

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
REGIONAL BENCH**

Excise Appeal No. 85227 of 2017

(Arising out of Order-in-Original No. PUN-EXCUS-004-COMMR-10-11/16-17 dated 24.11.2016 passed by the Commissioner of Central Excise, Pune-IV)

M/s. B.G. Shirke Construction Technology Pvt. Ltd. **Appellant**

No.72-76 Industrial Estate,
Mundhwa, Pune 411 036.

Vs.

Commissioner of Central Excise , Pune-IV **Respondent**

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune 411 001.

WITH

Excise Appeal No. 85176 of 2020

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-114/2019-20 dated 30.09.2019 passed by the Commissioner of Central Excise (Appeals), Pune-I)

M/s. B.G. Shirke Construction Technology Pvt. Ltd. **Appellant**

No.72-76 Industrial Estate,
Mundhwa, Pune 411 036.

Vs.

Commissioner of Central Excise , Pune-IV **Respondent**

41/A, ICE House, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Bharat Raichandani, Advocate, for the Appellant
Shri Deepak Bhilegaonkar, Additional Authorised Representative for
the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 25.11.2022
Date of Decision: 25.11.2022

FINAL ORDER NO. A/86223-86224/2022

PER: SANJIV SRIVASTAVA

These appeals are directed against order in original/
appeal as indicated below in table.

Appeal No	Impugned Order	SCN Date	Period	Duty Demand "Rs
E/85227/2017	PUN-EXCUS-004-COM-10-11/16-17 dated 24.11.2016	03.11.2015	Oct 10-Mar 15	10,22,96,115/-
		05.04.2016	Apr 15-Dec 15	82,48,427/-
E/85176/2020	PUN-EXCUS-001-APP-114/2019-20 dated 30.09.2019	25.01.2018	Jan 16-June 17	1,90,09,557/-
				12,95,54,099/-

1.2 By the impugned order following has been held:

A. PUN-EXCUS-004-COM-10-11/16-17 dated 24.11.2016

"ORDER

- i) *I reject the classification of 'Silo' under Chapter Sub-heading 84379090 of the Central Excise Tariff Act, 1985 adopted by M/s. B.G. Shirke Construction Technology Pvt. Ltd.*
- ii) *Silos are to be classified under chapter sub-heading 94060099 of the Central Excise Tariff Act, 1985 as is proposed in the subject notices.*
- iii) *Invoice value of clearance of Rs. 86,64,10,215/- during the period October, 2010 to March, 2015 as above and Rs. 6,59,87,402/- for the period from April, 2015 to December, 2015 respectively is to be considered as assessable value under Section 4 of the Central Excise Act, 1944 involving Central Excise duty payable amounting to Rs. 10,22,96,115/- and Rs. 82,48,427/- respectively.*
- iv) *Extended period has been correctly invoked in the show cause notices for the reasons mentioned above for recovery of duty along with interest and penalty for non payment of duty by availment of nil rate of duty beyond the period of one year.*

Accordingly, I hold that M/s. B.G. Shirke Construction Technology Pvt. Ltd. are liable for payment of duty, interest and penalty as below-

- i) *Central Excise duty amounting to Rs. 10,22,96,115/- (Rupees Ten Crores Twenty Two Lakhs Ninety Six Thousand One Hundred and Fifteen Only) + Rs. 82,48,427/- (Rupees Eighty Two Lakhs Forty Eight Thousand Four Hundred and Twenty Seven Only) totally amounting to Rs. 11,05,44,542/- (Rupees Eleven Crores Five Lakhs Forty Four Thousand Five Hundred and Forty Two Only) on the manufacture and clearance of Silos for the period October, 2010 to March, 2015 and April, 2015 to December, 2015 which is liable to be demanded and recovered from them under the proviso to Section 11A(1) (period upto 07.04.2011) and Section 11 A(4) (from 08.04.2011) of the Central Excise Act, 1944 is determined under Section 11A(10) erstwhile Section 11A ibid and confirmed. I accordingly order for its recovery*
- ii) *I confirm and order recovery of interest from them on the above confirmed demand as prescribed under Section 11AB and Section 11AA (as relevant) of the Central Excise Act, 1944.*
- iii) *I impose penalty of Rs. 11,05,44,542/- (Rupees Eleven Crores Five Lakhs Forty Four Thousand Five Hundred and Forty Two Only) on notice no. 1 under rule 25 of Central Excise Rules, 2002 read with section 11 AC of the Central Excise Act. 1944.*

As regards individual culpability of the company officials in respect of their individual roles played by them and as discussed in the findings above, I hold that penalty is liable to be imposed on Shri. Kishore Madhav Thatte, Senior Vice President (Finance) and Company Secretary i.e. noticee no. 2 under rule 26 of the Central Excise Rules, 2002. Accordingly-

- iv) *I impose personal penalty of Rs. 10,00,000/ (Rupees Ten Lakhs Only) on Shri. Kishore Madhav Thatte, Senior Vice President (Finance) and Company Secretary (noticee no. 2) of M/s. B.G. Shirke Construction Technology Pvt. Ltd. in show cause issued under F.No. V/25/2014-15 BZU-4774/2015 dated 3.11.2015 and Rs.*

1,00,000/ (Rupees One Lakh Only) in show cause issued under F.No. V(73)15-62/Adj/Commr/2015-16 dated 5.4.2016 totally amounting to Rs. 11,00,000/ (Rupees Eleven Lakhs Only) under rule 26(1) of the Central Excise Rules, 2002.

- v) *I do not impose personal penalty on Shri. Vijay B. Shirke, Chairman and Managing Director (noticee no. 3) of M/s. B.G. Shirke Construction Technology Pvt. Ltd. as discussed in para 98.2 above.*

This order is passed without prejudice to any other action that may be initiated against the noticee under the Central Excise Act or Rules made there under or any other law for the time being in force in India."

B. PUN-EXCUS-001-APP-114/2019-20 dated 30.09.2019 – Commissioner (Appeal) has upheld the order in original No PUN-EXCUS-001-ADC-RKD-0-19/18-19 dated 30.11.2018 holding as follows:

"ORDER

21.1 *I reject the classification of the subject excisable goods i.e. 'Silo' under Chapter Sub-heading 84379090 of the erstwhile Central Excise Tariff Act, 1985 adopted by M/s. B.G. Shirke Construction Technology Pvt. Ltd., 72-76, Mundhwa, Pune 411036 and hold that Silos are to classified under chapter sub-heading 94060099 of the erstwhile Central Excise Tariff Act, 1985 as is proposed in the subject Statement of demand.*

21.2 *I confirm the invoice value of clearance of Rs. 15,20,76,461/- (Rupees Fifteen Crore Twenty Lakhs Seventy Six Thousand Four Hundred and Sixty One Only) during the period January, 2016 to June, 2017 is to be considered as assessable value under Section 4 of the erstwhile Central Excise Act, 1944 involving Central Excise*

21.3 *I confirm and determine the demand of duty of excise amounting to Rs 1,90,09,557/- (Rupees One Crore Ninety Lakhs Nine Thousand Five Hundred and Fifty Seven Only) made by the Statement of Demand No 08/CEX/PUNE-I/CGST/ADC/2018 dated 25.01.2018 and short paid by*

M/s. B.G. Shirke Construction Technology Pvt. Ltd., 72-76, Mundhwa, Pune 411036, during the period January, 2016 to June, 2017 under the provisions of Section 11A(1) of the Central Excise Act, 1944 read with Section 11A(10) of the Central Excise Act, 1944; as the same is sustainable for the reason discussed in Para 18 above.

21.4 I confirm the demand of interest made under the provisions of Section 11AA of the Central Excise Act, 1944. On the confirmed and determined amount of duty of excise amounting to Rs 1,90,09,557/- in above para 21.3, for the reasons discussed in para 19 above; and

21.5 I impose penalty of Rs. 19,00,956/- (Rupees Nineteen Lakhs Nine Hundred and Fifty Six Only) under the provision of section 11 AC of the Central Excise Act. 1944 for the reasons discussed in Para 20 above on M/s. B.G. Shirke Construction Technology Pvt. Ltd., 72-76, Mundhwa, Pune 411036

22. This order is passed without prejudice to any other action that may be initiated against the noticee under the Central Excise Act or Rules made there under or any other law for the time being in force in India."

2.1 Appellant is registered with Central Excise department vide registration certificate No. AAACB7293DXM001, and are engaged in execution of infrastructure projects and manufacture of MS fabricated steel structures, doors, windows, frames classifiable under chapter 73 of the Central Excise Tariff Act, 1985. They are also engaged in manufacture of silos and classifying the same under the chapter sub-heading 84379090 of the Central Excise Tariff Act, 1985 at Nil rate of Central Excise duty, in their post harvest division.

2.2 Based on the specific intelligence gathered by the officers of Bangalore Zonal Unit of the Directorate General of Central Excise Intelligence (DGCEI, BZU for short), Appellant are misclassifying the Silos manufactured by them under Chapter Sub-heading 84379090 of the Central Excise Tariff Act, 1994 and are clearing at Nil rate of central excise duty, though the Silos manufactured and cleared by them appear classifiable under

Chapter Sub-heading 94060099 of the Central Excise Tariff Act, 1985 and attracting normal rate of Central Excise Duty, investigation/ enquiries were initiated.

2.3 On the basis of investigation undertaken revenue was observed that the silos manufactured and cleared by M/s, BGSCIL, Pune have the essential character of prefabricated buildings and has an independent function of storage or housing of grains / other produce / finished product, etc. Hence, in accordance to Rule 2(a) and Rule 3 of the General Rules of Interpretation of the First Schedule to the Central Tariff Act, 1985 and section note 4 of section XX of chapter 94, the silos manufactured and cleared by M/s. BGSCIL, Pune appear to be rightly classifiable under Chapter Sub-heading 94060099 of the first schedule of Central Excise Tariff Act, 1985 and is subjected to normal rate of Central Excise Duty.

2.4 Accordingly show cause notice dated 03.11.2015 was issued by the Additional Director General DGCEI, Bangalore asking the appellants to show cause as to why:

(i) The Silos manufactured and cleared by them should not be classified under chapter sub-heading 94060099 of the Central Excise Tariff Act, 1985 and the invoice value of clearance of Rs. 87,17,11,215/- (Rupees eighty seven crore seventeen lakh eleven thousand two hundred and fifteen only) during the period October 2010 to March 2015 should not be considered as assessable value under Section 4 of the Central Excise Act, 1944;

(ii) The central excise duty amounting to Rs. 10,29,51,319/- (Rupees ten crore twenty nine lakh fifty one thousand three hundred and nineteen only) [inclusive of cess] on the manufacture and clearance of Silos for the period October 2010 to March 2015 as detailed in Para 21 above and worksheet - 1 should not be demanded and recovered from them under proviso to Section 11A(1) (period upto 07.04.2011) and as per Section 11A(1) and Section 11A(4) (from 08.04.2011) of the Central Excise Act, 1944;

(iii) Interest at the appropriate rate as prescribed under Section 11AB and Section 11AA of the Central Excise Act, 1944 should not be demanded on the amount mentioned at Sl.No. (ii) above,

(vi) Penalty should not be imposed on them under Section 11AC of the Central Excise Act, 1944 Rule 25 of Central Excise Rules, 2002 for non-payment of central excise duty with an willfull intention to evade payment of central excise duty;

2.4 Shri Kishore Madhav Thatte, Senior Vice President (Finance) and Company Secretary and Shri. Vijay B. Shirke, Chairman and Managing Director of Appellant were called upon to show as to why penalty under Rule 26 of Central Excise Rules, 2002 should not be imposed on him for the offences committed.

2.5 Two Statement of Demands dated 05.04.2016 and 25.10.2018 were issued for the subsequent period demanding the duty for the periods April 2015 to December 2016 and January 2016 to June 2017.

2.6 The show cause notices have been determined as per the impugned order referred in para 1 above.

2.7 Aggrieved appellants have filed these appeals.

3.1 We have heard Shri Bharat Raichandani, Advocate for the appellant and Shri Deepak Bhilegaonkar, Additional Commissioner, Authorized representative for the revenue.

3.2 Arguing for the appellant learned counsel submits-

- At the outset, the appellant states that the above reasoning in the impugned order is not correct. In fact, the 8 digit tariff was introduced in 2005. What prompted the department to investigate in 2014 and issue show cause notice in 2015 came to the knowledge of the appellant after filing RTI application. The appellant sought information under the provisions of the Right to Information Act, 2005 vide letter dated. 08.01.2016. In the said application, the appellant sought the following information: "From 2011 till date, inform if Central Board of Excise and Customs (CBEC) had sought views/comments on classification of grain storage silos; (ii) Inform if the reply was sent to CBEC by the office of the Chief Commissioner of Customs and Central Excise, Pune."

- In reply thereto, vide letter dated 19.01.2016 the above information was provided to the appellants along with copies of the communication sought thereof. On perusal of letter F. No. 84/04/2012-CX.I dated 15.10.2012, it is clear that the CBEC had sought the view of the Pune Commissionerate on the issue of classification. The same was sought on a reference made by M/s Fowler Westrup (India) Private Limited vide letter dated 17.09.2012. In reply to the CBEC, the Ld. Chief Commissioner of Central Excise, Pune vide letter F. No. IV/16-104/CCO/PZ/TECH/2012 dated 09.01.2013 has categorically stated that the silo system manufactured by the appellants would merit classification under chapter 8437. It has also been stated that the same issue has been decided by the Hon'ble CEGAT vide order No. E/442 and 443/1995-B in their own case and the said order has been accepted by the department (vide CBEC letter F. No. 304/71-72/06-C). The said letter has been written by the Ld. Chief Commissioner of Central Excise, after the introduction of the eight digit tariff.
- Once the said issue stands settled and decided, accepted by the department and endorsed by the Chief Commissioner of Central Excise as well as the CBEC, the present show cause notice is nothing but an attempt to usurp the settled issue. However, shockingly, the Ld. Commissioner does not even advert to the said correspondence. The impugned order is clearly malafide attempt to re-agitate decided issue of classification, which is clearly impermissible in law. The Ld. Commissioner has passed the impugned order with a pre-meditated mind.
- In view of the above settled legal position, the impugned order is nothing but a blatant attempt to re-agitate the entire issue of classification, having lost at the hands of this Hon'ble Tribunal, without challenging the same. This is clearly impermissible in law. The AO is bound by decision of this Hon'ble Tribunal. It is well established principle of judicial discipline that the orders passed by the higher appellate authorities must be followed unreservedly

by the subordinate authorities. Once the decision given by the higher appellate authority is accepted by the Revenue, then, it is not open to the AO to doubt the correctness of the order passed by the appellate authority and must follow the appellate order.

- Reliance placed on amendment in 2005 from six digit to eight digit classification is irrelevant
 - the eight-digit classification code for excise was introduced to accommodate the demand from trade and industry for the adoption of a common commodity classification (based on internationally adopted HSN) to be used for all trade related transactions to facilitate international and domestic trade. It would also remove the difficulties arising due to divergence in classification by different departments and agencies and would facilitate international trade. It would also facilitate collection and compilation of specific data on commodities of special significance to India and sharing such data among various agencies. The expansion of the tariff classification would provide flexibility in the international trade negotiations along with facilitating collection of specific statistics. A common eight-digit commodity classification code would also facilitate effective computerization of tax administration and electronic data processing. This was the rationale for introduction of eight digit classification. Hence, it is clear that there was no deviation on the classification per se from the six digit classification system. The Commissioner clearly seems to be oblivious of this crucial aspect.
 - There has been no change in the classification of the product, in question, under the 8 digit classification vide the 2005 amendment. The silos would still be classified under tariff item no. 8437 of the Central Excise tariff. The transition from six digit classification to eight digit classification is only for purposes of alignment and does not call for reclassification of the goods manufactured by the

appellants. The issue of classification of "silos" is settled by the judgment of this Hon'ble Tribunal in their own case.

- In light of the decision of Hon'ble Bombay High Court in the case of Eco Valley Farms & Foods Limited [2013 (290) ELT 49 (Bom)] it is abundantly clear that the Department is bound by the classification approved and verified way back in 1994, as there is no change in law (vide 2005 amendment) in so far as the classification of the goods in question is concerned.
- Vide Circular No.808/05/2005-CX dated 25.02.2005, while clarifying the implementation of the eight digit tariff, the CBEC observed that the Government had no intention to vary the duty structure of the goods while transition from six digit to eight digit and the changes were of technical nature. Further, the said circular also clarified that the field officers must guide the assessee for smooth transition from six digit to eight digit tariff and every possible assistance should be provided to the assessees for classification. It is settled law that circulars issued by the department are binding upon department. The Revenue cannot argue contrary to their own circulars.
- Chapter heading 9406 was existing even under earlier six digit tariff. This fact is not in dispute. In fact, the show cause notice admits this factual position. If that be so, the department never made out a case under chapter heading 9406. Then, what could be the reason for change in classification sought by the department. If the silo manufactured by the appellants is a pre-fabricated building, as held by the Ld. Commissioner, today, then it would have been a pre-fabricated building then as well. It cannot become a pre-fabricated building as per the whims and fancies of the officers of central Excise department. Further, there is no allegation or finding that the silo system manufactured and sold by the appellants would merit classification under chapter heading 94060093. This is the only cause for the department to classify under chapter 9406. The "other" under chapter

heading 94060099 would not and cannot mean "other silos for storage". The same is a residuary entry of "other prefabricated buildings". If under the six digit era, the silo system was not a "pre-fabricated building" for the department; the same cannot be covered under chapter 9406 even under the eight digit classification era. The Revenue is estopped from contending that the silo system manufactured by the appellants would merit classification under chapter 9406.

- It is not the claim of the department that the silo system supplied by the appellant would merit classification under chapter heading 94060093 which covers "silos for storage of ensilage". Admittedly, the said classification has been ruled out. In such a situation, it is well settled that specific heading has to be preferred over residuary entry.
- The Revenue cannot keep raking the same issue over and over again. Once the issue has been decided by the highest appellate authority, the same cannot be re-opened under any new guise or pretext. No fresh facts have come to light. The factual position remains the same. Hence, the rule of constructive res judicata will apply in the facts of the present case. Therefore, the present proceeding is barred by the rule of res judicata.
- Reliance placed on the decision in Eminence Equipments Private Limited 2015 (330) ELT 344 is uncalled for. The facts of the said case are totally different and distinguishable from the facts of the present case.
- The Ld. Departmental Representative also submitted that there is no estoppel in law. He relied on judgment of the Supreme Court in the case of Dunlop India 1983 (13) ELT 1566 (SC). The said principle was held in the case of party seeking to change the classification. Even otherwise, the question in the instant case is not of estoppel but judicial discipline.
- Silo system" will not be classifiable under tariff item no. 9406 0099
 - The Ld. Commissioner discusses the mean of the term "building" and based on the brochures, holds that the silo manufactured by the appellants consists

of structures enclosed with exterior walls and roof and thus can be considered as a 'building'. Hence, according to the Ld. Commissioner, the silo is a pre-fabricated building in terms of chapter Note 4 to Section XX of Chapter 9406. Further, the Ld. Commissioner holds that silos of storing ensilage are classifiable under chapter heading 94060093 and therefore, other silos for storage of other goods would be classified under "others" under chapter heading 94060099. Under the eight digit classification, according to the Ld. Commissioner, specific heading for silos has been introduced and hence, according to the Ld. Commissioner, the specific heading needs to be adopted.

- Chapter Note 4 to Chapter 94 provides that for the purpose of heading 9406, the expression "prefabricated buildings" means buildings which are finished in the factory or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings. Assuming whilst denying chapter note 4 to chapter 94 were to be relevant for deciding the classification of "silo system" as held by the Ld. Commissioner, even in such case the same would not cover the "silo system" manufactured by the appellants. The chapter note refers to prefabricated buildings. In the instant case, the appellants are not engaged in manufacture of prefabricated buildings but are manufacturing silo systems which are machines installed at the site of the customer along with material handling equipments which perform specific functions. In any case, the illustrations referred to in the chapter note refer to offices, schools, shops, sheds, garages etc. The same are civil structures. The final product, in the present case, whose classification is in dispute, is not of the nature as referred in the chapter note. The principle of ejusdem generis would apply in the instant case.

- the reasoning given in the impugned order by the Ld. Commissioner to seek classification of the "silo system" under tariff item no. 9406 0099 consists of structures with exterior walls and roof which is akin to a building. The appellants submit that this finding is completely contrary to factual position as explained above. The appellants submit that there are no walls or four corners in the silo system. The appellants submit that any and every structure cannot be considered as building.
- On a plain perusal of the above HSN, it becomes clear that the above chapter heading seeks to cover only prefabricated buildings meant to be used as housing, worksite, accommodation, offices, schools, shops sheds, garages and greenhouses. This is further evident from the fact that the said HSN refers to electrical fittings, heating and air conditioning equipment sanitary equipment, kitchen equipment and items of furniture. Obviously, the silo system, in the instant case, would not have any of the said equipments. Though this specific submission was made, the Ld. Commissioner chooses to conveniently ignore the same.
- Most importantly, there is no allegation in the show cause notice that the "silo system" would merit classification under tariff item no. 9406 0093 "silos for storing ensilage". There is only one entry referring to "silos". The Ld. Commissioner also admits this in the impugned order. However, the Ld. Commissioner also does not classify the same under the said chapter heading. Silage is fermented, high-moisture stored fodder which can be fed to cattle, sheep and other such ruminants (cud-chewing animals) or used as a biofuel feedstock for anaerobic digesters. It is fermented and stored in a process called ensilage, ensiling or silaging, and is usually made from grass crops, including maize, sorghum or other cereals, using the entire green plant (not just the grain). Silage can be made from many field crops, and special terms may be used depending on type. Silage is made either by placing cut green vegetation in a silo or pit, by piling it in a large heap

and compressing it down so as to leave as little oxygen as possible and then covering it with a plastic sheet, or by wrapping large round bales tightly in plastic film. Hence, 'silo system' would not merit classification under chapter heading 9406.

- Fourth, most surprisingly, the appellants submit that chapter heading 9406 00 covers "pre fabricated buildings". Within the said classification, there are two sub-classifications (--- (3) dashes): (a) Green Houses and (b) Other. Within the said sub-categorization (other), there is further sub-classification (--- (4) dashes): (91) prefabricated housing material; (92) pre fabricated construction for cold storage; (93) Silos for storing ensilage and (99) other. The case of the department is that the silo system manufactured by the appellants would merit classification under (99) i.e. other. However, the "other" under (---- (4) dashes) would draw parentage from "other" under (-- (3) dashes) and "other" under (--- (3) dashes) would draw parentage from "Prefabricated buildings" (- single dash). Thus, the classification sought to be adopted by the department is other of other pre-fabricated buildings. Once the silo system, as explained hereinabove, is not a "pre-fabricated building", the question of classifying the same under the residuary chapter heading thereof would not arise.

3.3 Arguing for the revenue learned authorized representative while reiterating the findings recorded in the impugned order submits:

- Appellants are claiming that the "Silo System" manufactured by them are classifiable under Ch. Sh.84379090. It is a well settled principle of law that the goods are to be assessed in the form in which they are at the time of their clearance as have been held in following cases.
 - Dynaspede Integrated Systems P. Ltd. [1997 (89) E.L.T. 193 (Tribunal)] (
 - Sunil Industries [1999 (113) E.L.T. 931 (Tribunal)]

- Sanghi Polyesters Limited [2003 (155) E.L.T. 381 (Tri. - Bang.)]
 - M.M. Rubber Co. Ltd. [1989 (41) E.L.T. 343 (Tribunal)]
 - Vardhman Acrylics Ltd. [2002 (146) E.L.T. 604 (Tri. Del.)]
- Appellants are not manufacturing "Silos System" in the factory but even as per their own invoices and admission, what they manufacture and clear is "silo" or as per their invoices "Components of Silo System", thus the classification of Silo System, which as per their own admission is immovable property, is not relevant.
 - Ch. Sh. 8437 is classifying the excisable goods answering to the description of being "Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery". The Silo as cleared from the factory (at the time of assessment at factory for payment of duty) were not capable of performing any of the above said function of cleaning, sorting or grading seed, grain or dried leguminous vegetables and also the same were not cleared to any milling industry or for working of cereals or dried leguminous vegetables.
 - What is emerging at the Customers' end is not relevant. What the 'Silo System' is capable of performing is not relevant in as much as the present issue is not of classification of silo System (which is admittedly immovable property) but even as per the admission of the Appellants, the product manufactured and cleared by them is "component of Silo System" and not "Silo System".
 - Appellants claim that the Commissioner has no authority to question classification of silos when the same is decided by the Tribunal. However, as it is made clear in the SCNs as well as in Order-in-Original, due to the change in the Tariff from 6 digit to eight digit, there is introduction of specific entry for Silos under Chapter 94.

- It is well settled that the principle of Res Judicata is not applicable in Taxation matters. For this the following case laws are relied upon
 - Swaraj Mazda Ltd. [1995 (77) E.L.T. 505 (S.C.)]
 - Jain Exports Pvt. Ltd., [1987 (29) E.L.T. 753 (Del.)]
 - Peico Electronics and Electricals Ltd. [1994 (71) E.L.T. 1053 (T)]
 - Grasim Industries Ltd. [2006 (201) E.L.T. 565 (Tri. Chennai)]
 - A.B. Mauri India Pvt. Ltd. [2010 (260) E.L.T. 424 (Tri. Mumbai)]
 - Hewlett Packard Ltd. [1999 (108) E.L.T. 221 (Tribunal)].
- On the applicability of rule 2(a) of Rule of Interpretation reliance is placed on the decisions as follows:
 - Pioneer Embroideries Ltd. [2015 (322) E.L.T. 602 (S.C)]
 - Bharat Bijlee Ltd. [2014 (309) E.L.T. 129 (Tri. Mumbai)]
- The claim of the Appellants' that CEGAT order dtd. 10/11/1995 [1996 (81) ELT 417 (Tribunal)] is supporting their case is not correct. In that case, the issue was of classification of the product "Silo Grain Storage System" of M/s Shirke Structurals Pvt. Ltd. The Appellants therein contended that their product "SILO Grain Storage Complex" is not simply a bin for storage but a complex system for scientific grain preservation and handling which is mainly used by various industrial units such as milling plants etc. for storage of purchased grains till it is used. Hence, Heading 84.37 which includes machinery used in the milling industry other than farm type machinery also is appropriate. It may be appreciated that even though the product was different ("SILO Grain Storage Complex") from the present product "Components/Accessories of GIC Silo System" of the Assessee/Appellants, nowhere the Tribunal has held that the product was capable of cleaning, sorting or grading seed, grain or dried leguminous vegetables. The Tribunal also observed that "..from the list

of customers produced before us, it appears that it is being used mostly by milling industry at present..."

- Appellants contend that Silo System has accessories attached for multiple purpose of loading etc. However, this is not relevant as the issue is not of classification of Silo System but the excisable goods cleared as "Components/accessories of Silo System" and whether the same were answering to the requirement of present ch.Sh.8437 and perform the functions as stated therein in the state as cleared from the factor at the time of assessment.
- The Purchase Order is giving description of the goods. There are evidences in support that Silos were cleared which were capable of storing only and used exclusively for storing. The Appellants have not produced any evidence to the contrary.
- Appellants admitted that the Silo System emerges when Silos manufactured by the Appellants are installed at the premises of the customers with other components/accessories. The Appellants further claim that while determining the classification of a product, the function, nature and end use of final product has to be borne in mind, and for this reason Rule 2(a) of General of Interpretation is not applicable.
- It is an admitted fact that silos as cleared from factory were not capable of performing the functions as required under ch.sh.8437 and had no essential characteristics to perform also, they were capable of storing only.
- Appellants claim that they manufacture 'Silo System' which consists of silos manufactured by the appellants, auxiliary machines/ material handling equipments etc. The entire system performs the functions of cleaning, sorting, grading etc. Since, the issue in this case is not the classification of the entire system but only 'silos' manufactured and cleared by the Appellants which admittedly do not perform the functions as specified under ch.sh.8437, the Commissioner has correctly denied classification of silos under ch.sh.8437.
- HSN notes are correctly relied upon.

- The Adjudicating Authority in the OIO, relied on (i) the Supreme Court judgments in the case of International Tobacco [2009-TIOL-11-SC-CX] in support of the revenue contention that for classification, the basic character, function and uses are more important than the name in trade parlance (ii) Judgment in the case of Pesticides Manufacturing and Formulators Association [2002 (146) ELT 19 (SC)] in support of the revenue contention that for classification, chapter notes have to be given preference over the general rules of interpretation. It was also contended that the Tribunal order was for the period prior to 2004 pertaining to old tariff entries of six digits.
- The Appellants claim that 'Silo System' is not a prefabricated building but it is a complex system fitted with accessories/components etc. The classification under issue is not of 'Silo System' but 'Silos' manufactured and cleared by the Appellants in CKD conditions.
- The Appellants claim that Chapter Note 4 to Chapter 94 is not applicable as they do not manufacture prefabricated building. The prefabricated buildings are defined under Chapter note/Section note 4. Since their product is squarely falling under the definition as elaborated in the OIO, the same is to be considered for classification under Ch.sh.94060099.
- Appellants contend that the silo system has no walls or corners. It is again repeated that the silos manufactured and cleared by the Appellants are only storage devices covered from all the sides and thus are specifically covered under ch.sh.94060099.
- The Appellants claim that reliance placed on amendment in 2005 from six digit to eight digit is irrelevant. The dispute is not just arisen due to shifting of six digit Tariff system to eight digit but the wrong classification of Silos in spite of there being a specific entry. The product manufactured and cleared during the disputed period is different from the product classified by the CEGAT in the Order [1996 (81) E.L.T. 417 (Tribunal)] dated 10/11/1995.
- There is no case laws which decides that even if there is new specific entry in the changed tariff, the old entry

should be continued. In Crane Betel Nut Powder Works decision, it was decided what activities were not amounting to manufacture would not becoming manufacturing just because of change in tariff from 6 digit to 8 digit. Similar is the case in Eco Valley Farms & Foods Limited where the excitability of the product was in issue.

- Circular No. 808/5/2005-CX., dated 25-2-2005 nowhere says that the new tariff should not be given effect and even if specific headings are incorporated in the new tariff, the old classification should be continued. Thus the contention of the Appellants are baseless.
- The Appellants claim that primary classification has to be preferred over residuary classification. Silos are specifically classified under Chapter 94 and thus the same should be preferred.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For confirming the demand of duty against the appellant following findings have been recorded in the impugned order:

"93.1. *I find that Shri D.B.Ghule, DGM (Production) of noticee no. 1 in his statement dated 15.12.2014 has stated that Silos are being used for the sole purpose of storage of grains and that it is not used for preservation purpose such as cold storage, freezer, etc. From the statement it is also seen that Silos are manufactured using galvanized iron sheet, H R. sheet. M.S. angles, M.S. channels, nut-bolts, washers, etc. That the galvanized iron sheets and H.R. Sheets are cut into required sizes as per the bill of material and then the sheets are processed for corrugation, punching, rolling, bending, welding, etc; the process involves fabrication of the galvanized iron sheet/H.R. sheet; that for the said processes shearing machine, corrugation machine, punching machine, rolling machine, welding machine, etc. are used. The entire process of manufacture of Silo System is being carried out at the plant of noticee no. 1. Silo Systems are dispatched in completely knocked down condition (CKD) and are assembled at site of the customer.*

93.1.1. *Shri. Suresh R. Thakar, General Manager of noticee no. 1 is his statement dated 15.12.2014 has stated that they are manufacturing Silos and clearing the same under Chapter Sub-heading 84379090 as components/accessories of GIC Silo System; that they are classifying the Silos under the Sub-heading 8437 by virtue of CEGAT Order No. E-442 and 443/1995-B dated 10-11-1995 in their own case. As regards the description of goods under heading 8437 of the Central Excise Tariff Act 1985 and explanation thereof he stated that the entry in the chapter 8437 is for "Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm type machinery". Regarding description of goods under the heading 94360093 and 94060099 of the Central Excise Tariff Act. 1985, he has stated that Chapter 94 contains furniture, bedding, mattress supports, cushions and similar stuffed furnishing, lamps and light fittings, not elsewhere specified or included; illuminated signs, illuminated name plates and the like; prefabricated building; as per CETH 94060093 it is mentioned as 'Silos for storing ensilage' and 94060099 is for 'Other'.*

93.1.2. *Shri Kishor Madhav Thatte, Vice President (Finance) and Company Secretary (notice no. 2) in his statement dated 20.01.2015 has stated that they manufacture Silos, which are dispatched in parts (in CKD condition); Silos installed at the site of the clients after testing; they manufacture Silo Systems based on the customer requirements and their usage depends on the customer's choice and preferences; they are not manufacturing conveyor belts, bucket elevators, pre-cleaners, in their factory and if it is required by the customer, same are supplied to them as bought out items or otherwise they supply only Silo System. I find that he has also stated that the description under 8437 of CETA, 1985 states that "Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery"; also that they are clearing the Silo System without payment of Central Excise duty which is in conformity with the CEGAT Order*

No. E/442 & 443/1995 - B dated 10.11.1995 in their own case. In his statement dated 18.08.2015 he has stated that accessories of Silo such as ACC Discharge Gates, ACC Level Switches, Bucket Elevator, Chain Conveyor, Aerated Fan, Filter Unit, Sweep Auger Motorised Gate, Temperature Monitoring Device, etc. are not supplied to all the customers and the supply of accessories depends on the customer's requirement.

93.1.3. On going through noticee no. 1's brochure (POST HARVEST EQUIPMENT DIVISION) I find that the specification in the brochure mentions "GIC SILO GRAIN STORAGE SYSTEM - For grain based industries, Starch Plants, Solvent Extraction Plants, Flour Mills. Rice and Oil Mills, Breweries, Grains based Distilleries, Cattle Feed / Poultry Feed Plants, Silo capacity from 5MT to 10000 MT each".

93.2 In view of the above it is apparent that:

93.2.1 The GIC Silos manufactured by noticee no 1 are primarily storage equipments for agricultural produce.

93.2.2. I also find that they are clearing the Silos as 'parts' by classifying them under 84379090. But in the present case, from the statement of the Production Manager Shri. D. B. Ghule dated 15.12.2014, of noticee no. 1 it can be clearly seen that complete Silos were manufactured and thereafter they were transported in CKD condition and assembled at customer's site. The product catalogue produced by them also shows that it is a complete finished article and not a part. I find that Silos manufactured and cleared by noticee no. 1 (called 'Silo System' by them) by itself is only an equipment which can be used for storage of grains and is not a part of any machinery. The Silos manufactured at the factory are merely dismantled into CKD or SKD condition in order to enable them to be easily transported to the site of installation. It therefore appears that the classification under CETH 84379090 as a 'part/component' is not correct. The detailed discussions in this regard are herein below.

93.3. In common parlance "Silo" is a structure for storing bulk materials. They are used in agriculture to store grain or fermented feed known as silage. Silos are more commonly used for bulk storage of grain, cement, sugar etc.

In this regard I find that as per the general rules of interpretation of Schedule to Central Excise Tariff, both prior to eight digit classification and subsequently too, any reference to an article if it has essential character of complete or finished goods, it should be classified as a finished article itself. For better appreciation, Rule 2(a) of General Rules for Interpretation of CETA, 1985 is reproduced below-

"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". (emphasis supplied)

As per Rule 3(a) of General Rules for Interpretation of the First Schedule to the Central Excise Tariff Act, 1985 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 under-

a) the heading which provides the most specific description shall be preferred to heading providing a more general description. However, when two or more headings each refer to part of any 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 more complete or precise description of the goods. (emphasis supplied)

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. (emphasis supplied)

93.3.1. However I find that the description of excisable goods mentioned under Chapter Heading 8437 of the Central Excise Tariff Act, 1985 is -

"Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm type machinery".

93.3.2 On plain reading of the description of the goods under the Chapter Heading 8437 of CETA, 1985, I find that the basic criteria for classifying the goods under Chapter Heading 8437 is that the goods should be a machine which performs the function of cleaning, sorting or grading seed grain or dried leguminous vegetables or machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery. In the said heading I find that there is no specific mention of grain storing machine either singly or in association. with other equipment / machine so as to impute specific heading for the goods viz; Silos for storage as are manufactured/fabricated by the noticee no. 1 and declared in their brochure. In fact, there is no mention of Silos or storage device in said heading. Hence, I find that Silos manufactured by noticee no.1 do not fit the description under Chapter heading 8437 inasmuch as the Silos are used only for storage of grains as stated by the representative of noticee no. 1 in their various statements as also as is stated in their brochure.

93.3.3. On going through the statements of Shri Ajay Das Gupta of M/s. Gujarat Ambuja Exports Ltd., Shri Sanjay Jamdade of M/s. Millenium Starch India Pvt. Ltd. and Shri P.S.Inganahalli of M/s. Bilagi Sugar Mills Ltd. regarding the functions of Silos I find that Silos are used only for storage of maize and sugar of different grades. Silos do not consist of any mechanical device to perform the function of cleaning, sorting, grading of food grains as it does not consist of any mechanical device to do such functions. For carrying out functions of cleaning, sorting etc. Silos are required to be fitted with bought out accessories. From the statements recorded it is evident that a Silo manufactured and cleared by noticee no. 1 is not a standardized equipment manufactured for carrying out the function of cleaning, sorting or grading seed, grain. or dried leguminous vegetables or it is not a machinery used in the milling industry or for the working of cereals or dried leguminous vegetables as claimed by noticee no.

1. On the other hand it is built as per customer's requirement and is used merely for storing purposes. I find that noticee no. 1 manufactures and supplies only Silos for storage purpose. In case some auxiliary machines are required by the customer (like for sorting, cleaning filtering, grading), the auxiliary machinery is obtained from other sources by them and supplied along with their manufactured Silos to customer's site as bought out items. I find that the act of simply supplying the other bought out machinery along with Silos will not transform Silos into a machinery for cleaning, sorting or grading seed, grain or dried leguminous vegetables or a machinery used in the milling industry or for the working of cereals or dried leguminous vegetables. Also on going through the invoices issued by noticee no. 1 it is obvious that Silos are not exclusively cleared to the milling industry and are also cleared to various industrial customers who manufacture agri-based products which are in turn excisable products. The Silos are specifically designed as storage equipments used for storing of grains, agricultural produce, finished products, liquids, etc.

93.3.4. On going through noticee no.1's purchase documents discussed in detail in the Show cause notice I find that they have procured specific machinery performing individual function like chain conveyor, grain discharger, three way diverters, aeration blowers, etc. for supplying the same with their own manufactured Silos. I find that these purchased goods are classified on merits and in certain instances the suppliers have even paid central excise duty on them. I am therefore of the view that when specific machinery performing a particular function that is supplied with Silos is not being classified under 8437 CETA, 1985, mere addition of the same with Silos at the site of customers will not make the Silos a machinery manufactured at the factory of noticee no. 1 that performs function of cleaning, sorting or grading seed, grain or dried leguminous vegetables or machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery.

93.3.5. In this regard, I reproduce below the explanatory notes to Chapter 8437-

- MACHINES FOR CLEANING, SORTING OR GRADING SEED, GRAIN OR DRIED LEGUMINOUS VEGETABLES

This heading covers machines, whether of horticultural, agricultural or industrial

This heading covers machines, whether of horticultural, agricultural or industrial types, of a kind used for cleaning, sorting or grading cereal grains, dried leguminous vegetables, seeds, etc, by winnowing, blowing, sieving, etc. Such machines include:

- Fanning mills consisting of a feeding hopper, a blower and sieves (usually vibrating).*
- Grading winnowers, rotating winnowers and seed or grain selectors, more complex machines which clean by means of air currents, and grade the seed or grain according to weight, size or shape. Some seed selectors, etc., incorporate auxiliary devices for coating the seeds with insecticide powders, etc.*
- Sieving belts, often used for cleaning beet seed. They consist of a series of rolls operating an endless inclined belt running under a feeding hopper. The seeds roll freely to the bottom of the belt but the light vegetable waste adheres to the plushy surface of the belt fabric.*
- Special machines for selecting and grading seed for planting. This heading also covers machinery used in the milling industry for cleaning, sorting or grading grain prior to milling. Some of these machines are based on the same principles as the winnowing, screening and grading machines described above, but are designed lot larger output and are specialized for the milling industry, e.g.:*
- Cyclone separators for cleaning the grain.*
- Machines for cleaning and grading by the action of revolving pocketed or perforated drums.*
- Aspirator separators with oscillating sieves.*
- Separators and graders of the magnetic or electromagnetic types.*
- Washing, stone-removing and "whizzing" machines, with or without subsidiary drying columns.*

-Grain brushing machines.

-Grain dampening machines, whether or not incorporating heating or weighing apparatus.

The heading also includes combined machines which clean, sort and grade simultaneously, including machines incorporating devices for electro-magnetic separation.

(II) MACHINERY USED IN THE MILLING INDUSTRY

In addition to machinery for cleaning, sorting or grading grain prior to milling, the following are included as machinery used in the milling industry:

- Certain machines for mixing or preparing grain prior to milling, e.g.. -Machines for mixing grain in pre-determined quantities.

-Grain scouring machines consisting of spiked drums turning against rubber cylinders and thus eliminating the softer grains.

However, the heading does not cover-

-Plant operating by temperature change (heading 84.19). For example, heading 84.19 covers such drying or cooling columns, but grain dampening machines with thermal equipment remain in this heading.

-Centrifugal dryers (heading 84.21).

-Conveyors and elevators (e.g., of the bucket, belt or pneumatic suction types) (heading 84.28)

D) Grinding or crushing machinery, e.g.: -Grinding mills.

-"Breaking" rolls or mills composed of several sets of grooved rollers, sometimes internally cooled, which crush the grain into middling's, semolina and flour.

-Reduction rolls or mills with smoother rollers, specially designed to convert middlings, semolina, etc., into flour.

-Disintegrators or impact grinders used to grind down into flour, the meal, etc., which adheres to the mill or converter rollers in the preceding processes.

-Feeders, machines designed to ensure a regular and even flow or grain to the crushing rollers.

The heading does not include small farm type grinding mills (heading 84.36).

- *Machinery for the sorting or separation of flour from sharps or middlings.*

- *This group included machines for separating the flour, meal, middlings, sharps, etc., produced by milling.*

- *This separation is effected by a series of operations carried out on the following types of machines which are often used in series:*

- *Sifting machines ("bolters") for separating flour from groats and cereal*

Centrifugal sifters (or "reels") consist of drums fitted internally with beater bars and covered externally with gauze of various mesh sizes. Oscillating sifters or plansifters consists of

nests of free-swinging superimposed sieves and collecting trays.

- *Sieving machines or "purifiers". These grade the middlings etc. and also blow off the bran by means of vibrating sieves through which a current of air is drawn.*

- *Bran cleaners.*

- *Blending machines for flour, bran etc.; also machines for adding vitamins to flour.*

However, the heading does not cover:

- *Flour-drying machines (heading 84 19).*

- *Air filters and "cyclones " used to extract the dust from the exhaust air issuing from sorting or bolting machines (heading 84.21)*

- *"Extraction recorders" for recording the flour extraction rate, and other flour testing apparatus of Chapter 90.*

(III) MACHINERY USED FOR THE WORKING OF CEREALS OR DRIED LEGUMINOUS VEGETABLES

The working referred to is generally preceded by preliminary cleaning, sorting or grading above.

This group includes:

- *Machines for husking cereals or dried leguminous vegetables.*

- Rice hulling or polishing machines.
- Machines for splitting dried peas, lentils or beans.
- Machines for preparing rolled or flaked oats etc.. whether or not incorporating auxiliary heating devices.
- Special milling and grinding machines for milling cereals (other than bread grains, or dried leguminous vegetables into flour.
- "Bearding" machines and "clipping" machines designed to remove the "beards "or" points" from barley or oat grains.

This part of the heading does not cover:

- Machinery or plant operating by heat exchange (eg. Steamers, drying apparatus or roasting plant for the manufacture of puffed or toasted grain, plant for malting barley, for roasting flour, etc) (Heading 84.19).
- Machines for processes beyond the flour-making stage (eg. Bakery, preserving or macaroni making) (heading 84.38).

93.3.6. From the explanation and goods description in the HSN on Chapter 8437 above, it is evident that the Silos are not covered under Chapter Heading 8437. I also find that none of the activities mentioned in the explanatory notes to Chapter 8437 are performed by the Silo alone without the attachment of accessories/bought out items. On going through the purchase order/contracts for the supply of Silo Systems, I find that noticee no. 1 in most of the cases, have manufactured the bare Silos and supplied the bought out accessories /other machinery with individual functions directly from the seller of accessories to the customer's site for installation. Also noticee no. 1 has not proved with evidence that the Silo manufactured by them performs the functions of cleaning, sorting, grading etc. without fitment of bought out accessories.

Hence there cannot be any doubt that Silos are only a storage equipment and after addition of other accessories after installation at the site they do not fall under category of "machinery", but rather can be broadly category as a structure.

93.3.7. From the said facts I am of the view that the classification of Silos under 84379090 is not justified on both counts: that it is not a 'part' of a machinery and it is not

essentially a machinery to perform the function of cleaning, sorting or grading seed, grain or dried leguminous vegetables or a machinery used in the milling industry or for the working of cereals or dried leguminous vegetables. By wrongly attributing the functions of auxiliary machines which carry out certain definite functions to Silos manufactured by them, it appears that noticee no. 1 have mis-classified the Silos under Chapter 8437 for availing the unjustified benefit of clearing the same at Nil rate of Central Excise duty.

93.4. I find that the description of excisable goods proposed in the notice/s and mentioned under Chapter Heading 9406 of the Central Excise Tariff Act, 1985 is- "Prefabricated building".

93.4.1. As regards noticee no. 1's contention that Silos should not be treated as prefabricated building I find that the description of goods under Chapter heading 9406 of CETA, 1985 is referred to as 'Prefabricated buildings' and the Chapter subheading 94060093 under the Chapter heading 9406 refers to "Silos for storing ensilage" while the immediately succeeding sub-heading 94060099 refers to "Other".

93.4.2. I find that in common dialect Prefabrication is the practice of assembling components of a structure in a factory or other manufacturing site, and transporting complete assemblies or sub-assemblies to the construction site where the structure is to be located. The term is used to distinguish this process from the more conventional construction practice of transporting the basic materials to the construction site where all assembly is carried out.

Structure is a constructed building or a specific arrangement of things or people, especially things that have multiple parts. Structure means to purposefully arrange something in a specific way.

In view of the above there can be no doubt that what was manufactured and cleared from the factory of notice no. 1 in CKD / SKD condition to be assembled and installed at site was a "prefabricated" structure.

93.4.3. The word building is both a noun and a verb: the structure itself and the act of making it. As a noun, a building is

'a structure that has a roof and walls and stands more or less permanently in one place'; As a verb, building is the act of construction.

A prefabricated building, informally a prefab, is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building.

On a plain reading and as per dictionary meaning a 'Building' means permanent or temporary structure enclosed with exterior walls and a roof. From the brochure of Silos of noticee no. 1 it is seen that the Silos manufactured by them consist of structures enclosed with exterior walls and roof and thus it can be considered to be a building. On going through the submissions made by them, I find that they themselves have stated that Silos are having side walls and roof and are used for storing. They have also stated that Silos are assembled at the site of customer, with various accessories if required by the customers. Hence Silos are pre-fabricated in their factory premises and are transported in CKD condition and assembled at site of the customer. As per Note 4 to Section XX of Chapter 9406 "prefabricated buildings" means buildings which are finished in the factory or put up as elements, cleared together, to be assembled on site, such as housing or work site accommodation, offices, schools, shops, sheds, garages, or similar buildings. The Silos manufactured by them are buildings which are manufactured and finished at the factory premises and are assembled on site of the customers. I therefore find that the Silos manufactured by the noticee no 1 squarely fit in the description of goods as "prefabricated buildings". Silos are pre fabricated buildings is clearly evidenced from the fact for storing ensilage have specifically been classified under chapter sub-heading 94060093' hence it follows that Silos for storage of other materials should be rightly classifiable under immediately following (and residual) chapter subheading 94060099 of the CETA, 1985.

93.4.4. I find that six digit classification of goods which was in vogue till 2005 was replaced by eight digit System and was implemented with effect from 28.2.2005 vide Notification No

6/2005-Central Excise (NT) dated 24.02.2005. There were no specific descriptions under the sub-headings, when six digit classification was in vogue. Under the eight digit classification, more specific descriptions of the goods were incorporated as sub-headings. Under the Chapter Sub-headings 94060093 and 94060099 the description of the goods as 'Silos for storing ensilage' and 'Other' was introduced. I find that the Silos have a specific classification in the Central Excise Tariff Act, 1985 under Chapter Subheading 94060093 which immediately precedes the Chapter Sub heading 94060099 of the Central Excise Tariff Act, 1985. This puts the classification of "Silos" other than for storing ensilage squarely under the heading "9406 Prefabricated buildings - Prefabricated buildings --- Other :". Also the CESTAT order relied by the noticee/s is in respect of the dispute of classification under 8437 and 8479 of the CET as it existed then, i.e. before the introduction of eight digit classification in 2005 and thus is not applicable to the present issue since now there is specific description for Silos under Chapter 9406.

93.4.5. Thus, from the above mentioned definitions, brochure and the submissions made by noticee no. 1 and statements of various persons read with the specific chapter sub-heading 94060093 & 94060099 of the eight digit classification introduced in 2005, I find that the Silos manufactured by noticee no. 1 are actually Silos for storage which are pre-fabricated structures/buildings and will rightly be classifiable under CETH 94060099 of CETA, 1985 as alleged in the show cause notices.

To elaborate, I find that there is a specific heading for Silos under Chapter 9406, i.e. 94060093 for storage of "ensilage" and 94060099 for "other" under which noticee no. 1 has failed to classify Silos. From the facts discussed in the preceding paras, I find that the Silos have the essential character of prefabricated buildings and an independent function of storage of grains/other product/ finished product, etc. Therefore, in accordance to Rule 2(a) and Rule 3 of the General Rules of Interpretation of the First Schedule to the Central Tariff Act, 1985 and Section Note 4 of section XX of Chapter 94, the Silos manufactured and cleared by noticee no. 1 are rightly classifiable under Chapter Sub-heading 94060099 of the First Schedule of Central Excise Tariff

Act, 1985 and is subjected to normal rate of Central Excise Duty. I rely in the case of Commissioner of C.Ex., Ghaziabad Vs. International Tobacco Ltd-2009- TIOL-11-SC-CX wherein the Apex Court held that "for classification, the basic character, function and use is more important than the name used in trade parlance". By applying the said principle for classification of Silo, I find that basic character of Silo manufactured by noticee no. 1 is that it is a prefabricated building since it is fully fabricated in their factory and thereafter cleared in CKD for installation at customer's site. The basic function and use of Silo is that it is used as storage device. Apex Court in the case of UOI Vs. Pesticides Mfg. and Formulators Association of India - 2002 146) ELT 19 (SC) has held that specific heading is to be preferred over a general heading and if there are two specific headings for the product one occurring subsequently will prevail. For purpose of classification rules of interpretation contained in Chapter Notes would be given effect in preference to general rules of interpretation- 2004 (172) ELT 289 (SC) Constitution Bench CCE Vs. Acer India Ltd.

93.4.6. As regards their reliance in their own case decided jointly with Thermax Ltd. I find that the said case is clearly distinguishable from the present as the said case pertains to the period prior 2004 when specific heading for Silos did not exist. Para 24 of the Tribunal's judgement dated 10.11.95 [1996 (81) ELT 417 (T)] in noticee no 1's own case states that residuary entries can be considered only if a product could not be classified in any of the more specific headings.

I find that during the material period specific heading was not available for Silos in Central Excise Tariff Act, 1985 and therefore classification under 84.37 was considered most appropriate since the Silos was mostly being used in milling industry as per the details of customers produced before the Tribunal in the said case during the relevant period.

From the customer details submitted by noticee no. 1 in the instant case, I find that the Silos are not only used in milling industry but are also used for storage of grains, sugar, liquor, oil etc. and specific heading is available for Silos since 2005. Therefore, the relied upon judgement in their own case and

other relied upon judgements mentioned by them in their reply do not hold good in the present case, specific heading 94060093 and thereafter 94060099 being available in the Central Excise Tariff Act, 1985. In view of the same their submission referred above is not acceptable.

93.4.7. Regarding substantiation of correctness of the classification of the product i.e. Silos cleared by them under Tariff Item 8437 90 90 by Pune Commissionerate, I find that there is no justification to the noticee/s contention that just because classification as wrongly done in the past was not objected to by the department, it should continue forever. It has to be understood that the classification is done by the noticee/s and is not done or approved by the department. I find that it is actually an opportunity for them to bring about a long overdue correction in their books and for the department to pronounce upon the correction of classification since specific heading covering Silos is available in the Central Excise Tariff after 94060019 under the heading of "-Other:"

93.4.8. As regards their contention that classification by suppliers cannot be criteria/basis to change classification in their case, I find that nowhere in the show cause notice it has been alleged that they should have classified their product as per the classification of their inputs. Accordingly, their contention and the case laws relied upon in this context are not relevant in the present case.

93.4.9. As regards their contention that Silo can perform the function of cleaning, sorting, grading etc. I find that the said functions can be carried out by Silo only when it has been attached with various equipments/accessories which are bought out items from other suppliers of said accessories as mentioned above. I also find that they have not demonstrated any evidence as to how the function of cleaning, sorting, grading etc. is done by Silo manufactured by them without the fitment of accessories required for carrying out each of the function.

93.4.10. In view of the above, I conclude my findings that the Silos manufactured by noticee no. 1 are actually Silos for storage which are pre-fabricated structures/buildings and will rightly be

classifiable under CETH 94060099 of CETA, 1985 as alleged in the show cause notices.

94. As regards their submission that in the event the demand proposed is confirmed, then they should be given benefit of CENVAT credit on inputs and input services used in the manufacture of Silos, I hold that CENVAT credit is available on the inputs/input services used in the manufacture of Silos provided duty on Silos is paid and subject to the eligibility of inputs within a reasonable period and subject to various other conditions. This matter is outside the purview of the issue hereunder.

95. With regard to the next point of determination before me that whether extended period is invocable in the present case or not and whether interest & penal provisions would be attracted or not, I find on examination of various evidences that despite clear evidence to the contrary noticee no 1 described their product as a "System" and continued classification of Silos under CETH 84379090.

I have gone through sample purchase order Nos. mentioned below-

-GAEL HO/ 9099-HUBLI/13-14 dated 24.03.2014 - M/s. Gujarat Ambuja Exports Ltd.

-JSW/SP/PO/2013-14/AUGUST 02 dated 08.08.2013 M/s. JSW Steel Ltd., Mumbai, -2013-14/40 dated 22.07.2013 - M/s. Rise N Shine Floritech L.L.P, Pune -PO/GG/006 dated 11.06.2012 - M/s. Ruchi Soya Industries Limited, Mumbai -RLL/SILO/242 dated 12.06.2013 - M/s. Rajasthan Liquors Ltd., Kanpur -Contract No. AAL(MP)/ Vidisha/01 dated 31.07.2014 - M/s. Adani Agri Logistics (MP) Ltd. and the noticee,

95.1. Hereinabove I find that the said orders/contracts are for GIC Silo for storage of grains and the goods are manufactured by noticee no. 1 based on the design/ drawings & specifications supplied by the customers. There is no standard specification. or design and no standard product available in the market as "Silo System" for the purposes of cleaning, grading or sorting of food grains or leguminous vegetables. I find that separate machinery for cleaning, grading or sorting of food grains or leguminous

vegetables are available and advertised. I find that in some contracts orders are for supply of Silo as well as accessories/machines for material handling equipments such as bucket elevators, chain conveyors, belt conveyers, pre-cleaner, drum sieve, bag filter system, auto weighing machine, bag stitching, dust extraction, diverters which performs the functions of cleaning, grading or sorting of food grains or leguminous vegetables. I therefore find that there was no warrant for declaring Silos manufactured by noticee no. 1 as a "system" since it is only a storage equipment.

95.2. On going through para 12.1 of the show cause notice, I find that though the noticee no. 1 have supplied ladders, sealant, level switches, discharge gates, motorized gate and aeration fans and sweep auger (for flat bottom silos), I find that these are not machinery or equipment that can perform cleaning, grading or sorting of food grains or leguminous vegetables. In some cases, as per customer's specific requirement, catwalk way and vertical support from silos are provided. These are made of standard structural steel for providing support to the overhead conveyor. These also do not do the functions of cleaning, grading or sorting of food grains or leguminous vegetables. In some cases they provide temperature monitoring System which is used. only to monitor the temperature inside the silo and does not do the functions of cleaning, grading or sorting of food grains or leguminous vegetables. I therefore find that there was no warrant for classifying Silos manufactured by noticee no. 1 as a "machine" to fall under CETH 8437.

95.3. Shri. Thatte, Senior Vice President (Finance) and Company Secretary (noticee no. 2) vide letter dated 04.09.2015 has stated that GIC Silo Systems are supplied with standard accessories and just like other Systems it can also be supplied with optional accessories such as Temperature measuring Device, Level Indicators, etc. entirely depending upon the need of a client; that the GIC Silo System supplied to their clients over the years are capable of performing functions such as cleaning, sorting, grading. It may consist of ancillary equipments like Chain/Belt Conveyors, Bucket Elevators for loading & un-loading,

cleaning equipment such as Pre-cleaners, De- Stoner, etc. and also grading and sorting equipment like Auto Weighing, Packing, etc. it has been further emphasized that the supply to a client is made entirely depending upon the choice of the client; that the GIC Silo System also serves the purpose of comprehensive food grain preservation System to mitigate wastages; that for enabling It to do so it is equipped with devices like temperature sensing devices, level indicators, aeration blowers, level switches for effective fumigation of grain.

Accessories such as Bag Filter, Dust Extraction System, Drum Sieve, Cleaner with Bag Filter, Aerated Blower, Sweep Auger, Manual Gate, Motorised Gate, Bucket Elevators. Bagging Day Silo, GIC Storage Silo. Temperature Monitoring Device. Level Indicator, MCC & PLC, Grain Spreader, Auto Weigher, Conveyors, Trippler unloading hopper, Truck unloading hopper given with Silo depends on the requirement of the customer.

There was never any doubt that description of the Silo is "GIC Storage Silo". There was also never any doubt that noticee no.1 are manufacturing only Silo in their factory and accessories mentioned above are not an essential part of the Silo manufactured by them and are only supplied as bought out items on customer's demand. These accessories have their individual functions and their individual classifications cannot be extended to cover the Silos which had a separate and clearly defined essential function of storage. I therefore find that there was no warrant for classifying Silos manufactured by noticee no. 1 as 'part' of machine or as a 'system' to fall under CETH 8437.

95.4. I find that in their statement dated 15.12.2014 Shri. D.B. Ghule, DGM- Productions and Shri. Suresh R. Thakar, General Manager of noticee no. 1, both, have specifically mentioned that Silos manufactured by them are storage equipments. Whereas Shri. Thatte, Vice President (Finance) and Company Secretary (noticee no.2) in his statement dated 08.08.2015 has stated that the Silos System inter-alia performs the functions of cleaning, sorting or grading and falls under Chapter 8437 of the CETA, 1985. From the above contradictory statements I find that he has frantically tried to prove the classification of Silos under Chapter heading 8437 of the CETA, 1985. I find that the

contradictory statement as above of Shri. Thatte, Vice President (Finance) and Company Secretary(noticee no.2) who is incharge of indirect taxation and understands the financial implications of product description vis-à-vis of those such as Shri. D.B. Ghule, DGM-Productions and Shri. Suresh R. Thakar, General Manager who are officers uninvolved in taxation matters, has proved the willful intention of notice no. 1 and the involvement of Shri. Thatte to evade payment of Central Excise Duty. They have also misled the department by mis-stating the function of Silo and terming the Silos as "Silo System" although they are only engaged in manufacture of Silos. I find that noticee/s have attempted to project that the Silos are Systems which in their standalone capacity can perform the functions of cleaning, sorting or grading of grains which is factually incorrect. Thus, I find that the concerned noticee/s have deliberately attributed the performance of the entire installed structure to bare Silos and deliberately raised the invoices as 'Silo System' mis-classifying the Silos under CET 8437 for availing nil rate of excise duty.

95.5. I find that with reference to earlier classification dispute (prior to 2005) though department was aware of the classification under 8437, I find that Silos had been put in CETH under specific heading 9406 in 2005 itself. Noticee no. 1 in this era. of self assessment should have revisited the classification and changed it accordingly. However, they failed to do so. I find that even after the correct classification was brought to their notice by the DGCEI they brazenly continued to mis-classify the Silos under 8437 and continued clearances at nil rate of duty. Noticee no. 1's officials during statements recorded had committed that they will take up the issue with their management and revert back, however they failed to do so. Under the Self Assessment Scheme the onus is on the noticee/s to correctly classify the goods and to discharge the applicable Central Excise duties thereon. In view of the changes brought about in Central Excise Tariff Act, 1985 from 6 digits classification to 8 digit classification during 2005 and consequent to introduction of more specific sub headings under CETH 9406, particularly sub headings 94060093 and 94060099 for 'Silo' the noticee/s should have changed the classification of Silo

accordingly. However, I find that they deliberately chose not to do so as it was to their advantage to describe the fully finished Silos as "components/accessories of GIC Silo System" and continued to classify as parts under CEH 84379090 for availing benefit of Nil rate of duty. I also find that the noticee/s have purposely taken shelter of CESTAT order in their own case which was issued prior to the introduction of 8 digit tariff classification. From the said facts, I find that they deliberately did not revise the classification of the Silos and mis-stated the description of Silos with the sole motive of evading payment of appropriate Central Excise duty. Therefore, the case laws cited in this regard are not relevant. Accordingly, I hold that their contention regarding non invocation of extended period is not acceptable and extended period along with penal action and interest is rightly invokable.

95.6. As regards their contention in respect of non suppression of facts and non invocation of extended period, I find that they have stated that they are regularly filing ERI and that the department is well aware of the manufacture and clearances of Silos. In this context I find that in the self assessment era they should have revisited the classification and corrected the same on their own. In view of the same their contention is not acceptable.

96. From the facts discussed above and evidence on record I find that the noticee no. I have contravened the provisions of rule 2(a) and 3 of General Rules for interpretation of Central Excise Tariff Act, 1985 inasmuch as they have failed to correctly classify the Silos manufactured and cleared by them, rule 4, 6, 8 of the Central Excise Rules, 2002 inasmuch as they have failed to pay the duty leviable on the manufactured goods so removed from their factory, failed to assess the duty payable on the removal of manufactured excisable goods and failed to pay the Central Excise duty in the manner prescribed in the said Rule respectively. I find that they have intentionally misclassified the goods and removed the same at Nil rate of Central Excise duty and thereby evaded payment of appropriate duty. I find that willful suppression and mis-statement by them would not have been noticed if the same had not been investigated by DGCEI,

BZU. They have deliberately misclassified the goods to avail Nil duty benefit which has led to evasion of Central Excise duty and thus have contravened the provisions of Central Excise Act and Rules there under with intent to evade payment of duty. Therefore, the duty not paid by them is liable to be recovered/demanded from them under proviso to Section 11 A(1) / Section 11A(4) of the Central Excise Act, 1944 along with interest under section 11AB and 11AA of the said Act and penalty is liable to be imposed under Section 11 AC of the said Act and/or Rule 25 of the Central Excise Rules, 2002.

97. As regards recovery of interest, I rely in the case of Pratibha Processors Vs. UOI 1996(88) ELT 12 (SC) wherein the Hon'ble Supreme Court has held that interest is compensatory in nature which is imposed on the assessee who have withheld the payment of any tax as and when it is due and payable. Liability for payment of interest arises in view of the provisions contained in Section 11AA/AB of the Central Excise Act, 1944. I therefore hold that demand confirmed is recoverable along with interest at appropriate rate in terms of Section 11AA of the Central Excise Act, 1944 as interest is an automatic consequence to demand of duty."

4.3 From the perusal of the impugned order reproduced above it is evident that revenue has sought to classify the impugned goods as prefabricated buildings under the Chapter 94. The main reason for holding that they are classifiable under the said heading is that this heading is specific heading for the classification of 'SILO'. Appellant have claimed the classification under heading 8437 as per the CESTAT order in their own case reported at [1996 (81) ELT 417 (T)] The relevant chapter headings along with the relevant chapter notes is reproduced below:

The relevant entries in the year 1993-94

Section XVI – 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

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.

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 Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

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.

CHAPTER 84 *Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof*

8437 843700 *Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm type machinery*

SECTION XX – MISCELLANEOUS MANUFACTURED ARTICLES

CHAPTER 94

Furniture; bedding, mattress supports, cushions and similar stuffed furnishing; lamps and lightings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated building

4. For the purposes of heading 9406, the expression "prefabricated buildings" mean buildings which finished in the factory or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings.

9406 940600 *Prefabricated buildings:*

The relevant Entries in the year 2015-16

Section XVI – 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

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.

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Section XVI – 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

8437 *Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm type machinery*

84371000 - *Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables*

843780 - *Other Machinery:*

84378010 --- *Flour mill machinery*

84378020 --- *Rice mill machinery*

84378090 --- *Other*

843790 - *Parts*

84379010 --- *Of flour mill machinery*

84379020 --- *Of rice mill machinery*

84379090 --- *Other*

SECTION XX – MISCELLANEOUS MANUFACTURED ARTICLES

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Prefabricated buildings

940600 - *Prefabricated buildings:*

---	Green Houses:
94060011	---- Green house-in ready to assemble sets
94060019	---- Other
---	Other
94060091	---- Prefabricated housing material
94060092	---- Prefabricated construction for cold storage
94060093	---- Silos for storing ensilage
94060099	---- Other

4.4 From perusal of the above entries it is quite evident that the terms of heading pre and post introduction of the 8 Digit Classification Code in Central Excise the Section Note and Chapter Note and the terms of Chapter Heading, at 6- digit level were not amended or changed in any manner. This implies that the classification of the goods both pre and post introduction of 8 digit classification code, in respect of these heading would not change till 6 digit. Even replying to the debate in parliament at the time of passing of The Central Excise Tariff Amendment Bill, 2004, Hon'ble Finance Minister had observed:

"The purpose of this Bill is very limited. On the custom side we already have an eight-digit classification. It is, therefore, necessary that on the excise side also we have the same eight-digit classification. What we have found is that eight- digit classification helps both Trade and Revenue Department to identify a particular product and the heading under which it falls. Immediately the number of disputes comes down very sharply. There is transparency and there is reduction in the number of disputes. All these will facilitate trade. .."

4.5 India is signatory HSN Convention and Article 3 of the Convention provides as under:

"Article 3

Obligations of Contracting Parties

1. Subject to the exceptions enumerated in Article 4 :

(a) Each Contracting Party undertakes, except as provided in subparagraph (c) of this paragraph that from the date on which this Convention enters into force in respect of it, its Customs tariff and statistical nomenclatures shall be in

conformity with the Harmonized System. It thus undertakes that, in respect of its Customs tariff and statistical nomenclatures:

(i) it shall use all the headings and subheadings of the Harmonized System without addition or modification, together with their related numerical codes;

(ii) it shall apply the General Rules for the interpretation of the Harmonized System and all the Section, Chapter and Subheading Notes, and shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System; and

(iii) it shall follow the numerical sequence of the Harmonized System;

(b) Each Contracting Party shall also make publicly available its import and export trade statistics in conformity with the six-digit codes of the Harmonized System, or, on the initiative of the Contracting Party, beyond that level, to the extent that publication is not precluded for exceptional reasons such as commercial confidentiality or national security;

(c) Nothing in this Article shall require a Contracting Party to use the subheadings of the Harmonized System in its Customs tariff nomenclature provided that it meets the obligations at (a) (i), (a) (ii) and (a) (iii) above in a combined tariff/statistical nomenclature.

2. In complying with the undertakings at paragraph 1 (a) of this Article, each Contracting Party may make such textual adaptations as may be necessary to give effect to the Harmonized System in its domestic law.

3. Nothing in this Article shall prevent a Contracting Party from establishing, in its Customs tariff or statistical nomenclatures, subdivisions classifying goods beyond the level of the Harmonized System, provided that any such subdivision is added and coded at a level beyond that of the six-digit numerical code set out in the Annex to this Convention.”

From the perusal of the above convention it is quite evident that the contracting parties to the HSN Convention could have in its

statistical nomenclature, could have only specified the any sub division at a level beyond the six digit nomenclature set out in the code. The amendments made in the First Schedule to Central Excise Tariff Act, 1985 by the amending Act of 2004 were to expand the classification code from 6 digit to 8 digit and align the Central excise tariff with the Customs Tariff which was aligned to HSN.

4.6 In view of the above stipulations also by adopting the Eight Digit classification code in Central Excise to align the Central Excise Tariff with the Custom Tariff, the classification of the goods at the six digit level could not have been amended.

4.7 Revenue has contended that, the appellants were clearing the "Silo" simplicitor, which has been specifically classified under Chapter Heading 9406 as pre fabricated building. We do not find any support to the said argument from the tariff entries. The tariff entry, 9406 is in respect of "pre-fabricated building", and the term pre-fabricated building has been defined by the Chapter Note 4. Chapter Note 4 was not amended as result of introduction of Eight Digit Classification Code. Further it is to be noted that the term "pre fabricated building" has been defined using the word "mean", and as per the principles of interpretation, a definition using the word mean is restrictive in nature and limited to what has been stated therein. The HSN Explanatory Notes to chapter heading 9406 reads as under:

"This heading covers, "prefabricated buildings", also known as "industrialized buildings" of all materials. These buildings, which can be designed for a variety of uses, such as housing, worksite, accommodation, offices, schools, shops sheds, garages and greenhouses, are generally presented in the form of:

- *Complete buildings, fully assembled, ready for use;*
- *Complete buildings, unassembled;*
- *Incomplete buildings, whether or not assembled, having the essential character of prefabricated buildings.*

In the case of buildings presented unassembled, the necessary elements may be presented partially assembled (for example, walls, trusses) or cut to size (beams, joists, in particular), or in some cases, in indeterminate or random lengths for cutting on the site (sills, insulation etc)

The buildings of this heading may or may not be equipped. However, only built-in equipment normally supplied is to be classified with the buildings. This includes electrical fittings (wiring, sockets, switches, circuit breakers, bells etc), heating and air conditioning equipment (boilers, radiators, air conditioners etc), sanitary equipment (baths, showers, water heaters etc), kitchen equipment (sinks, hoods, cookers etc) and items of furniture which are built in or designed to be built in (cupboards etc)

Material for the assembly or finishing or prefabricated buildings (eg. Nails, glues, plaster, mortar, electric wire and cables, tubes and pipes, paints, wallpaper, carpentering) is to be classified with the buildings, provided it is presented therewith in appropriate quantities

Presented separately, parts of buildings and equipment, whether or not identifiable as intended for these buildings, are excluded from the heading and are in all cases classified in their own appropriate headings."

4.8 In the impugned order, for holding that the "silos" are prefabricated building, reliance has been placed on the heading No 94060093, which reads "*Silos for storage of ensilage*". The conclusion sought to be derived is all other silos, thus will be classified under the heading 94060099. Chapter heading 9406 00 covers "pre fabricated buildings". Within the said classification, there are two sub-classifications (--- (3) dashes): (a) Green Houses and (b) Other. Within the said sub-categorization (other), there is further sub-classification (--- (4) dashes): (91) prefabricated housing material; (92) pre fabricated construction for cold storage; (93) Silos for storing ensilage and (99) other. The case of the department is that the silo system manufactured by the appellants would merit classification under (99) i.e. other. However, the "other" under (---- (4) dashes) would draw parentage from "other" under (--- (3) dashes) and "other" under (--- (3) dashes) would draw parentage from "Prefabricated buildings" (- single dash). Thus, the classification sought to be adopted by the department is other of other pre-fabricated buildings, can be sustained only if it is held that the impugned goods cleared by the appellant were

classifiable as “pre fabricated buildings”. If that was the case then even prior to introduction of the Eight Digit Classification code, also the said goods would have merited classification under the Heading 940600. This was not even the argument ever before tribunal in the case of Thermax, decided earlier. Tribunal has in that case held as under:

"5. *It was their contention that it is classifiable as Agricultural machinery for storage of grains and oil seeds as it is intended for use by farmers and farmers' cooperatives. It has devices for grain handling, loading and unloading and (sic) and safeguards grains against rains, rodents, insects and fungi so that they can be stored for a longer duration with no deterioration in quality.*

6. *The Silos are supplied with standard accessories as well as optional ones including a temperature sensing device and level indicator, grain cleaner and begging system etc.*

7. *In this connection, he would also like to mention that the agricultural machinery can be broadly classified into three types,*

(i) meant for soil preparation or cultivation (84.34),

(ii) harvest or threshing machinery (84.33) and

(iii) other agricultural machinery including post harvesting machinery covered by Heading 84.36.

It was their contention that it is a post harvesting machinery. He urged that Professor of Agriculture and Member of ICAR is also here and his view may also be heard in this respect. Learned Professor stated, in the main, that it is correct that agriculture includes post harvesting operations.

8. *Learned counsel stated that their alternative submission was that it may be classified under 84.37 which covers agricultural machines for cleaning, sorting or grinding of grains etc.*

9. *It was also his contention that it would be incorrect to classify the product under 84.38 as the same is a residuary item and in any case it could not be classified under 84.79 because the same is meant for machines and mechanical appliances having individual functions not specified or included elsewhere in this chapter; and apart from being residuary item it cannot cover*

their system which performs more than one function and is not having individual functions.

10. *Learned counsel Shri Nankani stated that he adopts all the arguments advanced by the learned counsel Shri V. Lakshmi Kumaran but would like to add certain factual aspects of their case and emphasise his view point particularly with reference to 84.37.*

11. *In their case the assessee had initially claimed classification under 84.37 but the Assistant Collector had changed the classification to 84.79 (vide impugned adjudication order). The Collector (Appeals) on the other hand had accepted their alternative prayer regarding classification under 84.36 and it is the department which has now come in appeal.*

12. *In this connection, it is their submission that their main contention is that it was correctly classifiable under 84.37. From the pamphlet filed by them, it will be seen that their SILO Grain Storage Complex is not simply a bin for storage but a complex system for scientific grain preservation and handling which is mainly used by various industrial units such as milling plants etc. for storage of purchased grains till it is used. Hence, Heading 84.37 which includes machinery used in the milling industry other than farm type machinery also is appropriate.*

13. *In this connection, he is filing a list of his main customers most of which are various mills using agricultural produce as for example, those having Soyabean or Mustard Oil plants or Barley Milling plants or Palm Kernel mill or Cattle feed milling plant, Sugar Mills or Grain Milling plants for distillery etc.*

14. *It was, therefore, his contention that their complex system was usable by farmers and agricultural cooperatives as well as by milling industry, and their main customers have been the later ones.*

15. *Therefore, it was their contention that their plant is classifiable under 84.37 and in the alternative under 84.36.*

16. *Learned counsel Shri Lakshmi Kumaran also stated that although their prayer is for classification under 84.36 but he has no objection if their product is held to be classifiable under 84.37 because it was usable by milling industry as well.*

17. *It was also the contention of both the Id. counsels that whether it is classified under 84.36 or 84.37 in either case the product will be eligible for the benefit of exemption Notification No. 111/88, dated 1-3-1988 which covers both these headings.*

18. *Learned D.R. opposed the prayer. He drew attention to the order-in-original passed by the Additional Collector and emphasised that the main product of both parties is a SILO which is nothing but a storage system and storage systems are not covered by 84.32, 84.33, 84.34, 84.36 or 84.37 which among themselves covers all types of agricultural machinery.*

19. *In response to a query from the Bench, he agreed that the cost of this product is so high that the farmers can hardly afford it and it is capable of being used for storage by anybody and not necessarily farmers or farmers' cooperatives and further it can be installed at any place outside the farm or in a factory or otherwise and as admitted by the learned counsel Shri Nankani it is being used for industrial purposes hence it cannot be called as agricultural machinery.*

20. *Further, it need not be used only by industry engaged in the milling industry and 84.37 covers only the machinery used in the milling industry for specified purposes and other than farm type machinery. Therefore, Silos would fall under 84.38 as machinery not specified or included elsewhere in the chapter and those items having individual functions have to be classified under 84.79 which covers such machines and mechanical appliances which have individual functions.*

21. *It was also his contention that HSN or BTN also confirms this view point.*

22. *It was his further contention that since neither 84.38 nor 84.79 are covered by exemption Notification No. 111/88, dated 1-3-1988, therefore, the benefit of this notification could not be extended to the product.*

23. *We have considered the above submissions. We observe that the catalogue/pamphlets produced before us giving the description of use of the product and the list of customers filed before us by the learned Counsels show that the item is not simply a storage bin for grains etc. but a complex system*

incorporating many devices or sub-systems and having arrangements for loading and unloading, handling or aeration of grain as well as safeguarding the grains and ensuring that its quality is maintained as far as possible. It can be used both on and off of the farms by agriculturists or their cooperatives as well as by the industry using farm produce. Hence, it cannot be considered as purely an agricultural machinery only. In other words, it has multiple uses. In the circumstances, it can be classified only under 84.36 or 84.37 depending upon its principal use, standard and optional accessories. In America, this type of machinery is used by individual farmers also but in India, from the list of customers produced before us, it appears that it is being used mostly by milling industry at present. Hence, in our opinion, it will be more appropriate to classify it under Heading 84.37.

24. *Headings [84.78] and 84.79 are residuary entries which can be considered only if a product could not be classified in any of the more specific headings. Since in our opinion, these plants are classifiable under 84.37, both 84.78 and 84.79 go out of picture."*

4.10 In case of Quality Steel Products Pvt. Ltd [1993 (65) ELT 513 (T)] affirmed by the Hon'ble Supreme Court as reported at [1996 (83) ELT A 106 (SC)], following was observed:

"Further, change in tariff does not change the nature of goods. It is true that 26AA (iv) of erstwhile Central Excise Tariff was wide compared to 7306.90 of the new Tariff and there was only one single entry covering all sorts of tubes and pipes as against number of sub-headings in the new Tariff as it was argued by the D.R. But mere change in tariff or incorporating number of headings and sub-headings will not take away the nature of the goods unless name and description of the very goods is so specified under the relevant tariff entry for the purpose of classification..."

4.11 Hon'ble Bombay High Court in the case of Eco Valley Farms & Foods Limited [2013 (290) ELT 49 (Bom)] held as follows:

"In the present case, the specific case of the Revenue prior to the 2004 amendment to the 1985 Act was that fresh mushrooms

were excisable under Chapter 7 of the 1985 Act and even though the rate of Excise duty on fresh mushrooms was Nil, as per the proviso to Section 3(1) of the 1944 Act in respect of DTA clearances of fresh mushrooms effected by the assessee, a 100% EOU, the Excise duty was payable equivalent to the Customs duty payable on imported fresh mushrooms. The Commissioner of Central Excise (Appeals) held that the fact that fresh mushrooms were excisable would not entitle the Revenue to recover duty, because, so long as the duty on fresh mushrooms under the Central Excise Tariff was Nil, in respect of DTA clearances of fresh mushrooms by a 100% EOU covered under the proviso to Section 3(1) of the 1944 Act would also be Nil. That decision of the Commissioner of Central Excise (Appeals) dated 27th May 2004 was admittedly accepted by the Revenue. Therefore, so long as the decision of the Commissioner of Central Excise (Appeals) dated 27th May 2004 was holding the field, all the adjudicating authorities including the Commissioner of Central Excise were bound by the said decision passed by the Commissioner of Central Excise (Appeals) dated 27th May 2004. The argument of the Revenue that the decision of the Commissioner of Central Excise (Appeals) dated 27th May 2004 rendered prior to the 2004 amendment to the 1985 Act would not be applicable after the 2004 amendment to the 1985 Act is without any merit, because, as noted earlier, fresh mushrooms were excisable prior to the 2004 amendment and continue to be excisable even after the 2004 amendment. Similarly, Excise duty on fresh mushrooms prior to the 2004 amendment was Nil and even after the 2004 amendment continues to be Nil. Therefore, the 2004 amendment to the 1985 Act which brought out transition from six digit to eight digit classification did not bring about any change in law regarding the excisability on fresh mushrooms or dutiability on fresh mushrooms. In other words, the fresh mushrooms were excisable prior to the 2004 amendment and continue to be excisable subsequent to the 2004 amendment and, therefore, the decision rendered by the Commissioner of Central Excise (Appeals) on 27th May 2004 prior to the 2004 amendment was binding on the adjudicating authorities including the

Commissioner of Central Excise even after the 2004 amendment to the 1985 Act."

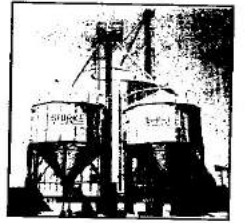
4.12 In case of Amiya Corporation after referring to the HSN Explanatory Note for Heading 9406, Tribunal has observed as follows:

"3. *Revenue's case in the impugned orders is that since the appellants have supplied prefabricated structures, therefore, the prefabricated buildings are classified under Heading 94.06. We observe that every structure is not necessarily a building. The building must have a wall as is apparent from the HSN Explanatory Notes. We observe that there is no allegation whatsoever in all the impugned orders nor in the customers orders relied upon by the Revenue that the appellants herein have supplied panels for walls and roof. Therefore, in our considered opinion, the structure supplied by the appellants in unassembled form as mentioned above cannot be treated as prefabricated buildings under Tariff Heading 94.06."*

4.13 Coming to the argument advanced by the revenue that the appellant were clearing the "silo" simplicitor and not the silo system capable of performing the functions as specified in the heading 8437. Further revenue has contended that the classification could not have been based on the intended function of the goods cleared, but has to be based on the form in which the goods are cleared. We have no dispute with the submissions made by the revenue. The present issue that is for consideration before us is in respect of the demand confirmed by the revenue by classifying the said goods under the heading 94060099. As submitted by the revenue the goods need to be assessed in the form in which they are cleared. To understand the products manufactured and cleared by the appellant we perused the brochure of the Appellant which is reproduced below:

18.5

MK-01/Cat-1



ISO 9001 : 2000 COMPANY

The Grain Storage People



GIC SILOS - FOR BULK STORAGE OF FOOD GRAINS

GRAIN CONVEYING EQUIPMENT

POST HARVEST EQUIPMENT

MECHANISED SUGAR HANDLING WITH GIC SILOS

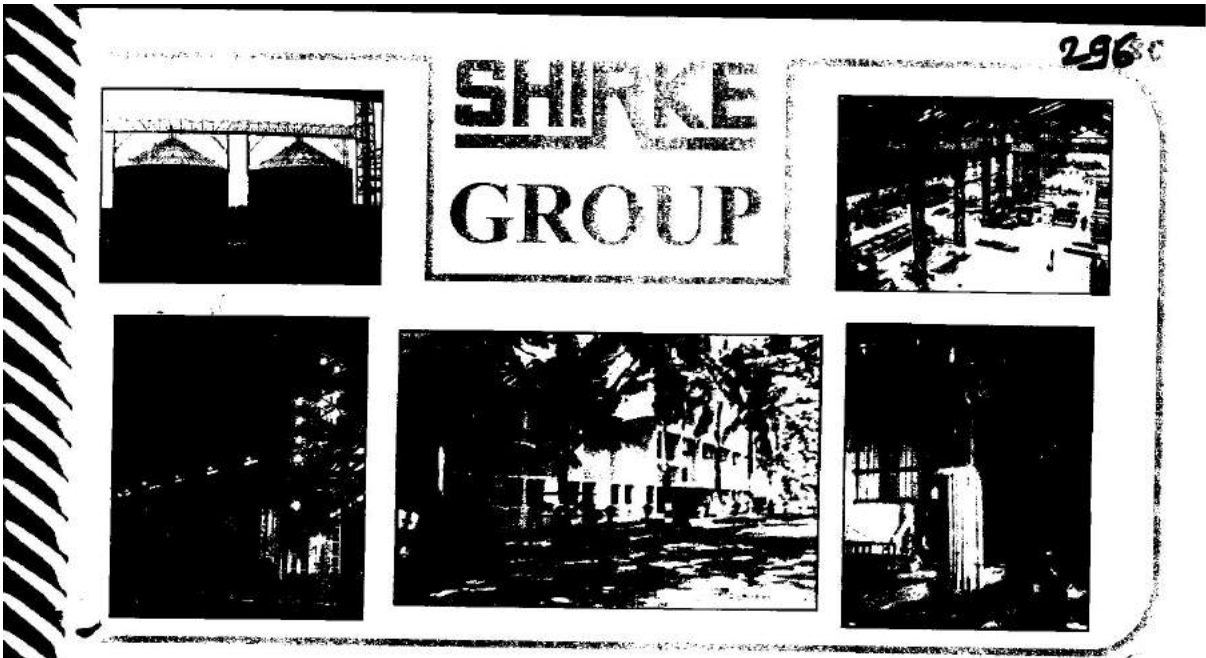
MECHANISED GRAIN HANDLING AND CLEANING SYSTEM

CATTLE/POULTRY FEED PLANTS/ BATCHING SYSTEM/

SILO SYSTEM

GIC SILOS FOR POULTRY FARMS

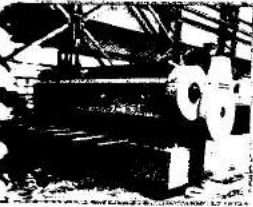
A Grain Saved ... IS multi-grain produced



THE SHIRKE GROUP - a dynamic, active participant in India's industrial arena is predominant in the fields of Civil and Structural engineering for over 50 years. The Group has six modernized, fully integrated manufacturing plants, sophisticated Computer-aided design offices and innovative R&D cells, located over 53 acres of land in the prime industrial belt of Mundhwa, a few kilometers from pune city.

The Group has ISO 9001/9002 accreditations. We are leaders in several fields and have industrialized Civil Engineering Technology. The Agro Division is exclusively engaged in post harvest engineering in general and GIC (Galvanized Iron Corrugated) silo storage systems for food grains in particular. The Division has vast experience and expertise in post harvest activities. Silos offered range in capacities from 5 MT to 10000 MT each. Agro Division offers the latest GIC silo storage systems for bulk storage of food grains with complete Grain Handling and cleaning equipment of capacities up to 250 TPH.

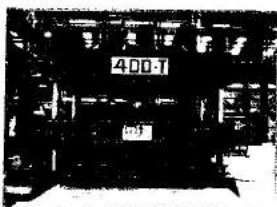
Because of its unique combination of strong civil and structural engineering coupled with expertise in post harvest technology, Shirke is India's only organization capable of supply and installation of silo systems for 1,00,000 to 500,000 MT capacity grain storage complexes. Shirke assures complete solutions to India's burning problem of food grain security.



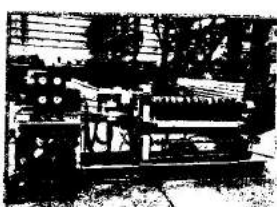
Shearing



Corrugation



Punching



Bending / Rolling

SHIRKE

SILO STORAGE SYSTEM FOR FOOD GRAIN

International technology, fully intergrated manufacturing plants (including in-house Galvanising Plant), large project handling capability and total expertise in the field of grain storage, have established Shirke as the leaders in the manufacture, supply and installation of GIC (galvanised iron corrugated) silo storage systems and post-harvest equipment including grain cleaners, batch dryers, conveyors and elevators for grain handling. Leading food industries across the country have installed our silo system and are benefitting from improved plant profitability.

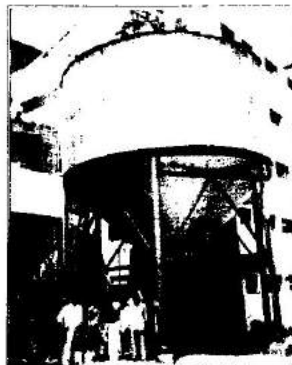
APPLICATIONS

- SOLVENT EXTRACTION PLANTS □ OIL MILLS
- STARCH PLANTS □ GRAIN BASED DISTILLERIES
- FLOUR MILLS

We offer GIC Flat Bottom Silos in capacities ranging from 100 MT to 6000 MT each, to store oil seeds, maize, cereals, etc. Higher capacities are available on request. The Silo system includes ancillary equipment such as Elevators, Conveyors, Cleaners etc.

■ BREWERIES

GIC Hopper Bottom silos are available in capacities ranging from 100 MT to 500 MT each, for storage of barley malt. Elevators and Conveyors can be tailor - engineered to suit specific requirements.



Typical system for a brewery.

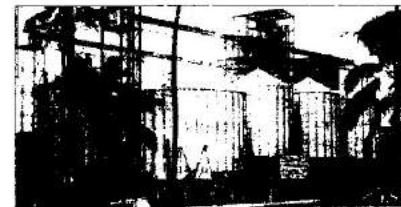


System installed for a sugar factory



■ CATTLE FEED / POULTRY FEED PLANTS

We offer Hopper Bottom or Flat Bottom silos in various capacities to store raw ingredients of cattle and poultry feed. Shirke also offers a modern feeding system with GIC bins for poultry farms.



Silo system for a cattle feed plant

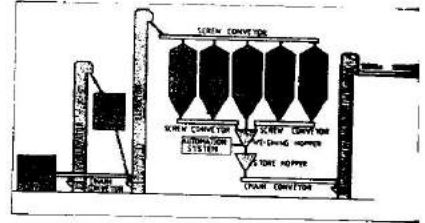
■ SUGAR FACTORIES

Shirke after extensive pioneering research together with Vasantdada sugar institute, Pune have developed a fully mechanised handling system using GIC silos for sugar. The system includes automatic weighing and bagging that helps eliminate wastage and considerably reduces manpower. The Hopper Bottom Silos range of capacity from 50 MT to 300 MT each, is sufficient for even 10,000 TCD sugar factory. The weighing and bag stitching of entire day's sugar production can be completed in just one shift.

258

■ AUTOMATIC BATCHING SYSTEM WITH GIC BINS FOR CATTLE -FEE/POULTRY FEED PLANTS.

GIC bins are available in capacities ranging from 5 MT to 25 MT for this application. The system is complete with feeding, weighing and batching arrangement with PLC.



Typical layout of automatic batching system for cattle feed plants

■ MECHANISED GRAIN CLEANING & WEIGHING SYSTEM FOR MARKET YARDS

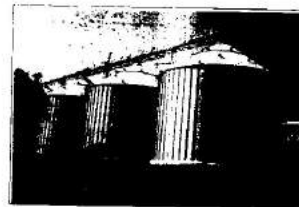
SHIRKE also offers a complete mechanised cleaning system with GIC Silo suitable to Market yards / grain procurement centre etc.

■ POST-HARVEST EQUIPMENT

- ☐ Batch Dryers for Dall mills. ☐ Grain Cleaners upto 50 TPH capacity.
- ☐ Elevators / conveyors upto 200 TPH capacity.

BENEFITS OF THE SHIRKE SYSTEM

1. Uses modern, scientific principle for grain storage, i.e. first in ... first out.
2. More economical than M.S. and RCC silos and godowns of the same capacity.
3. Stores grain for longer periods without deterioration and maintains grain quality.
4. Prevents handling losses and eliminates storage losses due to rats/insects/diseases & pilferage.
5. Saves considerable time and labour in handling, loading and unloading.
6. Require less space - saves valuable land
7. GIC Silos can be erected much faster than other types of silos.
8. All silo components are made in Shirke's factory, under one roof and, hence, offer better quality assurance compared to other types of silos that require site work.
9. Shirke's silos are fool-Proof and robust : designed to suit Indian conditions with an edge over imprinted silos.



GIC silo storage system at a solvent extraction.

SHIRKE

SHIRKE CONSTRUCTION EQUIPMENTS PVT. LTD. (POST HARVEST EQUIPMENT DIVISION)

72-76, Mundhwa, Industrial Estate, Pune 411 036.

☎ 020-2681 3077, 2687 0151, 152, 232

Fax : +91-20-26871612

E-mail : bgstech@vsnl.com

BRANCH OFFICES

NEW DELHI	: 1308, Hemkunt Towers, Nehru Place, New Delhi-110 019. PHONE : (011) 26464076, FAX : (011) 26462308
MUMBAI	: Near Parsi Well, Cross Maidan, Churchgate (East), Opp. C.T.O., Mumbai-400 020. PHONE : (022) 22624574, FAX : (022) 22624894, E-mail : siporexbom@vsnl.net
BANGALORE	: 303 & 304, 3rd Floor, Brigade Towers, 135 Brigade Road, Bangalore-560 025. PHONE : (080) 22277360 / 1, FAX : (080) 22277362, E-mail : bgshirke@satyam.net.in
HYDERABAD	: Surya Towers, 7th Floor, H Block, 1-7-4 to 19, S. P. Road, Secunderabad-500 003. PHONE : (040) 27841738, FAX : (040) 27846508, E-mail : bgshyd@sify.com



GIC SILO GRAIN STORAGE SYSTEM

For grain based industries, Starch Plants, Solvent Extraction Plants, Flour Mills, Rice and Oil Mills, Breweries, Grains based Distilleries, Cattle Feed / Poultry Feed Plants. Silo capacity from 5 MT to 10000 MT each.



MECHANISED SUGAR HANDLING SYSTEM WITH GIC SILOS

System comprises Bucket elevators, GIC silos of capacity to store 16 hours sugar production, auto weighing and bag stitching machine, etc. The system is very well established in sugar factories with its innumerable advantages over MS plate welded silos.



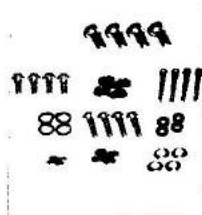
MECHANISED GRAIN HANDLING AND CLEANING SYSTEM : FOR MARKET YARDS (MANDIES)

To clean the grains and to have faster weighing, bagging and stitching. This system avoids glut formation and reduces handling cost and space

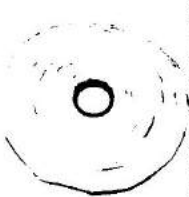


MODERN CATTLE / POULTRY FEED PLANTS

Suitable for 100 TPD to 500 TPD capacities with advanced PLC based automatic system and GIC silos for raw material storage.



Hardwares



Sealant



Level switch



Control gate



Grain spreader

GRAIN CONVEYING EQUIPMENT

ELEVATORS

Robust, all steel construction. Drive with integral geared motor or motor with gearbox.
Capacity : Upto 150 TPH.
Type : Belt and Bucket type or Chain and Bucket type.

CHAIN CONVEYORS

Robust and sturdy construction to suit the site conditions. Drive unit with integral geared motor or motor with gear box. The provision of UHMWPE has added advantages in reducing frictional losses and power consumption.

Capacity : Upto 150 TPH.

BELT & SCREW CONVEYORS

For various applications and capacities suitable for foodgrain and sugar handling.

POST HARVEST EQUIPMENT

GRAIN CLEANERS

Vibrating screen type cleaners to separate undersized, lighter and heavier impurities from grain. Compact and sturdy design complete with aspiration chamber, cyclone dust collector, blowers and adjustable feed hopper.

Capacity range : 5 TPH to 40 TPH.



SHIRKETM

B.G. SHIRKE CONSTRUCTION TECHNOLOGY PVT. LTD.

POST HARVEST EQUIPMENT DIVISION

72-76, Industrial Estate, Mundhwa, Pune - 411036, India

Tel.: 020-2682 4047, 2670 8245/46/21

E-Mail : phed@shirke.co.in

BRANCHES

- NEW DELHI** : 1308, Hemkunt Towers, 98, Nehru Place, New Delhi - 110019.
TEL.: (011) 46561394 FAX : 26462308 E - Mail : bgsdnd@yahoo.co.in
- MUMBAI** : Near Parsi Well, Cross Maidan, Churchgate (E). Opp.: C.T.O. Mumbai - 400020.
TEL.: (022) 22624574, 22692216 FAX : 22624894. E-Mail: siporexbox@vsnl.net
- BANGALORE** : 303 & 304, 3rd Floor, Brigade Towers, 135, Brigade Road, Bangalore - 560025. TEL.: (080) 22277360
22277361. FAX : 22277362 E - Mail : bgs525@shirke.co.in
- HYDERABAD** : Surya Towers, 7th floor, H Block, 1-7-4 to 19, Sardar Patel Road, Secunderabad - 500003.
TEL.: (040) 27841738 FAX : 27846508 E-Mail: bgshyd@sify.com
- Nagpur** : Akar Builder Colony, Bldg. No.-4, Flat No.-5, Chitnwis Layout, Bairamji Town, Nagpur - 440013
TEL.: (0712) 2594519. FAX : 0712-2594468 E-Mail: bgs528@shirke.co.in

4.14 From the perusal of the Brochure it is evident that appellant is not supplying any silo simplicitor but is manufacturing and supplying the silo system capable of performing the unique function. Further to convince ourselves we also examined few purchase orders, which are reproduced below:

✓ **ANNEXURE- 5**



GUJARAT AMBUJA EXPORTS LTD.

"Ambuja Tower", Opp. Memnagar Fire Station, Post-Navjivan, Navrangpura, Ahmedabad - 380 014 (India).
Phone - 079-2642 3316 (5 Lines) Fax: +91 079 26440776 / 2642 3079
Email: info@ambujagroup.com. Visit us at: www.ambujagroup.com

GAEL/HO/9099-HUBLI/13-14/

March 24, 2014

To,
M/s B.G. SHIRKE CONSTRUCTION TECHNOLOGY P. LTD
(POST HARVEST EQUIPMENT DIVISION)
72-76, MUNOHWA, PUNE- 411 036 (INDIA)
Tel: 020-26708245, 26708246, Direct: 26824047/Fax: 020-26871612 / Email: phed@shirke.co.in
Mr. A.S. Sable-[G.M.-PHED/090490/04154]

Dear Sirs,

This has reference to your offer no. PHED/VMK/00154/151213/R0 dated 18.12.2013 and subsequent discussion we had with you, we are pleased to place our order on you for supply of **GIC FLAT BOTTOM SILO of 10,000 MT x 1 No with accessories for Maize storage with B.D. 750 KG/M³ Compaction factor @ 5%** on following terms & conditions.

No	Description	Qty	Amount
01	supply of GIC flat bottom silo of 10,000 MT x 01 No with accessories for maize storage with B.D. 750 Kg/M ³ Compaction factor @ 5% [Details & Spec with rates as per attached ANNEXURE -- I]	01 Set	104,20,000.00

OTHER TERMS & CONDITION

DELIVERY	All items within 3 months from the issue of Purchase order. <i>In Month 3 JUNE</i>
PRICE	Ex - Works Pune
EXCISE DUTY	Nil
TAXES	2% Against C Form
P & F	Inclusive
TRANSPORTATION	Rs. 2,00,000.00 as a transportation charge will be given to B.G. Shirke construction
PAYMENT TERMS	25% advance along with the purchase order for supply, 65% balance against submission of dispatch documents of material and 10% retention to be released on completion of Erection against submission of Performance Bank Guarantee for 12 months period from the date of erection completion.
GUARANTEE	Your silos will be guaranteed for its performance and manufacturing defects for a period of 18 months from the date of commissioning.
WARRANTY	You will undertake to make good by replacement or repair, defects arising out of your faulty design, material or workmanship within 12 months of date of commissioning or 15 months of date of dispatch whichever is earlier. This warranty is subject to: 1) Equipment or part thereof not being subject to accident, alteration or misuse. 2) Equipment and system being operated and maintained by the buyer as per the recommended operation manual & procedures



GUJARAT AMBUJA EXPORTS LTD.

"Ambuja Tower", Opp. Memnagar Fire Station, Post-Navjivan, Navrangpura, Ahmedabad-380 014 (India).
Phone - 079-2642 3316 (5 Lines) Fax: +91 079 26440776 / 2642 3079
Email : info@ambujagroup.com, Visit us at : www.ambujagroup.com

INSPECTION	Third party inspection can be offered at your works with prior notice of minimum week & our confirmation. The right of waiver of inspection remains with us in case inspection as per schedule do not plan. In such case the subject equipment can be dispatched without inspection
HANDING OVER	The handing over of equipment / system will be done as completion of installation immediately
JURISDICTION / ARBITRATION	In case of any dispute, arising out of this contract, the courts at Ahmedabad shall have the jurisdiction. If, however, so desired, such disputes can be taken up to the arbitrators appointed mutually for settlement
NOTE	There will not be any escalation of the price till commissioning of equipment

DESTINATION & CONTACT PERSON AT SITE

Delivery & Billing Address for KARNATAKA
Gujarat Ambuja Exports Ltd Survey No - 153 & 154, Maldi Cross P.B. ROAD, 37 KM From Hubli Towards Bangalore, AT-Hulasoggi, Shiggoan, Dist - Haveri, Karnataka Tin No.-29680 895530/CSTNo-29530 785275

Contact Person
Mr. Paresh Upadhyay - 099245 01607 - H.O.
Mr. Umesh Pandey - 090999 76335 - Plant
Mr. Vaibhav Patil - 094808 27002 - Plant
Mr. Mathod - 094808 27006 - Plant

Please return the duplicate copy of this Purchase Order duly signed by you as a token of your acceptance

Thanking you,

Yours faithfully,

For, **GUJARAT AMBUJA EXPORTS LIMITED**

MANISH GUPTA
MANAGING DIRECTOR

[Attached Annexure - I for Technical Specification of Silo - 10000 Ton & 1 No.]

213' 100



GUJARAT AMBUJA EXPORTS LTD.

"Ambuja Tower", Opp. Memnagar Fire Station, Post-Navjivan, Navrangpura, Ahmedabad-380 014 (India).
Phone - 079-2642 3316 (5 Lines) Fax: +91 079 26440776 / 2642 3079
Email : info@ambujagroup.com, Visit us at : www.ambujagroup.com

ANNEXURE - I

SILO PRICE DETAILS WITH TECH SPEC

	Description	Qty	Rate	Amount
1	GIC FLAT BOTTOM SILO: 10000 MT FOR STORING MAIZE (BULK DENSITY: 750 Kg/m³). [Approx Weight 110 Ton] Model diameter: 28.46 x 16 Rings peak volume 13057 cu. mtr Eave Height : 18.30 meter Overall Height : 27.87 meter from GL <u>The externally stiffened grain silo includes:</u> a) Exterior ladder with safety cage. b) Interior ladder package. c) Rung ladder top of the roof. d) Sealant and hardware. e) Grain spreader	01 Set	80,00,000	80,00,000.00
2	SILO accessories Sweep Auger - 01 No / Silo This is required to remove the left out grain from the silo after gravity unloading. Made from structural steel (MS), bolted in construction with pivot assembly, screw with trough assembly, traction end wheel. Flame proof geared motor of suitable HP for screw main drive and geared motor for traction wheel are provided.	1 No	7,00,000	7,00,000.00
	Level Switches - 02 Nos / Silo Two numbers of vibrating fork type stationary level indicators will be provided for the silo, one at the top and one at the bottom to indicate whether the silo is empty or full.	2 Nos		
	Manual Discharge Gate - 09 Nos / Silo Manually operated discharge gate will be provided at the bottom of silo for controlling the flow of the grain from the silo.	9 Nos		
	Motorized Gate - 01 No / Silo Electrically operated discharge gate will be provided at the bottom of silo for controlling the flow of the grain.	1 No		
3	Aeration Fans with motor - 04 Nos / Silo To remove the hotspots developed inside the silos and to bring the inside grain atmosphere to uniform temperature, air will be circulated through the grain. Aeration system includes fans with aeration frames which are fixed in trenches on the floor of the SILO foundation. Aeration frames are covered by perforated sheets having holes for the air passage Fan Capacity - 15 HP CFM - 12500 CFM	04 Nos	1,05,000	4,20,000.00
4	Temperature Monitoring Device (TMD System) (for 1 No's Silo System)	1 Set	5,00,000	5,00,000.00
5	PAINTED FULL CATWALK WAY & VERTICAL SUPPORT FROM SILO [FBT Silo] <i>(12.5 mt Bridge way)</i> Catwalk way and Vertical supports made up of standard structural steel are provided for supporting the overhead conveyor.	01 Set	8,00,000	8,00,000.00
Basic Amount in INR				104,20,000.00

214

101



GUJARAT AMBUJA EXPORTS LTD.

"Ambuja Tower", Opp. Memnagar Fire Station, Post-Navjivan, Navrangpura, Ahmedabad-380 014 (India).
 Phone - 079-2642 3316 (5 Lines) Fax: +91 079 26440776 / 2642 3079
 Email : info@ambujagroup.com. Visit us at : www.ambujagroup.com

ANNEXURE - II

TECHNICAL SPECIFICATIONS & SCOPE OF SUPPLY

1. GIC FLAT BOTTOM SILO

Flat bottom type, sidewall made of Galvanized Iron Corrugated (GIC) sheets, shell wall strengthened by using splices, stiffeners of suitable size & thickness, ladder with cage. Roof made of Galvanized Plane (G.P.) sheets, supported with rafters of suitable size, manhole on the roof. Silo is provided with unloading gates at the bottom. Silo construction is of bolted type.

1	Shell wall SHEETS	ASTM A653 CLASS 1 G.P SHEETS
2	Roof Sheet	G.P SHEETS L.F.Q. 450 G.S.M
3	Structural	Hot dip galvanized Fe410 grade
4	Roof angle	28 Degree
5	Hard wares	H.T. 8.8 grade, Zinc plated
6	Galvanizing	450 Gms/M ² of total of both sides
7	Sealant	Joints to be sealed using special sealant
8	Complete with heavy duty roof cap, roof supports rings and rafter, one man hole on top. Height as per angle of repose of grains, wall sheet and stiffeners manufacture from A653 class 1 grade up to 3.0mm thickness and above 3.0mm hot dipped galvanized.	

SILo ACCESSORIES

1	<u>LEVEL SWITCH</u>	One numbers of stationary level indicators will be provided for the silo, one at the top and one at the bottom just to indicate whether the silo is empty or full.
2	<u>AERATION SYSTEM</u>	To remove the hotspots developed inside the silos and to bring the inside grain atmosphere to uniform temperature, air will be circulated through the grain. For this purpose fan of suitable design, transition duct and trench on the floor covered with perforated sheets will be provided.
3	<u>DISCHARGE GATES</u>	Manually operated discharge gate will be provided at the bottom of silo for controlling the grain from silo.
4	<u>SWEEP AUGER</u>	This is required to remove the left out grain from the silo after gravity unloading.

215, 4

SHALIMAR NUTRIENTS PRIVATE LIMITED

Corporate Office : 9, A. J. C. BOSE ROAD, IDEAL CENTRE, 5TH FLOOR, KOLKATA-700 017
 PHONE : +91 33 4023 9000. FAX : +91 33 4023 9011

PURCHASE ORDER FOR SUPPLY OF SILO SYSTEM

Date: 20/1/2012

KIND ATTN.: Mr. A.S.Sable (G.M.PHED)
 Mr. Vishal Kadbane (Dy.Manager)

M/s. B.G SHIRKE CONSTRUCTION TECHNOLOGY PRIVATE LTD
 POST HARVEST EQUIPMENT DIVISION.
 72-76-MUNDWA, PUNE, 411036

SUBJECT: PURCHASE ORDER OF SUPPLY OF GIC SILO SYSTEM FBT 10,000 MT X 4 No with MHE FOR STORING SOYABEAN WITH ACCESSORIES AT OUR NAGPUR PLANT.

Dear Sir,

This is with ref to your final offer, subsequent discussion & negotiation dated 17.12.11 at our Kolkata office and acceptance letter on 18.01.12 we are please to place this Purchase order on you, to Design, Manufacture and supply GIC Silos with accessories as per the detailed scope along with its prices enclosed. Kindly inform your acceptance

Yours faithfully,

For, M/s Shalimar Nutrients P Ltd

Proprietor

Registered Office : 17A, D & C. EVEREST, 46C, CHOWRINGHEE ROAD, KOLKATA-700 071
 Phone : +91 33 2288 6430/4017 8000 • Fax : 33 2288 2496 • E-mail : spl1723@vsnl.net

216,11

SHALIMAR NUTRIENTS PRIVATE LIMITED

Corporate Office : 9, A. J. C. BOSE ROAD, IDEAL CENTRE, 5TH FLOOR, KOLKATA-700 017

PHONE : +91 33 4023 9000, FAX : +91 33 4023 9011

[B] COMMERCIAL: BASIC PRICE BREAKUP SILO AND SILO ACCESSORIES FBT 10000 MT X 4 NOS GIC SILO SYSTEM

SL#	Model Description	Qty	Basic Price (INR) in Lakhs - Negotiated
1.	GIC FLAT BOTTOM SILO: 10000 MT FOR STORING SOYABEAN (BULK DENSITY: 740 Kg/m³). Model diameter : 28.46x 16 R peak volume 13057 cu.mtr. Eave Height : 16.01 meter Overall Height : 27.87meter from GL. The externally stiffened grain silo includes: a) Exterior ladder with safety cage b) Interior ladder package c) Rung ladder top of the roof d) Sealant and hardware e) Grain spreader	4 No's	301.84
2.	SILO ACCESSORIES a) Sweep Auger – 1 No / Silo This is required to remove the left out grain from the silo after gravity unloading. Made from structural steel (MS), bolted in construction with pivot assembly, screw with trough assembly, traction end wheel. Flame proof geared motor of suitable HP for screw main drive and geared motor for traction wheel are provided. b) Level Switches – 2 Nos / Silo Two numbers of vibrating fork type stationary level indicators will be provided for the silo, one at the top and one at the bottom to indicate whether the silo is empty or full. c) Manual Discharge Gate 9 Nos / Silo Manually operated discharge gate will be provided at the bottom of silo for controlling the flow of the grain from the silo. d) Motorized Gate 2 Nos for Feeding Silo & unloading from silo each (4+2) Electrically operated discharge gate will be provided at the bottom of silo for controlling the flow of the grain. e) Aeration Fans 2 Nos / Silo To remove the hotspots developed inside the silos and to bring the inside grain atmosphere to uniform temperature, air will be circulated through the grain. Aeration system includes fans with aeration frames which are fixed in trenches on the floor of the SILO foundation. Aeration frames are covered by perforated sheets, having holes for the air passage.	4 No's 8 No's 36 No's 6 No's 8 No's	30.38
	BASIC PRICE FOR SILO & SILO ACCESSORIES		332.2

Registered Office : 17A, B & C, EVEREST, 46C, CHOWRINGHEE ROAD, KOLKATA-700 071
 Phone : +91 33 2288 6439, 4017 9000 • Fax : +91 33 2288 2486 • E-mail : spn123@gmail.net

217

SHALIMAR NUTRIENTS PRIVATE LIMITED

Corporate Office : 9, A. J. C. BOSE ROAD, IDEAL CENTRE, 5TH FLOOR, KOLKATA-700 017

PHONE : +91 33 4023 9000, FAX : +91 33 4023 9011

SL#	Model Description	Total Qty	Basic Price (INR) in Lakhs - Negotiated
1	TEMPERATURE MONITORING DEVICE	4 sets	4.90
2	CATWALKWAY AND VERTICLE SUPPORT FROM SILO <i>Catwalk way and Vertical supports made up of standard structural steel are provided for supporting the overhead conveyer.</i>	4 Sets	23.52
TOTAL BASIC PRICE (INR) IN LAKHS			28.42

- SUPPLY PRICE- 360.64 LACS.
- TRANSPORT FROM PUNE NAGPUR - 7.50 LACS
- 12.5% VAT ON SUPPLY OF GIC SILO- 45.08 Lacs.

TOTAL PRICE FOR SITE(NAGPUR) INCLUDING SUPPLY, TRANSPORT, TAXES AND DUTIES
413.22 LACS. (Rs. FOUR CRORE THIRTEEN LAKHS AND TWENTY TWO THOUSAND ONLY)

[C] COMMERCIAL: BASIC PRICE BIFURCATION

SL#	Model Description	Total Qty	Basic Price (INR) in Lakhs - Negotiated
1.	RECEIVING HOPPER <i>Integrated type receiving hopper, made up of MS plates is provided at the unloading point.</i>	4 No 5	0.80
2.	SUPPORTING STRUCTURE FOR ELEVATOR. <i>Full length structural tower support suitable for elevator (EL2) of height 36 meters, feeding grain to the SILO.</i>	1 No	7.09
3.	SUPPORTING STRUCTURE FOR PRECLEANER <i>Precleaner maintenance and supporting structure / platform is provided.</i>	1 Set	2.20
4.	CHUTES & DUCTS <i>Made up of MS plates. The chutes and ducting are provided at all transfer/ discharge points of the grain handling equipments and SILO's.</i>	1 Set	1.56
TOTAL BASIC PRICE (INR) IN LAKHS			11.65

Registered Office : 17A, B & C, EVEREST, 46C, CHOWRINGHEE ROAD, KOLKATA-700 071

Phone : +91 33 2288 6439, 4017 9000 • Fax : +91 33 2288 2496 • E-mail : spf1123@vsnl.net

2187

SHALIMAR NUTRIENTS PRIVATE LIMITED

Corporate Office : 9, A. J. C. BOSE ROAD, IDEAL CENTRE, 5TH FLOOR, KOLKATA-700 017
 PHONE : +91 33 4023 5000 FAX : +91 33 4023 9011

MATERIAL HANDLING EQUIPMENTS

SL#	Model Description	Qty	Basic Price (INR) in Lakhs-- Negotiated
1.	BUCKET ELEVATORS (EL)		
a)	EL1 X 100 TPH X 15.00 Meter	1	7.75
b)	EL2 X 100 TPH X 36 Meter	1	13.72
2.	CHAIN CONVEYERS (CC)		
a)	CC1 X 100 TPH X 18.00 Meter	1	6.93
b)	CC2 X 100 TPH X 48.0 Meter	1	17.60
c)	CC3 X 100 TPH X 48.00 Meter	1	17.60
d)			
2.	BELT CONVEYERS (BC)		
a)	BC1 X 100 TPH X 19.00 Meter		11.19
b)	BC2 X 50 TPH X 63.50 Meter	1	16.61
c)	BC3 X 50 TPH X 66.00 Meter	1	17.38
3.	PRE- CLEANER (50 TPH)	2 No	20.58
4.	TWO WAY DIVERTOR	2 No	1.3
	TOTAL BASIC PRICE (INR) IN LAKHS		130.66

- SUPPLY PRICE OF MHE- 142.31 LACS.
- TRANSPORT FROM PUNE NAGPUR- 2.50 LACS
- 12.5% VAT ON SUPPLY OF MHE OF GIC SILO- 17.79 Lacs.

TOTAL PRICE FOR SITE INCLUDING SUPPLY, TRANSPORT, TAXES AND DUTIES
162.60 LACS. (Rs. ONE CRORE SIXTY TWO LAKHS AND SIXTY THOUSAND ONLY)

Registered Office : 17A, B & C, EVEREST, 46C, CHOWRINGHEE ROAD, KOLKATA-700 071
 Phone : + 91 33 2288 6439, 4017 9060 • Fax : + 91 33 2288 2496 • E-mail : spf1123@vsnl.net

SHALIMAR NUTRIENTS PRIVATE LIMITED

Corporate Office : 9, A. J. C. BOSE ROAD, IDEAL CENTRE, 5TH FLOOR, KOLKATA-700 017
PHONE : +91 33 4023 9000, FAX : +91 33 4023 9011

TOTAL PURCHASE ORDER FOR SILO AND MHE IS (413.22+162.60) = 575.82 LACS.

Terms & conditions:

1. Total price quoted above for supply is **F.O.R. NAGPUR SITE.**
2. Excise duty is currently NIL.
3. Packing and forwarding inclusive in above.
4. Separate work order will be for Erection and Commissioning separately.
5. Taxes: VAT: presently @ 12.50% included in above.
6. Delivery Period:
 - a. Supply: 4 to 6 months from the receipt of confirmed purchase order and complete advance as per terms agreed.
7. PAYMENT TERMS for Supply:
 - a. 30% of the total as advance along with taxes and duties.
 - b. 70% payment against our Proforma Invoice and prior to dispatch of material /equipment.
8. Transportation charges, transit insurance, included in above.

Yours faithfully,

For, M/s Shalimar Nutrients P Ltd



Registered Office : 17A, B & C, EVEREST, 46C, CHOWRINGHEE ROAD, KOLKATA-700 071
Phone : +91 33 2238 6439, 4017 9000 • Fax : +91 33 2288 2496 • E-mail : spf1123@vsnl.net

220/02

BILAGI SUGAR MILL LIMITED

BILAGI SUGAR MILL LIMITED, **BADAGANDI - 587 116.**

Taluk : Bilagi

District : Bagalkot

State : Karnataka.



Telefax : 08425 - 200244 Factory : 200367

KST No. : 5020743-0

CST : 5025743-2

W.E.F. : 11.12.2001

TIN No. : 29850348017

E-mail - bilagisugarmill@yahoo.co.in

BSML/Pur/Tech/Ord/2011-12/377

Date: 07-06-2011

Ref No. :

Date :

To,
 M/s. B. G. Shirke Construction Technology Pvt. Ltd.,
 72-76, Mundhwa,
 PUNE - 411 036.

Kind Attn: A. S. Sable,
 G. M. (PHED)

Sir,

Sub: Work order for Erection & Commissioning of Sugar Silo System in our Sugar Mill.

Ref : 1. Your proposal No: PHED/VVR/398/130411/R0 dtd: 13-04-2011.
 2. Negotiation held at factory site with your representative Mr. Vijay Rasal on 01-06-2011.
 3. Our provisional order no: BSML/Pur/Tech/Ord/2011-12/333 dtd: 01-06-2011.

With reference to the subject & references cited above, we are pleased to entrust the work of erection of entire sugar storage, Weighment, stitching & conveying system to be installed in our sugar plant.

A) Scope of Work:

1. Erection of Silos 3 Nos. with entire structure, equipments & all accessories.
2. Erection of:
 - a) Auto weighing machine - 3 nos
 - b) Bag stitching machine - 3 Nos
 - c) Bag conveyor (slat type) - 3 Nos
 - d) Sugar elevator - 3 Nos
 - e) Belt conveyor (from size to elevators).
3. All accessories piping, control units, drives chutes, liner connection for above equipments.

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4. After completion of work, the whole system should work efficiently for rated capacity as a one unit.

B) Material Supply:

- Entire material supply including consumables will be made by M/s. Shrike Construction Technology, Pune.

C) Drawings:

- All erection drawings as approved by us will be given to you for erection purpose.

D) Foundation:

- All foundations will be made ready as per foundation drawings & layout supplied by M/s. Shrike Construction Technology, and you will be informed for readiness well in advance to mobilize your work force to our site.

E) Material Dispatch Schedule:

- You will have to Co-ordinate with your equipment manufacturing units for proper dispatch of materials in sequential manner, so that work is not suffered for any reason whatsoever.

F) Site Facilities:

- Facilities like Water, Power, Electricity, will be provided free of cost till completion of erection & commissioning work.

G) Work Completion Schedule:

- Erection work should be carried out with high standard of workmanship. After completion of erection work and after mutual discussion no load trial of all equipments to be given.

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H) Commissioning:

- Entire system will be commissioned along with the start of our crushing operation. During commissioning you will have to fine tune the equipments so that they work at optimum level of efficiency.

I) Full Load Trial:

- After stabilization of crushing operation you have to give full load trial of entire system supplied by you. During this period you will have to train our operators for maintenance & operation of equipments. They should be trained to handle equipments independently.

J) Terms & Conditions:

1) Erection Charges:

- Price: Rs. 5,00,000/- (Rupees five lakhs only) for entire labour work.

2) Terms of Payment:

- a) 20% advance at the time of site mobilization.
- b) 70% on pro – rate basis.
- c) Remaining 10% one month after satisfactory commissioning against Performance Bank Guarantee for two crushing season.

d) Service Tax:

- 10.30% or as applicable.

e) Erection Period:

- Entire erection work and trials to be completed before end of Sept 2011 in all respect to commission sugar plant in first week of Oct 2011.

f) Guarantee:

- Two crushing seasons. If any defects in erection are noticed during working of equipments, the same are to be rectified free of cost.

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- 4 -



g) Performance:

- After commissioning of total system you will have to demonstrate and prove that system works satisfactorily on full production capacity as given above.

K) Other Terms & Conditions:

1. You should engage sufficient skilled staff to complete the work as per schedule.
2. Bar chart to be provided to review periodic work progress.
3. Experienced engineer to be engaged to supervise erection & commissioning of the equipments.
4. Free lodging, boarding and local conveyance will be provided to your site supervisory staff. Free accommodation only will be provided to your workers.

L) Exclusion:

- 1) Civil foundations.
- 2) All electrical cabling work and Panel erection (Except Auto weighing machine).
- 3) Shifting of graders or grader staging modification.
- 4) Stamping and approvals from Weights & Measurement Department.

This order is sent in duplicate. Please send one copy duly signed by you as a token of acceptance.

Thanking you.

Yours faithfully,

(K.A. Aziz)
Executive Vice President

BILAGI SUGAR MILL LIMITED

BILAGI SUGAR MILL LIMITED, BADAGANDI - 587 116.

Taluk : Bilagi District : Bagalkot State : Karnataka.

Telefax : 08425 - 200244 Factory : 200367

KST No. : 5020743-0

CST : 5025743-2

W.E.F. : 11.12.2001

TIN No. : 29850348017

E-mail - bilagisugarmill@yahoo.co.in

22406



Ref No. : BSML/Pur/Tech/Ord/2011-12 / 398

Date: 07-06-2011

To,
M/s. B. G. Shirke Construction Technology Pvt. Ltd.,
72-76, Mundhwa,
PUNE - 411 036.

Kind Attn: A. S. Sable,
G. M. (PHED)

Sir,

Sub: Supply of Silo System for Sugar Storage Bagging.

Ref : 1. Your proposal No: PHED/VVR/398/130411/RO dtd: 13-04-2011.
2. Negotiation held at factory site with your representative Mr. Vijay Rasal on 01-06-2011.
3. Our letter of intent no: BSML/Pur/Tech/Ord/2011-12/333 dtd: 01-06-2011.

With reference to the above cited subject and references, we are pleased to place our order for design, manufacture and supply of sugar silo and bagging system suitable for 5000 TCD for our sugar plant.

Details such as scope of supply, terms and conditions for payment and delivery etc., are given below.

A) Scope of Work.

- Scope includes engineering, design of entire system, manufacturing and supply of the equipments and giving full load trial for one week.

B) Data for designing equipments.

- a) Entire equipments suitable for 5000 TCD (22 Hours) capacity sugar plant.
- b) Recovery : 13%.

72.00
1.44
73.44
12.00
7.10
48.24
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- 2 -

- c) Sugar Grade% : M – 25% maximum.
Weise : S 30 – 70% maximum.
: S₁ 30 – 40% maximum.
- d) Sugar bagging Hrs : Maximum 10 hrs in a day.
- e) Angle of repose : 38 Deg. Maximum.
- f) Moisture : 0.08%.
- g) Bag Data:
 - i) Jute : 100 Kgs of 1120mm height x 675mm width x 1190 grms weight.
 - ii) P. P. : 50 Kgs of 900mm height x 590mm width x 160 grms weight.

C) Methodology to be Adopted for Proposed System.

- 1) Prepare a detailed layout of each equipment and overall shop floor layout in the space available in our sugar house showing following details.
 - a) Equipment floor plan.
 - b) Material movement path.
 - c) Operation area and operators accessibility.
 - d) Control panel and electrical layout.
 - e) Safety system and inter locks.
 - f) Expected operator allocation in each shift and material flow logic.
 - g) Three sets of all drawings to be submitted for approval of BSML within one week from receipt of this order.
 - h) After receipt of approved G. A. layout drawings, foundation drawings of each equipment to be given for casting foundations.
 - i) Air, Power and Manpower requirement to be given to see their availability and to make arrangement for additional requirement.
 - j) Project schedule to be given based on the available time limit (as agreed in the meeting for material supply).
 - k) Layout and design of equipment should be such that they are maintenance free easy for operation and easy accessibility especially those parts which require frequent attention.



- 3 -

D) Specification of Equipments:**1) Sugar Silos:**

- The silos to be designed considering all sugar properties as per IS standard S30, M30 & S1-30 grades. The silos will be of cylindrical shape fabricated out of GI corrugated sheet of sufficient thickness, strengthened by additional reinforcement to avoid bulging or ruptures. G. I. coating should be of sufficient thickness to resist sugar abrasion, rusting and should be of long lasting. Silo shall have conical bottom with sufficient slope for free movement of sugar. No pockets should be formed in any corner of silo to block sugar flow. Silo shall be installed, that there is enough space at bottom of discharge chute to accommodate automatic weighing and bagging machines and sugar bag slat conveyor. Each silo shall be supported independently on sturdy structure. The outlet of bottom cone will be fitted with Pneumatically / Electrically operated quick closing / opening, leak proof 3 position discharge gate (Main & fine feed sensing) Valves of reputed make to be supplied. Suitable level sensors for level sensing to be provided at top and bottom of each silo and to be inter locked with control panel.
- The silo roof to be covered with sufficiently strong G. P. Sheets and structural support for strengthening. Necessary man holes for cleaning, access ladders and railing, platform etc., as required to be provided. Relevant IS standards to be followed for all safety norms.

Silo shall have minimum holding capacity of:

- 100 MT : For M 30 Grade Sugar - One no.
- 150 MT : For S1 30 Grade Sugar - One no.
- 250 MT : For S 30 Grade Sugar - One no.

Provision should be made to provide dust catcher system in future in entire system to keep sugar house clean.



2) Auto Weighing Machine.

3 nos of automatic weighing and bag filling machine to be provided with following details.

- Type : Gravity feed.
- Weighing Range : 25 kgs to 100 kgs net (with adjustment for tare weight).
- Mechanism : Load cell type
- Display : Digital
- Contact Surface : S. S.
- Accuracy : +/- 20gms for each 100 Kgs or 50 Kgs
Net weight (on Net Weight)
- Speed : 450-500 bags per hour
(100kgs or 50Kgs)
- Feeding of the bags : Manual/Auto.

Provision for addition of software for online data management in future will be preferred.

The system shall have consistent accuracy level in the range given. Under no circumstances. Accuracy limit of +/- 20gms should not exceed. The weight output to be digitally displayed lasting till the next drop. Machine shall have following facilities.

- a) Auto fall correction device.
- b) Auto zero
- c) Upper & lower limit alarm / display.
- d) Automatic checking tare weight.
- e) Customized dust proof control panel with display of no. of bags produced and inter lock for operation to be provided.
- f) Machine shall have Pneumatic bag clamping arrangement.

All pneumatic cylinders, valves of rugged construction and of reputed make.



- 5 -

Machine to be provided with adequate structure (to with stand vibration), platform, stair case, railing, etc., The design shall be of superior quality. Weighing machine should be approved by weight & measurement department in Karnataka, necessary documents for getting stamping done to be submitted with supply.

3) Stitching Machines - 3 nos. *Sumit m. Deh*

To stitch 100/50Kgs filled jute & P.P. bags at the rate of minimum 500 to 600 bags per hour. The stitch should be double threaded Chain stitch of 7-10.5mm width, suitable for Synthetic or cotton thread of 20/6 or 20/9. Thread cutter arrangement after completion of stitching to be provided. Machine shall be of rugged construction with quick stop, start functions. Machine height should be adjustable by the help of telescopic column to accommodate various bag sizes from 25 kgs to 100 kgs weight. Stitching quality should be superior and leak proof.

4) Out Put Conveyor - 3 nos. *For Group 1, 2, 3, 4, 5, 6*

Suitable size slat conveyor to convey minimum 500 bags per hour from filling station to stitching machine and then to discharge bags to main out going conveyor to be provided. It shall have approximately 12-18mtr linear speed.

Conveyor shall be complete with start stop push buttons, drive arrangement, railing for bag guiding and safety arrangement, construction shall be sturdy for heavy duty conditions.

5) Bucket Conveyor - 3 nos. *m.b. Sugar mill*

Sugar from graders will be conveyed to silos by bucket elevators. Bucket elevators shall be vertical, positive discharge type. Three sides of elevators shall be totally encased by M.S. Plates with angle stiffeners. One side shall be bolted type for easy removal of casing for getting access for repairs.

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- 6 -

Belt shall be of food grade quality and of sufficient thickness. Also food grade bucket to be used. The top belt wheel shaft will be mounted on the double row ball / spherical roller bearing with heavy duty housing. The lower wheel shaft will be provided with suitable tightening arrangement. The elevator will be complete with gear box & motor (planetary gear box preferred) of suitable H.P & RPM. The elevator shall be provided with approach ladders, safety guards & working platform with toe plates & railing. The capacity, height & speed of each elevator shall be suitable for each silo height and quantity of sugar of each grade to be conveyed. The sugar will be discharged from elevator to silo by inclined closed chute. Crystal crushing should be avoided while scooping sugar in the bottom chute or during discharging.

6) Belt Conveyor.

Suitable length trough type belt conveyers of food grade quality with minimum 450mm width and length to suit location of 3 nos of elevator to transport 3 grades of sugar from 2 nos of sizers to be provided. Suitable screw type take up unit to be provided for tensioning belts at one end. Conveyers shall be complete with sturdy structure, drives etc.,

7) All hardwares, jointing, chute equipments for inter connections – one lot.

E) Terms and conditions:

- 1) **Price:** Rs, 72,00,000/- (Rupees Seventy two lakhs) for supply of entire Sugar Silo System.
- 2) **F. O. R** : Ex – works, Pune.
- 3) **P & F** : Nil.
- 4) **Excise Duty** : Nil.
- 5) **Taxes** : 2% CST, against "C" form.

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236

- 7 -

- 6) Payment terms : a) 25% advance alongwith order.
 b) 65% against proforma at the time of delivery
 c) Remaining 10% one month after satisfactory
 commissioning against Performance Bank
 Guarantee for two crushing seasons.
- 7) Guarantee : If workmanship found faulty or defective, the faulty
 Equipment to be repaired or replaced free of cost during
 the Guarantee period.
- 8) Delivery : Supply should be made in such a manner that entire
 erection and commissioning is done on or before
 30th Sept, 2011.

F) Other term & Conditions.

- 1) You will impart detail informative practical training for operation and maintenance of equipment to our operating staff.
- 2) Necessary manuals of all equipments to be given in 3 sets for our reference.
- 3) List of essential spares required for 2 years alongwith cost to be given.
- 4) During season, the service of your engineer to be made available immediately on receipt of breakdown calls.
- 5) System should be designed in such a manner that minimum nos. of workmen can handle bagging, stitching and bag conveying operations for entire day's production within 10 hours.
- 6) Good quality structural steel from standard manufacturers to be used (Not rerolled).
- 7) By pass arrangement to be provided for each silo to continue weighing and bagging operation manually in case there is any problem with weighing machines.



8

G) Make of equipments:

- a) Sugar Weighing Machine : Techno weigh
- b) Bag Stitching Machine : Sumech
- c) Slat conveyers / elevators : Any reputed makes
- d) Motors : Siemens / Allenberry / Premier
- e) Gear box : Top Gear / Premier
- f) Electrical : Siemens
- g) Control / Automation : Reputed make

Final choice of equipment will be informed shortly.

H) Exclusion:

- a) Electrical cable supply.
- b) Electrical starters and control panels of all motors except auto.

This order is sent in duplicate. Please return one copy duly signed as a token of acceptance.

Thanking you,

Yours faithfully,

(K.A. Aziz)
Executive Vice President

4.15 From the perusal of the purchase orders it is quite evident that the findings recorded in the impugned order that the appellant was supplying only silo per-se cannot be sustained. It is silo system which is capable of performing the assigned function is being manufactured and cleared by the appellant along with the associated accessories. It is settled position in law as per the Rule 2 (a) of the General Rules of Interpretation and clearly specified as per Section Note 3, 4 & 5 to Section XVI of the First Schedule to the Central excise Tariff Act, 1985 that essential character determines or the prime function of the machines, equipment interconnected or working in tandem will determine the classification of the said group of machines and equipment. HSN Explanatory Notes in respect of the Section XVI clearly states as follows:

"(V) UNASSEMBLED MACHINES

(See General Interpretative Rule 2 (a))

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 (IV) 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.

(VII) FUNCTIONAL UNITS

(Section Note 4)

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. 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.

"The following are examples of functional units of this type within the meaning of Note 4 to this Section :

(1) Hydraulic systems consisting of a hydraulic power unit (comprising essentially a hydraulic pump, an electric motor, control valves and an oil tank), hydraulic cylinders and the pipes or hoses needed to connect the cylinders to the hydraulic power unit (heading 84.12). (2) Refrigerating equipment consisting of components which are not fitted together to form a whole and are interconnected by means of piping through which the coolant circulates (heading 84.18).

(3) Irrigation systems consisting of a control station comprising filters, injectors, metering valves, etc., underground distribution and branchlines, and a surface network (heading 84.24).

(4) Milking machines with separate component parts (vacuum pump, pulsator, teat-cups and pails) interconnected by hoses or piping (heading 84.34).

(5) Brewhouse machinery comprising, inter alia, sprouting or germination machines, malt crushing machines, mashing vats, straining vats (heading 84.38). Auxiliary appliances (e.g., bottling machines, label-printing machines), are however not included and should be classified in their own appropriate heading.

(6) Letter sorting systems consisting essentially of coding desks, pre-sorting channel systems, intermediate sorters and final sorters, the whole being controlled by an automatic data processing machine (heading 84.72).

(7) Asphalt plant consisting of separate components, such as feed hoppers, conveyors, dryers, vibrating screens, mixers, storage bins and control units, placed side by side (heading 84.74).

(8) Machinery for assembling electric filament lamps, of which the component parts are interconnected by conveyors, and which include equipment for the heat-treatment of glass, pumps and lamp-testing units (heading 84.75).

(9) Welding equipment consisting of the welding head or tongs, with a transformer, generator or rectifier to supply the current (heading 85.15).

(10) Portable radiotelephone transmitters and their associated hand microphone (heading 85.17).

(11) Radar apparatus with the associated power packs, amplifiers, etc. (heading 85.26).

(12) Satellite television reception systems consisting of a receiver, a parabolic aerial reflector dish, a control rotator for the reflector dish, a feed horn (wave guide), a polarizer, a low-noise-block (LNB) down converter and an infra-red remote control (heading 85.28).

(13) Burglar alarms, comprising, e.g., an infra-red lamp, a photoelectric

cell and a bell (heading 85.31).

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).

(IV) INCOMPLETE MACHINES

(See General Interpretative Rule 2 (a))

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.

4.16 Further the finding recorded in the impugned order to effect of classification of Silos under Chapter Heading 9406, is contrary the classification opinion rendered by the HSN Committee in 59th Session.

"Amendments to the Compendium of Classification Opinions - HS Committee 59th Session

Insert the following Classification Opinions :

"8479.89

8. Flat base silos, made of corrugated sheets of galvanized steel iron, used for grain storage, ranging from 4.51 to 31.60 m in diameter with storage capacity from 50 to 15,000 tons, containing an indoor temperature control system which helps to

identify the hot areas and insect activity. They are equipped with a bottom sweep auger which rotates 360° around its own axis to unload residual grains at the bottom of the silos. Radial and axial fans are used for aeration of stored material.

Application of GIRS 1 and 6.

"8479.89

9. Conical base silos, made of corrugated sheets of galvanized steel iron, used for grain storage, produced within a range of 45 - 65° base angle, containing an indoor temperature control system which helps to identify the hot areas and insect activity. Radial and axial fans are used for aeration of stored material.

Application of GIRS 1 and 6."

4.17 Even Jurisdictional Chief Commissioner has expressed the opinion as follows in respect of the classification of the impugned goods as cleared by the Appellant as is evident from the following letter:

Annexure 'B'



OFFICE OF THE CHIEF COMMISSIONER OF CENTRAL EXCISE & CUSTOMS, PUNE,
41-A, ICE HOUSE, SASOON ROAD, POST BOX NO. 273, PUNE - 411001

Telephone No. : 020-26051800

FAX No. : 020-26051802

F.NO: IV/16-104/CCO/PZ/TECH/2012
PUNE, the December, 2012

SPEED POST

To,
Shri Madan Mohan,
OSD (CX.1)
Central Board of Excise & Customs,
New Delhi

Sir,

Subject : - Grain storage silos – Unfair application of classification to only one Indian manufacturers - reg....

Please refer to your letter F.No: 84/04/2012-CX.I dtd. 21.11.2012 on above mentioned subject.

2. In this context, it is to inform that M/s B.G.Shirke Construction Technology Pvt. Ltd., Mundhwa, Pune are the manufacturers of GI Silo System and is being classified under C.Ex. Tariff Sub-heading No. 84379090 attracting NIL rate of duty, as per the CESTAT decision in the case of M/s Shirke Structural's Pvt. Ltd., Pune (Old name of the assessee). The said order was passed in the case of M/s Thermax Ltd. Vs CCE,Pune & CCE,Pune Vs M/s Shirke Structurals (P) Ltd. (Copy of the said order is enclosed herewith). The another manufacturer in the zone Ie; M/s Thermax Ltd. have stopped manufacturing "Silos" since 1995.

3. The said GI Silo System is a complex system incorporating various mechanisms and sub systems performing individual functions and collectively known as system. It is not only a storage container like Diesel Barrel or Stainless Steel Tank but it is also an interconnected cluster of systems. This system is also attached with various enablers and processing equipments like loading, unloading, handling, aeration of grain, scientific preservation of grain, transfer through conveyors, packing in pre-programmed quantifies etc. Hence all these features incorporated in the GI Silo System strongly perceive that as a mechanism vis-à-vis only storage. Further such mechanism is predominantly used in various industries and particularly agricultural based /processing industry for storing the food grains till the time it is sold by a producer. This substantiates its usage as a machine rather than storing device

4. From the above it is felt that the classification of the above said product under Ch. Heading 84.37 seems to be correct. Further it is also felt that since the classification has been finalized by Hon'ble CESTAT vide order No. C/442 and 443/1995-B in their own case, the same is binding on the department as the appeal in this case is not filed by the department. The acceptance of the said CESTAT order is conveyed by the CBEC vide letter F.No: 304/71-72/96-C dtd. 02.02.1996.

Encl : as above



Yours faithfully,

(Signature)
(N.V.KULKARNI)
ADDITIONAL COMMISSIONER,
CENTRAL EXCISE & CUSTOMS

4.17 As per the above correspondence it is evident that Office of Chief Commissioner has agreed with the view as canvassed by the appellant while classifying the said goods under Heading 8437. We also take the note of the fact that this view has been expressed by the Chief Commissioner, under the scheme of eight

digit classification code introduced by the Central excise Tariff Amendment Act, 2004. We also take note of the Shipping Bills filed by the appellant classifying the same goods under CTH 843709090 and assessed by the Custom Authorities at Nhava Sheva under the said heading.

4.19 In view of the discussions as above we do not find any merits in the impugned order classifying the impugned goods cleared by the appellant under CETH 94060099 and demanding the duty accordingly.

4.20 When the issue was taken up and decided upto tribunal in 1995, all the facts were in the knowledge of the revenue since then. The amendment scheme of classification from 6 digit to 8 digit was introduced in 1995 and the Office of Chief Commissioner has rendered the opinion after examination of the issue on 9th January 2013, then it is not understood just for the change of opinion how can appellant be charged for suppression with intent to evade payment of duty subsequently for invoking extended period of limitation and for imposition of penalty under Section 11AC.

4.21 Since we are unable to sustain the order of demand of duty, the order for demand of interest too can't be sustained.

5.1 Appeals are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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