IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MAHARASHTRA VALUE ADDED TAX APPEAL NO.56 OF 2017
IN
VAT APPEAL NO.278 OF 2015

Prime Bond Industries)
A Partnership Firm and having address at 3,)
Bharat Comp, Opp. Pravasi Industrial Estate)
Goregaon-Mulund Link Road Signal,)
Goregaon (East), Mumbai – 400 063,)
Maharashtra)… Appellant

V/s.

The Commissioner of Sales Tax)
Maharashtra State, Mumbai having address)
at 8th Floor, Vikrikar Bhavan, Mazgaon,)
Mumbai – 400 010)...Respondent

WITH

MAHARASHTRA VALUE ADDED TAX APPEAL NO.73 OF 2017
IN
VAT APPEAL NO.278 OF 2015

4Mann Industries Pvt. Ltd.)
A company incorporated under the provisions)
of Companies Act, 1956 and having registered)
address at C-5, Gala & Shethia Enterprises)
Road No.11 (MIDC), Andheri (East), Mumbai)
400 093, Maharashtra)… Appellant

V/s.

Commissioner of Sales Tax)
Maharashtra State, Mumbai, 8th Floor,)
Vikrikar Bhavan, Mazgaon, Mumbai – 400 010)… Respondent

AND

MAHARASHTRA VALUE ADDED TAX APPEAL NO.74 OF 2017
IN
VAT APPEAL NO.278 OF 2015

Kevin Impex Pvt. Ltd.)
A company incorporated under the provisions)
of Companies Act, 1956 and having registered)
address at C-5, Gala & Shethia Enterprises)
Road No.11 (MIDC), Andheri (East), Mumbai)
400 093, Maharashtra)… Appellant

V/s.

Commissioner of Sales Tax)
Maharashtra State, Mumbai, 8th Floor,)
Vikrikar Bhavan, Mazgaon, Mumbai – 400 010)… Respondent

Mr.V. Sridharan, Senior Advocate alongwith Mr.Sahil Parghi and Mr. S. Sriram i/by Mr.C.B.Thakur, Advocates for the Appellant in MVXA/56/2017.

Mr.Rafique Dada, Senior Advocate alongwith Mr.Vipinkumar Jain, Mr.Vishal Agrawal, Mr.Ramnath Prabhu and Mr.Purushartha i/by Mr.Prabhakar K. Shetty, Advocates for the Appellant in MVXA/73/2017.

Mr.Vikram Nankani, Senior Advocate alongwith Mr.Vipinkumar Jain, Mr.Vishal Agrawal, Mr.Ramnath Prabhu and Mr.Purushartha Satish i/by Mr. Prabhakar K. Shetty, Advocates for Appellant in MVXA/74/2017.

Ms.Naira Jejeebhoy, Special Counsel alongwith Mr.Himanshu B. Takke, AGP for the State-Respondent.

CORAM : DHIRAJ SINGH THAKUR AND
ABHAY AHUJA, JJ.

PRONOUNCED ON : 15th FEBRUARY, 2023.

JUDGMENT :

1. These three appeals arise out of a common judgment dated 27th February, 2017 of the Maharashtra Sales Tax Tribunal at Mumbai ("MSTT Mumbai"/"Tribunal") affirming the Determination of Disputed Question ("DDQ") order of the Commissioner of Sales Tax.

2 The subject matter of the present dispute is classification of Aluminium Composite Panels ("ACP").

3 Three separate but similar applications for determination of DDQ u/s. 56(1)(e) of MVAT Act, 2002 were filed before Commissioner of Sales Tax by three dealers namely M/s Eurobond Industries Private Limited, M/s. Kevin Impex Private Limited and M/s Prime Bond Industries, the appellants herein for classification of ACP which were sold by them in the State of Maharashtra.

4 It is the contention of the Appellants that ACP is classifiable under Entry C-6 of Schedule to the MVAT Act, 2002 read with Sr. No.6 of Notification No. VAT- 1505/CR-113/Taxation-1 dated 1st June, 2005 and the sale was chargeable to 5% VAT and not 12.5 % as claimed by the State Authorities.

5 Schedule Entry C-6 and relevant portion of the said Notification dated 1st June, 2005 reads as follows-

6.	Aluminium, its alloys and products as may be notified from time to time by the State Government in the Official Gazette	-	4%	1.4.2005 to 31.3.2010
		-	5%	w.e.f. 1.4.2010

NOTIFICATION

Finance Department
Mantralaya,
Mumbai 400 032,

Dated 1st April, 2005.

Maharashtra Value Added Tax Act, 2002.

No. VAT-1505/CR-113/Taxation-1 in exercise of the powers conferred by entry 6 of Schedule C appended to the Maharashtra Value Added Tax Act, 2002 (Mah. IV of 2005) and in supersession of Government Notification, Finance Department, No. VAT-1505/CR-113/Taxation-1 dated 1st April, 2005, the Government of Maharashtra hereby, specifies the following goods more particularly described in the Schedule appended hereto, to be the aluminium, its alloys and products for the purposes of the said entry 6, namely:-

SCHEDULE

Aluminium, its alloys and products covered from time to time, under the heading, listed below of the Central Excise Tariff Act, 1985 (5 of 1986):-

Sr.No.	Central Excise Tariff Heading	Name of the Commodity
(1)	(2)	(3)
6	7606	Aluminium plates, sheets (including circles) and strips, of a thickness exceeding 0.2 mm

Note.-(1)

The Rules for the interpretation of the provisions of the Central Excise Tariff Act, 1985 read with the Explanatory Notes as updated from time to time published by the Customs Co-operation Council, Brussels apply for th interpretation of this notification.

Note.-(2)

Where any commodities are described against any heading or, as the case may be, sub-heading, and the aforesaid description is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then only those commodities described as aforesaid will be covered by the scope of this notification and other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.

Note.-(3)

Subject to Note 2, for the purpose of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purposes of the said tariff under that heading or sub-heading will be covered by the scope of this notification.

Where the description against any heading or sub-heading is shown as "other", then the interpretation as provided in Note 2 shall apply.

By order and in the name of the Governor of Maharashtra
Sudhakar Jamode
Deputy Secretary to the Government."

6 Goods covered by Schedule Entry C-6 of the MVAT Act are liable to tax @ 4% till 31st March, 2010 and 5% w.e.f. 1st April, 2010.

7 The Commissioner held that ACP is not covered under the Central Excise Tariff ("CET") Heading 7606, but would fall within CET Heading 7610 and therefore, the same is not covered by the notification issued for the purpose of Schedule Entry C-6 of the MVAT Act. The two competing entries of Chapter 76 with respect to Aluminium are set out below :

CETH 7606	Aluminium plates, sheets and strips, of a thickness exceeding 0.2 mm
CETH 7610	Aluminium structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures.

