

Read : Application dt.11.08.2010 (received on dt.23.08.2010) by M/s. Zamil Steel Buildings India Pvt. Ltd. holder of TIN-27580559901V.

Heard : Shri Nitin Shah, Advocate attended the hearing on behalf of the applicant.

## PROCEEDINGS

(under section-56(1)(e) of Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2010/Adm-3/39/B- 6

Mumbai, dt. 9/7/2013

An application is received from M/s. Zamil Steel Buildings India Pvt. Ltd. (for short 'the applicant') having address at Office No.101, 1<sup>st</sup> floor, Al-Monte Software Park, Plot No.2, S.No.8, Kharadi, Pune-411014 seeking determination of the rate of tax on the supply of Pre Fabricated Steel Buildings Components referred to as 'Rigid Frame Column' in the Packing List of the invoice no.ZSB-0023/2010-2011 dt.06.04.2010.

### 02. FACTS & CONTENTION AS PER APPLICATION

The applicant is engaged in the manufacturing of columns, rafters and channels which are fabricated out of basic steel and sheet, purlins and sundries for roofing and walling made out of steel. The goods are used for construction of pre-fabricated buildings. M/s.Force Motors Limited had raised a PO on the applicant for supply of pre-engineered steel against which the applicant has raised an invoice no.ZSB-0023/2010-2011 dt.06.04.2010 charging ax @12.5% for supply of Pre Fabricated Steel Buildings Components. The details of the same are mentioned in the Packing List.

The applicant seeks determination of the rate of tax applicable to "Rigid Frame Column" ('RFC' for short) mentioned in the Packing List. The process for manufacturing RFC is as follows :

- a. Shearing (Steel Plates of 1500x6000x(4-15 mm) & Gas Cutting 2100x6000x(20-50 mm))
- b. Flange Splicing
- c. Flange Punching
- d. Auto Welding
- e. Drilling
- f. Components cutting & Punching
- g. Fitting
- h. Full Welding
- i. Cleaning
- j. Painting

Each of the above process is explained thus :

#### a) Shearing

- Raw materials (Steel plates 4-15 mm thick) are transferred from storage to Main Shearing machine using overhead cranes.
- Lay down the steel plates adjacent to the Main shear machine and collect each pieces using free-standing jib crane on the Machine-in-feed table for layout and marking. Shearing the steel plates will depend on the shop work-orders received from production Control Department.
- Shearing output will be Flanges, webs and Steel Strips.
- Steel Strips will be transferred to Light Shear machine and to Component Shearing machine. For thicker plates, Gas cutting is done on a CNC gas cutting machine, the gases used are LPG and Oxygen; these will be supplied by pipelines up to the machine and will be stored in Bulk Tanks.

- Webs will be transferred to Auto-Welding Area by overhead crane Or to Crane beam fitting area. Flanges will be transferred to Flange splicing Machine by overhead crane Or to Crane beam fitting area.
- Raw materials (Steel Thick Plates 20-25 mm) transfer from storage to Profile Burning Machine using overhead cranes.
- The output will be for connecting End plates, which will be transferred to Radial Drilling Machine.

#### b) Flange Splicing

- Received Flanges from shearing process will be spliced (Butt Welding) if the required length of the beam is more than 6000 mm.
- Flanges with holes will proceed to Flange Punching machine.
- For Flanges without holes; they will be transferred to Auto-Welding machine by overhead cranes.

#### c) Flange Punching

- Received Flanges from Flange Splice Machine will be processed on this machine with different patterns of holes as per the design and details from production control department.
- Output of this machine will be transferred to Auto-Welding Machine by overhead cranes.

#### d) Auto-Welding Machine

- Stage 1 : The process on this machine will start with the Webs received from Main shearing machine, this stage called (Web Splicing).
- Stage 2 : Spliced webs will be transferred via steel conveyors to the next stage on the same Machine, this stage called (Tacking Assembly) where the Web will be assembled with the Top & Bottom flanges received from previous machines.
- Stage 3 : In this stage Materials from stage 2 will be transferred by conveyors to Automatic welding heads, where both flanges will be welded continuously with the web (Fillet Welding).

The output of this process will be transferred to the Fitting process locations.

Connecting End Plates received from Profile burning machine will be uploaded on the Radial Arm Drilling machine by overhead cranes, in order to provide the required holes as per the information received from Production Control Department.

- The output of this machine will be transferred by overhead cranes to the Fitting process location.

#### e) Components Cutting & Punching

- Steel Strips received from Main shearing machines will be sheared to length on the Component Shearing machine, the output of this machine will proceed by overhead cranes to Manual Punching machine located if holes are required, if not it will be transferred by overhead cranes to Fitting process location, or to Hot Rolled Fitting process.

#### g) Fitting Process

- All output from previous machines: Auto-Welding, Component Shear, Manual Punching Machines will be assembled together as per the drawings received from Production Control department by Track Welding (Stick Welding) process, and then transferred by overhead cranes to Full Welding Process or by Side loader equipment.

#### h) Full Welding Process

- Manual Welding process will be used to apply the proper welding measures on all locations and area on each piece as per the drawings received from production control department and as per the international specification and internal Zamil Steel Industries standards. All materials will be inspected by Quality Control Inspectors at the spot.
- Materials will be transferred by overhead cranes and forklifts to the manual cleaning and painting process area.

- Materials received from Full Welding Process will be cleaned manually and under Quality Control Inspection using proper solvents, and then transferred to paint application skids in the same area in order to apply the paint requirements as per instructions received from production control. Materials will be allowed to become dry to handle and transfer to the storage and shipping yard outside the building.

#### I) Shot Blasting

- The finished pieces from the full weld area will be shot blasted to clean the surface area for painting. SA 2.5 type of blasting will be needed for multi-coat paint system.

#### J) Painting

- Shot Blasted pieces will be taken to painting area skids/booths either through OH conveyer or by Forklift trucks for painting.

Once the above procedure is done, the same is inspected and is kept ready for dispatch.

It is stated that the impugned goods are cleared under the Excise Chapter Heading 94060099 for 'pre-fabricated buildings'. Currently, the applicant is charging tax @ 12.5%. The applicant contends that since the goods dealt with are steel structurals, they would be covered by the schedule entry C-55 of the MVAT Act, taxable @ 4%. A photograph of the product is attached alongwith the application. Also, a copy of work order dt.9.11.2009 for "supply of pre-engineered steel structure of the proposed production shed' by M/s.Force Motors Ltd., Nanekarwadi, Chakan is furnished.

### 03. HEARING

Shri Nitin Shah, Advocate, attended the hearing. The product is contended to be covered by the entry C-55(v) - '*Steel Structural (angles, joints, channels, tees, sheet piling sections, Z sections or any other rolled sections)*'. During the course of the hearing, it was pointed out to the applicant that entry defines or restricts the type of steel structurals to only the goods enumerated in the bracketed portion. On this point, it was argued by the applicant that the words in the bracket are enumerative and not exhaustive and further that the bracketed portion at the end contained the words "*or any other rolled sections*". Therefore, it was brought to the notice of the applicant that the exhaustiveness of the description was restricted to rolled sections only and further that the entry covers angles, joints, channels, tees, sheet piling sections, Z sections or other rolled sections only.

The applicant sought to invite attention to para no.12 of the judgment dt.31.03.2006 rendered by the Hon. Rajasthan High Court in the case of M/s.Prateek Technocom Pvt. Ltd. wherein the Hon. Court held that the word 'steel structurals' used in section 14(iv)(v) of the Central Sales Tax Act are wide enough to cover steel structurals of any design or specifications provided they are made of items like angles, joists, tees, etc. With regard to the aforementioned decision, the applicant was queried as to from which of the items namely angles, joists, channels, tees, etc. in the entry were the impugned products made of. It was informed that the product is made from plates and channels.

It was emphasized by the applicant that the product is covered by the words "steel structurals" and the only condition is that it should be made of iron and steel. It was further contended that the entry should not be interpreted in terms of the words used in the bracket only.

The attention of the applicant was invited to the fact that the invoice mentions the Central Excise Tariff Heading (CETH) as 94060099 which pertains to 'pre-fabricated buildings' whereas iron and steel is covered by Chapter-72 and articles of iron and steel are covered by Chapter-73 and further that the CETH heading 7308 covers 'structures' excluding 'pre-fabricated buildings' of heading 9406. On this point, it was argued that interpretation adopted in Central Excise should not be made applicable to Sales Tax.

The following was furnished with regard to the claim that the product is steel structurals :

- (a) Indian Standard is being followed while manufacturing the product.
- (b) Code of Standard Practice for Steel Building and Bridges by the American Institute of Steel Construction - Defines structural steel which is being followed.
- (c) Webster's Online Dictionary definition of structural steel.

The applicant's attention was invited to the observations in the case of M/s. Bansal Wire Industries (32 VST 533), which runs,- *"From the perusal of the 16 categories (iron and steel) it appears that sub-items (i) to (viii) are in the nature of raw material or primary iron and steel and item Nos. (x) to (xvi) are derivatives of such primary materials and raw materials"*. With regard to this case, it was submitted that a write-up would be given on the subject.

A re-hearing was held on dt.21.05.2013 wherein it was submitted that a write-up is being given in respect of the aforementioned judgment of the Allahabad High Court and the process of manufacturing (whether rolling method) of Rigid Frame Column. It was further submitted that the remarks in the judgment of the Allahabad High Court are just passing remarks and the Rajasthan High Court judgment would be directly applicable as the products involved are the same. It was further submitted that the judgment of the Allahabad High Court should not be relied upon as the Hon. Supreme Court in the very case has held that 'stainless steel wire' is not covered by the sub-categories (i) to (vii) because of the wordings used in entry (ix) and have not decided on the basis of 'primary or 'raw material'.

A write-up given by the applicant states thus :

1. Against the prima facie view expressed on the basis of the decision in M/s. Bansal Wire Industries (cited supra) during hearing that finished products are not covered by entry C-55(v), it is stated that firstly the observations in the judgment were that *'...are in the nature of raw material or primary iron and steel'* and thus, it also includes primary iron and steel items and not only the raw materials. Secondly, it is stated that there are various items which are enumerated which are used as it is and thus are not in the nature of raw material e.g. "Iron Shots" covered by entry C-55(i) is a finished product used in foundry. M.S.Sheet, hoops, strips covered by entry B-6(vi) are also finished goods so also plates mentioned in sub-entry (vii) of entry C-55. Thus there are goods which are mentioned in the sub entries which are used as it is

and not in the nature of raw material. Thirdly, it is stated that what the Court has stated is '....it appears that....' which is just a passing remark of the Court which does not have any binding force. It is just a Obiter Dicta. Such passing remarks are not binding as precedent.

2. The products mentioned in the brackets in sub-entry (v) of entry C-55 are manufactured by rolling process. However, the three items mentioned therein viz joists, tees and angles are manufactured by rolling as well as welding process. Joists are predominantly manufactured by welding process.
3. The RFC is manufactured from Hot Rolled plates which are nothing but rolled section.
4. The applicant has again invited attention to the Hon. Rajasthan High Court to contend that the same is binding and needs to be followed.

#### 04. OBSERVATIONS

I have gone through the facts of the case. The determination proceedings are in respect of the product "RIGID FRAME COLUMN" (for short 'RFC') which is grouped under the category "Pre fabricated steel Building Components". The applicant has laid claim in respect of clause (v) of the schedule entry C-55 as being applicable to the impugned product. The entry and the clause reads thus :

- C-55 Iron and Steel, that is to say,
- (i) .....
  - (v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);

It can be seen that the entry is for 'Iron and Steel'. However, the entry has defined the 'Iron and Steel' which could be covered by the entry. The entry uses the expression "that is to say" which has been dwelled upon by a catena of judgments, The Hon. Supreme Court in Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (118 STC 379 SC) has held that the expression "that is to say" is descriptive, enumerative and exhaustive and circumscribes to a great extent the scope of the entry.

Now, the entry C-55 is identical to the one under section-14(iv) of the Central Sales Tax Act, 1956 [CST Act]. Section 14 of the CST Act pertains to declared goods which have special importance in the course of inter-state trade and commerce and therefore, a corresponding entry has been carved under the MVAT Act, 2002. The claim in these proceedings is in respect of the clause (v) of this entry for 'iron and steel'. To understand the scope of the entry, I would reproduce the entire entry thus :

"55. Iron and steel, that is to say, -

- (i) pig iron, sponge iron and cast iron including ingots, moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;
- (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);
- (iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;
- (iv) steel bars (rounds, rods, square flats, octagons and hexagons, plain and ribbed or twisted in coil form as well as straight lengths);

- (v) *steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);*
- (vi) *sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in revetted condition ;*
- (vii) *plates both plain and chequered in all qualities;*
- (viii) *discs, rings, forgings and steel castings;*
- (ix) *tool, alloy and special steels of any of the above categories;*
- (x) *steel melting scrap in all forms including steel skull turning and boring;*
- (xi) *steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;*
- (xii) *tin plate, both hot dipped and electrolytic and tin free plates;*
- (xiii) *fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing pates, crossing sleepers and pressed steel sleepers, rails heavy and light crane rails;*
- (xiv) *wheels, tyres, axles and wheel sets;*
- (xv) *wire rods and wires - rolled, drawn, galvanised, aluminized, tinned or coated such as by copper;*
- (xvi) *defectives, rejects, cuttings or end pieces of any of the above categories."*

With regard to the clauses reproduced above, it would be useful to reproduce the observations of the Hon. Allahabad High Court in the case of Bansal Wire Industries Ltd. And Another v. State of U.P and Others (2010 32 VST 533) that, -

*"From the perusal of the 16 categories under the 'iron and steel' it appears that sub-items (i) to (viii) are in the nature of raw material or primary iron and steel and items Nos. (x) to (xvi) are derivatives of such primary materials and raw materials."*

The impugned product being a finished product ready for use, the above observations with regard to items in clauses (i) to (viii) being raw materials were brought to the notice of the applicant during the course of hearing. The applicant has come up with his set of arguments in respect of the above observations. I have dealt with these arguments separately at a later stage in these proceedings.

Coming back to the entry, it is seen that the same begins with the words '*steel structurals*' and is followed by a bracketed portion which mentions the following items therein - '*angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections*'. The last words of the bracketed portion are '*any other rolled sections*'. It could be fairly deduced from this that the bracketed portion covers only goods which are rolled sections and, owing to the same, further that the '*steel structurals*' of this clause would cover steel structurals of rolled sections only. During hearing, a prima facie opinion was expressed to the applicant that the words '*steel structurals*' are to be interpreted in terms of the items enumerated in the bracket. Let me ascertain the meanings of each of the terms used for the purposes of the clause (v) to form a conclusive opinion about the scope of this clause :

### STEEL STRUCTURALS

Wikipedia, the free encyclopedia describes '*structural steel*' with photographs of various structural steel shapes e.g. I-beam, Angle (L shaped cross section, Tee, (T-shaped cross section, Channel or C-Section, etc. Structural steel is steel construction material, a profile, formed with a

specific shape or cross section and certain standards of chemical composition and mechanical properties. While many sections are made by hot or cold rolling, others are made by welding together flat or bent plates (for example, the largest circular hollow sections are made from flat plate bent into a circle and seam-welded. Structural steel can be developed into nearly any shape, which are either bolted or welded together in construction. Structural steel can be erected as soon as the materials are delivered on site, whereas concrete must be cured at least 1-2 weeks after pouring before construction can continue, making steel a schedule-friendly construction material.

The clause has made use of the words '*angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections*' in the bracketed portion. These may be understood thus :

#### ANGLES

A hot rolled shape called an Angle with symbol L which has equal legs or unequal legs.

#### JOIST

A structural load-carrying member with an open web system which supports floors and roofs utilizing hot-rolled or cold-formed steel and is designed as a simple span member.

#### CHANNEL

A hot rolled structural shape the looks like "C".

#### TEE

A hot rolled shape with symbol T and is shaped like a "T".

#### SHEET PILING SECTIONS

Steel sheet piles are long structural sections with a vertical interlocking system that creates a continuous wall.

#### "Z" Section

A structural section in the shape of a "Z" cold formed from a steel sheet.

A look at the above reveals that these are the basic items, all of which come into existence by the rolling process. Metal rolling is one of the most important manufacturing processes and is often the first step in creating raw metal forms. The ingot or continuous casting is hot rolled into a bloom (*length of metal that has a round or square cross-section*) or a slab (*length of metal that is rectangular in cross-section*). These are the basic structures for the creation of a wide range of manufactured forms. Blooms and slabs are further rolled down to intermediate parts such as plate, sheet, strip, coil, billets, bars and rods. Many of these products will be the starting material for subsequent manufacturing operations such as forging, sheet metal working, wire drawing, extrusion and machining. Blooms are often rolled directly into I-Beams, H-Beams, Channel Beams, and T-Sections for structural applications. Plates and sheets are rolled from slab, and are extremely important in the production of a wide range of manufactured items. Thus, when the entry makes use of the words '*rolled sections*', it is understood to be the raw metal forms which are used in the manufacture of further items therefrom.

Having studied the entry in terms of its scope and coverage, I would understand the nature of the impugned product. The brochure describes the product thus :

➤ **Major components of the building:**

1. The Main Steel
2. Components
3. Design

➤ **The Main Steel**

These are the main structural load bearing elements (skeleton) of the building. In the **Main Steel Category**, there is sub-classification as follows :

**1.1 Main Frames : (Primary Steel)**

- 1.2 Secondary Members
- 1.3 Sheeting
- 1.4 Trims & Gutters

➤ In the **Main Frames** category, there is further sub-classification as follows :

**1.1.1A Built-up Sections**

**1.1.1B Hot-Rolled I-sections**

**1.1.1C Tube Sections**

**1.1.2A Welding Standard**

**1.1.2B Quality of the Welding Material**

**1.1.2C Welders standard and qualifications**

**1.1.3A Quality Control (QC) Standard**

**1.1.3B Mill Test Certificate**

**1.1.4 Environmental Coating Protection/Corrosion Protection**

➤ In **Built-up Sections**, there is mention of **Rigid Frame Column & Rafters, Mezzanine floor beams & Joists** etc.). It is further mentioned thus : *Fabricated from hot rolled steel plates conforming to ASTM A572M.*

➤ Under **Hot Rolled I-sections**, there is mention of **Endwall Columns/Fascia Framing and Similar Light Framing**. It is further mentioned thus : *Mill produced according to JIS G3101 SS400 or EN 10025 S355JR (or equivalent). (JIS: Japanese Industrial Standard, EN: Euro Norm).*

➤ Under **Tube Sections**, there is mention of **Mezzanine Columns, RF Interior Column, Wind Struts** are mentioned. It is further mentioned thus : *Mill formed steel sections conforming to JIS G3466 STKR490 or EN 10025 S275JR (or equivalent).*

The brochure about 'pre-engineered buildings' given by the applicant describes thus :

➤ **PEB buildings** are made up of 3 major components. They are :

1. Primary Framing
2. Secondary Framing members
3. Cladding

➤ **Primary Framing** is described thus :

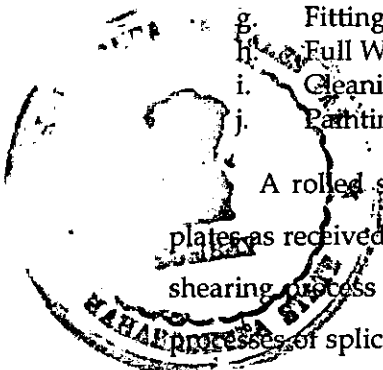
*Primary Framing consists of columns and rafters with tapered web and variable flanges. These are manufactured by welding together cut plates to form the desired frame I-sections. The tapered sections are welded at factory / bolted at site at splices to form the desired frame profile. These frames in PEB are normally moment resisting frames with fixed or pinned bases as mandated by the design.*

It can be seen from the above that 'RFC', the product for determination in the present proceedings is classified under the category of '**Built-up Sections**'. I have perused the copy of the BIS submitted by the applicant. It states that the same applies to general construction using hot rolled steel sections joined using riveting, bolting and welding. **Built-up Section** is defined



therein as - *A member fabricated by interconnecting more than one element to form a compound section acting as a single member.* Built-up Columns are fabricated from various different elements. They consist of two or more main components, connected together at intervals to form a single compound member. These are members made up by a fabricator from two or more standard sections. Channel sections and angles are often used as the main components but it is also possible to use I or H-sections; they are laced or battened together with simple elements (bars or angles or smaller channel sections) and it is possible to find columns where both methods are combined. *Built-up members are specified when the desired configuration cannot be obtained in a single hot rolled section.* Built-up sections can be bolted or welded. Pre-Engineered Steel Buildings use a combination of built-up sections, hot rolled sections and cold formed elements which provide the basic steel frame work with a choice of single skin sheeting with added insulation or insulated sandwich panels for roofing and wall cladding. What transpires from the above is that built-up sections cannot be equated with rolled sections. Built-up sections are obtained by fabrication. This can also be understood from the manufacturing process of the impugned product which has been categorized under built-up sections. The process begins with steel plates as the raw material which are then put to the following processes :

- a. Shearing (Steel Plates of 1500x6000x(4-15 mm) & Gas Cutting 2100x6000x(20-50 mm))
- b. Flange Splicing
- c. Flange Punching
- d. Auto-Welding
- e. Drilling
- f. Components cutting & Punching
- g. Fitting
- h. Full Welding
- i. Cleaning
- j. Painting



A rolled section is not understood to go through the above processes. The iron & steel plates as received from the rolling mill get transformed into some other form so much so that the shearing process brought about parts such as flanges, webs and Steel Strips. These undergo the processes of splicing, punching, welding, drilling etc. and then the RFC comes into existence. The identity of the rolled section becomes extinct once these sections are bolted or welded and the product so formed gets a new identity as a 'built up section'. I have also to observe that looking at the final product obtained after the above processes, it could be understood that the desired configuration could not have been obtained from the single rolled steel section and therefore, a built up section is fabricated. Built up steel sections are comprised of other smaller members. This could be 3 plates welded together to form an I-shape or 2 angles bolted back-to-back to make a double angle shape. Compared to this, the rolled section is one whole member and rolled into the shape directly. Thus, built up sections cannot be equated with rolled section and are not rolling mill products.

From the above, it could be seen that RFC is basically a built-up section of a pre-fabricated building. One should not forget that the applicant himself declares in the technical guide that "Different sections of the pre-fabricated building are removed, shipped and re-assembled at the site thence after a skeleton of a structure comes into being". In the case of construction of a structure stage-by-stage, step-by-step various parts become identifiable parts as such only after erection and positioning at appropriate places such as column, beam, etc. Such is not the factual position here. In the instant case, the Rigid Frame Column (RFC) was already identifiable as a RFC before it was removed from the factory. It would land at the construction site as RFC only for installation at the site. The RFC has a distinct name, identity, and use even prior to it being assimilated. Having seen thus, the obvious inference would be that RFC is a fabricated item and could not be said to be a rolling section steel structural.

The clause (v) for 'steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)' was the subject matter of a determination order No.DDQ-1180/ADM-5/5B-19 dt.30.07.1980 in the case of M/s. Crescent Metal Pressing Works. The product herein was 'slotted angles' which was manufactured from mild steel sheets which were cut into strips and punched for making slots and thereafter the slotted strips were pressed to make the angle shape. The applicant was paying tax @4% on the sale of slotted angles in view of a determination order No.DDQ-1176/104/B-17, dt.13.07.1976 passed in his own case. The applicant was subsequently informed that slotted angles would now fall outside the scope of entry B-1-3 as clarified in the Circular No.DDQ-1079/ADM-5/111 issued by the Commissioner, Sales Tax on dt.01.12.1979.

6/DO/ADM-5 of 1979

In view of the clarification, the applicant preferred a determination application. A *prima facie* view was communicated that the slotted angles would not fall under the scope of the then entry B-1-3 for 'Iron and Steel'. Alongwith the clarification, the applicant was also forwarded a copy of the opinion given by the Directorate General of Technical Development, New Delhi in his letter No. DT/No. 24/2/79-ST, dt.29<sup>th</sup> March 1979 stating that slotted angles cannot be classified under any of the headings of section 14(iv) [for 'Iron and Steel'] of the Central Sales Tax Act,1956. Having regard to the aforesaid advice given by the Government of India, a Trade Circular as mentioned above was issued clarifying the position. During the fresh determination proceedings, it was accepted by the applicant therein that it would not be possible to take hot rolled angles and punch continuous slots since the metal would be very thick. The observations while deliberating on the coverage of the slotted angles under the clause (v) could be reproduced thus :

*"It appears from the reading of the sub-item as a whole that the angles contemplated by this sub-item are those which are produced as angles by hot rolling process and not the slotted angles manufactured from sheets-strips."*

In the present case too, the 'RFC' is not manufactured by the rolling process but is fabricated by undergoing various processes. My views in the present determination order find

support from the principle echoed long back in the aforereferred determination order. Simply because the impugned product is manufactured from basic raw materials that may be iron and steel would not make the same a 'declared good', thereby enabling classification under the clause (v). When sold as a 'finished product', the impugned product would not fall under the above clause.

In the determination order dt.30.08.1993 in the case of Bharat Steel Industries, the same proposition as above was canvassed. The applicant therein purchased steel sheets and manufactured door frame sections out of it. The issue involved was whether 'door frame sections' would befall schedule entry B-6(v). The applicant during those determination proceedings had admitted that the expression 'angles' as known in Iron and Steel trade generally refers to hot rolled angles and not to fabricated angles made from sheet metal. The Commissioner herein observed that in the past, the scope of this entry was considered by the Sales Tax Tribunal in the case of M/s. Amsons Industries, Appeal 98/1980 dt.18.7.1993 wherein a view had been taken that the sub-entry in question applies only to the rolled structural sections. It was therefore observed thus - *'In terms, it means that the sections which are fabricated from rolled flat products, like sheet are not contemplated by the said narration'*. In the light of this interpretation, the scope of the entry can be ascertained in terms of the applicability to 'rolled structural sections' only. While determining the issue, the then Commissioner observed that the expression 'rolled structural section' is not defined in the Act nor was there direct trade parlance evidence. And so he referred to the Glossary of Terms relating to Iron and Steel adopted and published by the Indian Standard Institution. The expression "Sections and Structural Section' defined therein were reproduced thus :

2.105 Section - A hot rolled product widely used for structural purposes with a cross-section of special contour. The common types are as shown in Fig. 1.

2.70 Section Structural. - A hot rolled product widely used for structural purposes, with a cross-section of special contour. The common types are as shown in Fig. 1.

While observing that the expression 'rolled structural sections' does not contemplate fabricated items made from sheet metal, the determination order held that the products therein were not an article made on a rolling mill and therefore disallowed the claim with regard to clause (v). On subsequent challenge before the Hon. Maharashtra Sales Tax Tribunal (MSTT), the Tribunal was pleased to confirm the determination order in its decision dt.10.01.1997 (15 MTJ 233). The Hon. MSTT observed that the steel sheet completely changes its identity after conversion into door frame section during the process and loses its character as steel sheet and the process results in bringing into existence a different commercial commodity. The cases cited by the Revenue were cited with approval by the Hon. MSTT. One such case being the Hon. Allahabad High Court judgment in the case of Agra Metal Perforators Vs. Commissioner, Sales

Tax, UP Lucknow (1981 48 STC 378) wherein it was held that as a result of perforation of iron sheets, a different commercial commodity comes into existence and since perforated iron sheet is not covered by the categories mentioned in section 14(iv) of the Central Act, as amended by the Central Sales Tax (Amendment) Act, 1972, it could not be treated as iron and steel but had to be treated as an unclassified item for the purpose of assessment under the U.P. Sales Tax Act, 1948.

It may thus be seen that mere perforation is held sufficient to constitute change of identity of iron sheet. In the present case also, new commodity, namely, RFC emerges out of steel sheet, which has higher utility and is recognized as a different category of goods in the commercial circle. Even under the Delhi Value Added Tax Act, the claim under clause (v) which is in consideration in the present proceedings was rejected in respect of the goods 'M.S.Fabricated Structure' and the item was held as an unspecified item.

The Hon. MSTT in the case of M/s. Bharat Steel Industries (15 MTJ 233) has observed that identity of substance can be changed without there being any change in the contents or components of the original substance. It was further observed that it is the commercial commodity which is to be considered for determination of tax and not the substance from which it is made. If that commodity is recognized as the distinct and separate than the original substance, in commercial circle, then, that commodity is exigible to tax. In the present case, I have to observe that a new commercial commodity comes into existence.

The above observation of mine gets fortified even more when the excise invoice dt:06/04/2010 is scrutinized. Through this invoice, the applicant has cleared the RFC and 'Interior Column' as 'Pre-fabricated steel Building Components' under Tariff heading 94060099. Heading 9406 under CET Act provides for 'Pre-fabricated buildings'. Iron and steel is covered by Chapter-72 and articles of iron and steel are covered by Chapter-73 and further that the CETH heading 7308 covers 'structures' excluding 'pre-fabricated buildings' of heading 9406. It is no doubt disputed that the classification under Central Excise should not form a basis for classification under Central Excise. Nevertheless, a useful reference therefrom could always be drawn.

I have to observe that the rolled structural sections do not contemplate fabricated items made of iron and steel. In order to constitute structural steel, it must be a product of the rolling mill. The applicant claims that RFC being 'steel structurals' made up of rolled sections would be covered by schedule entry C-55(v). RFC is not erected at site by assembling goods in bracketed portion, nor is it a product of rolling mill contained in the schedule entry but instead it is a 'built up section'. It is not identifiable as rolling mill section. Therefore, it falls outside the description in schedule entry C-55(v). Having formed an opinion thus, I would now look at the arguments raised by the applicant.

It has been argued that the remarks of the Hon. Court in M/s. Bansal Wire (cited supra) are *obiter-dicta* or passing remarks. I have to say that this argument is an incorrect appreciation of the observations of the Hon. Court. The Court herein was called upon to deliberate on the argument that stainless steel wire is one of the species of iron and steel under section 14(iv)(ix) of the CST Act,1956. The Hon. Court had to decide the scope of the entry for declared goods namely 'iron and steel'. Therefore while explaining the above clauses, the observations thereto cannot be disregarded as 'passing remarks'. It is further argued that that the judgment of the Allahabad High Court should not be relied upon as the Hon. Supreme Court in this very case has held that 'stainless steel wire' is not covered by the sub-categories (i) to (vii) because of the wordings used in entry (ix) and thus, the decision is not on the basis of 'primary or 'raw material'. I have perused the judgment of the Hon. Apex court and it is seen that the apex court has upheld the judgment of the Allahabad High Court. I am not on the issue that the facts of the impugned case are similar to the facts in the aforementioned judgment. However, I have to be quick to add that the common thread between the two is the discussions on the entry for 'iron and steel', a declared good. Therefore, I refrain myself from commenting any further as regards the above argument. Yet another argument is tendered such that it was observed that the entry also includes primary iron and steel items and not only raw materials. With regard to this argument, it was stated that there are various items enumerated in the entry which are used as it is and are not in the nature of raw material e.g. "Iron Shots' covered by entry C-55(i), a finished product used in foundry and M.S.Sheet, hoops, strips covered by entry B-6(vi) are finished goods so also plates mentioned in sub-entry (vii) of entry C-55. Thus, it is argued that there are goods in the sub entries which are used as it is and are not in the nature of raw material. With regard to this argument, I have to state that the aforementioned examples given are of raw materials out of which other goods are made. I have to say that these are used for manufacturing other items. They are the finished forms constituting raw material for making other articles. They cannot perform a function by itself and have use as intermediate products in the manufacturing process of the finished products. In view of all above, I find that the arguments against the judgment in M/s. Bansal Wire (cited supra) are devoid of merit.

I would now turn to the Rajasthan High Court case of M/s.Prateek Technocom Pvt. Ltd. vs CTO And Ors. on 31 March, 2006 (RLW 2006 (3) Raj 2019, 2006 (4) WLC 315) which has been relied on by the applicant in support of his claim that 'RFC' is nothing but 'steel structurals' within the meaning of schedule entry C-55(v). The Hon. Rajasthan High Court in this case held that steel structurals made out by fabrication of various angles, channels, Hats, Bars and other Items as per drawing and design supplied by RSEB and converted Into steel structurals fall within the definition of Section 14(iv)(v) of the CST Act. It was also observed that the word 'steel structurals' used in Section 14(iv)(v) are wide enough to cover steel structurals of any design or

specification provided they are made of items like angles, joints, tees etc. mentioned in the brackets of said Section 14(iv)(v) of the CST Act. This clause (v) is the same clause which is in consideration in the present proceedings. As regards these observation of the Hon. Court, I have to say that my inference of the said clause is based on the words as appearing in the entry and finds support in the opinion given by the opinion of the Directorate General of Technical Development, New Delhi. It needs to be noted that when even slotted angles, not being a product of the rolling mill were kept out of the purview of the impugned clause, there remains no possibility of coverage of fabricated, welded items to find any place therein. Hence with utmost regard, I beg to disagree with the decision of the Hon. Rajasthan High Court and therefore, the same could not be made applicable to the facts of the present case. Further, it is felt that the facts therein were such that structural steel goods such as angles, channels, flats, etc. were used to fabricate transmission tower and such transmission towers were held as steel structurals. Whereas in the present case, RFC is fabricated in factory as per specific intricate design and requirement of clients under a works order for supply of PFB by using built-up sections which are not rolling mill products and what has emerged is RFC with a distinct name, identity and use. I find that the observations in M/s. Bansal Wire (cited supra) present a correct appreciation of the clause (v). Further, this is a later (2010) decision of the Madras High Court whereas the decision in M/s. Prateek Technocom(cited supra) was delivered in 2006.

As regards the argument that joists, tees and angles could be manufactured by rolling as well as welding process, I have to say that the entry has in clear words restricted the scope of items covered therein as having been obtained by the rolling process. Therefore, so far as joists or, for that matter, any of the items enumerated in the entry are obtained by the rolling process they stand covered by the said clause (v). I am not on the point that the items enumerated in the entry are obtained by the rolling process or the welding process. I have only to observe that the clause covers rolled structural sections only. In view thereof, the argument does not bring home a valid point.

In order to constitute structural steel, the product must have been manufactured out of rolling mill. The RFC is not a product of rolling mill. It is one of the components of primary frame work of a PEB structure and not a complete structure in itself. It has a specific role, specific functional utility to be positioned at a specific place in the PEB frame work. The clearance of RFC as a component of PFB in the invoice proves it beyond doubt because if it were steel structural, it would have been cleared under chapter-73 instead of Chapter-94. An useful inference could be derived from the case laws under the Central Excise Tariff Act that fabricated iron and steel structures or parts thereof fall in Heading 94.06.

There being no other specific entry under which the impugned product could be said to be covered, the same falls in the residuary entry E-1, thereby liable to tax @12.5%.

05. In the backdrop of the above discussion, I make the following order,-

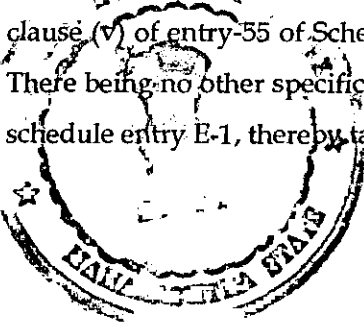
## ORDER

(under section-56(1)(e) of Maharashtra Value Added Tax Act, 2002)

No.DDQ-11/2010/Adm-3/39/B- 6

Mumbai, dt. 9/7/2013

The "Rigid Frame Column", a component of 'Pre-fabricated Steel Buildings' sold through invoice No ZSB-0023/2010-11 dt.06.04.2010 would not be 'steel structural' within the meaning of clause (v) of entry-55 of Schedule C as appended to the Maharashtra Value Added Tax Act,2002. There being no other specific entry covering the impugned product, it finds place in the residuary schedule entry E-1, thereby taxable @ 12.5%.



  
2/7/13  
(DR.NITEEN KAREER)

COMMISSIONER OF SALES TAX,  
MAHARASHTRA STATE, MUMBAI

