



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

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क	फ़ाइल संख्या FILE NO.	(1) S/49-126/CUS/MUN/2024-25 (2) S/49-125/CUS/MUN/2024-25 (3) S/49-124/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-411 to 413-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	18.11.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/69/2024-25 dated 11.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	18.11.2025



छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	<p>(1) M/s Kalpataru Power Transmission Ltd., Plot No. 101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat- 382028</p> <p>(2) Sh. Sandipkumar Jagirdar Assistant General Manager (Taxation) of M/s Kalpataru Power Transmission Ltd., Plot No. 101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat- 382028</p> <p>(3) Sh. Vipin Varshney, Vice President- Project Monitoring Group, M/s Kalpataru Power Transmission Ltd., Plot No. 101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat- 382028</p>
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1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगों के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

M/s. Kalpataru Power Transmission Ltd., Plot No.-101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat-382028, (hereinafter referred to as the '**Appellant No. 1**') , Shri Sandipkumar Jagirdar, Assistant General Manager (Taxation) of M/s Kalpataru Power Transmission Ltd., Plot No.-101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat-382028 (hereinafter referred to as the '**Appellant No.2**') , M/s. Vipin Varshney, Vice President, - Project Monitoring Group, M/s Kalpataru Power Transmission Ltd., Plot No.-101, Part-III, GIDC Estate, Sector-28, Gandhi Nagar, Gujarat-382028,(hereinafter referred to as the '**Appellant No.3**') have filed appeals in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original nos. MCH/ADC/AK/69/2024-25 dated 11.06.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner of Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that 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) 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.

2.1 The intelligence further suggested that the Appellant No.1 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 Appellant No.1 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 Optical fibres and optical fibre bundles; optical fibre cables other than those of heading 8544.

2.2 Acting on this intelligence, the DRI, vide letters dated 05.05.2020 and 12.05.2020, requested Appellant No.1 to submit documents related to the import of the said goods. In response, Appellant No.1 submitted certain documents and technical specifications via e-mail dated 06.05.2020 and letter dated 14.05.2020. A perusal of import data of Appellant No.1 and the submitted documents confirmed that the Appellant No.1 had indeed imported the said goods under tariff item 85447090 of the CTA and had availed the undue benefit of the concessional duty notification. In furtherance of the investigation, the DRI, vide letter dated 15.06.2020, sought expert analysis from the Deputy Director General (Transmission), Telecommunication Engineering Centre (TEC), Department of Telecommunications, regarding samples of OPGW. In response, vide e-mail dated 17.06.2020, the ADG (Transmission), TEC, New Delhi, informed the DRI, inter alia, that:

- In higher count OPGW Cables, the fibres are not individually sheathed; instead, the bundles of optical fibres are sheathed together with sheathing material.
- Cladding is an integral part of the optical fibre and is not sheathing.
- The dual acrylic coating over the cladding is an integral part of the optical fibre and is not sheathing.

2.3 Summons dated 13.11.2020, 25.11.2020, and 16.12.2020 were issued to Appellant No.1, directing them to appear in person, provide evidence, and submit information, documents, and samples related to the imports. In response, vide letter dated 28.12.2020, Appellant No.1 submitted documents and contended that their classification was correct. They cited two Orders-in-Appeal (No. COC-CUSTOM-000-APP-331/2015-16 and No. COC-CUSTOM-000-APP-330/2015-16, both dated 29.12.2015) wherein the Commissioner (Appeals) of Customs, Cochin, had allegedly held that OPGW imported by Appellant No.1 was correctly classifiable under heading 8544. Appellant No.1 also forwarded a copy of Test Report No. 77, 67A, 68, 68(A)(I) dated 26.06.2014 from Cochin Customs for OPGW.



2.4 The DRI also sought clarification from the Director, National Test House (NTH), Western Region, vide letters dated 16.12.2020 and 23.12.2020. In response, vide letters dated 22.12.2020 and 01.01.2021, the NTH informed, inter alia, that:

- Cladding and di-acrylic coating are integral parts of an optical fiber. Colour coating is primarily for identification and handling.
- Sheathing is defined as the drawing of tubes over an object, fitting closely, and its removal shall not damage the underlying object. It is applied by extrusion and made of materials like polyethylene (PE), polyurethane (PU), polyvinyl chloride (PVC), or Teflon.
- Individually Sheathed Fibres are those where each optical fibre has such a sheath over it.
- A di-acrylic coating over cladding cannot be construed as sheathing of the optical fibre.

2.5 Following this, a summons dated 11.01.2021 was issued to Appellant No.1 to explain their reasons for claiming the exemption. On 21.01.2021, Sh. Vipin Varshney, Vice President, Project Monitoring Group, and Sh. Sandipkumar Jagirdar, Assistant General Manager (Taxation), appeared. A statement from Sh. Vipin Varshney was recorded under Section 108 of the Customs Act, 1962, wherein he stated, inter alia:

- KPTL imports OPGW (24/48 fibre) and approach cable (24/48 fibres) for project transmission work, supplying them to entities like M/s Power Grid Corporation of India Limited (POWERGRID) and state electricity boards.
- OPGW is a dual-purpose cable for data transmission and grounding.
- KPTL imports OPGW and approach cables (OFAC) from M/s ZTT International Pvt. Ltd., China. Approach cables connect the OPGW from transmission towers to telecom equipment in sub-stations.
- He admitted that no one in KPTL could answer technical questions about the structure of OPGW and that an authorized person would appear later.
- When shown the tariff headings 8544 and 9001, he stated that 8544 covers optical fibre cables made of individually sheathed fibres, while 9001 covers those other than 8544.



