

2024 (84) G.S.T.L. 297 (A.A.R. - GST - T.N.)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, TAMIL NADU

Smt. D. Jayapriya, Member (Central Tax) and Smt. T. Indira, Member (State Tax)

IN RE : FLOAT GLASS CENTRE

Advance Ruling No. 115/AAR/2023, dated 22-11-2023 in Application Sl. No. 56/2022

Clear Float Glass - Float glass and surface ground or polished glass - Heading 7005 - Imported from Malaysia and traded by Applicant - Question referred in instant application was, appropriate classification of product imported "Clear Float Glass traded by Applicant - From Bills of Entry it was found that said product was classified under Tariff Item 7005 29 90, whereas, applicant was claiming subject goods under Tariff Item 7005 10 90 - *HELD* : No wire mesh was reinforced in glass during manufacturing process, hence subject goods was Non-wired Glass - As per description of sub-heading 7005 10 i.e., absorbent, reflecting or non-reflecting layer, what was intended to be classified under sub-heading 7005 10 was glass coated with an absorbent, reflecting or non-reflecting layer - It was made clear, in Chapter notes that absorbent layer was a microscopically thin coating of metal or metal oxide which had to be applied during manufacturing process itself to glass before process of annealing, so as to not regard glass as worked upon - Applicant was of view that tin layer was an absorbent layer, for which they relied on test report given by Central Glass & Ceramic Research Institute, Kolkata, who presented their report on samples of Clear Float Glass imported under one Bill of entry - From submission of applicant, beyond regular process of manufacture of float glass, no additional coating of any layer, as mentioned in explanatory notes, which would serve as an absorbent, reflecting or non-reflecting layer, was carried out - Argument that tin layer was absorbent layer, was not to be accepted as, tin was not used in float glass process with specific objective of providing any absorbent, reflecting or non-reflecting layer - Presence of tin was by default and on account of manufacturing process and not by design or intended to add a layer with any of properties such as absorption or reflection or non-reflection - Since, float glass had not undergone any coating process for presence of an absorbent, reflecting or non-reflecting layer, it was not to be classified under subheading 7005 10 - It was also not coloured throughout mass (body tinted), Opacified, flashed or merely surface ground, it was not to be covered under sub-heading 7005 21 also - Hence appropriate classification was under Tariff sub-heading 7005 29 as 'Others' and at eight digit level, if item was 'tinted', it was to be classifiable under Tariff Item 7005 29 10 and if 'non-tinted', under Tariff Item 7005 29 90 of Customs Tariff Act, 1975 - Section 9 of Central Goods and Services Tax Act, 2017 - Section 9 of Tamil Nadu Goods and Services Tax Act, 2017. [para 6]

Ruling in favour of department

CASES CITED

Asahi India Glass Ltd. — Order No. CC(A)Cus/D-II/ICD/PPG/861-863 of 2022-23, dated 20-7-2022 — *Referred* [Para 3.1]

Bagrecha Enterprises Ltd. v. Commissioner — (2023) 13 Centax 321 — *Referred* [Para 5.2]

Chandrakala Associates — 2022 (381) E.L.T. 573 (A.A.R. - Cus. - Mum.) — *Referred....* [Para 3.1]

Suraj Construction — Advance Ruling No. CAAR/MUM/ARC/10/2022, dated 10-5-2022 by Customs Authority for Advance Ruling — *Referred* [Para 3.1]

[Order]. - M/s. Float Glass Centre, 130/447, Mint Street, Sowcarpet, Chennai 600079 (hereinafter referred to as The Applicant), a GST Registrant, is under the Administrative control of Centre and is engaged in import trading of glass products.

2.1 The Applicant submitted a copy of challan evidencing payment of application fees of Rs. 5,000/- each under sub-rule (1) of Rule 104 of CGST Rules, 2017 and SGST Rules, 2017.

