



WP Nos.33562 of 2024 and etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2025

PRONOUNCED ON : 09.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.33562, 33563, 33565, 33573, 33692, 33758 of 2024, 1842, and
1949 of 2025

and

WMP Nos. 36484, 36481, 36362, 36350, 36347, 36346, 36345, 36344,
36361, 36351, 36559, 36558 of 2024, 2106, 2110, 2242 and 2246 of
2025

W.P. Nos.33562, 33563, 33565, 33573, 33692, 33758 of 2024:

M/s.Poomika Infra Developers,
Represented by its Proprietor K.S.Udhayashankar,
No.55/1, Minnakam Illam,
St.Shed Road, Gandhi Nagar,
Sathyamangalam, Erode-638 402. ... Petitioner(s)

V.

State Tax Officer,
Roving Squad-VI,
Meenakshi Sundaranar Salai,
Erode-638 001. ... Respondent(s)

W.P. Nos.1842 and 1949 of 2025:

1.M/s.MV Creations
Rep by its Proprietor
Madappan Venkateswaran,
No. 10/26-B, Ghandhi Nagar,
Elampillai, Salem-637502.
Petitioner(s)



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Vs

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- 1.The Assistant Commissioner (ST)(FAC)
Salem Rural Circle, Commercial Taxes
Complex, Pitchards Road,
Asthampatti, Salem-636 007.
- 2.The Assistant Commissioner (ST),
Salem Rural Assessment Circle,
Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007.
- 3.The State Tax Officer, (Audit)
Arisipalayam Assessment Circle,
Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007.
- 4.Joint Commissioner of Commercial Tax
Salem Division, Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007
- 5.The Deputy Commissioner of
Commercial Tax, (Appeal),
Salem, Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007.

Respondent(s)

PRAYER in W.P.No.33562 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records relating to the impugned order bearing GSTIN 33AAPPU6384C1ZC/2021-2022 dated 06.08.2024 passed by the Respondent and quash the same.

PRAYER in WP No. 33563 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records relating to the impugned order bearing GSTIN 33AAPPU6384C1ZC/2022-2023 dated 06.08.2024 passed by the



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Respondent and quash the same.

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PRAYER in WP No.33565 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records relating to the impugned order bearing GSTIN 33AAPPU6384C1ZC/2019-2020 dated 06.08.2024 passed by the Respondent and quash the same.

PRAYER in WP No.33573 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records relating to the impugned order bearing GSTIN 33AAPPU6384C1ZC/2020-2021 dated 06.08.2024 passed by the Respondent and quash the same.

PRAYER in WP No.33692 of 2024: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records relating to the impugned order bearing GSTIN 33AAPPU6384C1ZC/2018-19 dated 06.08.2024 passed by the Respondent and quash the same.

PRAYER in WP No.33758 of 2024:

Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari calling for the records relating to the impugned order bearing GSTIN 33AAPPU6384C1ZC/2017-18 dated 06.08.2024 passed by the Respondent and quash the same.

PRAYER in W.P.No.1842 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the Respondent No.1 in his Proceedings dated 18.11.2024 in FORM GST DRC -16 arising out of the Order of Demand made by the Respondent No.2 in his proceedings in FORM No.DRC 07 Ref.No.ZD3304242590561 dated 30.04.2024 and quash the same.

PRAYER in W.P.No.1949 of 2025: Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the Respondent No.1 in his Proceedings dated 18.11.2024 in



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FORM GST DRC -16 arising out of the Order of Demand made by the Respondent No.2 in his proceedings in FORM No.DRC 07 in GSTIN-33ADQPPV1929C1ZF/2017-18 dated 29.05.2024 and quash the same.

For Petitioner
in W.P.Nos.33562, : Mr.G.Natarajan
33563, 33565, 33573,
33692 and 33758 of 2024

in W.P.Nos.1842 and : Mr.S.Senthilnathan
1949 of 2025 for Mr.K.Chandrasekaran

For Respondents : Mr.Hajanazarudeen
in W.P.Nos.33562, 33563 Additional Advocate General
33565, 33573, 33692, assisted by Mr.V.Prashanth Kiran
and 33758 of 2024 Government Advocate

in W.P.Nos.1842 and : Mr.G.Nanmaran
1949 of 2025 Special Government Pleader

COMMON ORDER

Common question that arises for consideration in this batch of writ petitions is whether service of notice/order by making available in the Common Portal is valid. The writ petitions are thus disposed of by a common order with regard to the above question. The writ petition titled M/s.Poomika Infra Developers is being treated as the lead matter, for the purpose of disposing of the common question that arises in the present batch of writ petitions. This court shall refer to the facts in the above lead



