IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40891 of 2024
And
Customs Appeal Nos. 40293 to 40308/2025

(Arising out of Order in Appeal Seaport C. Cus. II No. 686 to 702/2024 dated 26.7.2024 passed by the Commissioner of Customs (Appeals – II), Chennai)

Date of Hearing: 01.07.2025

With

Customs Appeal Nos. 40075 to 40110/2025

(Arising out of Order in Appeal Seaport C. Cus. II No. 358 to 393/2024 dated 15.4.2024 passed by the Commissioner of Customs (Appeals – II), Chennai)

Date of Hearing: 08.08.2025

And

Customs Appeal Nos. 40111 to 40175/2025

(Arising out of Order in Appeal Seaport C. Cus. II No. 1 to 65/2024 dated 4.1.2024 passed by the Commissioner of Customs (Appeals – II), Chennai)

Date of Hearing: 18.08.2025

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

Vs.

Commissioner of customs **Respondent**
Chennai II Commissionerate
Custom House, 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri R. Sethu Prabakaran, Advocate for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40870 to 40987/2025

Date of Decision: 02.09.2025

Per M. Ajit Kumar,

These appeals are filed against Orders in Appeal Seaport C. Cus. II No. 686 to 702/2024 dated 26.7.2024; No. 358 to 393/2024 dated 15.4.2024 and Nos. 1 to 65/2024 dated 4.1.2024 all passed by the Commissioner of Customs (Appeals – II), Chennai (impugned orders).

2. Brief facts of the case are that the appellant is a regular importer of clear float glass with an absorbent layer, which are classifiable under CTH 7005 1090. The said goods were eligible for 'NIL' rate of BCD as per Sl. No. 934 of Notification No. 46/2011 dated 1.6.2011, if imported from ASEAN countries. The appellants were regularly importing the said goods from Malaysia and availing the benefit of the above-mentioned Notification. However, the Assessing Officer in the present case covered by the impugned Bills of Entry allegedly did not permit the appellant to file the bills of entry under CTH 7005 1090 as the Country-of-Origin certificate contained a different CTH. Provisional release sought by the appellant was also denied. To avoid detention and demurrage charges, the appellant filed bills of entry under CTH 7005 2990 'under protest'. Aggrieved by the classification in the bills of entry and the consequential denial of notification benefit therein, the appellant preferred appeals before the Ld. Commissioner (Appeals), who rejected their appeals. Hence the present appeals before this Tribunal.

3. The Ld. Counsel Shri R. Sethu Prabakaran appeared for the appellant and Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent.

3.1 The Ld. Counsel Shri R. Sethu Prabakaran for the appellant submitted that identical goods which were earlier imported by the appellant vide Bill of Entry No. 8520077 dated 19.10.2018 were provisionally assessed and the samples were sent for testing at CSIR-CGCRI, Kolkata. Subsequently, based on the test report dated 4.2.2019, the Bill of Entry was finally assessed classifying the goods under CTH 7005 1090. Later the Ministry of International Trade and Industries, Malaysia had mentioned the CTH as 7005 2990 instead of 7005 1090 in the country-of-origin certificate, for the impugned goods. The goods covered under CTH 7005 2990 are the ones which do not have an absorbent layer. The goods imported by the appellant have absorbent layer and are rightly classifiable under CTH 7005 1090. The matter has already been decided by this Tribunal in a detailed order in the appellant's own case i.e. M/s. Float Glass Centre Vs Commissioner of Customs, Chennai (**Final Order Nos. 40876-40908 of 2024 dated 18.07.2024**). The Order held that the correct classification of the imported glass is under CTH 7005 1090, as claimed by the importer-appellant. The legal position has also been reiterated in the following orders of various Co-ordinate Benches of this Tribunal:

i. M/s. Bagarecha Enterprises Ltd. vs. Commissioner of Customs, Kolkata, reported in (2023) 13 Centax 321 (Tri.-Cal)

ii. M/s. Bagarecha Enterprises Ltd. vs. Commissioner of Customs, Chennai, reported in (2024) 24 Centax 245 (Tri.-Mad)

iii. Navakar Impex Pvt. Ltd. vs. Commissioner Of Customs, Chennai reported in (2024) 25 Centax 66 (Tri.-Mad)

iv. Swastik Glass Traders vs. Commissioner of customs reported in (2024) 23 Centax 228 (Tri.-Mad)

v. M/s. Rider Glass Industries Pvt. Ltd. vs. Commissioner of Customs, Chennai, reported in (2024) 25 Centax 384 (Tri.-Mad)

vi. M/s. Enviro Safety Glass vs. Commissioner of Customs (Audit), Chennai, reported in (2024) 25 Centax 115 (Tri.-Mad).

vii. Suraj Constructions vs. Commissioner of Customs, Chennai - II Commissionerate - Final Order No. 40431-40435/2025-CU[DB] dated 09.04.2025.

The said decisions squarely cover the issue involved in the present case. He further took us through the merits of the case and prayed that the appeals may be allowed.

3.2 The Ld. Authorized Representative Shri Sanjay Kakkar appeared for the respondent and submitted that:

a. The subject case pertains to a change of declared and self-assessed classification without the emergence of new facts supporting such a change.

b. The submission of a Bill of Entry is an independent responsibility of the importer, performed electronically either directly or through an authorized Customs Broker. It is unclear how assessment authorities could intervene in this electronic process or prevent the appellant from filing the Bill of Entry.

c. According to Regulation 4(2), self-assessment is completed upon generation of the Bill of Entry Number following the declaration. The importer cannot subsequently object to their own declared classification in self-assessments.

d. If the importer intended for the goods to be classified under a different tariff heading, they should have filed the Bill of Entry with the desired classification and sought either first-check assessment (as per the second proviso to Section 46(1) of the Customs Act) or provisional assessment (under Section 18(1)(a) ibid) and requested for testing to determine the correct classification.

e. It is also submitted that a "protest" could only carry a meaning when some 'decision' has been conveyed by the proper officer for assessment to the importer. The importer could not have protested against their own self-assessment.

f. At most, the said payment could be termed as an 'involuntary payment distinct from 'payment under protest'. Reliance in this regard is placed on the decision of Hon'ble Calcutta High Court in the case of **Inchek Tyres Ltd. Vs Union of India and Others** [1978 (6) TMI 56]. The exercise appears to be a deceptive practice.

g. It is submitted that each import is distinct and Examination of goods is a matter of determination of fact and the examination report is sacrosanct. The Appellants have not placed any documentary evidence to justify that the imported goods fall in a classification different from what they had themselves declared under Section 46 of the Customs Act and self-assessed.

4. We have gone through the appeals, the written submissions made by the rival parties and have heard them in the matter. We first take up the objections raised by revenue against the appeal and find ourselves unable to concur with the submissions made.

4.1 As per Article 265 of the Constitution of India, no tax shall be levied or collected except by authority of law. The department cannot charge and collect excess amount of tax than that which is due by law and payable by the importer. This would apply even in the case of self-assessment. An importer is not expected to be an expert in classification. At times he may self-assess the goods wrongly and realise the same a little later or he may have declared the classification in accordance with the wishes of the authorities, as appears to be the case here, since an earlier provisional assessment was claimed to have been accepted by the department, after receipt of test report. That matter need not detain us, because even otherwise there can be no valid ground for collecting excess amount as tax or denying the importer the right to appeal against his own wrong self-assessment. There is no estoppel in law against a party in taxation matters. Further tax cannot be collected by consent of parties. It can only been levied as per the mandate of a taxing statute. Rules of procedure are the handmaid of justice. The payment of duty under protest is a beneficial legal mechanism that has evolved to protect the importer/ exporter from issues related to time bar of a refund claim being made at the end of the appeal process. Hence it can be deployed against an order of self-assessment also. Moreover, the Tribunal being the last fact-finding authority and is duty bound to consider the issue in order to correctly assess the tax liability of an assessee. Before parting it must be said that the role of the Departmental Representative is not merely to represent revenue, but to maintain fairness and impartiality in discharging his duties as an officer of the Court and help in the administration of justice. The Hon'ble Apex Courts observations in the case of Public Prosecutors would also be applicable to them. The Apex Court in **Captain Amarinder Singh Vs. Prakash Singh Badal** [(2009) 6 SCC 260] held:

> "We are also of the opinion that the public prosecutor cannot act on the dictates of the State Government, he has to act objectively as he is also an Officer of the Court."

4.2 A three Judge Bench of the Hon'ble Supreme Court examined a similar matter in the case of **ITC LTD. Vs COMMISSIONER OF CENTRAL EXCISE, KOLKATA-IV** [2019 (368) E.L.T. 216 (S.C.)]. At para 43 it held:

> **"43. <u>As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby.</u>** The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section

> 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. **The reasoning employed by the High Court is that since there is no *lis*, no speaking order is passed, as such an appeal would not lie, is not sustainable in law**, is contrary to what has been held by this Court in *Escorts* (supra)." (emphasis added)

4.3 Further in the case of the single judge order of the Hon'ble Calcutta High Court in, **Inchek Tyres Ltd**. (supra), cited by revenue, it appears that the judgment of a Bench consisting of nine Judge in the case of **Mafatlal Industries Ltd. Vs Union of India** [1997 (89) E.L.T. 247 (S.C.)] was not brought to the Hon'ble High Courts notice. The Hon'ble Supreme Court in its judgment at para 83, had held that "where a person proposes to contest his liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect".

4.4 For the reasons cited we reject the objections raised by revenue.

5. We find that the classification issue has been examined by a Coordinate Bench of this Tribunal in the appellants' own case vide **FINAL ORDER Nos. 40876-40908 / 2024**, Dated: 18.07.2024. Relevant portion of the Order is extracted below.

> "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.

***** ***** *****

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). . . ."

6. We find that the judgment of the coordinate Bench above, after considering 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* has held that the

classification of Clear Float Glass is under CTH 7005 1090 of the Customs Tariff Act, 1975. The appellant has also referred to a large number of judgments listed at para 3.1 above which have been decided similarly. As held by the Hon'ble Supreme Court in **Synthetics and Chemicals Ltd and others Vs State of U.P. and others** [AIR 1990 SUPREME COURT 1927 / 1990 (1) SCC 109], "Uniformity and consistency are core of judicial discipline". It is in this regard that the 'Doctrine of binding precedent' has come to stay. It promotes certainty and consistency in judicial decisions. [See: **Total Environment Building Systems Pvt. Ltd. Vs Deputy Commissioner of Commercial Taxes** [2022 (63) G.S.T.L. 257 (S.C.)]. We are hence bound by the decision of a Coordinate Bench of this Tribunal and we allow the appeals,

7. For the reasons discussed above the impugned orders are set aside and the appeals are allowed. The appellants are eligible for consequential relief as per law.

(Order pronounced in open court on 02.09.2025)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

Rex