



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद  
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
 चौथी मंज़िल 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 – 20250771MN000000E441

क	फ़ाइल संख्या FILE NO.	S/49-154/CUS/AHD/23-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-147-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	11.07.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDERS-IN- ORIGINAL NO.	Order – In – Original No. 5/AR/ADC/HAZIRA/2022-23, dated 21.03.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	11.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s K. K. Patel Glass Industries Ltd., 609, City Centre, Near Sosyo Circle, Udhna Magadalla Road, Surat – 395 007, Gujarat





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 imported on baggage
(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/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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 :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	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-	
	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 -	
(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 रूपए.	
(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;	
(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 रूपए	
(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 ;	
(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 रूपए.	
(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	
(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।	
(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.	
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.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



## ORDER IN APPEAL

M/s K. K. Patel Glass Industries Ltd., 609, City Centre, Near Sosyo Circle, Udhna Magadalla Road, Surat – 395 007, Gujarat (hereinafter referred to as 'the Appellant') have filed the present appeal challenging the Order – In – Original No. 5/AR/ADC/HAZIRA/2022-23, dated 21.03.2023 (hereinafter referred to as 'the impugned orders') issued by the Additional Commissioner of Customs, Hazira Port, Surat (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed one Bill of Entry as No. 5060366, dated 04.02.2018 for clearance of goods of Clear Float Glass of different thickness / dimension, imported from Malaysia and classified it under CTH 70051090 of the First Schedule to the Custom Tariff Act, 1975. The goods were imported from Malaysia without payment of Customs Duty by availing the benefit of Sr. No. 934 (i) of the Notification No. 46/2011, dated 01.06.2011, as amended. All the Bills of Entry had been assessed under RMS without assessment and examination.

2.1 The said Bill of Entry came up for assessment and the benefit of Notification No. 046/2011, dated 01.06.2011 Sr. No. 934 (i) was allowed as per the details in the Bill of Entry submitted by the Appellant. Accordingly, the Appellant took out the out of charge / clearance of the subject goods for which this Bill of Entry had been filed.

2.2 As per the Audit Report of the Comptroller and Auditor General of India for the year ended Audit Report for 2018-19 (Customs), the objection raised was that the Appellant had misclassified the goods under 70051090 of the First Schedule to the Customs Tariff Act, 1975, and availed the benefit of Sr. No. 934 (i) of the Notification No. 046/2011, dated 01.06.2011, as amended, under which BCD was NIL, instead of classifying the same under proper CTH 7005 2990 of the Customs Tariff Act, 1975, and clearing it on payment of 5% Customs duty and other applicable duties. Accordingly, they have short paid the Customs duty and other applicable duties by misclassifying the imported goods under CTH 70051090 instead of classifying it under CTH 70052990.

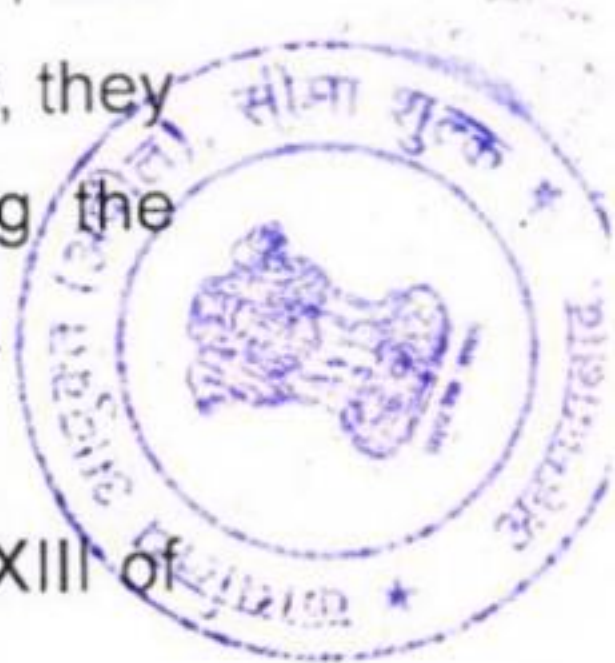
2.3 Items made of glass and glassware fall under Chapter 70 of Section XIII of the Customs Tariff Act, 1975. The relevant heading 7005 is described as under:-

*"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"*

2.3.1 The item description for the CTH 7005.10 reads as under:-

*"7005.10- Non – wired glass, having an absorbent, reflecting or non-reflecting layer:"*

and the item description for the CTH 7005.29 reads as under:





*"Other non-wired Glass: Other"*

2.3.2 Further, Chapter Note 2 (c) of Chapter 70 of the Customs Tariff Act, 1975 provides that:

*"(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."*

2.4 In this case, the Appellant had filed the said Bill of Entry for clearance of Clear Float Glass of different thickness and dimensions from Malaysia and availed the benefit of Notification No. 046/2011, Sr. No. 934 (i) as amended, i.e., BCD @ 0% by classifying the goods under CTH 70051090 instead of classifying it under CTH 70052990 and paying 5% Customs duty.

2.5 The Appellant vide letter dated 17.02.2021 submitted that they have imported Clear Float Glass from Malaysia under H.S. Code 70051090 because the edges of the glass sheet was worked / processed. Further, this glass is non-wired, having micro reflective layer on the surface of a glass sheet, while manufacturing process make it applicable for exterior use which prevents ultra violet rays. They have further stated that in India, there is no factory which produces such glass online with reflecting layers on clear float glass sheet with polished edges and that they have imported this glass on a special request of their client. However, ongoing through the replies submitted by various formations along with Test Reports, the audit officer observed that the reply was not acceptable.

2.6 Therefore, the subject goods appeared to be appropriately classified under CTH 70052990 - as "Other non-wired glass" attracting BCD @ 5% in terms of the said Notification, when imported from ASEAN countries.

2.7 Based on the audit objection, a Show Cause Notice dated 28.03.2022 was issued to the Appellant, proposing, as to why:

- i. The classification of 'Clear Float Glass' imported vide Bill of Entry (as detailed in Annexure – A) to the SCN) and classified by the Appellant, under 70051090 should not be rejected and re-determined under CTH 70052990;
- ii. Differential Customs duty amounting to Rs. 1,37,716/- under the CTH 70052990 should not be recovered from the Appellant under the proviso of Section 28 (4) of the Customs Act, 1962 along with interest under Section 28 AA of the Customs Act, 1962, as the Appellant had wilfully mis-declared the goods and suppressed vital facts to evade the Customs duty;





- iii. The goods valued at Rs. 21,21,979/- covered under the said Bill of Entry (as detailed in Annexure – A to the SCN) should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962;
- iv. Penalty should not be imposed on the Appellant under Section 112 (a) and Section 114 A of the Customs Act, 1962;

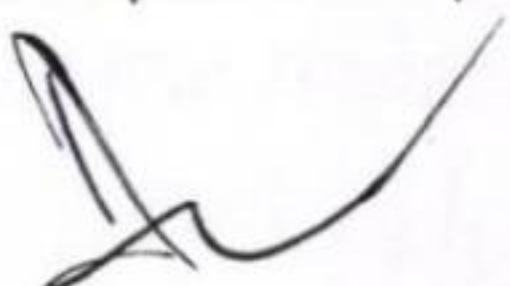
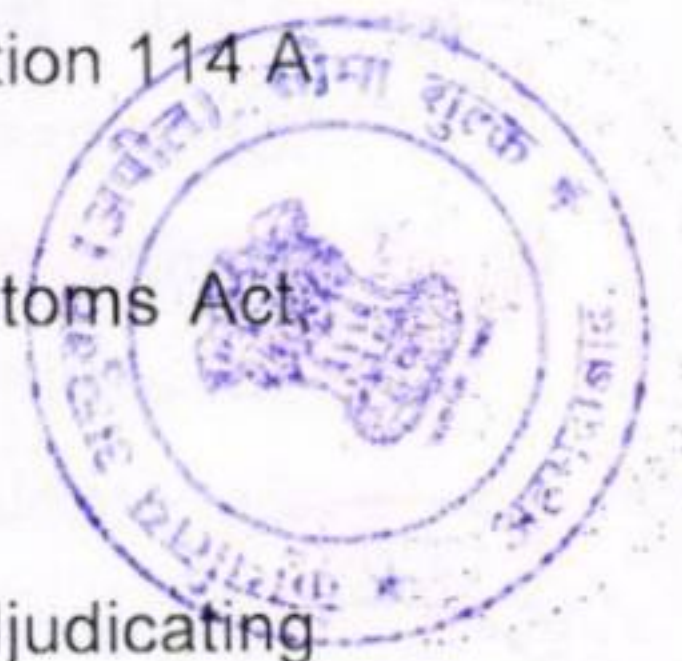
2.7.1 A Corrigendum dated 20.04.2022 to SCN dated 28.03.2022 was issued, wherein the SCN dated 28.03.2022 was made answerable to "the Additional Commissioner of Customs, Customs House, Surat Hazira, By-Pass Road, Choriyashi, At & Post Hazira – 394270".

2.8 The adjudicating authority vide the impugned order has passed the order as detailed below:-

- i. He has ordered to classify the subject goods at CTH 70052990 and rejected the declared classification in subject Bill of Entry of 70051090;
- ii. He has confirmed the demand of Customs duty amounting to Rs. 1,37,716/- under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28 AA of the Customs Act, 1962;
- iii. He has held the subject goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 and imposed fine in lieu of confiscation of Rs. 50,000/- under Section 125 (1) of the Customs Act, 1962. He also ordered that the Appellant shall pay this 'fine in lieu of confiscation' in addition to the ordered duties, interest and penalties as per the subject OIO;
- iv. He has imposed penalty of Rs. 1,37,716/- upon the Appellant under Section 114 A of the Customs Act, 1962;
- v. He has refrained from imposing penalty under Section 112 of the Customs Act, 1962, as per 5<sup>th</sup> proviso to Section 114 A of the Customs Act, 1962;

3. Being aggrieved with the impugned orders passed by the adjudicating authority, the Appellant have filed the present appeal. They have inter-alia, raised various contentions and filed detailed submission on following points, in support of their claim:

- Their import was cleared under Chapter 70051090, which is for 'Float Glass and surface ground or polished glass in sheet, whether or not having reflecting and an absorbent or nonreflecting layers; that they have declared same, but Customs says it should be under CTH 70052990 means "other than wired glass". Hence, this question arise, who is right and who is wrong?
- The said import was from Malaysia, they had special requirements for project use, of green house, which must have polished age, and having online reflecting layer which improves the reflecting qualities of the glass to retain the degree of transparency and controlling infrared right, so we approached M/s. Navkar Impex to import this special glass;



- They have no mismatch of any documents, short shipment or wrong CTH from glass factory to Mahavir Impex to K.K. Patel Glasslind Ltd, itself proves they did not have intention to evade Customs duty of 5%;
  - Moreover, there were no samples withdrawn from Customs, no data sheet reports, that their import should be classified under CTH 70052990. CAG is an auditing agency, they have not provided any technical ground to prove that their import is under CTH 70052990;
  - The manufacturing process of clear float glass is described in impugned order at Para 8 (a) and (b), as they have said that their glass was having tin side and on air side; that they had requested special reflective coating to factory for green house usage, so the classification was made correct;
  - HSN code only decided by testing and laboratory reports;
  - This import was High Sea Sales basis, no mismatch found anywhere;
  - Their import is under CTH 70051090 and it in their letter dated 17.02.2021 that edges of the glass was worked and processed with micro reflective film coating (non metal coating while manufacturing process) for special application of greenhouse buildings to prevent ultra violet rays, and its true that no Indian manufacturing are making such glass online, this glass under CTH 70051090 is correct;
  - Sample were never been taken / withdrawn for the said imported or notified us regarding the same. So it clearly indicates that the test reports mentioned has nothing to do without import. Items made of glass and glassware fall under Chapter 70 of Section xiii of the Customs Tariff Act, 1975. The heading 7005 is described as under; 7005 - 10; non-wired glass having an absorbent, reflecting or non-reflecting layer, surface ground or polished edge glass, which is perfectly matching with our import;
- Their goods are genuine and matching with our suppliers, so goods value should be kept as original;



#### **PERSONAL HEARING:-**

4. Opportunities for personal hearing in the case were given on 23.01.2025, 23.04.2025, 06.05.2025, 17.06.2025 & 26.06.2025. However, no person appeared on behalf of the Appellant. As sufficient opportunities for hearing have been given in the case, the case is being taken up for decision on the basis of the documents available on records.

#### **DISCUSSION & FINDINGS:**

5. I have carefully gone through the impugned order, appeals memorandum filed by the Appellant and documents available on records. The issues to be decided in the present appeal is as under:-



- i. Whether the impugned order classifying the subject goods at CTH 70052990 and rejecting the declared classification in subject Bill of Entry under 70051090, in the facts and circumstances of the case, is legal and proper or otherwise;
- ii. Whether the impugned order confiscating the subject imported goods declared under Section 111 (m) of the Customs Act, 1962, and imposing fine in lieu of confiscation under Section 125 (1) of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise; ;
- iii. Whether the impugned order confirming the demand of Customs duty under Section 28 (4) of the Customs Act, 1962 along with Interest under Section 28 AA of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise;
- iv. Whether the impugned order imposing penalty under Section 114 A of the Customs Act, 1962 upon the Appellant, in the facts and circumstances of the case, is legal and proper or otherwise;;

5.1 Being aggrieved, the Appellant has filed the present appeal on 18.05.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 21.03.2023 has been shown as 21.03.2023. Thus, 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 self-certified copy of the T.R.6 Challan No. 270, dated 02.05.2023 for Rs. 10329/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of duty of Rs. 1,37,716/-, under the provisions of Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. As the dispute in hand is classification of the 'Clear Float Glass' under CTH 7005 1090 as claimed by the Appellant, or under CTH 7005 2990, as held by the adjudicating authority, it is relevant to refer to the respective Chapter Notes and Chapter Heading of the First Schedule to the Customs Act, 1975. The same are reproduced below for ease of reference:

Tariff Item		Description	Unit	Rate of Duty	Preferential Area Rate
(1)		(2)	(3)	(4)	(5)
7005		<i>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</i>			
7005 10	-	<i>Non-wired glass, having an absorbent, reflecting or non-reflecting layer:</i>			
7005 10 10	---	Tinted	m2	10%	
7005 10 90	---	Other	m2	10%	
	-	<i>Other non-wired glass:</i>			
7005 21	--	<i>Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground:</i>			



7005 21 10	---	Tinted	m2	10%	
7005 21 90	---	Other	m2	10%	
7005 29	--	Other			
7005 29 10	---	Tinted	m2	10%	
7005 29 90	---	Other	m2	10%	
700530	-	Wired glass :			
7005 30 10	---	Tinted	m2	10%	
70053090	---	Other	m2	10%	

6.1 Relevant Chapter Notes are reproduced below:

"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."

6.2 On perusal of the above Chapter Note and respective Chapter Heading, it is explicit that the Non Wired Float Glass, having an absorbent, reflecting or non-reflecting layer, are classifiable under CTH 700510. As per the Chapter Note 2 (c) reproduced above, '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. Further, the Non-Wired Glass, coloured throughout the mass (body tinted), opacified, flashed or merely surface ground, are classifiable under CTH 700521. Other Non-Wired Glasses are classifiable under CTH 700529.

6.3 On perusal of the case records and submission of the Appellant, it is observed that the Appellant, before the adjudicating authority as well in the present Appeals Memorandum, have stated that the imported goods imported by them will meet the parameters laid down for heading 7005 10 inasmuch they are non-wired glass having an absorbent, reflecting or non-reflecting layer. However, the Appellant neither before the adjudicating authority nor in the present Appeal Memorandum, have submitted any literature or manufacturing process, with supporting documents claiming that the 'Clear Float Glass' imported by them were having any kind of absorbent and non-reflecting or non-reflecting layer, as described under Chapter Note 2 (c) of the Chapter Notes.