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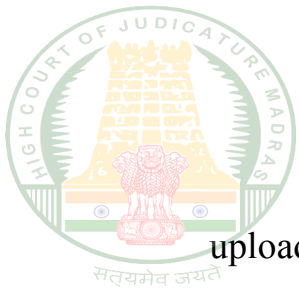
matter i.e., in the case of Poomika W.P.No.33562 of 2024.

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2. Brief facts:

2.1. Petitioner in W.P. No.33562 of 2024 was engaged in providing works contract service primarily to Central and State Government. Petitioner was registered under Goods and Service Tax Act, 2017 (hereinafter referred to as “GST Act”). Petitioner filed statutory returns and it is stated that appropriate taxes were also duly discharged. Petitioner was assigned to Central jurisdiction.

2.2. While so, petitioner's place of business was visited by GST Intelligence on 01.12.2023, and their books were verified by the State Tax Officers. During the course of such inspection, discrepancies were noticed relating to short payments of taxes for the period 2017-18 to 2022-23. An intimation in Form DRC-01A dated 01.04.2024 for the period 2018-19 was issued. The intimation contained allegations of discrepancies between Profit and Loss Account and GSTR 3B, GSTR 7 and GSTR 3B, Availment of ITC contrary to Section 16 of the Act. The above intimation was uploaded in GST Common Portal. This was followed by a show cause notice in DRC-01 dated 22.04.2024 which was



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uploaded in the Common Portal for the period 2021-22. The contentions/
allegations in DRC-01 was similar to that raised in DRC-01A. Thereafter,
impugned order for the period 2021-22 dated 06.08.2024 came to be
passed. It is this order which is the subject matter of challenge in this
writ petition. I must add that the facts are almost similar if not identical
in other writ petitions.

2.3. The challenge is on the premise that intimation in DRC-01A,
show cause notice in DRC-01 and order of adjudication in DRC-07, were
uploaded in the GST Common Portal, petitioner was not aware of the
same. Petitioner was thus unable to participate in the adjudication/
assessment proceedings. Petitioner challenged the order of assessment,
on the premise that the service of notice / order is improper and invalid.

3. Case of the petitioner:

3.1. The learned counsel for the petitioners Mr.G.Natarajan
submitted as under:

3.2. That as per Sections 73 and 74 of the CGST Act, the proper
officer shall serve a notice before determination of tax. Service is
complete only when the same is received by the intended entity. Making



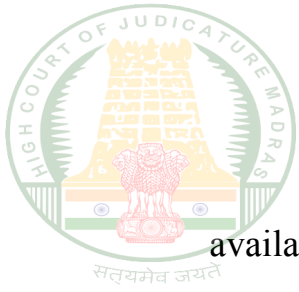
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available in the common portal cannot be treated as service of notice / order, though it may constitute issuance of notice/order under the GST Act.

3.3. Section 169 of GST Act, prescribes different modes of service of notice/order, summons or other communications and the manner in which date of service is to be reckoned under different modes. However, the date of service is not provided/deemed in respect of service of notice /order by making it available in the Common Portal in terms of sub-clause (d) to sub -section (1) to Section 169, service would thus be complete only when notice/order, summons or other communications is retrieved by the taxable person.

3.4. That in terms of Section 146 of GST Act, the Common Portal under GST Act, has been introduced only for the purpose of facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax. That common portal is not notified for communication of notice or order under the GST Act. The primary purpose of GST portal is only payment of tax and furnishing of returns.

3.5. That the legislature provides for 6 different modes of service of notice/order, summons or other communications including by making



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available the same in the common portal. The legislative intent is not to serve notice / order by uploading the same in the Common Portal, as evident from the fact that wherever legislature intended that proceedings are to be communicated by making it available in the common portal, the same is expressly provided. The following rules were relied upon in support thereof viz., Rule 8 (Application for Registration), Rule 26 (Method of Authentication), Rule 60 (GSTR-2A) and Rule 90 (Refund).

3.6. That Rule 142 provides that summary of show cause notice in Form DRC-1 shall be issued electronically, thereby impliedly excluding service of detailed notice by uploading in the common portal.

