



\$~31

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 12.07.2024

+

W.P.(C) 9441/2024

M/S FERON LIFE SCIENCES PVT. LTD.

.....Petitioner

Through: Mr Vineet Bhatia, Advocate.

versus

COMMISSIONER, DELHI GST AND ORS.

.....Respondents

Through: Mr Rajeev Aggarwal, ASC.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning the show cause notice dated 09.03.2021 (hereafter *the impugned SCN*) and the order dated 28.12.2021 (hereafter *the impugned order*) passed by the respondent pursuant to the impugned SCN, whereby the petitioner's GST registration was cancelled retrospectively from 02.07.2017.

2. The learned counsel for the petitioner also impugns certain orders issued by the Department of Trade and Taxes, Government of National Capital Territory of Delhi, as being *ultra vires* to the provisions of the Delhi Goods and Services Tax Act, 2017 [prayer (c)]. However, the learned counsel for the petitioner does not press such relief and has confined the present petition by only seeking the modification of the impugned order to the extent that it cancels the petitioner's GST registration retrospectively.



3. The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 and was at the material time engaged in the business of trading of medicaments, centrifuges, and allied products. It was registered under the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and was assigned the Goods and Services Tax Identification No. (GSTIN) –07AAACF9565G1ZF.

4. Respondent no.1 issued the impugned SCN calling upon the petitioner to show cause as to why its registration should not be cancelled on account of “Failure to file return timely”. The petitioner was called upon to respond to the impugned SCN within a period of seven working days from the date of service of the impugned SCN, that is 09.03.2021. Further, the petitioner’s registration was also suspended from the date of the issuance of the impugned SCN.

5. The petitioner did not respond to the impugned SCN and consequently, its GST registration was cancelled by the impugned order. The impugned order does not set out any reason for cancelling the registration of the petitioner and merely states that it is in reference to the impugned SCN. A tabular statement as set out in the impugned order, indicates that no tax has been determined as payable by the petitioner.

6. It is relevant to note that the impugned SCN, *inter alia*, also put the petitioner to notice that if it fails to appear on the appointed date and time, its case would be decided *ex parte* on the basis of available records and on merits. However, the impugned SCN did not set the appointed date and time on which the petitioner was required to appear for a personal hearing.



Thus, it is apparent that no opportunity of personal hearing was granted to the petitioner.

7. It is also relevant to note that the impugned SCN did not propose cancelling the petitioner's GST registration with retrospective effect. It merely called upon the petitioner to respond as to why its registration not be cancelled for failure to file returns timely.

8. The learned counsel appearing for the petitioner submits that the petitioner does not contest the cancellation of the GST registration, but is prejudicially affected by such cancellation with retrospective effect.

9. As noted above, the impugned order does not set out any reason for cancelling the GST registration except referring to the impugned SCN. The petitioner's GST registration has been cancelled on account of its failure to file returns within time. However, that may not justify the cancellation of the petitioner's GST covering the period for which the petitioner had filed its GST returns.

10. Although, in terms of Section 29(2) of the CGST Act, the Proper Officer has the power to cancel the GST registration from such date as it may deem fit, however it is obvious that such powers cannot be used arbitrarily. The decision to cancel the registration with retrospective effect must be informed by reason.

11. In the present case, no reasons are found either in the impugned SCN or the impugned order, which support the cancellation of the petitioner's registration from the date it was granted.



12. Mr. Aggarwal, learned counsel for the respondents fairly state that the impugned order may be made operative from the date of the impugned SCN, that is 09.03.2021, as the petitioner's GST registration was also suspended from the said date. The learned counsel for the petitioner also concurs with such submission.

13. Since, the learned counsel for the petitioner has not pressed the relief for setting aside the impugned SCN or the impugned order in their entirety, we consider it apposite to dispose of this petition by directing that the cancellation of the petitioners' GST registration will be with effect from the date of the impugned SCN – 09.03.2021 – and not retrospectively with effect from 02.07.2017 as set out in the impugned order.

14. The impugned order stands modified to the aforesaid extent. It is clarified that this order will not preclude the respondent from initiating any other steps for any failure on the part of the petitioner to comply with the statutory provisions. Needless to state all the rights and contentions of the parties in this regard are reserved.

15. The petition stands disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 12, 2024

M