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

\+ W.P.(C) 5872/2019, CM No. 25527/2019

M/S OSWAL CHEMICALS AND FERTILIZERS LTD. ..... Petitioner

Through: Mr. R.P. Sharma and Mr. Vaibhav Mehra, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL ..... Respondent

Through: Mr. Arjun Mitra and Ms. Nidhi Banga, ASCs with Mr. Govin Upadhyay, Adv. for NDMC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% **30.07.2019**

This petition has come on transfer.

1. The present petition has been filed by the petitioner with the following prayers:-

"It is, therefore, prayed that your lordships may be graciously pleased to:

A. Call for the record;

B. Issue writ of mandamus and any other appropriate writ(s) quashing notice dated 30.03.2005 issued under Section 72 seeking to amend the assessment list with proposed RV of Rs.2,46,28,100/-. (Annexure P-4);

C. Issue writ of mandamus or any other appropriate writ(s) *quashing notice dated 28.03.2007 issued under Section 72 proposing RV of Rs. 7,76,25,000/- with effect from 21.12.2006 (Annexure P-5).*

D. Issue writ of mandamus or any other appropriate writ(s) quashing assessment order conveyed vide endorsement No. A.O.No.T.I-(2)/930 J.D (Tax)/2017 dated 10.08.2017 (Annexure P-6):

E. Issue writ of mandamus or any other appropriate writ(s) commanding the respondent not to raise any demand on the basis of impugned assessment order(s); and

F. Issue such further direction(s)/order(s) as may do complete justice in the facts and circumstances of the case."

2. A perusal of the prayers would reveal, in substance the challenge in this petition is to the notices dated March 30, 2005, March 28, 2007 and the assessment order dated August 10, 2017. On a specific query to the learned counsel for the petitioner, as to why the petitioner does not challenge the assessment order before the Appellate Authority under Section 116 of the New Delhi Municipal Council Act, 1994, he stated the assessment order being under Section 72 of the Act cannot be challenged till such time there is an assessment list. I am unable to agree with the said submission of the learned counsel for the petitioner in view of Section 116 of the Act, which reads as under:-

"116. Conditions of right to appeal*.—No appeal shall be heard or determined under section 115 unless—*

(a) the appeal is, in the case of a property tax, brought within

> *thirty days next after the date of authentication of the assessment list under section 70 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under section 72 and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof;*
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> *(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Council."*

3. Admittedly, the order dated August 10, 2017 is an order passed under Section 72 of the Act, which is an amendment to the assessment list, which is a challengeable order before the Appellate Authority within 30 days after the date of receipt of the said order. It appears that the present petition has been filed as the period of 30 days has expired long back. There is no dispute that the power exist with the Appellate Authority to condone the delay on showing sufficient cause. Even otherwise, for this Court to entertain the writ petition to challenge notices issued in 2005 and 2007, and also the order dated August 10, 2017 under Section 72 of the Act, is clearly hit by delay and laches. There is no explanation given by the petitioner as to why the petitioner could not approach this Court earlier. Even on this ground, I do not see any reason to entertain this petition. The same is dismissed. No costs.

CM No. 25527/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 30, 2019/*ak*