8 The Commissioner held that the rate of tax applicable to the product is 12.5%, as it is covered by residual Schedule Entry E-1 under the MVAT Act. Further the Commissioner also rejected the request of the appellants to grant prospective effect to the ruling. Operative portion of the order is reproduced as under:-

> "a. The product 'Aluminium composite Panel' is not covered under the Central Excise Tariff Heading 7606 and therefore, not covered by the notification issued for the purposes of the schedule entry C-6 of the Maharashtra Value Added Tax Act, 2002.
>
> b. The rate of tax applicable to the product is 12.5 % being covered by the schedule entry E-1 under the Maharashtra Value Added Tax Act, 2002.
>
> c. For reasons as discussed in the body of the order, the request for prospective effect is rejected."

9 The order of the Commissioner was challenged by the appellants before the Tribunal in three different appeals registered as VAT appeals bearing Nos. 278 of 2015, 279 of 2015 and 280 of 2015 respectively. Before the Tribunal, the appellants raised an alternative contention, that if ACP is not covered by CET Heading 7606, then it would fall within the purview of CET Heading 3920. Statedly, the alternative contention that ACP would fall under Heading 3920 has been given up by the Appellants in the Appeals before us.

10 By common order dated 27 February 2017, the Tribunal dismissed the appeals filed by appellants and confirmed the order passed by the Commissioner. The present appeals have been preferred against the order dated 27th February 2017 passed by the Tribunal.

11 By order dated 24th August, 2022 the appeals have been admitted on following substantial question of law-

> "Whether in facts and circumstances of the case, the aluminium composite panel in question is classifiable under Schedule Entry C-6 read with Entry No.6 of Notification dated 01.06.2005 issued thereunder read with Heading 76.06 of Schedule to Central Excise Tariff Act, 1985 as claimed by the assessee or Heading 76.10 of the said Schedule and Schedule Entry E-1 as claimed by the revenue?

12 We have heard Mr.Rafique Dada, Mr.Sridharan, and Mr.Vikram Nankani, learned senior Counsel for the appellants and Ms.Naira Jejeebhoy, Special Counsel for the State and with their able assistance we have perused the papers and proceedings in the matters and considered the rival contentions. We have also considered the written submissions tendered on their behalf.

13 We observe that the primary issue between the Appellants and the Revenue is on the interpretation of Heading 7606 and Heading 7610. While the Appellants have argued that the appropriate classification of ACP is under Heading 7606, the Tribunal has accepted the arguments of the Revenue holding the ACP to be under Heading 7610. Various arguments have been advanced in support of the rival contentions. Learned Counsel have also relied upon the Harmonized Commodity Description and Coding System published by the World Customs Organization contained in the Harmonized

System Compendium of 30 years which comprises of the following :

(i) General Rules for the interpretation of the Harmonized System;

(ii) Section and Chapter Notes, including Subheading Notes;

(iii) A list of headings arranged in systematic order and, where appropriate, subdivided into subheadings.

(iv) Explanatory Notes to the HS published separately by the World Customs Organization

(v) The Compendium of Classification Opinions

The said material *inter alia* elaborately discusses Headings 7606, 7610 and how the various heads are to be read and / or construed with respect to the subject products.

14 Learned Counsel have also drawn our attention to the technical manual in respect of the product to advance arguments in support of their respective contentions. The manual contains the description of ACP, the various sizes in which the same is manufactured and sold/used, its essential characteristics as well as the end predominant use.

15 While the Appellants have argued that the products that they have sold are aluminium plates, sheets of a thickness exceeding 0.2 mm and therefore to be classified under the Heading 7606, the Revenue argues that these are either parts of structures or prepared for use in structures

considering the technical manual and the scope of application mentioned therein and would fall under the Heading 7610.

16 The Tribunal, as mentioned earlier, has passed a common judgment. As the issue with respect to Heading 3920 has been statedly not pressed, the relevant portion of the Tribunal order which is germane to our discussion is quoted as under :

> "*33. Lastly, we must also consider alternate argument of the appellants that their product falls under CET Heading 7606, if not under residuary sub-heading 3920 as claimed above. So far as this argument is concerned, Mr. Thakar, the learned Advocate, has relied upon the observations in the case of* ***Commissioner of Customs (Import), Chennai V/s. ICP India Ltd. reported in 2012 (284) E.L.T. 106 (Tri-Chennai) decided on 02/05/2012****. Wherein following observations are recorded by CESTAT in para 2 and 3 of its judgment:-*
>
> > *2. The respondents have imported the impugned goods describing the same as 'aluminum composite panels' seeking classification under CTH 7606 and claiming concessional rate of duty under Notification No. 21/2002. The original authority held the impugned goods to be classifiable under CTH 7610. On an appeal from the respondents, the lower appellate authority has, however classified the impugned goods under CTH 7606 leading to the present appeal by the Department,*
> >
> > *3. CTH 7606 covers aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm. On the other hand, CTH 7610 includes aluminum structure and parts thereof, and aluminum plates, profiles, rods, tubes and the like prepared for use in structures. The impugned goods are not aluminum plates, sheets and strip simplicitor, and hence, prima facie their classification under CTH 7606 appears to be ruled out. On the other*

hand, the impugned aluminum composite panels bearing the trade name Alpolic is composed or metal skins, a core and surface finish. Prima facie, such panels under impart are processed and prepared material meant for use in structures and not mere aluminum plates, sheets or strip. Though normally use of a material by itself is not a determinant for classifying a product, CTH 7610 particularly refers to materials "processed for use in structure". Hence, the impugned goods which are prepared and used for cladding in structures, prima facie appear to be classified under CTH 7610. Further, we find that similar goods have been classified under Heading 7610 in the case of Ram Enterprises v. Commissioner of Customs, Mumbai-2011 (267) E.L.T. 546, though in that case the competing entries considered were CTH 7610 and CTH 3920, out of which CTH 7610 was preferred by the Tribunal.

*34. Further we find that even under CET Heading 7606 in the case of **Rana Enterprises** (cited supra), these observations of CESTAT South Zonal Bench, Chennai are also supporting the views taken by us that item of the appellant falls within the purview of CET Heading 7610. Here at this juncture, we mush make reference to the argument of Mr. Thakar, that the item in question cannot be used as part of the structure. According to him it is used for giving better look/appearance to the structure from outside. Therefore, it is not a part of the structure. It was contended by him that if the item were intended to be used in the structure, it would have certain additional indications such as holes for fitting screws, holes for fixing hinges etc. No such provision is made in it, and therefore, the item cannot be said to be manufactured for the use as a part of the structure.*

35. The essential characteristics of the product are required to be taken into consideration, while ascertaining appropriate Heading for taxing the commodity. In the case of Rana Enterprises, identical material was under consideration. In that case, also no extra work has been done on the panels which would have indicated that material was meant for use as a part of the structure. Still the CESTAT observed that the

essential characteristics of the product were indicating that the same was meant for the use of giving better look to the structure from the outside. Since there is absolutely no difference between the description in the item before us and description in the item that was before the CESTAT for consideration, we are not inclined to take a different view.

36. Shri. Thakar in respect of his contention that his product is not a part of structure, placed his reliance on the judgment of the Hon'ble Bombay High Court in the case of ***Permasteelisa (India) Pvt. Ltd. V/s. State of Maharashtra and Others reported in (2016) 91 VST 129 (Bom) decided on 6th May, 2016.*** *It must be mentioned that issue for consideration before the Hon'ble High Court was whether on the facts and circumstances of the case of Tribunal was justified in holding that the contracts of construction of glass curtain wall executed by the appellant would not constitute contracts for construction of buildings, as mentioned in para A of the notification dated March 8, 2020, issued for the purpose of section 6A(1) of the Works Contract Act, nor would it constitute contracts incidental nor ancillary to the contract mentioned in paragraph B of the said notification. Ultimately the High Court has been pleased to hold that-*

*"**The fabricated structural glazing prepared by the applicant are transported to the site by the applicant and affixed on the exterior portion of the building, which building is constructed by the building contractor who is a third party. There is no dispute that the applicant is not a building contractor, it is not in the business of construction and erection of buildings. The activity of affixing glass and erecting glass walls with aluminum framework requires an altogether different expertise, and is ordinarily sub-contracted by the building contractor. The contention that some of the walls in the building are not required to be constructed by laying bricks and they are substituted by affixing the glass would not carry the case of the applicant further. We are also unable to accept the contention that the work of the applicant would be covered under the term "incidental or ancillary activity to the construction of the building" as that would have to have a direct nexus to the construction of the building itself. Therefore, the alternative*

argument that the contract would get covered by paragraph B of the said notification which includes incidental or ancillary contract to the contract of construction also cannot be accepted. What meaning is to be attached to the word "building" as mentioned in the notification would have to be determined considering the facts and circumstances of each case. In our view, the reliance on the definition of "building" in the regulation 2(3)(11) of DCR is misplaced and would not assist the applicant in any manner. The definition is in the context and purposes of DCR and cannot be imported and applied in the facts and circumstances of the present case".

37. We fail to understand as to how this judgment is relevant for ascertaining if the item of the appellant falls within the purview of CET Heading 7606. In our considered opinion, this judgment is absolutely not useful for resolving the controversy before us arising for adjudication.

38. Mr. Thakar, strongly relied upon the opinion expressed by Harmonized System Committee, World Customs Organization, Brussels. He placed reliance on Volume published by the Committee in the year 2002 for the relevant periods 1998-1999 and 1999-2000. He invited our attention to entry No. 327 on page no. 140. The entry reads as follows:-

	DESCRIPTION OF GOODS	HS HEADINGS UNDER CONSIDERATION	CLASSIFICATION DECISION	CLASSIFICATION RATIONALE AND OBSERVATIONS	RELEVANT DOCUMENTS	DECISION TAKEN	CLASSIFICATION OPINION
327	Laminated aluminum products, consisting of two flat rolled sheets of aluminum which constitute the outer layer of the terminated product and one sheet or layer or core. The outer layers usually	76.06/76.13	1606.11 to 7606.92	It was agreed that the product at issue was a composite goods consisting of two flat rolled products of aluminum and an inner layer of plastics. The classification of	42.100 G/11 + 41.800 F/13 41.304 41.348	HSC/ 20	YES

	have individual thicknesses up to 2.54 mm, and the core thickness may range from approximately 0.02 mm to 2.29 mm. The products are usually in colls with the width up to approximately 1600 mm or may be cut into sheets. The core imparts superior sound damping quality to the products. The products are used for external cladding of buildings, internal decoration, automotive body panels, home appliances, business machines etc. (C.O. 7606.11 to 7606.92/1) See also No. 319 (File 2843)			composite goods was governed by General Interpretative Rule 3(b). IT was the visible part i.e. the flat rolled product, which gave the whole its essential character. The General Explanatory Note to Chapter 72, which is referred to in Chapter 76, made clear that the product of that chapter 76, made clear that the product of that chapter could be combined with a coating of plastic, moreover, there was no legal provision preventing flat rolled product s from being combined or laminated with a layer of plastics. Since the product consisted of clad plated or coated material sheet the committee agreed that they corresponded			
				to the texts of heading 76.08 and should be classified in that heading (subheading 7600. 11 to 7608.92) thus precluding the possibility of classification in Heading 76.13 which was only a residual heading			

39. In our considered opinion, the opinion given by the Harmonized System Committee, Brussels is required to be followed as it is, provided the description of the item is exactly same. Mr. Thakar placed his reliance on the judgment delivered by Delhi high court in the case of ***Manisha Pharma Plasto Pvt. Ltd. V/s. Union of India reported in 1999 (112) E.I.T.22 (Del.) decided on 20/05/1999.*** *It is clearly observed by Hon'ble Delhi High Court that the Harmonized Systems Committee is the high-powered body to ascertain International practice of classification of a particular product referred to it and recommends to the member nations the most appropriate classification of the product under HSN. We also find force in the submission made by the petitioner that opinion of Harmonized Systems Committee has lot of weight and the same should ordinarily be taken as binding. As its very name suggests, that the committee is constituted to harmonize the conflicting interpretations of the entries in the excise statutes, descriptions of various products and their formulae, in the member countries with a view to bring uniformity in taxation in international trade.*

40. If ratio of this judgment is applied in the instant case at hand, following facts are emerging. In the cited case, the issue for consideration before the Delhi High Court was about the classification of Nycil Prickly Heat Powder i.e. whether it falls under Heading 30.03 as drug or it falls under Heading 33.04 of the CET as a cosmetic. It was brought to the notice of Delhi High Court that somewhat similar product manufactured by Jonson and Johnson Ltd. was held to be a product falling under CET Heading 33.04. It was argued before the Delhi High Court that both products are similar and Nycil Prickly Heat Powder should be classified under CET Heading 33.04. In both the cases i.e. in the case of Nycil Prickly Heat Powder as well as Jonson's Prickly Heat Powder, opinion was given by Harmonized System Committee, Brussel. For making this distinction between two products, Harmonized Systems Committee looked into all components of both the products. In Nycil Prickly Heat Powder, the following components were present:-

Chloroprene's IP - 1% w/w
Zink Oxide IP - 16 % w/w
Starch IP - 51 % w/w
Talk Purified IP to - 100% w/w

Identical ingredients were not present in Johnsons Prickly Heat Powder. The Committee opined that Nycil Prickly Heat Powder would fall under CET Heading 30.03 and Johnson's Prickly Heat Powder would fall within CET Heading 33.04. This distinction made by the Committee is justified by the Delhi High Court. It appears that opinion of the Committee is relevant only when all ingredients of the items under consideration are exactly identical. A slightest difference in components can change the classification of the commodity.

