



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009  
दूर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43  
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**  
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD**  
**380009**  
**PHONE : (079) 2754 46 30 FAX (079) 2754 23 43**

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-16/Pr.Commr/O&A/2018

DIN- 20240971MN0000240463

आदेश की तारीख/Date of Order : 10.09.2024  
जारी करने की तारीख/Date of Issue : 10.09.2024

द्वारा पारित/Passed by:- **शिव कुमार शर्मा, प्रधान आयुक्त**  
**Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR- 42 -2024-25 dated**  
**10.09.2024 in the case of M/s GTPL Hathway Ltd, GTPL House, FP No.**  
**50, Opp. Armedia, Near Pakwan Crossroad, Sindhu Bhavan Road,**  
**Bodakdev, Ahmadabad -380059**

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में

दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Sub: Show Cause Notice Nos. No. DRI/MZU/CI/INT-38/2018 dated 06.04.2018  
issued by the Additional Director General, DRI, MZU, Mumbai to M/s GTPL Hathway  
Ltd. 202, GTPL House, FP No. 50, Opp. Armedia, Near Pakwan Crossroad, Sindhu  
Bhavan Road, Bodakdev, Ahmadabad -380059

### Brief facts of the case:

Intelligence was developed that certain importers of 'Digital Headend equipment for CATV' like Digital Encoders, Decoders, Modulators/demodulators, Multiplexers, QAM Modulator etc. were evading Customs duty by mis-classifying these goods under CTH 8517 (claiming them to be telecom equipment) by not disclosing the principal use of these goods i.e. by suppressing the facts that these are used for reception and transmission of Cable Television namely headend equipment'.

1. One such importer is M/s. GTPL Hathway Ltd. (formerly known as Gujarat Telelink Private Limited), having their Registered Office located at 202, Shahjanand Shopping Centre, 2nd Floor, C)pp. Swaminarayan Mandir, Sahibaug, Ahmedabad, Gujarat - 380004 (here-in-after referred to as 'GTPL'), holders of IEC No. 0807006131, was engaged in import of Digital Headend Equipments amongst other business activities.

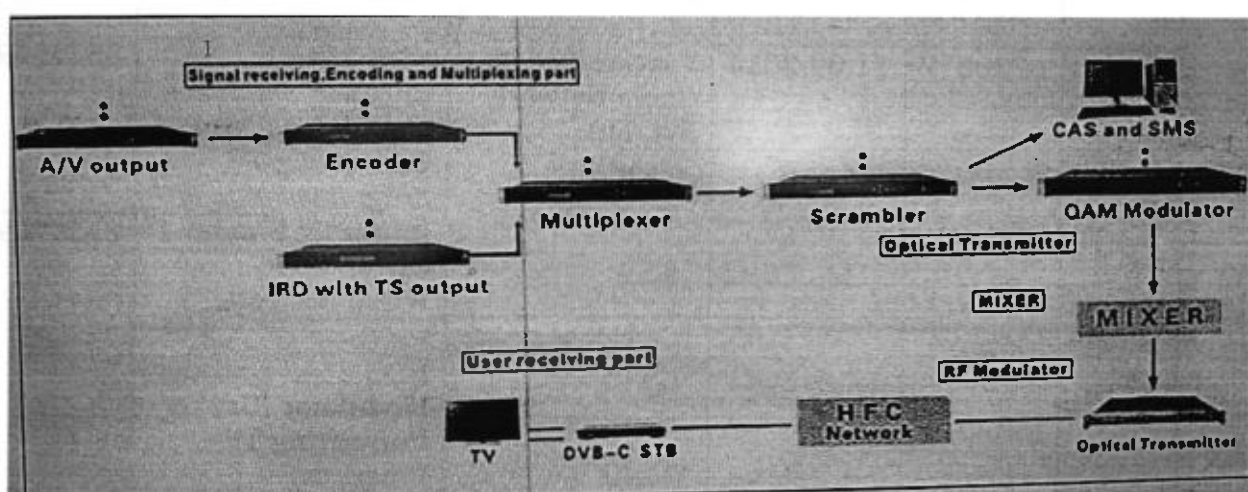
2. Scrutiny of import data and preliminary enquiries in pursuance to the above intelligence, revealed as under:-

i. GTPL had imported Cable TV - Digital Headend Equipments such as Modulators, Encoder, Modulators, Multiplexers etc. and were mis classifying them under CTH 8517 which is meant for telecom equipment and there by availing the benefit of 'NIL' BCD.

ii. (TP 1, was a Multi System Operator (MSOs) who provided Cable TV services to Local Cable Operators (LCOs) and other local subscribers.

iii. GTPL advertise themselves as a leading Cable TV Distribution company in across various states in India.

3. LINE DIAGRAM OF A TYPICAL HEADEND EQUIPMENT PLACED AT THE PREMISES OF MSOs IS AS UNDER:



(source: <https://www.alibaba.com/product-detail/tv-station-broadcast-equipment-digital-tv-60093558082.html>)

4. 1. From the analysis of import' data and preliminary enquiries in pursuance to the above intelligence, it appeared that the CTH claimed in the imports made by the GTPL was different when compared to similar imports made by other importers (from the similar suppliers like M/s. Chengdu Dexin Digital

Technologies Corp. Ltd./Dexin Digital Technologies Corp. Ltd., M/s Thomson Video Networks etc.). Representative data in respect of some of the importers for similar items is illustrated hereunder:

Sr.No.	B/E No.	B/E Date	Name of Importer	Item Description	CTH
1	5066848	27.04.2016	Analog Systems	Encoder (Digital Broadcast System) (Use In Cable TV Headend' Encoder (Digital Broadcast System) (Use In Cable TV Headend)	85287390
2	5488589	02.06.2016	Analog Systems	Encoder (Digital Broadcast System) (Use In Cable TV Headend' Encoder (Digital Broadcast System) (Use In Cable TV Headend)	85287390
3	3401687	28.09.2013	RVG Diginet Solutions Pvt. Ltd	Dx308 IP Modulator (Without Scrambling)	85299090
4	4374167	25.02.2016	Surbhi Broadband Pvt. Ltd	Modulator - L2-0101 s2 (For Cable TV Distribution)	85299090
5	4497936	08.03.2016	Vision Hire Entertainments Pvt.Ltd. ,	6 in 1 DVB-S2 Tuner Mux	85299090
6	6730677	11.09.2014	Fastway Media Cable Network Pvt. Ltd.	NDS 3548B Encoder Modulator (Use For Converting TV Programs Into IPFV Format On Wired Network	85299090
				NDS 3548 Encoder Modulator (Use for Converting TV Programs into IPFV format on wired network	85299090
				NDS 3542B Encoder Modulator (Use for Converting TV Programs	

				into IPTV format on wired network	
7	6781854	17.09.2014	Global Takeoff India Pvt. Ltd.	NDS 3107-S2 (6 Tuner Input MUX/ mA IRD) [Parts Of Catv	85299090
8	8923653	15.04.2015	Surbhi Broadband Pvt. Ltd	IP QAM Modulator - L2 Multijet Streamer (For Cable Tv Distribution	85299090

**4.2.** Accordingly, vide letter dated 15.03.2018, Shri Subrata Bhattacharya, Vice-President-Technology, GTPI, was summoned under the provisions of Section 108 of the Customs Act, 1962, to record his statement and produce relevant documents related to their imports of Digital Headend Equipments.

#### **5. PROCUREMENT OF NECESSARY DOCUMENTS:**

In response to the summons letter dated 15.03.2018, Shri Subrata Bhattacharya, Vice-President-Technology, GTPL appeared on 22.03.2018 and submitted necessary documents which had been sought by this office vide the above mentioned letter dated 15.03.2018, for further investigations by this office. The relevant documents are enlisted below:

Sr.No.	B/E. No.	B/E Date	Import Documents submitted	Remarks
1	2	3	4	5
1	9849597	15.04.2013	1) Copy of Bill of Entry. 2) MCBS Invoice no. MKT/DIV/RI/HSS/03/2013-14 dated 10.04.2013 3) Air Way Bill No. 62995036211 dated 07.04.2013 4) Chengdu Dexin Digital Technology Co. Ltd. Invoice and Packing List no. GD 13040 dated 07.04.2013, 6) High Sea Sales Agreement dated 10.04.13. 7) Literature/Brochure of the imported goods.	1) Procured on Hi: Sea Sales from Modern Communications and Broadcast Systems Pvt. Ltd. (MCBS) . 2) All documents mentioned in Column 4 of Sr. no 1, is placed as (RUD-2)
2	7959288	26.12.2016	1) Copy of Bill of Entry. 2) Invoice and Packing List no, 65413_A dated 18.11.2016 4) Air Way Bill No. 0865633046 dated 29.11.2016 5) Literature/Brochure of the imported goods	1) Bill of Entry assessed provisionally 2) All documents mentioned in Column 4 of Sr. no 2, is placed as (RUD-3)

## **6.1 STATEMENT OF SHRI SUBRATA BHATFACHARYA, VICE. PRESIDENT (TECHNOLOGY), GTPL.:**

Shri Subrata Bhattacharya, Vice-President-Technology, GTPL, was summoned and his statement dated 22.03.2018 was recorded under Section 108 of Customs Act, 1962. In his statement, Shri Subrata Bhattacharya, interalia stated that:

i. the goods imported by GTPL Hathway Ltd. vide the Bills of Entry nos.9543581 dated 12.03.2013 and 9849597 dated 15.04.2013 had been procured from M/s Modern Communications and Broadcast Systems Pvt. Ltd.(MCBS) through High Sea Sales; that they did not procure the same directly from the foreign supplier, Chengdu Dexin Digital Technology Co. Ltd. since MCBS were the distributors of Chengdu Dexin Digital Technology Co. Ltd. in India. The encoders imported vide the Bills of Entry nos. 9543581 dated 12.03.2013 and 9849597 dated 15.04.2013 were required by GTPL urgently for digitalization of Analogue Cable TV services at places where the other telecom service providers did not have their optical fibre network through which they could route their Digital Cable TV signals to reach the customers; that they would compress and convert the already present Analogue signals by the encoders and provide Digital Cable TV services to their customers. The said arrangement was of temporary nature to achieve the deadline of the government for achieving Digitalisation {Phase II -DAS (Digital Addressable System)};

ii. GTPL provided Cable TV Services to Local Cable Operators (LCO's) as well as direct customers in around 13 states in India; that they provided approx. 450 pay channels and free-to-air channels to their subscribers including Standard Definition and High Definition; that they received signals from various broadcasters like Star Network, Sony Ent. Network etc. through their various satellites; that they combined the different channels and converted them into Radiofrequency (RF) using Digital Headend Equipments;

iii. he was the head of the Technical Department of M/s GTPL Hathway Ltd.; that his role included integration and designing of all the technology based requirements of GTPL for digitalization of Cable TV Services; that it also included monitoring the combined signals at the Headend (HE) and design the network to carry the signal upto the premises of the subscribers;

iv. the various equipments required for providing Digital Cable TV Services included Digital Headend Equipments which in turn includes decoders provided by broadcasters, encoders, IRD (intergraded receiver decoders), multiplexers, scramblers etc. and other network equipments like Switches, Edge QAM (Quadrature Amplitude Modulation), Optical transmitters, optical fibres, Optical receivers/Nodes, co-axial/RF amplifiers etc.;

v. the Headend equipment installed at their premises comprised of broadcasters IRDs (intergraded receiver decoders)/decoders, encoders, multiplexers with scramblers and that all these equipment at the control room of their premises alongwith a dish antenna, LNB (Lx)w Noise Block Down Converters), Co-axial Cables were termed as Headend equipments by GTPL;

vi. As regards to the functions and role of various Headend equipment imported and installed at the premises of GTPL for achieving the Digitalization of Cable TV Services, he stated that GTPL achieved the Digitalization of Cable TV Services by following the procedure explained below:-

- a. The signals from the various broadcasters were received by decoders /IRDs which are then fed to the encoders. These encoders encode the video, audio & data signals into digital signals in compliance with MPEG-2 & MPEG-4 standards.
- b. These different digital signals are then combined by the multiplexers to give a singular Digital output over IP. This signal is then transmitted over long distance via National Long Distance Telecom Networks (NLD Links) which comprised of Optical Fibres; that GTPL generally lease the NLD Links from Tata Tele services, Airtel, Reliance Communications etc. for carrying their Cable TV signals to various hubs located in various cities.
- c. At the various hubs, these signals from the NLD links were converted to digital RF signals using Edge QAMs. These Digital RF signals were distributed to the LCOs/local subscribers via Coaxial cables or an optical fibre (Hybrid Fibre Coax Network) as per their requirement.

vii. As regards to the various standards that these Digital Headend Equipments imported by GTPL were based upon, he stated that the same were based on DVB-C (Digital Video Broadcasting – Cable) standards;

viii. the specifications of the Headend Equipment to be procured as per their requirements for digitalization of Cable TV Services were decided by his team on the basis of features and functions of the various Digital Headend Equipment; that the same were mentioned to the suppliers for procuring the same; for the procurement of the goods imported vide the above mentioned Bills of Entry, the suppliers MCBS (distributors of Thomson Products in India), M/s Harmonic Inc., the specifications of the goods were mentioned to the suppliers by his team as per the requirement of GTPL; that the equipment procured by them were as per various DVB standards and hence they placed the Purchase Orders for their procurement as per the set standards (DVB standards) for digitalization of Cable TV Services;

ix. the Digital Headend Equipment imported by M/s GTPL Hathway Ltd. vide the above mentioned Bills of Entry, was used for providing only Digital Cable TV Services to the various LCOs and their direct customers/ subscribers;

x. their subsidiary, M/s GTPL Broadband Pvt. Ltd. were Internet Service Providers (ISP) - since 2007. For providing the Internet services, they had purchased the desired bandwidth directly from bandwidth providers like Airtel, Tata Teleservices, Reliance Communications (R-Com), Vodafone etc. and used routers to manage the bandwidth; that the bandwidth was transmitted/distributed through fiber optics & Cat-5 Cables to provide Internet services to their customers;

xi. the Digital Headend Equipments installed at the premises of GTPL were not used to provide internet services as the technology for the same was totally different from providing Cable TV services using the said equipments and that the Digital Headend Equipments were not used for transmitting the bandwidth to supply internet services;

xii. as per the SLA (Service Level Agreement), they get the servicing / after sales servicing /defective hardware replacements directly from their suppliers like Harmonic Inc., Cisco etc;

xiii. these Digital Headend Equipment were reception apparatus for digitalisation of Analogue Cable TV Signals for providing Digital Cable TV Services and were based on Digital Video Broadcasting (DVB) Standards.