2.2 The Applicant has submitted that the subject goods i.e. 'Clear Float Glass with Absorbent layer' are used for decorative, industrial and automotive purposes. The subject goods possess an absorbent layer of tin on one side of the glass, which is naturally formed during the course of manufacturing of clear float glass. The manufacturing process is as follows :

Ø The raw materials such as sand, soda ash, Dolomite, limestone, salt cake etc. are mixed in a batch process, then fed together with suitable cullet (waste glass) in a controlled ratio into furnace whether it is heated to approximately 1500 degree C.

Ø Once molten, the temperature of the glass is stabilized to approximately 1200 degree C to ensure a homogenous specified gravity, then the molten glass is fed into a 'tin bath', a bath of molten tin (about 34 metre wide, 50 metre long and 6 cm deep), from a delivery canal and is poured into a tin bath by a ceramic lip known as spout lip and the amount of glass allowed to pour onto the molten tin is controlled by a gate called tweel.

Ø Tin is suitable this process as it has a high specific gravity, is cohesive and is immiscible with molten glass; To prevent oxidation of tin, the tin bath is provided with a positive pressure protective atmosphere of nitrogen and oxygen.

Ø The glass flows into the tin surface forming a floating ribbon with perfectly smooth surfaces on both sides and of even thickness; As the glass flows along with the tin bath, the temperature is gradually reduced to 1100 degree C until approximately 600 degree C, the sheet can be lifted from the tin on to the rollers, which is done at a controlled speed; Top rollers positioned above the molten tin may be used to control both the thickness and width of the glass ribbon.

Ø Once off the bath, the glass sheets pass through a lehr kiln for about 100m, where it is cooled gradually so that it anneals without strain and does not crack from the temperature change and on exiting the kiln, the glass is cut by machines.

3.1 On interpretation of law, the Applicant stated that -

Ø The subject goods are 'Clear float Glass', with an absorbent layer, which is fluorescent under UV illumination.

Ø The subject goods are not wired, not tinted and not green in colour.

Ø The classification of Float glass falls under Chapter 7005 10 90 as seen below :

700 5	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.
700- 5 10	Non-wired glass, having an absorbent, reflecting or non-reflecting layer :
700--- 5 10 10	Tinted
700--- 5 10 90	Other

Ø Domestic manufacturers of identical products such as M/s. Saint Gobain classify the goods under CTH 7005 10 90.

Ø Majority of imports into India of Float Glass having an absorbent layer have been correctly classified under CTH 7005 10 90 as evident from the data collected from the website Zaubas and Planetexim.

Ø They rely on the following case laws/Advance rulings :

- Commissioner (Appeals) [Order No. CC(A) CUS/D-II/ICD/PPG/861-863/2022-23, dated 20-7-2022] in the case of *M/s. Asahi India Glass Ltd.*

- Advance Ruling No. CAAR/MUM/ARC/10/2022, dated 10-5-2022 passed by Customs Authority for Advance Ruling in the case of *M/s. Suraj Construction.*

- Advance Ruling No. CAAR/MUM/ARC/36/2021, dated 24-9-2021 passed by Customs Authority for Advance Ruling in the case of *M/s. Chandrakala Associates.* [2022 (381) E.L.T. 573 (A.A.R. - Cus. - Mum.)]

3.2 Based on the above, the Applicant interpreted that the product 'Clear Float Glass' having an absorbent layer (Tin) on one side merits classification under CTH 7005 10 90.

4.1 The jurisdictional Centre authority, vide letter dated 7-2023, has stated that :

Ø The Applicant has not included the subject goods i.e. 'Clear Float Glass' in their GST Registration under the heading 'Goods/Services dealt' till date.

Ø The Applicant furnished copies of past Bills of Entry, test analysis report on import clearance, lab certification for the imported subject goods in which it was reported that the goods is a float glass, not tinted, not green glass and not wired glass, an absorbent layer (tin) on one side of the glass.

Ø The item 'clear float glass (non-wired having an absorbent (tin) non-reflecting layer' imported by the Applicant may be classified under HSN 7005 10 90.

4.2 The concerned State authority has not submitted any remarks and hence it is construed that are no proceedings already decided or are there any pending proceedings with respect to the Applicant.

5.1 The Applicant, after consent, was given an opportunity to be heard in person on 12-10-2023. They requested for adjournment and hence personal hearing was fixed on 15-11-2022. Shri Hari Radhakrishnan, Advocate, appeared for the personal hearing as the Authorised Representative (AR) of the Applicant. He submitted a compilation of relevant Chapter notes and following case laws, apart from those which were submitted along with the application which are in their favour as additional submissions :

Ø Order-in-Appeal No. 808/2022, dated 30-3-2022 of Commissioner of Custom (Appeals)

Ø Order-in-Appeal No. NOI-Cus-000-App-400-22-23, dated 9-3-2023

Ø Order-in-Appeal No. NOI-Cus-000-App-401-22-23, dated 9-3-2023

Ø RTI reply dated 17-7-2023

He stated that test reports given by CSIR, Kolkata, in respect of the goods imported by them affirms that the subject goods are to be classified under 7005 10 90. The AR was asked to submit copies of the test report on import clearance, lab certification and copies of earlier bill of entry.

5.2 The AR vide his letters dated 6-11-2023 & 7-11-2023 submitted copies of the following :

Ø Test report dated 4-2-2019 issued by the Central Glass & Ceramic Research Institute, Kolkata

Ø Order-in-Appeal No. Seaport C.Cus.II No. 206-200/2023, dated 17-3-2023, against which the Applicant has filed an appeal before the Hon'ble CESTAT, Chennai; Bills of Entry No. 2700637, dated 1-10-2022, 2634726, dated 27-9-2023, 3027636, dated 25-10-2022 and 3103278, dated 31-10-2022 mentioned in the said OIA.

Ø Local sales invoices issued by M/s. Saint Gobain, showing that the subject goods are classified under the Heading 7005 10 90.

They also stated that they rely on the decision of the Hon'ble CESTAT, Kolkata in the case of *M/s. Bagrecha Enterprises Ltd. v. Commissioner of Customs, Kolkata* vide Order dated 3-11-2023

[(2023) 13 Centax 321], wherein it was held that the presence of tin layer on the clear float glass is sufficient to classify the same under the Heading 7005 10 90.

Discussion and findings :

6.1 We have carefully considered the submissions made by the Applicant in their application, the additional submissions made during the personal hearing, the comments furnished by the Centre and State Tax Authorities and perused the documents filed by the Applicant.

6.2 In terms of Section 97(2) of the CGST/TNGST Act, questions on which advance ruling is sought under the Act, falls within the scope of Section 97(2)(a) of the CGST/TNGST Act, 2017, and therefore the application is admissible.

6.3 The question before us for consideration is the appropriate classification of the product 'Clear Float Glass', which is imported and traded by the Applicant. Since the product under question is imported, the Applicant was asked to submit copies of Bills of Entry. On perusal of the same, it is found that the said product is classified under CTH 7005 29 90 in the bills of entry and imported from Malaysia. Whereas, the Applicant is claiming that the subject goods are to be classified under the CTH 7005 10 90.

6.4 We find that it is pertinent to see the description of the said classification and relevant chapter notes, which is reproduced under :

H S N C o d e	Description
7 0 0 5	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
7 0 0 5 1 0	- Non-Wired Glass, having an absorbent, reflecting or non-reflecting layer
7 0	--- Tinted

0 5 1 0 1 0	
7 0 0 5 1 0 9 0	--- Other
	- Other Non-wired Glass
7 0 0 5 2 1	-- Coloured Throughout The Mass (Body Tinted), Opacified, Flashed Or Merely Surface Ground
7 0 0 5 2 1 0 0	--- Tinted
7 0 0 5 2 1 9 0	--- Other
7	-- Other

0 0 5 2 9	
7 0 0 5 2 9 1 0	--- Tinted
7 0 0 5 2 9 9 0	--- Other
7 0 0 5 3 0	- Wired Glass
7 0 0 5 3 0 1 0	--- Tinted
7 0 0 5 3	--- Other

0 9 0	
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'Notes to Chapter 70

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.’

6.5 Firstly, the subject goods ‘Float Glass’ is wired or not wired glass has to be decided. From the product literature submitted, we find that no wire mesh is reinforced in the glass during the manufacturing process. Hence the subject goods is ‘Non-wired Glass’. Coming to the next part of the description of the Chapter Heading 7005 10 i.e. absorbent, reflecting or non-reflecting layer, from the above chapter notes, in specific, under 2(c), we find that what is intended to be classified under the Heading 7005 10 is glass coated with an absorbent, reflecting or non-reflecting layer. It is made clear, in this notes that the absorbent layer is a microscopically thin coating of metal or metal oxide which has to be applied during the manufacturing process itself to the glass before the process of annealing, so as to not regard the glass as worked upon, as stated in Notes 2(a) above. The Applicant is of the view that tin layer is an absorbent layer, for which they rely on the test report dated 4-2-2019, which was given by Central Glass & Ceramic Research Institute, Kolkata, who presented their report on the samples of Clear Float Glass imported under B/E No. 8520077, dated 19-10-2018. Now, the point of consideration before us is that whether the layer of tin present in the float glass will satisfy the requirement as an absorbent layer, reflecting or non-reflecting.

6.6 At this juncture, it is pertinent to see the explanatory notes given in the Harmonised System of Nomenclature (HSN) for the Chapter 7005, which is reproduced under :

“7005 :

This heading covers float glass in sheets. Its raw materials are melted in a furnace. The molten glass leaves the furnace and is fed on to a float bath of molten metal. On the float bath, the glass acquires the flatness of a liquid pool and later retains smooth finish of liquid surfaces. Before it reaches the end of the bath, it is cooled to a temperature at which it is hard enough to be passed over rollers without being marked or distorted. From the float bath, the glass moves through an annealing lehr, at the end of which it is cooled and can be cut. This glass is not surface ground or polished; it is perfectly flat as a result of the manufacturing process.

The heading

In the surface grinding.....

The glass of this heading may be coloured or opacified in the mass, or flashed with glass of another colour, during manufacture or may be coated with an absorbent, reflecting or non-reflecting layer.”

From the above, it is seen that the first para in the above explanatory notes explains the general manufacturing process of Float glass. In the subsequent paras, the other glass such as surface ground or polished glass are also explained. The fourth para in these explanatory notes, describes how glass can be given a special characteristics such as coloured or opacified or flashed with glass of another colour or coated with an absorbent, reflecting or non-reflecting layer. This shows that there is an additional process beyond the regular manufacture of the float glass or surface ground or polished glass to acquire any special characteristics. A conjoint reading of the Notes to Chapter 70 under 2(c) [reproduced in Para 6.4 above] with the explanatory notes to the Chapter 70, makes it evident that a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) is to be done, which will serve as an absorbent, reflecting or non-reflecting layer, which is over and above the regular manufacturing process of float glass.

6.6 We find that from the write-up submitted by the Applicant, the process of manufacture of Float Glass, which is elaborated in Para 2.2 above, includes standard steps viz. molten glass flows through a twccl to the molten tin bath, then to lehr at the end of which it is cooled and can be cut; While floating through the molten tin, the glass under the works of gravity and surface tension becomes smooth and flat on both sides, one side of which is known as the tin side and the other side as the air side; Tin is suitable for the float glass process because it has a high specific gravity, is cohesive, is immiscible with molten glass, it remains in liquid state at 600 degree C and usage of tin gives the glass sheet uniform thickness and very flat surfaces.

6.7 From the above submissions made by the Applicant regarding the manufacturing process of Float Glass, we find that beyond the regular process of manufacture of float glass, no additional coating of any layer, as mentioned in the explanatory notes above, which would serve as an absorbent, reflecting or non-reflecting layer is carried out. The argument of the Applicant that tin layer is the absorbent layer, cannot be accepted as we find that, tin is not used in float glass process with the specific objective of providing any absorbent, reflecting or non-reflecting layer. It is evident that the presence of tin is by default and on account of manufacturing process and not by design or intended to add a layer with any of the properties such as absorption or reflection or non-reflection. Thus the tin layer is incidental to the manufacturing process of float glass and is not done specifically for an intended purpose/use.

6.8 It is seen that there are different types of float glass such as clear, coated, tinted, reflective, low-e float glass, acid-etched float glass etc. All such types of glass which are manufactured under the float process invariably would contain layer of tin on one side, which does not mean that the float glass is to be classified under 7005 10. We are of the view that any float glass said to have an absorbent layer will invariably be coated with a microscopically thin coating of metal or metal oxide, provided the coating is done online i.e. during the process of manufacturing of float glass and before the process of annealing, so that the glass isn't regarded as worked. If otherwise, the float glass has to be regarded as one having no absorbent layer.

6.9 The float glass has not undergone any coating process for presence of an absorbent, reflecting or non-reflecting layer and hence cannot be classified under sub-heading 7005 10. Further, as it is also not coloured throughout the mass (body tinted), opacified, flashed or merely surface ground, the item would not be covered under the sub-heading 7005 21. Hence the

appropriate classification for 'clear float glass' would be under the Tariff sub-heading 7005 29 as 'Others'. At the eight digit level, if the item is 'tinted', it would be classifiable under the CTH 7005 29 10 and if the item is 'non-tinted', it would be classifiable under CTH 7005 29 90 of the Customs Tariff Act, 1975.

6.10 The Applicant has relied heavily upon the test report dated 4-2-2019, which pertains to samples tested, which were imported vide bills of entry from the year 2018. We find that that test report is applicable to those goods pertaining to those bills of entry and cannot be applied in general. Further, the Applicant has cited many Advance Rulings issued by the Customs Authority for Advance Ruling, which are in their favour in respect of the subject issue. *Prima facie*, Advance Ruling extended to one applicant cannot be generalized and applied to all cases. As per Section 28J(1) of the Customs Act, 1962, such rulings are binding only on the Applicant and jurisdictional Commissioner in respect of that particular applicant. Hence, reliance placed by the Applicant on such rulings are of no avail.

6.11 Moreover, the Applicant has relied upon orders passed by Commissioner of Customs (Appeals). The subject matter in these orders are about goods imported by certain bills of entry. Though the issue is about classification of the product, 'Float Glass', these orders were issued for those particular goods that were imported by certain bills of entry. Hence the decision taken by Commissioner (Appeals) in these orders cannot be applied in general. The RTI relied upon by the Applicant is report showing the number of tests reports issued to Customs Department pertaining to testing of 'clear float glass' and Bill of entry-wise data is given. The other queries in the said RTI are related to the samples of product imported under those Bills of entry. We find that the said RTI can be of any support to the Applicant's claim if the subject product is under any of the Bills of Entry mentioned in the report. The question raised by the Applicant is classification of 'Clear Float Glass' in general and the same has been discussed in the previous paras.

6.12 Without prejudice to all the above, the Applicant is an importer as well as a trader. As per their submissions, they are trading the goods which are being imported by them. On import of the subject goods, that particular consignment of goods are classified under an entry in the Tariff and are assessed by the Customs Authorities. The Applicant also pays the appropriate duty on assessment. Thus, classification of imported goods are done consignment-wise by the Customs Authorities. As a trader, for trading the same goods imported in that particular consignment, the Applicant has to follow the classification approved and assessed by the Customs Authorities for that consignment, for which duty was paid by them agreeing to/accepting the assessment. The question of following a different CTH for trading purposes, for the same goods imported and assessed, does not arise.

7. In view of the above discussions, we rule as under :

RULING

8. The appropriate classification for 'clear float glass' is under the Tariff sub-heading 7005 29 as 'Others' and at the eight digit level, if the item is 'tinted', it is be classifiable under the CTH 7005 29 10 and if the item is 'non-tinted', it is be classifiable under CTH 7005 29 90 of the Customs Tariff Act, 1975.