41. Ms. Naira brought to our notice the technical manual published by the appellant. It is specifically mentioned on page no.2 that the Top Aluminum Sheet is coated with either Polyester or PVDF Paint. The core is either Low Density Polyethylene or a FR (Fire-Resistant) Core which is specially treated for fire resistance. The Bottom Aluminum Sheet comes with anti-corrosive primer or (6-8 micron) backside paint (White wash or Light Grey Color. It is also mentioned on page no. 4 that Aluminum Panel sheet is sandwich with top and bottom layers of aluminum sheets, nontoxic polythene cores materials. Both surface of coil coated with special baking varnish. Flow chart of the product Testing is at Page no.7 which indicates that coating is the integral part of product. Page nos. 8 & 10 of the manual provides information in respect of PVDF coating and page no.11 describes the protective film. Furthermore it was brought to our notice that item of the appellant's are cut to size.

42. We have considered this submission. In our view, these facts go to show that item which is described in Entry no. 327 by Harmonized System Committee is different than that of the item of the present appellants. For the reasons already mentioned in this judgment, we think that we need not refer to the opinions of lawyers produced by the appellant on record. We have demonstrated how the Item

Entry No. 327 by Harmonized Systems Committee is different from the item of the appellant.

43. Mr. Thakar, during the course of his argument, heavily relied upon the Notification no. 71 of 2009- Customs issued by the Government of India, Ministry of Finance (Department of Revenue), New Delhi dt. 19th June, 2009. By this Notification, provisional safeguard duty on import of Aluminum Flat Rolled Products falling under heading 7606 was imposed, excluding aluminum composite panels. By placing reliance of this notification, attempt was made to contend that this notification shows that Central Government has classified ACP under 7606. While replying this contention, Ms. Naira brought to our notice paragraph 66 of the notification which reads as follows:-

> ***"66. It has been contended by some of the interested parties that at some places "Aluminum Composite Panels" are being classified under 7606 and thus the same also be excluded. On verification, it was found that "Aluminum Composite Panels" are not manufactured by Hindalco. Thus, without going into the issue of classification of the same product, the product has not been part of safeguard investigation."***

44. These observations clearly go to show that notification does not make any classification of the product of the appellant.

45. Mr. Thakar during the course of the argument placed reliance on the judgment of the ***State of Andhra Pradesh and Another V/s. Concap Capacitors and Others reported in (2007) 10 VA ST 204 decided on 12th October, 2007.*** *The ratio of this judgment is that once the item is classified as per the classification done by some other authorities, then Sales Tax Department cannot have its own interpretation. We have already distinguished the opinion of the Harmonized System committee and it is not necessary to go into the details of the judgment of the Hon'ble Supreme Court.*

46. Mr. Thakar also placed his reliance on the judgment of Hon'ble Bombay High Court in the case of ***Samruddhi Industries Ltd. V/s. State of Maharashtra in Sales Tax Reference No. 20 of 2006 decided on 23rd December, 2014,*** *wherein the Hon'ble High Court has been pleased to hold that if the specific heading is covered under the relevant entry then irrespective of its use, item is required to be held falling in the said entry. Similarly he has also placed reliance on the judgment of the Bombay High Court in the case of* ***The Addl. Commissioner of Sales Tax V/s. M/s Sun Systems in Maharashtra Value Added Tax Appeal No. 20 of 2015 in VAT Appeal No. 658 of 2013 decided on 24th November, 2015.*** *In our considered opinion, this argument cannot be accepted for the following reasons.:-*

47. There are two entries before us for consideration under CET Heading 7606 and 7610. If the product appears to fall within the description of two different entries within two Heading, then Rule 3(c) comes into picture. It reads that when goods cannot be classified by reference to (a) or (b), then the same shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. If this rule is considered, in our considered opinion, the product would fall within CET Heading 7610 and not 7606.

48. For these reasons, we do not find any merit in the contentions of the Appellant that the judgments of ***Samruddhi Industries Ltd.*** *and* ***M/s. Sun Systems (cited supra)*** *are relevant and applicable in the present case.*

49. The Appellant has placed reliance upon the judgment in the case of ***State of Maharashtra vs. Bradma of India Ltd. reported in 140 STC 17 decided on 16th February 2005,*** *wherein it was held that specific entry overrides general entry and specific entry always prevails. After applying the above said ratio, in our consideration, Central Excise Tariff Heading 7610 is more specific entry than Central Excise Tariff Heading 7606. Central Excise Tariff Heading 7606 generally speaks about the plastic material, whereas CET Heading 7610 specifically speaks about part of the structure.*

50. Mr. Thakar also placed reliance on ***Bharat Forge & Press Industries (P) Ltd. reported in 84 STC 414 (SC) decided on 16th January, 1990.*** *We have carefully gone through the facts of this case. The Appellants were engaged in manufacturing pipe fittings; cutting it into different sizes. They were giving them shapes and they used to turn them into pipe fittings in their factories by heating in a furnace at temperature between 65 degrees Centigrade and 900 degrees Centigrade hammering and pressing. According to Revenue, the Appellants were bringing a new product into existence, and as such they were taxing it under tariff entry no.68 and the Appellants were claiming that their products were falling under Schedule entry 26AA (iv). The entry was in respect of "pipes and tubes including (including blanks therefor) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded." The question before the Hon'ble Supreme Court was whether the pipe fittings manufactured by the Appellants constitute different item or they remained same, which were items falling within the purview of Schedule Entry 26AA(iv). In our view, following observations of the Hon'ble Supreme Court are most relevant -*

> ***"In other words unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item. We do not think this has been done. Looking at tarrif item 26AA(iv), it encompasses all sorts of pipes and tubes. It is also clear that it is of no consequence whether the pipes and tubes are manufactured by rolling, forging, spinning, casting, drawing, annealing, welding or extruding."***

In our considered opinion, basic distinction in the case before the Hon'ble Supreme Court and the case before us is that the process of manufacture makes difference in the application of Schedule Entries. We have elaborately discussed this issue in our judgment. It is pointed out that the description of the item of the Appellant is different than that of the description of the item mentioned in the Harmonized System Committee of World Customs Organization, Brussels. It is also

demonstrated that appropriate description is given in CET Heading 7610 and that entry is not a residuary entry. In our view, therefore, reliance placed by Shri. C.B.Thakar on the case of ***Bharat Forge & Press Industries (P) Ltd. (supra)*** *is misplaced.*

51. The Appellant also placed reliance on the judgment of Hon'ble Bombay High Court in the case of ***Additional Commissioner of Sales Tax, VAT-III, Mumbai V/s. Bunge India Pvt. Ltd. reported in (2011) 39 VST 213 (Bom.) decided on 4th March, 2011.*** *Reliance on this judgment is misplaced since there is no question of interpretation of entries in the CET Act.*

52. The number of judgments were cited by both the sides. We have gone through it. They are not dealing with the issues arising before us for consideration. We have dealt with the relevant judgments. We have referred them and we have expressed our opinion about their relevance and probative value.

