

DIN : 20240471MN000000A83C

<p>अपर आयुक्त कार्यालय सीमाशुल्क, आईसीडी - अंकलेश्वर ओएनजीसी टाउनशिप के सामने, पुरानी राष्ट्रीय राजमार्ग संख्या 8, अंकलेश्वर -393002 Email. Id- icdankleshwar@gmail.com</p>	 <p>सत्यमेव जयते</p>	<p>OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS ICD, ANKLESHWAR OPP. ONGC TOWNSHIP, OLD N.H.NO. 8, ANKLESHWAR-393002. PHONE- 02646-235517/19, FAX 235516</p>
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PREAMBLE

A	फाइल संख्या /File No.	:	GEN/ADJ/ADC/154/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस नं. और तारीख Show Cause Notice no. and date	:	F. No. VIII/48-24/ICD-ANK/AUDIT/2019-20 dtd.06.05.2022
C	मुल आदेश संख्या / Order-In-Original No.	:	01/AR/ADC/AKWR/2024-25
D	द्वारा पारित आदेश /ORDER PASSED BY	:	Arun Richard अपर आयुक्त/ ADDITIONAL COMMISSIONER सीमा शुल्क/CUSTOMS
E	आदेश तिथि / Date of Order	:	30.04.2024
F	जारी करने की तारीख /Date of Issue	:	30.04.2024
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1. जिस व्यक्ति के लिए आदेश जारी किया गया है, उसके व्यक्तिगत उपयोग के लिए प्रति निशुल्क प्रदान की है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

2. इस आदेश से अपने को व्यक्तिगत महसुस करनेवाला कोई भी व्यक्तिआयुक्त (अपील), सीमा शुल्क, 4th मजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद- 380009 के यहाँ अपील कर सकता है। इस तरह की अपील, पार्टी को इस आदेश के सौंपे जाने अथवा डाक के प्राप्त होने के साठ दिन के अन्दर वैधानिक प्री-डिपॉजिट के साथ सीमा शुल्क (अपील) नियम, १९६२ के अंतर्गत फार्मस सी. ए. १ और २ दी जानी चाहिए। इस अपील पर नियमानुसार कोट की स्टाम्प लगा होना चाहिए।

2. Any person deeming himself aggrieved by this order, may prefer an appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009, in Form C. A. 1 & 2 as prescribed under Customs (Appeal), Rules, 1962. The appeal must be filed with statutory pre-deposit within sixty days from the date of receipt of this order either by the post or by the person. It should bear a court fee stamp of appropriate value.

3. अपील के साथ निम्नलिखित चीजे संलग्न जाए।

3. The following documents must be enclosed alongwith the appeal.

(क) अपील की प्रति, तथा (a) A copy of the appeal and

(ख) आदेश यह प्रति या अन्य आदेश की प्रति, जिस नियमानुसार कोट फी स्टाम्प लगा हो।

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(b) Copy of this order or another copy of the order, which must bear court fee stamp of appropriate value.

To:-

M/s Saint Gobain India Pvt. Ltd.
FAC- 29-36, 42-57, C/2, 1-37,
Jhagadia Industrial Estate,
Bharuch, Gujarat

Brief facts of the case:-

M/s Saint Gobain India Pvt. Ltd. (IEC No. 0498029204) having address at FAC-29-36, 42-57, C/2, 1-37, Jhagadia Industrial Estate, Bharuch, Gujarat (hereinafter referred to as "Importer") had filed the 13 Bills of Entry for clearance of goods to the description -"Float Glass- Dark Grey" of different thickness/dimension, imported from Indonesia, and classified it under CTH 70051090 of the Customs Tariff Act, 1975. The goods were imported from Indonesia without payment of Customs duty by availing the benefit of Notification No. 046/2011 Sr. No. 934(I), as amended. The details of 13 Bills of Entry (BEs) filed by the importer for Import at ICD Ankleshwar during the F.Y.2017-18 are enclosed as Annexure- A to the Show Cause Notice F.No. VIII/48-24/ICD-ANK/AUDIT/2019-20 dtd.06.05.2022.

2. All these 13 Bills of Entry had gone in RMS and assessment and examination were not prescribed for these Bills of Entry. Accordingly, the importer took the out of charge and clearance of the subject goods for which these Bills of Entry had been filed.

3. As per the audit report of the Comptroller and Auditor General of India for the year ended 2017-18 and 2018-19 (Customs), covering the same Bills of Entry, the objection raised that the importer has misclassified the goods under CTH 70051090 of the Customs tariff Act, 1975, and availed the benefit of Notification No. 46/2011 dated 01.06.2011, Sr. No. 934(I) as amended, under which BCD is NIL, instead of classifying it under proper CTH 70052990 of the Customs Tariff Act, 1975 and clearing it on payment of 5% Customs Duty and other applicable duties. Accordingly, it appeared that the importer has not paid the Customs Duty and other applicable duties by misclassifying the imported goods under CTH 70051090 instead of 70052990.

4. 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:-

"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".

5. The item description for the CTH 7005.10 reads as under:

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

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

“Other non-wired Glass: Other”

6. 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”.

7. On perusal of the said BEs, it appears that importer had filed 13 such Bills of Entry for clearance of Float Glass-Dark Grey of different thickness and dimension from Indonesia and availed benefit of Notification 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.

7. Summons dated 06.04.2021 was issued to the importer in relation to inquiry in the matter, the importer vide email dated 08.04.2021 submitted that due to covid restriction they were unable to travel. Further, it was submitted that they have classified the Dark Grey Float Glass correctly and sent test report of Nhava Sheva along with test memo and Bills of Entry.

8. On going through the replies submitted along with the test report from various formations, the CAG office vide letter File No. 609/Cus/Ind. tax136/2019 dtd. 07.09.2022 submitted that the replies are not acceptable on the following grounds:-

(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 process (clear, coated or tinted) invariably would contain a layer of tin on one side.

(b) As per the 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. 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 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.

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Duty demand and applicability of extended period of limitation

9. Section 17 of Custom Act- Assessment of duty:

"An Importer entering any Imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods",

10. Pursuant to the introduction of self-assessment in Customs since April, 2011, it is the duty of importer to correctly declare the CTH, assessable value, notification no. etc.

11. From the above, it is seen that in the instance case, the subject goods appear to be covered under CTH 70052990 instead of CTH 70051090 and BCD 5% is leviable thereon. It appears that it is not the case where importer was not aware of the nature and appropriate classification of goods. However, the importer has wilfully mis-classified the goods to evade payment of Customs duty. The importer has been regularly importing these goods and thus they are very well aware about the nature and condition of the said goods. Therefore, the importer appears to have suppressed these vital facts from the department and cleared these goods by self-assessing the same under CTH 70051090; paying NIL BCD, thereby it appears causing loss to revenue, as the said goods appears to be classifiable under CTH 70052990. The importer appears to have violated the provisions of Section 46 of the Customs Act, 1962. The duty appears not paid on all the goods cleared by the Importer under self-assessment appears liable to be demanded and recovered from the importer in terms of Section 28(4) of the Customs Act, 1962.

Confiscation and penalty under Section 112

12. This act of commission on the part of importer appears to have rendered the goods, mentioned in the Annexure A to the SCN, liable for confiscation under Section 111(m) of the Customs Act, 1962 and also liable for penalty- under Section 112(a) of the said Act.

Penalty under Section 114 A

13. Section 114 A of Customs Act, 1962 provides for penalty for short levy or non-levy of duty in certain cases - *"Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined".*

In view of the above, importer also appears liable to penalty under Section 114A of the Act as short payment of duty appears on account of / due to wilful mis-statement and suppression of facts on the part of importer.

14. Therefore, M/s. Saint Gobain India Pvt. Ltd., (IEC No.0498029204), vide Show Cause Notice F.No. VIII/48-24/ICD-ANK/AUDIT/2019-20

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dtd.06.05.2022 was called upon to show cause to the Additional Commissioner of Customs, (Incharge of ICD Ankleshwar), as to why:

- (i) The classification of "Dark Grey Float Glass" imported vide Bills of Entry and classified by importer, under 70051090 should not be rejected and re-determined under CTH 70052990;
- (ii) Differential Customs duty amounting to Rs. 58,38,337/-Rupees Fifty Eight lakh Thirty Eight Thousand Three Hundred Thirty Seven only) under the CTH 70052990 should not be recovered from them under proviso to Section 28(4) of the Customs Act, 1962, as the importer has wilfully mis-declared the goods/ suppressed vital facts to evade the Customs duty;
- (iii) Interest should not be recovered from them on the differential Customs duty as at (ii) above under Section 28AA of the Customs Act, 1962;
- (iv) The goods valued at Rs. 9,61,32,125/- (Rupees Nine Crore Sixty One Lakh Thirty Two Thousand One Hundred Twenty Five Only) covered under 13 Bills of Entry should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962;
- (v) Penalty should not be imposed on M/s. Saint Gobain India Pvt. Ltd., under Section 112(a) and under Section 114A of Customs Act, 1962

Defense Submission of M/s Saint Gobain:

15. Vide letter F.No. 135/2022 dated 04.07.2022, it was submitted as follows:

1. Please refer to the show cause notice as mentioned above issued to M/s.Saint Gobain India Pvt. Ltd., FAC-29-36, 42-57, C/2, 1-37, Jhagadia Industrial Estate, Bharuch – 393 110, Gujarat.

2. M/s.Saint Gobain India Pvt. Ltd. has authorized us to handle this matter on their behalf before you and the Vakalat executed by them in this connection is attached to this reply.

3. In terms of the subject notice, our clients have been called upon to show cause to you as to why,

(i) The classification of "Dark Grey Float Glass" imported vide Bills of Entry (as detailed in Annexure-A to the SCN) and classified by the importer under 7005 1090 should not be rejected and re-determined under CTH 7005 2990;

(ii) Differential Customs duty amounting to Rs.58,38,337/- under the CTH 7005 2990 should not be recovered from them under proviso to Section 28(4) of the Customs Act 1962, as the importer has willfully mis-declared the goods/ suppressed vital facts to evade the customs duty;

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(iii) Interest should not be recovered from them on the differential customs duty as at (ii) above under Section 28AA of the Customs Act 1962;

(iv) The goods valued at Rs.9,61,32,125/- covered under 13 Bills 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;

(vi) Penalty should not be imposed on M/s.Saint Gobain India Pvt. Ltd.under Section 112 (a) and under Section 114A of Customs Act 1962.

4. We would like to submit that the proposals made as above for the reasons set out in the show cause notice cannot be sustained either on facts or under law.

...2

5. At the outset, we would like to point out that the demand has been made by invoking the proviso to Section 28(4) of Customs Act 1962 on the ground that the importer has willfully mis-declared the goods/suppressed vital facts. On this basis, confiscation is proposed and also penalty is proposed in terms of Sections 112(a) as well as 114A of Customs Act 1962.

6. In the bills of entry filed by the noticee and also in the related shipping documents filed with the said bills of entry, complete details of the glass imported have been provided. There is absolutely no mis-statement or non-declaration of the material particulars relating to the goods imported. Determination of the correct rate of duty and applicability of various types of duties do not relate to material facts. These relate to statutory provisions and are questions of law. Merely claiming a wrong classification or wrong exemption or not mentioning the relevant notification by themselves will not constitute situations, where charges of suppression of facts or mis-statements can be raised.

7. In this context, we would like to refer to the judgment of the Supreme Court in the case of *Northern Plastic Ltd. Vs. Collector of Customs & Central Excise* reported in 1998 (101) E.L.T. 549 (SC) where the Supreme Court has held that merely claiming a particular classification does not amount to mis-declaration or suppression. The relevant portion of the observations made by the Hon'ble Supreme Court is extracted below.

