CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

1. Customs Appeal No. 40371 of 2023

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 206-220/2023 dated 17.03.2023 passed by Commissioner of Customs (Appeals-II), Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Float Glass Centre **...Appellant**
No. 23/55, Devarajan Stret,
Park Town,
Chennai – 600 003.

Versus

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

With

2. Customs Appeal No. 40416 of 2023

(Arising out of Order-in-Original No. 101612/2023 dated 10.04.2023 passed by Commissioner of Customs (Import), Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Float Glass Centre **...Appellant**
Old No. 447, New No. 130,
Mint Street, 1st Floor,
Chennai – 600 001.

Versus

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

With

3. Customs Appeal Nos. 40838 to 40849 of 2023

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 546-557/2023 dated 28.08.2023 passed by Commissioner of Customs (Appeals-II), Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Float Glass Centre **...Appellant**
No. 23/55, Devarajan Stret,
Park Town,
Chennai – 600 003.

Versus

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

And

4. Customs Appeal Nos. 40055-40067 & 40069-40074 of 2024

(Arising out of Order-in-Appeal Seaport C.Cus.II No. 715-733/2023 dated 27.10.2023 passed by Commissioner of Customs (Appeals-II), Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Float Glass Centre **...Appellant**
No. 23/55, Devarajan Stret,
Park Town,
Chennai – 600 003.

Versus

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

APPEARANCE:

For the Appellant : Shri S. Murugappan, Advocate (Sl.No. 2)
Shri Hari Radhakrishnan, Advocate (For rest)
For the Respondent : Shri R. Rajaraman, Authorised Representative

CORAM:
HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40876-40908 / 2024

DATE OF HEARING : 06.06.2024
DATE OF DECISION: 18.07.2024

Order :- Per Mr. VASA SESHAGIRI RAO

M/s. Float Glass Centre, Park Town, Chennai, the appellant herein has assailed the Orders of the Commissioner of Customs, Chennai II Commissionerate and Commissioner of Customs (Appeals), Seaport Chennai involving the issue of classification of imported Clear Float Glass from Malaysia availing the County of Origin benefit under the Notification No. 46/2011-Cus dated 01.06.2011. All these appeals are being taken up together for issue of a common order, as the issue involved is identical and on the basis of similar contentions by both the opposing sides.

2.1 Customs Appeal No. C/40416/2023 has been filed by the Appellant being aggrieved by the Order-in-Original No. 101612/2023 dated 10.04.2023 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.7,38,35,962/- during the period from 05.05.2017 to 07.12.2021, under Section 28(8) along with applicable interest as per Section 28AA of Customs Act, 1962, besides imposing redemption fine of Rs.5,70,00,000/- in lieu of confiscation in terms of Section 125 of Customs Act, 1962 and imposing penalty equal to duty short levied under Section 114A of Act *ibid*.

2.2 Brief facts that are culled out from this appeal are that the Appellant had imported “Clear Float Glass” (CFG) from Malaysia classifying them 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). The imports were provisionally assessed at the time of imports and subsequently, based on test reports by CSIR-CGCRI, Kolkata assessments were finalised classifying the imported goods under CTH 70051090 allowing the exemption benefit of the Notification No. 46/2011-Cus dated 01.06.2011. However, during the course of audit conducted by CRA, it was pointed out that the imported Float Glass is classifiable under CTH 7005 2990 attracting BCD @10% and consequently not eligible for the benefit of 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 the said Notification, resulting in short levy of applicable Customs duties.

2.3 Consequent to the above audit objection, a Show Cause Notice dated 04.05.2022 was issued to the Appellant proposing to:-

i. reject the classification of CFG under CTH 70051090 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. demand differential Customs duties of Rs.7,38,35,962/- arising on account of short levy under Section 28AA of Customs Act, 1962.
iii. Confiscate the subject import goods valued at Rs.56,82,24,181/- under Section 111(m) of the Act *ibid* and
iv. impose penalty under Section 114A/112(a) of Customs Act, 1962.

2.4 After due process of law, the Adjudicating Authority *vide* Order-in-Original No. 101612/2023 dated 10.04.2023:-

i. rejected the assessments 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 the Notification.

ii. Confirmed the demand of short levied Customs duties of Rs.7,38,35,962 /- under Section 28(8) of Customs Act,1962 along with applicable interest under Section 28AA of the Act *ibid.*

iii. held that the disputed imports valued at Rs.56,82,24,181 /- during the period from 05.05.2017 to 07.12.2021 were liable for confiscation under Section 111(m) of the Act *ibid* and imposed a redemption fine of Rs. 31 Lakhs 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*.

3.1 Then, second set of appeals - Customs Appeal Nos. C/40371/2023, C/40838-40849/2023, C/40055-40067/2024 and C/40069-40074/2024 have been filed by M/s. Float Glass Centre being aggrieved by the Order-in-Appeal Nos. 206 to 220/2023 dated 17.03.2023, 715 to 733/2023 dated 27.10.2023, 546 to 557/2023 dated 28.08.2023, respectively, all passed by the Commissioner of Customs (Appeals), Seaport, Chennai Customs-II rejecting all the 46 appeals filed on the ground that the Appellant had failed to neither provide any technical inputs / substantive evidence nor registered any protest before assessment of the goods. The details of the Bills of Entry involved wherein the appellant has challenged the classification / assessment in filing the appeals are as per the details given below:-

Sl. No.	CESTAT Appeal No.	OIA No.	Date	Bill of Entry No.	Date	Protest Reference
1	C/40371/ 2023	206–220/2023	17.03.2023	2700637	01.10.2022	–
				2634726	27.09.2022	
				3027636	25.10.2022	
				3103278	31.10.2022	
				3738590	14.12.2022	
				3365290	18.11.2022	
				3739225	14.12.2022	
				3808291	19.12.2022	
				3373249	19.11.2022	
				3538431	30.11.2022	
				3719895	13.12.2022	
				3808217	19.12.2022	
				3807679	19.12.2022	
				3644188	08.12.2022	
				3363035	18.11.2022	
2.	C/40838 to 40849/ 2023	546-557/2023	28.08.2023	8433204	26.04.2022	–
				7246673	27.01.2022	
				7353329	03.02.2022	
				7510405	16.02.2022	
				7648083	25.02.2022	
				7635652	24.02.2022	
				7996019	24.03.2022	
				8108573	01.04.2022	
				8328192	19.04.2022	
				8437023	26.04.2022	
				8607302	09.05.2022	
				8644513	12.05.2022	
				8912275	31.05.2022	
				8730277	18.05.2022	
				8909073	31.05.2022	

3.	C/40055 to 40067 & 40069 to 40074/ 2024	715-733/2023	27.10.2023	2388573	10.09.2022	
				2384767	10.09.2022	
				3107917	31.10.2022	
				3106351	31.10.2022	
				2919544	17.10.2022	
				2884677	14.10.2022	Letter dated 31.05.2022
				2829041	11.10.2022	
				2824116	11.10.2022	
				3234594	09.11.2022	
				2546645	21.09.2022	
				2513652	19.09.2022	
				2866176	13.10.2022	
				2514144	19.09.2022	
				2387706	10.09.2022	
				3137700	02.11.2022	
				3187217	05.11.2022	

3.2 In respect of the second set of appeals, the issue involved is also classification of imported Clear Float Glass and availability of exemption benefit of the Notification No. 46/2011-Cus dated 01.06.2011. Here also, the Appellant were importing "Clear Float Glass" (CFG) from Malaysia classifying them under CTH 7005 1090 and cleared the same @ Nil rate of BCD by 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). For Clear Float Glass imported *vide* 46 Bills of Entry during 2022, the Ministry of International Trade and Industries, Malaysia was mentioning the CTH as 70052990 instead of 70051090 in the Country-of-Origin certificates. The goods covered under CTH 70052990 does not have an absorbent layer unlike the goods imported by the Appellant which has an absorbent layer and hence do not qualify for exemption under Notification No. 46/2011-Cus dated 01.06.2011. The assessing officer has denied permission to file these Bills of Entry under CTH 70051090 as the Country-of-Origin Certificate (COOC) indicated a different CTH and consequently exemption benefit was denied. Though reportedly the Appellant requested for provisional assessment, the same was not allowed and to avoid demurrage / detention charges, the Appellant opted to declare the goods under CTH 70052990 and effected clearances upon payment of Customs duty.

3.3 Being aggrieved, the Appellant has preferred appeals before the Commissioner (Appeals) who *vide* Order-in-Appeal Nos. 206 to 220/2023 dated 17.03.2023, 715-733/2023 dated 27.10.2023 and 546-557/2023 dated 28.08.2023 rejected the appeals filed on the grounds that the Appellant (i) failed to request the issuing authority to cause amendment in COO Certificate (ii) failed to provide any technical inputs or substantive evidence or registered any protest with Customs authorities before assessment of the goods. Further, the Appellant's contention that they were not permitted to file the Bill of Entry under CTH 700510190 was denied citing the assessment procedure prevalent under Customs law.

3.4 Thus, in respect of the impugned Order-in-Original No. 101612 dated 10.04.2023 of the Commissioner of Customs and Orders-in-Appeal Nos. 206 to 220/2023 dated 17.03.2023, 715-733/2023 dated 27.10.2023 and 546-557/2023 dated 28.08.2023 of the Commissioner of Customs

(Appeals), the appellant being aggrieved came before this Tribunal. The main issue involved in all these 33 appeals is the classification of imported Clear Float Glass from Malaysia.

4. The Grounds of Appeal filed by the Appellant in respect of Appeal No. C/40416/2023 have been specified below :-

(i) The relevant classifications of Float Glass in the Customs Tariff were adverted as under:-

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%	-

and it was submitted that CTH 700510 at six- digit level covers non-wired glass having an absorbent, reflecting or non-reflecting layer and is further sub-divided into two headings at eight digit level, one covering tinted variety under CTH 70051010 and other varieties under heading 70051090, whereas heading 700521 covers other non-wired glass that are coloured throughout the mass, opacified, flashed or merely surface ground which was sub-divided into two categories, CTH 70052100 covering tinted varieties and other tinted varieties covered under CTH 70052190. It was submitted that as far as absorbent layer is concerned, in terms of Note 2(c) to Chapter 70, the tariff itself explains what an absorbent, reflecting or non-reflecting layer means:-

> *"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."*

The appellant has submitted that the thin coating of metal which absorbs infrared light will be sufficient to treat the glass as having absorbent layer which aspect has been confirmed during the testing by the Central Glass and Ceramic Institute, Kolkata in respect of past consignments imported by the Appellants and hence the conclusions in Paras 62 and 63 of the impugned order were disputed. Once it was confirmed that there is an absorbent layer of tin, it is irrelevant as to how the absorbent layer was formed. Further, it was submitted that the glass imported will meet the parameters laid down for heading 70051090 as it is a non-wired glass with an absorbent layer of tin metal and once the product falls within the scope of this heading, there was no requirement to proceed to further headings.

(ii) It was averred that identical goods manufactured by domestic manufacturers are being classified under CTH 7005 10 90 and assessed accordingly.

(iii) It was contended that the observations in paras 64 and 65 of the impugned order were seriously flawed as the insistence that both sides of the glass should have absorbent layer is not borne out of definition as given in the tariff.

(iv) That in respect of several bills covered in the impugned order, notices were already issued demanding differential duty on other grounds without raising the issue of suppression of facts or misstatement. It was put forth that 9 bills which were provisionally assessed in terms of Section 17 of the Customs Act and finalised earlier were also covered in the impugned order. In this regard, it was pointed out that the following judgements of the Hon'ble Supreme Court has clearly held that subsequent notices cannot be issued on the same subject alleging suppression when notices were already issued and the Department is aware of the facts:-

(a) Nizam Sugar factory Vs. Collector of Central Excise, A.P. [2006 (197) ELT 465 (SC)]

(b) ECE Industries Limited Vs. Commissioner of Central Excise, New Delhi [2004 (164) ELT 236 (SC)]

(v) It was contended that the invocation of extended period and the corresponding imposition of penalty is unwarranted in the current proceedings because the imports have been happening for a long time and the earlier imports were finalised under provisional assessment under CTH 70051090. Therefore, the allegation of intentional misclassification by the importer is not at all tenable. It was also submitted that the misclassification 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 *bona fide* 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 has been placed in this regard on the following decisions:-

- i. *Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]*
- ii. *Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur [2013 (288) ELT 161 (SC)]*
- ii. *Versuvius India Ltd. Vs. Commissioner of Customs, Vishakapatnam [2019 (370) ELT 134 (Tri.-Hyd.)]*
- iii. *Advanced Spectra Tek Pvt. Ltd. Vs. Commissioner of Customs (ACC & I), Mumbai [2019 (369) ELT 871 (Tri.-Mum.)]*
- iv. *Manek Chemicals Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad [2002 (145) ELT 335 (Tri.-Del.)]*
- v. *Commissioner of Central Excise & Service Tax, Dibrugarh Vs. Hi Flow Pump Co. [2012 (282) ELT 286 (Tri.-Kolkata)]*

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

(vi) The conclusions in Para 65 of the impugned order were contested and consequently it was submitted that the various decisions of the Supreme Court and High Courts relied in the impugned order are irrelevant.

(vii) It was averred that the judgement of the Hon'ble Supreme Court in the case of Weston Components Ltd. was misapplied and that confiscation cannot be ordered when the goods are not physically available as held by the Bombay High Court in the case of *Commissioner of Customs Vs. Finesse*

Creation Inc in its order dated 25.08.2009, which was upheld by the Hon'ble Supreme Court and also in the judgement of the Madras High Court in the case of *Visteon Automotive Systems India Limited* . It was further submitted that a similar view was taken by CESTAT *vide* order dated 04.08.2016 in the case of Commi*ssioner of Customs Vs. Jewel Tech India Pvt. Ltd.* Accordingly, it was submitted the impugned order holding that the goods are liable for confiscation and imposing redemption fine was not sustainable.

5. The Grounds of Appeal filed by the Appellant in respect of Appeal No. C/40371/2023, C/40838-40849/2023, C/40055-40067/2024 & C/40069-40074/2024 are summarised as follows:-

(i) It is submitted that the impugned imports are not wired, not tinted and not green in colour and having an absorbent layer and hence the more appropriate classification would be under CTH 70051090 as the sub-headings 7005 21 to 7005 29 covers non-wired glass which do not have an absorbent layer.

(ii) It has to be noticed that the appellant went on appeal against each and every assessment of Bill of Entry filed by them which would establish that they were aggrieved by the re-classification of goods under CTH 7005 2990 by the proper officer who refused to accept the self-assessment under CTH 7005 1090 and therefore the observations in Para 9 of the impugned order were not accepted.

(iii) It was averred that that the Appellant had taken all steps to get the Country of Origin Corrected after citing an advance ruling in the name of

Appellants sister concern and pointed out that in any case, classification had to be done as per the provisions of Customs Tariff Act,1975 and not as per declaration in the Country of Origin Certificate(COO) which was only to determine the Country of Origin of imports. In this regard it was pointed out that the identical goods imported during 2018 were provisionally assessed though the COO mentioned CTH 70051090 and the assessments were finalised only after test reports were obtained from CSIR-CGCRI, Kolkata to drive home the point that the goods have a tin (metal) layer which is absorbent reflecting layer. Hence it was stressed that the Assessing Officer has to independently apply his mind for classifying the import goods.

(iv) It was submitted that on a similar issue which came up for consideration before the Commissioner of Customs (Appeals), New Delhi in the case of M/s Asahi India Glass Limited, it was held vide Order-in Appeal No. 861-863/2022-23 dated 20.07.2022 that the subject goods merit classification under CTH 70051090 as the goods have an absorbent (tin) layer on one side and consequently extended the benefit under Notification No. 46/2011-Cus. dated 01.06.2011.

(v) It was pointed out that in identical cases, the Customs Authority for Advance Ruling, Mumbai *vide* ruling Nos. CAAR/MUM/ARC/10/2022 dated 10.05.2022 in the case of M/s. Suraj Constructions and CAAR/MUM/ARC/36/2021 dated 24.09.2021 in the case of M/s. Chandrakala Associates, held that the Clear Float Glass with absorbent layer on one side would merit classification under heading 7005 and more specifically under CTH 70051090, irrespective of the tariff heading mentioned in the COO and hence it was averred that the reliance placed by the assessing officer on the

Classification mentioned in the COO is not legally relevant for determining the classification of impugned imports.

(vi) It was contended that identical goods manufactured by domestic manufacturers *Viz*. Saint Gobain and others in Nava Sheva classified the goods under CTH 7005 10 90 and were assessed accordingly on the basis of absorbent layer on one side. It was also pointed out that the majority of imports into India having absorbent layer have been correctly classified under CTH 70051090 as per the data available on various web sites.

(vii) It was submitted that the test report dated 02.02.2022 of CSIR, Kolkata clearly stated that the tin layer is UV absorbent which meant that the float glass has an absorbent layer and therefore the fact whether the tin layer was automatically formed in the course of manufacture of the float glass was irrelevant for the classification of the product under CTH 70051090.

(viii) It was submitted that the entire allegation of mis-classification was based on an audit para (DAP 83 of audit report No. 17/2020)and in this regard reference was invited to Para 5 of Circular No. 1023/11/2016-CX dated 08.04.2016 issued by the Central Board of Excise and Customs (CBEC) as per which the adjudication of admitted DAP/AP's should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record and in the instant case no such reply was made available on record. In this connection, it was further submitted that the Appellant had applied for and sought for the Ministry's Action Taken Note on the said audit para by way of information sought under RTI ACT and perusal of the same revealed that the Ministry had replied in detail legally justifying the classification of CFG under CTH 70051090 as tabulated 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.

(ix) It was submitted that the issue involved in the appeal is covered by the decision of the Hon'ble Tribunal in the case of *Bagreecha Industries Limited Vs. Commissioner of Customs (Port), Kolkata in Final Order Nos. 77460-77462/2023 dated 03.11.2023* passed in Customs Appeal Nos. C/75536-75538/2023 wherein the Hon'ble Tribunal had held that the presence of tin layer on the CFG is sufficient to classify the same under CTH 70051090 and also covered by the decision of Hon'ble Tribunal Chennai in the case of the same appellant in Final Order No. 40352/2024 dated 27.03.2024 passed in Customs Appeal No. 40203 of 2023.

(x) It has been forcefully submitted that it is the onus of the department to prove and establish the classification of the product, in case, the department confronts a classification claimed by the Appellant and in this regard the Appellant relied on the ratio of the decision in the cases of *Hindustan Ferrodo Ltd. [1997 (89) ELT 16 (SC)], Collector of Central Excise Versus Calcutta Steel Industries and Others [1989 (39) ELT 175 (SC)], Parle Agro (P) Ltd. Vs. Commissioner of Commercial Taxes, Trivandrum [2017 (352) ELT 113 (SC)]* and *Puma Ayurvedic Herbal (P) Ltd. Vs. Commissioner of Central Excise, Nagpur [2006 (196) ELT 3 (SC)].*

(xi) It was submitted that the representative of the Appellant had filed an application dated 20.06.2023 with M/s. Central Glass and Ceramic Research Institute (CGCRI), Kolkata in which one of the queries pertained to whether the reports given by the said institute is relating to the existence of observant tin layer on one side of the CFG and the institute *vide* their reply dated 17.07.2023 clarified that the float glass tested by them contain an absorbent tin layer on one side which meant that the CGF had an absorbent and non-reflective layer.

6. The Ld. Counsels for the Appellant Shri S. Murugappan and Shri Hari Radhakrishnan reiterated the averments in the grounds of appeal and further submitted that the Hon'ble Apex Court in the case of *Commissioner*

of Central Excise, Bhopal vs. Minwood Rock Fibres Ltd. [2012 (278) ELT 581 (SC)] had held that when there are two conflicting entries in a classification dispute, then an entry which is beneficial to the Assessee requires to be applied. Further, the Counsels pointed out that the Hon'ble Apex Court in the case of *STP Limited [1998 (97) ELT 16 (SC)]* has held that if there is any dispute in the construction of any provision of a taxing statute, that doubt must be resolved in favour of the assessee. In view of the submissions and relied upon case laws, the Ld. Counsels prayed to dismiss the impugned orders.

7.1 The Ld. Authorised Representative Shri R. Rajaraman representing the Department affirmed the findings of the Lower Adjudicating Authority and the Lower Appellate 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, it was stressed that 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].*

7.2 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 cases 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 appeals, in view of the clear findings recorded in the impugned Order-in-Original dated 10.04.2023 and also in the Orders-in-Appeals dated 17.03.2023, 28.08.2023 and 27.10.2023.

8. We have carefully considered the submissions made by both the sides and also evidences as available in the records.

9. The issues which arise for decision in these appeals 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 the Orders-in-Appeal dated 17.03.2023, 28.08.2023 and 27.10.2023 of the Commissioner of Customs (Appeals), Custom House, Chennai are sustainable in denying the benefit of the exemption of the Notification No. 46/2011-Cus dated 01.06.2011 as in the Country-of-Origin Certificates, the classification of imported Clear Float Glass mentioned the HSN Code as 7005 2990? and,

iv. Whether Extended Period is invokable or not considering the evidence and facts in the appeal No. 40416 of 2023?

10. We find that the appellant had imported Clear Float Glass (CFG) from Malaysia through Chennai Seaport adopting the classification under CTH 7005 1090 and 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. Both the Ld. Advocates for the appellant argued that they have been importing CFG for many 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.

11. It has been argued that 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. Further, a reference was made to an RTI application addressed to CSIR wherein it was clarified that all the float glasses tested for Customs by them has a tin layer on one side of the float glass which is absorbent and non-reflective as per the report of the said Agency.

12. We notice that these proceedings were initiated as a result of CAG's audit objection and CBEC had replied in detail legally justifying the classification of CFG under CTH 70051090. As the Department itself are of the view that the CFG is rightly classifiable under CTH 70051090, the action initiated by the Department appears to be contrary to its stand taken before the CAG.

13. Not only the issue of classification of imported goods but also identical arguments submitted by both the sides have already been 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 the issue of classification of Clear Float Glass has been finally decided under CTH 7005 1090 of the Customs Tariff Act, 1975 and the relevant paras read as below:-

> *"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 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 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-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 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 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."

14.1 In respect of the second set of appeals where the appellant has challenged the assessments made in the Bills of Entry for the period from 27.01.2022 to 19.12.2022, the Lower Appellate Authority has denied the benefit of exemption under Notification No. 46/2011-Cus dated 01.06.2011 as the Country-of-Origin Certificates mentioned the HSN Code as 7005 2990 for the Clear Float Glass imported. Many contentions raised by the appellant have not been discussed at all. No reasons were advanced as to why the Country-of-Origin Certificates produced are not valid. We are of considered view that the imported goods are required to be classified under the Indian Customs Law. Classification of imported goods under the first schedule of Customs Tariff Act, 1975 is governed by the General Rules of Interpretation of Import Tariff. As per Rule 1 of GRI, Classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. If such headings or notes do not otherwise require then the classification is to be determined in accordance with Rule 2 to 6 of said Rules. Rule 6 of G.R.I. stipulates that the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub/headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires. It is important to note that the benefit of Country-of-Origin Certificate cannot be legally denied, if all the conditions 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 are satisfied. We also note that exporting country can mention on the Country-of-Origin Certificate the HSN Code of the importing country thus indicating that the HSN Code of the commodity in exporting country cannot be the sole basis for its classification under the Indian Customs Tarriff Act, 1975. During the hearing before the Tribunal, both the Ld. Counsels have informed that there are two important manufactures of Clear Float Glass in Malaysia *viz.* M/s. Kibing Group (M) Sdn. Bhd. (KGM) and M/s. Xinyi Energy Smart (Malaysia) Sd. Bhd. (XES).

14.2 The Ld. Counsels have informed that in respect of the first company belonging to Kibing Group (KGM), the Country-of-Origin Certificates mentioned the HSN Code of Clear Float Glass as 7005 1090, as Malaysian Customs have allowed its application to mention HSN Code of Clear Float Glass as 7005 1090. It appears, the application of XES is reportedly pending for effecting a similar change on the basis of the decision of Advance Ruling Authority in the cases of Chandrakala Associates dated 24.09.2021 and Suraj Constructions dated 10.05.2022. As such, we hold that classification of any imported goods has to be determined in terms of the provisions of Customs Tariff Act, 1975 including Section Notes and Chapter Notes read with the General Rules for Interpretation of Tariff (GIR). In the case of *Sharp India Ltd. Vs. Commissioner of Customs (Imports), Nhava Sheva, Raigad [2019 (366) ELT 153 (Tri.-Bom.)]*, the Tribunal Bombay has held that the classification of imported goods to be determined in accordance with Indian Customs Tariff and not solely on the basis of code mentioned in Certificate-of-Origin. In the context of import of RBD Palmolein mixture under Indo-Sri Lanka Free Trade Agreement (ISFTA), in the case of *Sheel Chand Agrolls P. Ltd. Vs. Commissioner of Customs (Preventive), New Delhi [2016 (331) ELT 251 (Tri.-Del.)]*, the Tribunal Delhi has held that the Country of Origin requirements were satisfied even if the goods were classified differently in the Country of Origin Certificate issued. It was held therein as follows:-

> *"5. ……………… ………… …………*
>
> *Under the D.O.O. Rules notified vide Notification No. 19/2000-Cus. (N.T.), dated 1-3-2000 one of the conditions required to be satisfied for declaring such goods as of Sri Lankan origin is that (a) processing in Sri Lanka should result in change of classification at 4 digit level (b) the third Country goods should not account for more than 65% of the FOB value of the goods and (c) the goods should be accompanied by Country of Origin certificate in the prescribed proforma from the competent Sri Lankan authorities. Ld. Adjudicating authority has acknowledged that certificate of country of origin has been issued by competent Sri Lankan authority certifying that the value of non-originating material is 54.23% which is less than the 65% of FOB value of the goods which conforms to the requirement of Rule 7(b) of DOO Rules, 2000. From the foregoing discussion it is also evident that as per the requirement under Rule 7(b) of DOO Rules, 2000, non-originating materials were sufficiently processed so as to result in a different classification at the 4 digit level of the Harmonized Commodity Description and Coding System.*

> ***6.** In the light of the aforesaid analysis we are of the view that appellant satisfied the requirement of Country of Origin as stipulated in the DOO Rules, 2000 and therefore, was entitled to the benefit of Notification No. 26/2000-Cus. Consequently, the impugned order is not sustainable. The appeal is allowed."*

14.3 As such, we hold that denial of the exemption benefit of Notification No. 46/2011-Cus dated 01.06.2011 is not justified though the Country-of-Origin Certificate mentioning the HSN Code as 70052990. The impugned Order-in-Original No. 101612/2023 dated 10.04.2023 of the Commissioner of Customs, Chennai II and Orders-in-Appeal Nos. 206 to 220/2023 dated 17.03.2023, 546-557/2023 dated 28.08.2023 and 715-733/2023 dated 27.10.2023 of the Commissioner of Customs (Appeals), Seaport Chennai cannot be sustained and so ordered to be set aside.

15.1 On the issue of invocation of extended period in respect of Appeal No. 40416/2023, we have considered the Ld. Counsel's submissions that the appellant has been importing Clear Float Glass 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. It has been submitted that even after the CRA objection for period under dispute, the provisional assessments were finalised allowing the classification under CTH 7005 1090. The allegation of wilful misclassification and intention to evade duty by the appellant is not at all tenable and misclassification could not be equated with misdeclaration within the meaning of Section 28(4) of the Customs Act, 1962 and it is a settled law that once the goods are correctly described, the *bona fide* adoption of classification by the importer cannot be equated with misdeclaration as the importers are not expected to be fully conversant with the schedule to the Customs Tariff Act, 1975. In respect of this contention, the Ld. Counsel has relied on the cases of *Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]* and *Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur [2013 (288) ELT 161 (SC)].*

15.2 From the above facts, we find that the issue has been very much in the know of the revenue as more than 9 Bills of Entry which were provisionally assessed in terms of Section 17 of the Customs Act, 1962 were finalised after the receipt of the test report. After finalisation of such provisionally assessed Bills of Entry, it is not open for the Department to invoke the larger period of limitation as these assessments have undergone the rigours of provisional assessment and subsequent finalisation for the same product and for the same reason. So, we are of the considered view that the appellant has not suppressed or mis-declared any fact and the proposal to reclassify was only on the basis of interpretation made in the CRA objection and not for any fault on the part of the appellant. Therefore, invoking extended period in these proceedings, either for demand of duty or for imposition of mandatory penalty is not at all sustainable. So, the issue of limitation is decided in favour of the appellant and consequently the order of confiscation and imposition of fine and penalties are set aside.

16. In view of the aforesaid discussion, we hold that the imported Clear Float Glass is more appropriately classifiable under Customs Tariff

Heading 7005 1090 of the Customs Tariff Act, 1975 and thus is eligible for exemption of the benefit of the Notification No. 46/2011-Cus dated 01.06.2011 (Sl.No. 934). All the impugned orders *viz.,* Order-in-Original No. 101612/2023 dated 10.04.2023 passed by the Commissioner of Customs, Chennai II and Orders-in-Appeal Nos. 206 to 220/2023 dated 17.03.2023, 715-733/2023 dated 27.10.2023 and 546-557/2023 dated 28.08.2023 passed by the Commissioner of Customs (Appeals), Chennai Seaport are ordered to be set aside.

17. Consequently, all the appeals of the appellant are allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 18.07.2024)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI C.S.)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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