

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Customs Appeal No. 30237 of 2021

(Arising out of Order-in-Original No. VIZ-CUSTM-000-COM-15-2020-21 dt.22.12.2020
passed by Principal Commissioner of Customs, Visakhapatnam)

Vijay Nirman Company Pvt Ltd

D.No.11-9-16, Daspalla Hills, Visakhapatnam,
Andhra Pradesh – 530 003

.....Appellant

VERSUS

**Principal Commissioner of Customs
Visakhapatnam - CUS**

4th Floor, Customs House, Port Area,
Visakhapatnam, Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri M. Srinivasa Rao, CMO for the Appellant.

Shri M. Anukathir Surya, AR for the Respondent.

Coram:

HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30009/2025

Date of Hearing: 13.12.2024

Date of Decision: 13.01.2025

[Order per: A.K. JYOTISHI]

M/s Vijay Nirman Company Pvt Ltd (hereinafter referred to as the Appellant) are in appeal against the OIO dt.22.12.2020 (impugned order) passed by the Principal Commissioner of Customs, Visakhapatnam. Vide the impugned order, the Adjudicating Authority has, inter alia, reclassified the imported product 'Aluminium Formwork Materials' (AFM) under CTH 84806000 from the claimed classification under CTH 76109090. As a consequence, he has also denied the benefit of notification claimed by the appellant under S.No.610 of Notification No. 152/2009-CUS dt.31.12.2009.

2. The brief facts of the case are that the appellants are, inter alia, engaged in civil and infrastructure construction business. They imported

AFM from M/s Kumkang Kind Co Ltd, Republic of Korea (South Korea) and classified the same under CTH 76109090 and also claimed nil rate of basic customs duty vide S.No.610 of Customs Notification No. 152/2009 dt.31.12.2009. The said consignment was cleared by the Customs as per the claimed classification and notification benefit. However, subsequent to the clearance, DRI Officers had issued a SCN, based on certain intelligence that the appellants have misclassified their product under CTH 76109090 whereas the said product is rightly classifiable under CTH 84806000. Further, based on the statement recorded and submission of certain documents including, inter alia, purchase orders of the appellant placed on their supplier, the department felt that since the essential character of the imported goods are assembling moulds used for moulding concrete in the construction activity, the same would be more appropriately classifiable under CTH 84806000 and not under CTH 76109090, as claimed. Therefore, essentially they felt that the imported goods were basically assemblies identifiable as parts of article of Chapter 84 and since they are more akin to moulds, it would be appropriately classifiable under CTH 84806000 and that since this has come in de-assembled form, having essential character of complete article, which are assembling moulds used for moulding concrete in construction activity, it would fall under CTH 84806000.

3. On adjudication, the Adjudicating Authority has mainly relied on the following facts:-

- a) The purchase contracts described subject items as "design and supply of aluminium formwork suitable to the final drawings of APTIDCO with suitable steel supports, complete adjustable supports, external bracket and accessories".
- b) As per HSN Explanatory Note to CTH 7610, the provisions of the explanatory note to heading 7308 apply, mutatis mutandis, to heading 7610 also. As per explanatory note to heading 7308, the heading covers complete or incomplete metal structures, as well as parts of structures and for the purpose of this heading, these structures are characterized by the fact that once they are put in position, they generally remain in that position. However, the same heading does

not cover coffering panels intended for pouring concrete, having the character of moulds.

- c) That goods are made of aluminium having essential character of mould and hence the function of mould is to retain the material in pre-determined shape until it sets into intended shape and also it never forms part of constructed structure but are removed after setting of concrete and reusable for some purpose.
- d) As per Design Building Wiki, an open source website, 'Formwork' is a term used for the process of creating a temporary mould into which concrete is poured and formed. In civil engineering terminology, a 'Formwork' is a die or a mould including all supporting structures, used to shape and support the concrete until it attains sufficient strength to carry its own weight.
- e) The importers themselves has agreed that goods are predesigned and custom made shuttering material exclusively to fit into the design for the contract for construction of dwelling units under APTIDCO and it cannot be used for any other purpose.
- f) HSN Explanatory Note to CTH 8480 covers, inter alia, moulds for mineral materials, including moulds for moulding concrete, cement or asbestos-cement goods, etc.
- g) Since they had already made part payment and they were in agreement with the department about proper classification, therefore, their objections put forth were more of an afterthought only after issue of subject notice.
- h) That coffering panels intended for pouring concrete, having the character of mould (CTH 8480) are excluded from the provisions of CTH 7610.

