IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.32968 of 2015 &
MP No.1 of 2015

Tvl.Global Tech
rep. by its Proprietor
R.Sivabalan [PETITIONER]

Vs

The Assistant Commissioner (CT)
Omalur Assessment Circle
Omalur. [RESPONDENT]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of a Writ Of Certiorari to call for the records on the files of the respondent in TIN No.33593248297/2013-14 dated 26.05.2015 and quash the same as being without jurisdiction and authority of law.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Manokaran Sundaram
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.S.Manokaran Sundaram, learned Additional Government Pleader for the respondent. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for final disposal.

2.The petitioner who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006 [TNVAT Act], on the file of the respondent, has filed this Writ Petition, challenging the order of assessment dated 26.05.2015, which has been completed, as the petitioner did not respond to the pre-assessment notices dated 05.03.2015 and 11.05.2015.

3.The learned counsel for the petitioner submits that immediately after receipt of the notices, the petitioner has paid the entire tax and penalty, filed the Return and the

Assessing Officer has recovered the tax and penalty by attaching the petitioner's Bank Account.

4.In the impugned order, those facts have not been set out nor referred or dealt with. In the parawise instructions given by respondent to the learned Special Government Pleader dated 23.10.2015, the fact that Rs.50,000/- has been debited to the petitioner's account and Rs.1,66,293/- has been recovered, have been admitted. If that was the factual position, while passing the impugned proceedings dated 26.5.2015, which is admittedly after the payment made by the petitioner, the respondent should have dealt with the same. However, he has not done so and if the respondent states that he cannot accept the earlier Returns, then there is no justification to retain the amount paid by the petitioner nor there can be no justification to retain the amount recovered from the petitioner. In such circumstances, this Court is of the view that the matter requires re-consideration.

5.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, consider their submissions and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.
rpa

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Omalur Assessment Circle
Omalur.

+ 1 cc to Mr.R.Senniappan, Advocate SR 43089

+ 1 cc to Spl.Govt.Pleader(Taxes) SR 43347

ctr(co)
prk2/8 W.P.No. 32968 of 2015