53. Lastly Mr. Thakar contended before us that initially the Appellant was assessed and the product of the Appellant was held falling within purview of Central Excise Tariff Heading 7606 for levy of tax at concessional rate. Specifically the assessment order was confirmed in first Appeal by the First Appellate Authority. Thereafter there was visit of officers of Investigation Branch. They suggested the Appellant to make reference to the Commissioner of Sales Tax for correct classification of his product and accordingly, the Appellant was constrained to apply for classification U/s.56(1) (e) of the MVAT Act. In view of this fact, considering the decision given by the Commissioner of Sales Tax, the Appellant may be protected and he should be assessed for concessional rate of tax as per the notification dt. 1st June, 2005 issued under Schedule Entry C-I of the MVAT Act. In support of the contention, Mr. Thakar strongly relied upon the judgment of Gujrat VAT Tribunal in the case of ***M/s. Umiya Flexifoam Pvt. Ltd. V/s. The State of Gujarat in Appeal No.11 of 2007 decided on 17/08/2009*** *and the judgment of Delhi VAT Tribunal in the case of* ***M/s. Gurind***

Traders V/s. Commissioner, Trade & Taxes, Delhi in Appeal No.06/ATVAT/06-07 decided on 29th April, 2013. *According to him,these decisions are under VAT provisions and therefore, they are binding.*

54. We have gone through those judgments. The Notification dt.31/12/2006 published by Government of Gujrat bearing No.GHN-33D/VAT-2006/SCH-II/(42A)(5) is reproduced by the Appellant. Sr. No.172 of the notification describes a product namely "Other plates, sheets film, foil, tape and strip of plastics, non-cellular, whether lacquered or metalised or laminated and not reinforced laminated supported or similarly combined with other materials" and attempt was made by Mr. Thakar to contend that product falls within purview of entry pertaining to industrial input. We are not inclined to accept the contention of Mr. Thakar. The entry at sr. no.172 of the notification issued by Government of Gujrat, there is no reference in Central Excise Tariff Heading and therefore the general rules of interpretation are different as applied by Gujrat VAT Tribunal.

55. So far as the contention of Mr. Thakar in respect of granting prospective effect is given, Ms. Naira contended before us that Sec. 56(2) of the MVAT confers the power upon the Commissioner of Sales Tax to resolve on disputed question and has power to direct that the determination not to affect the liability of the Appellant or other person till the date of order. The sub-section 2 of Sec.56 makes it abundantly clear that discretion is vested with the Commissioner either to grant prospective effect or to refuse to grant such prospective effect depending upon the facts and circumstances of the case. As far as the case at hand is concerned, the contention of the Appellant that he was mis-guided by the order dt.22 September, 2010 in the case of Kevin Impex Pvt. Ltd. appears to be incorrect, because the judgment in the case of Rana Enteprises (cited supra) was delivered on 8th February, 2011. It is settled position of the law that ignorance of law has no excuse, particularly in the field of taxation. It also appears that Reference is made to the Commissioner under Sec.56(1) on 10/12/2012 i.e. almost after two years. In such circumstances, we do not

find force in the contention of the Appellant that the Appellant is entitled to claim protection till date of determination order. Further, it would be profitable to see the observations of the Hon'ble Bombay High Court in the case of ***Lalbaugcha Raja Sarwajanic Ganeshotsav Mandal*** ***(MVAT Tax Appeal No.10 of 2015),*** *wherein prospective effect was claimed. The Court observed as under :*

> *"10. On plain reading of both the sub-sections (1) and (2) of Section 56, it is apparent that the Commissioner may direct that the determination shall not affect the liability under the MVAT Act of the applicant or if the circumstances so warrant, of any other persona similarly situated, as respects any sale or purchase effected prior to a determination. Therefore, this is not a mandate but a discretionary power vested in the Commissioner. This discretionary power has to be exercised and while exercising it, the Commissioner, has to be guided by certain inbuilt checks and safeguards. He cannot in the garb of giving relief of the nature contemplated by sub-section (2) totally wipe out the liability of any and every dealer.*
>
> *11. The Commissioner is expected to exercise this discretionary power so as not to defeat the law or render its provisions meaningless or redundant. The power must be exercised bearing in mind the facts and circumstances in each case. No general rule can be laid down. The exercise of this discretionary power must be bonafide and reasonable so also subserving the larger public interest. The highest officer in the hierarchy is chosen by the legislature as there is a presumption that this executive functionary will exercise the discretion in genuine and bonafide cases. He must be satisfied that there is a real need and the circumstances warrant exercise of the same. The power being wide the satisfaction must be backed by cogent and strong reasons which can be tested in a Court of law.*
>
> *12. The words are of wide amplitude and if the Commissioner exercises the discretion injudiciously or*

> ***arbitrarily and contrary to the object and purpose sought to be achieved by the enactment itself, his exercise of the discretionary power is always capable of being questioned. Therefore, when the Commissioner finds that there was never a disputed question to be determined and the law is very clear and free of doubt, equally its applicability, then, refusal by the Commissioner to exercise the discretion is rightly upheld by the Tribunal. Just as the Commissioner was obliged to assign reasons for not exercising his discretionary power equally the Tribunal was in upholding his order. The Tribunal in paragraph 22 of its order found that the entire process was utilized so as to delay compliance with the mandate of the Act. The Tribunal has also found that the Commissioner refused to grant relief holding that there is no ambiguity in the provisions and there is no scope, for any doubt arising out of the provisions and relevant for the purpose of the determination. The reasons that are assigned by the Commissioner for refusing to give prospective effect to his determination order, have not been found to be suffering from any error of law apparent on the face of the record or perversity warranting interference in the appellate jurisdiction of the Tribunal."***

