IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.35389 & 35390 of 2007
and
M.P.Nos.1 and 2 of 2007

M/s. Ferrari Shoes (India) Private Limited
Represented by its Director
Mr.N.P.Mustafa Yasin
No.112/113, SIDCO Industrial Estate
Malumichampatty
Coimbatore - 641 021. ...Petitioner in both writ petitions

Vs.

1. The Deputy Commercial Tax Officer
   Office of the Commercial Tax Officer (FAC)
   Podanur Asst. Circle
   Coimbatore.

2. The Commissioner of Commercial Taxes
   Chepauk,
   Chennai - 600 005. ...Respondents in both writ petitions

Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records comprised in TNGST No.1802293/ 2005-06 dated 19.10.2007 on the file of the first respondent and the impugned Clarification No. VAT CELL/7075/07/(VCC 421) dated 30.04.2007 on the file of the second respondent respectively and quash the same.

For Petitioner : Mr. Mohammed Shaffiq

For Respondents : Mrs. G.Dhanamadhri
Government Advocate (Taxes)

COMMON ORDER

The petitioner in both the writ petitions is one and the same. While WP.No.35389 of 2007 has been filed to quash the notice dated 19.10.2007 issued by the first respondent, calling upon the petitioner to submit its objections along with documentary evidence, if any, against the proposal to levy tax at 10.5% on the turnover of Rs.2,69,95,127/-, which was claimed as exemption on inter-state sales of Footwear, along with penalty, WP.No.35390 of 2007 has been filed to quash the clarification dated 30.04.2007 issued by the second respondent.

2.Today, when the matters were taken up for hearing, the learned counsel on either side fairly submitted that the issue involved herein is squarely covered by the order of this Court in Ferrari Shoes (India) Pvt. Ltd. vs. The Deputy Commercial Tax Officer and another in W.P. No.35586 of 2007, dated 26.10.2017 and the relevant portion of the said order is extracted as under :-

> "2. The petitioner, who is a manufacturer of shoes is aggrieved by a notice issued by the respondent dated 30.04.2007 stating that the exemption is not available in respect of shoes manufactured by the petitioner, where the retail price is less than Rs.100/-. It is submitted that was increased to Rs.200/-. This benefit of exemption continued in favour of the petitioner, even after coming into force of the TNVAT Act, 2006. All of a sudden, on account of the impugned circular, the respondent proposed to reopen the assessment and levied higher rate of tax. Similarly placed assessee by name Josco Polymners Private Limited filed an application under Section 48-A(1) of the TNVAT Act, 2006 before the authority for clarification and advance ruling which were taken on file as ACAAR No.27/2013-14. The said authority by a detailed order dated 24.06.2014 has held as follows:
>
> > "6.4.The clarification is therefore that "Footwear with sale value less than two hundred rupees" is exempt from tax by virtue of Entry 30 in Part - B of Fourth Schedule to the TNVAT Act, 2006, on sale inside the State and on sale in the course of interstate trade or commerce, within the scope of Section 8(2) of the CST Act, 1956."
>
> Thus, in the light of the above advance ruling which is binding on the Assessing Officer, he has to necessarily complete the assessment by applying the advance ruling given by competent authority.

3. Thus, for the above reasons, the writ petition is allowed and the impugned notice is set aside and the matter is remanded to the first respondent for completing the assessment for the relevant year, by adhering the clarification issued by the authority for clarification in advance ruling dated 24.06.2014, subsequently the threshold limit for exemption. No costs. Consequently, the connected Miscellaneous Petition is closed."

3.Following the aforesaid order, these writ petitions stand allowed and the impugned notice as well as the clarification issued by the respective respondents are set aside. The matter is remanded to the first respondent for completing the assessment for the year 2005-06, by adhering the clarification issued by the authority for clarification in advance ruling dated 24.06.2014, subsequently the threshold limit for exemption. No costs. Consequently, the connected miscellaneous petitions are closed.

ksa-2/vsi2

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commercial Tax Officer
Office of the Commercial Tax Officer (FAC)
Podanur Asst. Circle
Coimbatore.

2. The Commissioner of Commercial Taxes
Chepauk, Chennai - 600 005.

+1cc to the Govt.Pleader, Vide Sr.No.85558

W.P.Nos.35389 & 35390 of 2007

Kak(15/05/2019)