3.7. That GST Common Portal is not a Designated Computer Resource of the petitioner/taxable person under the GST Act, but designated computer resource of the respondent Department. Consequently in terms of sub-clause (ii) to Clause (a) of sub-section (2) to Section 13 of the Information Technology Act, 2000, the date of receipt can only be the date on which notice/order, summons or other communications is retrieved by the taxpayer. The email id would be the designated computer resource of the taxpayer for the purpose of the GST Act.



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3.8. Reliance was placed on Section 4 of the Contract Act, 1872, which provides when communication of proposal would be complete, to submit that the said principle ought to be applied in determining the date of service of notice/order under the GST Act.

3.9. That whenever there were technical glitches in the portal, this Court had permitted/directed service of order through registered post in addition to uploading in the portal. This Court had also taken into account lack of technical/computer knowledge on the part of taxable persons and directed revenue to serve the order/notice through registered post. Thus service of notice/order, summons or other communications by making it available in the common portal must be accompanied by additionally serving the same through registered post/speed post.

3.10. That uploading notice/order in the Tab “*view additional notices/orders*” is not a valid service as held by Delhi High Court in the case of Anhad Impex in W.P.(c) No.2356 of 2024.

4. Case of Respondents:

4.1. The learned Additional Advocate General Shri.Haja Nazirudeen would submit as under:



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4.2. That Section 169 of GST Act, provides for the mode in which any decision/ order/ summons/ notice or other communications under the GST Act / Rules shall be served. It enumerates the following modes of service viz.,

- a) by tender
- b) by registered post or speed post or courier
- c) by sending to Email address
- d) by making it available in the Common Portal
- e) by publication in news paper
- f) if none of the modes aforesaid is practicable

4.3. The above modes of service in clauses (a) to (e) are alternative to each other. The contentions that making available any decision/notice/order, summons or other communications on the common portal is not a valid service is contrary to the express provisions under GST Act.

4.4. Reliance on Section 146 of the GST Act, to submit that there is no common portal notified for service of notice / order issued in the course of adjudication, overlooks the express provisions contained in



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Section 169 of GST Act. It does not contemplate notifying a Common Portal for service of notice / order in terms of Section 146 of GST Act.

4.5. Reliance on Rule 142(1) of GST Rules, to submit that what is contemplated is only issuance of summary of show cause notice in Form DRC-01 and not the detailed notice which has to be issued otherwise, thus service of detailed notice by making it available in the common portal is invalid, is contrary to the express provisions of Section 169 of the Act.

4.6. That it is not in dispute that common portal is a computer resource for the purpose of Information Technology Act, 2000 (hereinafter referred to as “IT Act”). It is also not in dispute that each of the taxable person registered under GST Act are given an unique login ID and Password to enable them to have access to the portal. Common portal is thus a “*Designated Computer Resource*”, for both Department and taxable persons. That in terms of Section 13 (2) (a) of IT Act, 2000, receipt occurs when the electronic record in the present case notice/order enters the “*Designated Computer Resource*” i.e., Common Portal.

4.7. That in the absence of a challenge to the vires of Clause (d) to sub-section (1) to section 169 of the Act, it would not be open to the



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petitioner to question the validity of service made in accordance thereof.

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4.8. The submission that the petitioner/taxable person do not have adequate technical knowledge nor computer literate, resulting in hardship in responding to notices/orders cannot render the mode of service provided under the statute invalid.

5. Analysis:

5.1. To resolve the above controversy, it may be relevant to refer to section 169 of the Act:

Section 169 of Goods and Services Tax Act, 2017:

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



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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.”



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WEB COPY 5.2. On a plain reading of Section 169 of the Act, it is clear that various modes of service from (a) to (e) are alternate modes of service. This would be evident from the expressions "*shall be served by any one of the following modes*", employed in Section 169 of the Act before enumeration of various methods of service viz.,

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 authorized 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 authorized 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



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(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;

5.3. Service by affixture under sub clause (f) to sub section (1) to Section 169 of the Act, is to be resorted only if none of the methods from (a) to (e) is practicable. The above provision has been considered on more than one occasion by this Court and divergent views are expressed. This Court in W.P.(MD).No.26481 of 2024 dated 06.01.2025 and W.P.No.5539 of 2025 dated 24.02.2025 had taken a view that clauses (a) to (c) to sub-section (1) of Section 169 of the Act, must be treated as alternate modes of service and only if the above three modes are found to be not practicable, then the modes provided under Clauses (d) to (f) to sub-section (1) of Section 169 of the Act, would have to be resorted to, and it is only such interpretation that would render Section 169 of the Act, in compliance with principles of natural justice.

5.4. With respect I am unable to concur with the above view for the following reasons:

A) Construction contrary to the Division Bench of this Court:



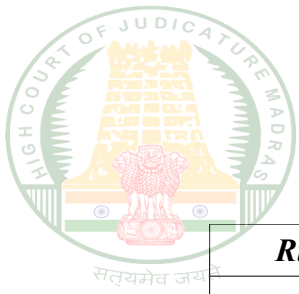
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5.5. The above construction is contrary to the Division Bench of this Court in ***A.Sanjeevi Naidu vs. The Deputy Commercial Tax Officer, Kanchipuram and Others*** reported in ***1972 SCC OnLine Mad 347***, wherein while considering Rule 52 of Tamil Nadu General Sales Tax Rules, 1959 which dealt with modes of service of notice, order, summons under the Tamil Nadu General Sales Tax Act, 1959, held that the authority may serve the notice/order, summons by any of the three modes provided under clauses (a), (b) and (c) of Rule 52 and if service under the above three modes was not effective, then service could be made by resorting to clause (d) of Rule 52. The above clause (d) to Rule 52 of TNGST Rules, 1959 corresponds to clause (f) to sub section (1) to Section 169 of the GST Act. To appreciate the relevance of Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959 while construing Section 169 of the GST Act, 2017, it may do well to compare and contrast Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959, with Section 169 of the GST Act. The following Table is relevant in this regard:

<i>Rule 52 of TNGST Rules, 1959</i>	<i>Section 169 of GST Act</i>
<i>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</i>	<i>(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</i>

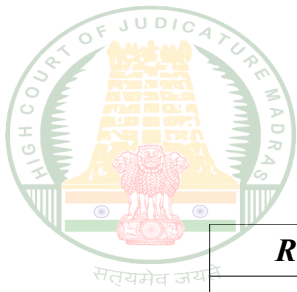


Rule 52 of TNGST Rules, 1959	Section 169 of GST Act
<i>the following ways, namely: –</i> (a). <i>by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative, or Explanation.- Endorsement by person who delivers the notice, etc., of having tendered or given it will be proof for the purpose of this sub-rule.</i> (b). <i>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;</i> (c). <i>if the address of such dealer is known to the assessing authority, by sending it to him by registered post;</i> <u>(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.</u>	<i>following methods, namely:--</i> (a) <i>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</i> (b) <i>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</i> (c) <i>by sending a communication to his email address provided at the time of registration or as amended from time to time; or</i> (d) <i>by making it available on the common portal; or</i> (e) <i>by publication in a newspaper circulating in the locality in which the</i>



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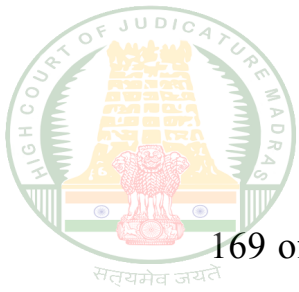
Rule 52 of TNGST Rules, 1959	Section 169 of GST Act
52(2). Where any Hindu undivided family, firm or other association of persons is partitioned, dissolved or discontinued, notice, summons or orders issued under the Act or these rules may be served on any member of the Hindu undivided family, any person 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.	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 <u>(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.</u> (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 subsection (1). (3) When such decision, order, summons, notice or any



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<i>Rule 52 of TNGST Rules, 1959</i>	<i>Section 169 of GST Act</i>
	<i>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.</i>

5.6. The above table would show that Section 169 of the Act, is similarly, if not identically structured to Rule 52 of the Tamil Nadu General Sales Tax Rules, in the sense that various modes of service from clauses (a) to (c) under Rule 52 of TNGST Rules and clauses (a) to (e) to Section 169 of the GST Act, are alternate before resorting to service of notice/order, summons or other communications by affixture under clause (d) to Rule 52 of TNGST Rules and clause (f) to sub-section (1) of Section 169 of the Act. It thus appears that construction placed on Rule 52 of TNGST Rules, would have a material bearing on construction of Section 169 of the GST Act. Applying the above decision of the Division Bench of this Court in *Sanjeevi Naidu case* referred supra, it appears that the modes of service provided in clauses (a) to (f) to Section



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169 of the GST Act are alternate to each other before resorting to clause

(f) to sub-section (1) to Section 169 of the Act. However, this Court in W.P.(MD).No.26481 of 2024 and W.P.No.5539 of 2025 relied upon by the petitioners, had found that the modes of service provided in sub-clause (a) to (c) to sub-section (1) to Section 169 are alternate modes and sub-clause (d) to (f) could be resorted to only after sub-clause (a) to (c) to sub section (1) to Section 169 of the GST Act is exhausted and not found practicable, which is plainly contrary to the law laid down by Division Bench of this Court in *Sanjeevi Naidu case* referred supra.

B. Constitution imputing superfluity in legislature – To be avoided

5.7. Secondly, the above interpretation placed by this Court, renders the expression "*shall be served by any one of the following modes*" redundant/superfluous. It is trite law that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted. If the construction placed by this Court is to be accepted, Section 169 of the Act would read as under :

Section 169. Service of notice in certain circumstances.-

“(1) Any decision, order, summons,



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notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, from (a) to (c) and if found not practicable by following (d) to (f).

.... ”

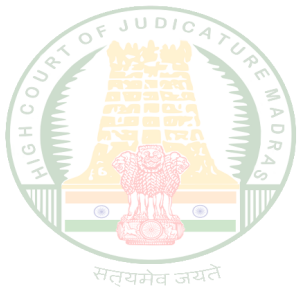
a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorized representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly 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 authorized 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;

“if the modes in (a) to (c) is not practicable, the decision order, notice shall be served by the methods enumerated in (d) to (e) namely:-

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



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(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;

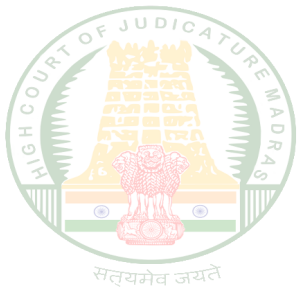
(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who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

5.8. The underlined portions would have to be inserted if the construction by the petitioner is to be accepted. In other words the above construction would result in recasting the provision, which is impermissible. The role of a Court is limited to interpret the law made by a competent legislature. Addition of words or supplying omission or omitting words in a legislation through a process of interpretation would amount to judicial legislation which ought to be avoided.¹

C. Hardship – No reason to depart from plain language

1 (i) *Dr.Ganga Prasad Verma and Others vs. State of Bihar and Others*, reported in 1995 Supplement 1 SCC 192;

(ii) *V.K.Naswa vs. Home Secretary, Union of India and Others* reported in 2012 (2) SCC 542

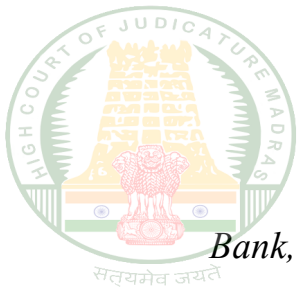


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5.9. The next reason which weighed with the learned judge in W.P.

No. 5539 of 2025, wherein after adopting the above reasons, proceeded to find that uploading of the notice / order in common portal, may not be desirable, if not a valid mode of service, on the premise that it causes grave hardship to the taxable person after finding that taxable persons are generally illiterate and common plebeians and engage consultants to comply with GST Laws.

5.10. With respect, I am unable to concur with the above reasoning of the learned Judge inasmuch hardship faced by the petitioner (or) a section of taxable persons which is apparently negligible, assuming to be true cannot be a reason to depart from plain language of Section 169 of the Act. It must be borne in mind that legislature in its wisdom has provided that making available the notice/order , summons or other communication would be a valid mode of service. On the basis of assumed hardship one cannot depart from the plain meaning. It may do well to remind ourselves of the latin maxim '*dura lex sed lex*', i.e., when there is a conflict between law and equity it is law which ought to prevail. In this regard, it may be relevant to refer to the judgment of the Supreme Court in the case of *Raghunath Rai Bareja v. Punjab National*



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Bank, reported in (2007) 2 SCC 230, wherein it was held as under:

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“29. we must, however, state that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim ‘dura lex sed lex’, which means ‘the law is hard, but it is the law’. Equity can only supplement the law, but it cannot supplant or override it.”

5.11. The learned Senior counsel for the respondent would submit that out of more than one lakh orders had been passed, grievance regarding service is raised by less than 1% of taxable persons out of which some of the taxable persons had responded at some stage of adjudication proceeding, any difficulty in responding or availing the remedies under the Act on the ground of service of notice/order not being sufficient is attributable to negligence of the taxable person and would not in any manner invalidate the service or proceeding. Without expressing any view on the above submission, it appears that these are possibly hard cases, it is a well known adage that, hard cases make bad law.²

D) Absence of notification under Section 146 of the Act for service of notice/order, summons or other communications by making available on

² *Umesh Chandra Shukla v. Union of India*, (1985) 3 SCC 721



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the common portal – Relevance:

WEB COPY 5.12. It is not in dispute that the Common Portal under Section 169

(1) (d) of CGST Act is a “*computer resource*”, for the purposes of IT Act, 2000. “*Common Portal*” is defined under sub-section (26) to Section 2 of the GST Act as under:

2(26) “*common portal*” means the common goods and services tax electronic portal referred to in section 146;

5.13. On a reading of the above definition, it would be clear that Common Portal is Common Goods and Service Tax Electronic Portal “*referred*” in Section 146 of the Act. It may thus be relevant to refer to Section 146 of the GST Act which reads as under:

“146.Common portal:

The Government may, on the recommendation of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.”

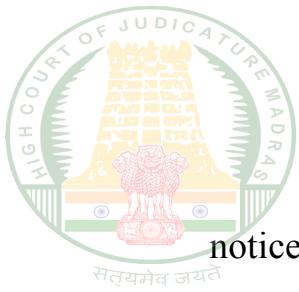


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5.14. Submission of petitioner that Section 146 of the GST Act

does not enable notifying common portal for serving notice/ orders/ communications, thus service of notice/ order by making it available in the common portal would not constitute valid mode of service is untenable. Section 146 of GST Act, provides that common portal may be notified for carrying out various functions and purpose of the Act. While the Government may in exercise of its power under Section 146 of GST Act, identify the portal and notify the purpose for which it is to be employed, however, the purpose/ functions for which the common portal may be employed in terms of notification issued under Section 146 of the Act is not exhaustive. Sub-clause (d) to sub-section(1) to Section 169 of the GST Act, while providing that the decision, order, summon, notice shall be served by making it available in the common portal does not contemplate a notification under Section 146. Section 169 of the Act is a standalone independent provision, its operation is not dependent on any notification under Section 146 of the Act.

5.15. “*Common Portal*” would mean in terms of the definition in sub-section (26) to Section 2 of the GST Act, common portal “*referred*” to in Section 146 of the GST Act. It is not in dispute that the



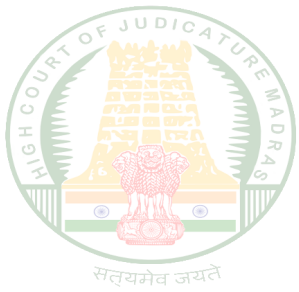
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notices/orders are served by making available in the common portal www.gst.gov.in which is one of the common portal notified under Section 146 of the GST Act. In other words www.gst.gov.in is a common portal “referred” to in Section 146 of the Act and resultantly a common portal in terms of Sub section (26) to Section 2 of the Act. It would thus be clear that making the order/notice available in common portal viz., www.gst.gov.in, would constitute a valid service in terms of Section 169 of the Act.

5.16. It may be necessary to clarify that there are other common portals notified under Section 146 of the GST Act , some of them being;

- (i) www.einvoice1.gst.gov.in;
- (ii) www.einvoice2.gst.gov.in;
- (iii) www.einvoice3.gst.gov.in;
- (iv) www.einvoice4.gst.gov.in;
- (v) www.einvoice5.gst.gov.in;
- (vi) www.einvoice6.gst.gov.in;
- (vii) www.einvoice7.gst.gov.in;
- (viii) www.einvoice8.gst.gov.in;
- (ix) www.einvoice9.gst.gov.in;
- (x) www.einvoice10.gst.gov.in.

5.17. Any doubts as to whether notice or order may be served in the above GST portals as well, is unfounded and hypothetical. This court is informed that notices and orders and other proceedings under Section 169 of GST Act are served only in the common portal www.gst.gov.in.



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5.18. Learned counsel for Respondent would also submit that they

do not serve notice in any other common portal other than www.gst.gov.in.

E) Rule 142 of GST rules – Relevance:

5.19. Reliance on Rule 142 of the GST Rules was made to submit that in terms of the above Rules, what is contemplated is only service of summary of notice/order, summons or other communications in the common portal and thus service of detailed notice/order, summons or other communications by making available in the common portal is impermissible. The above contention is liable to be rejected inasmuch as it is contrary to the plain language of Section 169 of the Act which provides that notice/orders, summons or other communications shall be served by making available the same in “*common portal*”. The above construction is also contrary to settled position that in case of conflict between the enabling Act and a rule or any other delegated legislation, the former shall prevail and the delegated legislation has to be read and construed consistent with the enabling Act.⁵ As discussed above Section 169 of the GST Act, is a standalone independent provision and cannot be

⁵ ITW Signode India Ltd. v. Collector of Central Excise, (2004) 3 SCC 48, p. 71 (para 56); (2004) 6 JT 456; Nowa ADS v/ Secretary, Department of Municipal Administration and Water Supply, (2008) 8 SCC 42 para 41 : AIR 2008 SC 2941



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controlled by Section 146 of the Act or any Rules.

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F) Relevance of Section 13 of Information Technology Act, 2000:

5.20. It is submitted by the learned counsel for the petitioner that there is a distinction in law between issuance of notice/order, summons or other communications and service. Reliance was sought to be place on the Information Technology Act, 2000, in particular Section 13 of the Information Technology Act, 2000, to submit that in terms thereof GST common portal is not a designated computer resource of the petitioner/taxable person under the GST Act, but a designated computer resource of the respondent Department. Consequently in terms of sub-clause (ii) to Clause (a) of sub-section (2) to Section 13 of the Information Technology Act, 2000, the date of receipt can only be the date on which notice/order, summons or other communications is retrieved by the taxpayer. The email id alone would be the designated computer resource of the taxpayer for the purpose of the GST Act. It may be relevant to refer to Section 13 of Information Technology Act, 2000:

Section 13 of Information Technology Act, 2000:



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“13. Time and place of despatch and receipt of electronic record.—

(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,—

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;



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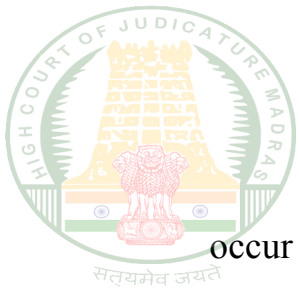
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(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) -usual place of residence?, in relation to a body corporate, means the place where it is registered.”

5.21. It appears to me that the common portal is a designated computer resource for both Department as well as taxable person inasmuch as the taxable person is given an unique login ID and password to enable them to have access to the portal. The common portal would thus constitute a “*designated computer resource*” for the taxable person as well.

5.22. Keeping this in view, Section 13 of the IT Act, 2000, may have a bearing in determining the time and place of service under the GST regime. In terms of Section 13 of the IT Act, 2000, if the addressee i.e., taxable person in the present case had designated a computer resource, for the purpose of receiving electronic records, receipt occurs at the time when the electronic record enters the designated computer resource i.e., the common portal. If the electronic record is sent to a computer resource other than the designated computer resource, receipt occurs when the electronic record is retrieved by the addressee. If the taxable person has not designated a computer resource, receipt would



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occur when the electronic record enters the computer resource of the addressee. Having found common portal to be a “*designated computer resource*” of the taxable person as well, receipt would occur when it enters the common portal i.e., when it is made available in the common portal, in terms of clause (a) to sub section (2) to section 13 of the Act.

5.23. We have dealt with the question of validity of service inasmuch as service goes to the root of jurisdiction and if service is invalid the proceedings would be *non est* and the question of orders of adjudication being barred by limitation would arise. Service by making it available in the common portal is a valid mode of service in terms of section 169 of the GST Act. Service is complete when it enters the common portal i.e., when it is made available in the common portal. In this regard, it may be relevant to refer to the decision of this Court in ***Pandidorai Sethupathi Raja vs. Superintendent of Central Tax, Nandanam*** reported in **2022 SCC OnLine Mad 9162**, wherein it was held as under:

“35.This is countered by the petitioner by drawing attention to Section 169(2), which deploys the terms 'tendered' 'published' or 'affixed'. Thus, according to petitioner, the absence of the term 'uploaded' as a mode of service, is conscious, and should not be taken to be proper service.