"22. As the goods imported by the appellant were being used and intended to be used as Cinematographic Film, the appellant had described them as Cinematographic Films covered by sub-heading 3702.20. No attempt was made by the customs authorities either before the Collector or before CEGAT to show that the goods imported by the appellant were ordinarily not used as Cinematographic Films or were not intended by the appellant for such a use. Moreover, looking to the Heading 3702 and its sub-heading, it does not appear that such goods were intended to be covered by sub-heading 3702.90. As regards the claim for exemption in payment of countervailing duty the appellant had stated that it was entitled to the benefit under Notification No. 50/88-C.E. The declaration made by the appellant has been found to be wrong by the Collector and CEGAT on the ground that there was a separate exemption notification in respect of jumbo rolls for Cinematographic Films. While dealing

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with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

23. *We, therefore, hold that the appellant had not misdeclared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty".*

A copy of this judgment is attached as Annexure-1.

8. Apart from that, in yet another case, namely, *Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur* reported in 2013 (288) E.L.T. 161 (S.C.), the Hon'ble Supreme Court has made the following observations.

"The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default?"

A copy of this judgment is attached as Annexure-2.

We also would like to refer to the following decisions in this regard.

i. In the case of *Vesuvius India Ltd. Vs. Commissioner of Customs, Visakhapatnam* reported in 2019 (370) E.L.T. 1134 (Tri.-Hyd.), the Hyderabad Bench of the Tribunal has made the following observations in para 5 of the order.

"5. We have considered the arguments of both sides and perused the records. It is not in dispute that the importer appellant has manufactured refractory bricks and that they imported aluminous cement for the purpose. It is also not in dispute that they have been classifying these products as aluminous cement under Chapter 25. It is also not in dispute that they have not changed their classification to high alumina refractory cement after the Tariff has been revised with effect from 2003-04. It is also not in dispute that the goods were declared by the trade name and necessary documents were produced along with bills of entry by the appellant. The documents which were produced at the time of assessment and presented before us during the current proceedings show that the certificate of quality was among the documents presented. These certificates of quality clearly indicate the alumina content. In all cases the alumina content is over 50%. The only point of allegation that can sustain in the present case is that the assessee has wrongly classified the imported goods in their bills of entry. The importer assessee is not an expert in classification of products and it

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is always possible that they claimed wrong classification. It is open for the department to direct the importer to correct classification or issue a show cause notice proposing revision of classification. Merely claiming the wrong classification by itself does not amount to misdeclaration of the goods and there is nothing on record to show that the description of the goods in the Bill of Entry and other documents as well as in the test report do not match. The department's case has to fail on this ground alone for the extended period of limitation and correspondingly the penalties also need to be set aside."

A copy of the above decision is attached as Annexure-3.

ii. In the case of *Advanced Spectra Tek Pvt. Ltd. Vs. Commr. of Cus. (ACC&I), Mumbai* reported in 2019 (369) E.L.T. 871 (Tri.-Mumbai), the Mumbai Bench of the Tribunal has held in para 5.3 as follows:

"5.3 The findings of the Commissioner are contrary to the facts of case and hence cannot be sustained. The appellants have made the declaration on the Bill of Entries as per the description given in the invoices of the foreign supplier. Since the description as has been given by the foreign supplier declare on the Bill of Entries, the appellants cannot be held guilty for misdeclaring the same. The classification declared by the appellants on the Bill of Entry is as per their understanding and assessment, it is for the assessing officer to determine the correct classification and duty payable. It is not the case of the department that appellants have made any declaration which was contrary to the documents available with the importer at the time of filing of Bill of Entry. No evidence has been produced by the department to the effect that catalogue of the "DANLOAD 6000" was called for by the assessing officer and not produced by the appellants."

A copy of this decision is attached as Annexure-4.

iii. In the case of *Manek Chemicals Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad* reported in 2002 (145) E.L.T. 335 (Tri.-Del.), the Delhi Bench of the Tribunal has held that on the ground of alleged misclassification, extended period cannot be invoked. Though this is a case relating to Central Excise classification, the principles laid down as mentioned in para 9 of the order and as reproduced below will be relevant to the present case also.

"... In our view, the description "activated earth" read with the process of manufacture disclosed by M/s. MCPL in their declarations was enough indication and information to the department that the product was classifiable as "activated natural mineral product" under CET Heading 38.02. The appellants cannot be said to have misstated, misdeclared or suppressed any fact before the department. The department has alleged that M/s. MCPL misclassified their product with intent to evade payment of duty. M/s. MCPL had, of course, claimed classification of their product under CET Heading 25.05, which entry carried 'nil' rate of duty. But that was a mere claim and not a case of misclassification, for it was the department's job to classify the goods and only the proper officer of the department could classify or misclassify the goods. To state that claiming classification of excisable goods under a particular Tariff

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entry for avoidance of duty is a case of mis-classifying the goods for evasion of duty will itself be a gross misstatement. Further, the fact remains that the department did not object to M/s. MCPL's claim for classifying their product under Heading 25.05 at any point of time during the material period. Therefore the allegation of misclassification against M/s. MCPL would not hold ground.

A copy of the above decision is attached as Annexure-5.

iv. In the case of *Commr. of C. EX. & S.T., Dibrugarh Vs. Hi Flow Pump Co.* reported in 2012 (282) E.L.T. 286 (Tri.-Kolkata), the Commissioner (Appeals) findings are reproduced by the Tribunal in para 6 of their order while upholding the Commissioner's order and dismissing the appeal filed by the revenue.

.... The Show Cause Notice also did not allege that material facts were suppressed by the respondents, it only alleged that they misdeclared / misclassified the products under a different heading in order to enjoy exemption benefit. The case records reflect that the department was made aware of classification and it was open to the department to change the classification if the product was held to be classifiable under a different heading / sub-heading.

A copy of the above decision is attached as Annexure-6.

9. We also would like to state that in respect of Bill of Entry No.4057055 dated 18.11.2017, by oversight, the float glass imported was cleared upon payment of duty of 10% without availing the benefit of Free Trade Agreement Notification. Once our clients realized this, they filed a refund claim which was rejected initially and thereupon an appeal was filed and after the case was remanded to the original authority by way of an Order in Appeal, the Deputy Commissioner of Customs, ICD Ankleshwar through an Order dated 28.02.2020, after examining the various aspects, passed an order by extending the benefit of Free Trade Agreement Notification and sanctioned refund of the excess duty paid. A copy of the order passed during the denovo proceedings by the Deputy Commissioner as mentioned above is attached as Annexure-7. This will show that the classification was not merely based on self-assessment and the customs department was aware of the classification followed and in respect of the bills of entry, after due scrutiny of all the aspects, refund also was granted by confirming the classification by extending the benefit of Free Trade Agreement Notification.

