सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
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DIN-20260171MN000000D1F0

क	फ़ाइल संख्या FILE NO.	S/49-14 to 27/CUS/AHD/2025-26 (14 Appeals)
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-531 to 544-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	28.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Following Orders passed by the Deputy Commissioner of Customs, ICD-Valvada:

Sr. No.	Appeal No.	O.I.O. No. of 2024-25	O.I.O. Dated
1	14/25-26	17	19-03-25
2	15/25-26	10	24-02-25
3	16/25-26	9	22-02-25
4	17/25-26	12	24-02-25
5	18/25-26	16	19-03-25
6	19/25-26	13	19-03-25
7	20/25-26	14	19-03-25
8	21/25-26	5	26-02-25
9	22/25-26	8	22-02-25
10	23/25-26	7	22-02-25
11	24/25-26	4	22-02-25
12	25/25-26	11	24-02-25
13	26/25-26	15	19-03-25
14	27/25-26	6	24-02-25

आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Chandan Exports, 401/402, Pratik Avenue, Opp. Shivsagar Restaurant, Nehru Road, Vile Parle (East), Mumbai - 400057.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-

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(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.	
4.	**मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं**	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलियअधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल,बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने,मांगे गए शुल्क के 10 % अदा करने पर,जहां शुल्क या शुल्क एवं दंड विवाद में हैं,या दंड के 10% अदा करने पर,जहां केवल दंड विवाद में है,अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

1. M/s. Chandan Exports, 401/402, Pratik Avenue, Opp. Shivsagar Restaurant, Nehru Road, Vile Parle (East), Mumbai - 400057 (hereinafter referred to as the 'appellant') has filed the present appeals against the following 14 Orders-In-Original (hereinafter referred to as the 'impugned orders'), passed by the Deputy Commissioner of Customs, ICD-Valvada, Dist. Valsad (hereinafter referred to as 'the adjudicating authority'):

Table-1

Sr. No.	Appeal No.	Bill of Entry No.	Bill of Entry dated	O.I.O. No. of 24-25	O.I.O. Dated	Date of communication of O.I.O.	Classi-fication changed by Customs ?	Value enhanced by Customs ?
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]
1	14/25-26	639	10-11-09	17	19-03-25	25-03-25	Yes	No
2	15/25-26	641	07-01-09	10	24-02-25	15-03-25	Yes	No
3	17/25-26	736	28-02-09	12	24-02-25	15-03-25	Yes	No
4	18/25-26	590	23-10-09	16	19-03-25	25-03-25	Yes	No
5	19/25-26	323	12-08-09	13	19-03-25	25-03-25	Yes	No
6	20/25-26	450	09-09-09	14	19-03-25	25-03-25	Yes	No
7	25/25-26	714	16-02-09	11	24-02-25	15-03-25	Yes	No
8	26/25-26	481	15-09-09	15	19-03-25	25-03-25	Yes	No
9	16/25-26	546	30-10-08	9	22-02-25	15-03-25	Yes	Yes
10	21/25-26	292	13-08-08	5	26-02-25	15-03-25	Yes	Yes
11	22/25-26	545	30-10-08	8	22-02-25	15-03-25	Yes	Yes
12	23/25-26	386	10-09-08	7	22-02-25	15-03-25	Yes	Yes
13	24/25-26	79	16-05-08	4	22-02-25	15-03-25	Yes	Yes
14	27/25-26	319	21-08-08	6	24-02-25	15-03-25	Yes	Yes

2. Facts of the case, in brief, are that the appellant had imported consignments of the goods declared as Aluminum Plate / Sheet of different thickness and Grades (Composite and coated for surface decoration) (hereinafter referred to as 'the impugned goods') for which the appellant had filed 14 Bills of Entry, as mentioned in the above Table-1 (hereinafter referred to as the 'impugned Bills of Entry'). The appellant had classified the impugned goods under the Customs Tariff Heading ('CTH') 7606 1190 which attracted Basic

Customs Duty ('BCD') @ 5%, and other applicable duties. The appellant declared value of the goods on the basis of invoice of foreign supplier.

3. However, Customs Department had classified the impugned goods under CTH 7610 9090 provisionally, as it appeared that CTH 7606 was for aluminium plates, sheets and strips of only prime aluminium articles; whereas composite material such as Aluminium Composite Plates having both aluminium and plastic could not be classified under CTH 7606. It further appeared that CTH 7610 is for Aluminium structures and Parts of structures; that the impugned goods were suitable for building, decoration of interior walls, ceilings, bathrooms, kitchens, balconies, shop's decorations, advertisement board, display platform and signboards etc.; that the impugned goods were prepared from aluminium essentially for use in structures such as external facades, wall, story addition for old buildings, ceilings etc. and therefore the impugned goods appeared to be classifiable under CTH 7610 9090, which attracted higher rate of duty (10% BCD).

4. The gist of the findings of the adjudicating authority are as under:

"3. I have carefully studied all the case records and the submission made by the Noticee. Further I note that in an another matter with respect to another Bill of Entry no. 00567 dated 19.02.2008, not a subject Bill of Entry under consideration in subject matter, filed by the same Importer, the Deputy Commissioner, Customs, ICD Valvada vide an OIO No. 06/07-08 dated 07.03.2008 had re-classified the imported goods "Aluminium Plate (Composite both side coated)" under the CTH 76109090 and accordingly re-assessed the said bill of entry by loading the value under Rule 4 of the Customs Valuation Rules, 2007. Being aggrieved with the OIO dated 07.03.2008, the Importer has filed an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. 100/2008/Cus/Commr(A)/AHD dated 30.12.2008 had set-aside the OIO No. 06/07-08 dated 07.03.2008. An appeal was filed by the Department before the Hon'ble CESTAT and Hon'ble CESTAT vide order dated 08.05.2017 remanded the matter to the Commissioner (Appeals), Customs, Ahmedabad for fresh decision after giving opportunity of personal hearing to both the sides before deciding the matter. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. AHD-CUSTM-000-APP-204-18-19 dated 14.02.2019 again set-aside the OIO No. 06/07-08 dated 07.03.2008. Again, being aggrieved with the OIA, the Department preferred an appeal before the Hon'ble CESTAT. Hon'ble CESTAT vide order No. A/10800/2023

dated 05.04.2023 upheld the OIA No. AHD-CUSTM-000-APP-204-18-19 dated 14.02.2019 and dismissed the appeal filed by the Department. The Hon'ble CESTAT's order was reviewed by the Department and an appeal was filed before Hon'ble Supreme Court of India against the said Hon'ble CESTAT's Final Order dated 05.04.2023. Hon'ble Supreme Court of India vide order dated 25.01.2024 in Civil Appeal Diary No. 793 of 2024 dismissed the said appeal, as follows:

> *"In view of the statement of learned ASG that the appeal involves low tax effect, the appeal is dismissed. Pending applications, if any, shall stand disposed of.""*

5. In the impugned orders, the Grounds of Appeal mentioned in the said Civil Appeal filed before the Hon'ble Supreme Court, have been reproduced. It has been further mentioned that as the Hon'ble Supreme Court had dismissed the Department's Appeal on low tax effect and not on merits, such cases shall not have any precedent value, as mentioned in Para 7 of the CBIC Instruction F. No. 390/Misc/163/2010-JC, dated 20.10.2010 and Section 131BA of the Customs Act, 1962.

6. The adjudicating authority found that the Aluminium Composite Plates are widely used as parts of Aluminium structures, like cladding (both external as well as internal), external walls, curtain boards, recoating of external walls, roofs, rooms etc., many of which are Aluminium Structures or parts of Aluminium Structures. Further, by applying common parlance test, it has been held that Aluminium Composite Plates, are Structures or Parts of structures classifiable under CTH 7610 9090, not under CTH 7606 1190. In this regards, following cases have been relied upon in the impugned order:

- *CCE, New Delhi Vs. Connaught Plaza Restaurant (P) Ltd. - 2012 (286) ELT 321 (SC)*
- *CCE, Nagpur Vs. Shree Baidyanath Ayurved Bhavan Ltd. - 2009 (237) ELT 225 (SC)*

7. As regards valuation of the impugned goods in respect of eight Bills of Entry, as mentioned at Sr. Nos. 1 to 8 of the Table-1, the adjudicating authority has not enhanced/loaded the value by observing, inter alia, that since the value declared had been accepted at the time of provisional assessment, need not to be re-assessed the value. Whereas, in respect of remaining six Bills of Entry, as mentioned at Sr. Nos. 9 to 14 of Table-1, the value has been enhanced/loaded by observing that similar goods under Bill of Entry No. 00567 dated 19.02.2008 of the same importer and same supplier, the value had been loaded and assessed, which has been accepted by the importer/CHA; that considering the

basis of NIDB data and value of earlier Bill of Entry No. 00567 dated 19.02.2008, assessable value had been enhanced.

8. In view of the above observations, the adjudicating authority has observed that the declared CTH 76061190 is liable to be rejected and the impugned 14 Bills of Entry are re-assessed by re-classifying the impugned goods under CTH 760109090. Further, value of the six Bills of Entry, as mentioned at Sr. Nos. 9 to 14 of the Table-1, has also been enhanced vide impugned order. In this regard, the Order of the Hon'ble Supreme Court in the case of *Connectronics & Cables Pvt. Ltd. Vs. C.C. (Adjudication), Mumbai - 2015 (324) ELT 699 (SC)*, has been relied upon in the impugned orders. The adjudicating authority also confirmed the demand of duty based on the classification and valuation determined vide impugned orders and appropriated the duty paid by the appellant.

Being aggrieved, the appellant has filed the present appeals, mainly, on the following grounds of appeal:

9. Judicial discipline not followed:

9.1 The Adjudicating authority has ordered the classification of the subject imported goods under CTH 7610 rejecting the classification claimed by the appellant under CTH 7606 and upheld by the Hon'ble Tribunal vide Final Order No. A/10800/2023 dated 05/04/2023 in Customs Department's appeal No. C/10893/2019 in the appellant's own case involving the same issues for the identical goods imported vide Bill of Entry No. 00567 dated 19/02/2008.

9.2 The Hon'ble Tribunal has upheld the classification of the subject goods under CTH 7606 as claimed by the appellant. After a couple of rounds of litigation, Hon'ble Tribunal has decided the matter by ordering classification of the identical imported goods under CTH 7606 1190. The Commissioner (Appeals) in two successive rounds of litigation upheld the classification claimed by the appellant.

9.3 The Adjudicating authority has, thus, not followed the judicial discipline by refusing to follow the decision of the Tribunal, which squarely covers the issue under consideration. The Adjudicating authority has merely reproduced the Customs Department's Grounds of Appeal in Civil Appeal Diary No. 793/2024 filed before the Hon'ble Supreme Court.

9.4 Further, the adjudicating authority has observed in Para 3 of the impugned order, as under:

The Hon'ble CESTAT's order was reviewed by the Department and an appeal was filed before Hon'ble Supreme Court of India against the said Hon'ble CESTAT's Final Order dated 05.04.2023. Hon'ble Supreme Court of India vide order dated 25.01.2024 in Civil Appeal Diary No 793 of 2024 dismissed the said appeal, as follows:

> *"In view of the statement of learned ASG that the appeal involves low tax effect, the appeal is dismissed. Pending applications, if any, shall stand disposed of."*

9.5 The appellant further contended that the adjudicating authority has failed to appreciate that Article 141 of the Constitution of India provides that the Law declared by the Supreme Court shall be binding on all Courts within the territory of India. The Hon'ble Supreme Court has dismissed the appeal filed by Customs Department, and not set aside the CESTAT Order dated 05/04/2023 upholding the classification of the subject goods under CTH 7606, as claimed by the appellant.

10. <u>The binding nature of the Tribunal's order does not diminish only because the Hon'ble Supreme Court dismissed departmental upped on monetary grounds</u>

The appellant have further submitted that only because the department chose to file appeal against the Tribunal's Order does not mean that the said order loses its force. The adjudicating authority is in error ignoring the vital aspect that the Supreme Court dismissed the departmental appeal. It was immaterial that the Supreme Court did not go into the merit of the departmental contentions.

11. <u>Mis-placed reliance on CBIC Instruction dated 20/10/2010</u>

The adjudicating authority has referred to CBIC Instruction F. No. 390/Misc/163/2010-JC, dated 20/10/2010, which provides that when appeal is not filed solely for reducing Government litigation, such cases shall not have any precedence value. However, in the instant case the department had filed an appeal challenging the classification upheld by the Hon'ble CESTAT. The Hon'ble Supreme Court dismissed the said appeal. Only because the Supreme Court did not go into the merits of the matter, it does not mean that the Supreme Court consented with the Department's grounds of appeal.

12. Mis-placed reference to Section 131BA

The appellant have further submitted that the adjudicating authority has failed to appreciate that the Section 131BA of the Customs Act, 1962, has no application to the present case. The said Section allows the Commissioner of Customs to file an appeal involving the same or similar issues or the questions of law in 'any other case', if an appeal, application, revision or reference against any decision or order was not filed. The adjudicating authority has failed to appreciate that the Department did file an appeal against the Order of the Tribunal, but failed. As such the Department cannot deny the application of the decision of the Tribunal to the case involving the same issue as determined by the Tribunal to the same appellant. Therefore, the said decision of Hon'ble CESTAT certainly has the precedence value and the adjudicating authority should have followed it adhering to the judicial discipline.

13. The appellant relied upon various decisions of higher fora in which observance of judicial discipline stressed upon.

14. Imported Aluminium Plates (Composite) not covered under CTH 7610

14.1 The appellant has further submitted that the adjudicating authority has erred in classifying the subject goods under CTH 7610 which reads as under:

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

14.2 The adjudicating authority has not appreciated that the 'buildings' cannot be considered as 'structures' referred to in the CTH 7610. The 'buildings' where the Aluminum Composite Panels are used for surface decoration are not the 'aluminium structures'. The impugned order failed to establish that the imported goods were in the nature of parts of 'aluminium structures', as the 'buildings' could not be considered as 'aluminium structures'.

14.3 Further, the adjudicating authority has not appreciated that Aluminium Composite Plates can be used for making 'parts of structures' but they were not the 'part of structures' by themselves. He has not appreciated that the 'aluminium plates' cannot be spoken in the same breath with other structural elements listed as 'parts of structures'. In fact, the aluminium plates, rods, profiles, tubes and the like, falls under CTH 7610 only if they 'prepared for use in structures'.

14.4 The imported goods cannot be considered as parts of structures only because these Aluminium Composite Plates, commonly known as ACP, are used for cladding the exterior of the buildings or used in signage. These sheets like plywood laminates can be used for partitioning or furniture (like Kitchen Trolley covers etc.) after necessary processing, cutting to the desired size and shape, drilling, tapping, bending, notching etc. By no means, the imported ACP have acquired the characteristics of parts of structures, not being 'prepared'. As an analogy, it may be said the wood laminates used for wall paneling (like in the court room) cannot be considered as parts of structures, and remain only 'decorative panels'.

15. No evidence that the ACP were known as 'parts of structures' in Public Parlance

The impugned order seems to suggest that the subject goods in 'common parlance' were 'parts of structures'. However, the impugned order, except for the revenue prejudiced presumption, had not led any evidence to that effect.

16. Imported ACP was not 'prepared' for use in structures

The word 'prepared' is derived from the verb 'prepare' which means 'make or get ready for use'. It is not a case made out in the Show Cause Notice or the impugned Order - in - Original that the imported ACP was in any manner 'ready to use in any kind of structure without further preparation'. The plates, rods, profiles or tubes can be 'prepared' for use in the structures by way of drilling, bending or notching. The subject ACP is not even cut to a specified shape.

17. The explanatory notes of HSN Heading 7610

17.1 The explanatory notes for the Heading 7610 under Harmonised System of Nomenclature (HSN) specify that the provisions of the explanatory notes to Heading 7308 apply, *mutatis mutandis*, to the hearing 7610. The relevant part of the explanatory note to Heading 7308 amplifying the scope of the term 'parts of structures' is as under:

> *"Parts of structures include clamps and other devices specially designed for assembling metal structural elements of round cross-section (tubular or other). These devices usually have protuberances with tapped holes in which screws are inserted, and at the time of assembly, to fix the clamps to the tubing."*

17.2 The imported ACP by no stretch of imagination can be considered as 'clamps or other devices' facilitating the assembly of structural elements. It is obvious that the imported ACP does not fit the description of 'parts of structures' specified in the said HSN explanatory notes. Also, the imported ACP are not covered under CTH 7610 not being 'prepared for use in the structures'. It is relevant that the explanatory note to Heading 7308 has provided with examples as to the manner of preparation. The relevant part of the Explanatory note to the Heading 7308 reads as under:

> *"The heading also covers parts such as flat-rotted products, 'wide flats' including so-called universal plates, strips, rods, angles, shapes, sections and tubes, which have been prepared (e.g., drilled, bent, notched) for use in structures."*

17.3 Thus, the flat rolled products could be considered as 'prepared' if drilled, bent or notched. The goods under importation are neither ' drilled, bent or notched' or prepared in any similar manner. The imported goods are simply 'rectangular composite sheets'. The imported ACP, therefore, cannot be considered as 'prepared for use in structures' and therefore falls out of the scope of Heading 7610.

18. <u>Imported Aluminium Plates (Composite) covered under CTH 7606</u>

18.1 The imported goods are covered within the parameters specified in the explanatory notes of HSN Heading 7606. The explanatory notes to the Heading 7606 specify the scope of the said heading with reference to Note 1 (d) to the Chapter 76 which reads as under:

> *(d) Plates, sheets, strip and foil*
>
> *Flat surfaced products (other than the un-wrought products of heading 76.01), coded or not, of solid rectangular (other than square) cross-section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:*
>
> - *of rectangular (including square) shape with a thickness not exceeding one-tenth of the width,*
> - *of a shape other rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.*
>
> *Headings 76.06, 76.07 apply, inter alia, to plates, sheets, strip and foils with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such other*

products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.

18.2 The appellant further contended that the adjudicating authority should have appreciated that the imported ACP being the flat surface product of solid rectangular cross-section of uniform thickness are specifically covered under the CTH 7606 by virtue of said Chapter Note. It is relevant that the plates would be covered under heading 7606 even if 'worked', i.e. cut to shape, perforated, corrugated, ribbed, channeled, coated, embossed, rounded at the ages, provided they do not thereby, assume the character of articles or of products of other headings. The subject imported ACP is not 'worked any manner', other than colour coating, but in any case were not prepared for use in structures. Therefore, the adjudicating authority has erred in classifying the subject goods under CTH 7610 instead of CTH 7606.

19. The Classification opinion adopted by the Customs Co-operation Council (WCO)

19.1 The adjudicating authority has ignored the Classification opinion adopted by the Customs Co-operation Council (WCO). It is categorically opined that the 'laminated aluminium products' consisting of two flat rolled sheets of aluminium which constitute the outer layers of the laminated product, and one sheet or layer of plastics which constitutes the inner layer or core, are classifiable under Heading 7606.11 to 7606.92.

19.2 It is relevant that opinions of WCO (HSN Explanatory Notes) is considered as a 'safe guide' for interpretation of Tariff unless a different intention was indicated in the Tariff itself. The classification under Heading 7606 was adopted in 1998 with reasoning in the 20th Session of Harmonised System Committee.

19.3 It is also noted in the opinion that there was no legal provision preventing flat-rolled products from being combined or laminated with a layer of plastics. Since the product in question consisted of clad, plated, coated metal sheets, the Committee agreed that they correspond to the texts of heading 7606 and should be classified in that heading.

20. Multiple decisions support the classification under CTH 7606

20.1 The appellant has further submitted that the decision of the Tribunal in the case of *ICP India Pvt. Ltd.* reported in *2019 (370) ELT 740 (Tri. Chennai)* holds ground, not being set aside by the Supreme Court. Only because the Supreme Court did not go into the merit of the matter, does not mean that the Supreme Court overturned the Tribunal decision. It continues to have the legal force.

20.2 The Advance Ruling Authority in case *Aludecor Lamination - 2022 (66) GSTL 245 (A.A.R.-GST.- Mah)* also hold the classification of the subject goods under CTH 7606.

20.3 The adjudicating authority has ignored a plethora of decisions which support the classification of the subject goods under heading 7606:

- *(i)* *CCE & ST Vs Jai Ambey Profiles - 2016 (342) ELT 428 (Tri. - Chandigad)*
- *(ii)* *Unitech Metals Ltd. Vs CCE, New Delhi - 1998 (98) ELT 628 (Tribunal)*
- *(iii)* *CCE, Indore Vs Dewas Techno Products (P) Ltd. - 2001 (131) ELT 182 (Tri.-Delhi)*

Though these decisions are in the context of classification under Heading 7308, these decisions are applicable to the decision on classification under Heading 7610, as the Notes to Heading 7308 are applicable *mutatis mutandis* to the Heading 7610.

21. No reason to reject the import invoice price as Transaction value

21.1 The appellant has further submitted that the adjudicating authority has not appreciated that there are no grounds to reject the declared invoice prices. It is a settled position of law that the value for the purpose of assessment of Customs duties cannot be re-determined unless the value assessed by the importer in reference to the declared invoice prices were rejected as correct transaction values, following the mechanism prescribed under the said Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ['CVR, 2007' for short].

21.2 If the assessing officer / investigating officer had reasons to doubt the truth or accuracy of the value declared in relation to any imported goods, he should have asked the appellant to furnish further information including documents or other evidence. However, the reasons to doubt the truth or accuracy of the declared values has not been disclosed to the appellant so as to give opportunity to the appellant explain the declared values. The details of contemporaneous imports of identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction, which were assessed at significantly higher values, have not been disclosed to the appellant.

21.3 Thus, the adjudicating authority has erred in rejecting the import invoice prices, without citing any reasons as specified in Rule 12 of the CVR, 2007.

22. The NIIDB Data or any data of contemporaneous imports has not ever been disclosed to the appellant

The adjudicating authority has observed in Para 11 of the impugned order that the value has been enhanced in the subject matter on the basis of the NIDB data. However, such data was not made available to the appellant at any point of time. The show cause notice does not refer to any specific import at a higher value of the identical / similar goods.

23. Enhancement of vale not accepted by the importer for the present Bills of Entry or the earlier Bill of Entry No. 00567 dated 19.02.2008

The appellant submitted that the Deputy Commissioner has observed that the importer had accepted the enhancement of value of imports from the same supplier. However, the said observation is factually incorrect. That the importer did not accept the enhancement of value for the present Bills of Entry or earlier Bill of Entry No. 567 dated 19.02.2008. That the importer contested the enhancement of value for the Bill of Entry No. 567 dated 19.02.2008 by preferring appeal against the O.I.O. No. 06/07-08 dated 07.03.2008, which culminated with the CESTAT Final Order No. A/10800/2023 dated 05.04.2023 in Department's Appeal No. C/10893/2019 with Supreme Court dismissing the Department's Civil Appeal against it.

24. Import price not hit by any exceptions under Rule 3 of CVR, 2007

24.1 The adjudicating authority has not appreciated that the invoice price has to be accepted as transaction value in each and every case except in circumstances specified in proviso to sub-rule (2) of Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. The burden was on the Department to establish that the declared invoice price was hit by any of the mischief specified in the said proviso. In the instant case there are no grounds as to why the declared import prices could not be accepted.

24.2 In this context, the adjudicating authority should have appreciated the principle laid down by the Supreme Court in the case of *Eicher Tractors Ltd. Vs CC, Mumbai* reported in *2000 (122) ELT 321 (SC)*. The Hon'ble Supreme Court has held that the subject to three conditions laid down in Section 14(1) of Customs Act, 1962, of time, place and absence of special circumstances, price of imported goods is to be determined under Section 14(1A) in accordance with the Customs Valuation Rules, 1988 (Now CVR, 2007). The "special circumstances" have been statutorily particularized in Rule 4(2) [Now Rule 3(2)] and in the absence of these exceptions, it is mandatory for customs to accept the price actually paid or payable for the goods in the particular transaction. The Supreme Court has held that unless transaction value (import invoice price) is rejected, the assessable value shall not be determined by proceeding sequentially with the valuation rules.

24.3 The adjudicating authority has not specified the special circumstances indicated in section 14(1) of the Customs Act, 1962, and particularized in Rule 3(2) of the CVR, 2007, warranting the rejection of the declared invoice prices.

25. Declared Value Cannot Rejected by Mere Comparison of Invoices of Two Importers: Supreme Court Decision in case of Basant Industries

25.1 The adjudicating authority has not appreciated that the sales prices by the manufacturers to all its customers for all similar goods need not be the same and the prices could be different to different customers and different variety of goods.

25.2 The adjudicating authority has ignored the settled judicial principle in this regard laid down by the Hon'ble Supreme Court in the case of *Basant Industries Vs Additional Commissioner of Customs Bombay [1996 (81) ELT 195 (S.C.)]*. In effect, mere comparison of invoices received by the appellant with the invoice of imports of same goods by other importer, is not conclusive for determination of the question of undervaluation.

26. Onus on department to prove undervaluation

26.1 It is relevant that the onus to prove undervaluation was on the department, as held by the Hon'ble Supreme Court in the case of *CC, Calcutta Vs South India Television (P) Ltd. [2007 (214) ELT 3 (S.C.)]*.

26.2 However, the adjudicating authority has not appreciated the following facts:

(i) The import invoices by the manufacturer supplier produced by the appellant were genuine;

(ii) The import prices constituted the full consideration for the imported goods;

(iii) There is no evidence that the declaration by the supplier in the country of export did not match with the import declaration.

26.3 In the circumstances, the adjudicating authority was in error in rejecting the declared values merely on the suspicion about its correctness and that too without disclosing the details of such contemporaneous imports said to be at the higher prices.

Admission of Appeal:

27. As regards requirement of pre-deposit, the appellant has mentioned that the duty, as assessed finally, has already been paid at the time of provisional assessment and so, no pre-deposit under the provisions of Section 129E has been required. Further, I find that all the 14 appeals have been filed on 21.04.2025, i.e. within the normal period of limitation of 60 days from the date of communication of impugned orders, as prescribed for filing appeals under the provisions of Section 128(1) of the Customs Act, 1962. In view of the above, these 14 appeals have been admitted and being taken up for disposal on merits.

28. One set of appeal memorandums have been forwarded by this office to the adjudicating authority for comments, but no reply thereof has been received. So, I proceed to decide the appeals on the basis of documents submitted by the appellant.

Personal Hearing:

29. Personal Hearing in this matter was held in virtual mode on 13.01.2025, which was attended by Shri Prashant Patankar, Consultant, on behalf of the appellant. He reiterated the submissions made at the time of filing of appeals. He further submitted that the issue involved in all the 14 matters was identical - Finalization of Provisional assessment with classification of Aluminium Composite Sheets under Tariff Item 7610 9090 and the enhancement of value. That both the issues are settled by the Order of CESTAT Final Order No. A/10800/2023 dated 05/04/2023 in the Appellant's own case, upheld by the Hon'ble Supreme Court by dismissing the Civil Appeals filed by the department. It was related to the BoE No 567 dated 19/02/2008. Following these decisions, Commissioner (Appeals), Customs, Ahmedabad, has also set aside the demand on identical grounds in respect of 5 bills of entry in Appeal F No. S/49- 229/Cus/AHD/2024-25 vide OIA No. AHD-CUSTM-000-APP-352-24-25 dated 24.03.2025.

Findings:

30. I have carefully gone through the facts of the cases and written as well as oral submissions made by or on behalf of the appellant.

31. The first issue to be decided in the present appeals is whether the finalization of assessment done vide impugned orders by classifying the impugned goods under CTI 7610 9090 (instead of CTI 7606 1190) in respect of all the 14 Bills of Entry is legal and proper or otherwise. The another issue to be decided is regarding enhancement of value of impugned goods imported under 6 Bills of Entry, as mentioned at Sr. Nos. 9 to 14 of Table-1, is legal and proper or otherwise.

32.1 I find that the adjudicating authority has ordered for classification of Aluminium Composite Plates on the ground that the impugned goods were being used in buildings/structures and so, classifiable as parts of building/structures under CTI 7610 9090. In this regard, I find that in order to classify the Aluminium Plates under CTI 7610 9090, one of the requirements is that they must be prepared for use in structures, which is mentioned in the wordings of CTH 7610 itself.

32.2 The examples of the word *'prepared'* used in this CTH have been given in the HSN Explanatory Note to Heading 7308, which has been applied, *mutatis mutandis*, to the Heading 7610, as per the Explanatory Note to Heading 7610. The said Explanatory Note to Heading 7308 is as under (underline supplied):

> ***"The heading also covers parts such as flat-rolled products, 'wide flats' including so-called universal plates, strips, rods, angles, shapes, sections and tubes, which have been prepared (e.g., drilled, bent, notched) for use in structures."***

In view of the above Explanatory Note, it can be said that the imported Aluminium Composite Plates can be termed as 'prepared for use in structure' only, if the process like drilling, bending, notching or any other similar preparatory process was undertaken on them for use in structure. Whereas, in the present case, no such process/preparation had been undertaken on the impugned goods i.e. rectangular Aluminium Composite Plates.

32.3 I have gone through the copies of the Bills of Entry, Invoices, Packing Lists and Bills of Lading submitted by the appellant. From these documents, it is clear that the impugned goods were coated Aluminium Composite Plates of different sizes and different grades. In the said documents, it is nowhere mentioned that the said Aluminium Composite Plates were prepared for use in structure. In absence of any document/evidence, it cannot be held that the impugned goods, i.e. Aluminium Composite Plates, were prepared for use in structures. Therefore, classification of same under CTI 7610 9090 is legally not sustainable.

33. I find that the case of *C.C. (Imports), Chennai Vs. ICP India Pvt. Ltd.* - 2019 (370) ELT 740 (Tri-Chennai) covers the issue of classification, which is similar to the issue of present case. Para 6 of this Order is as under:

> *"6. The Ld. Counsel has produced a sample plate of the impugned goods before us. It is in the 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."*

Thus, in the above-mentioned case covering similar issue, the Hon'ble CESTAT has rejected the contention of Customs Department for classification of similar goods under CTH 7610 9090, as parts for use in structures

34. I have also gone through the following case laws relied upon in the impugned order:

34.1 In the case of *CCE, New Delhi Vs. Connaught Plaza Restaurant (P) Ltd. - 2012 (286) ELT 321 (SC)*, the issue before the Hon'ble Supreme Court was whether 'Soft serve' served in restaurants can be classifiable as 'Ice-cream' under Heading 21.05 or not. In the said case, the 'common parlance test' has been explained. It has been observed that it is extension of general principle of interpretation of statutes for deciphering mind of law matter; that in the absence of a statutory definition in precise terms; the words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning.

34.2 In the case of *CCE, Nagpur Vs. Shree Baidyanath Ayurved Bhavan Ltd. - 2009 (237) ELT 225 (SC)*, the issue was that whether 'Dant Manjan Lal' was to be treated as Cosmetics or Medicaments. In the said case also, the Hon'ble Supreme Court has examined the matter by applying 'common parlance test'.

34.3 I find that in the present case, the Aluminium Composite Plates imported by the appellant, are not known as 'Parts prepared for use in Structures' in commercial or trade understanding. Therefore, classification of them determined vide the impugned order under CTI 7610 9090 by applying common parlance test, is not legal and proper.

34.4 As regards enhancing value of the impugned goods on the basis of NIDB data, the adjudicating authority has relied upon the Order of the Hon'ble Supreme Court in the case of *Connectronics & Cables Pvt. Ltd. Vs. C.C. (Adjudication), Mumbai - 2015 (324) ELT 699 (SC).* Observations of the Apex Court in the said case are as under (underline supplied):

> *"The appellant-assessee herein had imported certain goods from time to time and had cleared the same after paying customs duty. In the Bill of Entries for import of these various goods, certain values were declared. There was search in the premises of the appellant and others connected with the appellant by the Revenue wherein various incriminating documents were seized by the Department. On scrutiny of these documents, the Revenue found that the assessee was clearing the goods by mentioning lesser value of those goods and, therefore, as per the Revenue, it was the case of undervaluation which resulted in the lesser payment of customs duty.*
>
> *... ... ...*
>
> *7. We do not agree with the aforesaid submission for more than one reason. In the first instance, the CESTAT has categorically taken note of the submission of the Revenue that majority of goods listed in Chart D are identical to goods described in Charts A and B. If that is correct, coupled with the fact that the valuation of goods insofar as Charts A and B is concerned has become final, we do not understand as to how that cannot be the basis for determining the transaction value of those goods listed in Chart D which are identical to the goods described in Charts A and B.*
>
> *8. Consequently, for this purpose, the matter is remitted back to the Commissioner. Thus, the Commissioner can adopt the valuation of goods mentioned in Charts A and B only if it is proved that those goods are identical to the goods mentioned in Chart D. We make it clear that at the time of undertaking this exercise, complete opportunity shall be given to the assessee to prove otherwise and to contest the stand taken by the Revenue by taking all possible defences that are available to the assessee in law."*

In this regard, I find that in the aforesaid case of *Connectronics & Cables Pvt. Ltd. (supra)*, value of the goods was proposed to be increased based upon incriminating documents recovered during the search. Various Charts had been prepared for comparison of value of identical goods, which were not properly appreciated by lower authorities. Therefore, the Hon'ble Supreme Court had remitted the matter back to the Commissioner with the above directions, as mentioned in Para 8 of the said Order. Thus, the facts of *Connectronics & Cables Pvt. Ltd. (supra),* which has been relied upon by the adjudicating authority, are different from the case on hand. In the present case, no incriminating documents have been found, but the value has been loaded merely based upon the NIDB data available on file. So, by relying upon said Order in the case of *Connectronics & Cables Pvt. Ltd. (supra),* value of the impugned goods cannot be enhanced.

34.5 Thus, I find that the facts and circumstances in the case laws relied upon by the adjudicating authority are not useful in the present cases to justify the rejection of classification and valuation adopted by the appellant.

35. I further observe that the Hon'ble CESTAT, Ahmedabad, in an earlier case of the same appellant, decided the same issues of classification and valuation in favour of the appellant. The Hon'ble CESTAT has passed a Final Order No. A/10800/2023, dated 05.04.2023, in Customs Appeal No. 10893/2019 in the case of *C.C., Ahmedabad Vs. Chandan Exports*, which was another case of the same appellant. Observations of the Hon'ble CESTAT, Ahmedabad, in the said Final Order dated 05.04.2023 are reproduced below:

"7. We have considered the submissions made by both sides. The primary dispute covered in the present matter pertain to classification of the imported goods viz., 'Aluminum Composite Plates'. Ld. Commissioner (Appeals) in the present matter confirmed the classification of imported goods under CTH 76061190 of Customs Tariff Act. On other hand department is of the view that 'Aluminium Composite Plate' are classifiable under CTH 76109090 of the Custom Tariff Act. We have examined the position and important portion of said tariff entry is reproduced as under:

7606		**Aluminium plates, sheets, and strips, of a thickness exceeding 0.2 mm.**
	-	***Rectangular (including square) :***
760611	--	***Of aluminium, not alloyed :***
760611	--	***Of aluminium, not alloyed :***
76061110	---	**Electrolytic plates or sheets**
76061190	---	**Other**
76061200	--	**Of aluminium Alloys**

	-	*Other :*
760691	--	*Of aluminium, not alloyed :*
76069110	---	**Circles**
76069120	---	**Electrolytic plates or sheets**
76069190	---	**Other**
760692	--	*Of aluminium alloys :*
76069210	---	**Circles**
76069290	---	**Other**

From the above entry 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.

The heading under CTH 7610 is reproduced below for ease of reference.

7610		**Aluminium Structures (Excluding prefabricated building 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.**
76101000	-	**Doors, windows and their frames and thresholds for doors.**
761090	-	*Other :*
76109010	---	**Structures**
76109020	---	**Parts of structures, not elsewhere specified**
76109030	---	**Aluminium plates, rods, profiles, tubes and the like, prepared for use in structures**
76109090	---	**Parts**

It is seen that Heading 7610 covers Aluminium structures and its parts.

8. In view of above tariff entry it is clear that parts of structures illustrated in the tariff heading 7610 includes bridge and bridge – sections, towers, lattice masts, roof, roofing frameworks, door, windows and their frames and thresholds for doors, balustrades, pillars and columns. The list includes in said tariff entry includes only the structural elements and not the material used in making such structural elements. Further 'parts of structures' as the aluminium plates, rod, profiles tubes and the like fall under the tariff heading 7610 only if 'prepared for use in structures'. In the present matter neither the show cause notice nor impugned order-in-original indicate that the imported 'Aluminium Composite Plate' was prepared in any manner *for use in structures. Therefore Ld. Commissioner (Appeals) in the present matter correctly held that the imported goods cannot be considered as 'prepared for use in structures' and therefore falls out of the scope of heading 7610.*

9. As regard the valuation aspect, we find that in the present case department pointed out that B/E No. 495 dated 20.12.2007, where identical goods were imported by the same supplier and was assessed at a higher value and subsequently cleared by the respondent after paying duty at the higher assessed value. Whereas respondent has contended that loading of value for goods imported vide earlier Bill of entry No. 495 dtd. 20.12.2007, based on NIDB data was not contested due to the reason that they wanted to clear the goods expeditiously. Thus, we find that the Commissioner has rightly held that there are no reasons to reject the price declared by the respondents. There is merit in the contention of the respondent that the earlier assessment does not preclude them from protesting the enhancement of value on the same lines for subsequent imports. We also find that in the present matter there are no reasons recorded by the revenue for rejection of transaction value before taking the exercise of revaluation and enhancement of transaction value. In the case of ***Modern Manufacturers 2018 (363) E.L.T. 1020 (Tri. - Del.)*** *(supra) the Tribunal held that enhancement of value of imported goods based on NIDB data and circular issued by DGOV without rejecting declared value under Rule 12 of Customs Valuation Rules, 2007 is not proper. Redetermination of value based on NIDB data and DGOV circular is not sustainable. In the present case, no exercise of rejecting the declared value under Rule 12 and process of applying Valuation Rules sequentially were followed. Therefore, the value declared by the respondent has to be accepted.*

10. In the light of the above discussion and considering the facts and circumstances of the case and finding of impugned order, we do not find any reason to interfere with the impugned order and the same is sustained."

I find that the above-mentioned Final Order of the jurisdictional CESTAT, Ahmedabad, which has not been modified or set aside by any higher forum, is squarely applicable to the present case covering similar issues of the same appellant.

36. In the cases on hand, though the impugned goods may be used in construction of structures/building, but these goods were not found to be parts 'prepared for use in

structures' and therefore, not classifiable under CTI 7610 9090 as parts of Aluminium Structures. Further, the valuation issue covered in the present cases, is similar to the valuation issue mentioned in the above Order of the Hon'ble CESTAT in respect of the same appellant. Thus, the above Final Order No. A/10800/2023, dated 05.04.2023, in the earlier case of the appellant, squarely covers the both issues of classification and valuation involved in the present appeals.

37. I agree with the contention of the appellant by giving example to the effect that Plywood Laminate Sheets can be used for partitioning or making furniture, but they cannot be termed as 'parts' of structures or furniture. Similarly, in the present case of Aluminium Composite Sheets can be used in making structures, but they cannot be treated as parts of structures unless they are prepared for use as parts in structures.

38.1 In the impugned order, the reason for not following the Final Order A/10800/2023, dated 05.04.2023, has been given as the Customs Department had filed a Civil Appeal Diary No. 793 of 2024 with the Hon'ble Supreme Court, but the said Civil Appeal has been dismissed on low tax effect, not on merits.

38.2 In this regard, I have gone through Para 7 of the Instruction F. No. 390/Misc/163/2010-JC, dated 20/10/2010, issued by the CBIC and provisions of Section 131BA of the Customs Act, 1962, as quoted in the impugned order. Accordingly, the Orders, which have been accepted by Department due to low monetary value, shall not have any precedent value and the Department has liberty to file appeal in future for any other case involving same or similar issue, if the amount involved therein exceeds the prescribed monetary limits. I find that the said Instruction and Section are applicable for filing of appeals by Department. They are not applicable for taking decision on merits in adjudication, appeal and legal proceedings.

38.3 Further, in the case on hand, it is nowhere mentioned that the Final Order No. A/10800/2023, dated 05/04/2023, has been accepted by Customs Department due to monetary limits. On the contrary, it is on record that the Customs Department had filed a Civil Appeal Diary No. 793 of 2024 before the Hon'ble Supreme Court, which has been dismissed vide Order dated 25.01.2024 due to low tax effect. Therefore, the Instruction dated 20/10/2010 and provisions of Section 131BA of the Customs Act, 1962, as relied upon the impugned order, are not applicable in the present cases for taking decision on merits.

39.1 Further, I find that even though the Hon'ble Supreme Court has dismissed the Civil Appeal without passing a speaking order on merits, still the doctrine of merger of the Order of Hon'ble Supreme Court with the Order of the Hon'ble CESTAT applies. I find that the effect of dismissal of Civil Appeal by the Supreme Court is not similar to dismissal of Special Leave Petition ('SLP'). In this regard, I rely upon the Judgment dated 26.07.2010 of the Hon'ble Supreme Court in the case of ***Pernod Ricard India (P) Ltd. Vs. C.C., ICD, Tughlakabad,*** reported *as 2019 (256) ELT 161 (SC).* Relevant portion of the same is given below:

> *"22. … … … … … The appeal was, however, dismissed* ***in limine****. In our opinion, once a statutory right of appeal is invoked, dismissal of appeal by the Supreme Court, whether by a speaking order or non-speaking order, the doctrine of merger does apply, unlike in the case of dismissal of special leave to appeal under Article 136 of the Constitution by a non-speaking order.*
>
> *23. The nature, concept and logic of doctrine of merger was explained elaborately in Kunhayammed & Ors. v. State of Kerala & Anr.. Speaking for a Bench of three learned Judges, R.C. Lahoti, J. (as His Lordship then was) observed: (SCC p. 370, para 12)*
>
> … … … … …
>
> *24. In the present case, the appellant preferred statutory appeal under Section 130E of the Act against order of the Tribunal dated 25th March 2003 and, therefore, the dismissal of appeal by this Court though by a non-speaking order, was in exercise of appellate jurisdiction, wherein the merits of the order impugned were subjected to judiciary scrutiny. In our opinion, in the instant case, the doctrine of merger would be attracted and the appellant is estopped from raising the issue of applicability of Rule 6 in their case."*

39.2 I find that in the earlier case of the same appellant, the statutory Civil Appeal (not SLP) Diary No. 792 of 2024 was filed against the Order of CESTAT and therefore, the effect of dismissal of the said Civil Appeal without speaking order cannot be treated as similar to the effect of dismissal of SLP without speaking order.

39.3 In view of the above position of law, the Final Order No. A/10800/2023, dated 05.04.2023, passed by the Hon'ble CESTAT in case of the same appellant, has been merged with the Order dated 25.01.2024 of the Hon'ble Supreme Court in Civil Appeal Diary No. 792

of 2024, through which the Civil Appeal filed by Customs Department has been dismissed and thus, the Final Order of the Hon'ble CESTAT has attained finality. The said Final Order dated 05.04.2023 passed by the jurisdictional CESTAT cannot be ignored or overlooked by me because it has not been stayed, modified or overruled by any higher forum.

40. Further, I note that my predecessor Commissioner of Customs (Appeals), Ahmedabad, has already decided these same issues of the same appellant vide **Order-in-Appeal No. AHD-CUSTM-000-APP-352-24-25 dated 24.03.2025.** In the said Order-in-Appeal, it has been held that the impugned goods cannot be classified under CTI 7610 9090 and their value cannot be enhanced. Thus, the appeal filed by M/s. Chandan Exports had been allowed vide the said earlier Order-in-Appeal dated 24.03.2025.

41. In view of the above position of law, I find that impugned fourteen orders passed towards finalization of provisional assessment by classifying the impugned goods under CTI 7610 9090 and enhancement of value are required to be set aside. Further, the impugned goods are to be classified under CTI 7606 1190 and required to be finally assessed to Customs duties leviable for the said classification and invoiced based valuation declared by the appellant. The adjudicating authority is directed to finalize the assessments for the impugned 14 Bills of Entry under CTI 7606 1190 on the declared value and communicate the same to the appellant.

Order:

42. In view of the discussion made hereinabove, I set aside the impugned 14 orders passed by the Deputy Commissioner of Customs, ICD-Valvada, and allow the 14 appeals filed by the appellant, viz. M/s. Chandan Exports, with consequential relief, in accordance with law.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद

(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 28.01.2026

F.No. S/49-14 to 27/CUS/AHD/2025-26

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

To

M/s. Chandan Exports,

401/402, Pratik Avenue, Opp. Shivsagar Restaurant,

Nehru Road, Vile Parle (East), Mumbai - 400057.

(email: hrd.timexgroup@gmail.com , info@timexbond.com)

कार्यालय आयुक्त (अपील), सीमा शुल्क

अहमदाबाद.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad. (email: ccoahm-guj@nic.in)

2. The Pr. Commissioner of Customs, Ahmedabad. (email: cus-ahmd-guj@nic.in , rra-customsahd@gov.in)

3. The Deputy/Assistant Commissioner of Customs, ICD-Valvada, Dist. Valsad. (email: acicdval-custahd@nic.in)

4. Shri. Prashant Patankar, Consultant, New Mumbai. (email: prashant.patankar@gmail.com , deepa.patankar@patankarlegal.com)

5. Guard File.

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