

Read : Application dt.07.04.2015 (received dt.08.04.2015) by M/s. 3A Composites India Pvt. Ltd.
Heard : Sh. D.L. Jadhav [Advocate] and Shri S.K. Loonkar [Chartered Accountant].

PROCEEDINGS

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

No.DDQ/11-2015/Adm.6/5/B - 4

Mumbai, dt. 17/02/2016

The applicant, M/s. 3A Composites India Pvt. Ltd., holder of TIN 27360012457V and having address as Unit 852, 5th floor, Solitaire Corporate Park, Andheri Kurla Road, Andheri (East), Mumbai-400 093, seeks determination of the rate of tax on "Aluminium Composite Sheets" sold under description 'ALUCOBOND 101 WHITE 16' in invoice no.000662/14-15 dt.21.10.2014.

02. FACTS OF THE CASE

The application is reproduced verbatim thus :

"1.0. Preamble:

1.1. We are a registered dealers under Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as 'MVAT Act' for short).

1.2. We are the manufacturers of goods which are commonly known in the market as 'Aluminium Composite Sheets'. We have a manufacturing facility at Survey No.5, Hissa No. 1A, 1B, 1C, Khopali Pali Road, Parali, Tal. Sudhagad, Dist. Raigad, Maharashtra and another facility at Plot No. B 32/1/1, MIDC, Ranjangoan, Dhoksangavi, Tal Shirur, Dist. Pune, Maharashtra. We are clearing the goods from our factory premises under Central Excise Tariff Heading 7606. We are holding valid Central Excise registration for clearance of goods under the said Tariff Headings.

1.3. We are desirous to know the correct rate of tax applicable in respect of the 'Aluminium composite Sheets' in respect of their sale transaction evidenced by Taxcum Excise Invoice No.000662/14-15 dated 21.10.2014 raised on purchaser, M/s. Do Well Interiors and Contractors, Maharashtra. For your ready reference, a copy of said Tax cum Excise Invoice is enclosed herewith marked as Exhibit A.

1.4. We confirm that the issue of applicability of tax rate on the aforesaid goods is not involved before Tribunal or any Court in own matter. We also confirm that they have nor received any notice for assessment under section 23 of the MVAT Act, 2002, in respect of the period or the year in which the aforesaid transaction under reference falls. Therefore, we submit that they are entitled to raise the aforesaid legal question as regards the determination of correct rate of tax applicable to the impugned goods.

2.0. Our View:

2.1. As per our understanding, the product 'Aluminium Composite Sheets' is squarely covered by Schedule entry 6 of Schedule C appended to the MVAT Act, 2002 read with Notification dated 01.06.2005 issued under the said Schedule entry 6. Therefore, according to us, the impugned goods attract tax @4% (upto 31.03.2010) and 5% from 01.04.2010 onwards under the MVAT Act, 2002. Accordingly, we have collected tax separately in the Tax Invoice presented for determination.

2.2. We understand that so far as the State of Maharashtra is concerned, all the manufacturers of aluminium composite Sheets and the dealers who imported goods into the State of Maharashtra from other manufacturers located in other States, have adopted the same view and discharged their respective tax liability @ 4% or, as the case may be, @ 5% under the MVAT Act, 2002 treating the said goods as covered by Schedule entry C-6 of the MVAT Act, 2002.

2.3. Under the above referred Schedule entry C-6, the applicable tax rate is 4% upto 31.03.2010 and 5% from 01.04.2010. The said entry reads thus:

Quote: "Alluminium, its alloys and products as may be notified from time to time by the State Government in the Official Gazette." Unquote.

Under the aforesaid entry, the Government has issued Notification No.VAT-1505/CR-113/Taxation-1 dated 01.06.2005 wherein the scope of "aluminium, it's alloys and products has been pointedly defined in terms of the specific Central Excise Tariff Headings. Entry at Sr. No.6 of this notification refers to Central Excise Tariff Code Heading No. 7606 and it speaks thus: Quote: "Aluminium plates, sheets (including circles) and strips, of a thickness exceeding 0.2 mm." Unquote. It is the understanding of the applicants that the product sold by them is squarely covered by the aforesaid Tariff Heading 7606. Hence, according to us, our product sold through the aforesaid Tax Invoice attracts tax rate of 4% prior to 31.03.2010 and 5% from 01.04.2010

onwards under entry 6 of Schedule C of the MVAT Act, 2002.

2.4. We also understand that the impugned goods are cleared by other manufacturers under the above referred Excise Tariff Heading 7606. According to the market information available to the applicants, all the registered dealers of Maharashtra dealing in aluminum composite sheets have collected tax at @4% or 5% under the aforesaid Schedule entry C-6 and accordingly paid taxes into the Government Treasury.

3.0. Brief Description of the product:

Briefly stated, the aluminium composite sheet is nothing but the sandwiching of plastic sheet of desired size and shape in between the aluminium coils. In other words, aluminium sheets are wrapped or fastened on both sides of plastic sheet. The raw materials required in the process of manufacture of aluminium composite sheets are: LDPE granules, colour pigments, aluminium sheet, adhesive film and surface protective film etc. The surface protective film is just for protection of outer face of composite sheets and it is removed once aluminium composite sheets are used or applied.

4.0. Manufacturing Process:

The standard manufacturing processes undertaken in the manufacturing of aluminium composite sheets are briefly described below:

(a). Blending: The LDPE granules are blended with colour and dried in the drier to reduce moisture in the LDPE.

(b). Extrusion: The dried LDPE blend is mixed with polyglue granules and the mixture is fed into the extruder and LDPE sheets of required thickness are obtained. Sometimes adhesive films are used as binding agent instead of polyglue. In that case, Calendaring process mentioned below is carried out.

(c). Calendaring: The adhesive films are fixed on both sides of LDPE sheets with the help of Calendaring machine.

(d). Compositing: Adhesive film coated LDPE sheets are composited with Aluminium Coated coils on both sides of the sheet.

(e). Cooling /Trimming: The composed sheets are cooled and laminated with protection film on top of aluminium composite sheets. The aluminium composite sheets so manufactured are trimmed and cut to desired sizes.

(f). Marking: The marking is carried out including the marking of manufacturing date, batch no. etc.

(g). Quality Checks: Checks are carried out to identify the defects in manufacturing, if any.

(h). Packing & Dispatch: After carrying out all above processes, the finished product is packed and is ready for dispatch to the customers.

5.0 Applications:

Aluminium Composite Sheet is compounded with top and bottom layer of aluminium coil, polyethylene core material. Aluminium Composite sheets are used within the signage industry, Display panels, point of sale display, cladding etc.

6.0. Main submission:

We have cleared the goods from Central Excise Tariff Heading 7606. Since the Central Excise authority has allowed clearance of goods under Tariff Head 7606, there should be no controversy as to the inclusion of goods by Schedule entry C-6, by virtue of clearance of goods under the aforesaid Tariff Heading. Since the goods are covered under the main heading itself, there is absolutely no need to go to sub-Headings.

6.2. According to us, the aluminium composite Sheet is squarely covered by Tariff Heading 7606. The rules of interpretation given in the notification under the caption, 'Note' do not present any hurdle in the aforesaid interpretation. There is complete compliance of all the four golden rules prescribed under the aforesaid caption. Since the notification issued under entry 6 of Schedule C speaks in terms of the main Tariff Heading 7606 and when the goods are cleared under the said Tariff Heading, then there is no question of exclusion of certain items by applying the rule of exclusion as explicitly provided therein. Anything that is covered under that Tariff Head will automatically will get covered by the notification and thereby gets covered by Schedule entry C-6 of the MVAT Act, 2002.

6.3. The notification issued under Schedule entry C-6, is a piece of referential legislation. The reference is to Tariff Heading 7606 so as to precisely define the scope of expression, namely, "aluminium plates, sheets (including circles) and strips..." for the purpose of the said entry. Here, the Sales Tax Authorities have no active role to play in the matter of interpretation. What is covered in the Tariff Heading 7606 stands automatically covered for the purposes of Sales Tax Notification. By implication, it means the meaning assigned to the above expression under Central Excise Tariff Law is only of primary importance. The Sales Tax authorities are only required to ascertain as to whether the Central Excise authority cleared goods under given specified Tariff Heading or not. In the instant case, since the goods are cleared under Tariff Heading 7606, they are clearly covered by Schedule entry C-6. The Sales Tax authority is not even expected to undertake pains of entering into finer aspects of four golden rules of interpretation prescribed under caption 'Note' for the simple reason that in the instant case only the main Tariff Heading is

mentioned in the Notification and hence there is no question of exclusion of anything from Tariff Heading 7606.