10. Therefore, in the present case, there will not be any basis, whatsoever, to invoke the extended period and demand duty in terms of Section 28(4) of Customs Act 1962. Accordingly, on this ground itself, the demand made should fail.

11. The show cause notice fails to refer to any instance of suppression of facts or mis-statement. If classification adopted is incorrect, that 'perse' does not amount to mis-declaration or intention to evade payment of duty. Section 111(m) of Customs Act 1962 reads as follows.

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*“111. Confiscation of improperly imported goods, etc. –
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;”.*

12. As already stated, the above sub-section can be invoked only when there is wrong declaration of material facts. The relevance of correct classification of the goods imported is to be decided based on the legal provisions. Therefore, Section 111(m) has no role here and consequently, the confiscation of the goods as proposed in the notice is patently illegal.

13. Once confiscation cannot be carried out, then, imposition of penalty under Sections 112(a) / 114A also cannot be sustained.

14. Apart from the above, the department's own Manual on Self-Assessment states that in the absence of '*mens rea*', penal provisions are not to be invoked. The relevant extracts in this connection taken from the Manual on Self-Assessment are reproduced below.

“2.1 Self-Assessment can result in assured facilitation for compliant importers / exporters. However, delinquent and habitually non-compliant importers / exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

2.2 Penal provisions would not be invoked in cases of bona fide errors in Self-Assessment where mensrea and willful intention to evade duty or non-compliance of a condition cannot be proved”.

15. In para 3 of the show cause notice, it is already pointed out that in the audit report for the years 2017-18 and 2018-19 the Comptroller and Auditor General of India has raised an audit para with regard to the alleged misclassification of these goods under 7005 1090 instead of 7005 2990. Thus, the department was well aware of the audit objection made by CAG as early as 2019. Under such circumstances, invocation of extended period now in 2022 is not at all warranted.

16. When the earlier communication has not alleged any suppression, the present notice alleging suppression is thus, purely an afterthought to overcome the limitation. On the basis of the decisions already referred to and also the provisions contained in the Customs Self-Assessment Manual, in this case, neither the extended period can be invoked nor penalty in terms of Sections 112(a) / 114A of Customs Act can be levied.

17. As far as the merits of the case are concerned, it is alleged that the noticee has claimed concessional duty under Free Trade Agreement on the ground that these goods are imported from Indonesia and that concession was

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availed accordingly under Notification 46/2011 dated 01.06.2011 by classifying the goods under 7005 1090 and that, however, it is contended that the goods should accordingly be classifiable only under 7005 2990 and consequently, the concessional duty availed in terms of the Free Trade Agreement is not proper.

18. In para 8(b) of the notice it is alleged as follows:

“(b) As per the explanatory notes in Harmonised Commodity Description and Coding system 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 the 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 CH 7005.2990 - as “Other non-wired glass” attracting BCD at 5% In terms of the said notification, when Imported from ASEAN countries.”

19. We would like to submit that the contention made as above is not in accordance with the facts of the case and the legal provisions relating to classification of the subject goods.

20. For appreciation of the issues involved, we are reproducing the competing classifications in its entirety as mentioned below.

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

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21. From the above it may be seen that while heading 7005 10 at six-digit level covers non-wired glass having an absorbent, reflecting or non-reflecting layer. It is further sub-divided into two headings at eight-digit level, one covering tinted variety under heading 7005 1010 and the other varieties under heading 7005 1090. Heading 7005 21 covers other non-wired glass that are coloured throughout the mass (body tinted), opacified, flashed or merely surface ground. This again is sub-divided into two categories at eight-digit level, one covering tinted variety under 7005 2100 and other than tinted varieties are covered under 7005 2190.

22. It is to be kept in mind that the harmonized code of the World Customs Organisation has only the following headings at six-digit level.

Heading	H.S.Code	
70.05		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	<ul style="list-style-type: none"> - Non-wired glass, having an absorbent, reflecting or non-reflecting layer - Other non-wired glass :
	7005.21	<ul style="list-style-type: none"> -- Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground
	7005.29	<ul style="list-style-type: none"> -- Other
	7005.30	<ul style="list-style-type: none"> - Wired glass

Relevant extracts are attached as Annexure-8.

23. Further, it will be of interest to note that 7005.10 in the HS code mentions non-wired glass having an absorbent, reflecting or non-reflecting layer and 7005.21 mentions other non-wired glass that are coloured throughout the mass (body tinted), opacified, flashed or merely surface ground. At eight-digit level it is to be noted that Indian Customs Tariff Schedule covers tinted glass under both 7005 10 and also under 7005 21.

24. In this connection, the following extract from the HS classification Handbook published by World Customs Organisation will be useful.

“Although no changes may be made to the Harmonized System itself, there is nothing to prevent a Contracting Party from establishing additional subdivisions in its nomenclature to identify certain goods which could not be given separate status in the Harmonized System Nomenclature. Such measures may be necessary, in particular, to reflect tariff policy provisions or international trade developments relating to specific products. Paragraph 3 stipulates that additional subdivisions may only distinguish goods beyond the

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level of the existing HS subheadings, any code ascribed to them taking the form of an addition to the 6-digit HS code [for example, a 7th (or 7th and 8th) digit].”

Copy attached as Annexure-9.

25. The HS code does not use the expression “tinted” as such. But, under heading 7005 it uses the only expression “(body tinted)” for glass that is coloured throughout the mass.

26. While the same expression has been retained at six-digit level in the Indian Customs Tariff Schedule under Heading 7005 21, heading 7005 2110 merely mentions “tinted”. Here, there is no reference to ‘body tinted’. On the other hand, at eight-digit level, heading 7005 1010 refers to ‘tinted’ glass without any qualification, whatsoever.

27. It is a common principle of interpretation that when an expression is not qualified by any adjective, it will have a wider scope and meaning. Or in other words, when the word ‘tinted’ is not qualified by any adjective it will refer to ‘any’ type of tinting and not confined to a ‘particular’ type of tinting alone. As such, for classification under heading 7005 1010, the type of tinting cannot be prescribed by any authority and if it is interpreted in such a way to restrict the scope of the word ‘tinting’, then, it will amount to legislation by the executive, which is not permitted. No additions or subtractions can be made in the expressions used in the Tariff.

28. It is an admitted position that tinting can be done throughout the mass by adding metal oxides at the time of manufacturing process or by coating on the surface by other processes, such as chemical vapour deposition. But, since heading 7005 1010 does not refer to any specific type of tinting, all types of tinting will be within its scope.

29. As far as absorbent layer is concerned, the Tariff itself defines that expression as mentioned 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.

Thin coating of metal which absorbs infrared light will be sufficient to treat the glass as having absorbent layer. In the manufacture of glass by float process, the melted glass floats on a bath containing tin in liquid form and after the glass is formed and then cooled, there is a thin layer of tin coating at the bottom of the glass which absorbs infrared radiation. This aspect has been confirmed by testing by the Central Glass and Ceramic Institute, Kolkata in respect of past consignments imported by our clients.

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30. In the light of the above, it is to be noted that the glass imported will meet the parameters laid down for heading 7005 10. It is non-wired, tinted and has an absorbent layer of tin metal. Once the product falls within the scope of this heading, then, there is no requirement to proceed to further headings below that heading. In this connection, we would like to invite your attention to the following extracts again from the HS classification Handbook.

"Moreover, the Interpretative Rules clearly provide a step-by-step basis for the classification of goods within the Harmonized System so that, in every case, a product must first be classified in its appropriate 4-digit heading, then to its appropriate 1-dash subdivision within that heading and only thereafter to its appropriate 2-dash subheading within the predetermined 1-dash subdivision. It should be emphasized that at each step in the process, no account is taken of the terms of any lower-level subdivisions. This principle applies without exception throughout the Harmonized System."

A copy of the relevant portion is attached as Annexure-10.

31.1 In para.8(b) of the show cause notice it is alleged that on one side of the glass there is thin layer of tin which can be attributed to the thermal diffusion of the tin on one side during the manufacturing process and that the glass under question was not subjected to coating with absorbent, reflecting or non-reflecting layer during or after the manufacturing process.

31.2 The above assumptions made in para 8(b) fail to appreciate the technical aspects involved in the manufacture of glass and is a naive attempt to assume that coating has to be separately carried out. Tinting as well as coating with an absorbent layer can be done during manufacturing process or can be done at a subsequent time after the glass is formed. In the present case, the goods are of dark grey and tinting is carried out at the time of manufacture itself.

31.3 Secondly, since the glass is produced through float process necessarily tin layer gets coated at the bottom when the glass is formed. Thus, the coating is during the manufacturing process itself which is inherent in the production method. The test reports given by Central Glass and Ceramic Research Institute, Kolkata in respect of past cases very clearly confirm that absorbent layer of tin is on one side of the glass. A copy of the report is attached as Annexure-11. Once it is confirmed that there is an absorbent layer of tin, then how that absorbent layer has been formed is irrelevant. As long as the definition as given in Chapter Note 2(c) of Chapter 70 is complied with, then, it has to be held that the glass under reference falls under 7005 10 only.

32. Apart from the above, we also would like to invite your attention to two decisions which clearly support the contentions that when the scope of the heading is clear, one cannot travel further down through various sub-headings to choose a subsequent tariff heading in preference to an earlier sub-heading.

33. First one relates to *Gujarat Ambuja Exports Vs. Commissioner of Customs, Kandla* reported in 2011 (269) E.L.T. 239 (Tri.-Ahmd.) decided by Ahmedabad Bench of Cestat. This case involves classification of crude palm oil. Exemption

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notification issued under the Customs Act provided for certain parameters for crude oil for the purpose of extending the exemption benefit and while the authorities attempted to determine the classification by taking into account these parameters, the Tribunal in the above decision very clearly held that the classification has to be strictly done as per the scope of the Tariff entry, heading, sub-heading etc. and there will not be any question of any narrowing down or widening the scope of the Tariff heading by other means. In this regard, the following observations made by the Tribunal in para.10 will be relevant.

“10. The Commissioner has relied upon the Para 7 & 9 of the Circular in support of his view that the Circular issued clarification regarding classification of Palm Oil and it is not issued only for the purpose of particular notification, but for the purpose of classifying the imported palm oil. We find in Para 5 of the Circular it is clearly stated that for the purpose of duty assessment, Crude Palm Oil has been given a very specific definition. It is to be noted that the definition of Palm Oil has been given in an exemption notification and this definition has been communicated by way of Circular by the Board and the circular clarified that the duty assessment be made on the basis of the definition of Crude Palm Oil given in the notification. It is well settled law that for the purpose of classification, the tariff heading and the description of the tariff heading are relevant. When there is a doubt, HSN can be referred to. It is also to be noted that the tariff headings are assigned to different products and they are listed in the schedule to the Customs Tariff Act, enacted by the Parliament. The question that arises is as to whether the description given in the tariff heading can be narrowed down or widened by issue of notification by giving definition in the notification and by issue of a circular. The answer is ‘No’. If the Government intended that the definition of Crude Palm Oil for the purpose of assessment should be taken as given in the notification, the proper procedure was to amend the tariff by adding chapter note defining the Crude Palm Oil and not by giving definition of Crude Palm Oil in a notification.”

A copy of the decision is attached as Annexure-12.

34. The second decision relates to the case reported in *2011 (267) E.L.T. 225 (Tri.-Del.)* involving *Hindustan Lever Ltd.* In this case, Hindustan Lever Ltd. claimed that their product, “dairy whitener” is a partially skimmed milk powder with sugar and therefore claimed classification under the residuary heading. Whereas the Central Excise authorities sought to classify the product as skimmed milk powder only. In this case, the following observations have been made by the Tribunal in para.8 of the decision.

“8. It has been pleaded that for deciding the classification of the goods in question, the commercial parlance test must be applied and since in common parlance, the goods, in question, are considered as different from the milk powder, the same would not be covered by Heading No. 0401.13 of the Tariff. This plea of the appellant is un-acceptable, as when the words of the sub-headings are clear and un-ambiguous and admit only one interpretation, there is no need to take recourse to commercial parlance test. In the expression “milk powder other than powder specially prepared for feeding

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infants, put up in unit containers and ordinarily intended for sale" in sub-heading no. 0401.13, the expression "milk powder" is not qualified by any adjective and, therefore, this sub-heading would cover all milk powders other than "milk powder specially prepared for feeding infants" irrespective whether the same are whole milk powder or partially skimmed, milk powder or skimmed milk powder and irrespective of whether the same are sweetened or not or whether the same are used as whitener in tea or coffee or put to some other uses."

A copy of the above decision is attached as Annexure-13.

35. In the present case, it is to be noted that sub-heading 7005 1010 refers to "tinted" glass without any adjective or qualification. Further, it does not read as 'tinted, other than body tinted'. Accordingly, the tinted glass imported by our clients which also has an absorbent layer of tin will meet the scope of the Tariff entry 7005 10 at six-digit level and 7005 1010 at eight-digit level. Therefore, there is no scope to travel beyond this Tariff entry further down.

36. Based on all the above, we would like to point out that the subject show cause notice demanding duty, proposing confiscation of the goods and imposition of penalty cannot be sustained and therefore the proceedings in respect of the subject notice may be dropped.

37. We want to be heard in person before the case is decided. For this purpose, a convenient date and time may be fixed and intimated to us well in advance.

38. We also reserve our right to add / amend / delete any of the explanations furnished herein on or before the date of personal hearing.

16. Further submission made vide e-mail dtd. 20.04.2024 is as follows:

16.1 In this connection, we would like to submit that we have provided a detailed reply dated 04.07.2022 along with supporting documents. A soft copy of the reply submitted earlier and a scanned copy of the Vakalat are attached.

16.2 Apart from the above, we also would like to submit that with regard to classification of float glass with reflective layer on one side, the issue is no more *res integra*. The Cestat Bench at Kolkata in the case of *Bagrecha Enterprises Ltd. Vs. Commissioner of Customs (Port), Kolkata* reported in (2023) 13 Centax 321 (Tri.-Cal) has held that float glass with reflective layer on one side will be classifiable under 7005 10 only as against the classification insisted by the customs under heading 7005 21. Similarly, the Chennai Bench of Cestat in the case of Bagrecha Enterprises Ltd., the same importer, has decided a similar issue on 27.03.2024 in Appeal No.40203 of 2023. Here also the classification has been upheld under heading 7005 10. Copies of both these orders are attached.

16.3 These decisions relate to classification of clear float glass with reflective layer on one side and the classification is determined under heading 7005

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1090. In the present case, the product imported is a coloured float glass with reflective layer on one side and that is the only difference.

16.4 These decisions of the Tribunal, which is the higher appellate authority, will be binding on all officers working under the CBIC and under such circumstances, we would like to submit that the proceedings initiated against the noticee in terms of the subject notice need to be dropped'.

Record of Personal Hearing:

17. Personal Hearing was granted on 18.04.2024. On the request for adjournment by the importer, next hearing was granted on 23.04.2024. Shri S. Murugappan, Advocate attended the hearing in virtual mode and reiterated the contents of letter dtd. 04.07.2022 and submission made vide email dtd. 20.04.2024. The order of Hon'ble CESTAT Kolkata in the matter of Bagrecha Enterprises Ltd. vs. Commissioner of Customs [(2023) 13 Centax 321 (Tri.-Cal)] and Order No.40352/2024dtd. 27.03.2024 of Hon'ble CESTAT Chennai, in the matter of Bagrecha Enterprises Ltd. vs. Commissioner of Customs was cited during the hearing.

Discussion and Findings:-

18. I have carefully studied the case records. The subject SCN hinges on the issue of Classification of subject imported goods: Float Glass Dark Grey. In the matter of adjudication of subject SCN, the Hon'ble Principal Commissioner has permitted a further extension of One year for adjudication of subject matter, as per the first proviso to Section 28(9) Custom Act. In pursuance to the CBIC Circular 24/2011-Cus date 31.05.2011, Corrigendum dated 05.02.2024 to the subject Show Cause Notice was issued making the subject SCN dated 06.05.2022 answerable to the Principal Commissioner. Further, vide Office letter FNo VIII/10-148/Misc./O&A/2020-21 dated 15.04.2024, it was directed to transfer the said Show Cause Notice dated 06.05.2022 for adjudication by the Additional Commissioner in terms of Para 4 of Circular No. 23/2009-Cus dated 01.09.2009. I proceed to adjudicate the subject matter.

19. For ease of reference, the two CTH (customs tariff heading) classification Tariff items, one which is declared by the Importer :70051090 and another as proposed to be determined in subject Show Cause Notice 70052990 are reproduced as follows:

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*

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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

20. I find no test report of subject goods as there was no examination and no testing prescribed for these Bills of entry, all being RMS facilitated. The prime aspect to be decided in subject matter is Classification of subject goods. At this stage, I take into account the description of goods in subject Bills of entry which is the documentary evidence which was in existence at the time the goods were cleared. All the subject Bills of entry have the following description:

Item description in said Bills of entry: **Float glass (thickness specification) dark grey**

21. The item description in the subject Bills of entry nowhere described or mentioned that the goods have an absorbent, reflecting or non-reflecting layer. For this reason and in pursuance to the documentary evidence on record which is the 'description of subject goods entered in the subject Bills of entry' covered in the said Show Cause Notice, I find no merit to classify the goods in the 6 digit subheading 700510 because the CTH 700510 covers goods having an absorbent, reflecting or non-reflecting layer.

22. I refer to the General Explanatory Notes to the Import Tariff. As per the General Explanatory Notes to Import Tariff, *where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by “-”, the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by “- -”, the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has “-”. where the description of an article or group of articles is preceded by “---” or “---”, the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has “-” or “--”.*

23. In subject Tariff heading 7005, we have three broad sub-classification of goods preceded by ‘-‘ as follows:

- non wired glass, having an absorbent, reflecting or non reflecting layer.
- other non-wired glass.

