

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40654 of 2023

(Arising out of Order-in-Original No. 102220/2023 dated 09.06.2023 passed by Commissioner of Customs, Chennai-II, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Swastik Glass Traders

No. 41, Rangai Gowder Street,
Opp. Apollo Pharmacy,
Coimbatore – 641 001.

...Appellant

Versus

Commissioner of Customs

Chennai II Commissionerate,
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001.

...Respondent

APPEARANCE:

For the Appellant : Ms. Shrayashree T., Advocate
For the Respondent : Mr. R. Rajaraman, Authorised Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41107 / 2024

DATE OF HEARING : 29.07.2024
DATE OF DECISION: 21.08.2024

Order :- Per Mr. VASA SESHAGIRI RAO

Customs Appeal No. C/40654/2023 has been filed by the Appellant assailing the Order-in-Original No. 102220/2023 dated 09.06.2023 passed by the Commissioner of Customs, Chennai-II ordering for reclassification of imported Float Glass under CTH 70052990 and confirming the demand of short levied duties of Rs.4,12,70,377/- during the period

from 12.10.2017 to 22.03.2022, under Section 28(8) along with applicable interest as per Section 28AA of Customs Act, 1962, besides imposing redemption fine of Rs.3,10,00,000/- in lieu of confiscation in terms of Section 125 of Customs Act, 1962 and Penalty equal to duty short levied under Section 114 A of Act *ibid*.

1.2 Brief facts of this appeal are that the Appellant had imported "Clear Float Glass" (CFG) from Malaysia classifying them under CTH 7005 1090 and cleared the same @ Nil rate of BCD availing exemption under Notification No. 46/2011-Cus dated 01.06.2011 (Serial No. 934) as the Country of Origin of subject import goods is Malaysia, a country notified for the benefit of ASEAN India Free Trade Area (AIFTA). In total, during the period from October, 2017 to March, 2022, 89 imports were made by the appellant of Clear Float Glass of Malaysian origin. Most of these imported consignments were provisionally assessed at the time of imports and subsequently, based on test report by CSIR-CGCRI, Kolkata, assessments were finalised classifying the goods under CTH 70051090. However, during the course of audit conducted by Customs Revenue Audit (CRA), it was noticed that the imported Float Glass is classifiable under CTH 7005 2990 attracting BCD @10% and consequently not eligible for the benefit under Notification No. 46/2011-Cus. dated 01.06.2011. Hence, it was alleged that the CFG imported from Malaysia was wilfully mis-classified under CTH 70051090 for the purpose of availing undue FTA benefit of the said Notification, resulting in short levy of applicable Customs duty.

1.3 Accordingly, a Show Cause Notice dated 11.10.2022 was issued to the Appellant proposing *interalia* : -

- i. to reject the classification of CFG under CTH 70051090 adopted by the Appellant for the subject imports and to re-classify the same under CTH 70052990 thereby to deny the benefit of Notification No. 46/2011-Cus dated 01.06.2011.
- ii. to demand evaded/short paid Customs duties of Rs.4,12,70,377/- in respect of imports of CFG during the period from 12.10.2017 to 22.03.2022, arising on account of short levy under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.
- iii. to Confiscate the subject import goods valued at Rs.31,77,99,658/- under Section 111(m) of the Act *ibid* and
- iv. to impose penalty under Section 114A/112(a) of Customs Act, 1962.

1.4 After due process of law, the Adjudicating Authority *vide* Order-in-Original No. 102220/2023 dated 09.06.2023 confirmed all the proposals put forth in the Show Cause Notice and imposed a redemption fine of Rs.3,10,00,000/- in lieu of confiscation under Section 125 of the Act *ibid* and imposed a penalty equal to the duty confirmed in terms of Section 114A of Act *ibid*.

1.5 Being aggrieved, the present appeal was filed by the Appellant before this forum.

2. The appellant has submitted as follows as evident from the Grounds of Appeal filed: -

- i. That the impugned order is non-reasoned and in violation of Principles of natural Justice in as much as the proceedings under Section 28 was initiated by the department without challenging the assessments in the Bills of Entry by way of appeal relying on the decision in the case of *ITC Vs. CCE, Kolkata [2019 (368) ELT 216]*.
- ii. That the proceedings under Section 28 could not sustain in law as certain Bills of entry which were provisionally assessed were yet to be finalised. In this regard, reliance was placed on the ratio of decisions in the case of *AAS Syndicate (Warehousing) P. Ltd. Vs. Commissioner of Customs (Port) [2009 (12) TMI 609- Calcutta High Court]*, *M/s. Roochees Time Pvt. Ltd. Vs. CCE, Jaipur-I [2017 (6) TMI 696-CESTAT, New Delhi]* and *S. Patnaik Vs. Commissioner of Customs [2000 (118) ELT 502 (Tribunal)]*.
- iii. It was submitted that the imported goods were rightly classifiable under CTH 70051090 and the benefit of exemption Notification No. 46/2011- Customs was correctly availed of by them adverting to CTA and HSN as under: -

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	m ²	10%	-
7005 10 90	--- Other	m ²	10%	-
	- Other non-wired glass :			
7005 21	-- Coloured throughout the mass (body tinted) opacified, flashed or merely surface ground :			
7005 21 10	--- Tinted	m ²	10%	-
7005 21 90	--- Other	m ²	10%	-
7005 29	-- Other :			
7005 29 10	--- Tinted	m ²	10%	-
7005 29 90	--- Other	m ²	10%	-
7005 30	- Wired glass :			
7005 30 10	--- Tinted	m ²	10%	-
7005 30 90	--- Other	m ²	10%	-

and it was submitted that to get imported CFG classifiable under CTH 7005 1090, the CFG shall be non-wired glass having an absorbent, reflecting or non-reflecting layer and not tinted. As there was no dispute regarding CFG being non-wired, it would suffice to establish that CFG is having an absorbent, reflecting or non-reflecting layer to get it classified under CTH 70051090. It was submitted that as far as absorbent layer was concerned, in terms of Note 2(c) to Chapter 70, the tariff itself explains what an absorbent, reflecting or non-reflecting layer means, as mentioned below: -

Chapter Note 2(c) to chapter 70 read as follows:-

"2. For the purposes of headings 7003, 7004 and 7005 : (a) glass is not regarded as "worked" by reason of any process it has undergone before annealing ; (b) cutting to shape does not affect the classification of glass in sheets ; (c) the expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass.

