

(Issued vide no. 761/ST-1, dated 1.5.2006)

ORDER OF CLARIFICATION UNDER SECTION 56(3) OF HVAT ACT, 2003 ON THE APPLICATION OF M/S LIBERTY FOOTWEAR, KARNAL

This is an order of clarification under section 56(3) of HVAT Act, 2003 (VAT Act), on the application of M/S Liberty Footwear, Karnal seeking clarification,-

M/s Liberty Shoes Limited have stated that they are manufacturers of inter-alia plastic footwear which according to them is covered under entry 55 of Schedule C to the Haryana Value Added Tax Act, 2003 (for short 'the Act'), reading "**Moulded plastic footwear and hawaii chappals and straps thereof except those covered by Schedule B**", hence taxable @4%. Their argument is that the Empowered Committee consisting of Finance Ministers of the states has divided footwear into three distinct categories, one, cheap footwear for the poor (covered under entry 44 of schedule B to the Act reading "**Shoes and chappals with maximum retail price not exceeding Rs 200 per pair**"), two, not so expensive footwear for the middle class (covered under 55 of Schedule C) taxable @4%, and three, costly footwear for well-offs taxable @12.5%. This rational scheme of taxation, they say has been evolved by the Empowered Committee by consensus and has been adopted by the states. It has been further mentioned that the assessing officer visited their factory sometime back and though he was convinced that the plastic footwear they were billing as taxable @4% is indeed made of plastic yet he felt that those should be taxable @12.5%. Hence, they have sought clarification from this office.

The matter has been considered. First, EC's decision is that moulded plastic footwear and Hawaii chappals and straps thereof will be taxed @4% and other footwear @12.5%. It is only the State of Haryana that has divided footwear into three categories. One, shoes and chappals with maximum retail price not exceeding Rs 200 per pair which are tax free, two, moulded plastic footwear and Hawaii chappals and straps thereof taxable @4%, and three, other footwear taxable @12.5%. Thus, practically footwear which are taxable @4% in other VAT states are tax free in Haryana and other footwear are taxable @12.5% both in Haryana and other states.

The crux of the dispute in the present case is the construction of entry 55 in schedule C to the Act and in that also finding answer to the question as to

what constitutes '**Moulded plastic footwear**'. Applying the test of common parlance meaning, it can be said that this expression covers **footwear made from plastic by the process of moulding**. In Encyclopaedia Britannica words 'footwear', 'mould' and the process of moulding have been described as follows –

Footwear: wearing apparel (as shoes or boots) for the feet

Mold also spelled Mould, in manufacturing, a cavity or matrix in which a fluid or plastic substance is shaped into **a desired finished product**. A molten substance, such as metal, or a plastic substance is poured or forced into a mold and allowed to harden. Molds are made of a wide variety of materials, depending on the application; sand is frequently used for metal casting, **hardened steel for moulds for plastic materials**, and plaster for various purposes.

The tooling involved in plastic moulding is quite similar to that of stamping dies. The principal difference is that stamping requires force, while moulding does not. In **plastic moulding, two units are required whose design is such that, when brought together, they make up a system of closed cavities linked to a central orifice. Liquid plastic is forced through the orifice and into the cavities, or moulds, and when the plastic solidifies, the moulds open and the finished parts are ejected.**

It is seen from the meaning of the words footwear, mould and the process of moulding given above that moulded plastic footwear is such footwear which is made from plastic by moulding process and the finished product (in the present case footwear) comes straight from the moulds as they are opened after the plastic material poured in them has hardened or solidified. The process of plastic moulding gives rise to the desired finished product, footwear in the present case i.e. the footwear emerges from the mould as one complete piece (for the right or the left foot, as the case may be). Making footwear by moulding is practically a single stage process, the plastic material is poured into moulds and after the material has hardened, the finished product (footwear) comes out as moulds are opened. The end-product 'footwear' is made of single piece not upper or lower as is the case with other footwear.

