BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.5484 of 2018

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 Secretary,
Ministry of Petroleum and Natural Gas,
A-Wing, Sasthri Bhavan,
Dr.Rajendraprasad Road,
New Delhi - 110 001.

5.The Secretary,
Office of the GST Council Secretariat,
5th Floor II Jeevan Bharti Building,
Janapath Road,
Connaught Place,
New Delhi.

6.The Commissioner,
Commercial Tax Officer,
Cheupakkam,
Chennai - 5. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to instruct the respondents 2 to 5 to bring the petrol and diesel prices under the GST ambit to ensure One Nation One Tax, then only petrol diesel and other essential goods prices will come down and by considering the petitioner's representation, dated 16.02.2018.

For Petitioner : Mr.K.K.Ramesh (Party-in-person)

For RR 1 to 5 : Mr.V.Kathirvelu, Assistant Solicitor General of India. Assisted by Mr.J.Jeya Kumar, Central Government Standing Counsel.

ORDER

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

The present Writ Petition is filed as a 'Public Interest Litigation' by the petitioner/party-in-person, stating among other things, that Goods and Service Tax is based on two parliamentary Acts, namely the Integrated Goods and Services Tax Act and the Central Goods and Service Tax Act, for the covered object of “One Nation One Tax” and the said Act came to be passed during April, 2017.

2.The grievance now expressed by the petitioner is that though the main aim of Goods and Service Tax Act, is “One Nation One Tax”, the petrol and diesel having not been brought under the purview/control under the Goods and Service Tax Act and that apart price of per litre of the said fuels also fixed daily and it has reached all time high now, despite the fact that the International market price of crude oil per barrel is very low.

3.The petitioner/party-in-person by drawing the attention of this Court to the averments made in the affidavit filed in support of the petition as well as typed-set of documents and would submit that an exorbitant increase in the selling price of petroleum products, directly affects the common man for the reason that most of the Goods are transported, through road/service transport and any increase in price of the fuel would bound to increase the selling price of the commodities, especially essential commodities and it is high time that the petrol and diesel prices should be brought within the ambit of Goods and Service Tax (GST) and also pointed out in this regard that the petitioner has submitted a representation, dated 16.02.2018 to the respondents and inspite of receipt and acknowledgment, no response is forthcoming and therefore, he is constrained to approach this Court by filing this Writ Petition.

4.Mr.V.Kathirvelu, learned Assistant Solicitor General of India, assisted by Mr.J.Jeyakumar, learned Central Government

Standing Counsel, accepts notice on behalf of the respondents 1 to 5 and seeks time to get instructions as to the steps taken to bring the petroleum products within the ambit of Goods and Service Tax.

5.This Court has carefully considered the rival submissions and perused the materials placed on record.

6.The Central Goods and Service Tax Act, 2017 (Central Act 12 of 2017) (hereinafter referred to as 'the Act'), came to be passed "to make a provision for levy and collection of Tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto".

7.Section 2(36) of the 'the Act' defines "Council', which means "the Goods and Services Tax Council established under Article 279A of the Constitution of India".

8.Section 9 of the 'the Act' deals with 'Levy and collection' and it is relevant to extract the same:-

> "Levy and Collection:- 9 (1) Subject to the provisions of sub-Section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply alcoholic liquor for human consumption, on the value determined under Section 15 and at such rates, not exceeding twenty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
>
> (2) The Central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
>
> (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
>
> (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
>
> (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by

the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax."

9.Section 11 of 'the Act' speaks about the 'power to grant exemption from Tax' and it is extracted below:-

"Power to grant exemption from Tax:- 11(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the lax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-Section (1) or order issued under sub-Section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-Section (1) or order under sub-Section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.- For the purposes of this Section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both."

10.The prayer sought for by the petitioner/party-in-person, in the present Writ Petition filed as a 'Public Interest Litigation', is that the petroleum and diesel should be brought forthwith within the ambit of Goods and Service Tax, so that the selling price would drastically reduce and as a consequence, the prices of the Goods and essential commodities would come down, which would ultimately benefit to the common people, especially poor and down trodden. No doubt, in the event of prices of essential commodities being brought down through a permanent mode, common man would definitely be benefited.

11.The primordial question that remains for consideration in this petition is whether this Court in exercise of its Jurisdiction under Article 226 of the Constitution of India can issue any positive direction to the Goods and Central Services Tax council to bring petrol and diesel prices within the ambit of Goods and Service Tax?.

12.In the considered opinion of this Court, it cannot issue any direction for the reason that it is for the Goods and Service Tax council to take a call in that aspect and Section 9(2) of the 'Act' also deals with the Central Tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

13.The Goods and Service Tax council is having representation of the State Governments also and therefore, their views have also to be elicited, before the Goods and Service Tax council take a call as to bring the petrol and diesel prices within the ambit of Goods and Service Tax.

14.The Government on the basis of recommendations of the Goods and Service Tax council, is also having the power to issue a notification to exempt generally either absolutely or subject to such conditions as may be specified therein and it can act on public interest and also on the recommendation of the council to exempt from payment of Tax of any goods or services or both, on which, the Tax is levied. Hence, it is the prerogative of the Central Government to take a call on the basis of the recommendations of the Goods and Central Tax council.

15.It is a well-settled position of law that "it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken and the extent of the duty to act fairly will vary from case to case" (Akhtar Hasan Khan and others Vs. Federation of Pakistan and others reported in 2012 (5) SCC (FJ) 12.

16.The policy decision can be interfered with only it is found to be arbitrary or based on an irrelevant consideration or malafide or against any statutory provisions (Centre for Public Interest Litigation Vs. Union of India and others reported in 2016 (6) SCC 408).

17.In the considered opinion of this Court, in the light of the legal principles initiated by the Honourable Supreme Court of India in the above cited decisions coupled with the fact that it is for the Central Government to act on the recommendations of the Goods and Service Tax council as to bring the petroleum and diesel prices within the ambit of the Goods and Service Tax, this Court is not in a position to issue any positive direction to the respondents to consider the prayer sought for by the petitioner.

18.In the result, this Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Secretary to Prime Minister,
Union of India,
Prime Minister's Office,
South Block, Raisina Hill,
New Delhi-110 001.

2.The Principal Secretary,
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Department of Revenue,
Central Board of Excise and Customs,
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3.The Principal Secretary,
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6.The Commissioner,
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Chennai – 5.

+2cc to M/S.J.Jeya Kumaran, Advocate SR.No. 55482
+1cc to M/S.K.K.Ramesh, Advocate SR.No. 55853
+1cc to Special Government Pleader, SR.No. 55942

W.P(MD)No.5484 of 2018
15.03.2018

ps
JM/SKN RSK/SAR 2/27.03.2018/7P/11C