

Read - Applications' dt.10.12.2012 by

- a. M/s. Kevin Impex Pvt. Ltd., holder of TIN 27560406167V.
- b. M/s. Prime Bond Industries, holder of TIN 2733056549V.
- c. M/s. Eurobond Industries Pvt. Ltd., holder of TIN 27940559994V.

Heard - Sh.C.B.Thakar, Advocate attended in all the cases alongwith -

- a. Sh. Bharat Gala [Director] in M/s. Kevin Impex Pvt. Ltd.
- b. Sh. Dhanji Gala [partner] in M/s. Prime Bond Industries
- c. Sh. Rahul Gada [Director] in M/s. Eurobond Industries Pvt. Ltd.

PROCEEDING

(u/s. 56 (1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2012/Adm-6/49-51/B- 5

Mumbai, dt. 5/11/2015

A common issue is involved in the following three applications requesting determination of the rate of tax applicable to the product 'Aluminium Composite Panel'. Hence, it is decided to pass a common order.

Name of the applicant	Address	Bill No. and Date	Product
M/s. Kevin Impex Pvt. Ltd.	C-5, Gala & Shethia Enterprises, Road no.11 (MIDC), Andheri (East), Mumbai 400 093	Local/02/01 dt.05.02.2009	3MM - Mixed Sizes
M/s. Prime Bond Industries	3, Bharat Comp., Opp. Pravasi Industrial Estate, Goregaon-Mulund Link Road Signal, Goregaon (East), Mumbai-400 063	No.MUM 01183 dt.08.12.2012	3660 X 1220 X 3mm-2014
M/s. Eurobond Industries Pvt. Ltd.	C-5, Gala & Shethia Enterprises, Road no.11 (MIDC), Andheri (East), Mumbai 400 093	Local-902/MUM/T/12-13/0003602 dt.27.11.2012	Aluminium Composite Panel Sheet - 4F

02. SUBMISSION OF THE APPLICANT

All the three applicants' have made a common submission that they are engaged in sale of 'Aluminum Composite Panel' (referred to as ACP or ACP sheets). It states thus -

" M/s. Prime Bond Industries and M/s. Eurobond Industries Pvt. Ltd. have their manufacturing units at Haridwar and Jammu respectively. They get branch transfer of ACP from the manufacturing unit. The said ACPs are sold in Maharashtra. As for M/s. Kevin Impex Pvt. Ltd. is a trader in ACP. The ACPs are purchased largely from M/s. Eurobond Industries Pvt. Ltd., a local registered dealer & a manufacturer in the State of Jammu, who charges VAT at 5% / CST against form C. All the applicants' presently charge 5% VAT on the sale of said ACP as per entry C-6. However, the investigation authority has issued letter, suggesting that the tax is payable at 12.5% on the above item. Under above circumstances, this application for determination of correct rate of tax is filed before your goodself.

In this respect, we submit following relevant details;

1. Manufacturing process including raw materials and technical details of ACP.
2. M/s. Prime Bond Industries

We are not covered under Excise, therefore no excise heading is mentioned on the invoice. However, other manufacturers clear the above goods under chapter heading 76.06 of the Central Excise Tariff. M/s. Eurobond Industries Pvt. Ltd.

Gatepass for clearing of goods from factory, showing Excise Classification as 76.06.

M/s. Kevin Impex Pvt. Ltd.

We are purchasing the ACP from our vendor M/s. Eurobond Industries Pvt. Ltd. the vendor clears the ACP in Excise under Excise Heading 76.06 which is also mentioned on their sales Invoice. The purchase bill copy bearing no.711 dtd. 08.03.2008 is enclosed.

3. Sale bill for sale of above product
4. Copies of order passed by Govt. of Andhra Pradesh Commercial Taxes Department, Authority for Classification and Advance Ruling in case of M/s. Rangoli Marketing Co. dtd. 8.12.2005 and M/s. United Metal Tex Pvt. Ltd. dtd. 7.9.2005.

5. Classification of opinion given by Classification Committee of the World Customs Organization, Brussels.
6. Custom Notification No. 71/2009 dt. 19.6.2009, Govt. of India, New Delhi.
7. M/s. Eurobond Industries Pvt. Ltd
Opinions of experts viz; Shri V. Shridharan, Advocate and Mr. Nitin N. Mehta about coverage of above item in heading 7606.

From above details and considering the language of notification under entry C-6, as well as principles of interpretation of entries settled by various judgments of judicial forums, it will be appreciated that the above product ACP is covered by entry C-6.

In the alternative the said product be held as covered by entry C-54 for Industrial Inputs at sr.no.202 of the notification issued under said entry.

Prospective Effect

Your applicant also prays that if the above item is held taxable at higher rate than considering the debatability of the issue and the clearance of the goods under 76.06, as well as other factors mentioned above, the said order be made prospective and the liability on the same be protected upto the date of determination order, as per section 56(2) of the MVAT Act, 2002 and oblige.”

M/s. Prime Bond Industries and M/s. Eurobond Industries Pvt. Ltd. - have given the following details -

“Process Description

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.	Calendering	The Adhesive Films are fixed on both sides of LDPE sheets in with the help of Calendering Machine.
4.	Compositing	Adhesive film Coated LDPE sheets are composted with Aluminium Coated coils on both sides of the sheet.
5.	Cooling & Trimming	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.
6.	Marking	The Aluminium Compte Panels is than marked as per operations for traceability. This includes marking manufacturing date, batch number etc.
7.	Scanning for Defects	The Aluminium Composite Panels is checked for defects. This will check the defects of Coating and Finishing of final product.
8.	Packing and dispatch	The Aluminium Composite Panesls is packed and ready for dispatch.

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 Calendering. 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”.

List of Raw Materials

1. Surface Protective Film (SPF)
2. Aluminium Coil
3. Adhesive Film
4. Low Density Poly Ethelene (Plastic)”

03. HEARING

The cases were taken up for hearing on dt.03.12.2014. It was submitted thus -

M/s. Kevin Impex Pvt. Ltd.

The applicant is a reseller. The claim of applicable schedule entry is C-6. It is claimed that the product is classified under Central Excise Tariff 7606, the proof thereof is submitted in the form of a bill of a manufacturer of the product.

M/s. Prime Bond Industries

The bill presented for determination has the details '3660 X 1220 X 3mm-2014'. It is submitted that the same is the size of the sheets and the bill normally mentions the size. The applicant is a manufacturer. The manufacturing takes place in Uttarakhand and in Maharashtra, there is resale of the branch transferred goods. The claim of the schedule entry is C-6-Aluminium, its alloys and products as may be notified from time to time by the State Government in the Official Gazette. The notification refers to classification under Central Excise. Hence the applicant was asked to submit the excise proof. It was submitted that the applicant is exempt under Central Excise in the State of Uttarakhand. Hence, they have given the excise classification of other manufacturer's i.e Eurobond Industries. The excise classification therein is 7606.1190. It is claimed that the notification under the entry C-6 covers the Central Excise Tariff 7606-Aluminium plates, sheets (including circles) and strips, of a thickness exceeding 0.2mm. The applicant informs that the thickness of the impugned product is 3mm. It is requested that they wish to give a written submission in the matter alongwith necessary documents showing classification under C-6. Hence, it is claimed that the product is covered by the schedule entry C-6 under notification thereunder.

M/s. Eurobond Industries Pvt. Ltd.

The manufacturing of the product is done in Jammu where the product is cleared under the Central Excise Tariff 76061190. Hence, it is claimed that the product is covered by the schedule entry C-6 under notification thereunder.

All the applicants' wished to submit a written submission in the matter. Accordingly, a submission dt.06.12.2014 is given in M/s. Kevin Impex Pvt. Ltd. and it is asked to be considered in the case of the other two applicants' too. It is submitted thus -

"The issue in the DDQ is about rate of tax on the product sold by applicant viz; Aluminum Composite Panel/sheet (ACP).

Applicant respectfully submits that, the said item is covered by Schedule entry C-6 liable to tax at 4% & 5% (from 1.4.2010). Our submission for holding the said item as covered by entry C-6 is as under.

1. *The entry C-6 reads as under.*

6	Alluminium, 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 till date
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The relevant portion of Notification issued under above entry is reproduced below.

"NOTIFICATION

Finance Department
Mantralaya,
Mumbai 400 032,
dated the 01.06.2005

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. IX of 2005) and in supersession of Government Notification, Finance Department, No. VAT-1505/ CR-113/Taxation-1, dated the 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 the 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.

Note.- (4)

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

SUDHAKAR JAMODE

Deputy Secretary to the Government."

There are notes for interpretation of the entries in the Notification as reproduced above.

From combined reading of Note (2) & (3) it is manifestly clear that in case where the description in VAT notification and Central Excise is similar then all items covered by above Central Excise Tariff will be covered for purpose of VAT notification also. However, where the description is not matching, then only those items as are covered by VAT notification will be covered for above entry C-6 and other items, though covered by Central Excise Tariff, will not be covered by entry C-6.

In case of applicant its above item is covered by C.E. heading 7606. The heading 7606 in Central Excise Tariff Act is covered in VAT notification in the same form. There is no variation. Also, since main heading is covered there is no question of going into sub-headings etc.

In short the implication is that all goods covered by above heading for Central Excise purpose are also included in above VAT notification.

We further submit that the items of the applicant, viz; Aluminum Composite Panel/Sheets are duly covered by C.E. heading 7606. The vendor of the applicant is clearing goods under heading 7606. Therefore, the goods are covered by entry C-6 liable to tax @ 4%, which is collected and paid by the applicant. (Sample copies of purchase bill enclosed herewith as Annexure A).

2. Applicant also encloses herewith the manufacturing process as Annexure B. Particularly it will be noted that the item is prepared by Sandwiching Plastic between two Aluminum sheets. On such finished sheets protective film is also pasted which is to be removed by the user at the time of using the sheet/panel. Thus, the protective film is only for outside protection and nothing to do with real item. The issue of use of raw material be considered accordingly. Sample of the product is enclosed.

Though the legal position about classification is clear, the applicant has also obtained the opinions from Shri V. Sridharan, Advocate (two opinion dt.29.12.2008 and dated 13.11.2014) and Mr. Nitin N. Mehta, who are experts on Central Excise Law. The description of product and manufacturing process etc. are duly explained in the said opinion. In said opinions the detailed reasoning about above item being covered by heading 7606 is also given. We are enclosing copies of the said opinions for ready reference (Annexure C). For sake of brevity we do not repeat the said contents here. We request to consider above opinions and reasoning in the same, for considering the rate of tax @ 4%/5%. As stated in both above opinions, the above sheets/panels are covered C.E. Tariff heading 7606 and hence duly covered by entry C-6 of MVAT Act, 2002, liable to tax at 4%/5%.

3. We also draw kind attention towards Rules for interpretation of heading as given in the CE Tariff Act. The said Rules and its implication are also explained in the opinion of Mr. Nitin N. Mehta which also be considered.

4. In addition to above settled legal position, reference can be made to Supreme Court judgment in case of State of Andhra Pradesh & Others v/s. Concap Capacitors & Others (10 VST 204 (SC).

In this case Supreme Court has held that once the 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 above Supreme Court judgment is as under.

"The respondents claimed that the capacitors manufactured by them were eligible to tax at a concessional rate as 'electronic goods', in view of G.O.Ms. 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 clarification 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 purpose 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 the list prepared by the 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 the 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 the High Court, (i) that from the Government Orders and the Circular issued by the Commissioner, it was clear that the 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 be accepted 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 to make only a limited enquiry as to whether the item was included in the list prepared by the Electronic Commission. If any item was included in the list it had to be treated as such and tax had to be levied on that basis. Only if the item was not included in the list prepared by the Electronic Commission, it was open to the Tribunal to consider its placement on the basis of the "functional test" .

The case of applicant is fully covered by the above judgment. The above VAT notification classifies the item with reference to Central Excise Tariff Headings. Therefore, 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. Under Central Excise the goods of applicant are classified under Heading 7606 which heading is also covered by above stated notification. The description at both places matches. In view of the above Supreme Court judgment, the said classification has to be accepted by Sales Tax Department also.

5. In this respect, we also bring to your kind notice that the circular issued by Commissioner of Sales Tax in which the manner and method of interpreting the entries, when they are classified with reference to Central Excise heading, is explained. Reference is to circular of Commissioner of Sales Tax bearing no.24T of 2000 dt.16.09.2000. While interpreting similar entry C-I-29 under BST Act, 1959, the learned Commissioner of Sales Tax has given example of Central Excise heading 39.23. The learned Commissioner of Sales Tax, amongst others, observed as under.

"Where the heading No. or as the case may be, sub heading No. is provided, then all the commodities falling under said heading or sub-heading of the Central Excise Tariff, 1985, are covered by the notification except for the heading No.39.23."

The similar position will apply for interpreting entries under MVAT Act, 2002, as well as for the scope of Excise headings given in the notification. As your goodself are aware, the circulars of the Commissioner of Sales Tax are binding. The legal position that the circulars are binding is also clear from number of judgments. Readily, reference can be made to the judgment of Hon'ble Supreme Court in case of Indra Industries (122 STC 100) (SC) in which Supreme Court has held that till the circular is not withdrawn, it is binding.

6. In this respect, we also bring to your kind notice the order issued by Authority for Clarification and Advance Ruling, Commercial Taxes Department, Government of Andhra Pradesh, dated 08.12.2005, in which the said authority has ruled that the Aluminum Composite Panel will attract tax at 4%/5%.

7. In addition, reference can also be made to the order of the above said Authority i.e. Authority for Clarification and Advance Ruling, Commercial Taxes Department, Government of Andhra Pradesh, dated 02.09.2005. In this order, the learned authority has held that Aluminum Composite Panels are covered by entry 7606 and liable to tax at 4%/5%. Amongst others, this order also confirms the position that the Aluminum Composite Panels are covered by entry 7606 and therefore, duly covered by entry C-6 of the MVAT Act, 2002.

8. We also draw attention to the Notification no.71/2009/customs dated 19.6.2009 issued by Central Government. In this notification safeguard duty was levied on Aluminum Flat Rolled Products falling under heading 7606 excluding the specified items. One of the excluded items is Aluminum Composite Panel (ACP). This clearly suggests that even as per Central Government the ACP is covered by heading 7606.

9. We specifically also draw kind attention to the classification made by World Customs Organization as per Harmonized System in which also this item is classified under heading 7606.

10. We also draw attention to the fact that the importers are also importing the above item under heading 7606 and a copy of bill of entry in case of one of the importers is enclosed to substantiate the above.

11. We also draw attention to the fact that the Manufacturers are also clearing the above item under heading 7606 and a copy of Invoices of some Manufacturers are enclosed to substantiate the above.

12. In our own case, there was dispute about classification of above item in relation to the year 2006-07. In the said matter, the learned Joint Commissioner of Sales Tax (Appeals) III has passed appeal order dated 22.09.2010 in which the item is duly classified under entry C-6. The order is well reasoned order and we request to consider the said order also for deciding this DDQ.

13. It is also clear market condition that all the dealers in Maharashtra have considered this item as liable to tax @ 4%/5% right from 1.4.2005. We herewith enclose bills of some other dealers to substantiate above fact. In view of Hon. Bombay High Court judgment in case of Bunge India Pvt. Ltd. (39 VST 213) (Bom) when other dealers have charged tax at 4% then the rate should also be determined at such rate on the principle of parity. The relevant observations are as under.

"We take into account the fact that the margarine produced by other manufactures, viz., Kamani or Godrej is taxable at four per cent so under principle of parity margarine which is produced by the respondents is rightly made taxable at four per cent by the Tribunal by its judgment dated July 9, 2010."

In light of above legal position it will be appreciated that when other dealers are not subjected to tax on higher rate we also cannot be held liable to tax on higher rate. The rate should be determined @ 4%/5% under entry C-6.

14. We also draw attention to the fact that in other States like AP, Kerala, Tamil Nadu, Gujarat, UP the item is liable at 4%/5%. Copies of relevant notifications/entry enclosed.

15. It is settled law that when there is a specific entry, the goods should be held as covered by such specific entry in contrast to general entry. For above proposition of law, reference can be made to the judgment of Hon. Supreme Court in case of Bradma of India Ltd. (140 STC 17) in which Hon'ble Supreme Court has held that the special entry will always prevail upon general entry. As stated above, entry C-6 is specific entry for Aluminum and Aluminum Composite Panel is squarely covered by the notification under the said entry. Therefore, the said entry will prevail upon entry E-1 which is residuary/general entry.

16. It is also settled legal position that if there is any doubt about classification then it should be resolved in favour of the dealer. The Hon'ble Karnataka High Court in case of Bharat Vijay Mills Ltd. Vs. Commissioner of Commercial Taxes (and another case) (85 STC 23) (Kar) has held that the lower rate should be applied in case of doubt about classification. In the case of the applicant, there is no doubt about classification, but even if it is there, then in light of above legal position the same should be resolved in favour of applicant and the tax should be levied at 4%/5%.

17. Without prejudice to above and as an alternative, we also bring to your kind notice the judgment of Hon. Gujarat VAT Tribunal in case of Umiya Flexifoam Pvt. Ltd. (Appeal No.11 of 2007 dt.17.8.2009). In this case, the dispute was about the same item and Hon'ble Gujarat VAT Tribunal has held that the Aluminum Composite Panel, being made with the use of Plastic Sheet and Aluminum, will be covered by Central Excise Heading 39.20 and accordingly covered by list of Industrial Inputs under Gujarat VAT Act, liable to tax at the rate of 4%. In the MVAT Act, 2002 also there is entry C-54 for Industrial Inputs and in the Notification issued under the said entry, Excise heading 39.20 is duly covered. Therefore, the sales of Aluminum Composite Panels are otherwise also liable to tax at 4% under entry C-54.

Applicant prays to determine the rate accordingly.

Prospective Effect

We have also prayed for prospective effect in case the issue is determined against the applicant i.e. item is held liable to tax @ 12.5%.

It will be appreciated that there is justifiable ground for considering the item as covered by entry C-6. All dealers in Maharashtra have accordingly charged the tax @ 4%/5%. The rate under entry C-6 is also covered by statutory order i.e. first appeal order. We have relied upon the said order.

It is also settled position that the interpretation of entry is always a complicated process more particularly when other Government Department have treated the same as covered by particular heading i.e. 7606. Under above circumstances applicant deserves prospective effect from the date of DDQ order thereby protecting past unexpected liability.

If said liability is not protected there will be unexpected and unbearable financial burden leading to closure of business. There is statutory misguidance. There are number of judgments holding that when there is statutory misguidance prospective effect is required to be given. For example reference can be made to the DDQ as covered by Tribunal Judgment in case of Krishna Factory (Appeal 126 of 2001 dated 08.08.2003). in view of above we pray for grant of prospective effect and oblige.

If any further details required, applicant will submit the same on hearing from your good office. "

04. OBSERVATIONS

I have gone through the facts of the case. The product for determination is 'Aluminium Composite Panel'. It is claimed that the impugned product is covered under the notification issued for the purposes of the schedule entry C-6 of the Maharashtra Value Added Tax Act,2002 (MVAT Act,2002). The entry and description in the notification claimed applicable reads thus -

SCHEDULE ENTRY

Aluminum, its alloys and products as may be notified, from time to time, by the State Government in the Official Gazette.

NOTIFICATION

Central Excise Tariff Heading	Name of the Commodity
7606	Aluminium plates, sheets (including circles) and strips, of a thickness exceeding 0.2 mm

Since the notification under the entry refers to the classification under Central Excise, I would reproduce the description against the aforesaid Central Excise Tariff Heading (CETH) as appearing under the said statute thus -

Central Excise Tariff Heading	Description
7606	Aluminium plates, sheets and strips, of a thickness exceeding 0.2 mm

As can be seen, the description under Central Excise has been taken in its entirety for the purposes of the notification under the schedule entry C-6. Therefore, if the impugned product merits classification under the CETH 7606, the same would be covered by the schedule entry C-6.

Having seen thus, I would have a look at the product and the classification thereof :

The raw materials and the manufacturing process has been given by the applicants' and has been reproduced hereinearlier. 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).

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.

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		<ul style="list-style-type: none"> - Aluminium bars, rods and profiles.
	7604.10	<ul style="list-style-type: none"> - Of aluminium, not alloyed
		<ul style="list-style-type: none"> - Of aluminium alloys :
	7604.21	<ul style="list-style-type: none"> -- Hollow profiles
	7604.29	<ul style="list-style-type: none"> -- Other
76.05		<ul style="list-style-type: none"> - Aluminium wire.
		<ul style="list-style-type: none"> - Of aluminium, not alloyed :
	7605.11	<ul style="list-style-type: none"> -- Of which the maximum cross-sectional dimension exceeds 7 mm
	7605.19	<ul style="list-style-type: none"> -- Other
		<ul style="list-style-type: none"> - Of aluminium alloys :
	7605.21	<ul style="list-style-type: none"> -- Of which the maximum cross-sectional dimension exceeds 7 mm
	7605.29	<ul style="list-style-type: none"> -- Other
76.06		<ul style="list-style-type: none"> - Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm.
		<ul style="list-style-type: none"> - Rectangular (including square):
	7606.11	<ul style="list-style-type: none"> -- Of aluminium, not alloyed
	7606.12	<ul style="list-style-type: none"> -- Of aluminium alloys
		<ul style="list-style-type: none"> - Other :
	7606.91	<ul style="list-style-type: none"> -- Of aluminium, not alloyed
	7606.92	<ul style="list-style-type: none"> -- Of aluminium alloys
76.07		<ul style="list-style-type: none"> - 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 (+).
		<ul style="list-style-type: none"> - Not backed:
	7607.11	<ul style="list-style-type: none"> -- Rolled but not further worked
	7607.19	<ul style="list-style-type: none"> -- Other
	7607.20	<ul style="list-style-type: none"> - Backed
76.08		<ul style="list-style-type: none"> - Aluminium tubes and pipes.
	7608.10	<ul style="list-style-type: none"> - Of aluminium, not alloyed
	7608.20	<ul style="list-style-type: none"> - Of aluminium alloys
76.09	7609.00	<ul style="list-style-type: none"> - Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves).
76.10		<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - Doors, windows and their frames and thresholds for doors
	7610.90	<ul style="list-style-type: none"> - Other
76.11		<ul style="list-style-type: none"> - 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		<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - 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		<ul style="list-style-type: none"> - 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		<ul style="list-style-type: none"> - Other articles of aluminium.
	7616.10	<ul style="list-style-type: none"> -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. 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.

As I perused the decision in Rana Enterprises (cited supra), I find that this case has also answered the alternative plea of the applicants' for coverage under the CETH 3920 and thereby, as an Industrial Input under schedule entry C-54. The issue in this case was that the appellant had imported 'aluminium composite panels' under SH 7610.90 of the first Schedule to the Customs Tariff Act. The assessing authority allowed provisional clearance of the goods against a bank guarantee. Pending finalization of the assessment, a sample of the commodity was got tested in the department's laboratory as per which it was reported that the sample was made of 'pigmented polyethylene sheet sandwiched between two layers of aluminium sheet with one side backed by pigmented polyethylene film'. The composition of the sample was reported as 'aluminium sheet 47.2%, pigmented polyethylene sheet 51.4% and pigmented polyethylene film 1.4%'. On the basis of this test report, the importer was called upon to show cause why the goods should not be assessed under Heading 39.20 of the said Schedule, considering the predominant plastic content in the product. The Tribunal observed thus -



"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..... 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. Heading 39.20 covers 'Other plates, sheets, film foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials'. This Heading consists of a large number of sub-headings which are based on various plastic materials. The ultimate residuary sub-heading 3920.99 is the Revenue's choice. Going by the essential character test, the subject-goods cannot be classified under any of these entries."

In view of the above case holding that the impugned product would not fall in CETH 3920 and further this having been decided by an authority dealing with Tariff classification, the reliance on a decision by the Hon. Gujarat VAT Tribunal declaring classification under CETH 3920 would not help.

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 luminated, supported or similarly combined with other materials or not]



As regards reliance on the Customs Notification, it is seen that the same does not lay down as to which goods fall under Tariff Heading 7606. It seeks to impose a safeguard duty on Aluminum Flat Rolled Products falling under heading 7606 excluding certain items which include amongst others aluminium composite panels. I would interpret the same to mean that the notification in express words has sought to clear that aluminium composite panels do not fall under the Tariff Heading. We have elaborately seen above that by the scheme of things as found in the classification of goods under Chapter 76, the impugned goods do not fall under CETH 7606. Therefore, it is felt that all arguments in respect of the CETH 7606 as being applicable to the impugned product should be laid to rest.

Having seen that the impugned product does not fall under the CETH 7606 but the CETH 7610, I have to find whether the CETH 7610 has been notified in the notification for the purposes of the schedule entry C-6. However, I find that this CETH has not been notified. It is also seen that there is no other schedule entry under the MVAT Act,2002 which covers the impugned products. In view thereof, the products find placed in the residuary schedule entry E-1, thereby taxable @12.5%.

05. PROSPECTIVE EFFECT

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 mis-guidance. 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.

06. In view of the deliberations as had hereinabove, it is determined thus -

ORDER

(u/s. 56 (1)(e) of the Maharashtra Value Added Tax Act, 2002)

No.DDQ 11/2012/Adm-6/49-51/B- 5

Mumbai, dt. 5/11/2015

It is determined thus -

- 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.



(DR. NITIN KAREER)

COMMISSIONER OF SALES TAX,
MAHARASHTRA STATE, MUMBAI