

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75818 of 2023

(Arising out of Order-in-Appeal No. 608 dated 09.08.2023 passed by the Commissioner of Customs (Appeals) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Navakar Impex Private Limited
91, Fuso House, 1st Floor, PH Road,
EVR Periyar High Road, Egmore, Chennai-600084

: Appellant

VERSUS

The Commissioner of Customs,
Custom House, 15/1, Strand Road,
Kolkata-700001

: Respondent

AND

Customs Appeal No. 75819 of 2023

(Arising out of Order-in-Appeal No. 607 dated 09.08.2023 passed by the Commissioner of Customs (Appeals) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Navakar Impex Private Limited
91, Fuso House, 1st Floor, PH Road,
EVR Periyar High Road, Egmore, Chennai-600084

: Appellant

VERSUS

The Commissioner of Customs,
Custom House, 15/1, Strand Road,
Kolkata-700001

: Respondent

APPEARANCE:

Shri Sethu Prabakaran R., Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77532-77533/2025

DATE OF HEARING / DECISION: 18.09.2025

Order: [PER SHRI K. ANPAZHAKAN]

Both the appeals have a common issue namely, classification of float glass with an absorbent layer. Hence, both these appeals are taken up together for disposal by a common order.

2. M/s. Navakar Impex Private Limited, Chennai (herein after referred as the appellant) are regular importers of clear float glass with an absorbent layer. The appellant classified the said goods under CTH 7005 1090. The said goods are eligible for NIL rate of BCD as per SL.No.934 of Notification No.46/2011 dated 01.06.2011, if imported from ASEAN countries. The appellants are regularly importing the said goods from Malaysia and availing the benefit as per Notification No.46/2011 dated 01.06.2011.

2.1. In the present case, the Appellant had imported Clear Float Glass Non Wired Glass, Non Tined, Having an Absorbent, Non Reflecting layer of various sizes and thickness', vide Bill of Entry No. 2680938 dated 30.09.2022. The Proper Officer of the FAG, did not agree with the classification adopted by the appellant and re-classified the same under the CTH 7005 2990 and applied Sl. No. 935(i) of Notification No.46/2011-Cus dated 01.06.2011, which provided for 5% BCD. Thereafter, after the Deputy Commissioner of Customs has passed the impugned order-in-original dated 01.11.2022, wherein he has re-classified the goods and denied the benefit of SL.No.934 of Notification No.46/2011 dated 01.06.2011. Aggrieved by the impugned order-in-original No. KOL/CUS/AC/PORT/543/Gr.3/2022 dated 01.11.2022, the Appellant filed an appeal before the Commissioner (Appeals), who vide Order-in-Appeal

KOL/CUS(PORT)/KS/607/2023 dated 09.08.2023, rejected the appeal filed by the appellant. Aggrieved by the order-in-appeal, the appellant is before this Tribunal.

3. The appellant submits that they are regular importers of clear float glass with an absorbent layer, which are classifiable under CTH 7005 1090. They are regularly importing the said goods from Malaysia and are availing the benefit of Sl. No. 934 (1) of Notification No.46/2011 dated 01.06.2011. It is their submission that the goods imported are rightly classifiable under CTH 7005 1090.

3.1. The appellant submits that the Ld. Commissioner (Appeals) while upholding the re-classification of the goods imported under the CTH 7005 2990, observed that the presence of tin layer cannot be construed to be an absorbent layer for the purposes of classifying the said goods under the heading 7005 1090. According to the Ld. Commissioner (Appeals), a tin layer is an essential part of all float glass because of the manufacturing process of float glass. Thus, the appellant submits that the Ld. Commissioner (Appeals) has given a technical finding without any backing of an expert opinion. In this regard, the appellant contends that the test report dated 02.02 2022 of CSIR, Kolkata read with the clarification dated 30.02 2022 clearly states that the tin layer is UV absorbent. This means that the float glass imported by the appellant has an absorbent layer. The fact whether the tin layer is automatically formed in the course of manufacture of the float glass does not make any difference in the classification of the product under heading 7005 1090. Accordingly, the appellant submits that the

classification 7005 1090 adopted by them is supported by the Test Report of CSIR, Kolkata.

3.2. The appellant also cited the import of a similar product by the M/s Float Glass Centre, vide bill of entry No 8520077 dated 19.10 2018, wherein CSIR Kolkata had issued a test report dated 04.02.2019. The test report states that "an absorbent layer (tin)" is observed on one side of the glass which is Florissant under UV illumination for both the glasses" Here again, CSIR Kolkata have confirmed the fact that the tin layer on the float glass has to be considered as the absorbent layer There is no technical or expert opinion which supports the case of the Department that the presence of tin layer cannot be considered to be the absorbent layer for the purpose of classification of a product under CTH 7005 1090.

3.3. The appellant further submits that a similar issue came up for consideration before the Commissioner of Customs (Appeals), New Delhi in the case M/s. Asahi India Glass Limited. In that case, the Commissioner (Appeals), vide order in appeal no CC(A) CUS/D-II/ICD/PPG/861-863/2022-23, dated 20.07 2022, has held that the declared classification in respect of clear float glass under CTH 7005 1090 was correct. In Page 9 of the said order, the Commissioner (Appeals) has found that since the goods have an absorbent layer (Tin) on one side, they merit classification under CTH 7005 1090. It is submitted that in an identical issues pertaining to the classification of clear float glass, the Commissioner of Customs (Appeals), vide the following orders in appeal had upheld the classification of the goods under CTH 7005 1090 and had extended the benefit

of Sl. No 934 of notification No 46/2011-Cus dated 01.06 2011.

3.4. In view of the above submissions, the appellant prayed for setting aside the impugned order and allow the appeal filed by them.

4. The Ld. Authorized Representative reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. In the present case, we observe that the issue for consideration is whether the float glass imported by the appellant having an absorbent layer, merits classification under the heading 7005 1090 or not.

6.1. We observe that the appellant has imported the goods, 'Clear Float Glass Non Wired Glass, Non Tined, Having an Absorbent, Non Reflecting layer of various sizes and thickness' and filed Bill of Entry No. 2680938 dated 30.09.2022. The appellant classified the said goods under CTH 7005 1090 and claimed the benefit of Sl. No 934 of notification No 46/2011-Cus dated 01.06 2011. However, the Proper Officer did not agree with the classification adopted by the appellant and re-classified the same under CTH 7005 2990 and applied Sl. No. 935(i) of Notification No.46/2011-Cus dated 01.06.2011, which provided for 5% BCD.

6.2. For ready reference, the said Chapter heading is reproduced below:

7005 FLOAT GLASS AND SURFACE GROUND
OR POLISHED GLASS, IN SHEETS, WHETHER
OR NOT HAVING AN ABSORBENT, REFLECTING
OR NON-REFLECTING LAYER, BUT NOT
OTHERWISE WORKED

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

7005 10 10-Tinted

7005.10 90-Other

--- Other non-wired glass

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

7005 21 10--Tinted

7005 21 90-Other

7005 29-Other

7005 29 10-Tinted

7005 29 90-Other

6.3. From the above description, it is evident that float glass having an absorbent layer and which are non-tinted are classifiable under CTH 70051090. We find that in para 9 of the impugned order, the Commissioner (Appeals) has given a finding that the presence of tin layer cannot be construed to be an absorbent layer for the purposes of heading 7005 1090, since a tin layer is an essential part of all float glass because of the manufacturing process of float glass. We observe that the above said finding of the Ld. Commissioner (Appeals) is not supported by any expert opinion. In our view, a float glass having an absorbent layer merits classification under heading 7005 1090. There is no dispute in this case the float glass imported by the appellant has an absorbent layer. It is immaterial whether the absorbent layer has come on account of manufacturing process or otherwise.

6.4. In this regard, we observe that the representative of the appellant had filed an application dated 20.06.2023 with M/s. Central Glass and Ceramic Research Institute (CSIR), Kolkata. One of the queries raised was whether the test reports given by the said institute is relating to the existence

of observant tin layer on one side of the clear float glass. The Institute vide their reply dated 17.07.2023 have clarified that the float glass tested by them contain an absorbent tin layer on one side and it has been clarified by the Institute that the presence of absorbent tin layer would mean that the float glass has an absorbent and non-reflective layer. Thus, we observe that the test report received in the case of the goods imported by the appellant established that the float glass imported by the appellant has an absorbent layer. Accordingly, we hold that the goods imported by the appellant in this case appropriately merits classification under the CTH 7005 1090 and eligible for the benefit of SI. No. 934 (1) of Notification No.46/2011 dated 01.06.2011.

6.5. We observe that a similar issue came up for consideration before the Commissioner of Customs (Appeals), New Delhi in the case M/s. Asahi India Glass Limited. The Commissioner (Appeals), vide order in appeal no CC(A) CUS/D-II/ICD/PPG/861-863/2022 23 dated 20.07 2022 held that the declared classification in respect of clear float glass under CTH 7005 1090 was correct. We also find that in an identical issues pertaining to the classification of clear float glass, the Commissioner of Customs (Appeals), vide the following orders in appeal had upheld the classification of the goods under CTH 7005 1090 and had extended the benefit of SI. No 934 of notification No 46/2011-Cus dated 01.06 2011.

- (i) Order in appeal NO CUS-000 APP-400 22-23 dated 09. 03. 2023
- (ii) Order in-appeal NO CUS-000 APP-401 22-23 dated 09.03.2023

6.6. In view of the above legal position, we hold that the classification of the impugned goods under the heading 7005 1090 adopted by the appellant is correct and the impugned goods are eligible for the benefit of Sl. No 934 of notification No 46/2011-Cus dated 01.06 2011. Thus, we hold that the demand of differential duty confirmed in the impugned order on account of reclassification of the impugned goods under the CTH 7005 2990, by denying the benefit of Sl. No. 934 of Notification No.46/2011-Cus dated 01.06.2011, is not sustainable and hence we set aside the same. As the demand of duty is not sustained, the question of demand of interest and imposition of penalty does not arise and hence we set aside the same.

7. In the result, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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