



सीमा शुल्क(अपील) आयुक्त का कायलिय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हडको भवन **HUDCO Bhawan**, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा **Navrangpura**, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250571MN000051515D

क	फ़ाइल संख्या FILE NO.	S/49-138/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128 के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-032-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original/Speaking Order No. 02/2023-ACCCR(1-4), dated 02.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Navakar Impex Pvt. Ltd 1st Floor, No.91 Fuso House Poonamallee High Road, Egmore Chennai 600 084



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	<p>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</p> <p>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</p>	<p>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</p> <p>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</p>
5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए।</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए।</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए।</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।</p> <p>(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</p>	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए।	
	<p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>	



ORDER-IN-APPEAL

Appeal has been filed by M/s. Navakar Impex Pvt. Ltd, 1st Floor, No.91 Fuso House Poonamallee High Road, Egmore, Chennai 600 084 (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original/Speaking Order bearing No. 02/2023-ACCGR(1-4) dated 02.09.2023 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, (Gr. 1-4), New Custom House, Air Cargo Complex, Chennai (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed Bill of Entry No. 2360178 dated 09.09.2022 for clearance of goods declared as Clear Float Glass imported from Malaysia through their supplier M/s. Xinyi Energy Smart (Malaysia) SDN BHD. The subject goods were imported for clearance through Mundra Port. The assessable value of the imported goods is ₹15,43,686/- and the duty amount is ₹2,77,864/-.

2.1 The appellant had imported float glass having an absorbent and non-reflecting layer and had classified the goods under CTH 7005 1090 through Mundra Customs Port. The appellant had claimed NIL BCD in terms of S. No. 934(1) of Notification No. 46/2011-Cus dated 01.06.2011 vide Bill of Entry No. 2360178 dated 09.09.2022. The appellant had submitted ASEAN-India Free Trade Area Preferential Tariff Certificate of Origin No. KL.2022-A1-21-010286 dated 02.09.2022.

2.2 The Bill of Entry was marked to Faceless Assessment Group (FAG) and the same was assessed at Chennai Air Cargo Complex. The benefit of the above-mentioned notification was denied for the reason that the Country of Origin certificate mentioned the HS Code as 7005 2990 whereas the goods were classified under CTH 7005 1090. The goods were released to the appellant after assessment and examination by way of Out of Charge on 14.09.2022. The appellant had paid the duty amount of ₹2,77,864/- on 12.09.2022 for the consignment.

2.3 The appellant had filed a grievance with the Central Board of Indirect



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Taxes and Customs (CBIC) vide registration number CBOEC/E/2023/0004550 dated 29.07.2023 stating that the benefit of the above-mentioned notification was denied, that the goods were urgently required by the appellant and they had paid the differential duty under protest and cleared the goods. The appellant had requested to issue a speaking order.

2.4 Consequently, the adjudicating authority passed the impugned speaking order wherein the adjudicating authority ordered as under :-

- (1) She denied the benefit of S. No. 934 of the table appended to the Notification No. 46/2011-Cus dated 01.06.2011 for the Bill of Entry No. 2360178 dated 09.09.2022.

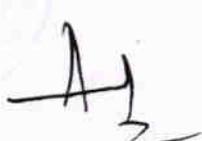
3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant are regular importers of clear float glass with an absorbent layer, which are classifiable under CTH 7005 1090. The said goods are eligible for NIL rate of BCD as per SI.No.934 of Notification No.46/2011 dated 01.06.2011, if imported from ASEAN countries. The appellants are regularly importing the said goods from Malaysia and availing the benefit as per Notification No.46/2011 dated 01.06.2011. It is further submitted that the identical goods which 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 finally assessed classifying the goods under CTH 7005 1090.

3.2 It is submitted that at present for the identical goods, the Ministry of International Trade and Industries, Malaysia are mentioning the CTH as 7005 2990 instead of CTH 7005 1090, in the Country of Origin Certificate. The goods covered under CTH 7005 2990 are the ones which does not have an absorbent layer. However, the goods imported by the appellant have absorbent layer and are rightly classifiable under CTH 7005 1090.

