CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40203 of 2023

(Arising out of Order-in-Original No. 101620/2023 dated 11.04.2023 passed by Commissioner of Customs, No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Bagrecha Enterprises Ltd. **...Appellant**
No. 850/5, Mettupalayam Road,
Coimbatore – 641 002.

Versus

Commissioner of Customs **...Respondent**
Chennai Import Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Shri S. Jai Kumar, Advocate
Shri M. Karthikeyan, Advocate

For the Revenue : Shri R. Rajaraman, Assistant Commissioner / A.R.

CORAM:
HON'BLE MR. S.S. Garg, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40352 / 2024

DATE OF HEARING : 25.01.2024
DATE OF DECISION : 27.03.2024

Order :- [Per Mr. VASA SESHAGIRI RAO]

Customs Appeal No. C/40203/2023 has been filed by M/s. Bagreecha Enterprises Limited being aggrieved by the Order-in-Original No. 101620/2023-ST dated 11.04.2023 passed by the Commissioner of Customs, Chennai-II ordering for reclassification of imported Float Glass under CTH 70052990 and confirming the demand of short levied duties of

Rs.41,41,13,642/- during the period from 17.04.2017 to 01.04.2022, under Section 28(8) along with applicable interest as per Section 28AA of Customs Act, 1962, besides imposing redemption fine of Rs.31,00,00,000/- in lieu of confiscation in terms of Section 125 of Customs Act, 1962 and Penalty equal to duty short levied under Section 114 A of Act *ibid*.

2.1 Brief facts emerging from this appeal are that the Appellant had imported "Clear Float Glass" (CFG) from Malaysia classifying under CTH 7005 1090 and cleared the same @ Nil rate of BCD availing exemption under Notification No. 46/2011-Cus dated 01.06.2011(Serial No. 934) as the Country of Origin of subject import goods is Malaysia, a country notified for the benefit of ASEAN India Free Trade Area (AIFTA).

2.2 However, the department was of the view that the imported Float Glass is classifiable under CTH 7005 2990 attracting BCD @10% and consequently not eligible for the benefit under Notification No. 46/2011-Cus. dated 01.06.2011. Hence it was alleged that the CFG imported from Malaysia was wilfully mis-classified under CTH 70051090 for the purpose of availing FTA benefit of said Notification, resulting in short levy of applicable Customs duty.

2.3 Accordingly, a Show Cause Notice dated 18.04.2022 was issued to the Appellant proposing :-

i. to reject the classification of CFG adopted by the Appellant for the subject imports and to re-classify the same under CTH 70052990 thereby seeking to deny the benefit of Notification No. 46/2011-Cus dated 01.06.2011

ii. to demand differential Customs duties of Rs.41,41,13,642/- arising on account of short levy along with interest under Section 28(8) and 28AA of Customs Act, 1962.

iii. to Confiscate the subject import goods under Section 111(m) of the Act *ibid* and to

iv. impose penalty under Section 114A/112(a) of Customs Act, 1962.

2.4 After due process of law, the Adjudicating Authority:-

i. rejected the assessment and declared classification of CFG under CTH 70051090 by the Appellant and ordered for re-classification under CTH 70052990 and re-assessment of the subject imports denying the benefit of Notification.

ii. Confirmed the demand of short levied Customs duties of Rs.41,41,13,642/- under Section 28(8) of Customs Act, 1962 along with applicable interest.

iii. held that the disputed imports valued at Rs.3,17,81,43,860/- during the period from 17.04.2017 to 01.04.2022 were liable for confiscation under Section 111(m) of the Act *ibid* and imposed a redemption fine of Rs.31 crores in lieu of confiscation under Section 125 of the Act *ibid* and

iv. imposed a penalty equal to the duty confirmed in terms of Section 114A of Act *ibid*.

2.5 Being aggrieved, the present appeal was filed by the Appellant before this forum.

3. The Ld. Advocates Shri S. Jaikumar and M. Karthikeyan representing the Appellant, have submitted that:-

i. Based on the audit objection raised by the Customs Revenue Audit ('CRA'), the Show Cause Notice (SCN) dated 18.04.2022was issued to the Appellant proposing reclassification of Clear Float Glass from CTH 70051090 to 70052990 and the benefit of Notification was also sought to be denied. It was averred that the SCN is *void abinitio*, in the absence of directions by Commissioner (PAC) to issue SCN and adjudicate the issue on merits.

ii. It was pointed out that the entire allegation as well as confirmation of the re-assessment leading to a re-classification was borne out of an audit Para 4.10.01 (DAP 83 of audit report No. 17/2020). As per Para 5 of Circular No. 1023/11/2016-CX dated 08.04.2016 issued by the Central Board of Excise and Customs (CBEC), with regard to adjudication of Show Cause Notices issued pursuant to audit objections by CERA/CRA, it has been mandated that the adjudication of admitted DAP/AP's should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record. It was informed that the appellant sought from the Ministry the Action Taken Note on the said Audit Para by way of information sought under the RTI Act and perusal of the same would reveal that the Ministry has replied both scientifically as well as legally justifying the classification of CFG under CTH 70051090, in their reply to the said Audit Para and the relevant Action Note is reproduced below:-

Verification comments on Ministry's Action Taken Note on Audit Para No. 4.10.1 (DAP 83) Audit Report No.17 of 2020

Sl. No	Audit Para No. and subject.	Gist of Para	Ministry's ATN	Remarks/comments of CRA Kochi
1	**4.10.1 Clear Float Glass misclassified as 'non wired glass'.**	4.10.1 Clear float glass misclassified as 'non wired glass'. Clear float glass is transparent and offers high visible light transmittance. It does not have any absorbent, reflective layer and is classifiable under CTH 70052990 as 'Other non-wired glass' attracting BCD at the rate of 5 per cent (notification no.46/2011-cus, Sl.no.935) when imported from ASEAN countries. M/s 'K' Enterprises Limited and 19 other firms imported (April 2017 to March 2018) 'float glass' (249 BsE) through Chennai (Sea) and Kochi (Sea) Commissionerates. The imported goods were misclassified under CTH 70051090 and exempted from BCD. This resulted in non-levy of duty amounting to 4.34 crore. Audit noticed that the imported goods were clear and not coated with any absorbent, reflective or non-reflecting layer, accordingly merit classification under CTH 70052990 and BCD was leviable at 5 per cent in terms of aforesaid	Please refer to your office letter No. 29/ Ind Tax/Customs/136-2019 dated 31.01.2022 on the above cited subject. In this regard it is to submit that the Audit objection is based on the proposition that the "absorbent, reflecting or non-reflecting layer" mentioned in Chapter notes 2(c) of Chapter 70 of the Customs tariff is distinct from the Tin layer found in the floating glass and that coating of glass is a process whereby metal oxides are sprayed in the form of thin coatings; that it modifies the behaviour of the glass with respect to solar radiation, visibility and reflection of light; that different types of technology and process are involved in coating of glass according to the purpose for which the glass is used and is a class apart from clear float glass. Classification of goods in the first schedule - import tariff is governed by the general rules of interpretation (GRI) and general explanatory notes thereof. As per Rule1 of GRI, "for legal purpose, classification shall be determined according to the terms of the headings and any relative section or chapter notes.". As	***The Ministry's reply examined and the following remarks are offered.*** As stated by the Ministry, as per Rule 1 of GRI, for legal purpose, classification shall be determined according to the terms of the headings and any relative section or ***chapter notes.*** Chapter note 2 (c) under Chapter 70 states as follows: "***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***". The purpose of the above Chapter Note indicates the intention of the legislature to bring clarity as to the type of glass covered by the term 'absorbent, reflecting or non-reflecting layer" and the purpose for which such type of glass is used, ie., ***which absorbs, for example, infra-red light or improves the reflecting qualities of***

		notification. On this being pointed out (July/ August 2018), the Customs authorities, Cochin stated (September 2019) that I/36202/2021 the composition of the glasses was soda lime silica based glass containing other minor components. The glass surfaces are not polished, not tinted, non-wired and not specified. The Department further stated that test results of imports indicate that "An absorbent Layer of Tin" was observed on one side of the glass which is fluorescent under UV illumination". Accordingly, in view of the test result, the imported goods are clear float glass and correctly classified under CTH 70051090. The reply of the Department was not acceptable because:- (a) The manufacturing process of float glass involves floating molten glass to the mirror-like surface of molten tin, starting at 1,100 degree Celsius leaving the float bath as a solid ribbon at 600 degree Celsius on a bed of molten tin which inevitably introduces tin by thermal diffusion into one side of the glass. The glass so manufactured is clear float glass, one side of which is known as the	per GRI 6, for legal purposes, the classification of goods in sub-headings of a heading shall be determined according to the terms of those sub-headings and any related subheading notes..."The terms of heading 7005 read as "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". The sub-heading 7005 10 read as "non-wired glass, having an absorbent, reflecting or non reflecting layer". The tariff item 7005 1010 denotes "tinted" and 7005 1090 denotes "other" whereas the Customs tariff item 7005 2990 denotes "Other" in the "Other" category of "other non-wired glass. The subject goods are declared as "clear float glass" and the relevant CGCRI report states that the glass is a non-wired float glass and that an absorbent layer (tin) is observed on one side of the glass which is fluorescent under UV illumination". On conjoint reading of the report vis a vis the chapter notes and terms of the sub heading 7005 10 and GRI, it can be seen that the goods are rightly classifiable under the customs tariff item of 7005 1090. Moreover Rule 3(a) of the GRI states that the heading which provides the most specific description shall be preferred to headings providing a more general description. It is pertinent to note that	***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*** " as a result of coating applied with metal or chemical compound. Audit is in agreement with the case law quoted by the Ministry which ruled that "in classifying the product, the scientific and technical meaning is not to be resorted to and that the product must be classified according to the popular meaning attached to it by those using the product" The popular meaning attached to the product "Clear float glass" does not covers glass which is subject to coating as specified in the Chapter note. Clear float glass means "CLEAR" as understood by those using the product and not COATED. Whereas the popular meaning of Glass which is coated as specified in the Chapter note is generally understood by those using the product as "coated glass". (i) The department has not disputed the fact that the item description in the Bills of Entry mentioned in the TA

		tin side and other side as the air side. All glass manufactured under float process, (clear, coated or tinted) invariably would contain a layer of tin on one side, which does not mean that all float glass is to be classified under 70051090. (b) Further, test reports also revealed that the glasses are neither "tinted" nor "wired". Hence, the possibility of classifying the glasses under CTH 70052110 (meant for tinted) or under CTH 70053010 (wired glass) was also ruled out. Therefore, the imported goods merit classification under CTH 70052990 – "Others" and attract BCD at the rate of 5 per cent. Apart from test checked cases, analysis of data (2017- 18) revealed that in another 592 imports of "Clear float glass" made through 27 Customs Ports, BCD was exempted instead of applicable rate of five per cent. The duty involved was 13.39 crore. CBIC may examine these cases and take corrective action. The matter was referred to the Ministry in August 2020, their response was awaited (September 2020).	neither the chapter notes to Chapter 70 of the Customs Tariff nor the explanatory notes issued by the World Customs Organization stipulate any specific process for the production of the coating nor it excludes per se the absorbent layer of Tin as reported in the test report of CGCRI, from the scope of the "microscopically thin coating of metal or of a chemical compound...". The wordings used in the relevant sub-heading is "non-wired glass, having an absorbent, reflecting or non-reflecting layer". The chapter notes or the explanatory notes referred above has not given any clarification on the coating process. Moreover, Supreme Court of India in Dabur (India) Ltd., Vs Commissioner of Central Excise, Jamshedpur (2005) (182) ELT 290 (SC) & Commissioner of Central Excise, Nagpur Vs Vicco Laboratories has ruled that in classifying the product, the scientific and technical meaning is not to be resorted to and that the product must be classified according to the popular meaning attached to it by those using the product. The audit has not given any source or details of the methodology adopted by them for arriving at the conclusion that the absorbent layer of Tin is excluded from the ambit of "microscopically thin coating	Memos were "Clear float glass" and not "Float glass having an absorbent reflecting or non-reflecting layer" or "coated glass". The presence of absorbent, reflecting or non-reflecting layer on the 'clear float glass' imported was not examined by the Department at the time of assessment nor was any test report produced along with the import documents to prove that the glass imported contained any absorbent reflecting or non-reflecting layer. In the absence of such documentary evidence it is not known how the Department concluded that the goods imported declaring as "clear float glass" contained any absorbent reflecting or non-reflecting layer and allowed clearance classifying under CTH 70051090 without considering the Chapter note 2(c). (ii) As stated by the Ministry "Rule 3(a) of the GRI states that the heading which provides the most specific description shall be preferred to headings providing a more general description". The sub-heading 7005 10 is specific to glass having an 'absorbent, reflecting or non-reflecting layer'. Whereas the item description of the imported glass is "clear float glass". In the absence of any documentary

			of metal or of a chemical compound..." as given in Chapter notes 2 (c) of Chapter 70 of the Customs tariff and also the process of coating of glass as detailed in (ii) ibid. In the absence of such scientific or legal background and also on the basis of the test results of identical goods, the objection raised by the audit is unsustainable. In view of the above, Audit Para may kindly be considered for closure.	evidence regarding the presence of "absorbent, reflecting or non-reflecting layer' on the imported glass at the time of permitting clearance, the imported "clear float glass' was rightly classifiable under 7005 29 90. (iii) The test report of CGCRI which was produced subsequently was not in respect of "clear float glass" imported against the Bills of Entry in respect of which Audit has issued TA Memos. Hence the same cannot be relied upon to conclude that all clear float glass imported and cleared earlier also contained "an absorbent, reflecting or non-reflecting layer'. Considering the above facts, reply of the Ministry is not acceptable and requires re-consideration.

iii. It was submitted that to get classified under Chapter Heading 70051090 of CTH, the CGF shall be a non-wired glass, having an absorbent, reflecting or non-reflecting layer and not tinted. In the instant case, there is no dispute between the importer and department that the CFG imported is a non-wired glass. The CFG has a microscopic tin layer during the manufacturing process and the dispute was only with regard to whether such a layer is an absorbent, reflective or non-reflective layer to merit classification under CTH 7005 10 90 as per Chapter note 2 (c) of Chapter 70 to Customs Tariff Act, 1975.

iv. It was pointed out that for the period between November 2018 to June 2019, the entire imports of CFG by the Appellant were provisionally assessed and samples were drawn and tested at CSIR-Central Glass and Ceramic Institute, Kolkata to verify whether an absorbent, reflecting or non-reflecting layer exists or not. The said institute in its report stated that the CFG imported by the Appellant is a non-wired, non-tinted float glass having an absorbent layer (Tin) on one side of the glass. The extract of the test report dated 24.02.2022 is reproduced below:-

> *"Based on the test results and analysis of the tested glass, following points can be drawn:*
>
> *a) From complete chemical analysis , it can be stated that the composition of the glass is soda- lime silica based glass containing other minor components as given in the complete chemical analysis report.*
> *b) The measured average thickness of glass plates is observed to be 11.96mm.*
> *c) The Tin Side is detected under UV illumination using tin detector.*
> *d) The glass is float glass.*
> *e) The glass is annealed glass for decorative, industrial and automotive purposes only.*
> *f) No absorbent side is observed on Air Side other than tine layer on Tin side of the glass which is fluorescent under UV illumination.*
> *g) The glass is non-wired glass.*
> *h) The glass is not tinted glass.*
> *i) No reflecting or non-reflecting layer"*

Based on the above test report the CFG imported under 61 Bills of Entry were finally assessed under CTH 70051090. This final assessment was not challenged or appealed against and thus attained the finality and reliance was placed on the decisions in the case of *Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) [2004 (172) ELT 145 (SC)]* and *M.M. Exports Vs. Zonal Director General of Foreign Trade [2001 (133) ELT 558 (Cal.)].* It was vehemently contended that the differential demand is patently illegal as the impugned order had included the imports which were earlier finalised provisional assessments.

v. The Ld. Advocate has submitted that the Adjudicating Authority in the impugned order arrived at the finding that the layer of tin is not due to 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 and so 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.

vi. It was submitted that the impugned order has reproduced the test reports in Paragraphs 51-54 and has ignored the vital finding of the test report which proves the presence of absorbent tin layer. In this connection the Appellant made mention of clause (c) and (h) of the test report wherein it was clearly stated that "the tin side is detected under UV illumination using tin detector" and "No absorbent layer is on air side other than the tin layer on the tin side of the glass which is fluorescent under UV illumination". Further it was also referred to an RTI application made to CSIR which clarified that all the float glasses tested by them between 2017 and 17.07.2023 have a tin layer on one side of the float glass which is absorbent and non-reflective. In this regard, the reply dated 17.07.2023 of CSIR, CGCRI, Kolkata is extracted and reproduced below:-

Query vide Registration Numben NIL *RTI Reg SI No: 423*

I am to refer to yöur request for information under RTI Art, 2005, receivëd vide Registration Number:: NIL dated 20/06/2023 and the reply is / are as follöws:

1. *How many many number of Test Reports, since the year 2017 have been issued to Indian Customs Department pertaining to testing of Clear Float Glass since 2017 to till date to know whether it Clear Float Glass?*

   Response : 43

2. *Provide the list of all Bills of Entry numbers with .corresponding test Reports issued for Testing of Clear Float Class since 2017 till date?*

   Response: List Attached (Annexure-I)

3. *How many Test are still Lending to be issued or how many sets of clear float glass samples are under testing process?*

   Response: 38 Nos. of Test Reports are stll pending to be issued and none is under process for Clear Float Glass Sample.

4. *Whether Test Reports are of Clear Flôat Glass are issued with regards to existence of absorbent tin layer on one side of Clear Float Glass?*

   Response: Yes.

5. *Whether it is found and confirmed that all the samples of Clear Float Glass had the tin layer one surface of the said Glass and such layer if Fluorescent and Absorbent?*

   Response: Yes.

6. *It is observed in some of the test reports that " No other layer other than the layer is found on one side of the glass which is Fluorescent is mentioned. Whether such layers are reflective or non-reflective and whether such layers are absorbent or not .*

   Response: (a) Not- reflective.(b) Absorbent (UV)

7. *Is it true that every Float Glass would have such layer is eiher reflective or not reflective?*

Response: Yes(not reflective.)

8. *Whether results of all the test reports issued for testing of Clear Float Glass are same with that of reflective or non-reflective tin layer.*

   Response: Yes.

Besides, the appellant relied on the test reports of Kolkata Custom House and Vizag Custom House which are on similar lines.

vii. It was averred that identical goods manufactured by domestic manufacturers *Viz*. Saint Gobain classified the goods under CTH 7005 10 90 and assessed accordingly for both domestic clearances and exports.

viii. It was contended that the impugned order has denied the benefit of Sl.No. 935 of Notification No. 046/2011 dated 01.06.2011 for the imported goods even under the classification under CTH 70052990 proposed by the department, which was unfortunate. CFG when classified under Chapter Heading 70052990 is eligible for concessional rate of duty at 5% under the Notification dated 01.06.2011 *supra.*

ix. It was submitted that in an identical proceeding against the same Appellant, the Hon'ble Bench of CESTAT, Kolkata vide Final Order No. 77460-77462/2023 dated 03.11.2023 *[2023 (11) TMI 485-CESTAT Kolkata],* had categorically upheld the Appellants classification under CTH 70051090 and rejected the Department's classification under CTH 70052990 which is squarely applicable to the instant case.

x. The Appellant has also relied on the ruling given by Customs Authority for advance Rulings for the identical imports in the case *of Chandrakala Associates [2021 (9) TMI 1433-A.A.R Customs, Mumbai]* wherein the subject goods were appropriately classified under CTH 7005 1090 which stand was reiterated in the case of Suraj Constructions by the Advance Ruling Authority. The relevant Paragraph of the decision of Advance Ruling Authority is extracted below:-

> *"10. In view of the above discussions, I rule that the subject goods 'Clear Float Glass' with absorbent layer on only one side would 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 supra, that seeks to impose definitive anti-dumping duty on Clear Float Glass, originating in or exported from Malaysia and imported into India. Further, the benefit of Sr. No.934 of the table appended to the notification no. 46/2011-Cus., dated 01.06.2011, shall be extended to the subject goods in terms of the said notification, provided the applicant in each case of import shall produce evidence as to the origin of subject goods before the Deputy/Assistant Commissioner of Customs. I also rule that the eligibility for the above mention exemption wouldn't be adversely effected in the event of wrong mention of HS code in the Certificate of origin."*

xi. It was contended that it is a well settled legal principle that the responsibility is cast on the department to establish that the classification claimed by them is not correct. In this regard reliance was placed on the following decisions:-

(a) Collector of Central Excise Vs. Calcutta Steel Industries and others- [1989 (39) ELT 175 (SC)]

(b) South Bihar Sugar Mills Ltd. Vs. Union of India & Others [1978 (2) ELT J 336 (SC)]

(c) Union of India Vs. Garware Nylons Ltd. [1996 (87) ELT 12 (SC)]

Puma Ayurvedic herbal (P) Ltd. Vs. Commissioner of Central Excise, Nagpur- 2006(196) ELT 3(SC)

(d) Parle Agro (P) Ltd. Vs. Commissioner of Commercial Taxes, Trivandrum-[2017 (352) ELT 113 (SC)]

(e) Commissioner of Customs & Central Excise, Amritsar Vs. D.L. Steels [2022 (381) ELT 289 (SC)]

Reliance was also placed on the decisions in the case of *Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibres Ltd. [2012 (278) 581 (SC)]* wherein it was held that in a classification dispute, an entry which is beneficial to assessee is required to be applied and in the case of *STP Ltd. [1998 (97) ELT 16 (SC)]* wherein the Hon'ble Apex Court held that if there is any dispute in construction of any provision of any statute, the doubt must be resolved in favour of the assessee.

xii. It was contended that any demand of duty due to any change of departure of an established and long standing practice could be enforced only prospectively from the date of issuance of Show Cause Notice and in this regard reliance was placed on the following decisions:-

(a) Steel Authority of India Ltd. Vs. CCE, Calcutta [1985 (22) ELT 487 (Tribunal)]- Maintained in Supreme Court [1991 (51) ELT A 42 (SC)]
(b) Inarco Ltd., Bombay Vs. CCE, Bombay [1987(31) ELT 469 (Tribunal)]- Approved in [1996(87) ELT 3 (SC)]
(c) Indian Oxygen Ltd. Vs. CCE [1990 (47)ELT 449 (Tribunal)]-Approved in [1991 (51) ELT A36 (SC)]
(d) CCE Vs. Swastik Coaters Pvt. Ltd. [1999 (107) ELT 533 (Tribunal)]
(e) Saurashtra Chemicals Ltd. Vs. CC, Jamnagar [2011 (272) ELT 158 (Tri.-Ahmd.)]
(f) CCE, Aurangabad Vs. Videocon Appliances [2009 (235) ELT 513 (Tri.-Mumbai)]
(g) CC(Imports), Mumbai Vs. Hindutan Gas & Industries Ltd. [2006 (202) ELT 693 (Tri.-Mum.)]
(h) Mac & Megha Agro Equipments (P) Ltd. Vs. CCE, Cochin [2006 (199) ELT 260 (Tri.-Bang.)]
(i) Madhus Garage Equipments Vs. CC, Bangalore [2006 (198) ELT 388 (Tri.-Bang.)]
(j) Wipro Ltd. Vs. CC, Chennai [2005 (189) ELT 289 (Tri.-Bang.)]

xiii. It was averred that the reliance of the Adjudicating Authority in Para 59 of the impugned order, on the decision in the case of *Dilip Kumar & Company [2018 (9361) ELT 577 (SC)]* is not applicable as the issue involved in this case at hand is classification and not exemption which is distinguishable from the above decision as per which the Hon'ble Court observed that exemption Notification has to be interpreted strictly.

xiv. It was contended that the invocation of extended period and the corresponding imposition of penalty is unwarranted in the current proceedings because of the reason that dispute is only based on audit objections and the imports have been happening for a long time and the earlier imports were finalised under provisional assessment under CTH 70051090 which were not challenged by way of appeal and attained finality. Therefore the allegation of intentional mis-classification by the importer is not at all tenable. It was also submitted that the mis-classification was not to be equated with the mis-declaration within the meaning of Section 28(4) of the Customs Act as it was settled law that once the goods are correctly described, the *bonafide* adoption of classification by the importer cannot be equated with mis-declaration as the importers are not expected to be fully conversant with schedule to the Customs Tariff Act,1975. Reliance was placed in this regard on the following decisions:-

(a) Northern Plastic Ltd. Vs. Collector of Customs (Central Excise [1998 (101) ELT 549 (SC)]

(b) Commissioner of Central Excise, Delhi Vs. Ishaan Research Lab (P) Ltd. [2008 (230) ELT 7 (SC)]

(c) Commissioner of Customs, Bangalore Vs. A.Mahesh Raj [2006 (195) ELT 261 (Kar.)]

(d) Sirthi Superware India Ltd. [2020 (371) ELT 324 (Tri.-Mumbai)]

(e) Midas Fertchem ImpexPvt. Ltd. [2023 (1) TMI 998 CESTAT New Delhi]

(f) Signet Chemicals Pvt. Ltd. [2022 (9) TMI 1014–Bomaby High Court]

Relying on the above decisions, it was contended that invocation of extended period under Section 28(4) on the grounds of mis-classification is not sustainable.

xv. The Appellant has relied on the following decisions to stress that confiscation is legally not sustainable as the subject imports were not available.

(a) Northern Plastic Ltd. Vs. Collector of Customs (Central Excise-1998(101)ELT549(SC)

(b) Satron Vs. CC [2020 (371) ELT 565 (Tri.-Mumbai)]

(c) Raja Impex Pvt. Ltd. [2008 (229) ELT 185 (P&H)]

(d) Shiv Kripa Ispat Pvt. Ltd. [2009 (235) ELT 623 (Tri. LB)] and the appeal filed by department dismissed by the High Court, Bomaby [2015 (318) ELT A259 (SC)]

(e) Finesse Creation Inc. [2009 (248) ELT 122 (Bom.)] and the appeal against the decision was dismissed by the Hon'ble Supreme Court [2010 (255) ELT A120 (SC)]

(f) Sudarshan Cargo Pvt. Ltd. [2010 (258) ELT 197 (Bom.)]

xvi. It was contended that when demand itself is unsustainable, the question of interest, penalty and redemption fine does not arise.

4.1 The Ld. Authorised representative Shri R. Rajaraman representing the Department affirmed the findings of the lower Adjudicating Authority. He has drawn our attention to the test report of CSIR-Central Glass & Ceramic Research Institute, Kolkata wherein the testing agency has opined that there is no absorbent, no reflective or non-reflective layer on airside. As such, the primary condition for classifying the imported CFG under CTH 70051090 was not satisfied. He has submitted that if the tin layer is treated as the absorbent layer which is inherent of the manufacturing process of every float glass, the words "whether or not having an absorbent, reflecting or non-reflecting layer" will become redundant. He has contended that it is not legal to interpret the tin layer itself as absorbent layer, which is automatically formed in the manufacture process of every float glass. The words "whether or not" used in the heading becomes redundant and such interpretation is not correct as settled by various case laws *viz., Rao Shiv Bhadr Singh Vs. The State of VP [AIR 1953, SC 394] and Shri Balaganesan Metals Vs. Shri M.N. Shanmugham Chetty & Others [AIR 1987 SC 1668]*.

4.2 He has supported the findings of the Adjudicating Authority, that there is no absorbent, reflective or non-reflective layer deposited on the surface of the glass and as such Clear Float Glass in the present case is not classifiable under 70051090 of the Customs Tariff Act, 1975. The item has not undergone any coating process and as there is no absorbent, reflective or non-reflective layer on the air side of Float Glass under import, it cannot be covered under Sub-heading 700510. He has prayed for setting aside the appeal, in view of the clear findings recorded in Paragraph 52, 53 and 54 of the Order-in-Original No. 101620/2023 dated 11.04.2023.

5. Heard both sides and carefully considered the submissions and evidences on record.

6. The issues which arise for decision in this appeal are:

i. Whether the imported Clear Float Glass, is classifiable under CTH 70051090 as declared/self- assessed by the Appellant or under CTH 7005 2990 as re-classified/re-assessed by the Department in terms of Chapter Note 2(c) to Chapter 70 of Customs Tariff Act, 1975?
ii. Whether the Appellant is eligible for FTA benefit under Sl. No. 934 of Notification No. 46/2011-Cus dated 01.06.2011? and
iii. Whether Extended Period is invokable or not considering the evidence and facts in this appeal?

7. From the facts obtaining in this appeal, it is evident that the appellant had imported Clear Float Glass (CFG) from various manufacturers from Malaysia through Chennai Seaport and were classifying the CFG under CTH 7005 1090 availing FTA benefit under Sl. No. 934 of Notification No. 46/2011-CUS dated 01.06.2011 by furnishing the required Certificate of Origin (COO) in terms of 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. The SCN dated 18.04.2022 proposed to reclassify the imported CFG from Tariff item 7005 1090 to 7005 2990 and to demand differential duty of over Rs.41.41 crores by invoking the extended period and to deny the benefit of FTA Notification claimed. The SCN also proposed to confiscate the imported CFG and to impose fine and penalty on the importer. The Commissioner of Customs, Chennai *vide* the impugned order dated 11.04.2023 reclassified

the imported CFG as proposed and confirmed the demand of duty absolutely by invoking extended period with interest and equal penalty. Further, the Commissioner also had held that the imported CFG was confiscable and allowed it to be redeemed on payment of fine of Rs.31 crores.

8.1 The Ld. Advocate for the appellant argued that they have been importing CFG for more than 15 years and have been classifying the CFG under 7005 1090 as the imported CFG are non-wired glass, non-tinted and has a thin TIN absorbent layer on one side of the glass.

Manufacturing process of CFG:

8.2 Float Glass is manufactured by float process, a process invented by Sir Alastair Pilkington in 1952. Various raw materials *viz*., sand, lime, dolomite, soda and sulphate are melted in a furnace at a very high temperature and the raw materials melt into a molten liquid which would be allowed to pass through a shallow bath of a molten tin. Such molten glass, when fed and passed through such float bath of the molten tin, the glass acquires perfect flatness of the liquid pool and later retains the smooth finish of the liquid surface. In the process it also gets imbibed with the layer of such molten tin by its physiological reactions. Thus, during the process of manufacture of CFG itself, one side of the glass will have a resultant metal coating of tin. Thereafter, such molten glass having the molten tin layer on one side would reach the end of the bath where it would be cooled and hard rolled through an annealing process, which would be subsequently cut to desired sizes.

Origin of the classification dispute:

8.3 We have noted that an objection was raised by the CRA to the effect that absorbent layer of metal should have been obtained by way of coating process after manufacture of CFG in order to merit classification under tariff item 7005 1090 and TIN layer obtained during the process manufacture of CFG is not to be considered as the layer required in terms of Chapter notes. As evident form Paragraph 3 above wherein Action Taken Note copy extracted the Department has not accepted the said objection and contesting the merit of the same though the objection was converted into Draft / Audit Para.

8.4 Consequent to the above audit objection by CRA, Department had provisionally assessed the imports made by the appellant in 61 Bills of Entry during the period November 2018 to June 2019. Also, Samples were drawn by the Department and the same were sent for test to the Central Glass and Ceramic Institute, Kolkata (CSIR-CGCRI) and required the institute to verify the description and among other things, whether an absorbent, reflecting or non-reflecting layer exists or not. The test report No. GC/3070/TCC/3345-3346/18-19 dated 05.02.2019 obtained indicates that the CFG Imported by the appellant is a non-wired, non-tinted float glass having an absorbent layer (Tin) on one-side of the glass. Based on the said report the Department had also finalized the provisional assessments of the said 61 Bills of Entry accepting the classification of CFG imported by the appellant under CTH 70051090 of CTA (Paragraph 31 of Order-in-Original dated 11.04.2023).

8.5 The Ld. Advocate has argued that despite finalisation of provisionally assessed imports on the basis of the test report obtained accepting the importer’s classification, the above SCN dated 18.04.2022 was issued proposing to reclassify the imported CFG from Tariff item 7005 1090 to 7005 2990 solely basing on the audit report which was being contested by the Department; that the SCN was issued in gross violation of the instructions given by the Department with respect to issuance of SCN based on CRA objections. He has referred to the Circular No. 1023/11/2016-CX dated 08.04.2016 wherein under Paragraph 4.1.2 it has been instructed that no SCN should be issued in cases where Department has not agreed with audit objections on merits. Further under Paragraph 4.2 of the said Circular, it was further instructed that where a contested objection has become DAP and on examination it is found by the Commissioner (PAC) or Joint Secretary (Customs) in CBEC that the objection should have been admitted, they may give necessary direction to the field to issue Show Cause Notice and adjudicate the case on merits. In the absence of such a direction given by Commissioner (PAC) to the field to issue SCN or adjudicate the same which makes the SCN *void ab initio*. It appears that above instructions were further reiterated in Circular No. 1053/02/2017-CX dated 10.03.2017. At this juncture, we wish to observe that these Circulars issued are meant to effectively manage Audit function and purely administrative in nature. It is not understood, how the appellant is arguing that the adjudication proceedings are to be set aside when no prejudice is caused to the appellant as while adjudicating the issues, principles of natural justice have been complied with.

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	m^2	10%	-
7005 10 90	**---**	**Other**	m^2	10%	-
	-	*Other non-wired glass :*			
7005 21	--	*Coloured throughout the mass (body tinted) opacified, flashed or merely surface ground :*			
7005 21 10	---	Tinted	m^2	10%	-
7005 21 90	---	Other	m^2	10%	-
7005 29	--	*Other :*			
7005 29 10	---	Tinted	m^2	10%	-
7005 29 90	**---**	**Other**	m^2	10%	-
7005 30	-	*Wired glass :*			
7005 30 10	---	Tinted	m^2	10%	-
7005 30 90	---	Other	m^2	10%	-

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 tows 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 nonwired 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 not-reflective 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 the 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-reflectinglayer, 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 theglass 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 findingsof some of the Test Reports in this regard are as under:-

"c) The Tin Side is detected under UV illumination using the detecter.

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 tinside 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.

13. In respect of invocation of extended period, the Ld. Advocate argued that the appellant has been importing CFG for almost 20 years by claiming classification under tariff item 7005 1090 and there was never a dispute in this regard except for the proceedings initiated in view of the CRA objection raised. Further, he submitted that even after the CRA objection, for the period from November 2018 to June 2019, the entire imports of CFG *vide* 61 Bills of Entry made by the appellant were provisionally assessed and samples were drawn and tested and based on these test reports the CFG were finally assessed under CTI 7005 1090 as communicated *vide* Letter F.No.S.MISC.292/2018-GR-3 dated 26.02.2020 of Custom House, Chennai. The Ld. Advocate has raised another plea that even if the imported goods are classified under 7005 2990 as classified by the Department and CRA,

they are eligible for partial exemption in terms of Notification No. 46/2011-Cus. dated 01.06.2011 which reads as below:-

S. No.	Chapter, Heading, Subheading and Tariff item	Description	Rate (in percentage unless otherwise specified)	
(1)	**(2)**	**(3)**	**(4)**	**(5)**
934	70010020 to 70051090	All Goods	0.0	0.0
935	700521 to 700530	All Goods	5.0	5.0

Even if the imported goods are classifiable under CTH 7005 2990 as above the applicable rate of duty is only 5%. Whereas in this Order-in-Original, duty was computed at 10% denying the benefit of exemption in *toto* of Notification No. 46/2011-Cus. dated 01.06.2011 at Sl.No. 935 *supra*. Conditions to be satisfied being the same under S.Nos. 934 and 935, actual duty demanded should have been 50% of demanded differential duty of Rs.41,41,13,642/-, as confirmed in the impugned Order-in-Original No. 101620/2023 dated 11.04.2023.

14. Further, we find that the issue has been very much in the know of the revenue whereby 61 Bills of Entry for the period November 18 to June 2019 had undergone the rigours of provisional assessment and subsequent finalization for the very same assessee, for the very same product and for the very same reason. After finalization of the same based on test reports in favour of the appellant, it is not open for the revenue to invoke the larger period of the limitation in general and definitely not in respect of those finalized 61 Bills of Entry. As such, we are of the considered view that the

appellant has not suppressed or mis-declared any fact and the proposal to re-classify is only on the basis of the interpretation made in the CRA objection and not for any fault of the appellant. Therefore invoking extended period in this proceedings for demand of duty and imposing mandatory penalty is not at all sustainable.

15. Having held that the classification adopted by the appellant for the imported CFG under tariff item 70051090 is correct, we hold that the imported CFG are not liable for confiscation under Section 111(m) of the Act and the impugned order confiscating the CFG with redemption fine is also not sustainable. Thus, the appellant succeeds on merits as well as on limitation.

16. In view of the above, we hereby allow the appeal and set aside the impugned order with consequential relief, if any, as per the law.

(Order pronounced in open court on 27.03.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(S.S. Garg)
MEMBER (JUDICIAL)

MK