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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1597/2020

RR INDIA PVT. LTD

..... Petitioner

Through: Mr. Rajesh Jain, Mr. Virag Tiwari,
Mr. Ramashish and Mr. K.J. Bhat, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Satish Aggarwala, Sr. Standing Counsel
with Mr. Vineet Sharma, Advocate for R-1
and R-2
Mr. Sanjeev Sagar, Advocate/ Standing
Counsel for UBI and Ms. Nazia Parveen,
Advocate for R-3
Mr. Aman Leekha and Mr. Udbhav Kumar
Jain, Advocates for R-5/HDFC Bank
Mr. Avnish Singh, Sr. Panel Counsel for UOI

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **17.02.2020**

1. The petitioner has preferred the present writ petition to seek the following reliefs:-

“a) quash and set aside the impugned orders dated 6.2.2020, 2.12.2019 & 3.12.2019;

b) declare Rule 159(5) of the Rules to the extent it specifies the time period of seven days as ultra-vires of the provisions of Section 83(1) of the Act;

c) *Issue a Writ of Mandamus or any other Writ, order or direction;*

d) *to issue appropriate writ, order or direction, directing to release/restore the six bank accounts as stated in prayer (a) for the exclusive operations of petitioner for running their day to day business affairs;”*

2. The grievance of the petitioner is that the respondents, in pursuance of the search operation which was conducted between 01.11.2019 and 30.11.2019, at various places of the petitioner, under Section 67(2) of the CGST Act, proceeded to issue provisional attachment orders under Section 83 of the CGST Act dated 02.12.2019 and 03.12.2019, which have also been impugned in the present petition. The petitioner states that bank accounts have been attached under Section 83 of the Act, particulars whereof are as follows:-

S. No.	Order C.No.	Balance as on	Account Number	Bank	Cr. Balance
1	267/INT/DGGI/H Q/2019/8499	31.12.19	378501010034789	Union Bank of India	4,94,76,201.30
2	267/INT/DGGI/H Q/2019/8500	11.2.20	5020008548874	HDFC Bank	86,51,284.80
3	267/INT/DGGI/H Q/2019/8501 267/INT/DGGI/H Q/2019/8557	11.2.20	510341000669579 Given new number i.e. 164701601000104	Corporation Bank	2,90,533.84
4	267/INT/DGGI/H Q/2019/8502	11.2.20	135405001069	ICICI Bank	1,46,03,591.98
5	267/INT/DGGI/H Q/2019/8558	28.1.20	034305003448	ICICI Bank	1,34,178.44
	Total				7,31,55,790.36

3. The petitioner filed objections to the original attachment, which have

been rejected vide order No .01/2020 dated 06.02.2020, only on the ground that the petitioner had not moved under Rule 159(5) of the CGST Rules within a period of 7 days of attachment. Rule 159(5) reads as follows:-

“159(5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC-23.”

4. The submission of learned counsel for the petitioner is that the before the respondents, the petitioner relied upon the decision of the Supreme Court in ***Sambha Ji Vs. Gangabai, 2009 (240) ELT 161 (SC)***. In the said case, the Court construed Order 8 Rule 1 CPC to be a directory provision, notwithstanding that it requires the defendant to present the written statement of his defence within 30 days from the date of service of summons upon him. Order 8 Rule 1 CPC reads as follows: -

“1. Written statement – The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the day of service of summons.”

5. The aforesaid would show that the proviso grants an additional period of 60 days from the date of service of summons, while also employing the words *“but which shall not be later than”*.

6. His submission is that despite the language employed by the Parliament in the aforesaid provision, the Supreme Court held that the period for filing of the written statement could be extended even beyond the period of 90 days from the date of service of summons. Paragraph 8 and 13 of the said decision reads as under:

“8. Order 8 Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Substituted Order 8 Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactic, delaying the disposal of cases, causing inconvenience to the plaintiffs and the petitioners approaching the court for quick relief and also the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

x x x x

13. it is also to be noted that though the power of the court under the proviso appended to Rule 1 of Order 8 is circumscribed by the words “shall not be later than ninety day” but the consequences flowing from non-extension of time are not specifically provided for though they may be read by necessary implication. Merely, because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts, when called upon to interpret the nature of the

provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.”

7. Learned counsel for the petitioner further submits that under the CGST Act or Rules, there is no provision which mandates the filing of objections to provisional attachment within 7 days. No consequence of delay in filing objections is provided. Moreover, the respondent does not suffer any adverse consequence on account of delay on the part of the objector in moving the objections which is beyond the period of 7 days of the date of the provisional attachment.

8. On the other hand, Mr. Aggarwala submits that the respondents are bound to comply with the letter of the law and since sub-Rule 5 of Rule 159 stipulates that the person whose property is attached, may within 7 days of attachment under sub-Rule (1), file an objection, the petitioner ought to have filed the same within the aforesaid stipulated period. Since, admittedly, the objections were preferred beyond the period of 7 days, respondent were bound to reject the same.

9. Having heard both the learned counsels, it is clear to us that the period of 7 days prescribed in Rule 159(5) is a directory and not a mandatory period. Therefore, on account of delay on the part of the objector, if he prefers his objections beyond the period of 7 days, the objections cannot be rejected on the ground of limitation. No consequence is prescribed either in the Act or in the Rules to say that if the objections are not preferred within 7 days, they shall not be entertained.

10. The decision in *Sambhaji (supra)* is clearly attracted to the present case. Moreover, it is the objector who would suffer adverse consequence on account of delay on his part in raising the objections. The respondents do not suffer any adverse consequence on account of delay, if any, in moving the objections. We, therefore, hold that the period of 7 days prescribed in Rule 159(5) of the CGST Rules for moving the objections to the provisional attachment is merely directory and not mandatory. Objections raised by the petitioner, therefore, could not be rejected on that ground alone.

11. We accordingly set aside the order No. 1/2020 dated 06.02.2020 and remand the proceedings back to the concerned authority for passing a fresh order on the merits of the objections. The officer concerned shall proceed to pass a fresh reasoned order within two weeks from today.

12. Petition stand disposed of in the above terms.

13. Order *dasti*.

VIPIN SANGHI, J.

SANJEEV NARULA, J.

FEBRUARY 17, 2020

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