It was required to be proved whether the CFG having microscopic tin layer on one side of the glass is an absorbent, reflecting or non-reflecting layer as contemplated under the said Chapter note. It was submitted that as per the test report dated 31.01.2019 issued by CGCRI, Kolkata wherein it was clearly specified that "an absorbent layer (Tin) was observed on one side of the glass which is fluorescent under UV illumination", the tin layer is present in CFG and it may be considered as a UV absorbent layer justifying classification of CFG as a non-wired, non-tinted float glass having an absorbent tin layer on one side of the glass under CTH 70051090. The finding in the impugned order was denied as neither the Customs tariff nor the HSN explanatory notes stipulate that the absorbent layer should be as a result of applying coating on CFG. Reliance was placed on the decisions in the case of *Oswal Agro Mills Ltd. Vs. Collector of Central Excise*, [1993 (66) ELT 37 (SC)], *Commercial Taxes officer Vs. Bombay Machinery Stores* [2020 (36) GSTL 161 (SC)], *Union of India Vs. Dharmendra Textile Processors*, [2008 (231) ELT 3 (SC)] and *Commissioner of Income Tax-III Vs. Calcutta Knitwear* [2014 (362) ITR 673 (SC)].

- iv. It was submitted that CTH7005 29 being a residual entry, any CFG shall be classified under that CTH only if they were not covered under any specific entry under CTH7005 and in this regard pointed out that as per Rule 3(a) of the general Rules of Interpretation of the harmonised system, headings providing specific description shall be preferred to heading providing general description. Reliance was placed in this regard on the decisions in the case of *M/s. Bharat Forge*

& Press Industries Pvt. Ltd. Vs. CCE [1990 (1) TMI 70-SC], HPL Chemicals Ltd. Vs CCE, Chandigarh [2006 (4) TMI 1 (SC)], Metals and Ferro Alloys Ltd., Cuttack Vs. Collector of Central Excise, Bhubaneshwar, [1991 (1) SCC 125], Mauri Yeast India Pvt. Ltd. vs. State of Uttar Pradesh [2008 (5) SCC 680], Dunlop India Ltd. Vs. Union of India & Others [1976 (2) SCC 241] and M/s. Aalayam Traders Vs. The Appellate Assistant Commissioner (CT), Puduchery, [2019 (7) TMI 1670-Madras High Court].

v. It was averred that it is the onus of the department to prove and establish the classification of the product, in case, the department confronts the classification claimed by the Appellant and contradicted the findings in the impugned order that in cases of entitlement of exemption Notification, the onus was on the Appellant. In this regard the Appellant relied on the ratio of the decisions in the cases of *Hindustan Ferrodo Ltd. [1997 (89) ELT 16 (SC)], Parle Agro (P) Ltd. Vs. Commissioner of Commercial Taxes, Trivandrum [2017 (352) ELT 113 (SC)], Commissioner of Customs & C.Ex., Amritsar Vs. DL Steels [2022 (381) ELT 289 (SC)]* and *HPL Chemicals Ltd. Vs. CCE, Chandigarh [2006 (197) ELT 324 (SC)].*

vi. It was contended that the Show Cause Notice was partly time barred in respect of Bills of Entry pertaining to 2018-2020 and the facts of the instant case cannot be said to have warranted the invocation of extended period of limitation under Section 28(4) of the Customs Act, 1962 as there was no collusion or wilful mis-statement or suppression of facts. It was submitted that the facts were always available with the department as the subject goods were provisionally assessed and test

reports were submitted as early as 2019 and hence the ingredients for invoking the extended period was unjustified in as much as the impugned order had not brought anything on record to prove the same. Further, it was disputed that the allegation of wilful mis-declaration by the importer is not at all tenable as claiming a particular classification under the Customs Tariff Act cannot and does not amount to mis-statement. It was also submitted that the mis-classification was not to be equated with the mis-declaration within the meaning of Section 28(4) of the Customs Act as it was settled law that once the goods are correctly described, the *bona fide* adoption of classification by the importer cannot be equated with mis-declaration. Reliance was placed in this regard on the ratio of decisions in the case of *Uniworth textiles Ltd. Vs. Commissioner of Central Excise, Raipur* [2013 (288) ELT 161 SC], *CCE Vs. Ishaan Research Lab (P) Ltd.* [2008 (230) ELT 7 SC], *Densons Pultretaknik Vs Commissioner of Central Excise*, [2003 (155) ELT 211 (SC)], *PSL Ltd. Vs. Commissioner of Customs* [2015 (328) ELT 177 (Tri.-Ahmd.)], *Commissioner Vs. Ratnamani Metals & Tubes Ltd.* [2016 (331) ELT A89 (SC)], *CCE Vs. Chemphar Drugs & Liniments* [1989 (040) ELT (276) SC] and *Continental Foundation Jt. Venture Vs. Commissioner of Central Excise, Chandigarh-I* [2007 (216) ELT 117 (SC)].

