

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50425 OF 2024

(Arising out of Order-in-Appeal No. 42(RLM)CUS/JPR/2023 dated 14.12.2023 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

**Commissioner of Customs (Preventive)
Jaipur**

NCR Building, Statue Circle, 'C' Scheme
Jaipur – 302005

.....Appellant

versus

M/s. Asahi India Glass Ltd.

A-2/10, 1st Floor,
WHS DDA Marble Market,
Kriti Nagar,
New Delhi – 110065

.....Respondent

APPEARANCE:

Shri Sashi Kant Sharma, Authorized Representative for the Department

Shri V. Lakshmikumaran, Shri Jitendra Singh, Ms. Rubel Bareja and Ms. Saksham Garg, Advocates for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
 HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.01.2025

DATE OF DECISION: 10.02.2025

FINAL ORDER NO. 50294/2025

JUSTICE DILIP GUPTA:

The Commissioner of Customs (Preventive), Jaipur has filed this appeal to assail the order dated 14.12.2023 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur¹, by which the appeal filed by the department to assail the order dated 03.03.2023 passed by the Assistant Commissioner of Customs has been dismissed. The Assistant Commissioner finalized the 220 Bills of Entry filed by M/s. Asahi India Glass Ltd.², which is a respondent in this appeal, in respect of import of Light Green Float Glass³ from Indonesia, Japan and Thailand under

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1. **the Commissioner (Appeals)**
 2. **Asahi India Glass**
 3. **Light Green Float Glass**

Customs Tariff Item⁴ 7005 10 10 of the First Schedule to the Customs Tariff Act, 1975⁵ claimed by Asahi India Glass and cancelled the provisional duty bonds and bank guarantee submitted by Asahi India Glass against the provisional assessment. Both the Assistant Commissioner and the Commissioner (Appeals) placed reliance upon an order dated 20.07.2022 passed by the Commissioner (Appeals) in the matter of Asahi India Glass itself, wherein Light Green Float Glass was classified under CTI 7005 10 10.

2. The issue involved in this appeal is whether Light Green Float Glass imported by Asahi India Glass through 220 Bills of Entry during the period from 08.01.2021 to 24.02.2023 would be classifiable under CTI 7005 10 10 as claimed by Asahi India Glass, or under CTI 7005 21 10 as claimed by the department. This would determine, whether Light Green Float Glass would be eligible for the benefit of exemption from payment of basic customs duty under the Exemption Notification dated 01.06.2011.

3. The Commissioner (Appeals), by the impugned order dated 14.12.2023, rejected the appeal filed by the department and upheld the order dated 14.03.2023 passed by the Assistant Commissioner. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below:

"8.1I find that identical issue of the respondent (M/s Asahi India Glass Ltd) on the same issue has already attain finality, which are discussed as under-

a. I find that in the similar matter in their own case Hon'ble High Court of Punjab & Haryana at Chandigarh in C.W.P. Nos. 22451 & 2241 of 2021 (O&M) and C.M. No. 16778 (CWP) of 2021 while rejecting the appeal filed by the

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5. the Tariff Act

appellant vide order dated 11-11-2021 held in para 8 that –

8. We find that the impugned order is extremely detailed and has given entire analysis not only of the product imported by the petitioner, but also quoted all the tests reports etc. We fail to understand why the petitioner did not file any detailed reply or did not submit any report from some other laboratory which may have supported the stand of the petitioner. It is not the case that the relief sought cannot be granted by the Appellate Authority. In the facts circumstances of the case, we are not inclined to interfere under the extra ordinary jurisdiction of this Court and dismiss this writ petition.

b. I further find that the M/s Asahi India Glass Ltd preferred an appeal before Hon'ble Apex Court against the said order dated 11-11-2021 of Hon'ble High Court of Punjab & Haryana, The Hon'ble Apex Court while disposing the said appeal as withdrawn held in para 3 that-

3. The present Special Leave Petition stands disposed of as withdrawn without further entering into the merits of the controversy and/or expressing anything on merits in favour of either of the parties. The Commissioner (Appeals) to decide and dispose of the appeal which has been filed against the final Assessment in accordance with law and on its own merits without in any way being influenced by any of the observations made by the High Court in the impugned judgment and order, if any.

c. I find that after Hon'ble Apex Court order dated 11/11/2021, the Commissioner (Appeals), IGI, New Delhi vide Order-in-Appeal No.CC(A)CUS/D-II/CD/PPG/861-863-2022-23 dated 20/07/2022 set-aside the Orders and allowed the appeal filed by the M/s Asahi India Glass Ltd. The Commissioner (Appeals) vide said OIA upheld classification of "Light Green Float Glass / Coloured Float Glass" under CTH 7005 10. The Commissioner (Appeals) in para 5.4.5 of the said OIA dated 20/07/2022 held that-

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 gone 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 tin detector.