7.0. Case Law:

We wish to rely on the judgment of Supreme Court in the case of State of Andhra Pradesh v/s. Concap Capacitors (10 VST204 (SC)). In this case, the Apex Court has held that once item is to be classified as per the classification done by some other authorities then the Sales Tax Department is not entitled to have its own interpretation. The interpretation made by such referred authority is to be accepted without any demur. The gist of the above Supreme Court judgment is as under:

"The respondent claimed that the capacitors manufactured by them were exigible to tax at a concessional rate as 'electronic goods', in view of G.O.M. No.520 dated July 20, 1988, issued by the State Government under section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957, as well as a similar notification (No.521) issued under the Central Sales Tax Act, 1956. Upon representations seeking clarifications the Government issued a Memo dated June 1, 1989, that the list of electronic items prepared by the Electronic Commission might be followed for the purposes of concessional rate of tax on 'electronic goods'. The list of electronic items prepared by the Electronic Commission included "plastic film capacitors". The Commissioner of Commercial Taxes also issued a circular dated July 13, 1989, enclosing a copy of list prepared by Electronic Commission. The Appellate Tribunal, however, applied the "operating principle" or the "user test" and held that the capacitors were not "electronic goods". On revision petitions filed by the respondents, the High Court held that, in view of the relevant material, it was clearly established that "capacitors" would fall under the category of "electronic goods" and once the list of electronic items prepared by Electronic Commission included "capacitors", the Tribunal was not justified in considering the question on the basis of the 'operating principle'. On appeal, to the Supreme Court, Supreme Court held that the decision of High Court, (i) that from Government Orders and the Circular issued by the Commissioner, it was clear that capacitors could be said to be "electronic goods" and were covered by the concessional rate of tax, when the Electronic Commission had prepared list which contained the item "capacitors". It had to accept by the Department and tax could only be levied on the basis of such classification.

Supreme Court further held that when the item had been specifically included in the list prepared by the Electronic Commission, the Tribunal could not have applied the "functional test", "operating principle" or the "user test". The Tribunal was required only to make only a limited enquiry as to whether the item was included in the list prepared by Electronic Commission. If any item was included in the list it had to be treated as such and tax has to be levied on that basis. Only if the item was not included in the list prepared by Electronic Commission, it was open to the Tribunal to consider its placement on the basis of the "functional test"."

Needless to mention that our case is squarely covered by the aforesaid decision of our Supreme Court. Once the item is covered by notified Central Excise Tariff Heading, the Sales Tax Department has to follow the same and they cannot distinguish it in any manner. Further, the scope of enquiry to be made by the Commissioner is limited as to whether the Central Excise authority allowed the clearance of goods under identified Tariff Headings or not. The Sales Tax authority including Commissioner has no scope to go further and enter into the arena of Central Excise Tariff law for further interpretation.

8.0. Circular No. 24T of 2000:

8.1. The Hon'ble Commissioner of Sales Tax, Maharashtra State has issued Trade Circular No.24T of 2000 dated 16.09.2000 in the context of interpretation of Schedule entry C-I-29 under the erstwhile Bombay Sales Tax Act, 1959, which was then read thus: "Industrial inputs and packing material, as may be specified by the State Government, from time to time, by notification by the Official Gazette". In the said Circular, the Hon'ble Commissioner had given clarification as regards the manner and method of interpretation of the entries when they are classified with reference to the Central Excise Tariff Heading. While interpreting similarly placed entry, namely Schedule entry C-I-29 under the erstwhile B.S.T. Act, 1959, the Commissioner has offered clarification as under: Quote:

"(1) Where the heading No. or, as the case may be, sub-heading No. is provided, then all the commodities falling under the said heading or sub-heading of the Central Excise Tariff, 1985, are covered by the notification except for the heading No.3913.

(2) For the Heading No.39.23, the commodities specified in the "description" column only are covered; the other commodities falling under the same heading for the purpose of Central Excise but not species in the notification dated 11th August 2000 are not covered by the notification.

(3) Where the description of the commodity is described as "other" then the commodities falling under said sub-heading as per Central Excise Tariff, 1985 are covered by the notification".

(4)". Unquote

The aforesaid clarification is equally relevant for interpretation of Notification under MVAT Act, 2002.

8.2. We believe that the clarification then given by the Commissioner is binding on the Department. It is well settled that Circular issued by the Commissioner, if favourable to the trade, that will be binding for the Department. It is also a settled position of law that, though Circular is binding for the Department, it is not binding for the dealer. In this regard we would like to invite attention to the judgment of Supreme Court in the case of Indra Industries (122 STC 100 (SC)). In short, the clarification then given by the Commissioner is binding on similarly placed entry even under the MVAT Act, 2002.

9.0. Bunge India (39 VST 213 (Bom)).

It is crystal clear that in the State of Maharashtra, all manufacturers and all traders dealing in the aluminium composite sheets, have paid tax at the rate of either 4% or 5% since the advent of VAT era, then by adopting the principle of parity as pronounced by the Bombay High Court in the case of Bunge India (cited supra), the rate as actually in practice needs to be declared as the correct rate of tax applicable to the aluminium composite sheets on the principle of parity. If required, we will place more material on record to strengthen this submission.

10.0. It is only a settled principle of law that in the event of genuine doubt about the application of correct rate of tax, then the controversy be resolved by adopting a lower rate of tax as held by Karnataka High Court in the case of Bharat Vijay Mills (85 STC 23 (Kar)). It must be appreciated despite tax payment at @4% or 5% by the entire trade for over a decade, without inviting any objection from the Department, there is sufficient justification for declaration of correct rate as applicable to Schedule entry C-6.

11.0. Other High Court Rulings:

There are rulings of other High Courts such as Andhra Pradesh, Kerala, Tamil Nadu, Uttar Pradesh, Gujarat etc. on the very product, namely, the aluminium composite sheets. All such rulings tilt the scale in favour of us. We would like to elaborate on the basis of such judgments at the time of hearing of this petition.

12.0. Additional Evidence:

There are already decided cases of other High Courts in respect of the very product, aluminium composite sheets. In the same way, we will also place on other relevant evidence from the market to sustain their submissions. We would also place on record the sample of the product under consideration and may also demonstrate the user of this particular product during the course of hearing of this matter.

13.0. Prospective effect u/s. 56(2):

13.1. In case, the Hon'ble Commissioner is not pleased with the submissions made herein above or will be made in the course of hearing of this petition, then we would request the Hon'ble Commissioner to grant prospective effect under section 56(2) of the MVAT Act, 2002 to his order so as to protect the enhanced tax liability for the past periods. The very fact that all registered dealers dealing in aluminium composite sheets, whether as manufacturers, importers or traders have paid tax @4% or 5% (depending on particular date) right from the advent of VAT era, clearly necessitate the prospective effect. It cannot be presumed that all the dealers that are manufacturers, importers and traders were guided by mala fide intentions of reaping undue tax benefit.

13.2. We would elaborate on the point of giving prospective effect to the determination order of the Commissioner, in case the Hon'ble Commissioner is not impressed by our submissions made herein above.

14.0. Prayer:

We request to take the Hon'ble Commissioner to take up the present petition for early disposal on merit as expeditiously as possible."

03. SCRUTINY

The facts as made in the application were examined by me. The product in question is stated to be "Aluminium Composite Sheets" and is sold under description 'ALUCOBOND'.

Now, there is a determination order No.DDQ-11/2012/Adm-6/49-51/B-5 dt.05.01.2015 in the case of M/s.Kevin Impex Pvt. Ltd., M/s.Prime Bond Industries and M/s.Eurobond Industries Pvt. Ltd. wherein it was held that 'Aluminium Composite Panels' are not covered by the Central Excise Tariff Heading (CETH) 7606 and therefore not covered by the notification issued for the purposes of schedule entry C-6 of the MVAT Act,2002. Instead, it was held as covered by the residuary schedule entry E-1, thereby taxable @ 12.5%. A reference to this determination order is made as the product in the present proceedings and the said product are identical and therefore,

a determination as to its rate of tax already exists. The similarities could be seen thus :

