

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT&amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68</b> <b>FAX.No.02838-271169/62</b>	
File No.	: GEN/ADJ/COMM/104/2022-Adjn-O/o Pr Commr-Cus - Mundra	
Order-in-Original No.	: MUN-CUSTM-000-COM-017-23-24	
Passed by	: K. Engineer Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
Date of order and Date of issue	: 30.11.2023 30.11.2023	
SCN No. & Date	: 1. SCN No. VIII/48-1813/TG Advait/Gr-V/MCH/2021-22 dated 09.02.2022, issued by Commissioner of Customs, Customs. 2. SCN No. 184/2021-22 dated 12.10.2021, issued by Deputy Commissioner of Customs, Group 5M, NCH, New Delhi. 3. SCN No. 434/21-22/DC/Gr.VB/CAC/JNCH, dated 27.09.2021, issued by Deputy Commissioner of Customs, Group 5B/5, (F.I.V), NS-V, JNCH. 4. SCN No. VIII/48-52/ACC/SCN/T.G.Advait/2021-22 dated 04.09.2021 issued by Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad,	
Noticee(s) / Party / Importer	: <b>1. M/s TG Advait India Pvt. Ltd.</b> (IEC-AAFCT9124L) Registered office at A-803, Sankalp Iconic Tower, Opp. Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054  <b>(Communication address-</b> Plot No. PE-42 & 43, Sanand Engineering Estate-2, GIDC, BOL, Tal-Sanand, Ahmedabad-382110 <b>2. Sh. Shalin Sheth,</b> Director, M/s. TG Advait	
<b>DIN</b>	: DIN-20231171MO000000CD91	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम (1)6 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1)के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है -

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”  
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

- उक्त अपील के साथ 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

- अपील ज्ञापन के साथ ड्यूटी/दंड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमाशुल्क अपील (नियम, 1982) और CESTAT (प्रक्रिया (नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

## BRIEF FACTS OF THE CASE

**1. M/s TG Advait India Pvt. Ltd.** (IEC- AAFCT9124L) (*hereinafter referred to as 'the importer' or 'TG Advait' for the sake of brevity*), having registered office at A-803, Sankalp Iconic Tower, Opp. Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054 (Communication address- Plot No. PE-42 & 43, Sanand Engineering Estate-2, GIDC, BOL, Tal-Sanand, Ahmedabad-382110) were engaged in import of 'Optical Ground Wire Cable (OPGW)', 'Optical Fibre Unit (Stainless Steel Tube/ Aluminium Tube with fibre)' and 'Optical Fibre Approach Cable' (hereinafter referred to as 'the said goods')

**2.** An intelligence was received and developed by the Officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as 'the DRI' also) that importer had been importing 'Optical Ground Wire Cable (OPGW)', 'Optical Fibre Unit (Stainless Steel Tube/Aluminium Tube with fibre)' and 'Optical Fibre Approach Cable', which were not made up of individually sheathed optical fibres and therefore the said goods did not merit classification under Custom Tariff Heading 85447090 of the CTA, 1975. Resultantly, the importer was availing undue benefit of concessional rate of duty under the Notification No. 24/2005-Cus dated 01.03.2005 (SL No. 28), while the said goods were appropriately and correctly classifiable under tariff item- 90011000 of the CTA i.e., under '**Optical fibres and optical fibre bundles; optical fibre cables other than those of heading 8544.**

**3.** In furtherance of the investigation, the DRI, vide letter dated 15.06.2020, requested the Deputy Director General (Transmission), Telecommunication Engineering Centre (TEC), Department of Telecommunications, for analysis of the samples of OPGW. The ADG (Transmission), TEC, New Delhi vide e-mail dated 17.06.2020, interalia, informed that: -

- (i) In higher count OPGW Cables, the fibres are not individually sheathed but the bundles of optical fibres are sheathed together with sheathing material.
- (ii) Cladding is integral part of the optical fibre and the same is not sheathing of optical fibres.
- (iii) The dual acrylic coating over the cladding is an integral part of the optical fibre and the same is not sheathing of optical fibres.

**4.** Acting on the above intelligence, the officers of SIIB, Custom House, Mundra on 25.07.2020 examined the live consignment of goods imported by the importer vide Bill of Entry No. 8080922 dated 04.07.2020 and representative samples were drawn vide Panchnama dated 25.07.2020. The samples were forwarded to DRI, DZU by Custom House, Mundra. On physical examination of the samples and photographs, it was noticed that the goods declared as Optical fibre *unit*, contained optical fibers which were **not sheathed individually but a bundle of multiple optical fibres were sheathed together in a metal tube.**

**5.** In furtherance of the investigation, search was conducted by the officers of DRI, Ahmedabad Zonal Unit at the registered preM/s.es of the importer located at A-803, Sankalp Iconic Tower, Opp- Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054 and factory premises of the importer located at Plot No. PE-42 & 43, Sanand Engineering Estate-2, GIDC, BOL, Tal Sanand,

Ahmedabad-382110. During the search proceedings, the documents and electronic devices relevant to the investigation were resumed vide respective Panchnamas dated 17.08.2020.

**6.** In this connection, Statement of Shri Shalin Sheth, Director of the Importer was recorded on 17.08.2020, under Section 108 of Customs Act wherein he *inter-alia* stated as under:-

- (i) that Optical Fibre Ground Wire (OPGW) is used in **Power Transmission Lines with duel function as earth wire which protects Transmission line from Lightning Strikes and Optical Fibre inside performs the function of Data Transmission**. 24F/48F is the numbers of Fibres in the cable where 24F consist 24 Fibres and 48F consists 48 Fibres in the cable;
- (ii) that approach cable is used for the completion with Transmission line to connect/approach FODP Panel which is kept inside the substation. In short, approach cable carries the Optical Fibres from OPGW to substation. Optical Fibre Units are the central member of OPGW;
- (iii) that M/s Jiangsu Tongguang Optical Fibre Cable Co. Ltd., China and M/s. Shanghai Tongguang International Trading Co. Ltd., China are the two main supplier of TG Advait for OPGW cable;
- (iv) that TG Advait has imported **Optical Fibre Unit** and some quantity of OPGW. Through the imported Optical Fibre Unit, they have manufactured OPGW. OPGW is used in Power Transmission Lines, it is used as earth wire in power Transmission line as well it carries telecommunication data for its end users;
- (v) that Since the existing Transmission lines can be useful as economical highway for caring the **Fibre along with function as earth wire**, this replacement as a great economical value to the government. Central Government also providing 50% subsidy under PSDF to State Electricity Boards for this replacement work;
- (vi) that the imported product is Optical Fibre Unit and OPGW which also contain Fibre optics inside. Optical Fibre Units are having individual Fibres coated, cladded, colored and printed individually and then it is jacketed with PVC in bunch of four or six which is further added jelly for protection. The bunch of four or six jacketed wires is enclosed in protective aluminum or stainless steel tubes. This total assembly called optical Fibre Unit which is central member of OPGW. He produced Technical literature of Optical Fibre ground wire (OPGW) Structure;
- (vii). that Optical Fibres are the silica Fibre glass and for its better efficiency and protection it is sheathed/ protected with cladding and coating; Optical Fibres are used in multiple applications for data Transmission;
- (viii). that Optical Fibre individually or in bundle cannot be used for data Transmission without coating and cladding; **they consider coating and cladding as sheathing**; individual fibres are carrying optical data as individual channel because of this sheathing. This sheathing is also protecting, strengthening the optical fibres;
- (ix) that he is not aware of the manufacturing process of Optical Fibre; as per his knowledge main component of an Optical Fibre is Silica Glass;
- (x) that OPGW is finally used in Central Board (Power Grid) and State Board

Transmission Networks; since central board are inviting tenders for OPGW **under CTH 8544 and they believe that this is appropriate heading for OPGW**, so they have imported sub component of OPGW in this heading. He produced a copy of Tender/ Invitation for bids (IFB) published-by M/s Power Grid Corporation of India Ltd. (A govt. of India enterprise) in which they have mentioned in schedule-I the HSN code of OPGW as '85447090';

- (xi). that as per their understanding, each Fibre are coated cladded and carrying optical data as individual channel because of this protection, so optical Fibres are individually sheathed; Colour of optical Fibre is done specifically for its identification;
- (xii) that sheathing of cable is done for purpose of protection, strengthening and insulation/ individualization; Optical Fibre coating and cladding working as protection and maintaining its Fibre optic data purity.
- (xiii) that as per his knowledge, they have never imported OPGW Cable under CTH 90011000 or any other chapter heading except 85447090;
- (xiv) that OPGW is part of power Transmission line, which is installed with dual purpose of earthing against Lightening and to carry Telecommunication data. Optical Fibre unit is central member of OPGW having Aluminum/steel tube covered on Fibres. Stranding of Aluminum clad wire around optical Fibre unit will make OPGW. Approach cable is used to make joint of Fibre portion of OPGW with the Fibre Optic distribution panel (FODP) which is used at the end of Transmission line only;
- (xv) that they have imported approach cable under both CTH 85447090 and 90011000; being a low value item, it is not noticed by management.
- (xvi) that Optical Fibre Unit being a sub-component to manufacture Optical Fibre Ground Wire, it is imported under 8544 because they import OPGW in 8544. Optical Fibre approach cable is always imported in very small quantity as accessories. In some cases, it was imported under CTH 90011000; the construction and use of both cables are different. However, the fibre used in both products is same;
- (xvii) that after going through the Chapter Heading 8544, he stated that under CTH 85447090, individually sheathed Fibre with conductor/ earthing application should be classified which are used for long distance telecommunication;
- (xviii) that Optical Fibre conductor applications, which are not falling under CTH 8544 i.e. not used in long range telecommunication needs should go for 9001 i.e. instrumentation, medical devices, spectacles and short distance cables;
- (xix) that Optical Fibre has the thin coating which is not visible from naked eyes. Since individual Fibre are carrying individual data and working as separate channels, this is enabled by coating, cladding on glass Fibres, which also serves as strengthening and protect the Fibre so it can be treated as sheath of Fibre.

**7.** Further, the importer in their letter dated 25.08.2020 submitted that they have imported Optical Fibre Ground wire (OPGW), Optical Fibre Cable (OFC) and Optical Fibre Unit-Tube with Fiber (OFU) under CTH 8544 and stated that the construction of an individual optical fibre is as follows:-

- Core made of glass (diameter 8 microns to 10 microns)
- Cladding of glass surrounding the glass core (outer diameter of 125 microns)- The cladding confines light wave modes to the core by means of total internal reflection, provides some protection to the core. The cladding layer prevents light loss once light enters a glass fibre.
- Dual acrylate Coating (Outer diameter 245 microns)- Dual acrylate coating protects optical fibre from external interference and external abrasion. This coating is made up of a UV Curable acrylate. It is applied in two layers. The inner layer is somewhat softer than the outer one. This is to protect the fibre against the micro-bending loss and from abrasion.
- Colour coating of individual fibre is done over the dual acrylate coating, with a unique/ distinct color.

**7.1.** The optical fibres in question are manufactured individually, with a cladding and further with a UV-dual acrylate layer coatings and an additional colour coating. Its optical fibers are individually produced and then cladded and coated. Dual acrylate layers are applied to each individual optical fiber. Then a colour coating is applied. The initial layer of acrylate is a soft, low-modulus with UV curable acrylate and it provides a cushion-like protection against small bends and external forces. The second layer of UV acrylate is a high-modulus, abrasion resistant coating which provides stronger mechanical protection of the glass fiber during handling, cable manufacturing and installation. The color coating is added immediately after the dual UV acrylate layers are applied. Cladding & Dual Layer Acrylate Coating are easily strippable just like a casing of an electric wire cable by means of mechanical stripping tools to enable splicing of the two Optical Fibres for establishing continuous connection.

**7.2.** The importer further submitted that a "coated fiber" at times is also referred as "buffered fiber" in the optical fiber cable industry. The term is used to describe "an optical fiber that has a coating over the cladding for protection, increased visibility, and ease of handling." It was also submitted that Cladding & Coating is a kind of Sheathing being provided to the raw optical fibre. The Optical fibres which are assembled in the quantity of 24/48 No's are functioning individually for Transmission of data i.e., each fibre works as a separate channel. Thus Cladding & Coating of fibres acts as insulation for data Transmission and data of one fibre cannot get mixed up with the data of the other fibre. Thus fibres assembled in OPGW should be called as Individually Sheathed Fibres.

**7.3.** The importer contended that the word Sheathing means "to cover with something that protects" and one of the synonyms for the word sheathing is cladding and an optical fiber cladded with glass with dual acrylate coating and further coated with colours for identification shall be treated as individually sheathed as per dictionary meaning read with explanation given under **HSN**, meriting classification of the product under CTH 8544. In support, the importer also submitted a copy of Test Report dated 14.09.2017 in respect of supplier, M/s Sichuan Huiyuan Optical Communication Co. Ltd., China and Test Report dated 18.09.2017 in respect of supplier, M/s. Jiangsu Tongguang Optical Fiber Cable Co. Ltd., China, issued by National Test House in respect of OPGW imported by M/s Advait Infratech Ltd.

**8.** During the investigation, it has been gathered that as per Joint Venture agreement dated 20.01.2019 between M/s Jiangsu Tongguang Optical Fiber

Cable Co. Ltd., China and M/s Advait Infratech Pvt. Ltd., formed a joint venture company, **M/s. TG Advait India Private Limited** which is incorporated in India for manufacturing and marketing of Cables. As per the agreement, in the Joint venture company M/s TG Advait India Pvt. Ltd., 66.5% shares are held by M/s. Jiangsu Tongguang Optical Fiber Cable Co. Ltd., China and 33.5% shares are held by M/s. Advait Infratech Pvt. Ltd. Sh. Shalin Sheth is the only Indian director in M/s TG Advait India Pvt. Ltd. Sh. Shalin Sheth is also the managing director in M/s. Advait Infratech Pvt. Ltd.

**8.1.** In a separate investigation in case of OPGW imported by M/s Advait Infratech Ltd. vide Bill of Entry No. 7445277 dated 14.04.2020, the goods were examined and representative samples were drawn by the officers of ICD, JRY Kanpur vide panchnama dated 30.04.2020. The manufacturer of the OPGW imported by M/s. Advait Infratech Ltd. (in respect of OPGW imported vide Bill of Entry No. 7445277 dated 14.04.2020) and M/s TG Advait India Pvt. Ltd. are the same i.e., **M/s. Jiangsu Tongguang Optical Fiber Cable Co. Ltd., China.**

**9.** The DRI, vide letter dated 10.08.2020, forwarded the samples of impugned goods (24 Fibre OPGW Optical Fibre Cable) drawn by the officers of ICD, JRY Kanpur vide panchnama dated 30.04.2020 to the Telecommunications Engineering Centre (TEC), Department of Telecommunications, New Delhi, along with Test Memo No. 37 dated 27.07.2020 for analysis. In response, the Director (NR), TEC, New Delhi vide letter No. 4-20/2015-NR/ TEC dated 20.08.2020 informed that the subject samples were analyzed by Transmission Division (Tx) of TEC and provided the below comments-

*i. As per the specifications of optical fibre provided by DRI (Sample No. 37 and Sample No. 38), in higher count OPGW Cable, **the fibres are not individually sheathed.***

*ii. The Cladding is an integral part of the optical fibre and the same is not sheathing of optical fibres.*

*iii. **The dual acrylic coating over tile cladding is an integral part of the optical fibre and tile same is not sheathing of tile optical fibres.***

**10.1.** On a reasonable belief that the impugned goods -Optical Fibre Unit (Tube with Fiber) and 'Optical Fibre Cable with Conductor' imported by M/s TG Advait India Pvt. Ltd. vide bill of entry No. 8080922 dated 04.07.2020 were M/s.- declared and M/s.-classified, the said goods were seized under Section 110 of the Customs Act, 1962 vide Seizure Memorandum dated 22.10.2020. The details of seized goods are as under:-

**Table-1: Details of goods seized**

S. No.	BE no.	BE date	Goods description	Quantity (in metres)	Declared Assessable value	Differential Duty payable
I	8080922	04.07.20	Optical Fibre Unit (Tube with Fiber)	19773	8,52,671	1,66,015
2	8080922	04.07.20	Optical fibre cable with Conductor- 48 Fiber	500	5,425	1056
<b>TOTAL</b>					<b>8,58,096</b>	<b>1,67,071</b>

**10.2.** In view of above, the importer vide letter dated 06.09.2020, 28.09.2020 and 21.10.2020 requested for release of goods imported vide Bill of Entry Number 8080922 dated 04.07.2020 under provisional assessment under Section 18 of the Customs Act, 1962 after executing a bond for the differential duty. Therefore, consequent upon issuance of NOC by DRI, the Additional/ Joint Commissioner of Customs, Mundra Port granted provisional release of the seized goods imported vide Bill of Entry Number 8080922 dated 04.07.2020 under Section 110A of the Customs Act, 1962. Accordingly, the said Bill of Entry was provisionally assessed by the port.

**11.** Statement of Sh. M. Balaji, Production head, M/s TG Advait India Pvt. Ltd. was recorded on 07.12.2020, 09.12.2020, 21.12.2020, 01.02.2021 under Section 108 of the Customs Act, 1962 on 09.12.2020, wherein he, *inter-alia*, stated that:

- (i) M/s TG Advait India Pvt. Ltd. was incorporated in 2016 but started operations from 2018 onwards; the company is primarily engaged in manufacturing and imports of Optical Ground Wire (OPGW), approach cable, Optical Fiber Cable (OFC) etc.;
- (ii) They import Optical Fiber Ground Wire/ Optical Fibre cable with Conductor- of 24 and 48 Fibres, approach cable- 24 and 48 Fibres, according to the requirement for Transmission project work; that most of their OPGW cables and approach cables are imported from M/s. Jiangsu Tongguang Optical Fibre Co. Ltd., China and M/s. Shanghai Tongguang International Trading Co. Ltd., China;
- (iii) In 2019 and 2020, they only used to do Aluminium stranding on the imported OPGW cables; that they are planning to minimise the imports from China and manufacture almost 90% cables in India and procure raw materials locally;
- (iv) Optical fibre is thin strand of glass which is used for communication purpose to transmit light signals;
- (v) OPGW stands for Optical Fiber overhead Ground Wire. OPGW is a dual-purpose cable which is used in communication as well as for grounding purpose in a power Transmission cable. In basic construction the OPGW is a central optical fibre unit surrounded with steel or aluminium tube, which is further surrounded by multiple aluminium-cladded steel (ACS) wires.
- (vi) In respect of **48** Fibre OPGW Cable, in the central optical fibre unit, a group of Twelve (12) optical fibres of different colours are encapsulated in a PBT Tube filled with water blocking jelly. There are four (04) such PBT Tubes in OPGW cable. In the centre of optical fibre unit, there is Fibre reinforced plastic (FRP) for strength and flexibility. The PBT Tubes are binded with PP yarns and wrapped with poly-amide tape, which acts as thermal barrier. This structure is further encapsulated in a steel or aluminium tube, which is further surrounded with ACS wires in tubular form. Similarly, in respect of **24** Fibre OPGW Cable- a group of Six (6) optical fibres are encapsulated in a single PBT Tube and there are four (04) such PBT Tubes, each filled with water blocking jelly. The rest of the design is same as that in 48 Fibre OPGW Cable.
- (vii) OPGW cables are designed to replace the traditional earth wires. OPGW cables have dual use of continuous Transmission of data through

optical fibres and to ground the fault current/accidental current due to lightning strikes or short circuits. In the OPGW Cables, electric current does not flow continuously through it and its primary use is data transmission through optical fibres.

(viii) There are three (3) main components in optical fibres - 1. **Core**- Centre region is the glass core, which actually transmits the light. 2. **Cladding**- made up of glass/silica, which surrounds the optical fibre core. Its main purpose is to restrict the light from going outside the core region 3. **Di-acrylic coating** which is also called Primary Coating and Secondary Coating provides protection to the optical fibres against mechanical, bending, tensile and crushing stress. A colour coating/ is applied used upon the optical fibre for end-to-end identification of the fibres inside a cable. Dual acrylic coating is not separately visible with naked eye;

(ix) On being asked about the manufacturing process of Optical Fibre, he stated that firstly a pre form is prepared from Silica doped with germanium. This pre-form is then loaded in a furnace wherein by a process called drawing, a cylindrical glass core with cladding of different diameter is drawn by the process of melting in a temperature of around 1800- 2000 degree Celsius. During the process of drawing, firstly primary coating and then secondary coating is applied upon the cladded glass core. Thereafter, acrylic coating is cured with the help of UV-LED and the product so manufactured is optical fibre. It is then stored in reel form, having length in several kilometres;

(x) During the manufacturing process, after cladding of the central core, it is known as bare fibre. After di-acrylic coating, the product is known as individually coated optical fibre; an optical fibre cannot be used commercially with just cladding over the core because optical fibre can get damaged and may break when subjected to bending and mechanical stress. The fibre may break easily which will result in signal losses leading frequent breaks in connectivity. Core is an integral form of optical fibre, without which an optical fibre cannot be used commercially;

(xi) The meaning of sheathing is covering or protection over any object. Sheathing of any object is done for its protection. Sheathing is layer of protection around the individual optical fibre. No optical fibre can be manufactured without sheathing. In an OPGW cable, for an individual fibre, the acrylic coating is sheathing and for a bundle of 6 or 12 fibre, the respective PBT tube is sheathing. Sheathing is provided around an optical fibre to protect against physical damage etc.;

(xii) A protective covering around individual fibre, which may be the acrylic coating is called individual sheathing of optical fibre.

(xiii) primary and secondary acrylic coating is integral part of optical fibre. Any fibre cannot be commercially used without the primary and secondary coating. Before di-acrylic coating, it is only an intermediate product. Only after primary and secondary coating, the intermediate product -cladded glass core (bare fibre) becomes optical fibre and can be used as commercially as an optical fibre;

(xiv) Two or more optical fibres cannot be encased/sheathed in dual acrylic coating of fibre and such optical fibres are not commercially available anywhere. I state that, all the optical fibres are individually coated with acrylic coating, which is the individual sheathing of an optical

fibre. Hence, all optical fibres are individually sheathed;

(xv) The di-acrylic coating is done on the intermediate goods i.e., cladded glass core or bare fibre. Only after the di-acrylic coating, the product becomes an optical fibre and can be used commercially. There is no further sheathing/ encasing of the optical fibre with di-acrylic coating; the primary and secondary coating cannot be separated from the optical fibre separately. Further, primary and secondary coating is also not visible to the naked eye separately but they are visible together only after stripping the same from the optical fibre.

(xvi) Two or more optical fibres cannot be encased/ sheathed within a single di-acrylic coating as the same may cause scattering of light signals and disturbance in data Transmission. Therefore, more than 2 optical fibres can never be coated with di-acrylic coating. There is no such design where 2 or more optical fibres are encased/ sheathed within a single di-acrylic coating;

(xvii) On going through the definition/ description of optical fibres given in Explanatory notes of Chapter heading 9001, he stated that as per his knowledge, no optical fibre is available for data Transmission without the plastic coating. The plastic di-acrylic coating is an integral part of optical fibre. This plastic coating described in Explanatory notes is same as the dual acrylic coating. It provides physical protection to the fibre from strain and abrasion. I agree that the optical fibre used in OPGW cable imported is aptly described in the heading 9001 of the Explanatory notes;

(xviii) On going through the definition/description of optical fibre cables given in Explanatory notes of Chapter heading 9001, he stated that as per my knowledge, the optical fibres which are not individually sheathed fall under the heading 9001. I state that more than one optical fibre cannot be encased in the di-acrylic coating. After going through the contents of heading 9001 of Explanatory Notes, I agree that sheathing is different from di-acrylic coating. Initially, it was my understanding that di-acrylic coating is sheathing of optical fibre;

(xix) The main purpose of Water blocking jelly is to provide cushioning effect to the fibres which are grouped together. It protects the fibre from moisture/ water. The water blocking jelly is put in the PBT buffer tube/ loose tube containing multiple optical fibre cables. The water blocking jelly cannot be filled in the di-acrylic coating of optical fibre;

(xx) Approach cable stands for Optical Fibre approach cable (OFAC). 24 F and 48F stands for 24 Fibre or 48 Fibre, which is the count of optical fibres in it. Approach cable is basically a type of optical fibre cable which is used to connect OPGW cable from power Transmission towers to power sub-stations. I state that there is no difference between optical fibre used in approach cable and optical fibre used in OPGW. The only difference is that, in approach cable, the outer conductor is not present. The central optical unit containing the optical fibres is same in both approach cable and OPGW cable;

(xxi) As per my understanding and the technical literature, both OPGW Cable and approach cable merit classification under the same tariff heading. The quantity of approach cables imported is negligible (in meters) in comparison to OPGW Cables (several Kilometres) imported by the company. As per my understanding, due to much higher volume of

import of OPGW, the same were classified under heading 8544 although approach cables continued to be imported under heading 9001;

(xxii) M/s Advait Infratech Ltd is 33.5% shareholder of M/s. TG Advait India Pvt. Ltd. Majority owner of the company, M/s TG Advait India Pvt. Ltd. is M/s. Jiangsu Tongguang Optical fiber Co. Ltd., China having 66.5% stake. Sh. Shalin Rahul Sheth is the common director in both the companies and is also the only Indian director in M/s. TG Advait India Pvt. Ltd. Further, M/s TG Advait India Pvt. Ltd. also supplies both 24148 F OPGW cables and 24/48F approach cables;

(xxiii) He perused the contents of Test Memo No. 37 of 2020 dated 27.07.2020 in respect of testing of OPGW cables imported by M/s Advait Infratech Private Limited and the contents of letter dated 20.08.2020 received from TEC, New Delhi in respect of analysis of sample in relation to Test Memo No. 37 of 2020 dated 27.07.2020. On the basis of analysis, they have reported that in OPGW cables imported by M/s Advait Infratech Pvt. Ltd., the fibres are not individually sheathed and Cladding and dual acrylic coating over the cladding is not sheathing of optical fibre cable; he stated that the 24/48 Fibre OPGW cable imported by M/s TG Advait India Pvt. Ltd. is same as the 24/48 Fibre OPGW cable imported by M/s Advait Infratech Ltd.; that coating is done over the intermediate product i.e., cladded glass core, after which the product finally becomes optical fibre cable and can be used commercially; before di-acrylic coating, it is known as bare fibre. After di-acrylic coating, the product is known as optical fibre. The optical fibre thus obtained after di-acrylic coating are individually coated. On this basis, coating over a bare fibre cannot be termed as individual sheathing of optical fibre.

(xxiv) Technical write up and specifications are provided by the China based supplier. On perusal of the same and after matching the same with classification provided by the end client, we decide the classification of goods. The classification of imported goods is finalised by. Mr. Zhou Feng, Director and India Plant Manager, M/s TG Advait India Pvt. Ltd after consultation with CHA.

**12.** Further, in response to Summons dated 12.12.2020 Shri M. Balaji, Production Head of the Importer, appeared to record his statement on 21.12.2020 under Section 108 of the Customs Act, 1962, wherein he interalia stated that:

(i) On being shown a copy of E-mail dated 17.06.2020 received from TEC, New Delhi (RUD-2 supra), he stated that he agreed with their analysis that in higher count OPGW Cables, i.e. 24 Fibre or 48 Fibre, the fibres are not individually sheathed; that in his opinion, the bundles of optical fibres are clubbed together in different colour plastic buffer tubes (PBT); that coating is done over the intermediate product i.e. cladded glass core or bare fibre, after which the product finally becomes optical fibre cable and this coating is not sheathing of optical fibre;

(ii) In higher count OPGW cables i.e. 24 Fibre or 48 Fibre, if all the fibres are individually sheathed, the diameter of the cable will increase substantially, due to which the installation, transportation of OPGW Cable will become difficult. Also, the weight of OPGW cable increases substantially which causes extra load on Transmission towers. Therefore, the optical fibres are bundled in groups so as to reduce the diameter and

weight of OPGW;

(iii) Optical Fibres in the OPGW imported by TG Advait are not individually sheathed and hence not classifiable under heading 8544. On perusal of heading 9001 and explanatory notes to heading 9001, he stated that heading 9001 is the correct classification for the OPGW cables/ optical fibre imported by the company.

(iv) TG Advait admits the differential duty liability that arises due to the change in classification from 8544 to 9001 will pay all the differential duty liability that arises due to the change in classification from 8544 to 9001 and sought a further time period of 3 months to clear all the duty liability, along with applicable interest; that he will once again discuss the matter with the directors and submit a detailed plan for depositing the said duty by 04.01.2021.

**13.** In response to Summons dated 08.01.2021 and 19.01.2021 issued to the importer to appear in person to give evidence in relation to imports of OPGW cables; Shri M. Balaji, Production Head of the Importer, appeared to tender his statement on 01.02.2021 under Section 108 of the Customs Act, 1962, wherein he interalia stated as under:

(i) that OPGW cable & approach cables are optical fibre cables. OPGW cables are used in dual purpose i.e. for data Transmission as well as for grounding the fault current of power Transmission line. Since, OPGW cable and approach cables are optical fibre cables, therefore at the time of import, M/s TG Advait India Pvt. Ltd. declared it under the tariff heading of optical fibre cables;

(ii) that On being shown the samples of OPGW cables and Approach cables (submitted by on 09.12.2020) imported by TG Advait, he stated that the optical fibres constituting the imported OPGW cable have only primary coating in two layers and accepted that these fibres are not individually sheathed because the primary coating is the integral part of the optical fibre; the primary coating of optical fibres has been done in two layers of UV curable acrylate. Therefore, these fibres are called dual acrylate coated optical fibres and having total outer diameter of  $245\pm07\mu\text{m}$ ; both these layers of UV curable acrylate are part of primary coating of optical fibre, which is an integral part of optical fibre;

(iii) that a thin colour coating has been done on the outer surface of acrylate coating of optical fibre only for end to end identification of optical fibre in optical fibre cables; the optical and physical characteristics of optical fibres contained in approach cable are same as to the optical fibres of OPGW cable, which is also evident from the approved specification for OPGW cabling and associated hardware & fitting by M/s Power Grid Corporation of India Ltd.;

(iv) that Optical Fibres used in OPGW cable and Approach cable, imported by M/s TO Advait India Pvt. Ltd are of ITU-T G.652D standard. These optical fibres are single mode Optical fibres, having nominal core diameter of  $8.3\pm0.4\mu\text{m}$ , having nominal cladding diameter of  $125\pm1.0\mu\text{m}$  and having nominal primary protective coating of  $245\pm7\mu\text{m}$ . M/s TG Advait India Pvt. Ltd imported all the OPGW cable and Approach cable for supply to the power projects approved by M/s Power Grid Corporation of India Ltd. M/s Power Grid Corporation of India Ltd has only approved single mode optical fibre of ITU-T G.652D standard;

(v) that he is aware about **CESTAT Order No. I/07-23/17/LB dated 22.11.2017 issued by CESTAT, West Zonal Bench, Mumbai in the matter of Vodafone South Ltd. V/s Commissioner of Customs (Import), Nhava Sheva, Mumbai** wherein it has been clearly held that the coating is not treated as 'sheathing';

(vi) that POWERGRID has clearly mentioned in the Section II, Instructions to Bidder, of Contract Agreement, that the bidder shall solely be responsible for HSN/SAC classification and the rate of GST for each item and HSN code mentioned in Bill of Quantity is only indicative in nature.

(vii) that OPGW and Approach cables imported by M/s TG Advait India Pvt. Ltd, are not made up of individually sheathed optical fibres, therefore, correctly classifiable under Customs Tariff heading 9001;

(viii) He accepted that TG Advait had wrongly classified the imported OPGW cables under Tariff heading 85447090 and availed duty exemption under Sr. No. 28 of notification no. 24/2005 dated 01.03.2005; that TG Advait is ready to pay the differential duty and undertakes to pay an amount of **Rs. 2 Crore** against partial discharge of differential duty liability arises due to change in classification from 8544 to 9001.

**14.** During investigation, the importer submitted that they relied upon the **Test report No. NTH (WR)/EL(C)/2017/00187 dated 14.09.2017 and NTH(WR)/EL(C)/2017/00188 dated 18.09.2017 issued by National Test House (Western Region), Mumbai** to infer that the OPGW Cable is made up of individually sheathed fibre and to justify classification of OPGW cables under CTH 85447090. The DRI, vide letters dated 16.12.2020 and 23.12.2020, requested the Director, National Test House (Western Region), to provide certain clarifications in respect of Optical Fibres and Optical Fibre Cables/OPGW. In response, vide letters dated 22.12.2020 and 01.01.2021 National Test House (Western Region), inter-alia, informed that:

- i. Cladding and di-acrylic coating are integral part of optical fiber and use of colour coating is primarily for identification, ease of visibility and ease of handling purpose.
- ii. Sheathing is drawing of tubes over an object that it fits closely on underlying object and removal of sheath shall not damage the underlying object. The sheath shall be applied by extrusion and shall not adhere to the object. Common materials of sheath include polyethylene (PE), polyurethane (PU), polyvinyl chloride (PVC) and Teflon (plenum).
- iii. Individually Sheathed Fibres are the ones in which each optical fibre has sheath over them and whose removal (removal of covering) does not damage the Optical fibre. Common materials of sheath include polyethylene (PE), polyurethane (PU), polyvinyl chloride (PVC) and Teflon (plenum).
- iv. **Di-acrylic coating over cladding cannot be construed as sheathing of optical fibre.**

**14.1.** Further, for the same goods- OPGW bearing description **metallic tube containing 24 optical fibers** of different colours, National Test House (Western Region), vide **Test Certificate No. NTH (WR)/EL(C)/2020/044 dated 24.02.2020** remarked that '**from the above examinations and observations, the sample could be considered as "optical fibre cable" and classified under heading 9001!**'

**15.1.** Further, the DRI, vide letter dated 04.02.2021, requested the Deputy Director General (NR), Telecommunication Engineering Centre (TEC), Department of Telecommunications, for certain clarifications in relation to Optical ground wire (OPGW) and optical fibre approach cables. In response, vide letter F. No. 8-2/2021-Tx/ TEC dated 16.02.2021, Director (Tx), TEC, New Delhi, interalia, informed that: -

- i. **the diameter of primary coating of single mode optical fibre (G.652D) is  $242 \pm 5 \mu\text{m}$ ;**
- ii. **the dual acrylic coating present in single mode optical fibre (G.652D) refers to two different layers of primary coating;**
- iii. As per TEC GR of OPGW cable, the primary coated fibres are protected by loose packaging within a stainless steel buffer tube which is filled with Hydrogen scavenging type thixotropic jelly;

**15.2.** Further, as per Generic Requirement (GR) issued by Telecommunication Engineering Centre (TEC) GR No. TEC/GR/TX/OFC-021/0A/SEP-11: Optical Ground wire (OPGW) cable, it has been mentioned that Single Mode Optical Fibre used in manufacturing Optical Fibre cables shall be as per ITU-T Rec. G.652D/G.655. In clause 3.2 Geometrical Characteristics, the cladding diameter is mentioned as  $125 \mu\text{m} \pm 1.0 \mu\text{m}$ , Diameter over primary coated with double UV Cured acrylate is mentioned as  $245 \mu\text{m} \pm 10 \mu\text{m}$ . Further, in the Notes, it has been mentioned that the thickness of colour coating may be over the values specified above, if the manufacturer adopts separate UV cured colouring process (of secondary layer of primary coating) of the fibres, during fibre manufacturing. In para 3.8.1 Secondary Protection, it has been mentioned that the Primary coated fibres shall be protected by loose packaging within a tube, which shall be filled with thixotropic jelly. **This implies that the Single mode optical fibre of specification G.652D has only primary coating of UV cured acrylate material in two layers.**

**16.1.** During the search of office/registered preM/s.es of TG Advait on 17.08.2020, one laptop (HP make, Sr. No. CND84327S6, Model No. 15daO296TU, Prodid 4TS97PA#ACJ) was resumed vide panchnama dated 17.08.2020 supra). Further, vide Panchnama dated 01.07.2021, data of the above mentioned laptop was forensically retrieved in presence of Sh. Shambhu Nath, authorised representative of TG Advait. On scrutiny of the data in the laptop, certain incriminating E-mail conversations were found in the above said laptop, which were required to be confronted.

**16.2.** During investigation, it was observed that in E-mail dated 20.09.2019 from Sh. Vimal Pandya (General Manager, Advait Infratech Pvt. Ltd.) addressed to Sh. Gaurav Panchal (Assistant Manager, procurement, M/s TG Advait India Pvt. Ltd.) with a copy to Shalin Sheth on email id: [Shalin.sheth@advaitinfra.com](mailto:Shalin.sheth@advaitinfra.com), certain directions were given to not write the word OPGW and write "OPTICAL FIBER CABLE WITH CONDUCTOR". It has been mentioned - *"Please arrange product description as below for the upcoming shipment of APSPL at Mundra Port. "OPTICAL FIBER CABLE WITH CONDUCTOR - .48F" (WE WILL NOT WRITE THE WORD OPGW). HS CODE SHOULD BE OF 8544".*

**16.3.** Further, in E-mail dated 30.11.2019 from Gaurav Panchal ([gauravpanchal@tgjt.cn](mailto:gauravpanchal@tgjt.cn)) to Zhou Feng (Director, M/s TG Advait India Pvt. Ltd.) with a copy to Sh. Shalin Sheth on email id: [Shalin.sheth@advaitinfra.com](mailto:Shalin.sheth@advaitinfra.com), it

has been interalia mentioned that-

*"As all know that now day by day for 85447070 Chapter due to complaint's of sterlite custom department has become more vigilant and in case we are making mistake in preparation of document specially invoice and BL from China. In that case we may be ended upto in paying import duties.... Since OPGW and optical fiber cable are the finished product invariably if we import we will have to pay 15% import duty only so please avoid importing of the opgw considering import duty less titan 15 % and all the fiber approach cable will be imported with 15% duty only".*

At the end of the said e-mail, it was mentioned "with best regards Shalin Sheth".

**17.** Summonses dated 01.07.2021 and 05.07.2021 were issued to Sh. Shalin Sheth to appear in person to give evidence in relation to imports of OPGW cables. In response to summons dated 05.07.2021, Shri M. Balaji, Production head, M/s TG Advait India Pvt. Ltd. appeared on behalf of Sh. Shalin Sheth on 09.07.2021. Statement of Shri M. Balaji was recorded under Section 108 of the Customs Act, 1962 on 09.07.2021, wherein he, *inter-alia*, stated that:

- i. Even though the summonses have been issued in the name of Sh. Shalin Sheth, Director, M/s. TG Advait India Pvt. Ltd., he did not appear for recording of statement and vide authorisation dated 07.07.2021, Sh. Shalin Sheth authorised him to appear for statement; that all the decisions and submissions made by him are acceptable to the management of TG Advait;
- ii. TG Advait imports OPGW Cable/ Optical Fiber cable with Conductor, Optical fiber Unit and approach cables from TOG Group companies i.e., (a) M/s Jiangsu Tongguang Optical Fibre Company (JTOFC), which is also the parent company of M/s TG Advait India Pvt. Ltd. and (b). M/s Shanghai Tongguang International Trading Co., Ltd.; that both these companies are TOG group companies (TonGGuang);
- iii. For the OPGW imported by TG Advait and supplied by M/s Shanghai Tongguang International Trading Co., Ltd., the manufacturer is M/s Jiangsu Tongguang Optical Fibre Company. M/s Shanghai Tongguang International Trading Co., Ltd. is only acting as a trader;
- iv. On going through various purchase orders (PO No. TGAPL/60-3 dated 17.01.2020, TGAPL/41 dated 01.11.2019) of OPGW cable raised by TG Advait India Pvt. Ltd. to the supplier, M/s Shanghai Tongguang International Trading Co., Ltd., he stated that it has been noticed that Mr. Din Guofeng is the common legal representative or authorised agent in both the companies; that Mr. Din Guofeng is also a director in TG Advait;
- v. He submitted the certificate of incorporation and Memorandum of Association (MoA) of M/s TG Advait India Pvt. Ltd.; that as per the original MOA, Sh. Shalin Rahulkumar Sheth and his wife Mrs. Rejal Shalin Sheth are the directors in TG Advait;
- vi. He submitted an amended Joint Venture agreement dated 20.01.2021 between M/s. Jiangsu Tongguang Optical Fiber Cable Co. Ltd and M/s Advait Infratech Pvt. Ltd. vide which M/s. TG Advait India Private Limited, a joint venture company was incorporated in India for manufacturing and marketing of Cables in India. As per the agreement, 66.5% shares are held by M/s. Jiangsu Tongguang Optical Fiber Cable Co. Ltd. and 33.5% shares

are held by M/s Advait Infratech Pvt. Ltd.; that currently, Mr. Shalin Sheth is the only Indian director in TG Advait. The other Directors (China Nationals) in TG Advait are Mr. Zhou Feng (Eric Zhou), Mr. Ding Guofeng and Mr. Jiang Yongwei.

vii. The import activities in TG Advait is currently looked after by the procurement/purchase department, currently headed by Mr. Mrunal Raj, Assistant Manager. Earlier, Mr. Gaurav Panchal and Mr. Dhruv Patel used to look after the imports in TG Advait; that the procurement department works under the supervision of Mr. Shalin Sheth and Mr. Zhou Feng, both directors in TG Advait;

viii. The E-mail ID- purchase@tgjt.cn is currently blocked. During the time of search by ORI, Mr. Dhruv Patel, Assistant Manager, procurement, TG Advait India used to operate the said E-mail ID. Earlier it was operated by Mr. Gaurav Panchal, Assistant Manager, procurement, TG Advait;

**ix. No appeal has been filed against the assessment of OPGW cable by Nhava Sheva Customs under tariff item 90011000 in Bill of Entry Number- 4861978 dated 11.09.2019;**

x. TG Advait uses the description "OPGW (L-AL-TUBE)", "OPTICAL FIBER GROUND WIRE CABLE", "OPGW-1C1/48" and "OPTICAL FIBER CABLE WITH CONDUCTOR(to check) OPGW-24/48 F" during the import of OPGW Cable.

xi. TG Advait has also imported "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L AL\_TUBE)" and "OPTICAL FIBER UNIT (3.85MM SUS TUBE WITH 24 FIBER)". AL-tube refers to aluminium tube and SUS tube refers to Stainless steel tube. These Optical fiber Units are stranded with ACS wires to obtain OPGW cable.

**18.** Summon dated 12.07.2021 was issued to Sh. Shalin Sheth, Director, M/s. TG Advait to appear in person to submit evidences in relation to imports of OPGW cables. In response to summons dated 12.07.2021, Sh. Shalin Sheth appeared on 12.07.2021 and his statement was recorded under Section 108 of the Customs Act, 1962 on 12.07.2021, wherein he, *inter alia*, stated as under:

- i. that at the time of search by DRI in the office of M/s. TG Advait on 17.08.2020, Mr. Dhruv Patel, Assistant Manager, procurement, M/s. TG Advait India Pvt. Ltd. used to operate the above laptop resumed by DRI;
- ii. that TG Advait imports OPGW Cable/ Optical Fiber cable with Conductor, Optical fiber Unit and approach cables from TGG Group companies i.e., (a) M/s. Jiangsu Tongguang Optical Fibre Company (JTOFC), which is also the parent company of M/s. TG Advait India Pvt. Ltd. and (b). M/s. Shanghai Tongguang International Trading Co., Ltd.;
- iii. that M/s. Shanghai Tongguang International Trading Co., Ltd. and M/s. TG Advait India Pvt. Ltd. have one common director;
- iv. For the OPGW imported by TG Advait and supplied by M/s. Shanghai Tongguang International Trading Co., Ltd., the manufacturer is M/s. Jiangsu Tongguang Optical Fibre Company. M/s. Shanghai Tongguang International Trading Co., Ltd. is only acting as a trader;
- v. The cables supplied by Shanghai Tongguang International Trading Co., Ltd. are manufactured by M/s. Jiangsu Tongguang Optical Fibre Company;

vi. After going through various purchase orders (PO No. TGAPL/60-3 dated 17.01.2020, TGAPL/41 dated 01.11.2019) of OPGW cable raised by TG Advait to the supplier, M/s. Shanghai Tongguang International Trading Co., Ltd., he stated that Mr. Ding Guofeng is the common legal representative or authorised agent in both the companies and Mr. Ding Guofeng is also a director in TG Advait;

vii. TG Advait uses the description "OPGW (L-AL-TUBE)", "OPTICAL FIBER GROUND WIRE CABLE", "OPGW-1C1/48" and "OPTICAL FIBER CABLE WITH CONDUCTOR OPGW-24/48 F" during the import of OPGW Cable; TG Advait has also imported "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L-AL\_TUBE)" and "OPTICAL FIBER UNIT (3.85MM SUS TUBE WITH 24 FIBER)". AL- tube refers to aluminium tube and SUS tube refers to Stainless steel tube. These Optical fiber Units are stranded with ACS wires to obtain OPGW cable;

viii. TG Advait has self-assessed OPGW cables and Optical fiber Unit (SUS Tube/ Aluminium Tube) under tariff item 85447090 and Approach Cables under tariff item 90011000;

ix. As per the technical specifications of M/s Powergrid /other Government Power Utilities for OPGW cables and approach cables, the optical fibres contained in OPGW cables and approach cables have identical/physical characteristics;

x. As per his understanding and the technical literature, both OPGW Cable and approach cable merit classification under the same tariff heading. The quantity of approach cables imported is negligible (in meters) in comparison to OPGW Cables (several Kilometers) imported by the company; as per his understanding, due to much higher volume of import of OPGW, the same were classified under heading 8544 although approach cables continued to be imported under heading 9001 along with other accessory items;

xi. After perusing the technical specification of OPGW, which they submitted by e-mail dated 25.08.2020 and pertains OPGW imported TG Advait India and manufactured by M/s. TGG, China, he stated that in the specifications for Optical fibre G.652D, **primary coating material** is mentioned as UV curable acrylate and fiber diameter is mentioned as **250±10 µm**;

xii. On being shown a copy of E-mail dated 17.06.2020 received from TEC, he stated that he agreed with their analysis that in higher count OPGW Cables, i.e. 24 Fibre or 48 Fibre, the fibres are not individually sheathed; that in his opinion, the bundles of optical fibres are clubbed together in different colour plastic buffer tubes (PBT).

xiii. Coating is done over the intermediate product i.e. cladded glass core or bare fibre, after which the product finally becomes optical fibre cable and this coating is not sheathing of optical fibre; that in higher count OPGW cables i.e. 24 Fibre or 48 Fibre, if all the fibres are individually sheathed, the diameter of the cable will increase substantially, due to which the installation, transportation of OPGW Cable will become difficult. Also, the weight of OPGW cable increases substantially which causes extra load on transmission towers. Therefore, the optical fibres are bundled in groups so as to reduce the diameter and weight of OPGW.

xiv. He perused the contents of Test Memo No. 37 of 2020 dated 27.07.2020 in respect of testing of OPGW cables imported by M/s. Advait Infratech Private Limited and manufactured by M/s. Jiangsu Tongguang Optical Fiber Cable Co. Ltd., China (JTOFC); He went through the contents of letter dated 20.08.2020 received from TEC (RUD-12 supra) in respect of analysis of sample in relation to Test Memo No. 37 of 2020 dated 27.07.2020 wherein it has been reported that in OPGW cables imported by M/s. Advait Infratech Pvt. Ltd., **the fibres are not individually sheathed and Cladding and dual acrylic coating over the cladding is not sheathing of optical fibre cable** and stated that he had nothing to comment on the said report.

xv. The E-mail ID- purchase@tgjt.cn is currently blocked. During the time of search by DRI, Mr. Dhruv Patel, Assistant Manager, procurement, TG Advait India used to operate the said E-mail ID. Earlier it was operated by Mr. Gaurav Panchal, Assistant Manager, procurement, TG Advait;

xvi. On being shown a copy of e-mail dated 20.09.2019 wherein directions were given to not write the word OPGW and write "OPTCAL FIBER CABLE WITH CONDUCTOR", he stated that as there is no entry in the customs tariff in the name- OPGW/ Optical Fiber Ground Wire Cable, therefore, it was suggested to write "Optical Fiber Cable with Conductor" in place of OPGW, which is more akin to the tariff heading 8544;

xvii. On being shown a copy of E-mail dated 30.11.2019 wherein it was mentioned "*Since OPGW and optical fiber cable are the finished product invariably if we import we will have to pay 15% import duty only so please avoid importing of the OPGW considering import duty less than 15% and all the fibre approach cable will be imported with 15% duty only*", he stated that the OPGW cables are not made up of individually sheathed optical fibres, therefore, it may be correctly classifiable under CTH 90011000; that however, they imported OPGW under CTH 85447090 as the CTH of product given in the Tender documents of different Government Utilities and global supply practices. If OPGW falls under 9001, then optical fibre unit should also fall under CTH 9001; that for the subject mail, he was not able to recall the reason of such e-mail.

**19.1.** Further, in a separate investigation of import of OPGW cables (Manufacturer- M/s. Jiangsu Tongguang Optical Fibre Cable Co. Ltd., China) by M/s Power Grid Corporation of India Ltd. (IEC- 0591023768), the goods "24 Fibre (DWSM) OPGW Fibre Optic Cable" imported by POWERGRID vide bill of entry No. **3358819** dated **30.03.2021**, were examined by SIIB, Chennai Customs vide Panchnama/Mahazar dated 07.04.2021 and representative samples were drawn for further examination. The samples were forwarded to Deputy Director General (SR) Regional Telecom Engineering Centre (RTEC), Bengaluru for testing.

**19.2.** Based on inspection of the OPGW sample, Director (SR), RTEC, Bengaluru vide letter dated 20.04.2021 reported that:-

- i. The sample consists of 4 main loose tubes and each of these 4 loose tubes has 6 Optical Fibres. The colour of these 4 loose tubes observed are Blue, Orange, Green and Brown. These 4 loose tubes along with strength members are housed in central metallic tube;
- ii. The Six Optical fibres observed in each loose tube are coated with

Blue, Orange, Green and Brown, Slate and White colour. (This colour combination is matching with the details as mentioned in TEC OPGW Cable generic Requirements (GR) no. TEC/TX/OFC-021/01/SEP- 11;

iii. **It is observed that the sample does not have individually sheathed fibres. This is evident from visual inspection because each of the 6 optical fibres in the tube does not have any kind of individual sheath over it.**

**19.3.** It is pertinent to mention here that the manufacturer of OPGW cables in the instant case is **M/s Jiangsu Tongguang Optical Fibre Cable Co. Ltd., China**, which is the sole manufacturer of the OPGW cables imported by M/s TG Advait India Pvt. Ltd. and also the parent company of TG Advait. From the analysis by RTEC, Bengaluru, it is evident that the optical fibres in the OPGW cable are not individually sheathed.

**20.** The documents submitted by the importer and the investigation carried out revealed that '**Optical ground wire (OPGW)**' are dual purpose optical fibre cables which are used to provide earthing to the conductors in transmission towers and for optical communication/ telecommunication. OPGW cables are designed to replace the traditional earth wires. An OPGW cable is made up of optical telecommunications fibers contained in one or more protective fiber optic units. Typically, an OPGW cable consists of one or more layers of metallic wires stranded about a cable core comprised of components such as metallic tubes and optical fibers in optical fiber units.

**20.1.** In a 24 Fibre OPGW, in the central optical fibre unit, a group of Six (06) optical fibres of different colours are encapsulated in a PBT loose buffer Tube filled with water blocking jelly and there are four (04) such PBT buffer Tubes in 24 fibre OPGW cable. The PBT tubes are filled with water blocking jelly. In the centre of optical fibre unit, there is Fibre reinforced plastic (FRP) for strength and flexibility. The PBT loose buffer tubes are bound with PP yarns and wrapped with poly amide tape, which acts as thermal barrier. This structure is further encapsulated in an aluminium tube, which is further surrounded with ACS wires in tubular form. Similarly, in the case of 48 fibre OPGW, a group of Eight (08) or twelve (12) optical fibres of different colours are encased in a single PBT buffer Tube.

**20.2.** Optical Ground Wire (OPGW) cables have the dual functions of a ground wire with telecommunication capabilities. As the name suggests, it is primarily an optical fibre cable having primary function of data Transmission. In the technical specifications issued by M/s. POWERGRID, it has clearly been stated that the OPGW cable construction shall comply with **IEEE-1138, 2009** (IEEE Standard for testing and performance for Optical Ground wire for use on Electric Utility). Also, the manufacturer, in their technical specification and authorized representative of the importer during statement, as mentioned in para-13 above, clearly stated that OPGW is an optical fibre cable. Therefore, both manufacturer (in the sale invoice) and the importers (in Bills of Entry) have also declared the same as Optical fibre cables, not as electrical conductor for earthing. Therefore, this fact is not being disputed by the importer too.

**20.3 Optical Fibre Unit** (Stainless Steel tube/ Aluminium tube) is a component of OPGW cable and is itself in the form of an optical fibre cable in which multiple optical fibres are encased inside Stainless Steel/ Aluminium tube. In the case of Optical Fibre Unit (Stainless Steel tube), multiple optical fibres are encased in a Stainless Steel tube buffer tube also known as SUS tube

with some slack length of fiber allowed to prevent strain on the glass fibers. The Stainless-Steel buffer tubes are filled with hygroscopic jelly to protect the optical fibers from water and gives internal cushion to the fibers. Further, in the case of Optical Fibre Unit (Aluminium tube), groups of 4/6/8/12 optical fibres are bundled together and encapsulated in PBT loose buffer Tubes filled with water blocking jelly. These PBT tubes are further encased in an Aluminium tube.

**20.3.1** The Optical Fibre Unit (**Stainless-Steel tube (SUS tube)/ Aluminium tube**) is stranded into the cable with aluminium clad steel strands to form an OPGW cable. Optical Fibre Unit is the structural part of OPGW and provides essential characteristics to OPGW Cable.

**20.4. Fibre Optic Approach Cables** are armoured fibre optic cables required to connect OPGW between the final termination of the fibre cable on the power line and the Fibre Optic Distribution Panel (FODP) installed in the power sub-stations. These Approach cables contain fibres with identical optical/physical characteristics as those in the OPGW cable and there is no difference between optical fibre used in approach cable and optical fibre used in OPGW. The only difference between the two is that in the approach cable, the ACS wire is not present. The optical fibres used in OPGW and approach cable are Single mode optical fibre G.652D only.

**20.5.** During investigation, it has been submitted by the importer that the said goods are imported by them for supply to power transmission companies including M/s. Power Grid Corporation of India Ltd. As per the tender documents of M/s. Power Grid Corporation of India Ltd. (and of other state power utilities), the OPGW cables are required to conform to **IEEE-1138, 2009:** IEEE standard for Testing and performance for Optic Ground Wire (OPGW) for use on Electric Utility Power Lines. Relevant portions of **IEEE standard 1138, 2009** are reproduced below for reference: -

### **1.1. Scope**

*This standard covers the performance, test requirements, procedures, and acceptance criteria for a transmission line overhead ground wire (a.k.a. shield wire, static wire, earth wire, skywire) with optical fibers commonly known as optical ground wire (OPGW). An OPGW cable has the dual performance functions of a ground wire with telecommunications capabilities. This standard includes functional requirements, such as electrical, mechanical, optical fiber, environmental and packaging, and test requirements related to design, installation, in-service, and maintenance, including routine tests.*

### **1.1 Purpose**

*This standard covers the construction, mechanical and electrical performance, acceptance criteria, and test requirements for overhead ground wire (OPGW) designed to be located primarily on overhead power utility facilities. The standard provides performance and testing requirements that insure within the guidelines of this standard that the mechanical and electrical capabilities of the cable and cable components properly maintain mechanical integrity, optical fiber integrity, and optical transmission.*

### **4. Description of OPGW cable and components**

*There are multiple acceptable designs of OPGW. Typically, they consist of one or more layers of metallic wires stranded about a cable core comprised of components such as tubes, wires and/or slotted rods, and optical fibers in optical*

fiber units.

#### **4.2 Design of fiber optic unit**

The fiber optic unit shall be designed to house and protect the optical fibers from damage due to forces such as crushing, bending, twisting, tensile stress, and moisture. The fiber optic unit and the outer stranded metallic conductors shall serve together as an integral unit to protect the optical fibers from degradation due to vibration and galloping, wind and ice loadings, wide temperature variations, lightning and fault current, as well as environmental effects that may produce hydrogen. The fiber optic unit may include an aluminium tube, channeled aluminum rod, stainless steel tubing, or aluminum-coated stainless steel tubing; but is not limited to these designs.

##### **4.2.3 Filling compound**

If required, the interstices of the fiber optic unit shall be filled with a suitable compound to prohibit any moisture ingress from outside or any water migration along the fiber optic unit. The filling compound used shall be compatible with all the components with which it may come in contact.

##### **4.2.4 Structural members of fiber optic unit**

Structural member(s) may be used to limit the stress on the fiber inside the central fiber optical unit. These structural member(s) shall be made of non-conductive dielectric materials that do not pose an electrical hazard to the fiber optic splicing or terminations processes.

#### **4.3 Optical fiber**

**The core and the cladding shall consist of all glass that is predominantly silica (SiO<sub>2</sub>). The coating is usually made from one or more synthetic materials, such as plastic or acrylate, or compositions and shall be provided to protect the fiber during manufacture, handling, and operation.** The optical fiber shall be in accordance with the appropriate industry standard such as those referenced in Clause 2.

#### **4.4. Buffer construction**

A buffer for protection from physical damage during fabrication, installation, and performance of the OPGW cable may surround the individually coated optical fiber(s). Loose buffer or tight buffer constructions are two types of protection that may be used to isolate the fibers. The fiber coating and buffer shall be strippable for splicing and termination.

##### **4.5. Loose buffer**

Loose buffer construction shall consist of a tube that surrounds each fiber or fiber group such that the inner diameter of the tube is greater than the outside diameter of the fiber or fiber group. The interstices inside and outside the tube may be filled with a water-blocking compound.

##### **4.5.2 Tight buffer**

Tight buffer construction shall consist of a suitable material that comes in contact with the coated fiber.

#### **4.5.3 Color coding**

*The fiber coloring shall be in accordance with an appropriate industry standard for fiber color as referenced in Clause 2. In cases where the number of fibers per unit exceeds the number of fibers per unit provided in the applicable standard, the supplier shall implement other means for identifying fibers in the same unit. In case of multiple fiber units, these units shall be also uniquely identified*

### **5. Requirements and recommendations for OPGW cables**

OPGW serves two purposes:

- a) *To replace a conventional ground wire, to protect the transmission system from lightning, and to serve as a conductive medium for carrying fault currents to ground*
- b) *To provide telecommunications capacity utilizing optical fibers.*

*As such, an OPGW cable is required to withstand the effects from installation and long-term in service exposure to mechanical, electrical, and environmental loads without significant degradation in performance. **An OPGW cable shall be made up of optical telecommunications fibers contained in one or more protective fiber optic units combined with concentric-lay stranded metallic wires in single or multiple layers***

**21.** As per the technical specification for OPGW cabling and associated hardware & fittings (OPGW Section-02), approved by M/s. Power Grid Corporation of India Ltd. and submitted by the importer, the optical fibres to be used in the OPGW cable shall be Single Mode Optical Fibre G.652D which shall be conforming to ITU-T G.652 standards. For generic and product specifications of optical fibres, **IEC-60793** standard has been specified in the **IEEE-1138, 2009** standard. These international standards are also referred in the technical specification of OPGW cables of different manufacturers/ suppliers, approved by POWERGRID and state utilities. Relevant portions of Volume II- Technical specification (for Package-A, Band C: Communication System for Central Sector, as approved by M/s. Power Grid Corporation of India Ltd. in the tender documents, are reproduced below for reference: -

## **OPGW Section-02**

### **Specification for OPGW cabling and associated hardware & fittings**

#### **2.1 Fibre Optic Cabling**

*In this section of the technical specification, the functional & technical specifications of OPGW cable, Fibre Optic Approach Cable, Joint box and associated hardware & fittings for the requirements for G.652D Dual-window single mode (DWDM) telecommunications grade fiber optics cable is specified. Bidders shall furnish with their bids, detailed descriptions of the fibre & cable(s) proposed.*

*All optical fibre cabling including fibre itself and all-associated installation hardware shall have a minimum guaranteed design life span of 25 years.*

##### **2.1.1 Required Optical Fibre Characteristics**

*The optical fibre to be provided should have following characteristic:*

###### **2.1.1.4 Physical Characteristic**

*Dual-Window Single mode (DWSM), G.652D optical fibres shall be provided in their optic cables. DWSM optical fibres shall meet the requirements defined in Table 2-1(a):*

**Table 2-1 (a): DWSM Optical Fibre Characteristics**

<b>Fibre Description</b>	<i>Dual-window Single-Mode</i>
<b>Mode Field Diameter</b>	<i>8.6 to 9.5<math>\mu</math>m (<math>\pm 0.6\mu</math>m)</i>
<b>Cladding Diameter:</b>	<i>125.0<math>\mu</math>m <math>\pm 1\mu</math>m</i>
<b>Mode field collcetivity error</b>	<i>&lt;0.6<math>\mu</math>m</i>
<b>Cladding non-circularity</b>	<i>&lt; 1%</i>
<b>Cable Cut-off Wavelength</b>	<i>&lt;1260nm</i>
<b>1550 nm loss performance</b>	<b>As per G.652 D</b>
<b>Proof Test Level</b>	<i>&gt;0.69 Gpa</i>
<b>Attenuation Coefficient:</b>	<i>@1310nm <math>\leq 0.35</math>dB/Km @1550nm <math>\leq 21</math> dB/Km</i>
<b>Chromatic Dispersion; Maximum</b>	<i>18 ps/ (nm x km) @ 1550nm</i>
<b>Zero Dispersion Wavelength:</b>	<i>3.5 ps/(nm x km) @ 1288-1 339nm</i>
<b>Zero Dispersion Slope:</b>	<i>5.3 ps/ (nm x km) @1271-1360nm</i>
<b>Polarization mode dispersion coefficient</b>	<i>1300 to 1324nm</i>
<b>Temperature Dependence:</b>	<i>0.092ps/ (nm<sup>2</sup> x km) maximum</i>
<b>Bend Performance:</b>	<i>&lt;.2ps/(km<sup>1/2</sup>)</i>
	<i>@1310nm (75<math>\pm 2</math> mm dia mandrel), 100 turns Attenuation Rise) <math>\leq .05</math>dB</i>
	<i>@ 1550nm (30<math>\pm 1</math> mm radius Mandrel), 100 turns; Attenuation Rise <math>\leq 0.05</math>dB</i>
	<i>@ 1550 nm (32<math>\pm 0.5</math>mm dia Mandrel .1 turns Attenuation Rise <math>\leq 0.05</math>dB</i>

### **2.1.2 Fibre Optic Cable Construction**

*The OPGW (Optical Ground Wire) cable is to be installed on 765/400/220/132 kV Transmission of Eastern Region. The list of lines is enclosed at Appendices. The design of cable shall account for the varying operating and environment conditions that the cable shall experience while in service.....*

*The OPGW cable to be supplied shall be meeting the design parameters specified in Technical specifications.*

### **2.1.3- Optical Ground Wire (OPGW) construction**

*OPGW cable shall comply with **IEEE-1138, 2009**. The Cable provided shall meet both the construction and performance requirements such that the ground wire function, the optical fibre integrity and optical Transmission characteristics are suitable for intended purpose.*

### **2.1.2.4 OPGW design**

### **Buffer Tube**

Loose tube construction shall be implemented. The individually coated optical fibre(s) shall be surrounded by buffer for protection from physical damage during fabrication, installation and operation of the cable. The fibre coating and buffer shall be strippable for splicing and termination. Each fibre unit shall be individually identifiable utilizing colour coding. Buffer tubes shall be filled with water-blocking gel. The individually coated optical fibre(s) shall be provided directly in stainless steel tube in case of stainless steel tube design.

#### **(a) Central Aluminium tube type**

The composite fibre optic overhead ground wire shall be made up of multiple buffer tubes embedded in a water tight aluminium/aluminium alloy protective central fibre optic unit surrounded by concentric-lay stranded metallic wires in single or multiple layers. Each buffer tube shall have maximum 12 no. of fibres. All fibres in single buffer tube or directly in central fibre optic unit is not acceptable. The dual purpose of the composite cable is to provide the electrical and physical characteristics of conventional overhead ground wire while providing the optical transmission properties of optical fibre.

#### **(b) Central Stainless Steel tube type**

The composite fibre optic overhead ground wire shall consist of a central fibre optic unit made up of stainless steel with aluminium coating/tube surrounded by concentric-lay stranded metallic wires in single or multiple layers. The dual purpose of the composite cable is to provide the electrical and physical characteristic of conventional overhead ground wire while providing the optical transmission properties of optical fibre.

#### **2.1.3.1.1 Central Fibre Optic Unit**

##### **(a) Central Aluminium tube type**

The central fibre optic unit shall be designed to house and protect multiple buffered optical fibre units from damage due to forces such as crushing, bending, twisting, tensile stress and moisture. The central fibre optic unit and the outer stranded metallic conductors shall serve together as an integral unit to protect the optical fibres from degradation due to vibration and galloping, wind and ice loadings, wide temperature variations, lighting and fault current, as well as environmental effects which may produce hydrogen.

The OPGW design of dissimilar materials for stranded wires and tubes are not allowed. Central fibre optic unit may be of aluminium/ aluminium alloy tube. There shall be no exposed areas of tubing that can make electrical contact either directly or indirectly through moisture, contamination, protrusions, etc with the surrounding stranded wires. The tube may be fabricated as a seamless tube, seam welded, or a tube without a welded seam.

##### **b) Central stainless steel tube type**

The central fibre optic unit shall be designed to house and protect optical fibres provided in single buffered tube of stainless-steel tube from damage due to forces such as crushing, bending, twisting, tensile stress and moisture. The central fibre optic unit and the outer stranded metallic conductors shall serve together as an

integral unit to protect the optical fibres from degradation due to vibration and galloping, wind and ice loadings, wide temperature variations, lighting and fault current, as well as environmental effects which may produce hydrogen.

The OPGW design of dissimilar materials for stranded wires and tubes are not allowed. Central fibre optic shall be of stainless-steel tube with aluminium protective coating or stainless steel tube with Al protecting outer tube. In case of aluminium protective coating, the coating must completely cover the tubes leaving no exposed areas of tubing that can make electrical contact either directly or indirectly through moisture, contamination, protrusions, etc with the surrounding stranded wires. The tube may be fabricated as a seamless tube, seam welded, or a tube without a welded seam.

#### **2.1.6. Fibre Optic Approach Cables**

For purposes of this specification, a Fibre Optic Approach Cable is defined as the armoured underground fibre optic cable required to connect overhead Fibre optic cable (OPGW) between the final in line splice enclosure on the gantry/ tower forming the termination of the fibre cable on the power line and the Fibre Optic Distribution Panel (FODP) installed within the building....

#### **2.1.6.3 Optical, Electrical and Mechanical Requirements**

Approach cable shall contain fibres with identical optical physical characteristics as those in **the OPGW cables**. The cable core shall comprise of tensile strength member(s), fibre support/bedding structure, core wrap/bedding and an overall impervious jacket.

**22.1.** Further, as per the technical specifications approved by POWERGRID, Single mode **G.652D** optical fibres conforming to ITU-T G.652D standard shall be used in the OPGW. Relevant portions of **ITU-T G.652**: Characteristics of a single-mode optical fibre and cable (**RUD-39**) are reproduced below for reference: -

#### **Summary**

Recommendation ITU-T G.652 describes the geometrical, mechanical and Transmission attributes of a single-mode optical fibre and cable which has zero-dispersion wavelength around 1310 nm. The ITU-T G.652 fibre was originally optimized for use in the 1310 nm wavelength region, but can also be used in the 1550 nm region.

#### **1 Scope**

This Recommendation describes a single-mode optical fibre and cable which has zero dispersion wavelength around 1310 nm and can be used in the 1310 nm and 1550 nm regions. Both analogue and digital transmission can be used with this fibre.

The geometrical, optical, transmission and mechanical parameters are described below in three categories of attributes:

- fibre attributes are those attributes that are retained throughout cabling and installation;
- cable attributes that are recommended for cables as they are delivered;
- link attributes that are characteristic of concatenated cables, describing estimation methods of system interface parameters based on measurements, modelling or other considerations. Information for link attributes and system design are in Appendix I

### 3 Definitions

#### 3.1 Terms defined elsewhere

For the purposes of this Recommendation, the definitions given in [ITU-T G.650.1] and [ITU-T G.650.2] apply.

### 6. Fibre attributes

Only those characteristics of the fibre providing a minimum essential design framework for fibre manufacture are recommended in this clause. Ranges or limits on values are presented in the tables of clause 8. Of these, cable manufacture or installation may significantly affect the cabled fibre cut-off wavelength and PMD. Otherwise, the recommended characteristics will apply equally to individual fibres, fibres incorporated into a cable wound on a drum and fibres in an installed cable.

#### 6.1 Mode field diameter

Both a nominal value and tolerance about that nominal value shall be specified at 1310 nm. The nominal value that is specified shall be within the range found in clause 8. The specified tolerance shall not exceed the value in clause 8. The deviation from nominal shall not exceed the specified tolerance.

#### 6.2 Cladding diameter

The recommended nominal value of the cladding diameter is 125  $\mu\text{m}$ . A tolerance is also specified and shall not exceed the value in clause 8. The cladding deviation from nominal shall not exceed the specified tolerance.

### 8 Tables of recommended values

The following tables summarize the recommended values for a number of categories of fibres that satisfy the objectives of this Recommendation. These categories are largely distinguished on the basis of attenuation requirement at 1383 nm. The historical relationship between maximum PMDQ value and supporting bit rate can be found in Appendix I of this Recommendation.

Table 1, ITU-T G.652.B attributes, contains recommended attributes and values needed to support higher bit rate applications, up to STM-64, such as some in [b-ITU-T G.691] and [b-ITU-T G.692], STM-256 for some applications in [b-ITU-T G.693] and [b-ITU-T

G.959.1]. Depending on the application, chromatic dispersion accommodation may be necessary.

Table 2, **ITU-T G.652.D** attributes, is similar to ITU-T G.652.B, but allows transmission in portions of an extended wavelength range from 1260 nm to 1625.

Class reference table between IEC fibre category and ITU-T G.65x fibre types is given in Table V.1 in Appendix V of [b-ITU-T G-Sup.40].

**Table 2 - ITU-T G.652.D attributes**

Fibre attributes			
Attribute	Detail	Value	Unit
Mode field diameter	Wavelength	1310	Run
	Range of nominal values	8.6-9.2	$\mu\text{m}$
	Tolerance	$\pm 0.4$	$\mu\text{m}$
Cladding diameter	Nominal	<b>125.0</b>	<b>Um</b>
	Tolerance	$\pm 0.7$	$\mu\text{m}$
Core concentricity error	Maximum	0.6	$\mu\text{m}$

Cladding no circularity	Maximum	1.0	%
Cable cut-off wavelength	Maximum	1260	Run

**22.2.** Further, for relationship between IEC fibre category and ITU-T G.65x fibre types, ITU-T Series G Supplement- G (ITU-T G-Sup.40) has been referred in ITU-T G.652. Accordingly, relevant portions of **ITU-T Series G Supplement- G (ITU-T G-Sup.40)**: Optical fibre and cable Recommendations and standards guideline (**RUD-40**) are reproduced below for reference: -

### Summary

*Supplement 40 to the ITU-T G-series Recommendations provides information on the background and specifications used in the development of optical fibre and cable ITU-T Recommendations such as Recommendations ITU-T G.651.1, ITU-T G.652, ITU-T G.653, ITU-T G.654, ITU-T G.655, ITU-T G.656, ITU-T G.657 and L series Recommendations. It also contains information used in the development of test method Recommendations such as Recommendations ITU-T G.650.1, ITU-T G.650.2 and ITU-T G.650.3. Moreover, this Supplement maps ITU-T documents to optical fibre and cable standards developed under IEC.*

## Appendix V

### Status of optical fibre and cable specifications in ITU-T and IEC

#### V.1 Fibre specifications

**The status of optical fibre specifications in ITU-T and IEC is listed in Table V.1.**

**Table V.1- Status of single-mode optical fibre specifications in ITU-T and IEC Optical fibre specification**

ITU-T		IEC	
Fibre category	Recommendation	Fibre category	Document
Single-mode optical fibre	ITU-T G.652	B-652(ex.B1.1/ex. B1.3) single-mode fibre	IEC 60793-2-50
Dispersion-shifted single-mode optical fibre	ITU-T G.653	B-653 (ex. B2) single-mode fibre	
Cut-off shifted single-mode optical fibre	ITU-T G.654	B-654 (ex. B1.2) single-mode fibre	
Non-zero dispersion-shifted single-mode optical fibre	ITU-T G.655	B-655 (ex. B4) single-mode fibre	
Non-zero dispersion-shifted single-mode optical fibre for wideband optical transport	ITU-T G.656	B-656 (ex. B5) single-mode fibre	
Bending loss insensitive single-mode optical fibre	ITU-T G.657	B-657 (ex. B6) single-mode fibre	

From the above tables, it can be seen that Single mode optical fibre ITU-T G.652 recommendation is referred as **B-652** Single mode fibre in IEC standards/specifications.

**22.3.** Further, as mentioned in para-3 of ITU-T G.652 standard, for the purpose of definition, ITU T G.650.1 has been referred. Accordingly, the relevant

portions of **ITU-T G.650.1**: Definitions and test methods for linear, deterministic attributes of single-mode fibre and cable, are reproduced below for reference: -

### **3 Definitions**

*This Recommendation defines the following terms:*

#### **3.5. Others**

**3.5.1 primary coating:** The one or more layers of protective coating material applied to the fibre cladding during or after the drawing process to preserve the integrity of the cladding surface and to give a minimum amount of required protection (e.g., a 250  $\mu\text{m}$  protective coating).

**3.5.2 secondary coating:** The one or more layers of coating material applied over one or more primary-coated fibres in order to give additional required protection or to arrange fibres together in a particular structure (e.g., a 900  $\mu\text{m}$  "buffer" coating, "tight jacket", or a ribbon coating).

**NOTE 2** - *The presence of a primary coating on the fibre usually does not affect the cut off wavelength. However, the presence of a secondary coating may result in a cut-off wavelength that may be significantly shorter than that of the primary coated fibre.*

*The measurement may be performed on a fibre having a secondary coating if the secondary coating type has been examined and it has been confirmed that it does not significantly affect the cut-off wavelength, provided that the secondary coating is properly applied.*

**22.4.** Further, for generic & product specifications of Optical Fibres, **IEC-60793-2** standard has been specified in the international standard **IEEE-1138, 2009**. The relevant portions of such International standard **IEC 60793-2: Optical fibres- Part 2: Product specifications- General** are reproduced below for reference: -

**1 Scope-** *This part of IEC 60793 contains the general specifications for both multi-mode and single-mode optical fibre.*

*Sectional specifications for each of the three single-mode fibre classes, B, C and D contain requirements common to each class.*

**3. Terms and definitions-** *for the purposes of this document, the following terms and definitions apply.*

**3.1 multimode fibre-** *optical fibre in the core of which the radiation of two or more bound modes can propagate at the wavelength of interest.*

**3.2 single-mode fibre-** *optical fibre in which the radiation of only one bound mode can propagate at the wavelength of interest.*

**3.3 core-** *central region of an optical fibre through which most of the optical power is transmitted*

**3.4 cladding-** *dielectric material of an optical fibre surrounding the core.*

**3.5 primary coating-** *thin coating applied directly to the cladding, usually at the time of the fibre drawing, in one or more layers, to [preserve integrity of the cladding surface.*

*Note 1 to entry- A secondary coating **may be applied** directly to the primary coating of one or more fibers, to reinforce the protection of the optical fibre during*

handling and cabling.

**3.6 fibre buffer**- material or assembly of materials used to protect the optical fibre against physical damage.

**3.7 coloured coating**- thin coating applied on the primary coating or on the secondary coating in order to make each fibre distinguishable by its colour.

## 6 General requirements

6.1 Coating-Fibres with glass cladding shall be coated with a material suitable for protecting the cladding material from damage. For fibres with coatings:

- (a) the coating shall be in close contact with the cladding material to preserve the initial integrity of the surface;
- (b) the coating consists of **one or more layers of the same or different materials**;
- (c) the coating shall be removable for connecting purposes, except where it is used as a reference surface.

**22.5** Further, for sectional specifications of Single-mode optical fibres, international standard **IEC 60793-2-50** has been referred in IEC 60793-2:2019. The relevant portions of such international standard **IEC 60793-2-50: Optical fibres- Part 2-50: Product specifications- Sectional specification for class B Single-mode fibres (RUD-43)**, are reproduced below for reference: -

### 1. Scope

This part of IEC 60793 is applicable to optical fibre categories B-652, B-653, B-654, B-655, B-656 and B-657.

.....Table 1 shows a map from IEC designations to the ITU- recommendations.

**Table 1- Map of IEC designation to ITU-T Recommendations and IEC 60793-2-50:2015 designation**

Anne x	Category	Sub category	Description	IEC 60793-2-50:2015	ITU-I Rec
	B-652		Dispersion unshifted fibre		G.652
A		B-652.B		B1.1	G.652.B
<b>A</b>		<b>B-652.D</b>		<b>B1.3</b>	<b>G.652.D</b>

### Annex A (normative)

#### Family specification for category B-652 Dispersion unshifted single-mode fibres

##### A.I General

This dispersion unshifted single-mode fibre is optimized for use in the 1310 nm region but can be used in the 1550 nm and 1625 nm regions.

##### A.2 Dimensional requirements

Table A.2 contains dimensional requirements specific to category B-652.D fibres

**Table A.2 - Dimensional requirements specific to category B-652.D fibres**

Attribute	Unit	Limit (250 $\mu\text{m}$ coating)	Limit (200 $\mu\text{m}$ coating)	Reference
Cladding diameter	$\mu\text{m}$	$125 \pm 0.7$	$125 \pm 0.7$	<b>5.2</b>
Cladding non-circularity	%	$\leq 1.0$	$\leq 1.0$	<b>5.2</b>
Core-cladding concentricity error	$\mu\text{m}$	$\leq 0.6$	$\leq 0.6$	<b>5.2</b>
<b>Primary coating diameter coloured<sup>a</sup></b>	<u><math>\mu\text{m}</math></u>	<b>235 to 255</b>	180 to 210	<b>5.2</b>
Primary coating-cladding concentricity error <sup>a</sup>	$\mu\text{m}$	235 to 265	180 to 220	<b>5.2</b>
Primary coating-cladding concentricity error	$\mu\text{m}$	$\leq 1.0$	$\leq 1.0$	<b>5.2</b>
Fibre length	km			<b>5.2</b>

<sup>a</sup>Alternative nominal primary coating diameters may be used (see table 2), to be agreed between supplier and customer

**Table 2- Dimensional attributes and measurement methods**

Attribute	Measurement method
Cladding diameter	IEC 60793-1-20
Cladding non-circularity	IEC 60793-1-20
Core-cladding concentricity error	IEC 60793-1-20
Primary coating diameter	IEC 60793-1-21
Primary coating non-circularity	IEC 60793-1-21
Primary coating-cladding concentricity error	IEC 60793-1-21
Fibre length	IEC 60793-1-22

From the above tables, it can be seen that the coating limits on optical fibres of category B-652.D is 250  $\mu\text{m}$ . The cladding diameter is mentioned as  $125 \pm 0.7 \mu\text{m}$ , the primary coating diameter-uncoloured is mentioned as 235 to 255  $\mu\text{m}$  and the primary coating diameter-coloured is mentioned as 235 to 265  $\mu\text{m}$ .

**22.6.** For definitions and terminology, International standard **IEC60050-731:1991** has been referred in IEC 60793-2:2019 and as per International standard **IEC60050-731:1991** (IEC 50(731)): International Electrotechnical Vocabulary, Chapter 731: Optical fibre Communication, certain definitions & terminology are reproduced below for reference: -

**731-02-01: Optical Fibre-** A filament shaped optical *waveguide* made of dielectric materials.

**731-02-02: Single mode fibre-** An *Optical fibre* in which the radiation of only one bound mode can propagate at the wavelength of interest.

**731-02-03: Multimode fibre:** An *optical fibre* in the core of which the radiation of two or more bound modes can propagate at the wavelength of interest.

**731-02-04: core:** The central region of an *optical fibre* through which most of the optical power is transmitted.

**731-02-05: cladding:** That dielectric material of an *optical fibre* surrounding the core.

**731-02-23: reference surface** (of an optical fibre): The cylindrical surface of an *optical fibre* to which reference is made for jointing purposes.

**Note** - The reference surface is typically the cladding or primary coating surface. In rare circumstances it could be the core surface.

**731-02-56: fibre buffer:** A material or assembly of materials used to protect the *optical fibre* against physical damage.

**731-02-57: primary coating: A thin coating applied directly to the cladding to preserve integrity of the cladding surface.**

**731-02-56 : secondary coating/ fibre jacket:** A coating applied directly to the *primary coating* to reinforce the protection of the optical fibre during handling and cabling.

**731-04-01: optical cable/ optical fiber cable:** An assembly comprising one or more optical fibres or fibre bundles inside a common covering designed to protect them against mechanical stresses and other environmental influences while retaining the transmission quality of the fibres.

*Note*- May also contain metallic conductors.

**731-04-04: tight jacketed cable:** An optical cable in which the secondary coated optical fibres are not free to take up their own position but are constrained.

**731-04-05: loose cable structure:** An optical cable in which each optical fibre with only a primary coating is fitted loosely in cell or a tube.

**731-04-07: loose tube cable:** A loose cable structure in which the fibres are fitted in one or more tubes.

**731-04-09: fibre bundle/ bundle:** An assembly of unbuffered *optical fibres*.

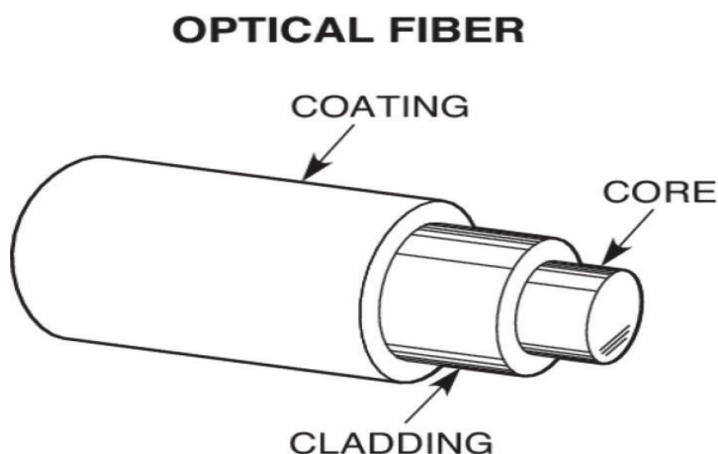
**23.** As per Fiber Optic glossary published by Light brigade (An institute that provides fibre optics training and certification) and available freely online(<https://learn.lightbrigade.com/images/download/FiberOpticGlossary.pdf>) and being relevant, these definitions are reproduced below for reference:

- (i) **Fiber:** A single optical transmission element characterized by a core, a cladding, and a coating. Two common structures, single-mode (with a step-index profile) or multimode (with a graded-index profile) are used for fiber optic communication systems. Different variations are made depending on the attenuation, bandwidth, dispersion, wavelengths, and mechanical requirements.
- (ii) **Optical fiber:** An optical waveguide comprised of a light-carrying core and cladding, which traps light in the core. Fiber optic communication systems use either single-mode or multimode types.
- (iii) **Fiber coating:** A UV-cured material immediately surrounding the glass cladding that serves to protect the integrity of the fiber from surface damage and stresses. Normally 250  $\mu\text{m}$  for outside plant cables and 900  $\mu\text{m}$  for indoor cables.
- (iv) **Coating:** A plastic or acrylate coating, normally up to 245-250 microns, that is placed over the cladding during the manufacturing process. After this process, the fiber can be colored or upper coated to 900 microns for use in tight buffered cables. See *buffer coating*.

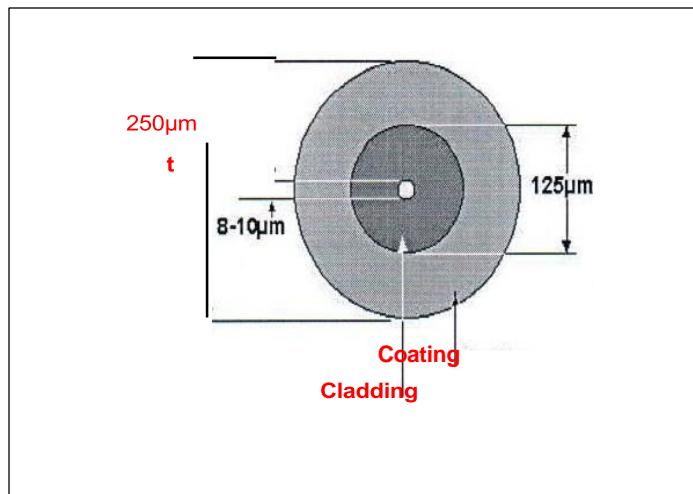
- (v) **Buffer coating:** A protective material with no optical function that covers and protects a fiber. A secondary plastic coating adhered around the coating of the optical fiber to provide additional protection against damage. Normally 250 or 900 microns.
- (vi) **Sheath:** See *cable jacket*.
- (vii) **Cable jacket:** The protective outer covering of optical cable. Common materials include polyethylene (PE), polyurethane (PU), polyvinyl chloride (PVC) and Teflon (plenum).

**24.** On perusal of the various technical specifications of OPGW Cables as approved by M/s Power Grid Corporation of India Ltd. and other state utilities for various suppliers/ importers of OPGW cables, it has come to notice that:-

- **the OPGW cables, Optical Fiber Unit and Approach Cables consist of Single mode optical fibre G.652D (conforming to ITU-T G.652 standard). Single mode optical fibres G.652D have glass core and glass cladding.**
- There are three (3) main components of an optical fibre (including Single mode optical fibre G.652D) -(1) Core- Centre region is the glass core, which actually transmits the light. (2) Cladding- made up of glass/silica, which surrounds the optical fibre core. Its main purpose is to restrict the light from going outside the core region (3) Coating/protective coating-It provides protection to the core and cladding against mechanical, bending, tensile and crushing stress. Core and cladding have different refractive indices for obtaining total internal reflection. The fibre so obtained after di-acrylic coating is of white/ natural colour. A colour coating is applied upon the optical fibre for end-to-end identification of the fibres inside a cable.



**Fig: Components of an optical fibre**



**Fig: Cross section of a single mode optical fibre**

Acrylic coating (Di-acrylic coating) is an integral part of an optical fibre. Optical fibres having only glass core with glass cladding are not commercially available without acrylic coating over the cladding surface since it is brittle and does not have sufficient physical strength. In the absence of acrylic coating, fibre is prone to fracture which may result in loss of light signals. This protective coating is usually applied in two or more layers- inner primary layer and outer primary layer. The inner primary coating of acrylate is a soft, low modulus with UV curable acrylate, rubbery material that cushions the glass from external mechanical loads and external forces. The primary coating is surrounded by outer primary coating (also called secondary layer of primary coating), which is a much stiffer acrylate material and is meant to protect the fiber from abrasions and environmental exposure. The outer primary coating (also called secondary layer of primary coating) also provides an acceptable surface for colouring. Therefore, even the primary coating may have two or more layers.

On perusal of the information available in the public domain about coating of optical fibres, it is evident that Primary coating is done in two layers. The first layer is inner primary coating and the second layer is outer primary coating. Sometimes outer primary coating is also referred to as secondary coating which is within the total range of 240-250  $\mu\text{m}$  diameter/ thickness. For example, the information available on the website of M/s. Corning USA, largest manufacturer of Optical fibre (<https://www.corning.com/media/worldwide/coc/documents/Fiber/white-paper/WP373.pdf>) clearly states that primary coating on optical fibres is done in two layers i.e., inner primary layer and outer primary layer.

**25.** Further, for better handling and cabling, a **secondary coating** may also be applied directly to the primary coating of one or more fibers, to reinforce the protection of the optical fibres during handling and cabling (IEC 60793-2). This secondary coating is also defined as fibre jacket in IEC 60050-731. However, this Secondary coating is nowhere specified in **ITU-T G.652D** standard. Further, as per the definition of Coated Optical Fibres given in ITU-T Manual 2009: Optical fibre, cables and systems - Primary coating means primary protection of a fibre. A secondary protection of primary coated fibres **may** also be applied by using several protection methods viz. (i) loose packaging within a tube or groove, (ii) micromodule construction; (iii) tight polymer coating; (iv) ribbon

construction. (Relevant portion of ITU-I Manual 2009 is. As per ITU-I Manual, 2009 tight secondary coating means:-

### **3.1.2.4 Tight secondary coating**

*A multiple layer tight coating consists of a composite primary layer, an optional buffer layer, and a polymer secondary coating. A buffer layer improves the stability of the optical loss when the fibre is subjected to radial pressure (Figure 2-5). A secondary coating of polymer improves the compressive load characteristic of the fibre. It improves the handling properties of the fibre and makes it particularly suitable as an equipment tail cable when it is encapsulated in a sheath reinforced with aramid yarn strength members.*

In the ITU-T manual, the thickness of primary coated fibre is mentioned as 250 **µm** and the thickness of secondary coated fibre is mentioned as 900 **µm**. In the Single mode optical fibre G.652D, the thickness/ diameter of primary coated fiber is in the range 245-255 **µm**. Further, there is no additional coating over and above the primary coating of thickness/diameter 245-255 **µm**. Therefore, it is amply clear that Single mode optical fibre is primary coated with dual acrylic coating (inner primary coating and outer primary coating) and the evidences available suggest that this coating is an integral part of optical fibre.

**26.1.** The thickness/diameter of the cladding is specified in the ITU-T G.652 standard- "*The recommended nominal value of the cladding diameter is 125 µm*". However, the thickness/diameter of coating is not specified in the ITU-T G.652 standard. Accordingly, in the technical specifications of single mode optical fibre G.652D approved by M/s. Power Grid Corporation of India Ltd. and other State utilities, while the cladding diameter is always specified, the coating diameter is not always specified. However, on going through the technical specifications available in open source, of all the major suppliers/ manufacturers of single mode optical fibre G.652D viz. M/s. ZIT International Pvt. Ltd. China, M/s Coming optical fibre, USA, M/s Furukawa Electric, M/s. Sumitomo, M/s. Fujikura, M/s Prysmian Group, M/s. Hengtong Optic Electric, China, M/s. Taihan Fibreoptics, South Korea etc., it has been gathered that the coating diameter/ thickness is specified as 240-250 **µm**. Therefore, it can be construed that even though the coating thickness/ diameter is not specified in the ITU-I G.652 standard, it is in the range of **240-250 µm**. Further, in the technical specifications and data requirement sheets of OPGW Cables, the suppliers of OPGW cable specify the thickness/ diameter of protective coating of Single mode optical fibre G.652D as **245± 10 µm** and the same is approved by POWERGRID.

As discussed above, cladding diameter is mentioned in ITU-T G.652 standards but coating diameter is not mentioned in the ITU-T G.652 standards. However, the definition of primary coating has been provided in ITU-T G.650.1 wherein the primary coating has been mentioned as 250 **µm** protective coating. Further, the dimensional characteristics viz. cladding diameter and coating diameter of Single mode G.652D Optical fibre are mentioned in **IEC 60793-2-50** standard: Product specifications- Sectional specification for class B Single-mode fibres (RUD-43 supra). Further, as per Table A.2 (Dimensional requirements specific to category B-652.D fibres) of the said standard, the coating limits mentioned on optical fibres of category B-652.D is 250 **µm** coating. The cladding diameter is mentioned as  $125 \pm 0.7 \mu\text{m}$ , primary coating diameter-

uncoloured is mentioned as 235 to 255  $\mu\text{m}$  and primary coating diameter-coloured is mentioned as 235 to 265  $\mu\text{m}$ .

**26.1. Therefore, from the above discussion, standards, evidences and various definitions, it is evident that the single mode optical fibre G.652D (of ITU-T G.652 standards) has a primary coating upto the diameter of  $245\pm 10 \mu\text{m}$ .** Accordingly, all the manufacturers detailed above, manufacture single mode optical fibre G.652D having maximum primary coating diameter in the range of  $245\pm 10 \mu\text{m}$ . Further, as per the definition of primary coating provided in the **IEC 50 (731) and IEC 60793-2**, it is amply clear that **the primary coating over an optical fibre, either in one or more layers applied usually at the time of fibre drawing are exclusively for preserving the integrity of the cladding surface.** Therefore, after applying primary coating over core and cladding, an optical fibre is obtained. Hence, primary coating is an integral part of optical fibre, because it is used to preserve the integrity of the cladding surface and this has been stated by various technical experts as noted above and without the primary coating, no optical fibre (having glass core and glass cladding) exists for commercial use as the glass cladding is very fragile and does not have sufficient strength. Some sample technical specifications of different manufacturers of Single mode optical fibre G.652D wherein coating diameter in the range of  $245\pm 10 \mu\text{m}$  mentioned as primary coating is enclosed as RUD-46 supra. **However, as per the definition of Secondary coating, it is amply clear that it is applied directly to the primary coating of one or more fibers, to reinforce the protection of the optical fibres.**

**27.1** Also, as per the description of tight secondary coating given at para 3.1.2- ITU-T Manual 2009, it has been mentioned that primary coating has diameter of  $250 \mu\text{m}$  and secondary coating has diameter of  $700\text{-}1000 \mu\text{m}$ . Further, as per ITU-T G.650.1 (which contains definitions and test method suitable mainly for linear, deterministic attributes of single-mode optical fibres incl. ITU-T G.652), primary coating and secondary coating (buffer coating, tight jacket or ribbon coating) of optical fibre is described and dimensions for primary coating and secondary coating is mentioned as  $250 \mu\text{m}$  and  $900 \mu\text{m}$  respectively. Therefore, it is evident that the primary coating has diameter  $250 \mu\text{m}$  and secondary coating must be over and above this primary coating diameter with a diameter in the range  $700\text{-}1000 \mu\text{m}$ .

**27.2.** Furthermore, as per the definition given in IEC standard above in para 12.4, **primary coating is "a thin coating applied directly to the cladding, usually at the time of fibre drawing, in one or more layers, to preserve integrity of cladding surface".** As per the definition, this coating is required for reinforcing the integrity of cladding. Further, some manufacturers/suppliers of OPGW i.e., M/s. ZTT, China and M/s. Taihan Fibreoptics, in their technical specification, specifically mention that fibers have only primary protective coating and the same is approved by POWERGRID. Infact, on perusal of the documents submitted by the importer in respect of technical specifications of SS Tube provided by the supplier (M/s. TGG), in the specifications for Optical fibre G.652D, **primary coating material** is mentioned as UV curable acrylate and fiber diameter is mentioned as  $250\pm 10 \mu\text{m}$ . Hence, it is evident that the OPGW and SS Tube imported by the importer consist of optical fibers, which have only primary coating up to diameter of  $250\pm 10 \mu\text{m}$ . Further, from the technical specifications of ZTT single mode optical fiber G.652D available on open source, the coating diameter is mentioned as  $245\pm 10 \mu\text{m}$ . The said coating is not bifurcated anywhere between primary or secondary coating, neither any

separate dimensions of primary and secondary coating of G.652D fibre is mentioned. Also the representative of importer during investigation clearly stated that the primary and secondary coating cannot be separated from the optical fibre separately. Therefore, it is amply clear that Single mode optical fibres G.652D used in OPGW, approach cable and SS Tube optical fibre unit have only primary coating of diameter  $245\pm 10 \mu\text{m}$ . As per international standards, it is undisputed fact that primary coating is for preserving the integrity of the cladding surface and it is an integral part of optical fibres and without primary coating, we cannot imagine the existence of optical fibre having glass core and glass cladding.

Further, there is no additional coating/ covering over and above the primary coating of thickness/diameter  $245-255 \mu\text{m}$  in single mode optical fibre G.652D. Therefore, primary coating of the optical fibre cannot be construed as 'sheathing' of optical fibre when the optical fibre itself is not complete without the primary coating.

**28.1** From the above discussion, it is amply clear that OPGW cables and approach cables are types of optical fibre cables made up of single mode optical fibre G.652D having primary coating in the range of  $245\pm 10 \mu\text{m}$ . As per Customs Tariff Act, 1975, 'Optical fibre cables' are appropriately classifiable under the following two customs tariff heading/ Tariff items:

Chapter Heading/ Tariff Item	Description	Customs duty (BCD)
8544	Insulated (including enamelled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of <b>individually sheathed fibres</b> , whether or not assembled with electric conductors or fitted <b>with</b> connectors - Optical fibre cables: --- Lead alloy sheathed cables for lighting purposes --- Other	0% (SL No. 28 of Notf. No. 24/2005 dated 01.03.200 5)
854470 85447010 85447090		
9001	Optical fibres and optical fibre bundles; optical fibre <b>cables other than those of heading 8544</b> ; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked	
90011000	- Optical fibres, optical fibres bundles and cables	15%

**28.2** Further, as per HSN Explanatory Notes for the headings 8544 and 9001-

**a) Heading 8544**

The heading also covers optical fibre cables, made up of **individually**

**sheathed fibres**, whether or not assembled with electric conductors or fitted with connectors. The sheaths are usually of different colours to permit identification of the fibres at both ends of the cable. Optical fibre cables are used mainly in telecommunications because their capacity for the transmission of data is greater than that of electrical conductors.

**b)** Heading 9001

**Optical fibres** consist of concentric layers of glass or plastics of different refractive indices. Those drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibres less prone to fracture. Optical fibres are usually presented on reels and may be several kilometers in length. They are used to make optical fibre bundles and optical fibre cables.

**Optical fibre bundles** may be rigid, in which case the fibres are agglomerated by a binder along their full length, or they may be flexible, in which case they are bound only at their ends. If coherently bundled, they are used for transmission of images, but if randomly bundled, they are suitable only for transmission of light for illumination.

**Optical fibre cables** of this heading (which may be fitted with connectors) consist of a single sheath containing one or more optical fibre bundles, the fibres of **which are not individually sheathed**.

**28.3** Further, on perusal of the term "optical fibre" described in explanatory notes to heading 9001, it is clear that optical fibres made up of glass must have a plastic coating invisible to the naked eye, to give protection to the glass fibre, which implies that coating is an essential component of a glass optical fibre. Further, in the description of optical fibre cable, the word sheath has been mentioned which implies that sheath is an object containing one or more optical fibre bundles wherein the fibres are not individually sheathed. However, in the imported OPGW cables, the optical fibres only have a coating of plastic material and further a bunch of fibres are encapsulated **in** a Plastic tube filled with thixotropic jelly. Therefore, in the said goods, a bunch of optical fibres are sheathed together and not the individual fibres, as declared by the importer.

**28.4.** As provided in the General Rules for Interpretation (GIR) of the Harmonized System, classification of the goods in the nomenclature shall be governed by the principles contained in Rule 1 to 6. Rule 1, *inter alia*, provides that *"for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes "* As per First Schedule to the Customs Tariff Act, 1975, heading 8544 covers Optical fibre cables having single fibre or multiple fibres, wherein the fibres are **sheathed individually**.

Further, in the chapter note 1 (h) to Chapter 90, it is mentioned that the chapter does not cover optical fibre cables of heading 8544. As per explanatory notes to heading 9001, heading 9001 does not cover optical fibre cables made up of individually sheathed fibres.

**28.5.** On perusal of tariff heading and HSN explanatory notes, it is amply clear that Optical fibre cables which are made up of individually sheathed optical fibres squarely fall under the tariff heading 8544 and Optical fibre cables in which optical fibres are not individually sheathed and optical fibres cables **other than those of heading 8544** fall under the tariff heading 9001. Therefore, for determining the correct classification of OPGW/ Approach Cable, it is necessary to examine whether the optical fibres conforming to ITU-T G.652D standard

used in OPGW/ Approach Cable, are individually sheathed.

**29.1.** Further, the terms 'sheath' and 'coating' of optical fibre are not defined or explained anywhere in the HSN or the Act. However, looking at the definition of coating and sheathing in general sense-

**A. The New Shorter Oxford English Dictionary - 1993 Edition**

**Sheath:** *A close-fitting case or covering for the blade esp. of a sword dagger, etc. when not in use; A case or covering with a similar function or purpose; A thin-walled, hollow part of a device or mechanism which surrounds another part.*

**Coating** - A layer of any substance, as paint, tin, etc., spread over or covering a surface;

**B. McGraw-Hill - Dictionary of Scientific and Technical Terms - Fifth Edition**

**Sheath:** A protective outside covering on a cable. [. ELECTROMAG] The metal wall of a wave guide, (SCI TECH] A protective case or cover

**Coating:** 1. Any material that will form a continuous film over a surface.  
2. The film formed by the material.

On perusal of the above meanings, it is evident that 'sheathing' is different from 'coating' and nowhere have these words been used interchangeably. In explanatory notes to heading 8544, it has been mentioned- "*In addition the heading covers plaited wire coated with lacquer or inserted in an insulating sheath*". The use of word 'or' suggests that the terms sheathing and coating, as envisaged in the customs tariff, are not the same. Hence, it is clearly inferred that coating is different from sheathing.

Further, vide **Order No. I/07-23/17/LB dated 22.11.2017 CESTAT, West Zonal Bench, Mumbai, in the matter of Vodafone South Ltd. v/s Commissioner of Customs (Import), Nhava Sheva, Mumbai**, has categorically held that the 'coating' of optical fibre is not 'sheathing' and coating and sheathing are different for an optical fibre.

**29.2.** Also in the entire nomenclature, the expression of word 'sheath' is available in reference of cable. Accordingly, the same meaning of "sheath" needs to be applied for the optical fibre. Further, the term 'sheath' is used in both headings 8544 and 9001 in two contexts. A '*sheath around the fibre*' and as a '*sheath of the cable*'. Accordingly, same meaning has to be assigned to the word 'sheath'. It cannot be construed as a 'coating' in the context of a fibre and as a "casing/tubing" in the case of a cable. Further, Primary coating is an integral part of optical fibre without which optical fibre cannot exist commercially. Hence, primary coating, in any case, cannot be construed as sheathing of optical fibre.

Furthermore, as per the standard input-output norms (SION) prescribed by DGFT for import of raw materials for production of optical fibres (B215), the UV curable coating is listed under the list of raw materials for optical fibres. It is not listed under the raw materials for cabling the fibre into cables. Further, in the explanatory note to heading 9001, Optical fibre is described wherein it is mentioned that glass optical fibre has a plastic coating. Therefore, it is evident that coating is an integral and essential component of optical fibre.

**30.1** Therefore, the facts/evidences available and discussed in the above paras reveal that coating is an integral and essential component of the optical

fibres having glass core and glass cladding. No optical fibres (having glass core and glass cladding) are commercially available without such coating. If **such coating is considered as sheathing, all the optical fibers would be individually sheathed and all optical fibre cables would, therefore, fall under heading 8544, thereby making heading 9001 for the optical fibre cables redundant. The legislature has deliberately chosen to differentiate between the optical fibre cables containing individually sheathed fibres and the optical fibre cables containing fibres or bundles of fibres sheathed together, which are not individually sheathed.** The tariff classifies them separately under different headings and in different chapters. The tariff has specifically made a distinction between the headings 8544 and 9001 on the basis of construction of the optical fibre cables. Only those Optical fibre cables which are made of individually sheathed fibres are classifiable in heading 8544 and the optical fibre cables in which the optical fibres are not individually sheathed, would fall under heading 9001. From the investigation, it is clear that in the OPGW/Approach Cable, a bundle of primary coated optical fibres are sheathed together in a PBT buffer tube or stainless steel tube (SS Tube). The importer has self-assessed the goods under tariff item 85447090, while as per the above discussion, since the optical fibers in the imported OPGW and Approach Cable are not individually sheathed, the said goods are automatically excluded from CTH 8544 and such goods are specifically included in CTH 9001. Therefore, the self assessment of OPGW and Approach Cable under CTH 85447090 by the importer appears to be incorrect and the impugned goods appear to be correctly classifiable under CTH 90011000 wherein the benefit of concessional rate of Customs duty under Notification No. 24/2005-Cus dated 01.03.2005 is not available.

**30.2.** During investigation, the importer relied on Schedule of Rates and Prices (a part of tender/bidding documents issued by M/s Power Grid Corporation of India Ltd.) wherein, for item description- 24/48 Fibre DWSM OPGW Fibre Optic Cable, the corresponding HSN code is mentioned as 85447090, and relied upon the same for classification of subject goods under heading 8544. However, on going through the said tender documents issued by M/s POWERGRID and available in open source (Volume-I: Conditions of contract, Section-III: Bid Document sheet), it can be noticed that the following has been mentioned in the bidding documents regarding HSN code:

*"it shall entirely be the responsibility of the bidder to check the HSN/ SAC code and rate of GST given against each item. The bidder may either confirm the HSN and rate of GST or if the bidder opts to classify the item in question under a different HSN/ SAC code or opts to indicate a different rate of GST, the bidder may indicate the same in columns provided. **The bidder shall solely be responsible for HSN/ SAC classification and the rate of GST for each item**"*

This clearly shows that the HSN/SAC code mentioned is only **indicative**. It shall be the sole responsibility of the bidder/ supplier (or importer in this case) to check and declare the correct HSN/ SAC classification for the goods.

**31.** The facts and evidences discussed in detail supra reveal that in OPGW cable, Optical Fibre Unit and Optical fibre approach cable, single mode optical fibre G.652D is used. As per the international standards, the diameter of the primary coated optical fibre G.652D is in the range of  $245\pm10\text{ }\mu\text{m}$ . In all the technical specifications, either of the supplier of OPGW cables or manufacturers of single mode optical fibre G.652D, the coating diameter of primary coated

optical fibre is in the range of  $245\pm10$   $\mu\text{m}$ . Also, as per the opinion of TEC and NTH, the diameter of primary coating of single mode optical fibre G.652D is in the range 240-250  $\mu\text{m}$  and dual acrylic coating present is single mode optical fibre G.652D is an integral part of the optical fibre and the same is not sheathing of optical fibre. It has already been brought out above in the preceding paras that the primary coating is an integral part of optical fibre and without primary coating, no optical fibre having glass core and glass cladding is available commercially and as such the Primary coating cannot be termed as sheathing of optical fibre. Further, the importer himself deals in optical fibre cables and they must have knowledge of international standards governing the quality of optical fibre and optical fibre cables. Therefore, the self-assessment of OPGW, Optical fibre Unit and Optical Fibre Approach Cables under tariff item 85447090 by the importer and availment of undue benefit of concessional rate of Customs duty under Notification No. 24/2005-Cus dated 01.03.2005, appear to be incorrect.

**32.1.** From the documents submitted by the importer, it has been noticed that the importer has imported OPGW cables and Optical Fibre Unit (Steel Tube/ Aluminum tube) under heading 8544 and imported Optical Fibre Approach Cables under two different tariff headings i.e., 8544 and 9001. The importer has claimed concessional rate of duty benefit under Notification No. 24/2005 when the goods are imported under heading 8544.

Further, the importer had imported Optical fibre approach cable manufactured by M/s Jiangsu Tongguang Optical Fibre, China under tariff heading 8544 till September, 2019 and claimed concessional rate of benefit of duty under Notification No. 24/2005. However, from October, 2019 onwards, the importer imported Optical fibre approach cable-24/48 Fibre from the same Manufacturer under heading 9001 and did not claim concessional rate of duty benefit under Notification No. 24/2005.

**32.2** As per POWERGRID specifications, "*Approach cable shall contain fibres with identical optical/physical characteristics as those in the OPGW cables*". The importer himself admitted that there is no difference between optical fibre used in approach cable and optical fibre used in OPGW and both the goods merit classification under same tariff heading. Further, in various Bills of Entry for example Bill of Entry Number 5978782 dated 06.12.2019, 6697135 dated 31.01.2020, 6807538 dated 08.02.2020, 7640656 dated 12.05.2020, 8080922 dated 04.07.2020 etc., the OPGW cables/ Optical Fibre Unit have been imported under heading 8544, whereas Approach Cables have been imported under heading 9001 in the same Bill of Entry even when supplier/manufacturer of the goods is same. Therefore, it is evident that the importer has adopted dual classification for the similar product as per their convenience and not as per the law. This clearly shows that the importer had clear knowledge that the goods i.e., OPGW cables were correctly classifiable under tariff item 90011000 but the importer deliberately M/s.-declared the goods in various Bills of Entry under the tariff item 85447090 to wrongfully avail the benefit of concessional rate of duty benefit under Notification No. 24/2005-Cus. Dated 01.03.2005.

**32.3** Further, it has been gathered that M/s. Jiangsu Sterlite Tongguang Fibre Co., Ltd. (manufacturer of Single mode Optical fibre G.652D), China is a Joint Venture company of M/s Jiangsu Tongguang Communication Co., Ltd., China (Supplier of OPGW cables to the importer) and M/s Sterlite Technologies Limited, India (manufacturer of Optical Fibre Cables in India and a part of M/s

Vedanta Group). Investigation in the case has revealed that for the same goods i.e. OPGW cable and Approach Cable, M/s Sterlite Technologies Limited, India issues invoices to Powergrid other state utilities and other buyers of OPGW under HSN/CTH 9001. Further, the technical expert and production head of M/s TG Advait India Pvt. Ltd. (parent company- M/s. Jiangsu Tongguang Communication Co., Ltd., China) admitted that the fibers in the OPGW imported by M/s TG Advait India Pvt. Ltd. from M/s. Jiangsu Tongguang Communication Co., Ltd., China are not individually sheathed and hence correctly classifiable under heading 9001. Sh. Shalin Sheth is also the sole Indian Director in M/s. TG Advait India Pvt. Ltd., who also agreed with the statement of Sh. M. Balaji (Production Head of M/s. TG Advait). Therefore, it is evident that the importer had full knowledge and knowingly indulged in mis-classification of the said goods.

**32.4** As discussed in para 30.2 supra, the importer during statement and written reply relied on the POWERGRID Schedule of Rates and Prices (OPGW Package) for classification the OPGW Cables and Approach cables under heading 8544. However, as brought out above, the HSN/SAC mentioned in POWERGRID schedule is only indicative and it is the sole responsibility of the supplier of the said goods to check and declare the correct HSN/ SAC classification for the goods. Accordingly, various Indian suppliers and overseas suppliers' viz. M/s. Sterlite Technologies Limited, India, M/s Taihan Fiberoptics, Korea and M/s LS Cable and System, South Korea supply the said goods to POWERGRID under heading 9001, in various invoices. Further, in the same schedule, POWERGRID has also indicated the HSN/SAC for approach cables under HSN/ SAC 544. However, the importer imported approach cables by self-assessing the same under heading 9001, therefore, it is evident that importer has adopted an opportunistic approach and declared the imported goods as per their convenience and not as per law.

**32.5** The importer has also relied on Test report of National Test House (NTH), Mumbai for classification of OPGW cables and approach cables under heading 8544. However, as detailed in para-12 supra, NTH has categorically mentioned that Cladding and di-acrylic coating are integral part of optical fiber and di-acrylic coating over cladding cannot be construed as sheathing of optical fibre. Also as per the international standards for Optical Fibre as discussed in above paras, it is an established fact that the primary coating of optical fibre upto the thickness of  $245\pm10\text{ }\mu\text{m}$  is an integral part of optical fibre and it cannot be construed as sheathing of optical fibre. Further, during the analysis of samples of the same goods, of another importer NTH stated that the samples could be classified under heading 9001. Also as per the opinion of TEC, New Delhi and its regional unit of TEC, Bengaluru clearly state that the OPGW cables are not made up of individually sheathed fibres. Therefore the test report relied upon by the importer is not tenable.

**33.** On perusal of the retrieved e-mail conversations, it is evident that the importer was fully aware that imported OPGW cable/ Optical Fibre Unit and Approach Cable is correctly classifiable under CTH 9001 and therefore attracts BCD@15%. However, while importing OPGW/Optical Fibre Unit and Approach Cable, TG Advait M/s.-declared the same under CTH 8544 to avail duty benefit. In the said conversations, they are discussing about complaints received by Customs department in relation to M/s.-classification of OPGW, therefore, they are suggesting taking more precautions in preparation of import documents

which clearly reflects their mensrea to evade duty payment by all possible means.

Further, the importer in statement dated 12.07.2021 himself admitted that for the OPGW imported by TG Advait and supplied by M/s. Shanghai Tongguang International Trading Co., Ltd., were actually manufactured by M/s. Jiangsu Tongguang Optical Fibre Company. M/s Shanghai Tongguang International Trading Co., Ltd. is only acting as a trader. Further, on going through various purchase orders (for example PO No. TGAPL/60-3 dated 17.01.2020, TGAPL/41 dated 01.11.2019) of OPGW cable raised by TG Advait to the supplier, M/s Shanghai Tongguang International Trading Co., Ltd., it has been noticed that Mr. Ding Guofeng (one of the directors in TG Advait) is the common legal representative or authorised agent in both the companies viz. M/s Shanghai Tongguang International Trading Co., Ltd. and M/s TG Advait.

Hence, it is evident that the importer and the supplier are related parties and the importer is getting the manipulated documents from their suppliers, as per their choice. Therefore, documents provided through supplier cannot be relied upon. Further, when confronted with these e-mail conversations, Sh. Shalin Sheth gave evasive reply that he was not able to recall the reason for such e-mails. Nonetheless such e-mails prove mensrea on part of the importer to intentionally Mis-state the description and to mis-classify the said goods to evade duty.

**34.** Further, during his statement recorded on 15.03.2021 in a separate investigation, Sh. Shalin Sheth agreed with the statement dated 04.12.2020 of Sh. Vimal Pandya (technical expert of M/s Advait Infratech Private Limited) and statement dated 01.02.2021 of Sh. M. Balaji, (Technical expert, M/s TG Advait India Pvt. Ltd.), that the imported OPGW cables and Approach Cables do not contain individually sheathed optical fibres. Sh. Shalin Sheth himself admitted that OPGW cables are not made up of individually sheathed optical fibres and therefore, it may be correctly classifiable under CTH 90011000 and committed to deposit the differential duty arising out due to change in classification.

**35.** The facts and evidences discussed in the paras above clearly show that the importer resorted to willful misstatement and suppression of material facts necessary for deciding the issue and was knowingly and intentionally involved in mis-declaration and mis-classification with intent to evade payment of Customs duty on OPGW Cables, Optical Fibre Units and Approach Cables. Hence, Section 28(4) of Customs Act, 1962, invoking extended period for demand of duty, is applicable in the instant case. **Annexure-A** containing details of differential duty in the instant case is prepared. The differential Customs duty aggregating to **Rs.3,59,83,188/- (Mundra- Rs. 3,56,91,077/-, Delhi Air Cargo- Rs. 2,20,887/-, Nhava Sheva- Rs. 57,014/- and Ahmedabad- Rs. 14,210/-)** leviable on the said goods imported and cleared under bills of entry mentioned in **Annexure-A** and not paid by **M/s TG Advait India Pvt. Ltd.** at the time of filing the said bills of entry, is, therefore, liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

### **36. LEGAL PROVISIONS:**

In the instant case, mis-declaration and mis-classification has been resorted to with the intent to evade payment of Customs duties. The various provisions of law/ rules relevant to the import of goods in general, liability of goods to confiscation and liability of persons concerned to penalty for improper

importation of goods, are summarized below:

**36.1 Section 2(2) of the Customs Act, 1962:** "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

**36.2 Section 2(14) of the Customs Act, 1962:** "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

**36.3 Section 2(16) of the Customs Act, 1962:** "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under Section 84.

**36.4 Section 11A(a) of the Customs Act, 1962:** "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

**36.5 Section 17 of the Customs Act, 1962:** (1) 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.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-

assess the duty leviable on such goods.

**36.6. Section 28 of the Customs Act, 1962-** Recovery of duties not levied or not paid or short levied or short-paid or erroneously refunded. -

(1) ...

(2) ...

(3) ...

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of-

(a) collusion; or

(b) any willful misstatement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5)...

(11) ...

**36.7. Section 28AA of the Customs Act, 1962** - Interest on delayed payment of Duty:

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

**36.8. Section 46 of the Customs Act, 1962:** (1) The importer of any goods, other than goods intended for transit or transshipment, shall make an entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following namely:

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

**36.9. Section 112 of the Customs Act, 1962** - Penalty for improper importation of goods, etc. - Any person,

(a) Who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater; -

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

..

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of 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 percent of the penalty so determined;

(iii) -----

(iv) -----

(v) -----

**36.10. Section 114A of the Customs Act, 1962** - 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 willful M/s.-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 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 determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that, where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

**36.11. Section 114AA of the Customs Act, 1962** - Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

**36.12. Section 140 of the Customs Act, 1962:** Offences by companies. - (1) If the person committing an offence under this Chapter is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**37.** With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was the obligatory on the part of the importer to declare the actual description and correct classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of

the Customs Act, 1962, in as much as they have M/s.-classified and M/s.-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

**38. Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011** cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self assessment, is required to ensure that he declared the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.

**39.1.** In view of above, Show Cause Notice F.No. VIII/48-1813/TG Advait/ GrV/MCH/2021-22 & DRI/DZU/23/Enq-19/2020/TG Advait dated 09.02.2022 was issued to **M/s. TG Advait** wherein they were called upon to show cause to the Commissioner of Customs, Custom House Mundra, having his office at Office of the Principal Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra, Gujarat - 370421 as to why:

- a) the entered and declared classification under tariff item 85447090 of the CTA, for the goods "OPGW", "OPGW (L-AL-TUBE)", "OPTICAL FIBER CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE" in bills of entry, mentioned in Annexure- A to this Notice, should not be rejected and the said goods should not be classified under tariff item 90011000 with consequential duty liability;
- b) The goods imported under Bill of Entry No. 8080922 dated 04.07.2020 having total assessable value **Rs. 8,58,096/-** (as detailed in Table-I), seized vide seizure memo dated 22.10.2020 and subsequently released provisionally, should not be confiscated under Section 111 (m) of the Customs Act, 1962;
- c) The differential Customs duty amounting to **Rs. 3,56,91,077/- (Rupees Three Crore Fifty Six Lakh Ninety One Thousand and Seventy Seven Only)**, short levied / short paid on the said goods covered under bills of entry (as detailed in Annexure-A to subject Notice), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- d) Penalty should not be imposed on them under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962;

**39.1.1** Vide the aforementioned Show Cause Notice dated 09.09.2022; **Sh. Shalin Sheth**, Director, M/s. TG Advait; were also called upon to show cause to the Commissioner of Customs, Customs House, Mundra as to why penalty should not be on him under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962

**40.** Further, investigation carried out by the DRI also revealed that M/s. T. G. Advait had imported goods through AIR Cargo Complex, New Delhi; JNPT, Nhava; and Air Cargo Complex, Old Airport, Ahmedabad. Therefore, three separate Show Cause Notices were also issued to them by the competent authorities. Details of the same is as under:

- **SCN No.184/2021-22 dated 12.10.2021 issued vide F.No. VIII/12/ACC-imp/Gr. 5M&5B/Misc-213/2021-22 by the Deputy Commissioner of Customs (Group 5M), New Customs House, New Delhi;**
- **SCN No. 434/21-22/DC/Gr.VB/CAC/JNCH dated 27.09.2021 issued vide F.No. S/26-Misc-716/21-22/Gr.VB/NS-V/JNCH by the Deputy Commissioner of Customs, Group 5B/5, (F,I,V), NS-V, JNCH;**
- **SCN F.No.VIII/48-52/ACC/SCN/T.G.Advait/2021-22 dated 04.09.2021 by the Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad-380003.**

40.1. **M/s TG Advait** had imported the goods “OPTICAL FIBER CABLE WITH CONDUCTOR-OPGW-48F” through AIR Cargo Complex, New Delhi, therefore **SCN No.184/2021-22 dated 12.10.2021 issued vide F.No. VIII/12/ACC-imp/Gr. 5M&5B/Misc-213/2021-22 by the Deputy Commissioner of Customs (Group 5M), New Customs House, New Delhi** to **M/s TG Advait**, wherein they were called upon to show cause to the Deputy Commissioner of Customs, Group 5M, Office of the Pr. Commissioner of the customs, Air Cargo Complex, New Delhi, as to why:

- a) The entered and declared classification under tariff item 85447090 of the CTA, for the goods “OPTICAL FIBER CABLE WITH CONDUCTOR-OPGW-48F”, in bills of entry, mentioned in Annexure- A to this Notice, should not be rejected and the said goods should not be classified under tariff item 90011t 00 with consequential duty liability;
- b) The differential Customs duty amounting to **Rs. 2,20,887/- (Rupees Two Lakh Twenty Thousand Eight Hundred and Eighty-Seven Only)**, short levied / short paid on the said goods covered under bills of entry No. 5408123 dated 23.10.2019 as detailed in Annexure- A to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- c) Penalty should not be imposed on them under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962;

**40.1.1.** Vide the aforementioned Show Cause Notice dated 12.10.21; **Sh. Shalin Sheth**, Director of M/s. TG Advait; were also called upon to show cause to Deputy Commissioner of Customs, Group 5M, Office of the Pr. Commissioner of the customs, Air Cargo Complex, New Delhi as to why penalty should not be on him under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962.

**40.2. M/s TG Advait** had also imported the goods “OPTICAL FIBER Unit” through JNPT, Nhava Sheva, therefore **SCN No. 434/21-22/DC/Gr.VB/CAC/JNCH dated 27.09.2021 issued vide F.No. S/26-Misc-716/21-22/Gr.VB/NS-V/JNCH by the Deputy Commissioner of Customs, Group 5B/5, (F,I,V), NS-V, Jawaharlal Nehru Custom House, Nhava Sheva, Ta. Uran, Distt. Raigad, Maharashtra-400707**, as to why:

- a. the entered and declared classification under tariff item 85447090 of the CTA, for the goods “OPTICAL FIBER Unit”, in bills of entry, mentioned in Annexure- A to this Notice, should not be rejected and the said goods should not be classified under tariff item 90011000 with consequential

duty liability;

- b. The differential Customs duty amounting to **Rs. 57,014/- (Rupees Fifty Seven Thousand Eight Hundred and Eighty Seven Only)**, short levied / short paid on the said goods covered under bills of entry as detailed in Annexure- A to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- c. Penalty should not be imposed on them under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962;

**40.2.1.** Vide the aforementioned Show Cause Notice dated 27.09.21; **Sh. Shalin Sheth**, Director of M/s. TG Advait; were also called upon to show cause to Deputy/ Assistant Commissioner of Customs, Group B/5, (F.I.V), NS-V, Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran, Distt. Raigad, Maharashtra-400707 as to why penalty should not be on him under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962.

**40.3.** **M/s TG Advait** had also imported the goods “OPGW(L-AL-TUBE)”, through AIR Cargo Complex, Ahmedabad, therefore **SCN F.No.VIII/48-52/ACC/SCN/T.G.Advait/2021-22 dated 04.09.2021 by the Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad-380003** to **M/s TG Advait** wherein they were called upon to show cause to the Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad-380003, as to why:

- a. the entered and declared classification under tariff item 85447090 of the CTA, for the goods “OPTICAL FIBER Unit”, in bills of entry, mentioned in Annexure- A to this Notice, should not be rejected and the said goods should not be classified under tariff item 90011000 with consequential duty liability;
- b. The differential Customs duty amounting to **Rs.14,210/- (Rupees Fourteen Thousand Two Hundred Ten Only)**, short levied / short paid on the said goods covered under bills of entry as detailed in Annexure- A to this Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;
- c. Penalty should not be imposed on them under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962;

**40.3.1** Vide the aforementioned Show Cause Notice dated 27.09.21; **Sh. Shalin Sheth**, Director, M/s. TG Advait; were also called upon to Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad-380003 show cause to as to why penalty should not be on him under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962.

**40.4.** Since the **M/s TG Advait** and its Director, Sh. Shalin Sheth, have been asked to show cause to different adjudicating authorities in respect of various imports made by them through Mundra Port, CD Sabarmati, Nhava Sheva and under their respective jurisdictions, **Commissioner of Customs, Customs House, Mundra, is the proper authority** to adjudicate the above SCNs, in terms of Notification No. 29/2022-Customs (NT) dated 31.03.2022, as highest

amount of duty arises at Mundra Port. Accordingly, corrigenda were issued by the Show Cause Notice issuing Authorities of Air Cargo Complex Delhi, Nhava Sheva Port and Air Cargo Complex, Ahmedabad all the SCNs have been made answerable to **Commissioner of Customs, Customs House, Mundra, being the proper authority** to adjudicate the above SCNs.

### **WRITTEN SUBMISSION**

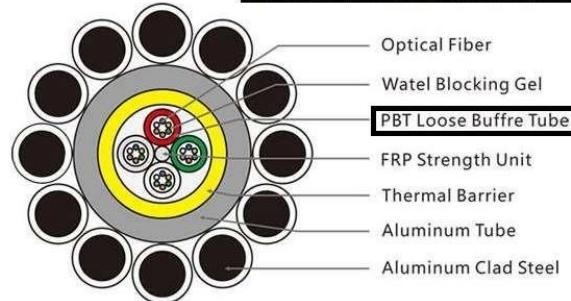
**41.** The importer through Advocate Shri Soham Bandyopadhyay vide email dated 20.11.2023 and email dated 21.11.2023 has filed written/defense submission wherein he has contended the allegation/charge of Show cause Notice.

#### **41.1. The Importer has submitted the Description of the Imported Product as under: -**

##### **Optical Fiber Ground Wire Cable (OPGW Cable)**

42.1 OPGW cables are installed on the Top Peak of the Power Transmission Line Tower. The basic function of the OPGW is to ground/give path to earth to the fault currents produced due to Lightning Strikes. Further, there are Optical Fibres assembled in the centre of the OPGW which can be used as a medium for Data Transmission. The basic construction of the OPGW is given in the belowmentioned pictorial explanation.

#### **OPGW CONSTRUCTION**



41.2 Optical Fibres which are differentiated by different colours are grouped in the count of 4 or 6 or as per design in required nos., and the group is surrounded by suitable material jacket. A typical OPGW contains such 4 or 6 jackets. A typical OPGW will have around 24, 48 or as per design required numbers of individual optical fibres. The main function of Optical Fibres is transmission of light signals which are used for Data Transmission.

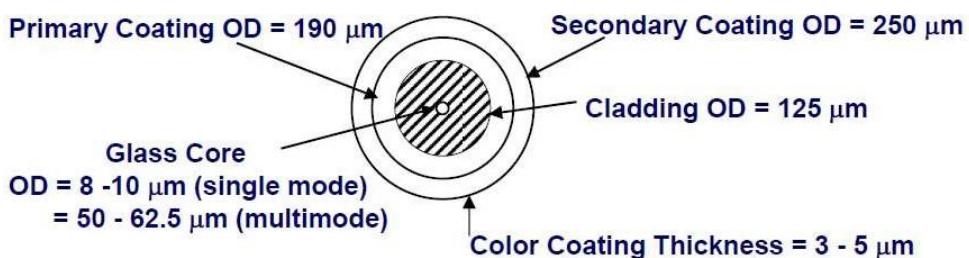
41.3 The product OPGW cable imported by Noticee contains outer layer of metallic conductors made up of Aluminium Clad Steel Wires. The metallic conductors are stranded on Aluminium or Steel Tube. This is also called Optical Fibre Unit. The tube consists of required numbers of buffer tubes of different unique colours. This buffer tube consists of required numbers of individual optical fibres. Each individual optical fibre is coated with a unique/different colour. The individual optical fibres are very thin strands of pure glass and it is designed to transmit light signals from a transmitter

to a receiver. These light signals represent encoded electrical signals that include video, audio, or data information in any combination. The construction of an individual optical fibre are as follows:

- i. Core made of Glass [Diameter 8 microns to 10 microns]
- ii. Cladding of glass surrounding the glass core [Outer Diameter 125 microns] -The cladding confines light wave modes to the core by means of total internal reflection, provides some protection to the core, and transmits evanescent waves that are usually bound to waves in the core. In other words, the cladding layer prevents light loss once light enters a glass fibre.
- iii. Dual Acrylate Coating [Outer Diameter 245 microns]- Dual acrylate coating protects optical fibre from external interference and external abrasion. This Coating is made of a UV-Curable acrylate. It is applied in two layers. The inner layer is somewhat softer than the outer one. This is to protect the Fibre against micro-bending loss and from abrasion.
- iv. Colour coating of individual Fibre is done over the dual acrylate coating, with a unique/distinct colour.

41.4 The optical fibres in question are manufactured individually, with a cladding and further with a UV- dual acrylate layer coatings and an additional colour coating. Its optical fibres are individually produced and then cladded and coated. Dual acrylate layers are applied to each individual optical fibre. Then a colour coating is applied. The initial layer of acrylate is a soft, low-modulus with UV curable acrylate and it provides a cushion-like protection against small bends and external forces. The second layer of UV acrylate is a high-modulus, abrasion resistant coating which provides stronger mechanical protection of the glass fibre during handling, cable manufacturing and installation. The colour coating is added immediately after the dual UV acrylate layers are applied.

41.5 Cladding & Dual Layer Acrylate Coating are easily strippable just like a casing of an electric wire cable by means of mechanical stripping tools to enable splicing of the two Optical Fibres for establishing continuous connection. For the sake of brevity, the reference diagram of optical fibre is given below:



41.6 A “coated fibre” at times also referred as “buffered fibre” in the optical fibre cable industry and is the term used to describe “an optical fibre that has a coating over the cladding for protection, increased visibility, and ease of handling.” [Communication Standard Dictionary, 3rd Edition by Martin H. Weik, D.Sc.].

41.7 That the Cladding & Coating is a kind of Sheathing being provided to the raw optical fibre. Further, the Optical Fibres which are assembled in the quantity of 24/48 Nos., or so, are functioning individually for transmission of data i.e., each fibre works as a separate channel. Thus, Cladding & Coating of fibres acts as insulation for data transmission and data of one fibre cannot get mixed up with the data of the other fibre. Thus, fibres assembled in OPGW should be called as Individually Sheathed Fibres.

41.8 The primary function of the OPGW remains providing grounding to the fault currents being produced due to a lightning strike which is provided by Metallic Conductors made up of Aluminum Clad Steel Wire. The optical fibres are assembled in the centre of the tube so that data connectivity can also be established. However, providing data connectivity is the secondary function of OPGW. Whether or not the Optical Fibres are utilized for data transmission, the OPGW cable must be capable of providing the function of Earth Wire.

**B. GYFTS-24B1 & GYFTS-48B1 (Optical Fibre Cables)**

41.9 These types of cables are also called as Approach Cable or ADSS or Optical Fibre Cable. The construction difference between OPGW & OFC is that OPGW is surrounded by metal conductors while OFC is not surrounded by metal conductors. OPGW is installed on top of the transmission line tower, while OFC is installed underground or on distribution line poles as ADSS.

41.10 As far as construction of optical fibre in OFC is concerned, it is similar to OPGW. The only difference between OFC and OPGW is absence of metal conductors. The only function of the OFC is providing dataconnectivity.

**The importer has submitted Classification Analysis as under:-**

41.11. There are two competing headings for classification of the optical fibre cables: -

CTH 8544	CTH 9001
Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; <u>optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors</u>	<u>Optical fibres and optical fibre bundles; optical fibre cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked</u>

41.12. Thus, among others, there are two distinguishing and important aspects for deciding classification of above products: -

a. CTH 9001 is a residual entry for optical fibre cable and

product will fall under CTH 9001 if and only if it is excluded from CTH 8544. This is evident from CTH description as well as note 1(h) of Chapter notes of chapter 90.

1. This Chapter does not cover:

(h) ..... **connectors for optical fibres, optical fibre bundles or cables (heading 8536); numerical control apparatus of heading 8537; sealed beam lamp units of heading 8539; optical fibre cables of heading 8544;**

**b.** If the optical fibres are individually sheathed, then the product will definitely be classified under CTH 8544.

41.13. Explanatory notes to CTH 8544 states as under: -

*"The heading also covers optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors. The Sheaths are usually of different colour to permit identification of the fibres at both ends of the cables. Optical fibre cables are used mainly in telecommunications because their capacity for the transmission of data is greater than that of electrical conductors"*

41.14. Thus, above explanation makes it clear that: -

- i. CTH 8544 is not limited to "optical fibre cables, made up of individually sheathed fibres" alone because in that case it should have used the expression "this heading covers only those optical fibre cables, which are made up of individually sheathed fibres." The expression "The heading also covers" is a clarificatory explanation which simply means that apart from other types of optical fibre cables, the heading also covers "optical fibre cables, made up of individually sheathed fibres"
- ii. The sheathing referred in explanation 8544 essentially refers to a sheathing of colours to permit identification of the fibres at both ends of the cables, which is definitely present in the imported products.
- iii. Apart from optical fibre cables used in power sector, even the optical fibre cables used in telecommunication are specifically covered under 8544.

41.15. Explanatory Notes to 9001 states as under: -

*(A) Optical fibres and optical fibre bundles as well as optical fibre cables other than those of heading 85.44*

*Optical fibres consist of concentric layers of glass or plastics of different refractive indices. Those drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibres less prone to fracture. Optical fibres are usually presented on reels and may be several kilometres in length. They are used to make optical fibre bundles and optical fibre cables.*

*Optical fibre bundles may be rigid, in which case the fibres are agglomerated by a binder along their full length, or they may be flexible, in which case they are bound only at their ends. If coherently bundled, they are used for transmission of images, but*

*if randomly bundles, they are suitable only for transmission of light for illumination.*

*Optical fibre cables of this heading (which may be fitted with connectors) consist of a sheath containing one or more optical fibre bundles, the fibres of which are not individually sheathed.*

*Optical fibre bundles and cables are used primarily in optical apparatus, particularly in endoscopes of heading 90.18*

41.16. Thus, above explanation makes it clear that CTH 9001 covers Optical fibre bundles and cables that are used primarily in optical apparatus. In the present case the imported product has no connection at all with any kind of optical apparatus at all. The imported products are used in power transmission and chapter 85 being the suitable chapter for all power related equipment, the correct classification is under 8544. Even the optical fibre cables used in telecommunication is specifically covered under 8544.

41.17. According to Merriam Webster Dictionary, the word sheathing means “to cover with something that protects”. One of the synonyms for the word sheathing is cladding.

41.18. According to Cambridge Dictionary the word “***sheathing***” means “***a close-fitting covering designed to protect something***”. As per Collins Dictionary the word “sheathing” means “any material used as an outer layer”.

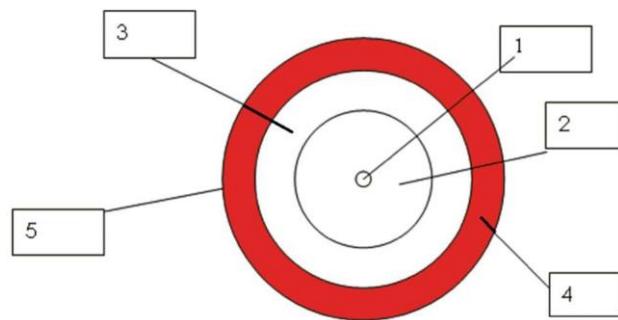
41.19. The strands of optical fibre which are cladded and coated with dual acrylate is for the purposes of protection of the optical fibres.

41.20. Therefore, an optical fibre cladded with glass with dual acrylate coating and further coated with colours for identification shall be treated as individually sheathed as per dictionary meaning read with explanation given under HSN, meriting classification of the product in question under CTH 8544.

#### Explanatory Notes to the Combined Nomenclature of the European Communities

41.21. The European union describes the optical fibre cables of CTH 8544 as

***Optical-fibre cables***- *This subheading also includes optical-fibre cables, designed for example for telecommunication use, made up of optical fibres individually coated with a dual layer of acrylate polymer placed in a protective casing. The coating consists of an inner sheath of soft acrylate and an outer sheath of hard acrylate, the latter being coated by a layer of various colours. The coating of the individual optical fibres provides protection and structural integrity, for example by protecting the individual fibres against fracture*



1. *optical-fibre core (glass-fibre core);*
2. *optical-fibre cladding (glass);*
3. *inner sheath of soft acrylate coating;*
4. *outer sheath of hard acrylate coating.*
5. *colour coding (Colour Lock) identification*

41.22. The products imported by the Noticee correctly fit the description as provided in the explanatory notes adopted by the European Union and thus the correct classification shall be under CTH 8544.

Test Report of National Test House (Western Region), Ministry of Consumer Affairs, Government of India:

41.23. M/s Advait Infratech Pvt. Ltd. (Importer of said product) subjected the product in question to tests at National Test House (Western Region) wherein inter alia vide Test Certificate No. NTH (WR)/EL(C)/2017/00188 having Code No. 1505197278310 dated 14.09.2017 it was found that "*Light Transmission was observed through the fibre while fibre being bent through angle*" and further it was opined by the Authority that the goods are individually sheathed optical fibre cables and are rightly classifiable under CTH 8544.

41.24. National Test House (Western Region) is Central Government of India Body operated and regulated under the Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs. Revenue without any valid reason discarded the said report and tabled the allegations against the Noticee No. 1 & Noticee No. 2 which are denied vehemently as the product in question is rightly classifiable under CTH 8544.

**The Importer have submitted US Ruling as under:**

41.25. Reliance is also placed on the multiple US Customs Rulings regarding HSN classification of Optical fiber cables wherein it was held that the individual fibers which are cladded, coated with dual acrylate coating with additional layer of colouring does provide substantial sheathing protection to the individual optical fibers in its optical fiber cable and is classifiable under CTH 8544.

**The Importer have submitted their contentions on decisions of Judicial forums of India as under:-**

41.26. There are CESTAT and AAR decisions including a tribunal larger bench decision holding that optical fibre cables where individual fibres are coated but not provided with a visible plastic cover or cover of some other material, shall fall under CTH 9001.

- a. Optel Telecommunication Ltd. v. Commissioner — 2005 (186) E.L.T. 109 (Tribunal)

- b. Alcatel India Ltd. — 2006 (197) E.L.T. 176 (A.A.R.)
- c. Reliance Communications Infrastructure Ltd. v. Commissioner 2015 (320) E.L.T. 306 (Tri.-Mumbai)
- d. Commissioner v. Vodafone Essar Gujarat Ltd. - 2018 (360) E.L.T. A193 (CESTAT-LB)/2017-TIOL-4586-CESTAT-MUM-LB

41.27. However, these decisions are *per incuriam* because

- a. One decision has been followed in other without any kind of independent technical opinion and without looking as to how the product is classified in other customs jurisdiction which are also based on same HSN. It appears that in a biased manner all the technical literature and opinions and rulings of foreign jurisdiction has been brushed aside and matter has been decided based on independent understanding of the product by honourable judges.
- b. While referring the matter to larger bench, referral bench noted as below.

*“On merits, it has been held that after seeing the samples of the goods and going through technical literature, it is apparent that each optic fibre in the Optic Fibre Cable (OFC) has a sheath. Further these are not optical fibre bundles which consist of thousands of fibres and used for image transmission. The goods are also not consisting of two or more optical fibre bundles. As regard classification between two rival heads, the only difference is that whereas under Heading 8544 of Customs Tariff Act, 1975 each fibre is required to be individually sheathed in the cable, under Heading 9011 there are bundles of fibres and each fibre is not individually sheathed. HSN explanatory notes fortify these views. In present case there are only 48 fibres present in the cable. Each fibre is not only sheathed but also colour coated for identification of each fibre at both end of cable. 48 fibres as such cannot transmit light that too in endoscopes, etc. Thus, OFC in instant case appears classifiable under Heading 8544 and not Heading 9001. Technical opinions also point to confirmation of classification under Heading 8544 only.”*

*[Commissioner v. Vodafone Essar Gujarat Ltd - 2016 (331) E.L.T. A139 (Tri. - Mumbai)]*

- c. In the larger bench decision, Court agreed that 'sheathed' or 'sheath' has not been defined in the statute and thus its meaning has to be ascertained from the relevant trade/field.
- d. But instead of referring to relevant field and technical opinion, the court referred to textile/rubber headings 40.10, 56.04, 56.07, General explanatory notes to chapter 46, Chapter note2 to chapter 59 etc.) to conclude that the term 'sheathed' is different from coating and coating cannot be treated as sheathing. This analysis is perverse because what is said with respect to textile products cannot be applied mechanically with respect to optical fibre. The way concepts of classical physics cannot be applied for movement of electrons, similarly textiles concepts cannot be applied to optical fibres. Court should have referred the optical fibre

literature or sought an opinion from an expert in optical fibre technology.

- e. Court has not discussed any technical literature from the relevant field to conclude that the term 'sheath' refers to a separate object which is used to encase other items.
- f. The observation regarding use of the optical fibre cables of CTH 9001, which was relevant for the purposes of classification has been arbitrarily brushed aside and irrelevant details of textile chapters has been relied upon.

41.28. None of the decisions noted above refer to optical fibre products used in power sector. They all refer to optical fibre products used in telecom sector. Further these decisions are *per incuriam*, as they do not decide the issue correctly and thus are not binding and the classification issue can be contested.

41.29. It should be noted that India, USA and EC all being members of World Customs Organization (WCO), follow HSN explanatory notes which guides the classification of products at 6-digit level and thus US ruling and EC explanations are meaningful for classification of the product under Indian Tariff.

41.30. In view of above analysis, it is submitted that the imported products in question are correctly classifiable under CTH 8544 70 90 and the demand of duty proposed vide the said SCNs is not sustainable at all.

**The Importer in their submission has contended the applicability of Interest as under:**

41.31. Since the demand of duty itself is not sustainable there is no question of any interest liability under section 28AA of the Customs Act, 1962.

**The importer has submitted that SECTION 28(4) has wrongly been invoked by the department**

41.32. Customs has invoked the Section 28 (4) of the Customs Act, 1962, which is otherwise, invoked only in cases of collusion, any willful mis-statement, suppression of facts.

41.33. The provision stipulates that section 28(4) can be invoked only when there exists element of collusion or willful mis-statement or suppression of fact. In the case of the Noticee, none of the three elements have been satisfied and the powers granted under Section 28 (4) cannot be exercised by the Customs.

41.34. The entire case of the Noticee is based on interpretation of Customs Tariff Act, 1975 read with WCO HSN Explanatory Notes and other supporting literatures. The Noticee claimed a classification that is CTH 8544 and the classification adopted by the Noticee is being challenged by the Customs. However, while alleging willful mis-statement, collusion etc. Customs completely ignored the fact that the issue of classification of OPGW Cables and Approach Cables is All Industry Issue. Not only private parties like that of the Noticee are adopting such classification but government PSUs namely M/s Power Grid Corporation of India have adopted the same classification under CTH 8544 for import of the said products.

41.35. It is further submitted that apart from Indian Importers, importers from other nations also have adopted the same classification which is evidenced above. [Refer US Rulings and EU Explanatory Notes]

41.36. It is pertinent to mention here that there is no dispute regarding the

description of goods, quantity and other details declared by the Noticee at the time of filing Bill of Entry. The imported goods correspond exactly to declaration in respect of the description and value and there is no discrepancy pointed out by the Customs. The objection of the department is only with respect to classification of the imported goods. As already been explained in the aforementioned paras the classification suggested by the department w.r.t. to imported goods is not correct. The correct classification of the imported goods is under CTH 8544 where there is no implication of any differential duty.

41.37. Assuming for a moment that the goods are to be classified under Chapter 90 (though not admitting) even then section 28 (4) cannot be invoked in the present case. There was no suppression of any fact or any description of the imported goods at the time of filing bill of entries. All the facts regarding the description of the imported products were declared at the time of import. There is not even an allegation in the SCN that the Noticee has suppressed any fact as to the description of imported goods. The classification of an imported product is a legal exercise and misclassification of product cannot be equated with mis declaration with an intention to evade payment of duty. **It is to be noted here that classification of a product depends on the Section/Chapter Notes and references to the Heading.**

41.38. In the instant case, none of the above ingredients of Section 28(4) is attracted and therefore allegation of collusion, willful mis-statement or suppression of fact is arbitrary and un-tenable. For the sake of clarity, the relevant provision is reproduced below: -

*“Section 28 (4)- Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —*

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts,”*

41.39. In the present case the issue is of interpretation of law and its application to decide the correct classification of a particular product. Deciding correct classification by referring to Customs Tariff, general interpretative Rules, Section Notes, Chapter Notes and Headings and subheading etc. is a legal exercise. It is settled law that mis-declaration of imported goods cannot be alleged against importer, when the issue involved is purely of classification or claiming benefit of exemption notification, where subsequently on merit the declared classification is found to be wrong or claimed benefit of exemption notification is found to be inadmissible. We rely on the following decision of the apex court and Tribunals:

- a)** In the case of the **Northern Plastic Ltd. v. Commissioner [1998 (101) E.L.T. 549 (S.C.)]** the Hon'ble Apex Court has held in the following terms:

**23. We, therefore, hold that the appellant had not mis declared 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.**

**b) In O.K. Play (India) Ltd. v. Commissioner [2005 (180) E.L.T. 300 (S.C.)],**

**38.** *We do not find any merit in these arguments. Nothing prevented the department from calling upon the assessee over the years to produce their catalogues. The classification lists were duly approved by the department from time to time. All the facts were known to the department, whose officers had visited the factory of the assessee on at least 12 occasions. In the circumstances, we do not find any infirmity in the reasoning given by the Tribunal in coming to the conclusion that there was no willful suppression on the part of the assessee enabling the department to invoke the extended period of limitation under the proviso to Section 11A(1) of the 1944 Act. However, we may clarify that the show cause notices dated 24-6-1997, 27- 5-1998, 15-10-1998, 31-3-1998 and 30-9-1999 are in time as held by the Tribunal.*

**c) National Radio & Electronics Co. v. Commissioner [2000 (119) E.L.T. 746],**

*3. We see force in the submissions of the learned Counsel that the demand is entirely barred by limitation. The appellants clearly described the goods in dispute in their classification list as peripherals and parts for computers and also attached a list of all the peripherals and parts. It is not the case of the Department that the goods did not correspond to the description given in the list. The only ground on which the extended period of limitation has been held to be applicable is that the appellants did not declare the correct nature of the peripherals and parts and their functions, giving an impression that peripherals and parts are automatic data processing unit and, therefore, they had suppressed the fact and mis declared peripherals and parts for business systems computers as falling under Heading 84.71 which were in fact classifiable under Heading 84.73. We fail to understand how the Department gathered such an impression, in the face of the clear description and details of the various items in dispute. Claiming a classification different from what is ultimately approved by the Department, does not amount to suppression. It is open to an assessee to claim classification under any Heading and it is the responsibility of the Revenue to arrive at the correct classification after examination of full facts. The allegation and finding of suppression and misdeclaration is, therefore, unfounded and unsustainable and we set aside the same. In the result, we set aside the impugned order holding that the demand is entirely barred by limitation and allow the appeal on this ground, without going into the issue of correct classification of the disputed goods.*

41.40. Reliance is placed on the case of **RELIANCE JIO INFOCOMM LTD Vs THE COMMISSIONER OF CUSTOMS (IMPORT), AIR CARGO COMPLEX, MUMBAI 2021-TIOL-661-CESTAT-MUM** wherein the Hon'ble Tribunal held as under:

*60. The submission advanced by the learned Authorized Representatives cannot be accepted. The assessment done by the importer under section 17(1) of the Customs Act is not conclusive but is subject to verification by the proper Officer under section 17(2) of the Central Act. If the proper Officer finds that self-assessment is incorrect,*

*the proper Officer has to re-assess the goods under section 17(4) of the Customs Act. There is nothing on the record which may indicate that the proper Officer did not accept the self-assessment and carried out the re-assessment. Thus, also the benefit of the extended period of limitation could not have been invoked.*

41.41. Reliance is placed on the case of **M/s SIGNET CHEMICAL PVT LTD v. COMMISSIONER OF CUSTOMS 2020-TIOL-1478-CESTAT-MUM** wherein the Tribunal held as under:

18. *We do not see substance in the argument of the Revenue inasmuch as the appellant have been continuously declaring classification of the product under Heading 1702 after providing full and description of the goods in their Bills of Entry; duly filed all literatures on process of manufacture, its usage etc. as and when called for by the department during assessment proceedings. In such circumstance, allegation of suppression of facts or mis-declaration solely on the basis that the correct classification which according to the Department would fall under different Tariff Heading i.e. 1701 attracting higher rate of duty during the period under dispute cannot be sustained. This is the principle of law laid down by the Tribunal and courts in a series of cases. Consequently, the demand confirmed in the impugned Order invoking extended period relating to Appeal No. C/85493/2019 is set aside on the ground of limitation.*

41.42. In the case of **RELIANCE COMMUNICATIONS INFRASTRUCTURE LTD Vs COMMISSIONER OF CUSTOMS (IMPORT), NHAVA SHEVA 2015-TIOL-177-CESTAT-MUM** the Hon'ble Tribunal held that the differential duty demand on account of such re-classification is hit by time bar.

41.43. Therefore, in view of above it is submitted that invoking Section 28(4) of CA, 1962 and imposition of penalty is uncalled for and unjustified.

**The Importer have contended that GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTIONS 111(m) OF CUSTOMS ACT, 1962, they have submitted as under:**

41.44. The Department has proposed confiscation under Section 111 of the Customs Act, 1962. Extract of the relevant statutory provision is reproduced below:

***“Section 111 in the Customs Act, 1962***

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

.....

*(1) 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 sub section (1) of Section 54;*

.....

41.45. Confiscation is only mandated in case of any form of misdeclaration/if goods do not correspond in accordance with their respective description. In the instant case, the goods imported by the Noticee corresponds exactly with the description and details declared before the Customs at the time of import. In

fact, all the SCN cumulatively does not allege that there exists variation in the description provided and the goods actually imported.

41.46. It is trite law that the issue of classification is a legal issue and in simple cases involving issue of classification allegation of mis-declaration cannot be sustained. Because facts can be mis-declared however law cannot be mis-declared.

41.47. That it is appropriate to mention that herein in the current matter, there is no dissensus regarding the description, quantity and other details pertaining to the goods declared by the Noticee at the time of filing of Bill of Entry. The imported goods herein are strictly declared in accordance with the Bill of Entry being filed. Therefore, discrepancy pointed out by the Department is devoid of any merits as it pertains to the classification claimed by the Noticee. Moreover, the Customs Department was particularly informed that the goods were being imported under CTH 8544 and all the relevant documents required for import were submitted in accordance with the Department.

41.48. Furthermore, it is submitted that the only allegation against the Noticee is that of "**classification of goods**". The Hon'ble Supreme Court in the matter of **Northern Plastic Ltd vs. Commissioner [1998 (101) E.L.T. 549 (SC)]**, has accordingly held as follows:

***23. We, therefore, hold that the Noticee had not mis declared 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.***

41.49. The Noticee herein places further reliance in the matter of **Midas Fertchem Impex Pvt. Ltd vs. The Principal Commissioner of Customs [2023 (01) LCX 0045]**, wherein the Hon'ble CESTAT New Delhi (Principal Bench) observed as follows:

***50. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer mis-declared. As far as the description of the goods, quantity etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression.***

**The importer have contended that penalty under Section 112 is not sustainable on the noticee company, their submissions are as under:-**

41.50. The Department has proposed penalty under Section 112 of the Customs Act, 1962. In the instant case, the goods imported by the Noticee are freely importable under the Foreign Trade Policy read with Customs Act, 1962. Therefore, in the current scenario, wherein the acts of the importer do not render the goods to be liable for confiscation, penalty under Section 112 is highly unwarranted. Extract of relevant provision is reproduced below:

***"Penalty for improper importation of goods etc.***

Any person, –

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

41.51. The Noticee while acting within the purview of the law, has not committed any act/omission that would render the imported goods liable for confiscation. The Noticee herein has merely imported the goods under CTH 8544. In absence of any substantive evidence against the Noticee, the penalty under Section 112 stands unsubstantiated and is therefore liable to be set aside.

41.52. The Noticee herein places specific reliance in the case of **Commissioner of Customs (Import) versus Trinetra Impex Pvt. Ltd. 2020 (372) ELT 332 (Del)**, the Hon'ble Delhi High Court held that although statute is not explicit about the ingredient of Mens Rea but is important in case of imposition of penalty. Without Mens rea or guilty mind penalty cannot be imposed even under Section 112(a) of the Customs Act, 1962. Extract of the relevant paragraph is reproduced below:

*“11. In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section 111 of the Act. Here, the imposition of the penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. [Ref.: Amritlakshmi Machine Works v. The Commissioner of Customs (Import), [2016 SCC OnLine Bom 66 = 2016 (335) E.L.T. 225 (Bom.)].*

*12. In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-à-vis the respondent.”*

41.53. In the case of **Commissioner of Customs versus Vodafone Essar Gujarat Ltd. 2020 (373) ELT 421**, the Hon'ble CESTAT held that in cases of classification or interpretation penalty under Section 112 cannot be imposed. Extract of the relevant paragraph is reproduced below:

*“7. As far as Appeal Nos. C/54 & 55/2010 are concerned, in addition to confirmation of the demand, the authorities below have imposed fine*

and penalty, which in our opinion cannot be sustained as the issue involved relates to classification of the imported Optical Fibre Cables and no facts have been suppressed nor misdeclared while claiming classification under Heading No. 8544 of Customs Tariff Act, 1975. Consequently, the fine and penalties imposed are set aside and orders are modified to this extent and appeals are partly allowed.”

41.54. Further reliance is placed upon the case of **Kores (India) Ltd versus Commissioner of Customs (I), Nhava Sheva 2019 (370) ELT 1444**, the Hon'ble CESTAT Division Bench held that in cases where the only dispute is with respect to classification, penal provisions of Section 112 cannot be invoked. Extract of the relevant paragraph is reproduced below:

**“5.6** However we find that appellants have in the Bill of Entry declared the goods by describing them correctly as per the import documents. Revenue has not disputed the description/declaration in respect of the goods. **Only dispute being with reference to classification of the goods. It has been held by various authorities that misclassification cannot be a reason for invoking penal provisions against the importer.** Reliance is placed on the decisions as follows:

- (i) R.G. Sales P. Ltd. [[2002 \(148\) E.L.T. 1076](#) (Tri.-Kol.)]
- (ii) Kuresh Laila [[2005 \(189\) E.L.T. 45](#) (Tri.-Chennai)]
- (iii) Steel authority of India Limited [[2005 \(184\) E.L.T. 308](#) (Tri.-Bang)]
- (iv) Lietronics Vijay India Pvt Ltd [[2009 \(234\) E.L.T. 535](#) (Tri.-Chennai)]

**5.7.** In result we uphold the order of Commissioner (Appeal) classifying the imported goods under heading 34070010, but set aside the penalty imposed on the importer under Section 112(a) of the Customs Act, 1962.

**The Importer have submitted that NO PENALTY CAN BE IMPOSED U/S 114A OF THE CUSTOMS ACT, 1962, their submission are as under:**

41.55. It is submitted that in the SCN penalty has been proposed under Section 114A of the Customs Act upon the Noticee Director. The said provision is extracted below:

**“SECTION 114A. 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 [xxx] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful 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 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :**

**[Provided** that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [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 determined has also been paid within the period of thirty days referred to in that proviso :

**Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

**Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

**Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

**Explanation.** - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under [sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

41.56. Penalty under Section 114A is only attracted if following conditions are fulfilled:

- a) In case the duty has not been levied/short-levied/interest charged or paid/partly paid or duty/interest is erroneously refunded by reason of any collusion
- b) In case the duty has not been levied/short-levied/interest charged or paid/partly paid or duty/interest is erroneously refunded by reason of any willful misstatement or suppression of facts.

41.57. That Section 114A stipulates that penalty under this section can be imposed only when duty has been short paid on account of collusion, willful misstatement or suppression of facts. However, herein this case, there exists no allegation with respect to collusion, willful misstatement or suppression of facts. In fact, the only issue is with respect to classification of the imported product. Only facts can be mis-declared and law cannot be.

41.58. It is submitted that in the case of **Sirthai Superware India Pvt. Ltd. vs. Commissioner of Customs, Nhava Sheva-III 2020 (371) E.L.T. 324 (Tri. -**

**Mumbai)**, the Hon'ble CESTAT Mumbai held that in cases where description of goods match the actual content of the consignment and if the issue is with respect to classification, penalty cannot be imposed either under Section 112 or 114A of the Customs Act, 1962. Extract of relevant paragraph is reproduced below for the sake of clarity: -

*“4.9 From plain reading of the said clauses of Section 111, we do not find that these sub-clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two clauses. Hence the order holding goods liable for confiscation and imposition of penalty under Section 112(a) cannot be sustained.*

*4.10 Since we have held that appellant had made any misdeclaration with intent to evade payment of duty, we are setting aside the penalty imposed under Section 114A of Customs Act, 1962”*

41.59. Reliance is placed on the case of **Continental Foundation Jt. Venture v. Commissioner of C. Ex., Chandigarh-I [2007 (216) E.L.T. 177 (S.C.)]** the Supreme Court observed that Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression.

*10. The expression “suppression” has been used in the proviso to Section 11A of the Act accompanied by very strong words as ‘fraud’ or “collusion” and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.*

41.60. Similar views were formed by apex court in the case of **Pushpam pharmaceuticals Co. Vs C.C.E. Mumbai - (1995(78) E.L.T.401 (S.C.).**

*4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different than what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it*

*has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.*

41.61. It is submitted that the description of the goods corresponds to that of the consignment; the noticee claimed the classification, which they thought to be the correct classification and accordingly paid the applicable rate of duty. In the SCN, the Department failed to adduce any evidence to suggest collusion or willful mis statement, and thus in light of the provision as well as Judicial precedents, penalty under Section 114A cannot be imposed on the Noticee. Reliance is placed on the case of **C.C., C. EX. & SERVICE TAX, HYDERABAD-II Versus SANDOR MEDICAIDS PVT. LTD. 2019 (367) E.L.T. 486 (Tri. - Hyd.).** Extract of the relevant paragraph is reproduced below: -

*"9. As far as the limitation is concerned, once the appellant has declared what is being imported in the invoice and the Bill of Entry, they cannot be faulted for claiming a classification which, according to them is correct. Nothing prevented the assessing officer from seeking further literature and information and redetermining the classification if the classification claimed in the Bill of Entry is felt to be incorrect. Clearly, there is no evidence on record that the appellant assessee had misdeclared the nature of goods. Hence the Orders-in-Original Nos. 12/2011-Adj. (Cus. and 2/2012-ACC(R), dated 6-1-2012 failed on this count also. These impugned orders are set aside with consequential relief to the appellant."*

41.62. Further Reliance is placed on the case of: -

- a. Surbhit impex p. Ltd. Vs Commissioner of Customs (ep), Mumbai 2012 (283) E.L.T. 556 (Tri. - Mumbai)
- b. International Trade Affairs vs. Commissioner of Customs, Hyderabad 2003 (162) E.L.T. 584 (Tri. - Bang.)

**The importer have submitted that NO PENALTY CAN BE IMPOSED U/S 114AA OF THE CUSTOMS ACT, 1962, their submissions are as under:**

41.63. The Ld. Adjudicating Authority has also imposed penalty upon the Noticee under Section 114AA of the Customs Act. For the sake of brevity, the provision is reproduced below:

*"SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

41.64. Thus, penalty is only attracted under Section 114AA of the Customs Act, if any person knowingly or intentionally makes any declaration/ statement / document which is false or incorrect with regard to the transactions of any business for the purposes under the Customs Act.

41.65. In the instant case, the dispute is clearly of classification of the imported goods and is not a case of mis-declaration in terms of valuation or description of the goods concerned. Any allegation made by the Department in terms of any mis-declaration made by the Noticee is unsubstantiated and devoid of any merit.

41.66. All the facts regarding the description of the imported products were declared at the time of import. The classification of an imported product is a legal exercise and misclassification of product cannot be equated with mis-declaration with an intention to evade payment of duty.

41.67. It is submitted that the noticee has not used any false or incorrect material for importing the product in question. Declaration in the form of description of the product value has been disclosed correctly before the department. It is not even an allegation that the noticee has produced incorrect material for importing the products. The only issue in the present is that of classification. Therefore, the penalty cannot be imposed under section 114AA of the Customs Act, 1962.

41.68. In the case of **Lewek Altair Shipping Pvt. Ltd. versus Commissioner of Customs, Vijayawada, 2019 (367) ELT A328 (Supreme Court)** the Hon'ble Supreme Court of India held that claiming a certain classification or an exemption notification doesn't amount to making a false or incorrect statement or description and hence penalty will not be imposable under section 114AA of the Customs Act, 1962. Extract of the relevant paragraph is reproduced below:

*"7. We have considered the arguments on both sides and perused the records including the statement by the Master of the vessel. The vessels in question are meant to support the ONGC's oil drilling platform and were imported as such. The next question is how the vessels support the platform. As is evident from all available documents that the vessels carry out this function by carrying personnel and equipment from shore to the platform and back. Such a function is essential for the offshore oil drilling platforms which are located far away from the shore. In such a factual matrix, we are unable to hold that the navigation of the vessels is not the primary function. We find that navigation indeed, is the primary function of the vessels and dynamic positioning system helps to perform this function efficiently. Similarly, loading or unloading goods or embarking or disembarking personnel are incidental to the transportation. Therefore, the vessels in question are rightly classifiable under Customs Tariff Heading 8901 90 00 as claimed by the appellant. Thus, in our view, the vessels cannot, by any stretch of imagination, fall under CTH 8905. Consequently, the benefit of exemption Notification No. 12/2012-Cus. is also admissible to the appellant. The demand of duty under CTH 8905 90 90 denying the benefit of exemption Notification No. 12/2012-Cus., dated 17-3-2012 by Ld. Commissioner needs to be set aside and we do so. Consequently, no interest is also payable on such demand. We find that confiscation of vessels under Section 111(m) was only on the ground that the bill of entry claimed under Customs Tariff Heading which, according to the Commissioner, was incorrect. It was therefore held that in the entry made under Customs Act viz.; Bill of Entry, the Customs Tariff Heading was not correct and therefore the goods are liable to be confiscated under Section 111(m). As we have held that the goods in question are classifiable as claimed by the appellant, under CTH 8901 90 00, this allegation does not survive. Even otherwise, we find it hard to hold that an assessee*

who filed bill of entry with a Customs Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111(m). The Customs Tariff Heading indicated in the Bill of Entry is only a self-assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation. It is a different matter if the goods have been described wrongly or the value of the goods has been incorrectly declared. In this case, although there was an allegation in the show cause notice that the invoices were initially submitted for a lower value and thereafter were revised for higher amount, the confiscation in the impugned orders were only on the ground that CTH in the bill of entry was incorrect. In our view, this cannot form the basis for confiscation of goods under Section 111(m). Therefore, the confiscations and the redemption fines need to be set aside and we do so. Consequently, no penalties are imposable under Section 112(a). As far as the penalties under Section 114AA are concerned, these are imposable if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. Ld. Commissioner held “considering the facts of the case, it has to be held that on the ground of willful misstatement regarding classification and availing of notification, I am constrained to hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962.” Thus holding, he imposed a penalty of Rs. 1.00 crore on the appellant in each of the impugned orders. In our considered view, claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of the Customs Act, 1962. Further, in these cases, we have already upheld the classification claimed by the appellant and therefore find that no penalty is imposable on the appellant.”

41.69. It is further submitted that the word **“suppression” refers to failure to disclose full information with the intent to evade payment of duty.** However, herein this case, the Noticee did not suppress or withhold any information rather the same was declared in the bill of entry. Reliance is placed on the case of **Continental Foundation Jt. Venture versus Commissioner of Central Excise, Chandigarh- I, 2007 (216) ELT 177 (SC)**. Extract of the relevant paragraph is reproduced below:

“10. The expression “suppression” has been used in the proviso to Section 11A of the Act accompanied by very strong words as ‘fraud’ or “collusion” and, therefore, has to be construed strictly. **Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty.** When the facts are known to both the parties, omission by one party to do what he might have done would not render

*it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.*

*12. As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'willful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not willful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be willful.*

41.70. Therefore, the in absence of suppression of facts or fraud or willful misstatement, imposition of penalty on the Noticees under Section 114AA is not tenable at all.

**THE IMPORTER HAS CONTENDED THAT NO PENALTY CAN BE IMPOSED UPON THE NOTICEE NO. 2 I.E, DIRECTOR AND THEY HAVE SUBMITTED AS UNDER:**

**41.71. No Role of the Noticee Director**

1. The Noticee Director Sh. Shalin Sheth has no role to play when it comes to the Noticee's Day to Day Cargo Operations regarding the imported goods.
2. As far as the allegation of the department is concerned, it is submitted that the allegation of the department is based on assumptions and presumptions. In taxation laws nothing can be presumed unless presumption is specifically sanctioned by law. Reliance is placed on **State of West Bengal v. Md. Khalil [2000 (4) SCC 594]** wherein the Hon'ble Apex Court held that a presumption is an inference sanctioned by law which does not logically or necessarily follow from the proved facts.
3. The Noticee without adducing any substantial evidence to prove the alleged role of the Noticee Director in mis-classification, penalty has been proposed whereas this is a simple case involving issue of classification. Furthermore, while determining the role of the Noticee Director, it must to consider the fact that a governmental Testing Agency operated and regulated under Ministry of Consumer Affairs has very clearly opined that the product in question is sheathed and is classifiable under CTH 8544. Furthermore, it is also to be noted that this is an All-Industry Issue involving Public Sector Units like Power Grid.

**41.72. NO PENALTY CAN BE IMPOSED ON THE NOTICEE DIRECTOR UNDER SECTION 112(A), 112(B), AND SECTION 114A OF THE ACT:**

- (1). In the aforementioned paras it has already been submitted that the classification of imported goods shall fall under CTH 8544 and there is no implication of any differential duty liability. Further the present case is a case

involving interpretation of classification in terms of Customs Tariff Act, 1975 which is a legal exercise and cannot be correlated with act which violates the provisions of the customs act or rules made there under.

(2). It is submitted that penalty under Section 112 of the Act can be imposed only when:

- a) goods must be liable to confiscation under section 111.
- b) the person on whom the penalty is sought to be imposed must have done or omitted to do something, or abetted in performance of an act as a result of which goods became liable to confiscation under section 111.

(3). In the present case the goods are not liable to confiscation as the goods were cleared after proper filing of B/E and on payment of applicable duties. Further there is no allegation in the SCN that the goods does not correspond to the value declared by the noticee importer therefore no penalty can be imposed on the noticee directors under section 112 of the Act.

(4). Further no false or incorrect material has been used therefore no penalty can be imposed under section 114AA of the Act. The only issue is of classification and that too does not attract any differential duty liability as already been explained in the aforementioned paras.

(5). The classification under CTH 8544 has been adopted by other importers also including PSUs. This is an all-industry issue where OPGW Cables & Approach Cables have been imported by the importers under CTH 8544. The classification under Chapter 90 suggested by the department is not all applicable for the imported goods as the goods does not correspond to description of products provided under CTH 9001.

**THE IMPORTER HAS ALSO FILED MISCELLANEOUS SUBMISSIONS**

**NONE OF THE SCNS HAVE BEEN ADJUDICATED WITHIN THE TIME PERIOD PROVIDED UNDER SECTION 28(9) OF THE CUSTOMS ACT, 1962:**

41.73. The present case there are four (4) SCN dated 04.09.2021, 27.09.2021, 12.10.2021 and 09.02.2022 respectively however it is to be noted that all the 4 show cause notices have been taken up for adjudication after a delay of 1 year from the date of issuance of the Show Cause Notices.

41.74. As per Section 28 (9) of the Customs Act, 1962, in matters involving collusion, willful mis-statement or suppression of facts, the adjudication proceedings must be completed within one year of Show Cause Notice (SCN) and in other matters within six months of SCN. If adjudication is not completed within the prescribed time limits, it will be deemed that no SCN was issued. The same is being reproduced below: -

Section 28. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. -

(1) Where any duty .....  
.....  
.....

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub- section (1);

(b) within one year from the date of notice, in respect of cases falling under sub-section (4).

*Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:*

*Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.*

41.75. It is submitted that under Section 28 (9) of the Customs Act 1962 stipulates that a show cause notice issued in normal cases need to be adjudicated within a period of six months and a show cause notice issued involving collusion, wilful mis-statement or suppression of facts, should be adjudicated within a period of one year. Thus, the action of the department of seeking to revive the adjudication proceedings after inordinate and unjustifiable delay of almost approximately 2 years is arbitrary and in breach of principles of natural justice. Hence, the show cause notice deserves to be quashed and set aside, the same being arbitrary and illegal. It is brought to the notice of the adjudicating authority that the higher judiciary and Tribunal in plethora of cases held that show cause notices issued long ago cannot be revived and adjudicated after an unreasonably long delay.

41.76. The Hon'ble HIGH COURT OF DELHI in the case of **SWATCH GROUP INDIA PVT LTD AND ORS Vs UNION OF INDIA AND ORS 2023-TIOL-991-HC-DEL-CUS** addressed the question whether the time period for adjudicating the show cause notices in terms of Section 28(9) of the Customs Act, as in force prior to 29.03.2018, has lapsed. The HC inter-alia held that with effect from 29.03.2018, it is mandatory for the proper officer to adjudicate the Show Cause Notices that are issued after the amendment to Section 28(9) of the Customs Act within a period of six months or one year of the date of issuance as the case maybe. The same can be extended for a further period of one year by an officer senior in rank to the proper officer, after considering the circumstances under which the proper officer was prevented from passing an order within the prescribed period. It is also significant that an Explanation 4 was inserted by the Finance Act, 2018, which clarified that the show cause notices issued prior to the date on which Finance Bill, 2018 receives the assent of the President shall continue to be governed by the provisions of unamended Section 28. The unamended Section 28(9) of the Customs Act, specifically provides that the proper officer 'shall' determine the amount of duty within six months or within one year, as the case may be, from the date of notice. It only provides certain degree of inbuilt flexibility by incorporating the words 'where it is possible to do so'. The Legislature has mandated the show cause notices to be adjudicated within six months or one year as the case may be; it has provided flexibility only to the extent that if the same is not practicable / possible the period can be extended. The same, however, cannot be an endless period without any plausible justification. In the opinion of the Bench, the benefit of extension of limitation as provided under Section 28(9A) of the Customs Act would be applicable only in those cases where the show cause notices have been issued

after the enactment of the Finance Act, 2018 since, even as per the Revenue, the notice issued prior to coming into effect of Finance Act, 2018 would be governed by the unamended provisions. **The mention of the words, "where it is not possible to do so", in opinion of the Bench, does not enable the Department to defer the determination of the notices for an indeterminate period of time.** The legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the officer concerned to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee. Such indifference is not only detrimental to the interest of the taxpayer but also to the exchequer. **In the absence of any ground that it was not possible for the officer to determine the amount of duty within the prescribed period, the impugned SCN has lapsed and cannot be adjudicated.** For the sake of brevity, the relevant portion of the case law is reproduced below: -

**“Conclusion**

**18. Since the learned Counsel for the petitioner has contended that the petition be decided de hors the argument that Respondent No. 2 is not a proper Officer, we feel it apposite to confine the present judgment only on the issue, whether the adjudication of the impugned SCN issued on 14.02.2018 is now barred by limitation and has lapsed in view of Section 28(9) of the Customs Act.**

**19. Section 28(9) of the Customs Act, as in force prior to 29.03.2018 read as under:**

**"[28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded. xxxx xxxx xxxx**

**(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-**

**(a) within six months from the date of notice, [where it is possible to do so], in respect of case falling under clause (a) of sub- section (1);**

**(b) within one year from the date of notice, [where it is possible to do so] in respect of cases falling under sub-section (4):"**

**20. Section 28(9) and 9(A) of the Customs Act pursuant to amendment read as under:**

**"[28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded.**

**xxxx xxxx xxxx**

**(9) The proper officer shall determine the amount of duty or interest under sub-section (8),-**

**(a) within six months from the date of notice, [xxx], in respect of case falling under clause (a) of sub-section (1);**

**(b) within one year from the date of notice, [xxx] in respect of cases falling under sub-section (4):**

**PROVIDED that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the**

*proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:*

*PROVIDED FURTHER that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]*

*[(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that-*

- (a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or*
- (b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or*
- (c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or*
- (d) the Settlement Commission has admitted an application made by the person concerned,*

*the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.]..."*

25. It is significant to note that the provisions of Section 28(9) of the Customs Act were amended by the Finance Act, 2018 (Act, 2013 of 2018). The same came into effect from 29.03.2018. The amended and unamended provisions of Section 28(9) of the Customs Act have been referred above. Pursuant to the said amendment, the words "where it is possible to do so" were deleted from Section 28(9) of the Customs Act and a proviso was inserted, which provided that where a proper officer fails to determine the amount of duty within the specified period any officer senior in the rank to that of the proper officer may extend the period to a further period of six months or one year as the case may be on being satisfied of the existence of the circumstances under which the proper officer was prevented from determining the duty within the specified period. Sub-section (9A) was also inserted by the Finance Act, 2018.

26. It is also significant that an Explanation 4 was inserted by the Finance Act, 2018, which clarified that the show cause notices issued prior to the date on which Finance Bill, 2018 receives the ascent of

the President shall continue to be governed by the provisions of unamended Section 28 of the Customs Act.

27. Explanation 4 as inserted vide The Finance Act, 2018 reads as under:

***Explanation 4: For the removal of doubts, it is hereby declared that in cases where notice has been issued for nonlevy, not paid, short-levy or short-paid or erroneous refund after the 14th day of May, 2015, but before the date on which the Finance Bill, 2018 receives the assent of the President, they shall continue to be governed by the provisions of section 28 as it stood immediately before the date on which such assent is received."***

32. The unamended Section 28(9) of the Customs Act, specifically provides that the proper officer 'shall' determine the amount of duty within six months or within one year, as the case may be, from the date of notice. It only provides certain degree of inbuilt flexibility by incorporating the words 'where it is possible to do so'.

33. ***The phrases "as far as possible" and "as far as practicable"*** appear in other statutes as well came up for consideration before the Apex Court in ***C. N. Paramasivam and Another v. Sunrise Plaza: (2013) 9 SCC 460***. It is observed that the words "possible" and "practicable" are more or less interchangeable along with the other words such as feasible, performable etc. The incorporation of such words gives certain degree of flexibility to the Department such as if some circumstances or insurmountable exigencies arise, which makes the recourse unpracticable or not possible, the authorities can deviate from what was required to be done in terms of the statute. When the challenge is laid to the act of the authorities deviating from the rule, the onus shifts on the authority to prove that it was not practicable or possible to follow the rule. The same is to be adjudicated on the facts and circumstances of each case.

34. The flexibility, at the same time, in our opinion, cannot be equated with the lethargy of the Department or its officers. The Legislature has mandated the show cause notices to be adjudicated within six months or one year as the case may be; it has provided flexibility only to the extent that if the same is not practicable / possible the period can be extended. The phrase 'where it is possible to do so' would only mean that wherever it is not practicable / possible to do certain act, the period can be extended. The same, however, cannot be an endless period without any plausible justification.

35. This Court in **Sunder Systems Private Limited (supra)**, had an occasion to consider Section 73(4B)(a) and (b) of the Finance Act, 1994, which read as under:

"Section 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. –

xxx xxx xxx

(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2) –

(a) within six months from the date of notice **where it is possible to do so**, in respect of cases falling under sub-section (1);

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A)."

**36. Section 73, as referred to above, contains a provision that is identically worded as the erstwhile Section 28(9) of the Customs Act. This Court, after considering the facts of that case, had allowed the writ petition on the ground that the Show Cause Notice was not adjudicated within the time prescribed.**

*45. It is the case of the Revenue that the amended provision of Section 28 of the Customs Act is not applicable in the present case for the reason that the impugned SCN was issued prior to the Finance Act, 2018, coming into force. Therefore, in our opinion the benefit of extension of limitation as provided under Section 28(9A) of the Customs Act would be applicable only in those cases where the show cause notices have been issued after the enactment of the Finance Act, 2018 since even as per the Revenue the notice issued prior to coming into effect of Finance Act, 2018 would be governed by the unamended provisions.*

*46. In our view, there is no material to show that it was not possible for the proper Officer to determine the amount of duty within the prescribed period. The mention of the words, "where it is not possible to do so", in our opinion, does not enable the Department to defer the determination of the notices for an indeterminate period of time. The legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the concerned officer to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee. Such indifference is not only detrimental to the interest of the taxpayer but also to the exchequer.*

*47. In the absence of any ground that it was not possible for the officer to determine the amount of duty within the prescribed period, the impugned SCN has lapsed and cannot be adjudicated.*

41.77. The Noticees further relies on the following case laws: -

- a. *Parle International Ltd. Versus Union of India 2021 (375) E.L.T. 633 (Bom.)*
- b. *Raymond Limited V. Union of India, 2019 (368) E.L.T. 481 (Bombay).*
- c. *The Bombay Dyeing and Manufacturing Company Ltd Vs Deputy Commissioner Of CGST And CX, Div-Ix, Mumbai Central GST Commissioner 2022-Tiol-269-Hc-Mum-Cx –*
- d. *Mentha & Allied Products Ltd. Versus Commr. Of CGST, Chandigarh 2021 (376) E.L.T. 41 (P & H)*
- e. *Maxcare Laboratories Ltd. Versus Jt. Commr., CGST, C. Ex. & Cus., Bhubaneswar - 2021 (378) E.L.T. 401 (Ori.)*
- f. *Group India Pvt Ltd and Ors Vs Union of India And Ors 2023-Tiol-991-Hc-Del-Cus*
- g. *Gala International Pvt Ltd V Addl. DGGI, Delhi & Ors 2023-Tiol-1243-Hc-Del-Cus*
- h. *Nanu Ram Goyal Vs Commissioner of CGST And Central Excise, Delhi and Ors. 2023-Tiol-455-Hc-Del-St.*

- i. *In Sanghvi Reconditioners Pvt. Ltd. V. Union of India Through The Secretary, Department Of Revenue & Ors. 2017 SCC Online Bom 9781 = 2017-Tiol-2618-Hc-Mum-Cus,*
- j. *In Ata Freight Line (I) Pvt. Ltd. V. Union of India & Ors. 2022 SCC Online Bom 648 = 2022-Tiol-412-Hc-Mum-St,*
- k. *Swati Menthol & Allied Chemicals Ltd. Versus Commr., GST & C. Ex. Commissionerate, Chandigarh 2021 (378) E.L.T. 110 (P & H); And*
- l. *Transworld Shipping Services Pvt. Ltd. Versus Government of India 2018 (361) E.L.T. 176 (Mad.)*
- m. *Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India and Ors.: Manu/MH/3805/2017*
  - i. *Hindustan Lever Ltd. Vs. UOI, 2011 (24) STR 97 (Bom.)*
  - ii. *GPI Textiles Ltd. Vs. UOI, CWP No. 10530 Of 2017*
  - iii. *CCE Vs. Hari Concast (P) Ltd. Manu/PH/1205/2009:2009 (242) ELT 12*

41.78. Hence, in view of the above submissions, it is clear that whether amended or unamended the delay in adjudication can only be attributable to some reasonable ground. If there is absence of reason for delay than the same cannot form the basis for delay in adjudication and the department is bound to adjudicate the proceeding initiated in a time bound limit as prescribed in the provisions of the section 28 (9) of the Customs Act, 1962.

41.79. Thus, in view of the provisions of Section 28(9) of the Customs Act, 1962 the present four (4) show cause notices are liable to be set aside on this ground alone.

**41.80. IN ANY CASE, OPPORTUNITY OF PERSONAL HEARING MUST BE PROVIDED TO THE NOTICEE FOLLOWING THE PRINCIPLES OF NATURAL JUSTICE.**

41.81. In view of the above submissions, the importer has prayed that the proceedings initiated in the above mentioned (4) Show Cause Notices may kindly be dropped with consequential reliefs.

**PERSONAL HEARING:-**

41.82. Opportunity of personal hearing in the case was given to the Noticee on 04.10.2023, 06.11.2023 & 21.11.2023. Shri Jayat Kumar, Authorized representative attended the Personal Hearing on behalf of the Importer on 21.11.2023. During personal hearing, Shri Jayat Kumar referred that reply of the Notice has been submitted on the preceding day. Besides explaining the technical aspects of the classification, he has also stated that this is an all Industry issue and there remain no valid grounds for extended period or penalization the company director.

**DISCUSSION AND FINDINGS:**

**42.** M/s. TG Advait have imported the impugned goods through various ports/ICDs/Air Cargo viz. Mundra Port, Air Cargo Complex, Delhi, Nhava Sheva and four Show Cause Notices were issued to importer by their Jurisdictional Authority. Being highest amount of duty arises at **Mundra Port, Commissioner of Customs, Customs House, Mundra, is the proper authority** to adjudicate the above SCNs, as per Notification No. 29/2022-Customs (NT) dated

31.03.2022. Details of the Show Cause Notices which are being adjudicated in the present order, is as under:

- (i). SCN No. VIII/48-1813/TG Advait /Gr-V/MCH/2021-22 dated 09.02.2022, issued by Commissioner of Customs, Customs House, **Mundra**, for demand of duty of **Rs. 3,56,91,077/-**;
- (ii). SCN No. 184/2021-22 dated 12.10.2021, issued by Deputy Commissioner of Customs, Group 5M, NCH, New Delhi, for demand of duty of **Rs. 2,20,887/-**;
- (iii). SCN No. 434/21-22/DC/Gr.VB/CAC/JNCH, dated 27.09.2021, issued by Deputy Commissioner of Customs, Group 5B/5, (F.I.V), NS-V, JNCH, for demand of duty of **Rs.57,014/-**;
- (iv). SCN No. VII1/48-52/ACC/SCN/T.G.Advait/2021-22 dated 04.09.2021 issued by Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad, for demand of duty of **Rs. 14,210/-**

**43.** Further, the Importer in their written submission have contended that the all the above four SCNs have not been adjudicated within the time limit prescribed under Section 28(9) of Customs Act, 1962. They have also alleged that there was absence of reason for delay in adjudication of the case. They have submitted plethora of judgements passed by higher Judicial forums in support of their above submissions. Therefore, it becomes imperative to examine the above contentions of importer before examine the merits of case.

**43.1.** I find that after pronouncement of Judgement dated 09.03.2021 by Hon'ble Apex court in case of M/s. Canon India, the Board had issued an instruction to keep the Adjudication proceedings pending where the SCN were issued by DRI or Investigation was carried out by DRI. In light of instruction issued by the Board such Notices were kept in abeyance till further instruction. Therefore, the subject Show Cause Notices were transferred to Call Book by the competent authority under the provisions of Section 28(9A) (**inserted w.e.f. 29.03.2018 vide Finance Act, 2018**) of the Customs Act. The same was intimated to the Importer. I have carefully gone through the Section 28(9) of Customs Act, 1962 and above case laws. I find that Section 28(9) of Customs Act, 1962 is followed by Section 28(9A) which provides that in some reasons the time specified in Section 28(9) shall not apply from the date of notice but such reason ceases to exists. Therefore, time limit to adjudicate the instant case is governed by Section 28(9A) of customs Act, 1962.

Further the importer has relied on following case laws:-

- a) *SWATCH GROUP INDIA PVT LTD AND ORS Vs UNION OF INDIA AND ORS 2023-TIOL-991-HC-DEL-CUS;*
- b) *Parle International Ltd. Versus Union of India 2021 (375) E.L.T. 633 (Bom.)*
- c) *Raymond Limited V. Union of India, 2019 (368) E.L.T. 481 (Bombay).*
- d) *The Bombay Dyeing and Manufacturing Company Ltd Vs Deputy Commissioner Of CGST And CX, Div-Ix, Mumbai Central GST Commissioner 2022-Tiol-269-Hc-Mum-Cx –*
- e) *Mentha & Allied Products Ltd. Versus Commr. Of CGST, Chandigarh 2021 (376) E.L.T. 41 (P & H)*
- f) *Maxcare Laboratories Ltd. Versus Jt. Commr., CGST, C. Ex. & Cus., Bhubaneswar - 2021 (378) E.L.T. 401 (Ori.)*

- g) *Group India Pvt Ltd and Ors Vs Union of India And Ors 2023-Tiol-991-Hc-Del-Cus*
- h) *Gala International Pvt Ltd V Addl. DGGI, Delhi & Ors 2023-Tiol-1243-Hc-Del-Cus*
- i) *Nanu Ram Goyal Vs Commissioner of CGST And Central Excise, Delhi and Ors. 2023-Tiol-455-Hc-Del-St.*
- j) *In Sanghvi Reconditioners Pvt. Ltd. V. Union of India Through The Secretary, Department Of Revenue & Ors. 2017 SCC Online Bom 9781 = 2017-Tiol-2618-Hc-Mum-Cus,*
- k) *In Ata Freight Line (I) Pvt. Ltd. V. Union of India & Ors. 2022 SCC Online Bom 648 = 2022-Tiol-412-Hc-Mum-St,*
- l) *Swati Menthol & Allied Chemicals Ltd. Versus Commr., GST & C. Ex. Commissionerate, Chandigarh 2021 (378) E.L.T. 110 (P & H); And*
- m) *Transworld Shipping Services Pvt. Ltd. Versus Government of India 2018 (361) E.L.T. 176 (Mad.)*
- n) *Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India and Ors.: Manu/MH/3805/2017*
- o) *Hindustan Lever Ltd. Vs. UOI, 2011 (24) STR 97 (Bom.)*
- p) *GPI Textiles Ltd. Vs. UOI, CWP No. 10530 Of 2017*
- q) *CCE Vs. Hari Concast (P) Ltd. Manu/PH/1205/2009:2009 (242) ELT 12*

I find that case laws submitted by the Importer is in respect of such Show cause notices which were issued before 2018, are not squarely applicable in this case, since Section 28(9A) of the Customs Act, 1962 was inserted w.e.f. 29.03.2018 vide Finance Act, 2018. Therefore, under the provisions laid down in the Section 28(9A) of the Customs Act, 1962 the instant case is being adjudicated within the time limit.

**44.** Now, after having carefully gone through all the four aforementioned Show Cause Notices; relied upon documents, legal provisions, submission made by the Noticee and the records available before me, I proceed to decide the case.

The noticee/importer had imported 'OPGW', "OPGW (L-AL-TUBE)", "OPTICAL FIBER CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L- AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE" through Mundra Port, Air Cargo Complex-Ahmedabad, Delhi Air Cargo and Nhava Sheva Port and had self-assessed the goods under tariff item 85447090 by availing benefit of concessional rate of Customs duty issued under Notification No. 24/2005-Cus dated 01.03.2005 at Sr. no. 28. This fact is not disputed.

The main issues involved in the above cases which are required to be decided in the present adjudication are as below:

- (i) Whether, importer is correctly classifying the OPGW", "OPGW (L-AL-TUBE)", "OPTICAL FIBER CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L- AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE" under CTH 85447090 instead of classifying the subject imported goods under CTH 90011000.
- (ii) Whether the goods imported under Bill of Entry No. 8080922 dated 04.07.2020 having total assessable value Rs. 8,58,096/- (as detailed in table-I of Show Cause Notice), seized vide seizure memo dated 22.10.2020

and subsequently released provisionally, should not be confiscated under Section 111 (m) of the Customs Act, 1962

- (iii) Whether the importer are liable to pay the differential Customs duty amounting to short levied / short paid on the said goods covered under bills of entry as detailed in above mentioned four Show Cause Notices, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act.
- (iv) Whether the said Importer is liable to penalty under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962.
- (v) Whether penalty under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962 is liable to be imposed on Sh. Shalin Sheth, Director, M/s. TG Advait India Pvt. Ltd., A-803, Sankalp Iconic Tower, Opp- Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054

**45.** I find that Shri Shalin Sheth in his statement dated 12.07.2021 has stated that the importer uses the description "OPGW (L-AL-TUBE)", "OPTICAL FIBER GROUND WIRE CABLE", "OPGW-1C1/48" and "OPTICAL FIBER CABLE WITH CONDUCTOR OPGW-24/48 F" during the import of **OPGW Cable** and they have also imported "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L-AL\_TUBE)" and "OPTICAL FIBER UNIT (3.85MM SUS TUBE WITH 24 FIBER)". AL- tube refers to aluminium tube and SUS tube refers to Stainless steel tube.

**46. Before discussing the classification of items in question, basic of Structure/Composition and function of OPGW, Fibre Optic Approach Cables is being discussed as under: -**

**46.1 'Optical ground wire (OPGW)'** are dual purpose optical fibre cables which are used to provide earthing to the conductors in transmission towers and for optical communication/ telecommunication. OPGW cables are designed to replace the traditional earth wires. An OPGW cable is made up of optical telecommunications fibers contained in one or more protective fiber optic units. Typically, an OPGW cable consists of one or more layers of metallic wires stranded about a cable core comprised of components such as metallic tubes and optical fibers in optical fiber units.

**46.2.** In a 24 Fibre OPGW, in the central optical fibre unit, a group of Six (06) optical fibres of different colours are encapsulated in a PBT loose buffer Tube filled with water blocking jelly and there are four (04) such PBT buffer Tubes in 24 fibre OPGW cable. The PBT tubes are filled with water blocking jelly. In the centre of optical fibre unit, there is Fibre reinforced plastic (FRP) for strength and flexibility. The PBT loose buffer tubes are bound with PP yarns and wrapped with poly amide tape, which acts as thermal barrier. This structure is further encapsulated in an aluminium tube, which is further surrounded with ACS wires in tubular form. Similarly, in the case of 48 fibre OPGW, a group of Eight (08) or twelve (12) optical fibres of different colours are encased in a single PBT buffer Tube.

**46.3.** Optical Ground Wire (OPGW) cables have the dual functions of a ground wire with telecommunication capabilities. As the name suggests, it is primarily an optical fibre cable having primary function of data Transmission. In the technical specifications issued by M/s. POWERGRID, it has clearly been stated that the OPGW cable construction shall comply with **IEEE-1138, 2009** (IEEE

Standard for testing and performance for Optical Ground wire for use on Electric Utility). Also, the manufacturer, in their technical specification and authorized representative of the importer during statement, as mentioned in para-13 above, clearly stated that OPGW is an optical fibre cable. Therefore, both manufacturer (in the sale invoice) and the importers (in Bills of Entry) have also declared the same as Optical fibre cables, not as electrical conductor for earthing. THE REPRESENTATIVE IMAGE OF OPGW AND ITS CONSTITUENTS IS REPRODUCED BELOW: -

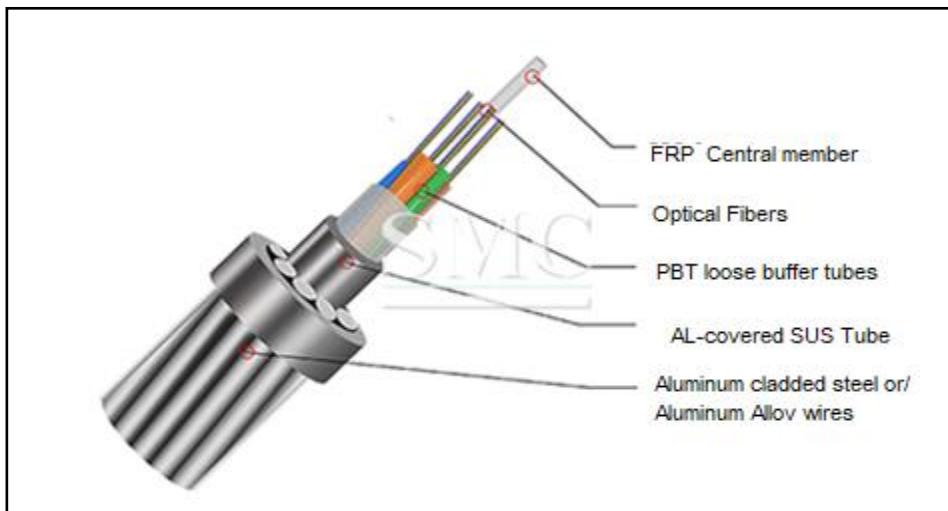


FIG-1: OPGW AND ITS CONSTITUENTS

**46.4. Optical Fibre Unit** (Stainless Steel tube/ Aluminium tube) is a component of OPGW cable and is itself in the form of an optical fibre cable in which multiple optical fibres are encased inside Stainless Steel/ Aluminium tube. In the case of Optical Fibre Unit (Stainless Steel tube), multiple optical fibres are encased in a Stainless Steel tube buffer tube also known as SUS tube with some slack length of fiber allowed to prevent strain on the glass fibers. The Stainless-Steel buffer tubes are filled with hygroscopic jelly to protect the optical fibers from water and gives internal cushion to the fibers. Further, in the case of Optical Fibre Unit (Aluminium tube), groups of 4/6/8/12 optical fibres are bundled together and encapsulated in PBT loose buffer Tubes filled with water blocking jelly. These PBT tubes are further encased in an Aluminium tube.

**46.5.** The Optical Fibre Unit (**Stainless-Steel tube (SUS tube)/ Aluminium tube**) is stranded into the cable with aluminium clad steel strands to form an OPGW cable. Optical Fibre Unit is the structural part of OPGW and provides essential characteristics to OPGW Cable.

**46.6. Fibre Optic Approach Cables** are armoured fibre optic cables required to connect OPGW between the final termination of the fibre cable on the power line and the Fibre Optic Distribution Panel (FODP) installed in the power sub-stations. These Approach cables contain fibres with identical optical/physical characteristics as those in the OPGW cable and there is no difference between optical fibre used in approach cable and optical fibre used in OPGW. The only difference between the two is that in the approach cable, the ACS wire is not present. The optical fibres used in OPGW and approach cable are Single mode optical fibre G.652D only.

**46.7.** The representative images of SS Tube Optical fibre Unit and approach cables, which were found during investigation, are reproduced below for reference:

The representative images of Fibre Optic Approach Cables, which were

found during investigation, are reproduced below for reference:-

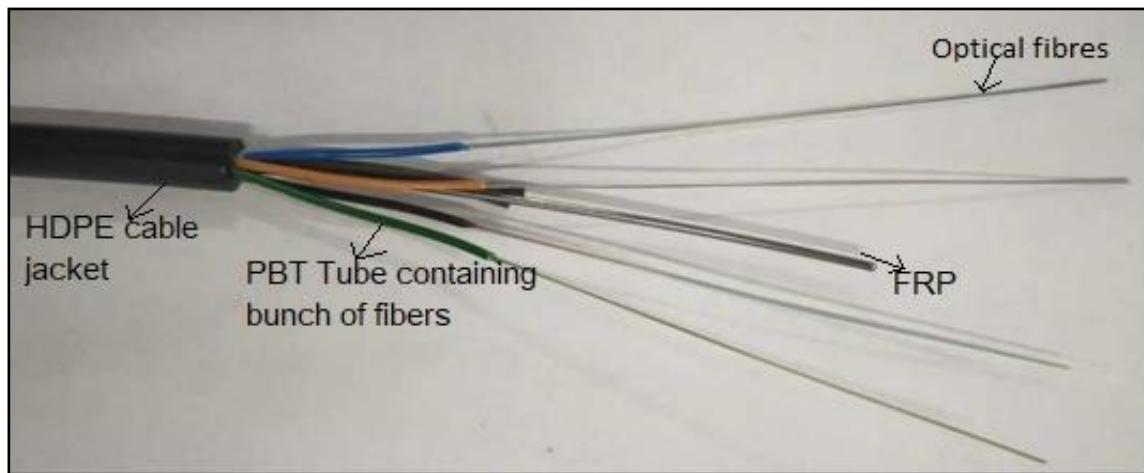


Fig-2: Approach cable

**Classification of impugned imported Goods "OPGW", "OPGW (L-AL-TUBE)", "OPTICAL FIBER CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L- AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE":**

**46.8.** After going through basic structure/function of impugned goods viz. OPGW", "OPGW (L-AL-TUBE)", "OPTICAL FIBER CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L- AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE", I find that all are a type of optical fibre cables made up of single mode optical fibre G.652D having primary coating in the range of  $245\pm10\text{ }\mu\text{m}$  and the importer has also no contention over it. As per Customs Tariff Act, 1975, 'Optical fibre cables' are appropriately classifiable under the following two customs tariff heading/Tariff items:

Chapter Heading/ Tariff Item	Description	Customs duty (BCD)
8544	Insulated (including enamelled or anodized) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors	<b>0%</b> (Sl. No. 28 of Notf. No. 24/2005 dated 01.03.2005)
854470	- Optical fibre cables:	
85447010	- - Lead alloy sheathed cables for lighting purposes	
85447090	- - Other	
9001	Optical fibres and optical fibre bundles; optical fibre cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked	15%
90011000	- Optical fibres, optical fibres bundles and	

cables

Further, as per HSN Explanatory Notes for the headings 8544 and 9001-

**a) Heading 8544**

The heading also covers optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors. The sheaths are usually of different colours to permit identification of the fibres at both ends of the cable. Optical fibre cables are used mainly in telecommunications because their capacity for the transmission of data is greater than that of electrical conductors.

**b) Heading 9001**

**Optical fibres** consist of concentric layers of glass or plastics of different refractive indices. Those drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibres less prone to fracture. Optical fibres are usually presented on reels and may be several kilometers in length. They are used to make optical fibre bundles and optical fibre cables. Optical fibre bundles may be rigid, in which case the fibres are agglomerated by a binder along their full length, or they may be flexible, in which case they are bound only at their ends. If coherently bundled, they are used for transmission of images, but if randomly bundled, they are suitable only for transmission of light for illumination.

**Optical fibre cables** of this heading (which may be fitted with connectors) consist of a single sheath containing one or more optical fibre bundles, the fibres of which are not individually sheathed.

**46.9.** Further, on perusal of the term "optical fibre" described in explanatory notes to heading 9001, it is clear that optical fibres made up of glass must have a plastic coating invisible to the naked eye, to give protection to the glass fibre, which implies that coating is an essential component of a glass optical fibre. Further, in the description of optical fibre cable, the word sheath has been mentioned which implies that sheath is an object containing one or more optical fibre bundles wherein the fibres are not individually sheathed. However, in the imported OPGW cables, the optical fibres only have a coating of plastic material and further a bunch of fibres are encapsulated in a Plastic tube filled with thixotropic jelly. Therefore, in the said goods, a bunch of optical fibres are sheathed together and not the individual fibres, as declared by the importer.

**46.10.** As provided in the General Rules for Interpretation (GIR) of the Harmonized System, classification of the goods in the nomenclature shall be governed by the principles contained in Rule 1 to 6. Rule 1, *inter alia*, provides that "*for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes....*" As per First Schedule to the Customs Tariff Act, 1975, heading 8544 covers Optical fibre cables having single fibre or multiple fibres, wherein the fibres are sheathed individually.

**46.11.** Further, in the chapter note 1 (h) to Chapter 90, it is mentioned that the chapter does not cover optical fibre cables of heading 8544. As per explanatory notes to heading 9001, heading 9001 does not cover optical fibre cables made up of individually sheathed fibres.

**46.12.** On perusal of tariff heading and HSN explanatory notes, it is amply clear

that Optical fibre cables which are made up of individually sheathed optical fibres squarely fall under the tariff heading 8544 and Optical fibre cables in which optical fibres are not individually sheathed and optical fibres cables other than those of heading 8544 fall under the tariff heading 9001. Therefore, for correct classification of OPGW/ SUS Tube, it is necessary to examine whether the optical fibres, conforming to ITU-T G.652D standard used in OPGW/SUS Tube, are individually sheathed.

**46.13.** Further, the terms '**sheath**' and '**coating**' of optical fibre are not defined or explained anywhere in the HSN or the Act. However, looking at the definition of coating and sheathing in general sense-

A. The New Shorter Oxford English Dictionary - 1993 Edition

*Sheath: A close fitting case or covering for the blade esp. of a sword dagger, etc. when not in use; A case or covering with a similar function or purpose; A thin-walled, hollow part of a device or mechanism which surrounds another part.*

*Coating - A layer of any substance, as paint, tin, etc., spread over or covering a surface;*

B. McGraw-Hill - Dictionary of Scientific and Technical Terms - Fifth Edition

*Sheath: A protective outside covering on a cable. [. ELECTROMAG] The metal wall of a wave guide, (SCI TECH) A protective case or cover*

*Coating: 1. Any material that will form a continuous film over a surface. 2. The film formed by the material.*

On perusal of the above meanings, it is evident that 'sheathing' is different from 'coating' and nowhere have these words been used interchangeably. In explanatory notes to heading 8544, it has been mentioned-"*In addition the heading covers plaited wire coated with lacquer or inserted in an insulating sheath*". The use of word 'or' suggests that the terms sheathing and coating, as envisaged in the customs tang are not the same. Hence, it is clearly inferred that coating is different from sheathing.

**47.** On questions posed by **M/s. ALCATEL INDIA LTD, Advance Ruling Authority, New Delhi vide order dated [2006 (197) E.L.T. 176 (A.A.R.)]** has held that the term coating is different from sheathing. Thus, goods are classifiable under Tariff item 90011000. The relevant paras of the said ruling is produced as under:-

*13. Since the terms 'sheath' and 'coating' are not defined or explained in the HSN or the Act, we have to understand them in the sense in which they are understood by English speaking people ordinarily as well as in scientific/technical context. Therefore, necessarily, we have to look for the meaning of these words in the dictionary which, in our view, would give a reasonably clear perception of what a 'sheath' and 'coating' ordinarily stand for and how they are commonly understood. This is what we found.*

***The New Shorter Oxford English Dictionary -1993 Edition***

*Sheath 1A close-fitting case or covering for the blade esp. of a sword, dagger, etc. when not in use..... b A case or covering with a similar function or purpose; ..... 4a A thin-walled, hollow part of a device or mechanism which surrounds another part.*

*Coating* — 3A layer of any substance, as paint, tin etc, spread over or covering a surface;

**Chambers Dictionary of Science and Technology**

*Sheath (ElecEng)* - The covering of a cable.

*Coating (ElecEng)* — The metallic sheets or films forming the plates of a capacitor.

**The New Oxford American Dictionary**

*Sheath* A close-fitting cover for something, esp. something that is elongated in shape, in particular:

A cover for the blade of a knife or sword.

A protective covering around an electric cable.

*Coating* — a thin layer or covering of something: a coating of paint.

**McGraw-Hill — Dictionary of Scientific and Technical Terms — Fifth Edition**

**Sheath** [ELEC] A protective outside covering on a cable. [.....ELECTROMAG] The metal wall of a waveguide. [SCI TECH] A protective case or cover

**Coating--**

1. Any material that will form a continuous film over a surface.
2. The film formed by the material.

From the above, it is clear that as is understood and perceived not only in common parlance but also in scientific/technical sense, a “sheath” is something different from a “coating”. Nowhere have these two words been shown as synonym. No material has also been placed before us to show that they are treated as synonymous. In ‘Fibre Optics’ by Robert J. Hoss & Edward A. Lacy, the expression ‘Optical-Fibre Coating’ has been explained as “a protective material bonded to an optical fiber, over the cladding if any, to preserve fiber strength and inhibit cabling losses, by providing protection against mechanical damage, protection against moisture and debilitating environments, compatibility with fiber and cable manufacture, and compatibility with the jacketing process. Coatings include fluoropolymers, Teflon, Kynar, polyurethane, and many others....”. In the website Answers Com, fiber optics glossary, the word ‘coating’ has been taken to mean “a protective layer applied over the fiber cladding during the drawing process to protect it from the environment”. We think there is no need to multiply the references to drive home the point that ‘coating’ is not treated as ‘sheathing’ either in ordinary sense or in the scientific/technical field.

In support of their contention that the products in question should be classifiable under Tariff Heading 8544, the applicant referred to the HSN Explanatory Note for Heading 8544 in which the issue of insulation of conductors has been dealt with. In our view, it is of no help to them. That Explanatory Note merely states that for insulation purpose, one or more coverings of insulating materials are generally used and in certain

cases the insulation is obtained by anodizing or by a similar process (e.g. the production of a surface coating). In fact, in the same Explanatory Note, the word 'sheath' has been used in contradistinction to coating when it clarifies that in certain cases a metal sheath (e.g., lead, brass, aluminium or steel) serves as a protective covering for the insulation of a conductor. It is, therefore, clear that the coating and sheathing are two different entities, though both of them may have the same function, namely, insulation of conductors. We are, therefore, unable to appreciate as to how the expression "individually sheathed fibres" employed in the Heading 8544, would justify the view that a 'coating' given on the cladding of an optical fibre, becomes a 'sheath', notwithstanding their common protective purpose.

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24. Thus, in view of the foregoing, we rule on the question posed by the applicant that each of the fourteen products proposed to be imported by them whose identifying descriptions have been enlisted in the Table in para 2 above and whose technical details and representative samples have been produced by them before the Authority, is not covered by the Tariff Heading 8544 and would accordingly be appropriately classifiable under the Tariff Item 9001 10 00 of the First Schedule to the Act.

**48.** Further, the larger Bench of CESTAT, West Zonal Bench, Mumbai, in the matter of **Vodafone South Ltd. v/s Commissioner of Customs (Import), Nhava Sheva, Mumbai vide Order No. 1/07-23/17/LB dated 22.11.2017** has categorically held that the 'coating' of optical fibre is not 'sheathing' and coating and sheathing are different for an optical fibre. The judgement of Hon'ble Tribunal [Commissioner v. Vodafone Essar Gujarat Ltd. - 2018 (360) E.L.T. A193 (CESTAT-LB)] reads as under:-

- 1. HSN Explanatory Notes are very relevant for deciding the issue of classification of goods under the Customs Tariff Act.**
- 2. Since no definition of the word 'sheath' and 'sheathed' occurring in various places of HSN/Tariff, provided in the statute, the trade meaning thereof has to be given prominence. The expression 'impregnated, coated, covered or sheathed' used in various places of the Customs Tariff makes it clear that the term 'sheathed' has been used in contrast with the term 'impregnated', 'coated' or 'covered'. The term coating and sheathing have different meaning in the Tariff.**
- 3. The Tribunal in Reliance Communication Infrastructure Ltd. case reported in 2015 (320) E.L.T. 306 (Tri.-Mum.) has rightly approved the decision of the Authority for Advance Ruling in the case of Alcatel Ltd. reported in 2006 (197) E.L.T. 176 (AAR) and held that 'coating' and 'sheathing' are two different things though both of them may have the same function, namely insulation of conductors.**

**4. Optical Fibre Cables consisting of dual acrylic coating with colour coding at both the ends and used in Telecommunication, are classifiable under Heading 9001 of the Customs Tariff and not under Heading 8544 of the said Tariff.**

**49.** Also in the entire nomenclature, the expression of word 'sheath' is available in reference of cable. Accordingly, the same meaning of "sheath" needs to be applied for the optical fibre. Further, the term 'sheath' is used in both headings 8544 and 9001 in two contexts - A 'sheath' around the fibre and as a 'sheath' of the cable. Accordingly, same meaning has to be assigned to the word 'sheath'. It cannot be construed as a 'coating' in the context of a fibre and as a "casing/tubing" in the case of a cable. Further, Primary coating is an integral part of optical fibre without which optical fibre cannot exist commercially. Hence, Primary coating, in any case, cannot be construed as sheathing of optical fibre.

**50.** Furthermore, as per the standard input-output norms (SION) prescribed by DGFT for import of raw materials for production of optical fibres (B2I5), the UV curable coating is listed under the list of raw materials for optical fibres. It is not listed under the raw materials for cabling the fibre into cables. Further, in the explanatory note to heading 9001, Optical fibre is described wherein it is mentioned that glass optical fibre has a plastic coating. Therefore, it is evident that coating is an integral and essential component of optical fibre.

**51.** Therefore, facts/evidences available and discussed in the above paras reveal that coating is an integral and essential component of the optical fibres having glass core and glass cladding. No optical fibres (having glass core and glass cladding) are commercially available without coating. **If coating is considered as sheathing, all the optical fibers would be individually sheathed, all optical fibre cables would therefore fall under heading 8544, thereby making heading 9011 for the optical fibre cables redundant. The legislature has deliberately chosen to differentiate between the optical fibre cables containing individually sheathed fibres and the optical fibre cables containing fibres or bundles of fibres sheathed together, which are not individually sheathed.** The tariff classifies them separately in different headings and different chapters. The tariff has specifically made a distinction between the heading 8544 and 9001 on the basis of construction of the optical fibre cables. Only those Optical fibre cables which are made of individually sheathed fibres are classifiable under heading 8544 and optical fibre cables.in which the optical fibres are not individually sheathed would fall under heading 9001. From the investigation, it is clear that in OPGW/SUS tube, a bundle of primary coated optical fibres are found sheathed together in a PBT buffer tube or stainless steel tube (SUS Tube). Such facts made clear that the OPGW/SUS tube are not made up of individually sheathed Optical fibres, hence, the *same* are out of purview of heading 8544 of CTA.

**52.** Further, I have gone through written submissions of the Importer wherein they have contested that the case laws relied upon in the subject SCNs are '*per in curium*' for reasons stated therein. In this regard I have carefully gone through the said Judgements and found that in case of **Alcatel India Ltd. — 2006 (197) E.L.T. 176 (A.A.R.)**, the Authority for Advance Ruling , New Delhi after carefully examination of the questions posed by the applicant, both from technical and

legal angles, has stated that:

*“23. To complete the analysis, we have to refer to one more relevant fact. As we have recorded earlier, ten samples in all, covering the fourteen products under consideration have been produced before us by the applicant. Out of these, eight samples which are of the two categories, namely, OALC & URC, are purely optical fibre cables as can be made out by visual examination, whereas the remaining two which are samples of the category ‘Terrestrial (Land)’ cables, are found to be having electric conductors apart from optical fibre cable(s) in the same assembly. In other words, they are composite goods. Unlike the Heading 8544, there is no qualifying remark “whether or not assembled with electric conductors or fitted with connectors” for the entry “optical fibre cables” in the Heading 9001. Section/Chapter Note to Chapter 90 is silent on this aspect. The HSN Explanatory Note to Heading 9001 clarifies only to the extent that optical fibre cables of this heading may be fitted with connectors, but does not talk of assembly with conductors. So, we have to fall back upon the General Rules for the Interpretation of the First Schedule to the Act, for deciding the classification of such composite goods. Rule 3(b) which is the relevant rule for this purpose reads as follows — “(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.” Since, undoubtedly, the optical fibre cable component in the composite goods under consideration gives them their essential character, they would have to be classified as if they consisted of optical fibre cable(s) only. This would mean that even these composite goods would be classifiable under the Heading 9001 and more precisely, under the Tariff Item 9001 10 00.”*

The importer have failed to appreciate the aforementioned decision of the AAR before tagging the same as **‘per in curium’**.

**53.** I have gone through the Judgement of **Hon’ble CESTAT in case of M/s. Commissioner v. Vodafone Essar Gujarat Ltd. -20148 (360) E.L.T. A193 (CESTAT-LB)** wherein the Hon’ble Tribunal has clearly stated that

*“4. Optical Fibre Cables consisting of dual acrylic coating with colour coding at both the ends and used in Telecommunication, are classifiable under Heading 9001 of the Customs Tariff and not under Heading 8544 of the said Tariff.”*

➤ I find that pronouncement of Hon’ble Tribunal is crystal clear to settle the issue under dispute. However, Shri Shalin Sheth, Director of the Importer in his statement dated 17.08.2020 has admitted that

*“Optical Fibre conductor applications, which are not falling under CTH 8544 i.e. not used in long range telecommunication needs should go for 9001 i.e. instrumentation, medical devices, spectacles and short distance cables;”*

➤ **Similarly, Shri M. Balaji, Production Head of the Importer** in his statements dated 21.12.2020 admitted that

*“Optical Fibres in the OPGW imported by TG Advait are not individually sheathed and hence not classifiable under heading 8544. On perusal of heading 9001 and explanatory notes to heading 9001, he stated that heading 9001 is the correct classification for the OPGW cables/ optical fibre imported*

by the company”;

➤ **Shri M. Balaji, Production Head of the Importer** in his another statement dated 01.02.2021 has again admitted that

*“TG Advait had wrongly classified the imported OPGW cables under Tariff heading 85447090 and availed duty exemption under Sr. No. 28 of notification no. 24/2005 dated 01.03.2005; that TG Advait is ready to pay the differential duty and undertakes to pay an amount of **Rs.2 Crore** against partial discharge of differential duty liability arises due to change in classification from 8544 to 9001.”*

However, in their written submission without submitting any Judgement in support of their claim, they have for any reason known to them, failed to appreciate the relied upon judgements and quoting the same as **‘per in curium’**.

**54.** I find that during investigations, several other importers produced Schedule of Rates and Prices (a part of tender/bidding documents issued by M/s Power Grid Corporation of India Ltd.) wherein, for item description- 24/48 Fibre DWSM ·OPGW. Fibre Optic Cable, the corresponding HSN code is mentioned as 85447090, and the same has been relied upon the same for classification of subject goods under heading 8544. Further, it is noticed that the following provision is made in the bidding documents regarding HSN code:

*“it shall entirely be the responsibility of the bidder to check the HSN/ SAC code and rate of GST given against each item. The bidder may either confirm the HSN and rate of GST or if the bidder opts to class& the item in question under a different HSN/ SAC code or opts to indicate a different rate of GST, the bidder may indicate the same in columns provided The bidder shall solely be responsible for HSN/ SAC classification and the rate of GST for each item”*

**55.** Above facts clearly state that the HSN/SAC code mentioned is only indicative. It shall be the sole responsibility of the bidder/ supplier (or importer in this case) to check and declare the correct HSN/ SAC classification for the goods.

**56.** M/s. TG Advait imports goods from two suppliers **(a)** M/s. Jiangsu Tongguang Optical Fibre Company (JTOFC), which is also the parent company of M/s. TG Advait India Pvt. Ltd. and **(b)**. M/s. Shanghai Tongguang International Trading Co., Ltd. The goods supplied by M/s. Shanghai Tongguang International Trading Co., Ltd., the manufacturer is M/s. Jiangsu Tongguang Optical Fibre Company. M/s. Shanghai Tongguang International Trading Co., Ltd. is only acting as a trader. Therefore, I find that M/s. Jiangsu Tongguang Optical Fibre Cable Co. Ltd., China is the sole manufacturer of goods imported by M/s. TG Advait.

**57.** In a separate investigation of import of OPGW cables by M/s Power Grid Corporation of India Ltd. (IEC- 0591023768) (Manufacturer- M/s. Jiangsu Tongguang Optical Fibre Cable Co. Ltd., China), the goods "24 Fibre (DWSM) OPGW Fibre Optic Cable" vide bill of entry No. **3358819** dated **30.03.2021**, were examined by SIIB, Chennai Customs and representative samples were drawn for further examination. The samples were forwarded to Deputy Director General (SR) Regional Telecom Engineering Centre (RTEC), Bengaluru for testing. Based on inspection of the OPGW sample, Director (SR), RTEC,

Bengaluru vide letter dated 20.04.2021 reported that:-

- i. The sample consists of 4 main loose tubes and each of these 4 loose tubes has 6 Optical Fibres. The colour of these 4 loose tubes observed are Blue, Orange, Green and Brown. These 4 loose tubes along with strength members are housed in central metallic tube;
- ii. The Six Optical fibres observed in each loose tube are coated with Blue, Orange, Green and Brown, Slate and White colour. (This colour combination is matching with the details as mentioned in TEC OPGW Cable generic Requirements (GR) no. TEC/TX/OFC-021/01/SEP-11;
- iii. **It is observed that the sample does not have individually sheathed fibres. This is evident from visual inspection because each of the 6 optical fibres in the tube does not have any kind of individual sheath over it.**

**58.** I find that DDG (T), Telecommunication Engineering Centre opined vide communication dated 17.06.2020 that the imported optical fibres are no individually sheathed, but bundles of optical fibre cables sheathed. Moreover, Director, National Test House (WR) vide communication dated 22.12.2020 and 01.01.2021 opined that Di-acrylic coating over cladding cannot be construed as sheathing of optical fibre. It is therefore, evidently clear that the OPGW cables imported by the importer are not individually sheathed. Therefore, I hold that the impugned goods are correctly classifiable under Tariff Item 90011000 of the first Schedule of Customs Tariff, 1975.

**59.** I find that the Importer vide their written submission have relied upon the **Test report No. NTH (WR)/EL(C)/2017/00187 dated 14.09.2017 and NTH(WR)/EL(C)/2017/00188 dated 18.09.2017 issued by National Test House (Western Region), Mumbai** to infer that the OPGW Cable is made up of individually sheathed fibre and to justify classification of OPGW cables under CTH 85447090. In this regard, the DRI sought clarification in respect of Optical Fibres and Optical Fibre Cables/OPGW from the Director, National Test House (Western Region). In response the National Test House (Western Region) vide their letters dated 22.12.2020 and 01.01.2021 interalia clarified that **Di-acrylic coating over cladding cannot be construed as sheathing of optical fibre.**

**60.** In view of the above, I hold that the impugned items merits classification under Tariff Item 90011000 of the first Schedule of Customs Tariff, 1975 wherein the benefit of concessional rate of Customs duty under Notification No. 24/2005-Cus dated 01.03.2005 is not available to the importer.

**Applicability of extended period under section 28(4) of the Customs Act, 1962, Confiscation of Goods under Section 111(m) of Customs Act, 1962, Imposition of Penalty under Section 112(a)(ii) and/or 114A and 114AA on importer and Director**

**61.** I find that the demand in the present four Show Cause Notices has been raised invoking Section 28(4) of Customs Act, 1962 and penalty under Section 114 A and 114AA of Customs Act, 1962 has been proposed. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below for sake of convenience: -

*“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—*

*(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts.”*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

**The term “relevant date” For the purpose of Section 28 *ibid*, has been defined in Explanation 1, as under:**

***Explanation 1*** . - *For the purposes of this section, “relevant date” means,-*

- (a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;*
- (d) in any other case, the date of payment of duty or interest.*

**62.** On perusal of Section 28(4) of Customs Act 1962, it emerges that the said section can be invoked in only such case where either of the three elements viz. *collusion, any willful mis-statement, suppression of facts* may be proved. Further, Hon’ble CESTAT, Mumbai, in its final order dated 09.10.2018 [2020(373) E.L.T. 421(Tri-Mumbai)], during passing order on classification of optical fibers which were not individually sheathed, has also held that Since issue relates to issue of classification of imported Optical Fibre Cables and no facts have been suppressed nor misdeclared while claiming classification, confiscation and penalty not sustainable - Sections 111 and 112 of Customs Act, 1962. The relevant portion of aforesaid order is as under: -

*“7. As far as Appeal Nos. C/54 & 55/2010 are concerned, in addition to confirmation of the demand, the authorities below have imposed fine and penalty, which in our opinion cannot be sustained as the issue involved relates to classification of the imported Optical Fibre Cables and no facts have been suppressed nor misdeclared while claiming classification under Heading No. 8544 of Customs Tariff Act, 1975. Consequently, the fine and penalties imposed are set aside and orders are modified to this extent and appeals are partly allowed.*

8. *With regard to Appeal No. C/126/10 filed by the Revenue, which relates to enhancement of penalty, the same is dismissed and the Appeal No. C/688/2008, also of the Revenue, which relates to classification of the Optical Fibre Cables under Tariff Heading 9001, is hereby allowed".*

**63.** I find that for invoking Section 28(4) of Customs Act, 1962 in Show Cause Notice, it is indispensable to prove the suppression of facts being key ingredient of Section 28(4) *ibid* which cannot be proved in light of CESTAT Order.

**64.** I find that the Hon'ble Supreme Court in the case of Union of India v. Kamlakshi Finance Corporation Ltd, reported in 1991(35) E.L.T.433(S.C.), has held that "**The adjudicating Officer acts as a quasi-judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction.** If his order is thought to be erroneous by the Department, the Department can as well prefer appeal in terms of the statutory provisions contained in the Central Excise Act, 1944. Further, the Hon'ble Supreme Court in the case of Hari Singh v. State of Haryana, reported in 1993 (66) E.L.T.23 (S.C.), has held that "It is true that the system of the justice which is being administered by the Courts, one of the basic principles which has to be kept in view, is that **Courts of co-ordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on question of law. If Courts express different opinion on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy.**

**65.** I find that the Hon'ble Apex Court in the Case of Gammon India Ltd. v. Commissioner of Customs, Mumbai reported in 2011 (269) ELT 289 (SC), has held that two Tribunals should not take differently divergent views, which will create judicial uncertainty in declaring the law involved in identical issues. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. **A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.**" We respectfully concur with these observations and are confident that all the Courts and various Tribunals in the country shall follow these salutary observations in letter and spirit." The Hon'ble Supreme Court in the case of Commissioner of C. Ex, v. Novapan Industries Ltd., held that "It is settled law that the department having accepted the principles laid down in the earlier case cannot be permitted to take a contra stand in the subsequent cases"

**66.** In light of above judgements of Hon'ble Apex Court, order dated 09.10.2018 [2020(373) E.L.T. 421(Tri-Mumbai)] passed by CESTAT is guidance value and I find the facts of the instant case meriting to be decided along the same lines as above decision of CESTAT. Therefore, I, find that invoking of Section 28(4) of Customs Act, 1962 is not sustainable in present four Show Cause Notices which are being adjudged by me and I hold so. I further hold that the goods procured under the Bills of Entry No. B/E No. 8080922 dated 04.07.2020 is also not liable for confiscation under Section 111(m) of Customs Act, 1962 as laid down by CESTAT in its order dated 09.10.2018.

**67.** The Show Cause Notices have also proposed penalty under Section 112 or

114A or 114AA of Customs Act, 1962 on M/s. TG Advait and Shri Shalin Seth, Director. I find that that penalty proposed under Section 112 or 114A or 114AA of Customs Act, 1962 on M/s. TG Advait and Shri Shalin Seth, Director is not sustainable for reasons discussed in detail in the CESTAT order dated 09.10.2018 therefore I hold that M/s. TG Advait and Shri Shalin Seth, Director is also not liable of penalty under Section 112 or 114A or 114AA of Customs Act, 1962.

**68.** M/s. TG Advait and Shri Shalin Seth, Director has submitted plethora of Case Laws and arguments in their defence. As I have held Section 28(4) of the Customs Act, 1962 is not invokable and penalty under Section 112 or 114A or 114AA of Customs Act, 1962 is not imposable on M/s. TG Advait and Shri Shalin Seth, Director, I do not discuss their defense submissions made in this regard.

**69.** I find that Section 28(10B) of Customs Act, 1962 provides that A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any willful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly. Therefore, I hold that duty and the interest is liable to be computed in terms of Section 28(1) of Customs Act, 1962.

**Differential Duty determination on classification of such goods under CTH 90011000 Section 28(8) Customs Act, 1962 read with Section 28(1) of Customs Act, 1962.**

**70.** In foregoing paras, I have held that the goods imported by M/s. TG Advait is correctly classifiable under Tariff Item 90011000 of the first Schedule of Customs Tariff, 1975 and duty is to be determined under Section 28(1) of Customs Act, 1962.

**71.** The noticee/importer had imported "OPGW", "OPGW (L-AL-TUBE)", "OPTICAL FIBER CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE" through Air Cargo Complex, Mumbai and Nhava Sheva Port and had self-assessed the goods under tariff item 85447090 by availing undue benefit of concessional rate of Customs duty issued under Notification No. 24/2005-Cus dated 01.03.2005 at Sr. no. 28.

**72.** In view of above, I hold that **the importer is liable to pay the differential duty as tabulated below on the goods imported through Mundra Port, Nhava Sheva Port, Air Cargo Complex-Delhi, Air Cargo Complex-Ahmedabad** along with applicable interest under Section 28AA of the Customs Act 1962 and is to be demanded and recovered from the importer/notice.

Sr No.	SCN No. and Date	Amount of Duty Demanded in Show Cause Notice	Applicable relevant period for demand in terms of Section 28(1) of Customs Act, 1962 from Date of issuance of SCN	Amount of duty involved in the said period in terms of Section 28(1) of Customs Act, 1962 from Date of issuance of SCN and is to be Demanded	Details of BE which demand is being conformed
1	VIII/48-1813/TG Advait /Gr-V/MCH/2021-22 dated 09.02.2022 issued by Commissioner of Customs, Customs House, Mundra	3,56,91,077/-	10.02.2020 to 09.02.2022	1,92,56,591/-	Sr. No. 56 to 93 of Annexure-A of SCN (Order of Clearance of in respect of Bill of Entry mentioned at Sr. No. 56 was granted on 18.02.2020)
2	184/2021-22 dated 12.10.2021 issued by Deputy Commissioner of Customs, Group 5M, NCH, New Delhi	2,20,887/-	13.10.2019 to 12.10.2021	2,20,887/-	All BE of Annexure-A to Show Cause Notice
3	434/21-22/DC/Gr.VB/CA C/JNCH, dated 27.09.2021 issued by Deputy Commissioner of Customs, Group 5B/5, (F.I.V), NS-V, JNCH	57,014/-	28.09.2019 to 27.09.2021	0	Time Barred. (Order of Clearance was granted on 04.12.2018)
4	VIII/48-52/ACC/SCN/T.G. Advait/2021-22 dated 04.09.2021 issued by Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad	14,210/-	05.09.2019 to 04.09.2021	0	Time Barred. (Order of Clearance was granted on 13.06.2019)

73. In view of discussion and findings supra, I pass the following order:

**ORDER**

**73.1.** Order in respect of Show Cause Notice No. VIII/48-1813/TG Advait /Gr-V/MCH/2021-22 and DRI/DZU/23/Enq-19/2020/TG Advait dated 09.02.2022, issued by Commissioner of Customs, Customs House, Mundra:

a) I reject the declared classification under tariff item 85447090 of the CTA, for the goods "OPGW", "OPGW (L-AL-TUBE)", "OPTICAL FIBER

CABLE WITH CONDUCTOR", "OPTICAL FIBER UNIT", "OPTICAL FIBER UNIT (TUBE WITH FIBER) (L AL\_TUBE)", "OPTICAL FIBER UNIT (SUS TUBE WITH FIBER)", "OPTICAL FIBER CABLE", "FIBER APPROACH CABLE" and "SUS TUBE" in bills of entry, mentioned in Annexure- A to the show cause and order the said goods imported by **M/s TG Advait India Pvt. Ltd.** (IEC- AAFCT9124L) to be classified under Tariff item 90011000 with consequential duty liability;

- b) I reject the benefit of Sr. No 28 of Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN.
- c) I confirm the demand of differential Customs duty amounting to **Rs. 1,92,56,591/- (Rupees One Crore Ninety Two Lakh Fifty Six Thousand Five Hundred and Ninety One Only)**, short levied / short paid on the said goods covered under bills of entry, as detailed in Annexure- A( Sr. No. 56 to 93) to the show cause notice, under Section 28(1) of the Customs Act, 1962 and order to recover applicable interest on the short under Section 28AA of the Customs Act, 1962;
- d) I drop the demand of differential Customs duty amounting to **Rs. 1,64,34,486/- (Rupees One Crore Sixty Four Lakh Thirty Four Thousand Four Hundred and Eighty Six Only)**, proposed in Annexure- A( Sr. No. 1 to 55) to the show cause notice,
- e) I hold the impugned goods imported vide B/E No. 8080922 dated 04.07.2020 having assessable value Rs. 8,58,096/- (*Rs. Eight Lakh Fifty Eight Lakh and Ninety Six*) as not liable for confiscation under Section 111(m) of the Customs Act, 1962.
- f) I refrain from imposing Penalty under Section 112, 114A and 114AA on M/s TG Advait India Pvt. Ltd. (IEC- AAFCT9124L) having registered office at A-803, Sankalp Iconic Tower, Opp. Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054 114AA of the Customs Act, 1962.
- g) I refrain from imposing Penalty under Section 112, 114A and 114AA on Shri Shalin Sheth, Director, M/s TG Advait India Pvt. Ltd.

**73.2.** Order in respect of Show Cause Notice No. 184/2021-22 dated 12.10.2021 issued vide F.No. VIII/12/Acc-imp/Gr.5M&5B/Misc-213, by Deputy Commissioner of Customs, Group 5M, NCH, New Delhi and made answerable to the Commissioner of Mundra vide corrigendum F.No.CUS/APR/SCN/659/2023-GR SB dated 20.09.2023.

- a) I reject the declared classification under tariff item 85447090 of the CTA, for the goods "OPTICAL FIBER UNIT" in bills of entry, mentioned in Annexure- A to the show cause and order the said goods imported by **M/s TG Advait** to be classified under Tariff item 90011000 with consequential duty liability;
- b) I reject the benefit of Sr. No 28 of Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN
- c) I confirm the demand of differential Customs duty amounting to **Rs. 2,20,887/- (Rupees Two Lakh Twenty Thousand Eight Hundred and Eighty Seven Only)**, short levied / short paid on the said goods covered under bills of entry, as detailed in Annexure- A to the show cause notice, under Section 28(4) of the Customs Act, 1962 and order

to recover applicable interest on the short under Section 28-AA of the Customs Act, 1962;

d) I refrain from imposing penalty on **M/s TG Advait India Pvt. Ltd.** (IEC- AAFCT9124L) having registered office at A-803, Sankalp Iconic Tower, Opp. Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054 under Section 112, 114A and 114AA of the Customs Act 1962, for the reasons discussed above

e) I refrain from imposing Penalty under Section 112, 114A and 114AA on Shri Shalin Sheth, Director, M/s TG Advait India Pvt. Ltd, for the reasons discussed above

**73.3.** I drop the all proceedings initiated vide Show Cause Notice No. 434/21-22/DC/Gr.VB/CAC/JNCH dated 27.09.2021 issued vide F.No.S/26-Misc-716/21-22/Gr.VB/NS-V/JNCH by Deputy Commissioner of Customs, Group 5B/5, (F,I,V), NS-V, JNCH,Nhava Sheva and made answerable to the Commissioner of Mundra vide corrigendum F. No. S/26-MISC-716/2021-22/GR.VB/JNCH & F.No. DRI/DZU/23-ENQ-19/2020/TG Advait/16510 dated 06.10.2023.

**73.4.** I drop the all proceedings initiated vide Show Cause Notice SCN No. VIII/48-52/ACC/SCN/T.G.Advait/2021-22 dated 04.09.2021 issued by Deputy Commissioner of Customs, Air Cargo Complex, Old Airport, Ahmedabad and made answerable to Commissioner of Mundra vide corrigendum F. No. VIII/48-52/ACC/SCN/T.G.Advait/2021-22 dated 04.09.2021.

**74.** This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act,1962, and/or other law for the time being in force in the Republic of India.



**(K. Engineer)**  
Commissioner of Customs  
Custom House, Mundra.

To

**1. M/s TG Advait India Pvt. Ltd.**  
(IEC-AAFCT9124L)

Registered office at A-803, Sankalp Iconic Tower, Opp. Vikramnagar, Iscon Cross Road, SG Highway, Ahmedabad-380054

**(Communication address-** Plot No. PE-42 & 43, Sanand Engineering Estate-2, GIDC, BOL, Tal-Sanand, Ahmedabad-382110)

**2. Sh. Shalin Sheth**, Director, M/s.  
TG Advait (IEC- AAFCT9124L)

**Copy for information and further necessary action / information/ record to:**

- a.** The Chief Commissioner of Customs, CCO, Ahmedabad.
- b.** The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra
- c.** The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- d.** The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- e.** Notice Board
- f.** Guard File