

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
REGIONAL BENCH
COURT NO. III

Customs Appeal No. 399 of 2011

Arising out of OIA-201-202/2011/Cus/Commr(A)/AHD
Passed by CC - AHMEDABAD

WITH

Customs Appeal No. 400 of 2011

Arising out of OIA-201-202/2011/Cus/Commr(A)/AHD
Passed by CC - AHMEDABAD

Date of Hearing: 05.04.2019

Date of Decision: 05.07.2019

M/s JAJOO ARCHITECTURAL GLASS PVT LTD
PLOT NO 1310, GIDC ESTATE, HALOL
PANCHMAHAL, GUJARAT

Vs

COMMISSIONER OF CUSTOMS
AHMEDABAD, CUSTOMS HOUSE
NR AIR, NAVRANGPURA
AHMEDABAD, GUJARAT

Appellant Rep by: Shri W Christian, Adv.

Respondent Rep by: Shri T K Sikdar, AR

CORAM: Ramesh Nair Member (J)

Raju Member (T)

Cus - The assessee-company filed BoE for clearance of imported *Extra Float Glass* - Through the relevant Notfn, Anti Dumping Duty (ADD) was imposed on Float glass of thickness 2mm to 12mm (both inclusive) of clear as well as tinted variety (other than green glass), processed glass meant for decorative, industrial or automotive purposes falling under heading 7005 of the first schedule to the Customs Tariff Act, imported from China PR & Indonesia - While the assessee did contend that the glass imported by it would not attract ADD, it nevertheless paid such duty under protest - On appeal, the Commr.(A) observed that the *Extra Clear Float Glass* bore the characteristics of *Clear Float Glass* and that merely appending 'extra' in the former would not lead it to be treated as the latter - It is also not a case that the goods were specifically excluded for non-levy of ADD under the relevant Notfn - It was also held that the establishment of causal link between dumping and injury could best be done by the Designated Authority - Hence the present appeals were filed by the assessee against such O-i-A.

Held: As per the literature produced, the *Extra Clear Glass* is altogether a different variety of glass - The glass-making technique is different, as is the raw material used, in the sense that it contains less Iron - There is difference in the prices of both types of glasses - The assessee also produced a certificate issued by the Federation of Safety Glass, stating that both types of glass in issue here, are different from each other & that the *Extra Clear Glass* is not manufactured in India - In such a situation, there is no reason to hold that the import of such goods would cause any injury to the domestic industry - When goods are not manufactured in India, there is no reason to cause injury to the domestic industry - Hence such goods are eligible to be imported without payment of any ADD - Hence the O-i-A merits being set aside: CESTAT

Assessee's appeal allowed

Case law cited:

Indian Refractory Makers Association 2000 (119) ELT 319 (TRI)... Para 2

FINAL ORDER NOS. A/11068-11069/2019

Per: Ramesh Nair:

The present appeals have been filed against Order-in-appeal No. 201-202/2011/CUS/Commr (A)/AHD dated 09.06.2011 passed by the Commissioner of Customs (Appeals), Ahmedabad. Since the issue involved in both the appeals are common, the same are being taken up together for disposal. The brief facts of the case are that the Appellant had filed Bill of Entry No. 2385097 dated 02.12.2010 and BE No. 2442001 dated 17.12.2010 for clearance of imported "Extra Float Glass". Vide Notification No. 4/2009-Cus dated 06.01.2009 anti dumping duty was imposed on the imports of Float glass of thickness 2mm to 12mm (both inclusive) of clear as well as tinted variety (other than green glass), processed glass meant for decorative, industrial or automotive purposes falling under heading 7005 of the first schedule to the Customs Tariff Act, originating in or exported from the Peoples Republic of China and Indonesia and imported into India. The Appellant contended that since the glass imported by them is of extra clear variety which is different from ordinary float glass and moreover such extra float glass is not manufactured in India, hence the anti dumping duty is not imposable on their imports. The Appellant therefore paid the "Anti dumping" duty under protest in respect of both the Bill of Entry and filed appeals before the Commissioner (Appeals) against such assessment and imposition of Anti dumping duty. The Appellate Commissioner, however rejected the appeals holding that "I find that 'Extra' means 'in addition to', 'something more superfluous'. The imported 'Extra Clear Float Glass' have the characteristics of 'clear float glass'. Technical specification, though do indicate that 'extra clear float glass' is a low iron glass, by reducing iron content in Glass, the clarity/ light transmission is increased. Clear float glass is free from encumbrance, where light can be transmitted. I therefore find that this explanation given by the Appellant does not lead to explain

that the impugned goods cannot be treated as 'clear float glass'. Mere calling it 'extra clear' would not take it out from the ambit of the Notification No. 4/2009-Cus dated 06.01.2009. It is also not a case that the impugned goods are specifically excluded for non levy of anti dumping duty under the notification No. 4/2009-Cus". That "the another contention of the Appellant is that 'Extra Float glass" is not manufactured in India, there is no injury to the domestic industry, by importing this item, and hence Anti dumping duty is not imposable in this case. The exercise to establish casual link between dumping and the injury is being done by the designated authority as Anti Dumping Duty is imposed after investigations by the Designated Authority. This issue, however, can best be addressed by the Designated Authority who after verification and investigation can decide the issue of injury to domestic industry or absence thereof." Aggrieved, the Appellant has filed the present appeals.

2. Sh. W. Christian, Ld. Counsel appearing for the Appellant submits that the impugned order is incorrect. The Appellate Authority has failed to observe that the Anti Dumping duty is on "clear Float glass" and not on "Extra clear float glass". He invites our attention to technical literature which shows that while ordinary clear glass of 4 mm has light transmittance of 89% and 12mm has 85%, the 4 mm extra clear glass has light transmittance of 91.6% and 12mm has 91% and thus there is vast difference in the quality and price of the goods. The technical specification of both glasses also differs. Extra clear glass is a low iron glass by reducing the iron content in glass and the clarity/ light transmission is increased thereby. That by floating process, different types of float glass can be produced by further processes like Annealed glass, toughened glass, laminated glass, coated glass, mirrored glass, flattened glass, extra clear glass. The anti dumping notification covers only two glasses i.e. 'clear' and 'tinted' and not "Extra Clear". The extra clear glass is a specific type of melted glass and it differs from other types of glass by its basic raw material composition. It is made up of very low iron content in order to minimize its sun reflection properties to let in as much light as possible. It is most particularly used for solar energy applications where it is important that the glass covers lets light through to reach the thermal tubes or photovoltaic cells. Anti reflective properties can be further increased by applying a special coating on the low iron glass. He submits that it is not simply the name which is different but technical specifications, raw materials, process of manufacture, end uses and characteristics of extra clear glass are widely different from the ordinary float glass and so the subject notification cannot be applied to the goods in question. He further submits that since there are no manufacturers of "extra clear glass" in India, hence there is no question of any injury to the domestic industry by its importation and hence anti dumping duty is not imposable on import of "Extra clear float glass". He relies upon the Federation of Safety Glasses, certificate in this regard. He relies upon the Tribunal order in case of *Indian Refractory Makers Association 2000 (119) ELT 319 (TRI)* that if

dumped import of an article does not or is not capable of causing injury to the domestic industry, imposition of Anti Dumping duty is not warranted as it only increases cost to Indian importer without affording any protection to Indian manufacturers of like article. He also points out that even there is difference in prices of between "clear' and "extra clear" He shows from the calculation that where the price of 'extra clear glass' is 880/- the cost of clear glass is 660/- and in such case nobody would import if the glass are same. They have paid extra amount for clarity. To support his point he draws comparison between the prices of domestic manufacturer of "Clear glass" and price of imported "extra clear float glass".

3. Per contra Sh. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing for the revenue supports the impugned order and reiterates the findings of the impugned order.

4. Heard both the sides and perused the records. Vide Notification No.4/2009–Cus dated 06.01.2009, the Anti Dumping duty has been imposed upon 'clear' and 'tinted' variety of float glass which is imported into India which is originated or imported from Peoples Republic of China and Indonesia. We find that as per the literature produced before us the "extra Clear glass" is altogether a different variety of glass. The glass making technique and the raw material itself are different as the clear glass contains more iron, the 'extra clear glass' contains less iron. From the literature on such glass manufacturing from STEGBAR Data Sheet VI we find that a difference in products as well as clarity of vision has been shown. Same has been found from the literature of M/s Pilkington, UK. In case of Clear float glass the visibility is also lower than that of 'Extra Clear float glass". Even the product is separately advertised as Lowiron glass by the companies who are selling it as we find from the brochure of company M/s AGC which sells such products under 'KRYSTAL – KLEAR" Brand. We also find that even there is difference between the prices of both type of glasses as compared to import price of Rs. 880/- per square metre of imported 'extra clear glass', the domestic manufacturer's price of 'clear glass' is Rs. 600/- to 660/- per sq meter. The Appellant has also produced a certificate issued by Federation of Safety Glass certifying that both types of glasses are different and 'extra clear glass' is not manufactured in India. In such situation there is no reason to hold that the importation of such goods would cause injury to the domestic glass industry. The Tribunal in case of *Indian Refractory Makers Association 2000 (119) ELT 319 (TRI)* has held that if dumped import of an article does not or is not capable of causing injury to the domestic industry, imposition of Anti Dumping duty is not warranted as it only increases cost to Indian importer without affording any protection to Indian manufacturers of like article. Thus when the goods are not manufactured in India, there is no reason to cause injury to the domestic industry and the subject imported goods are eligible to be imported without payment of anti dumping duty.

5. We thus hold that the imports are not liable of anti dumping duty and accordingly the impugned orders are set aside. Accordingly the goods shall be assessed without imposition of Anti Dumping duty. The appeals are allowed with consequential reliefs, if any.

(Pronounced in the open court on 05.07.2019)