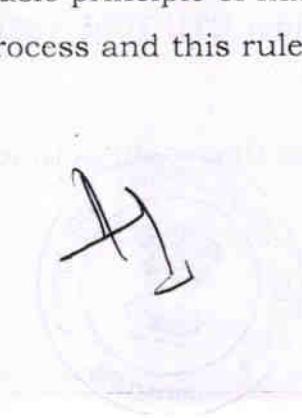
3.3 It is submitted that in the course of business, the appellant imported




clear float glass with an absorbent layer from Malaysia vide bill of entry No.2360178 dated 09.09.2022. The appellant had classified the goods under CTH 7005 1090. The bill of entry was marked to the Face Assessment Group (FAG) to the Proper Officer at Chennai. Despite the fact that the description of the goods has been accepted by the Proper Officer, the benefit of the above-mentioned notification has been denied for the reason that the country-of-origin certificate mentioned the HS code as 7005 2990. As the goods were urgently required, the appellant paid the differential duty under protest and cleared the goods. However, despite repeated requests, no speaking order was passed. And this prompted the appellant to file a grievance with the Central Public Grievance and Redressal System (CPGRAMS), which was registered as CBOEC/E/2023/0004550 dated 29.07.2023. A reply was received on 05.09.2023 stating that the speaking order has been issued. Aggrieved by the said speaking order dated 02.09.2023 the present appeal is being filed with the following among other grounds.

3.4 It is submitted that the impugned order dated 02.09.2023 has been issued more than eleven months after the denial of the benefit of notification No.46/2011 dated 1.6.2011. It is submitted that since the speaking order has not been passed within the mandated period of 15 days, the denial of the notification benefit by the Respondent/Proper Officer of Customs has no legs to stand and consequently, the re-assessment made by the Assistant Commissioner is liable to be set aside. In this regard, reliance is placed on the decision of the Division Bench of the Hon'ble High Court of Calcutta in the case of Sigma Power Products Put .Ltd. Vs The Commissioner of Customs, as reported in 2017 (350) ELT 610 (Kol.)

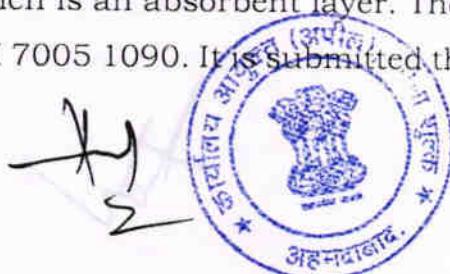
3.5 It is submitted that impugned order is non-speaking to the extent that it does not discuss the grounds based on which the Assistant Commissioner came to the conclusion that the goods imported does not fall under the tariff heading as declared by the appellant. It is submitted that the impugned order is not a reasoned one. Courts have time and again clarified that as a quasi-judicial officer, the adjudicating authority is expected to pass a speaking order after considering all the submissions made by the appellant. The Hon'ble Apex Court in Siemen Engineering & Mfg. Co. Ltd. a Union of India, AIR 1976 SC 1785 has held that the rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must be present in every quasi-judicial process and this rule must be observed in its



proper spirit and mere pretense of compliance with it would not satisfy the requirement of law. It is submitted that the request of giving reasons also ensures that the orders are not arbitrary. It enables the parties to know the reason why their submissions have been accepted or not accepted. Further, giving of reasons enable the appellate forum to appreciate and understand the basis for the Tribunal coming to a particular conclusion so as to appropriately deal with a challenge to it. However, in the present case the principles of natural justice stand violated as none of the submissions made by the appellant have been considered. And, hence, the impugned order is liable to be set-aside on these grounds alone.