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

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

The Test Reports have clearly established that impugned goods were having absorbent layer (Tin) on one side. This fact is not disputed. Accordingly, I find absolutely no reason to exclude these goods from 700510 & classify them under 700521. Rather, the said goods viz. "Light Green Float Glass/ Coloured Float Glass" with absorbent Layer of Tin on one side would merit classification under Sub-heading 7005 and more precisely under CTH 7001010."

d. I find that the said Order-in-Appeal No.CC(A)CUS/D-II/CD/PPG/861-863/2022-23 dated 20/07/2022 was accepted by the competent Authority i.e. Committee of Commissioners of Customs as conveyed vide letter dated 13/01/2023.

8.4 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.

8.5 The Reviewing Authority and the appellant has submitted that CTH 700521 covers glass which may or may not have absorbent or reflecting or non-reflecting layer. The appellant has contended that the impugned goods are coloured throughout body (i.e. body tinted) and thus covered by CTH 700521 and articles of CTH 700521

may or may not have absorbent/ reflecting layers. This interpretation itself is erroneous in light of scheme of CTH under 7005 and explanation given in 8.4 above.

8.6. It is settled position of law that burden of proof of classification is on the Department. The classification has been challenged to change 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 Respondent. Rather the said Reports do mention the presence of 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 70052 1. 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 7001010.

8.7.4 I find that the Commissioner of Customs (Appeals) Near IGI Airport New Delhi vide OIA CNO CC(A) CUS/D-II/ICD/PPG/864 dated 20.07.2022 set aside the OIO NO (i)01/JK/DC/ICD/Rewari/2021/Asahi India (ii) 02/JK/DC/ICD/Rewari/2021/Asahi India (iii) 03/JK/DC/ICD/Rewari/2021/Asahi India passed by DC ICD Rewari, and the OIA allowed the appeal filed by M/s Asahi India Glass Ltd., New Delhi 110065 and ordered that BE's should be finalized and re-assessed under CTH 70051010 with application of S. no. 934 of Notification No. 46/2011-CUS dated 01.06.2011, as amended, along with consequential relief.

8.7.5 On 10.05.2022, the Customs Authority for Advance Ruling, Mumbai given its ruling in the case of M/s. Suraj Constructions dated 10.05.2022 holding that goods similar to the Assessee Respondent having an absorbent layer will be classifiable under CTH 700510.

9. In view of the above discussion and findings, the appeal filed by the appellant i.e. by the Assistant Commissioner of Customs, ICD, Kathuwas, Alwar is hereby rejected and uphold the impugned OIO.”

(emphasis supplied)

4. Shri Sashi Kant Sharma, learned authorized representative appearing for the department made the following submissions:

- (i)** Similar or identical goods imported by Asahi India Glass and other importers have been classified under CTI 7005 21 10, rather than CTI 7005 10 10, but the adjudicating authority did not consider this prevailing classification leading to inconsistency in applying tariff headings;
- (ii)** The difference between Customs Tariff Sub-Heading⁶ 7005 10 and CTSH 7005 21 under the Customs Tariff is significant in the context of classification of glass products. CTSH 7005 10 focuses on glass that achieves tinting or reflection through added layers or coatings. CTSH 7005 21 focuses on glass that is inherently colored throughout its mass during production. The goods under review fit the description of body-tinted glass and are primarily colored throughout the mass, aligning more with CTI 7005 21 10 rather than CTI 7005 10 10;
- (iii)** A sample drawn from an earlier consignment Bill of Entry No. 9841506 dated 03.08.2022 was tested by Central Glass and Ceramic Research Institute, Kolkata. The primary characteristic of the goods being body-tinted glass classifies them under CTSH 7005 21 as they are colored throughout the mass. The presence of a tin layer

6. CTSH

or other coatings is secondary and does not influence the primary classification;

- (iv)** The primary condition for classifying the imported Green Float Glass under CTI 7005 10 10 was not satisfied. 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. It would not be proper to interpret the tin layer itself as absorbent layer, which is automatically formed in the manufacture process of every float glass; and
- (v)** The Circular No. 23/2024-Customs CBIC has clarified that the clear float glass which is not wired, not coloured, not reflective and not tinted and has only a tin layer on one side and there is no other metal oxide layer on it, will be said to be having no absorbent layer and, therefore, will be correctly classified under CTI 7005 29 90.

5. Shri V. Lakshmikumaran, learned counsel for Asahi India Glass assisted by Shri Jitendra Singh, Ms. Rubel Bareja and Ms. Saksham Garg made the following submissions:

- (i)** Light Green Float Glass imported by Asahi India Glass is correctly classifiable under CTI 7005 10 10. Consequently, it is eligible for exemption under the Exemption Notification;
- (ii)** The issue of classification of Light Green Float Glass has been settled, as has also been noted by the Commissioner (Appeals) in the impugned order;

- (iii) The amendment made by section 88(B) of the Finance Act, 2019⁷ does not impact the classification of Light Green Float Glass;
- (iv) When multiple interpretations are possible in a taxing statute, one which favours the assessee should be adopted;
- (v) Reliance placed by the department on import data of Light Green Float Glass under CTI 7005 21 10 by Asahi India Glass from other ports is incorrect and untenable; and
- (vi) The department has not discharged its onus to prove the re-classification claimed by them.

6. The submissions advanced by the learned authorized representative appearing for the department and the learned counsel for Asahi India Glass have been considered.

7. It would be appropriate to refer to the relevant tariff entries and the same are reproduced below:

Chapter 70		Glass and glassware		1385	
Tariff Item	Description of goods		Unit	Rate of duty	
				Standard	Preferential Areas
(1)	(2)		(3)	(4)	(5)
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%	-

7. the 2019 Finance Act

8. Asahi India Glass had filed 3 Bills of Entry in 2021 for clearance of Light Green Float Glass at ICD, Alwar. During the course of assessment, a query was raised by Port Assessment Group⁸ seeking explanation from Asahi India Glass in relation to pending proceeding against Asahi India Glass at Patparganj Customs Commissionerate in respect of the same product. Asahi India Glass, by a letter dated 26.11.2021, submitted a copy of speaking order dated 04.09.2021 issued by Patparganj Customs Commissionerate classifying identical goods under CTSH 7005 21 as against CTSH 7005 10 claimed by Asahi India Glass. Asahi India Glass further apprised PAG that the issue of classification was sub-judice as Asahi India Glass had preferred an appeal against said speaking order and the appeal was pending disposal before the Commissioner (Appeals). In view of the pendency of the appeal, Asahi India Glass requested for clearance of the Bills of Entry on provisional assessment basis in terms of section 18 of the Customs Act, 1962⁹. This request was accepted by the competent authority subject to submission of bond and bank guarantee equal to the value of goods and differential duty. Subsequent imports were also cleared for home consumption on provisional assessment of Bills of Entry.

9. The Commissioner (Appeals), in respect of the proceedings at Patparganj Customs, passed an order dated 20.07.2022 setting aside the speaking order along with two other orders and held that since Light Green Float Glass has a layer of tin which satisfies the condition stipulated under Note 2(c) of Chapter 70 of the Tariff Act, it would merit the classification under CTSH 7005 10. The Commissioner (Appeals), further

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9. the Customs Act

held that the interpretation entertained by the department that goods fall under CTSN 7005 21 was not correct.

10. Thereafter, Asahi India Glass submitted a letter dated 16.12.2022 containing a copy of the order dated 20.07.2022 passed by the Commissioner (Appeals) to the PAG and requested for finalization of the provisionally assessed Bills of Entry under CTI 7005 10 10 with benefit of exemption under the Exemption Notification.

11. The Assistant Commissioner, by order dated 14.03.2023, accepted the classification of Light Green Float Glass under CTSN 7005 10 and accordingly, finalized the 220 Bills of Entry for the period from 08.01.2021 to 24.02.2023 under CTI 7005 10 10 with consequential benefit of the Exemption Notification. The order also directed for cancellation of provisional duty bond and bank guarantee submitted by Asahi India Glass against provisional assessment of the Bills of Entry.

12. The order dated 14.03.2023 was passed by the Assistant Commissioner for the following reasons:

- (i) The order dated 20.07.2022 passed by the Commissioner (Appeals) in favour of Asahi India Glass was accepted by the Committee of Commissioners;
- (ii) The Commissioner (Appeals) found that the test reports clearly established that Light Green Float Glass imported by Asahi India Ltd. had an absorbent layer (tin) on one side. Hence, there was no reason to exclude these goods from CTSN 7005 10 and classify them under CTSN 7005 21.

13. It is against the order dated 14.03.2023 that the department filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) upheld the order dated 14.03.2023 passed by the Assistant

Commissioner and rejected the appeal filed by the department for the following reasons:

- (i)** The issue under consideration had attained finality as in a similar matter, the Commissioner (Appeals) held by order dated 20.07.2022 that the goods were classifiable under CTI 7005 10 10, which order had been accepted by the department;
- (ii)** The case of the department was that CTSH 7005 21 covers glass which may or may not have an absorbent reflective or non-reflective layer. The order passed by the Commissioner (Appeals) holds that a perusal of CTSH 7005 10 would show that it covers non-wired glass having an absorbent reflective or non-reflective layer. The single dash entry after CTI 7005 10 90 i.e. "other non-wired" glass would cover non-wired glasses without absorbent reflective or non-reflective layer;
- (iii)** The order further holds that the test report dated 31.03.2023 would not be sufficient to reject the classification adopted by Asahi India Glass. The said report does mention the presence of a layer which clearly establishes that Light Green Float Glass has an absorbent reflective or non-reflective layer which is of tin; and
- (iv)** The order relies upon the earlier order dated 20.07.2022 of the Commissioner (Appeals).

14. The issue that requires consideration in this appeal is whether Light Green Float Glass imported by Asahi India Glass deserves to be classified under CTI 7005 10 10 as claimed by Asahi India Glass or under CTI 7005 21 10 as claimed by the department.

15. It is not in dispute that this issue was examined at length by the Commissioner (Appeals) in the order dated 20.07.2022 passed in Appeal Nos. 861-863/2022-23. This order was passed pursuant to the judgment dated 11.02.2022 of the Supreme Court that disposed of three appeals that had been filed by Asahi India Glass. The issue involved before the Commissioner (Appeals) was classification of Light Green Float Glass. After referring to the Customs Tariff and the competing entries and the test reports, the Commissioner (Appeals) held that Light Green Float Glass imported by Asahi India Glass would merit classification under CTI 7005 10 10 and consequently would be entitled to claim exemption under the Notification dated 01.06.2011. The relevant observations are:

"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 may 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 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 70051010.

5.6 The classification issue in the favour of the appellant is further supported by the stand of other Assessing Authorities for the similar goods imported by the Appellant. For instance, they have submitted a copy of letter C. No. VIII(30)Cus/ICD DD/Gr-3/Asahi/106/2020 dated 25.03.2021 issued by the Assistant Commissioner (Gr.-3), Noida Customs, wherein it has been decided that the goods in question are liable to be classified under CTH 700510. *****

5.7 As the declared classification of the appellant has been upheld, hence the benefit of S. No. 934 of the Notification No. 46/2011-Cus. Dated 01.06.2011 is held to be applicable. Consequentially the demand of differential duty does not survive. Accordingly, the interest liability under section 18 (3) also does not survive. Thus, all the three impugned orders are liable to be set aside."

(emphasis supplied)

16. This order passed by the Commissioner (Appeals) was accepted by the Committee of Commissioners, which fact is clear from the letter dated 13.01.2023 sent by the Joint Commissioner of Customs, which is reproduced below:

"Please refer to the above mentioned subject. In this regard, it is informed that Order-in-Appeal No. CC(A)/Cus/D-II/ICD/PPG/861-863-2022-23 date 20.07.2022 issued vide F.No. CC(A)/DLH/Cus/ICD-PPG/715/2021 & Ors. has been accepted by the Committee of Commissioner of Customs.

The Commissioner of Customs (Appeals) vide above mentioned Order-in-Appeal has ordered for classification of impugned goods under CTH 70051010 along with application of notification no. 46/2011-cus dated 01.06.2011 (Sl. No. 934). In compliance with the above said Order-in-Appeal, the process of Re-Call and Re-assessment of Bills of Entry is being carried out by this office."

17. It also needs to be noted that the Deputy Commissioner, Customs, Pali also passed an order dated 24.06.2022 rejecting the classification of Light Green Float Glass claimed by Asahi India Glass, but the appeal filed before the Commissioner (Appeals) was allowed by order dated 29.12.2022 and Light Green Float Glass was classified under CTI 7005 10 10. Reasons given by the Commissioner (Appeals) in the said order are identical to the reasons contained in the aforesaid order dated 20.07.2022. Learned counsel for the appellant also pointed out that the department has not filed any appeal against the order dated 29.12.2022 and learned authorized representative appearing for the department has not disputed this fact.

18. The order dated 14.12.2023 passed by the Commissioner (Appeals) that has been impugned in this appeal takes cognizance of the earlier order dated 20.07.2022 passed by the Commissioner (Appeals) in favour of Asahi India Glass and also notes that the said order was accepted by the department. Once the order passed by the Commissioner (Appeals) classifying Light Green Float Glass under CTI 7005 10 10 has been accepted by the department, it is not permissible for the department to contend in this appeal that Light Green Float Glass should be classified under CTI 7005 21 10. In this connection reliance can be placed on the decision of the Supreme Court in **Jayaswals Neco Ltd.** vs.

Commissioner of Central Excise, Nagpur¹⁰. The relevant observations are:

"6. This Court in *Birla Corporation Ltd. v. Commissioner of Central Excise* [2005 (186) E.L.T. 266 (S.C.)] relying upon an earlier decision of this Court, held that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases. In Paragraph 5 of the said judgment it was observed, thus:

"In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in *Pepsico India Holdings Ltd. (supra)* cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assesseees in a quandary."

7. Since the point involved in the present case is identical to the point decided in the *Hindustan Gas & Industries case (supra)* and the department having accepted the principle laid therein to the effect that the inserts did not require any precision machining or that any such machining was done by the appellant, cannot be permitted to take a stand different than the principles laid down in the earlier case."

19. There is, therefore, no illegality in the order dated 14.12.2023 passed by the Commissioner (Appeals) classifying Light Green Float Glass under CTI 7005 10 10.

20. Learned authorized representative appearing for the department, however, placed much emphasis on the Circular dated 14.11.2024 issued by the Ministry of Finance. The issue that was considered in the said Circular was whether the presence of a tin layer on one side of the float glass can be treated as the absorbent, reflective layer. The Circular

10. 2006 (195) E.L.T. 142 (S.C.)

"Circular No. 23/2024-Customs
F.No. 521/01/2023-STO(TU)

North Block, New Delhi.
Dated: 14.11.2024

The Board is in receipt of several reference regarding the classification of the goods referred as Clear Float Glass having a tin layer on one side.

3. For the ease of reference, following from the First Schedule to Customs Tariff Act, 1975 is reproduced below:

7005 10	-non-wired glass, having an absorbent, reflecting or non-reflecting layer:
7005 10 10	---Tinted
7005 10 90	---Other
	-Other non-wired glass:

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

.....

7005 29 --Other:
7005 29 10 ---Tinted
7005 29 90 ---Other
7005 30 -Wired glass:

.....

(b) Further, as per Chapter Note 2.(c) to Chapter 70, For the purposes of headings 7003, 7004 and 7005, 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.”

4. The issue has been examined in consultation with CSIR-Central Glass & Ceramic Research Institute, Kolkata. **On examination, it is understood that due to the manufacturing process (Pilkington process), the final product clear float glass, has always a tin layer on one side by default due to floating of glass on the molten tin to achieve a flat, smooth surface. Getting ‘tin layer’ on the one side of the glass by default does not mean that it satisfies the condition under Note 2(C) of Chapter 70, that “the expression absorbent, reflecting or non-reflecting layer” means a microscopically thin coating of metal or of a chemical compound (for e.g. metal oxide)”.**

5. **In view of the above, it is clarified that the clear float glass which is not wired, not coloured, not reflective and not tinted and has only a tin layer on one side and there is no other metal oxide layer on it, will be said to be having no absorbent layer; therefore, will be correctly classified under tariff item 7005 29 90.”**

(emphasis supplied)

21. It needs to be noted that the issue of classification and exemption has been settled in favour of Asahi India Glass. Once the legal position is settled and the same has been accepted by the Department, it is not open to the Department to take a contrary view by placing reliance on a Circular issued by the Board.

22. In this connection reliance can be placed on the judgment of the Supreme Court in **Commissioner of C. Ex., Bolpur vs. Ratan Melting & Wire Industries**¹¹. The Supreme Court held:

"6. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. **They are not binding upon the court.** It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

(emphasis supplied)

23. In **Commissioner of Central Excise, Bhopal vs. Minwool Rock Fibres Ltd.**¹², the Supreme Court held:

"14. The learned senior counsel Shri Bhatt invites our attention to the circular instructions issued by the Board. In our view, the departmental circulars are not binding on assesee or quasi-judicial authorities or courts and therefore, in that view

11. 2008 (12) S.T.R. 416 (S.C.)

12. 2012 (278) E.L.T. 581 (S.C.)

of the matter, the circular/instructions issued by the Board, would not assist them”

(emphasis supplied)

24. In **Collector of Central Excise, Bombay vs. Kores (India) Limited**¹³, the Supreme Court held:

“3. The learned Addl. Solicitor General, on behalf of the Revenue, has drawn our attention to the judgment of this Court in Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. - 1988 (37) E.L.T. 480 (SC) = 1989 (1) SCC 150, where it was observed, with reference to the Tariff Advice that dealt with coated paper, that Trade Notices and Tariff Advices were not relevant, as such, in construing items in the Tariff Schedule. **A quasi-judicial body exercising quasi-judicial powers was not bound by the directions of the Central Board of Excise & Customs. It was, therefore, submitted by the learned Addl. Solicitor General, that regardless of the tariff Advice and Trade Notice, we should decide whether stencil skin fell under Item 68 as held by the Tribunal or under Item 17(2) as contended by the Revenue.**

4. A Tariff Advice or a Trade Notice issued by the Board certainly does not bind the Tribunal or the Courts and an assessee may argue that it is erroneous; but it is not open to the Revenue to advance arguments that are contrary to the terms thereof. Upon this short ground alone, the appeals must be dismissed.”

(emphasis supplied)

25. Thus, when the issue of classification has attained finality, the Circular cannot unsettle the settled position.

26. In any view of the matter, the Circular dated 14.11.2024 deals with the question whether the presence of a tin layer (which is present by default in all float glass) on one side can be treated as the absorbent, reflective layer. The Board clarified that issue was examined in

13. 1997 (89) E.L.T. 441 (S.C.)

consultation with CSIR-Central Glass & Ceramic Research Institute, Kolkata. On examination, the Board found that "Getting 'tin layer' on the one side of the glass by default does not mean that it satisfies the condition under Note 2(c) of Chapter 70, that 'the expression absorbent, reflecting or non-reflecting layer' means a microscopically thin coating of metal or of a chemical compound (for e.g. metal oxide)". It was, therefore, clarified that clear float glass, which is not wired, not coloured, not reflective, not tinted and only has a tin layer on one side with no other metal oxide layer on it, will be said to be having no absorbent layer and consequently classifiable under CTI 7005 2990.

27. This Circular fails to appreciate the correct understanding of Note 2(c) of Chapter 70. Note 2(c) does not envisage any specific mode or method of "coating", while defining the expression "absorbent, reflecting or nonreflecting layer". On the contrary, it indicates that a layer formed by whichever means would qualify as a "coating". Therefore, the layer of tin coated on the disputed goods as a result of manufacturing process will qualify as an absorbent and reflective in nature, based on the technical evidence provided by Asahi India Glass. Consequently, the goods would be correctly classified under CTI 7005 10 10.

28. The test reports issued by CSIR Kolkata, also relied upon by the Commissioner of Customs (Appeals) in the impugned order, record that "the tin side is detected under UV illumination using tin detector", and "an absorbent layer is observed on tin side of the glass which is fluorescent under UV illumination". The Circular cannot provide for a stand which is contrary to the settled position determined by the Tribunal. Once the disputed goods satisfy all the conditions of Note 2(c) of Chapter 70, they deserve to be classified under CTI 7005 10 10 of the Customs Tariff Act.

29. Thus, for all the reasons stated above, the order passed by the Commissioner (Appeals) does not require any interference. The appeal, therefore, deserves to be dismissed and is dismissed.

(Order Pronounced on **10.02.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya, Jyoti