IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30512 of 2024 &
W.M.P.Nos.33128 and 33129 of 2024

M/s.Computer Access Private Limited,
Represented by Shri.R.Vijaykumar, Chief Executive Officer,
1, Ground Floor, Dr.Ranga Road,
Alwarpet, Chennai- 600 018. ... Petitioner

Vs.

1. The Deputy Commissioner of CGST & Central Excise,
Mylapore Division, Chennai North Commissionerate,
7th Floor, Annexe Building, 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai- 600 034.

2. The Joint Commissioner of CGST & Central Excise,
Chennai North Commissionerate,
26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai- 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records and quash the impugned Order-in-Original No.04/2023 dated 30.01.2023 passed by the 1st respondent and further direct the 1st respondent to pass a fresh order, after providing the petitioner the opportunity of being heard by following the principles of natural justice.

For Petitioner : Mr.A.P.Ravi

For Respondent : Mr.Rajendra Raghavan
Senior Standing Counsel

***

ORDER

This writ petition has been filed by the petitioner challenging the order of the 1st Respondent dated 30.01.2023 and further direct the 1st respondent to pass a fresh order, after providing the petitioner the opportunity of being heard by following the principles of natural justice.

2. Mr.Rajendra Raghavan, learned Senior Standing Counsel takes notice on behalf of the Respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that in the present case, the 1st Respondent has issued a show cause notice dated 28.04.2022 to the Petitioner, for which the Petitioner vide letters dated 28.05.2022 and 24.11.2022 sought time to file reply. But, the 1st Respondent without considering their request has passed the impugned order dated 30.01.2023. Since the Petitioner's staff Mr.Manikandan, who received the impugned order, left the Petitioner's concern, the Petitioner was not aware of the same and subsequently, the Petitioner received recovery intimation letter from the Department vide letter dated 31.07.2024 and only after the receipt of the said communication, the Petitioner came to know of the impugned order. Thereafter, the Petitioner got the copy of the impugned order only by way of filing RTI application. In the meantime, the Department had initiated the recovery proceedings vide letter date 05.09.2024.

5.Further, he would submit that impugned assessment order came to be passed without affording an opportunity of hearing to the Petitioner and therefore the same is in violation of principles of natural justice and therefore prays to set aside the same.

6. On the other hand, the learned Senior Standing Counsel would submit that the Petitioner though the Respondents granted time to the Petitioner to file reply, as requested by them vide letters dated 28.05.2022 and 24.11.2022, they have not chosen to file reply. That apart, though personal hearing was fixed on two occasions, the Petitioner failed to appear before the Authority concerned to substantiate its case and therefore the impugned order came to be passed.

7. In reply, the learned counsel for the petitioner would fairly submit that the petitioner is now ready and willing to pay 10% of the disputed tax liability made by the respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Senior Standing Counsel has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the Respondents and also perused the materials available on record.

9. In the present case, the Petitioner requested the Department to file the reply to the show cause notice on two occasions and despite the time being granted by the Respondents, the Petitioner has not chosen to file its reply and therefore exparte impugned order came to be passed by the 1st Respondent.

10. It is settled law that violation of principles of natural justice is a failure of due process. If any order is passed against the petitioner with demand, that order has to be passed after giving an opportunity of personal hearing to the petitioner otherwise, it will amount to depriving the interest of the petitioner and the same amounts to violation of principles of natural justice.

11. Further, it appears that no opportunity of personal hearing was

provided to the petitioner prior to the passing of impugned order. Hence, this Court is of the view that the impugned order is passed in violation of principles of natural justice and it is just and necessary to provide an opportunity to the petitioner to establish their case on merits. In such view of the matter, this Court is inclined to set aside the impugned order dated 30.01.2023 passed by the 1st Respondent. Accordingly, this Court passes the following order:-

(i) The impugned order dated 30.01.2023 is set aside and the matter is remanded to the respondent for fresh consideration on condition that the petitioner shall pay 10% of disputed tax to the respondents within a period of ***four weeks*** from the date of receip t of a copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

17.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
arr

To

1. The Deputy Commissioner of CGST & Central Excise,
   Mylapore Division, Chennai North Commissionerate,
   7th Floor, Annexe Building, 26/1, Mahatma Gandhi Road,
   Nungambakkam,
   Chennai- 600 034.

2. The Joint Commissioner of CGST & Central Excise,
   Chennai North Commissionerate,
   26/1, Mahatma Gandhi Road, Nungambakkam,
   Chennai- 600 034.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.30512 of 2024

17.10.2024