**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-22451-2021 (O&M)
Date of decision: 11.11.2021**

Asahi India Glass Ltd. .... Petitioner

Versus

Commissioner of Customs and another .... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Jagmohan Bansal, Sr. Advocate with
Mr. Kapish Chawla, Advocate
for the petitioner.

(Through Video Conferencing)

****

AJAY TEWARI, J (ORAL)

CM-16778-CWP-2021

Allowed as prayed for. Documents taken on record, subject to all just exceptions.

CWP-2241-2021

This petition has been filed against the speaking order dated 04.09.2021 (Annexure P-18), whereby it has been declared that the goods have been mis-classified. The petitioner is an importer of glass. It had classified its import under entry 700510, i.e. 'non wired glass, having an absorbent, reflecting or non-reflecting layer'.

By the impugned order however, it has been held that the goods imported by the petitioner would be covered by entry 700521, which is 'other non wired glass coloured through the mass (body tinted), opacified, flashed or merely surface ground'.

The precise contention of the learned senior counsel is that the reports on which this finding was based did not accompany the notice. The second arguments raised by learned counsel is that the notice merely directed it to justify the classification, but did not mention any further consequences or that it would not be held entitled to the benefit of the notification No.46/2011-Cus dated 01.06.2011 and charged between 0 to 5 per cent but would instead be charged at 10 per cent.

At this stage, it would be appropriate to quote the entire notice:-

> *"2. In this context, it is to inform you that in the Test Reports received from CSIR-Central Glass & Ceramic Research Institute (CGCRI), Kolkata of samples of the imported goods by M/s Asahi India Glass Limited, the following have been pointed out:*
>
> *(i) The glass is float glass;*
>
> *(ii) It is a non-wired glass;*
>
> *(iii) The glass is transparent glass without opacified or surface ground:*
>
> *(iv) The glass is coloured throughout the mass (body tinted);*
>
> *(v) An absorbent layer (Tin) is observed on one side of the glass which is fluorescent under UV illumination;*
>
> *(vi) The Tin side is detected under UV illumination using Tin director;*
>
> *(vii) The glass is found to be coated with ZnSO4 film on opposite to tin side as protective layer.*
>
> *3. There is significant difference between the "tinted glass" and "coloured tinted glass". The tinted glass refers to any glass that has been treated with a material such as a*

film or coating which reduces the transmission of light through it. Glass can be tinted with various types of coating, which block and/or reflect different amount and types of light according to the needs and preferences of the customer. However, coloured throughout mass (body tinted) means that primary the colour was added [common colours include grey and bronze tints made from iron, cobalt [NiO & CoO] and selenium [ScO], green tints made with iron [Fe2o3], and blue tints made from cobalt and iron [CoO]] during process of melting and later on before annealing various types of coating can be done. The colouring of float glass is not a layering of float glass. Here it is important to mention that no further work can be conducted in this chapter heading after annealing process of Glass.

4. On the basis of test reports and investigation, it appears that the imported goods were "Green Float Glass", means the imported float glass is primarily-Coloured throughout the mass (body tinted), having an absorbent layer (it may or not mandatory in this chapter heading 700521), however, it is mandatory in chapter heading 700510, presence of molten tin is basic requirement in making of Float Glass, without this process, the Float Glass cannot be made. This process was done for unique surface ground. It is also stated by the examiner of test report that in the sample tin was present but it is not payer of coating. It is part of process for making a float glass a molten tin surface is required. It is not opacified (it may be opacified through various coating such as enamel coating etc).

5. Further, on reading of Chapter Notes under Chapter 70 (Glass and Glassware) under point 2 (c)-the expression "absorbent, reflecting or non-reflecting layer" means a

> *microscopically thin coating of metal or of a chemical compound (for example metal oxide) which absorbs, for example, infra red light or improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass.*
>
> *6. In view of the above, you are requested to justify your classification of subject imported goods under CTH 700510."*

Thereafter, the petitioner filed a short reply which is also quoted hereinabove:-

> "*1. In response to our letter of personal hearing dated 2.7.2021 on the above cited subject, vide your letter dated 16.07.2021 and email dated 30.7.2021, we have been provided some justifications and test reports dated 21.5.2019. We have been once again called upon to justify our classification of subject goods under CTH 70051010 on a hearing fixed on 04.08.2021.*
>
> *2. As pointed out in our various communications in the past, the classification CTH 70051010 issue was settled in our favour after detailed examination by the department. Further, vide our letter dated 30.7.2021, we prayed that a show cause notice may be issued duly supported by all investigation details specifically the different test reports available at all the ICD's where clearances had been made. We had also requested that all relied upon documents as well as non-relied upon documents may also be provided. We would be happy to file a comprehensive reply within 30 days thereafter to justify our classification of subject goods under CTH 70051010.*
>
> *3. Without prejudice to above, it may be reitereated that we are not aware of any change either in the product*

characteristics, chapter heading, chapter notes or section notes or any exemption notification, which could necessitate reconsideration of the settled classification. There is also no change in the interpretation by virtue of any court judgment etc. which would necessitate the review of the earlier decision, determinations and orders. Further, the decision, determinations and orders taken earlier have also not been appealed by the department.

4. It may also be pointed out that the issues raised in there cent communications by your office are identical to the issues that were raised at other jurisdictions of your own department, which were ultimately settled in our favour after detailed examination.

5. In the aforementioned premises, it is most respectfully prayed that classification under CTH 70051010 may be accepted as it stands approved for past several years after due consideration of test reports, investigation reports and submissions made by our company.

6. We also pray that till such time a consolidated show cause notice is issued with all the RUD's and Non-RUD's, hearings fixed by the department cannot be treated as an effective opportunity. As stated earlier, we would be happy to file a comprehensive reply within 30 days to justify the classification of the subject goods under CTH 70051010, and thereafter appear for a personal hearing through our legal representative."

It would be seen that in the reply, the petitioner had only been making demands for documents and trying to give a legal colour to a purely factual aspect but did not even bother to state that in fact the material imported by them was not full body (other non wired glass coloured through the mass (body tinted), opacified, flashed or merely surface ground) and covered by entry 700521, or how it would be said to be covered by entry 700510. It is thereafter that the impugned order has been passed.

We find that the impugned order is extremely detailed and has given entire analysis not only of the product imported by the petitioner, but also quoted all the tests reports etc. We fail to understand why the petitioner did not file any detailed reply or did not submit any report from some other laboratory which may have supported the stand of the petitioner. It is not the case that the relief sought cannot be granted by the Appellate Authority. In the facts circumstances of the case, we are not inclined to interfere under the extra ordinary jurisdiction of this Court and dismiss this writ petition.

Since the main case has been decided, the pending application, if any, also stands disposed off.

(AJAY TEWARI)
JUDGE

(PANKAJ JAIN)
JUDGE

11.11.2021
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : No