565, 29983, 30104, 30212-30214, 28672, 30499, 30501, 30628, 30810, 30845, 30824, 30825 & 30891 of 2024

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