## **6.2. INFERENCE FROM THE ABOVE STATEMENT OF SUBRATABHATTACHARYA:**

From the above statement of Shri Subrata Bhattacharya it is evident that the Digital Headend Equipments, procured by GTPL from MCBS on High Sea Sales and from Harmonic, were complying with various DVB standards and were used only to provide Digital Cable TV services and nothing else. Thus it appeared that the claim of GTPL that the Digital Headend Equipments supplied by them were telecommunications equipment is not only incorrect but appears to have been made with an intention to avail Customs Duty benefit applicable to telecom equipment. The imported goods were meant to provide Cable TV services only. It appears that GTPL classified the goods as telecommunication equipment only to mis-classify the goods and thereby avoid payment of applicable customs duty.

Vide the above statement, Shri Subrata Bhattacharya confirmed that the Digital Headend Equipment imported by GTPL were reception apparatus, for digitalisation of Analogue Cable TV Signals for providing Digital Cable TV Services to their customers. It was further stated that the impugned goods were based on Digital Video Broadcasting (DVB) Standards.

## **7. SEARCH OF THE PREMISES OF M/S THOMSON VIDEO NETWORKS INDIA PVT. LTD.:-**

In light of the fact that M/s Thomson Video Networks SAS, France was one of the suppliers of Digital Headend Equipments to MCBS who in turn sold the same to GTPL on High Sea Sales Basis, a search was conducted under Panchnama dated 18.09.2017 (RUD 5) at the premises of M/s Thomson Video Networks India Pvt. Ltd. to recover documents and evidences relevant in the said case. During the course of the search, certain documents were recovered from the said premises which were taken over under the said panchnama. Some of the relevant documents are listed below for reference:

i. Invoice nos. THVN 1386 dated 20.06.2012, THVN0788 dated 07.10.2011, THVN0800 dated 11.10.2011 (RUD 6) wherein the CTH of DHE like encoders is mentioned as '8528'. It appears that the CTH in invoices were mentioned as 8528 in 2011 but would have been changed over time to suit the needs and requirements of their partners/re-sellers to evade duty. A representative copy of one of the invoice from the above said invoices is depicted below for sake of brevity:



# THOMSON

## FACTURE D'EXPEDITION / SHIPPING INVOICE

### Thomson VIDEO NETWORKS

Rue du Clos Courtel  
35510 Cesson Seignie  
TEL : +33 (0)2 97 27 26 93

N° FACTURE/Invoice

THVN1386

DATE/Date

02/02/12

AUTRES REFERENCES/Other references

FINAL EXPORT CC00811

DESTINATAIRE/Destination

Mr. Hafiz Alam Balhok  
ATN Bangla Ltd  
43 Arden Row, London, E1 2EG, UK  
Tel: +44 20 7426 4870, Fax: +44 20 7377 2408, Mobile: +44 (0)795  
105 6564  
Email: hafiz.Ezzamel@bt.com 2nd Email: hafiz71@bt.com

Notation/Notation

CONTACT:  
TEL:

EMETTEUR DU VOUCHER/Issuer's Name

Pays d'origine/Country of origin

EU - US

DATE DE LIVRAISON/Date of delivery

23/05/2012

DATE D'EXPEDITION/Date of shipment

20/05/2012

INCOTERM/Incoterms

EXW/Ex

DESTINATION/Destination

THVN - CESSON SEIGNE  
- France - INCOTERMS  
(2010)

PRE-TRANSPORT PAY/  
Pre-shipment

LIEU DE RECEPTION/  
Place of receipt

CONTRAT DE PAIEMENT/  
Form of payment

MONNAIE DE PAIEMENT/  
Currency of payment

USD

IDENTITE DU MOYEN DE TRANSPORT/  
Transport ID

LIEU DE CHANGEMENT/  
Place of loading

CESSON SEIGNE - FR

LIEU DE CHANGEMENT/  
Place of change

LONDON

LIEU DE DESTINATION/  
Place of destination

United Kingdom

DESIGNATION DES ARTICLES EN QUANTITE EN VUE/  
Description of goods to be made under bill

OUR SYSTEM QUOTATION N12341 IN CHI-MI DATED 19<sup>th</sup> APRIL

ENCODER VIBE EN 2001  
MODEL : NEN 20001BA  
HS CODE : 8528719000

ENCODER VIBE EN 2001  
MODEL : NEN 20001BA  
HS CODE : 8528719000

QUANTITE/ Quantity	PREMIER PRIX/ Unit price	MONTANT TOTAL/ Amount
1	3000	3000
1	2000	2000

EMBALLAGE/Packing

POIDS BRUT/  
Gross weight

Poids net/  
Net weight

MONTANT TOTAL/  
Total amount

8000

Freight

Freight

DEDUCTIONS/  
Deductions

Freight

5000

USD

CLASSEMENT/Classification

1 PACKAGE - DIMENSIONS : 75X50X17CM  
GW : 10.5KGS  
1 PACKAGE - DIMENSIONS : 65X50X22CM  
GW : 7KGS

THOMSON

THOMSON VIDEO NETWORKS SAS

Capital social de 5 019 345 €

6, rue du Clos Courtel - CS 31719

35517 Cesson Seignie Cedex - France

Tel : +33 (0)2 97 27 26 93 - Fax : +33 (0)2 97 27 26 94

33292173885

SIGNATURE/Signature

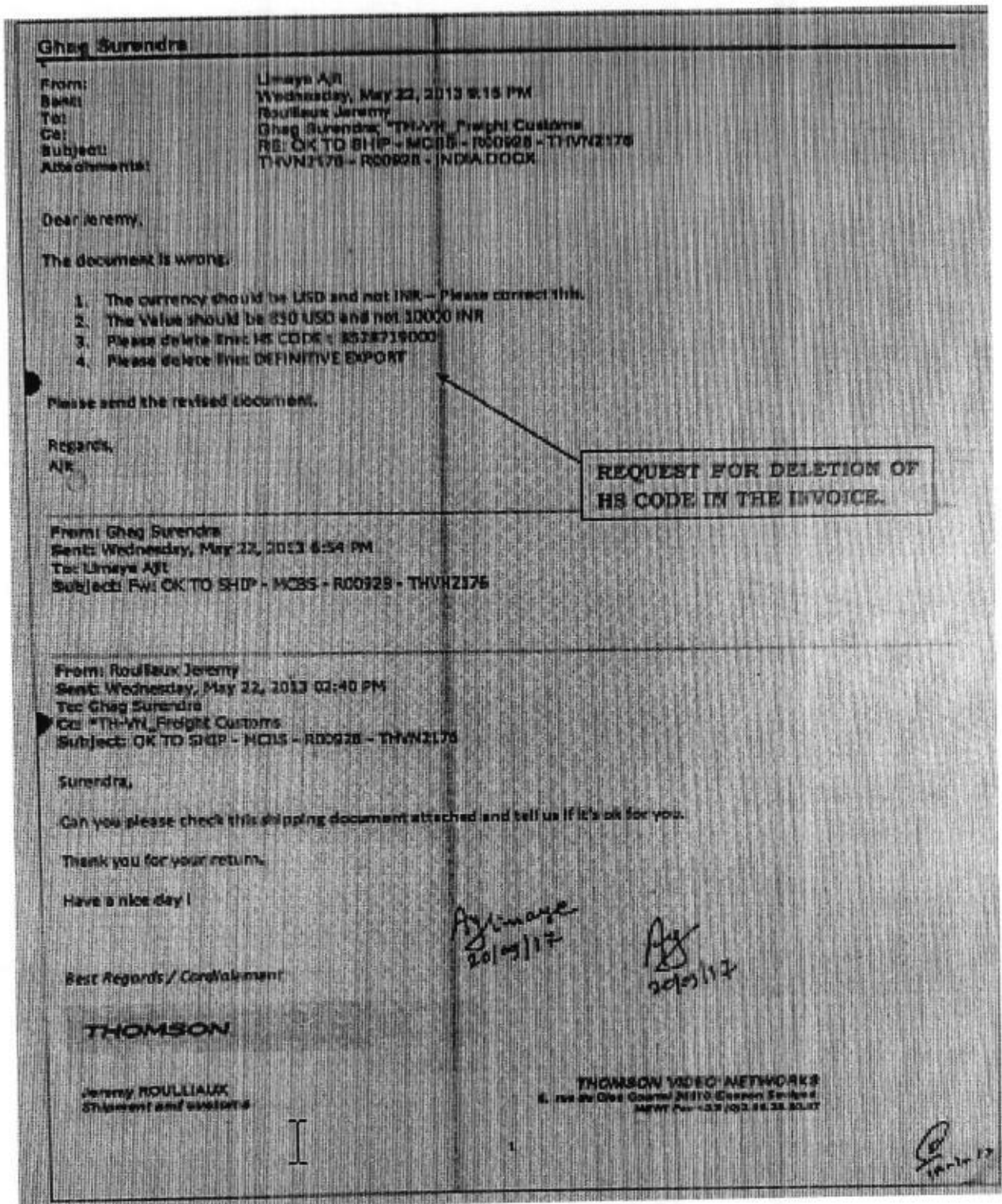
PC-S RENSEIGNEMENTS/INFORMATION

Bref 477 555 718 00048 - Code APE 2630Z

HS Code of Encoder is mentioned as  
8528719000

ii. Email dated 22.05.2013 from Shri Ajit Limaye to Mr. Roulliaux Jeremy, Shipment and Customs, Thomson, France alongwith the corresponding Invoice no. THVN2176 dated 22.05.2013 (having HS Code 8528719000) requesting to delete the HS Code 8528719000 as depicted below. It appears that the said email communication ensured that the HS code 8528 would not appear in the suppliers invoice and any of the import documents to enable the re-sellers to classify the goods as per their requirements to avoid payment of applicable customs duty.

A. copy of the e-mail dated 22.05.2013 requesting to delete HS Code:



B. Copy of Invoice No. THVN2176 dated 22.05.2013



12

# THOMSON

## Thomson VIDEO NETWORKS

Rue du CLOS COURTEL  
33310 Cesson Sevigne  
SIRET : 477 588 718 80048

DESTINATAIRE/Consignee  
MCBS  
B-138/139 GDC ELECTRONICS  
ESTATE,  
SECTOR-35, GANDHINAGAR-382044  
GUJARAT  
INDIA

RECEPTE/Receivable  
CONTACT : MR RAJNIBEN  
TEL : 079-33287385

### FACTURE D'EXPEDITION / SHIPPING INVOICE

N° FACTURE/Invoice  
THVN2178

DATE/Date  
6/22/2013

AUTRES RECHERCHES/Other references  
DEFINITIVE EXPORT H00000

ACHETEUR/Buyer  
MCBS  
B-138/139 GDC ELECTRONICS  
ESTATE,  
SECTOR-35, GANDHINAGAR-382044  
GUJARAT  
INDIA

BANQUE DU VENDEUR/Seller's bank

PAYS D'ORIGINE/Country of origin  
FRUE

N° SIRET SIRET/India number of

DATE DE MISE A DISPOSITION  
Date of shipment  
6/22/2013

DATE D'EXPIRATION DEMANDE  
Date of shipment exp.  
5/22/2013

INCOTERMS/Incoterms  
DDP

DESTINATION/Destination  
THVN - GUJARAT - INDIA  
INCOTERMS 2010 D

PRE-TRANSPORT PART  
Percentage

LIBRE DE RECEPTION  
Free of receipt

CONDITIONS DE PAIEMENT  
Terms of payment

MONTANT DE PAIEMENT  
Amount of payment  
148

SECTEUR DU MOYEN DE TRANSPORT  
Transport ID

LIBRE DE CHARGEMENT/Free of receipt  
CESSON SEVIGNE - FR

LIBRE DE DECHARGEMENT  
Free of receipt  
GUJARAT

LIBRE DE DESTINATION/Free of destination  
INDIA

DESCRIPTION DES ARTICLES/DI CLAIR ENVOI EN MET Description of goods to send in meter	Q. QUANTITE Quantity	P. PRIX UNITAIRE Unit price	M. MONTANT Amount
ELECTRONIC EQUIPMENT ENCODER EM2000 SN : RM076NB HS CODE : 8528729000	1	10000	10000

EMBALLAGE/Packing

DESCRIPTION/Description

PREMIER/First

DEUXIEME/Second

QUATRIEME/Fourth

CHARGEMENT/Charge

1 PACKAGE  
DIMENSIONS : 75X55X17CM  
GW : 11KGS

PRIX UNITAIRE  
Unit price

PRIX TOTAL  
Total price

ALPHAS COURTES/Short

MONTANT TOTAL/Total amount  
10000

TOTAL CDD (Total total charge)

TOTAL OUESTION (Total deduction)

TOTAL PAYER (Total pay)

10000 INR

LIBRE D'ENVOI/Free of hand

CESSON SEVIGNE

INDIA

YASHKUM DABAH

33293285388

SIGNATURE/Signature

THOMSON

Page 1/1

Thomson Invoice having the HS code as 8528719000 for Encoder.

