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

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Date of decision: 12.02.2024

+ **W.P.(C) 1260/2024**

M/S FRIENDS MEDIA ADD COMPANY

.....Petitioner

versus

PRINCIPAL COMMISSIONER OF GOODS AND SERVICE
TAX WEST DELHI

....Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Pranay Jain & Mr. Karan Singh, Advocates.

Respondent: Mr. Anish Roy, Senior Standing Counsel for CBIC &
Customs with Mr. Girish Agarwal, Advocate.**CORAM:-****HON'BLE MR. JUSTICE SANJEEV SACHDEVA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 12.12.2023 whereby GST registration of the petitioner was cancelled retrospectively with effect from 30.05.2022 and seeks restoration of the GST registration of the petitioner.

2. Vide Show Cause Notice dated 25.08.2023, petitioner was called upon to show cause as to why the registration be not cancelled for the following reasons:-



“Issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax.”

3. We may note that though the Show Cause Notice states that invoice or bill has been issued by the petitioner without supply of goods and/or services leading to wrongful availment or utilization of input tax credit or refund of tax. No particulars or details have been mentioned in the Show Cause Notice. There is no reference to any invoice or bill which the petitioner is alleged to have issued without making any supplies. It appears that the Show Cause Notice extracts the reason in a standard format as there are several other options mentioned in the reason i.e. “without supply of goods and/or services” and “leading to wrongful availment or utilization of input tax credit or refund of tax”

4. It appears that the respondents are using a template for issuing said notices without providing any particulars. There is no clarity as to whether the petitioner has issued invoices or bills without supply or the action of the petitioner has led to wrongful availment or utilization of input tax credit or refund of tax.

5. Further, the Show Cause Notice also does not mention the quantum of wrongful availment of input tax credit or any refund claimed on the said account. The impugned order also does not state any reasons for cancellation of the GST registration



retrospectively. Both the show cause notices and the impugned order are bereft of any reasoning and particulars.

6. Learned counsel for the respondent submits that the Deputy Excise & Taxation Commissioner (Sales Tax Kurukshetra), vide letter dated 26.05.2023, has informed that petitioner had availed/utilized ungenuine ITC amounting to Rs.3,60,00/- from a fraudulent supplier i.e. M/s. Shubh Advertiser.

7. Learned counsel for the petitioner has placed on record Form GST DRC-03 to contend that a sum of Rs.3,60,000/- besides interest of Rs.32,400/- has been deposited without prejudice to his rights and contentions.

8. Learned counsel for the petitioner further submits that petitioner does not seek to carry on the business any further and intends to close the same. He submits that the cancellation of registration be made from the date when the Show Cause Notice dated 25.08.2023 was issued.

9. In terms of Section 29(2) of the Central Goods and Services Tax Act, 2017, the proper officer may cancel the GST registration of a person from such date including any retrospective date, as he may deem fit if the circumstances set out in the said sub-section are satisfied. The registration cannot be cancelled with retrospective effect mechanically. It can be cancelled only if the



proper officer deems it fit to do so. Such satisfaction cannot be subjective but must be based on some objective criteria. Merely, because a taxpayer has not filed the returns for some period does not mean that the taxpayer's registration is required to be cancelled with retrospective date also covering the period when the returns were filed and the taxpayer was compliant.

10. It is important to note that, according to the respondent, one of the consequences for cancelling a tax payer's registration with retrospective effect is that the taxpayer's customers are denied the input tax credit availed in respect of the supplies made by the tax payer during such period. Although, we do not consider it apposite to examine this aspect but assuming that the respondent's contention in this regard is correct, it would follow that the proper officer is also required to consider this aspect while passing any order for cancellation of GST registration with retrospective effect. Thus, a taxpayer's registration can be cancelled with retrospective effect only where such consequences are intended and are warranted.

11. Further, the Show Cause Notice also does not put the petitioner to notice that the registration is liable to be cancelled retrospectively. Accordingly, the petitioner had no opportunity to even object to the retrospective cancellation of the registration.



12. In view of the above facts and circumstances, the order of cancellation is modified to the extent that the same shall operate with effect from 25.08.2023, i.e., the date on which the Show Cause Notice was issued.

13. Respondents are also not precluded from taking any steps for recovery of any tax, penalty or interest that may be due from the petitioner in accordance with law.

14. The petition is accordingly disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

FEBRUARY 12, 2024/sk