In view of the above observations of the Hon'ble Bombay High Court, we do not find it necessary to discuss in detail the decision relied by the Appellant of this Tribunal in respect of granting prospective effect. Suffice it to say that these decisions are based on the facts and circumstance of those individual cases and they cannot be said to have laid any binding precedent. Whether to grant prospective effect or not is a discretion vested in the Commissioner of Sales Tax and the same is required to be used judiciously. In our considered opinion, there is no reason to interfere with this discretionary power of the Commissioner of Sales Tax unless there are pressing reasons such as legal ambiguity in the interpretation of the entry or statutory misguidance. There is no such case. The prospective effect can't be granted on the ground that some other importers/ traders also paid tax @ 4% or 5%. Whether the revenue has regarded the item @

4% or 5% is relevant to grant prospective effect, and not what other importers / traders have done. It is clear that Appeal orders in the case of Appellant M/s. Kevin Impex Pvt. Ltd. are revised by the appropriate Authorities. Therefore, it is clear that revenue has not regarded ACPs taxable @ 4% or 5% as the case may be. In view of this, we hold that the Commissioner of Sales Tax has rightly rejected the request of the Appellant to grant prospective effect. Therefore, we pass the following order :

ORDER

VAT Appeals Nos.278, 279 and 280 of 2015 are dismissed. Request of the Appellants to grant prospective effect is also rejected.

No order as to costs.

Copy of this judgment and order be kept in all the above proceedings."

17 Learned Senior Counsel for the Appellants have argued that the decision of the Tribunal that the classification of aluminium composite panel is under the Heading 76.10 since ACP is either parts of structure or products prepared for use in structure is incorrect. It is submitted that the Tribunal has relied upon the last leg of the Heading i.e. prepared for use in structure to decide the classification of ACP under CET 7610. That ACP is neither prepared for use in structure nor is ultimately used in structures. That in the present case ACP is manufactured and cleared in sheet form of standard sizes, specifications including 4 feet x 8 feet or 4 feet x 10 feet etc. from its factory without undertaking any process on it such as drilling, bending, notching etc. Further, after clearing ACP from its factory various other

processes are performed on the ACP by the customers. It is submitted that the explanatory notes for Heading 7610 explain the details which are covered under the heading. Explanatory notes for Heading 7610 state that the provisions of Explanatory Note to Heading 7308 will apply mutatis mutandis.

18 The Explanatory Note to Heading 7610 reads as follows :

> *"The provisions of the Explanatory Note to Heading 73.08 apply, mutatis mutandis to this heading"*

Both, Heading 7308 and Heading 7610 fall under Section XV of the HSN which covers "Base Metals and Articles of Base Metal." Section Note (c) to Section XV reads as follows :

> *"In general, identifiable parts of articles are classified as such parts in their appropriate headings in the Nomenclature."*

19 The Explanatory Note under Heading 7308 *inter alia* reads as under :

> *"This heading covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheeets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc.*
>
> *Parts of structures include clamps and other devices specially designed for assembling metal structural elements of round cross-section (tubular or other). These devices usually have protuberances with tapped holes in which screws are inserted, at the time of assembly, to fix the clamps to the tubing.*
>
> *The heading also covers parts such as flat-rolled products, "wide flats" including so-called universal plates, strip, rods, angles, shapes, sections and tubes, which have been prepared (e.g., drilled, bent or notched) for use in structures."*

20 It is submitted that the items covered are those which are essentially prepared for use in structures in such form and therefore Heading 7610 covers goods that are specifically prepared for use in structures by undertaking further processes such as drilling, bending, notching etc. Without such processes, such items cannot be covered under Heading 7610. That could be the meaning of specifically prepared for use in structures. Unless the processes as above are performed on the products and such products are cleared with standard sizes, then such products will not fall under the Heading 7610. Therefore, the carrying out of any of these processes before clearing from the factory is a must in order to classify such products under the Heading 7610. It is submitted that, therefore, the ACP cleared by the Appellants cannot be treated as item prepared for use in structures classifiable under the Heading 7610 under Central Excise Act 1985.

21 Further, it has been submitted that the contention that ACP would fall within CET Heading 7610 as Aluminium plates prepared for use in structure has been raised by Revenue without leading any evidence and that impugned goods do not fall under the expression “prepared for use in structure”. That, the burden to prove classification claimed by the Revenue is on the Revenue.

22 Without prejudice to the foregoing, it is submitted that Heading 7610 covers (i) structures, (ii) parts of structures and (iii) aluminium plates, rods, profiles, tubes and the like, prepared for use in structures. The last part of the expression “aluminium plates, rods, profiles, tubes and the like” do not cover “aluminium sheets”. That the Glossary of Terms relating to aluminium and aluminium alloys, published by the Bureau of Indian Standards defines a “Plate” as 6 mm or thicker and a “Sheet” as between 0.15 mm and 6 mm which also suggests that Heading 7610 only includes “plates, rods, profiles, tubes and the like” which are capable of bearing a load, and not “sheets” which are not load bearing. It is submitted that ACP Sheets are expressly mentioned in Heading 7606 and cannot be brought into Heading 7610 by using the phrase “and the like”.

23 It is submitted that even assuming that ACP “Sheets” fall within the “expression plates, rods, profiles, tubes and the like, prepared for use in structures” even then plain unworked ACP sheets are not covered by Heading 7610. The HSN Explantory Notes to Heading 7308 point to the fact that “prepared for use in structures” means drilling, bending or notching the article of aluminium. Admittedly, the Appellant’s do not carry out any such activities on the impugned goods. For ease of reference, the HSN Explanatory Note is extracted below :

> *"The heading also covers parts such as flat-rolled products … … which have been prepared (e.g.. drilled, bent or notched) for use in structures."*
>
> *(emphasis supplied)*

24 Referring to the case of **D&M Building Products Pvt. Ltd. vs. Commissioner of Customs, Bangalore**[1] relied on by the Revenue, it is submitted that the product i.e. "cut to size" aluminium profiles (not Sheets) were imported as per the specifications requested for by the customer. All that was to be done at the site was to assemble it by drilling and punching. The Tribunal held that cut-to-size aluminium profiles imported by the assessee met the exact specific requirement i.e. "cut-to-size" and hence, was "prepared for use" in structure.

25 That, further, in the case of **D&M Building Products Pvt. Ltd. vs. Commissioner of Customs, Bangalore**, the article in question was Aluminium "Profiles", which is specifically mentioned in Heading 7610 under "plates, rods, profiles, tubes and the like, prepared for use in structure", whereas, "Sheets" are not. Though Heading 7606 covers aluminium plates, sheets and strips, of a thickness exceeding 0.2 mm, Heading 7610 contains no reference to "sheets and strips".

