कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421.
PHONE : 02838-271426/271163 FAX :02838-271425
E-mail id- adj-mundra@gov.in

A	**FILE NO.**	GEN/ADJ/ADC/73/2022-Adjn-O/o Pr Commr-Cus-Mundra
B	**OIO NO.**	MCH/ADC/AK/69/2024-25
C	**PASSED BY**	ARUN KUMAR ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	**DATE OF ORDER**	11.06.2024
E	**DATE OF ISSUE**	12.06.2024
F	**SCN NUMBER & DATE**	1. VIII/48-1627/Kalpataru/ Gr.V/ MCH/2021-22 Dated 11.01.2022 2. VIII//ICD/TKD/6AG/Gr.5A/ Kapataru Power/1974/2021 dated 29.07.2021 3. VIII/10-10/ICD/KPTL/ADJ/2021 dated 14.07.2021 4. VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021 5. Misc/55/2021-Gr.5A dated 24.06.20212021 6. VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated 25.06.2021
G	**NOTICEE/ PARTY/ IMPORTER**	1. M/s Kalpataru Power Transmission Ltd. (IEC: 0889003297) 2. Sh. Sandipkumar Jagirdar 3. Sh. Vipin Varshney
H	**DIN NUMBER**	20240671MO000000F2C5

1. यह आदेश संबन्धित को नि:शुल्क 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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में 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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमा शुल्क आयुक्त) अपील(,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD, NAVRANGPURA, AHMEDABAD-380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60दिन के भीतर दाखिल की जानी चाहिए ।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित

अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

i. उक्त अपील की एक प्रति और A copy of the appeal, and

ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची1- के अनुसार न्यायालय शुल्क अधिनियम1870- के मद सं°6- में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 %भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) 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

An intelligence received and further developed by the officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as "the DRI") indicated that a number of importers including M/s Kalpataru Power Transmission Ltd. (IEC- 0889003297) (hereinafter referred to as 'the importer' or 'KPTL') having registered office at Plot No. 101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat- 382028 and Corporate office at 81, Kalpataru Synergy, Opp. Grand Hyatt, Santacruz (E), Mumbai-400055, were engaged in import of 'Optical Ground Wire Cable (OPGW)' and 'Optical Fibre Approach Cable' (hereinafter referred to as 'the said goods") classifiable under heading 9001 of the first schedule of the Customs Tariff Act, 1975 (hereinafter referred to as 'the CTA') primarily from China and evading Customs duty by way of mis-classification/mis-declaration of the said goods under heading 8544 of the CTA.

2. The intelligence further suggested that the importer had been importing 'Optical Ground Wire Cable (OPGW) 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 tariff item 85447090 of the CTA. Resultantly, the importer was availing undue benefit of concessional rate of duty under the Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28), while the said goods appeared appropriately and correctly classifiable under tariff item-90011000 of the CTA i.e. under OpticaI fibres and optical fibre bundles; optical fibre cables other than those of heading 8544.

3. Acting on the above intelligence, vide letter dated 05.05.2020 and 12.05.2020, the

importer was requested to submit documents in respect of the import of the said goods. In response, vide e-mail dated 06.05.2020 and letter dated 14.05.2020, the importer submitted certain documents in respect of import of the same goods and their technical specifications. Perusal of the import data and the documents submitted by the importer revealed that the said goods had been imported by the importer under tariif item 85447090 of the CTA, after availing undue benefit of concessional rate of duty under Notiification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28).

4. 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. In response, vide e-mail dated 17.06.2020, ADG (Transmission), TEC, New Delhi, 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.

5. Summonses dated 13.11.2020,25.11.2020 and 16.12.2020 were issued to the importer to appear in person to give evidence and to provide certain information/documents along with the sample goods and their technical specification, in relation to the import of the said goods. In response vide letter dated 28.12.2020, the importer submitted certain documents in respect of import of OPGW Cables. The importer submitted that vide Order-in-Appeal No. COC-CUSTM-000-APP-331/2015-16 dated 29.12.2015 and Order –in- Appeal No. COC-CUSTM-000-APP-330/2015-16 dated 29.12.2015, Commissioner (Appeals) of Customs, Cochin held that the OPGW imported by the importer is correctly classifiable under heading 8544. The importer also forwarded a copy of Test Report No.77, 67A, 68, 68(A)(I) dated 26.06.2014 of Cochin Customs for OPGW.

6. 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 (r-emoval 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.

7. Summons dated 11.01.2021 was issued to the importer to appear in person to give evidence and explain the reasons along with the facts and evidences for claiming the benefit Notification No. 24/2005-Cus dated 01.03.2005. In response to summons dated 11.01.2021, Sh. Vipin Varshney, Vice President, Project Monitoring Group and Sh. Sandipkumar jagirdar, Assistant General Manager (Taxation), M/s Kalpataru Power Transmission Ltd. Appeared on 21.01.2021. Statement of Sh. Vipin Varshaney was recorded under Section 108 of the Customs Act, 1962 on 21.01.2021, wherein he, interalia, stated that: -

i. KPTL imports optical Fiber Ground Wire (OPGW) of 24/48 fibre and approach cable- 24/48 fibres according to the requirement for project transmission work; they supply OPGW and approach cable to M/s Power Grid Corporation of India Limited and state electricity boards;

ii. They also procure OPGW & approach cables from domestic vendors, as approved by M/s Power Grid Corporation of India Limited;

iii. Technical specification and vendor for OPGW & approach cable is specified by M/s Power Grid Corporation of India Limited; that POWEGRID specifies the vendor from which the goods are to be procured, which may be domestic or overseas supplier;

iv. 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;

v. Since, OPGW Cable and approach cables are optical fibre cables, therefore at the time of import, KPTL declared it under the tariff heading of optical fibre cables;

vi. OPGW stands for Optical power ground wire, which is a dual purpose cable used for providing earthing to the conductors in transmission towers and for telecommunication purposes. It is a type of optical fibre cable.

vii. KPTL imports OPGW cables-24 Fibre/24 Fibre and approach cables-24 Fibre/24 Fibre from M/s ZTT International Pvt. Ltd., China.

viii. Approach cable stand for Optical Fibre approach Cable (OFAC) 24 F and 48 F stands for 24 Fibre or 48 Fibre, which is the count of optical fibers. Approach cable is basically used to connect OPGW cable from power transmission towers to telecom

equipment in power sub-stations. The central optical unit containing the optical fibres is same in approach cable and OPGW cable.

ix. On being asked about the constituent parts/structure of OPGW Cable, he stated that no one in KPTL can answer about the technicalities of OPGW; that he will discuss about the same with the top management, Sh. Manish Muhnot and other directors and the person authorized by the top management to appear before DRI, DZU, will appear on 04.02.2023 to tender a statement and answer all the technical aspects of OPGW cable.

x. On going through the heading 8544 and 9001 of the custom Tariff Act, 1975, he stated that optical fiber cables made up of individually sheathed optical fibres are classified under heading 8544 of the Customs Tariff Act, 1975; for heading 9001, he was unable to give any comment on what type of optical fibre cables fall under heading 9001; that optical fibre cables other than those of heading 8544 are classifiable under heading 9001;

xi. KPTL imports OPGW cable and approach cable under CTH 85447090 of the Customs Tariff Act, 1975.

xii. As per description provided by M/s Power Grid Corporation Ltd., they place order to the supplier and file the Bill of entry as per HSN code provided in the certificate of origin by the overseas supplier. Whatever HSN code is mentioned in the certificate of origin, the same is declared in the Bill of entry during the time of import;

xiii. KPTL does not find it necessary to apply further due diligence on the part of company while finalizing the classification of OPGW cable and approach cables.

8. Summons dated 02.02.2021 and 04.02.2021 was issued to the importer to appear in person to give evidence and to provide representative samples of the OPGW and approach cables, along with their Technical Specification and Data Requirement Sheet (DRS). In response to summons dated 04.02.2021, Sh. Sandipkumar jagirdar, Assistant General Manager (Taxation), M/s Kalpataru Power Transmission Power Transmission Ltd. Appeared on 11.02.2021. Statement of Sh. Sandipkumar jagirdar was recorded under section 108 of the Customs Act, 1962 on 11. 02.2021, wherein he, interalia, stated that:

(i) KPTL deals in the business of design, engineering, manufacturing, procurement, supply, erection and commissioning of high tension power transmission: that KPTL does not manufacture optical fiber, OPGW or other optical cables and imports Optical fiber Ground Wire (OPGW) of 24/48 Fiber and approach cable – 24/48 according to the requirement for project transmission work. They also procure OPGW and approach cables from domestic vendors, as approved by M/s. Power Grid Corporation of India Limited.

(ii) Technical specification and vendor for OPGW and approach cable is specified by M/s power Grid Corporation of India Limited: that they (M/s power Grid Corporation of India Limited) specify that vendor from which the goods are to be procured, which may be domestic or overseas supplier.

(iii) Since, OPGW cable and approach cable are optical fibre cable therefore at the time of import, KPTL declared it under the tariff heading if optical fiber cables.

(iv) CTH -85447090 is declared bt M/s. Kalpataru Power Transmission Limted during import OPGW cable and approach cable,

(v) As per the sample invoice submitted, KPTL domestically procures OPGW cables and approach cables under two HSN codes-85447090 and 90011000: that M/s. Apar Industries Ltd issue their invoices for OPGW cables and approach cable under HSN code 85447090 while M/s. Sterlite Power Transmission Limited issue their invoice for OPGW cable and approach cable under HSN code 9001000;

(vi) As per the sample sale invoice submitted, KPTL sells/supplies OPGW cable and approach cable under two HSN Code- 85447090 and 90011000;

(vii) Optical fibre cables can be classified under heading 8544 and 9001 of the customs Tariff Act, 1975; that the only differentiating factor between both the heading is sheathing of optical fibres.

(viii) He stated that on perusal of headings 8544 and 9001, it is evident that Optical fibre cables made up if indicidually sheathed optical fibres are classifiable under heading 8544; that the Optical fibre cables in which the optical fibre are not individually sheathed fall under chapter heading 9001.

(ix) He is not a technical person so he cannot comment on what is sheathing and what are individually sheathed fibres; there is no internal mechanism in KPTL to decide the HSN for import or purchase of OPGW in KPTL;

(x) The classification is finalised based on the classification provided by the supplier; that as per description provided by POWERGRID, they place the order to the overseas supplier and file the Bill of Entry as per HSN code specified in the certificate of origin;

(xi) In the technical specification of OPGW cables supplied by M/s ZTT, China and approved by M/s Power Grid Corporation of India Ltd, the optical fibre in the OPGW cable is mentioned as single mode optical fibre G.652D;

(xii) He is not a technical person and does not know anything about the technical issues of optical fibre and optical fibre cables; he is unable to give any comment on whether the single mode optical fibre G.652D is individually sheathed or not;

(xiii) There is no person in KPTL who is technically competent to give clarifications regarding optical fibres and OPGW Cable; that KPTL does not manufacture OPGW Cable nor performs any operation on the imported/ domestically procured OPGW Cable; that KPTL is merely acting as a trader in respect of OPGW cable.

(xiv) As per his knowledge, there is no correspondence from their supplier of OPGW Cable and approach cable i.e. M/s ZTT, China confirming that the OPGW cable is made up of individually sheathed fibre; that in the technical specification of M/s ZTT China, it is not mentioned anywhere that OPGW cable is made up of individually sheathed fibre.

(xv) While raising the purchase order with their domestic supplier (M/s Sterlite Power Transmission Ltd), KPTL adopts the classification of OPGW cables under HSN 9001;

(xvi) Their domestic supplier, M/s Sterlite Power Transmission Ltd, advises KPTL to classify the goods- OPGW cables under HS 9001; that M/s Sterlite Power Transmission Ltd, raises the invoice for OPGW cables under HSN 9001;

(xvii) For domestic purchase, KPTL procures OPGW cables from two major suppliers viz. M/s Apar Industries and M/s Sterlite Power Transmission Ltd.; that while M/s Apar Industries supplies OPGW cables under HSN 8544, M/s Sterlite Power Transmission Lid supplies OPGW cables under HSN 9001;

(xviii) For the OPGW cables procured from M/s Sterlite Power Transmission Lid., KPTL supplies/sales the OPGW cable to their client, POWERGRID under HSN 9001;

(xix) He agreed with the statement of Sh. Vipin Varshney recorded on 21.01.2021 wherein it was stated that M/s Kalpataru Power Transmission Ltd. files the Bill of entry as per HSN code provided in the certificate of origin by the overseas supplier and the company does not find it necessary to apply further due diligence while finalising the classification of OPGW Cables and approach cables;

(xx) He perused the technical specifications submitted by M/s Kalpataru Power Transmission Ltd. and approved by M/s Power Grid Corporation of India Ltd, in relation to (i) imported OPGW cables supplied by M/s ZTT, China (il) domestically procured OPGW cables from M/s Sterlite Power Transmission Ltd. and stated that in both the specifications, the optical fibre has been mentioned by both the suppliers as 'Single mode optical fibre G.652D' and in both the specifications, it has been mentioned that UV curable acrylate material is applied over fiber cladding as optical fiber primary protective coating.

(xxi) He is not a technical person and he does not know anything about the technical issues of optical fibre and optical fibre cables; he is unable to give any comment on

whether the single mode optical fibre G.652D is individually sheathed or not;

(xxii) In their test/ analysis, Telecommunication Engineering Centre (TEC) have given their opinion that in higher count OPGW Cables, the fibres are not individually sheathed but the bundles of optical fibres are sheathed together with sheathing material; he is not a technical expert in the field of OPGW cables; he further stated that there is no person in M/s Kalpataru Power Transmission Limited who is technically competent to give clarifications regarding optical fibres and OPGW Cable, therefore, the opinion of TEC appears acceptable.

9. 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.65ZD) is 242-L 5 km;

(ii) the dual acrylic coating present in single mode optical fibre (G.652D) refers to two different layers of primaFy 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;

9.1 Further, as per Generic Requirement (GR) issued by Telecommunication Engineering Centre (TSC) 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 µm ± l .0 µm, Diameter over primary coated with double UV Cured acrylate is mentioned as 245 µm ± l 0 µm. 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 made optical ftbre of specification G.652D has only primary coating of UV cured acrylate material in two layers.

10. 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 fibres 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. The optical fibers in the optical ground wire (OPGW) are Single mode optical fibre G.652D (conforming to ITU-T G.652 standards). The representative image of OPGW and its constituents is reproduced below: -

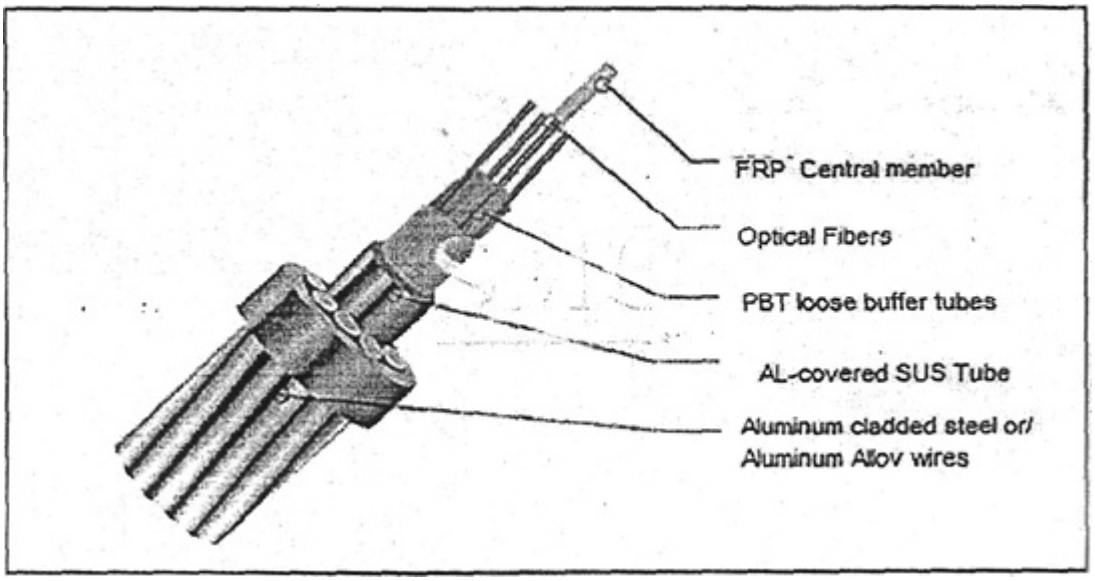


Fig-1: OPGW and its constituents

10.1 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, ln the case of 48 fibre OPGW, a group of twelve (12) optical fibres of different colours are encased in a single PBT buffer Tube.

10.2. Optical Ground Wife (OPGW) cables have the dual functions of a ground wire with telecommunication capabilities. As the name suggests, i t i s primarily an optical fibre cable having primary function of data transmission. In the technical specifications issued by Mls PO WERGRID, 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.

10.3 Fiber 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. The representative images of OPGW cablesand approach cables, which were found during investigation, are reproduced below for reference-:

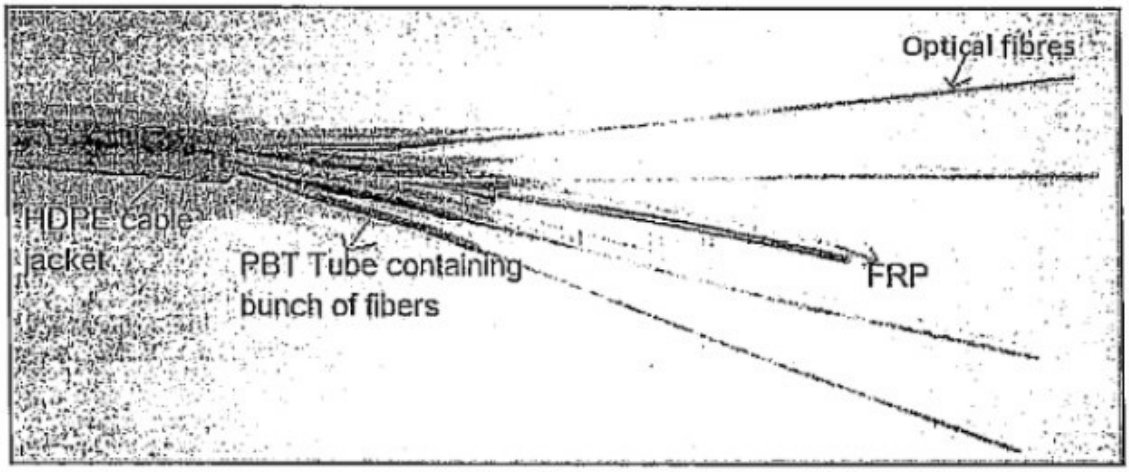


Fig-2: Approach cable

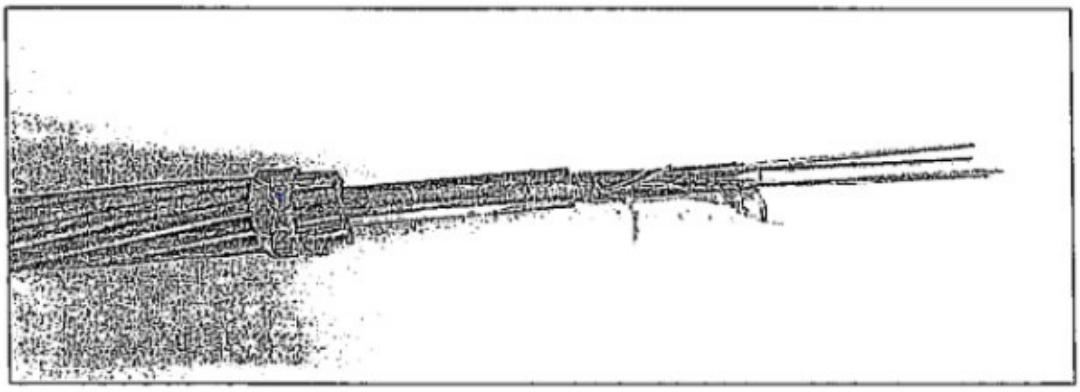


Fig-3: 24 Fibre OPGW cable-Aluminium tube design

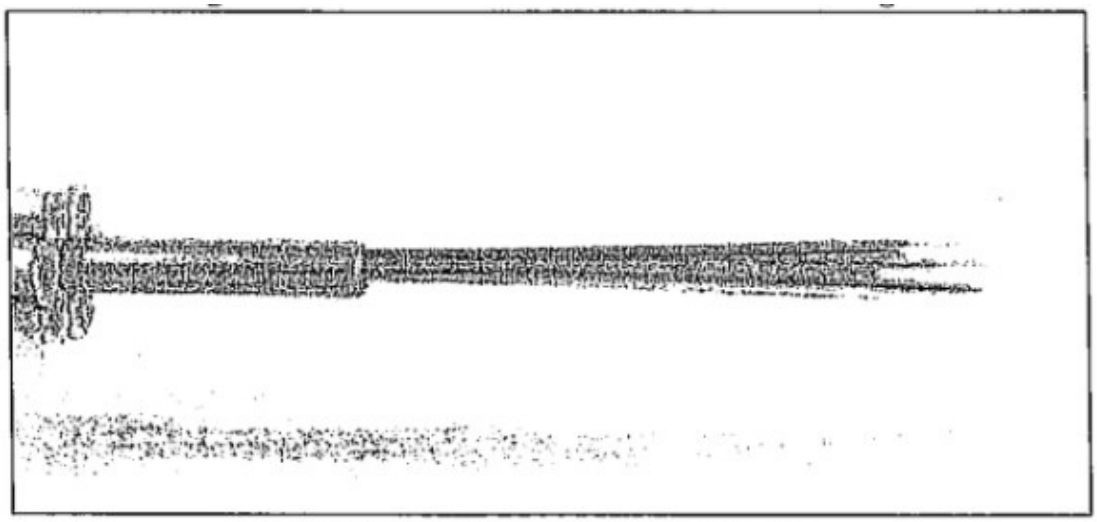


Fig-4: OPGW cable SUS tube design

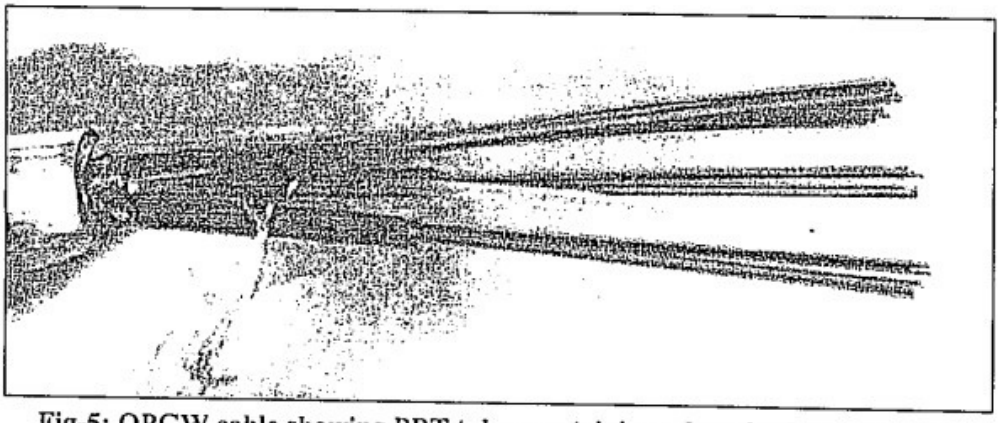


Fig-5: OPGW cable showing PBT tubes containing a bunch of optical fibres

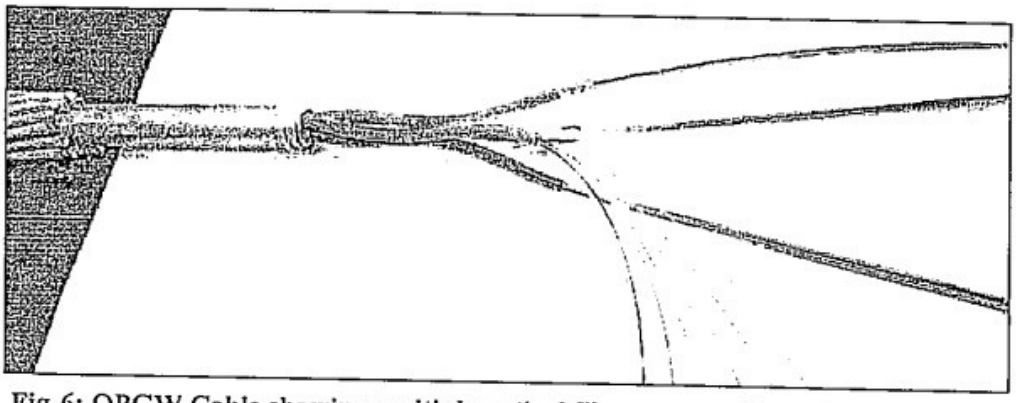


Fig-6: OPGW Cable showing multiple optical fibres encased in a single PBT tube

10.4 During investigation, it has been submitted by the importer that the said goods are imported by them for supply to power transmission companies including Mls Power Grid Corporation of India Ltd. As per the tender documents of Mls 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.

1.2 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 capabillties 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 morelayers 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 duet vibration and galloping, wind and ice loadings, wide temperature varlations,

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 Sptic 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 (SiO2). 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 fi ber 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 st all be strippable for splicing and termination.

4.4.1Loose buffer

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

4.4.2 Tight buffer

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

4.4.3 Color coding

*The fiber coloring shall be in accordance witri an at'propriate industry standard for fiber color as referenced in Clause 2. In cases wher • tlae mumber of fibers per unit exceeds the mumber of fibers per unit provided in the apps cable *tandard, the supplier shall implement other means for identifying fibers in the sam unit. In case of multiple fi ber units, these units shall be also uniquely identified*

5. Requirements and recommendation s **for OPGW cables**

OPGW serves two purposes:

a. To replace a conventional ground vire. tc, protect the transmission system from lightning and to serve as a condi ctive 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 ln single or multiple layers

11. As per the technical specification for OPGW cabling and associated hardware & fittings (OPGW Section-02), approved by Mls 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 manufactures/ suppliers, approved by POWERGRID and state utilities. Relevant portions of Volume II- Technical specification (for Package-A, B and 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 hard\vare & 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 (DWSM) telecommunications grade fiberoptics 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

Fibre Description	Dual window Single Mode
Mode Field Diameter	8.6 to 9.5 µm (±0.6µm)
Cladding Diameter	125.0 µm ± 1 µm
Mode Field concertricity error	≤ 0.6µm
Cladding non Circularity	≤ 1%
Cable Cut off Wavelength	≤ 1260nm
1550 nm loss performance	As per G.652 D
Proof Test Level	≥0.69 Gpa
Attenuation Coefficient	@1310nm ≤ 0.35dB/Km @1550 nm ≤ 0.21 dB/Km
Chromatic Dispersion Maximum Zero Dispersion Wavelength: Zero Dispersion Slope:	18ps/ (nm * km) @ 1550 nm 3.5 ps/ (nm* km) @ 1288-1339 nm 5.3ps /(nm* km) @ 1271-1360 nm 1300 to 1324 nm 0.092 ps/ (nm2 * km) maximum
Polarization mode Dispersion coefficient	≤ 0.2 ps/ (Km^½
Temperature Dependence:	Induce d attenuation ≤ 0.05 dB(-60C-+85C)
Bend Performance:	@1310nm (75±2mm dia mandrel), 100 turns Attenuation Rise ≤ 0.05dB @1550nm (30 ± 1mm radius Mandrel), 100 turns; Attenuation Rise ≤ 0.05dB @1550nm (32 ± 0.5 mm dia Mandrel.1 turns; Attenuation Rise ≤ 0.05dB

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 Appedices. 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.

2.1.3.4 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 light aluminium / aluminium alloy protective central fibre optic unit swrounded 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 10 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 contract 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.*

12.1. 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 are reproduced below for reference:

Summary

Recommendation ITU-T G.652 describes the geomctrical, 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 nrn region.