8.1. STATEMENT OF SHRI AJIT V. LIMAYE, SALES DIRECTOR, M/STHOMSON VIDEO NETWORKS INDIA PVT. LTD.:

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In view of the above document recovered during the search of the premises of M/s Thomson Video Networks India Pvt. Ltd., Shri Ajit Vijay Limaye, Sales Director, M/s Thomson Video Networks India Ltd. was summoned and his statement dated 22.09.2017 (RUD 7) was recorded under Section 108 of Customs Act, 1962. In his statement, Shri Ajit Vijay Limaye, inter alia stated as under:

i. That their parent company, Thomson, France were the suppliers of DHE like Encoders, Decoders/IRDs, Multiplexers, Video Servers etc. and M/s Harmonic Inc. manufactured and supplied H-QAM modulators required for Cable TV; that for Thomson, France, MCB Swere a partner/re-seller for supplying DHE in Digital Cable TV segment and their customers were various Cable TV service providers only;

ii. That for the goods supplied by their parent company, Thomson, France to their partners/re-sellers, the invoices were sent by Thomson, France to Thomson, India to confirm the particulars like CTH, COO etc., before dispatching the shipment to India and they in turn sent the same to the partners/re-sellers for confirmation; that once the confirmation was received by them from the partners/re-sellers, they accordingly confirmed Thomson, France for shipping the goods to India. He further confirmed that the partners did suggest changes like CTH, description etc. which they forwarded to the logistics department in France who made the changes accordingly;

iii. That the classification of the goods was on the basis of the description, function, technical specifications and end use of the goods and not based on the duty structure;

iv. That their parent company, Thomson, France supplied DHE like Encoders, Decoders/IRDs, Multiplexers etc. which were used for converting analogue and uncompressed video signals to digital and compressed video signals such as mpeg-2 and mpeg-4; that these equipments were used for video broadcasting over Cable and

Satellite Televisions; that for Cable and Satellite television, the goods were based on various DVB standards; that after the takeover of Thomson, France by M/s Harmonic International AG, all the supplies were now being made by M/s Harmonic International AG, itself;

v. He further confirmed that the Headend Equipments supplied by Thomson, France and M/s Harmonic International AG were based on DVB (Digital Video Broadcasting) Standards and hence could not be classified as telecommunication equipments.

## **8.2. INFERENCE FROM THE ABOVE STATEMENT OF SHRI AJIT LIMAYE:**

From the above statement of Shri Ajit Limaye, it can be inferred that Thomson, France were the suppliers of DHE which was used in the Digital Cable TV segment to supply goods to Cable TV service providers only. Their partners/re-sellers suggested changes like CTH, description etc. He further confirmed that the Headend Equipments supplied by Thomson, France and M/s Harmonic International AG were based on DVB (Digital Video Broadcasting) Standards and hence could not be classified as telecommunication equipments.

## **9.0 UNDERSTANDING THE TRANSMISSION /RECEPTION, ENCRYPTION AND DECRYPTION OF AUDIO-VIDEO (TV) SIGNALS.**

9.1

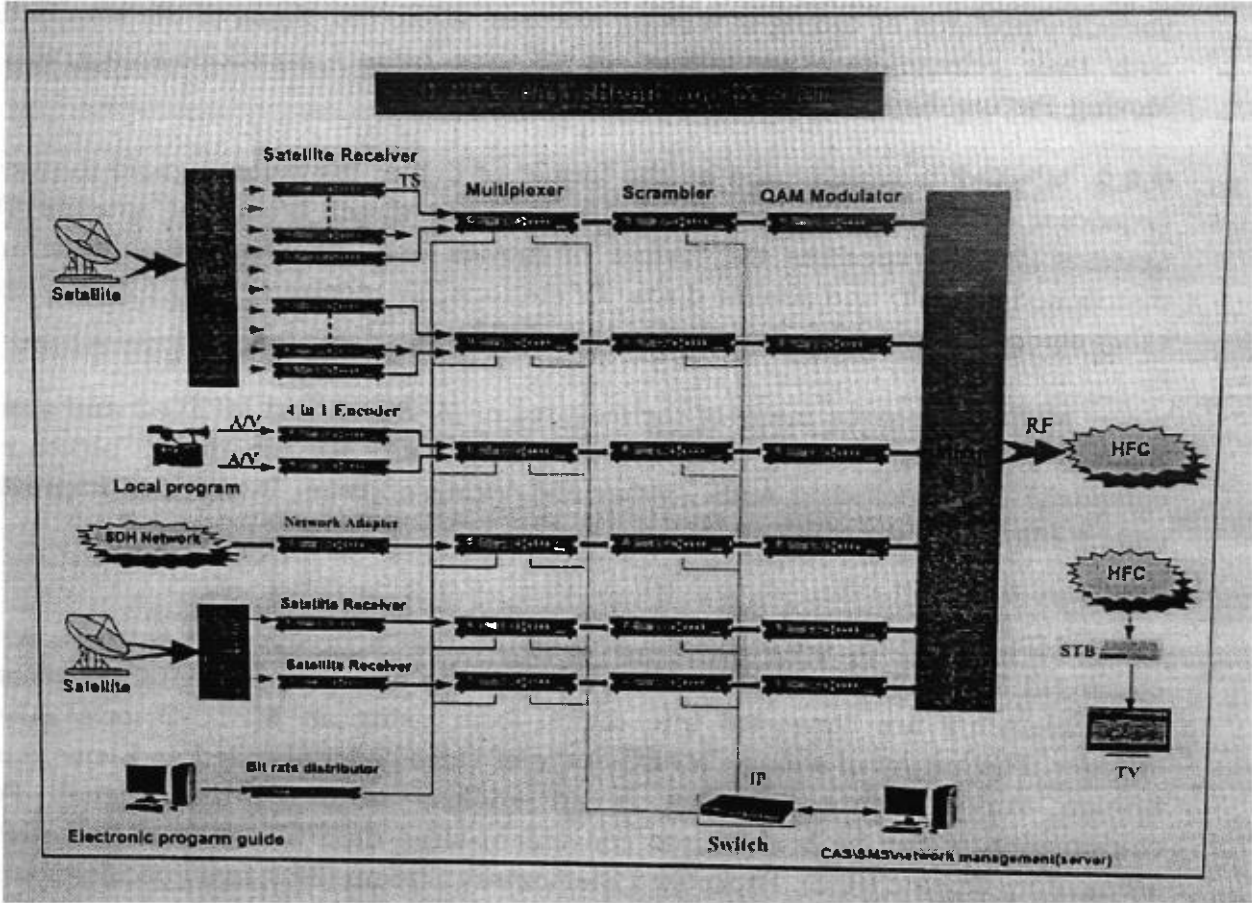
DVB-C

CATV

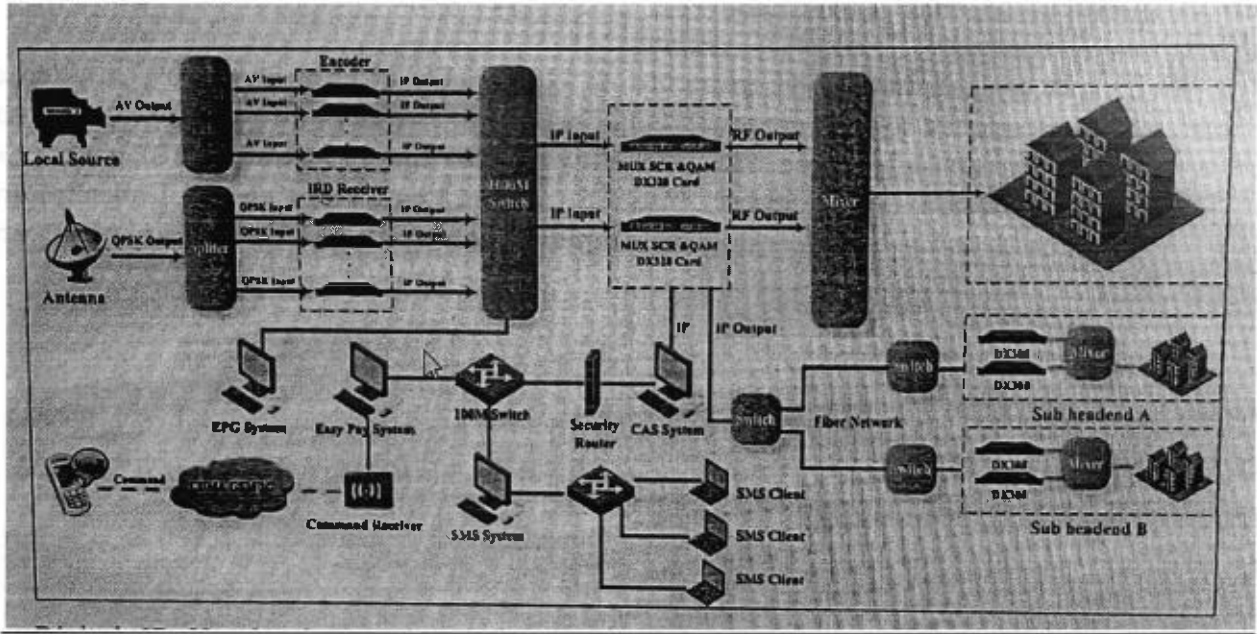
Head-end

System(Source :-

[https://www.alibaba.com/product-detail/CATV-digM1-Headend-Encoder-Scrambler-Modulator\\_721779086.html](https://www.alibaba.com/product-detail/CATV-digM1-Headend-Encoder-Scrambler-Modulator_721779086.html)



HEAD END EQIPMENT



Digital IP Headend Solution (Source \*DEXIN DIGITAL TECHNOLOGY CORP LTD.)

The above shown diagrams depict a typical headend equipment. The headend is the master distribution center of a CATV system by which incoming television signals from video sources (e.g, DBS satellites, local studios, video players) are received, amplified, compressed, mixed, encrypted and modulated and scrambling onto TV channels for transmission down the CATV system.

9.2 MPEG & DATA STREAMS

**9.2.1 MPEG:** The Moving Picture Experts Group (MPEG) is a working group of authorities that was formed by International Organization for Standardization (ISO) and International Electro technical Commission (IEC) to set standards for audio and video compression and transmission. Thus, MPEG-2 and MPEG-4 are various standards of coding of moving pictures, audio etc. Some of the standards with their release date are placed as (Source [https://en.wikipedia.org/wiki/Moving\\_Picture\\_Experts\\_Group](https://en.wikipedia.org/wiki/Moving_Picture_Experts_Group). )

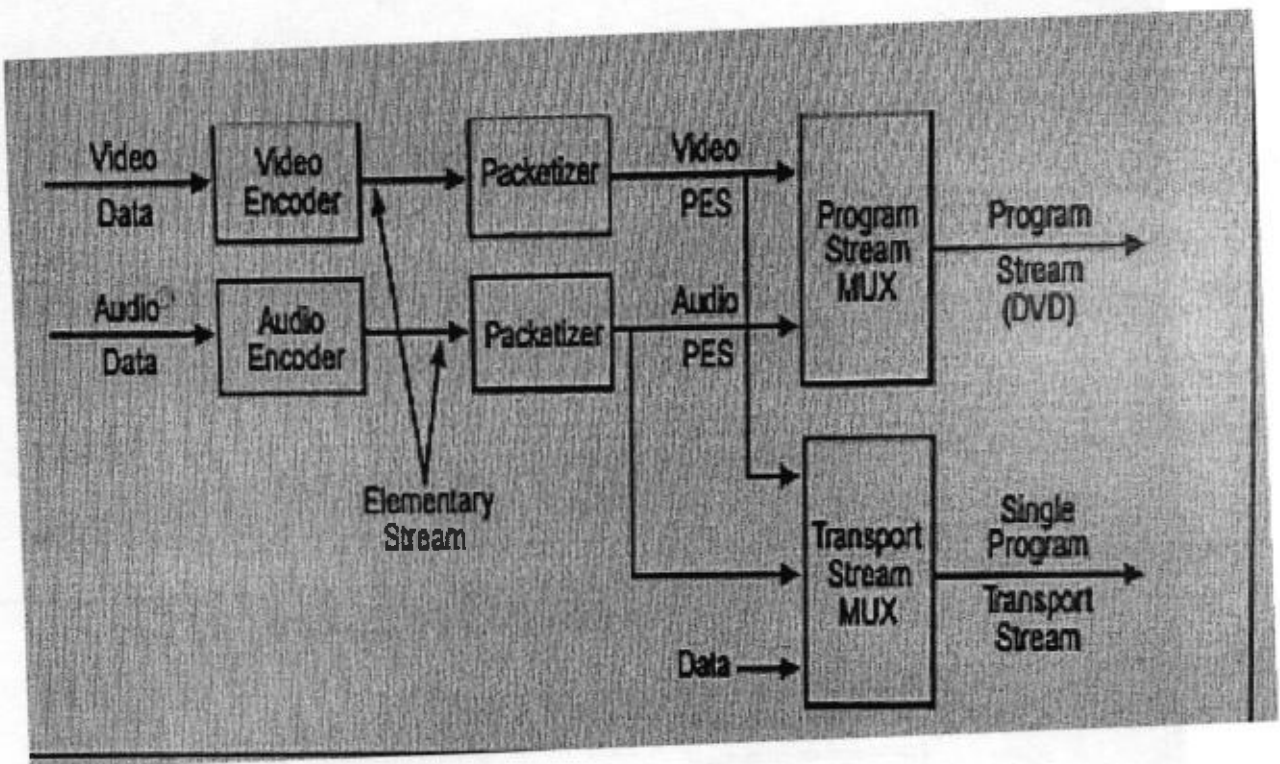
**9.2.2.** MPEG-2 is widely used as the format of digital television signals that are broadcast by terrestrial (over-the-air), cable, and direct broadcast satellite TV systems. It also specifies the format of movies and other programs that are distributed on DVD and similar discs. TV stations, TV receivers, DVD players, and other equipment are often designed to this standard.