Particulars	ALUMINIUM COMPOSITE PANEL (PRODUCT IN EARLIER DETERMINATION ORDER)	ALUMINIUM COMPOSITE SHEETS (PRESENT PRODUCT)																											
CETH claimed	SAME FOR BOTH - 7606																												
Schedule entry contended	SAME FOR BOTH - Covered by the description 'Aluminium plates, sheets and strips, of a thickness exceeding 0.2 mm' in notification under schedule entry C-6 of the MVAT Act, 2002																												
Manufacturing Process	Process Description <table><thead><tr><th>Sr.No.</th><th>Function</th><th>Description</th></tr></thead><tbody><tr><td>1.</td><td>Blending</td><td>The LDPE granules are received by the company in bags of 25 kgs. The said granules are blended with colour and dried in the drier to reduce the moisture component in the LDPE</td></tr><tr><td>2.</td><td>Extrusion</td><td>This dried LDPE blend is fed into the extruder and LDPE sheets of required thickness is extruded.</td></tr><tr><td>3.</td><td>Calendaring</td><td>The Adhesive Films are fixed on both sides of LDPE sheets in with the help of Calendaring Machine.</td></tr><tr><td>4.</td><td>Compositing</td><td>Adhesive film Coated LDPE sheets are composted with Aluminium Coated coils on both sides of the sheet.</td></tr><tr><td>5.</td><td>Cooling & Trimming</td><td>The composted sheets are cooled and laminated with protection film on the top of Aluminium Composite Panels. The final Aluminium Composite Panels so manufactured is trimmed and cut to the desired sizes.</td></tr><tr><td>6.</td><td>Marking</td><td>The Aluminium Compite Panels is than marked as per operations for traceability. This includes marking manufacturing date, batch number etc.</td></tr><tr><td>7.</td><td>Scanning for Defects</td><td>The Aluminium Composite Panels is checked for defects. This will check the defects of Coating and Finishing of final product.</td></tr><tr><td>8.</td><td>Packing and dispatch</td><td>The Aluminium Composite Panesls is packed and ready for dispatch.</td></tr></tbody></table> Start with blending, in which the LDPE Granules and Colour Pigments are blended or mixed together, which is then auto loaded in another chamber. The moisture of blended mixture is removed or dried and extruded. After extruding the dried mixture, it is then formed into sheet of desired thickness with help of Calendaring. The LDPE sheets are composited with Aluminum Coated Coils on both the sides which is known as Composting. In cooling stage the Composite Sheets are cooled & levelled and laminated with protection film on the top of Aluminium composite Panel. An Aluminium Composite Panel is taken off after trimming and cutting into desired sizes. Finally you get the finished product of "ALUMINIUM COMPOSITE PANEL".	Sr.No.	Function	Description	1.	Blending	The LDPE granules are received by the company in bags of 25 kgs. The said granules are blended with colour and dried in the drier to reduce the moisture component in the LDPE	2.	Extrusion	This dried LDPE blend is fed into the extruder and LDPE sheets of required thickness is extruded.	3.	Calendaring	The Adhesive Films are fixed on both sides of LDPE sheets in with the help of Calendaring Machine.	4.	Compositing	Adhesive film Coated LDPE sheets are composted with Aluminium Coated coils on both sides of the sheet.	5.	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Extrusion: The dried LDPE blend is mixed with polyglue granules and the mixture is fed into the extruder and LDPE sheets of required thickness are obtained. Sometimes adhesive films are used as binding agent instead of polyglue. In that case, Calendaring process mentioned below is carried out. (c). Calendaring: The adhesive films are fixed on both sides of LDPE sheets with the help of Calendaring machine. (d). Compositing: Adhesive film coated LDPE sheets are composited with Aluminium Coated coils on both sides of the sheet. (e). Cooling /Trimming: The composed sheets are cooled and laminated with protection film on top of aluminium composite sheets. The aluminium composite sheets so manufactured are trimmed and cut to desired sizes. (f). Marking: The marking is carried out including the marking of manufacturing date, batch no. etc. (g). Quality Checks: Checks are carried out to idetify the defects in manufacturing, if any. (h). Packing & Dispatch: After carrying out all above processes, the finished product is packed and is ready for dispatch to the customers. 5.0 Applications: Aluminium Composite Sheet is compounded with top and bottom layer of aluminium coil, polyethylene core material. Aluminium Composite sheets are used within the signage industry, Display panels, point of sale display, cladding etc. Briefly stated, the aluminium composite sheet is nothing but the sandwiching of plastic sheet of desired size and shape in between the aluminium coils. In other words, aluminium sheets are wrapped or fastened on both sides of plastic sheet.
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Raw materials	<u>List of Raw Materials</u> 1. Surface Protective Film (SPF) 2. Aluminium Coil 3. Adhesive Film 4. Low Density Poly Ethelene (Plastic)	The raw materials required in the process of manufacture of aluminium composite sheets are: LDPE granules, colour pigments, aluminium sheet, adhesive film and surface protective film etc. The surface protective film is just for protection of outer face or composite sheets and it is removed once aluminium composite sheets is used or applied.																											
Reliance on case laws	1. State of Andhra Pradesh & Others v/s. Concap Capacitors & Others(10 VST 204) 2. Bharat Vijay Mills Ltd. Vs. Commissioner of Commercial Taxes (and another case) (85 STC 23) 3. Indra Industries (122 STC 100) (SC) 4. Bunge India Pvt. Ltd. (39 VST 213)	} SAME FOR BOTH																											
Reliance on Circular	SAME FOR BOTH - Circular of Commissioner of Sales Tax No.24T of 2000 dt.16.09.2000																												
Request for Prospective Effect	SAME FOR BOTH - Yes																												



From the above Table, it can be seen that the manufacturing process and the raw materials of both the products are the same. The cases relied upon are also the same. The only difference is the terminology used to describe the product. The applicant therein, too, had claimed that the product 'Aluminium Composite Panel' was covered by the description 'Aluminium plates, sheets and strips, of a thickness exceeding 0.2 mm' as notified under the notifications for the purposes of the schedule entry C-6 of the Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002). Though the applicant has preferred to term the impugned product as "Aluminium Composite Sheets", I notice that the products of the applicant are advertised and are well known as 'Aluminium Composite Panels'..... ALUCOBOND® is the "Original" and has been the market leader in aluminium composite panels world-wide since 1969. In view thereof, since a determination order already exists in respect of a product similar to the present one, a reference to the determination order is necessitated. The arguments of the applicant in the said determination proceedings were dealt in the following manner :

"The raw materials and the manufacturing process has been given by the applicants' and has been reproduced hereinafter. From a perusal thereof, it is seen that there are 3 layers - on LDPE sheets, adhesive films are fixed to which Aluminium Coated coils are "composted" (as described by the applicant) on both sides. A protective film is then affixed thereon. The information from the Internet states thus -

"Aluminium composite panel (ACP) also aluminium composite material, (ACM) is a type of flat panel that consists of two thin aluminium sheets bonded to a non-aluminium core. ACPs are frequently used for external cladding or facades of buildings, insulation, and signage.

Aluminium sheets can be coated with polyvinylidene fluoride (PVDF), fluoropolymer resins (FEVE), or polyester paint. Aluminium can be painted in any kind of colour, and ACPs are produced in a wide range of metallic and non-metallic colours as well as patterns that imitate other materials, such as wood or marble. The core is commonly low density polyethylene, or a mix of low density polyethylene and mineral material to exhibit fire retardant properties."

Aluminium composite panel is compounded with top and bottom layers of aluminium sheet, non-toxic polyethylene core material. There's also a protective film. Thus, the product comprises an aluminium sheet bonded to some core material which in the present case is low density polyethylene, a thermoplastic. The product is perceived in the market as a kind of new decoration material with convenience of installation and low cost. They are extensively used in the construction industry, on the exteriors of buildings as curtain walls, paneling and cladding applications.

It is seen that Prime Bond and Eurobond are manufacturers but the manufacturing activity does not take place in the State of Maharashtra. The former has submitted that they are not covered under Excise, however, other manufacturers clear the impugned goods under the CETH 76.06. The latter submits evidence of clearing the goods against CETH 76.06. M/s. Kevin Impex Pvt. Ltd. is a trader and in support of classification under Central Excise have tendered the purchase bill issued by their vendor, M/s. Eurobond Industries. The CETH as seen from the bill is 76061190. Since the entire description against the CETH 7606 has been notified, the applicants' claim that the impugned product is covered under the schedule entry C-6. What needs to be seen now is that whether the impugned product is classified under the CETH 7606. I have come across the following case laws which say otherwise. The same could be seen thus -

In Rana Enterprises V. Commissioner of Customs, Mumbai (2011-(267)-ELT-546-TRIB), the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), the Tribunal has held that the impugned goods are covered under the Heading 7610 under the Customs Tariff Act (which is similar to 7610 under the Central Excise Tariff). The aforesaid case in terms of classification of the impugned goods under CETH 7610 was followed by the CESTAT while deciding the classification in the matter of SAS Developers & Engineers V. Commissioner of Customs, Mumbai (Appeal No. C/892/03 (Arising out Order-in-Appeal No.309/2003 MCH, dt.31.07.2003 passed by the Commissioner of Customs (Appeals), Mumbai), decided on June 26, 2013)."

After referring to the Tariff classification and observing that the Tariff authorities themselves have classified the impugned products under CETH 7610 and not CETH 7606, the then Hon. Commissioner, also referred to the CETH 7610 thus :

"The above cases show that the impugned product is classified under CETH 7610 and not CETH 7606. I may reproduce the CETH 7610 thus -

"Aluminium structures (excluding prefabricated buildings of heading 9406) 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"

As can be seen the Heading covers part of structures or products prepared for use in structures. The impugned product is widely known to be used on the exteriors of buildings. It is, therefore, felt that the classification of the impugned product under the CETH 7610 appears to be appropriate. Further, I find that the word 'plates, sheets and strips' as appearing in the Chapter 76 (Aluminium and articles thereof), have a certain meaning. The Harmonized Commodity Description and Coding System Explanatory Notes (HSN) say thus -

1. In this Chapter, the following expressions have the meanings hereby assigned to them :

.....
(d) Plates, sheets, strip and foil

Flat-surfaced products (other than the unwrought products of heading 76.01), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are :

- of rectangular (including square) shape with a thickness not exceeding one-tenth of the width,
- of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.

Headings 76.06 and 76.07 apply inter alia to plates, sheets, strip and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.

Thus, only those 'plates, sheets and strips' satisfying the criteria as above would fit into the Heading 7606. The heading covers products which have been perforated, corrugated, polished or coated. However, products which have assumed the character of articles or products of other headings due to being perforated, corrugated, polished or coated remain excluded from the headings 76.06 and 76.07. From a look at the description of the impugned product, it is felt that they would not fit into the broad specifications as laid down by the HSN Notes."

The above observations in the determination order show that the HSN Notes were referred to explain what constitutes 'Aluminium plates, sheets and strips' for the purposes of Chapter 76 of the Excise Tariff. The determination order further dwelled on the classification of goods in the Chapter 76 of the Excise Tariff as a whole thus :

"I also find that the HSN Notes in respect of Chapter 76 state thus -

"The Chapter covers

- (A) Unwrought aluminium, and waste and scrap (headings 76.01 and 76.02);
- (B) Aluminium powders and flakes (heading 76.03)
- (C) Products generally obtained by rolling, extruding, drawing or forging the unwrought aluminium of heading 76.01. (headings 76.04 to 76.07).
- (D) Various articles specified in headings 76.08 to 76.15, and other articles of the residual heading 76.16 which covers all other aluminium articles other than those included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature."

The above Chapter Note describes the manner in which the classification of goods is made under the various sub-headings comprising the Chapter 76 for e.g unwrought aluminium in the initial headings, then aluminium powders then products and lastly the articles.

Products covered in the Chapter (headings 76.04 to 76.07)

It is seen that the Chapter covers products under the headings 76.04 to 76.07. It is further clarified that the Chapter covers products generally obtained by rolling, extruding, drawing or forging the unwrought aluminium of heading 76.01. The present product does not seem to fit in this category of Headings covering 'products of aluminium'.

Articles specified in headings 76.08 to 76.15 and 76.16

The Chapter covers articles under the headings 76.08 to 76.15 and other articles in the residual heading 76.16. The HSN headings from 76.04 to 76.07 and 76.08 to 76.16 for products and articles respectively are as follows :

Heading No.	Sub-heading No.	Description of article
76.04		- Aluminium bars, rods and profiles.
	7604.10	- Of aluminium, not alloyed
		- Of aluminium alloys :
	7604.21	-- Hollow profiles
	7604.29	-- Other

76.05		- Aluminium wire.
	7605.11	- Of aluminium, not alloyed :
	7605.19	-- Of which the maximum cross-sectional dimension exceeds 7 mm
		-- Other
	7605.21	- Of aluminium alloys :
	7605.29	-- Of which the maximum cross-sectional dimension exceeds 7 mm
		-- Other
76.06		- Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm.
	7606.11	- Rectangular (including square):
	7606.12	-- Of aluminium, not alloyed
		-- Of aluminium alloys
		- Other :
	7606.91	-- Of aluminium, not alloyed
	7606.92	-- Of aluminium alloys
76.07		- Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm (+).
		- Not backed:
	7607.11	-- Rolled but not further worked
	7607.19	-- Other
	7607.20	- Backed
76.08		- Aluminium tubes and pipes.
	7608.10	- Of aluminium, not alloyed
	7608.20	- Of aluminium alloys
76.09	7609.00	- Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves).
76.10		- 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.
	7610.10	- Doors, windows and their frames and thresholds for doors
	7610.90	- Other
76.11		- Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment.
76.12		- Aluminium casks, drums, cans, boxes and similar containers (including rigid or collapsible tubular containers), for any material (other than compressed or liquefied gas), of a capacity not exceeding 300l whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment.
	7612.10	- Collapsible tubular containers
	7612.90	- Other
76.13		- Aluminium containers for compressed or liquefied gas.
76.14		- Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated.
	7614.10	- With steel core
	7614.90	- Other
76.15		- Table, kitchen or other household articles and parts thereof, of aluminium; pot scourers and scouring or polishing pads, gloves and the like, of aluminium; sanitary ware and parts thereof, of aluminium.
		- Table, kitchen or other household articles and parts thereof, pot scourers and scouring or polishing pads, gloves and the like :
	7615.11	-- Pot scourers and scouring or polishing pads, gloves and the like
	7615.19	- Other
	7615.20	- Sanitary ware and parts thereof
76.16		- Other articles of aluminium.
	7616.10	- Nails, tacks, staples (other than those of heading 83.05), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles
		- Other:
	7616.91	-- Cloth, grill, netting and fencing, of aluminium wire
	7616.99	-- Other

It can be seen that the headings 76.08 to 75.16 for articles of aluminium cover items such as aluminium tubes and pipes, pipe fittings, aluminium structures, aluminium reservoirs, tanks, vats, casks, drums, cans, boxes and similar containers, stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated, table, kitchen or other household articles and parts thereof, of aluminium and other articles of aluminium. Headings 76.04 to 76.07 for products of aluminium cover items such as aluminium bars, rods and profiles, aluminium wire, aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm, aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm. From the description of the products in the headings for products and articles, it is seen that the description meant for the purposes of the "products" covers products which are made from aluminium only such as aluminium wires, bars, rods. These items would be used as raw materials for manufacturing other finished products. Rightly so then one finds them classified as products of aluminium and not as articles of aluminium. A look at the description for articles of aluminium reveals that the items are finished products manufactured using aluminium as the basic/major raw material. Being finished products these articles would not be used individually as raw materials for manufacturing finished products.

In view of all above, it is felt that the impugned product is an article of aluminium. The classification under CETH 7610 providing for parts of structures would be apt. And my inference stands fortified by the decisions under the statutes for tariff classification. Additionally, I also find that the applicants' are relying only on the classification

under Central Excise as shown in their bills. Other than that, I find that no case laws under the Central Excise statute have been tendered in support of the claim under CETH 7606.”

Thus it can be seen that with the aid of the Excise Tariff and HSN Notes, the determination order deliberated upon the classification of the impugned product. The product in the aforementioned determination order was referred to as ‘Aluminium Composite Panel’ whereas the present product is referred as ‘Aluminium Composite Sheet’. We have seen that the ingredients and the manufacturing process of both the products is the same. In view of the products being the same and the arguments and contention being identical, the applicant was sought to be informed that on identical facts, a determination order already exists which may be referred to by the applicant. The letter dt.14.05.2015 informing as aforesaid stated thus :

“This has reference to the application cited above seeking determination as to the rate of tax applicable on ‘Aluminium Composite Sheet’ (the ACS). It has been contended therein that the impugned ACS are liable to be covered by the description “Aluminium plates, sheets (including circles) and strips, of a thickness exceeding 0.2 mm.” as occurring at Sr.No.6 in the notification dt.01.06.2005 issued for the purposes of schedule entry C-6 of the Maharashtra Value Added Tax Act, 2002 (the MVAT Act). In this regard, I am directed by the Hon.Commissioner of Sales Tax to inform you as under:

The issue of classification of ‘Aluminium Composite Panels’ (ACP) under schedule entry C-6 stands concluded through a determination order No.DDQ-11/2012/Adm-6/49-51/B-5 dt.05.01.2015 in the case of M/s.Kevin Impex Pvt. Ltd., M/s.Prime Bond Industries and M/s.Eurobond Industries Pvt.Ltd. A copy thereof is attached herewith. It is held therein that the product ‘ACP’ is not covered by Central Excise Tariff heading 7606 and therefore not covered by the notification issued for the purposes of schedule entry C-6 of the MVAT Act. Instead, it is held covered by the residuary schedule entry E-1, thereby taxable @ 12.5%. From the information submitted by you, it is seen that your product, the ACS goes through the same manufacturing process and that it has all the attributes and functional utility as that of ACP. In view thereof, the aforesaid determination order is squarely applicable to your case. Thus, the issue in your case stands concluded by the said determination order. You are requested to arrange your affairs accordingly.”

However, the applicant requested on a hearing in the matter and no opinion was communicated as to the acceptance or otherwise of the aforementioned determination order.

04. HEARING

The case was taken up for a hearing when Sh. D.L. Jadhav [Advocate] and Shri S.K. Loonkar [Chartered Accountant] attended. The proceedings during hearing are thus :

- When enquired about the product put up for determination and described in the invoice as ‘Alucobond 101 White 18’, it was submitted that the same is a ‘Aluminium Composite Sheet’ and it is specifically argued that the impugned product is not a ‘Aluminium Composite panel’ with emphasis that ‘Aluminium Composite panel’ and ‘Aluminium Composite Sheet’ are two distinct products.
- Their attention was invited to the letter dt.14.05.2015 whereby the applicant was asked to arrange his affairs according to the determination order dt.5.1.2015 in the case of Kevin Impex, Prime Bond and Eurobond. The said letter was sent as the application mentioned the description, process which was same as the one in the aforesaid determination order. Hence they were queried as to whether the determination order for a product of the same description as the impugned product is being claimed as inapplicable. They were also asked to point out and bring to notice any point about the process, product details, manufacturing process as of the present product which could be said to be different from the product in the determination order. To this, it was submitted that the applicant can only vouch for whatever product details, manufacturing process as are stated in the present application for determination.
- Since it is claimed that the aforesaid determination order is not applicable, a submission is given on the lines thus:
 - a) Product is a sheet and not a panel.
 - b) Decision in Rana Enterprises did not discuss about coverage under 7606.
 - c) Heading 7610 covers aluminium Structures, parts of structures and aluminium plates,

rods, profiles, tubes and the like prepared for use in structures.