6.4 Further, observation of the CAG on submission of the Appellant as mentioned at Para 8 of the impugned orders are as under:-



*"(a) The manufacturing process of float glass involves floating molten glass to mirror like surface of molten tin, starting at 1100 degree Celsius leaving the float bath as solid ribbon at 600 degrees Celsius on a bed of molten tin which inevitably introduces tin by thermal diffusion into one side of the glass. The glass so manufactured is clear float glass, one side of which is known as tin side and other side as air side. All goods manufactured under float glass process (clear, coated or tinted) invariably would contain a layer of tin on one side.*

*(b) As per explanatory notes in Harmonized Commodity Description and coding in Chapter 7005, what is intended to be classified under CTH 70051090 is float glass coated with absorbent, reflecting or non-reflecting layer. Further, goods imported are clear and not coated with any absorbent, reflecting or non-reflecting layer. Hence, these goods cannot be classified under CTH 70051090 because as per the test report, only one side of the glass is having a layer of tin which can be attributed to thermal diffusion of the tin on one side during the manufacturing process. It further confirms the fact that the glass under test was not subjected to coating with absorbent, reflecting or non-reflecting layer during or after the manufacturing process of clear float glass. Also as per the test reports, the glasses are neither tinted nor wired. Hence, the said goods are to be appropriately classified under CTH 7005 2990 as "Other non-wired glass" attracting BCD at 5% in terms of the said notification, when imported from ASEAN countries."*

6.5 It is observed from the above that the manufacturing process does not describe to any process carried out on the imported goods such as giving 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, as explained in Chapter 70, Note 2 (c) of the First Schedule to the Customs Tariff Act, 1975, as reproduced above.

6.6 In view of the above, I am of the considered view that the imported goods are rightly classifiable under CTH 7005 2990 of the Customs Tariff Act, 1975. Therefore, I agree with the findings of the adjudicating authority rejecting classification of the imported goods under CTH 7005 1090, as claimed by the Appellant, and re-classifying the imported goods under CTH 7005 2990.

6.7 Further, it is pertinent to refer to the Board's Circular No. 23/2024 – Customs, dated 14.11.2024, issued from F. No. 521/01/2023-STO (TU), wherein it has been held that:

*"4. The issue has been examined in consultation with CSIR-Central Glass & Ceramic Research Institute, Kolkata. On examination, it is understood that due to the manufacturing process (Pilkington process), the final product clear float glass, has always a tin layer on one side by default due to floating of glass on the molten tin to achieve a flat, smooth surface. Getting 'tin layer' on the one side of the glass by default does not mean that it satisfies the condition under Note 2(c) of Chapter 70, that "the expression absorbent, reflecting or*





*nonreflecting layer" means a microscopically thin coating of metal or of a chemical compound (for e.g. metal oxide).*

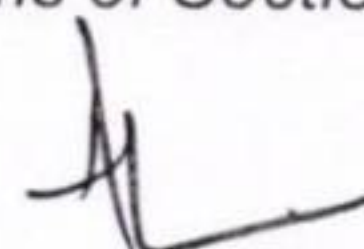
5. *In view of the above, it is clarified that the clear float glass which is not wired, not coloured, not reflective and not tinted and has only a tin layer on one side and there is no other metal oxide layer on it, will be said to be having no absorbent layer; therefore, will be correctly classified under tariff item 7005 2990."*

6.8 In view of the above clarification given by the CBIC, I am of the considered view that the impugned goods imported by the Appellant are rightly classifiable under CTH 7005 2990. Therefore, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings in the impugned orders.

7. It is observed that the adjudicating authority has ordered for confiscation of the imported goods under Section 111 (m) of the Customs Act, 1962. However, it is observed that the Appellant have not made any submissions in respect of the confiscation of the goods. Therefore, I uphold the order of the adjudicating authority confiscating the import goods under Section 111 (m) of the Customs Act, 1962. Consequently, the imposition of redemption fine with respect to the confiscated goods under Section 125 (1) of the Customs Act, 1962 is required to be upheld.

It has been contended by the Appellant that their import was High Sea Seller basis and the declared value was genuine and matching with their supplier and they have not willfully mis-declared the goods and suppressed the vital facts. In this regard, I find that the adjudicating authority has held that the appellant had misdeclared the classification within an intent to wrongly avail exemption and non-payment of Customs duty by under:

"28. ....I hold that in the era of self-assessment and particularly in the phase of RMS facilitation, where import cargo are facilitated under RMS procedure, it would be incumbent upon the importer to exercise due diligence and ensure that they have correctly captured the Classification of subject goods in the Bill of entry whereby the Classification CTH entails exemption benefit or otherwise. With the documentary evidence which is the item description of the subject goods in the said Bills of entry read with the heading, subheading and tariff item description under CTH 70052990, established that the subject goods are classifiable under the said CTH and thereby the importer should have refrained from misclassification of subject goods and refrained from wrongly availing the subject exemption notification. In the present case, the importer, having carried out self-assessment for the imports was under obligation to ensure that they had correctly classified goods. Having failed to carry out this onus, I find that the importer has mis-declared the classification with an intent to wrongly avail exemption and non-payment of Customs duty. Thus, I find that provisions of extended period for demand of Customs Duty, in terms of Section 28 (4) of the Customs Act, 1962 have been rightly invoked."



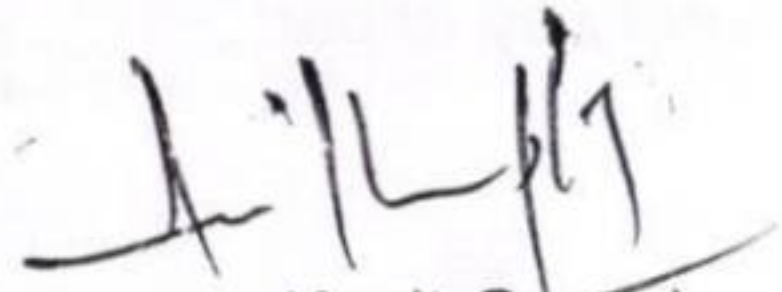



8.1 From the above, I find that that the adjudicating authority has correctly held that since the Appellant having carried out self-assessment for the imports was under the obligation to ensure that they had correctly classified the goods, which they failed and had mis-declared the classification with an intent to wrongly avail exemption and non-payment of Customs duty. I am not in the agreement with the contention of the Appellant that their they have not willfully mis-declared the goods and suppressed the vital facts inasmuch as the Appellant, in their appeal memorandum have not submitted any details contrary to the findings of the adjudicating authority by way of literature of the product, sound reasoning relying upon Chapter Notes, HSN Notes, etc., explaining how the imported goods falls under CTH 70051090. Hence, I do not find any infirmity in the findings of the adjudicating authority and accordingly, the contention of the Appellant that they had not willfully mis-declared the goods and suppressed the vital facts goods are legally not sustainable and accordingly are rejected.

8.2 Further, it is observed that penalty under Section 114A of the Customs Act, 1962 have been imposed upon the Appellant. As the provisions of the Section 114A of the Customs Act, 1962 are invocable, in cases where duty has not been levied or short levied on account of collusion or any willful mis-statement or suppression of the facts, I am of the considered view that penalty upon the Appellant under Section 114A of the Customs Act, 1962 is legally sustainable, as it is already held in above paragraph that the demand of duty under Section 28 (4) of the Customs Act, 1962 is legally sustainable on the grounds that the ingredients of willful misstatement or suppression are invocable in the facts of the present case. Accordingly, the penalty imposed under Section 114A of the Customs Act, 1962 upon the Appellant No. 1 is also required to be upheld.

9. In view of the above discussions, the findings and observations of adjudicating authority are required to be upheld.

10. Accordingly, the appeal filed by the Appellant is rejected.

  
(Amit Gupta)  
Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-154/CUS/AHD/2023-24

Date: 11.07.2025

By Registered post A.D

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Gujarat

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