MPEG-4 absorbs many of the features of MPEG- 1 and MPEG-2 and other related standards, adding new features such as 3D rendering, object-,ed composite files (including audio, video and VRML objects). It provides improves coding efficiency over MPEG-2.

**9.2.3.** MPEG Signals: Each individual program that a broadcaster provides a= is composed of many elements, such as video, audio and text. In digital television, these elements are converted into digital form using an MPEG-2 (or MPEG-4) encoder. The output of a single MPEG audio or video coder is called an Elementary Stream. An Elementary Stream is an endless near real-time signal. For convenience, it can be broken into convenient-sized data blocks in a Packetized Elementary Stream (PES). Packetized Elementary Stream (PES) is a specification in the MPEG-2 that defines carrying of elementary streams (usually the output of an audio or video encoder) in packets within MPEG program streams and MPEG transport streams. The elementary stream is packetized by encapsulating sequential data bytes from the elementary stream inside PES packet headers.

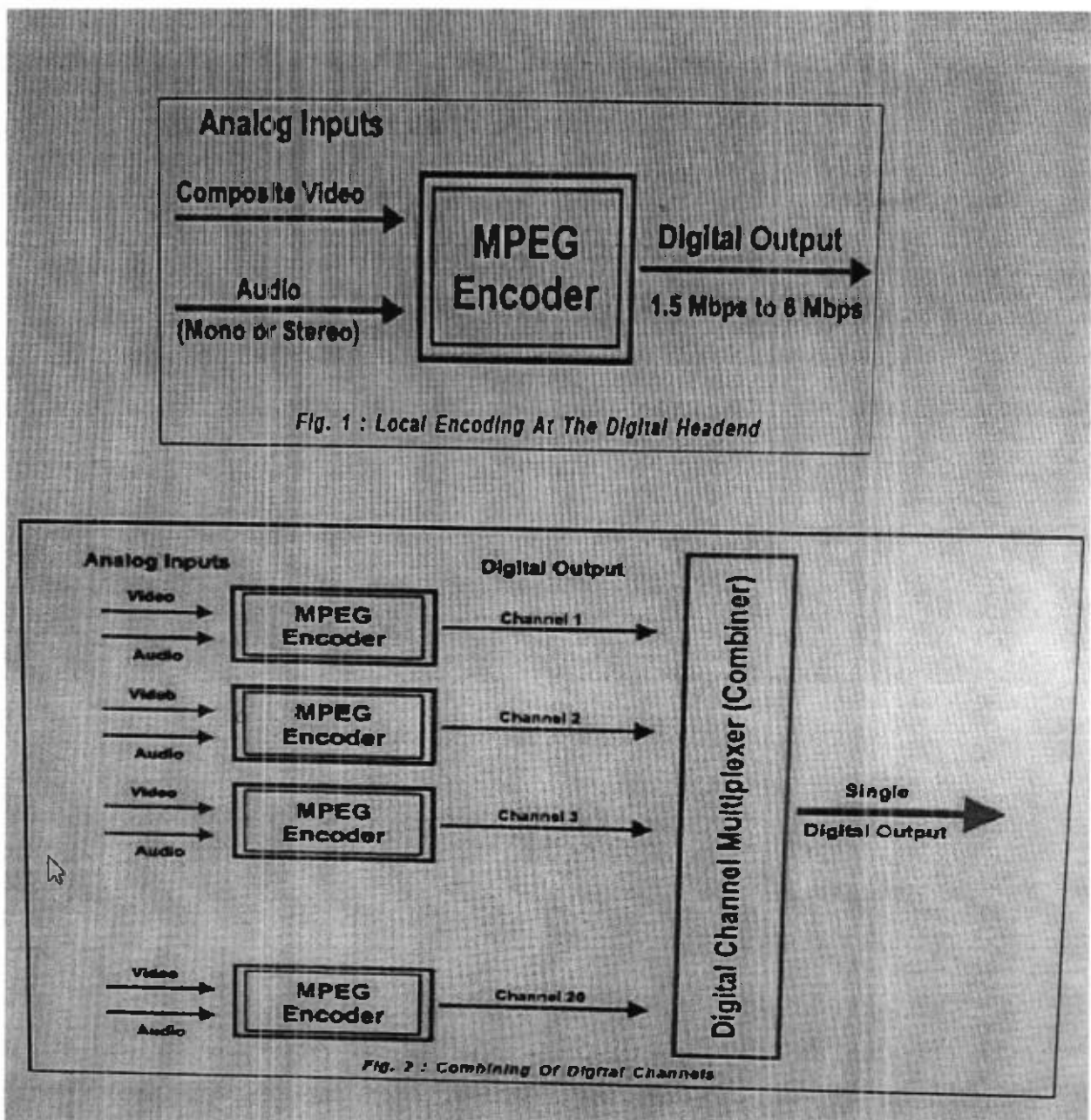
A typical method of transmitting elementary stream data from a video or audio encoder is to first create PES packets from the elementary stream data and then to encapsulate these PES packets inside Transport Stream (TS) packets or Program Stream (PS) packets. The TS packets can then be multiplexed and transmitted using broadcasting techniques, such as those used in an **ATSC** and **DVB**.





The Figure above depicts that one video PES and a number of audio PES can be combined to form a Program Stream. For transmission and digital broadcasting, several programs and their associated PES can be multiplexed into a single Transport Stream. At this point, it is called the Digital Video Broadcast (DVB) MPEG-2 transport stream (TS). A Transport Stream differs from a Program Stream in that the PES packets are further subdivided into short fixed-size packets.

**9.2.4.** Further, the CAS can scramble the programming data either at the PES level or the TS level. The Conditional Access system scrambles the signal making it accessible only to authorized set-top boxes. The encoding and multiplexing functions are illustrated by the following block diagrams:



**9.2.5** The STB receives these signals and then decrypts / un-scrambles these permitted channels.

### **9.3. TRANSMISSION OF MPEG SIGNALS OVER INTERNETPROTOCOL:**

**9.3.1** The Internet Protocol (IP) is the method or protocol by which data is sent from one device to another on the Internet. Each device (known as a host) on the Internet has at least one IP address that uniquely identifies it from all other computers on the Internet.

The manner in which data is sent or received (for example, an e-mail note or a Web page) is elaborated as follows:

- 1) When you send or receive data, the message gets divided into little chunks called packets.
- 2) Each of these packets contains both the sender's Internet address and the receiver's address. Any packet is sent through one or many gateway computers and at the end, the packets are directly forwarded to the computer whose address is specified.



3) Because a message is divided into a number of packets, each packet can, if necessary, be sent by a different route (different gateway computers) across the Internet.

4) Packets can arrive in a different order than the order they were sent in. **The Internet Protocol just delivers them.**

5) It's up to another protocol, the Transmission Control Protocol (TCP) to put them back in the right order and sequence.

**9.3.2** IP is a connectionless protocol, which means that there is no continuing connection between the end points that are communicating. Each packet that travels through the Internet is treated as an independent unit of data without any relation to any other unit of data. The reason the packets do get put in the right order is because of TCP, the connection-oriented protocol that keeps track of the packet sequence in a message.

**9.3.3** Structure of a Data Packet The structure of a data packet depends on two aspects:

- i) type of message i.e. packet and
- ii) on the protocol.

Normally, a packet is comprised of following:

#### **a. HEADER**

The header keeps overhead information about the packet, the service, and other transmission-related data.

The header contains information useful for transmission, such as:

- i) Source (sender's) address
- ii) Destination (recipient's) address
- iii) Packet size
- iv) Sequence number
- v) Error checking information

#### **b. PAYLOAD**

The payload represents the bulk of the packet and is actually the data-being carried.

### **9.3.4 Generation & Receipt of Packets**

Packets are generated by the network hardware. Even the application(e.g. email, webpage, video, audio etc.) does not know that the data to be transmitted is packetized.

When packets are received, they are put together before the application accesses the data

### **9.3.5. DEVICES**

Such Packetized communication is used by many devices – Computer, Printers, digital TV, cellular phones, IPTV etc.

9.4.0. STANDARDS

9.4.1. Given the fact that Internet protocol is used by many devices, it is necessary to have Global standards which protect the users from incompatibility problems between the devices which communicate with each other through Internet Protocol. The basic principal of any communication is that when sender device initiates communication through Internet protocol with other devices, then the recipient device should understand the communication message sent by the sender Device. Any incompatibility between the two both at the hardware level as well as packet stage would render the communication defunct since the message sent by one device will not be understood by the other.

9.4.2. In order to overcome this compatibility problem, the manner in which the packets are sent through Internet protocol are standardized at global level. International Telecommunication Union (ITU) is the United Nations specialized agency for information and communication technologies. This agency with its headquarters based in Geneva, Switzerland develops the technical standards followed world-wide that ensure networks and technologies seamlessly interconnect.

Such standards are known globally as ITU standards which are required to be followed by both the manufacturers of hardware/software for devices to seamlessly interconnect including connections through internet protocol.

Based on the payload i.e. actual data being' transmitted through internet protocol, each ITU standard stands prescribed. For the telecommunication services such issued standards are identifiable by Acronym ITU-T define how telecommunication networks operate and interwork. There are over 4000 such standards in force depending upon the service for which data is being transmitted, network architecture and security.

9.4.3. The standards are divided into series depending upon the nature of service for which the same has been prescribed. Each Series is categorized by an alphabet, as such, there are 26 series the summary of which is reproduced below for easy understanding:

Sr. No.	Alpha Code	Broad Series Description	Sr. No.	Alpha Code	Broad Description	Series
1	A	Organisation of the work of ITU-T	13	O	Specifications of measuring equipment	
2	D	Tariff and Accounting principles and international telecommunication/ICT economic and policy issues	14	P	Telephone transmission quality, telephone installations, local line networks	
3	E	Overall network operation, telephone service, service operation and human factors	15	Q	Switching and signaling, and associated measurements and tests	
4	F	Non-telephone telecommunication services	16	R	Telegraph transmission	
5	G	Transmission systems and media, digital systems and networks	17	S	Telegraph services terminal equipment	

6	H	Audiovisual and multimedia systems	18	T	Terminals for telematic services
7	I	Integrated services digital network	19	U	Telegraph switching
8	<b>J</b>	<b>Cable networks and transmission of television, sound programme and other multimedia signals</b>	20	V	Data communication over the telephone network
9	K	Protection against interference	21	X	Data networks, open system communications and security
10	L	Environment and ICTs, climate change, E-waste, energy efficiency; constructions, installation and protections of cables and other elements of outside plant	22	Y	Global information infrastructure, Internet protocol aspects, next generation networks, Internet of Things and smart cities
11	M	Telecommunication management, including TMN and network maintenance	23	Z	Language and general software aspects for telecommunication system
12	N	Maintenance; international sound programme and televisions-transmission circuits			

As is evident from the aforesaid table, each series pertains to a specific service that the payload in data packet is carrying along with header. For e.g. J Series of ITU-T Standards are specified for Cable networks and transmission of television, sound programmed and other multimedia signals while Y services pertain to Global information infrastructure, Internet protocol aspects, next-generation networks, Internet of Things and smart cities. The same can be understood better with examples like Fax devices etc.

#### 9.4.4 Fax Devices.

Fax (short for facsimile), sometimes called telecopying or telefax (the latter short for telefacsimile), is the telephonic transmission of scanned printed material (both text and images), normally to a telephone number connected to a printer or other output device. The original document is scanned with a fax machine (or a telecopier).

