

TAMIL NADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamil Nadu Goods and Services Tax Act 2017)

A.R.Appeal No.01/2024 AAAR

Dated : 26.03.2024

BEFORE THE BENCH OF

Sh. Ashish Varma, I.R.S., Principal Chief Commissioner of GST & Central Excise, Tamil Nadu & Pondicherry Zone, Member (CGST), Appellate Authority for Advance Ruling, Tamil Nadu	Dr. D.Jagannathan, I.A.S., Commissioner of Commercial Taxes, Member (SGST), Appellate Authority for Advance Ruling, Tamil Nadu
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Order No. AAAR/4/2024 (AR)

(Passed by Tamil Nadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamil Nadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamil Nadu Goods & Services Tax Act 2017 ("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.
2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;
 - (b) on the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.
4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the Appellant	M/s FLOAT GLASS CENTRE No.130/447, Mint Street, Sowcarpet, Chennai – 600 079
GSTIN or User ID	33AJCPM7016K1ZA
Advance Ruling Order against which appeal is filed	Order No.115/AAR/2023 dated 22.11.2023
Date of filing appeal	04.01.2024
Represented by	Shri M. Hari Radhakrishnan, Advocate
Jurisdictional Authority-Centre	Chennai North Commissionerate
Jurisdictional Authority -State	Chennai North Division, Vallalar Nagar Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20,000/- (CGST-Rs.10,000 + SGST-Rs.10,000) made vide CIN-UCBA : 24013300012364 dated 03.01.2024

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act, 2017.

2. The subject appeal was filed under Section 100(1) of the Tamil Nadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 (hereinafter referred to 'the Act') by M/s Float Glass Centre (hereinafter referred to as 'Appellant'). The Appellant was registered under the GST Act vide GSTIN 33AJCPM7016K1ZA. The appeal was filed against the order No. 115/AAR/2023, dated 22.11.2023 passed by the Tamil Nadu State Authority for Advance ruling on the Application for Advance ruling filed by the Appellant.

3.1. The Appellant has stated that they are engaged in the import and trading of glass products, described by them as "Clear Float Glass with Absorbent layer". They have further stated that the subject goods are used for decorative, industrial and automotive purposes, which have an absorbent layer of tin on one side, which is naturally formed during the course of manufacturing of clear float glass. They had applied for Advance Ruling vide their online application dated 09.11.2022 requesting for determination of correct classification of 'Clear Float Glass'.

The Authority for Advance Ruling, Tamil Nadu (hereinafter referred to as 'AAR') vide Order No.115/AAR/2023 dated 22.11.2023 ruled as follows :-

"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 classifiable under the CTH 7005 2910 and if the item is 'non-tinted', it is classifiable under CTH 7005 2990 of the Customs Tariff Act, 1975."

3.2. The Original Authority (AAR) had arrived at the above decision based on the following discussions held therein, viz.,

- A conjoint reading of the Notes 2(c) to Chapter 70, along 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, in order to serve as an absorbent.
- However, 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 presence of tin on one side of the glass is by default 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 used in float glass process with the specific objective of providing any absorbent properties.
- The float glass has not undergone any coating process for presence of an absorbent, and all such types of glass which are manufactured under the float process invariably would contain a layer of tin on one side, which does not mean that the float glass is to be classified under 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 2910 and if the item is 'non-tinted', it would be classifiable under CTH 7005 2990.

3.3. Aggrieved of the above decision of the AAR in Order No.115/AAR/2023 dated 22.11.2023, the Appellant has filed the present appeal. The grounds of appeal as submitted by the Appellant, are as under:

- The learned Advance Ruling Authority has not appreciated the facts and contentions put forth by the Appellant and has passed the impugned ruling mechanically.
- The learned Authority has rendered a finding in paragraph 6.7 that the tin layer found in the subject goods cannot be accepted for the reason that the

same was formed during the manufacturing process of float glass and that there was no process by which a tin layer was consciously applied on float glass.

- In paragraph 6.8, it was held that to merit classification under 7005 10, the float glass will invariably be coated with thin coating of metal or metal oxide. In this regard, note 2(c) to Chapter 70 of HSN defines the expression 'absorbent, reflecting or non-reflecting layer' and only states that there should be a thin coating of metal or metal oxide with absorbing property, 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. Therefore the only requirement to merit CTH 7005 10 is the presence of thin layer of metal or metal oxide and it is an undisputed fact that the subject goods has a tin layer on one side of the glass.
- The findings of the learned Authority in paragraph 6.9, is that there is no evidence of an absorbent layer, which is factually incorrect and contrary to their own findings in paragraphs 6.7 and 6.8. The existence of tin layer on one side of the glass is not disputed by the Authority.
- The HSN Explanatory Notes to CTH 7005 does not prescribe any specified manner in which the coating of metal/absorbent is to be obtained, and therefore the clear float glass can be said to be absorbent, as long it has a coating of tin metal, irrespective of whether such coating is applied during the manufacturing process or subsequently.
- The tin layer acts as an absorbent layer and therefore, the subject goods satisfies the requirement under Note 2(c) to Chapter 70 and merit classification under CTH 7005 1090.
- In spite of filing the invoices, Bills of Entry and the relevant Test Reports which was obtained by the Department, and which clearly mentions the description of goods and the presence of tin layer, the total disregard with respect to the test reports relied upon by the Appellant as in the findings of the Learned Authority in paragraph 6.10, is not sustainable. Further, when the test report pertains to the same goods imported from the same manufacturer, it is permissible to place reliance on the previous test report taken.
- With respect to the finding that the advance rulings will apply only to the applicant who had sought it, it is stated that they have persuasive value and that the same has been observed in the case of Cyril Eugene Pereira, in Re. [(1999) 239 ITR 650] and in the case of Union of India & Anr. V. Azadi Bachao Andolan & Anr [(2003) 263 ITR 706 at 742].
- The finding of the Learned Authority in paragraph 6.12 that the Bills of Entry is assessed and the Appellant herein has accepted and paid duty is factually incorrect, as the Appellant has reportedly been disputing the classification proposed by the Department and have been paying the duty under protest. Further the finding of the Authority that the Appellant has to accept the classification proposed by the Customs authorities has no legal sanctity.