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- *wired glass.*

24. As discussed in para 21, there is no merit to classify subject goods in Tariff subheading 700510 with reference to the description of goods entered in the subject Bills of entry. Thereby in subject matter, Tariff subheading 700529 is attracted to cover the subject goods; as the sub-classification 'other non-wired glass' is further sub classified as follows:

700521 -- coloured throughout the mass (body tinted), opacified, flashed or merely surface ground:

700529 -- Other

25. I refer to the item description in subject Bills of entry and thereby find the appropriate sub classification between the said comparable tariff levels is 700529 for the simple direct reason that the description of goods in the bill of entry do not mention the description as detailed in tariff subheading 700521. At this juncture, I reiterate the General Rules for the Interpretation of Import Tariff principle that only sub headings at the same level are comparable (Rule 6). Also, with respect to Rule 3(c) of said Interpretative Rules, When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. However in subject matter, with reference to the item description in the said Bills of entry which is the documentary evidence on record, the goods merit classification under tariff 700529 and thereby the need to rely on said Rule 3(c) Interpretative Rules does not arise in subject matter as the Classification is subject matter is arrived at tariff 700529 based on the terms of the headings and item description of goods in subject Bills of entry. The heading 700529 provides the most specific description of the subject goods in contrast to the description provided in tariff 700510. Within the sub classification of tariff 700529, the goods are sub classified into two categories, as follows:

*70052910 --- Tinted
70052990 --- Other*

26. The subject imported goods, as per the item description in said Bills of entry, are thereby appropriately classified under tariff item 70052990. This tariff item has no mention in the exemption notification 46/ 2011-CUS dated 01.06.2011, as the cited Sr. No. 934(I) of the said Notification prescribes exemption to goods falling under C.S.H. 70051090 and not to 70052990. Thereby the importer has wrongly claimed the benefit of subject exemption Notification. I hold that in the era of self-assessment and particularly in this phase of RMS facilitation, where import cargo are cleared under RMS procedure, it would be incumbent upon the importer to exercise due diligence and ensure that they have correctly captured the Classification CTH of subject goods in the Bills 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 said Bills of entry read with the heading, subheading and tariff item description under CTH 70052990, established that the subject goods are classifiable under said CTH and thereby the importer

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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 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 provisions of Section 28(4) of the Customs Act, 1962 have been rightly invoked. Further, by quoting the wrong exemption Notification in subject Bills of entry and thereby the importer has not paid the Custom duties payable, I hold this act of wrongly quoting the exemption notification as willful mis-statement by the importer, which has accrued to the importer ineligible benefit of subject exemption from payment of applicable custom duties in subject matter. I find that the interest payable on the customs duties not paid is automatic and mandatory. For the reason of willful misstatement by the importer, I hold that the Section 114A of the Customs Act, 1962 is attracted in subject matter and the penalty for wilful misstatement and suppression of fact wherein consequently duty has not been paid by the importer shall be a penalty equal to the duty so determined, as per the provisions of section 114A of the Custom Act. Further as per the position of law, vide 5th proviso to Section 114A Custom Act, where any penalty has been levied under this section, no penalty shall be levied under Section 112.

27. I note that the importer has cited a Test Report dated 12-10-18 of a BE No. 3980427 dt 13-11-17 filed at JNCH, Nhava Sheva. However, in subject matter, all the subject 13 Bills of entry in said SCN dated 06.05.2022, were filed at ICD Ankleshwar for subject goods imported at ICD Ankleshwar, were cleared through RMS, without any examination and testing. The above mentioned test report pertains to another Bill of entry for import at JNCH, Nhava Sheva.

28. I find that the importer has cited certain case laws. The case law of Northern Plastic ltd, at para 11 reads '*as the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty*'. This is not the case in subject matter, where as per the item description in subject Bills of entry, the imported goods are classifiable under CTH 70052990 and thereby ineligible for the wrongly claimed exemption notification. Further, the Classification in present case of Float glass has been determined in compliance to the General Rules of Interpretation for Import Tariff and in consonance with the description of the headings, subheadings and tariff item description in the Custom Tariff 70052990. Thereby the case laws citing classification of crude palm oil (dealt in Gujarat Ambuja Exports case law) and dairy whitener (dealt in Hindustan Lever ltd case law under central excise) are not applicable in the present matrix of subject matter classification of Float glass dark grey. Further, the subject matter is not just mere non-payment of duties, as detailed in Uniworth Textiles Ltd case law cited by the importer, but the subject matter pertains to misclassification of good CTH (custom tariff heading) in the subject bills of entry and thereby quoting the wrong exemption notification in subject Bills of entry and thereby availing ineligible custom

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duty exemption benefit. Further, in the case law cited by the noticee viz. Vesuvius India Ltd. Vs. Commissioner of Customs, Visakhapatnam reported in 2019 (370) E.L.T. 1134 (Tri.-Hyd.) which pertains to Import of cement with high alumina content and that issue of Exemption admissibility between high alumina cement and low alumina cement was discussed; Advanced Spectra Tek Pvt. Ltd. Vs. Commr. of Cus. (ACC&I), Mumbai reported in 2019 (369) E.L.T. 871 (Tri.-Mumbai) wherein order was passed with regard to delay in issuance of show cause notice was not justified since all the facts and documents was made available at the time of initiation of investigation; & Manek Chemicals Pvt. Ltd. Vs. Commissioner of Central Excise, Ahmedabad reported in 2002 (145) E.L.T. 335 (Tri.-Del.), which decided on the issue of activated earth natural clay (bentonite) washed with acid. Whereas, in the case cited viz. Commr. of C. EX. & S.T., Dibrugarh Vs. Hi Flow Pump Co. reported in 2012 (282) E.L.T. 286 (Tri.-Kolkata) , as per the order, the SCN itself did not allege suppression of facts which is not the case in the present matter. The noticee cited the case law viz. Bagrecha Enterprises Ltd. vs. Commissioner of Customs [(2023) 13 Centax 321 (Tri.-Cal)] and Order No.40352/2024 dtd. 27.03.2024 & ii. Order of Hon'ble CESTAT Chennai, in the matter of Bagrecha Enterprises Ltd. vs. Commissioner of Customs., whereas in both of the cases, the imported goods were "Clear Float Glass" whereas in the subject matter the imported goods are "Float Glass- Dark Grey". There is an apparent difference in the description of goods.

29. The importer in subject 13 Bills of entry wherein the item description is float glass dark grey has declared CTH 70051090 and thereby wrongly availed the benefit of exemption Notification. This mis-declaration of classification particulars of subject imported goods coupled with quoting the said Exemption Notification in the self-assessed subject Bills of entry has attracted the provisions of Section 111(m) Custom Act, which reads as follows:

Section 111. Confiscation of improperly imported goods, etc.- The following goods brought from a place outside India shall be liable to confiscation:-

.....

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to subsection (q) of section 54;

30. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported goods by the importer himself by filling a bill of entry electronically to the proper officer. Section 46 of the Customs Act, 1962 provides statutory mechanism for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. Thus, under self-assessment, it is the importer who declares the classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any in respect of the imported goods while presenting bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17 since,

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08.04.2011, it is the responsibilities of the importer more specifically in RMS facilitated bill of entry, to declare the correct description, Value, notification, etc. in order to determine and pay the duty applicable in respect of imported goods. In other words, the onus is on the importer to give correct declaration of goods being imported in the Bill of Entry. Incomplete description of the goods declared, mis-classification of goods being imported, availing wrong benefit of notification availed, if any amounts to suppression of information with an intent to evade payment of Customs Duty by the said act of omission and commission.

31. Therefore, with self-assessment, the onus is on the importer, especially when availing any duty exemption notification, to file correct classification or seek advance ruling for proper classification. Thus in the present case the noticee mis-declared and suppressed material facts with an intention to wrongly avail duty exemption notification.

32. The noticee submitted that in one of the BE they have been granted refund extending them benefit of the duty exemption notification. The noticee submitted that due to oversight, it forgot to mention duty exemption notification in their BE and paid duty @10%. The noticee filed for refund of excess duty paid by them. The refund was initially rejected as the noticee filed the refund without challenging the assessment. After the case being remanded back by the Hon'ble Commissioner (Appeal), the noticee was allowed to add the duty exemption notification benefit and subsequently refund granted vide Order dated 28.02.2020 by the Deputy Commissioner. It is pertinent to mention here that in pursuance to the CAG audit objection with respect to subject Bills of entry covered in subject Show Cause Notice dated 06.05.2022 , as reproduced, as follows, the mis-declaration by the importer with intention to avail duty exemption benefit has been brought on record; the CAG audit objection is on the following grounds:

- (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 process (clear, coated or tinted) invariably would contain a layer of tin on one side.
- (b) As per the 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. 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 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

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BCD at 5% in terms of the said notification, when imported from ASEAN countries.

33. I find that the subject SCN has invoked Section 111(m) Custom Act. The fact that the subject goods Classification particulars has been mis-declared by the importer is on record and thereby exemption notification was wrongly claimed in subject Bills of entry by misclassifying the subject goods and wrongly quoting the ineligible exemption notification. I note that this section does not take the support of 'mens rea' to invoke it but mere wrong entry particulars in the subject Bills of entry such as mis-classification and thereby undue wrong benefit of exemption notification availment is sufficient to invoke Section 111(m) in subject matter. With reference to the clear unambiguous wordings of Section 111(m) Custom Act, I hold the goods have been rendered liable to confiscation.

34. In a similar issue, an OIO NO. 3/AR/ADC/HAZIRA/2022-23 dtd. 17.02.2023 was passed with respect to the same noticee: M/s. Saint Gobain by the Additional Commissioner, Customs, Hazira Port wherein the CTH was determined as '70052990'. The said OIO dated 17.02.2023 (as intimated by the RRA, Section, H.Q. vide e-mail dtd. 18.04.2024) has been accepted by the Department.

In conspectus of aforementioned discussion and findings, I pass the Order,

ORDER

(i) I order to reject the declared Classification CTH 70051090 and order to classify the subject goods at CTH 70052990.

(ii) I order and confirm the demand of Customs Duty amounting to Rs. 58,38,337/- (Rupees Fifty Eight lakh Thirty Eight Thousand Three Hundred Thirty Seven only) under Section 28(4) of the Customs Act, 1962;

(iii) I order recovery of Interest on the Customs Duty as above at (ii) under Section 28AA of the Customs Act, 1962;

(iv) I order to impose penalty of Rs. 58,38,337 (Rupees Fifty Eight lakh Thirty Eight Thousand Three Hundred Thirty Seven only) on importer in terms of Section 114A of the Customs Act, 1962; the first and second proviso to section 114A of Customs Act, 1962 reads as follows:

"Provided that where such duty or interest, as the case may be, as determined under ²²/sub-section (8) of section 28, and the interest payable thereon under section ²⁴[28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so

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determined has also been paid within the period of thirty days referred to in that proviso :"

Accordingly, if the amount so determined is paid within 30 days of receipt of this order, then the amount of **penalty under section 114A will be 25% of duty**. Further, the benefit of the first proviso is available only if the penalty as reduced under first proviso to section 114A of Customs Act, 1962 is also paid within 30 days of receipt of this order.

(v) I refrain from imposing penalty under Section 112, as per 5th proviso to section 114A Custom Act.

(vi) I hold the subject goods liable to confiscation under Section 111(m) Custom Act, but as neither the goods are physically available nor is there any Bond/ enforceable guarantee on record in this regard, therefore I neither confiscate the goods nor impose Redemption fine in lieu of confiscation.

(Arun Richard)
Additional Commissioner
ICD, Ankleshwar

F. No. GEN/ADJ/ADC/154/2024-ICD-AKWR-CUS-COMMRTE-AHMEDABAD
DIN: 20240471MN000000A83C 30.04.2024

To
M/s Saint Gobain India Pvt. Ltd.
FAC- 29-36, 42-57, C/2, 1-37,
Jhagadia Industrial Estate,
Bharuch, Gujarat

Copy to:

1. The Principal Commissioner of Customs, Ahmedabad.
2. The Assistant Commissioner, ICD-Ankleshwar, Ankleshwar.
3. The Assistant Commissioner, Tax Recovery Cell, Customs, Ahmedabad.
4. Guard File.