Recommendation ITU-T T.38 defines the procedures to be applied to allow Group 3 facsimile transmission between terminals where, in addition to the public switched telephone network (PSTN) or integrated services digital network (ISDN), a portion of the transmission path used between terminals includes an IP network, e.g., the Internet.

By virtue of Chapter tariff heading all CTH 8443 i.e. COPYINGMACHINES AND FACSIMILE MACHINES are classifiable under CTI: 8443 32. 60. Just because the transmitting standards of the same are specified as International Telecommunication Union i.e. ITU-T T.38, the fax machines cannot be classified under CTH 8517 and claimed to be an "Apparatus for Communication in A Wired Or Wireless Network:" .

## 10. VARIOUS DVB STANDARDS

The information collected from open source as regards DVB standards is as under:

i. As per information available in the open source, Digital Video Broadcasting (DVB) is a set of standards that define digital broadcasting using existing satellite, cable, and terrestrial infrastructures. In the early 1990s, European broadcasters, consumer equipment manufacturer's, and regulatory bodies formed the European Launching Group (ELG) to discuss introducing digital television (DTV) throughout Europe. The ELG realized that mutual respect and trust had to be established between members later became the DVB Project. Today, the DVB Project consists of over 220 organizations in more than 29 countries worldwide. DVB-compliant digital broadcasting and equipment is widely available and is distinguished by the DVB logo. Numerous DVB broadcast services are available in Europe, North and South America, Africa, Asia, and Australia. The term digital television is sometimes used as a synonym for DVB. However, the Advanced Television Systems Committee (ATSC) standard is the digital broadcasting standard used in the U.S.

(Source : <http://searchmobilecomputing.techtarget.com/definition/Digital-Video-Broadcasting>).

ii. DVB technology has become an integral part of global broadcasting, setting the standard for satellite, cable, terrestrial and IP-based services. This section includes a large family of DVB Standards and Specifications covering many categories and more than 100 specification documents. When a new specification is completed by DVB, it is published as a Blue Book, after which the document is usually published as a formal standard by ETSI. (source: <https://www.dvb.org/standards>). Various standards like DVB-C, DVB-S, DVB-S2, DVB-T, ISDB-T, ATSC and ASI and their respective titles are published in Blue Book as detailed in the open source literature.

iii. From the above, it appears that for any product to be used for Digital Video Broadcasting, the same has to comply with respective standards and the compliance of these standards are a must and shall be specifically mentioned on such product and the corresponding literature.

### **11.0 DISCUSSION OF NATURE OF EACH IMPORTED PRODUCT ON THE BASIS OF THE PRODUCT LITERATURE OF THE SUPPLIER (COPIES OF THE LITERATURE HAVE BEEN PLACED AS RUDs 2, 3).**

**11.1. DECODERS:** An integrated receiver/decoder (IRD) or Decoder is an electronic device used to pick up a radio-frequency (RF) signal and convert digital information transmitted in it. The signals from the various broadcasters are received by the decoders/IRDs and converted to digital signals which are fed into an Encoder for compression of signals.

#### **11.1.1 ProView 7100 (Supplier: Harmonic International AG):**

The ProView 7100 adds broadcast-quality SD/HD MPEG-2 and MPEG-4 AVC 4:2:0/4:2:2 10-bit decoding and video transcoding to the feature-rich ProView IRD platform, allowing content providers, broadcasters, cable MSOs and telcos to easily and cost-effectively streamline their workflows and decrease operating costs. The ProView 7100 IRD harnesses a flexible and modular design to address the

vast spectrum of content reception applications, from decoding, descrambling and multiplexing of multiple transport streams to MPEG-4 to MPEG-2 transcoding.

Content can be received and transcoded to any resolution required. A rich set of options includes input of multiple DVB-S/S2/S2X, IP and DVB-ASI the ability to provide simultaneous primary satellite and backup IP network feeds.

**Highlights:**

- Four TS descramblers with four integrated DVB-CI slots
- MPEG-2 4:2:0 8-bit and MPEG-4 AVC 4:2:2 10-bit decoding
- HEVC decoding of I080p60 media
- Up to eight channels of MPEG-4 AVC to MPEG-2 transcoding with Down conversion option
- Single/dual-channel decoder in 1 RU
- Four independent ASI outputs
- Four IP outputs with 1+1 redundancy support
- HD-SDI, SD-SDI, HDMI and analog video outputs
- Any-to-any re-multiplexing capabilities
- T2-MI deframing to MPEG TS

**11.2 ENCODERS:** The digital encoders convert analogue or digital video, audio and data signals from a source like Analogue Cable TV programs into digital signals by compressing and encoding as per MPEG -2 or MPEG -4 video compression standards.

**11.2.1 8 IN 1 ENCODER MODEL NO. ULBA-MAGIC-8100A(Supplier: Chengdu Dexin Digital Technology Co. Ltd.)**

The multichannel encoder is our newest professional HD audio & video encoding and multiplexing device with powerful functionality. It is equipped with 8 HDMI (or SDI) channels input supporting MPEG-2 or MPEG-4 AVC/H.264 High Profile code format & main Profile code format. It can multiplex the 8 encoded TS to generate a MPFS AND 8 SPFS output THROUGH GE output port. In conclusion, its high integration and cost effective design make this device widely used in variety of digital distribution systems such as CATV digital head-end, satellite and terrestrial Digital TV.

**Key Features**

- \* Support 8 HDMI/SDI channels input with MPEG-2 video encoding (MPEG - 4 optional) .
- \* Support MPEGI Layer II audio encoding
- \* Support IP Output MPFS and 8 SPFS over UDP and RTP/RTSP
- \* Support audio gain adjustment

**11.2.2 ELECTRA X2 - ENCODER (Supplier: Harmonic International AG):**

Electra X2 offers programmers and service providers market-leading video quality unparalleled function integration and increased operational flexibility in a cost-effective 1-RU appliance. Rich audio functionality includes encoding of Dolby Digital Plus (E-AC-3) content and integrated audio leveling. As an ext-generation media processing system, Electra X2 offers a new approach to encoding. Uncompressed video over IP workflows are supported via optional SMPTE ST 2022-6 ingest.

**HIGHLIGHTS:**

- SD/HD MPEG-2, MPEG-4 AVC and HEVC encoding for broadcast and OTT multiscreen services

- Integrated video graphics and branding, without custom authoring tools or training
- Optimized statistical multiplexing over IP
- Rich audio functionality, including E-AC-3 encoding and Jtinger Level Magicaudio level adjustment
- Optional SMPFE 2022-6 support for uncompressed video over IP

**11.3. MULTIPLEXER:** The digital multiplexer combines several input MPEG-2transport stream signals (about 64) into a single multiplexed MPEG-2transport stream according to DVB-ASI (Digital Video Broadcasting synchronous Serial Interface) standard. It can integrate multiple videos, audio(including multi-channel audio) and data signals in the same multiplexed output signal.

**11.3. 1 Prostream 9100 (Multiplexer)  
(Supplier: Harmonic International AG):**

ProStream 9100 is an ideal solution for multiplexing, scrambling, descrambling and statistical multiplexing of SD and HD MPEG video. The compact 1-RU system delivers the flexibility to support any-to-any remultiplexing, DVB-ASI and AES scrambling, digital turnaround, linear ad splicing – and a wide variety of video processing applications. The platform's enhanced GbE I/O modules deliver up to 2 Gb of IP throughput for the multiplexing, scrambling and descrambling of up to 500 transport streamsand services.

**Highlights:**

- Compact, modular 1-RU chassis with five IOM slots
- IP and DVB-ASI I/O, 8VSB input
- Multiplexing and scrambling of up to 500 simultaneous SD and HD broadcast services
- Flexstream IP statistical multiplexing with remote distributed encoders
- Linear ad splicing into MPEG-2, MPEG-4 AVC and HEVC SD/HD video streams
- Advanced remultiplexing

\* As discussed herein above in this SCN, MPEG transport stream (MPEG-TS,MTS or TS) is a standard digital container format for transmission and storage of audio, video, and Program and System Information Protocol (PSIP) data. It is used in broadcast systems such as Digital Video Broadcasting (DVB).

\*\* A digital TV signal is transmitted as a stream of MPEG-2 data known as a transport stream. Each transport stream consists of a set of sub-streams(known as elementary streams) , where each elementary stream can contain either MPEG-2 encoded audio, MPEG-2 encoded video, or data encapsulated in an MPEG-2 stream. Each of these elementary streams has a 'packet identifier' (usually known as a PID) that acts as a unique identifier for that stream within the transport stream.

**12.0 CLASSIFICATION OF SUBJECT IMPORTED DHE:**

**12. 1. ANALYSIS OF MERITS OF THE CLASSIFICATION**

**12.1.1** A "headend" is a cable television industry term for a combination of television signal transmission apparatus. Each system is individually configured as per the set specifications for every particular customer. Generally, the headend receives satellite television signals, modifies the signal, and then transmits the signal into a cable television. Thus, the headend serves an integral function in the cable TV transmission chain. Headend contain combinations of converters, signal

processors/ generators, combiners, scramblers, amplifiers, modulators/ demodulators and receivers. The receiver/ descramblers are used in cable television applications for receiving, decoding and retransmitting a television signal. The receiver/ descrambler decodes a scrambled signal for further transmission, reception, and subsequent display.

A headend consists of a number of machines combined together to perform a specific function. Section XVI, Note 4, requires the classification of "functional units" to be within the heading appropriate to the function of the unit. Section XVI, Note 4, states: Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function. In the instant case, the headend is a combination of individual machines, interconnected by electric cables, intended to contribute together to the clearly defined function of "transmission apparatus for... television, whether or not incorporating reception apparatus."

**12.1.2.** The subject goods consist of digital encoders, multiplexers and modulators used in cable television. Functions of the encoder, multiplexer and modulators are as follows:

- i) The digital encoders convert analogue or digital video, audio and data signals of the source information such as CATV (Cable television) programming into digital signals by means of compressing and encoding techniques in compliance with the MPEG-2 and the newer MPEG-4AVC/ H .264 , or MPEG-4 , video compression standards
- ii) The digital multiplexer combines several input MPEG-2 transport stream signals into a single MPEG-2 transport stream, using multiplexing technologies, in order to increase efficiency in transmission. The apparatus is capable of receiving multiple (up to say 64) input MPEG-2 transport stream signals and integrating and reproducing those input transport stream signals into a MPEG-2 transport stream signal compliant with the DVB-ASI (Digital Video Broadcasting Asynchronous Serial Interface) standard. It can integrate multiple video, audio (including multi-channel audio) and data signals in the same multiplexed output signal.
- iii) A modulator (or RF modulator) takes a baseband input signal and then outputs a radio frequency (RF) modulated signal. This is often a preliminary step in signal transmission, to another device such as a television.
- iv) The encoders, multiplexers and modulators are to be used for transmission of Cable television (CATV) program providers to the Cable TV operators.

## **12.2 ISSUE OF THE CLAIM OF THE CLASSIFICATION VIS-A-VIS THEMERITS OF CLASSIFICATION:**

**12.2.1** The Issue in brief is whether the subject goods are classifiable in Custom heading 8517, as "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; or, in heading 852871.00 for apparatus " Not designed to incorporate a video display or screen" as "reception apparatus for television, whether or not



incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.”

**12.2.2** Classification under the Customs Tariff Act, 1975 is made in accordance with the General Rules of Interpretation. General Rules of Interpretation 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The relevant provisions for the subject goods are as follows:

**8517-** Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), **other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528;**

**8525-** Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders.

**8527-** Reception apparatus for radio-broadcasting whether or not combine in the same housing, with sound recording or reproducing apparatus or a clock.

**8528-** Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

**85287100-** Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus not designed to incorporate a video display or screen.

Insofar as the subject goods meets the terms of Customs Tariff Headings 8525 to 8528, it cannot be classified in heading 8517, by the express terms of the latter heading i.e. only those goods that are other than transmission or reception apparatus of heading 8443, 8525, 8527 .

Heading 8525 provides for “transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders” . Headings 8517 and 8525 and 8528 utilize the terms transmission and reception. The applicable distinction in terms of headings 8517 and 8525 or 8528, is whether the transmission or reception is “of voice, images or other data” or “for television”. **In sum then, even if the transmission or reception is “of voice, images or other data,” if that transmission or reception is “for television”, the apparatus is excluded from heading 8517, by the terms of that heading.**

**12.2.3.** CATV transmission system is processed as follows.

(1) A program-provider supplies analogue or digital video, audio & data signals to Encoders which compress and encode the video, audio & data signals into ASI (output) signals in compliance with MPEG-2 standard.

(2) Output signals (ASI)\* of several Encoders are entered into a Multiplexer which combines several signals (ASI) of Encoders into a ASI output Transport Stream signal by means of some multiplex techniques in order to carry several communication channels.



\* ASI is a streaming signal compressed & encoded by MPEG-2 standard.

