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

\+ W.P.(C) 5693/2024, CM APPL. 23501/2024

DURGA MERCANTILE PRIVATE LIMITED ..... Petitioner

Through: Mr. Praveen Alok and Mr. Karan Khaitan, Advs.

versus

MUNICIPAL CORPORATION OF DELHI & ANR. .... Respondents

Through: Mr. Tushar Sannu, SC for MCD.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **24.04.2024**

CM APPL. 23502/2024 - *Ex(Filing Certified Copies Of Annx.)*
CM APPL. 23503/2024 - *Ex(Filing Fair Copies And Proper Margin)*

1. The present petition assails a Sealing Show Cause Notice No. Tax/CNZ/Circle-1/5747 dated 11.03.2024, Rectification Assessment / Samriddhi Assessment *vide* letter No. Tax/CNZ/A&C/2024/990 dated 16.01.2024 and Deficiency Letter under Section 123D of DMC (Amendment) Act, 2003 No. TAX/MCD/CENTRAL/2023/053086 dated 18.09.2023.

2. Learned counsel for the petitioner specifically assails the finding rendered in para 3 of the Rectification Assessment / Samriddhi Assessment order which reads as under:-

> *"(3) I have examined the case and gone through the documents available on file. I have also perused letters filed by taxpayer. I have also examined the factors adopted in the Samriddhi Scheme and found that the covered area and use factor adopted in the Samriddhi Scheme are not correctly adopted by the taxpayer. Moreover, the taxpayer has taken into consideration only 5 floors i.e. basement, ground floor, first*

floor, second floor and third floor whereas there are 7 floors in total in the building meaning thereby that the taxpayer did not include include Still floor and 4'th floor while applying for Samriddhi Scheme. In his letter dated 19 .l 0.2023 the taxpayer informed that only two floors are in use and rest of the floors are vacant. It is further stated in the letter that they added one mezzanine floor having covered area 136.80 sqm and another floor having covered area of 48.50 sqm during April-May 2023. No documentary evidence in support of his contention has been furnished by the taxpayer. Accordingly, taxpayer's claim vide letter : dated 19.10.2023 that (I) only two floors are in use and rest of the floors are vacant; and (ii) one mezzanine floor having covered area 136.80 sqm and another floor having covered area of 48.50 sqm were added during April-May 2023 do not hold good. In view of above, it appears a case of wilful suppression of facts and hence I the Samriddhi Scheme availed by taxpayer is liable to be cancelled. Accordingly, the assessment is taken up right from the beginning.”

3. Learned counsel for the petitioner submits that the above conclusions drawn in the said rectification assessment order are contrary to the documents / evidence placed on record by the petitioner before the concerned officer as also filed alongwith the present petition. He submits that the petitioner is in a position to establish through documentary evidence that (i) only 2 floors in the property have been used for commercial purposes and the rest of the floors are vacant (ii) one mezzanine floor having covered area 136.80 sqm. and another floor having covered area of 48.50 sqm. were constructed during April-May 2023.

4. After some hearing, respective counsel for the parties are in agreement that the present petition itself be treated as a representation by the MCD and a speaking order be passed thereon. If so warranted, the Rectification Assessment / Samriddhi Assessment shall also be amended / modified upon conclusion of the aforesaid exercise. It is directed accordingly.

5. Learned counsel for the petitioner submits that without prejudice to

the outcome of the aforesaid exercise, the petitioner shall deposit a sum of Rs.3,50,000/- with the MCD within a period of 2 weeks from today. It is directed accordingly.

6. Let a hearing be fixed within a period of 2 weeks from today and a prior intimation in this regard shall be sent to the petitioner and also to the counsel who appears today. Let a speaking order be passed within a period of 4 weeks thereafter.

7. Till the culmination of the aforesaid exercise and subject to the aforesaid deposit being made by the petitioner, no coercive/precipitative steps shall be taken by the respondent/MCD.

8. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

APRIL 24, 2024/at