- He admitted KPTL imports under CTH 85447090.
- He made a critical admission that KPTL places orders based on the HSN code provided by the overseas supplier in the certificate of origin, and this same HSN code is declared in the Bill of Entry.
- He further admitted that KPTL does not find it necessary to apply further due diligence on its own part while finalizing the classification of the imported goods.

2.6 Further summons dated 02.02.2021 and 04.02.2021 were issued for samples and technical specifications. On 11.02.2021, Sh. Sandipkumar Jagirdar appeared, and his statement was recorded under Section 108. He stated, inter alia as under:

- He reiterated that M/s Kalpataru Power Transmission Ltd (KPTL) imports OPGW and approach cables for projects, that POWERGRID specifies the vendor, and that KPTL declares CTH 85447090.
- He made a significant admission that KPTL domestically procures OPGW and approach cables under two different HSN codes: 85447090 (from M/s Apar Industries Ltd.) and 90011000 (from M/s Sterlite Power Transmission Limited).
- He also admitted that KPTL sells/supplies these goods under both HSN codes (85447090 and 90011000).
- He agreed that the only differentiating factor between the two tariff headings is the "sheathing of optical fibres" and that 8544 is for "individually sheathed" fibres while 9001 is for those that are not.
- He claimed no technical expertise and reiterated that classification is finalized based on the supplier's provided HSN code.
- He confirmed that the technical specification from their supplier, M/s ZTT, China, identifies the fibre as "single mode optical fibre G.652D."
- He admitted there is no correspondence from M/s ZTT confirming the OPGW cable is "made up of individually sheathed fibre," nor is this stated anywhere in ZTT's technical specifications.
- He confirmed that when KPTL raises purchase orders on their domestic supplier M/s Sterlite, KPTL itself adopts the HSN code 9001.
- He agreed with Sh. Varshney's earlier statement about the company not applying due diligence in classification.
- He reviewed the technical specifications from both the imported goods




(from M/s ZTT, declared as 8544) and the domestically procured goods (from M/s Sterlite, declared as 9001) and stated that in both specifications, the optical fibre is described identically as 'Single mode optical fibre G.652D' with 'UV curable acrylate material... as optical fiber primary protective coating.'

- Lacking technical expertise, he stated that "the opinion of TEC appears acceptable"—referring to the TEC's opinion that the fibres are not individually sheathed.

2.7 The DRI sought further clarification from TEC vide letter dated 04.02.2021. The Director (Tx), TEC, replied vide letter dated 16.02.2021, informing, inter alia:

- The diameter of the primary coating of a single-mode optical fibre (G.652D) is $242 \pm 5 \mu\text{m}$.
- The "dual acrylic coating" refers to two different layers of the primary coating.
- As per TEC Generic Requirement (GR) for OPGW cable, the primary coated fibres are protected by loose packaging within a stainless steel buffer tube filled with jelly.
- The GR specifies the diameter over the primary coating (double UV Cured acrylate) is $245 \mu\text{m} \pm 10 \mu\text{m}$. This implies the fibre only has this primary coating.

2.8 The investigation established that OPGW cables are dual-purpose (earthing and telecommunication) and are designed to replace traditional earth wires. They are composed of optical fibres (Single mode G.652D) contained in protective units, with metallic wires stranded around this core. A 24-fibre OPGW, for example, has a central unit with four (04) PBT loose buffer tubes; each tube encapsulates a group of six (06) optical fibres in a water-blocking jelly. These tubes are wound around a central FRP member, and this entire structure is then encapsulated in an aluminium tube and surrounded by ACS wires. This construction means a bunch of fibres are placed in a tube, not individually sheathed.

2.9 Fibre Optic Approach Cables are armoured cables used to connect the OPGW from the tower to the Fibre Optic Distribution Panel (FODP) in a



sub-station. They contain fibres with identical optical/physical characteristics as those in the OPGW (i.e., Single mode G.652D). The only difference is the absence of the outer ACS wire. Images of the cable's construction show PBT tubes containing a bunch of optical fibres.

2.10 The technical specifications from POWERGRID, which KPTL is required to meet, mandate compliance with IEEE-1138, 2009. This standard describes OPGW as having "optical fibers in optical fiber units." It defines the "optical fiber" as having a glass core, glass cladding, and a "coating" (e.g., acrylate) to protect the fibre. It then describes a "buffer construction" which may surround the coated fibre(s). It explicitly defines a "Loose buffer" as a "tube that surrounds each fiber or fiber group." The POWERGRID specification further mandates "Loose tube construction" and states, "Each buffer tube shall have maximum 12 no. of fibres." The specification for Approach Cables confirms they "shall contain fibres with identical optical/physical characteristics as those in the OPGW cables."

2.11 The POWERGRID specifications refer to ITU-T G.652D standards. This standard (and its related ITU-T G.650.1) provides definitions. The ITU-T G.650.1 standard defines:

- Primary coating: "The one or more layers of protective coating material applied... during or after the drawing process to preserve the integrity of the cladding surface (e.g., a 250 μm protective coating)."
- Secondary coating: "The one or more layers of coating material applied over one or more primary-coated fibres... (e.g., a 900 μm 'buffer' coating, 'tight jacket', or a ribbon coating)."
- Further, IEC 60793-2 defines "Primary coating" as a "thin coating applied directly to the cladding... to preserve integrity." IEC 60793-2-50 specifies the dimensional requirements for B-652.D fibres (the IEC equivalent of G.652D), listing the "Primary coating diameter coloured" as 235 to 255 μm .

2.12 International standards (IEC 60050-731) and industry glossaries further differentiate these terms:

- Primary coating (731-02-57): "A thin coating applied directly to the cladding to preserve integrity..."




- Secondary coating/ fibre jacket (731-02-58): "A coating applied directly to the primary coating to reinforce protection..."
- Loose tube cable (731-04-07): "...fibres are fitted in one or more tubes."
- Sheath/Cable jacket: "The protective outer covering of optical cable. Common materials include polyethylene (PE), polyurethane (PU), polyvinyl chloride (PVC) and Teflon (plenum)." This clearly distinguishes the thin (250 μ m) primary coating (an integral part of the fibre) from a sheath or secondary coating (a separate, thicker protective layer like a 900 μ m buffer or a PVC jacket).

2.13 The investigation synthesized these technical facts. The G.652D fibres used in the imported goods have a glass core and glass cladding. They are covered by a "di-acrylic coating," which is a dual-layer primary coating (one soft inner, one hard outer) with a total diameter of ~250 μ m. This coating is integral and essential; glass fibres are not commercially available without it, as they would be too brittle. This 250 μ m primary coating is distinct from a "secondary coating" or "sheath," which, as per the ITU-T Manual, would be a much thicker layer (e.g., 900 μ m) applied over the primary-coated fibre. The imported OPGW and Approach Cables do not have this secondary coating on each fibre; instead, a bundle of primary-coated fibres is placed loosely inside a PBT or steel tube.

2.14 All major manufacturers of G.652D fibre (including KPTL's supplier, M/s ZTT) specify a coating diameter in the 240-250 μ m range. This aligns with the IEC 60793-2-50 standard for primary coating. Therefore, the single-mode G.652D fibre used in the imported cables has only a primary coating, which is an integral part of the fibre itself and necessary to preserve the cladding's integrity. This primary coating (of ~250 μ m) cannot be construed as "sheathing." The technical specifications from KPTL's supplier, M/s ZTT, explicitly state that the fibres used have "only primary protective coating." A "sheath," as defined by NTH and international standards, is a separate protective covering, not the integral primary coating.

2.15 The investigation then compared this factual finding with the relevant Customs Tariff headings:

Heading 8544 (specifically 85447090): Covers "optical fibre cables, made



up of individually sheathed fibres..." This heading qualifies for 0% Basic Customs Duty (BCD) under Notification No. 24/2005-Cus.

- Heading 9001 (specifically 90011000): Covers "optical fibre cables other than those of heading 8544..." This heading attracts a 15% BCD, with no exemption available.

2.16 The HSN Explanatory Notes reinforce this distinction.

- HSN Note to 8544: Confirms it covers cables "made up of individually sheathed fibres."
- HSN Note to 9001: Describes the fibre itself as having "a very thin coating of plastics... which renders the fibres less prone to fracture" (confirming the coating is part of the fibre). It then describes the cables of this heading as consisting of "a single sheath containing one or more optical fibre bundles, the fibres of which are not individually sheathed."

2.17 Based on General Rules for Interpretation (GIR) Rule 1, the classification must be determined by the terms of the headings. The imported goods, consisting of bundles of primary-coated (not individually sheathed) fibres placed in a loose tube, do not meet the description of heading 8544. They are factually described by the HSN Note to 9001. The distinction is clear: 8544 requires individually sheathed fibres, which the imported goods are not. The investigation further noted that dictionary definitions clearly distinguish "coating" (a layer spread on a surface) from "sheath" (a close-fitting case or covering that surrounds another part). The HSN itself uses the terms "coated... or inserted in an insulating sheath," implying they are mutually exclusive. This interpretation is supported by a CESTAT, West Zonal Bench, Mumbai decision in the matter of Vodafone South Ltd. v/s Commissioner of Customs (Import), NhavaSheva, which categorically held that the 'coating' of an optical fibre is not 'sheathing'.

2.18 Further evidence from DGFT's Standard Input-Output Norms (SION) lists "UV curable coating" as a raw material for producing optical fibres (SION B215), not for producing cables. This confirms the coating is an integral component of the fibre. If the integral primary coating were considered "sheathing," then all glass optical fibres would be "individually sheathed," and all optical fibre cables would fall under 8544, rendering the provision for "optical fibre cables" in heading 9001 redundant. The legislature clearly



intended to differentiate based on the cable's construction. The imported OPGW/Approach Cable, where a bundle of primary-coated fibres is sheathed together in a PBT/SUS tube, is therefore excluded from CTH 8544 and specifically included in CTH 9001.

2.19 The investigation also addressed the importers' potential argument that POWERGRID tender documents list HSN code 85447090. The investigation found that the very same tender documents include a disclaimer stating: "it shall entirely be the responsibility of the bidder to check the HSN/SAC code... The bidder shall solely be responsible for HSN/SAC classification..." Thus, the HSN code in the tender was merely indicative and not a valid basis for classification.