- vii. It was contended that interest under Section 28AA and penalty under Section 114AA are not leviable/ imposable when the duty demanded itself is unsustainable in view of the decisions in the case of *Pratibha Processors Vs. Union Of India* [1996 (88) ELT 12 (SC)] and *Commissioner of Customs Vs. MMK Jewellers & Anr.* [2008 (225) ELT 3

SC]. Further, it was averred that there was no reasonable ingredient for imposing penalty under Section 114A when suppression/ wilful mis-statement/collusion could not be proved to exist in view of the decision off the Apex Court in *Sun Microsystems India Pvt. Ltd. Vs. Commissioner of Customs, Bangalore [2016 (339) ELT 475 (Tri.-Bang.)]*

viii. It was argued that the goods were not liable for confiscation under Section 111(m) as there was no mis-declaration pursuant to the claim of classification and exemption made by the Appellant. In this regard reliance was placed on the ratio of the decisions in *Northern Plastic Ltd. Vs. Collector of Customs (Central Excise [1998 (101) ELT 549 (SC)]*, *Sirthai Superware India Ltd. [2020 (371) ELT 324 (Tri.-Mumbai)]*, *Commissioner of C.Ex, New Delhi Vs. Mittal International [2018 (359) ELT 527 (Tri.-Del.)]* and *Jay Kay Exports & Industries Vs. Commissioner of Customs, Kolkata-[2004 (163) ELT 359 (Tri.-Kol)]*.

ix. It was averred that the proceedings of Confiscation and Penalty are unsustainable in law as more than 20 of the subject bills were provisionally assessed pending finalisation as confirmed in Para 58 of the impugned order and in this regard reliance was placed on the ratio of the decisions in the case of *Jaju Petro Chemical Pvt. Ltd. Vs. Commissioner of Customs (Port) & Ors. [2017 (7) TMI 633]*, *Commissioner of Customs (Import) Vs. Mahesh India [2006 (7) TMI 306]*, *Collector of Customs Vs. Kusum Marodia [1995 (77) ELT 808 (Cal.)]*, *Lan Esenda Ltd. Vs. Commissioner of Customs, Mumbai [2005 (192) ELT 305 (Tri.-Mum.)]*, *Kevin Infotech Pvt. Ltd. Vs. Commissioner of Customs(Port), Kolkata, [2007 (216) ELT 435 (Tri.-Lol)]*, *Mangalore*

Refinery & Petrochemicals Ltd. Vs. CC, Mangalore [2002 (145) ELT 689 (Tri.-Bang.)] and hence it was stressed that the redemption fine imposed were unsustainable.

3.1 The Ld. Counsel Ms. Shrayashree T. representing the Appellant reaffirmed the averments in the grounds of appeal and further submitted that the issue involved in the appeal was already covered by the decision of the Tribunal in the case of *Bagreecha Industries Limited Vs. Commissioner of Customs (Port), Kolkata [Final Order Nos. 77460-77462/2023 dated 03.11.2023]* passed in Customs Appeal Nos. C/75536-75538/2023 wherein the Tribunal had held that the presence of tin layer on the CFG is sufficient to classify the same under CTH 70051090 and also covered by the decision of Tribunal Chennai in the case of the same appellant in Final Order No. 40352/2024 dated 27.03.2024 passed in Customs Appeal No. 40203 of 2023. Further reliance was placed on the ratio of the Tribunal decisions in the case of *M/s. Rider Glass Industries Pvt. Ltd. Vs. Commissioner of Customs in Customs Appeal No. 40607 of 2023*, *M/s. Swastik Safety Glass (Bangalore) Pvt. Ltd. Vs Commissioner of Customs in Customs Appeal No. 40573/2023*, *M/s. Enviro Safety Glass Vs Commissioner of Customs (Audit) in Customs Appeal No. 40119 of 2024*, *M/s. Navakar Impex Pvt. Ltd. Vs. Commissioner of Customs in Customs Appeal no. 40514/2023* and advance rulings in *CAAR/MUM/ARC/10/2022* dated 10.05.2022 in the case of *M/s. Suraj Constructions* and *CAAR/MUM/ARC/36/2021* dated 24.09.2021 in the case of *M/s. Chandrakala Associates*.

3.2 The Ld. Counsel contended that the Show Cause Notice and the impugned order were due to CRA Audit objection which was unwarranted as the Ministry of Finance itself refuted the findings of the CRA Audit. It was averred that neither the SCN nor the impugned order brought forth any contumacious act of the Appellant showing mis-statement with an intent to evade payment of duty, when the Appellant had been importing CFG for many years adopting CTH 70051090.

3.3 The Ld. Counsel further referred to RTI response of CGCRI-CSIR in relation to a similar finding in the case of *M/s. Bagreecha Industries cited supra*, wherein the presence of an absorbent and non-reflecting layer on the CFG was confirmed which justified the classification under CTH 70051090.

4.1 The Ld. Authorised representative Shri R. Rajaraman representing the Department affirmed the findings of the Lower Adjudicating Authority. He has drawn our attention to the test report of CSIR-Central Glass & Ceramic Research Institute, Kolkata *vide* Report No. GC/3337/TCC/3796-3797/21-22 dated 24.02.2022 wherein the testing agency has opined that there is no absorbent, no reflective or non-reflective layer on airside. As such, it was stressed that the primary condition for classifying the imported CFG under CTH 70051090 was not satisfied. He has submitted that if the tin layer is treated as the absorbent layer which is inherent of the manufacturing process of every float glass, the words "whether or not having an absorbent, reflecting or non-reflecting layer" will become redundant. He has contended that it is not legal to interpret the tin

layer itself as an absorbent layer, which is automatically formed in the manufacture process of every float glass.

4.2 He has supported the findings of the Adjudicating Authority, that there is no absorbent, reflective or non-reflective layer deposited on the surface of the glass and as such Clear Float Glass in the present case is not classifiable under 70051090 of the Customs Tariff Act, 1975. The item has not undergone any coating process and as there is no absorbent, reflective or non-reflective layer on the air side of Float Glass under import, it cannot be covered under Sub-heading 700510. He has prayed for setting aside the appeal, in view of the clear findings recorded in the impugned Order-in-Original dated 09.06.2023 of Commissioner of Customs, Chennai-II, Chennai.

5. Heard both sides and carefully considered the submissions and evidences on record.

6. The issues which arise for decision in this appeal are:

- i. Whether the imported Clear Float Glass, is classifiable under CTH 70051090 as declared/self-assessed by the Appellant or under CTH 7005 2990 as re-classified/re-assessed by the Department in terms of Chapter Note 2(c) to Chapter 70 of Customs Tariff Act, 1975?
- ii. Whether the Appellant is eligible for FTA benefit under Sl. No. 934 of Notification No. 46/2011-Cus dated 01.06.2011? and

iii. Whether Extended Period is invocable or not considering the evidence and facts in this appeal?

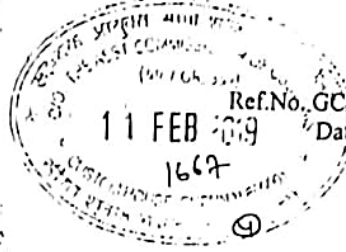
7. We find that the appellant had imported Clear Float Glass (CFG) from Malaysia through Chennai Seaport by declaring the classification under CTH 7005 1090 and availing FTA benefit under Sl. No. 934 of Notification No. 46/2011-CUS dated 01.06.2011 by furnishing the required Certificate of Origin (COO) in terms of Customs Tariff (Determination of Origin of Goods Under the Preferential Trade Agreement Between the Government Of Member States of ASEAN and Republic of India) Rules, 2009. The department, based on an audit objection, rejected the classification declared by the Appellant and re-classified the imported goods under CTH70052990 denying the benefit of Notification cited supra which culminated in the issuance of a SCN and the impugned order dated 09.06.2023. The Ld. Advocate for the appellant argued that they have been importing CFG for many years and have been classifying the CFG under 7005 1090 as the imported CFG are non-wired glass, non-tinted and has a thin TIN absorbent layer on one side of the glass. In support of their contention that the imported Clear Float Glass has satisfied the condition of Chapter Note 2(c) to Chapter 70 of Customs Tariff Act, 1975 of having an absorbent reflecting or non-reflecting layer, the appellant has relied on the test report given by CSIR-Central Glass & Ceramic Research Institute, Kolkata which reads as follows : -



सीएसआईआर - केन्द्रीय काँच एवं सिरामिक अनुसंधान संस्थान
196, राजा एसा सी मल्लिक रोड, कोलकाता - 700 032, भारत
CSIR - CENTRAL GLASS & CERAMIC RESEARCH INSTITUTE
196, Raja S C Mullick Road, Kolkata - 700 032, India



From:
Dr. Omprakash Chakrabarti
Chief Scientist & Head
Testing & Characterisation Cell
Tele-Fax: 033-2483 7339



Ref.No. GC/TCC/TR-3069/18-19
Dated, 31st January, 2019

To
Office Of The Commissioner Of Customs
Deputy Commissioner (Group-3)
Custom House No. 60, Rajaji Salai,
Chennai – 600 001.

Sub: Testing of Sample under B/E. No. - 8624044, dt. 26.10.2018

Dear Sir,

Enclosed please find the Test Report (No. GC/3069/TCC/3343-3344/18-19 dated 31.01.2019) of the above mentioned sample, carried out vide your F. No. S.Misc 291/2018-Gr.3, Dt: 28.11.2018.

Kindly acknowledge the receipt of the above.

Thanking you,

रवि सुब्रह्मण्यन

Encl: as above

Yours sincerely,



(Omprakash Chakrabarti)

सूचना
आवश्यक
सूचना
INFORMATION

दूरभाष/Phone : निदेशक/Director : +91 33 2473 5829, कार्यालय/Office : 2473 3469/76/77/96; 2483 7340-46,2483 7349-50
DID Lines : 2483 8079/8082 फ़ैक्स/Fax : (033) 2473 0957,2473 6082,2483 7339,2483 8085 ई मेल/Email : dir_office@cgcri.ros.in
वेब साइट/Website : www.cgcri.res.in



सीएसआईआर - केन्द्रीय काँच एवं सिरामिक अनुसंधान संस्थान
196, राजा एस सी मल्लिक रोड, कोलकाता - 700 032, भारत
CSIR - CENTRAL GLASS & CERAMIC RESEARCH INSTITUTE
196, Raja S C Mullick Road, Kolkata - 700 032, India



TEST REPORT

NO. GC/3069/TCC/3343 - 3344/18-19 Dated: 31.01.2019.	TELEPHONE : 23223288, 24837339, 24733496/97 (Extn. 3288). FAX : (033)-24837339
ISSUED TO :	E-MAIL: testing_cell@cgcri.res.in.
Office Of The Commissioner Of Customs Appraising Group 3 & 4, Custom House No. 60, Rajaji Salai, Chennai - 600 001.	F. No. S.Misc 291/2018-Gr.3, Dt: 28.11.2018. B/E No- 8624044, dt: 26.10.2018. Reg. no. GC/3069/TCC/3343 - 3344/18-19; dt: 03.01.2018.

Description of sample received: Clear Float Glass Sample (as declared by the agency) under B/E No- 8624044, dt: 26.10.2018.

Name of Test(s) Desired: Description, whether sheet glass or float glass, thickness, whether clear float glass, whether processed glass for decorative, industrial or automotive purpose only, whether wired or non-wired glass, whether absorbent, reflecting or non-reflecting layer exists or not and its specification, whether tinted or not with expert opinion.

Name of Test(s) Done: (i) Complete Chemical Analysis & B₂O₃ using methods as mentioned in the report. (ii) Check light test and tin layer test by using tin detector for float glass testing, (iii) Transmission and reflectance spectral measurement using spectrophotometer, iv) Measurement of thickness using screw-gauge following standard procedure.