- The classification of Float Glass falls under chapter 7005, which is as follows:-

HSN Code	Description
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
7005 30	- Wired Glass
7005 30 10	--- Tinted
7005 30 90	--- Other

The subject goods are clear float glass, with an absorbent layer, which is fluorescent under UV illumination, and that they are not wired, not tinted, and not green in colour, and therefore the more appropriate CTH is 7005 1090.

- Domestic manufacturers of identical products such as M/s.Saint Gobain classify the goods under CTH 7005 1090. Majority of the imports into India of float glass with absorbent layer have been correctly classified under CTH 7005 1090, as is evident from the data collected from the website 'Zauba' and 'Planetexim', and that the applicant relies upon this data in support of their submission.
- On a similar issue involving M/s. Asahi India Glass Limited, the Commissioner (Appeals), vide Order-in-Appeal dated 20.07.2022 issued under No.CC(A) CUS/D-II/ICD/PPG/861-863/2022-23, has found that the goods merit classification under CTH 7005 1090, since they have an absorbent layer (Tin) on one side, as it appears in page 9 of the said order.
- In another identical case involving M/s.Suraj Construction, the Customs Authority for Advance Ruling, Mumbai vide Ruling dated 10.05.2022 in No.CAAR/Mum/ARC/10/2022 had held that 'Clear Float Glass' with absorbent layer on only one side would merit classification under heading 7005 and more specifically under the sub-heading 7005 1090.
- In another identical matter involving M/s.Chandrakala Associates, the Customs Authority for Advance Ruling, Mumbai vide Ruling dated 24.09.2021 in No.CAAR/Mum/ARC/36/2021, had held in page 4 of the said order that the subject goods are clear float glass, with absorbent layer, which is

fluorescent under UV illumination and that they would merit classification under heading 7005 and more specifically under the sub-heading 7005 1090.

- The issue involved in the appeal is covered by the decision of the Hon'ble Tribunal in the case of M/s.Bagarecha Enterprises Vs. Commissioner of Customs, Kolkata [Order dated 03.11.2023 passed in Appeal Nos. C/75536 to 75538/2023], wherein it was held that the presence of tin layer on the clear float glass is sufficient to classify the same under CTH 7005 1090, which squarely applies to the instant case.
- It has also been stated 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, wherein 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 any 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.

Hence, the Appellant prayed that the Hon'ble Appellate Authority for Advance Ruling may be pleased to set aside the impugned order No.115/AAR/2023 dated 22.11.2023 and consequently, hold that the product 'Clear Float Glass' having an absorbent layer (Tin) on one side, merits classification under CTH 7005 1090.

PERSONAL HEARING:

5.1. The Appellant was provided with an opportunity of personal hearing on 07.02.2024 and Shri M. Hari Radhakrishnan, Advocate appeared as the authorized representative (AR) for the appellant. The AR reiterated the submissions made by them in the 'Grounds of Appeal' furnished along with the appeal application filed by them. Further the AR submitted that the Hon'ble CESTAT Kolkata's decision in the case of Bagarecha Enterprises Ltd. Vs. Commissioner of Customs relied upon in the application for advance ruling was not discussed in the ruling given by the Advance Ruling Authority.

5.2. The AR made additional submissions dated 07.02.2024 during the PH and stressed on the RTI reply dated 17.07.2023 received from CSIR and remarks made in Notification F.No.14/25/2012-DGAD dated 10.10.2014 of the Ministry of Commerce and Industry, Dept. of Commerce, Directorate General of Anti Dumping and Allied Duties which support their contention that the product 'Clear Float Glass' merits classification under CTH 7005 1090.

5.3. When the Members raised a query as to why the advance ruling application was filed when both the tariff 7005 1090 and 7005 2990 attract the same rate of tax under GST, the AR replied that both the tariffs attract different rate of duty under

Customs law and they have applied for ruling for consistency and also contemplating any changes in the rates of tax in GST between the said tariff heading in future. The AR requested for time till Monday (12.02.2024) to make additional submissions.

