IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75549 of 2023

(Arising out of Order-in-Appeal No. Kol/Cus(Port)/KS/345/2023 dated 01.05.2023 passed by the Commissioner of Customs (Appeals) 3rd Floor, Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. PS Primarc Projects LLP **: Appellant**
Primarc Square, LA-1, 8TH Floor,
Sector III, Saltlake City, Kolkata-700098

VERSUS

Commissioner of Customs(Port), Kolkata **: Respondent**
3rd Floor, Custom House, 15/1, Strand Road,
Kolkata-700001

APPEARANCE:

Shri Niraj Baheti, Advocate for the Appellant

Shri A. K. Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75753/2026

DATE OF HEARING / DECISION: 11.06.2026

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order.

2. The facts of the case are as under: -

(i) "M/s. PS Primarc Projects LLP (hereinafter referred to as "**the Appellant"**) having IEC Code No. AAQFP9146A is engaged, interalia, in developing residential & commercial projects. The Appellant imported "Aluminium Formwork Structure with accessories" from Republic of Korea by filing home consumption Bill of Entry No. 3981110 dated 08-07-2019 and 4545898 dated 19-08-2019 and classified the same under CTH 76109010 attracting 'Nil' rate of Basic Customs Duty in terms of Sl. No. 610 of Customs Notification No. 152/2009 dated 31-12-2009. The said consignment was cleared by Customs as per the claimed classification and notification benefit.

(ii) However, subsequent to clearance, the Additional Commissioner, Special Investigation Branch, Port ("SIB") had issued show cause notice based on certain intelligence that the Appellants have misclassified their product under CTH 76109090 whereas the said product is rightly classifiable under CTH 84806000, proposing a demand of customs duty amounting to Rs. 48,88,454/-, along with applicable interest and penalty.

(iii) The Appellant duly replied to the show cause notice denying and disputing the contentions raised therein. However, disregarding the submissions the Ld. Adjudicating Authority, vide Order-in-Original No. KOL/CUS/PORT/JC/21/SIB/2021 dated 28.04.2021(hereinafter referred as **"OIO"**), confirmed the demand proposed in the Notice. Further, for the first time in the Order-in-Original, it was alleged that the preferential Certificate of Origin does not conform to Origin Rules and consequently, the benefit of Customs Notification No. 152/2009-Cus. was denied and the customs duty demand was enhanced from Rs. 48,88,454/- to Rs. 73,32,683/-.

(iv) Pursuant to the OIO, the Appellant, vide letters dated 12.07.2021 and 27.07.2021, deposited an amount of Rs. 48,88,454/- 'under protest' through Demand Draft No. 600131 dated 26.07.2021, without prejudice to its rights, contentions and remedies available in law. Further, being aggrieved by the Order-in-Original, the Appellant thereafter preferred an appeal before the Ld. Commissioner (Appeals).

(v) However, disregarding the submissions made by the Appellant, the Ld. Commissioner of Customs (Appeals), Kolkata (hereinafter referred to as the **"Ld. Appellate Authority"**), vide Order-in-Appeal No. KOL/CUS/PORT/KS/345/2023 dated 01.05.2023 (hereinafter referred to as the **"Impugned Order"**), upheld the OIO passed by the Ld. Adjudicating Authority."

3. Against the said order, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant had made the following submissions:-

5. ***Contents of the Appellant***

A. ***The issue is no longer res integra as the same stands settled in favour of the Appellant by the Hon'ble Tribunal.***

A.1 The Appellant submits that the issue arising in the present appeal is no longer res integra and stands conclusively settled in favour of the Appellant. The Hon'ble Tribunal, in a series of decisions, has consistently held that Aluminium Formwork Structures are correctly classifiable under CTH 76109010 and not under CTH 84806000. The relevant decisions are set out below:

i. M/s. Alcove Construction Private Limited Vs. CC (Port), Kolkata [2025 (9) TMI 821 - CESTAT KOLKATA]

"7. From the Explanatory Notes under HSN (copy of which was provided by the appellant), we find that under 7308.40, "Equipment for scaffolding, shuttering, propping or pit-propping" are given, under Chapter 73, pertaining to structures of iron or steel. The Explanatory Notes to heading 76.10 state that the Explanatory Note to heading 73.08 apply, mutatis mutandis, to the heading under 76.10.

7.1. When both of these are read together, it would mean that when the goods viz., Aluminium structures in this case, are similar to equipment for scaffolding, shuttering, propping or pit-propping, the same would get classified under heading 76.10 only. Therefore, we hold that the appellant was correct in classifying the impugned goods under CTH 7610 90 10."

ii. Vijay Nirman Company Pvt Ltd Vs. Principal Commissioner of Customs Visakhapatnam [2025 (1) TMI 747 - CESTAT HYDERABAD]

23. We also find that the reliance has been placed by the learned Advocate on the recent *judgment of the coordinate bench at Kolkata, where the similar item has been held to be classifiable under CTH 76109010 and therefore, the ratio of the said judgment is applicable to the present factual matrix as the facts are more or less identical. Further, we also note that in this case, the Bill of Entry, which was cleared under self assessment, has not been challenged by the Revenue. Therefore, in view of the judgment in the case Shri Rajib Saha Vs CC (Prev), Shillong (supra), the demand is not sustainable on this count also. It is also noted that there is some force in the submissions made by the appellants that the Adjudicating Authority has gone beyond the scope of SCN by denying them the benefit of notification 152/2009 (S.No.610), in as much as there was no reasons cited in the SCN as to why the above said notification should be denied. We have perused the notification 152/2009 and we find that this is a notification provided for concessional duty in respect of imports made from Republic of Korea. In the SCN or in the OIO, there is no specific discussion as to why this notification has been denied, whether it was on account of import not being considered as import from Korea or it was on account of the fact that it was not covered under S.No.610 of the notification. Therefore, in the absence of these details, the appellants were not given adequate opportunity to defend the eligibility for said notification and therefore, this denial is also not tenable.*

24. In view of the discussions in the foregoing paras, we find that the product AFM imported by the appellant is rightly classifiable under CTH 76109090 and not under CTH 84806000, as confirmed by the Adjudicating Authority. Moreover, since there is no dispute as regards origin of the goods, therefore, once the goods are falling under CTH 7610, the same would be entitled for exemption notification 152/2009 dt. 31.12.2009 at S.No.610. In view of the same, the Order of the Adjudicating Authority is not legally tenable and therefore, we set aside. Since the appeal has been allowed on merits itself, the issue of limitation is not taken up and is left open.

iii. M/s. Unimarkmirania Projects LLP Vs. CC (Port), Kolkata [2024 (9) TMI 712 - CESTAT KOLKATA] – Para 11 to 13.

B. <u>The impugned proceedings are unsustainable since no appeal has been filed against Bills of Entries, which is an appealable order</u>

*B.1 It is a settled principle that self-assessed bill of entry is an order of assessment and is an appealable order under Section 128 of the Customs Act. Hence, a demand cannot be made sans any challenge to the bill of entry. Reliance in this regard is placed on the decision of Supreme Court in the case of **ITC Ltd. Vs. CCE, Kolkata-IV [2019(368) E.L.T. 216 (S.C.)]** and the decision of Hon'ble Tribunal, Kolkata in the case of **Shri Rajib Saha Vs. CC (Preventive), Shillong [2023(8) TMI 1162 - CESTAT KOLKATA]**. Therefore, in view of the principles laid down in the aforesaid judgment, the impugned proceedings are unsustainable in law and liable to be set aside, since the Bills of Entry were never challenged or appealed by the Department.*

C. <u>The impugned proceeding is bad in law as it travels beyond the scope of the Show Cause Notice</u>

C.1 The Appellant humbly submits that a SCN constitutes the very foundation of proceedings against an assessee, and therefore, the Adjudicating Authority as well as the Appellate Authority cannot travel beyond the allegations and charges set out therein. In the present case, the Adjudicating Authority has enhanced the customs duty demand from Rs. 48,88,454/- (as proposed in the Show Cause Notice) to Rs. 73,32,683/- on the ground that the imported goods were not eligible for exemption under Notification No. 152/2009-Cus since the preferential Certificate of Origin had allegedly been issued contrary to the origin criteria prescribed under the Customs Tariff (Determination of Origin of Goods under the Preferential Trade

Agreement between the Government of the Republic of India and the Republic of Korea) Rules, 2009. However, it is pertinent to note that there was not even a whisper about any of the above noted facts in the show cause notice. The impugned demand, having been confirmed on ground never proposed in the Show Cause Notice, is therefore wholly unsustainable in law.

C.2 The Appellant states that it is a settled law that an adjudication order cannot traverse beyond the scope of show cause notice. Reference in this regard is invited to the following decisions:

i. CC vs. Toyo Engineering India Ltd. [2006 (201) ELT 513 (SC)]
ii. Ganapati India International Pvt. Ltd. vs CCE, Bolpur [2014 (35) STR 709 (Cal)]

D. The Preferential Certificate of Origin has been appropriately issued and therefore the benefit of exemption cannot be denied to the Appellant.

D.1 Even otherwise, the Appellant humbly submits that the Certificate of Origin was issued by the competent authority under the Comprehensive Economic Partnership Agreement between India and Korea and carries a presumption of validity. In the absence of any adverse verification report from the issuing authority, the benefit flowing from such Certificate could not have been denied by the customs authorities.

D.2 It is submitted that that the Ld. Appellate/Adjudicating Authority has lost sight of the fact that the Certificate of Origin was issued in terms of Rule 5(1)(b) of Certificate of Origin Rules i.e. CTSH + RVC35% (Regional Value Content not less than 35 percent of the FOB value and change in sub-heading at six digit level) and not under the product specific rule specified in Rule 5(1)(a). The said fact can also be corroborated from Certificate of Origin itself, wherein the Origin criterion at Sl. No *has been reflected as "CTSH+RVC 35%". In which case, there was no requirement of impugned goods falling under CTH 76109010 to be covered by Annexure 1 under Rule 5 of the Certificate of Origin Rules, which is mandated for PSR and not otherwise.*

E. The Appellant is entitled to refund of sum of Rs. 48,88,454/- paid under protest

The Appellant had deposited a sum of Rs. 48,88,454/- towards under protest through Demand Draft No. 600131 dated 26.07.2021, without prejudice to its rights and contentions. In view of the submissions made hereinabove, it is evident that no duty is payable by the Appellant. Accordingly, the Appellant humbly prays that the Hon'ble Tribunal be pleased to direct refund of the aforesaid amount of Rs. 48,88,454/- paid under protest, along with applicable interest."

5. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

6. Heard the parties and considered their submissions.

7. We find that the following issue emerges from the impugned proceedings:

(a) Whether aluminum framework structures along with accessories are classifiable under CTH 76109010, as claimed by the appellant under CTH 84806000, as 'moulds for mineral materials', as claimed by the Revenue;

(b) Whether the adjudicating authority can enhance the customs duty demand by travelling beyond the scope of the Show Cause Notice in view of the fact that the issue of certificate of origin was not raised in the Show Cause Notice, or not.

Issue (a): Whether aluminum framework structures along with accessories are classifiable under CTH 76109010, as claimed by the appellant under CTH 84806000, as 'moulds for mineral materials', as claimed by the Revenue

8. We find that the issue of classification of the goods in question has been decided by this Tribunal in the case of *M/s. Alcove Constructions Pvt. Ltd. vs CC (Port), Kolkata[2025(9) TMI 821-CESTAT Kolkata]* wherein this Tribunal observed as under: -

> *"6. We find from the photographs enclosed by the appellant that these are moveable Formwork which can be used at various sections of the constructed area based on the requirement of the client. The basic content of the product is Aluminium.*
>
> *7. From the Explanatory Notes under HSN (copy of which was provided by the appellant), we find that under 7308.40, "Equipment for scaffolding, shuttering, propping or pit-propping" are given, under Chapter 73, pertaining to structures of iron or steel. The Explanatory Notes to heading 76.10 state that the Explanatory Note to heading 73.08 apply, mutatis mutandis, to the heading under 76.10.*
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> *7.1. When both of these are read together, it would mean that when the goods viz., Aluminium structures in this case, are similar to equipment for scaffolding, shuttering, propping or pit-propping, the same would get classified under heading 76.10 only. Therefore, we hold that the appellant was correct in classifying the impugned goods under CTH 7610 90 10.*
>
> *8. We also observe that this is a case where the Bills-of-Entry were self-assessed by the appellant. The Revenue has not challenged the assessment under these Bills-of-Entry, which they are required to do before they come up with their demand notice. This Tribunal in the case of Shri Rajib Saha v. Commissioner of Customs (Prev.), Shillong [Final Order Nos. 76465-76466 of 2023 dated 24.08.2023*

in Customs Appeal No. 75278 of 2016 & anr. (CESTAT, Kolkata)] has held as under: -

> *"10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd, has held as under:*
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> > *47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund, and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.*
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> *11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also."*

8.1. We find that the ratio laid down the above Final Order passed by this Tribunal is squarely applicable to the facts of the present case. Therefore, even on this count, we set aside the impugned order and allow the appeal.

9. We also find force in the appellant's submission that the Id. adjudicating authority and the lower appellate authority have traversed beyond the scope of the Show Cause Notice. Admittedly, though a proposal was made to deny the benefit of the Notification, the Show Cause Notice did not *specify as to any condition which had not been fulfilled by the appellant so as to deny the benefit of the said Notification. In such a case, the appellant would not have had an opportunity to defend their case by submitting proper documentary evidence.*

10. In view of the foregoing, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law."

9. Further, the said issue was again examined by this Tribunal in the case of *Vijay Nirman Company Pvt. Ltd. vs. Principal Commissioner of Customs Visakhapatnam[2025 (1) TMI 747-CESTAT Hyderabad].* wherein the issue has been examined by this Tribunal, observing as under: -

> *"9.The core issue to be decided in this matter is whether imported AFM is classifiable under CTH 76109010 or CTH 84806000. From the documents and evidence on record, it appears that the appellants had placed order for AFM for the proposed APTIDCO project. Therefore, there is no denial that the items were specifically designed to suit the end use of the appellant i.e., construction of building and related structures. However, before we take up the statutory provisions of classification under competing headings, for the ease of reference, the said headings are reproduced below:-*
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> *……….*
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> *……….*
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> *……….*
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> *10. As per HSN explanatory note for the heading 7610, inter alia, the explanatory note to heading 7308 would also apply to CTH 7610 and also will exclude assemblies identifiable as parts of articles of Chapter 84 to 88. Explanatory note to heading 7308, inter alia, covers complete or incomplete metal structures, as well as parts of structures and for the purpose of the said heading, these structures are characterized by the fact that once they are put in position, they generally remain in that*

position but this heading does not cover coffering panels intended for pouring concrete, having the character of moulds. On the other hand, Chapter heading 8480.60, inter alia, includes moulds for mineral materials and the explanatory note to this heading covers the moulding boxes used in metal foundry, mould bases and moulding patterns, with certain exceptions. It also covers all moulds (whether or not hinged and whether used by hand or in presses or moulding machines) which are of a kind used for moulding the following materials into blanks or finished articles:

i) Metals and metal carbides

ii) Glass (including fused quartz or other fused silica) or mineral materials such as ceramic pastes, cement, plaster or concrete.

iii) Rubber or plastics.

In general, the essential function of a mould is to retain the material in a predetermined shape while it sets; some moulds, also exert a certain pressure on the material. But the heading excludes stamping dies of heading 82.07 since they shape the material solely by means of a powerful blow or compression (e.g., dies for stamping out sheet-metal goods).

11. The department is relying on the explanatory note which explains about mould for mineral materials. This has been described as "moulds for moulding concrete, cement or asbestos-cement goods (tubes, vats, paving stones, flags, chimney-pots, banisters, architectural ornaments, wall, floor or roof slabs, etc.) and also moulds for making prefabricated construction elements of reinforced or pre-stressed concrete (window frames, parts of vaulting beams, railway sleepers, etc.). 12. Learned Advocate for the appellant has shown us some photographs to better appreciate the use of Aluminium Formwork in the construction of building, structure, etc. These photographs are reproduced below for ease of reference.

13. We have seen the photographs submitted by the learned Advocate on 13.12.2024 and we find that though it has been designed for intended purpose, it is essentially Aluminium Formwork, which is used for holding the concrete when it is poured in the cavity created by placing different formwork in a vertical or horizontal manner around the steel bars and once the concrete is poured and it sets in, the inner and outer plates are removed and again used in another sector or segment of the same building and therefore, to that extent it is definitely movable. Apparently, this is used in place of the old conventional method of supporting the casting of concrete for making walls, roof or floor by using shuttering made of wooden planks or iron plates. Whereas, by using this system, the entire shuttering is complete either vertically or horizontally, it becomes much easier and faster to pour the concrete inside the cavity for settling down and subsequently, the same plates are removed once they set in. Therefore, because of the use of this system, the construction becomes faster and it also has facility for dismantling once the concrete sets in.

14. An AFM which essentially is a shuttering to facilitate efficient and faster casting and therefore cannot ipso facto become mould. At this juncture, it is important to understand the difference between formwork and mould. Basically, a formwork is nothing but a shutter plate/shuttering material, which is temporary structure used to shape and support freshly poured concrete until it hardens and gains sufficient strength to support itself and the formwork can be used in different areas, including building foundations, where it is used to create the shape of foundation walls, footings and piers, walls and partitions, beams and columns, where it is used to shape columns, slabs, where it is used to create flat surface such as floors, roofs and bridge decks. Even though this term 'formwork' and 'mould' are often used interchangeably in construction activity, they have different meanings. While *formwork is a temporary structure used to shape and hold concrete until it sets in and it basically provides support and maintains the structure during the construction process and are typically removed after concrete sets in, leaving behind the desired structure. Whereas, in case of mould, they are reusable pattern or cavity used to shape material and can make multiple copies and can be permanent also depending on the application. Therefore, while formwork is primarily used in construction to shape and support structures temporarily, the moulds are used in creating multiple copies of desired shape and design often used for casting smaller elements like decorative features or precast components. The reliance placed by the Adjudicating Authority that it is customized and cannot be used or moved to other location is also misplaced. It is nobody's case that these formworks remain even after concretes were set in and that they were not removed and kept elsewhere for a similar use at a later date, if required.*

15. CTH 7610 covers, inter alia, aluminium structures and by way of example, it includes, inter alia, roofing frameworks. The roofing framework is therefore covered within CTH 7610 and therefore, it is necessary to understand what roofing framework is and how it is different from formwork. Roofing framework refers to structural element that supports a roof and, inter alia, provides structural support and also serves as a base for roofing material. In other words, it would be permanent structure as distinct from aluminium formwork. It is here that one has to see that the heading is vast enough to cover all kinds of aluminium formwork except for clear exclusion and the example includes various types of materials and structures which are used in the construction work. It is an admitted fact that aluminium formwork has been used only in relation to construction activity and even though it is not permanently attached, it does not get excluded from the coverage under the category of 'aluminium structure' merely on *this count. Similarly, in the case of definition of mould also, the moulds are primarily for shaping various things including prefabricated construction elements or reinforced or pre-stressed concrete (window frames, parts of vaulting beams, railway sleepers, etc.), tubes, vats, paving stones, flags, chimney pots, banisters, architectural ornaments, wall, floor or roof slabs, etc. Therefore, essentially when certain things are moulded, it will produce repeated copies of the same depending on the material used for shaping and its intended use and therefore, it is a standalone mould which is used for creating such intended goods. Whereas, formwork is an in situ structural support during the construction of a building or an infrastructure where essentially cement is required to be poured in the cavity supported on the either side by the formwork and where the steel material or other reinforcing material is already placed. Once the structure sets in, the entire panel can be dismantled by removing one by one and the structure will stand on its own. Merely because of this process of casting, it cannot become a mould for either making a slab or a mould for making a full structure itself. There has to be a definite item or product which can be made repeatedly by using such moulds which is not the case here. In fact HSN clearly points out that a mould is used for moulding certain materials into blanks or finished articles. Nowhere the department has pointed out any blank or article has emerged out these aluminium formworks. A complete immovable building structure cannot be called a blank or an article. The illustration also made it clear that mould would create blanks, articles, etc., including cement slabs but not the entire building or structure.*

16. We also observe that the case has been made out on the basis of information and statement given by the appellant, wherein, they had, inter alia, also stated that they had paid up the differential duty in respect of 15 Bills of Entry to avoid interest burden, etc. However, in respect of remaining 5 Bills of

Entry, which is the subject matter of this appeal, they are contesting that the same as they felt it is appropriately classifiable under CTH 7610 on the grounds that essential character of the goods is imparted by the aluminium and these items are useful for one time. Moreover, the suppliers have classified the item under CTH 7610 and that the custom officers have not denied the said classification, as claimed by them. Thereafter, the Adjudicating Authority, by relying on purchase contracts and statutory provisions under Chapter 76 and Chapter 84 as well as HSN explanatory notes, made an observation that since the goods are predesigned and custom made shuttering material, it cannot be used for any other purpose. Therefore, in view of the HSN explanatory note, which clearly excludes structures and part of structures, which do not stay in place after construction and specific exclusion (b) which excludes coffering panels intended for pouring concrete having the character of mould from the purview of Chapter 76, came to the conclusion that the product imported by the appellant is rightly classifiable under CTH 8480. Admittedly, apart from this evidence, there is no other evidence like expert opinion or comparable imports, etc., to support the claim of the department that the goods are more in the nature of mould and not otherwise.

