Read :- 1. Application dated 25/12/2007 by M/s. Dev Enterprises Ltd., holder of TIN No.27390049737V.

Heard:- Shri Kurhade (President), Shri Akbar Satranjiwala (Treasurer), Shri.Vinod Modi (proprietor of M/s Dev Enterprises) and other members of the Poona Footwear Dealers Association.

PROCEEDINGS

(under Section 56(1) (e) and (2) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2007/Adm-3/58/B- 1 Mumbai, dt. 11.2.2008

The application is filed by M/s. Dev Enterprises Ltd., having address as 401, Ganesh Peth, Pune- 411002, on behalf of the Poona Footwear Dealers Association (henceforth referred to as 'Association') requesting determination order on the rate of tax on 'Escort 111 SYN Black' sold through invoice no 1130 dt. 25.8.05.

02. FACTS OF THE CASE

A representation dt. 13.12.2007 is received from the Association in the matter of survey by officers of the Sales tax Department of dealers engaged in the trade of plastic footwear. It is their submission that the survey has created an atmosphere of fear and panic in the footwear industry in Maharashtra. It is their contention that the product manufactured by them is not covered by the residual entry but is 'plastic moulded footwear' covered by schedule entry C-74 and is therefore taxable @ 4%.

It is submitted that the products bought and sold by them attract 4% rate and are certified by the manufacturer as stated on his tax invoice as being covered by the relevant tariff heading6409.90.90. It is also certified by FDDI Ministry of Commerce Govt. of India as being 'plastic moulded footwear'.

It was brought to the notice of the Association that the representation by them cannot be treated as an application and therefore cannot be entertained for determination proceedings under section 56 of the MVAT Act. They were asked to apply for determination in accordance with the provisions of Section 56 of the

MVAT Act read with Rule 64 of the MVAT Rules. Accordingly, the Association submitted an application filed by M/s Dev Enterprises which is filed on behalf of the Association. The sale invoice of M/s Dev Enterprises is filed along with the application. The application, now being in consonance with the requirements is taken up for consideration. The application by M/s Dev Enterprises is considered as a representative application and therefore the observations and the conclusions reached in this order is applicable to all dealers comprising the Association. Needless to say, the order is binding on all dealers producing similar products.

In support of their contention, the Association has submitted the following:

(A) THE DEFINITION OF "PLASTIC FOOTWEAR"

It is clarified in the section 12 Chapter 64 Note no.3 of Brief Tariff Notes (BTN) that the term "Rubber & Plastic" include woven fabrics or other textile fabrics with an external layer of rubber or plastic being visible to the naked eye. Therefore, the uppers of the aforesaid footwear are plastics. Hence, the aforesaid footwear has been identified as 'plastic footwear'. These are covered under the Central Excise 8 Digit Tariff 6402.19.90 and the third schedule sr. no.51 of Delhi Value Added Tax Bill 2004.

(B) WRITTEN SUBMISSION

The Association also gave a written submission dt.19.12.2007 in which the facts given above are reiterated.

They have referred to the judgment of the MSTT in the matter of M/s. Preston India Pvt. Ltd. and M/s. Elastrex Polymers Ltd. Vs. State of Maharashtra(VAT Appeal No.8 of 2002 dt. 30.8.2007) wherein certain products were preferred for DDQ and the judgement ruled that 'EVA chappal' is covered by schedule entry C-74 whereas footwear manufactured by M/s. Elastrex Polymers Ltd. - 'black shoes' and 'chappal' were not given the benefit of schedule entry C-74 but were classified in the residual entry. These particular products were not covered in the ambit of plastic footwear (moulded) because although these footwear were made of plastic materials, the assembly process used pasting and studding and not moulding. Thus they were disqualified as plastic footwear (moulded).

It is contended that this does not mean that all other genuinely plastic moulded products manufactured by reputed brands like Bata, Action etc be disqualified being taxable @ 4%. They further submitted that, they are already paying tax @12.5% on non-moulded plastic footwear such as determined by the MSTT.

The plastic footwear (moulded)manufactured by them includes footwear with uppers of Rexine (defined as plastic u/s.12 chapter 64 note No.3 of brief tariff notes (BTN)) and PVC soles bounded together via direct injection moulding process (DIP). They also submitted Certificates explaining detail explanation of the DIP process along with visual CD. It is stated that the moulding process is undergoing continuous modernization and advancement with the times in accordance with the quality demands of the consumers. All such products are termed plastic moulded footwear in common trade parlance. All such plastic moulded products are essentially low cost and low price products catering to the basic essential needs of the lower income segment of the society.

It is informed that it is also a fact that such manufacturers of plastic moulded footwear are also facing severe survival problems because of disappearing margins, cut throat price competition and flooding of cheap Chinese imports. The manufacturing hub for plastic footwear is concentrated in Delhi and Haryana state. Such products are distributed in India through company depots to wholesale dealers as and when orders are placed from ready stock. Such products are bearing MRP prices in accordance with excise laws, and various other statutes. Since almost all states in India are assessing all kinds of plastic footwear, including plastic footwear (moulded) at 4% rate of tax, such MRP price is calculated considering a 4% VAT liability.

The Association has attached VAT schedules of immediately neighboring states of Andhra Pradesh, Madhya Pradesh and Gujarat. They have also submitted tax invoices raised by reputed brand manufacturers in these particular states for ready reference. In the aforementioned States, plastic footwear (moulded) is being bought and sold at 4% VAT.

It is stated that in case their product is held as not being taxable @4% influx of goods from neighboring states via grey market is inevitable. Such influx is detrimental to the interests of company-authorized dealers and also the state of Maharashtra and will result in loss of revenue to both.

It is further submitted that the spirit of VAT legislation as explained by the Hon'ble Finance Ministers at the time of VAT implementation was to remove the differences in rates of tax in various states and create an equal and fair level ground conducive to growth of business and to curb unlawful entry of goods and tax evasion. Therefore, it is contended that, if such is the envisagement of the law, they cannot understand as to why there exist different interpretations and imposed conditions like the word "moulded", "single moulded" etc exist in the Schedules of the different States.

It is submitted that taking into consideration the initial drafts of the VAT Law that had placed all plastic footwear at the rate of 4% and in many states in India the entry still exists in its unchanged form, it is not understood as to why the entry is different in Maharashtra.The Association submitted an order by the JC(appeals)of the State of Karnataka dt 18.8.2006 , in the case of M/s Liberty Footwear, that even though the footwear is not made entirely of plastic, it will be plastic footwear.

03. HEARING

The case was fixed for hearing. Shri Kurhade (President, PFDA), Shri Akkar Satranjiwala (Treasurer), Shri Vinod Modi (proprietor of M/s Dev Enterprises), Shri Ajay Vishrani (Associate member), Shri Rajesh Sasdev (Member) and other members of the Poona Footwear Dealers Association attended in respect of the hearing on "Plastic Footwear (Moulded)". It was first brought to their notice that there was no application from a dealer. Also bills and samples were not produced. Shri Modi of M/s. Dev Enterprises, agreed to submit an application as per the Act and Rules within two days. As regards the product, they have given a CD which shows the manufacturing process of the product. The manufacturing process involves making of upper from plastic and then a process of injection moulding. The manufacturing process has been explained in the letterheads of

1. Nikhil International.
2. Nikhil Footware Pvt. Ltd.
3. Kabeer Textile Pvt. Ltd.

It is submitted that their products are essentially low cost and low priced. In other states, the products are sold as taxable @ 4% and hence Maharashtra dealers will suffer if the product is treated as taxable @ 12.5%. Also there are fixed margins by manufacturers which would lead to a situation wherein taxes would be higher than the margins to dealers. Such products cannot have separate MRP for Maharashtra because they are sold from ready stock at centralised depots.

The Association has also submitted tax invoices raised in the states of Andhra pradesh, Gujarat and Karnataka so as to show that the same product is being taxed @ 4% in the neighboring states. They have submitted that the above situation would lead to stock coming from grey market into the Maharashtra state thus jeopardizing the interests of Maharashtra Govt. as well as dealers.

As regards prospective effect, it is submitted that if the product is treated as taxable @ 12.5% then prospective effect be granted to the order.

They have relied on the decision of the MSTT delivered in the case of M/s. Elastrex Polymers Ltd. & M/s.Preston India Pvt. Ltd. in VAT appeal Nos. 7 & 8 of 2007 respectively decided on 30/8/2007.

DOCUMENTS SUBMITTED

- Copy of invoice No.003348 of M/s. Nikhil Footwears pvt. Ltd.

- Copy of invoice No.001275 of M/s. Kabeer Textiles pvt. Ltd.
- Copy of invoice No.4617/20 of M/s. Micro industrial Corporation.
- Copy of invoice No.6179/12 of M/s. Micro industrial Corporation (Unit II).
- Copy of invoice No.3918/3 of M/s. Micro industrial Corporation.
- Clarification given by the Footwear Design & Development Institute, Ministry of Commerce, Govt. of India to M/s. Dev Enterprises, Pune.
- Datewise rate schedules of MVAT Act, 2002 (A, B, C & D).
- All India Value Added Tax Manual of different states like Andhra Pradesh, Karnataka, Gujarat, and Madhya Pradesh.
- Certificate by Central Footwear Training Institute.
- Excise Chapter Notes 64.
- Excise Bill of M/s. Nikhil Footwear showing the description of the product as "moulded plastic footwear" (64019990)

MANUFACTURING PROCESS

The moulded plastic footwear is manufactured with injection moulding process in which Shoe Upper made of plastic coated materials is mounted on the sole which is formed by injection of plastic material (polyvinyl chloride classified in chapter 39 of Central Excise Tariff) in the form of granules through injectors fitted with heaters to preheat the granules to give it viscosity required for injection into the mould attached to the injection moulding machine.

It is submitted that the footwear manufactured by the above process is classified by them under the category of 'moulded plastic footwear' in view of the clarification in section 12 chapter 64 note 4 of the Brief Tariff Notes of Central Excise Tariff. It is also stated that the aforesaid fact has already been clarified by Footwear Design & Development Institute, Ministry of Commerce, Government of India in various Certificates issued by them to the footwear industry.

04. OBSERVATIONS

I have gone through the facts of the case . The applicant, who has filed an application on behalf of the Association, has stated that he is manufacturer of plastic footwear which is covered under entry 74 of Schedule C appended to the Maharashtra Value Added Tax Act, 2003. The schedule entry is reproduced as below :

C-74	**Plastic footwear**	4%	1.4.2005 to 30.4.05
C-74	**Plastic footwear (moulded); hawaii chappals and straps thereof**	4%	1.5.2005 onwards

A similar issue has already been dealt with in the determination order in the case of M/s Preston India Limited, and M/s Elastrex Polymers Pvt Ltd (No. DDQ-11-2005/Adm-5/ 93-94/B-2 dt.26.4.2007) wherein it was held that Walkie Chappal, EVA chappal, Aviva Footwear, Max, Slickers, Easee, Camry ,Slickers are covered by the residual entry. They were not considered to be 'moulded plastic footwear' covered by the schedule entry C-74 as they were not made by pasting the upper on the sole. The matter went before the Tribunal and the Tribunal in its order (VAT Appeal No. 7 and 8 of 2007 dt. 30.8.2007), relying upon the decision of the Karnataka High Court (35 MTJ 139) , held the following:

- Products sold by Elastrex viz Aviva Footwear, Max, Slickers, Easee, Camry ,Slickers, not being moulded , the determination order is confirmed.
- EVA chappals sold by M/s Preston are covered by schedule entry C-74 (following the Karnataka High Court judgement). In this judgement, the Tribunal followed the Karnataka High Court judgement which held that the insertion of single mould in terms of the order is unacceptable and that in the existing entry under the MVAT Act, the concept of single

mould is not introduced and therefore these chappals would come under the schedule entry.

In the present case, the product before me is made of two parts- Uppers and Lower. I have seen the CD showing the process of manufacturing. The Shoe Upper is made of plastic coated material which is mounted on the sole. The sole is formed by the process of injection of plastic material in the form of granules (through injectors fitted with heaters to preheat the granules to give it viscosity)required for injection into the mould attached to the injection moulding machine. Only the sole is made by moulding whereas the upper is stitched, sewed and mounted on the lowers.

Any product in order to be eligible to qualify under C-74 has to satisfy the following criteria:

1) It should be moulded.
2) It should be entirely made of plastic.

I have seen the sample of the product. I have seen the process of manufacturing of the product. The applicant had produced CDs showing two processes- the shoes made by DIP- Direct Injection process , and the 'Stuck-on process'- .In the DIP process- which was the process by which the impugned product is made the lower sole of the product is made by the process of direct injection moulding. The upper part of the product is also mounted on the sole by moulding. These two processes are completed in a single stroke of moulding. The process of direct injection moulding is recognised as one of the processes of molding by the HSN. On the other hand, in the 'Stuck-on' process' , neither the upper nor the sole was moulded. The upper was pasted on the lower. This is not a process of moulding but assembly by pasting. After scrutinising the processes, I come to the conclusion that the impugned product which is made by DIP is a 'moulded' footwear.

Now , I come to the issue as to whether the footwear is plastic footwear. The applicant has admitted that the Shoe Upper is made of plastic coated materials and not of plastic. Thus, the first condition itself is not satisfied , even with respect to the entry prior to its amendment where the word 'moulded 'was absent. The upper is not made purely of plastic whereas the schedule entry covers only 'plastic footwear' which implies 'footwear made entirely of plastic'. The product cannot strictly be termed as a 'plastic footwear.'

Reports of FDDI – Footwear Design& Development Institute, Ministry Of Commerce, Government of India with respect to shoes manufactured by M/s Ajay Plastic and M/s Nikhil Plastic are on record. They state that the Institute has declared the footwear in question as made of plastics. Perusal of the report shows that the shoes in question are in all cases made of PVC coated synthetic upper and PVC sole. The report only certifies, by referring to the BTN, that the footwear are plastic footwear. The reason why FDDI has opined the whole shoe as made of plastic is stated in its report in the following terms –

> "It is clarified in the section 12 Chapter 64 note no. 3 of Brief Tariff Notes (BTN), the terms "Rubber & plastics" include woven fabrics or other textile fabrics with an external layer of rubber or plastics being visible to the naked eye. Therefore, the uppers of the aforesaid footwear are plastics. Hence, the aforesaid footwear have been identified as plastic footwear."

The BTN are the HSN notes which explain the term 'plastic footwear' as occurring under Chapter 64 of the HSN. The notes explain that for the purposes of Chapter 64 of the HSN, rubber or plastic footwear would include shoes made of materials coated with plastic/plastic. Reference to the FDDI and also the HSN is unnecessary as well as irrelevant as the entry C-74 does not define products covered by it as per the HSN.

The applicant also produced a certificate dt. 25.1.2008 from the Footwear Design& Development Institute, Ministry Of Commerce, Government of India. The certificate is with respect to the product under consideration. It says the following :

..." In the sample, the visible portion is plastic. The upper material is plastic coated fabric. The sole is PVC (plastic).Hence, the footwear is identified as plastic footwear with direct injected sole. "

The certificate says that the upper portion is plastic coated and is not itself plastic. The layer of cloth is coated with plastic while the sole is the only part which is purely of plastic as it is made from plastic granules. In such a case, the product does not fall within the meaning of the term 'plastic footwear' as it is no a pure plastic product. The upper is made of hand cut and stitched plastic coated fabric and the lower alone is made of moulded plastic.

The Karnataka High Court judgement is also very specific in this respect. While deciding the classification about 'Walkie Chappals' which were made of plastic polymer and rubber sheet , the Lordships observed the following in para no.10 of the order...

...." Insofar as Walkie Chappal is concerned, we are concerned only for the period between 1.4.2005 to 6.6.2005. For this period, the Entry reads as ," plastic footwear." .The material on record would show that the material used for upper portion is Man-made fabric with plastic coating. That being the case, in our view, the reasoning of the Authority in para 6 of the order that it does not fall within the description of Plastic Footwear is acceptable."

The High Court has clearly ruled out the classification of 'Walkie Chappal' in 'Plastic Footwear' because the upper portion is of man-made fabric with plastic coating.In this period – from 1.4.2005 to 6.6.2005, the entry under the Karnataka Sales Tax Act was wide in the sense that it did not have the word 'moulded' before 'plastic footwear' in it. However, Court did not find it fit to classify 'Walkie Chappals' in 'Plastic footwear' as the former was not made purely of plastic. The situation is similar in the instant case and therefore, the inescapable conclusion that the impugned product will not fall under the entry for 'Moulded Plastic Footwear."

05. PRAYER FOR PROSPECTIVE EFFECT U/S 56(2) OF THE MVAT ACT.

The Association has prayed for prospective effect in its representation. The application by M/s Dev Enterprises has not made the plea though the plea was made at the time of hearing. However, while ignoring the lacuna as being more due to haste rather then intention, I proceed to deal with it.

It is the contention of the Association , which is an Association of traders, that they collected taxes @ 4% under the belief that their footwear is 'moulded plastic footwear'. The Association also prayed that this belief was reinforced by the order of JC(Appeals), Karnataka. However, the order passed under a different Act cannot be a ground of prospective effect. Also, there is no statutory misguidance in this case. I, therefore, cannot accept the plea of prospective effect made by the applicant.

06. In view of the aforesaid discussion, I pass an order as follows:-

O R D E R

(under Section 56(1) (e) and (2)of the Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2007/Adm-3/58 /B-1 Mumbai, dt. 11.2.2008

1. The rate of tax on 'Escort 111 SYN Black' sold through invoice No. 1130 dt. 25.8.05 is 12.5% being covered by schedule entry E-1.

2. The prayer of prospective effect u/s 56(2) of the MVAT Act is rejected for reasons given in the order.

SANJAY BHATIA
Commissioner of Sales Tax,
Maharashtra State, Mumbai.