- With regard to merits, it was submitted that,-
 - a) The product is covered by schedule entry C-6 as it is cleared under CETH 7606.
 - b) The interpretation done by the Excise authorities is relevant and Sales Tax Department has not to carry out their job.
 - c) The cases as mentioned in the application are reiterated (Concap Capacitors, Bharat Vijay Mills, Bunge India). They additionally quoted judgment of the Hon. Bombay High Court in Merind Ltd.
 - d) They requested for prospective effect if their submission is not acceptable.
- A written submission dt.16.09.2015 was given to be kept on record. The same states thus :

1. "For better appreciation of our point of view we have formulated certain propositions and offered our comments thereon wherever necessary. We have culled out these propositions from the DDQ Order dated 5th Jan. 2015 passed in the case of M/s. Kevin Impex and others. According to us following propositions are not debatable.

- The first proposition is that the ACS is covered by Chapter 76 of Central Excise Tariff Act (CET).
- The second proposition is that ACS can be classified either under heading 7606 or 7610 of Chapter 76 i.e. there is no other competing heading in the said Chapter for its inclusion.
- The Third proposition is that if the ACS is covered by heading 7606 of CET Act then it would get covered by Schedule Entry C-6 of MVAT Act attracting lower rate of sales tax.
- The fourth proposition is that there is no judgment of any Court or adjudication by Excise Authority, specifically holding that ACS is not covered by CETH 7606.

2. The debatable propositions are as under:

What is the ratio of the judgment of the Custom, Excise, Service Tax Appellate Tribunal (CESTAT), given in case of M/s. Rana Enterprises v/s Commissioner of Customs, Mumbai. If the ratio is that CESTAT has taken a conscious view that the goods, described therein as Aluminium Composite Panels (ACP), are not covered by the identical heading 7606 of the Customs Tariff Act, and further assuming without admitting that ACP and ACS are not different goods, then the judgment has a strong persuasive value for holding that ACS would also fall outside the scope of excise heading 7606. If not, then the judgment is not relevant for deciding the issue on hand.

3. Our Comments on the above:

(i). It is noticed from the judgment in question that the commodity described as Aluminium Composite Panel (ACP), was imported by M/s Rana Enterprises. While clearing these imported panels he had claimed before Customs Authorities that it would be covered by Customs Tariff Heading 7610. This was rejected by Customs Authorities. The panels were assessed under heading 3920 treating them as plastic goods. Decision of Custom authorities treating ACP's as plastic goods was challenged in appeal before CESTAT. Thus the issue before CESTAT was whether the panels in question are plastic goods or aluminium goods?. By applying the essential character test CESTAT held that the panels are not plastic goods as claimed by revenue. Before CESTAT nobody contested that within the Chapter 76 the panels in question would be covered by heading 7606 and not by 7610. As a corollary to this, classification of panels done by assessee under Heading 7610 remained unchanged. Hence this judgment is not a authority for the proposition that the commodity described as ACP is not covered by heading 7606, but by 7610.

(ii). In our case the commodity is Aluminium Composite Sheet (ACS). The expression panel, which is extensively used in common parlance, is not used in the CET Act. In view of this it is necessary to know more about sheet and panel. The meaning of expression panel and sheet as per Oxford English Dictionary is as under:

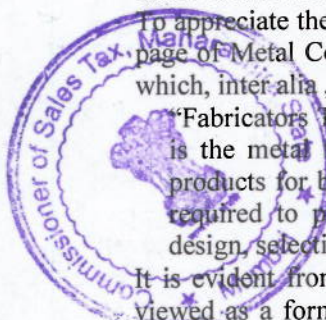
Panel- a distinct section, typically rectangular, forming part of or set in to a door, vehicle, garment etc.

Sheet- a broad flat piece of metal or glass.

To appreciate the difference between panel and sheet we reproduce herein below extracts from the web page of Metal Construction Association (MCA) who manufacture metal composite materials (MCM) which, inter alia, include ACS manufactured by us. (www.metalconstruction.org)

"Fabricators Transform Sheets into Panels. MCM manufacturers produce high quality sheets, but it is the metal fabricators who change the flat sheets into panels and transform them into viable products for building projects. Metal fabricators are generally responsible for the bulk of the work required to produce the actual metal composite material panel system including metal system design, selection and engineering in some cases."

It is evident from above that the two expressions panel and sheet are not interchangeable. Sheet is viewed as a form of metal, whereas panel is viewed as part, made from sheet, of some product. In many instances shape of the panel is similar, i.e. rectangular or square, to the sheet from which it is



made. Hence at times, in common parlance, these expressions are wrongly used interchangeably. This may be the reason that CET Act has not used the expression panel. In our opinion the expression, "prepared for use in structures", used in CETH 7610 relate to such panels which are produced from universal use sheets.

4. The proposition is that heading 7606 contemplates aluminium plates, sheets, and strips as is obtained from unwrought aluminium by a process of rolling, extruding, drawing and forging i.e. if these items are processed / worked further then such processed items would cease to be covered by the description of this heading.

Our Comments: We do not agree with the aforesaid proposition. It is evident from the notes appended to Chapter 76 of CET Act that the aforesaid proposition has no basis. These notes define in great detail expressions used in the Chapter. The definition of expressions bars and rods, profiles, and wire employ the phrase "Rolled, extruded, drawn, or forged". In the definition of plates, sheets, strip, foil, tubes and pipes aforesaid phrase has not been used. This clearly indicates that the scope of the heading 7606 is wide enough to include sheets which are further worked. To corroborate further please refer to Heading 7607 in respect of aluminium foil. The sub-heading 7607.11 specifically excludes further worked foils from its ambit. It reads 'Rolled but not further worked'. Further the definition of plates, sheets, etc. greatly widens its scope. The definition given in the Note of Chapter 76, is as under:

"(d) Plates, sheets, strip and foil:

Flat-surfaced products (other than the unwrought products of heading 7601), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:

- (i) of rectangular (including square) shape with a thickness not exceeding one-tenth of the width;
- (ii) of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles of products of other headings.

Headings 7606 and 7607 apply, inter alia, to plates, sheets, strips and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings."

5. The above definition widens the scope of the heading by specifically including flat surfaced products of all shapes and patterns, and also products which are perforated, corrugated, polished or coated. The only restriction for this inclusion is that they should not assume the character of articles or products of other headings. In view of this restriction it needs to be seen whether the scope of heading 7610 is wide enough to include ACS. The heading 7610 consists of two distinct categories of aluminium products:
 - Aluminium structures and parts of structures;
 - Aluminium plates, rods, profiles, tubes and the like, prepared for use in structures.

The heading 7610 is all about structures and parts of structures. The expression 'structure', though used repeatedly has not been defined. Hence, the same is required to be interpreted. The heading starts with 'Aluminium structures' (excluding prefabricated buildings of heading 9406) and then refers to the '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); and finally it talks of aluminium plates, rods, profiles, tubes and the like, prepared for use in structures'. The first expression, Aluminium structures, restricts the scope of structures only to structures made from Aluminium. Hence in the context the expression structure would refer to only structures made from aluminium. Be that as it may. Presuming that the expression structure used in second and third clauses of this heading contemplates all types of structures still the ACS manufactured by us will not be covered by this heading. ACS manufactured by us can be put to various uses. Hence universal use ACS is not covered by first category of products as it is not aluminium structure or a part of a structure. In the second category also universal use ACS will not be covered because they are not ready for use in structures. In this connection for further corroboration we wish to refer to Explanatory Notes to HSN for heading 7610. It states that the provisions of Explanatory Notes 7308 apply, mutatis mutandis, to heading 7610. Therefore, for understanding the scope of heading 7610 it is relevant to refer to the Explanatory Notes of heading 7308. Relevant portion reads as under: "The heading further covers parts such as flat-rolled products, wide flats including so-called universal plates, strips, rods, angles, shapes, sections and tubes, which have been prepared (e.g., drilled, bent or notched) for use in structures."

Thus according to this note prepared for use in structures means drilling, bending etc. which are post manufacturing activities done by fabricators.

6. Further, we wish to state that the last clause of the heading 7610, inter alia, does not mention sheets,

strips, and foils. This by itself indicates that sheets/strips/foils even if they are prepared for use in structures will not be covered by heading 7610.

7. To summarise we reiterate that as per CESTAT judgment in the case of Rana Enterprises ACS manufactured by us would not be a plastic material but an aluminium metal in sheet form. ACS has many uses. ACS is mostly purchased by metal fabricators who fabricate things or prepare them for use in structures as per the orders of the customers. Accordingly ACS is covered by CETH 7606 and not be 7610.
8. In view of the above, the view taken by the Hon'ble Commissioner earlier may be reviewed, if applicable and, the Aluminium Composite Sheets may be held as covered by aforesaid heading 7606. In case, the Hon'ble Commissioner thinks otherwise, then at least, prospective effect may be given to the determination so as to save the honest tax payers from unintended hardships and inconveniences. We hope that justice would be done to us."

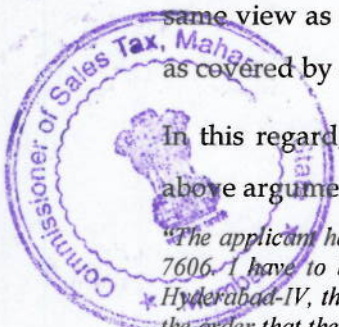
05. OBSERVATIONS

I have gone through the facts of the case. The product for determination is 'Aluminium Composite Sheets' sold under description 'ALUCOBOND'. I have reproduced the manufacturing process and the ingredients of the impugned product. I have also shown hereinafter as to the manufacturing process and the ingredients of the impugned product being identical to the manufacturing process and the ingredients of the product in the determination order in the case of M/s.Kevin Impex Pvt. Ltd., M/s.Prime Bond Industries and M/s.Eurobond Industries Pvt. Ltd. (cited supra). It was held in the said determination order that 'Aluminium Composite Panels' are not covered by the Central Excise Tariff Heading (CETH) 7606 and therefore not covered by the notification issued for the purposes of schedule entry C-6 of the MVAT Act, 2002. Instead, it was held that they were covered by the residuary schedule entry E-1, thereby taxable @ 12.5%. Since the issue was elaborately dealt with in the aforementioned determination order and I find no fault with the same, I refrain from deliberating upon or revisiting the possibility of coverage of the impugned product under the schedule entry C-6 of the MVAT Act, 2002. However, I am of the opinion that, for a fair order, I need to deal with the arguments which are being tendered in the present proceedings in support of the claim under the CETH 7606 and thereby, the schedule entry C-6. The application as well as written submission tendered during hearing have been reproduced hereinabove. I begin thus -

- i. The applicant has argued that so far as the State of Maharashtra is concerned, all the manufacturers of aluminium composite Sheets and the dealers who import goods into the State of Maharashtra from other manufacturers located in other States, have adopted the same view as of the applicant and discharged their respective tax liability treating the goods as covered by schedule entry C-6 of the MVAT Act, 2002.

In this regard, I find that the aforementioned determination order, too, has dealt with the above argument thus :

"The applicant has stated that all the dealers are treating the impugned product as being covered by the CETH 7606. I have to be quick to say that it is not so. In Alumayer India Pvt. Ltd. V. Commr. of Cus. & C. Ex., Hyderabad-IV, the appellant therein had accepted before the Tribunal and this has come out in express words in the order that they are the manufacturers of structural glazing and aluminium joinery,, aluminium composite



panel cladding for pillars and columns, aluminium composite panels for bridge cladding all falling under Chapter Sub-Headings 7610 10 00, 7610 90 10, 7610 90 20; 7610 90 30 & 7610 90 90 of the Central Excise Tariff Act, 1985. Thus, it can be seen that other dealers are also treating the impugned product as falling under the CETH 7610.

I have also come across international rulings. A decision dt.25.07.2002 given under the United States International Trade Commission Rulings and Harmonized Tariff Schedule, the subject matter was the tariff classification of "aluminium panels" marketed under the name 'Alpolic'. The product was used as the exterior cladding of buildings. Each panel comprised a polyethylene core sandwiched between two layers of aluminium sheet. The top surface is finished with a fluorocarbon coating and the bottom surface is covered with a service coating. It was held that the applicable sub-heading would be 7610.90.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for Aluminum, structures and parts of structures, nesoi; aluminum plates, rods, profiles, tubes and the like prepared for use in structures. This description is similar to the one under CETH 7610.

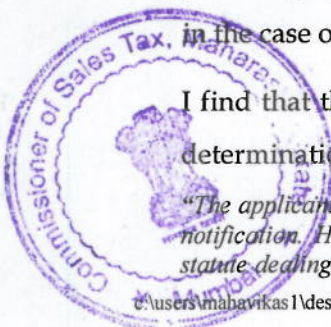
There are also other international rulings wherein the impugned product is held as covered under the CETH 7610. The other ruling I come across is under the Harmonized Tariff Schedule of the United States (NY C87243 - CLA-2-76:RR:NC:1: 112 C87243, dt.21.05.1998) wherein the product ALCOPLA (aluminum composite plastic) panels was held as falling under the Tariff Heading 7610.90.0020, Harmonized Tariff Schedule of the United States (HTS), which provides for other aluminum structures and parts of structures."

It can be seen from the above that dealers across the nation and internationally, too, were aware of the Tariff classification of the impugned products. As for Maharashtra, the case law of Rana Enterprises pertained to the dealer in Maharashtra. Further, the determination order placed reliance on the very Tariff Heading as decided by the authorities knowledgeable about the Tariff classification. Apart from that above, I need to observe that a determination to ascertain the classification of a product in terms of a taxing statute would always be governed by the provisions as they stand in the statute, their interpretation with regard to available facts as also the interpretation in respect of the provisions as given by the Hon. Courts of law. No external considerations than the very provisions can be had in interpreting the language of a statute. Giving consideration to the tax payments by other dealers as per a particular provision which is inherently incorrect would mean rendering the provision giving the right view to be redundant. Therefore, I find that the applicant fails to make a point.

- ii. The applicant has argued that the scope of enquiry to be made by the Commissioner is limited as to whether the Central Excise authority allowed the clearance of goods under identified Tariff Headings or not and further, that the Sales Tax authority including Commissioner has no scope to go further and enter into the arena of Central Excise Tariff law for further interpretation. To put across the point, the applicant has placed reliance on the judgment of Supreme Court in the case of State of Andhra Pradesh v/s. Concap Capacitors (cited supra). The applicant has also relied on the Circular No. 24T of 2000 and the judgment in the case of Indra Industries (cited supra).

I find that these case laws and arguments, too, have been dealt with in the aforementioned determination order thus -

"The applicant has relied on a few case laws in support of his claim that the impugned goods are covered by the notification. However, we have seen the Headings 7606 and 7610 and further that case laws under the very statute dealing with Tariff classification have held otherwise. In such circumstances, I do not find any relevance



to discuss or distinguish these cases. As regards reliance on interpretation rules, again the same rules apply. I have already observed above and, therefore, do not dispute that if the CETH has been notified in its entirety then all products classified under the said Heading would fall under the schedule entry C-6. However, what is peculiar to the present case is that the Tariff Heading on which reliance has been placed is itself rejected by the Tariff deciding authorities. Therefore, interpretation rules would not help when excise classification as claimed is incorrect.

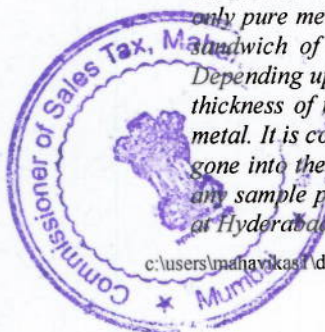
As far as Sales Tax is concerned, I find that reliance on decisions passed by other authorities of other States would not be helpful when we have seen that the Tariff Heading claimed applicable is incorrect. However, I have seen that in a Determination order dt.08.08.2006 under the Delhi VAT Act, it was held that Aluminium Composite sheet is not covered in Entry No.84 (166). It was held that in fact Aluminium Composite Sheet is general unspecified goods, falling u/s 4(1)(e) of DVAT Act, 2004, and attracts tax @ 12.5%. [entry no.84 (166) is for industrial inputs 39.20 - Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not]

As I see above, I find that the applicant's reliance on the aforesaid case law would, in fact, be helpful for the determination ruling as the determination order is actually following, and not disputing, the classification as has been made by the authorities conversant with the Tariff classification. These authorities have ruled, and internationally, too, there is an undisputed ruling that the impugned sheets or panels are covered by the CETH 7610 and, therefore, when the notification for the purposes of the entry under the MVAT Act, 2002 in respect of which claim is being laid by the applicant has covered the CETH 7606 and not the CETH 7610, no fault could be found with the reasoning in the determination order. Besides, we have seen above that the determination order has placed the reasoning as can be found from the Excise Tariff and the HSN Notes as to the classification of items in the Chapter 76.