5.4 As undertaken by them in the personal hearing, the AR furnished the following additional submissions vide their letter dated 14.02.2024, and requested that the same may kindly be placed on record, viz.,

- The issue involved is squarely covered by the decision of the Hon'ble CESTAT Kolkata in the case of *Bagarecha Enterprises Ltd Vs. Commissioner of Customs, Kolkata* [Final Order No.77460-77462/2023 dated 03.11.2023]. Though the said order was quoted before the Hon'ble Authority for Advance Ruling and has been reproduced in paragraph five (5) of the impugned order, the said judgment has not been discussed or taken into consideration under the impugned order dated 22.11.2023, while deciding the issue.
- The Authority for Advance Ruling did not dispute the fact that the subject goods have tin layer on the one side. The Central Glass and Ceramic Research Institute, Kolkata in their RTI reply dated 17.07.2023 have stated in response to question No.6 as follows:-
"6. It is observed in some of the reports that "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.
Response:
(a) Not-reflective
(b) Absorbent (UV)"
- The Directorate General of Anti-dumping and Allied Duties, Department of Commerce, Ministry of Commerce & Industry has issued a Final Findings dated 10.10.2014 in respect of imposition of anti-dumping duty of clear float glass originating in or exported from Pakistan, Saudi Arabia and UAE. In paragraph 16 of the said Final Findings, it has been categorically stated that the classification of clear float glass at the eight digit level is 7005 1090. This also conclusively establishes the understanding by the Ministry.
- The Advance Ruling issued by the Customs Authority for Advance Ruling in the case of in the case of M/s.Suraj Constructions and M/s. Chandrakala Associates has been brushed aside by the Authority for Advance Ruling by stating that they are applicable only on the respective applicants, and has not cited any reasons to differentiate the same from the instant case. In this regard, it is submitted that the Hon'ble Supreme Court has held in the case of *Columbia Sportswear Company Vs. Director of Income Tax, Bangalore* reported in 2012 (283) ELT 321 (SC), that the principle of law laid down in the Advance Ruling, though of a persuasive value in respect of third parties, it cannot be said that the said principle of law will not be followed in future.

- The entire allegation as well as confirmation of the re-assessment done by Customs Department in respect of the imports made by the appellant leading to a re-classification is borne out of an audit para 4.10.01 (DAP 83 of audit report No. 17/2020). As per para 5 of the **Circular No. 1023/11/2016-CX dated 8.04.2016** issued by the Central Board of Excise and Customs on adjudication of Show Cause Notices issued on the basis of CERA/CRV objections, it has been stated that, the adjudication of admitted DAP/AP's should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record, which is not so in the instant case.
- In this connection the importer through his resources had applied and sought the Ministry's Action Taken Note (ATN) on the above said audit para by way of information sought under the RTI Act and a perusal of the same would reveal that the Ministry has replied in detail both scientifically as well as legally justifying the classification of the CFG under Chapter heading CTH 7005 10 90, in their reply to the said audit para.
- The appellant submits that when the Action Taken Report (ATN) by the Ministry of Finance clearly contended that the subject product is classifiable under CTH 7005 10 90, ignoring the same is biased approach by the proper Officer of Customs. Without taking into account the case laws and the advance rulings, Proper Officer of Customs has proceeded to confirm the classification of clear float glass under CTH 7005 29 90. In this connection, kind reference is drawn to para 5.3 of the above circular wherein it has been mandated that, adjudicating authority is a quasi-judicial authority and is legally bound to adjudicate the case independently and judiciously taking into consideration the audit objection by CERA/CRA **reply of the department as referred above, reply of the party, relevant legal provisions, case laws on the subject and relevant circulars of the board if any.** It could be seen that the Proper Officer of Customs has thrown all the cardinal mandates laid down for adjudication as per the above said circular to wind and had proceeded to confirm the classification of the impugned CFG under CTH 7005 29 90, which needs to be set aside, on this score alone. Needless to mention that, perusal of the impugned order, has no reference whatsoever neither to the ATN nor any reply by the importer etc., which demonstrates the above averment of the importer and thus, would render the entire adjudication proceedings *void ab initio*.
- The appellant had also submitted that in respect of the re-assessment made by Customs, the Appellant has filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) and the said appeal has been posted for final hearing on 27.03.2024. They have enclosed a copy of the STAY/MISC Order dated 17.01.2024 passed by the Hon'ble CESTAT and have requested alternatively to keep the present appeal proceedings pending till 27.03.2024, which is the date fixed for final hearing by the Hon'ble CESTAT.

DISCUSSION AND FINDINGS:

6.1 We have carefully considered all the material on record, the various submissions made by the Appellant and the applicable statutory provisions. We find that the product in question is 'Clear Float Glass'. The Authority for Advance Ruling (hereinafter referred to as 'AAR') vide Order No.115/AAR/2023 dated 22.11.2023, had ruled that 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 classifiable under the CTH 7005 2910 and if the item is 'non-tinted', it is classifiable under CTH 7005 2990 of the Customs Tariff Act, 1975.

6.2 The Appellant is before us, seeking to set aside the impugned Advance Ruling No. 115/AAR/2023 dated 22.11.2023 and to hold that the product 'Clear Float Glass' having an absorbent layer (Tin) on one side, merits classification under CTH 7005 1090.

6.3 We find that the Appellant are engaged in the import and trading of glass products, described by them as "Clear Float Glass with Absorbent layer". They have further stated that the subject goods are used for decorative, industrial and automotive purposes, which have an absorbent layer of tin on one side, which is naturally formed during the course of manufacturing of clear float glass.

6.4 We observe that the main contention of the Appellant is that the product, 'Clear Float Glass', having an absorbent layer (Tin) on one side, merits classification under CTH 7005 1090. To this effect, the appellant has adduced the following points in support of their stand, viz.,

- i. Note 2(c) to Chapter 70 of HSN defines the expression 'absorbent, reflecting or non-reflecting layer' and only states that there should be a thin coating of metal or metal oxide with absorbing property, 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.
- ii. The existence of tin layer on one side of the glass is not disputed by the Authority (AAR).
- iii. The HSN Explanatory Notes to CTH 7005 does not prescribe any specified manner in which the coating of metal/absorbent is to be obtained, and therefore the clear float glass can be said to be absorbent, as long it has a coating of tin metal, irrespective of whether such coating is applied during the manufacturing process or subsequently.
- iv. The tin layer acts as an absorbent layer and therefore, the subject goods satisfies the requirement under Note 2(c) to Chapter 70, in order to merit classification under CTH 7005 1090.
- v. The Test Report of the Central Glass and Ceramic Research Institute, Kolkata, obtained by the Department, clearly mentions the description of goods and the presence of tin layer.

- vi. Further, the Central Glass and Ceramic Research Institute, Kolkata in their RTI reply dated 17.07.2023 have stated in response to question No.6 as follows:-
"6. It is observed in some of the reports that "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.
Response:
(a) Not-reflective
(b) Absorbent (UV)"
- vii. When the test report pertains to the same goods imported from the same manufacturer, it is permissible to place reliance on the previous test report taken.
- viii. Though the advance rulings will apply only to the applicant who had sought it, they have persuasive value and that the same has been observed in the case of Cyril Eugene Pereira, in Re. [(1999) 239 ITR 650] and in the case of Union of India & Anr. V. Azadi Bachao Andolan & Anr [(2003) 263 ITR 706 at 742].
- ix. The Appellant has reportedly been disputing the classification proposed by the Department and have been paying the duty under protest.
- x. Domestic manufacturers of identical products such as M/s.Saint Gobain classify the goods under CTH 7005 1090, and a majority of the imports into India of float glass with absorbent layer have been correctly classified under CTH 7005 1090.
- xi. The Commissioner (Appeals) in the case of M/s. Asahi India Glass Limited, the Customs Authority for Advance Ruling, Mumbai in the cases of M/s.Suraj Construction, and M/s.Chandrakala Associates, and the Hon'ble CESTAT, Kolkata, in the case of M/s.Bagarecha Enterprises, have all ruled that the subject goods merit classification under CTH 7005 1090.

6.5 We find that the instant appeal is a result of the dispute in classifying the product 'Clear Float Glass', which has been classified under CTH 7005 2910, if tinted, and under CTH 7005 2990, if non-tinted, by the AAR. Whereas, the appellant contends that the said product rightly merits classification under CTH 7005 1090. For ease of reference, the relevant portion of the classification of products under chapter heading 7005 is reproduced below:-

HSN Code	Description
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
 7005 30 - Wired Glass
 7005 30 10 --- Tinted
 7005 30 90 --- Other

6.6 To begin with, we observe that the chapter heading 7005 relates to float glass under four sub-headings, viz., 7005 10, 7005 21, 7005 29 and 7005 30. Out of the above, chapter sub-heading 7005 21 covers "**Coloured** throughout the mass (body tinted), opacified, flashed or merely surface ground", and chapter sub-heading 7005 30 covers "**Wired** Glass". In this regard, we notice that in para F of the Grounds of Appeal (vide Annexure-B) filed along with the Appeal Application dated 04.01.2024, the appellant had stated in clear terms as follows :- "*The subject goods are **not wired**, not tinted and **not green in colour**.*" As the product '**Clear** Float Glass', is not coloured, and not wired, the possibility of classifying the subject goods either under chapter sub-heading 7005 21 or under 7005 30, gets ruled out. Accordingly, the scope for classification of the subject goods gets restricted to either 7005 10, or 7005 29.

6.7 As far as the chapter sub-heading 7005 10 is concerned, the description reads as : - "***Non-wired** glass, having an **absorbent**, reflecting or non-reflecting layer*", and the classification at the eight digit level goes as follows :-

"7005 10 10 --- Tinted

7005 10 90 --- Other"

As against this, the product description under chapter sub-heading 7005 29 reads as "*-- **Other***", and the classification at the eight digit level goes as follows :-

"7005 29 10 --- Tinted

7005 29 90 --- Other"

Under chapter sub-heading 7005 29, the term "*-- **Other***" refers to '*Other **non-wired** glass*' which are '***not Coloured** throughout the mass (body tinted), opacified, flashed or merely surface ground*'.

6.8 From the above, it is clear that in order to merit classification under 7005 10, the float glass should be 'non wired' and should have an 'absorbent' layer, and in order to merit classification under 7005 29, the float glass should be 'non-wired' and that the same should 'not be coloured'. '**Clear** Float Glass', as the name suggests, are supposed to be colourless, and are admittedly non-wired. Once these aspects are taken out of equation, we are left with the term '*an **absorbent** layer*' which becomes the crucial difference between the chapter sub-headings 7005 10 and 7005 29, and

accordingly, the discussion on the said 'absorbent layer' assumes immense significance in determining the classification in the instant case.

6.9 In this regard, we take note of the relevant extract of the explanatory notes given in the Harmonised System of Nomenclature (HSN) for the chapter heading 70.05, which is reproduced as under:-

*"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 also covers the types of glass of headings 70.03 and 70.04, which have been surface ground or polished (usually the two processes are combined).

In the surface grinding process the glass is subjected to

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."

6.10 Further, the Note 2 to Chapter 70 (Glass and glassware), reads as follows :-

2. For the purposes of headings 7003, 7004 and 7005 :

- (a) glass is not regarded as "**worked**" by reason of any process it has undergone **before annealing**;*
- (b) cutting to shape does not affect the classification of glass in sheets;*
- (c) the expression "**absorbent, reflecting or non-reflecting layer**" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."*

It becomes clear from the above that a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) is required to be carried out during the manufacturing process of float glass, in order to serve as an absorbent, reflecting or non-reflecting layer. As an alternative, the float glass may be coated with an absorbent, reflecting or non-reflecting layer, post manufacture. The other noticeable point that could be seen from the explanatory notes to chapter heading 70.05, (which details the process of manufacture of float glass) is that when the molten glass leaves the furnace, it is fed on to a float bath of molten metal. We notice that 'Tin' is the

commonly used metal for such purposes.

6.11 It is learnt that the float process of manufacturing glass was invented by Sir Alastair Pilkington in 1952 under which clear, tinted and coated glass for buildings, and clear and tinted glass for vehicles are manufactured. As per the said Float Process,

*"Molten glass, at approximately 1000°C, is poured continuously from a furnace onto a shallow bath of molten **tin**. It floats on the **tin**, spreads out and forms a level surface. Thickness is controlled by the speed at which solidifying glass ribbon is drawn off from the bath. After annealing (controlled cooling) the glass emerges as a 'fire' polished product with virtually parallel surfaces.*

Modified properties are produced from the basic glass by means of surface coatings. Glass can be coated on-line in the float process as the ribbon of glass is being formed in the float glass bath. The technology uses chemical vapor deposition to apply a microscopically thin coating on the glass at a temperature of about of 600 C."

On perusal of an independent write-up on 'Float Glass' available under 'UQG Optics', the product is described as follows :-

*"Float glass is a type of flat glass produced by floating molten glass on a bed of molten metal, **typically tin**, to create a uniform thickness and smooth surface.*

It is a high-quality, versatile material commonly used for architectural, automotive, and decorative purposes. Float glass can be further processed by cutting, drilling, laminating, tempering, and coating to meet specific optical requirements. Its optical properties include high transparency, low absorption, and minimal distortion."

Another write-up on 'Float Glass', available under 'FOSG', read as :-

*"Basic float glass is manufactured by melting sand. Other ingredients such as soda ash, limestone, salt cake and broken cullet glasses are added to lower the melting temperature of silica and promote optical clarity of the finished glass product. Mixed batch of above materials is heated to a temperature of 1450 to 1650° C and formed into large flat sheets by floating molten glass on **molten tin**, thus giving it precise flatness and transparency.*

TINTED FLOAT GLASS

*It is a normal flat glass to which **colour is added** during manufacturing process to achieve tint and solar radiation absorption properties."*

We find that all these literature/write-ups on float glass speak in unison about the usage of 'Tin' in the manufacture of float glass, which goes to prove that 'Tin' is used by default, and that the said metal is used mainly for the purpose of achieving smooth finish and for a flat surface of the float glass. This fact is further supported by the 'Manufacturing process of Float Glass' furnished by the appellant themselves,

at the time of filing the original application before the AAR. The said write-up also mentions that Tin is suitable for the float glass process because it has a high specific gravity, is cohesive, is immiscible with molten glass, and that while flowing into the tin surface, the glass attains smooth surfaces on both sides and of even thickness. The write-up under "UQG Optics" referred above also point to the fact that in order to meet specific optical requirements, the float glass can be processed further by way of laminating, tempering, coating, etc., but in such cases, the glass will be as treated as 'worked', as such laminating/coating process will be regarded as a 'secondary process', after the completion of manufacturing process. As an alternative, the write-up under 'FOSG' suggests adding colour to the glass during the manufacturing process to achieve tint and solar radiation absorption properties, but in such cases, the output will be referred to as a Tinted Float Glass, and not as Clear Float Glass.

6.12 As admitted by the appellant themselves in para F of the 'Grounds of Appeal', the subject goods are not wired, not tinted and not green in colour. Further, it is not on record that the said product has been subjected to any secondary process of laminating or coating to attain special properties. Nevertheless, it is not in dispute that a layer of tin is present on one side of the glass. The Appellant is of the view that tin layer is an absorbent layer, for which they rely on the test report dated 04.02.2019, which was given by Central Glass & Ceramic Research Institute, Kolkata, who presented their report on the samples of Clear Float Glass imported under BOE 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.

6.13 On scrutiny of the sample test report dated 04.02.2019 of CGCRI, Kolkata pertaining to this appellant, it is observed that the report mentions about the presence of *"An absorbent layer (Tin) is observed on one side of the glass which is fluorescent under UV illumination for both the glasses"*. At the same time, it is observed that the test report does not say that the glass has undergone any coating process. This Tin layer on one side which fluoresce under UV illumination is not the result of applying any coating on clear float glass, but actually inherent to the production of Float Glass. As discussed in para 6.11 above, the write-up on float process by Sir Alastair Pilkington states that modified properties are produced by means of surface coatings whereby a microscopically thin coating on glass is applied by chemical vapour deposition technology; the write-up under "UQG Optics" refers to application of secondary process of laminating, tempering, coating, etc., to meet specific optical requirements; the write-up under 'FOSG' suggests adding colour to the glass during the manufacturing process to achieve tint and solar radiation absorption properties. As the said test report does not mention that the glass has undergone any such coating, we are of the opinion that the glass does not have an absorbent, reflecting or non-reflecting layer.

6.14 In this regard, we find that the Order-in-Appeal Seaport.C.Cus.II No.206 to 220/2023 dated 17.03.2023 passed by the Commissioner of Customs (Appeals-II), Chennai, against the appellant discusses the same issue in a detailed manner, in

respect of some of the imports made during 2022. We find that some of the points discussed in the said Order merit consideration, viz.,

- That the appellant had stated in support of their stand that when the identical goods were imported vide bill of entry No.8520077 dated 19.10.2018, the same were provisionally assessed and the samples were sent for testing at CSIR-CGCRI, Kolkata. Subsequently, based on the test report dated 04.02.2019, the bill of entry was assessed classifying the goods under CTH 7005 1090;
- That the appellant have been regularly importing the said goods from Malaysia and were classifying the goods under CTH 70051090, and that the Ministry of International Trade and Industries (MITT), Malaysia were also mentioning the goods under CTH 7005 1090;
- That it is reported by the appellant that of late, the MITT, Malaysia is mentioning CTH 7005 2990 in the Country of Origin Certificate, for the very same goods;
- That the Assessing Officer, Customs did not permit the appellant to file the bill of entry under CTH 70051090, as the Country of Origin certificate contained a different CTH. Therefore, left with no other option and to avoid demurrage and detention charges the appellant had filed the relevant bills of entry classifying the goods under CTH 70052990;
- The appellate authority has stated that the test report dated 04.02.2019, which pertains to bills of entry from the year of 2018, is not contemporaneous and therefore cannot be applied squarely to the current appeals, which are pertaining to the BOEs filed in the year 2022. Further, as none of the shipments involving the BOEs in question (filed in the year 2022) were tested for confirmation of correct description of the imported items', the relevance of the test report dated 04.02.2019, stands invalidated;
- That when the COO/FTA Certificate issued by the International Trade and Industries, Malaysia states that the Customs Tariff heading (CTH) of the product is 7005 2990, the appellant has not made any effort to correct the Customs Tariff Heading (CTH) in the COO/FTA Certificate issued at the point of origin of goods;
- That though the appellants had claimed that they were forced to clear the goods under CTH 7005 2990 to avoid demurrage, they have neither produced any technical inputs or substantive evidence in support of their arguments, nor any protest was registered by them before assessment of the goods;
- That under the Customs Act, 1962, the process of filing a Bill of Entry allows the appellant to file under their own Customs Tariff Heading (CTH), and subsequently the Bill of Entry will be subjected to assessment by the assessment officer. Therefore, the importer's assertion that they were not permitted to file the Bill of Entry under CTH 7005 1090 by the assessment

officer was **incorrect**.

- Accordingly, all the 15 appeals of the appellant involving the 15 BOEs mentioned in the said Order-in-Appeal, were rejected by the Commissioner (Appeals).

6.15 We find that the discussions in the aforesaid Order-in-Appeal regarding the Country of Origin Certificate from Malaysia and the mention of the classification code as 70052990, **of late**, in respect of such goods exported from Malaysia, is of immense significance in the present scenario. As one may be aware, 'HSN' which stands for 'Harmonised System of Nomenclature' was developed by the World Customs organisation (WCO), with a view to facilitating the classification of goods all over the World in a systematic manner. Classification of goods based on HSN is in use worldwide, especially by the member countries of WCO, and it is seen that apart from India, the United States, Malaysia, etc., are also members of WCO.

6.16 It would not be out of place to discuss an identical case that was deliberated upon as early as 1992, involving the 'HSN' as well as the 'float glass', in the United States, the excerpts of which is reproduced below :-

"HQ 951136
June 2, 1992

This is in response to your letter of February 14, 1992, requesting the tariff classification of float glass under the Harmonized Tariff Schedule of the United States (HTSUS).

*Heading **7005**, HTSUS, provides for float glass and surface ground or polished glass, in sheets, whether or not having an absorbent or reflecting layer, but not otherwise worked. The applicable subheading depends on whether the float glass has an absorbent or reflecting layer. According to Legal Note 2(c) to Chapter 70, "absorbent or 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." If the subject float glass has an absorbent or reflecting layer, it is classified in subheading 7005.10.00, HTSUS, which provides for float glass..., nonwired glass, having an absorbent or reflecting layer.*

*If the subject float glass **does not have an absorbent** or reflecting layer, it is classified in subheading 7005.29.15, HTSUS, which provides for float glass..., other nonwired glass, other, measuring less than 10mm in thickness, measuring over 0.65 meters square in area.*

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This goes to prove that the 'Harmonised System of Nomenclature' is being followed throughout, by the member countries of WCO, and that the principles relating to classification are being governed by the same set of notes/regulations worldwide for uniformity.

6.17 Therefore when the Country of Origin Certificate issued by MITT, Malaysia which was carrying the classification code as 7005 **10** 90 hitherto, is reported to have changed the classification code, of late, as 7005 **29** 90, we feel that it is made with a sense of purpose, and that it cannot be considered as an erroneous mention, or as an entry due to oversight. We are therefore of the opinion that the mention of CTH 7005 2990 was made with a conscious effort to set right the anomaly that existed earlier in respect of the exports received, of late from Malaysia, the country of origin. Alternatively, it can also be said that the goods being received at present, rightly merit classification under 7005 2990. At this juncture, the relevant entries under the chapter heading 7005, at the six digit level alone, are reproduced hereunder, for a better understanding of the issue.

HSN Code	Description
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
	- Other Non-wired Glass
7005 21	-- Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground
7005 29	-- Other
7005 30	- Wired Glass

As could be seen from the above, chapter sub-heading '7005 10' alone, stands for 'Float Glass, having an absorbent layer', and '7005 29' stands for "-- Other" under " - Other Non-Wired Glass" category. It therefore becomes clear that the change in classification by Malaysia, the country of origin of goods, was with an intended purpose to convey to the countries importing float glass from them, that such goods do not have an absorbent layer.

6.18 In general, we observe that the basic manufacturing process of float glass involves floating molten glass on the mirror-like surface of tin, starting at 1,100 degree Celsius leaving the float bath as a solid ribbon at 600 degree Celsius on a bed to 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 the 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.** 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) to chapter 70, 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.”*

6.19 We find that the popular meaning attached to the product ‘Clear float glass’ does not cover glass which is subject to coating as specified in the chapter note. ‘Clear float glass’ means “CLEAR” as understood by those using the product and not “COATED”. ‘Clear float glass’ are transparent and colourless and allow visible light to pass through it. It is also apparent that ‘Clear Float Glass’ neither possess an absorbent, reflecting or non-reflecting layer to absorb or improve the reflecting qualities of the glass nor are coloured throughout the mass (body tinted), opacified, flashed or surface ground and therefore, same are excluded from the purview of classification under CTH 70051090 or CTH 700521. Further, the Clear Float Glass are not wired glass and as such do not merit classification under CTH 700530. In view of the aforesaid position, the subject goods are rightly classifiable under Customs Tariff Heading 70052990 of the Customs Tariff Act, 1975.

6.20 Further, as the appellant in the instant case is a **trader of the imported goods**, and not the actual manufacturer, it becomes imperative on their part to adopt the HSN based Customs Tariff Heading mentioned in the import documents, for the purposes of assessment under GST as well. In this regard, it may be noted that classification of products under GST is aligned with the Customs Tariff Act, 1975, in view of the explanation (iii) and (iv) to Notification No.01/2017 – Central Tax (Rate) dated 28.06.2017, as amended, which reads as below :-

(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

*(iv) The **rules for the interpretation** of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule **shall**, so far as may be, **apply** to the interpretation of this notification.*

6.21 We further notice that while the determination of correct classification of ‘Clear Float Glass’ only was sought by the appellant in their original application filed before the AAR, the ruling by the AAR has considered the case of ‘Clear Float Glass’, **if tinted**, as meriting classification under CTH 7005 2910, which is superfluous and not required to be discussed in the instant case. Therefore, the ruling of the AAR is liable to be modified to that extent.

6.22 We now move on to discuss the other points raised by the appellant, in support of their stand, viz.,

- Regarding the appellant’s reliance on the case law involving M/s.Bagrecha Enterprises Ltd., passed by the Hon’ble CESTAT Kolkata in its Final Order

No.77460-77462/2023 dated 03.11.2023, we notice that an appeal is being preferred against the said Order by revenue.

- The appellant's reliance on the RTI reply dated 17.07.2023 given by the Central Glass and Ceramic Research Institute, Kolkata is of no avail to them, as it is seen that the original test report dated 04.02.2019 which is specific to the appellant, pertains to a BOE No.8520077 dated 10.10.2018, which cannot be applied in general as it is not contemporaneous in nature. We find that the RTI reply dated 17.07.2023 discusses about 43 test results, one among them being the case of aforesaid BOE No.8520077 dated 10.10.2018 of the appellant. Accordingly, the relevance of the RTI reply dated 17.07.2023 also gets invalidated in view of the reasons mentioned above.
- The appellant places reliance on the classification of clear float glass as 7005 1090 at the eight digit level, by the Directorate General of Anti-dumping and Allied Duties, Department of Commerce, Ministry of Commerce & Industry in its Final Findings dated 10.10.2014. The same do not substantiate their argument, as we find that the relevant clause at para 16 of the said findings runs as *"The classification at the eight digit level is 7005 1090 even though the same are being classified and imported under various headings like 7003, 7004, 7005, 7009, 7013, 7015 7016, 7018, 7019 and 7020 etc. The customs classification is indicative only and in no way binding upon the product scope of the Customs Tariff Act, 1975."* Further, it is seen that the focus of the said findings is on the dumping of the product, and not on the classification aspect. This apart, the product involved in the instant case is reportedly being received from Malaysia, whereas the said finding discusses about the product originating in or exported from Pakistan, Saudi Arabia and UAE.
- The appellant's argument that domestic manufacturers of identical products such as M/s.Saint Gobain classify the goods under CTH 7005 1090, and that a majority of the imports into India of float glass with absorbent layer have been correctly classified under CTH 7005 1090, does not have substance, as they have neither substantiated the same with scientific/technical inputs of the products referred to, nor proved beyond doubt that the product involved in the instant case and the product being referred to are one and the same.
- The appellant has disputed the finding of the AAR in para 6.12 of the impugned ruling dated 22.11.2023, that the appellant has to accept the classification proposed by the Customs authorities. The relevant extract of the findings of AAR read as *"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." We are in agreement with the findings of AAR in this regard, and as discussed in para 6.20 above, classification under GST and Customs are no different from each other.

- The appellant has claimed that the Advance Ruling issued by the Customs Authority for Advance Ruling in the case of M/s.Suraj Constructions and M/s. Chandrakala Associates has been brushed aside by the AAR by stating that they are applicable only on the respective applicants, without citing any reasons. While appreciating the fact that such rulings do have a persuasive value, we are also bound to make it clear that such rulings are binding only on the applicant, the concerned officer or the jurisdictional officer in respect of the applicant. This aspect is in-built in the statute, i.e., under Section 103(1) of the CGST Act, 2017. Further, as against the Advance Rulings projected by the appellants in favour of their stand, we find that in an identical case involving M/s.Neha Traders, the Customs Authority for Advance Ruling, Mumbai vide Ruling No.CAAR/Mum/ARC/66/2023 dated 03.10.2023, had ruled that clear float glass merit classification under CTH 7005 2990.
- The appellant has argued that the entire allegation as well as confirmation of the re-assessment done by Customs Department in respect of the imports made by the appellant leading to a re-classification is borne out of an audit para 4.10.01 (DAP 83 of audit report No. 17/2020). They have further stated that as per para 5 of the Circular No. 1023/11/2016-CX dated 8.04.2016 issued by the Central Board of Excise and Customs on adjudication of Show Cause Notices issued on the basis of CERA/CRV objections, it has been stated that, the adjudication of admitted DAP/AP's should be undertaken after ensuring that the reply given by the Ministry (CBEC) is available on record, which is not so in the instant case. In this regard, we would like to convey that we are not required to comment on an adjudication proceeding undertaken by a different authority. However, we would like to make it clear here that that the said Circular applies only to cases involving adjudication which is transaction/consignment specific, and that they do not apply to cases of advance ruling which is clarificatory/general in nature.
- The appellant has also submitted that in respect of the re-assessment made by Customs, the Appellant has filed an appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) and the said appeal has been posted for final hearing on 27.03.2024. Alternatively, the appellant requested to keep the present appeal proceedings pending till 27.03.2024, which is the date fixed for final hearing by the Hon'ble CESTAT. As stated already above, basically the process of 'Adjudication' and 'Advance Ruling' are independent of each other in nature.

7. Accordingly, we proceed to pass the following order:

ORDER

In view of the aforesaid discussions, we hold that 'Clear Float Glass' merit classification under Customs Tariff Heading 70052990 of the Customs Tariff Act, 1975.


(D. JAGANNATHAN)
Commissioner of Commercial Tax
Tamil Nadu/Member AAAR


(ASHISH VARMA)
Pr. Chief Commissioner of GST
& Central Excise, Tamil Nadu &
Pondicherry Zone/Member AAAR

To

M/s Float Glass Centre,
No.130/447, Mint Street,
Sowcarpet, Chennai – 600 079.

//BY SPAD//

Copy to:

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26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. Office of the Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. The Commissioner of Central GST & Central Excise,
Chennai North Commissionerate.
4. The Assistant Commissioner (ST),
Vallalar Nagar Circle, Chennai North Division
5. Master File/ Spare-2