2024:DHC:5781-DB

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

% *Date of Decision : 05.08.2024*

\+ **W.P.(C) 10717/2024 & CM APPL. 44144/2024**

M/S WELLNESS MARKETING EXI PVT LTD

.....Petitioner

Through: Mr.Vineet Bhatia, Mr Bipin Punia and Mr.Abhinav Sharde, Advocates.

versus

UNION OF INDIA AND ORS.

.....Respondent

Through: Mr.Sushil Raaja, SPC for UOI/R1. Mr.Rajeev Aggarwal, ASC and Mr.Shubham Goel, Advocate for Mr.Udit Malik, ASC for R2 to R5.

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,* praying as under:-

> "(a) Issue an appropriate writ, order, or direction thereby setting aside the impugned Show Cause Notices in FORM GST DRC-01 dated 08.12.2023 and 24.12.2023 bearing Reference No. ZD071223040253X and Reference No. ZD071223140600Z respectively.
> (b) Issue an appropriate writ, order, or direction

thereby setting aside the impugned orders in the FORM GST DRC-07, dated 04.04.2024 and 27.04.2024, bearing Reference No. ZD0704240113220 and Reference No. ZD070424062897Y respectively.
(c) Issue an appropriate writ, order, or direction to Respondents to declare Section 16(2)(c) of the CGST Act, 2017/DGST Act, 2017 as ultra vires to the Constitution of India, 1950.
(d) Alternatively, issue an appropriate, writ, order or direction to Respondents reading down the provision of Section 16(2)(c) of the CGST Act, 2017/DGST Act, 2017 so as to restrict its invocation only in cases of collusion of suppliers and purchasers.
(e) Issue an appropriate writ, order or direction to declare the Notification no. 9/2023 – central tax dated 31.03.2023 and Notification no. 56/2023-central tax dated 28.12.2023 as ultra vires to the Central goods and Service Tax Act, 2017.
(f) Issue an appropriate writ, order or direction to declare of the orders dated 16.11.2023, 07.11.2023, 16.10.2023 and 29.09.2023 issued by the Department of Trade and Taxes, Government of National Capital Territory of Delhi, as ultra vires being beyond the provisions of the parent Act. i.e., Delhi Goods and Service Tax Act, 2017.
(g) Direct the Respondents to form an appropriate "Appellate Authority" in accordance with law."

2. The petitioner has filed the present petition making several prayers. However, the learned counsel for the petitioner submits that the present petition be confined to challenging the impugned orders dated 04.04.2024 and 27.04.2024 (hereafter *the impugned orders*) passed under Section 73 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and the Delhi Goods and Services Tax Act, 2017 (hereafter *the DGST Act*).

3. The impugned orders were passed pursuant to the show cause notices dated 24.12.2023 and 08.12.2023 respectively (hereafter *the impugned SCNs*).

4. The learned counsel for the petitioner submits that in terms of the impugned SCNs, the petitioner was called upon to show cause as to why demand, as raised in the said notices, not be confirmed. It is alleged that the petitioner had filed excess Input Tax Credit (hereafter *the ITC*) demand on account of non-reconciliation of information. It is also suggested that the petitioner had availed ITC in violation of Section 16(2)(c) of the CGST Act/DGST Act in as much the suppliers from whom the petitioner had availed the services, had not deposited the tax with the Government. The impugned SCNs specifically mentioned M/s Feron Life Sciences Private Limited as the supplier. Additionally, it was also alleged that the petitioner had availed ITC in respect of the exempted supplies and the same required to be reversed.

5. The petitioner had received supplies from M/s Feron Life Sciences Private Limited and had availed the ITC in respect of such supplies. The impugned SCNs indicate that the GST registration of M/s Feron Life Sciences Private Limited was cancelled retrospectively and as a consequence thereof, the demand had been raised for excess ITC.

6. The petitioner replied to the impugned SCNs and presented its explanations in respect of the allegations made in the impugned SCNs, spanning several pages.

7. A plain reading of the impugned orders indicates that the same have

been passed without considering the reply submitted by the petitioner.

8. The impugned orders merely state as under:-

> "The taxpayer has submitted his reply on the GSTIN portal. The undersigned examined the reply and the documents submitted by him on the GSTIN portal and found the taxpayer has not properly replied/filed explanation despite of sufficient and repeated opportunities provided to him."

9. It is clear from the above that the impugned orders are not informed by reasons as they do not deal with any of the explanation submitted by the petitioner. The impugned orders are similar to those passed on the last few days of the expiry of limitation period for making such orders.

10. This Court has noticed in several cases that unreasoned orders are being passed in the last few days prior to the expiry of the period of limitation whereby a tabular statements as set out in the show cause notice are reproduced and the demands are confirmed, without alluding to the explanations provided by the tax payer.

11. Mr Aggarwal, learned counsel for the respondent points out that the retrospective cancellation of the GST registration of M/s Feron Life Sciences Private Limited was restored by this Court by an order dated 12.07.2024 in ***M/s Feron Life Sciences Pvt Limited v. Commissioner, Delhi GST & Ors*** : Neutral Citation : 2024:DHC:5144-DB. He submits that the same would be a relevant factor in considering the demand raised from the petitioner. He concedes that the impugned orders be set aside and the matter be remanded to the Proper Officer for consideration afresh.

12. The learned counsel for the petitioner submits that he would be satisfied if the order to that effect is passed by this Court.

13. In view of the above, the impugned orders are set aside and the matter is remanded to the Proper Officer for consideration afresh. The Proper Officer shall examine the reply furnished by the petitioner and also afford an opportunity to the petitioner for a personal hearing.

14. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 05, 2024

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Click here to check corrigendum, if any