26 Further it is submitted that the expression "parts of structures" is not the same as parts for general use. The same has to be understood as per the

1 CESTAT Bangalore decision dated 28 June 2019

HSN Explanatory Note to Heading 7610 where such expressions appear, applies *mutatis mutandis* to Explanatory Note to Heading 7608.

27 Therefore, for a product to be covered under Heading 7610, it has to be an "identifiable part of a structure". It is submitted that the expression "parts of structures" means identifiable parts of structures, that have acquired a shape or characteristic, such that they can be recognised only as a part of that structure, and not otherwise.

28 The example of "parts of structures" in the HNS explanatory notes to Heading 7308 (Bridges and Bridge Section, doors and windows and their frames, thresholds for doors, roofs, roofing frameworks etc.) makes it clear that reference to "parts of structures" is only to those parts which are identifiable with that structure. A bridge Section is identifiable with a bridge. Similarly, doors and windows are identifiable with a building.

29 That, a bridge Section has no other use/purpose, other than becoming a part of a structure viz. a bridge. Another example is the door of a car, which when customized and designed for a particular car, becomes clearly "identifiable" as a "part" of a car, and has no other use/purpose.

30 In view of the above, it is submitted that plain ACP sheets are not "identifiable parts of structure" and it is only after cutting, drilling, grooving etc., they may become an "identifiable part of a structure", which is not the case here.

31 It is submitted that the Hon'ble Supreme Court in the case of **CCE, Delhi vs. Insulation Electrical (P) Ltd**.[2] inter alia held that "a part is an essential component of the whole without which the whole cannot function".

32 It is submitted that if the aforementioned test is applied, it is clear that the ACP Sheets sold by the Appellant are not parts of a building, since a building is complete even without ACP cladding. However, a building is not complete without doors and windows and therefore, these products are "parts of structure". Similar are the examples given under 7610 viz. bridges and bridge sections, roofs, roofing frameworks etc. ACP cladding only gives an aesthetic look to the building and therefore, is not a "part of a structure".

33 It has also been submitted that ACP does not have load bearing capacity and is typically used as decorative material.

34 For the aforementioned reasons, it is submitted that the impugned goods cannot be classified under Heading 7610, either as "parts of structures" or "aluminium plates prepared for use in structures".

2 2008 (224) ELT 512 (SC)

35 Ms. Jejeebhoy, learned Special Counsel for the Revenue supports the MSTT judgment and submits that the question of classification is a question of law and requires consideration of this Court.

36 Learned Special Counsel relies upon the Technical Manual described as Eurobond Manual to submit that none of the Appellants raised any objection to the said Manual before the Tribunal. She further submits that as can be seen from the Manual, which she submits is not advertising material, that the subject product is not being sold in running length sheets or coils but in fact is being subjected to processes such as coating and cutting to desired size so as to prepare it for use as part of a structure.

37 Learned Special Counsel would submit that the Appellants DDQ annexed a note of manufacturing process of the ACP and the Appellants have admitted that the product has aluminium coated coils, that the final ACP is trimmed and cut to the desired sizes and that the composite sheets are eventually laminated with protection film on the top. All this, learned Special Counsel submits, is further elucidated in the Technical Manual on record. She would submit that before using the composite panel there is a coating of Polyvinylidene difluoride (PVDF) to be applied which is to prepare the ACP for use in an exterior structure. Learned Special Counsel refers to the Eurobond Manual and submits that the coating is an essential component

of the ACP which is the subject matter of these Appeals. That the coating is applied so as to prepare the ACP for use as an external part of a structure as can be seen from the description of the coating as well as he predominant use of the ACP. Learned Special Counsel submits that ACP is admittedly trimmed and cut to the desired size as can be seen from the Manual. It is not the case that the ACP is sold by the Appellants as a standard product, even though it may have a standard size which is most commonly used. She would submit that it is an admitted fact that the predominant use of the ACP is for external cladding or facades of buildings and refers to the Manual in support of her contention.

38 Learned Special Counsel for the Revenue would submit that the ACP falls under Heading 7610 and the same is borne out by the following facts :

"a. Classification tests to be applied – predominant use and common parlance test bear out that the product ACP is part of a structure;

b. Alternatively, the ACP has been "prepared for use in structures";

c. CETH 7610 is more specific and hence should be preferred to CETH 7606;

d. The wording of CETH 7610 cannot be read in a restrictive manner as contended by the Appellant;

e. Under Indian law, ACP has been classified under heading 7610. The decision relied on by the Appellant is per incuriam and in any event distinguishable from the facts of this case.

f. Under the Rules for interpretation of the CET Act ("the CET Rules"), Heading 7610 is to be preferred to Heading 7606.

39 With respect to ACP being part of a structure, learned Special Counsel refers to the common parlance theory as elucidated by the Hon'ble Apex Court in **Alpine Industries vs. Collector of Central Excise**[3] and submits that the terms and expressions used in tariff have to be understood by their popular meaning i.e. the meaning attached to them by those using the product. She submits that where an entry links a taxable object with the general or ordinary use, it is necessary for the authority to consider the general use of the product and the deciding factor is the predominant or ordinary purpose or use and it would not be enough to show that the article can be put to other uses also. It is its general or predominant user which determined the category in which an article would fall. Learned Special Counsel refers to the decision of the Hon'ble Apex Court in the case of **M/s. Annapurna Carbon Industries Co. vs. State of Andhra Pradesh**[4].

40 Learned Special Counsel would submit that considering the predominant use of the product as can be seen from the Manual, the Heading 7610 which refers to the use of the product as part of a structure or prepared for use in a structure, and therefore, the usage cannot be ignored.

41 Referring to the decision of the Lahore High Court in the case of **Md. Umar vs. Fayazuddin**[5], the learned Special Counsel draws our attention to paragraph 3 thereof as under :

3 (2003) 3 SCC 111
4 (1976) 2 SCC 273
5 AIR 1924 Lah 172

> *"3. ... The word "building" or "structure" is not defined in the Act but it may be stated that every building is a structure though every structure is not a building and the word "structure" can be applied to a wall or shed or any other unsubstantial erection for which the word "building" cannot be used."*
>
> *(emphasis supplied)*

She submits that the meaning of term structure is extremely wide and includes not only buildings but also a wall, shed or other unsubstantial erection.