17. We find that these are in the nature of panels, which are predesigned, keeping in view certain designs for construction of houses, buildings, etc. These are required to be first setup in accordance with the design of the house, whereby they look like prefabricated structure. Apart from fixing the core material like iron bars, rods, etc., the concrete is poured in the cavity between the two panels and once the concrete is set in, these panels are removed one by one, whereby the set concrete gives look of a predesigned structure.

18. It could be seen that the department is proposing that these are more in the nature of moulds for mineral materials. On perusal *of HSN explanatory note (f) to CTH 8480, it would be seen that it covers (i) moulds for ceramic pastes (e.g., brick moulds, moulds for pipes or for other articles of ceramics, including moulds for artificial teeth) and (ii) moulds for moulding concrete, cement or asbestos-cement goods (tubes, vats, paving stones, flags, chimney-pots, banisters, architectural ornaments, wall, floor or roof slabs, etc.). Therefore, what is apparent is that it covers that kind of mould, which will mould concrete, etc., into various items like tubes, vats, paving stones, flags, etc. It will also include the mould walls, floor or roof slabs. Here it is important to note that the expression used, "wall, floor or roof slabs, etc.", means that slabs which are meant for use in walls, floors or roofs are also made by using moulds. Essentially, in the case of mould, the articles which are made by way of moulding concrete, etc., are the articles which are end products of the moulding product and the same is thereafter used for certain other purposes including construction purposes. Whereas, in the case of impugned goods, they are acting as a support for setting of the concrete and the structure once set in stays where it is and only the plates are removed. Therefore, there is stark difference between this product and the mould and therefore, AFM cannot be treated as if it is a mould for moulding in building or a house. It is nobody's case that these were used for making parts which were later assembled for construction of house rather from the facts, it is apparent that these were used as shutters and support, in situ, where the concrete gets set and immovable structures like houses, building, etc., emerge.*

19. On the other hand, CTH 7610 covers, inter alia, all kinds of aluminium structure except for the exclusion provided, i.e., mould falling under Chapter 84. Therefore, even if there is a mould made out of 100% aluminium also, it would be not classifiable under CTH 7610 and it will be falling under Chapter 84. However, when the product itself is not a mould then the exclusion will *not be applicable. The same heading also includes aluminium plates, rods, profiles, tubes and the like, prepared for use in structures. In this case, as discussed in the foregoing paras, these goods are nothing but various aluminium plates though custom designed, which are assembled at site, in situ, for construction of buildings, etc. Since in view of the use of this panel it cannot be called a mould, therefore, reclassification proposed by the department is not sustainable and classification claimed by the appellant will have to be accepted.*

20. The Revenue has also relied on the judgment of CC (Import), Mumbai Vs Dilip Kumar and Co. & Ors (supra) in support that if there is a grey area, the benefit should go to Revenue. In this case, there is a contradictory classification which will decide whether the benefit of notification will accrue or otherwise and it is not the admissibility of notification, per se, which is in question. In so far as the classification is concerned, the Hon'ble Supreme Court, inter alia, debated as to how the statute should be construed and considered various case laws to come to the conclusion that when the words in the statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. However, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose. The crux of this judgment is summarized in Para 43 of this judgment which is reproduced below:-

> *"43. There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money*

from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view."

21. Therefore, if there is any ambiguity in a taxation provision, it is to be interpreted in favour of the subject/ assessee. However, when a tax exemption has to be interpreted, the benefit of doubt should go in favour of the Revenue. Thus, as the issue is not that of exemption and more of classification leading to demand of duty, this judgment would not help the cause of the department. In fact, going by the ratio, we find that since in this case, there could be grey area regarding coverage under Chapter 76, vis-à-vis Chapter 84 due to various interpretations not emanating from the heading itself, the benefit of doubt should be given to the appellant and not to the Revenue. The Revenue has also relied on the judgment in the case of M/s Tata Projects Ltd Vs CC, Chennai [2024 (3) TMI 1055 – CESTAT Chennai]. However, going through the judgment, it appears that in this case the supplier had claimed the classification of aluminium framework under CTH 8480.60, whereas the appellant claimed said goods under CTH 7610.9020. This case is distinguishable on two counts. Firstly, the appellant themselves are claiming the classification under CTH 8480.60 and the product is aluminium framework and not aluminium formwork. Moreover the issue was relating to grant of refunds and not that of classification. Similarly, the other case laws, relied upon by the Revenue, are not relevant as in the case of Shree Ram Urban Infrastructure Ltd Vs CC (Imports), Mumbai [2009 (5) TMI 673 – CESTAT Mumbai], the issue was classification of composite product used to assist in construction and based on the examination of samples and its composition, the Tribunal felt that the same was classifiable under CTH 8480.60. In fact, in Para 5 of the said order, the department reiterated the findings of the Commissioner and contended that the expression, "for use in structure", used in CTH 7610 does not necessarily imply that the goods should become part of the structure and temporary use is also covered within the expression, "use in structure". Therefore, since the essential character is imparted to the panel by aluminium, the goods are rightly classifiable under CTH 7610. In the present appeal, the department is taking a different view on CTH 7610 that it needs to be a permanent structure and it should not be movable, which is tenable."

10. In view of the above discussion, we hold that the goods in question are correctly classifiable under CTH 76109010. Therefore, the appellant is not liable to pay duty under CTH 84806000.

Issue (b): Whether the adjudicating authority can enhance the customs duty demand by travelling beyond the scope of the Show Cause Notice in view of the fact that the issue of certificate of origin was not raised in the Show Cause Notice, or not.

11. We find that the allegation that the certificate origin does not satisfy the requirement of Rule 5(1)(a) of the Origin Rules is not sustainable as the same was not the part of the Show Cause Notice. Therefore, we are of the opinion that the adjudicating authority has gone beyond the scope of Show Cause Notice. Consequently, the impugned demand against the appellant by alleging that the certificate of origin does not satisfy the requirement of Rule 5(1)(a) of the Origin Rules is not sustainable as held by the Hon'ble Apex Court in the case of *Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd. 2006(201) E. L. T. 513(S.C.).* Wherein the Hon'ble Apex Court observed as under:-

> *"16. Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither adjudicating authority nor the appellate authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show*

cause notice as well. The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals these points have not been taken."

12. Further, in the case of *Ganpati India International Private Limited Vs. Commissioner of Central Excise Bolpur [2014(35) S. T. R. 709(Cal.)* the Hon'ble High Court of Calcutta had an occasion to examine the issue wherein it was observed as under: -

> *"4. At the time of making final adjudication, the authorities found certain other services viz. Cleaning Services, Supply of Tangible Goods Services, Business Auxiliary Services, Consulting Engineers Services and Security Agency Services which attracts service tax to be paid and imposed the liability for non-payment of the service tax thereupon.*
>
> *5. The petitioner tried to impress that Watch and Ward Services is distinct and different from the Security Services. But the authorities, after recording the findings thereupon, refused to accept such interpretation sought to be made by the petitioner. The adjudicating authority further proceeded to impose not only the service tax but also the penalty upon the petitioner.*
>
> *6. Before the Tribunal, apart from other issues, one of the issues raised was that certain services, for which liabilities have been imposed upon the petitioner, were outside the scope of the show cause notice.*
>
> *7. The Tribunal simply records that the demands have been raised on the basis of the balance sheets and the findings have been arrived upon consideration of the defence taken by the petitioner and it cannot be said that it is beyond the scope of the show cause notice.*
>
> *8. As I have already indicated that in paragraphs 2.2 and 2.3 the adjudicating authority contemplates that service tax under the services of Security Agency and Manpower Supply Services have not been paid as shown in the balance sheet*

> *which attracts violation of the provisions of Sections 67, 68, 69 and 73 of the Finance Act, 1994. The adjudicating authority cannot travel beyond the show cause notice and should have confined its consideration within the compass thereof."*

13. Therefore, we hold that the adjudicating authority has travelled beyond the issue involved in the Show Cause Notice. Therefore, the new allegation that the certificate of origin does not satisfy the requirement of Rule 5(1)(a) of the Origin Rules is not sustainable.

14. In view of the above discussion, we do not find any merit in the impugned order and accordingly the same is set aside.

15. Consequently, the appeal is allowed, with consequential relief.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp