IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.5021 of 2016 &
W.M.P.No.4376 of 2016

M/s.Baer Shoes (P) Ltd.
Rep by its Authorized Signatory P. Ahad Basha
SF No.90-93, Somalapuram Village Road
Somalapuram, Ambur, Vellore District .. Petitioner

v.

The Assistant Commissioner (CT)
Ambur Assessment Circle
Ambur
Vellore District .. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN No. 33870541649/ 2012-13, dated 31.12.2015 and quash the same as illegal.

For Petitioner : Mr.S.RAmanathan

For Respondent : Mr.Kanmani Annamalai
Addl. Govt. Pleader

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33870541649/ 2012-13, dated 31.12.2015 and to quash the same as illegal.

2. It is the case of the petitioner that the respondent issued a notice proposing to reverse the ITC of Rs.7,92,978/- and to levy tax under Section 12 of the Tamil Nadu Value Added Tax Act and to levy penalty of Rs.7,92,978/- under section 27 (4) of the said Act. The petitioner filed their reply stating that already reversal of ITC of Rs.7,92,978/- has been made and enclosed the copy of the returns in proof for the same. Further, it is the case of the petitioner that the

purchases were made from the registered dealers and hence, the levy of tax under Section 12 of the Act does not arise and penalty is also not attracted. According to the petitioner, the respondent accepted the explanation and dropped the proposal to reverse the ITC of Rs.7,92,978/-. However, in the order, he has worked out a new method and has reversed the ITC of Rs.3,00,188/- without giving an opportunity of hearing. Further, the respondent also levied a penalty of Rs.10,93,166/- as against the proposal of Rs.7,92,978/-, that too, without giving an opportunity of hearing to the petitioner. In these circumstances, the petitioner has filed the present writ petition on the ground that no opportunity to show cause against the fresh reversal of ITC and higher levy of penalty, which is against the provision of Section 27(2) and proviso to 27(4) of the Act.

3. Mr.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent, submitted that since the respondent had not taken into consideration all the aspects as contended by the petitioner, the impugned order may be set aside and the respondent may be directed to issue fresh notice to the petitioner and decide the matter afresh in accordance with law, after giving an opportunity of hearing to the petitioner.

4. Having regard to the submissions made by the learned counsel on either side, while accepting the case of the petitioner that notice was issued to the petitioner erroneously by the respondent and without taking into consideration the entire aspects as contended by the petitioner, I set aside impugned order dated 31.12.2015 and remit the matter back to the respondent for fresh consideration. The respondent is directed to issue fresh notice to the petitioner in accordance with law and the petitioner shall give his explanation to the notice to be issued by the respondent and after the receipt of the reply, the respondent is directed to decide the matter afresh, after giving an opportunity of personal hearing to the petitioner, on merits and in accordance with law.

With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner(CT),
Ambur Assessment Circle,
Ambur,
Vellore District.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.8518
+1cc to the Government Pleader, S.R.No.8723

W.P.No.5021 of 2016 &
W.M.P.No.4376 of 2016

lrs(CO)
srg(25/02/2016)