3.6 It is submitted that the appellant, are regular importers of clear float glass with an absorbent layer, which are classifiable under CTH 7005 1090. The said goods are eligible for NIL rate of BCD as per SI.No.934 of Notification No.46/2011 dated 01.06.2011. The appellant are regularly importing the said goods from Malaysia and are availing the benefit of SI. No. 934 (1) of Notification No.46/2011 dated 01.06.2011. Despite the fact that the description of the goods has been accepted by the Proper Officer, the benefit of the abovementioned notification has been denied for the reason that the country of origin certificate mentioned the HS code as 7005 2990. Reference is made to the Advance Ruling, Mumbai vide Ruling No. CAAR/Mum/ ARC/10/2022 dated May 10, 2022 in the case M/s. Suraj Construction held in that, the subject goods 'Clear Floats Glass' with absorbent layer on only one side would merit classification under heading 70.05 and more specifically, under the sub heading 70051090 of the first schedule Customs Tariff Act, 1975. In the said case the Hon'ble Authority for Advance Ruling held that irrespective of the tariff heading mentioned in the Country of Origin Certificate, the classification has to be determined as per the General Rules of Interpretation of the First Schedule to the Customs Tariff Act. Therefore, the reliance placed by the Assistant Commissioner on the classification mentioned in the Country of Origin Certificate is not legally relevant for determining the classification of the product in question.

3.7 It is submitted that the impugned speaking order does not dispute the facts that the goods are classifiable under CTH 7005 1090. In other words it is not the case of the Department that the subject goods does not have an absorbent or a reflecting or non-reflecting layer. The goods have a tin layer on one side, which is an absorbent layer. Therefore, the correct classification of the goods is CTH 7005 1090. It is submitted that the appellant, are regular Importers



of clear float glass with an absorbent layer, which are classifiable under CTH 7005 1090. The said goods are eligible for NIL rate of BCD as per SI.No.934 of Notification No.46/2011 dated 01.06.2011. The appellants are regularly importing the said goods from Malaysia and are availing the benefit of SI. No. 934 (1) of Notification No.46/2011 dated 01.06.2011. It is further submitted that the goods imported are rightly classifiable under CTH 7005 1090.

3.8 It is submitted that the appellant has imported only Clear Float Glass. The very process of float glass manufacture causes a thin coating of tin metal on one side of the glass as a float happens on molten tin. The Chapter Note 2(c) of Chapter 70 explains what an absorbent, reflecting or non-reflecting layer means. It states that it means "A microscopically thin coating of metal or". It is not an issue that tin is a metal. It is also not an issue that a coating should take place by a process extraneous to the basic manufacturing process. It is not also in dispute that the thin layer of tin coating on one side of the imported product acts as "absorbent reflecting....." layer as opined by the Testing Cell, CGCRI. This opinion itself was good enough to establish that the goods in question have an absorbent layer.

3.9 It is submitted that a similar issue came up for consideration before the Commissioner of Customs (Appeals), New Delhi in the case M/s. Asahi India Glass Limited. The Commissioner (Appeals), vide order-in-appeal no. CC(A) CUS/D-II/ICD/PPG/861-863/2022-23 dated 20.07.2022 held that the declared classification in respect of clear float glass under CTH 7005 1090 was correct. In Page 9 of the said order, the Commissioner (Appeals) has found that since the goods have an absorbent layer (Tin) on one side, they merit classification under CTH 7005 1090. It is submitted that in an identical issues pertaining to the classification of clear float glass, the Commissioner of Customs (Appeals), vide the following Orders-in-Appeal had upheld the classification of the goods under CTH 7005 1090 and had extended the benefit of SI.No.934 of notification No.46/2011-Cus dated 01.06.2011.