2.20 The investigation summarized specific culpability of hereinafter referred to as the Appellant No. 1 as under :

- The imported goods (OPGW and Approach Cable) use G.652D fibres with only a $245 \pm 10 \mu\text{m}$ primary coating, which is integral and not sheathing.
- In a separate DRI investigation concerning M/s ZTT India Ltd. (a subsidiary of KPTL's supplier, M/s ZTT China), M/s ZTT India categorically stated that the OPGW cables imported from M/s ZTT International are not individually sheathed and are correctly classifiable under heading 9001. There cannot be a dual classification for the identical goods from the same supplier.
- KPTL itself demonstrated knowledge of the correct classification by engaging in dual classification:
 - Domestic Procurement: KPTL bought identical OPGW cables from M/s Sterlite Power Transmission Ltd. under HSN 9001, while buying from M/s Apar Industries under HSN 8544.
 - KPTL's Own Purchase Orders: KPTL itself raised Purchase Orders (e.g., PO No. 2400065127 dated 22.10.2019, PO No. 2400031686 dated 11.09.2017) on domestic suppliers classifying OPGW under HSN 9001.
 - KPTL's Own Sales Invoices: KPTL itself sold/supplied OPGW to POWERGRID under HSN 9001 (e.g., Invoice No. TLD-UK-19-10019 dated 07.02.2020).



This dual classification proved that KPTL had clear knowledge that OPGW and Approach cables were classifiable under 9001, but they chose to classify imports under 8544 to avail the duty exemption.

2.21 The investigation also rebutted KPTL's reliance on the 2015 Order-in-Appeal from Cochin Customs:

- That order was based on a test report that merely described the fibres as "plastic covered," which the Commissioner (Appeals) inferred to mean "individually sheathed." This inference is technically incorrect, as the "plastic cover" was the integral primary coating.
- It was alleged that KPTL submitted an incomplete or misleading declaration from that supplier (M/s Suzhou Furukawa) at the time. The supplier's actual technical specifications showed a primary coating diameter of 235-245 μm , not a sheath.
- The 2015 order is not applicable as the supplier in the current case is M/s ZTT International, China, not M/s Suzhou Furukawa.
- KPTL's reliance on CBIC Circular No. 191/25/96-CX was also found to be misplaced, as that circular pertains to pigtails/patch cords, which are made of individually sheathed fibres and are correctly classified under 8544, unlike OPGW.
- KPTL admitted that their current supplier, M/s ZTT, never confirmed the fibres were individually sheathed.

2.22 The investigation concluded that KPTL's representatives' admissions (no technical competence, reliance on supplier's HSN, acceptance of TEC's opinion) and their documented practice of using HSN 9001 for domestic procurement and sales, proved they had clear knowledge that the imported goods were not made of individually sheathed fibres. By not disclosing this vital fact to Customs authorities and continuing to declare imports under 85447090, KPTL acted with mala fide intention.

2.23 Based on these facts, the investigation alleged that KPTL resorted to wilful mis-statement and suppression of vital facts with intent to evade payment of Customs duty. Therefore, the extended period for demand of duty under Section 28(4) of the Customs Act, 1962, was deemed applicable. The differential Customs duty, arising from the misclassification and wrongful




availment of Notification No. 24/2005-Cus, was liable to be demanded and recovered from KPTL under Section 28(4) along with applicable interest under Section 28AA. It was further alleged that by mis-declaring and mis-classifying the goods, KPTL contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962. By failing to declare the correct classification and pay the appropriate duty, KPTL failed to discharge its obligatory duty of self-assessment under Section 17 of the Customs Act, 1962.

2.24 Based on the above investigation, six (06) separate Show Cause Notices (SCNs) were issued to M/s Kalpataru Power Transmission Ltd. by various Customs Commissionerates for imports made through different ports/ICDs. Consequently, the Adjudicating Authority passed the order wherein he rejected classification of the goods ('Optical Ground Wire Cable (OPGW)' and 'Optical Fibre Approach Cable') under Customs Tariff Item 85447090 and ordered goods to be classified under Customs Tariff Item 90011000, which carries a higher duty liability. The benefit of the concessional duty rate under Notification No. 24/2005-Cus (Sr. No. 28) claimed by the Appellant 1 was rejected. The demand for differential Customs duty of Rs.84,40,282/- was confirmed under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The imported goods covered by all SCNs were held liable for confiscation under Section 111(m) of the Customs Act, 1962. No redemption fine was imposed, as the Adjudicating Authority noted that the goods were not physically available for confiscation. Penalties were imposed on the importer, M/s Kalpataru Power Transmission Ltd., under both Section 114A and Section 114AA. Penalties were imposed on two employees of KPTL viz Shri Sandipkumar Jagirdar (Assistant General Manager, Taxation) & Shri Vipin Varshney (Vice President, Project Monitoring Group) under Section 112(a)(ii) and Section 114AA.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant 1, 2, 3 have filed the present appeals against the Customs duty, interest and penalty imposed. The Grounds of Appeal are not reproduced in detail for sake of brevity, as the copy of the same is available with the Appellants as well Respondent. However, the same have been examined and the brief is as under:



Submission by Appellant 1

3.1 The core technical dispute is the classification of the imported OPGW (Optical Fibre Overhead Ground Wire) cables. The Appellants classify them under Heading 8544, while the Adjudicating Authority (Customs Department) insists on Heading 9001. The Appellants argue that the OPGW cables satisfy the description under Heading 8544, which covers "optical fibre cables, made up of individually sheathed fibres". The individual optical fibre consists of a glass core, glass cladding, a dual acrylate coating, and a unique colour coating. The Appellants contend that the dual acrylate coating, along with the colour coding, constitutes a 'sheath'. This is supported by:

- HSN Explanatory Notes to Heading 85.44, which mentions that sheaths are usually of different colours to permit identification of the fibres at both ends.
- Technical literature and US Patents which recognize "coating" as "sheathing" in the context of optical fibres.
- The coating's function is protective and enhancing tensile strength, and it must be stripped away to connect the fiber, which is indicative of a sheath and not a functional part of the core.

3.2 US Customs and EU Customs have classified similar optical fibre cables akin to OPGW under Heading 8544, holding that acrylate coating is a sheath. In the Appellants' own case, the Ld. Commissioner (Appeals), Cochin, had previously set aside a reassessment under Heading 9001 and held the correct classification was under Heading 8544. These orders were unchallenged by the customs department and have attained finality.

3.3 Heading 90.01 covers "OPTICAL FIBRE CABLES OTHER THAN THOSE OF HEADING 8544" and whose fibres are not individually sheathed. The imported OPGW is used in power transmission projects for data transmission. Heading 90.01 is generally for optical fibre bundles and cables used for illumination or image transmission (e.g., in endoscopes). Since the Appellants argue the fibres are individually sheathed by the dual acrylate and colour coating, it excludes them from the scope of Heading 9001.




3.4 The Appellants contest the invocation of the extended period of limitation under Section 28(4) of the Customs Act and the imposition of penalties under Section 114A and 114AA. The dispute is one of classification and legal interpretation, which is a matter of bona fide belief and does not amount to wilful mis-statement or suppression of facts with an intent to evade duty. The customs department was previously aware of the classification adopted by the Appellants (Heading 85.44) and had even accepted it in prior unchallenged Orders-in-Appeal. Subsequent demand is merely a "possible change in opinion". The Appellants declared the classification (85.44) and description ("OPGW cable") in the Bills of Entry, which constitutes disclosure of basic and primary facts. The classification is an industry-wide practice, and the issue is sub-judice before the Hon'ble Supreme Court, which granted a stay to another assessee, further proving it is a matter of legal interpretation where two views are possible. Claiming a classification in a self-assessment regime, even if later found incorrect, is a matter of considered judgment and does not automatically amount to mis-declaration or suppression.

3.5 Confiscation is not warranted as the Appellants acted in a bona fide manner, and there is no proven mens rea or intentional mis-declaration. The description of the goods in the Bill of Entry matched the import documents. The demand for interest is not sustainable if the principal demand for differential duty is set aside. The proceedings should have been kept in abeyance pending the decision of the Hon'ble Supreme Court on the classification of OPGW in the case of Vodafone Essar Vs. CC. The opinion of the Telecommunication Engineering Centre (TEC) relied upon by the department should not be considered valid as it is not based on technical literature, specifications, or the specific imported goods, and the term 'sheathing' is not a precise technical word. In the absence of an appeal against the assessed Bills of Entry (Out of Charge orders), the assessment has gained finality and cannot be challenged or negated by the subsequent issuance of a Show Cause Notice (SCN).

Grounds of Appeal submitted by Appellant 2 & Appellant 3

3.6 The appellants vehemently refute all allegations and contend that the penalties imposed are bad in law and should be set aside on this ground alone. As employees of M/s. Kalpataru Power Transmission Limited (the Appellant 1), their appeals are heavily reliant on the main appeal filed by the Company, and they crave leave to borrow its grounds. They submit that if the



A

proceedings against the Company are set aside, nothing survives, and the impugned order against them is also liable to be set aside. The dispute centers on the re-classification of goods, 'Optical Ground Wire Cable and Approach Cable' (OPGW), from the declared Heading 85.44 to Heading 90.01.

3.7 The imposition of penalty under Section 112(a)(ii) is fundamentally challenged on several points. Penalty under Section 112 is linked to whether the goods are liable to confiscation under Section 111. The appellants assert that they neither did nor omitted to do any act that would render the imported goods liable for confiscation. Their role involves overall supervision and providing assistance only when a legal dispute arises, and they had no involvement in the filing of the specific Bills of Entry (BOEs), which were handled in a routine course. A necessary requirement for imposing this penalty is the presence of mens rea, which the appellants state is absent. They claim their conduct was totally bona fide, and penalty cannot be imposed for a breach arising from a bona fide belief, citing Supreme Court judgments. The classification issue concerning OPGW is an industry-wide dispute, with multiple possible views, thus precluding any allegation of suppression. They rely on numerous High Court and Tribunal decisions that have consistently held that no suppression or mis-declaration can be alleged in classification disputes regarding imported Optical Fibre Cable (OFC), resulting in the dropping of proceedings related to confiscation and penalty on the assesseees and their officials.

3.8 The imposition of penalty under Section 114AA is contested as follows. Section 114AA penalizes a person who knowingly or intentionally makes, signs, or uses a declaration or document which is false or incorrect in any material particular. The appellants assert that they have not done this and furnished true and correct documents. The mere claim of an incorrect classification or an ineligible exemption does not amount to making a false or incorrect statement. They submit that penalty cannot be imposed in cases of disputes relating to classification, as different views are possible on the product classification (OPGW). There is no proof that the appellants were "in cahoots" with the Company for mis-declaration, nor did they have anything to gain or derive any personal interest or gain from any misclassification.

3.9 The impugned order wrongly imposes penalties merely on the basis of statements recorded under Section 108 of the Customs Act, without any corroborative evidence. It is a settled law that sole reliance on statements without



supporting evidence is bad in law. Furthermore, statements recorded on the interpretation of law (e.g., classification) have no value as evidence. The question of penalty does not arise if the demand for duty is ultimately found to be non-sustainable on merits or on the ground of time-bar in the main appeal. Once the main company has suffered a penalty, there is no justification for imposing a separate personal penalty on an employee, especially when the employee was merely acting under the instructions of the employer and was not a party to the fraud or personally benefited from it.

3.10 The appellants specifically rebut the impugned order's findings that they were aware of the goods' correct classification and knowingly misclassified them with malafide intent. The appellants bona fide declared the classification believing it to be correct, noting that the Company had been importing the goods under the same classification for a long time. They argue that during the relevant period, there were conflicting decisions and ambiguity on the classification of OPGW, and even the Customs Department itself was unclear on the correct heading at one point. In such a scenario, declaring a classification, even if eventually proven wrong, cannot be considered mis-declaration or suppression. The allegation of adopting an "opportunistic approach" to avail undue exemption benefit is refuted, reiterating that the appellants gained nothing personally and should not be penalized for an ambiguity in classification.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant No. 1, 2 & 3 on 16.10.2025, following the principles of natural justice wherein Ms. Madhura Kahandekar, Advocate appeared for the hearing in virtual mode on behalf of all the three appellants. She re-iterated the submissions made at the time of filing the appeal. She also made further submissions, the gist of which is as under:-

- Optical fiber cables in question are for transmission of telecommunication signals. Such cables of telecommunication use are specifically covered by Heading 85.44 as evident from the Indian Customs Tariff read with corresponding WCO HSN Explanatory and also from EU Explanatory Notes.
- Though the Hon'ble Tribunal has decided issue of classification of OFC against the importers under Heading 90.01, however, the same has been



stayed by the Hon'ble Supreme Court in the appeal filed by Vodafone India Limited.

- Without prejudice, though the Hon'ble Tribunal has decided the issue of classification of OFC against the importers, however, the demand has been upheld for normal period of limitation only. Further, confiscation of imported OFC has been set aside since the issue involved is of classification and as a consequence, redemption fine and penalty imposed have also been set aside.
- The fact that the issue of classification of OFC has ultimately decided by Larger Bench shows that the issue is debatable and not free from doubt. There cannot be suppression at the hand of the importers. In such case, extended period of limitation cannot be invoked, especially the description of the goods mentioned in the bills of entry are correct and aptly described the imported goods and same were subjected to testing on import.
- Claim to a classification whether admissible or not is a matter of belief of assessee and does not amount to mis-declaration, when there is no mis-declaration as to the description of the imported goods.
- Pursuant to Orders-in-Appeal both dated 29.12.15 and the Test Report dated 26.06.14, assessment of 2 Bill(s) of Entry pertaining to 2014 were finalized under Heading 85.44. This evidences that Heading 85.44 was accepted by the Customs Department, Cochin as classification for OPGW during the relevant period.
- Order(s) issued by various Commissionerates for the Appellants as well as other importers confirming classification of OFC under Heading 85.44 of the Customs Tariff.
- Technical Opinion and RTI response confirming classification of OFC under Heading 85.44 of the Customs Tariff. Refer Sr. Nos. 6 & 7 of Vol. II of Compilation.
- Submission / averment by the Customs department that OFC for telecommunication use is classifiable under Heading 85.44 of the Customs Tariff.




- No mis-declaration or suppression of facts etc. can be alleged even when bill of entry is self-assessed bill by the importer when the issue is limited to classification or claim to exemption benefit as the same are matter of bonafide belief and issue of legal interpretation. In fact, a few of the consignments were physically examined and granted out-of-charge. Hence, the department was always aware of the declared classification.
- It is a settled legal position that in case of any delay in 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.

She also filed additional submissions as under :-

- Optical Fibre cables in dispute ('OPGW') are primarily for data transmission (transmission of ecommunication 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 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.
- It is the Appellants' 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.



- The present issue of classification of OPGW stands settled in the Appellants' own case under Heading 85.44 involving identical goods vide the decision of the Hon'ble CESTAT, Chennai (reported at Kalpataru Power Transmission Vs. CC-2025 (1) TMI 795). Further, this decision has been affirmed by the Hon'ble Supreme Court as well in 2025 (7) TM1 1353.
- In any case, 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 Appellants adopt all the submissions made by Vodafone Essar before the Larger Bench on classification.
- In addition, 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 Appellants. 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, 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.
- 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 Appellants.
- 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 (i) 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.

- Proposed demand with respect to OPGW imported during the period 29.06.2016 to 09.01.2020 is miserably time barred (except I 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 is being imported by the Appellants since 2011/2014. 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:

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.

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)



- In light of the above, the finding of misstatement or suppression is completely incorrect.
- Without prejudice, 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.

- 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
 - b. O-1-A dated 15.12.2011 of CC Appeals, Kolkata; and
 - c. O-1-A dated 19.01.2017 of CC (Appeals), Kolkata.
- 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). This itself shows that there was always a doubt regarding classification of OFC within the Customs department itself.
- 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 judgments. 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-lyd.) Affirmed by Supreme Court in 2019 (367) ELT A328.

- 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 Impex Vs. Principal CC-2023 (1) TMI 998 at paragraph 50 and Challenger Cargo Carriers Vs. Principal CC-2022 (12) TMI 621 at para 13.
- 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, invocation of extended period of limitation is incorrect, and so also confiscation of the imported goods and imposition of penalty on the Appellants and their officials.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellants in their appeal. Copies of appeal memorandum were also sent to the jurisdictional authority for comments. However, no response has been received.

5.1 On going through the material on record, I find that the following issues need to be addressed:

- Whether the entire demand confirmed vide the OIO is barred by the extended period of limitation as prescribed under Section 28(4) of the Customs Act, 1962.



- (ii) Whether the original assessment of the imported goods under CTH 8544 70 90 was correct, or if the re-classification to CTH 9001 10 00 by the Adjudicating Authority is legally sustainable.
- (iii) Whether the imposition of penalties on the Company (KPTL) i.e Appellant No. 1 and its officials Shri Sandipkumar Jagirdar , i.e Appellant No. 2 and Shri Vipin Varshney i.e Appellant No. 3 under Sections 112(a)(ii), 114A, and 114AA is justified in law.

5.2 The Appellate Authority notes that the core challenge against the OIO is the application of the extended period of limitation as the majority of the disputed transactions fall outside the normal period of two years. The Show Cause Notices (SCNs), except for a few Bills of Entry (BOEs), sought to invoke the extended period of limitation under Section 28(4) of the Customs Act, 1962, alleging suppression of facts and wilful mis-statement with the intent to evade duty. The extended period of five years under Section 28(4) can only be invoked if the short-levy is specifically due to "collusion", "wilful mis-statement", or "suppression of facts" by the importer with an established "intent to evade payment of duty". The presence of mens rea (a guilty mind) is a non-negotiable prerequisite.

5.3 The records clearly show that the Classification dispute regarding OPGW (Optical Ground Wire Cable) under CTH 8544 or CTH 9001 is an industry-wide issue. The Appellant No.1 (KPTL) had previously imported the identical product (OPGW) and initially faced a classification dispute at Cochin Customs. However, the Commissioner (Appeals), Cochin, explicitly investigated the matter and vide Orders-in-Appeal (dated 24.07.2014 and 10.11.2015) explicitly ruled that OPGW was correctly classifiable under CTH 8544, noting that the fibres were "plastic covered" (individually sheathed) as confirmed by the test report. These appellate orders attained finality as the department did not challenge them. The Appellant was therefore operating under a clear, reasonable, and bona fide belief that their chosen classification under CTH 8544 was correct and legally valid, as affirmed by the Customs hierarchy itself. Since the Appellant was relying on a binding judicial precedent in their favour from the Customs Appellate Authority, their continued classification under CTH 8544 was rooted in a bona fide belief. This prior adjudication clearly established the department's knowledge of the issue, rendering the subsequent allegation of "suppression of



facts" or "wilful mis-statement" legally untenable. The invocation of the extended period in this context amounts to a mere "change of opinion," which is not permissible for invoking Section 28(4).

5.4 The Hon'ble Supreme Court and various Tribunals have consistently held that the extended period of limitation under Section 28(4) (previously 28(1) proviso) cannot be invoked in cases primarily involving a dispute of classification or legal interpretation, especially where the facts are known to the department, or where there is a bona fide belief on the part of the assessee due to contradictory departmental orders or an industry-wide confusion. The key ingredients of collusion, willful mis-statement, or suppression of facts with intent to evade duty are necessary for invoking the extended period. The Supreme Court in *Hindustan Steel Ltd. Vs. State of Orissa* reported at 1978 (2) E.L.T. (J 159) (S.C.) held that no penalty should be imposed for a mere technical or venial breach where the breach flows from a bona fide belief. The Supreme Court in *Northern Plastic Ltd. Vs. CCE* reported at 1998 (101) E.L.T. 549 (S.C.) held that the declaration was a claim made on the basis of a belief and cannot be considered a mis-declaration for the purpose of invoking the extended period or imposing penalties. The Tribunal in *Midas Fertchem Impex vs. Principal CC* reported at 2023 (384) E.L.T. 397 (Tri. - Del.) held that claiming a wrong classification or ineligible exemption does not amount to misstatement or suppression. Since the Appellant had a legitimate, previously accepted claim of classification and the matter involved a legal interpretation issue with conflicting views even within the department, the invocation of the extended period of limitation under Section 28(4) for the old period is unsustainable. The demand for differential duty should be restricted to the normal period of limitation of two years (or one year, depending on the relevant period, which is now two years) immediately preceding the date of the SCN.

5.5 The primary ground for setting aside the majority of the confirmed demand and all penalties is the illegal invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962. The revenue's case for invoking the extended period fails because the dispute is fundamentally one of classification and legal interpretation—a matter of bona fide belief. Where the department (Customs or DRI) was fully "aware" of the classification adopted and the underlying facts through prior investigations and subsequent court/tribunal decisions, the allegation of "suppression of facts" or "mis-statement" is entirely negated. The investigation essentially amounted to a "change of opinion" by a



different set of officials, which cannot be a ground for invoking the extended period.

5.6 The issue of classification itself is highly contentious and deeply technical:

- CTH 8544: Covers optical fibre cables "made up of individually sheathed fibres"
- CTH 9001: Covers optical fibre cables "other than those of heading 8544"

5.7 The core technical dispute revolves around whether the dual acrylate coating and colour coating on the optical glass fibre constitute "sheathing" for the purposes of CTH 8544. The Appellant argues the dual acrylate coating and colour coating serve a protective function and must be stripped for coupling. They cite US Customs Rulings and EU Explanatory Notes which recognize such coatings/layers as "sheaths" in the context of telecommunication cables, arguing that Tariff entries must keep up with technological advancements. The OIO relies on technical opinions from TEC/NTH, asserting that the dual acrylate coating is merely an integral primary protective coating (like an extension of the cladding), and true "sheathing" must be thicker (e.g., 900um) and applied by extrusion.

5.8 Given the classification dispute is pervasive, technical (relying on conflicting expert opinions and international practices), and most of the period of demand being barred, a final determination on merits requires fresh scrutiny. There is a judicial precedent upholding a classification in the Appellant's favour on identical goods. In the interest of justice the merits of classification for the period within two years is remanded the Original Adjudicating Authority for de novo consideration in light of all evidence, including the judicial precedent.

5.9 Since the extended period of limitation is not applicable, the imposition of penalties under Section 114A (linked to Section 28(4)) is also not sustainable. Similarly, the argument for imposing penalties on the officials under Section 112(a)(ii) and Section 114AA hinged on the finding of willful misstatement/suppression/malafide intent. The Appellate Authority notes the submissions that the officials acted within a system based on technical certifications and existing departmental clarifications/orders. The officials were salaried employees with no personal interest or gain from the alleged misclassification. Furthermore, the officials were merely salaried employees acting on a bona fide and accepted legal position. There is no evidence they derived any "personal interest or gain" or acted with "mens rea," which is



essential for personal penalties. Their participation in the investigation as company representatives cannot be the basis for penalty. The issue was a purely legal and technical matter on which the officials were not experts. The act of claiming a classification based on a bona fide belief, especially when supported by a prior appellate authority order, does not constitute the 'mens rea' (guilty mind) required for imposing mandatory penalties. It is well-established that imposing personal penalties on employees requires proof of their active and wilful involvement, coupled with some evidence of personal benefit or gain. No such evidence was produced by the Revenue. The officials were acting in their official capacity within a legal framework informed by a prior favourable order, meaning the mens rea is absent. Numerous judicial pronouncements support that no penalty is imposable on individual employees when the issue is one of a classification dispute or where no personal benefit is proved. As the underlying charge of wilful mis-declaration/suppression is set aside for the Company, the charges against the officials under Sections 112(a)(ii) and 114AA, being consequential and requiring a higher degree of mens rea, cannot be sustained. Given that the finding of willful suppression is not sustainable for the extended period, the imposition of penalties on the Company (KPTL) i.e Appellant No. 1 and the officials Shri Sandipkumar Jagirdar i.e Appellant No.2 and Shri Vipin Varshney i.e Appellant No. 3 are also not justified and must be set aside.

6. In light of the detailed findings above, the Appellate Authority concludes that the primary demand raised under the extended period of limitation is bad in law, and the imposition of penalties is therefore unwarranted.

I. Order in respect of M/s Kalpataru Power Transmission Ltd.:

- a. The rejection of declared classification under Tariff Item 8544 70 90 and the re-classification under Tariff Item 9001 10 00 for all imports covered by the various SCNs for the period beyond two years from the date of each of the 6 SCNs are set aside on the grounds that the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962, is not sustainable.
- b. The demand for differential Customs duty and any corresponding interest under Section 28AA of the Customs Act, 1962, arising from these time-barred Bills of Entry are hereby set aside.
- c. The proposed confiscation of goods under Section 111(m) of the Customs Act, 1962, pertaining to the time-barred period is consequently set aside.



- d. The imposition of penalty under Section 114A of the Customs Act, 1962 and Section 114AA of the Customs Act, 1962, on M/s Kalpataru Power Transmission Ltd. are hereby set aside.

II. Order in respect of Shri Sandipkumar Jagirdar (Appellant No.2) and Shri Vipin Varshney (Appellant No.2) :

- a. The imposition of penalty of under Section 112(a)(ii) and Section 114AA on Shri Sandipkumar Jagirdar and Shri Vipin Varshney is hereby set aside.

III. Order on the Non-Time-Barred Bill of Entry and Remand:

- a. The matter relating to the demand period within two years is remanded back to the Original Adjudicating Authority (The Additional Commissioner of Customs, Custom House, Mundra) for de novo adjudication on merits, limited solely to this specific transaction falling within the normal period of limitation.
- b. The Original Adjudicating Authority is directed to afford a fresh, reasonable opportunity of hearing and re-adjudicate the matter, taking into consideration all the submissions of the Appellant.
7. The appeal filed by M/s Kalpataru Power Transmission Ltd. (Appellant No.1) is partly allowed and partly remanded as stated above.
8. The appeals filed by Shri Sandipkumar Jagirdar, (Appellant No.2) and Shri Vipin Varshney (Appellant No.3) are allowed as stated above.



सत्यापित/ATTESTED
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 अधीक्षक/SUPERINTENDENT
 सीमा शुल्क (अपील्स), अहमदाबाद.
 CUSTOMS (APPEALS), AHMEDABAD

1.144

(AMIT GUPTA)

Commissioner (Appeals),
 Customs, Ahmedabad

Date:18.11.2025

(1) F.No.S/49-126/CUS/MUN/2024-25

(2) F.No. S/49-125/CUS/MUN/2024-25

(3) F.No. S/49-124/CUS/MUN/2024-25

4476

By Speed Post /E-Mail

To,

(1) M/s Kalpataru Power Transmission Ltd.(F.No.S/49-126/CUS/MUN/2024-25),
Plot No. 101, Part-III, GIDC Estate, Sector-28,
Gandhi Nagar, Gujarat- 382028

(2)Shri Sandipkumar Jagirdar (F.No. S/49-125/CUS/MUN/2024-25)
Assistant General Manager (Taxation)
of M/s Kalpataru Power Transmission Ltd.,
Plot No.-101, Part-III, GIDC Estate, Sector-28,
Gandhi Nagar, Gujarat-382028

(3) Shri Vipin Varshney, (F.No. S/49-124/CUS/MUN/2024-25)
Vice President- Project Monitoring Group,
M/s Kalpataru Power Transmission Ltd.,
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Gandhi Nagar, Gujarat-382028

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House , Mundra.
3. The Additional Commissioner of Customs, Custom House , Mundra.
4. Guard File.