Report/Result

Page: 1 of 2

Result of Chemical Analysis

Constituents	Mean % wt.	SD	90% Confidence limit for mean			Method used
				±		
SiO ₂	71.49	± 0.02	71.49	±	0.08	Volumetry
Al ₂ O ₃	1.28	± 0.00	1.28	±	0.00	ICP - AES
Fe ₂ O ₃	0.12	± 0.00	0.12	±	0.00	ICP - AES
TiO ₂	0.05	± 0.00	0.05	±	0.00	ICP - AES
CaO	8.91	± 0.01	8.91	±	0.04	ICP - AES
MgO	4.01	± 0.01	4.01	±	0.04	ICP - AES
Na ₂ O	13.80	± 0.02	13.80	±	0.08	ICP - AES
K ₂ O	0.23	± 0.00	0.23	±	0.00	ICP - AES
B ₂ O ₃	traces	---				Volumetry

Continue.....2

Director's Phone निदेशक/Office : +91 33 2473 5829, कार्यालय Office : 2473 3469/76/77/96; 2483 7340-46, 2483 7349-50
DID Lines : 2483 8079/8082 फ़ैक्स/Fax : (033) 2473 0952, 2473 6002, 2483 7339, 2483 8085 ई मेल/Email : dlr_office@cgcri.res.in
Website : www.cgcri.res.in



Report/Result

Page: 2 of 2

Report:

Based on the above test results and analysis, following points can be drawn:

- From complete chemical analysis it can be stated that, the composition of the glass is soda-lime silica based glass containing other minor components as given in the complete chemical analysis report.
- The measured average thickness of glass plate is observed to be 11.74 mm.
- The Tin side is detected under UV illumination using tin detector.
- The glass is float glass.
- The type of glass is clear float glass as per transmission spectral profile with average visible transmission of 87.10 % and the Fe_2O_3 content of 0.12 %.
- It is not tinted glass.
- It is non-wired glass.
- An absorbent layer (Tin) is observed on one side of the glass which is fluorescent under UV illumination.
- It is annealed glass for decorative, industrial or automotive glass.


This Report refers only to the particular Sample(s) submitted for Test and the Sample(s) was / were not drawn by us. This Report also does not give any Information regarding whether it is direct from factory or a processed one.

DISCLAIMER: 1) The Responsibility of the CSIR- Central Glass & Ceramic Research Institute is limited to only technical data on matters referred to in the report. 2) All procedural, legal or operational matters will be the responsibility of the party using this report. 3) This report refers only to the particular sample(s) submitted for test and the sample(s) was/were not drawn by us. 4) This report also does not give any information regarding whether it is direct from factory or a processed one. This report may not be reproduced in full or part, unless written permission for the publication of an approved abstract has been obtained from the Director, Central Glass & Ceramic Research Institute, Calcutta.

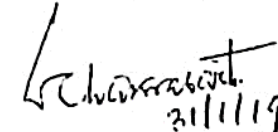
Prepared by:


Abhishek Mukherjee
Technician, TCC

Checked by:


(Ms. Ruma Chakraborty)
Sr. Technical Officer, TCC

Issued by:


(Dr. Omprakash Chakrabarti)
Chief Scientist & Head TCC

Telephone : निर्देशक Director : +91 33 2473 5829, कार्यालय Office : 2473 3469/76/77/96; 2483 7340-46, 2483 7349-50
DID Lines : 2483 8079/8082 फ़ैक्स Fax : (033) 2473 0957, 2473 6082, 2483 7339, 2483 8085 ई मेल Email : dir_office@cgcri.res.in
वेब साइट Website : www.cgcri.res.in

The above Report clearly indicates that the imported Clear Float Glass is a non-wired glass and not tinted which is having an absorbent layer on the Tin side which is fluorescent under UV illumination. The Clear Float Glass imported is annealed glass and meant for decorative, industrial or automotive glass.

8. We notice that these proceedings were initiated as a result of CAG's audit objection and CBEC had replied in detail legally justifying the classification of CFG under CTH 70051090. As the Department itself was of the view that the CFG is rightly classifiable under CTH 70051090, the action initiated by the Department appears to be contrary to its action taken report in reply to the CAG.

9. It has been argued that the only requirement for CFG to get classified under 70051090 is that the CFG shall have an absorbent reflecting or non-reflecting layer, which is undisputedly present in the instant case and the same, is evidenced by test reports issued by the notified Government Agency *viz.*, CSIR-CGCRI. Further, a reference was made to an RTI application addressed to CSIR wherein it was clarified that all the float glasses tested for Customs by them has a tin layer on one side of the float glass which is absorbent and non-reflective as per the test report of the said Agency.

10. We find that the issue of classification of CFG is no more res integra since the issue and identical arguments submitted by litigants were already elaborately dealt with in the Orders of the Kolkata Tribunal *vide [Final Order Nos. 77460-77462/2023 dated 03.11.2023]* and Chennai Tribunal *vide [Final Order No. 40352/2024]* in the case of *M/s. Bagrecha Enterprises Ltd. Vs. Commissioner of Custom, Chennai* wherein it was held that the Clear Float Glass is more appropriately classifiable under CTH 7005 1090 of the Customs Tariff Act, 1975 and the relevant paras have been reproduced below for the sake of convenience:-

"9.1 Before proceeding to determine the appropriate classification of imported CFG, it would be relevant to reproduce rival tariff entries with the relevant Chapter Note 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	m ²	10%	-
	-			
7005 10 90	--- Other	m ²	10%	-
	- Other non-wired glass :			
7005 21	-- Coloured throughout the mass (body tinted) opacified, flashed or merely surface ground :			
7005 21 10	-- Tinted	m ²	10%	-
	-			
7005 21 90	-- Other	m ²	10%	-
	-			
7005 29	-- Other :			
7005 29 10	-- Tinted	m ²	10%	-
	-			
7005 29 90	-- Other	m ²	10%	-
	-			
7005 30	- Wired glass :			
7005 30 10	-- Tinted	m ²	10%	-
	-			
7005 30 90	-- Other	m ²	10%	-
	-			

Chapter Note 2(c) to chapter 70 read as follows:-

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

(a) glass is not regarded as "worked" by reason of any process it has undergone before annealing ;

(b) cutting to shape does not affect the classification of glass in sheets ;

(c) the expression "absorbent, reflecting or non-reflecting layer" means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infra-red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass."

9.2 *It is evident from the manufacturing process that the CFG manufactured as above has a microscopically thin coating of metal layer, namely TIN on one side of the CFG, which is known as "Tin Side". Further it is an undisputed fact in this proceeding that the imported CFG are non-wired and non-tinted. This leaves us to ascertain whether such microscopically thin Tin Coating appearing on the TIN side is an absorbent, reflecting or non-reflecting layer to get classified under Tariff item 7005 1090.*

9.3 *It is already on record that the Department have drawn samples and tested the same with the Government notified laboratory namely CSIR-CGCRI, Kolkata which had reported that the imported CFG sample is having a microscopically thin coating of Metal, namely TIN, and it is an absorbent/non-reflective layer. This fact is also not in dispute in this proceeding. However, the SCN alleges that such absorbent reflective tin layer present in the CFG is obtained by natural phenomena during the manufacturing process and not by way of a separate coating process after manufacture of CFG and hence, the imported CFG would not merit classification under tariff item 70051090. The Ld. Adjudicating Authority has confirmed the above proposition in the impugned order.*

9.4 *But, the Ld. Advocate argued that as per CTH 7005 to get classified under Chapter Heading 70051090 of CTA, CFG shall be a non-wired glass, having an absorbent, reflecting or non-reflecting layer of metal. The imported CFG is non-wired is not in dispute. Entire dispute centres around whether the imported goods are having an absorbent layer or not in terms of Chapter Note 2(c) of Chapter 70 of the Customs Tariff Act, 1975. As per Chapter Note 2(c) of Chapter 70 what needs to be demonstrated is that the CFG has 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."*

9.5 *The Ld. Advocate has further submitted that it is evident from the manufacturing process explained above as well as the test report referred above, that the CFG is having a microscopically layer of metal, namely tin, which is an absorbent/non-reflective layer as contemplated in the above referred Chapter note, and it was an admitted fact in Paragraphs 11 and 12 of the Show Cause Notice.*

9.6 *It was further contended that though the Ld. Adjudicating Authority accepts that CFG has an absorbent layer of tin on one side, he proceeds to*

give a finding that such layer of tin is not the result of applying any coating on the CFG but of a natural phenomena in the manufacture of CFG which inevitably introduces tin by thermal diffusion into one side of the glass. In other words, the Ld. Adjudicating Authority tosses the audit objection of CRA that the absorbent reflecting or non-reflecting layer is available only on the tin side of the CFG and not on the air side of the CFG.

9.7 The advocate would submit that, neither the tariff heading nor the Chapter Note warrants nor mandates that the absorbent reflecting or non-reflecting layer shall be on which side of the CFG. In other words, the only requirement for CFG to get classified under 70051090 is that the CFG shall have an absorbent reflecting or non-reflecting layer, which is undisputedly present in the instant case and the same, is evidenced by test reports issued by the notified Government Agency viz., CSIR-CGCRI as many as more than 40 test reports pertaining CFG imports through various Custom Houses. Further, the Ld. Advocate referred to an RTI application made to CSIR wherein it was clarified that all the float glasses tested for Customs by them since 2017 till 17.07.2023 has a tin layer on one side of the float glass which is absorbent and non-reflective. [CSIR-Central Glass and Ceramic Research Institute's letter dated 17.07.2023. (Page No. 43 of Synopsis filed)]

9.8 He also submitted that, identical goods manufactured by domestic manufacturers viz., Saint Gobain have also classified the goods under CTH 7005 1090 and assessed accordingly both for domestic clearances and exports.

9.9 We find that Department's insistence of absorbent layer to be only on the air side for its classification under CTH 70051090 was vehemently contested by the counsels for the appellant and they submitted that, neither the tariff heading nor the chapter note provides for a requirement of such coating on any prescribed side and instead, on a plain reading of the tariff entry and the chapter Note 2(c) would only envisage that the CFG should have an absorbent, reflective or non-reflective thin microscopical layer for the purpose of classification under tariff item 70051090, which is very much present and remains undisputed. It was submitted that it is not permitted for the Ld. Adjudicating Authority to add or amend either tariff or chapter notes, to suit revenue's benefit. The above contentions are convincing as in matters of classification, a simplicitor and straight forward approach is paramount unless there is an anomaly.

10. We also note that in the appellant's own case on the very same issue, the co-ordinate bench of this Tribunal at Calcutta vide their Final Order No. 77460-77462/2023 reported in [2023 (11) TMI 485 CESTAT KOLKATA] has held that the CFG is rightly classifiable under tariff item 7005 1090. The relevant Paragraphs read as follows:-

"16. We find that there is no dispute that the impugned goods is non-wired glass. By conjoint reading of the above note 2(c) and the manufacturing process, it can be inferred that CFG would have microscopical layer of metal, namely tin, which is an absorbent

layer as contemplated under the above said Chapter Note 2(c). Hence, the correct classification of the impugned goods is under CTH 7005 1090 of Customs Tariff Act.

17. We further find that the manufacturers in India of the identical goods namely M/s. Saint-Gobain India Pvt. Ltd., M/s. Goldplus Float Glass are manufacturing and clearing CFG under CTH 70051090 of the CTA and the same has been accepted by the department.

18. We further find that the impugned proceedings were initiated against the appellant on the basis of Audit Para holding that the Float Glass invariably a layer of Tin on one side, which does not mean that all Float Glass to be classifiable under 7009 1090.

19. We find that the appellant sought reply under RTI dated 17.07.2023, wherein the question was raised that it is observed that in some of the Report, no other layer other than Tin layer is found on one side of the Glass which is fluorescent is mentioned. Whether such layers are reflective or notreflective and whether such layers are absorbent or not? The reply is given as (a) not-reflective and (b) absorbent (UV).

20. If the same is considered then the said clarification is satisfying the Chapter Note 2(c) of Chapter 70 of the Customs Tariff Act and the said Report has not been relied upon by the adjudicating authority while adjudicating the case. Therefore, the impugned order is bad in law.

21. We further take note of the fact that in the case of M/s. Suraj Constructions (supra), the Advance Ruling Authority has examined the issue and observed as under:-

"7. I have considered all the materials placed before me for the subject goods. I have gone through the submissions made by the applicant during personal hearing and the comments of the jurisdictional Principal Commissioner/Commissioner of Customs, on the impugned subject matter. The subject goods for which advance ruling has been sought, their characteristics, manufacturing process, utility etc. are already mentioned in the aforementioned paras. The subject goods are clear float glass, with an absorbent layer, which is fluorescent under UV illumination. The subject goods are not wired, tinted or green in colour. The heading 7005 10 covers non-wired glasses having an absorbent, reflecting or non-reflecting layer and the headings 7005 21 to 7005 29 deal with non-wired glasses which are tinted having absorbent layer, opacified, flashed etc. Therefore, the subject goods are appropriately covered under sub-heading 7005 1090. Based on the applicant's submission about the country of origin and the manufacturer of the subject goods, benefits under sr.no.934 of the table annexed to the exemption notification no.46/2011-Cus., dated 01.06.2011, would be available, subject to the condition that in respect of each case of import, the applicant would have to produce evidence before the Deputy/Assistant Commissioner of Customs as to the origin of subject goods.

8. On the issue of whether the benefit of the said exemption would be available even if the sub-heading mentioned in the COO differs for 70051090, the applicant & their authorized representative were asked to explain the context of the said question. It appears that the subject goods are being exported from Malaysia under its code 70052990. The applicant has submitted a copy of the letter ref. no.MITI.700-2/26 Jld.6(38) dated 30.04.2021 from the Director of Trade and Industry Cooperation, Ministry of International Trade and Industry (MITI, hereinafter), stating that they had been requesting the clear float glass exporters to provide an advance ruling/document of the Government of India or from Royal Malaysian Customs confirming the correct HS code. It appears that M/s. Kibing Group (M) Sdn. Bhd. has obtained a letter from the Royal Malaysian Customs dated 12.03.2021 confirming the classification of clear float glass under HS code 7005.10.09, and therefore, MITI has allowed KGM to apply for a COO with exporting and importing HS code of 70051090. This letter goes on to state that unless M/s. Xinyi produces a similar

document, their application with different exporting and importing tariff code cannot be approved.”

22. Further, in the case of M/s. Chandrakala Associates (supra), again the Advance Ruling Authority has examined the issue and observed as under:-

“10. I have considered all the materials placed before me for the subject goods. I have gone through the submissions made by the applicant during personal hearing. In the absence of any comment from the jurisdictional Principal Commissioner/Commissioner of Customs, on the impugned subject matter, I proceed to render an advance ruling based on materials available on record. The subject goods for which advance ruling has been sought, their characteristics, manufacturing process, utility etc. are already mentioned in the aforementioned paras. The subject goods are clear float glass, with an absorbent layer, which is fluorescent under UV illumination. The subject goods are not wired, not tinted or not green in colour. The heading 7005 10 covers nonwired glasses having an absorbent, reflecting or non-reflecting layer and the headings 7005 21 to 7005 29 deal with non-wired glasses which are body tinted, opacified, flashed etc. Therefore, the subject goods should more appropriately be covered under sub-heading 7005 1090. While prima facie, based on the applicant’s submission about the country of origin and the manufacturer of the subject goods, exemption notification no.46/2011-Cus., dated 01.06.2011, appears to be available, in terms of the said notification, in each case of import the applicant would have to produce evidence before the Deputy/Assistant Commissioner of Customs to substantiate the origin of subject goods.

11. In view of the above discussions, I hold that the subject goods ‘Clear Float Glass’ having an absorbent layer merit classification under heading 70.05 and more specifically, under subheading 70051090 of the first schedule to the Customs Tariff Act, 1975. The said imports shall also be governed by the provisions of Notification No.37/2020- Customs (ADD), dated 11.11.2020. The benefit of exemption notification no.46/2011, dated 01.06.2011 would be determined in accordance with conditions laid down in the said notification.”

23. Further, the Ld. Commissioner (Appeals) in the case of M/s. Asahi India Glass Limited (supra) has examined the issue and observed as under:-

“5.4 Now coming to merits of issue, the contesting entries viz 70051010 (as declared by the appellant) and 70052110 (as per the assessing Authority) from the Customs Tariff are reproduced below:-

Upto 31.12.2019

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.
700510	-Non-wired glass, having an absorbent, reflecting or non-reflecting layer.
70051010	--- Tinted

70051090	--- Other
	- Other non-wired glass;
700521	-- Coloured throughout the mass (body tinted) opacified, flashed or merely surface ground:
70052110	--- Tinted.

It is pertinent to mention that w.e.f. 01.01.2020 (as amended vide Finance Act, 2019 and made applicable as per Notfn.89/2019-Cus (N.T.), dated 10.10.2019), the sub-heading 700521 was amended to read as under:-

"...Coloured throughout the mass (body tinted), opacified, flashed or merely surface ground."

Thus, specifically a comma was inserted in the said sub-heading. The said amendment was not given retrospective effect.

5.4.1 Chapter Note 2 of chapter 70 is reproduced below –

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

(a)

(b)

(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."

5.4.3 A Plain reading of CTH 7005 would reveal that 700510 covers non-wired glass having absorbent, reflecting or non-reflecting layer. A clear conclusion is that single clash entry after 70051090 i.e. "... other non-wired glass" would cover non-wired glasses without absorbent, reflecting or non-reflecting layer.

5.4.4 The Adjudicating Authority has held that CTH 700521 covers glass which may or may not have absorbent or reflecting or non- reflecting layer. The Adjudicating Authority has contended that the impugned goods are coloured through out body (i.e. body tinted) and thus covered by CTH 700521 and articles of CTH 700521 may or not have absorbent/reflecting layers. This interpretation itself is erroneous in light of scheme of CTH under 7005 and explanation given in 5.4.3 above.

5.4.5. It is settled position of law that burden of proof of classification is on the Department. The classification has been changed on the basis of Test Reports. I have carefully going through the copies of Test Reports from CGCRI, Kolkata. I find that said Test Reports are not conclusive enough to reject the declared classification by the Appellant. Rather, the said Reports do mention the presence of Layer. The exact findings of some of the Test Reports in this regard are as under:-

"c) The Tin Side is detected under UV illumination using the detector.

i) An absorbent layer (Tin) is observed on one side of the glass which is fluorescent under UV illumination.

j) The glass is found to be coated with ZnSO4 film on opposite to tin side as protective layer."

The Test Reports have clearly established that impugned goods were having absorbent layer (Tin) on one side. This fact is not disputed. Accordingly, I find absolutely no reason to exclude these goods from 700510 & classify them under 700521. Rather, the said goods viz. "Light Green Float Glass/Coloured Float Glass" with absorbent Layer of Tin on one side would merit classification under Sub-heading 7005 and more precisely under CTH 7051010."

24. As from the facts of the case, it is clear that the Clear Float Glass imported by the appellant are absorbent and having non-reflecting layer, in that circumstances, the appellant has qualified the merit classification under CTH 7005 1090, therefore, we hold the correct classification of the Clear Float Glass imported by the appellant under the impugned Bills of Entry is classifiable under CTH 7005 1090. Consequently, the appellant is entitled for benefit of Sl. No. 934 (I) of Notification No. 46/2011-CUS dated 01.06.2011

25. In view of this, we conclude that the impugned orders deserve no merit, hence, the same are set aside and the appeals are allowed with consequential relief, if any. "

11. In the instant case, a conjoint reading of the Tariff Heading, relevant Chapter Note, test reports and the manufacturing process would establish that there is a thin TIN layer which is absorbent and non-reflective answering the tariff heading/chapter note in the affirmative, thus meriting classification under tariff item 70051090. As rightly contested by the appellants, there is no legal prescription as to which side of the CFG should have such an absorbent, reflective/non-reflective layer. We are unable to persuade ourselves with the Revenue's contention which is based on contested CRA objection that the presence of metal layer should be by way of conscious coating and on the "Air Side" of the CFG. It is relevant to note here that on one hand the revenue themselves have not accepted the CRA objection, which is the basis for these proceedings, and are contesting the CRA objection. Thus, we conclude that the classification adopted by the appellant under tariff item 7005 1090 is correct and the classification determined in the impugned order is without any basis and hence not sustainable. Appreciating the ratio of the decision of Kolkata Tribunal in the Appellant's own case where facts are identical, we hold that the impugned Order-in-Original No. 101620/2023 dated 11.04.2023 cannot be sustained and so ordered to be set aside.

12. As such, we confirm the classification of the imported CFG under tariff item 7005 1090 and consequently, the appellants are rightly entitled for the benefit of Sl.No. 934 of Notification No. 46/2011-cus., as claimed by them subject to fulfilment of production of valid Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of Member States of ASEAN and Republic of India) Rules, 2009."

As submitted by the Ld. Counsel, the issue of classification of imported CFG from Malaysia by many importers has been settled *vide* Final Orders Nos. 40956, 40957&40958/2024 dated 23.07.2024 and Final Order No.

40960/2024 dated 24.07.2024 issued in respect of M/s. Swastic Safety Glass, M/s. Enviro Safety Glass, M/s. Rider Glass Industries P. Ltd. and M/s. Navakar Impex Pvt. Ltd. In compliance to judicial discipline and by appreciating the ratio of the decision as cited *supra*, the issue of classification of Clear Float Glass is decided in favour of the appellant. Thus, the appellant succeeds on merits.

11.1 On the issue of invocation of extended period, we have considered the Ld. Counsel's submissions that the appellant has been importing Clear Float Glass for a long time by claiming classification under Tariff item 7005 1090 and there was no dispute in this regard except for the proceedings initiated in view of the CRA objection raised. It has been submitted that even after the CRA objection for period under dispute, the provisional assessments in respect of some Bills of Entry were yet to be finalised while in respect of other bills classification under CTH 7005 1090 was allowed. In the absence of any finding of positive suppression by the Appellant in the impugned order, we find that the allegation of wilful misclassification and intention to evade duty by the appellant is not at all tenable and misclassification could not be equated with misdeclaration within the meaning of Section 28(4) of the Customs Act, 1962 as it is a settled law that once the goods are correctly described, the *bona fide* adoption of classification by the importer cannot be equated with misdeclaration as the importers are not expected to be fully conversant with the schedule to the Customs Tariff Act, 1975. In respect of this contention, the Ld. Counsel has relied on the cases of *Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]* and *M/s. Miot Hospitals P. Ltd. Vs. Commissioner of Customs, [2023 (9) TMI 464-CESTAT Chennai]*.

11.2 From the above facts, we find that the issue has been very much in the know of the revenue as the Department itself was of the view that the CFG is rightly classifiable under CTH 70051090 as identical imports of CFG were initially assessed provisionally in terms of Section 17 of the Customs Act, 1962 and were later finalised after the receipt of the test report from CGCRI-CSIR. The Department which was of the view that the CFG is rightly classifiable under CTH 70051090, changed its stand and initiated action consequent to raising of the audit objection by CAG. After finalisation of assessments relying on the Test Report, it is not open for the Department to invoke the larger period of limitation as these assessments have undergone the rigours of provisional assessment and subsequent finalisation for the same product and for the same reason, we are of the considered view that the appellant has not suppressed or mis-declared any fact and the proposal to reclassify was only on the basis of interpretation made in the CRA objection and not on account of any shortcoming on the part of the appellant. Therefore, invoking extended period in these proceedings, either for demand of duty or for imposition of mandatory penalty is not at all sustainable. So, the issue of limitation is decided in favour of the appellant and consequently the order of confiscation and imposition of fine and penalties are set aside.

12. In view of the aforesaid discussion, we hold that the imported Clear Float Glass is more appropriately classifiable under Customs Tariff Heading 7005 1090 of the Customs Tariff Act, 1975 and thus is eligible for

exemption of the benefit of the Notification No. 46/2011-Cus dated 01.06.2011 (Sl.No. 934) and the impugned Order-in-Original No. 102220/2023 dated 09.06.2023 is set aside.

13. Consequently, the appeal filed by the appellant is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 21.08.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

MK