1. Scope

This Recommendation describes a single-mode opti.Tal fibre and cable which has zero- dispersion wavelength around 1310 nm and can be used in the 1310 rim 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 recommend 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 1.*

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 rim. The nominal value that is specified shall be within the range found in clause 8. The specified tolerance shall not exceed the value i n 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 µm. 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 rim. The histories 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 o n 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 transmissions 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	nm
	Range of nominal values	8.6-9.2	µm
	Tolerance	±0.4	µm
Cladding diameter	Nominal	125.0	µm
	Tolerance	±0.7	µm
Core concentricity error	Maximum	0.6	µm
Cladding non circularity	Maximum	1.0	%
Cable cut-off wavelength	Maximum	1260	nm

12.2. 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-7 G-Sup.40): Optical fibre and cable Recommendations and standards guideline 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 deve1opm‹•nt of optical fibre and cable ITU-T Recommendations such as Recommendations I EU-T t›.651.1. ITU-T G.652, ITU-T G.653, ITU-T G.654, ITU-T G.65J, 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 spccificaliens in ITU-T and UC

V.1 Fibre specifications

The statue of optical fibre specifications in ITU-Tand IEC is listed in Table V. I.

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	ITU-T G.653	B-653 (ex. B2) single-mode	

single-mode optical fibre		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.

12.3 Further, as mentioned in para-3 of ITU-T G 652 st indard, for the purpose of definition, ITU- T G.650. l has been referred. Accordingly, the relevant portions of **ITU-T G.650.1**: Definitions and test methods for linear, deterniinist c attributes of single-mode *Abie* and cable, are reproduced below for reference: -

3 Definitions

This Recommendation defines the following erms:

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 um 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 µm "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 lt has been confirmed that it*

does not significantly affect the cut-off wavelength, provided that the secondary coating is properly applied.

12.4 Further, for generic & product specifications of Optical Fibres, IEC-60793-2 standard has been specified in the internatlonal 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.*

12.5 Further, for sectional specifications of Single-mode optical fibres, international standard IEC 60793-2-50 has been referred in IEC 60793-2:20 19. 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, 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-T recommendations.

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

Annex	Category	Sub Category	Description	IEC 60793-2-50:2015	ITU-T Rec
	B-652		Dispersion unshifted fibre		G.652
A		B-652.B		B1.1	G.652.B
A		B-652.D		B1.3	G.652.D

Annex A (normative)
Family Specification for category B-652 Dispersion unshifted single-mode fibres

A.1 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 µm coating)	Limit (200 µm coating)	Reference
Cladding diameter	µm	125 ± 0.7	125 ± 0.7	5.2
Cladding non circularity	%	≤ 1.0	≤ 1.0	5.2
Core cladding Concentricity error	µm	≤ 0.6	≤ 0.6	5.2
Primarty coating	µm	235 to 255	180 to 210	5.2

diameter coloured				
Primary coating cladding concentricity error	µm	235 to 265	180 to 220	5.2
Primary coating cladding concentricity error	µm	≤1.0	≤1.0	5.2
Fibre Length	km			5.2
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
Primarty 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 coating limits on optical fibres of category 652.D is 250 µm. The cladding diameter is mentioned as 125 ± 0.7µm, the primary coating diameter-uncoloured is mentioned as 235 to 255 µm and the primary coating diameter-coloured is mentioned as 235 to 265 µm.

12.6 For definitions and terminology, International standard IEC 60050-731:1991 has been referred in IEC 60793-2:2019 and as per International statndard IEC60050-731:1991 (IEC50(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: multi mode fibre: An optical fibre in the core of which the radiation of two or mon 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.

731-02-58: 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 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.

13. 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 elerrient 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 com, prised of a light-carrying core and cladding, which traps light in the core. Fibre 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 µm for outside plant cable and 900 µm for indoor cables.

iv. **Coating**: A plastic or acrylate coating, normally up to 245-250 microns, that is

placed over the cladding during the manufactui .ng prc cess. 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).

14. On perusal o f the various technical specifications of OPCW 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 and approach cables consist of Single mode optical fibre G.652D (conforming t o 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) (l) **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 o f white/ natural colour. A colour coating is applied upon the optical fibre for end-to-end identification of the fibres inside a cable

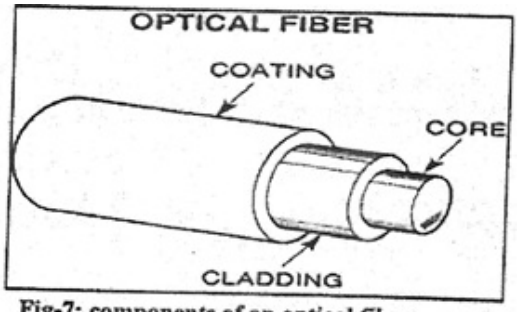


Fig-7: components of an optical fibre

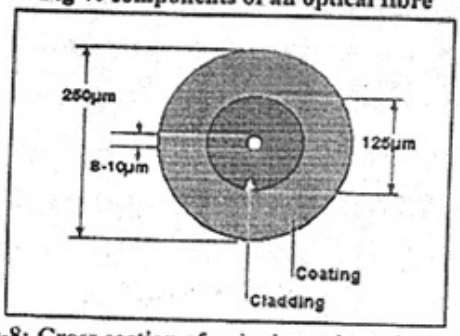


Fig-8: Cross section of a single mode optical fibre

- 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 cailed 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.

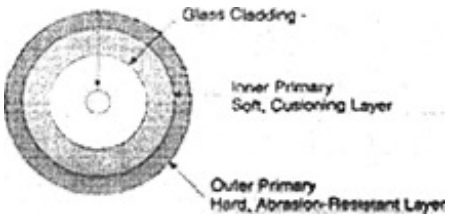


Fig. 9: Cross section of a dual layer primary coating of an optical fibre

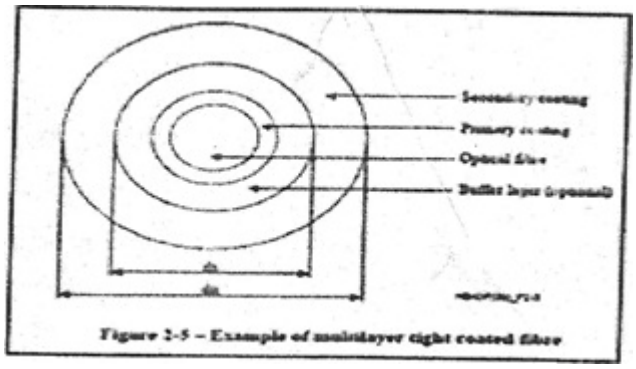
On perusal of the information available in the public domain about coating of optical fibres, it is evident that Primary coating is done in two layers. The first layer is inner primary coating and the second layer is outer primary coating. Sometimes outer

primary coating is also referred to as secondary coating which is witnin the total range of 240-250 µm diameter/thickness. For example, the information availab1e on the website of M/s Coming 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 primar layer.

14.1 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 Co ated optica1 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 ofITU-T Manual 2009). As per ITU-T 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 Slngle 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.

15.1 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/ manufactures of single mode optical fibre G.652D viz. M/s ZTT International Pvt. Ltd. China, M/s Corning 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 TaihanFibreoptics, 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-T 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 250um 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. Further, as per Table A.2 (Dimensional requirements specific to category B-652.D fibres) of the said standard, the coating limits metioned on optical fibres of category B-652.D is 250 µm coating. The cladding diameter is mentioned as 125 ± 0.7 µm, primary coating diameter uncoloured is mentioned as 235 to 255 µm and primary coating diameter-coloured is mentioned as 235 to 265 µm.

15.2 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±10 µm. Accordingly, all the manufacturers

detailed above, manufacture single mode optical fibre G.652D having maximum primary coating diameter in the range of 245±10 µm. 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±10 µm is mentioned as primary coating is enclosed. 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.

16. 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 µm and secondary coating has diameter of 700-1000 µm. Further, as per ITU-T G 650.1 (which contains definitions and test method suitable mainly for linerar, deterministic attriubutes 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 µm and 900 µm respectively. Therefoe, it is evident that the primary coating has diameter 250 µm and secondary coating must be over and above this primary coating diameter with a diameter in the range of 700-1000 µm.

16.1 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 the cladding surface". As per the definition, this coating is required for reinforcing the integrity of cladding. Further, the main suppliers of the importer i.e. M/s ZTT, China and M/s Taihan Fibre optics, in their technical specification, specifically mention that fibers have only primary protective coating. Further, from the technical specifications of ZTT single mode optical fiber G.652D available on open source, the coating diameter is mentioned as 245±10 µm. 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 and Approach Cable have only primary coating of diameter 245±10 µm. 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 µm 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.

17.1 From the above discussion, it is amply clear that OPGW Cables and Optical Fibre 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±10 µm. 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 lndividually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors	0% (SI. 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; optlcal 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	

90011000	- Optical fibres, optical fibres bundles and cables	15%

17.2 Further, as per HSE 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 areusually 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 containlng one or more optical fibre bundles, the fibres of which are *not* individually sheathed.

17.3 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.

17.4. As provided in the General Rules for Interpretation (GIR) of the Harmonized

System, classification of the goods in the nomenclatura shall be governed by the principles contained in Rule 1 to Rule 6, 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 l (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.

17.5 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/ SS Tube Optical Fibre Unit/ 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.

18.1 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. 1/07-23/17/LB dated 22.11.2017 CESTAT, West Zonal Bench, Mumbai, in the matter of Vodafone South Ltd. v/s Com.missioner of Customs(Import), NhavaSheva, Mumbai, has categorically held that the 'coating' of optical fibre is not ‘sheathing' and coating and sheathing are different for an optical fibre.

18.2 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 intergral part of optical fibre without which optical fibre cannot exist commercially. Hence, primary coating, in any case, cannot be construed as sheating of optical fibre.

Furthermore, as per the standard input-oritput norme (SION) prescribed by DGFT for importof raw materials for production of optical fibres (B2l 5), the UV curable coating is listed under the list of raw materials for optical fibre. 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.

19.1 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 whlch 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 (SUS 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 Custom duty under Notification No. 24/2005-Cus dated 01.03.2005 is not available.

19.2 During investigation, other several importers 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 AST 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.

20.1 The facts and evidences discussed in detail supra reveal that in OPGW cable 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 ± 10 μm. 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 ± 10 μm. Also, as per the opinion or TEC and NTH, the diameter of primary coating of single mode optical fibre G.652D is in the range 240-250 μm 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 preceeding 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 and 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, appears incorrect.

20.2. From the documents submitted by the importer, it has been noticed that the importer has imported 24/48 OPGW cables and Optical Fibre Approach Cables, from their overseas supplier, M/s ZTT International Ltd., China under heading 8544 of CTA and claimed concessional rate of duty benefit under Notification No. 24/2005-Cus. dated 01.03.2005. In a separate investigation by the DRI, M/s ZTT approach cables, made up of Single Mode Optical Fibre G. 652D imported by them from their overseas supplier, M/s ZTT International Ltd., China are not individually sheathed and are correctly classifiable under heading 9001. There cannot be dual classification for the same goods supplied by the same supplier (i.e. M/s ZTT International Ltd., China).

Further, for domestic procurement of OPGW cables, dual classification is adopted by the importer i.e. heading 8544 and 9001. The importer admitted that M/s Sterlite Power Transmission Ltd. supplies OPGW cables under HSN 9001, whereas; M/s Apar Industries Ltd. supplies the OPGW Cables under heading 8544. In a separate investigation, the technical expert of M/s Apar Industries ltd admitted that the fibres in the OPGW cable are not individually sheathed and the OPGW cables are rightly classifiable under heading 9001.

20.3 further, in various purchase orders viz. PO No. 2400065127 dated 22.10.2019, PO No. 2400031686 dated 11.09.2017 and PO No. 2400037149 dated 06.03.2018 raised on the domestic suppliers, the importer himself has mentioned HSN code as 9001 for the supply of OPGW Cables. Similarly, during sale/supply of OPGW Cables to M/s Power Grid Corporation of India Ltd., in Sale invoices No. TLD-UK-19-10019 dated 07.02.2020 and Invoice No. TLD-UK-19-10020 dated 07.02.2020, heading 9001 has been adopted by the importer. Hence, it is evident that dual classification is adopted by the importer i.e. heading 8544 and 9001.

21.1 During investigation, the importer submitted that vide Order-in-Appeal No. COC-CUSTM-000-APP-331/2015-16 dated 29.12.2015 and Order-in-Appeal No. COC-

CUSTM-000-APP-330/201S-16 dated 29.12.2015, Commissioner (Appeals) of Customs, Cochin has held that the OPGW imported by the importer is correctly classifiable under heading 8544. The importer also sent a copy of Test Repor No.77, 67A, 68, 68 (A) (1) dated 26.06.2014 of Cochin Customs for OPGW. Relevant portion of the test report is reproduced below for ready reference: -

"*Two packets received. Each of the two packets contain two samples. Each of the four samples is in the form of cur-piece of a bundle of wires. Each is made of tubular metallic cable surrounded by metallic wires. The metallic cable contains 4 numbers of different coloured plastic tubular cables, one white cylindrical; strand & to sets of yellow coloured bunch of fibers, all are wrapped with yellow coloured thin plastic sheet to get a cylindrical shape. Each of the four coloured plastic tubular cables (made of organic polymeric material contain 6 numbers of different coloured, plastic covered strand of glass fibres in an oil liquid, White cylindrical strand is made of glass fibres bonded together with styrene lape material. Yellow coloured bunch of fibers are made organic polymeric tape material. The metallic cable composed of aluminium and the metallic wires are composed of iron coated with aluminium*"

On perusal of the said order, it has been noticed that the same is on the basis of the test report dated 26.06.2014 of Cochin Customs and the supplier's declaration provided by the importer. In the order, it has been stated that "As per The lest repart of the Customs Laboratory, the fibers are found to be plastic covered which by itself indicales that they are individually sheathed and ……". In
the test report, it has been mentioned that " *Each of the four coloured plastic mbular cables (made of organic palmeric material) contain 6 numbers of different coloured, plastic covered strand of glass fibres in an oily liquid*". Apparently, the Commissioner (Appeals) of Customs, Cochin has inferred the plastic conting over the glass cover to be sheathing on the basis of the supplier's declaration and the test report. In the said test report, the testing authority has only mentioned that the glass fibres have a plastic cover, without referring any technical and dimensional characteristics of the Optical fibre and has not given any comments on whether the optical fibres are individually sheathed or not. However, it has been clearly brought out in this investigation that for glass core & glass cladding optical fibers (Single mode fiber G.652), the Plastic/acrylic coating is an essentinl and integral component. Also as per the explanatory notes optical fibre having glass core and glass clad must have a plastic coating. Further, before the adjudicating authority and the appellate authority, the importer submitted false declaration from the supplier of the importer goods, M/s Suzhou Furukawa Power Optic Cable Co. Ltd., China that the fibres contained in the OPGW cable are individually sheathed fibre because, on perusal of the technical specification of the supplier M/s Suzhou Furukawa

Power Optic Cable Co. Ltd., China, it is clear that the optical fibre contained in the OPGW cable have uncoloured coating diameter of 235 to 245 µm. This shows that the importer has provided an incomplete/misleading declaration of supplier that OPGW cables have individually sheated optical fibre, before the appellate authority for claiming duty exemption.

21.2. The importer also submited a flowchart of OPGW manufacturing process of M/s Suzhou Funkava Power Optic Cable Co. Ltd, China (SFPOC). On going through the same, it is evident that SFPOC procures Optical Fiber for manufacturing of OPGW from M/s OFS (a furukava group company) or M/s Corning. The optical fiber undergoes colouring and tubing before the final stranding process, after which it is known as OPGW. Nowhere, it is mentioned that at any stage, the optical fiber undergoes any 'sheathing' process which makes the fibre individually sheathed. Further on going through the technical specification of Single Mode Optical Fibre G.652D manufactured by M/s OFS and M/s Corning (available in open source) it is amply clear that the optical fibre have coating diameter in the range of 237 to 247 µm. It has already been discussed above that the optical fiber in the OPGW, having diameter in the range 240-250 um have only primary coating and there is no further sheathing over and above the coating of the optical fibre.

Further, as discussed in above paras it is evident that 'sheathing' is different from 'coating" and in the matter of Vodafone South Ltd. v/s Commissioner of Customs (Import), Nhava Sheva, Mumbai, it has been held that the 'coating' of optical fibre is not 'sheathing' and coating and sheathing are different for an optical fibre.

21.3. The importer also relied on CBIC Circular No. 191/25/96 CX dated 27.03.1996. The said circular pertains to classification of pigtail/ patch cord made of fibres. In this regard, it is noticed that pigtails and patch cords are kind of optical fibre cables consisting of individually sheathed optical fibre. Accordingly, the said circular rightly clarifies that pigtails and patch cords having individually sheathed fibres appropriately merit classification under chapter heading 85.44 of the Central Excise Tariff Act, 1985, as optical fibre cables made up of individually sheathed fibres. However, as brought out above, investigation in the instant case revealed that OPGW is a type of optical fibre cable in which the optical fibers are not individually sheathed but bundle of optical fibers sheathed together and hence the goods are rightly classifiable under heading 9001.

21.4. Further, the facts, i.e. supplier M/s Suzhou Furukawa Power Optic Cable Co. Ltd., China declaration provided by the importer before the appellate authority is not tenable since the supplier in the instant case is M/s ZTT International, China. Therefore, the importer's reliance on the Order-in-Appeal dated 29.12.2015 (detailed above in para

21.1) is also not applicable. Further, the importer himself admitted that there is no correspondence from their current supplier (of OPGW Cable and approach cable i.e. M/s ZTT International, China) confirming those as made up of individually sheathed fibre and in the technical specification of M/s ZTT China, it is nowhere stated that OPGW cable is made up of individually sheathed fibre. Albeit, in the technical specification, M/s ZTT International, China categorically mention that the optical fibres used in OPGW Cable have only primary protective coating. Such primary coating being integral part of the fibre cannot be said lo be its sheathing.

22.1. The importer, in the statements dated 21.01.2021 and 11.02.2021, admitted, inter alia, that there is no person in KPTL who is technically competent to give clarifications regarding optical fibres and OPGW Cable, therefore, the opinion of TEC that the fibres are not individually sheathed but the bundles of optical fibres are sheathed together with sheathing material, appears acceptable. The importer admitted that KPTL filed the Bill of entry as per HSN code provided in the certificate of origin by the overseas supplier and the company does not find it necessary to apply further due diligence while finalising the classification of OPGW Cables and approach cables. In the instant case, the supplier of the said goods to the importer is M/s ZTT International Ltd. and as detailed above, M/s ZTT India Ltd. (subsidiary of ZTT, China) have categorically stated that the Optical fibres in the OPGW Cables imported by them from M/s ZTT Intenational Ltd. are not individually sheathed and hence, correctly classifiable under heading 9001.

22.2 Further, in statement dated 21.01.2021, Sh. Vipin Varshney, Vice President-Project Monitoring Group and Sh. Sandipkumar Jagirdar, AGM-Taxation stated that KPTL does not apply any due diligence while finalizing the classification of OPGW Cables and Approach Cables. Further, in statement recorded on 11.02.2021, Sh. Sandipkumar Jagirdar stated that there is no person in KPTL who is competent to give clarifications regarding optical fibres and OPGW cable appears 10 be misleading, because the goods i.e. OPGW cable imported by them are high precision goods and have very limited/specific and technical use, without knowledge no one can import the same. On being confronted with the evidences gathered during investigation, both of them gave evasive replies. This shows that both these representatives and the importer, KPTL were well aware of the fact that OPGW/approach cable wer not made up of individually sheather fibre but they deliberately gave evasive replies.

22.3 The importer is engaged in the import and trading of OPGW cables made up of single mode optical fibre G.652D. At the time of import of OPGW cables and approach cables made up of single mode optical fibre G.652D, they classify the said goods under heading 8544 and avail duty benefit under Notification No. 24/2005-Cus. dated 01.03.2005. However, at the time of domestic procurement and onward sale/ supply to

their clients, the importer adopts dual classification i.e., heading 9001 and heading 8544. Therefore, it is evident that the importer had clear knowledge that OPGW and Approach cable, made up of single mode optical fibre G.652D, imported by them, is not made up of individually sheathed fibres but they never disclosed this fact before the Customs authorities and based on this, the orders of the Commissioner (Appeals) are not applicable as vital facts were not disclosed before the adjudicating authority and the appellate authority during the material time. With a mala fide intention, the importer continued to declare in various Bills of entry declared the goods OPGW under CTA 85447090 and avail inadmissible duty exemption benefit.

23. The facts and evidences discussed in the paras above clearly show that the importer resorted to wilful mis-statement and suppression of vital facts, necessary for deciding the issue and was knowingly involved in mis-declaration and mis-classification with intent to evade payment of Customs duty on OPGW Cables and Approach Cables. Hence, Section 28(4) of Customs Act, 1962, invoking extended period for demand of duty, is applicable in the instant case. The differential Customs duty aggregating to Rs. 32,11,756/- leviable on the said goods imported and cleared under bills of entry and not paid by M/s Kalpataru Power Transmission Ltd. at the time of filing the said bills of entry, is, therefore, liable to be demanded and recovered from them unde Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

24. 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 he obl gatory on the part of the importer to declare the actual description and correct classificat on of the goods imported by them and pay the duty applicable in respect of the said goods. The efore, 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 mis-classified and mis-declared the goods imported by them, by supressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods.

25. 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.

ISSUE OF SHOW CAUSE NOTICE

26.1 Based on the above investigation, a show cause Notice No. VIII/48-1627/Kalpataru/Gr.V/MCH/2021-22 dated 11.01.2022 was issued by the Additional Commissioner of Customs, Group -V, Import, Custom House, Mundra to M/s Kalpataru Power Transmission Ltd., calling up on to show cause, to the Additional Commissioner, Customs House,5B, Port User Building, Mundra Port, Mundra, Gujarat-370421 as to why:

(i) the entered and declared classification under tariff item 85447090 of the CTA, for the goods Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' in bills of entry, mentionedin Annexure-A to the Notice, should not be rejected and the said goods should not be classified under tariff item 90011000 with consequential duty liability.

(ii) the differential Customs duty amounting to Rs. 32,11,756/-(Rupees Thirty-Two Lacs Eleven Thousand Seven Hundred Fifty-Six 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;

(iii) Penalty should not be imposed on them under Section 112(a)ii) and/or 114A and 114AA of the Customs, Act, 1962;

(iv) Penalty should not be imposed on Sh. Sandkip Kumar Jagridar, Assistant General Manger (Taxation) of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

(v) Penalty should not be imposed on Sh. Vipin Varshaney, Vice President-Project Monitoring Group of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

26.2 A show Cause notice **SCN No. VIII//ICD/TKD/6AG/Gr.5A/Kapataru Power/1974/2021 dated 29. 07. 2021** issued to M/s Kalpataru Power Transmission Ltd. wherein they were called upon to show cause, to the Joint/Additional Commissioner, Office of the Principal Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi-110020, as to why:

i. the entered and declared classification under tariff item 85447090 of the CTA, for the goods Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' 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;
ii. The differential Customs duty amounting to Rs. 12,23,408 /-(Rupees Twelve Lacs Twenty-Three Thousand Four Hundred Eight 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;
iii. Penalty should not be imposed on them under Section 112(a)(ii) and/or 114A of the Customs, Act, 1962;
iv. Penalty should not be imposed on Sh. Sandip Kumar Jagridar, Assistant General Manger (Taxation) of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.
v. Penalty should not be imposed on Sh. Vipin Varshaney, Vice President-Project Monitoring Group of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

26.3 A show Cause notice SCN No. VIII/10-10/ICD/KPTL/ADJ/2021 dated 14.07.2021 issued to Kalpataru Power Transmission Ltd. wherein they were called upon to show cause, to the Assisstant/Deputy Commissioner of Customs, ICD Khodiyar Railway Station, S. G. Highway, Distt. Gandhinagar, as to why:

i. the entered and declared classification under tariff item 85447090 of the CTA, for the goods Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' 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;
ii. The differential Customs duty amounting to Rs. 3787/-(Rupees Three Thousand Seven Hundred Eighty Seven), 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;
iii. Penalty should not be imposed on their under Section 112(a)(ii) and/or l 14A and 1l4AA of the Customs, Act, 1962;
iv. Penalty should not be imposed on Sh. Sandip Kumar Jagridar, Assistant General Manger (Taxation) of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.
v. Penalty should not be imposed on Sh. Vipin Varshaney, Vice President- Project

Monitoring Group of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

26.4 A show Cause notice SCN No. VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021 issued to Kalpataru Power Transmission Ltd. wherein they were called upon to show cause, to the Assisstant/Deputy Commissioner of Customs, Inland Container Depot, Juhi Raiway Yard (JRY), Kanpur - 208012, as to why:

i. The entered and declared classification under tariff item 85447090 of the CTA, for the goods 'Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' 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;
ii. The differential Customs duty amounting to Rs. 27,80,305/-(Rupees Twenty Seven Lakh Eighty Thousand Three Hundred Five 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 28AA of the Customs Act, 1962;
iii. Penalty should not be imposed on them under Section 112(a)(ii) and/or 114A and 114AA of the Customs, Act, 1962;
iv. Penalty should not be imposed on Sh. Sandip Kumar Jagridar, Assistant General Manger (Taxation) of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.
v. Penalty should not be imposed on Sh. Vipin Varshaney, Vice President- Project Monitoring Group of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

26.5 A show Cause notice SCN No. Misc/55/2021-Gr.5A dated 24.06.2021 issued to Kalpataru Power Transmission Ltd. wherein they were called upon to show cause, to the Assisstant/Deputy Commissioner of Customs, Office of the Commissioner of Customs, Chennai-II (Import Commissionerate) Custom House, 60, Rajaji Salai, Chennai-600001, as to why:

i. the entered and declared classification under tariff item 85447090 of the CTA, for the goods 'Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' 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;
ii. The differential Customs duty amounting to Rs. 2,26,474/-(Rupees Two Lacs Twenty-Six Thousand Four Hundred Seventy-Four 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 28AA of the Customs Act, 1962;
iii. Penalty should not be imposed on them under Section 112(a)ii) and/or 114A and 114AA of the Customs, Act, 1962;
iv. Penalty should not be imposed on Sh. Sandip Kumar Jagridar, Assistant General Manger (Taxation) of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

v. Penalty should not be imposed on Sh. Vipin Varshaney, Vice President- Project Monitoring Group of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a) (ii) and/or 114A and 114AA of the Customs Act, 1962.

26.6 A show Cause notice SCN No. VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated 25.06.2021 issued to Kalpataru Power Transmission Ltd. wherein they were called upon to show cause, to the Assisstant/Deputy Commissioner of Customs, Inland Container Depot (ICD), Panki, Kanpur-208020, as to why:

i. the entered and declared classification under tariff item 85447090 of the CTA, for the goods 'Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' 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;
ii. The differential Customs duty amounting to Rs. 9,94,552/-(Rupees Nine Lacs Ninety-Four Thousand Five Hundred Fifty Two 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 28AA of the Customs Act, 1962;
iii. Penalty should not be imposed on them under Section 112(a)ii) and/or 114A and 114AA of the Customs, Act, 1962;
iv. Penalty should not be imposed on Sh. Sandip Kumar Jagridar, Assistant General Manger (Taxation) of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a) (ii) and/or 114A and 114AA of the Customs Act, 1962.
v. Penalty should not be imposed on Sh. Vipin Varshaney, Vice President- Project Monitoring Group of M/s Kalpataru Power Trasnsmission Ltd. under Section 112(a) (ii) and/or 114A and 114AA of the Customs Act, 1962.

CORRIGENDUM TO THE SHOW CAUSE NOTICE

27. Corrigendum were issued to show Cause Notices, wherein respective Show Cause Notices were made answerable to Additional Commissioner/Joint Commissioner of Customs, Custom House, 5B, Port User Building, Mundra Port, Mundra, Gujarat-370421, which are as below:

i. VIII//ICD/TKD/6AG/Gr.5A/ Kapataru Power/1974/2021 dated 29.07.2021 vide Corrigendum dated 02.11. 2022.
ii. VIII/10-10/ICD/KPTL/ADJ/2021 dated 14.07.2021 along with Corrigendum issued dated 14.11.2022
iii. VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021 along with Corrigendum issued dated 28.10.2022
iv. Misc/55/2021-Gr.5A dated 24.06.20212021 along with Corrigendum issued dated 21.10.2022
v. VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated

25.06.2021 along with Corrigendum issued dated 21.10.2022

28. <u>WRITTEN SUBMISSION OF THE PARTY</u>

1. Submissions: OPGW in dispute are classifiable under Tariff Item 8544 70 90

1.1. Optical Fibre cables in dispute ('OPGW') are primarily for data transmission (transmission of telecommunication signals) and also for earthing the conductor in transmission tower. Heading 85.44 inter alia covers cables which are used in telecommunication as evident from Indian Customs Tariff read with HSN Explanatory Notes. This is also supported by Explanatory Notes to European Union Customs Tariff (see pg. 29 of Compilation Vol. 1) which provides that Sub-Heading 854470 00 also includes optical fibre cables, designed for example for telecommunication use, made up of optical fibres individually coated with a dual polymer placed in 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 colour. The coating of the individual optical fibres provides protection and structural integrity, for example by protecting the individual fibres against fracture. Needless to mention here that Explanatory Notes are safe guide for interpretation of customs tariff for classification as held by the Hon'ble Supreme Court in **CC Vs. Business Forms - 2002 (142) ELT 18.**

1.2. It is the Noticees' submission that the dual acrylate coating together with colour coding constitutes a 'sheath'. Accordingly, fibres in OPGW are individually sheathed. Therefore, these cables satisfy the tariff description of Heading 85.44 and so also the telecommunication purpose (as evident from Generic Requirement issued by TEC - RUD-18). Hence, these OPGW correctly merit classification under Tariff Item 8544 70 90.