M/s Liberty Footwear Limited, has explained that they make three kinds of footwear. One moulded plastic footwear by the simple process of moulding plastic into shape of a footwear making single-piece shoes normally used

in rainy season and costing as little as Rs.100 or so. The second, plastic footwear which have separate upper and lower (sole). The upper is made from a plastic sheet by hand cutting and stitching which is joined with sole again made of plastic. He states that the making of the plastic sole and its joining with the upper is achieved in one single process as the sole is moulded into shape and fixed to the upper with light adhesives and chemicals simultaneously. These shoes cost between Rs.200 and Rs.1000. Then there are two-piece synthetic and leather shoes in which upper and sole are made separately and then joined together with the help of adhesives and other materials. These shoes cost between Rs.500 and Rs.5000 per pair. His contention is that shoes made of plastic in which upper is made of plastic sheet and sole is also made of plastic by injection moulding and is joined with the upper simultaneously should also be classified as moulded plastic shoes hence taxable @4%.

M/s Liberty Footwear refers to the report of FDDI – Footwear Design & Development Institute, Ministry Of Commerce, Government of India, stating 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 / EVA / PU / Polyester coated / laminated fabric / nylon mesh* and *PVC / PU sole*. PVC / EVA / PU are all variants of plastic. Thus, shoes in question are made of plastic coated fabric (upper) and plastic sole (lower) i.e. they are indisputably made in two parts and while the plastic sole is moulded, the same is not the case with the upper, which is basically a fabric coated / laminated with plastic material. Thus, upper is not made from plastic by the moulding process. It is made from the fabric by coating or laminating the same with plastic material. This comes in the form of a sheet which is hand cut and stitched to make the shoe upper. 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 necked eye. Therefore, the uppers of the aforesaid footwear are plastics. Hence, the aforesaid footwears have been identified as plastic footwear.”

It may be noted that there is no Brief Tariff Notes added to entry 55 in Schedule C to the HVAT Act with the aid of which it could be said that the shoes in question are made of plastic. Moreover, the basic question here is whether or not the shoes

in question are 'moulded plastic shoes', even if it be conceded that the shoes are made of plastic, the same are decidedly not moulded plastic shoes as their upper is made of hand cut and stitched plastic coated fabric and the lower alone is made of moulded plastic.

The decision of U.P. Tax Tribunal appended to the representation simply holds that the shoes in question are not made of leather. The present dispute does not relate to this question i.e. whether the shoes in question are made of leather or plastic. So, that decision is not relevant to resolve the present controversy.

If the argument of M/s Liberty Shoes were to be accepted, then the use of the word 'moulded' in the entry 'moulded plastic footwear' becomes redundant and the cardinal principle of construction that no word in a legal text is to be construed as redundant is violated. It is indeed difficult to accept Liberty's argument without considerable violence to the plain meaning of the words used in describing the entry in question and there is no ground much less any compelling ground to do so.

The argument that shoe sole (lower) is made and pasted with the upper, though made separately, in one single process and hence the shoe is moulded plastic footwear does not appeal to reason. Simply because technology permits moulding of sole and its affixation to the upper in one single step (whether it does so is not being put to verification because even if it does so, it will make any material difference to the basic make up of the shoe) does not make the shoe as moulded plastic shoe which as explained above is the shoe made by pouring plastic material into a complete shoe-mould and the shoe emerging from the mould after the material hardens as one single piece and not that upper is made separately from plastic coated fabric sheet and then the same is joined with the moulded sole.

It is seen clearly that plastic shoes made of upper and lower where upper is separately made and lower (sole) is separately made by injection moulding though joined with the upper, as claimed, at the time of moulding of sole, are entirely of a class quite different and distinct from simple moulded plastic shoes, which are made by the process of moulding of plastic alone in one piece i.e. the upper and sole are not joined together but the whole shoe comes out from the moulds as single piece. Not only from the angle of the manufacturing process involved in their making but also from the angle of pricing, the two types of shoes

are quite apart. The 2-piece plastic shoes are quite costly compared to the moulded plastic shoes. Plastic moulded shoes are priced under Rs.200 per pair (in fact most sell below Rs.100) while 2-piece plastic shoes are priced between Rs.200 and Rs.1000 per pair. The inescapable conclusion, therefore, is that plastic footwear (other than moulded plastic footwear) is not covered by entry 55 in Schedule C to the Act and these are taxable @12.5%.

dated :-

(L.S.M. Salins)
Financial Commissioner and Principal Secretary to
Government, Haryana Excise and Taxation Department