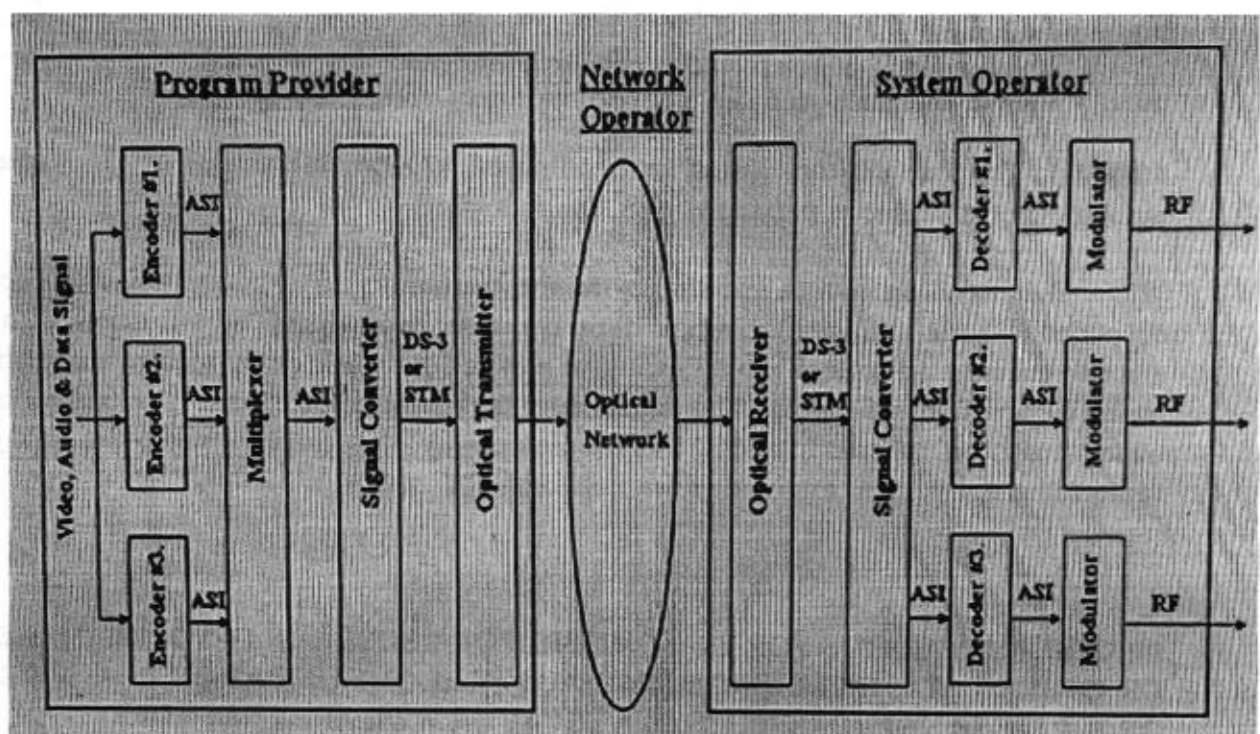
(3) Output signals (ASI) of Multiplexer are entered into a Signal Converter which converts ASI signals into DS-3 or STM signals which will be transported further to the Optical Transmitter.

(4) The Optical transmitter transmits the optical video, audio & data signals to the Optical Receiver through the optical network run by Network Operator.

(5) Optical Signals of Optical Receiver are transported to Signal Converter which converts DS-3 or STM signals into ASI signals.

(6) The ASI signals of the Signal Converter are connected to the Decoder which converts ASI signals into audio, video & data signals. The video & audio signals of the Decoder are transported to Modulator which converts or modulates video, audio & data signals into RF (Radio Frequency) signals.

(7) The RF signals enter into HFC network to supply TV service subscribers.



#### CATV Transmission through a typical headend equipment.

The diagram above, represents an example of how decoders, encoders, multiplexers and modulators etc. may be arranged in a CAW transmission system. It depicts the role within television transmission of the articles. **The encoder compresses and encodes signals received from the program provider in accordance with MPEG standards.** The encoder then transmits or passes along the processed signals, to the multiplexer. **The multiplexer receives the processed signals and combines them into a single MPEG transport stream for output.** This multiplexed output is then passed on or transmitted to a modulator which combines the signals again into a DVB-ASI standard,

**processes them further, and transmits them or passes them along for eventual transmission to be received and displayed by the CATV subscriber."**

**12.2.4.** The terms "transmission" and "reception" are not defined in the Tariff. A tariff term that is not defined is construed in accordance with its common and commercial meaning. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources.

The McGraw-Hill Encyclopedia of Science & Technology (9th Edition, Vol. 18) describes the HDTV (High Density Television) Standard below:

– The main HDTV transmitter operations are video/ audio coding and compression, data multiplexing into packets, data scrambling, channel coding (for error detection and correction), synchronization multiplexing, and digital modulation (for broadcast transmission). The HDTV receiver reverses the operations of the transmitter.

**Further, transmission may be defined as:**

-- The passage of radio waves in the space between transmitting and receiving stations; also: the act or process of transmitting by radio or television  
([http:// www .merham-webster.com/ dictionary / transmission](http://www.merham-webster.com/dictionary/transmission))

– Also, the transfer of information from one point to one or more otherpoints by means of signals is defined as transmission.

Reception means:

--the receiving of a radio or television broadcast  
([http:// www .merham-webster. com/ dictionary/ reception](http://www.merham-webster.com/dictionary/reception))

**12.2.5.1.** The Explanatory Notes for heading 85.17, indicate that 85.17, includes, among other articles, in pertinent part, the following:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electro magnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

\*\*\*\*\*

(II) OTHER APPARATUS FOR TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK)

\*\*\*\*\*

(G) Other communication apparatus.

\*\*\*\*\*

This group includes:

(4) Multiplexers and related line equipment (e.g., transmitters, receivers or electro-optical converters).

The Explanatory Note (EN) for heading 85.25 have limited examples of articles other than specific "transmitters" that would include the articles at issue.

Further, the ENs do not provide much guidance with respect to the subject articles. For instance, multiplexers are listed in the EN 85.17 and the EN 85.25 or 85.27 or 85.28 does not mention multiplexers, encoders, or any of the devices used to receive and transmit a signal for television in order to change, compress or combine it into a different format.

**12.2.5.2.** However, the ENs can neither limit nor expand the scope of a heading, and the lists of examples in the ENs are not exhaustive. Furthermore, there are a wide variety of multiplexers, some of which are used for other than television. The standards for which the subject articles are manufactured, in this case MPEG-2 and MPEG-4, are widely used as television signal standards. Further the multiplexers are based in compliance with DVB standards (European Cable TV standards or ITU-T J standards (American Cable TV standards). Hence, it appears that the "multiplexers" mentioned in EN 85.17 does not apply to the multiplexers that are the subject of investigation here. As mentioned above, digital signals, whether for telecommunications or for television, are encoded to a format best suited for the type of data being transmitted. The formats used to encode and subsequently multiplex a signal are distinct by each industry. It has been established at discussions at para 9.2. above, that MPEG-2 (or MPEG-4) formatting is particular to cable television. **Therefore, a multiplexer receiving, combining and transmitting signals in accordance with MPEG-2 and other known television formats, in furtherance of the ultimate transmission to a receiver and television, should remain classified in heading 8528, as per the exclusion in heading 8517. The same analysis applies with respect to the other DHE like encoders and Modulators etc.**

**12.2.5.3.** Lastly, the text explicitly lists transmitters and receivers as "related line equipment" of heading 8517. Whereas the ENs to headings 8525 and 8528 also list "transmitters for . . . television" and "receivers of television broadcasts."

**12.2.5.4.** Goods of headings 8517 and 8525 or 8528 may transmit or receive by line (a cable). Goods of the headings might be a transmitter or receiver or multiplexer or other equipment on the line. Goods of the headings may transmit or receive digital data. **The crucial difference is whether the data transmitted or received by the device in question is formatted for and understood as being "for television" and if so, the device cannot, by the terms of heading 8517, be classified there. These articles are transmitting or receiving in the same manner as they would for purposes of heading 8517, however the difference is that with respect to the specific goods in question (covered under the subject notice), the transmitting or receiving is for television as confirmed by the standards to which they are complying ie. DVB standards (European Cable TV standards or ITU-T J standards (American Cable TV standards), and therefore they cannot be classified in heading 8517.**

**12.2.5.5.** The data that will pass through the encoders, multiplexers, modulators etc. **is television programming received from satellite for television viewing. It will ultimately be transmitted to subscribers homes, and watched, in the vast majority of cases, on their television.** Therefore, by application of GRI I the subject goods appear to be classified under heading 85287100 as "Reception apparatus for television".

### **13. MIS-CLASSIFICATION TO AVAIL EXEMPTION FROM BCD BY WAY OF WRONG DECLARATION OF THE NATURE OF THE GOODS:**

**13.1** As per the discussions on the merits of the goods vis-a-vis the functionality of the same, it appears that the goods were deliberately misclassified by GTPL

under CTH 8517 meant for 'Telecommunication equipment'. The functionality of the various components has been discussed hereinabove.

**13.2.** Further, from the investigations, it is apparent that while the Digital Headend Equipments were rightly classifiable under CTH 85287 100, GTPL have claimed wrong classification under CTH 85 17 meant for telecommunication. It appears that GTPL being aware of the fact that duty incidence on goods falling under CTH 8528 being higher, wilfully misclassified consignments of impugned goods under CTH 85. 17 in order to avail 'NIL' rate of BCD. In his statement dated 22.03.2018, Shri Subrata Bhattacharya, Vice-President-Technology, GTPL stated that the Digital Headend Equipments imported by their firm was to be used to provide only Digital Cable TV Services to their customers. He also accepted that the same were reception apparatus for televisions meant for digitalisation of Analogue signals for providing Digital Cable TV Services and were based on various DVB Standards. In view of the admittance in his statement recorded under Section 108 of the Customs Act, 1962, the mis-classification of these equipment as 'Telecom apparatus' appears deliberate and made with a malafide intent to evade payment of applicable customs duty. Therefore, it appears that provisions related to extended period beyond the normal period two years is squarely invocable in this case to demand differential Customs duty in terms of Section 28(4) of the Customs Act, 1962.

**13.3** Further, it appears that GTPL have knowingly mis-classified the goods under the CTH 8517 meant for telecom equipments even though they were well aware that the equipments were basically used for MPEG-2 & MPEG-4 signal compression and transmission and were not telecommunication equipments, and it was just a modus to claim benefit of NIL BCD.

**13.4** Further from the invoices recovered during the search of the premises of M/s Thomson Video Networks India Pvt. Ltd. (now part of Harmonic Inc.), it was apparent that the CTH of invoices were mentioned as 8528 in 2011 but would have been changed over time to suit the needs and requirements of their customers.

#### **14.0. PROVISIONS OF LAW CITED IN THIS NOTICE:**

- (i) Section 17 of the Customs Act, 1962.
- (ii) Section 18 of the Customs Act, 1962.
- (iii) Section 111 (m) of the Customs Act, 1962.
- (iv) Section 112 of the Customs Act, 1962
- (v) Section 28AA (1) of the Customs Act, 1962
- (vi) Section 114A of the Customs Act, 1962.
- (vii) Section 28(4) of the Customs Act, 1962.

#### **15.1 OBLIGATIONS UNDER SELF-ASSESSMENT**

Section 17 of the Customs Act, 1962, was substituted with effect from 08.04.2011 introducing self-assessment of goods imported by the importers. Accordingly, the impugned goods were self-assessed by GTPL and B/Es were filed wherein the wrong CTHs/CETHs were declared and ineligible 'Nil' rate of BCD were claimed for the goods discussed hereinabove. Under the self-assessment procedure, it is obligatory on the part of importers to declare all the particulars such as description of the goods, CTHs/CETHs for applicable rate of duties correctly. Therefore, by not declaring the true and correct facts, at the time of

import and subsequent to the clearance of the self-assessed imported goods before the Customs department, GTPL appear to have indulged in mis-classification and suppression of facts with intent to evade payment of applicable Custom duties. It therefore appears that GTPL have, knowingly and deliberately, suppressed the actual functions and use of the goods to consequently wrongly classify the Digital Headend Equipments under CTH8517 to avail 'nil' basic duty that is not applicable to the said goods.

## **15.2 DEMAND INVOKING EXTENDED PERIOD**

As discussed in para 14 hereinabove, GTPL being fully aware of the fact that the imported goods were meant for transmission and reception of broadcast signals for Television (more specifically CATV) meant for Cable TV operators, still chose to classify under different CTHs at time of import in order to avail 'NIL' BCD. In view of the wilful suppression of actual description of goods, subsequent mis-classification, efforts to hide and conceal the function and use of the goods and evasion of payment of appropriate Customs duty, the extended period provision under Section 28(4) of the Customs Act, 1962 is invocable to demand the differential duty from GTPL.

## **16. SUMMARY OF INVESTIGATION:**

**From the foregoing discussions, it appears that:-**

- i.** GTPL had imported Digital Headend Equipments and were misclassifying them under CTH 8517 meant for telecom equipment, thereby availing the benefit of 'NIL' BCD. GTPL was involved in providing Cable TV services to their subscribers.
- ii.** Shri Subrata Bhattacharya, Vice-President-Technology, GTPL had accepted that GTPL were Digital Cable TV Services providers to their subscribers. He also accepted that the Digital Headend Equipments were reception apparatus meant for digitalisation of Analogue Cable TV Signals for providing Digital Cable TV Services and that these Equipments were based on Digital Video Broadcasting (DVB) Standards.
- iii.** The DHEs were equipments meant for receiving, combining and transmitting signals in accordance with MPEG-2 and other known television formats, in furtherance of the ultimate transmission to a receiver and television, and hence should remain classified in heading 8528, as per the exclusion in heading 8517

It is also pertinent to mention that Goods of the headings 8517 may transmit or receive digital data but the crucial difference between goods classifiable between CTH 8528 or 8517, is whether the data transmitted or received by the device in question is formatted for and understood as being "for television" and if so, the device cannot, by the terms of heading 85172 be classified there. The specific goods in question (covered under the subject notice), is reception apparatus for television as confirmed by Shri Subrata Bhattacharya that the equipments imported by them were complying with DVB standards, and therefore they cannot be classified in heading 8517.

- iv.** Thus, it was apparent that while the Digital Headend Equipments were rightly classifiable under CTH 85287100 as "Reception apparatus for television", GTPL had wrongly claimed classification under CTH 8517 meant for telecommunication. It appears that GTPL being aware of the fact that duty incidence on goods falling under CTH 8528 being higher, wilfully mis classified consignments of impugned goods under C' TH 85. 17 in order to avail "NIL" BCD.

v. In view of the wilful mis-statement and suppression of facts with regards to the correct nature and function of the goods and subsequent classification cleared under Bills of Entry mentioned in Annexure A and B to this SCN, the provisions relating to extended period are invokable to demand duty beyond the normal period of two years in terms of Section 28(4) of the Customs Act, 1962.

vi. Also, the Customs duties totaling to **Rs. 6,54,340/- (Rupees Six Lakh, Fifty Four Thousand Three Hundred Forty only)**, short paid in respect of the Bill of Entry no. 9849597 dated 15.04.2013, appears to be recoverable under the provisions of Section 28(4) of the Customs Act, 1962, along with interest under the provisions of the Section 28AA, *ibid*.

vii. Further, the Customs duty amounting to **Rs. 2,00,31,047/- (Rupees Two Crore, Thirty One Thousand, and Forty Seven only)** for the impugned goods imported by them under the Bill of Entry no. 7959288 dated 26.12.2016 and provisionally assessed under CTI 85299090/85287390 by the Ahmedabad Commissionerate, appears to be payable under the provisions of Section 28(4) of the Customs Act, 1962.

viii. GTPL also appear to have rendered the impugned goods **(as detailed in Annexure A & B to this SCN) with total CIF value totaling Rs. 7,34,91,929/- (Rupees Seven Crore, Thirty Four Lakh, Ninety One Thousand, Nine Hundred and Twenty Nine only)** (comprising of assessable value of Rs.54,54,000/- on the goods on which duty was short paid as mentioned in Annexure - A and assessable value of Rs. 6,80,37,929/- on the goods which were assessed provisionally as mentioned in Annexure-B) liable to confiscation under Section 111(m) of the Customs Act, 1962. Consequently they also appear to have rendered themselves liable to penalty under Section 112(a) and/or Section 114A of the Customs Act, 1962, in relation to the said goods;

17. In view of the above, Show Cause Notice No. DRI/MZU/CI/INT-38/2018 dated 06.04.2018 issued to M/s. GTPL Hathway Ltd. calling them to show cause to the Pr. Commissioner of Customs, Ahmedabad as to why:

i) The impugned goods imported by them under the Bills of Entry, as detailed in the Annexure- A of the SCN should not be held as correctly classifiable under CTI 85287100 and Customs duties, as detailed in Annexure A to SCN amounting to Rs.

6,54,340/- (Rupees Six Lakh Fifty Four Thousand Three Hundred Forty only), should not 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) The impugned imported goods with a total assessable value of Rs.54,54,000/- (Rupees Fifty Four Lakh Fifty Four Thousand only) in respect of Bill of Entry as mentioned in 'Annexure - A' of the Show Cause Notice should not be held liable for confiscation under section 111(m) of the Customs Act, 1962;

iv) The impugned goods imported by them under the Bill of Entry no.7959288 dated 26.12.2016 as detailed in the Annexure- B of the Show Cause Notice and provisionally assessed under CTI 85299090/85287390, should not be held as correctly classifiable under CTI 85287100 and the said provisionally assessed Bills of Entry should not be finalised under section 18 *ibid* under the CTI 85287100.

V) The Customs duty amounting to Rs. 2,00,31,047/- (Rupees Two Crore Thirty One Thousand Forty Seven only) paid for the impugned goods imported under the Bill of Entry no. 7959288 dated 26.12.2016 and as detailed in the Annexure- B and provisionally assessed under CTI 85299090/85287390, should not be adjusted towards applicable customs duty at the time of finalisation of Bills of Entry under the CTI 85287100;



vi) The impugned goods imported by under the Bill of Entry, as detailed in the Annexure- B of the Show Cause Notice having assessable value of Rs. 6,80,37,929/- Rs. Six Crore, Eighty Lakh, Thirty Seven Thousand, Nine Hundred and Twenty Nine Only) should not be held liable for confiscation under section 111(m) of the Customs Act, 1962;

vii) Penalty should not be imposed on them in terms of section 112(a) or 114A of the Customs Act, 1962.

**18. Written submission: Advocate of M/s. GTPL Hathway Limited filed their reply to SCN vide letter dated 16.10.2021 wherein they inter alia submitted as under.**

**18.1** That the imported goods, namely, "Digital Headend Equipment" (hereinafter referred to as "DHE"), which have been classified by them under Heading 8517, Sub Heading 85176990 of the Customs Tariff and the Revenue's case, however, is that such goods were mis-classified by them, because they merit classification under Heading 8528 of the Customs Tariff where Basic Customs Duty was also chargeable; that Basic customs duty for goods of heading 8517 had been "Nil", and therefore it is alleged that they have misclassified the above goods under heading 8517 so as to avail unlawful benefit of nil rate of basic duty; and on this basis the above referred amounts of Rs.6,54,340/- and Rs.2,00,31,047/- are proposed to be demanded and recovered as basic customs duty on all the imports of DHE made by them;

**18.2** That the basis of the show cause notice that DHE merit classification under heading 8528 of the Tariff is incorrect and unjustified; that allegation of misclassification and further allegation of seeking to classify DHE under heading 8517 for availing nil rate of basic custom duty are also incorrect and unjustified; that they emphasised that Heading 8517, SH 85176990 is the most appropriate classification for the goods imported by them, namely, DHE; and therefore all the proposals levelled against them in this show cause notice deserve to be dropped; that they deny that the goods in question merit classification under Heading 8528 of the Tariff as suggested by the Revenue;

**18.3** That in the show cause notice, the goods imported by them are broadly considered and classified as "digital headend equipment", but at various places in the show cause notice, the individual products imported by us are also referred to; though all such individual products imported by them are considered as DHE for broad classification; that such individual products imported by us are in the nature of Modulators, Encoders, Decoders, Multiplexers, Scramblers, IRD (Integrated Receiver Decoder) etc. However, all such individual products are admittedly in the nature of interconnected components intended to contribute together to a clearly defined function, namely, transmission or reception of data, and apparatus for communication in a wireless network, and therefore all of them i.e. "the whole" are to be classified in the heading appropriate to such clearly defined function; that by virtue of Note No.4 of Section XVI of the Customs Tariff, such individual components are not to be classified separately or individually, but they are all to be classified as "the whole" falling under one heading appropriate to that function; which is the legal position accepted by the Revenue also at para 12.1.1 of the show cause notice.

**18.4** That it is an admitted position of fact that the above goods, namely, DHE were accepted and assessed as classifiable under C.H.85176990 by the proper Custom Officers until December, 2016; and therefore assessment of all imports

made prior thereto have been finally made by such proper Custom Officers under the above referred classification which attracts nil rate of basic custom duty; that now a dispute of classification is raised in respect of all importers of DHE, and not only in their case, as is observed in the very beginning of the present show cause notice; that a perusal of the show cause notice shows that various documents and also statements recorded by DRI officers have been relied upon for the purpose of raising the dispute of classification; that certain information selectively taken from certain Websites has also been referred to in the show cause notice in respect of certain technical issues; that among other documents, a statement of one Shri Ajit Limaye being the Sales Director of M/s. Thomson Video Networks India Ltd. is also relied upon by the Revenue for suggesting that he confirmed that Headend equipments supplied by M/s. Thomson, France, and one another company could not be classified as Telecommunication Equipments; that the veracity, truthfulness and reliableness of such details including the statements of various persons and Shri Ajit Limaye are however not established in this case; and therefore further enquiry and probe into such evidence including the statements of various persons recorded by the DRI officers (including Shri Ajit Limaye) would be necessary in this proceedings; that **they shall address the issue of such probe and enquiry, including cross examination of relevant witnesses, at an appropriate stage in this proceedings.**

**18.5** That the main issue raised by the Revenue is that DHE were rightly classifiable under S.H.85287100 as "Reception Apparatus for Television", and that they have wrongly claimed classification under Heading 8517 meant for Telecommunication, however, it is noteworthy that the goods in question fall under Heading 8517 is not ruled out by the Revenue; but, on the contrary, it is accepted by the Revenue in the show cause notice itself that the goods in question were classifiable by the description of goods under Heading 8517 of the Tariff; but since this heading is for the goods "other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528", the Revenue's case is that DHE would stand excluded by virtue of the above referred exclusion for goods of Heading 8528, though DHE were in the nature of apparatus for the transmission or reception of data for communication in a wireless network; that in this regard, para 12.2.5.4 of the show cause notice may be referred to, wherein the Revenue has accepted that goods of heading 8517 may transmit or receive by line (a cable), the goods of heading 8517 might be a transmitter or receiver or multiplexer or other equipment on the line; the goods of Heading 8517 may transmit or receive digital data; but the crucial difference is whether the data transmitted or received by the device in question is formatted for and understood as being "for television", and if so, the device cannot, by terms of Heading 8517, be classified there; that a reference may also be made to para 12.2.5.2 of the show cause notice wherein also it is recorded that a multiplexer receiving, combining and transmitting signals in accordance with MPEG-2 and other known-television formats, in furtherance of the ultimate transmission to a receiver and television, should remain classified in Heading 8528, as per the exclusion in Heading 8517; that the same principle is sought to be applied by the Revenue with respect to other DHE like Encoders, Modulators etc. also; that therefore, question arising in this case is whether the goods in question i.e. DHE were in the nature of transmission or reception apparatus as contemplated under Heading 8528; because if DHE was in the nature of transmission or reception apparatus of Heading 8528, then these goods are excluded from Heading 8517 of the Tariff for classification; that but if these goods were not in the nature of transmission or reception apparatus of Heading 8528, then they would merit classification under Heading 8517 only; that therefore they submit that it is a crucial fact to be borne in mind that DHE are accepted by the Revenue also to be apparatus for the transmission or reception of



data for communication in a wireless network, but still they are suggested to be goods not classifiable under Heading 8517 of the Tariff, because such transmission or reception apparatus are excluded from this heading if they were covered under Heading 8528 of the Tariff. In this view of the matter, the scope of both these competing headings may be considered in detail, and it also be considered whether the goods in question were actually transmission or reception apparatus of Heading 8528 as alleged by the Revenue, or not;

**18.6 Burden of Classification:** That there is a twin burden on the Revenue in a case involving dispute of classification; that when there were two competing Tariff entries, the Revenue is required to not only establish inapplicability of one of the two rival tariff entries, but the Revenue is also required to establish positive applicability of one of the classifications; that principle stands settled by virtue of various decisions in cases like Aravali Forgings Ltd. V/s. Collector of Central Excise, Jaipur, reported in 1994 (70) ELT 693, Indrol Lubricants and Specialities Ltd. V/s. CCE, Calcutta reported in 1996 (83) ELT 432, and the like and therefore, in the present case also, the Revenue is under the obligation of establishing with evidence that Heading 8517 was not the proper and correct classification for DHE though this classification has been accepted by the proper Custom officers till December, 2016, and also that Heading 8528 of the Tariff was the most appropriate classification for DHE imported by us. But when the show cause notice is considered fully, it is apparent therefrom that no reliable and cogent evidence is brought on record by the Revenue for establishing that DHE were not classifiable under Heading 8517 of the Tariff, and that Heading 8528 was the most appropriate classification for these goods; that except referring to certain selected information from of a few websites, the Revenue has not brought on record any evidence for establishing that DHE were in the nature of "Reception Apparatus for Television" as precisely alleged at para 12.2.5.5 of the show cause notice; that it is also not established by the Revenue that any "apparatus for transmission or reception for telecommunication" were in the nature of "reception apparatus for television" and hence most appropriately classifiable under S.H.85287100; that when the above two rival headings, namely, 8517 and 8528 are considered, it becomes clear that any apparatus for telecommunication are most appropriately covered under Heading 8517, and this is the clarification coming out from the Explanatory Notes under Heading 8517 of Harmonious System of Nomenclature (HSN) also; that apparatus for the transmission or reception of speech or other sounds, images or data between two points by variation an electric current or optical wave flowing in a wired network or by electro-magnetic waves in a wireless network are most appropriately covered under Heading 8517 of the Tariff that they also emphasise that the networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio telegraphy, local and wide area networks also; that communication apparatus like multiplexers and related line equipment are covered under heading 8517 as communication apparatus, and therefore such apparatus cannot be classified under heading 8528 of the Tariff; that DHE imported by them are **not** in the nature of "Television Reception Apparatus", and therefore the Revenue's case that they were covered under heading 8528 of the Tariff is without any merit and justification; that they elaborated function of DHE and stated that DHE that are goods in the nature of apparatus used for reception and conversion of data; that it is also clear that Encoders, Decoders and Multiplexers are used in Digital Headends/Gateways, which are used for digitalization of Analogue signals; that however, **digitalization is a process where the signals are transmitted in digital format (i.e. MPEG-2/MPEG-4, and the like); that for such transmission, data communication equipment required are encoders, modulators, multiplexers, Router, Gateways etc; and it is this equipment which take signals from one network and convert, regenerate and stream them for being delivered to another**

network. This way, the equipment take signals, convert them from Analogue to Digital format, regenerate digital data and make such data ready for IP network (Information Protocol Network); that upon conversion when the signal is made ready, it is delivered to Local Area Network (LAN), and Wide Area Network (WAN) over telecom network, broadband, content delivery network and fibre optic network; thus, the use and actual function of the apparatus is receiving data from satellites, the data being voice, video (MPEG or motion pictures or group of motion pictures), images or any other information; and dispatching such data to a separate and different type of Content Delivery Network (CDN).