- (i) Order-in-Appeal NO.CUS-000-APP-400-22-23 dated 09.03.2023
- (ii) Order-in-Appeal NO.CUS-000-APP-401-22-23 dated 09.03.2023

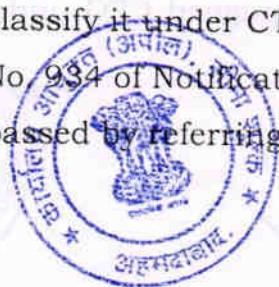
PERSONAL HEARING:

4. A personal hearing was granted to the Appellant on 24.04.2025 following




the principles of natural justice wherein Ms. Punnagai M Advocate, appeared on behalf of the Appellant. She reiterated the submissions made in the appeal. She further submitted that the present case is squarely covered by the appellant's own case by the Hon'ble Tribunal, Chennai in the case of Navakar Impex Pvt. Ltd. Vs. Commissioner of Customs, Chennai reported in (2024) 25 Centax 66 (Tri-Mad). The appellant has also filed additional submissions wherein they have submitted as under :-

- i. In the appellant's own case, i.e. Navakar Impex Pvt. Ltd. Vs. Commissioner of Customs, Chennai reported in (2024) 25 Centax 66 (Tri-Mad), the Hon'ble Tribunal has accepted the classification of the clear float glass imported by the assessee under CTH 7005 1090 and held that they are eligible for the duty exemption.
- ii. It is submitted that the issue involved in this appeal is covered by the decisions of the Hon'ble Tribunal, Chennai in the case of M/s. Float Glass Centre vs. Commissioner of Customs, Chennai, as per Final Order Nos. 40876-40908 of 2024 dated 18.07.2024; in the case of M/s. Bagarecha Enterprises Ltd. vs. Commissioner of Customs, Kolkata, reported in (2023) 13 Centax 321 (Tri-Cal), in the case of M/s. Bagarecha Enterprises Ltd vs. Commissioner of Customs, Chennai, reported in 2024 (5) TMI 943 CESTAT Chennai; in the case of M/s. Rider Glass Industries Pvt. Ltd. vs. Commissioner of Customs, Chennai, as per Final Order No. 40958 of 2024 dated 23.07 2024, and in the case of M/s. Enviro Safety Glass vs. Commissioner of Customs (Audit), Chennai, as per Final Order No. 40957 of 2024 dated 23.07 2024 (a copy of the same is enclosed as Annexure-F) The Hon'ble Tribunal has held that the presence of a tin layer on clear float glass is sufficient to classify it under CTH 7005 1090 and eligible for NIL rate of BCD as per Sl.No.934 of Notification No.46/2011 dated 01.06.2011 These decisions squarely cover the issue involved in the present issue.
- iii. It is submitted that recently, the Commissioner (Appeals-II), Chennai, has allowed the appeal in the case of M/s. Fuso Glass India Pvt. Ltd., vide Order-in-Appeal SEAPORT.C.Cus.II No. 70/2025 dated 09.01.2025, by holding that the presence of a tin layer on clear float glass is sufficient to classify it under CTH 7005 1090 and eligible for NIL rate of BCD as per Sl No. 934 of Notification No. 46/2011 dated 01.06.2011. The said order was passed by referring to the above-mentioned Hon'ble Tribunal decisions. In



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fact, majority of the imports into India of Float Glass having absorbent layer have been correctly classified under CTH 7005 1090 as is evident from the data collected from the website zauba and planetexim. The appellant relies upon this data in support of their submission.

- iv. It is submitted that the entire allegation as well as confirmation of this re-assessment leading to a re-classification is borne out of an audit para 4.10.01 (DAP 83 of audit report No. 17/2020). Kind reference is drawn to 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. As per para 5 of the said circular, with regard to the adjudication of Show Cause Notices issued pursuant to an audit objection by CERA/CRA, 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. In this instant case, no such reply given by the Ministry is made available on record. 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. It is submitted 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 respondent.
- v. Without taking into account the case laws and the advance rulings, the learned Commissioner has proceeded to confirm the classification of the imported CFG 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 from the impugned order, LAA 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.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner of Customs, (Gr. 1-4), New Custom House, Air Cargo Complex, Chennai and the defense put forth by the appellants in their appeal as well as those during personal hearing along with additional submissions. The Appellant has filed the present appeal on 06.11.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 02.09.2023 as 07.09.2023. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the E-payment challan No. 2040844431 dtd 12.09.2022 towards payment of entire duty amount of Rs. 2,77,864/- . As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues are to be decided in the present appeals:

- i. Whether the impugned order passed by the adjudicating Authority is delayed or otherwise and is non-speaking and arbitrary which lacks reasoning.
- ii. Whether the appellant is entitled to NIL BCD under SI no. 934 of Notification no. 46/2011-Cus dated 01.06.2011.

5.2.1 Firstly, I take up the issue of delay of passing the speaking order. Section 17(5) of the Customs Act, 1962, provides that a speaking order be passed within fifteen days if the assessment contradicts the appellant's claim, unless the appellant accepts it in writing. In the instant case, BE no. 2360178 dated 09.09.2022 was assessed and the goods were released to the appellant after assessment and examination by way of Out of Charge on 14.09.2022. The appellant had paid the duty amount of ₹2,77,864/- on 12.09.2022 for the



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consignment. Bill of Entry was assessed after dis-allowing the NIL BCD in terms of S. No. 934(1) of Notification No. 46/2011-Cus dated 01.06.2011. Goods against the Bill of Entry was cleared for home consumption on payment of duty as per re-assessment. Neither any protest letter nor any objection have been placed on record by the appellant raised by them before the department regarding denial of benefit notification and clearance thereof. However, when the appellant asked for the speaking order the said was issued by the Adjudicating authority. It is observed that the impugned order was issued after a significant delay. However, this procedural lapse does not invalidate the assessment. The speaking order was issued, and the appellant has exercised their right to appeal, addressing substantive issues. The delay does not prejudice the appellant's rights, as they can challenge the classification and duty assessment on merits. The appellant has claimed that the impugned order is non-speaking and arbitrary. The impugned order references the COO's HS code as 7005 2990 and the discrepancy on the HS code mentioned on the documents, providing a basis for the classification. While concise, it meets the minimum requirement of a reasoned order, enabling the appellant to appeal effectively. Thus, the contention of arbitrariness is not substantiated.

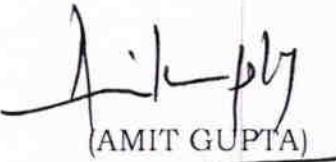
5.2.2 Now I come to the second issue i.e. whether the appellant is entitled to NIL BCD under SI no. 934 of notification no. 46/2011-Cus dated 01.06.2011. It is observed that the NIL BCD under SI no. 934 of notification no. 46/2011-Cus dated 01.06.2011 is valid only for goods classified under HS Code 7005 9010 and not for 7005 2990. It is observed that then appellant have declared the goods under CTH 7005 9010 and claimed NIL BCD under SI no. 934 of notification no. 46/2011-Cus dated 01.06.2011 as amended. The benefit of NIL BCD under the said Notification is available for the declared goods subject to the submission of Country of Origin Certificate as stipulated under the said Notification. It is observed that the goods mentioned in the COO certificate submitted by the appellant during assessment showed a different CTH of goods i.e 7005 2090 whereas the goods imported are classified under 7005 1090. The classification of goods is not under dispute. I find that during assessment the appellant could not produce a valid COO matching the declared CTH. Hence the the question of granting exemption under the said notification doesn't arise and the adjudicating authority has correctly denied the benefit of NIL BCD under SI no. 934 of notification no. 46/2011-Cus dated 01.06.2011 as amended.

6. In view of the above discussions, I agree with the observations and



findings of the adjudicating authority and do not find any justification to interfere with the findings of the adjudicating authority.

7. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant.



(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-138/CUS/MUN/2023-24

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Date: 27.05.2025

By Registered post A.D/E-Mail

To,

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1st Floor, No.91 Fuso House
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Chennai 600 084.

(2) M/s. Agol Associates,
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No.17. 1st Cross Street, Customs Colony,
4th Avenue, Besant Nagar,
Chennai-600090.
(Email:-contact@agol.in)



सत्यापित/ATTESTED


महाल/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Deputy/Assistant Commissioner of Customs, Custom House, Mundra.
4. Guard File.