42 She also refers to the decision of the Hon'ble Apex Court in the case of **Indian City Properties Ltd. vs. Municipal Commissioner of Greater Bombay**[6] and particularly paragraph 19 thereof to submit that the word "structure" is wider than the term building. The term structure is wide enough to include a wall and certainly includes a building. It also includes the other structures referred to in the Eurobond Manual in which ACP is a part (viz. Exteriors of Multi Storey Apartment, Curtain Wall, Industrial & Commercial Constructions, Wall Cladding, Hospitals, Parapet Walls / Copings etc). The word building includes within its scope the fabric of which it is composed. Where ACP is used in the building, this is part of the structure. Accordingly, since the predominant use of ACP is as part of buildings, it follows that ACP is part of a structure. Since the predominant use of the ACP is as part of a wall / structure, it would fall within CETH 7610.

6 (2005) 6 SCC 417

43 Learned Special Counsel addresses this Court with respect to ACP prepared for use in structures as well and clarifies that that an article like ACP may be both prepared for use in structures and part of a structure as it is logical that a part of a structure would be prepared, as required, to be used in the structure. However, even assuming the ACP is not held to form part of the structure, the ACP sold by the Appellants has clearly been prepared for use in structures as, in the present case, it is an admitted position that the Appellant's product is cut to the desired size and coated.

44 It is submitted that apart from the fact that the ACP is prepared for use in structures by application of the PVDF coating, it is also cut to the requisite size by the Appellants which is a further act of preparing it for use in the structure. Learned Special counsel would submit that the Appellants' have contended that the cutting is only to make the ACP a standard size. She submits that this contention appears to be an afterthought and is contrary to their assertion in the Appellants' own Process Description that the ACP "is trimmed and cut to the desired sizes". She submits that the Technical Manual and website of 4Mann Industries Pvt. Ltd. bear out that the ACP is trimmed / cut to the desired size before sale.

45 With respect to the Appellants reliance upon the Explanatory Note to HS Heading 7308 to contend that the word "prepared" means "drilled, bent

or notched" learned special Counsel would submit that these are merely examples of means of preparation. This is not an exhaustive definition of the word prepared nor does the listing of such examples preclude other means of preparation from bringing a product within the purview of CETH 7610. In the case of ACP, the preparation has taken place by coating the ACP for external use and/or cutting it to the requisite size. This, learned Special Counsel submits, is further borne out by Department Clarifications by which such flat rolled products of aluminium subjected to a process like trimming for being used as building materials are parts of structures and fall within heading 7610.

46 Learned Special Counsel further submits that the mere fact that there may be some further drilling or size adjustment at the site would not change the essential character of the product and it would still be classifiable under CETH 7610. Learned Special Counsel relies upon the case of **D&M Building Product Pvt. Ltd. vs. Commissioner of Customs (supra)** where she submits that at para 8 the CESTAT held that the product, aluminium profiles, would fall under CETH 7610 even though they were being cut, drilled etc at the site. Reliance has also been placed upon the decision in **Commissioner of Central Excise v Pushpadeep Enterprises**[7]. At para 9 the Court held that the process of "cutting, grooving and routing of aluminium sheets to make composite panels amounts to manufacture as a new product emerges. The goods in the

7 2010 SCC Online Kar 5363

instant case cannot be equated with the aluminium sheets in running length used for manufacturing of the aluminium composite panels." Since the Appellants in the present case are admittedly cutting the sheets to the "desired size" and then selling them for use in structures, the ACP sold by the Appellants fall within the scope of CETH 7610, even assuming some additional work may be done at the site.

47 Learned Special Counsel would submit that, therefore, the entry 7610 is more specific and should be preferred to entry 7606 as per the Rules of Interpretation of Entries. She relies upon the decision cited by the Tribunal in support of the Revenue's case that the subject ACP falls under entry 7610. Learned Special Counsel would submit that the decision of the Tribunal, therefore, needs to be upheld and the question to be answered in favour of the Revenue and against the Appellants.

48 Learned Counsel for the Appellants have strenuously argued that the Tribunal being a final fact finding body ought to have, at the least, given a finding whether cutting to size of the subject aluminum sheet would make it prepared for use in a structure. Learned Senior Counsel refer to paragraph 41 quoted above and submit that there is no independent finding nor any application of mind to the factual aspects except dealing with judgments. It is also submitted that the technical manual referred to in paragraph 41 is not a manual published by the industry but by one of the Appellants viz. M/s.

Eurobond Industries Private Limited. It is further submitted that on the basis of the said manual, the Tribunal has erroneously come to a conclusion that the said aluminium sheet falls under Heading 7610 and that too on the basis that it was “cut to size”. Learned Senior Counsel submit that there is no reasoning given to distinguish the opinions of the Worlds Customs Organisation as cited on behalf of the Appellants, except paragraph 41.

49 We observe from the impugned decision that although many of the arguments with respect to the two Headings 7606 and 7610 have been recorded by the Tribunal and undoubtedly, classification of a product would be a question of law, the factual findings as to whether the subject ACP was prepared for use in structure or part of structure which was a critical finding, which the MSTT appears to have missed out. Except paragraph 41, the learned Tribunal has failed to give any finding with respect to subject ACP in the context of the product description, its manufacture, its end use, the various principles including essential characteristics as well as the predominant use. There is no finding as to whether the subject aluminium panel is not a aluminum plate or sheet or a strip of thickness exceeding 0.2 mm nor a finding that the same is part of a structure or prepared for use in structures to come to a conclusion that it falls under Heading 7610. Nowhere the Tribunal has distinguished the opinions published by the Worlds Customs Organization.

50 In our view, it was necessary for the Tribunal to consider the submissions made on behalf of the Appellants as well as the Respondent Revenue and give factual findings with detailed reasoning before confirming the orders of the Commissioner and dismissing the Appeals. The Tribunal is the last fact finding authority and is expected to come to a conclusion of a product under a Heading after a detailed factual analysis of the product in question and not merely on the basis of judgments cited before it. In our view, the Tribunal ought to have independently come to a conclusion after considering and exhaustively dealing with the material furnished by the Appellants. To this extent, we agree with the submissions made on behalf of the Appellants. We are, therefore, not inclined to express any opinion on merits.

51 In this view of the matter, we deem it appropriate to remand the matters back to the Tribunal. Accordingly, the common judgment of the Tribunal dated 27th February, 2017 is hereby set aside. The Tribunal is directed to pass a fresh order / judgment after considering and dealing with all the factual submissions made on behalf of the Appellants as well as the Respondent Revenue and particularly a finding on whether or not the aluminum composite panel as used in the context of the business of the Appellants would simply be aluminum plates or strips of a thickness exceeding 0.2 mm or aluminum plates, rods, profiles, tubes and the like,

prepared for use in structures or parts of structures. All questions and contentions are left open. The question of law is returned unanswered. The Appeals, accordingly, stand disposed. No costs.

(ABHAY AHUJA, J.) (DHIRAJ SINGH THAKUR, J.)