

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No.20871 of 2017

And

**Service Tax Cross Objection Application No.20539 of 2017
in
Service Tax Appeal No.20871 of 2017**

(Arising out of Order-in-Original No.02/2017 dated 25.01.2017
passed by the Commissioner of Service Tax, Bengaluru.)

**Commissioner of Customs,
Central Excise and Service Tax,**
1st to 5th Floor,
TTMC Building, Above BMTC Bus Stand,
Domlur, Bangalore - 560 071.

Appellant(s)

VERSUS

M/s. Puravankara Projects Ltd.,
130/1, Puravankara Projects Ltd.
Ulsoor Road,
Bangalore - 560 042.

Respondent(s)

APPEARANCE:

Shri M. Sreekanth, Asst. Commissioner (AR) for the Appellant
Shri Vinayaka Hegde, Chartered Accountant for the Respondent

CORAM:

**HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

FINAL ORDER NO. 20814 / 2026

DATE OF HEARING: 08.06.2026

DATE OF DECISION: 07.07.2026

PER: R. BHAGYA DEVI

This appeal is filed by the Revenue against Order-in-Original No. 2/2017 dated 25.01.2017 passed by Commissioner of Service Tax-I Commissionerate, Bangalore.

2. During the course of audit, it was noticed that the respondent had imported aluminium articles clearing under Chapter Heading 76 of the Customs Tariff and had availed credit on the same. Since, these were not capital goods as defined under the Cenvat Credit Rules, 2004, the credit was found to be ineligible; hence, show-cause notice was issued. The Commissioner in the impugned order observing that the aluminium panels are pre-designed panels to form shape of a civil structure, held them to be 'mould' and allowed cenvat credit on them. Aggrieved by this order, the Revenue is in appeal.

3. The Revenue in their grounds of appeal referring to the definition of 'Capital Goods' stated that the aluminium system/panels cannot be considered as capital goods in the form of mould in view of the fact that their classification is under Chapter Heading 7610 9090 which are excluded from the definition of capital goods. It is further submitted that the aluminium panels which are used in the construction activity can only be considered as inputs and the rules specifically bar the respondent from availing cenvat credit on these inputs which are used for payment of service tax on works contract services. It is also submitted that the Commissioner was wrong in allowing the cenvat credit based on the functional use of the panels in the construction building without looking into the actual description of the goods.

4. The learned Authorised Representative (AR) reiterating the above submissions submitted that at the time of import, admittedly, the goods were classified under CTH 7610 9090 and as per the Customs Tariff, all moulds fall under CTH 84, hence the question of extending the benefit of cenvat credit does not arise. He also relied on the decision of the Hon'ble Supreme Court in the case of **Commissioner of Customs (Import) vs. M/s. Welkin Foods: 2026 (1) TMI 348 (S.C.)**.

5. The Learned Chartered Accountant (CA) on behalf of the respondent submitted that the imported goods are not ordinary aluminium panels but are specialized 'Mivan System Formwork' which are used as moulds for concrete and the nature of usage establishes the fact that they are moulds. It is submitted that they are not single used materials but can be used repeatedly, hence cannot be considered as inputs. Referring to the decision of the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd.: 2010 (255) ELT 481 (S.C.)** submits that the functionality test has to be referred to while deciding the classification of the goods as capital goods. Also relies on the decision of **Gestamp Sungwoo Automotive (Chennai) P. Ltd. Vs C.C.E. Chennai -IV: 2018 (363) E.L.T. 1191 (Tri.-Mad.)**. It is further submitted that cenvat credit has been denied for the period from October 2007 to March 2008 and the show-cause notice was issued on 08.10.2009 which is beyond the normal period of limitation. Relying on the decision of the Hon'ble Supreme Court in the case of **Uniworth Textiles vs. Commissioner of Central Excise: 2013 (288) ELT 161 (S.C.)** submits since there is no suppression, the demand cannot be sustained.

5. Heard both sides. It is an admitted fact that at the time of import, the goods were specifically cleared as aluminium panels classifiable under Customs Tariff Heading 7610 9090 and the relevant Chapter Heading is extracted below:

7609 00 00	Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)
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

Parts of structures, not elsewhere specified :

7610 90 21	----	Portable bridge
7610 90 29	----	Other
7610 90 30	---	Aluminium plates, rods, profiles, tubes and the like, prepared for use in structure
7610 90 90	---	Other

8480 Bases; Moulding Patterns; Moulds for Metal (other than ingot Moulds), Metal Carbides, Glass, Mineral Materials, Rubber or Plastics

8480 10 00	-	Moulding boxes for metal foundry
8480 20 00	-	Mould
8480 30 00	-	Moulding patterns
	--	Moulds for metal or metal carbides
8480 41 00	--	Injection or compression types
8480 49 00	--	Other
8480 50 00	-	Moulds for glass
8480 60 00	-	Moulds for mineral materials
	-	Moulds for rubber or plastics :
8480 71 00	--	Injection or compression types
8480 79 00	--	Other

5.1. As per the HSN Explanatory Notes, 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. It also clarifies that the Chapter Heading 8480 includes "Moulds for moulding concrete, cement or asbestos-cement goods (tubes, vats, paving stones, flags, chimney-pots, bannisters, architectural ornaments, wall, floor or roof slabs, etc.). Also moulds for making prefabricated construction elements of reinforced or prestressed concrete (window frames, parts of vaulting beams, railway sleepers, etc.)". Admittedly, the goods were classified as aluminium panels under CTH 7610 and not as moulds under CTH 8480 because the respondent himself in his submissions admits to the fact that when the imported items are assembled at their factory, the formwork takes a form of a hollow container in the suitable shape and when the concrete is poured inside, the

formwork is removed after concrete is hardened. This itself proves the fact that the product attains the mould form only at their factory after assembling the aluminium panels that were imported.

'Capital Goods' definitions is extracted below:

(a) "**capital goods**" means :-

(A) the following goods, namely :-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof;
- (vii) storage tank, [and]

[(viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers used

5.2. The above definition clearly excludes goods classified under CTH 7610; therefore, the Revenue is right when they claim that the functional test cannot be the criteria for claiming cenvat credit. It is also an admitted fact that the mould is formed in their manufacturing premises by arranging the aluminium panels imported by the respondent and the same panels are used for different sizes and shapes of moulds. Therefore, from their own submissions, it is clearly evident that what is imported by the respondent is only aluminium panels which have been rightly classified under CTH 7610 9090. Hence, the Commissioner was not justified in extending the benefit of cenvat credit on the inputs (aluminium panels) which were assembled to form a mould in their manufacturing premises. It is also pertinent to note that in the impugned order, the Commissioner observes that the aluminium formwork is classified under CTH 7610 9090 as per the Bill of Entry available on record. He also observes that when these panels are put together would be in the shape of desired civil structure and

thus, the mould is formed only after the importation of the aluminium panels. Cenvat credit is on the products that are imported and not based on the resultant product at the premises of the respondent. Therefore, the Commissioner was not justified in extending the cenvat credit on the inputs which are categorically ineligible as per the Cenvat Credit Rules, 2004.

6. The Supreme Court in the case of **Pioneer Embroideries Ltd. Versus Commissioner of Customs, Mumbai: 2015 (322) E.L.T. 602 (S.C.) dated 22-7-2015** observed as follows:

"5. It was argued by Mr. Vikram S. Nankani, learned senior counsel appearing for the appellant, that the two sets of machines were imported with the intention to make the mechanised machines as computerised and they were presented as such and thus, the case would be covered by GIR 2(a). This aspect has been simply dealt with by the CESTAT, in the impugned judgment, in the following words :-

"Based on these facts, it is not difficult to identify the goods for what they are. As noted in the aforecited decision of the Australian Tribunal, the classification of the goods has to be done with reference to the state or condition of the goods at the time of importation and not by reference to the purpose of the importer or of the purchaser. The Australian Tribunal further goes on to say that regard must be had to the characteristics of the goods themselves as they would present themselves to an informed observer. The learned consultant for Revenue has also emphasized the word 'as presented' in GIR 2(a). We have no doubt in our mind that as presented the goods were a collection of old and used textile embroidery machines which were yet to be computerised along with new Jacquard Control Devices. As such, the machines were not computerized as presented at the time of importation but they have been subsequently computerized after importation at the premises of the appellants. The classification and essential character of the goods under import has to be determined with reference to the state or condition of the goods at the time of importation and not with reference to the purpose

for which the goods have been imported or the use to which such goods are put to after importation.”

6.1. The Hon’ble Supreme Court in the case of **Commissioner of Customs (Import) Vs. M/s. Welkin Foods** (supra), in similar set of facts, with regard to classification observed as follows:

Summary

96. Based on the aforesaid discussion, the legal position regarding consideration of use when dealing with classification disputes under the First Schedule, Act 1975, can be summarised as follows:

- a. *‘Use’ can be considered as a relevant factor when dealing with classification, only if the concerned tariff heading allows for consideration of ‘use’ or ‘adaptation’, either explicitly or implicitly.*
- b. *A tariff entry is said to allow consideration of ‘use’ or ‘adaptation’ for classification in the following scenarios:*
 - i. *The tariff heading itself explicitly contains a reference to use or adaptation.*
 - ii. *The notes related to a tariff item provide a legal definition or criterion that includes a reference to use or adaptation.*
 - iii. *Use or adaptation is inherent in the wording of the tariff entry itself.*
 - iv. *The heading is an eo nomine term with no statutory definition, and based on the common or trade parlance test, the Court concludes that the common or commercial meaning of the good includes ‘use’ or ‘adaptation’ of the good as a defining aspect of its identity.*
- c. *Unless statutory intention to the contrary is proven, an importer cannot classify goods based on the actual use to which the goods are put.*
- d. *If the importer wishes to classify goods based on their ‘intended use’, then the following conditions must be fulfilled:*
 - i. *First, the tariff heading under which the importer seeks to classify should allow consideration of ‘use’ as a relevant factor;*

ii. Secondly, if such a tariff heading allows for consideration of 'use', the 'use' mentioned in the tariff heading and the 'intended use' claimed by the importer must be consistent.

iii. Lastly, the intended use as claimed by the importer:

1. should be inherent in the goods in question and should be discernible from their objective characteristics and properties, which include, among other things, factors such as function, design and composition; and

2. should conform to the standard of use established for that entry.

e. When a tariff heading contains both an eo nomine component and a use component, both criteria must be satisfied. An importer cannot rely on the use criterion to ignore the product's fundamental eo nomine identity.-----

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(a) Whether subject goods can be classified as 'Aluminium Structures' under CTI 76109010

117. Upon examining Chapter Heading 7610, it is evident that goods must meet a two-part criterion to be classified under it: firstly, they must be made of aluminium, and secondly, they must be a structure or part of such a structure.

118. It is also clear that Chapter Heading 7610 is an eo-nomine provision and makes no reference to use in any manner whatsoever, either explicitly or inherently. Thus, Chapter Heading 7610 is purely an eo-nomine provision. As laid down above, an eo-nomine provision is one that describes a commodity by its name. A use limitation cannot be imposed on an eo-nomine provision unless the name inherently suggests use. An eo-nomine provision would ordinarily include all forms of the name article. Consequently, Chapter Heading 7610 would cover all forms of aluminium structures, except for prefabricated buildings of heading 94.06, which have been excluded by the heading itself.

119. There is no dispute between the parties that the subject goods are made of aluminium. Therefore, the only remaining question is whether

the subject goods can be classified as structures and consequently fall under CTI 76109010.

120. There is no explicit definition or criterion provided for determining what constitutes a structure in the Schedule to the Act, 1975. Nevertheless, guidance can be found in the Explanatory Notes. The Explanatory Note to Chapter Heading 7610 states that the provisions of the Explanatory Note to heading 7308 apply, *mutatis mutandis*, to it. The explanatory note to heading 7308, which is relevant to Chapter Heading 7610, offers a broad criterion for recognising 'structures': firstly, they generally remain in the same position once assembled, and secondly, they are usually composed of various prepared components (such as rods, tubes, plates, etc.) joined by methods like riveting, bolting, or welding.

121. On the basis of examining the objective characteristics and properties of the subject goods, it is evident that the subject goods fulfil the characteristics and unquestionably fall within the category of structures. To further substantiate, we have no doubt that even in common parlance, the subject goods would be referred to as structures. Therefore, the subject goods are classifiable under CTI 76109010 as Aluminium Structures.---

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F. Conclusion

148. A classification dispute in the context of imported goods arises when the revenue and the importer disagree on the tariff heading or sub-heading under which the imported goods ought to be classified. In such scenarios, the tribunals and courts are tasked with determining the most appropriate heading/sub-heading for the purposes of customs law classification. When undertaking this exercise of determining the most appropriate heading, the tribunals and courts are bound by the GRIs, which are provided for in the First Schedule to the Act, 1975 and ought to be applied sequentially. The GRI 1 forms the basis for classifying goods under the First Schedule of the Act, 1975, and establishes the primacy of the notes and terms of headings in determining classification. Thus, any customs law classification dispute at its core would involve interpreting

the tariff headings involved, along with the section and chapter notes relevant to such headings.

149. When interpreting a tariff heading involved in a classification dispute, the tribunal or court may need to invoke and rely on the common or trade parlance test to understand the meaning and scope of the terms used in that tariff heading. After a thorough consideration of this Court's various rulings on this issue, we have succinctly summarised the broad factors that need to be considered in invoking common or trade parlance when dealing with classification disputes in paragraph 66 of this judgment. At the core of all the factors mentioned therein is that the common or trade parlance test can be invoked to determine the meaning and scope of words, only in the absence of statutory guidance.

150. Furthermore, in some cases, such as the one at hand, one another related issue relevant for the purpose of determining whether goods are classifiable under a particular tariff heading is whether the 'use' or 'adaptation' of the goods can be considered a relevant factor. A close examination of various decisions of this Court on this issue indicates that 'use' or 'adaptation' can be a relevant factor in determining classification under a heading, only if such a heading refers to 'use' or 'adaptation', explicitly or inherently. Further, only the intended use as is discernible from the objective characteristics and properties of the goods can be taken into account, and not the actual use, as the same ensures conformity with the 'as imported' principle. After a thorough and detailed examination of all decisions on the subject, we have summarised the legal position in India regarding the consideration of use or adaptation when dealing with classification disputes under the First Schedule of the Act, 1975, in paragraph 96 of this judgment."

7. In view of the above, since the goods were rightly classifiable under CTH 76 as aluminium panels at the time of importation, the benefit of cenvat credit cannot be extended. Moreover, as already discussed at paragraphs 5 to 5.2, there is a separate heading for moulds which was not claimed by the respondent at any given point of time and based on the observations of the Hon'ble apex court, the goods cannot be

classified as moulds. It is their admitted statement that the aluminium panels were formed at their premises after the importation was complete in order to make it a mould like structure to pour the concrete into it, thus, the classification under CTH 7610 9090 as aluminium panels has never been disputed. Therefore, we find that the Commissioner has erred in extending the benefit of cenvat credit. Accordingly, the impugned order is set aside.

7. With regard to limitation, since the Commissioner had set aside the demand on merit, there was no occasion to look into the question of limitation, therefore, in the interest of justice, the issue being upheld on merit, the same is remanded to the original authority to decide the issue only on limitation.

The appeal filed by the Revenue is allowed by way of remand and Cross Objection filed by the respondent is also disposed of.

(Order pronounced in Open Court on 07.07.2026.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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