Apart from the rulings mentioned in the said determination order, I have also come across an Advance Ruling dt.16.06.2015 under the Andhra Pradesh VAT Act as per which 'Aluminium Composite Panels' are clarified to be an unclassified item falling in the tax bracket of 14.5%. A preliminary observation was expressed during the hearing in the above matter that only the metals in their primary and extrusion form and their alloys in their primary form and the extrusions form alone are covered by the entry 27 of the Fourth Schedule of the APVAT Act but not the articles made using both metals and plastics, as in the case of aluminium composite panels. After examination of the issue with reference to the provisions, it was observed thus -

"As per the specimen sample, the panels are apparently not industrial input. They are used as building materials for decoration of new or old buildings, notice boards, advertisement boards, etc. They are also used in structural glazings, cladding, curtain walls, spandrel panels, fascias and soffits, column and beam covers parapet walls and copings and also used in signboards, partitioning, ceilings, display units, vehicle bodies, and furniture, etc. The chemical composition of the ACP is that polythene core has been treated with adhesive material and then aluminium sheets (coils) affixed thereon, on both the sides of it. To get a better look, it is being colour coated, after applying the primer. In other words, these panels are made out of two aluminium composite panel structures which are pre-coated and thermally bonded to each side of the non-toxic polythene core. The adhesion is achieved by the combination of chemical and mechanical actions.

Thus, the composition of the ACP is different from the goods mentioned in the entry 27 of the Fourth Schedule to the APVAT Act, 2005 which reads as "ferrous and non-ferrous, metals and alloys and extrusions thereof". Thus, only pure metal or its alloys in their primary form and in extrusion form are covered by this entry. The ACP is a sandwich of two aluminium sheets on outer either sides and the LDPE/HDPE plastic sheet in the middle. Depending upon the thickness of the ACP required, the volume of the middle plastic sheet would change. But, the thickness of the outer parts of the aluminium sheets is constant. ACP is neither wholly metal nor wholly non-metal. It is combination of both metal and non-metal, i.e., plastic. The earlier advance ruling authorities have not gone into the physical composition of the product, their characters and uses. They appear to have not examined any sample piece of ACP and the relevant binding decisions of the High Court of Judicature of Andhra Pradesh at Hyderabad and the honourable Supreme Court of India.



The very name of the "aluminium composite panel" gives an insight that it is a panel made of various products. The product dealt by the applicants, i.e., the composite panel cannot be equated to a metal in its primary form or in extrusion form. It is an article made up of metal and (non-metallic) plastic core, in substantial volume and value. Aluminium metal or extrusion/metal or extrusion of the alloys of the aluminium have different names, characters and uses from that of the aluminium panels."

One of the representatives heard by the Authority giving the above Ruling dt.16.06.2015 was M/s. Eurobond Industries Private Limited. And Eurobond is one of the applicant's in whose case the aforesaid determination order, which I am referring to, has been given.

In view of the above, I dwell no further on this.

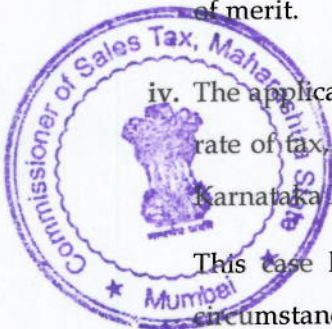
- iii. The applicant has sought to put forth a point that by adopting the principle of parity as pronounced by the Hon. Bombay High Court in the case of Bunge India (cited supra), the rate as actually in practice needs to be declared as the correct rate of tax applicable to the aluminium composite sheets.

Even this case law was cited in the aforesaid determination order. Before I dwell on this argument, a point which I notice is that the applicant on one hand wishes to take shelter of the plea about the tax treatment meted out to Aluminium Composite Panels/Sheets by other dealers but on the other hand has not admitted to the product in the determination order (Aluminium Composite Panel) being the same as the product in the present proceedings (Aluminium Composite Sheet) and this despite the raw materials and the manufacturing process being the same.

With regard to the argument, I have to say that there is no parity of facts in the case at hand and the case before the Hon. Court. In the case before the Hon. Court, the issue was in relation to the interpretation of a word as found in the entry itself and the entry had no notification to specify what falls therein. In the present case, the pronounced Excise classification of CETH 7610 as applicable to Aluminium Composite Panels/Sheets does not find a mention in the notification and therefore, would not be eligible to be covered by the impugned entry. And about tax treatment by other dealers, I have to say that a levy of tax is empowered only by the provisions of the statute from which it derives its sanctity. Non-payment of tax or payment of tax at reduced rates by some dealers cannot make a levy an ineffective piece of legislation. In view of the above, it is seen that the arguments are devoid of merit.

- iv. The applicant has argued that in the event of genuine doubt about the application of correct rate of tax, the controversy be resolved by adopting a lower rate of tax as held by the Hon. Karnataka High Court in the case of Bharat Vijay Mills (cited supra).

This case law was cited in the aforesaid determination order, too. I find that no such circumstances exist. And even if the situation was so, there is no concept of consolation entry in the MVAT Act, 2002. The impugned schedule entry C-6 specifies the items that it covers by



way of a notification and this notification does not specify the impugned products. And as has been held in the aforesaid determination order, there is no other specific entry which covers the Aluminium Composite Panels/Sheets. As such being an 'unclassified item', the impugned products get placed in the residuary entry E-1. In view thereof, I find that the arguments make no point.

- v. It is argued that the decision of the Customs, Excise & Service Tax Appellate Tribunal in Rana Enterprises V. Commissioner of Customs, Mumbai (cited supra) is not an authority for the classification of the Aluminium Composite Panels/Sheets as there was no discussion therein about the applicability of the CETH 7606.

The aforesaid argument is incorrect. The appellant therein had imported 'aluminium composite panels' which were classified under SH 7610.90 of the first Schedule to the Customs Tariff Act. With regard to the said classification, the Tribunal dwelled upon thus-

"The Deputy Chief Chemist, this time, reported the aluminium sheet and the polyethylene sheet to be 47.4% and 52.6% respectively. The party also produced the supplier's catalogue in support of their claim for classification of the goods under Heading 76.10. The Deputy Commissioner of Customs, in adjudication of the dispute, held that temperature resistance and sound-dampening quality were the two essential characteristics of the aluminium composite panels and that both these properties were attributable to the plastic material sandwiched between aluminium sheets. Accordingly, the classification of the goods was decided taking into account the predominance of the plastic content. Hence the classification of the item under SH 3920.99.

.....
The learned consultant for the appellant submits that the aluminium composite panels were imported to be used as a building material. These panels were used as a lining or covering for buildings to give them not only an aesthetic appeal but also better resistance to water, heat, fire etc. as well as a dust-free condition for the building surfaces. It is submitted that all these qualities are attributable to the aluminium component of the commodity and hence it should be appropriately classified under SH 7610.90. The learned consultant has also relied on the Supreme Court's judgment in CCE, Hyderabad vs. Bakelite Hylam Ltd. 1997 (91) ELT 13 (SC) in support of his argument that the classification of any composite material has to be determined on the basis of its essential character rather than the percentage of components thereof. It is further pointed out that the appellant has been importing aluminium composite panels and that the Customs authorities have been classifying them under Heading 76.10 inasmuch as the duty rate for this Heading is higher than the rate corresponding to Heading 39.20.

.....
After considering the submissions, we have found a valid point for the learned consultant. He has also claimed support from two stay orders, but we need not examine the same. The point established by the consultant is that the imported item should be classified considering its essential character. We have found support to this point from the manufacturer's literature as well. This literature has set forth the mechanical properties of the product, some of which are deflection temperature, thermal expansion, ultimate compressive strength, bonding strength, water absorption, thermal resistance, thermal conductivity, tensile strength, tensile modulus, shear strength, sound transmission class, flame spread index, fire resistance, fire propagation etc. We find that all these properties are attributable essentially to the outer component of the commodity, which is aluminium sheet. It is not in dispute that the aluminium composite panel is used as an external lining material for walls of buildings. Therefore, properties like bonding strength, thermal resistance, water absorption, thermal conductivity, fire resistance, sound transmission etc. should be understood with reference to the aluminium sheets. We have noted that this panel is used to improve water resistance, heat resistance, dust repelling property etc. of a building as also to impart an aesthetic appeal to it. By no stretch of imagination can it be said that these purposes would be attained by the polyethylene sandwiched between the aluminium sheets. The essential character test is, therefore, to be undertaken by considering the aluminium component of the goods in question. The authorities below appear to have considered only two properties, viz. temperature resistance and sound-dampening quality. Even these qualities were erroneously attributed to the plastic material used in the goods. We are at a loss to understand as to how this commodity can be held to be able to resist high temperatures and dampen sound from within.

