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**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 5531 OF 2025**

**COMMISSIONER OF CUSTOMS (IMPORT) ...APPELLANT**

**VERSUS**

**M/S WELKIN FOODS ...RESPONDENT**

**J U D G M E N T**

**J.B. PARDIWALA, J.**

For the convenience of exposition, this judgment is divided into the following parts:

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1. This appeal arises from the Judgment and Final Order No. 55604/2024 dated 19.04.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "**CESTAT**"), in Customs Appeal No. 50542 of 2021, wherein the tribunal allowed the appeal and thereby held that the aluminium shelves imported by the respondent should be classified under Customs Tariff Item 84369900, as 'parts' of agricultural machinery, as opposed to Customs Tariff Item 76109010, as aluminium structures.

2. Customs Tariff Item (hereinafter "**CTI**") 84369900 carries a nil rate of duty, whereas CTI 76109010 attracts a basic customs duty of 10%, a countervailing duty of 12.5%, a customs cess of 3%, and an additional customs duty of 4% respectively.

**A. <u>Factual Matrix</u>**

3. M/s Welkin Foods, the respondent, imported aluminium shelving along with a floor drain and an automatic watering system and filed a Bill of Entry No. 7399702 dated 09.11.2016 under Section 46 of the Customs Act, 1962 (hereinafter referred to as "**the Act, 1962**"). In the said bill of entry, the respondent declared and classified the imported goods as follows:

| **S. No** | **Item Description** | **Quantity** | **Value (in Rs.)** | **CTI as per Bill of entry filed** |
|---|---|---|---|---|
| 1. | Aluminium Shelving for Mushroom Growing | 6451.20 Sqm. | 12075505.28 | 84369900 |
| 2. | Floor Drain for Mushroom Growing | 48 Nos. | 274866.83 | 84369900 |

| | | | | |
|---|---|---|---|---|
| | (Agriculture Use) | | | |
| 3. | Automatic Watering System for Mushroom Growing (Agriculture Use) | 1 No. | 208188.33 | 84369900 |

4. The appellant accepted the classification of floor drain and automatic watering system under CTI 84369900 as 'parts' of agricultural machinery. However, the Audit Scrutiny revealed that the aluminium shelving (hereinafter referred to as "**the Subject Goods**") was a type of aluminium structure and not a 'part' of any agricultural machinery & therefore, the revenue ought to have classified the subject goods under CTI 76109010, which would attract a basic customs duty rate of 10%, a countervailing duty rate of 12.5%, customs cess at 3%, and additional customs duty at 4%. The misclassification caused a short levy of duty amounting to INR 21,01,983, which was recoverable from the Respondent under Section 28(1) of the Act, 1962, along with interest under Section 28AA of the Act, 1962.

5. Chapter Heading 7610 and Chapter Heading 8436 respectively, along with their respective sub-headings and tariff items, as specified in the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as "**the Act, 1975**"), are outlined below:

**Chapter Heading 7610**

| **Tariff Item** | | **Description of goods** | **Unit** | **Rate of duty** | |
|---|---|---|---|---|---|
| 7610 | | Aluminium structures | | | |

| | | | | | |
|---|---|---|---|---|---|
| | | (excluding prefabricated buildings of heading 94.06) 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 | - | *Other:* | | | |
| 7610 90 10 | --- | Structures | Kg. | 10% | - |
| 7610 90 20 | --- | Parts of structures, not elsewhere specified: | | | |
| 7610 90 21 | --- | Portable bridge | Kg. | 10% | - |
| 7610 90 29 | --- | Other | Kg. | 10% | - |
| 7610 90 30 | --- | Aluminium plates, rods, profiled, tubes and the like, prepared for use in structure | Kg. | 10% | - |
| 7610 90 90 | --- | Other | Kg. | 10% | - |

**Chapter Heading 8436**

| Tariff Item | | Description of goods | Unit | Rate of duty | |
|---|---|---|---|---|---|
| | | | | | |
| 8436 | | Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders | | | |
| 8436 10 00 | - | Machinery for preparing animal feeding stuffs | u | 7.5% | - |
| | - | Poultry-keeping machinery; poultry incubators and brooders | | | |
| 84362100 | -- | Poultry incubators and brooders | u | 7.5% | - |
| 84362900 | -- | Other | u | 7.5% | - |
| 843680 | - | *Other Machinery:* | | | |
| 84368010 | --- | Germination plant fitted with mechanical and thermal equipment | u | 7.5% | - |
| 84368090 | --- | Other | u | 7.5% | - |
| | - | *Parts:* | | | |
| 84369100 | -- | Of poultry-keeping machinery or poultry incubators and brooders | Kg. | 7.5% | - |
| 84369900 | -- | Other | Kg. | 7.5% | - |

6. Consequently, a notice dated 08.08.2018 under Section 28(1) of the Act, 1962 was issued to the respondent, calling upon to show cause as to why (i) the subject goods should not be classified under CTI 76109010 instead of CTI 84369900 and charged to duty as applicable to the goods of that tariff item; and (ii) the duty short levied amounting to INR 21,01,983/- should not be recovered from it under Section 28(1) of the Act, 1962, along with interest under Section 28AA of the Act, 1962.

7. The show cause notice referred to above was adjudicated by the Joint Commissioner of Customs, ICD - Import, Tughlakabad. *Vide* the Adjudication Order No. 25/2019/JC/KK/ICD/TKD dated 28.02.2019, the Joint Commissioner held that the subject goods were liable to be classified under CTI 76109010 (hereinafter referred to as "**Order-in-Original**"). The Joint Commissioner's decision was based on the following aspects: (i) the subject goods were structures of aluminium which were to be fixed or installed at a location; (ii) CTI 7610 does not exclude aluminium structures based on their end use and covers all types of aluminium structures regardless of their use or design; (iii) the subject goods did not display characteristics of a machine, which is necessary for classification under CTI 8436, i.e., agricultural/horticultural machinery; and (iv) CTI 8436 does not encompass every individual component that is essential for mushroom cultivation.

8. Consequently, the Joint Commissioner confirmed the demand of duty of INR 21,01,983/- along with interest in respect of Bill of Entry No. 7399702 dated 09.11.2016.

9. Being dissatisfied with the Order-in-Original, the respondent preferred an appeal to the Commissioner of Customs (Appeals). *Vide* the Order in Appeal No. CC(A)CUS/D-

II/Import/ICD/TKD/1237/2020-21 dated 28.12.2020, the Commissioner of Customs (Appeals) affirmed the Order-in-Original (hereinafter referred to as "**Order-in-Appeal**"). In the Order in Appeal, the Commissioner of Customs (Appeals), while agreeing with the line of reasoning assigned in the Order-in-Original, also noted: (i) the subject goods could not have been classified under Chapter Heading 8436 solely because they could be integrated with various other machines used in the mushroom cultivation process; and (ii) the subject goods cannot be said to possess characteristics of a machine or a 'part' of one.

10. It is relevant to note that in both the Order-in-Original and Order-in-Appeal, respectively, the decision to classify the subject goods under CTI 76109010 was based on the application of General Rule of Interpretation No.1, i.e., GRI 1.

11. The respondent preferred an appeal before the CESTAT. The CESTAT disagreed with the two authorities below and allowed the appeal. The relevant findings of the CESTAT are as follows:

> *"10. [...] The goods imported by the appellant apparently are the aluminium shelves/racks which are imported by the appellant for using the same after integrating with the other two imported goods (drains and automatic watering system) for mushroom growing. it is also nowhere been denied that the other activities essential for mushroom growing that is the climate control equipments, the compost spreading equipments, the insecticide praying equipments etc. are also to be fastened on the imported aluminium shelves. No doubt, all these machines are to be integrated subsequent to the import but we observe that the goods are imported from the person, who exclusively deals in the structures specific to mushroom growing industry. The importer-appellant is also in the business of growing mushrooms. There is also no denial to the fact that the aluminium shelves imported cannot be used as any other aluminium structures for any other purpose.*

*11. From the general rule of interpretation, as discussed above, it is clear that the goods have to be classified to the more appropriate category instead of being covered under the generic category. Chapter 76 is generic to all aluminium structures but chapter 84 is specific for any machine/ device of any metal which is used for agriculture purpose. There can be no denial that growing mushroom is an agricultural or horticultural activity and the product imported is crucial and specific for the said activity that the product is specifically' designed part of mushroom growing apparatus.*

*12. No doubt, the goods under Chapter 84 have first to be a machine or mechanical appliance. For the purpose, we foremost look into the dictionary meaning of these words.*

*13. As per Oxford dictionary machine is a piece of equipment with moving parts that is designed to do a particular job by the use of power (any kind). Similar is the definition in the Cambridge dictionary. The dictionary meaning of mechanical device is that it is an instrument /apparatus or devise for a particular purpose or use. As already observed above, the aluminium shelves/ the impugned goods have no purpose other than a specific one of being used in the mushroom growing industry. Admittedly, the two other imported goods i.e. drain and automatic watering system have to be integrated on these aluminium shelves. Department, has admitted these two to be covered under CTH 84369900. Though these two apparatuses along with two others are to be integrated on the mushroom shelving, post import but we observe that the aluminium shelve itself is so designed with such specifications, as may permit these specific integrations. The brochure of product Info also mentions the model of the goods as mechanization/ planting machine. Thus, we hold that the goods in question is not aluminium shelve in generic but is a mushroom growing rack specifically; though is made of aluminium but it is a mechanical appliance used for agriculture purpose.*

*14. Chapter 76 is all about anything made of aluminium. On the contrary chapter 84 is about mechanical appliances of whatsoever metal but specific for agricultural use. There is no denial to the fact that the aluminium shelving in question*

*is not known to the common trade parlance as a mere aluminium structure but is specifically known as Mushroom growing rack.*

*15. Hence, we hold that the goods under question as imported by appellant (mushroom shelving) are classifiable under CTH 84369900. Appellant is held to have rightly classified the same under CTH 84369900 [...]"*

(Emphasis Supplied)

Thus, while allowing the appeal, the CESTAT relied on the following aspects of the matter: (i) the respondent is involved in mushroom cultivation and got the subject goods imported from a party who exclusively deals in structures specific to the mushroom cultivation industry; (ii) the subject goods are specifically designed to integrate with other machinery used in mushroom cultivation and are not simply aluminium shelves but mechanical appliances used for agricultural purposes; (iii) the subject goods are essential for mushroom growing and are designed as part of the mushroom growing apparatus; (iv) the subject goods cannot be used as aluminium structures for any purpose other than their specific use in the mushroom growing industry; (v) in common trade parlance, the subject goods are known not as mere aluminium racks but as mushroom growing racks; and (vi) Chapter 76 covers all aluminium structures generally, whereas Chapter 84 specifically pertains to any machine or device made of metal used for agricultural purposes.

12. As is evident from the paragraphs above, the CESTAT in its impugned judgment relied on the General Rule of Interpretation No.3, i.e., GRI 3, to classify the subject goods under CTI 84369900.

13. In view of the aforesaid, the appellant is before this Court with the present appeal.

**B. <u>Submissions on behalf of the Appellant</u>**

14. Mr. Siddhant Kohli, the learned counsel appearing on behalf of the appellant, submitted the following:

a. <u>End use is irrelevant</u>

- It is well established that the taxable event for customs duty occurs at the time of import, not at the time of use. The condition of the article at the time of import is the crucial factor for classifying the product. Therefore, the end use of a product does not determine its classification for customs duty purposes. Reliance is placed on ***Dunlop India Ltd vs Union of India,*** reported in **(1976) 2 SCC 241**, ***Indian Aluminium Cables Ltd vs Union of India & Ors***, reported in **(1985) 3 SCC 284**, ***Shantilal Khushaldass & Bros. Pvt. Ltd. & Anr v. Assistant Collector of Customs, Goa***, reported in **(1998) 9 SCC 180**, ***Union of India & Anr v. V.M. Salgaoncar and Bros. Ltd. & Ors***, reported in **(1998) 4 SCC 263,** and ***Akbar Badrudin Giwani v. Collector of Customs, Bombay***, reported in **(1990) 2 SCC 203.**

- The subject goods, at the time of import, were in the form of aluminium shelves, which are structures made of aluminium. At this stage, the goods cannot be classified as 'agricultural machines' because they are neither attached to any other machinery nor can they be used independently for mushroom cultivation.

- The CESTAT, in its impugned judgment, relied on the end-use of the subject goods as declared by the respondent to classify it as a 'part' of agricultural machinery, thereby

clearly contradicting the established position of law. The fact that the subject goods are ultimately used to cultivate mushrooms after being attached to other machines once imported cannot influence their classification for customs duty purposes.

b. Subject goods are not agricultural machines or 'parts' of agricultural machinery

- Subject goods could never have been classified as machines or machine parts. Dictionary definitions of the word 'Machine' indicate that a machine consists of moving parts that use power to carry out a specific task. The subject goods lack any moving parts and do not transmit force, motion, or energy through them to accomplish a task.

- The impugned judgment recognises that a machine, by definition, should include the components listed above. However, the CESTAT failed to take into account the legal implications of this definition while resolving the classification dispute, as it failed to apply the definition to the specific facts of the case.

- Merely because the subject goods are used as a base or structure for other machines to be clamped onto them, the shelves themselves would not become an 'agricultural machine' or a 'part' of one. In the case of ***Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi-III***, reported in **(2014) 15 SCC 625**, this Court addressed a similar question: can iron and steel structures supporting a plant be considered component parts of a 'sugar manufacturing plant'? The Court ruled in the negative. Therefore, subject goods cannot be regarded as a 'part' of an

agricultural machine, as they are the structures on which the machines are placed.

c. Subject goods are more appropriately classifiable under CTI 76109010

- Aluminium shelves exhibit characteristics of a 'structure', such as their arrangement of parts, immobility, and function as a supporting base. Therefore, they should be classified as aluminium structures.

- Such an interpretation is also supported by the Explanatory Notes of the Harmonised System Nomenclature. The explanatory note applicable to Chapter Heading 7610 reads as follows:

> *"This heading covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc. 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, at the time of assembly, to fix the clamps to the tubing."*

- The subject goods in this case serve as a foundational structure upon which compost is levelled, and a series of machines or devices are attached to it for mushroom cultivation. This includes head-filling machines for laying layers of compost on the shelves and machines for spraying water, fertilisers, and insecticides. Once positioned, the subject goods generally remain in place.

They are constructed from shapes, sections, sheets, and plates, joined by riveting, bolting, welding, etc. They feature protuberances with tapped holes, where screws are inserted during assembly to secure the clamps to the tubing. Consequently, they possess all the defining features of a 'structure'.

d. Subject goods are not incomplete articles which bears the essential character of the complete article

- Rule 2(a) of the General Rules for Interpretation states that a reference to an article shall include a reference to an incomplete article, provided that the incomplete article has the essential character of the complete article.
- In this case, the subject goods, even if considered part of another incomplete article, do not possess the essential characteristics related to agricultural machinery and cannot be classified as an agricultural machine.

**C. Submissions on behalf of the Respondent**

15. Mr. Salil Arora, the learned counsel appearing on behalf of the respondent, submitted the following:

a. As per Note 5 of Section XVI to the First Schedule of the Act, 1975, the expression 'machine' encompasses any machine, machinery, plant, equipment, apparatus, or appliance under Chapter 84. This definition is broad and not limited solely to machines with moving parts. It also does not specify that 'machine' includes electrical appliances that require power to operate, contrary to the department's incorrect interpretation. The imported goods must be considered as a whole, as they form part of a plant and not in isolation.

b. Note 1(f) of Section XV to the First Schedule of the Act, 1975, clearly excludes machinery, mechanical appliances, and electrical goods of Section XVI. Chapter Heading 7610 falls under Section XV, while Chapter Heading 8436 falls under Section XVI. Therefore, in accordance with Note 1(f), goods classified under Chapter Heading 8436 are excluded from being classified under Chapter Heading 7610.

c. CESTAT classified the subject goods based on the general rules of interpretation, which require goods to be classified under the most specific category rather than a generic one. While Chapter 76 generally covers all aluminium structures, Chapter 84 specifically relates to machines or devices made of any metal used for agricultural purposes. Mushroom cultivation is an agricultural or horticultural activity, and the subject goods are essential components, specifically designed for a mushroom-growing apparatus. Hence, its classification under Chapter 84 is more appropriate. Reliance was placed on ***Dunlop India*** (*supra*) and ***Indian Aluminium Cables*** (*supra*), which held that when an article can be classified under a specific item in the Tariff Schedule by all standards, denying it the specific classification and consigning it to the residual item would go against the very principles of classification.

d. The subject goods should be regarded as 'parts' of the mushroom-growing apparatus. Reliance was placed on (i) ICAR (Indian Council of Agricultural Research) Directorate's certificate dated 29.08.2019, which stated that the subject goods are an integral part of the mushroom unit, and (ii) ***Dharti Dredging and Infrastructure Ltd vs***

***Commissioner of Customs and Central Excise, Guntur,*** reported in **(2023) 18 SCC 103**, in which this Court held that the test for classification for 'parts' is whether the good in question is essential for the functioning of a product.

e. End Use of the articles can be considered when classifying items under the Act, 1975. Reliance was placed on the judgment of this Court in ***Collector of Customs vs Kumudam Publications (P) Ltd*** reported in **(1998) 9 SCC 339**.

f. CESTAT, after considering the materials on record, rightly concluded that the subject goods serve no purpose other than their specific use in the mushroom growing industry, as they were designed with such specifications to enable integration with other machines involved in mushroom cultivation. Consequently, there are no good or valid grounds to set aside the impugned judgment.

**D. <u>Issue to be Determined</u>**

16. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following question falls for our consideration:

- Whether the subject goods should be classified as 'parts' of machines or mechanical appliances of Chapter 84 under CTI 84369900 or as aluminium structures of Chapter 76 under CTI 76109010?

**E. <u>Analysis</u>**

17. We recognise that classification disputes, particularly in the Harmonised System Nomenclature (hereinafter referred to as

"**HSN**") era, are inherently complex and require careful consideration of an intricate set of notes and interpretation rules. Given this complexity, and to accurately resolve the issue before us, we find it essential to first examine the specific aspects relevant to classification disputes, such as:

a. First, when addressing classification disputes under taxation law, this Court has often had to resort to the common parlance or trade parlance test to interpret the meaning of words in the statute. However, the adoption of the common parlance or trade parlance test is often heavily contested. Therefore, it is vital for us to consider and determine the circumstances in which this Court has, in various decisions, deemed it appropriate to rely on the common parlance test and those in which it has not. This will help us understand whether, in the facts of this case, the common or trade parlance test should be applied to interpret the meaning of the words in the tariff heading.
b. Secondly, as contested in this case, the consideration of end use as a factor for determining classification is a contentious issue in many classification disputes. Consequently, it is essential to understand whether end use can be taken into account when dealing with classification disputes of imported goods under the First Schedule of the Act, 1975, and if so, what principles govern such consideration.

18. Before addressing the specific issues referred to above, we find it appropriate and necessary to discuss certain fundamental concepts related to the classification of goods imported into India.

***i. <u>Classification under the Act, 1962 and the Act, 1975</u>***

19. Section 12 (1) of the Act, 1962, serves as the primary charging section for customs duties in India. It states as follows:

> *12. Dutiable goods - (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from India.*

20. The Act, 1975, came into force on 02.08.1976, replacing the Indian Tariff Act, 1934, and its amending acts. The First Schedule of the Act, 1975, now governs the classification of imported goods in India. Whereas the Second Schedule of the Act, 1975 deals with export tariff. Section 2 of the Act, 1975, states that the rates at which customs duties are levied under the Act, 1962, are specified in the First and Second Schedules of the Act, 1975, respectively. It states as follows:

> *2. Duties specified in the Schedules to be levied. - The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.*

21. Section 2 of the Act, 1975, is subordinate to Section 12 of the Act, 1962, and does not operate as an independent charging section. The provisions of both Acts must necessarily be read together.

22. The First Schedule of the Act, 1975, was originally based on the Brussels Tariff Nomenclature. By Act 8 of 1986, this was amended to adopt the Harmonised Commodity Description and Coding System, commonly known as the Harmonised System Nomenclature. The HSN is an internationally standardised classification system developed by the World Customs Organisation. It provides a structured way to classify traded goods using a standardised numerical code framework. The HSN

comprises more than 5,000 commodity groups, each identified by a six-digit code, arranged in a logical and legal framework supported by well-defined rules to achieve uniform classification.

23. The HSN is utilised by over 200 countries as a foundation for their Customs tariff and ensures uniformity in customs procedures, promoting international trade by providing a common language for identifying and categorising goods across various jurisdictions.

24. In the First Schedule of the Act, 1975, commodities are arranged in a fixed pattern with the duty rates specified against each item. The First Schedule is divided into sections, which are further subdivided into chapters. Each section and chapter also includes its respective notes, known as Section Notes and Chapter Notes, respectively. The First Schedule of the Act, 1975, consists of 21 Sections and 98 chapters.

25. A section is a group consisting of a number of chapters which codify a particular class of goods. The Section Notes clarify the scope of chapters, headings, and other elements. The chapters include chapter notes and a brief description of commodities, arranged at four-digit, six-digit, and eight-digit levels. Each four-digit code is called a 'heading', each six-digit code is called a 'subheading', and an eight-digit code is called a 'Tariff Item'. The HSN provides commodity/product codes and descriptions only up to the 4-digit (Heading) and 6-digit (Sub-heading) levels. Member countries of WHO are permitted to extend the codes to any level, provided that no changes are made at the 4-digit or 6-digit levels. India has developed an 8-digit classification to specify particular statistical codes for indigenous products and also to monitor the trade volumes.

26. Customs classification is best described as the process of identifying the appropriate heading, subheading, or tariff item for a good. This is the most crucial step in the customs law, as it is not just an administrative task. Instead, the classification determines the legal and financial treatment of the goods in question, including the applicable duty rate and eligibility for exemptions.

(a) General Rules of Interpretation

27. The First Schedule of the Act, 1975, outlines the principles that govern the classification of goods under the schedule and are commonly referred to as the General Rules for Interpretation (hereinafter referred to as "**GRI**"). They are as follows:

> *1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.*
>
> *2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or, finished by virtue of this rule), presented unassembled or disassembled.*
>
> *2. (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*
>
> *3. When by application of rule 2(b) or for any other reason,*

*goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

*(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified, as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

*(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

*4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

*5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:*

*(a) camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;*

*(b) subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.*

*6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related subheading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

28. GRI 1 is the fundamental rule for effectively navigating the HSN. The influence of GRI 1 is pervasive and forms the basis for customs classification of goods under the Act, 1975. GRI 1 states that: (i) headings of sections, chapters and subchapters are for reference only and (ii) for legal purposes, the classification shall be determined by the terms of headings and the relevant section or chapter notes. Thus, GRI 1 essentially establishes the primacy of the notes and terms of headings for determining the classification of a product.

29. GRI 2 (a) is expanding the terms of a heading to include (i) incomplete or unfinished goods, as long as the essential character of the complete or finished article is obvious from the goods as presented at the time of importation; or (ii) goods presented in unassembled or disassembled form. [See ***Collector of Customs, Bangalore & Anr v. Maestro Motors Ltd. & Anr***, reported in **(2005) 9 SCC 412, *Commissioner of Customs, New Delhi v. Sony India Limited***, reported in **(2008) 13 SCC 145** and ***Salora International Limited v. Commissioner of Central Excise, New Delhi*,** reported in **(2012) 9 SCC 662**]

30. GRI 2 (b) deals with mixtures consisting of different materials or substances and goods that are produced from different materials or substances. GRI 2 (b) states that a reference in a heading to: (i) to a material or substance shall be taken to include a reference to

mixtures or combinations of that material or substance with other materials or substances and (ii) goods of a given material or substance shall include a reference to goods consisting wholly or partly of such materials or substance. Lastly, those mixtures or goods that consist of mixtures of different materials or substances are classified according to GRI 3.

31. GRI 3 is the rule that acts as a tie breaker when, by application of GRI 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings. Such classification shall be based on the following

    a. As per GRI 3(a), a heading with a more specific description of goods is preferred to a heading with a more general description of goods. However, GRI 3(a) cannot be applied to decide classification when two or more headings each refer to only part of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale. Each of those headings is to be regarded as equally specific in relation to those goods, even if one gives a more complete or precise description of the goods. The decision of classification will then be made based on GRI 3(b) or GRI 3(c). [See ***CCEC & ST, Vishakhapatnam v. Jocil Limited***, reported in **(2011) 1 SCC 681**]

    b. GRI 3(b) concerns the decision for mixtures and goods that consist of different materials or components and for goods put up in sets for retail sale, which cannot be classified by reference to GRI 3(a). The classification shall be determined by the material, substance or component that gives them their essential character, insofar as this

criterion is applicable. The criterion that gives goods their essential character differs according to the type of goods. The material or substance, its contents, its amount, its weight, its value or the value of a material for its usage can determine this.

c. GRI 3(c) is applicable only when a classification according to GRI 3(a) and GRI 3(b) was not possible. Consequently, the goods are placed in the heading which occurs last in numerical order among those which equally merit consideration.

32. GRI 4 is invoked very rarely, as many classification disputes are resolved through the application of GRIs 1-3, thereby making it needless to invoke GRI 4. GRI 3 and GRI 4 are mutually exclusive, as once the analysis enters the arena of GRI 3, GRI 4 cannot be invoked, as the dispute would ultimately be resolved by GRI 3(c). GRI 4 is essentially a failsafe rule, an option of last resort, intended to ensure that an HSN provision can be found for even the most unusual product. Under GRI 4, goods are classified under the heading appropriate to the goods to which they are most akin. Thus, kinship is the sole evaluative criterion allowed under GRI 4.

33. GRI 5 is a special rule of interpretation that pertains only to the classification of cases and packing materials.

34. GRI 6 is a procedural rule that explains how to classify a good after the correct 4-digit heading has already been found. In simple terms, it states that the exact same principles from GRI 1 to 5 must be applied again, mutatis mutandis, to determine the correct subheading within that heading. Classification at the sub-heading level is governed by the specific terms of the sub-headings and any

sub-heading notes, with the critical condition that only sub-headings at the same level can be compared.

35. The primary purpose of the GRIs is to establish mandatory boundaries for any classification inquiry, ensuring a structured, uniform, and predictable approach to classification. It is essential not to treat these GRIs as a menu of options that can be invoked randomly, but rather as a legal framework that dictates a precise and sequential methodology for classifying all goods.

36. This Court has repeatedly reiterated that GRIs 1-4 must be applied sequentially. [See ***Commissioner of Central Excise, Nagpur v. Simplex Mills Co. Ltd.***, reported in **(2005) 3 SCC 51** and ***Secure Meters Limited v. Commissioner of Customs, New Delhi***, reported in **(2015) 14 SCC 239**]. GRI 1, which gives primacy to the headings and notes, is the non-negotiable starting point. GRI 2, which deals with incomplete, unassembled or composite goods or mixtures, often acts as an extension of GRI 1, by deeming the headings to include incomplete/unassembled goods or mixtures or combinations of a material or substance. GRI 3 is only invoked when the application of GRI 1 and/or GRI 2 results in a good being prima facie classifiable under two or more competing headings. GRI 3 exists solely to resolve this tie. GRI 4, the rule of last resort, is mutually exclusive to GRI 3 and is only invoked if GRI 1 and 2 have failed to find even one possible heading for the good. To illustrate, let us take the analogy of "locked doorways":

    a. Classification begins and, in most cases, ends at the first door: GRI 1.
    b. If, upon applying GRI 1 and/or GRI 2, the result is a *tie* between two or more headings, the key to the GRI 3 door is granted to find the tie-breaker. Further, once the door to

GRI 3 is unlocked, the subsequent doors to GRI 3(b) and GRI 3(c) are also unlocked in a sequential manner, i.e., the door to GRI 3(b) unlocks only when the dispute is not resolved through application of GRI 3(a), and similarly door to GRI 3(c) unlocks only when the dispute is not resolved through application of GRI 3(b)

c. If, upon applying GRI 1 and/or GRI 2, the result seems to be that no heading applies at all, the key to the GRI 4 door is granted to find the "most akin" good.

(b) Role of HSN Explanatory Notes

37. The official interpretation of the HSN is provided in the Explanatory Notes published by the World Customs Organisation (hereinafter "**Explanatory Notes**"). Therefore, these Explanatory Notes form the foundation for interpreting the HSN. Given their importance for classification, it is apposite to understand how they can be used when addressing questions of classification under the First Schedule of the Act, 1975.

38. This Court, in ***Commissioner of Central Excise, Salem v. Madhan Agro Industries (India) Private Ltd.***, reported in **2024 SCC OnLine SC 3775**, while dealing with a classification dispute under excise law, made the following pertinent observations regarding consideration of the Explanatory Notes:

> *"**16.** Ergo, in resolving disputes relating to tariff description and classification, a ready reckoner is the internationally accepted nomenclature in the HSN. That being said, we must hasten to reiterate what was pointed out in Wood Craft Products Ltd.. If the headings/entries in the First Schedule to the Act of 1985 are different from the headings/entries in the HSN or if they are not fully aligned, reliance cannot be placed upon the HSN for the purpose of classifying those goods under the Act of 1985.*

> ***17.*** *To sum up, the First Schedule to the Act of 1985 is based on the HSN, which is an internationally standardized system developed and maintained by the World Customs Organization for classifying products, and unless the intention to the contrary is found within the Act of 1985 itself, the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding guidance in understanding and giving effect to the headings in the First Schedule. It is only when a different intention is explicitly indicated in the Act of 1985 itself that the HSN would cease to be of guidance. In effect, the legislative intention to depart from the HSN must be clear and unambiguous. For instance, in Camlin Ltd. v. Commissioner of Central Excise, Mumbai, this court found that there was an inconsistency between the Central Excise Tariff description and the entry in the HSN and, therefore, reliance upon the HSN entry was held to be invalid. It was affirmed that it is only when the entry in the HSN and the tariff description in the First Schedule to the Act of 1985 are aligned that reliance would be placed upon the HSN for the purpose of classification of such goods under the correct tariff description."*
>
> (Emphasis Supplied)

Thus, in ***Madhan Agro*** (*supra*), this Court clarified the applicability of the Explanatory Notes. Their application is governed by a single, critical condition of 'alignment'. This test is met when the domestic tariff entry (in the First Schedule of the Act, 1975) is fully aligned with the corresponding HSN heading, and no explicit deviation or contrary legislative intent is found in the Act, 1975. Where such alignment exists, the Explanatory Notes are to be treated as binding guidance. The rationale is based on the legislative intent. Since the First Schedule of the Act, 1975 was amended to be in accordance with the HSN, the Explanatory Notes, being the official, international interpretation, are the most authentic guide to understanding the scope of the headings.

39. In the present case, this condition of alignment is satisfied. Upon examining the competing headings (Chapter Heading 7610 and Chapter Heading 8436), along with their subheadings and the relevant section and chapter notes in the First Schedule of the Act, 1975, it is found that they are identical to their counterparts in the HSN. As no explicit statutory deviation has been shown to exist, there can be no doubt that the Explanatory Notes can be considered as binding guidance to resolve the classification dispute before us.

### ***ii. Applicability of the Common Parlance test in classification disputes***

40. It is a well-established principle of statutory interpretation, as repeatedly affirmed by this Court, that when a particular term in a taxing statute is not defined, it should be understood in the sense recognised by those who deal with it. The common parlance, trade parlance, and popular parlance tests are all iterations of this fundamental rule. For the sake of ease of reference, we would generally refer to the test as the 'common parlance test'. However, it is clarified that any reference to 'common parlance' shall be construed to include trade, commercial, or popular parlance, if the context may require so.

41. The rationale behind this principle is that the purpose of a fiscal statute is to generate revenue, and the legislature assumes it is addressing the public and traders, not scientists or technical experts. Therefore, the terms used in the statute are based on the understanding of those dealing with the said goods. If a specific scientific meaning had been intended, the statute would have included an explicit definition to that effect. [See ***Indo International Industries v. Commissioner of Sales Tax, Uttar***

***Pradesh***, reported in **(1981) 2 SCC 528**, ***Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P.***, reported in **(1998) 7 SCC 228**, ***Asian Paints India Ltd v. Collector of Central Excise***, reported in **(1988) 2 SCC 470,** and ***United Offset Process (P.) Ltd v. Asst. Collector of Customs, Bombay***, reported in **1989 Supp (1) SCC 131**]

42. For the purposes of understanding the considerations that weighed with this Court while applying the common parlance test in classification disputes, it is necessary to analyse the relevant case law carefully. For the clarity of exposition, the case law discussed is divided into two broad categories: (a) cases where the common parlance test was applied; and (b) cases where the common parlance test was not applied.

(a) Cases where the common parlance test was applied

43. In ***Dunlop India*** (*supra*), a three-judge bench of this Court considered a dispute regarding the customs classification of Vinyl Pyridine Latex, a type of rubber. In this case, one of the contentions on the part of the Revenue was that the said good could be classified as a 'resin' based on its technical meaning. The Court, dismissing the Revenue's claim, held that the meaning assigned to articles in a fiscal statute must align with how people involved in trade and commerce, who are familiar with the subject, generally understand and treat them. Technical and scientific tests should be applied only within limits. The Court's observations are as follows:

> *"29. It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority.*

*30. Dealing with the meaning of the term "vegetables" in the Excise Tax Act in King v. Planters Nut and Chocolate Company Limited [1951 Canada Law Reports 122] the Exchequer Court observed as follows:*

> *"Now the statute affects nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally, the consumer who, in the last analysis, pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be affected by the Act, would be botanists. The object of the Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a 'fruit' or 'vegetable' which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such."*
>
> *The Exchequer Court also referred to a pithy sentence from "200 chests of Tea", per Story, J. [(1824) 9 Wheaton (US) 435] that "the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists".*

*xxx*

*34. [...] It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. [...] Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."*

(Emphasis Supplied)

44. In ***Oswal Agro Mills Ltd & Ors v. Collector of Central Excise & Ors***, reported in **1993 Supp (3) SCC 716**, this Court examined whether a 'toilet soap' could be classified as a 'household soap' under the Central Excises and Salt Act of 1944. Before its

amendment in 1964, Tariff Item 15 classified soaps as: (i) Soap, household and laundry, (ii) Soap, toilet, and (iii) Soap, other than household, laundry, or toilet. After the 1964 amendment, Tariff Item classified soaps as: (i) Soap, household and laundry, and (ii) other sorts. Consequently, the specific category for 'toilet soaps' was abolished, raising the issue of whether 'toilet soaps' should be classified as 'household soaps' or as 'other sorts'. It is in this context that the Court made the following relevant observations:

> *"4. The provisions of the tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence it must be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor can we delete anything but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the statute. The contention that toilet soap is commercially different from household and laundry soaps, as could be seen from the opening words of Entry 15, needs careful analysis. [...] Let us, therefore, consider the meaning of the word soap "household". The word household signifies a family living together. In the simplistic language toilet soap being used by the family as household soap is too simplification to reach a conclusion. Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the*

*intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. [...]*

*5. In Ramavatar Budhaiprasad v. Assistant STO , another Constitution Bench was to consider whether "betel leaves" are "vegetable" within the meaning of Item 6 of Second Schedule to the M.P. Sales Tax Act. It was contended that betel leaves are vegetable and, therefore, they are exempted from the payment of sales tax. While construing Item 6, this Court held that the words must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It is to be construed as understood in common language. Therefore, betel leaves were held to be not vegetable. The term 'vegetables' is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table. The same view was reiterated in Motipur Zamindary Co. (Pvt.) Ltd. v. State of Bihar and State of W.B. v. Washi Ahmed . In Washi Ahmed case green ginger was held to be vegetable within the meaning of the word used in common parlance. In Motipur Zamindary case it was held that sugar-cane was not vegetable. In Porritts & Spencer (Asia) Ltd. v. State of Haryana this Court held that 'Dryer felts' are not textiles. In that context the principle of understanding the meaning of the word in common parlance was adopted. In Indo International Industries v. CST this Court held that: (SCC p. 530, para 4)*

> *"It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expression used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression*

*has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted."*

*(emphasis supplied)*

*In that case the clinical syringes manufactured and sold by the assessee were not considered as 'glassware' falling within Entry 39 of the First Schedule of the Act. In commercial sense glassware would never comprise of articles like clinical syringes etc., or specialised significance and utility. Same view was reiterated in P.A. Thillai Chidambara Nadar v. Addl. Appellate Asstt. Commissioner, Madurai that coconut is neither a fresh fruit nor a vegetable. [...]*

*6. In Shri Bharuch Coconut Trading Co. v. Municipal Corpn. of the City of Ahmedabad this Court applied the test as "would a householder when asked to bring some fresh fruits or some vegetables for evening meal, bring coconut too as vegetable? Obviously the answer is in the negative". Again when a person goes to a commercial market ask for coconuts, "no one will consider brown coconut to be vegetable or fresh fruit, no householder would purchase it as a fruit. Therefore, the meaning of the word brown coconut, whether it is a green fruit has to be understood in its ordinary commercial parlance". Accordingly it was held that brown coconut was not green fruit. [...] The general purpose or common use of the product though may not be conclusive but may be relevant to classify it in a tariff entry when it was not specifically enumerated in a particular entry or sub-entry. [...] In Anant B. Timbodia v. Union of India this Court was to consider whether imported cloves fell within Item 169 in List 8 of Appendix 6 or para 167 of Chapter 8 of Import and Export Policy 1990-93. Para 167 of Chapter 8 of Import Policy clearly provided the heading — Import of Spices includes cloves, cinnamon/cassia, nutmeg and mace. Therefore, it was held that import permit is necessary. The doctrine of popular sense or trade or its use in making medicine as crude drug was not accepted. Dictionary meaning or meaning given in Indian Pharmaceutical Codex was not accepted as given in view of specific enumeration.[...]*

*xxx*

> *9. Thus considered in the legal setting and commercial parlance we are of the considered view that "toilet soap" being of everyday household use for the purpose of the bath and having removed its separate identity which it enjoyed preceding amendment and having been not specifically included in "other sorts", it took its shelter in commercial parlance under "household". As stated if anybody goes to the market and asks for toilet soap he must ask only for household bathing purpose and not for industrial or other sorts. Even the people dealing with it would supply it only for household purpose. It may be true that household consists of soap used for cleaning utensils, laundry used for cleaning soiled clothes and soap toilet is used for bathing but household is compendiously used, toilet soap is used only by the family for bathing purpose. Individual preference or choice or taste of a particular soap for bath is not relevant. The soap "toilet" would, therefore fall within the meaning of the word "household" in sub-item (1) of Item 15 of the Schedule. The classification shall accordingly be adopted. The appeals are accordingly allowed. [...]"*
>
> (Emphasis Supplied)

45. In ***Oswal Agro*** (*supra*), the Court applied the common parlance test to determine that toilet soap should be classified as a 'household soap'. It is relevant to note that in all the cases referenced by the Court where the common parlance test was applied, the focus was on understanding whether, in everyday language, the goods would fall under the specified tariff item category, such as whether a brown coconut would be called a fruit or a vegetable, or whether betel leaves would be considered vegetables in common parlance. This Court in ***Oswal Agro*** (*supra*) also adopted a similar approach by asking whether, in common parlance, 'toilet soap' would be categorised as 'household soap'.

46. Furthermore, this Court in ***Oswal Agro*** (*supra*) sounded a few notes of caution to be observed when courts apply the common

parlance test. These are: first, the common parlance test cannot be applied if there is a specific enumeration of the goods within a category by the legislature; secondly, while interpreting terms in a tariff item, an overly simplified approach should be avoided, and the words should be understood within their legal context.

47. In ***Union of India & Ors v. Garware Nylons Ltd & Ors***, reported in **(1996) 10 SCC 413**, the respondents manufactured 'Nylon Yarn' and 'Nylon Twine'. Under Item 18 of the First Schedule of the Central Excise and Salt Act, 1944, excise duty was payable on 'Nylon Yarn'. A notification issued under Rule 8 of the Excise Rules provided that 'Nylon Yarn', intended for use in making fishing nets and parachute cords, was exempt from paying excise duty in excess of Rs 4 per kg under Item 18. The respondents therein argued that the 'Nylon Twine' they manufactured was used for making fishing nets. Before 1975, they were permitted to clear Nylon Twine, manufactured by them, by paying excise duty as specified under the exemption notification. Subsequently, when the new item, namely Item 68 (a residuary entry), was introduced into the Act, it was contended by the Excise authorities that 'Nylon Twine' produced by the respondents was not covered by Item 18. According to the revenue, 'Nylon Twine' and 'Nylon Yarn' were two separate items, with Item 18 covering only 'Nylon Yarn', not 'Nylon Twine'. The authorities sought to impose excise duty on 'Nylon Twine' under Item 68. The respondents, however, contested the classification under Item 68, arguing that 'Nylon Twine' was considered a kind of 'Nylon Yarn' by traders and those dealing with the subject matter. The Court, applying the trade parlance test, concluded that there was sufficient evidence to establish that, in trade parlance, 'Nylon Twine' was regarded as a type of 'Nylon Yarn'

and was therefore classifiable under Item 18. The relevant observations of the Court are as follows:

> *"9. [...] In this case, clinching evidence is afforded to demonstrate that trade and industry which deals with the goods, consider "Nylon Twine" as a kind of "Nylon Yarn".*
>
> *10. There are innumerable decisions of this Court which have laid down the test or the principles to be borne in mind in construing the items or entries in Fiscal Statutes. In a recent decision in Indian Cable Co. Ltd. v. CCE a three-member Bench stated the law thus: (SCC p. 615, para 5)*
>
> > *"… in construing the relevant item or entry, in fiscal statutes, if it is one of everyday use, the authority concerned must normally, construe it, as to how it is understood in common parlance or in the commercial world or trade circles. It must be given its popular meaning. The meaning given in the dictionary must not prevail. Nor should the entry be understood in any technical or botanical or scientific sense. In the case of technical words, it may call for a different approach. The approach to be made in such cases has been stated by Lord Esher in Unwin v. Hanson [(1891) 2 QB 115 : 65 LT 511 : 60 LJQB 531] thus:*
> >
> > *'If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.'*
> >
> > *We would only add that there should be material to enter appropriate finding in the case. The material may be either oral or documentary evidence."*
>
> *xxx*

*12. The law on the point as laid down by this Court (in various decisions) has been summarised in the book Principles of Statutory Interpretation (Sixth Edition — 1996) by Justice G.P. Singh, at pp. 67, 70, 72 and 73, thus:*

> *"[...]*
>
> ***
>
> *As a necessary consequence of the principle that words are understood in their ordinary or natural meaning in relation to the subject-matter, in legislation relating to a particular trade, business, profession, art or science, words having a special meaning in that context are understood in that sense. Such a special meaning is called the technical meaning to distinguish it from the more common meaning that the word may have. The Supreme Court 'has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and, it is the sense in which they understood it which constitutes the definitive index of legislative intention'."*

*13. Stated briefly, we should understand, the expression occurring in Item 18 of the Act, in the sense, in which the persons who deal in such goods understand it normally.*

*14. In this case, apart from the meaning given to the words 'Yarn', 'Twine' etc., in the standard works referred to by the High Court, two items of evidence stand out prominent and clinch the issue. The first is, an order received by the assessee from the Director of Fisheries, Madras which goes to show that Nylon Twine is considered as a type of Nylon Yarn used for making fishing nets. The second is, two affidavits filed by the assessees before the authorities — one from the Managing Director of Maharashtra Rajya Machimar Sekhari Sangh Limited and another from a partner of Maharashtra Fishing Material Company, wherein it is stated that 'Twine' is a category of 'Yarn'. What is more — the assessees made available the above persons who have sworn to the affidavits for cross-examination at the*

*time of the hearing of the applications, but the Revenue did not cross-examine them. The trade enquiry received by the assessees and also the affidavits conclusively point out that Nylon Twine is considered as a kind of "Nylon Yarn" in the particular trade by persons conversant with the subject-matter. The Revenue has not let in any material to the contra."*

(Emphasis Supplied)

48. The Court's observations in ***Garware Nylons*** (*supra*) are significant for two reasons:

    a. First, it clarifies when the common understanding of the term should be adopted, as opposed to when its trade understanding must be applied. The choice is not arbitrary but rather determined by the statutory context and the audience to whom the tariff item is addressed. When a statute or tariff is general in nature and does not indicate a particular industry or trade circle, the common parlance understanding is appropriate. However, when a tariff item is specific to a particular industry, as was the case in ***Garware Nylons*** (*supra*), the term must be understood as it is used within that specific trade circle.

    b. Secondly, the Court highlighted that when a party asserts a meaning of a term based on common or trade parlance, it must present satisfactory evidence to support that claim. A dispute over classification cannot be resolved without such evidence.

49. The issue of classifying 'soft-serve' served at restaurants or outlets, popularly known as 'McDonald's', under the Central Excise Tariff Act, 1985, was considered by this Court in ***Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant***

***Private Limited***, reported in **(2012) 13 SCC 639**. The revenue contended that 'soft-serve' should be classified under Heading 21.05 (Ice cream and other edible ice). In contrast, the respondent argued that 'soft-serve' was classifiable under Heading 04.04 (Other dairy produce) or Heading 2108.91(Edible preparations not elsewhere specified or included). The Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, relying on the technical meaning and specifications of the product 'ice cream', concluded that 'soft-serve' could not be classified as ice cream. The Tribunal declined to apply the common parlance test to determine the classification of 'soft-serve'.

50. To fortify its claim for classification under Heading 04.04 (or Heading 2108.91), the respondent relied on the following points: (i) 'soft-serve' is a product distinct and separate from 'ice cream' because, worldwide, 'ice-cream' is generally understood to contain more than 5% milk fat, whereas' soft serve' does not exceed 5%; (ii) 'soft serve' cannot be considered 'ice cream' in common parlance since it is marketed globally by the assessee as 'soft serve'; and (iii) 'ice cream' should be understood in its scientific and technical sense. Conversely, the Revenue argued that "soft serve" is recognised as "ice cream" in common parlance. The Court observed that, to determine the appropriate heading, it was necessary to first understand the true scope of the relevant headings. None of the terms in the relevant heading was defined, nor was any technical or scientific meaning provided in the chapter notes. In this context, the Court examined whether, in the absence of a statutory definition, the term "ice cream" under Heading 21.05 should be interpreted according to its scientific and technical meaning or in line with its common parlance understanding. After reviewing a series of decisions by this Court concerning the application of the

common parlance test, the Court made the following pertinent observations.

> *"33. Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding.*
>
> *34. In the light of these principles, we may now advert to the question at hand viz. classification of "soft-serve" under the appropriate heading. As aforesaid, the Tribunal has held that in view of the technical literature and stringent provisions of the PFA, "soft-serve" cannot be classified as "ice-cream" under Entry 21.05 of the Tariff Act. We are of the opinion, that in the absence of a technical or scientific meaning or definition of the term "ice-cream" or "soft-serve", the Tribunal should have examined the issue at hand on the touchstone of the common parlance test.*
>
> *35. As noted before, Headings 04.04 and 21.05 have been couched in non-technical terms. Heading 04.04 reads "other dairy produce; Edible products of animal origin, not elsewhere specified or included" whereas Heading 21.05 reads "ice-cream and other edible ice". Neither the headings nor the chapter notes/section notes explicitly define the entries in a scientific or technical sense. Further, there is no mention of any specifications in respect of either of the entries. Hence, we are unable to accept the argument that since "soft-serve" is distinct from "ice-cream" due to a difference in its milk fat content, the same must be construed in the scientific sense for the purpose of*

*classification. The statutory context of these entries is clear and does not demand a scientific interpretation of any of the headings. Therefore, in the absence of any statutory definition or technical description, we see no reason to deviate from the application of the common parlance principle in construing whether the term "ice-cream" under Heading 21.05 is broad enough to include "soft-serve" within its import.*

*36. The assessee has averred that "soft-serve" cannot be regarded as "ice-cream" since the former is marketed and sold around the world as "soft-serve". We do not see any merit in this averment. The manner in which a product may be marketed by a manufacturer, does not necessarily play a decisive role in affecting the commercial understanding of such a product. What matters is the way in which the consumer perceives the product at the end of the day notwithstanding marketing strategies. Needless to say the common parlance test operates on the standard of an average reasonable person who is not expected to be aware of technical details relating to the goods. It is highly unlikely that such a person who walks into a "McDonalds" outlet with the intention of enjoying an "ice-cream", "softy" or "soft-serve", if at all these are to be construed as distinct products, in the first place, will be aware of intricate details such as the percentage of milk fat content, milk non-solid fats, stabilisers, emulsifiers or the manufacturing process, much less its technical distinction from "ice-cream". On the contrary, such a person would enter the outlet with the intention of simply having an "ice-cream" or a "softy ice-cream", oblivious of its technical composition. The true character of a product cannot be veiled behind a charade of terminology which is used to market a product. In other words, mere semantics cannot change the nature of a product in terms of how it is perceived by persons in the market, when the issue at hand is one of excise classification.*

*xxx*

*50. In view of the aforegoing discussion, we are of the opinion that the Tribunal erred in law in classifying "soft-serve" under Tariff Sub-Heading 2108.91, as "Edible preparations not elsewhere specified or included", "not bearing a brand name". We hold that "soft-serve" marketed by the assessee, during the relevant period, is to be*

*classified under Tariff Sub-Heading 2105.00 as "ice-cream"."*

(Emphasis Supplied)

51. The Court in ***Connaught Plaza*** (*supra*), after examining the tariff headings and relevant section and chapter notes, concluded that the term "ice cream" should be interpreted using the common parlance test rather than adopting a scientific or technical meaning. Notably, the Court applied the common parlance test not only because there was no specific definition, but also because the statutory context, including the heading, section, and chapter notes, provided no guidance on how to interpret 'ice cream'. In this context of statutory flexibility, the Court employed the common parlance test to determine whether "soft serve" qualifies as "ice cream" under the Central Excise Tariff Act, 1985. Furthermore, notably, the Court also held that mere marketing alone could not lead a subject item to develop a separate meaning distinct from its common parlance.

52. In ***Commissioner of Customs and Central Excise, Amritsar (Punjab) v. D.L. Steels & Ors***, reported in **(2023) 17 SCC 358**, this Court examined a classification dispute concerning dried pomegranate seeds, locally known as "anardana". The respondent had imported "anardana" from Pakistan. Heading 0813 in the schedule of the Act, 1975, covers the dried form of all items falling within Headings 0807 to 0810. The revenue argued that since the imported product is essentially a dried form of the fruit pomegranate (which falls under heading 0810), it should be classified under heading 0813. The Court first observed that, for classification under Chapter 8, a fruit must be edible, and thus the key question before it was whether the source fruit, in this case "daru" or wild pomegranate, was edible. Relying on the common

parlance test, the Court accepted the CESTAT's finding that wild pomegranate was not consumed as a fruit. Accordingly, the Court refused to classify the imported good under Heading 0813. The relevant observations made by the Court are as follows:

> *"14. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined, or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject-matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker. However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable.*
>
> *xxx*
>
> *18. The first Chapter Note to Chapter 8 stipulates that inedible nuts and fruits are not covered by the Chapter. Clearly, for the purpose of classification, this Note draws a distinction between "edible" and "inedible" fruits. Etymologically, the word "edible" derives from the Latin word "edibilis" which means "eatable". The word "edible" as per Webster's New International Dictionary means "fit to be eaten as food; eatable; esculent". The Concise Oxford English Dictionary defines edible as "fit to be eaten". The phrase "fit to be eaten" can imply an absence of harmful effects. However, while the word "edible" seems simple, it warrants elaboration as over-simplification will be problematic.*
>
> *19. Ben Baumgartner, in his article, has referred to several judgments of different courts in the United States of America to argue that the decisions have culminated in the various tests and parameters to determine the meaning of the word "edible". These are extracted below:*
>
> > *"Thus, courts have turned to, and parties have argued for, various other tests to determine*

*whether a good is edible. Such tests include : (1) whether the good appears edible to the senses, (2) whether the good provides nourishment, (3) whether the good's constituent parts are edible, (4) whether the good is principally used as food, (5) whether the good may be eaten without harmful effects, (6) whether the good is "habitually eaten", and (7) whether the good is actually eaten. This comment argues that a good should be considered edible if it can be eaten without harmful effects, but that whether the good is "habitually eaten" should control if testing the good is dangerous, and if neither of these tests yields a result, the matter should be resolved by whether the good is actually eaten."*

*The author thereafter goes on to argue that an item should be considered edible if it can be eaten without harmful effects, however, the "habitually eaten" test would apply if the testing of the goods to check for harmful effects is dangerous. If neither of the two tests yield a result, the matter should be resolved by determining if the item was actually eaten.*

*20. We need not discuss this article in detail but for the purpose to record that the word "edible" is capable of diverse and multiple meanings, which are plausible. For the purpose of the present case, the word "edible" must be construed using the principle of common parlance, which has been discussed supra. The law-makers, while enacting statutes, are cognizant of the way in which a word might be understood in common or trade parlance. Thus, if a meaning different than that attributed to it by people who are conversant in that subject-matter was intended to be attached to a word, the same would be specifically delineated by way of a definition. The word "edible" has no such specific definition attached to it, and therefore, must be interpreted using the common parlance test. The question which so arises is whether the goods — "anardana", are dried pomegranates, which when fresh are understood as "edible" fruits in common parlance. [...]*

*xxx*

*23. In favour of the appellant's claim, it must be highlighted that pomegranates, along with some other fruits, are expressly included in Clause 7 to the Explanatory Notes to Sub-Heading 0810.90. Consequently, it can be argued with*

*some merit that dried pomegranate, if prepared by drying in the sun or by industrial processes, would fall under Sub-Heading 0813.40.*

*24. However, pomegranates are rather unusual fruits and their structure is unlike other fruits. The outermost layer is a hard and inedible shell. The edible part consists of the seeds and arils. Arils are the sweet, juicy, and crunchy covering that encase the seeds. However, the finding of CESTAT is that wild pomegranates from which "anardana" is made are different from the pomegranate fruit. This finding of fact is supported by considerable literature which states that "anardana" is prepared by dehydrating the arils of wild pomegranates, and not from the pomegranate which is eaten as a fresh fruit. The conventional utilisation of the wild pomegranate fruit lies in drying the seeds along with pulp to make "anardana". The wild pomegranate fruit is widely found on the hilly slopes of the Himalayas. It contains high acid content along with other quality characteristics, which distinguishes it from the pomegranate fruit which is consumed as a fresh fruit. The dried wild pomegranate arils have a distinct tart and sour flavour, owing to the high acid content, which gives it the commercial value. "Anardana", therefore, can be defined as sun-dried seeds of ripe sour pomegranate, and is predominantly used as an acidulant in Indian and Persian cuisines, and for its health benefits in the Ayurvedic system of medicine.*

*xxx*

***31.** In the context of the present case, once we accept the finding of fact recorded by CESTAT that "anardana" is a dried product of local "daru" or wild pomegranate, which grows in mid hill conditions and which fruit in its fresh form is different from the pomegranate included in Clause 7 to Heading 08.10, as this wild pomegranate is not consumed as a fresh fruit, the contention of the Revenue must fail. [...]"*

(Emphasis Supplied)

(b) Cases where the common parlance test was not applied

53. In ***Akbar Badrudin*** (*supra*)**,** the appellant had imported certain stones and had taken due care before importing to ensure that

those stones were not marble, as they were a restricted item under Item 62, Appendix 2, Part B of the Import and Export Policy April 1988–March 1991. In Entry 62, the restricted item was described as follows: "*marble/granite/onyx*". However, after the import, the customs authorities classified those goods as marble on the basis that, in common parlance, they were known as marble and their end use was similar to that of marble. Conversely, the appellant therein contended that the imported goods should be classified as 'slabs of calcareous stones (other than marble)' and not as 'marble' under Tariff Item 25.15 in Appendix 1-B, Schedule I to the Import (Control) Order, 1955. Tariff Item 25.15 was worded as follows: "*Marble, travertine, ecassine, and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape."* The core issue before the Court was whether the common parlance meaning of the term 'marble' should be adopted. In other words, the Court was left to consider the broader question of when the undefined terms within the customs tariff schedule should be interpreted according to their common parlance meaning and when their scientific and technical meanings should be applied. It is in this context that the Court made the following pertinent observations:

> *"36. In deciding this question the first thing that requires to be noted is that Entry 25.15 refers specifically not only to marble but also to other calcareous stones whereas Entry 62 refers to the restricted item marble only. It does not refer to any other stones such as ecaussine, travertine or other calcareous monumental or building stone of a certain specific gravity. Therefore, on a plain reading of these two entries it is apparent that travertine, ecaussine and other calcareous monumental or building stones are not intended to be included in 'marble' as referred to in Entry 62 of*

Appendix *2 as a restricted item. Moreover, the calcareous stones as mentioned in ITC Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word 'marble' has to be interpreted, in our considered opinion, in the scientific or technical sense and not in the sense as commercially understood or as meant in the trade parlance. There is no doubt that the general principle of interpretation of tariff entries occurring in a text (sic tax) statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the tariff entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said word was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry.*

*xxx*

*40. It may be pointed out that this Court has clearly and unequivocally laid down that it is not permissible but in fact it is absolutely necessary to depart from the trade meaning or commercial nomenclature test where the trade or commercial meaning does not fit into the scheme of the commercial statements. This Court referring to the observation of Pullock, B. in Grenfell v. Inland Revenue Commissioner observed: (quoted at SCR p. 724)*

> *"that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular sense', that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." But "if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a*

*construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adapted to the fitness of the matter of the statute."*

*41. The court has also referred to the observation of Fry, J. in Holt & Co. v. Collyer. The observation is: "If it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning."*

*xxx*

*43. This Court in K.V. Varkey v. Agricultural Income Tax and Rural Sales Tax Officer specifically declined to apply the popular or commercial meaning of 'Tea' occurring in the sales tax statute holding that the context of the statute required that the technical meaning of 'a product of plaint life' required to be applied and therefore green tea leaves were tea even though they might not be tea as known in the market*

*44. In Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin this Court held that the word 'hank' occurring in a Central Excise Notification could not be interpreted according to the well settled commercial meaning of that term which was accepted by all persons in the trade, inasmuch as the said commercial meaning would militate against the statutory context of the said exemption notification issued in June 1962. The word 'hank' as used in the notification meant a 'coil of yarn' and nothing more.*

*45. In Collector of Central Excise v. Krishna Carbon Paper Co. it has been observed by this Court that it is a well settled principle of construction that where the word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. It has also been observed that whether the general principle of interpretation was applicable or not depended on the statutory context. [...]*

*xxx*

*48. On a conspectus of all these decisions mentioned hereinbefore the position which thus emerges is that when the expression 'marble' has not been defined in the Customs Tariff Act as well as in the Customs Act or in the relevant notification regarding the restriction on import of marble in the List of Restricted Articles, it is necessary to decide the significance and true meaning of the word 'marble' as used in the ITC Schedule as well as in the List of Restricted Items, Customs Tariff Act and the Customs Act not in its popular sense i.e. people who are dealing with this trade meant the same or what that term is commercially known in trade parlance but it has to be given a meaning in the context in which this word has been used in the ITC Schedule as well as in the List of Restricted Items of Import. It is also necessary to decide whether the word 'marble' as stated in the ITC Schedule refers to only marble or includes travertine, ecaussine, alabaster and other calcareous monumental or building stones and can be termed as marble in the commercial sense or in trade nomenclature so as to bring the same within the restricted Item 62 of Appendix 2 of the Import and Export Policy for April 1988 — March 1991. We have already stated hereinbefore that in the List of Restricted Items under Item 62 only marble has been mentioned and not the other stones including calcareous stone used for building or monumental purposes which have been left out. Therefore, per se it may be difficult to say that marble includes the other calcareous stones mentioned in the ITC Schedule. [...]*

*xxx*

*55. It is apparent from all these reports that the calcareous stone of specific gravity of 2.5 is not marble technically and scientifically. The finding of the Appellate Tribunal is, therefore, not sustainable. It is, of course, well settled that in taxing statue the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the tariff entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the tariff entry and any other entry in the Tariff Schedule. In the instant case, in the Tariff Entry 25.15 in the ITC Schedule, Appendix 1 2DB, marble, travertine, ecaussine, alabaster and other calcareous stones of an apparent specific gravity of 2.5 or more have been mentioned whereas in Entry 62 only the word marble has been mentioned as a restricted item for*

*import, the other calcareous stones such as travertine, ecaussine, alabaster etc. have not been mentioned in Entry 62. In these circumstances, some significance has to be attached to the omission of the words travertine, ecaussine and other calcareous monumental or building stones of an apparent specific gravity of 2.5 or more and alabaster from the ITC Schedule in Entry 62 of Part B, Appendix 2 of Import and Export Policy for April 1988 — March 1991. The only natural meaning that follows from this is that Entry 62 is confined only to marble as it is understood in a petrological or geological sense and as defined by the Indian Standards Institute and not as mentioned in the opinion given by the Indian Bureau of Mines on visual observation and it does not extend to or apply to other calcareous stones mentioned in the ITC Schedule. Moreover, the commercial nomenclature or trade meaning cannot be given to marble inasmuch as such a meaning if given will render otiose, redundant the terms travertine, ecaussine, alabaster and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more whether or not roughly trimmed or merely cut by sawing. [...]"*

(Emphasis Supplied)

54. The Court in ***Akbar Badrudin*** (*supra*) declined to interpret the words by applying the common parlance test, as doing so would have rendered certain other terms of the tariff item completely otiose. From the paragraphs above, this Court made it clear that it would not apply the common or trade parlance tests to determine the meaning of the terms if: (i) such application contradicts the statutory context in which the word was used, (ii) such application conflicts with the clear intention expressed by the statute, or (iii) the statute itself employs the words in a scientific or technical sense.

55. The issue before a three-judge bench of this Court, of which one of us (R. Mahadevan, J.) was a member, in ***Madhan Agro*** (*supra*), was whether pure coconut oil, packaged and sold in small quantities

ranging from 5 ml to 2 litres, should be classified as 'Edible oil' under the Heading 1513 (*Coconut (Copra) oil, etc.*) or as 'Hair oil' under the Heading 3305 (*Preparations for use on the hair*) of the first schedule to the Central Excise Tariff Act, 1985. It is not necessary to set out in detail the factual context of the case for the purposes herein. It is only important to note the Court's rejection of the reliance placed by the Revenue on the common parlance test. The Court observed that the common parlance test cannot be applied when there is no ambiguity and no difference in the clear heading in the first schedule and the corresponding entry in the HSN. The relevant observation made by the Court is as follows:

> *"35. We may now deal with the next point—the "common parlance test". A well-settled principle of interpretation of taxing statutes is that words therein must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those who are conversant with the subject-matter that the statute is dealing with. This principle, known as the "common parlance test", serves as good fiscal policy so as to not put people in doubt or quandary about their tax liability. The test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker but it is subject to certain exceptions—for example, when there is an artificial definition or special meaning attached to the word in the statute itself, whereby the ordinary sense approach would not be applicable.*
>
> *36. However, we find that the reliance presently placed by the Revenue upon the "common parlance test" is utterly misplaced. The said test would have to be understood in the proper perspective and cannot be brought into play when there is no ambiguity and there is no difference in the clear heading in the First Schedule and the corresponding entry in the HSN. In Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant P. Ltd., New Delhi, this court observed that classification of excisable goods*

*shall be determined according to the headings and corresponding Chapter or Section Notes but where these are not clearly determinative of the proper classification, the same shall be effected according to the general rules of interpretation and according to the common parlance understanding of such goods. It was pointed out that fiscal statutes are framed at a point of time but are meant to apply for significant periods of time thereafter and they cannot, therefore, be expected to keep up with nuances and niceties. It was held that the terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable and it is for this precise reason that courts apply the "common parlance test" every time parties attempt to differentiate their products on the basis of subtle and finer characteristics***.***

*37. Earlier, in Alpine Industries v. Collector of Central Excise, New Delhi, this court observed that, in interpreting tariff entries in taxation statues like the Excise Act, where the primary object is to raise revenue and, for that purpose, various products are differently classified, the entries must not be understood in their scientific/technical sense and must be construed as per their popular meaning, i.e., the meaning that would be attached to them by those using the product. <u>However, as already noted above, this exercise would be undertaken when a product is not clearly defined or specifically dealt with in the headings in the First Schedule to the Act of 1985 and the corresponding HSN entries.</u>*

***38.** Long prior thereto, in Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh, this court held that any term or expression defined in a taxing statute must be understood in the light of the definitions given in the Act, in the absence of which the meaning of the term as understood in common parlance or commercial parlance must be adopted."*

(Emphasis Supplied)

56. In ***Madhan Agro*** (*supra*), after thoroughly examining the relevant headings, section notes, chapter notes, and Explanatory Notes, this Court concluded that the criteria as provided by the statute itself must be met to classify the goods as 'cosmetics' under Heading

3305. These criteria include: (i) the good must be suitable for use as a hair oil; (ii) it had to be put up in packing of a kind sold by retail for such use; and (iii) if the products are suitable for other uses then are in packing of a kind sold to consumers and are put up with labels, literature, or other indications that that they are for use as a cosmetic, or they are put up in a form clearly specialized to such use. In such cases, if the common parlance test is applied to decide on classification without considering these established criteria, it would amount to a flagrant disregard of the statutory provisions. This holds particularly true in the HSN era, where GRI 1 explicitly states that the classification of a good should prioritise chapter headings, chapter notes, and section notes. It is only when (i) no clear pathway exists to determine classification under a chapter heading, i.e., absence of a definition or criterion, and (ii) there is ambiguity regarding the meaning and scope of a tariff item, that the possibility of invoking the common parlance test arises.

57. In ***Chemical and Fibres of India Ltd & Ors. v. Union of India & Ors,*** reported in **(1997) 2 SCC 664**, this Court was faced with the question of whether polymer chips manufactured by the assesses and used by them in the production of nylon yarn could be classified, for the purpose of levying excise duty, under Item 15-A in Schedule I to the Central Excises and Salt Act, 1944, as it stood during the period from 1962 to 1972. Item 15-A was amended in 1964. Before its amendment, the heading of the item read: *Plastics, All Sorts.* It was the contention of the assesses that the polymer chips manufactured by them were not known in the trade as plastics and, therefore, could not be classified under Entry 15-A. It was argued on behalf of the Revenue that the chemical composition of the polymer chips is similar to that of the material used in the plastic industry, and thus, based on its chemical

composition, it can be appropriately classified as a plastic. For the period before the amendment, the Court applied the trade parlance test and held that the polymer chips were not referred to as plastic in the trade. The Court made the following observations:

> *"13. [...] Entry 15-A does not use any scientific or technical term. It deals with "plastics, all sorts". As Encyclopaedia Britannica has described, the term "plastic" is a commercial classification. When this kind of a term in commercial use is used in an excise entry which deals with marketable commodities which are manufactured and which are subject to the levy of excise, we will have to examine that term in the light of how it is understood in the trade. If, however, strictly technical or scientific words are used, the approach for their interpretation may be different.*
>
> *xxx*
>
> *18. In the present case, since Entry 15-A as it then stood, uses a commercial term "plastics" which is well known in the trade and is used in the trade, we should not go into the technical analysis of the composition and character of a plastic product. We should go by the meaning which is attached to the term "plastics" in the trade parlance. Plastics as understood in the trade covers all kinds of synthetic materials. As the Encyclopaedia Britannica sets out very clearly, there is a distinction made in commercial parlance between materials used in the production of plastics and materials used in the production of fibres, films or rubber although they may share certain structural features. The assessee has also filed affidavits from people in the trade to say that polymer chips of the kind manufactured by the assessee are not considered as plastics by those dealing in plastics."*
>
> (Emphasis Supplied)

58. Following the amendment, the heading of the item read as follows: *Artificial or synthetic resins, plastic materials, and articles thereof.* Clause (1) of the item referred to artificial or synthetic resins and plastic materials in any form, some of which were described in sub-clauses (i), (ii), and (iii). These sub-clauses detail the technical

processes by which the end product is produced. For example, sub-clause (i) mentions processes such as condensation, polycondensation, and polyaddition, along with the resulting products. Sub-clause (ii) refers, inter alia, to polyamides. The Court acknowledged that after the amendment, the tariff item included technical and scientific terms and, therefore, resolved the disputes by interpreting the meaning of the words used therein with the assistance of technical literature and dictionaries.

59. This Court, in ***Reliance Cellulose Products Ltd., Hyderabad & Anr vs Collector of Central Excise, Hyderabad & Anr***, reported in **(1997) 6 SCC 464**, examined the legal position regarding the classification of sodium carboxymethyl cellulose under the Central Excise Tariff Act, 1985. The department wished to classify it under Item 15-A(1) as *Artificial or synthetic resins, plastic materials, and articles thereof,* while the assessees sought classification under Item 68, the residuary head. This Court upheld the tribunal's order, which classified the said goods under Item 15-A based on evidence that included technical literature. Addressing the assessees contention that the tribunal failed to consider how the products of the appellants were known in the trade, the Court held as follows:

> *"15. The next contention of the appellant was that the Tribunal has failed to consider the way the products of the appellants were known in the trade. It is well settled that excisable commodities have to be understood in the sense in which the market understands them and have to be classified accordingly. This proposition may generally be held to be right but when a technical or scientific term has been used by the legislature, it must be presumed that the legislature has used the term in their technical sense. Tariff Entry 15-A as it stood after its amendment made on 1-3-1982 was:*
>
> > *"Regenerated cellulose, cellulose nitrate, cellulose acetate and ethers and other chemical derivatives*

*of cellulose, plasticide or not (for example collodions, celluloid).”*

*16. Regenerated cellulose, cellulose nitrate, cellulose acetate and ethers as well as other chemicals which were derivatives of cellulose have to be understood in the technical sense of the terms. Moreover, it has not been shown that there is a special meaning given to the product of the appellant in the market.*

*xxx*

*20. In other words, if the word used in a fiscal statute is understood in common parlance or in the commercial world in a particular sense, it must be taken that the Excise Act has used that word in the commonly understood sense. That sense cannot be taken away by attributing a technical meaning to the word. But if the legislature itself has adopted a technical term, then that technical term has to be understood in the technical sense. In other words, if in the fiscal statute, the article in question falls within the ambit of a technical term used under a particular entry, then that article cannot be taken away from that entry and placed under the residuary entry on the pretext that the article, even though it comes within the ambit of the technical term used in a particular entry, has acquired some other meaning in market parlance. For example, if a type of explosive (RDX) is known in the market as Kala Sabun by a section of the people who uses these explosives, the manufacturer or importer of these explosives cannot claim that the explosives must be classified as soap and not as explosive.*

*xxx*

*22. [...] Cellulose ether has been made specifically taxable under Entry 15-A(1). The product manufactured by the appellant is sodium carboxymethyl cellulose which has been tested and found to be cellulose ether. The question is whether this product will come under Entry 15-A(1). It is not the case of the appellant that this product is known in the market by some other name and that name is to be found in some other entry. The Tribunal was right in holding that SCMC manufactured by the appellant answered the description “Cellulose Ether” and as such was assessable under Entry 15-A(1).”*

(Emphasis Supplied)

60. Both in ***Chemical and Fibres of India*** (*supra*) and ***Reliance Cellulose*** (*supra*), respectively, the Court’s approach of not

applying common parlance was based on the fact that the relevant tariff items used scientific or technical terms. It is natural that scientific or technical terms would lack common or commercial meaning. To illustrate, the Court in **Reliance Cellulose** (*supra*) observed that the "cellulose ether," unlike "plastic," lacked a common or commercial meaning. The Court in ***Reliance Cellulose*** (*supra*) also sounded a note of caution that while dealing with classification involving tariff headings that use scientific or technical terms, if fiscal law specifically classifies an item under a technical term in one category, the same should not be moved to another category just because people in the market use a different name for it. Doing so would go against the legislative intent, as the legislature itself had adopted a technical term, expecting it to be understood in the technical sense.

61. In ***Indian Tool Manufacturers v. CCE,*** reported in **1994 Supp (3) SCC 632**, a three-Judge bench of this Court examined the classification of 'Throw Away Inserts' and primarily considered whether such 'Throw Away Inserts' could be classified as 'Tool Tips'. The appellant challenged this, relying on the market parlance test, arguing that a customer seeking to buy 'Throw Away Inserts' would not ask for Tool Tips, and vice versa. Rejecting this contention, the Court made the following observation:

> *"12.That may be the position. But that will not solve the controversy in this case. If there is a general heading for the purpose of levy of Excise Duty, then every variety of goods falling under that general heading will have to be taxed under that heading. The fact that a particular variety is known by a particular name in the market will not take it out of the general heading. For example, when duty is leviable on biscuits, then every variety of biscuits will be taxed under that heading. A particular type of thin crisp biscuits is known in the market as 'wafer', but basically it is a biscuit. It was held by the Andhra Pradesh High Court*

*in the case of International Foods v. Collector of Central Excise, Hyderabad (1978) E.L.T. (J 50), that 'wafer' was a kind of biscuit, although it may be different in size and shape from an ordinary biscuit. A pear-shaped drinking glass with a small opening is known as 'snifter'. Because of that, 'snifter' will not cease to be a drinking glass. [...]"*

(Emphasis Supplied)

62. In ***O.K Play (India) Ltd v. Commissioner of Central Excise, Delhi-III, Gurgaon***, reported in **(2005) 2 SCC 460**, this Court again observed that it would not be prudent to determine the classification of goods solely based on the name used to refer to such products in trade or common parlance. If the common parlance or trade parlance test is applied based on such a notion, i.e., the name used to refer to the product in common parlance or trade parlance, then the entire rationale behind classification might be vitiated. If such an application were permitted, importers or manufacturers could simply alter the names of the products to achieve classification under the preferred category.

63. Tribunals frequently encounter classification disputes in which the importer or manufacturer asserts that the subject goods possess a distinct commercial identity, warranting a classification that is independent of their common or popular understanding. Upon reviewing this Court's observations in ***Connaught Plaza*** (*supra*), **Reliance *Cellulose*** (*supra*) and ***O.K Play*** (*supra*), respectively, the following settled principles emerge regarding such claims of separate commercial identity: (i) first, if the importer or manufacturer claims that a special meaning is attributed to the goods in the market, then the burden lies on such importer or manufacturer to prove this specialised meaning, distinct from its common or commercial understanding; and (ii) secondly, such a

specialised meaning cannot be established solely on the basis of the product's marketing and nomenclature in the market.

64. As per this Court's observations in ***Indian Tool Manufacturers*** (supra), it is clear that the mere fact that a product constitutes a sub-type of a broader category does not, by itself, establish a separate commercial identity for classification purposes. To succeed in such a claim, the importer or manufacturer must establish that the product has undergone such a substantial transformation that it can no longer be identified with the general class of goods of a category, but must instead be recognised as a distinct commercial entity.

65. We wish to emphasise that the operative standard is one of 'substantial' transformation, rather than merely 'incidental' modification. Simple incidental changes, which do not fundamentally alter the nature and character of the goods, do not suffice to remove a product from the grasp of its general class or the common or commercial meaning associated with that class. While the determination of a substantial transformation is inherently fact-specific, as is evident from this court's ruling in ***Indian Tool Manufacturers*** (supra), the inquiry must focus on whether there are major differences in the design, utility, nature, character, and functions of the good [See ***Camelbak Products, LLC v. United States***, reported in **649 F.3d 1361**].

(c) Summary

66. Based on the aforementioned case law, the following governing principles can be culled out with regard to the application of the common or trade parlance test while dealing with classification disputes under taxation laws:

a. The common or trade parlance test must be applied restrictively. Its function is limited to ascertaining the common or commercial meaning of a term found within a tariff heading or its defining criterion.
b. The trade or common parlance test can be invoked when dealing with a classification dispute only when the following conditions are satisfied.

    i. The governing statute, including the relevant tariff heading, Section Notes, Chapter Notes, or HSN Explanatory Notes, does not provide any explicit definition or clear criteria for determining the meaning and scope of the tariff item in question.
    ii. The tariff heading does not include scientific or technical terms, or the words used in the heading are not employed in a specialised, technical context.
    iii. The application of the common parlance test must not contradict or run counter to the overall statutory framework and the contextual manner in which the term was used by the legislature.

Thus, broadly speaking, the common or trade parlance test cannot be invoked where the statute, either explicitly or implicitly, provides definitive guidance. Explicit statutory guidance exists where the legislature provides a specific definition or a clear criterion for a term within the Act itself. Conversely, implicit guidance is found where the terms employed are scientific or technical in nature, or where the statutory context indicates that the words must be construed in a technical sense. It is only in a state of statutory silence, where the legislative intent remains unexpressed, that the

tribunals or courts may resort to the common or trade parlance test.

c. In the contemporary HSN-based classification regime, the common or trade parlance test cannot serve as a measure of first resort. It should only be employed after a thorough review of all relevant material confirms the absence of statutory guidance.

d. When interpreting terms in a tariff item by relying on the basis of common or trade parlance, an overly simplified approach should be avoided, and the words should be understood within their legal context. Further, when a party asserts a meaning of a term based on common or trade parlance, it must present satisfactory evidence to support that claim.

e. When a tariff item is general in nature and does not indicate a particular industry or trade circle, the common parlance understanding of that term is appropriate. However, when a tariff item is specific to a particular industry, the term must be understood as it is used within that specific trade circle.

f. The common or trade parlance test cannot be used to override the clear mandate of the statute. Specifically:

    i. The test cannot be applied in a way that results in the reclassification of a good that is clearly identifiable under a particular heading according to the statute, simply because that good is marketed or called by a different name in trade or common parlance.

    ii. Conversely, the test cannot be used to challenge the classification of goods under a statutory heading if those goods retain the essential characteristics defined by that heading, even if they have a unique or specialised trade name.

In other words, the character and nature of the product cannot be veiled behind a charade of terminology which is used to market the product or refer to it in common or commercial circles.

g. To establish a separate commercial identity, it is essential to demonstrate that the good has undergone such a substantial transformation that it can no longer be characterised as a mere sub-type or category of a broader class and thus falls outside the ambit of the common or commercial understanding associated with such a class of goods.

67. Furthermore, examining the case law where the common or trade parlance test was applied by this Court reveals a clear judicial approach. The Court generally does not undertake an academic exercise to define the general term in dispute. In ***Connaught Plaza*** (*supra*), ***Oswal Agro*** (*supra*), and ***D.L. Steels*** (*supra*) for example, the Court did not seek to define 'ice cream,' 'household soap,' or 'edible fruit' respectively. Such an exercise was unnecessary because the broad meaning of these terms was not disputed. Instead, the Court's focus was on determining the *scope* of the term, that is, whether the good in question fell within that term according to its common or trade understanding. The question was whether 'soft serve' is regarded as 'ice cream' by the public, or if 'wild pomegranate' is commonly understood as an 'edible fruit'. It is in this context that the Court ascertains the 'meaning' of a tariff term, not by giving a dictionary definition but by defining its scope and limits within a specific dispute.

68. This reliance on common or trade parlance tests while addressing classification disputes under taxation statutes, such as the Act, 1975, is not unique to India. In fact, a review of foreign jurisprudence

reveals that courts in both the United States and the European Union apply the common or trade parlance test in a broadly similar manner, considering comparable factors and considerations. [See ***Skatteministeriet Departementet v Global Gravity ApS,*** Case C-788/21, ***Kreyenhop & Kluge GmbH & Co. KG v Hauptzollamt Hannover,*** Case C-471/17 and ***Len-Ron Mfg. Co. v. United States,*** 334 F.3d 1304, 1309 (Fed.Cir.2003)]

### *iii. Consideration of 'use' when determining classification under the Act, 1975*

69. Whether or not the purpose for which goods are used can be considered while deciding on their classification under fiscal statutes is often a highly debatable issue. As with all classification disputes, the parties' position regarding use depends on a single factor: the rate of the taxable duty. Importers, manufacturers, and traders will invoke 'use' when it allows them to have the goods taxed at a lower rate. Conversely, the revenue authorities will seek to invoke use when they see the possibility of taxing the goods at a higher rate.

70. In this case, a similar situation is unfolding. Invoking 'use', the respondents wish to classify the subject goods as a 'part' of agricultural machinery due to the nil rate of customs duty payable under such a classification. Conversely, the revenue is contesting such invocation of 'use' and instead seeks to classify the subject goods as 'aluminium structures' *de hors* such consideration of use, as the same would attract a higher rate of customs duty. To determine whether 'use' can be invoked in this case and what type of considerations should be taken into account, it is first prudent to examine how this Court has approached the 'use' factor in classification disputes.

(a) Consideration of 'Use' – Indian Perspective

*Explicit Reference to 'Use' or 'Adaptation' in the Tariff Heading*

71. In ***Dunlop India*** (supra), the primary question before a three-judge bench of this Court was whether Vinyl Pyridine Latex, a form of rubber, should be classified as 'raw rubber' or 'synthetic resin' under the Indian Tariff Act, 1934. Vinyl Pyridine Latex met all criteria to be classified as rubber and was recognised internationally as synthetic rubber latex. However, the Department's classification was primarily influenced by the article's ultimate use. It argued that Vinyl Pyridine Latex was neither designed for nor intended to be used as rubber. Instead, Vinyl Pyridine Latex was used as an adhesive in tyre manufacturing and was rarely employed for the purposes typical of rubber. The appellate authority rejected classification as 'raw rubber' based on this reasoning. This Court allowed the appeal, holding that Vinyl Pyridine Latex should be classified as 'raw rubber'.

72. In ***Dunlop India*** (supra), this Court had declined to deny the classification of Vinyl Pyridine Latex as 'raw rubber' solely based on end use, as the same was irrelevant in the context of the tariff entry concerning 'raw rubber', i.e, the entry didn't refer to use or adaptation. Therefore, the Court held that the use of an article for classification under customs law is only relevant if the entry referred to the "use or adaptation". If such a reference is absent from the entry, use cannot be regarded as a relevant factor for the purposes of classification. The Court also acknowledged that the 'taxable event' occurs when the goods are imported into the country, and consequently, what matters is the condition of the goods at the time of import. The relevant observations made by this Court are produced herein.

*"23. [...] Then comes the crucial conclusion of the authority:*

*"If V.P. Latex was designed for or intended to be used as rubber, there would have been no difficulty in classifying it under Item 39 ICT. In fact synthetic rubber itself has been classified as raw rubber only because synthetic rubber serves exactly the same purpose as crude rubber in all its industrial uses and has no practical difference from the latter. Pyratex V.P. Latex is designed for use as an adhesive in the manufacture of tyres. It is seldom put to any of the other uses to which rubber, natural or synthetic is ordinarily put. In composition it is similar to rubber latex and it may also well answer the tests for rubber such as elongation, etc. when reduced to dry state, but its use is not the same as that of rubber. It could theoretically be converted into a substance which is akin to rubber but it has been admitted that due to high rate of cure, scorching and incompatibility with other rubbers, it does not find use in a dry state. In fact it does not replace rubber in use though it has similar properties."*

*xxx*

*26. To revert to the order of the authority, it is clear that the authority would have found no difficulty in coming to the conclusion that V.P. Latex in view of chemical composition and physical properties is rubber raw, if the same were commercially used as rubber. The authority, therefore, was principally influenced to come to its decision on the sole basis of the ultimate use of the imported article in the trade.*

*xxx*

*28. The relevant taxing event is the importing into or exporting from India. Condition of the article at the time of importing is a material factor for the purpose of classification as to under what head, duty will be leviable. The reason given by the authority that V.P. Latex when coagulated as solid rubber cannot be commercially used as an economic proposition, as even admitted by the appellants, is an extraneous consideration in dealing with the matter. […]*

*xxx*

***40.** We are clearly of opinion that in the state of the evidence before the Revisional Authority no reasonable person could come to the conclusion that V.P. Latex would not come under rubber raw. The basis of the reason with*

*regard to the end use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article. The orders of the authority are, therefore, set aside. In the result the appeals are allowed with costs."*

(Emphasis Supplied)

73. While the judgment of this Court in ***Dunlop India*** (supra) was delivered in the pre-HSN era, it laid down two principles governing classification under the customs law which remain relevant even in the HSN era. They are: (i) evaluation and classification of goods based on their condition at the time of import, generally referred to as the 'as imported' principle; and (ii) consideration of 'use' only when reference to use or adaptation is provided in the tariff heading. It is apposite to discuss a few other judgments of this Court to understand how the aforementioned principle concerning 'use' has been applied while dealing with classification disputes under various fiscal statutes.

74. In ***Indian Aluminium Cables*** (*supra*), this Court addressed the classification of 'Properzi Rods'. The department argued that Properzi Rods were 'aluminium wire rods' and thus fell under Entry No. 27(a)(ii) of the First Schedule to the Central Excises and Salt Act, 1944. Entry No. 27(a)(ii) states: *Aluminium – wire bars, wire rods, and castings, not otherwise specified.* Conversely, the appellants maintained that Properzi Rods were a distinct product, not commercially known as wire rods, differing in manufacturing process and use, and therefore should be classified under the residuary heading, namely Entry No. 68. The Court dismissed the appeal, ruling that Properzi Rods are a species of "wire rods" and correctly fall under Entry No. 27(a)(ii). Moreover, the Court held that the use to which a product is put "*cannot necessarily be*

*determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff".* According to the Court, what was more significant was to ascertain if the "*broad description of the article fits with the expression used in the Tariff".*

75. In ***Indian Aluminium Cables*** (*supra*), this Court's reluctance to consider the use of the subject article must be understood in the context of the entry being dealt with therein, i.e., Entry No. 27(a)(ii). Like in ***Dunlop India*** (supra), this Court in ***Indian Aluminium Cables*** (*supra*) was also dealing with an 'eo-nomine' tariff entry. An eo-nomine tariff entry is one that describes a commodity by a name rather than by its use. Generally, an eo-nomine tariff entry, with no terms of limitation, will usually include all forms of a named article. On examining Entry No. 27(a)(ii), it is clear that it covers all forms of aluminium wire bars, aluminium wire rods, and aluminium casting, regardless of their use. Consequently, the Court concluded that 'Properzi Rods' were nothing but a species of aluminium wire rods.

76. In ***Kumudam Publications*** (*supra*) this Court was tasked with determining the correct classification of printing plates imported by the assessees under the Act, 1975. It was the Department's case that these goods fell under Chapter 37.01/08. On the other hand, the assessees contended that the printing plates were properly classifiable under Chapter Heading 84.34. Chapter Heading 37.01/08 broadly covered photographic plates and films, whereas Chapter Heading 84.34 pertained to machinery, apparatus, and accessories for printing purposes, including printing blocks, plates, and cylinders. The Court classified the goods under Chapter 84.34, after coming to the conclusion that the imported goods, in terms of their end use, character and nature, were goods employed in the

printing of newspapers and magazines. The Court further held, citing ***Indian Tool Manufacturers*** (*supra*), that the end use or function of a good is not always irrelevant for classification purposes. The Court's approach was aligned with the principle established in ***Dunlop India*** (supra), especially since the case involved Chapter Heading 84.34, which expressly included references to use, as it covered various machinery and apparatus prepared 'for printing purposes'.

77. The principle established in ***Dunlop India*** (supra), which limits the consideration of 'use' to cases where the tariff entry itself explicitly refers to use or adaptation, must be interpreted within the framework of the HSN. Under the HSN, GRI 1 gives legal force to the Section and Chapter Notes, which frequently contain binding definitions or specific criteria for classification. It is plausible, and in fact common, that such statutory definitions or criteria explicitly mention 'use'. In these cases, 'use' becomes a relevant consideration for classification, not in breach of the principle from ***Dunlop India*** (supra), but as a natural outcome of the statutory text.

78. A clear illustration of the aforesaid is the catena of decisions of this Court concerning the classification of goods as 'Medicaments' under the Central Excise Tariff Act, 1985. We are not presently concerned with the specific facts of those cases or all the factors that this Court considered while resolving the classification disputes in those cases. Our focus is solely on the fact that, for the purposes of chapter heading 30.03, medicaments were referred to as goods for "therapeutic or prophylactic uses". Therefore, it is clear that 'use' is a relevant consideration while determining a goods classification under chapter heading 30.03. Accordingly, in such

cases, the Court examined whether the goods in question were primarily intended for "therapeutic or prophylactic uses". [See ***Commissioner of Customs, Central Excise and Service Tax v. Ashwani Homeo Pharmacy,*** reported in **2023 SCC OnLine SC 558**, ***Puma Ayurvedic Herbal (P) Ltd v. Commissioner, Central Excise, Nagpur***, reported in **(2006) 3 SCC 266** & ***Commissioner of Central Excise v. Wockhardt Life Sciences Limited***, reported in **(2012) 5 SCC 585**]

*'Use' or 'Adaptation' inherent in the Tariff Heading*

79. In ***Indian Tool Manufacturers*** (*supra*), this Court examined whether "Throw Away Inserts" should be classified under Tariff Item No. 51A (iii) or Tariff Item No. 62 of the Central Excises and Salt Act, 1944. At the relevant time, the tariff items stated: (a) *51A(iii) - Tools designed to be fitted into hand tools, machine tools, or tools falling under Sub-item (ii), including dies for wire drawing, extrusion dies for metals, and rock drilling bits*; and (b) *62. Tool Tips, in any form or size, unmounted, of sintered carbides of metals such as tungsten, molybdenum, and vanadium.* The Court observed that to determine whether the 'Throw Away Inserts' fall under the category of Tool Tips, the nature and function of such inserts had to be examined. In this context, the Court made the following observations.

> *"9. A distinction has been drawn between "Tools, designed to be fitted in hand tools, machine tools and tools of other specified categories" under one heading, "Tool Tips in any form or size" under the other heading. In order to find out whether "Throw Away Inserts" manufactured by the appellants fall in the category of Tool Tips or Tools, the essential characteristics of the Inserts will have to be examined. There is no dispute that the Throw Away Inserts are unmounted and are of "sintered carbides of metals such as tungsten, molybdenum and vanadium". Therefore, the*

*only question that remains to be considered is whether a "Throw Away Insert" is a variety of Tool Tip. This controversy is basically one of fact. The Tribunal has pointed out that an insert is multi-edged, detachable and has a shorter life span. It has to be thrown away when its edges get blunted. The edge of an ordinary Tool Tip can, however, be sharpened and used again.*

*xxx*

***13.*** *The finding of the Department which has been upheld by the Tribunal is that both Tool Tips as well as Throw Away Inserts were Carbide Tips for machining of metal. The Inserts had shorter functional life and were replaceable. The Tool Tip had one cutting edge while the Insert had multiple cutting edges. These facts did not alter in any way the basic character and function of the two articles. Both were tips meant for machining of metal. Both were manufactured by the same process and had been made out of same metals. The Inserts were clamped on the holders. The ordinary Tool Tips were brazed on the holders. This will not take the Inserts out of the amplitude of the description in Tariff Item 62 "Tool Tips in any from or size …". This wide description will encompass every type of Tool Tips detachable or otherwise. Whether a Tool Tip is brazed on a tool handle or clamped on a tool handle will not alter its basic character, function or use. The form of the Tool Tip is also immaterial. The detachable Tool Tip is only a variety of Tool Tips and the fact that it is identified by the name "Throw Away Insert" will not take it out of the ambit of the heading "Tool Tips in any form or size …".*

*xxx*

***15.*** *The assessee has been unable to bring to the notice of the Court anything to show that the nature and function or composition of a Throw Away Insert is in any way different from an ordinary Tool Tip. The highest that can be said for the appellants is that a Throw Away Insert is a detachable Tool Tip with multiple edges.*

*xxx*

***20.*** *It is not the case of the appellant that its products are mounted on tools. The composition of its product is same as mentioned in Tariff Item 62. In shape or form it is not different from a Tool Tip, except that it has multiple cutting edges. Its function is the same as that of a Tool Tip. The fact that it is detachable and has to be thrown away after use, will not change its basic character or function."*

(Emphasis Supplied)

80. This Court, in ***Commissioner of Central Excise, Delhi vs Carrier Aircon Ltd***, reported in **(2006) 5 SCC 596**, examined the legal position surrounding the classification of chillers. It was the assessee's contention that the chillers should be classified under Chapter Heading 84.18 of the Central Excise Tariff Act, 1985, which covers "Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of Heading 84.15." On the other hand, the Revenue submitted that chillers should be classified under Chapter Heading 84.15, which pertains to 'Air-conditioning machines' as parts of air conditioning machines. The rationale behind the Revenue's classification was that 90% of the chillers manufactured by the assessee were being used in air conditioning units. Rejecting this submission of the Revenue, the Court made the following pertinent observations:

> *"**13.** From the above, it is established that the primary function of the chiller is to refrigerate or chill water/liquid irrespective of the industrial or other application which the chilled water is put to. Air-conditioning system is just one amongst the various industrial applications in relation to which chillers are used. Only because 90% of the chillers manufactured by the respondent are used in the air-conditioning systems cannot be the basis for classification of the chillers as parts of air-conditioning system classifiable under Heading 84.15.*
>
> ***14.** End use to which the product is put to by itself cannot be determinative of the classification of the product. See Indian Aluminium Cables Ltd. v. Union of India. There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors inter alia are statutory fiscal entry, the basic character, function*

*and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to (sic produced), the end use to which the product is put to, cannot determine the classification of that product.*

***15.*** *Tariff Heading 84.15 covers air conditioning machines which control and maintain temperature and humidity in closed places. The main function of air-conditioning system is to control temperature which is not done by a chiller. A reading of Tariff Entry 84.15 would show that it is intended to cover only those machines which comprise elements for changing temperature and humidity and chillers would fall outside the purview of the said entry. The function of the chiller is only to chill water or bring it to a very low temperature, and it is the air-handling unit having an independent and distinct function which produces the effect of air conditioning, controlling the temperature and the humidity. The chiller itself does not do any air conditioning as it is designed only to refrigerate or produce chilled water/liquid.*

***16.*** *Revenue is classifying the impugned chillers as parts of the air-conditioning system as the same are used in central air-conditioning plants of star hotels, airports, hospitals, large office complexes and large establishments. The use of the chillers in the air-conditioning system would not take away the primary or basic function of the chiller which is to produce chilled water by using a refrigerating circuit. Heading 84.18 covers refrigerators, freezers and other refrigerating or freezing equipment. Accordingly, the chillers in question shall fall under specific Heading 84.18 of the Tariff Act. This view is supported by the explanatory notes of HSN below Heading 84.15. HSN provides that:*

> *"If presented as separate elements, the components of air conditioning machines are classified in accordance with the provisions of Note 2(a) to Section 16 (Headings 84.14, 84.18, 84.19, 84.21, 84.79, etc.)…."*

*"Chillers" manufactured by the respondent are cleared as separate elements and not as (sic part of) air conditioning machines, therefore, the same have to be classified under Tariff Entry 84.18 as refrigerating or freezing equipments as the basic function of the chillers*

*is to chill the water or liquid. Chillers manufactured by the respondent cannot be classified under Heading 84.15 simply because 90% of the chillers manufactured by the respondent were being used in the commissioning of central air-conditioning plant. End use to which the product manufactured is put to, cannot determine the classification of the product when the product manufactured falls under a specific heading.*

***17.** Chillers in the domestic and international trade parlance are known as refrigerating equipments. The trade identifies chillers as refrigerating machinery on the basis of their function of chilling water using refrigerating circuit. Even by testing them from the commercial parlance test as well the chillers would not be classifiable under Chapter Heading 84.15."*

(Emphasis Supplied)

81. This Court's observations in ***Indian Tool Manufacturers*** (*supra*) and ***Aircon*** (*supra*), at first blush, seem to be at odds with the use principle established in ***Dunlop India*** (*supra*). This is because the tariff headings considered there seem to be 'eo-nomine' headings, such as 'tool tips', and 'air conditioning machines', which restrict the consideration of how the goods are intended to be used for classification purposes. However, this Court appears to have taken into account the intended use of the goods by considering the 'function' of those goods. As laid down above, an eo-nomine provision describes a good by its name, not by its use, and thus functions that a good performs are irrelevant considerations when dealing with eo-nomine tariff provisions. However, the Court's approach in ***Indian Tool Manufacturers*** (*supra*) and ***Aircon*** (*supra*) is not in breach of the principle set out in ***Dunlop India*** (*supra*), as it is clear that the tariff headings in consideration therein refer to use or adaptation that is inherent. Thus, reference to use or adaptation in a tariff heading can be explicit or implicit.

82. Let us examine this concept of inherent use more carefully. An inherent reference to 'use' or 'adaptation' in a tariff heading may possibly be present in these two scenarios:

    a. Firstly, the language of the tariff heading or the supporting chapter and section notes is inherently indicative of consideration of use. For example, a heading that reads as 'refrigerating or freezing equipment' or 'tool tips' inherently refers to 'use' in the form of 'function' (refrigeration or freezing and cutting or working point of a larger tool, respectively). Consequently, use can be considered a factor when classifying goods under this heading. Another example is the heading, which reads, "Motor vehicles principally designed for the transport of goods." This clearly indicates consideration of "use" (transportation of goods), albeit such consideration of use should be primarily derived from the design features of the good.

    b. Secondly, in cases where the common or commercial meaning adduced to the eo-nomine good provided for in the tariff heading is such that the 'use' of the article is an important and defining component of an article's identity. For example, the common parlance meaning of 'air conditioning machines' would indicate that the 'use' of an 'air conditioning machine' is an important and defining component of its identity.

83. The core method used in ***Aircon*** (*supra*) to identify the intended use of goods was through examining the product's function. This is because a product's function is often the clearest indicator of its intended use [See ***Atul Glass Industries (Pvt) Ltd. & Ors v. Collector of Central Excise & Ors,*** reported in **(1986) 3 SCC 480**

& ***Thermax Ltd v. Commissioner of Central Excise, Pune-1***, reported in **(2022) 17 SCC 68**]. This function-focused approach offers one way to determine intended use. However, it should be noted that function is not the only criterion. Depending on the specific tariff item and relevant statutory context, intended use can also be assessed through other objective factors, such as design features and composition. These factors may be considered individually or together, as demonstrated in ***Indian Tool Manufacturers*** (*supra*), where the Court examined not only the function but also the design features of the throw-away inserts.

*Actual Use and Objective Characteristics and Properties*

84. Furthermore, two other aspects that are clearly evident after reading the Court's observations in ***Indian Tool Manufacturers*** (*supra*) and ***Aircon*** (*supra*) are as follows: (i) the actual use to which a product is put is irrelevant for determining classification and only intended use can be considered and (ii) if an imported or manufacturer wishes to classify based on the intended use of the product, then such 'intended use' must be inherent in the product and should be discernible from the objective characteristics and properties of the good in question.

85. The twin factors mentioned should be regarded as fundamental principles while determining the classification of a product under the First Schedule of the Act, 1975. This is because, according to Section 12 of the Act, 1962, it is evident that the goods are taxable at the point of import. Therefore, as recognised by this Court in ***Dunlop India*** (*supra*), what is crucial is the condition of the goods at the time of import, which is the taxable event under the Act, 1962. By excluding consideration of actual use and subjective intentions regarding use, it is ensured that classification aligns with

the taxable event. Actual use can be considered only in those rare instances where there is overwhelming statutory evidence to that effect.

86. Furthermore, relying on 'objective characteristics and properties' ensures legal certainty and ease of verification. The core of the principles outlined above is to prevent 'subjectivity' from influencing classification disputes. Reckless and unfounded consideration of subjective elements can lead to a cascade of issues in classification, as such elements may be used as a shield to import goods at a lower duty.

*Standard of Intended Use*

87. A further issue concerns the standard of intended use that an importer must establish. This standard varies, depending on the exact wording and legal context of the tariff heading itself. The burden on the importer is to show that the product's intended use, supported by its objective features, aligns with the specific standard set by the statute. Let us understand this through a set of hypothetical illustrations:

    a. A tariff heading might cover "Motor vehicles principally designed for the transport of goods". If an importer seeks classification under this heading, it is not enough to merely prove the vehicle can *carry* goods. The law itself defines the standard. The importer must demonstrate, using objective evidence of the vehicle's design and features, that its principal use is to transport goods.

    b. An importer imports certain LCDs and wants to classify them under the heading "Electricity meters". The relevant chapter contains a note that states parts or accessories must be

classified under the same heading that describes the final good if they are intended to be used solely in such final good. In such a situation, to classify the goods under the heading of "Electricity meters", the importer has to satisfy that the LCDs were such that they could solely be used in electricity meters.

88. Upon a bare textual reading of the several headings and chapter/section notes in the Act, 1975, it is clear that for headings in which use is the main consideration or a descriptive factor, the legislature has generally provided a standard of use that is necessary to be achieved by a good to be classified in the said headings. If the notes mandate 'sole use', then the good must be such that it can be used only for the purpose envisaged by the heading. Alternatively, if the standard is of 'principal use', then the good must be such that it is used predominantly for the purpose envisaged by the heading. Whether the good meets the standard so stipulated can only be decided on a case-to-case basis.

89. In the same breath, we must also clarify that, where the statute is silent as to the applicable standard of use for headings, then the statutory context of the said tariff heading, i.e., the relevant section and chapter notes, have to be perused to gauge the legislative intent with regard to standard of use i.e. whether the standard of use is that of simpliciter use, principal use or sole use. Generally, consideration of 'use' in most situations would involve providing proof of at least 'principal' use.

*Interlinking consideration of 'use' and the common and commercial meaning of a good*

90. From the preceding discussion, it is evident that the consideration

of ‘use’ and the common or commercial meaning of a good are often inextricably linked. In many instances, the two do not operate in isolation but rather reinforce one another to provide a comprehensive understanding of a product's identity. This interlinkage manifests in two primary ways.

91. First, in cases involving explicit ‘use’ provisions, the common or commercial meaning is frequently employed to define the scope of the ‘use’ mandated by the statute. For instance, where a heading provides for “chemicals to be used for industrial purposes”, the Court must necessarily inquire into the commercial understanding of the terms “chemical” and “industrial purposes”. Such an inquiry serves a dual purpose: it ensures the product matches the threshold of what constitutes a ‘chemical,’ and it clarifies the ambit of the qualifying use, i.e., what the trade recognises as an ‘industrial purpose,’ thereby determining if the subject goods fall within the ambit of the said tariff heading.

92. Second, in provisions where use is inherent to the eo nomine description, the interlinkage with common or common parlance may play out in the following ways:

    a. In the first instance, the tariff heading itself may employ descriptors that necessitate a consideration of use, such as “household soap” or “industrial soap”. When dealing with such headings, common or commercial understanding is utilised to determine the scope of these qualifying terms. The Court applies the parlance test to discern what is recognised as having a 'household' versus an 'industrial' application, thereby identifying whether the specific article in issue fits within that designated category.

b. In the second instance, the common or commercial identity of a good may be so fundamentally tied to its application that its very name implies a specific use. Emphasis is on the aspect that goods identity is 'fundamentally' and 'substantially' linked to a certain use or adaptation. In such cases, the trade recognises the article not merely by its physical composition, but by the use for which it is intended.

93. However, a note of caution must be struck. The invocation of common or commercial meaning in these interlinked scenarios must strictly adhere to the broad parameters established in the preceding sections of this judgment regarding when the common or trade parlance test can be invoked. Specifically, the common parlance test cannot be used to override or bypass explicit statutory guidance. Where the statute, through a Section or a Chapter Note, provides a definition or a specific criterion, for example, by prescribing exactly what constitutes "household soap", "chemical", "industrial purposes" and "industrial soap", there is no occasion to resort to commercial understanding.

*Eo-Nomine component not to be ignored*

94. When dealing with eo-nomine tariff headings, which inherently refer to use, it is important to ensure that the consideration of use is not done in complete ignorance of the eo-nomine component. To illustrate, an importer tomorrow cannot classify any product that regulates temperature as an air conditioning machine. The importer must demonstrate that the goods are air conditioning machines and, in doing so, can emphasise their use and function as helpful tools that assist in this effort. However, apart from use and function, other factors, such as physical characteristics, also need to be satisfied for the good in question to be considered as an air

conditioning machine. Let us consider another example: an importer claims to classify a cardboard box as a bag, as both are intended for the same purpose. However, despite their similarity in intended use, objectively, bags and cardboard boxes are distinct products, and in common parlance, a bag does not encompass a cardboard box.

95. The above discussion also applies to provisions that explicitly refer to use but also have an eo-nomine component. For example, if a tariff heading refers to machinery used for printing purposes, the court must satisfy itself of a two-fold criterion: (i) the goods are machinery, and (ii) the goods are capable of being used for printing purposes.

*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.

97. We may clarify that our endeavour here is not to establish a comprehensive framework or a universal test for classification in all cases. Such an exercise is unfeasible. This Court, on multiple occasions, had observed that there can be no single test to resolve classification disputes [See ***O.K Play*** (*supra*) & ***A.Nagraju Bros v. State of A.P.***, reported in **1994 Supp (3) SCC 122**]. Our present discussion is broadly limited to understanding in which scenarios intended use can be considered and vice versa. The exact criterion for determining such intended use and the test to be applied for final classification would depend on the type of goods, the wording of the tariff entries under review, and other relevant material, such as chapter, section, and explanatory notes. Furthermore, we once again wish to emphasise that the consideration of intended use when determining the classification of a good cannot be considered in isolation from other relevant considerations.

(b) Consideration of Use – USA and EU perspective

98. It is wise not to rely heavily on foreign cases concerning customs classification disputes, even though the HSN is adopted by most countries. This is because each nation may introduce specific additional subheadings, notes, and rules that govern customs classification under its own law alone. However, with that being said, it remains undeniable that foreign jurisprudence is especially

valuable for understanding the broad principles related to customs classification under the HSN regime.

99. In the United States, tariff item provisions are broadly divided into *eo nomine* and *use* provisions [See ***Clarendon Marketing, Inc. v. United States***, 144 F.3d 1464 (Fed. Cir. 1998) & ***Carl Zeiss, Inc. v. United States***, 195 F.3d 1375 (Fed. Cir. 1999)]. Traditionally, use could only be considered under the latter. However, recently, US courts have also recognised a third category. This category allows for consideration of use even under *eo nomine* headings, provided the term inherently references the product's use. [See ***GRK Canada, Ltd. v. United States, 773 F.3d 1282*** (Fed. Cir. 2014) & ***Ford Motor Company v. United States,*** 926 F.3d 741 (Fed. Cir. 2019)].

100. Further, in the United States, in addition to the GRI's, customs classification is also governed by the "*Additional U.S Rules of Interpretation"*. Use provisions are governed by these additional rules, specifically Rule 1(a) and Rule 1(b).

    a. Rule 1(a) deals with **principal use** and reads as follows: *a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.*

    b. Rule 1(b) deals with **actual use** and reads as follows: *a tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods*

*are so used, and proof thereof is furnished within 3 years after the date the goods are entered.*

Thus, in the United States, use provisions are categorised either into principal use provisions or actual use provisions.

101. Under European Union law, it is a well-established principle that, in the interests of legal certainty and ease of verification, the main criterion for classifying goods for customs purposes is generally based on their objective characteristics and properties as defined in the wording of the relevant heading and notes to the sections or chapters. [See ***Indurstriemetall Luma GmbH v Hauptzollamt Duisburg*** - Case 38/76].

102. In accordance with the above principle, the intended use of a product can serve as an objective criterion for classification under European Union Law only if the intended use is inherent to the product and can be assessed based on the product's objective characteristics and properties. [See ***Hark GmBh & Co. KG Kamin- und Kachelofenbau v. Hauptzollamt Duisburg*** - Case C-450/12 & ***Staaastssecretaris Van Financlen v. TNT Freight Management (Amsterdam) BV*** - Case C-291/11] Several factors relevant for determining intended use include: (i) the methods of use of the good, i.e., what functions it can perform; (ii) the place of the good's use, i.e., where and in which context it can be used; and (iii) the design of the good, i.e., whether it is specifically designed for such an intended purpose. [See ***Nederlandsch BV, Amsterdam v. Inspector of Customs and Excise, Amsterdam*** - Case 37/82, ***Oliver Medical SIA v. Valsts ieņēmumu dienests*** - Case C-547/13 & ***Pfizer Consumer Healthcare Ltd v. Commissioners for Her Majesty's Revenue and Customs*** – Case C-182/19]

103. The Indian approach to use-based classification is a hybrid structure that combines elements of the methods used in the United States and the European Union. In brief, the differences and similarities are as follows:

a. While the bifurcation of tariff provisions is not as explicitly distinguished in India as it is in the United States, both systems appear to follow a similar approach, namely, that use can only be considered if (i) the tariff entry explicitly refers to use or adaptation, or (ii) such use is either inherent in the tariff entry itself or implied by the meaning of the term within a tariff entry.

b. The approach of the European Union is less focused on bifurcating the provisions and more on the objective characteristics and properties of the good in question. Use could be a factor in determining classification if the use is inherent to the product and can be identified through its objective characteristics or properties.

c. Unlike the US, India and the EU do not have separate governing rules for use provisions. Instead, in both jurisdictions, the consideration of use is strictly limited to the intended use, which must be objectively determined from the product's inherent characteristics and properties.

### *iv. Relevant Provisions*

104. Based on the discussion in the preceding sections, it is clear that tariff headings, relevant section, chapter, and explanatory notes are crucial when determining a classification dispute. Therefore, for the sake of convenience, we have extrapolated the relevant headings and notes related to the classification dispute at hand.

(a) Relevant provisions relating to Aluminium Structures

*Relevant Tariff Heading*

| | |
|---|---|
| **Main Tariff Heading -7610** | *Aluminium structures (excluding prefabricated buildings of heading 94.06) 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* |
| **Sub-Heading – 7610 90** | *Other (Sic Aluminium Structures)* |
| **Customs Tariff Item – 76109010** | *Structures* [Duty of 10%] |

CTI 76109010 falls under Chapter 76, which covers '*Aluminium and Articles* thereof'. Chapter 84, in turn, belongs to Section XV of the Act, 1975, which covers '*Base Metals and Articles of Base Metal*'

*Relevant Section Notes – Section XV of the Act, 1975*

105. Relevant portions of Section Note 1 of Section XV read as follows:

> *1. This Section does not cover:*
> *[...]*
> *(f) Articles of Section XVI (machinery, mechanical appliances and electrical goods);*

106. Section Note 3 of Section XV reads as follows:

> *3. Throughout this Schedule, the expression "base metals" means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium,*

*vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.*

*Relevant HSN Explanatory Notes to Tariff Heading 7610*

107. The relevant HSN Explanatory Notes to Tariff Heading 7610 read as follows:

*a. The provisions of the Explanatory Note to heading 73.08 apply, mutatis mutandis, to this heading.*
*b. The heading excludes: (a) Assembles identifiable as parts of articles of Chapter 84 to 88 [...]*

108. Relevant Explanatory Note to heading 73.08 is as follows:

*"This heading covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterised by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheeets, plates, wide flats including so-called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc. 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, at the time of assembly, to fix the clamps to the tubing."*

(b) Relevant provisions relating to Parts of Agricultural Machinery

*Relevant Tariff Headings*

| | |
|---|---|
| **Main Tariff Heading -8436** | *Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders* |
| **Sub-Heading – 84368090** | *Other (Sic Agricultural Machinery)* |

| | |
|---|---|
| **Customs Tariff Item – 84368090** | *Parts (Sic of such Machinery) [Duty of Nil%]* |

CTI 84368090 falls under Chapter 84, which covers '*Nuclear Reactors, Boilers, Machinery and Mechanical Appliances; Parts Thereof*'. Chapter 84, in turn, belongs to Section XVI of the Act, 1975, which covers '*Machinery and Mechanical Appliances; Electrical Equipment; Parts Thereof; Sound Recorders and Reproducers, Television Image and Sound Recorders and Reproducers, and Parts and Accessories of Such Articles'*.

*Relevant Section Notes – Section XVI of the Act, 1975*

109. Section Note 2 of Section XVI reads as follows:

> *2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:*
>
> > *(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8050[8487], 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;*
> >
> > *(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in headings 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;*
> >
> > *(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8051[8487] or 8548.*

110. Section Note 3 of Section XVI reads as follows:

*3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.*

111. Section Note 4 of Section XVI reads as follows:

*4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then the whole falls to be classified in the heading appropriate to that function.*

112. Section Note 5 of Section XVI reads as follows:

*5. For the purposes of these Notes, the expression 'machine' means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.*

*Relevant HSN Explanatory Notes – Section XVI of the Act, 1975*

113. The relevant HSN Explanatory Notes to Section XVI are as follows:

***General***

a. *Subject to certain exclusions provided for in the Notes to this Section and to Chapters 84 and 85 and apart from goods covered more specifically in other Sections, this Section covers all mechanical or electrical machinery, plant, equipment, apparatus and appliances and parts thereof, together with certain apparatus and plant which is neither mechanical nor electrical (such as boilers and boiler house plant, filtering apparatus, etc.) and parts of such apparatus and plant.*

b. *In general, the goods of this Section may be of any material. In the great majority of cases they are of base metal, but the Section also covers certain machinery of*

*other materials (e.g., pumps wholly of plastics) and parts of plastics, of wood, precious metals, etc.*

***Incomplete Machines***

c. *Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine). Thus a machine lacking only a flywheel, a bed plate, calender rolls, tool holders, etc., is classified in the same heading as the machine, and not in any separate heading provided for parts. Similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 84.67) is classified in the same heading as the corresponding complete machine even if presented without that motor.*

***Unassembled Machines***

d. *For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts. The same applies to an incomplete machine having the features of the complete machine (see Part (TV) above), presented unassembled see also in this connection the General Explanatory Notes to Chapters 84 and 85). However, unassembled components in excess of the number required for a complete machine or for an incomplete machine having the characteristics of a complete machine, are classified in their own appropriate heading.*

***Multi-Function Machines and Composite Machines (Section Note 3)***

e. *In general, multi-function machines are classified according to the principal function of the machine. Multi-function machines are, for example, machine-tools for working metal using interchangeable tools, which enable them to carry out different machining operations (e.g., milling, boring, lapping). Where it is not possible to determine the principal function, and where, as provided*

*in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)*

f. *Composite machines consisting of two or more machines or appliances of different kinds, fitted together to form a whole, consecutively or simultaneously performing separate functions which are generally complementary and are described in different headings of Section XVI, are also classified according to the principal function of the composite machine. The following are examples of such composite machines: printing machines with a subsidiary machine for holding the paper (heading 84.43); a cardboard box making machine combined with an auxiliary machine for printing a name or simple design (heading 84.41); industrial furnaces combined with lifting or handling machinery (heading 84.17 or 85.14); cigarette making machinery combined with subsidiary packaging machinery (heading 84.78).*

g. *For the purposes of the above provisions, machines of different kinds are taken to be fitted together to form a whole when incorporated one in the other or mounted one on the other, or mounted on a common base or frame or in a common housing. Assemblies of machines should not be taken to be fitted together to form a whole unless the machines are designed to be permanently attached either to each other or to a common base, frame, housing, etc. This excludes assemblies which are of a temporary nature or are not normally built as a composite machine.*

***Functional Units (Section Note 4)***

h. *This Note applies when a machine (including a combination of machines) consists of separate components which are intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or, more frequently, Chapter 85. The whole then falls to be classified in the heading appropriate to that function, whether the various components (for convenience or other reasons) remain separate or are interconnected by piping (carrying air, compressed gas, oil, etc), by devices used to transmit power, by electric cables or by other devices*

i. *For the purposes of this Note, the expression "intended to contribute together to a clearly defined function" covers only machines and combinations of machines essential to the performance of the function specific to the functional unit as a whole, and thus excludes machines or appliances fulfilling auxiliary functions and which do not contribute to the function of the whole.*

j. *It should be noted that component parts not complying with the terms of Note 4 to Section XVI fall in their own appropriate headings. This applies, for example, to closed circuit video-surveillance systems, consisting of a combination of a variable number of television cameras and video monitors connected by coaxial cables to a controller, switchers, audio board/receivers and possibly automatic data processing machines (for saving data) and/or video recorders (for recording pictures).*

*Relevant Chapter Notes – Chapter 84 of the Act, 1975*

114. Chapter Note 7 of Chapter 84 reads as follows:

*7. A machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose*

*Relevant Explanatory Notes – Chapter 84 of the Act, 1975*

115. The relevant HSN Explanatory Notes to Chapter 84 are as follows:

a. *Heading 84.25 to 84.78 cover machines and apparatus which, with certain exceptions, are classified there by reference to the field of industry in which they are used, regardless of their particular function in that field*

### *v. Application to the facts at hand*

116. In the present case, the dispute revolves around the classification of aluminium shelves, i.e., subject goods. While the appellant submits that they should be classified under CTI 76109010 as an 'Aluminium Structure', the respondent maintains they should be

classified under CTI 84369900 as 'Parts of Agricultural Machinery'.

(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.

122. However, our finding that the subject goods are classifiable under CTI 76109010 does not, by itself, resolve the dispute at hand. This is because both Section Note 1(f) to Section XV and the Explanatory Note to Chapter Heading 7610 are clear: (1) goods classifiable under Section XVI are excluded from being classified under Section XV, and (2) assemblies identifiable as parts of articles of Chapters 84 to 88 are excluded from being classified under heading 7610. Therefore, if the respondent's classification of the goods as "parts of agricultural machinery" under Chapter Heading 8436 is accepted, the goods would be legally barred from classification under Chapter Heading 7610. [See ***Intel Design Systems (India) P. Ltd. v. Commissioner of Customs and Central Excise***, reported in **(2008) 3 SCC 258** & ***CCE, Aurangabad v. Videocon Industries Ltd.***, reported in **2023 SCC OnLine SC 357**]

123. The reason for excluding goods classifiable under Section XVI from Section XV can be understood from the Explanatory Notes, which recognise a practical reality: most goods in Section XVI (Machinery and Electrical Appliances) are, by their nature, made of base metals (Section XV). Without this specific exclusion, nearly every machine or electrical appliance would be classified under Section XV as an 'article of base metal'. This would render the specific headings of Chapters 84 and 85 redundant. Thus, the exclusion note was created to avoid this absurd result and to ensure that complex articles (like machinery) are not simply classified based on their material (in Section XV).

(b) Whether subject goods can be classified as 'Parts of Agriculture Machinery' under CTI 84369900

124. We will now examine the respondent's primary contention: that the subject goods are classifiable as 'parts' under Chapter Heading 8436, which, if correct, would exclude them from Chapter Heading 7610. Chapter Heading 8436 covers "*Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery...*". It is important to note that Chapter Heading 8436 does not refer to a single specific article or machine but rather includes all *agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery* not specifically listed in the other headings of Chapter 84. From this perspective, the scope of classification under Chapter Heading 8436 is quite broad.

125. The basis for the respondent to classify the subject goods under Chapter Heading 8436 is that they are used for mushroom-cultivating purposes as parts of the mushroom growing apparatus. However, as stated above, only the intended use can be considered. Intended use can serve as the basis for

classification only if the following conditions are met: (i) Chapter Heading 8436 must permit such consideration of use, (ii) the intended use is identifiable from the objective characteristics and properties of the subject goods, and (iii) the intended use aligns with the standard of use specified in Chapter Heading 8436.

126. Chapter Heading 8436 is an eo nomine provision. It refers to goods by their name: 'agricultural machinery'. The fact that an entry does not specify a particular article, but rather a *category* of articles, does not change it from an eo nomine provision to a 'use' provision. Tariff headings often name broad categories without losing their eo nomine character.

127. However, it is undeniable that the term 'agricultural machinery' inherently refers to 'use'. It pertains to items primarily utilised in agricultural processes. While the First Schedule of the Act, 1975 offers no explicit definition or criteria for classifying goods as 'agricultural machinery', support for this interpretation can be found in the HSN Explanatory Notes, which state that Chapter Heading 8436 belongs to a category of headings that group machinery by the *field of industry in which it is used*, regardless of its specific function in that field. Such an interpretation aligns perfectly with the common parlance meaning associated with the term 'agricultural machinery'. We have no doubt that, in common parlance, the term 'agricultural machinery' is understood to mean machinery whose principal use is in agricultural processes.

128. Furthermore, upon reviewing Chapter Heading 8436 and the relevant chapter, section, and explanatory notes, it is clear that to be classified under Chapter Heading 8436, the use test must be one of 'principal use', not 'use' simpliciter. The rationale behind this is that a heading that simply refers to a field of industry is

inherently broad. If *any* possible or incidental use in agriculture were sufficient, it would improperly expand the scope of this heading, potentially including general-purpose machines. Therefore, it is essential that the product's objective characteristics and design clearly demonstrate that it is *principally intended for* use in agricultural purposes. This helps prevent goods with ambiguous or multiple uses from being incorrectly classified under this heading.

129. We must not forget that Chapter Heading 8436 is, first and foremost, an *eo nomine* heading for 'machinery'. Therefore, the initial inquiry is to establish whether the subject good is 'machinery'. Only after its identity as 'machinery' is confirmed can we proceed to consider 'use' and to discern whether its objective properties and characteristics are such that they would point towards the fact that the principal use of the subject good is as agricultural machinery.

130. As regards the question whether the subject goods can be considered as agricultural machinery, we are in complete agreement with the appellant's contention that they are not 'machinery' in themselves. The term 'machinery' is not defined in the First Schedule of the Act, 1975. While the appellate authorities and parties have referred to various dictionary definitions, this Court has repeatedly cautioned against a mechanical reliance on such meanings, especially when the common understanding of a term is clear and unambiguous. We have no doubt that in common parlance, the subject goods are not understood as 'machinery'. An iron or steel shelf, for example, is universally understood as a 'structure' or 'furniture', not a machine. By the same logic, these aluminium assemblies are mere structures. To

classify these static, non-moving assemblies as 'machinery' is a classification that defies common sense and is patently absurd. [See ***Commissioner of Income Tax, Madras v. Mir Mohammad Ali***, reported in **1964 SCC OnLine SC 199**]

131. The respondent has contended, on the basis of Section Note 5 of Section XVI, that the term "machine" encompasses any machinery, plant, equipment, apparatus, or appliance. It was further contended that the subject goods are parts of a mushroom-growing plant and should therefore be classified as 'parts' under CTI 84369900.

132. We find no merit in the respondent's contention that, based on Section Note 5 of Section XVI, the word 'machinery' would include other terms such as 'plant', 'equipment', 'apparatus' or 'appliance'. Section Note 5 states: *For the purposes of these Notes, the expression 'machine' means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85.* The reason for Note 5 becomes clear when we focus on the words '*for the purposes of these notes*'. It is relevant to note that the headings in Chapters 84 and 85, respectively, encompass a broad range of goods, including machines, machinery, plant, equipment, and appliances. Note 5 offers a single umbrella term ('machine') to be used within the other Section Notes, removing the need to list each item separately.

133. It is important to emphasise that tariff headings must be interpreted and construed strictly, i.e., words cannot be added or omitted. Section Note 5 does not modify or broaden the scope of the tariff headings themselves. Therefore, if a specific heading, such as Chapter Heading 8436 in this case, refers solely to 'machinery' its scope is limited to 'machinery' and cannot

encompass other types of goods like 'plant'. An item can only be classified as a 'plant' if the relevant heading explicitly includes that term, for example, Chapter Heading 8404 (*Auxiliary plant for use with Boilers of Heading 8402 or 8403...)* and 8419 (*Machinery, Plant or Laboratory Equipment, Whether or not electrically heated...).*

134. At this juncture, the respondent may contend that Chapter Heading 8436 includes *'a germination plant'* and therefore it is possible to classify other 'plants' under the scope of Chapter Heading 8436. Such a contention is legally untenable. In fact, the specific inclusion of 'germination plant' indicates that the legislature deliberately intended to include this particular item, which might otherwise have been excluded. This specific inclusion reinforces the conclusion that other types of 'plants' are not covered by the term 'machinery' in the main heading.

135. Having determined that the term 'machinery' in Chapter Heading 8436 cannot be extended to include 'plant', the next question is whether the mushroom growing apparatus can be considered as 'machinery' in its own right. If the apparatus does not qualify as 'machinery', then classification under Chapter Heading 8436 fails at this initial stage.

136. Upon reviewing the record, we find that this mushroom growing apparatus cannot be classified as 'machinery' under Chapter Heading 8436. In fact, the respondent itself attempted to classify the apparatus as a 'plant', a term we have already recognised as distinct from 'machinery' and not included within this specific heading. Furthermore, a close examination of the respondent's submissions clearly shows that they do not advance a case for how the mushroom growing apparatus itself meets the essential,

eo nomine, requirement of being 'machinery' under Chapter Heading 8436.

137. The "mushroom growing apparatus" seems to be a combination of various separate machines. However, on applying the relevant section notes and Explanatory Notes, it appears to us that mushroom growing apparatus does not qualify as: (i) a composite machine, as the different machines are not meant to be fitted together permanently, or (ii) a functional unit, because all the machines do not appear to work together towards a single, clearly defined function. Rather, each machine, i.e., the head filling machine, the automatic watering system, and the compost spreading equipment, seems to perform its own independent task. The only common element is that they are all part of the *broader mushroom* cultivation process, which is different from fulfilling a specific, unified function. To illustrate, according to the Explanatory Notes, an irrigation system comprising a control station with filters, injectors, metering valves, underground distribution, branch lines, and a surface network would be considered a functional unit. Conversely, closed-circuit video surveillance systems, which include a varying number of television cameras and video monitors connected by coaxial cables to a controller, switchers, audio receiver, and possibly automatic data processing machines (for data storage) and/or video recorders (for recording pictures), would not be regarded as a functional unit.

138. The core of the respondent's argument, as accepted by the CESTAT, is that these custom-made shelves are "parts" because they are designed to allow for the integration of other machines,

post importation. Without such integration, these machines would not be able to function and fulfil their primary purpose.

139. This Court has consistently held that a "part" is an integral or constituent component that is essential for the article to be complete and functional. [See ***Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi- III,*** reported in **(2014) 15 SCC 625**, and ***M/s Steel Authority India Ltd. v. Commissioner of Central Excise and Customs, Bhubaneswar***, reported in **2022 SCC OnLine SC 1232**]. This understanding of parts is consistent with the view taken by the courts in the European Union regarding 'parts' when dealing with classification disputes. [See ***Unomedical A/S v. Skatteministeriet***, Case C-152/10 & ***Turbon International GmbH v. Oberfinanzdirektion Koblenz***, Case C-250/05]

140. The subject goods simply do not meet the aforementioned standard, as each individual machine is self-contained. Furthermore, we do not believe that merely being custom-made and providing the 'means' for a machine to complete a task automatically qualifies it as a 'part' of such a machine. Such an interpretation would fundamentally misunderstand what it means to make something functional. All of the individual machines are already complete and fully operational on their own; their mechanical and electrical functions do not rely on aluminium shelves. These shelves do not contribute to their operation; they merely serve as a surface for the devices to perform their functions. A surface supports an object but does not become a part of it. To illustrate, a car needs a road to operate. One could even create a custom race track for a specific race car, enabling it

to be driven solely on that track. However, it is never disputed that the road is not a 'part' of the car.

141. The respondent's reliance on this Court's ruling in ***Dharti Dredging*** (supra) will not further its case. The reasons are two-fold:

a. Firstly, in ***Dharti Dredging*** (supra), there was no question regarding the nature of the good, i.e., whether or not it was machinery, etc. In the present case, we have already concluded that the 'mushroom growing apparatus' cannot be considered to be 'machinery'.

b. Secondly, in ***Dharti Dredging*** (supra), the issue was whether the items were "essential for the purpose of dredging" and the Court found, based on the facts, that the dredger would fail to function as a dredger without them. As we have stated above, that is not the situation in the present case. None of the individual machines (watering systems, compost spreaders) would operationally or mechanically fail without the subject goods, which merely act as platforms.

142. For the reasons outlined above, we are satisfied that the subject goods do not fall under Chapter Heading 8436. We have established that the 'mushroom growing apparatus' is not classified as 'machinery' and further, that the subject goods are 'structures' rather than 'parts' of machinery. Consequently, we find it unnecessary to determine whether the intended use of the subject goods was apparent through their objective characteristics and properties.

143. We now wish to discuss certain other aspects of the impugned judgment, which we believe rested on flawed and insufficient

reasoning. The CESTAT in the impugned judgment based its decision on two ancillary assertions: first, that the goods have “no other purpose” other than being used for mushroom cultivation, and second, that they are known in “trade parlance” as a “mushroom growing apparatus” rather than mere racks. We observe that the impugned judgment provides no reasoning or evidence to substantiate either of these conclusions.

144. The standards of proof required to establish “trade parlance” and "no other purpose" are stringent. The fact that these have been custom-made for integration with other machinery used for mushroom cultivation does not necessarily mean they serve no other purpose. CESTAT should have assessed and identified objective features of the subject goods that restricted their use as any other aluminium structure. No such finding was recorded.

145. Similarly, relying solely on marketing materials, such as brochures, or on the fact that the goods were sourced from a person dealing in mushroom cultivating equipment, cannot be sufficient grounds to establish that, in trade parlance, the subject goods were known as mushroom growing racks. As we noted above, to establish a separate commercial identity distinct from that of general aluminium shelves, sufficient evidence needed to be presented, especially indicating how the goods, owing to their design, structure, and function, substantially transformed from being merely aluminium shelves into mushroom growing racks. No such evidence is discernible in this case. However, in the facts of this case, even if the subject goods obtained a separate commercial identity, it would not still warrant their classification under CTI 84369900, as they cannot be regarded as ‘parts’ of an agricultural machinery.

146. Furthermore, the CESTAT also held that Chapter Heading 8436 is "more specific" than Chapter Heading 7610. However, CESTAT should have never looked into which heading is more specific, as that criterion is part of GRI 3(a). Since GRIs are to be applied sequentially, GRI 3 can only be invoked after it is first determined, under GRI 1, that the goods are *prima facie* classifiable under both competing headings. In this case, such a scenario would never arise. This is because if the goods were indeed classifiable under Chapter Heading 8436 as held by the CESTAT, then the classification dispute is solved by the section note, which excludes goods from Section XVI from the ambit of Section XV. This non-sequential application of the GRIs is an error that must be avoided.

147. Looked at from any angle, we are satisfied that the subject goods cannot be classified under Chapter Heading 8436. Consequently, the subject goods are liable to be classified under CTI 76109010 as 'Aluminium Structures'.

**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.

151. In the present case, the question before us is whether the subject goods should be classified under CTI 76109010 as 'Aluminium Structures' or under CTI 84369900 as 'Parts of Agricultural Machinery'.

152. To be classified under CTI 76109010, the subject goods need to fulfil a two-part criterion: first, they must be made of aluminium, and secondly, they must be a structure or part of such a structure. On the basis of examining the objective characteristics and properties of the subject goods, it is evident that the subject goods fulfil both the characteristics and thus can be classified under CTI 76109010 as aluminium structures. However, both Section Note 1(f) to Section XV and the Explanatory Note to Chapter Heading 7610, respectively, are clear: (1) goods classifiable under Section XVI are excluded from being classified

under Section XV, and (2) assemblies identifiable as parts of articles of Chapters 84 to 88 respectively, are excluded from being classified under the heading 7610. Therefore, if the respondent's classification of the goods as "parts of agricultural machinery" is accepted, the goods would be legally barred from classification under Chapter Heading CTI 7610901.

153. Chapter Heading 8436 is an eo nomine provision as it refers to goods by their name: 'agricultural machinery'. However, it is undeniable that the term 'agricultural machinery' inherently refers to 'use', i.e, machinery whose principal use is in agricultural processes.

154. For the subject goods to be classified under the CTI 84369900, once again, a two-fold criterion needs to be fulfilled: (i) there needs to be agricultural machinery, i.e., a machinery whose principal use is in the agricultural process, and (ii) the subject goods ought to be considered as 'parts' of such agricultural machinery.

155. The respondent has contended, on the basis of Section Note 5 of Section XVI, that the term "machine" encompasses any machinery, plant, equipment, apparatus, or appliance. It was further contended that the subject goods are part of a mushroom growing plant and should therefore be classified as 'parts' under CTI 84369900. On a close reading of Section Note 5 of Section XVI, it is clear that Note 5 of Section XVI limited the expansion of the term "machine" to include plants only for the purposes of the section notes of Section XVI. Consequently, if a specific heading, such as Chapter Heading 8436 in this case, refers solely to 'machinery', its scope is limited to 'machinery', and it cannot be argued on the basis of Section Note 5 that the same would

encompass other types of goods like 'plant' also. Thus, the corollary question that arises now is whether the mushroom growing apparatus can be termed as 'machinery'?

156. The "mushroom growing apparatus" seems to be a combination of various separate machines. However, on applying the relevant section notes and Explanatory Notes, it appears to us that mushroom growing apparatus does not qualify as: (i) a composite machine, as different machines are not meant to be fitted together permanently, or (ii) a functional unit, because all the machines do not appear to work together towards a single, clearly defined function. Rather, each machine, i.e., the head filling machine, the automatic watering system, and the compost spreading equipment, seems to perform its own independent task. The only common element is that they are all part of the broader mushroom cultivation process, which is different from fulfilling a specific, unified function. Thus, mushroom growing apparatus cannot be classified as 'agricultural machinery' under Chapter Heading 8436.

157. Lastly, the subject goods also fail to qualify as parts of the machines with which they are integrated post-importation. All of the individual machines are already complete and fully operational on their own, i.e, their mechanical and electrical functions do not rely on the aluminium shelves. These shelves do not contribute to their operation; they merely serve as a surface for the devices to perform their functions. A surface supports an object but does not become a part of it.

158. Looked at from any angle, we are of the firm view that the subject goods cannot be classified under Chapter Heading 8436. Consequently, the subject goods are liable to be classified under

CTI 76109010 as ‘Aluminium Structures’.

159. For all the foregoing reasons, the appeal succeeds and is hereby allowed. The impugned Judgment and Final Order No. 55604/2024 dated 19.04.2024 passed by the CESTAT in Customs Appeal No. 50542 of 2021 is hereby set aside.

**..... J.**
**(J.B. PARDIWALA)**

**..... J.**
**(R. MAHADEVAN)**

**New Delhi.**
**January 06, 2026.**