# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 20346 of 2018 [DB]**

[Arising out of Order-in-Appeal No. 945/2017 dated 08/11/2017 passed by Commissioner of CUSTOMS (Appeals), BANGALORE.]

**M/s. Alufit India Pvt Ltd**
17A, II Phase, Peenya Industrial Area,
BENGALURU – 560 058.
KARNATAKA
…..Appellant(s)

*VERSUS*

**Commissioner Of Customs,**
C.R. BUILDING, QUEENS ROAD,
P.B.NO. 5400,
Bangalore – 560 001.
Karnataka
……Respondent(s)

**Appearance:**

Mr. Solomon. C, Advocate for the Appellant

Mr. P. Gopakumar, Authorised Representative for the Respondent

**CORAM: HON'BLE SHRI S.K. MOHANTY, JUDICIAL MEMBER**
**HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER**

## Final Order No. 20203 /2022

Date of Hearing: 25/04/2022
Date of Decision: 27/04/2022

**Per : P.ANJANI KUMAR**

The appellants M/s. Alufit India Pvt. Ltd. vide the Bills of Entry No.6632042 and No.6632043 both dated 2.9.2014 for import and clearance of 'Aluminium Composite Material' and 'Aluminium Composite Panels'; the appellants classified the same under Chapter Tariff Heading (CTH) 7606 1200; the department was of the opinion that the same are classifiable under CTH 7610 9030; an investigation was conducted and a show-cause notice dated 25.3.2015 seeking to change the classification and demanding differential duty; show-cause notice was confirmed by Order-in-Original dated 15.10.2015; the findings of the lower authority have been upheld by the Order-in-Appeal No.945/2017 dated 8.11.2017, hence, the appeal.

2. Shri Solomon C, learned advocate appearing for the appellant submits that the product in question is rightly classifiable under CTH 7606 1200 and the issue is covered in their own case by the previous orders of the Tribunal. He submits that department has challenged the very same classification and issued an Order-in-Original dated 16.10.2006 changing the classification to CTH 7610 9030; on an appeal, Commissioner (A), Chennai vide Order dated 13.11.2006 rejected the Revenue's contention; on an appeal filed by the department, CESTAT vide order dated 13.6.2008 remanded the matter back to the Original Authority to pass a speaking order under the provisions of Section 17(5) of the Customs Act, 1962. In the remand proceedings, the Order-in-Original dated 2.2.2010 has confirmed the classification under CTH 7610 9030 which was set aside by the Commissioner (A) once again vide Order dated 25.9.2012 and confirming the appellant's claim of classification under CTH 7606 1200; in an appeal filed by the Department, was rejected by CESTAT vide Order dated 11.5.2015. He submits, therefore, the order of Commissioner (A)'s, Chennai has attained finality and the present proceedings are in contravention of the Principles of Judicial Discipline.

2.1 Learned counsel further submits that the impugned goods are aluminium sheets which are rightly classifiable under CTH 7606 1200. He submits that the relevant Chapter Headings are as follows:

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|---|---|
| **7606** | **ALUMINIUM PLATES, SHEETS AND STRIP OF A THICKNESS EXCEEDING 0.2 MM** |
| | - Rectangular (including square) |
| 7606 11 | Of aluminium, not alloyed |
| 7606 1110 | Electrolytic plates or sheets |
| 7606 1190 | Other |
| 7606 1200 | Of aluminium alloys |
| | - Other |
| 7606 91 | Of aluminium, not alloyed: |
| 7606 9110 | Circles |
| 7606 9120 | Electrolytic plates or sheets |

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| 7606 9190 | Other |
| 7606 92 | Or aluminium alloys |
| 7606 9210 | Circles |
| 7606 9290 | Other |

Thus, it is seen that this heading covers aluminium articles such as plates, sheets, strip, etc., so long as they are of a thickness exceeding 0.2 mm.

| | |
|---|---|
| **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 THRESHOLD FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS); ALUMINIUM PLATES, RODS, PROFILES, TUBES AND THE LIKE PREPARED FOR USE IN STRUCTURES.** |
| 7610 1000 | Doors, windows and their frames and thresholds for doors. |
| 7610 90 | Others |
| 7610 9010 | Structures |
| 7610 9020 | Parts of structures, not elsewhere specified |
| 7610 9030 | Aluminium plates, rods, profiles, tubes and the like prepared for use in structures. |
| 7610 9090 | Parts |

He also relies upon the HSN Explanatory Notes, WCO Compendium of Classification Opinion, Trade Classification Data and Bills of Entry filed and cleared in other Ports in India. He submits that Hon'ble Tribunal in the case of **ICP Ltd.: 2012 (284) ELT 106 (Tri.-Chennai)** and vide Final Order No.41647/2018 have decided the issue in favour of the appellants. Learned counsel has also submitted a sample of the plate imported.

3. Learned Shri P. Gopakumar, Authorised Representative for the department reiterates the findings of the impugned order and relies upon D

& M Building Product Pvt. Ltd. vs. CC, Bangalore: 2019 (370) ELT 1183 (Tri.-Bang.).

4. Heard both sides and perused the records of the case. On going through the case records, we find that the issue is decided by the Commissioner (A)'s Chennai in favour of the appellants on two occasions. Department's appeal was rejected by CESTAT. We find that CESTAT had rejected the appeal of the Department for the reason of delayed filing by dismissing the COD application. We do not find any material on record to show that dismissal of the application by CESTAT has been appealed against by the Department. Under the circumstances, we find that order of learned Commissioner (A)'s Chennai has attained finality and it is not open for the Department to raise the same issue again and again. Moreover, we find that in the case of ICP Ltd. (supra), on an identical set of facts, Coordinate Bench at Chennai had decided the issue in favour of the appellants. The Bench observed that:

> "6. The Ld. Counsel has produced a sample plate of the impugned goods before us. It is in form of a sheet and definitely is not a structure, or part of structure falling under 7610. It cannot be used as structure or part of structure and is only plates that are generally used for cladding the surfaces. These are sheets which are cut and grooved to clad surfaces, walls, etc. They cannot be termed as structures or parts used for construction. In our view, the Commissioner (Appeals) has rightly classified the same under 7606. We therefore find no ground to interfere in the impugned order. The appeal filed by department is dismissed."

4.1 In view of the above and the literatures produced by the appellants, we have no doubt that the impugned goods are rightly classifiable under CTH 7606 1200. We find that learned Authorised Representative relies upon D & M Building (Supra). On going through the facts of the case, we find that the facts of the case are different, items in dispute in the case of D & M Building (supra) were items prepared for use in structures after import, whereas in the instant case, the impugned goods are simple aluminium plates which are used for cladding the outer walls of the building. The facts of the case and the item being different, the case referred by learned

Authorised Representative cannot be relied upon. Moreover, in the case of the appellants, the decision of the Commissioner (A)'s Chennai has attained finality and a contrary decision, which will be detrimental to the appellants cannot be taken in the interest of justice.

5. In view of the above, the appeal is allowed with consequential relief, if any.

(Order pronounced in the Open Court on **27/04/2022**.)

**(S.K.MOHANTY)**
**JUDICIAL MEMBER**

**(P.ANJANI KUMAR)**
**TECHNICAL MEMBER**

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