THE HONOURABLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLANEOUS SECOND APPEAL No.17 of 2019

JUDGMENT:

1. The present second appeal has been directed against the judgment dated 11.06.2019 in M.A.No.64 of 2018 on the file of the Chief Judge, City Small Causes Court, Hyderabad, wherein and whereby, the appeal filed by the appellant herein challenging demand notice dated 06.03.2018 issued by the respondent was dismissed.

2. The main grievance of the appellant is that demand notice dated 06.03.2018 was issued by the respondent in respect of recovery of arrears of tax for the period from 2008-2009 second half to 2017-2018. According to the appellant, a part of arrears under the demand notice are barred by limitation. Therefore, notice ought not to have been issued by the respondent, in respect of arrears which are barred by limitation. It is also submitted that the larger period of limitation which was brought as amendment to Section 278-A of GHMC Act, 1955 was given effect from 05.08.2013. Hence, such larger period of limitation cannot be pressed into service for demanding arrears prior to that date which is barred by limitation. In support of such contention, learned

counsel for appellant relied upon the common judgment passed by this Court in *GHMC v. Muzaffar Ali Khan* in C.M.S.A.Nos.5, 6, 7, 8 and 9 of 2022.

3. Heard both sides.

4. In the light of the submissions made by both parties the following point emerged for consideration before this Court:

> "Whether the respondent is entitled to recover the arrears which are barred by limitation by invoking Section 278-A of GHMC Act, 1955?"

<u>Point:-</u>

5. Learned standing counsel for respondent has not disputed the factum of decision of this Court in the above referred common judgment, whereunder, this Court held that amendment to Section 278-A of GHMC Act, 1955 cannot be invoked to recover arrears which are barred by limitation, since the said provision is substantive provision and has no retrospective effect.

6. As seen from the demand notice dated 06.03.2018, the arrears of tax were demanded for the period from 2008-2009 second half to 2017-2018. Prior to the amendment of Section 278-A of GHMC Act, 1955, the limitation was only three (3) years. Therefore, by the date of issue of present demand notice on

06.03.2018, the arrears pertaining to period from 2008-2009 second half to 2012-2013 first quarter are barred by limitation. Hence, the notice for demand ought not to have been issued for recovery of arrears ante date 05.08.2013. The demand notice dated 06.03.2018 to that extent requires to be quashed by allowing the present second appeal in part.

7. In the result, the second appeal is allowed in part as follows:

a. The judgment dated 11.06.2019 in M.A.No.64 of 2018 on the file of the Chief Judge, City Small Causes Court, Hyderabad, is confirmed except to the extent of recovery of arrears anterior to 05.08.2013. Consequently, demand notice dated 06.03.2018 to the extent of demand in respect of tax arrears anterior to 05.08.2013 is quashed and rest is confirmed.

b. The appellant shall be given benefit of penalty or interest, if any, on the tax demanded in impugned demand notice covered in respect of period anterior to 05.08.2013.

c. There shall be no order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

M.LAXMAN, J

Date: 05.12.2022
GVR