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

Date of Decision 01/06/2022

+ **W.P.(C) 6453/2022, CM. APPL. No.19518/2022 & CM.APPL No.19517/2022**

IN THE MATTER OF:

M/S KANISHKA IMPEX PVT LTD .... Petitioner.

Through: Mr.Kunal Israney and Ms.Ruchika Joshi, Advocates.

Versus

SOUTH DELHI MUNICIPAL CORPORATION AND ANR. ..... Respondents

Through: Mr.Kunal Vajani, Standing Counsel with Mr.Kunal Mimani, Mr.Kartikey Bhatt and Mr.Shubhang Tandon, Advocates for respondent No.1/ SDMC.
Mr.Santosh Kr.Tripathi, Standing Counsel (Civil), GNCTD.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Articles 226/227 of the Constitution of India, the petitioner has assailed the Suo-Moto Assessment Order dated 25.12.2020 issued by the respondents, whereby its self-assessment of property tax return in respect of property *No. B-1/Ext/E-19, Mohan Cooperative Industrial Estate, New Delhi-110044* is sought to be reopened from the year 2004 onwards. The petitioner further seeks quashing of demand notice dated 17.03.2022 issued under Section

154(1) of the Delhi Municipal Corporation Act, 1957 (hereinafter, referred to as the *'Act'*), whereby demand of Rs.32,82,413/- in form of property tax due as on 31.03.2021 has been raised. Other connected reliefs are also sought.

2. Mr. Kunal Israney, learned counsel for the petitioner, submits that a representation dated 16.03.2021 was filed before the respondents on behalf of the petitioner, wherein it was mentioned that the petitioner had in fact made a payment of Rs.3,52,600/- towards alleged deficits in property tax for the years 2004-2021. He further submits that out of Rs.32,82,413/- demanded vide the impugned notice, Rs.15,19,287/- were claimed by the respondents towards interest. The petitioner, in order to avail the benefit of the General Amnesty Scheme 2020-21, made payment of Rs.3,52,600/- (approx.) to the respondents and is accordingly entitled to waiver of 100% interest and penalty on payment of upto date outstanding dues on account of property tax upto 31.03.2021, in terms of the Scheme.

3. Mr. Kunal Vajani, learned Standing Counsel for the respondent/SDMC, on the other hand, has disputed the submissions made on behalf of the petitioner and submitted that after considering the petitioner's representation, fresh assessment order dated 16.02.2022 was passed and demand notice dated 17.03.2022 issued.

4. Mr. Israney has further contended that under Section 169 of the Act, the impugned assessment order is appealable before the Municipal Taxation Tribunal (hereinafter, referred to as *'the Tribunal'*). As such, the petitioner had filed an appeal before the Tribunal under Sections 169/170 of the Act, alongwith an application seeking stay of the impugned demand notice. However, the same is not likely to be heard

within the statutory period of 30 days since receipt of demand notice, as the Tribunal has not been functioning.

In response, Mr. Santosh Kr. Tripathi, learned Standing Counsel (Civil), GNCTD, has submitted that requisite steps for constitution of the Tribunal are underway. In this regard, he has handed over a 'Status Note' in Court, which is taken on record. As per the 'Status Note', all the posts in the Tribunal, as on date, are lying vacant. Learned Standing Counsel, on instructions, submits that requisite steps in this regard would be taken expeditiously.

5. Mr. Israney has also referred to judgment dated 20.12.2021 passed by a Co-ordinate Bench of this Court in Mother Dairy Fruit and Vegetable Pvt. Ltd. *v.* East Delhi Municipal Corporation, **W.P. (C) 14585/2021** where, subject to the petitioner continuing to pay property tax as per the base assessment year of 2004, it was directed that no coercive steps be taken against it.

Learned counsel, on instructions, submits that the present petitioner shall continue to pay property tax as per the base year 2004-05. He also seeks liberty for the petitioner to pursue appropriate recourse before the Tribunal as and when the same becomes functional.

6. In view of the submissions made on behalf of the parties, the present petition is disposed of with a direction to the petitioner to continue to pay property tax as per the base assessment year 2004-05, as undertaken by it. The petitioner shall also be at liberty to pursue appropriate remedy before the Tribunal within four weeks of commencement of its functioning.

7. Subject to the petitioner taking recourse before the Tribunal in the time permitted and continuing to pay property tax as per the assessment

year 2004-05, no coercive steps be taken against it till listing of the appeal. It is clarified that continuation of interim protection thereafter shall be subject to the orders to be passed by the Tribunal. Miscellaneous applications are disposed of as infructuous.

8. Needless to state that this Court has not gone into the merits of the contentions raised on behalf of either of the parties. As such, the rights and contentions of the parties shall remain reserved.

(MANOJ KUMAR OHRI)
JUDGE

JUNE 01, 2022
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