THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

Tax Revision Case Nos.44 and 45 of 2019

COMMON ORDER : (*Per* Sri Justice M.S. Ramachandra Rao)

Both these Revisions are filed by the State of Telangana under Section 34(1) of the Telangana Value Added Taxes Act, 2005 (for short 'the Act') challenging orders dt.16.04.2019 passed in T.A.Nos.39 of 2017 and T.A.No.40 of 2017 of the Telangana VAT Appellate Tribunal, Hyderabad (for short 'the Tribunal').

2. The respondent in both these Revisions is a registered dealer under the Act and an assessee on the rolls of the Commercial Tax Officer, M.G. Road Circle, Hyderabad.

3. The respondent deals in sports goods including 'sports shoes' and 'sports apparel'.

4. On authorization by the Joint Commissioner (C.T.), Enforcement Wing, Nampally, Hyderabad, the D.C.T.O.-II Enforcement Wing, conducted audit and assessment for the Financial Years 2012-13 and 2013-14 and passed orders in A.O.No.30164 dt.04.08.2015.

5. Likewise, he also conducted audit and assessment for the Financial Year 2014-15 and passed orders in A.O.No.30165 dt.04.08.2015.

6. These orders were challenged by the respondent by filing appeals before the Appellate Deputy Commissioner (C.T.), Punjagutta Division contesting the levy of tax of 14.5% instead of 5% on the sales of 'sports shoes' and 'sports apparel'.

7. The said Appellate Deputy Commissioner dismissed the appeals by separate orders dt.14.12.2016 confirming the orders of the D.C.T.O. in levying tax at 14.5% under V Schedule to the Act.

8. Aggrieved thereby, the respondent filed T.A.N.o.39 of 2017 and 40 of 2017 to the Tribunal.

9. By separate orders, dt.30.04.2019, the said Tribunal allowed both the appeals and set aside the orders of the Appellate Deputy Commissioner and that of the Assessing authority.

10. Challenging the same, the State has filed the instant Revisions.

11. Heard Sri M. Govind Reddy, Special Standing Counsel for Commercial Taxes for the State of Telangana, and Sri S.R. Vishwanath, for the respondent.

12. The issue in this case is:

> *'whether 'sports shoes' and 'apparel' sold by the respondent were liable to tax under Entry 46 and Entry 52 of IV Schedule*

respectively, or they fall under the residuary entry falling under V Schedule?".

13. Entry 46 of IV Schedule deals with 'Moulded Plastic Footwear and Hawai Chappals and Straps thereof'; Entry 52 of IV Schedule deals with 'Ready-made Garments'; and Entry 60 deals with 'Sports Goods excluding Apparels and Footwear'. The rate of tax if they fall in these entries of IV Schedule is 5%.

14. But, if they fall under the residuary entry under V Schedule, the rate of tax would be 14.5%.

15. The Assessing Authority, i.e., the D.C.T.O.-II (Enforcement Wing) held that Entry 60 of IV Schedule deals with 'sports goods' and as the said entry *excludes* apparels and footwear, they would fall under the residuary entry under V Schedule. But, he did not give any reason why 'sports apparel' and 'sports shoes' do not fall in Entry 52 and Entry 46 of Schedule IV which deal with 'Ready-made Garments' and 'Moulded Plastic Footwear and Hawai Chappals and Straps thereof'.

16. The Appellate Deputy Commissioner took a different view that 'sports shoes' with multiple moulds do not come under Entry 46. He also held that 'sports apparel' cannot be equated with 'readymade garments' as they are specialized cloth wear used while playing sports and they are available not only in sports outlets but also in any store / mall for ready-mades.

17. The Tribunal was of the opinion that the Government had issued a Memo No.48659 / CT – II (1) / 2008 – 02 dt.17.10.2008 clarifying in para no.5 that it had, after careful examination of the matter deleted HSN Code 6401.10.10 from Entry 46 of Schedule IV of the Act and clarified that 'moulded plastic ware' as described in Entry 46 also includes not only the 'footwear of one moulded plastic piece' but also 'more than one piece moulded and joined together'; that the Appellate Deputy Commissioner could not ignore the said Memo which is binding on him and take the view that 'sports shoes with multiple moulds' would not come under Entry 46. The Tribunal also opined that the Assessing Authority ought to have given reasons for its conclusion that 'sports apparel' and 'sports footwear', if not coming under Entry 60 of Schedule IV, also do not come under Entry 46 and 52 of Schedule IV, and why they should be brought under the residuary entry in Schedule V.

18. It also held that the Department had consistently considered the goods as falling under Entry 46 of Schedule IV for the years 2005-06 to 2011-12 and such classification, which had been accepted for the earlier ten years, cannot be disturbed when there was no change in the fundamental aspects. It recorded a finding that none of the Officials of the Department had in fact made product verification or taken any expert opinion before making a material change by treating 'sports shoes' as goods falling under residuary V Schedule, but not under Entry 46 of IV Schedule, as treated by them earlier.

19. It also referred to certificates issued by two suppliers of footwear vouching that sports shoes were made of only plastic, which evidence was not rebutted by the Department before the Tribunal.

20. It is also not denied by the Department that advance rulings issued by the Commercial Tax Department which were valid till 19.03.2013 considered 'sports shoes' made of pure plastic under Entry 46 of IV Schedule and were taxed at 5%.

21. The **Allahabad High Court in Commissioner of Sales Tax vs. Fateh Chand Mahajan**[1] held that 'sports shoes' are included in 'Footwear' of Item No.2 of Notification No.ST-7097/X-1012-1965 DT.01.10.1965. In its opinion, the term 'Footwear' has a very wide sweep and it includes all kinds of shoes, including those which may be used on particular occasions or events. Simply, because one variety of shoes is generally sold by a dealer in sports goods, it will not go outside the purview of the Entry 'Footwear'.

22. We agree with the said view and hold that the term 'Footwear' in Entry 46 of IV Schedule includes 'sports shoes' and the D.C.T.O.-II (Enforcement Wing) could not have held that they fall under residuary entry under V Schedule, and he ought to have held that they fall under Entry 46 of IV Schedule; and the Tribunal was right in not only relying on the certificates of the suppliers that the shoes were made of plastic but also on the Government Memo dt.17.10.2008 holding that 'moulded plastic footwear' described in Entry 46 also

[1] (1975) 36 STC 309 [Allahabad]

includes not only the 'footwear' of one moulded plastic piece but also more than one piece moulded and joined together. When the Department authorities did not make any product verification, they could not have changed the classification of the 'sports shoes' from Entry 46 in Schedule IV, which they had been doing for the previous ten years, to the residuary Entry in V Schedule.

23. Coming to 'Sports Apparel' also the Tribunal held that for the previous ten years the Department had been treating 'sports apparel' as coming in the category of 'ready-made garments' in Entry 52 of IV Schedule and that the reasoning given by the Assessing Authority as well as the Appellate Deputy Commissioner that 'sports apparel' do not fall in the said category since they were specialized cloth wear used for being worn while playing sports and they are not only available in the sports outlets but also in store / mall for ready-mades, does not pass muster. We are of the opinion that the word 'garments' in Entry 52 of IV Schedule is of wide import and 'sports apparel' would fall under the said entry and the Tribunal did not commit any error in taking that view.

24. The contention of the Special Government Pleader that the findings of the Tribunal are perverse is hereby rejected as being without any merit.

25. We therefore do not find any merit in these Revisions and they are accordingly dismissed. No order as to costs.

26. As a sequel miscellaneous petitions pending if any in these Tax Revision Cases shall stand closed.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date:16-12-2019
Ndr