The Hon'ble Supreme Court's decision is of immense support to the appellant's case. In that case, decorative laminated sheets were classified under Chapter 39 after finding that the property of the item to resist heat and moisture was imparted by synthetic resin and not by paper content in the composite material. The percentage of

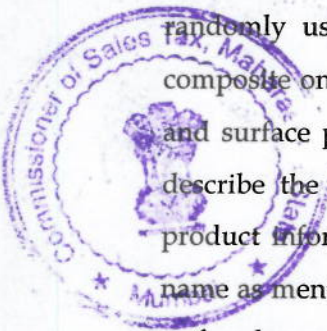
paper in the composite material was 60 to 70% and that of synthetic resin was 30 to 40%. The minor component in terms of percentage content was found to be determinative of the essential character of the composite material. This decision of the Hon'ble Supreme Court in the case of Bakelite Hylam Ltd. (supra) squarely supports the learned consultant's submission that one must not blindly go by the percentage composition to determine the classification of a composite material under the Customs Tariff Schedule. It is the essential character of the goods which has to be reckoned for the purpose. Rule 3(b) of the General Rules for the interpretation of the said Schedule is to the effect that composite goods consisting of different materials or made of different components, which cannot be classified by the reference to Rule 3(a), shall be classified as if they consisted of the material/component which gives them their essential character.

.....
Heading 76.10, as it stood during the material period, covers 'aluminium plates, rods, profiles, tubes and the like, prepared for use in structures'. Sub-heading 7610.10 covers 'doors, windows and their frames and thresholds for doors'. The residuary sub-heading 7610.90 (Other) covers the commodity in question."

From the above observations, it can be seen that the said Tribunal understood the product through its composition and then found that the appropriate heading would be 7610. The Heading 7606 was not considered as the same was not applicable at all in the first place. The Heading 7606 has been reproduced above as being 'Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm.'. We have seen that the Excise as well as HSN Notes lay down certain criteria as to what would be the 'plates, sheets and strip' as understood by the said Heading. The aforesaid determination order has observed that the Aluminium Composite Panels/Sheets do not fit into the description of CETH 7606. We have seen the Advance Ruling authorities under the APVAT Act also to observe on identical lines as in the determination order. To refer to again, I would cite the observations - "The very name of the "aluminium composite panel" gives an insight that it is a panel made of various products.". In view of the position being so that the CETH 7606 being nowhere near to a Heading in which the Aluminium Composite Panels/Sheets could be classified, the same was not considered worthy of mention or discussion. In view of the detailed deliberations in the determination order as well as the applicable decisions and the discussion as had by me in the present proceedings hereinabove, I observe that the argument fails to make a point.

- vi. The applicant has argued about the impugned product being a sheet and not a panel and the same not being a structure or part of a structure as understood by CETH 7610.

Without debating, I agree that the words sheet or panel cannot be used interchangeably. The present product or the product in the aforesaid determination order gain a distinct identity by the use of the word 'composite' in their description. The words panel or sheet are randomly used by the trading community. What is important is that the product is a composite one comprising LDPE granules, colour pigments, aluminium sheet, adhesive film and surface protective film etc. One important thing is that the applicant has preferred to describe the present product as 'Aluminium Composite Sheet'. However, a look at the product information as available on the Internet shows that 'ALUCOBOND' (the product name as mentioned on the invoice) is widely known as Aluminium Composite Panel. Its use as facades on the exterior or internal applications is much publicised. We have seen above



that the present product and the product in the determination order have the same raw materials and the manufacturing process. The aforesaid determination order had deliberated upon the requirements of an 'aluminium plate, sheet or coil'. The impugned products with the composite components do not fulfill the definition as mentioned in the Excise Tariff. Further, in the scheme of things of Chapter 76, the aforesaid determination order deliberated upon how the impugned products fall in the category of articles of aluminium. When interpretation of the words used in the CETH 7606 has been clearly laid down, referring to the words "Rolled, extruded, drawn, or forged" to hold out an argument doesn't make sense. As regards the CETH 7610, the applicant's argument that the impugned item is not a part of structure also lacks in merits. Articles on the Internet describe aluminum as a widely recognized structural metal for construction applications (Aluminum stands tall as a structural metal...www.fabricator.com). The advertisements of these composite panels, the Customs Ruling, the International Ruling help us to understand that the impugned products are of the type used in structures. The impugned Alucobond is also widely known for its ease of application. In view of the same, I find that the decision taken in the aforesaid determination order dt.05.01.2015 holding that the Aluminium Composite Panels/Sheets are not covered by the CETH 7606 but by the CETH 7610 needs no rethinking or review.

06. In view of the detailed deliberations held hereinabove, I am of the considered opinion that the issue raised in the present proceedings has been decided earlier by the determination order No.DDQ-11/2012/Adm-6/49-51/B-5 dt.05.01.2015 in the case of M/s.Kevin Impex Pvt. Ltd., M/s.Prime Bond Industries and M/s.Eurobond Industries Pvt. Ltd. In view thereof, the present application becomes non-maintainable.

07. PROSPECTIVE EFFECT

The applicant has prayed for prospective effect if the contentions as made are not acceptable. The applicant claims that all registered dealers dealing in aluminium composite sheets, whether as manufacturers, importers or traders have paid tax @4% or 5%. In the aforesaid determination order in the case of M/s.Kevin Impex Pvt. Ltd., M/s.Prime Bond Industries and M/s.Eurobond Industries Pvt. Ltd. (cited supra) too, the prayer for prospective effect was made.

The same was dealt with thus -

The applicant has prayed for prospective effect if his contention is not accepted. We have seen that there seems to be no misclassification about the Excise classification. In fact, the decisions under the very statute dealing with Tariff classification have held contrary to what has been contended by the applicant. Further, even international rulings were available. Reliance on the orders passed under the other VAT statutes would not make out a case for misguidance. Further, reliance on the order passed in appeal also does not help advance the plea for prospective effect. The said decision in appeal is not a policy decision of the Sales Tax Department. Herein, I would like to point out that on the very issue as is being dealt with in the present proceedings, a representation was made by the Aluminum Composite Panel Manufacturing Association to the Government. An alternate submission was made therein to notify the impugned product as an industrial input. The issue had been dealt with by my predecessor and the comments as

informed to the Finance Department then were such that the notification does not cover the impugned products. Then the issue was also studied in terms of the recommendations of the Empowered Committee, the apex body entrusted with the task of implementing the Value Added Tax system of taxation across the country. The subcommittee III of the Empowered Committee had not recommended the impugned product in its recommended list for industrial inputs. Therefore, the Finance Department was also informed that the request for inclusion as an industrial input cannot be considered in view of the impugned product not being recommended as an industrial input by the Empowered Committee. The aforesaid view was informed by the Government, acting through the Finance Department, to the Association in 2009. Thus, the Trade, through their Association, was made aware that the notification under schedule entry C-6 does not cover the impugned product. Hence, it is not the case that the applicants' were unaware of the view in respect of the impugned product. Further, assessment orders were also being passed wherein the impugned product was not held as covered by the notification under C-6. In view thereof, I find that no case for statutory misguidance is made out in the attending circumstances. In the present proceedings, I have elaborately dealt with the issue of tax on the impugned product on the basis of facts and my inference is supported by the tariff classification and case laws. Not just rulings but the entire scheme of classification as found under Chapter 76 should have enabled the applicants' to decide the Excise classification. In view of all the attending circumstances and explicit provisions and supporting case laws, I do not feel inclined to favourably consider the request for prospective effect."

In the aforesaid determination order, we have seen that there was absolutely no reason to dispute classification of the impugned Aluminium Composite Panels/Sheets as being under CETH 7606 and not under 7610. We have seen that the decision in Rana Enterprises was in the case of a dealer in Maharashtra. Further, there were international rulings, too. The aforesaid determination order also brought to light the fact that the Aluminum Composite Panel Manufacturing Association was also informed that the impugned products would not be covered by the CETH 7606 as notified for the purposes of the schedule entry C-6 of the MVAT Act, 2002. The situation being so, I find no reason to deviate from the stand taken in the aforesaid determination order.

08. In view of the deliberations held hereinabove, it is determined thus -

ORDER

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

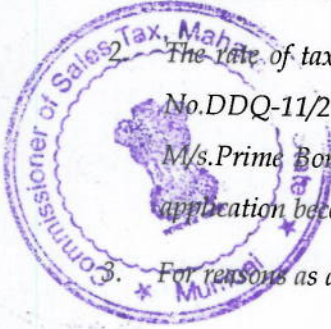
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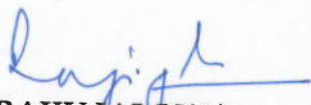
Mumbai, dt. 17/02/2016

1. The product "Aluminium Composite Sheets" sold under description 'ALUCOBOND 101 WHITE 16' are the Aluminium Composite Panels and accordingly, advertised so by the applicant.

2. The rate of tax on Aluminium Composite Panels has been dealt with in the determination order No.DDQ-11/2012/Adm-6/49-51/B-5 dt.05.01.2015 in the case of M/s.Kevin Impex Pvt. Ltd., M/s.Prime Bond Industries and M/s.Eurobond Industries Pvt. Ltd. In view thereof, the present application becomes non-maintainable.

3. For reasons as discussed in the body of the order, the request for prospective effect is rejected.




(RAJIV JALOTA)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI