

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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75536 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/KS/563-565/2023 dated 24.07.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Bagrecha Enterprises Limited

(850/5, Mettupalayam Road, Coimbatore, Tamil Nadu-641002.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

.....Respondent

WITH

Customs Appeal No.75537 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/KS/563-565/2023 dated 24.07.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Bagrecha Enterprises Limited

(850/5, Mettupalayam Road, Coimbatore, Tamil Nadu-641002.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

.....Respondent

AND

Customs Appeal No.75538 of 2023

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/KS/563-565/2023 dated 24.07.2023 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s. Bagrecha Enterprises Limited

(850/5, Mettupalayam Road, Coimbatore, Tamil Nadu-641002.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

.....Respondent

APPEARANCE

Shri Hari Radhakrishnan, Advocate for the Appellant (s)
Shri Faiz Ahmed, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

FINAL ORDER NO. 77460-77462/2023

DATE OF HEARING : 3 November 2023
DATE OF DECISION : 3 November 2023

Per : ASHOK JINDAL :

All the appeals are having common issue, therefore all are disposed of by a common order.

2. The facts of the case are that the appellant is a regular importer of Clear Float Glass (CFG). The subject matter of these appeals are the 3(three) Bills of Entry filed by the appellant for import of CFG from M/s. Kibing Group (M) SDN BHD, Malaysia by classifying the goods under Tariff Item 7005 10 90 of the Customs Tariff Act (CTA) and claiming benefit at Sl.No.934 (I) of Notification 046/2011-CUS dated 01.06.2011. As per the audit para 4.10.01 of Audit Report No.17 of 2020, the respondent being not satisfied with the clarification given by the appellant, the adjudication order was passed holding that the imported goods namely CFG having merit classification under CTH 7005 2990 and consequently the same is not covered under Sl.No.934(I) of the Notification No.046/2011-CUS dated 01.06.2011 and the benefit thereof is not available to the appellant. Aggrieved from the said orders, the appellant preferred appeal before the Ld.Commissioner(Appeals), who dismissed the appeals filed by the appellant. Against the said orders, the appellant is before us.

3. The Ld.Counsel appearing for the appellant submits that although no test report was sought for the impugned Bills of Entry but the adjudicating authority has considered the test report dated 04.02.2019, wherein CFG was imported from the same supplier who has supplied the goods to the appellant which clearly depicts that the goods were

having absorbent layer (tin) but the benefit of Notification No.046/2011-CUS dated 01.06.2011 was denied.

4. The adjudicating authority has observed as under:-

"14. The issue is to decide whether the said goods will fall under the declared CTH "70051090" or any other CTH. No absorbent layer other than tin layer has been reported in the test report. A tin layer is an essential part of all float glass because of the manufacturing process of float glass. *Lorraine F. Francis, in Materials Processing, 2016*, has described the process as below-

*"The float glass process was invented in the year 1950s in response to a pressing need for an economical method to create flat glass for automotive as well as architectural applications. Existing flat glass production methods created glass with irregular surfaces; extensive grinding and polishing was needed for many applications. The float glass process involves floating a glass ribbon on **a bath of molten tin** and creates a smooth surface naturally. Floating is possible because the density of a typical soda-tin-silica glass (-2.3 g/cm³) is much less than that of tin (-6.5 g/cm³) at the process temperature. After cooling and annealing, glass sheets with uniform thicknesses in the 1-25 mm range and flat surfaces are produced."*

15. Hence, I find that the manufacturing process of float glass involves floating molten glass on 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 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.**

16. The above manufacturing process is well known. As the glass ribbon is floated on a bath of molten tin, a layer of tin is always seen in any float glass. Under UV light it is illuminated and that side is identified as tin side.

Absorbent layer in float glass is in addition to the tin layer.

Chapter Note 2(c) has explained the absorbent layer as below-

*“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.”*

17. **It appears that the importer is considering tin layer as absorbent layer.** A tin layer is an essential part of **all float glass** because of the manufacturing process of float glass. The test report (of identical product) submitted by the importer does not mention that goods have an absorbent layer reflecting or otherwise. The report only mentions tin layer which is supposed to be found in every float glass. In fact presence of tin layer may be good criteria to identify that a glass is float glass. Hence, the contention that tin layer is absorbent layer does not appear acceptable and goods may be treated as having no absorbent layer.

18. Further, test reports also revealed that the glasses are neither “tinted” nor “wired” nor IR absorbent. Hence, the possibility of classifying the glasses under CTH 70052110 (meant for tinted) or under CTH 70053010 (meant for wired glass) was also ruled out. Therefore, the impugned goods ideally merit classification under CTH 70052990 – “Others”.

5. It is the submission of the Ld.Counsel that to decide the issue of classification, the onus is on the department. To support this contention he relied on the following decisions:-

1. D.L. Steels
[2022 (381) E.L.T. 289 (SC)]
2. Parle Agro (P) Ltd.
[2017 (352) E.L.T. 113 (SC)]
3. Puma Ayurvedic Herbal (P) Ltd.
[2006 (196) E.L.T. 3 (SC)]
4. Hindustan Ferodo Ltd.
[1997 (89) E.L.T. 16 (SC)]
5. Garware Nylons Ltd.
[1996 (87) E.L.T. 12 (SC)]
6. Calcutta Steel Industries and Others
[1989 (39) E.L.T. 175 (SC)]

6. He further submitted that the Hon’ble Apex Court in the case of Commissioner of Central Excise, Bhopal vs. Minwal Rock Fibres Ltd.

[2012 (278) E.L.T. 581 (S.C.)] held that when there are two competitive entries then in a classification dispute an entry which is beneficial to assessee requires to be applied.

7. Further, in the case of STP Limited [1998 (97) E.L.T. 16 (SC)], the Hon'ble Apex Court held that if there is any dispute in construction of any provision of a taxing statute, that doubt must be resolved in favour of the assessee.

8. It is his submission that department wants to classify the impugned CFG under CTH 70052990 of CETA, there shall be a coating on the "air side" of the CFG and the absorbent layer of tin observed on one side which fluoresces under UV illumination is not a result of any coating of CFG but a natural phenomenon in the manufacture of CFG.

9. It is his submission that nowhere the Chapter Heading contemplates on which side the coating shall be present. He also relied Chapter Note 2(c) of Chapter 70 to CETA, which defines the expression "absorbent, reflective or non-reflective layer" requires a microscopic thin coating of metal that has absorbent quality. It is his submission that in the instant case, it remains undisputed fact that the tin layer present in CFG is absorbent.

10. When neither the Chapter Heading nor Chapter Note prescribes/mandates on which side such an absorbent layer should be present, the observations that it should be present only on the air side are devoid of any merits. He also submits that the case of Dilip Kumar [2018 (361) E.L.T. 577 (S.C.)] is not applicable to the facts of the present case. Further, he submits that the Advance Ruling Authority in the case of M/s. Suraj Constructions vide Order No.CAAR/CUS/APPL/16/2022 dated 10.05.2022, M/s. Chandrakala Associates, Chennai, Ruling No.CAAR/Mum/ARC/36/2021 dated 24.09.2021 has held that the merit classification of the impugned goods is 7005 1090. He further submits that the Ld.Commissioner(Appeals) in the case of M/s. Asahi India Glass Limited vide Order No.D-II/ICD/PPG/861-863/2022-23 dated 20.07.2022 held the merit classification of the impugned goods as CTH 7005 1090. He also relied

on the order passed by the Ld.Commissioner(Appeals) in the case of M/s. Rider Glass Industries Pvt.Ltd. vide Order-in-Appeal No.NOI-CUSTM-000-APP-400-2022-23 dated 09.03.2023. Therefore, he prayed that the impugned orders are to be set aside and merit classification of the impugned goods to be held as 7005 1090 and consequent to that the appellant is entitled to get the benefit of Notification 046/2011-CUS dated 01.06.2011.

11. On the other hand, the Ld.AR for the department supported the impugned order and submits that the classification of the impugned goods has been done on the basis of the audit objection raised. Therefore, the correct classification of the impugned goods is 7005 2990.

12. Heard the parties, considered the submissions.

13. Before deciding the issue, we have to see the manufacturing process of the impugned goods which is discussed as under:-

i. The various raw materials including silica are melted in a furnace at a very high temperature and the raw materials melt in a molten glass in the furnace. Such molten glass would be allowed to pass through a float bath of a molten metal, mainly, tin.

ii. Such molten glass, when fed and passed through such float bath of the molten metal, the glass acquires the flatness of the liquid pool and later retains the smooth finish of the liquid surface, in the process it also gets imbibed with the layer of such molten metal by its physiological reactions. This is the reason that this side of CFG is generally called "tin side" and the other side being called as the "air side". During the process of manufacture of CFG itself, one side of the glass will have a resultant metal coating of tin. Thereafter, such molten glass having the molten layer on one side (tin side) would reach the end of the bath where it would be cooled and hard rolled through an annealing layer, which would be subsequently cut to desired sizes.

14. For better appreciation of the classification of the impugned goods, whether they are classifiable under CTH 7005 1090 as claimed by the appellant or under CTH 7005 2990 as claimed by the Revenue, the tariff heading is also extracted hereunder:-

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) apacified, Flashed or merely surface ground :

7005 21 10 --- Tinted

7005 21 90 --- Other

7005 29 --- Other

7005 29 10 ---- Tinted

7005 29 90 ---

7005 30 --- Wired glass:

7005 30 10 --- Tinted

7005 30 90 --- Other

15. Further, Chapter Note 2(c) of Chapter 70 which is relevant is reproduced hereunder:-

"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."*

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 not-reflective and whether such layers are absorbent or not? The reply is given as (a) not-reflective and (b) absorbent (UV).

20. If the same is considered then the said clarification is satisfying the Chapter Note 2(c) of Chapter 70 of the Customs Tariff Act and the said Report has not been relied upon by the adjudicating authority while adjudicating the case. Therefore, the impugned order is bad in law.

21. We further take note of the fact that in the case of M/s. Suraj Constructions (supra), the Advance Ruling Authority has examined the issue and observed as under:-

"7. I have considered all the materials placed before me for the subject goods. I have gone through the submissions made by the applicant during personal hearing and the comments of the jurisdictional Principal Commissioner/Commissioner of Customs, on the impugned subject matter. The subject goods for which advance ruling has been sought, their characteristics, manufacturing process, utility etc. are already mentioned in the aforementioned paras. The subject goods are clear float glass, with an absorbent layer, which is fluorescent

under UV illumination. The subject goods are not wired, tinted or green in colour. The heading 7005 10 covers non-wired glasses having an absorbent, reflecting or non-reflecting layer and the headings 7005 21 to 7005 29 deal with non-wired glasses which are tinted having absorbent layer, opacified, flashed etc. Therefore, the subject goods are appropriately covered under sub-heading 7005 1090. Based on the applicant's submission about the country of origin and the manufacturer of the subject goods, benefits under sr.no.934 of the table annexed to the exemption notification no.46/2011-Cus., dated 01.06.2011, would be available, subject to the condition that in respect of each case of import, the applicant would have to produce evidence before the Deputy/Assistant Commissioner of Customs as to the origin of subject goods.

8. On the issue of whether the benefit of the said exemption would be available even if the sub-heading mentioned in the COO differs for 70051090, the applicant & their authorized representative were asked to explain the context of the said question. It appears that the subject goods are being exported from Malaysia under its code 70052990. The applicant has submitted a copy of the letter ref. no.MITI.700-2/26 Jld.6(38) dated 30.04.2021 from the Director of Trade and Industry Cooperation, Ministry of International Trade and Industry (MITI, hereinafter), stating that they had been requesting the clear float glass exporters to provide an advance ruling/document of the Government of India or from Royal Malaysian Customs confirming the correct HS code. It appears that M/s. Kibing Group (M) Sdn. Bhd. has obtained a letter from the Royal Malaysian Customs dated 12.03.2021 confirming the classification of clear float glass under HS code 7005.10.09, and therefore, MITI has allowed KGM to apply for a COO with exporting and importing HS code of 70051090. This letter goes on to state that unless M/s. Xinyi produces a similar document, their application with different exporting and importing tariff code cannot be approved."

22. Further, in the case of M/s. Chandrakala Associates (supra), again the Advance Ruling Authority has examined the issue and observed as under:-

"10. I have considered all the materials placed before me for the subject goods. I have gone through the submissions made by the applicant during personal hearing. In the absence of any comment from the jurisdictional Principal Commissioner/Commissioner of Customs, on the impugned subject matter, I proceed to render an advance ruling based on materials available on record. The subject goods for which advance ruling has been sought, their characteristics, manufacturing process, utility etc. are already mentioned in the aforementioned paras. The subject goods are clear float glass, with an absorbent layer, which is fluorescent under UV illumination. The subject goods are not wired, not tinted or not green in colour. The heading 7005 10 covers 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 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-heading 700521 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 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 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 Serial No.934 (I) of Notification No.046/2011-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.

(Operative part of the order was pronounced in the open Court.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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