

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20745 of 2023

(Arising out of Order-in-Appeal No. 1763/2022 dated 05.01.2023
passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Swastik Glass Traders

No. 41, Rangai Gowder Street,
Coimbatore - 641 001.
Tamil Nadu.

Appellant(s)

VERSUS

Commissioner of Customs

BMTC Building, Above BMTC Bus Stand,
Domlur,
Bangalore - 560 071.

Respondent(s)

APPEARANCE:

Ms. Vinitha, Advocate for the Appellant

Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 21648 /2024

DATE OF HEARING: 17.12.2024

DATE OF DECISION: 17.12.2024

PER : R BHAGYA DEVI

This appeal is filed by the appellant M/s. Swastik Glass Traders against Order-in-Appeal No. 1763/2022 dated 05.01.2023.

2. The appellant had imported 'Clear Float Glass' and classified the same under Customs Tariff Heading (CTH) 7005 1090 and claimed the benefit of the Notification No.46/2011 [Free Trade Agreement - Sl. No.934(I)]. The Commissioner (Appeals) rejected the classification of the appellant and

reclassified the same under CTH 7005 2990 as “others”, based on the manufacturing process. Hence, this present appeal.

3. The Learned Counsel on behalf of the appellant submitted that the issue of classification arose only based on the Comptroller & Auditor General of India (C&AG) Audit observations. It is submitted that the ‘clear float glass’ imported by them is rightly classifiable under CTH 7005 1090 which was rejected by the Revenue only on the ground that it does not have a ‘absorbent layer’. Further, relying on Chapter Notes 2(c) of Chapter 70, it is submitted that ‘clear float glass’ imported by them has a layer of oxidized metal i.e., tin on the side, which is an absorbent layer. It is further stated that when ‘clear float glass’ is manufactured, the raw materials, namely sand, soda-ash, limestone, feldspar, broken glass etc., are first melted in the furnace and the molten materials are subsequently fed into a bath of molten tin and spreads over a tin. This results in the formation of the absorbent layer of tin on one side of the glass. Referring to the decision of the Kolkata Bench of this Tribunal in the case of **M/s. Bagrecha Enterprises Ltd., Vs. Commissioner of Customs vide Final Order No. 77460-77462/2023 dated 03.11.2023**, wherein reliance was placed on the technical clarification from CSIR-CGCRI that the tin layer is an absorbent and non-reflective layer. He also relied on the decision in the case of **Oswal Agro Mills Ltd. vs. Collector of Central Excise: 1993 (66) ELT 37 (S.C.)** to emphasise that the Tariff Entries have to be read strictly.

3.1 He further submits that for classifying the product under CTH 7005 1090, only requirement is an absorbent layer, reflecting or non-reflecting is required to be present, while CTH 7005 2990 is only a residual entry and unless the other entries are ruled-out, it cannot be classified under this Heading. Finally, it is submitted that if the description of the goods in the Bills of Entry matches with the goods, claim of classification and

exemption has to be considered as a *bona fide* belief and cannot be construed as misdeclaration, hence confiscation and penalty thereof cannot be sustained. Relied on the following decisions:

- **Northern Plastic Vs. CCE: 1998 (101) ELT 549 (S.C.)**
- **Miot Hospitals P. Ltd. Vs. Commissioner of Customs: 2023 (9) TMI 464 – CESTAT, Chennai.**
- **Sirthai Superware India Ltd. Vs. Commissioner of Customs, Nhavasheva-III: 2020 (371) ELT 324 (Tri.-Mum.)**

4. The Learned Authorized Representative on behalf of the Revenue reiterating the observations of the authorities below submitted that based on the manufacturing process, the goods were rightly classifiable under CTH 7005 2990. Also, relied on the Board Circular dated 14.11.2024 wherein the Board had clarified that '*clear float glass which is not wired, not coloured, not reflective and not tinted and has only tin layer on one side and there is no other metal oxide layer on it, will be set to be having no absorbent layer; therefore, will be correctly classified under Tariff Item 7005 2990*'. Hence, he submitted that the impugned order needs to be sustained. It is also submitted that under RMS scheme, the emphasis is more on the self-assessment of the appellant and they are expected to be more vigilant and accurate in classifying their products, therefore, when the classification and the exemption claimed is found to be not in order, they are liable for confiscation, fine and penalty.

5. Heard both sides. The only issue to be decided is whether the 'clear float glass' imported by the appellant is classifiable under CTH 7005 1090 as claimed by the appellant or under CTH 7005 2990 as demanded by the Revenue and whether the benefit of Notification No. 46/2011-Cus dated 01.06.2011 can be extended to the impugned goods.

6. The Commissioner (Appeals) in the impugned order has observed that "*the manufacturing process of Float Glass reveals*

that during the production of any float glass, the molten glass is fed into a "Float or Tin Bath" to make float glass perfectly flat and smooth. Tin is suitable for float glass process because it has a high specific gravity, is cohesive and is immiscible with molten glass. Though, it leaves a residue on one side on the glass panel which can be identified with the short-wave UV light. It indicates that "float or tin bath" process is followed during the production of each and every float glass, hence, any type of float glass falling under CTH 70051, 700521, 700529 or 700530 have to undergo to the process of float or tin bath during its manufacturing and therefore, this cannot be treated as layer in sense of CTH 700510 or more specifically any observant, reflecting or non-reflecting layer. Further, the possibility of classifying the glasses under CTH 7005 2110 (meant for tinted) or under CTH 7005 3010 (wired glass) was also ruled out. I find that the subject goods are merit classification under CTH i.e., 7005 2990 - "others".

7. On the other hand, the appellant had placed on record the decision by this Tribunal in their own case wherein the impugned products were classified under Chapter Heading 7005 1090. The Tribunal vide its Final Order No. 40956/2024 dated 23.07.2024 has observed as follows:

"10. We find that the issue of classification of CFG is no more res integra since the issue and identical arguments submitted by litigants were already elaborately dealt with in the Orders of the Kolkata Tribunal vide [Final Order Nos. 77460-77462/2023 dated 03.11.2023] and Chennai Tribunal vide [Final Order No. 40352/2024] in the case of M/s. Bagrecha Enterprises Ltd. Vs. Commissioner of Custom, Chennai wherein it was held that the Clear Float Glass is more appropriately classifiable under CTH 7005 1090 of the Customs Tariff Act, 1975 and the relevant paras have been reproduced below for the sake of convenience:-

"9.1 Before proceeding to determine the appropriate classification of imported CFG, it would be relevant to reproduce rival tariff entries with the relevant Chapter Note as follows:-

7005- Float Glass and Surface Ground or Polished Glass, in Sheets, whether or not having an Absorbent, Reflecting or Non-Reflecting Layer, but not Otherwise Worked

7005 10 - Non-wired glass, having an absorbent, reflecting or non-reflecting layer

7005 10 10 --- Tinted

7005 90 --- Other

- Other non-wired glass

7005 21 -- Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground:

7005 21 10 --- Tinted

7005 21 90 --- Other

7005 29 -- Other

7005 29 10 --- Tinted

7005 29 90 --- Other

Chapter Note 2(c) to chapter 70 read as follows:- "2. For the purposes of headings 7003, 7004 and 7005 : (a) glass is not regarded as "worked" by reason of any process it has undergone before annealing ; (b) cutting to shape does not affect the classification of glass in sheets ;

(c) the expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."

9.2 It is evident from the manufacturing process that the CFG manufactured as above has a microscopically thin coating of metal layer, namely TIN on one side of the CFG, which is known as "Tin Side". Further it is an undisputed fact in this proceeding that the imported CFG are non wired and non-tinted. This leaves us to ascertain whether such microscopically thin Tin Coating appearing on the TIN side is an absorbent, reflecting or non- reflecting layer to get classified under Tariff item 7005 1090.

9.3 It is already on record that the Department have drawn samples and tested the same with the Government notified laboratory namely CSIR CGCRI, Kolkata which had reported that the imported CFG sample is having a microscopically thin coating of Metal, namely TIN, and it is an absorbent/non-reflective layer. This fact is also not in dispute in this proceeding. However, the SCN alleges that such absorbent reflective tin layer present in the CFG is obtained by natural phenomena during the manufacturing process and not by way of a separate coating process after manufacture of CFG and hence, the imported CFG would not merit classification under tariff item 70051090. The Ld. Adjudicating Authority has confirmed the above proposition in the impugned order.

9.4 But, the Ld. Advocate argued that as per CTH 7005 to get classified under Chapter Heading 70051090 of CTA, CFG shall be a non-wired glass, having an absorbent, reflecting or non-reflecting layer of metal. The imported CFG is non-wired is not in dispute. Entire dispute centres around whether the imported goods are having an absorbent layer or not in terms of Chapter Note 2(c) of Chapter 70 of the Customs Tariff Act, 1975. As per Chapter Note 2(c) of Chapter 70 what needs to be demonstrated is that the CFG has a "microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."

9.5 The Ld. Advocate has further submitted that it is evident from the manufacturing process explained above as well as the test report referred above, that the CFG is having a microscopically layer of metal, namely tin, which is an absorbent/non-reflective layer as contemplated in the above referred Chapter note, and it was an admitted fact in Paragraphs 11 and 12 of the Show Cause Notice.

9.6 It was further contended that though the Ld. Adjudicating Authority accepts that CFG has an absorbent layer of tin on one side, he proceeds to give a finding that such layer of tin is not the result of applying any coating on the CFG but of a natural phenomena in the manufacture of CFG which inevitably introduces tin by thermal

diffusion into one side of the glass. In other words, the Ld. Adjudicating Authority touts the audit objection of CRA that the absorbent reflecting or non-reflecting layer is available only on the tin side of the CFG and not on the air side of the CFG.

9.7 The advocate would submit that, neither the tariff heading nor the Chapter Note warrants nor mandates that the absorbent reflecting or non reflecting layer shall be on which side of the CFG. In other words, the only requirement for CFG to get classified under 70051090 is that the CFG shall have an absorbent reflecting or non-reflecting layer, which is undisputedly present in the instant case and the same, is evidenced by test reports issued by the notified Government Agency viz., CSIR-CGCRI as many as more than 40 test reports pertaining CFG imports through various Custom Houses. Further, the Ld. Advocate referred to an RTI application made to CSIR wherein it was clarified that all the float glasses tested for Customs by them since 2017 till 17.07.2023 has a tin layer on one side of the float glass which is absorbent and non-reflective. [CSIR-Central Glass and Ceramic Research Institute's letter dated 17.07.2023. (Page No. 43 of Synopsis filed)]

9.8 He also submitted that, identical goods manufactured by domestic manufacturers viz., Saint Gobain have also classified the goods under CTH 7005 1090 and assessed accordingly both for domestic clearances and exports.

9.9 We find that Department's insistence of absorbent layer to be only on the air side for its classification under CTH 70051090 was vehemently contested by the counsels for the appellant and they submitted that, neither the tariff heading nor the chapter note provides for a requirement of such coating on any prescribed side and instead, on a plain reading of the tariff entry and the chapter Note 2(c) would only envisage that the CFG should have an absorbent, reflective or non-reflective thin microscopical layer for the purpose of classification under tariff item 70051090, which is very much present and remains undisputed. It was submitted that it is not permitted for the Ld. Adjudicating Authority to add or amend either tariff or chapter notes, to suit revenue's benefit. The above contentions are convincing

as in matters of classification, a simplicitor and straight forward approach is paramount unless there is an anomaly.

10. We also note that in the appellant's own case on the very same issue, the co-ordinate bench of this Tribunal at Calcutta vide their Final Order No. 77460-77462/2023 reported in [2023 (11) TMI 485 CESTAT KOLKATA] has held that the CFG is rightly classifiable under tariff item 7005 1090. The relevant Paragraphs read as follows:-

"16. We find that there is no dispute that the impugned goods is non-wired glass. By conjoint reading of the above note 2(c) and the manufacturing process, it can be inferred that CFG would have microscopical layer of metal, namely tin, which is an absorbent layer as contemplated under the above said Chapter Note 2(c). Hence, the correct classification of the impugned goods is under CTH 7005 1090 of Customs Tariff Act.

17. We further find that the manufacturers in India of the identical goods namely M/s. Saint-Gobain India Pvt. Ltd., M/s. Goldplus Float Glass are manufacturing and clearing CFG under CTH 70051090 of the CTA and the same has been accepted by the department.

18. We further find that the impugned proceedings were initiated against the appellant on the basis of Audit Para holding that the Float Glass invariably a layer of Tin on one side, which does not mean that all Float Glass to be classifiable under 7009 1090.

19. We find that the appellant sought reply under RTI dated 17.07.2023, wherein the question was raised that it is observed that in some of the Report, no other layer other than Tin layer is found on one side of the Glass which is fluorescent is mentioned. Whether such layers are reflective or notreflective and whether such layers are absorbent or not? The reply is given as (a) not-reflective and (b) absorbent (UV).

20. If the same is considered then the said clarification is satisfying the Chapter Note 2(c) of Chapter 70 of the Customs Tariff Act and the said Report has not been relied upon by the adjudicating authority while adjudicating the case. Therefore, the impugned order is bad in law.

21. We further take note of the fact that in the case of M/s. Suraj Constructions (supra), the Advance Ruling Authority has examined the issue and observed as under:-

"7. I have considered all the materials placed before me for the subject goods. I have gone through the submissions made by the applicant during personal hearing and the comments of the jurisdictional Principal Commissioner/Commissioner of Customs, on the impugned subject matter. The subject goods for which advance ruling has been sought, their characteristics, manufacturing process, utility etc. are already mentioned in the aforementioned paras. The subject goods are clear float glass, with an absorbent layer, which is fluorescent under UV illumination. The subject goods are not wired, tinted or green in colour. The heading 7005 10 covers non-wired glasses having an absorbent, reflecting or non-reflecting layer and the headings 7005 21 to 7005 29 deal with non-wired glasses which are tinted having absorbent layer, opacified, flashed etc. Therefore, the subject goods are appropriately covered under sub-heading 7005 1090. Based on the applicant's submission about the country of origin and the manufacturer of the subject goods, benefits under sr.no.934 of the table annexed to the exemption notification no.46/2011-Cus., dated 01.06.2011, would be available, subject to the condition that in respect of each case of import, the applicant would have to produce evidence before the Deputy/Assistant Commissioner of Customs as to the origin of subject goods.

8. On the issue of whether the benefit of the said exemption would be available even if the sub-heading mentioned in the COO differs for 70051090, the applicant & their authorized representative were asked to explain the context of the said question. It appears that the subject goods are being exported from Malaysia under its code 70052990. The applicant has submitted a copy of the letter ref. no.MITI.700-2/26 Jld.6(38) dated 30.04.2021 from the Director of Trade and Industry Cooperation, Ministry of International Trade and Industry (MITI, hereinafter), stating that they had been requesting the clear float glass exporters to provide an advance ruling/document of

the Government of India or from Royal Malaysian Customs confirming the correct HS code. It appears that M/s. Kibing Group (M) Sdn. Bhd. has obtained a letter from the Royal Malaysian Customs dated 12.03.2021 confirming the classification of clear float glass under HS code 7005.10.09, and therefore, MITI has allowed KGM to apply for a COO with exporting and importing HS code of 70051090. This letter goes on to state that unless M/s. Xinyi produces a similar document, their application with different exporting and importing tariff code cannot be approved."

22. Further, in the case of M/s. Chandrakala Associates (supra), again the Advance Ruling Authority has examined the issue and observed as under:-

"10. I have considered all the materials placed before me for the subject goods. I have gone through the submissions made by the applicant during personal hearing. In absence of any comment from the jurisdictional Principal Commissioner/Commissioner of Customs, on the impugned subject matter, I proceed to render an advance ruling based on materials available on record. The subject goods for which advance ruling has been sought, their characteristics, manufacturing process, utility etc. are already mentioned in the aforementioned paras. The subject goods are clear float glass, with an absorbent layer, which is fluorescent under UV illumination. The subject goods are not wired, not tinted or not green in colour. The heading 7005 10 covers nonwired glasses having an absorbent, reflecting or non-reflecting layer and the headings 7005 21 to 7005 29 deal with non-wired glasses which are body tinted, opacified, flashed etc. Therefore, the subject goods should more appropriately be covered under sub-heading 7005 1090. While prima facie, based on the applicant's submission about the country of origin and the manufacturer of the subject goods, exemption notification no.46/2011-Cus., dated 01.06.2011, appears to be available, in terms of the said notification, in each case of import the applicant would have to produce evidence before the Deputy/Assistant Commissioner of Customs to substantiate the origin of subject goods.

11. In view of the above discussions, I hold that the subject goods ‘Clear Float Glass’ having an absorbent layer merit classification under heading 70.05 and more specifically, under subheading 70051090 of the first schedule to the Customs Tariff Act, 1975. The said imports shall also be governed by the provisions of Notification No.37/2020-Customs (ADD), dated 11.11.2020. The benefit of exemption notification no.46/2011, dated 01.06.2011 would be determined in accordance with conditions laid down in the said notification.”

23. Further, the Ld. Commissioner (Appeals) in the case of M/s. Asahi India Glass Limited (supra) has examined the issue and observed as under:-

“5.4 Now coming to merits of issue, the contesting entries viz 70051010 (as declared by the appellant) and 70052110 (as per the assessing Authority) from the Customs Tariff are reproduced below:-
Upto 31.12.2019

7005	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked.
700510	-Non-wired glass, having an absorbent, reflecting or non-reflecting layer.
70051010	--- Tinted
70051090	--- Other
	- Other non-wired glass;
700521	-- Coloured throughout the mass (body tinted) opacified, flashed or merely surface ground:
70052110	--- Tinted.

It is pertinent to mention that w.e.f. 01.01.2020 (as amended vide Finance Act, 2019 and made applicable as per Notfn.89/2019-Cus (N.T.), dated 10.10.2019), the sub-heading700521 was amended to read as under:- “....Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground.”. Thus, specifically a comma was inserted in the said sub-heading. The said amendment was not given retrospective effect. 5.4.1 Chapter Note 2 of chapter 70 is reproduced below –

- “2. For the purposes of headings 7003, 7004 and 7005:
- (a)
 - (b)
 - (c) The expression “absorbent, reflecting or non-reflecting layer’ means a microscopically thin coating of metal or of a chemical

compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass.”

5.4.3 A Plain reading of CTH 7005 would reveal that 700510 covers non-wired glass having absorbent, reflecting or non-reflecting layer. A clear conclusion is that single clash entry after 70051090 i.e. “.... other non-wired glass” would cover non-wired glasses without absorbent, reflecting or non-reflecting layer.

5.4.4 The Adjudicating Authority has held that CTH 700521 covers glass which may or may not have absorbent or reflecting or non-reflecting layer. The Adjudicating Authority has contended that the impugned goods are coloured through out body (i.e. body tinted) and thus covered by CTH 700521 and articles of CTH 700521 may or not have absorbent/reflecting layers. This interpretation itself is erroneous in light of scheme of CTH under 7005 and explanation given in 5.4.3 above.

5.4.5. It is settled position of law that burden of proof of classification is on the Department. The classification has been changed on the basis of Test Reports. I have carefully going through the copies of Test Reports from CGCRI, Kolkata. I find that said Test Reports are not conclusive enough to reject the declared classification by the Appellant. Rather, the said Reports do mention the presence of Layer. The exact findings of some of the Test Reports in this regard are as under:-

“c) The Tin Side is detected under UV illumination using the detector.

i) An absorbent layer (Tin) is observed on one side of the glass which is fluorescent under UV illumination.

j) The glass is found to be coated with ZnSO₄ film on opposite to tin side as protective layer.”

The Test Reports have clearly established that impugned goods were having absorbent layer (Tin) on one side. This fact is not disputed. Accordingly, I find absolutely no reason to exclude these goods from 700510 & classify them under 700521. Rather, the said goods viz. “Light Green Float Glass/Coloured Float Glass” with absorbent Layer

of Tin on one side would merit classification under Sub heading 7005 and more precisely under CTH 7051010."

24. As from the facts of the case, it is clear that the Clear Float Glass imported by the appellant are absorbent and having non-reflecting layer, in that circumstances, the appellant has qualified the merit classification under CTH 7005 1090, therefore, we hold the correct classification of the Clear Float Glass imported by the appellant under the impugned Bills of Entry is classifiable under CTH 7005 1090. Consequently, the appellant is entitled for benefit of Sl. No. 934 (I) of Notification No. 46/2011-CUS dated 01.06.2011

25. In view of this, we conclude that the impugned orders deserve no merit, hence, the same are set aside and the appeals are allowed with consequential relief, if any. "

11. In the instant case, a conjoint reading of the Tariff Heading, relevant Chapter Note, test reports and the manufacturing process would establish that there is a thin TIN layer which is absorbent and non-reflective answering the tariff heading/chapter note in the affirmative, thus meriting classification under tariff item 70051090. As rightly contested by the appellants, there is no legal prescription as to which side of the CFG should have such an absorbent, reflective/non-reflective layer. We are unable to persuade ourselves with the Revenue's contention which is based on contested CRA objection that the presence of metal layer should be by way of conscious coating and on the "Air Side" of the CFG. It is relevant to note here that on one hand the revenue themselves have not accepted the CRA objection, which is the basis for these proceedings, and are contesting the CRA objection. Thus, we conclude that the classification adopted by the appellant under tariff item 7005 1090 is correct and the classification determined in the impugned order is without any basis and hence not sustainable. Appreciating the ratio of the decision of Kolkata Tribunal in the Appellant's own case where facts are identical, we hold that the impugned Order-in-Original No. 101620/2023 dated 11.04.2023 cannot be sustained and so ordered to be set aside.

12. As such, we confirm the classification of the imported CFG under tariff item 7005 1090 and consequently, the appellants are rightly entitled for the benefit of Sl.No. 934 of Notification No. 46/2011-cus., as claimed by

them subject to fulfilment of production of valid Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of ASEAN and Republic of India) Rules, 2009.”

8. In view of the above, as the issue of classification of the impugned products stands settled in favour of the appellant, we do not find any reason to sustain the impugned order and the same is set aside and the Appeal is allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in
Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

RV