1.3. In any case, the issue of OPGW classification is sub-judice before the Hon'ble Supreme Court in Vodafone Essar case reported at 2020 (373) ELT A93. The Hon'ble Court has admitted the appeal and has also granted a stay in the matter to the assessee. The Noticees adopts all the submissions made by Vodafone Essar before the Larger Bench on classification.

1.4. In addition, it is submitted that the fact that fibres in OPGW are individually sheathed is also evident from Test Report dated 26.06.14 (RUD-9) of Cochin Customs. This test report relates to the very initial imports of OPGW made vide Bill of Entry No. 5796108 dated 13.06.14 and 7173507 dated 27.10.14, by the Noticees. After physical examination, this report concluded that fibers in these cables are plastic covered which by itself means individually sheathed. However, the bills of entry were re-assessed, and classification of OFC was changed from Heading 90.01 to Heading 85.44. Upon challenge in appeal, the Ld. Commissioner (Appeals) vide two (2) Orders-in-Appeal

dated 29.12.2015 (refer pg. 3 - 14 of Compilation Vol. 2), held that when the test report states - "fibres in these cables are plastic covered', it means that the cables are individually sheathed and accordingly, set aside the re-assessment and confirmed classification under Heading 85.44.

1.5. Multiple clarifications sought by DRI from National Test House, Mumbai are indicative of a desperate attempt to discard the test report (given upon physical examination) which is in favour of the Importer / Noticees.

1.6. The opinion of TEC is not based on any technical literature and therefore, it cannot be considered as valid. Further, it does not specify the nature / kind of the samples they were dealing with, and it does not answer the pertinent questions on (1) end-use of these cables, ii) possible use of these cables in medical application, (iii) whether these cables are used for telecommunication, (iv) the purpose of colour coating, etc., have not been asked from these experts. Hence, the opinion sought is biased and tutored one.

2. Submissions: Extended Period of limitation cannot be invoked in the present case, and no penalty is imposable on Noticees

2.1. Proposed demand with respect to OPGW imported during the period 29.06.2016 to 09.01.2020 is miserably time barred (except 1 bill of entry pertaining to import at Chennai) since the Customs department (including DRI) have always been aware about classification adopted under Heading 85.44 for the imported OPGW and present proceeding is nothing but a change of opinion, which is evident from below:

a. OPGW has been imported by the Noticees since 2014. The initial imports made vide Bills of Entry No. 5796108 dated 13.06.14 and 7173507 dated 27.10.14 were subjected to physical examination and routine assessment procedure. Samples of the imported OPGW were drawn and sent for testing in light of CBIC Circular No. 12/2006-Cus., dated 28.02.2006 (see pg. 31 A of Compilation Vol. 1);

b. After physical examination, the Cochin Customs vide Test Report dated 26.06.14 (RUD-9), concluded that fibers in these cables are plastic covered which by itself means individually sheathed. However, the bills of entry were reassessed, and classification of OFC was changed from Heading 90.01 to Heading 85.44. Upon challenge in appeal, the Ld. Commissioner (Appeals) vide two (2) Orders-in-Appeal dated 29.12.2015, held that when the test report states - 'fibres in these cables are plastic covered', it means that the cables are individually sheathed and accordingly, set aside the re-assessment and confirmed classification under Heading 85.44.

c. Apart from consignments subject to RMS assessment, many of the imports made post 2014, which are also subject matter of the dispute, were subjected to routine assessment procedure wherein after physical examination and

verification by customs officials, the classification declared under Heading 85.44 was approved and out-of-charge was granted. Refer page 1-2 of Compilation Vol. 2.

d. Investigation by DRI started subsequent to decision of the Hon'ble Larger Bench of CESTAT in Vodafone Essar case (22.11.2017), and also admission of Vodafone Essar appeal before the Hon'ble Supreme Court (on 11.06.2020)

2.2. In light of the above, the allegation of misstatement or suppression is completely incorrect.

2.3 Without projudice, although the Hon'ble CESTAT has decided the issue of OFC classification against the importers, however, the demand has been upheld only and only for the normal period of limitation. Further, the Hon'ble CESTAT has deleted the confiscation and penalty in other importers case. Refer: Decisions passed in case of various importers including Reliance Communication, Bharti Airtel, Vodafone Essar available at page 72-86 of Compilation Vol.1.

2.4. It is further submitted that during the relevant period, there were conflicting decisions / orders on classification of OPGW. There were decision(s) of various Commissioner of Customs (Appeals) holding that OPGW are classifiable under Heading 85.44 as listed below:

a. O-1-A dated 25.03.2008 of CC Appeals, Mumbai-III (see pg. 15 - 18 of Compilation Vol. 2)

b. O-I-A dated 15.12.2011 of CC Appeals, Kolkata (see pg. 19 - 25 of Compilation Vol. 2); and

c. 0-1-A dated 19.01.2017 of CC (Appeals), Kolkata (see pg. 26 - 43 of Compilation Vol. 2).

2.5. Even at one point of time, the Customs department itself was arguing / contesting that OFC is classifiable under Heading 85.44 as can be seen from decision passed in case of Optel Telecommunication case reported at 2005 (186) ELT 109 (T.-Del) [available at pg. 50 - 54 of the Compilation Vol. 2]. This itself shows that there was always a doubt regarding classification of OFC within the Customs department itself.

2.6. Even otherwise, the fact that the issue of classification reached and was decided by the Larger Bench of the CESTAT, itself shows the issue is debatable and not free from doubt. In such cases, alleged misstatement or suppression is completely bad in law as held by the Hon'ble Supreme Court consistently in many judgements including a few cited at Sr. Nos. 13 to 21 of Compilation Vol. 1. In addition, claim to classification whether admissible or not is a matter of belief of assessee and does not amount to mis-declaration as held by the Hon'ble Supreme Court in Northern Plastic case reported at 1998 (101) ELT 549 (SC) and Lewek Altair Shipping Pvt. Ltd. Vs. CC - 2019 (366) ELT 318 (Tri.-Hyd.) Affirmed by Supreme Court in 2019 (367) ELT A328. Also refer: decisions cited at Sr. Nos. 22 to 26 of Compilation Vol. 1.

2.7. In fact, no mis-declaration or suppression of facts etc. can be alleged even when bill of entry is self-assessed by the importer especially when the issue is limited to classification or claim to exemption benefit as the same are matters of bonafide belief and issue of legal interpretation.as held by the Hon'ble CESTAT New Delhi in Midas Fertchem Imper Vs. Principal CC - 2023 (1) TMI 998 at paragraph 50 and Challenger Cargo Carriers Vs. Principal CC - 2022 (12) TMI 621 at para 13.

2.8. Lastly, it is a settled legal position that in case of any delay in the issuance of a show cause notice by the department, after having knowledge about the alleged transactions, extended period of limitation cannot be invoked. Such situation is not more than a change of opinion within different set of custom officials Refer: Nizam Sugar Factory Vs. CCE - 2008 (9) STR 314 (SC). In light of the above, proposal to invoke extended period of limitation is incorrect, and so also proposal to confiscate the imported goods and impose penalty on the Noticees and their employees.

2.9 The SCNs have been issued by invoking extended period of limitation in terms of Section 28(4) of the Customs Act, 1962. As per Section 28(9) of the Act, the proper officer is required to adjudicate the Show Cause Notice within a period of one year, which is extendable by another year. In the present case, all six (6) SCNs were issued in June 2021, July 2021 and January 2022. The reply to the SCNs were filed in 2022 and February 2023. Personal hearing was conducted on 02.03.2023. However, no Order was passed within the one-year time-limit. Therefore, in terms of Section 28(9), the present SCN deemed to have been concluded without any further proceedings. Further, the Noticee has not received any information from the proper officer, as contemplated under Section 28(9A) of the Customs Act, 1962 regarding any extension. In the absence of the same, the SCN should be treated as deemed to have been concluded as per second proviso to Section 28(9) of the Customs Act, 1962.

2.10 It is further submitted that even if the extension is granted for adjudication under the first proviso, such an extension should be treated as bad in law in absence of grant of opportunity of being heard to the Noticee. The extension order (if any) should be treated as nullity on account of non-granting of personal hearing and intimation of proposed extension to the Noticee. Reliance in this regard is placed on judgement of Hon’ble Supreme Court in case of Assistant Collector of Customs Vs. Charan Das Malhotra - AIR 1972 SC 689. In the said case, it was held that extension of period for retention of seized goods cannot be granted without sufficient cause and without an opportunity of being heard to the person whose goods are seized. Reliance is also placed on judgement of Hon’ble Supreme Court in case of Harbans Lal Vs. CCE - 1993 (67) ELT 20 (SC) wherein it was held that ex-parte order of extension without an opportunity of being heard is vitiated.

2.11 Recently, the Hon'ble Delhi High Court in the case of Swatch Group India Vs. UOI - 2023 (386) ELT 356 (Del.) has held that show cause notice has to be adjudicated within the time prescribed under the Customs Act and in the absence of any reason preventing the proper officer from adjudicating the show cause notice, the same cannot be kept pending for an inordinate amount of time. Accordingly, the Hon'ble High Court held that the SCN has lapsed and cannot be adjudicated. In view of these judgements, the present SCN dated 18.05.22 should be treated as lapsed / concluded. This judgement had been followed in the case of Gala International Vs. Additional Director General - 2024 (387) ELT 67 (Del.).

2.12 In any case, the maximum time limit of two years, including the extension period has already expired. Therefore, any extension taken cannot revive the show cause notice for adjudication. In light of this, the present show cause notice should be concluded and closed.

2.13 Further, the present issue is that of classification which is a matter of bonafide belief. The customs department was always aware of the classification being adopted by the Noticees. In fact, in the past, the customs department, after due examination had approved the classification as declared by the Noticee under Heading 85.44. Commissioner (Appeals) in Noticee's own case as well as in cases of other importers had also issued Order approving the classification under Heading 85.44. Therefore, allegation of suppression or mis-statement cannot be made against the Noticee. Accordingly, demand beyond normal period of limitation is liable to be dropped on this ground itself. Refer Sl. Nos. 1-5 of Compilation Vol. II.

2.14 In matters involving identical issue for other importers, the Hon'ble CESTAT has dropped the demand beyond normal period of limitation along with fine and penalty. Refer Sl. No. 8-10 of Compilation Vol I. Reliance is placed on the decision in Midas Fertchem Impex Vs. CC – 2023 (1) TMI 998, para 50 wherein the Hon'ble Tribunal has held that any wrong classification by an importer will not amount to mis-statement or suppression.

2.15 2.10. All submissions made in the replies are reiterated.

3. The Noticee further relies on the following case laws:-

a. CC Vs. Vodafone Essar Gujarat 2018(I)TMI 959

b. CC Vs. Vodafone Essar 2020(373) ELT A 93

c. Reliance Communications Infrastructure Vs. CC 2015 (320) ELT 306 (Tri. – Mumbai) Affrimed by Bombay High Court in 2017 (349) ELT A222

d. Vodafone Essar South Vs. CC 2009 (235) ELT 466 (Tri. - Chennai)

e. Vodafone Essar South Vs. UOI 2009 (237) ELT35 (Bom.)

f. Continental foundation Jt. Venture Vs. CCE 2007 (216) ELT 177 (SC)

g. CCE Vs. Wonderax laboratories 2010 (255) ELT 60 (Del.) Affirmed by Supreme Court in 2010 (255) ELT A 16 (SC)

DISCUSSION AND FINDING

29. M/s Kalpataru Power Transmission Ltd. have imported the impugned goods through Mundra Customs House, ICD- Tughlakabad, ICD- Khodiyar, ICD-JRY- Kanpur, Chennai Port and ICD-Panki-Kanpur and Six Show Cause Notices were issued to the importer by their Jurisdictional Commissionerate. Being highest amount of duty involved in the import at Mundra Port, Additional Commissioner of Customs, Customs House, 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:

a. SCN No. VIII/48-1627/Kalpataru/ Gr.V/MCH/2021-22 dated 11.01.2022 issued by Additional Commissioner of Customs, Group V, Mundra Custom House.
b. SCN No. VIII//ICD/TKD/6AG/Gr.5A/ Kapataru Power/1974/2021 dated 29.07.2021 issued by Dy./Astt. Commissioner of Customs, ICD-Tughlakabad.
c. SCN No. VIII/10-10/ICD/KPTL/ADJ/2021 dated 14.07.2021 issued by Dy/Astt. Commissioner of Customs, ICD, Khodiyar, Gandhinagar.
d. SCN No. VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021 issued by Dy/Astt. Commissioner of Customs, ICD, Juhi Railway Yard(JRY), Kanpur-208012
e. SCN No. Misc/55/2021-Gr.5A dated 24.06.2021 issued by Dy/Astt. Commissioner of Customs, Chennai-II, Import.
f. SCN No. VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated 25.06.2021 issued by Dy/Astt. Commissioner of Customs, ICD, Panki, Kanpur

30. The subject SCNs are made answerable to Additional Commissioner/ Joint Commissioner of Customs, Customs House, 5B, Port User Building, Mundra Port, Mundra, Gujarat-370421 vide coirigendum issued by respective Commissionerates which are as tabulated as below:

Sr.	Show Cause Notice No	

No		Initially Answerable to
1	VIII/48-1627/ Kalpataru/ Gr V/MCH/2021-22 dated 11.01.2022	Additional Commissioner o Customs, Mundra Custom House
2	VIII/ICD/TKD/6AG/Gr.5A/Kalptaru Power/ 1974/2021 dated 29.07.2021	Dy./Astt.Commissioner of Customs, ICD Tughlakabad
3	VIII/10-10/ ICD/KPTL/ADJ/2021 dated 14.07.2021	Dy./Astt.Commissioner of Customs, ICD-Khodiya Gandhi Nagar
4.	VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021	Dy./Astt.Commissioner of Customs, Juhi Railway Yard(JRY), Kanpur
5.	Misc/55/2021-Gr.5A dated 24.06.2021	Dy./Astt.Commissioner of Customs, Chennai-II, Impo
6.	VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated 25.06.2021	Dy/Astt. Commissioner of Customs,ICD, P a n k i , K a n p u r

30.1 I have carefully gone through the SCN, evidence/material on record, facts of the case, oral submission by the authorized representative on behalf of the noticee during personal hearing and the written Submission of the Noticee.

30.2 I find that the subject SCNs were issued by the respective jurisdictional Commissionerates and in terms of principle of natural justice, Personal Hearing (PH) were granted to the Noticee on 02.03.2023 & 17.05.2024, and in response to the same, a submission through authorized representative Shri Akhilesh Kangsia and Ms. Apoorva

Parihar, Ld Advocate received through email, the same has been taken for consideration. I proceed to decide the case on merits.

31. I refer to the Importer's various submssion wherein they have inter-alia submitted that none of the SCNs (SCN dated 11.01.2022, 29.07.2021, 14.07.2021, 24.06.2021, 24.06.2021 and 25.06.2021) have been adjudicated within the time period provided under section 28(9) of the Customs Act, 1962 and in the matter, they have referred to various case laws. In the matter, I find that an extension of time to complete the adjudication under proviso to section 28(9) of the Customs Act, 1962 was sought and Commissioner of Customs, Custom House, Mundra vide his order dated 11.11.2022 has granted extension of time limit to adjudicate the case. Further, this is also to note that SCN's were transferred to Call Book on 17.03.2023 as per circular dated 1028/16/2016-CX dated 26.04.2016. The same was intimated to the noticees vide letter dated 20.03.2023. Further, the said SCN's were taken out from Call Book on 26.10.2023 for adjudication. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

32. After addressing the preliminary contentions in the submission of the noticees, I now proceed to frame the issues to be decided in the instant SCNs before me. On a careful perusal of the subject show Cause Notices and case records, I find that following main issues are involved in this case, which are required to be decided: -

i. Whether or not the impugned goods covered under above mentioned six (06) SCNs are rightly classifiable under 85447090 or 90011000 and whether the importer is eligible for availing concessional rate of duty under Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28).

ii. Whether or not the differential duty amount as calculated in each SCN arising out of undue availment of Notification No. 24/2005-Cus dated 01.03.2005 should be demanded and recovered under the provisions of Section 28(4) of the Customs Act, 1962, along with interest under section 28AA of the Customs Act, 1962;

iii. Whether or not the goods imported, as detailed in SCN(s), should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

iv. Whether or not penalty is imposable on M/s Kalpataru Power Transmission Limited (IEC:- 0889003927) under 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962;

v. Whether or not penalty is imposable on Mr. Sandip kumar Jagirdar, Assistant General Manger (Taxation) and Shr. Vipin Varshney, Vice President – Project Monitoring Group of M/s Kalpataru Power Transmission Ltd. under 112(a)(ii) and/or 114A

and l 14AA of the Customs Act, 1962;

33. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually by analysing them in light of facts, circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements, keeping in view the submission/contention of the notices

A. Whether or not the impugned goods covered under above mentioned four (06) SCNs are rightly classifiable under 85447090 or 90011000 and whether the importer is eligible for availing concessional rate of duty under Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No, 28)

34.1 I have gone through the facts of the case, Show Cause Notice, Relied Upon Documents, the oral and written submissions made by the noticee-importer and the cases laws quoted by the importer/noticee. The brief facts of the case and the submissions made by the importer have been already discussed in the preceding paras and hence not being repeated for the sake of brevity. It has been alleged in the show cause notices that the noticee/importer had imported "Optical Ground Wire Cable (OPGW)', Optical Fiber Cable with Electric Conductor OPGW and 'Optical Fibre Approach Cable' through ICD-Tughlakabad, ICD-Khodiyar, ICD-JRY, Kanpur, ICD- Panki, Kanpur, Chennai Port and Mundra 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.

34.2 I find that 'Optical Ground Wire Cable (OPGW)', Optical Fiber Cable with Electric Conductor OPGW and ' Optical Fibre Approach Cable' are types of optical fibre cables made up of single mode optical fibre G.652D having primary coating in the range of 245±10 µm. As per Customs Tariff Act, 1975, 'Optical fibre cables' are appropriately classifiable under the following two customs tariffheading/Tariff items:

Chapter Heading/	Description	Customs
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 indlvidually sheathed fibres,	0% (SI. No. 28 of

	fitted with connectors	24/2005 dated
854470	- Optical fibre cables:	01.03.2005)
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	

34.3 Further, I reproduce the HSN Explanatory Notes for the headings 8544 and 9001 for ease of reference-

(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 *drive* 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 makc 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.

34.4 Now, I refer to Importer's submission wherein they have mentioned that 'Dual Acrylic Coating' amounts to sheathing of fibre. I reproduce their claim below :-

Dual acrylate coating together with colour coding constitutes a ‘sheath’. Accordingly, fibres in OPGW are individually sheather. Therefore, these cables satisfy the tariff descritption of Heading 85.44 and so also the telecommunication purpose (as evident from Generic Requirement issued by TEC). Hence, those OPGW correctly merit classification under Tariff Item 85447090.

In addition, it is submitted that the fact that fibres in OPGW are individually sheathed is also evident from Test Report dated 26.06.2014 of Cochin Customs. This test report relates to the very initial imports of OPGW made vide Bill of Entry No. 5796108 dated 13.06.2014 and 7173507 dated 27.10.2014 by the Noticees. After physical examination, this test report concluded that fibres in these cables are plastic covered which by itself means individually sheathed. However, the bills of entry were re assessed, and classification of OFC was changed from Heading 90.01 to Heading 85.44. Upon challenge in appeal, the Ld. Commissioner (Appeal) vide two (2) Orders-in-Appeal dated 29.12.2015 held that when the test report states – ‘fibres in these cables are plastic covered’, it means that the cables are individually sheathed and accordingly, set aside the re-assessment and confirmed classification under Heading 85.44.

34.5 However, Deputy Director General (Transmission), Telecommunication Engineering Centre (TEC), Department of Telecommunication, after analysis of the samples of OPGW have categorically mentioned vide email dated 17.06.2020 that :

the fibres are not individually sheathed and Cladding and dual acrylic coating over the cladding is not sheathing of optical fibre cable

34.6 Now, the issue before me to address is whether 'Dual Acrylic Coating' amounts to sheathing of fibre. Firstly, I will examine the term 'Sheath' or 'Sheathed' as it appears in the Tariff and HSN. I find that in the instant ease no definition of the term 'Sheathed' or 'Sheath' has been provided in the statute. However, the context in which the word is to be

understood can be made out from the manner in which the said words have been used in the tariff and HSN elsewhere. In this regard, the HSN has an extremely pursusassive status the same status as a Statute, specially on the issues of classification; thus, a recourse can be made primarily to the HSN.

34.7 In the case, I refer to the judgment in the case of "Commissioner of Customs (Import) Mumbai Versus Vodafone Essar Guajrat Ltd, Vodafone Spacetel Ltd, Vodafone Essar Cellular Ltd, Vodafone South Ltd, Vodafone Digilink Ltd and Vodafone Essar Ltd. and (vice-versa)" [Ref: 2018 (1) TMI 959 - CESTAT MUMBAI (LB)] wherein it has inter-alia mentioned that:-

The HSN/Tariff uses the word 'Sheath' and 'Sheathed at various places. Learned AR has listed out the manner in which these words have been used and it has been mentioned that

> *"In so many places in the tariff (like heading 40.10, 56.04, 56.07, General explanatory notes to chapter 46, Chapter note 2 to chapter 59 etc) the expression used to describe the products is 'impregnated, coated, covered or sheathed'. Simultaneous use of these words makes it clear that the term 'Sheathed' has been used in contrast with the term 'impregnated', 'coated' or covered'. It is apparent the term coating and sheathing have different meaning in the tariff. In fact, the term 'sheath' has been used to describe separate object as can be seen from the table 4.3.1 above. It is seen that the expression used in many places is 'encased in rigid sheath', 'encased in sheath', 'in a sheath composed of layers of paper', 'in a sheath of lead or tin', 'machines for braiding a wire sheath on hose of rubber', 'consisting of a simple wire mesh sheath' etc. which clearly indicates that 'sheath' is by itself an object. In those circumstances it is seen that the tariff does not recognize coating as sheathing and treats the two as different. The term 'sheath' refers to a separate object which is used to encase other items."*

34.8 It has been further noticed that the said bench have explicitly mentioned that:

> **'Optical Fibre Cables (OFC in short) imported by Vodafone Grouji of Companies and used in Telecommunication are not classifiable under Customs Tariff Heading 8544 and they would fall under customs Tariff Heading 9001.'[Ref:** 2018 (4) TMI **959 - CESTAT MUMBAI (LB)]**

34.9 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.

34.10 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. As, 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 fibre. On perusal of tariff heading and HSN explanatory notes, it is 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 othet than those of heading 8544 fall under the tariff heading 9001. Therefore, for correct classification of 'Optical Ground Wire Cable (OPGW)', Optical Fiber Cable with Electric Conductor OPGW and 'OpticalFibre Approach Cable'. it is necessary to examine whether the optical fibres conforming to ITU-T G.652D standard used in 'Optical Ground Wire Cable (OPGW)', Optical Fiber Cable with Electric Conductor OPGW and 'Optical Fibre Approach Cab1e Tube, are individually sheathed.

34.11 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 inuse; 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 mentloned- *"Inaddition 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.

34.12 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.

34.13 Furthermore, as per the standard input-output norms (SION) prescribed by DGFT for importof 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.

34.14 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 fibres 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 leading 9001. From the investigation, it is clear that in 'Optical Ground Wire Cable (OPGW)', Optical Fiber Cable with Electric Conductor OPGW and 'Optical Fibre Approach

Cable', 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 'Optical Ground Wire Cable (OPGW)', **Optical Fiber Cable with Electric Conductor OPGW and ' Optical Fibre Approach Cable' are not made up of individuallv sheathed Optical fibres, hence, the same are out of purview of heading 8544 of CTA,1975.**

34.15 I find that during investigations, several other importers produced Schedule of Rates and Prices (a part of tender/bidding documents issued by Mls 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 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 entire ly be the responsibilit y 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 differerit HSN/SA C code or opts* ro *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 ite m"*

34.16 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 fot the goods.

34.17 Further, I find that Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation), M/s Kalptaru Power Transmission Ltd, in his statement recorded before the officers of DRI admitted that there is no person in M/s Kalpataru Power Transmission Limited who is technically competent to give clarification regarding optical fibres and OPGW Cable, therefor opinion of TEC appears acceptable. He further accepted that KPTL filed the Bill of Entry as per HSN code provided in the certificate of origin by the overseas supplier and the company does not find it necessary to apply further due diligence while finalizing the classification of OPGW cables and approach cables.

35. I find that Shri Vipn Varshaney, Vice President – Project Monitoring Group in his statement dated 21.01.2021 admitted that KPTL does not find it necessary to apply further due diligence on the part of the company while finalizing the classification of OPGW Cables and Approach Cables.

36. In view of the detailed investigation in the subject matter alongwith the submissions made by the Importer/authorized representative, alongwith the opinion of Director, National Test House (WR) vide communication dated 22.12.2020 and 01.01.2021 wherein he mentioned that Di-acrylic coating over cladding cannot be construed as

sheathing of optical fibre, it is amply clear that the OPGW cables imported by the importer are not individually sheathed. Therefore, I hold that the impugned goods are correctly classifiable under CTH 9001 of the CustomsTariff.

37. I further refer to decision given by Authority for Advance Rulings (CESTAT MUMBAI) in case of Reliance Communications Infrastructure Ltd. Versus C.C. (I) , Nhava Sheva [Ref: 2015 (9) TMI 614 - CESTAT MUMBAI] wherein it has been inter-alia ordered that:- *"Having carefully examined the question posed by the applicant, both from the technical as well as legal angles, we are inevitably led to the conclusion that the products involved in these applications, namely, optical fibre cables are not "made up of individually sheathed fibres" which is the basic criterion to be fulfilled by any optical fibre cable to merit classification under tariff heading 8544 of the First Schedule to the Act. That being the case, they can not be classified under the heading 8544.* ***Since the tariff heading 9001 specifically covers "optical fibre cables other than those of heading 8544, the products in question would accordingly fall squarely under the heading 9001. Note 1(h) of Chapter 90 states that "optical fibre cables of heading 8544 are not covered in Chapter 90. In other words, optical fibre cables made up of fibres that are not "individually Sheathed" would be classifiable under the heading 9001"***

38. I also refer to AAR in respect of M/s ALCATEL INDIA LTD. [Ref: 2006 (2) TMI 196 - AUTHORITY FOR ADVANCE RULINGS] wherein it has been inter-alia ordered that: -

*"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/or 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 chanacter, 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 ltem 9001 1000".

39. After, deciding the classification of the impugned goods, I proceed to decide whether the benefit of concessional rate of duty under the Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28) is admissible to the Importer or otherwise. In the matter, I find that the investigations have revealed that the importer himself procured OPGW Cable and approach cables under two HSN codes 85447090 and 90011000 from M/s Apar Industries Ltd. and M/s Sterlite Power Transmission Limited. M/s Apar Industries Ltd. issues their invoices for OPGW cables and approach cables under HSN code 85447090 while M/s Sterlite Power Transmission Limited issued their invoices for OPGW cables and approach cable under HSN code 90011000. It is evident that importer has adopted an opportunistic approach and declared the imported goods as *per* their convenience and not as per law. This shows clear malafide intent on the part of the importer to state such iron-individually sheathed fibres as individually sheathed fibre, in order to mis-classify the said good only to avail duty exemption benefits, which was not available otherwise.

40. I find that as facts and evidences discussed in detail supra revealed that in OPGW cable 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 ± 10 µm. 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±10 µm. 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 µm and dual acrylic coating present is single mode optical fibre G.6 52D 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 can not be termed as sheathing cf 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 and Approach Cables under tariff item 85447090 bv the importer and availment of undue benefit of concessional rate of Customs duty under Notification No. 24/2005-Cus dated 01.03.2005, is improper which I hold accordingly.

(B) Whether or not the differential duty amount as calculated in each SCN arising out of undue availment of Notification No. 24/2005-Cus dated 01.03.2005 should not be demanded and recovered under the provisioins of Section 28(4) of the Customs Act. 1962, along with interest under section 28AA of the Customs Act, 1962.

41.1 I find that importer has imported OPGW cables and Optical Fibre Approach Cables under heading 8544. The importer has claimed concessional rate of duty benefit under Notification No. 24/2005-Cus. dated 01.03.2005 when the goods are imported under heading 8544. Further, the importer has procured OPGW Cable and approach cables domestically under two HSN codes 85447090 and 90011000 from M/s Apar Industries Ltd. and M/s Sterlite Power Transmission Limited. M/s Apar Industries Ltd. issues their invoices for OPGW cables and approach cables under HSN code 85447090 while M/s Sterlite Power Transmission Limited issued their invoices for OPGW cables and approach cable under HSN code 90011000.

41.2 I find that 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, while procuring the same domestically, they same were purchased under 02 headings i.e. 8544 7090 and 90011000 from different supliers. Therefore, it is evident that the importer has used 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 mis-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.

41.3 As per my detailed findings above and as found out by the investigation authority, the importer has short paid the duty as detailed in each of the Show Cause Notice(s) arising out of misclassification and undue availment of Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28) and thus, differential duty as worked out in the Show Cause Notice along with applicable interest is recoverable from the importer. The relevant legal provision is as under

SECTION 28(4) of the Customs Act 1962.

Recovery of duties not levied or not paid or short-levied or short- paiJ 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

th) Any wilful mis-statement, or

(c) Suppression of facts,

by the importer or the exporter or the agent or employee of the importer or expoFter, 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.

Section 28AA.

Interest on delayed payment of duty—

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 interes't, 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.*
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 razette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such intef est shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or front the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

41.4 As already discussed in the preceding paras, I find that M/s Kalptaru Power Transmission Ltd., in respect of the impugned goods, had knowingly used the dual classification of the goods for the similar product as per their convenience and not as per the law, which clearly indicates that goods i.e., OPGW cables were correctly classifiable under tariff item 90011000 but the importer deliberately mis-declared the goods in 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. In view of the provisions discussed above, I find that the true applicable duty had not been levied by reasons of collusion, willful mis-statement and suppression of facts and therefore, the

same is aptly proposed to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962. Further, the importer is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962.

41.5 In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, Pune **V/s. SKF India Ltd. [2009 (239) ELT 385** (SC)] wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

> *"....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or cantravention of any of the provisions of the Act or of Rules made thereeunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & I IAC) interest is leviable on delayed or deferred payment of duty for whatever reasons."*

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

41.6 I find that while filing the Bills of Entry, M/s Kalptaru Power Transmission Ltd. (IEC: 08889003297) had deliberately misclassified the imported goods viz. 'Optical Fibre Ground Wire (OPGW)' and ' Optical Fibre Approach Cable' under 85447090 with an intent to avail of the benefit of the notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28) and intentionally avail undue benefit of the concessional rate of duty. As a result, M/s Kalptaru Power Transmission Ltd. has short paid the Customs duty amounting to Rs. 84,40,282 (Rupees Eighty Four Lakh Forty Thousand Two Hundred Eighty Two only), which is tabulated below for ease of reference, in the all six SCNs issued by the respective jurisdictional Commissionerates.

Sr. No.	Show Cause Notice No	Differential Customs Duty
1.	VIII/48-1627/ Kalpataru/ Gr V/MCH/2021-22 dated 11.01.2021	Rs. 32,11,756/-
2.	VIII/ICD/TKD/6AG/Gr.5A/Kalptaru Power/ 1974/2021 dated 29.07.2021	Rs. 12,23,408/-
3.	VIII/10-10/ ICD/KPTL/ADJ/2021 dated 14.07.2021	Rs. 3787/-
4.	VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021	Rs.27,80,305/-

5.	Misc/55/2021-Gr.5A dated 24.06.2021	Rs. 2,26,474/-
6.	VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated 25.06.2021	Rs. 9,94,552/-
Total		Rs. 84,40,282/-

41.7 Therefore, I hold that the differential duty amount as mentioned in each Show Cause Notice is leviable on the goods (details as per "Annexure" to the notice) pertaining to M/s Kalptaru Power Transmission Ltd. is recoverable along with interest from the Importer under Section 28(4) and 28AA of the Act ibid.

(C) Whether or not the goods imported, as detailed in SCN(s), should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

42.1 I find that, the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

42.2 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/s Kalptaru Power Transmission Ltd. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall at the foot thereof make and subscribe to adeclaration as to the truth of the contents of such bill of entry and in support of such declara tion, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the assessable value, which were grossly undervalued while being presented to the Customs.

42.3 I reproduce the provisions of Section 111 of the Customs Act, 1962 as under :-

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

*(m) **any goods which do not correspond in respect of value or in any other particular***

*with the entry **made under** this Act, **shall be** liable **to confiscation.**"*

42.4 From the above discussions and legal provisions, I find that M/s Kalptaru Power Transmission Ltd. were involved in wilful mis-declaration and suppression of the correct classification of the subject goods to avail the undue benefit of under Notificatlon No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28). I find that the case is established on documentary evidences, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon'ble Supreme Courtin CC Madras V/s D Bhuramal — [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T.67 (Tri. - Chennai) the Hon'b1e CESTAT, South Zonal Bench, Chennai has held as under: -

"Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show couse notice on *the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un- discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means.*

42.5 Thus I hold goods are liable for confiscation under Section 111(m) for not declaring the correct value. The subject goods imported are not available for confiscation, but I rely upon order in cse of Shivalaya Spinning v. CC, the Tribunal declared clearly, "*In so far as redemption fine is concerned we agree with the contention of the ld. Counsel based on the decisions of the Apex Court cited by him that when the*

goods are not available for confiscation, redemption fine cannot be imposed". Hence, the order imposing redemption fine is set aside.

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42.6 I find that in Mahalaxmi International Export v. CC, the tribunal held in para 10, "We find merit in the appellant's submission with regard to imposition of redemption fine. In the present case, the goods are not available for confiscation. Nor had they been originally cleared against a bond. In such a case, the law does not permit imposition of redemption fine as held by us in the Ram Khazana Electronic & Ors. v. CC, AIR Cargo, Jaipur (Supra) [2003 (156) E.L.T. 122 (Tribunal)].

42.7 In view of above facts, findings and legal provisions, l find that it is an admitted fact with documentary evidences as well as statements of the Noticees, the importer had willfully misdeclared the classification of the impugned goods to avail the undue benefit of Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28). Therefore, I hold that the acts and omissions of the importer, by way of wilful mis-statement & mis-declaration of the assessable value of the imported goods, have rendered the goods liable to confiscation under section 111(m) of the Customs Act, 1962. However, due to non availability of goods physically, redemption fine cannot be imposed in respect of subject imported goods.

(D) Whether or not penalty in imposable on M/s Kalptaru Power Transmission Ltd. under 112(a)(ii) and/or 114A and 114AA of the Customs Act, 1962.

43.1 I find that the Notice proposes penal action on M/s Kalptaru Power Transmission Ltd. under Section 114A of the Customs Act, 1962. The said section is reproduced as under: -

Section 112. 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 to penalty.

(i) ……..

(ii) in the case of dutiable goods, other than prohibited goods, subject to the

provisions of section *114A, to a penalty not exceeding ten per cent 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 per cent of the penalty so determined.]*

Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

Where the duty has not been levied or has br en shout-levied or the interest has not been charged or paid or has been part paid or the duty or the interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or in''erest, as the case may be, as determined under sub-section (2) of section 28 shall als o 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 (2) 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:*

43.2 I find that in the instant case, the impugned imports under the ambit of the subject SCNs were affected in the name of M/s Kalptaru Power Transmission Ltd. It is an admitted fact that Importer has resorted to misclassification of the impugned goods to avail the undue benefit of Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 28). Further, the importer has procured OPGW Cable and approach cables domestically under two HSN codes 85447090 and 90011000 from M/s Apar Industries Ltd. and M/s Sterlite Power Transmission Limited. M/s Apar Industries Ltd. issues their invoices for OPGW cables and approach cables under HSN code 85447090 while M/s Sterlite Power

Transmission Limited issued their invoices for OPGW cables and approach cable under HSN code 90011000. Therefore, it is evident that the importer has used dual classification for the similar product as per their convenience and not as per the law. This 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 mis-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.

43.3 I note that the importers had mis-declared the classification in the Bills of Entry with intention to evade the true Customs duty for the imported goods. Moreover, I find that the importer mis-declared the classification in the Bills of Entry with intention to evade the correct Customs duty for the imported goods, thus evading the applicable duty. In view of the provisions discussed above, I find that the correct applicable duty had not been levied by reasons of collusion, willful mis-statement and suppression of facts. Accordingly, I hold M/s Kalptaru Power Transmission Ltd. is liable for penalty under Section 114A of the Customs Act, 1962. Consequently, in view of fifth proviso to Section 114A, no penalty is liable to be imposed on the importer under Section 112 of the Customs Act, 1962.

43.4 Furthermore, I find that Penal Action under Section 114 AA of the Customs Act has also been proposed on M/s Kalptaru Power Transmission Ltd. I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

> *28. As far as the penalty under Section 114AA is concerned, it is imposable 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 /or the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the* ***goods as per*** *the manufacturer 's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.*

43.5 From the facts of the case, I find that the M/s Kalptaru Power Transmission Ltd. were aware and had knowingly make the wrong declaration about the classification of the impugned goods despite procuring the same goods in correct CTH on various earlier occasions. Thus, I find that the importer had knowingly used and caused to be used such

particulars as mentioned above that were false for the transactions under the Customs Act as explained in the preceding paragraphs. The importer caused wrong declarations made in respective bills of entry and submitted falsified documents. I find that he had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act, 1962 as explained in hereinabove.

43.6 In the instant case, the investigation had proved its case with precise evidences, which further found support from the revelations made during the statements rendered by the Noticees under Section 108 of the Customs Act, 1962 that the imports were made using falsified import documents with malafide intent of evading duty. In view of the foregoing discussions and on examination of the role of the M/s Kalptaru Power Transmission Ltd. vis-a-vis the legal provisions and ratio of judgement relied above, I hold that M/s Kalptaru Power Transmission Ltd. is also liable to penalty under Section 114AA of the Customs Act, 1962.

(E) Whether or not penalty in imposable on Shri Sandipkumar Jagirdar, Assisstant General Manager(Taxation) and Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under 112 (a)(ii) and/or 114A and 114AA of the Customs Act, 1962

44.1 I find that the instant SCN proposed penalty on Shri Sandipkumar Jagirdar, Assisstant General Manager(Taxation) and Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under 112(a)(ii) and/ or 114A and 114AA of the Customs Act, 1962. From the facts of the case, I find that that Shri Sandipkumar Jagirdar, Assisstant General Manager(Taxation) and Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. were aware of the exact nature, technical specifications, usage of 'Optical Ground Wire Cable (OPGW)', and 'Optical Fibre Approach Cable' and correct classification of the import goods. However, despite knowing these facts, they made such declaration that was incorrect, which in the instant case is the classification of imported goods viz. 'Optical Ground Wire Cable (OPGW)', and 'Optical Fibre Approach Cable' at the time of presenting the bills of entry to Customs.

44.2 I find 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). During investigation, importer has admitted that they have procured OPGW Cable and approach cables domestically under two HSN

codes 85447090 and 90011000 from M/s Apar Industries Ltd. and M/s Sterlite Power Transmission Limited. M/s Apar Industries Ltd. issued their invoices for OPGW cables and approach cables under HSN code 85447090 while M/s Sterlite Power Transmission Limited issued their invoices for OPGW cables and approach cable under HSN code 90011000. Therefore, it is evident that the importer had full knowledge and knowingly indulged in mis- classification of the said goods. In the instant case, I find that it has been proved without doubt that Shri Sandipkumar Jagirdar and Shri Vipin Varshney had knowingly misclassified the goods before Customs Authorities to avail the undue benefit of Notification benefit. Such acts of omissions and commissions on their part have rendered the impugned goods liable for confiscation under the provisions of section 111(m) of the Act ibid. Thus, I hold that him liable for penalty under Section 112(a)(ii) of the Act ibid. Also, I find that penalty under Section 114A of the Customs Act, 1962 is not imposable on the managing director of the company, as the firm, M/s Kalptaru Power Transmission Ltd is liable to pay duty or interest, if any.

44.3 I also find that it is evident that importer has adopted an opportunistic approach and declared the imported goods as per their convenience and not as per law. This shows clear malafide intent on the part of the importer to state such non-individually sheathed fibres as individually sheathed fibre, in order to mis-classify the said goods to avail duty exemption benefits, which was not available on the said goods with their correct classification under heading 9001 of the CTA.

44.4 I also find 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). During investigation, importer has admitted that they have procured OPGW Cable and approach cables domestically under two HSN codes 85447090 and 90011000 from M/s Apar Industries Ltd. and M/s Sterlite Power Transmission Limited. M/s Apar Industries Ltd. issued their invoices for OPGW cables and approach cables under HSN code 85447090 while M/s Sterlite Power Transmission Limited issued their invoices for OPGW cables and approach cable under HSN code 90011000. Therefore, it is evident that the importer had full knowledge and knowingly indulged in mis- classification of the said goods. In the instant case, I find that it has been proved without doubt that Shri Sandipkumar Jagirdar and Shri Vipin Varshney had knowingly misclassified the goods before Customs Authorities to avail the undue benefit of Notification benefit.

44.5 In view of the foregoing discussions and findings, I find Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) and Shri Vipin Varshney, Vice President- Project

Monitoring Group of M/s Kalptaru Power Transmission Ltd. had all knowingly used/caused to be used such declarations for the purpose of presenting Bill of Entry under Section 46 of the Customs Act, 1962 to evade the applicable Customs Duty. Accordingl y, I hold that Sandipkumar Jagirdar, Assisstant General Manager(Taxation) and Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. liable to penalty under Section l 14AA of the Customs Act.

45. In view of above discussion, I pass the following order:

ORDER

45.1 In respect of **Show Cause Notice No. VIII/48-1627/Kalpataru/ Gr. V/MCH/2021-22 dated 11.01.2022** issued by Additional Commissioner of Customs, Import Groups, Custom House, Mundra:

i. I reject the declared classification under tariff item 85447090 for the goods 'Optical Ground Wire Cable (OPGW)' AND 'Optical Fibre Approach Cable' in bills of entry, mentioned in Annexure-A to show cause and order the said goods imported by M/s Kalptaru Power Transmission Ltd., to be classified under tariff item 90011000 with consequential duty liability;

ii. I reject the benefit of Sr. No. 28 of the Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN.

iii. I Confirm the demand of differential Customs duty amounting to Rs. 32,11,756/- (Rupees Thirty-Two Lakh Eleven Thousand Seven Hundred and Fifty-Six Only), short levied / short paid on the said goods covered under bills of entry as detailed in Annexure- A to this Notice under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

iv. I hold the goods, imported vide said consignments imported in the name of M/s Kalptaru Power Transmission Ltd. having total value at Rs. 2,65,85,868 (Rs. Two Crore Sixty Five Lacs Eighty Five Thousand Eight Hundred Sixty Eight) (based on Annexure A to the SCN) liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962;

v. I impose penalty of Rs. 32,11,756/- (Rupees Thirty-Two Lakh Eleven Thousand Seven Hundred and Fifty-Six Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114A of the Customs Act, 1962;

vi. I impose penalty of Rs.3,00,000/-(Rs. Three Lakh only) on the Importer, M/s Kalptaru Power Transmission Ltd. under section l 14AA of the Customs Act, 1962;

vii. I impose penalty of Rs.45,000/-(Rs. Forty Five Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

viii. I impose penalty of Rs.1,00,000/-(Rs. One lakh Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

ix. I impose penalty of Rs.45,000/-(Rs. Forty Five Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

x. I impose penalty of Rs.1,00,000/-(Rs. One lakh Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

45.2 Order in respect of **SCN No. VIII//ICD/TKD/6AG/Gr.5A/Kapataru Power/1974/2021 dated 29. 07. 2021** issued by Deputy Commissioner, Customs, Inland Container Depot, Tughlakabad, New Delhi-110020.

i. I reject the declared classification under tariff item 85447090 for the goods "OPGW CABLE/ OPTICAL FIBER CABLE WITH ELECTRIC CONDUCTOR OPGW" in bills of entry, mentioned in Annexure- A to show cause, and order the said goods imported by M/s Kalptaru Power Transmission Ltd., to be classified under tariff item 90011000 with consequential duty liability;

ii. I reject the benefit of Sr. No. 28 of the Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN.

iii. I Confirm the demand of differential Customs duty amounting to Rs. 12,23,408 /-(Rupees Twelve Lacs Twenty-Three Thousand Four Hundred Eight), short levied / short paid on the said goods covered under bills of entry as detailed in Annexure- A to this Notice under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

iv. I hold the goods, imported said consignments imported in the name of M/s Kalptaru Power Transmission Ltd., having total value at Rs.1,00,65,888/- (Rupees One Crore Sixty-Five Thousand Eight Hundred Eighty-Eight only) liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the

Customs Act, 1962;

v. I impose penalty of Rs. 12,23,408 /-(Rupees Twelve Lacs Twenty-Three Thousand Four Hundred Eight) on the Importer, M/s Kalptaru Power Transmission Ltd. under section 114A of the Customs Act, 1962.

vi. I impose penalty of Rs. 1,20,000/-(Rs. One Lakh only) on the Importer, M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

vii. I impose penalty of Rs.15,000/-(Rs. Fifteen Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 112(a)ii) of the Customs Act, 1962.

viii. I impose penalty of Rs. 35,000/-(Rs. Thirty Five Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

ix. I impose penalty of Rs.15,000/-(Rs. Fifteen Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

x. I impose penalty of Rs. 35,000/-(Rs. Thirty Five Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

45.3 Order in respect of **SCN No. VIII/10-10/ICD/KPTL/ADJ/2021 dated 14.07.2021** issued by the Deputy Commissioner of Customs, ICD Khodiyar, Gandhinagar:

i. I reject the declared classification under tariff item 85447090 for the goods"OPGW CABLE/ OPTICAL FIBER CABLE WITH ELECTRIC CONDUCTOR OPGW" in bills of entry, mentioned in Annexure-A to show cause and order the said goods imported by M/s Kalptaru Power Transmission Ltd. to be classified under tariff item 90011000 with consequential duty liability;

ii. I reject the benefit of Sr. No. 28 of the Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN;

iii. I Confirm the demand of differential Customs duty amounting to Rs. 3787/- (Rupees Three Thousand Seven Hundred Eighty-Seven Only), short levied / short paid on the said goods covered under bills of entry as detailed in Annexure- A to this Notice under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

iv. I hold the goods, imported said consignments imported in the name of M/s Kalptaru Power Transmission Ltd. having total value of Rs. 31425/- (Rupees Thirty-One

Thousand Four Hundred Twenty-Five) liable for confiscation under the provisi.ins of Section 111(m) of the Customs Act, 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962;

v. I impose penalty of Rs. 3787/- (Rupees Three Thousand Seven Hundred Eighty-Seven Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114A of the Customs Act, 1962.

vi. I impose penalty of Rs.1,000/-(Rs. One Thousand Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962;

vii. I impose penalty of Rs. 5,000/-(Rs. Five Thousand only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 112(a)ii) of the Customs Act, 1962.

viii. I impose penalty of Rs.10,000/-(Rs. Ten thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

ix. I impose penalty of Rs.5,000/-(Rs. Five Thousand only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

x. I impose penalty of Rs.10,000/-(Rs. Ten thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

45.4 Order in respect of **SCN No. VIII(6) /ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021** issued by the Deputy Commissioner of Customs, ICD, JRY, Kanpur:

i. I reject the declared classification under tariff item 85447090 for the goods "OPGW CABLE/ OPTICAL FIBER CABLE WITH ELECTRIC CONDUCTOR OPGW" in bills of entry, mentioned in Annexure-A to show cause and order the said goods imported by M/s Kalptaru Power Transmission Ltd. to be classified under tariff item 90011000 with consequential duty liability.

ii. I reject the benefit of Sr. No. 28 of the Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN.

iii. I Confirm the demand of differential Customs duty amounting to Rs. 27,80,305/- (Rupees Twenty Seven Lakh Eighty Thousand Three Hundred Five Only), short levied short paid on the said goods covercd under bills of entry as detailed in Annexure- A to this Notice under Section 28(4) of the Customs Act, 1962, along with applicable interest under

Section 28 AA of the Customs Act, 1962;

iv. I hold the goods, imported said consignments imported in the name of M/s Kalptaru Power Transmission Ltd., having total value at Rs. 2,30,71,154/- (Two Crore Thirty Lakhs Seventy One Thousand One Hundred Fifty Four only) liable for confiscation undei the provisions of Section 111(m) of the Customs Act, 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962;

v. I impose penalty of Rs. 27,80,305/- (Rupees Twenty Seven Lakh Eighty Thousand Three Hundred Five Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114A of the Customs Act, 1962;

vi. I impose penalty of Rs. 2,50,000/-(Rs. Two Lakh Fifty Thousand Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962;

vii. I impose penalty of Rs.7,000/-(Rs. Seven Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

viii. I impose penalty of Rs. 15,000/-(Rs. Fifteen Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

x . I impose penalty of Rs.7,000/-(Rs. Seven Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

xi. I impose penalty of Rs.15,000/-(Rs. Fifteen Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962

45.5 Order in respect of **SCN No. Misc/55/2021-Gr.5A dated 24.06.2021** issued by the Deputy Commissioner of Customs, Chennai-II, Import :

i. I reject the declared classification under tariff item 85447090 for the goods "OPGW CABLE/ OPTICAL FIBER CABLE WITH ELECTRIC CONDUCTOR OPGW" in bills of entry, mentioned in Annexure-A to show cause and order the said goods imported by M/s Kalptaru Power Transmission Ltd. to be classified under tariff item 90011000 with consequential duty liability.

ii. I reject the benefit of Sr. No. 28 of the Notification No. 24/2005-Cus dated 01.03.2005 on the goods mentioned in Annexure-A to the SCN.

iii. I Confirm the demand of differential Customs duty amounting to Rs. 2,26,474/-

(Rupees Two Lakh Twenty Six Thousand Four Hundred Seventy Four Only), short levied short paid on the said goods covercd under bills of entry as detailed in Annexure-A to this Notice under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

iv. I hold the goods, imported said consignments imported in the name of M/s Kalptaru Power Transmission Ltd., having total value at Rs. 15,37,295/- (Rupees Fifteen Lacs Thirty Seven Thousand Two Hundred Ninety Five only) liable for confiscation undei the provisions of Section 111(m) of the Customs Act, 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962;

v. I impose penalty of Rs. 2,26,474/- (Rupees Two Lakh Twenty Six Thousand Four Hundred Seventy Four Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114A of the Customs Act, 1962;

vi. I impose penalty of Rs. 25,000/-(Rs. Twenty Five Thousand Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962;

vii. I impose penalty of Rs. 8,000/-(Rs. Eight thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 112(a)ii) of the Customs Act, 1962.

viii. I impose penalty of Rs.12,000/-(Rs. Twelve Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 114AAof the Customs Act, 1962.

ix. I impose penalty of Rs.8,000/-(Rs. Eight thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

x. I impose penalty of Rs.12,000/-(Rs. Twelve Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962

45.6 Order in respect of **SCN No. VIII(6) ICD/PANKI/CUS/KNP/ SCN/Kalpataru/49/2021 dated 25.06.2021** issued by the Deputy Commissioner of Customs, ICD, Panki, Kanpur :

i. I reject the declared classification under tariff item 85447090 for the goods "OPGW CABLE/ OPTICAL FIBER CABLE WITH ELECTRIC CONDUCTOR OPGW" in bills of entry, mentioned in Annexure-A to show cause and order the said goods imported by M/s Kalptaru Power Transmission Ltd. to be classified under tariff item 90011000 with consequential duty liability

ii. I reject the benefit of Sr. No. 28 of the Notification No. 24/2005-Cus dated

01.03.2005 on the goods mentioned in Annexure-A to the SCN.

iii. I confirm the demand of differential Customs duty amounting to Rs. 9,94,552/- (Rupees Nine Lakh Ninety Four Thousand Five Hundred Fifty Two Only), short levied short paid on the said goods covercd under bills of entry as detailed in Annexure- A to this Notice under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

iv. I hold the goods, imported said consignments imported in the name of M/s Kalptaru Power Transmission Ltd., having total value at Rs. 81,82,918/- (Rupees Eighty One Lakh Eighty Two Thounsand Nine Hundred Eighteen only) liable for confiscation undei the provisions of Section 111(m) of the Customs Act, 1962. Since, the subject goods are not physically available for confiscation, therefore, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962;

v. I impose penalty of Rs.9,94,552/- (Rupees Nine Lakh Ninety Four Thousand Five Hundred Fifty Two Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 1 14A of the Customs Act, 1962;

vi. I impose penalty of Rs. 90,000/-(Rs. Ninety Thousand Only) on the Importer M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962;

vii. I impose penalty of Rs. 13,000/-(Rs. Thirteen Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

viii. I impose penalty of Rs. 6,000/-(Rs. Six Thousand Only) on Shri Sandipkumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalptaru Power Transmission Ltd. under section 112(a)ii) of the Customs Act, 1962.

ix. I impose penalty of Rs. 13,000/-(Rs. Thirteen Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 114AA of the Customs Act, 1962.

x. I impose penalty of Rs. 6,000/-(Rs. Six Thousand Only) on Shri Vipin Varshney, Vice President- Project Monitoring Group of M/s Kalptaru Power Transmission Ltd. under section 112(a)(ii) of the Customs Act, 1962.

46. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/ firms concerned, covered or not covered by this show cause notice, under the provisions of Custoiaas Act, 1962, and/or any other law for the time being in force in the Republic of India.

47. The Show Cause Notice issued vide F.No. (i) VIII/48-1627/Kalpataru/ Gr.V/ MCH/2021-22 Dated 11.01.2022 (ii) VIII//ICD/TKD/6AG/Gr.5A/ Kapataru Power/1974/2021 dated 29.07.2021 (iii)VIII/10-10/ICD/KPTL/ADJ/2021 dated

14.07.2021 (iv) VIII(6)ICD/JRY/CUS/KNP/SCN/Kalpataru/307/2021 dated 24.06.2021 (v) Misc/55/2021-Gr.5A dated 24.06.20212021 (vi) VIII(6)ICD/PANKI/CUS/KNP/SCN/Kalpataru/49/2021 dated 25.06.2021 GEN/ADJ/ADC/1286/2023-ADJN. Dated 24.06.2023 are hereby disposed of.

Signed by
Arun Kumar
Date: 11-06-2024 19:03:00

Arun Kumar
ADDITIONAL COMMISSIONER

F.No. I/2048150/2024 Date:11-06-2024

By Speed post/ By Hand/by E-mail

To,

1. M/s. Kalpataru Power Transmission Ltd.(IEC-0889003297), Plot No.-101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat-382028

2. Shri SandipKumar Jagirdar, Assisstant General Manager (Taxation) of M/s Kalpataru Power Transmission Ltd., Plot No.-101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat-382028

3. M/s. Vipin Varshaney, Vice President, Vice President- Project Monitoring Group, M/s Kalpataru Power Transmission Ltd., Plot No.-101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat-382028

Copy to:-

1. The Deputy/Assistant Commissioner, Customs, ICD-Khodiyar, Gandhinagar
2. The Deputy/Assistant Commissioner, Customs, ICD-JRY, Kanpur
3. The Deputy/Assistant Commissioner, Customs, ICD- Panki, Kanpur
4. The Deputy/ Assistant Commissiner, Customs, ICD- Tughlakabad, New Delhi
5. The Deputy/Assistant Commissioner, Gr. 5A, Import Commissionerate, Custom House, No.60, Rajaji Salai, Chennai-600001
6. The Deputy/Assistant Commissioner (RRA), CH, Mundra.
7. The Deputy/Assistant Commissioner (EDI), CH, Mundra.
8. The Deputy/Assistant Commissioner (TRC), CH, Mundra.
9. The Additional Director, DRI, Delhi Zonal Unit, B-3&4, 6th Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
10. Guard File.