4. Therefore, essentially the Adjudicating Authority has held that the imported AFM as having essential character of mould since function of a mould is to retain the material in pre-determined shape until it sets in the intended shape and not of an aluminium structure envisaged in CTH 7610.

5. Learned Advocate for the appellant submits that in view of the judgment in the case of Alcove Construction Pvt Ltd Vs CC, Kolkata [Final Order No.76894/2024 dt.12.09.2024], the classification of imported AFM is no longer res integra and it has been held by the Tribunal that the same would be rightly classifiable under CTH 76109010. He further submits that even otherwise, careful analysis of the applicable CTH and the proposed CTH read with HSN explanatory notes and the actual nature of goods would indicate that they are more appropriately classifiable under CTH 76109010 and not under CTH 84806000. He further submits that the department has placed reliance on the definition of 'Formwork' as given in Wikipedia and no expert advice or opinion was sought to know the actual nature of the imported goods. He submits that AFM imported by them was actually used at various building sites on a customized basis and the same cannot be termed as 'mould' since the form of the base structure changes as per the requirement of the customer/client and the entire formwork system is designed as a cost-effective shuttering and used to provide structure and support to brick walls, roofing, etc., in civil construction. As an alternative argument, he also submits that unless the assessment of Bills of Entry is not challenged by the department, demand cannot be made against them, relying on the judgment of Kolkata Bench of this Tribunal in the case of Shri Rajib Saha Vs CC (Prev), Shillong [Final Order No.76465-76466/2023 dt.24.08.2023]. He also submitted that the Adjudicating Authority has traversed beyond the scope of the SCN, wherein, although initially the demand was confirmed by way of the OIO, the Adjudicating Authority denied the benefit of exemption notification. Since they did not get specific reason as to why and which conditions of the notification were not fulfilled by the appellant, therefore, they were not in a position to rebut the same.

6. Learned Advocate relies on the explanatory note to HSN and submits that under the heading 7308.40, "equipment for scaffolding, shuttering, propping or pit-propping" is given under Chapter 73, pertaining to structures of iron or steel and that the same explanatory note would also be applicable, mutatis mutandis, to the heading under 7610. Therefore, Aluminium structures in this case, are similar to equipment for scaffolding, shuttering, propping or pit-propping. Apart from merit, he has also relied on various case laws in support that, in the facts of the case, there is no suppression

and there is no ground for invoking extended period as also for imposition of penalty.

7. On the other hand, learned AR has reiterated the observations made by the Adjudicating Authority for reclassification and confirmation of demand as well as for imposition of penalty, etc. They have also relied on the judgment of Hon’ble Supreme Court in the case of CC (Import), Mumbai Vs Dilip Kumar and Co. & Ors [2018 (7) TMI 1826 (SC)]. Learned AR has also explained the statutory provisions and HSN explanatory notes to support that it has essential character of mould for moulding concrete.

8. Heard both sides and perused the records.

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:-

Tariff Item	Description	Unit	Rate of duty	
			Standard	Preferential Areas
7610	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			
7610 10 00	Doors, windows and their frames and thresholds for doors	kg.	10%	-
7610 90	<i>Other:</i>			
7610 90 10	Structures	kg.	10%	-
7610 90 20	Parts of structures, not elsewhere	kg.	10%	-

	specified			
7610 90 30	Aluminium plates, rods, profiles, tubes and the like, prepared for use in structure	kg.	10%	-
7610 90 90	Other	kg.	10%	-

Tariff Item	Description	Unit	Rate of duty	
			Standard	Preferential Areas
8480	Moulding Boxes for metal foundry; mould bases; moulding patterns; mould for metal (other than ingot moulds), metal carbides, glass, mineral materials, rubber or plastics	kg.	7.5%	-
8480 10 00	Moulding boxes for metal foundry	kg.	7.5%	-
8480 20 00	Mould bases	kg.	7.5%	-
8480 30 00	Moulding patterns	kg.	7.5%	-
	<i>Moulds for metal or metal carbides:</i>			
8480 41 00	Injection or compression types	kg.	7.5%	-
8480 49 00	Other	kg.	7.5%	-
8480 50 00	Moulds for glass	kg.	7.5%	-
8480 60 00	Moulds for mineral materials	kg.	7.5%	-
	<i>Moulds for rubber or plastics:</i>			
8480 71 00	Injection or compression types	kg.	7.5%	-
8480 79 00	Other	kg.	7.5%	-

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:

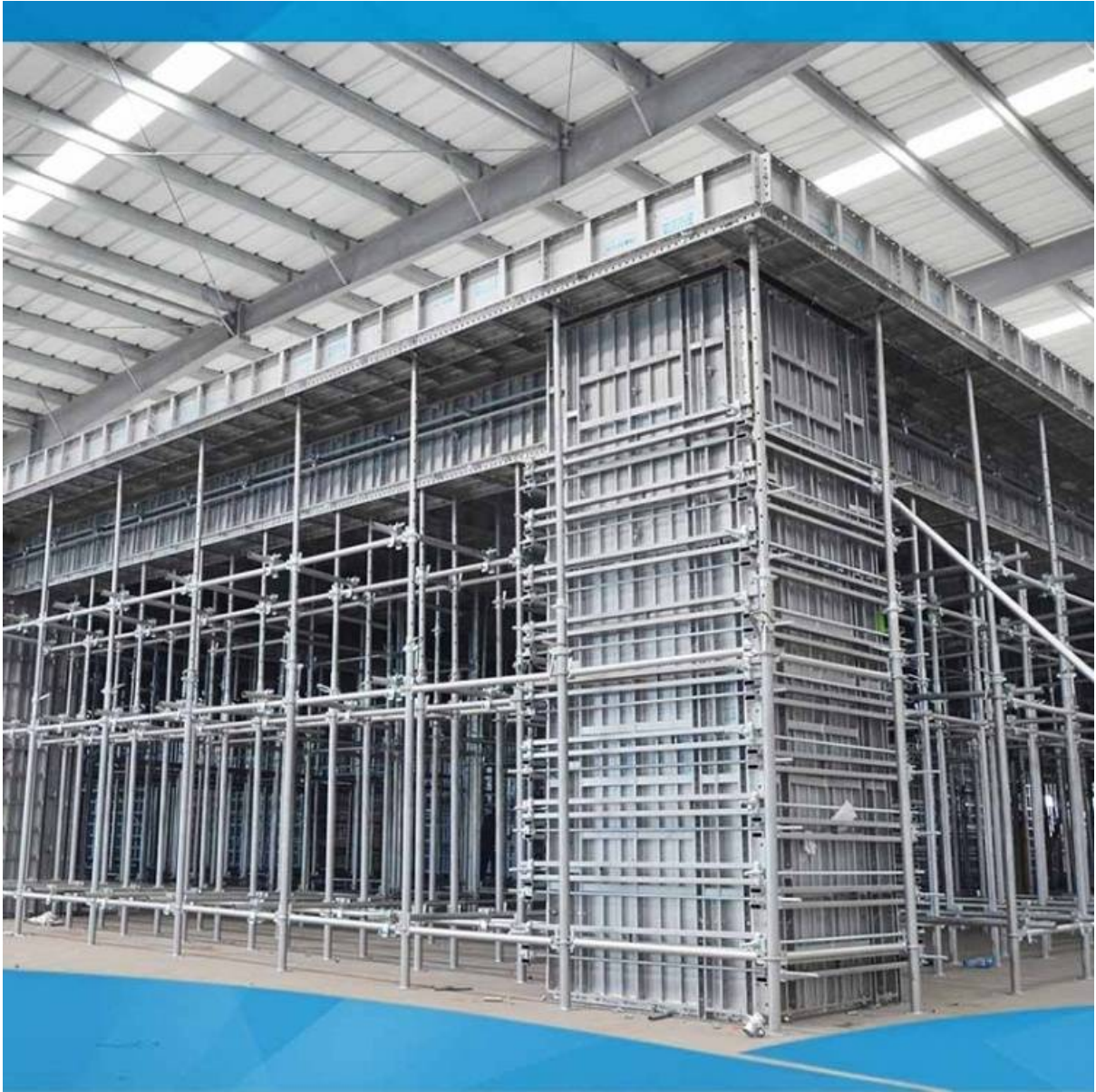
- i) Metals and metal carbides
- ii) Glass (including fused quartz or other fused silica) or mineral materials such as ceramic pastes, cement, plaster or concrete.
- iii) Rubber or plastics.

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.





ADVANTAGES & DISADVANTAGES OF ALUMINUM FORMWORK

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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.

22. Another ground taken by the department is that they will get excluded because they are coffering panels and therefore, they would not be included in the purview of CTH 7610. We find that coffering panels are basically decorative ceiling treatment that is used for creating a grid like pattern on ceiling and by the very description, as discussed supra, Aluminium Formwork cannot be considered as coffering panels and therefore, it does not get excluded from CTH 7610.

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.

25. Appeal is allowed with consequential benefits, as per law.

(Pronounced in the Open Court on 13.01.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)