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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 11180/2020 & CM No. 34884/2020 (for interim relief)
RAMAKRISHNA ELECTRO COMPONENTS
PVT LTD

..... Petitioner

Through: Mr. Rajul Jain, Mr. Abhinav Beri and
Ms. Kanchan Sah, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Satish Kumar, Sr. Govt. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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14.01.2021

[VIA VIDEO CONFERENCING]

1. This writ petition was preferred, seeking (i) directions to the respondent no.2 Director General of GST Intelligence to cancel the DRC- 03 dated 7th October, 2020 for reversal of Input Tax Credit; (ii) for quashing of the proceedings dated 7th October, 2020 conducted under Section 67 of the Central Goods and Services Tax Act, 2017; (iii) for quashing of the attachment order dated 21st December, 2020 vide which State Bank of India (SBI) account no.37975466366 at branch Wazirpur Industrial Area, Delhi and ICICI account no.135351000004 at branch ITL Tower, New Delhi, of the petitioner were attached; and, (iv) return of the original documents seized under Section 67(2) supra on 7th October, 2020

2. The petition came up first before this Court on 24th December, 2020, when none appeared for the respondents; thereafter, on 28th December, 2020 when the counsel for the respondents appeared, he complained that the

petitioner was not co-operating with the investigation, despite the summons having been issued on 4th December, 2020. Vide order of the said date, permitting the petitioner to file additional documents as sought, the matter was adjourned to 5th January, 2021.

3. On 5th January, 2021, the additional documents claimed to have been filed by the petitioner were not on record though a short affidavit filed by the respondents was on record. The matter was adjourned to today, granting opportunity to the respondents to file additional short affidavit to the additional documents filed by the petitioner.

4. We have today heard the counsel for the petitioner and the counsel for the respondents at length. However need to detail all the arguments is not felt inasmuch as it is *inter alia* the plea of the counsel for the respondents that this petition is not maintainable as an alternate efficacious remedy under Rule 159(5) of the Central Goods and Services Tax (CGST) Rules, 2017, of preferring an objection to the Commissioner to the effect that the property attached was or is not liable to attachment under Rule 159 supra, is available to the petitioner.

5. The counsel for the petitioner, faced therewith has referred us to the dicta of the Division Bench of the High Court of Gujarat in ***Pranit Hem Desai Vs. Additional Director General*** MANU/GJ/1855/2019 and has drawn attention to paragraph 23 thereof where the High Court of Gujarat has opined that the writ petitions subject matter thereof were entitled to be allowed for the reason that the total tax paid by the petitioner therein during the subject period was in excess of the Input Tax Credit availed of by the said writ petitioner and there was thus no question of the Government revenue being at stake, for which purpose attachment in that case was

effected.

6. However the counsel for the petitioner along with the petition itself has also filed copy of the judgment of the High Court of Bombay in *Siddharth Mandavia Vs. Union of India* 2020 SCC OnLine Bom 2110 where the writ petition was not entertained for the reason of alternate remedy under Rule 159(5) supra being available to the petitioner.

7. A perusal of the judgment in *Pranit Hem Desai* supra, now relied upon by the counsel for the petitioner, shows that though before the High Court of Gujarat also the writ petitions filed immediately after attachment was effected, were not being entertained, referring to Rule 159(5) supra but the subject writ petitions which were being adjudicated, were filed impugning adjudication under Rule 159 (5) supra.

8. Moreover a reading of the said dicta in *Pranit Hem Desai* supra indicates that before the High Court of Gujarat there was no dispute that the total tax paid by the writ petitioner in that case was in excess of the Input Tax Credit availed. On the contrary here, the counsel for the respondents controverts the argument of the counsel for the petitioner that the petitioner has already paid tax in excess of the Input Tax Credit availed. The counsel for the respondents contends that the petitioner for making such statement, is relying upon its own books of accounts and which are disputed by the respondents.

9. The counsel for the petitioner has also drawn our attention to the requirement of Rule 159(5) supra, of the objections being preferred within seven days.

10. However this Court in *R.R. India Pvt. Ltd. Vs. Union of India* MANU/DE/1372/2020 has held the said time limit to be directory and not

mandatory.

11. The counsel for the petitioner then seeks to withdraw this writ petition without prejudice to the rights and contentions of the petitioner, to avail of the remedy under Rule 159(5) supra. He however seeks a time bound disposal of the said remedy.

12. The counsel for the respondents has fairly stated that the objections under Rule 159(5) supra, if any, preferred by the petitioner will be disposed of within four weeks of filing thereof, subject however to the petitioner responding to the summons issued and submitting all information sought for by the Commissioner under Rule 159(5) supra.

13. The counsel for the petitioner is agreeable thereto.

14. Accordingly, this writ petition is dismissed as withdrawn, (i) granting liberty to the petitioner to, on or before 22nd January, 2021 prefer objections under Rule 159(5) supra and directing the Commissioner to dispose of the said objections by an order in writing, on or before 22nd February, 2021; and, (ii) by directing the petitioner to, in response to the summons already issued to the petitioner and mentioned in the short affidavits (two in number) filed by the respondent no.2, along with its objections under Rule 159(5) supra, submit the requisite information/documents, and binding the Managing Director of the petitioner to, appear before the Commissioner in Rule 159(5) supra proceedings on whatever date is given along with all further information, if any, sought and by clarifying that if the petitioner and/or its Managing Director default, the Commissioner in the order to be passed under Rule 159(5) supra to give particulars thereof along with the dates and directions issued for production of further records/information and communication thereof to the petitioner/its Managing Director.

15. The counsel for the petitioner also states that of the two bank accounts attached of the petitioner, there is a sum of Rs.90,00,000/- odd in the account with ICICI Bank and the account with SBI is an overdraft account and there was no substantial money therein on the date of attachment. The counsel for the petitioner states that the petitioner requires funds for its day-to-day functioning and for the payment of salaries, emoluments, etc.

16. We have heard the counsel for the respondents on the aforesaid aspect. The respondents cannot have any claim to further overdraft, if any, availed of by the petitioner in the overdraft account with the SBI. We thus deem it apposite to, while disposing of this petition as aforesaid, direct that while the ICICI Bank account and the SBI account with monies therein as on the date of attachment shall continue to be attached till further orders in pursuance to the objections to be filed under Rule 159(5) supra, the petitioner shall be entitled to avail of further overdraft in the SBI account and to withdraw and/or disburse by cheques or otherwise the further overdraft amount so availed of by the petitioner.

17. It is further clarified that all contentions remain open to the parties and the petitioner, if remains aggrieved from the order to be passed under Rule 159(5) supra, shall have remedies in law including on the grounds urged in this petition. We further clarify that if the objections to be filed by the petitioner are dismissed, the attachment to continue till vacated in the appropriate proceedings.

18. The counsel for the petitioner also states that pursuant to the appearance of the Managing Director of the petitioner on 4th January, 2021 before the authority concerned, the tax value of Rs.85,00,000/- has already been reversed.

19. We are told the aforesaid will be taken into consideration while deciding the objections to be filed under Rule 159(5) supra.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

JANUARY 14, 2021
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