36. I find no merit in this argument. In my view,



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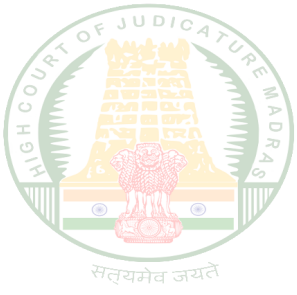
making an order available on the common portal would tantamount to 'tendering' of that order to the recipient. That apart, I am also unable to ascribe my conscious intention on the part of the Legislature to exclude uploading as one of the modes of service. This argument is rejected.

37. There is yet another aspect to the matter. The Income-tax Act, 1961 permits uploading of orders upon the portal, or on the web application, and construes the same as a proper method of service. However that statute, in Explanations (r) to (u) of Section 144B thereof, contains a requirement that the official concerned, issue an alert either to the registered e-mail of the assessee or by way of SMS to the registered mobile number of the assessee, to bring to the notice of the assessee that such order/communication has been uploaded. Such a facility is not available under the GST Act.

38. The explanation put forth by the revenue in this regard, is that an assessee under the provisions of the Goods and Services Tax Act enactments is under a statutory obligation to file a return on monthly basis and hence is expected to visit the portal once a month for this purpose. The necessity for an alert thus stands obviated, for this reason.

39. I find this explanation acceptable and hence conclude that uploading of orders upon the common portal constitutes proper mode of service.”

5.24. Though normally, this Court would have in the event of disagreeing with a Coordinate Bench referred the matter to a Larger Bench, however, that exercise may not be required in the present case inasmuch as this Court finds that the judgment of the Division Bench in *Sanjeevi's case (1972 SCC OnLine Mad 347)* covers the issue.



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6. The learned counsel for the petitioner would then place reliance upon the judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024***, to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Counsels for the Revenue does not have any serious objection.

7. By consent of both parties,

a) The impugned orders are set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.



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c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above direction, shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.



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f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

8. Before parting, I must state that the matter was listed under the caption for clarification on 08.04.2025, this Court suggested the Commissioner of Commercial Taxes, be present on 09.04.2025, with a view to see if a circular/instruction is issued whereby the respective



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Assessing Officers while issuing/passing notice/order, summons or other communications and served in terms of clause (d) to sub-section (1) of Section 169, simultaneously issue an alert SMS to the mobile number of the taxable persons and send an e-mail to the registered email ID of the taxable persons independent of the email and SMS being auto generated and issued by the GST Network.

9. The above exercise was suggested by this Court only to try and make aware taxable persons that such notice/orders/proceedings has been uploaded in the common portal. Apprehensions were expressed by the respondent that this may constitute a requirement in addition to whatever is provided under the Act to constitute a valid service. It is clarified that instructions to be issued may state that it is an inter departmental instruction/confidential and meant for administrative purpose and would not in any manner have a bearing in deciding the validity of service which must be made solely on the basis of extant provisions/rules under GST Act/Rule.



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10. The above writ petitions stand disposed of on the above terms.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11. To be listed under the caption “For Reporting Compliance” after four weeks.

09.04.2025

Index : Yes/No
Neutral Citation : Yes/No
mka/pam

To:

- 1.State Tax Officer,
Roving Squad-VI,
Meenakshi Sundaranar Salai,
Erode-638 001.
- 2.The Assistant Commissioner (ST)(FAC)
Salem Rural Circle, Commercial Taxes
Complex, Pitchards Road,
Asthampatti, Salem-636 007.
- 3.The Assistant Commissioner (ST),
Salem Rural Assessment Circle,
Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007.

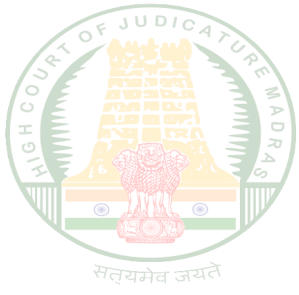


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4.The State Tax Officer, (Audit)
Arisipalayam Assessment Circle,
Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007.

5.Joint Commissioner of Commercial Tax
Salem Division, Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007

6.The Deputy Commissioner of
Commercial Tax, (Appeal),
Salem, Commercial Taxes Complex,
Pitchards Road, Asthampatti, Salem 636 007.



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