18.7 That it is specifically explained under Part(G) of Explanatory Notes of Heading 85.17 of HSN that apparatus for transmission or reception of data within communication networks were covered under that classification; that it is further clarified that communication networks may be configured as Local Area Networks (LAN), Metropolitan Area Networks (MAN) and Wide Area Networks (WAN), whether proprietary or open architecture; that it is thus also clear that apparatus allowing for the connection to a communication network in the nature of LAN or WAN are specifically covered under heading 8517; and therefore also, it is clear that the goods in question i.e. DHE are specifically covered under Heading 8517 as apparatus for communication in a network;

18.8 That any apparatus in the nature of "telecommunication equipment" is classifiable under Heading 8517 of the Tariff. This is the case of the Revenue also; that but, it is suggested in the show cause notice that Head-end equipment imported by us could not be classified as "Telecommunication Equipments", and on this basis, the goods in question are proposed to be excluded from Heading 8517; that in this regard, they may refer to para 8.1(v) of the show cause notice wherein, on the basis of statement of Shri Ajit Limaye of M/s.Thomson Video Networks India Pvt. Ltd., it is suggested that Headend equipment supplied to them were based on DVB (Digital Video Broadcasting) standards and hence could not be classified as telecommunication equipment; that in the following para 8.2 of the show cause notice also, it is suggested that inference from the statement of Shri Ajit Limaye was that Headend equipment supplied to us being based on DVB standards, and hence could not be classified as Telecommunication Equipments; that it is an admitted fact that "Telecommunication Equipment" merit classification only under Heading 8517 of the Tariff, but the goods imported by us are allegedly not telecommunication equipments, and therefore not classifiable under Heading 8517; therefore, the crucial issue arising in this case is, what is telecommunication equipment?; that the answer is given by a Constitution Bench of the Hon'ble Supreme Court in case of Bharat Sanchar Nigam Ltd. V/s. Reliance Communications Ltd. reported in (2011) 1 Supreme Court Cases 394; that in para 32, the Hon'ble Supreme Court has returned the following findings in this regard.

*"32. Telecommunication is all about transferring information from one location to another. This includes telephone conversations, television signals, computer files and other types of data. To transfer the information, you need a channel between the two locations. This may be a wire pair, radio signal, optical fibre, etc."*

Thus, the Constitution Bench of the highest Court of the Land has held that telecommunication includes television signals and other types of data, and that you need a channel between the two locations to transfer information, and telecommunication is all about transferring information from one location to another; that the general Explanatory Notes under Heading 8517 of HSN also clarifies the same position, that apparatus for the transmission of data between

two points in a wired network or in a wireless network was covered under that Heading; meaning thereby such telecommunication equipment are specifically classified under that heading i.e. Heading 8517;

**18.9** That when telecommunication equipment specifically merit classification under Heading 8517, the core issue arising in this case is whether Headend Equipment i.e. DHE are in the nature of telecommunication equipment, or not; that in this regard, the Revenue has observed under para 12.1 titled "Analysis of Merits of the Classification" that a Headend consists of a number of machines combined together to perform a specific function. Note No.4 of Section XVI of the Customs Tariff is referred to for suggesting that classification of a Headend was governed by this statutory note, which provides that where a machine consists of individual components intended to contribute together to a clearly defined function covered by one of the headings under Chapter 84 or Chapter 85, then the whole falls to be classified under heading appropriate to that function; that it is also suggested that the Headend is a combination of individual machines, interconnected by electric cables, intended to contribute together to the clearly defined function of "transmission apparatus for .....television, whether or not incorporating reception apparatus"; that thus it is the Revenue's case that Note No.4 of Section XVI of the Customs Tariff is applicable for classification of Headend, because Headend is a combination of individual machines interconnected by electric cables intended to contribute together to a clearly defined function; that this is the Revenue's case, and they have no quarrel or dispute about this proposition that the Headend was a combination of individual machines, interconnected by electric cables, intended to contribute together to a clearly defined function; that it is also the Revenue's case that Note No.4 of Section XVI of the Customs Tariff was applicable for classification of Headend and accordingly the whole falls to be classified under Heading appropriate to the clearly defined function; and they **have no quarrel or dispute about this proposition also; that** only dispute they have is in determining what was the clearly defined function of the Headend, because the suggestion made by the Revenue in para 12.1.1 of the show cause notice that the clearly defined functioned was "transmission apparatus for ... television, whether or not incorporating reception apparatus" is not correct; and they **dispute and disagree with the Revenue's case that the Headend was a transmission apparatus for television, whether or not incorporating reception apparatus; that they** submit that the clearly defined function of the Headend is as telecommunication equipment i.e. the apparatus for communication in wireless network like Local Area Networks (LAN) and Wide Area Networks (WAN); that such clearly defined functions are specifically referred to at general Explanatory Notes under Heading 85.17 of HSN and also under Part(G) of Explanatory Notes under the same heading of HSN;

**18.10** That in view of the above, they submit that the clearly defined function of the Headend is not that of "transmission apparatus for television", but the clearly defined function of the Headend is that of a Data Communication Equipment i.e. a **telecommunication equipment; that the** Hon'ble Supreme Court has held what was "telecommunication", and the function of Headend i.e. DHE imported by them is as defined by the Hon'ble Supreme Court i.e. transferring information from one location to another; that technical method used for performing such function as a telecommunication equipment in DHE is undoubtedly those clarified and described under general Explanatory Notes under Heading 85.17 of HSN, and also under Part(G) of Heading 8517 of this Nomenclature; that individual components that form the whole i.e. DHE or a Headend are also those which are specifically referred to and included in the group of communication apparatus under Heading

85.17 of HSN; that the analysis made by the Revenue about the individual components of Headend and also functions performed by Headend also establish that the **Headend or a telecommunication equipment** is specifically covered under Heading 8517; that they submit that Heading 8517 is the most specific classification for Headend, which is a **telecommunication equipment**, in the nature of a combination of individual components as contemplated under Note No.4 of Section XVI of the Customs Tariff; that the classification of the goods imported by us under Heading 8517, Sub Heading 85176990 has been perfectly legal and valid, and therefore the proposal to change this classification to Heading 8528 of the Customs Tariff does not hold any water; that the proposal to change the classification levelled by the Revenue in the show cause notice therefore deserves to be vacated at once along with other proposals in respect of demand of duty, interest, penalty and confiscation of the imported goods.

**18.11** That Revenue has not raised any serious dispute about the true nature of the goods imported by us i.e. DHE; that the Revenue has also accepted that they are an apparatus or equipment for transmission or reception of voice, images or other data; and the Revenue has also not raised any serious dispute about the fact that DHE were apparatus for communication in a wireless network such as Local or Wide Area Network; that only case made out by the Revenue is that if transmission or reception was of voice, image or other data but such transmission or reception is "for television", then the apparatus is excluded from Heading 8517 in view of the terms of that Heading; and such goods would be classified as "reception apparatus for television", under S.H.85287100; that at para 12.2.5.4 of the show cause notice, it is specifically suggested that the crucial difference between Heading No.8517 on one hand and Heading No.8528 on the other hand was about the data transmitted or received by the equipment; and if the data transmitted or received was formatted for and understood as being "for television", then the device cannot be classified under heading 8517; that on this basis, it is specifically suggested at para 12.2.5.5 that data that would pass through the encoders, multiplexers, modulators etc. was television programming received from satellite for television viewing; and ultimately the data would be transmitted to subscribers' homes, and watched on their television. Therefore, allegedly, the goods in question are classifiable as "reception apparatus for television" under the above referred S.H.No.85287100; that in view this case made by the Revenue, it is crucial and relevant to consider which equipment or apparatus were in the nature of "reception apparatus for television", because only such equipment are excluded from classification of heading 8517, and merit classification under heading 8528 of the Tariff, however, **they submit that DHE or the Headend imported by them are not in the nature of "reception apparatus for television"**, and therefore the Revenue's case for classification of the imported goods under S.H. No.85287100 is without any justification and without any merit; that Heading 8528 of the Customs Tariff is parimateria (i.e. absolutely similar to) Heading 8528 of HSN; that Heading 8528 of our Customs Tariff, Heading 85.28 of HSN also includes two broad classes or groups of goods, namely, (i) Monitors and Projectors, not incorporating television reception apparatus, and (ii) reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; that since these two Headings are parimateria, the Explanatory Notes under Heading 8528 of HSN are very relevant for understanding the scope and coverage of classification under heading 8528.

**18.12** That the clarification and explanation under Part (D) of Notes under Heading 85.28 of HSN that this group includes apparatus in the nature of television receivers and receivers of television broadcasts is in line with the scheme of Section S.H.85287100 of the Customs Tariff; that it is clear that only

the apparatus for the end user falls for classification under this part of Heading 8528 of the Customs Tariff, and not the apparatus for transmission or reception of data and apparatus for communication in a wired or wireless network; that

Reception apparatus for television, whether or not incorporating radio broadcast receivers or sound or video recording or reproducing apparatus are the goods under Heading 8528, which is broadly divided into two parts; that the first is classified under S.H.No.85287100, with the description, namely, "Not designed to incorporate a video display or screen"; that the second part is meant for television sets of various screen size and also LCD and other television receivers; that Colour and black & white, both varieties of television receivers are included in the second part as is clear from S.H.No.852872 to 85287219 of the Customs Tariff; that when the second group of goods covered under Heading 8528 of the Customs Tariff is considered comprehensively i.e. all the sub headings from S.H. 85287100 to S.H.85287390 are considered together, a clear picture that emerges is that the goods covered here are reception apparatus for the end use i.e. for actual viewing or watching; that the case of the Revenue is to classify the DHE under SH 85287100, but this classification is also only for individual apparatus used for televisions; that a Circular No.52/2011-Cus. dated 11 November, 2011 issued by the Government of India for clarifying the scope of S.H. 85287100 of the Customs Tariff; that Classification of apparatus like TV Tuners is held under Customs Tariff item 85287100 under this circular, on the basis that Customs Tariff item 85287100 was for device that provides the television function through the reception of broadcast signal from television station and conversion in to audio and video information of the broadcast signal enabling television broadcasts to be viewed on the screen; that this clarification also shows that SH 85287100 is a classification for equipment/apparatus meant for direct viewing on the screen; that in view of the above, they submit that DHE which is an apparatus consisting of several individual components interconnected to one another, and intended to contribute together to a clearly defined function as a **telecommunication equipment** is not in the nature of "reception apparatus for television"; and therefore these goods, namely, DHE do not merit classification under Heading 8528 of the Tariff; that SH 85287100 suggested by the Revenue for classification of DHE is not for an apparatus consisting of several individual components like encoders, decoders, multiplexers, IRD etc. when all such individual components are interconnected for performing function of a telecommunication equipment; that sub Heading 85287100 of the Tariff is only for apparatus like TV Tuners which provide the television function through the reception of broadcast signal from television station and conversion in audio-video information of the broadcast signal enabling TV broadcasts to be viewed on the screen; that DHE is not an apparatus of that nature because DHE as a whole (and even the individual components that are interconnected resulting in the whole, namely, DHE) is not capable of providing the television function through the reception of broadcast signal from television station and conversion into audio-video information of the broadcast signal enabling television broadcasts to be viewed on the screen; that in view of the above referred scope of Heading 8528, S.H. 85287100, DHE cannot be classified thereunder; that DHE is not apparatus that provide the television function, and DHE is not an apparatus for conversion of broadcast signal into audio and video information enabling television broadcasts to be viewed on the screen; that the **goods imported by them allow the reception, conversion and transmission of speech or other sounds, images, within a network**; that DHE is an apparatus in the nature of telecommunication equipment, and therefore not classifiable under Sub Heading No. 85287100 as suggested by the Revenue.

**18.13** That the entire case of the Revenue is that the transmission or reception apparatus of Heading 8528 (and also Heading 8443, 8523 and 8527) are excluded



from the coverage of Heading 8517 in terms of the description and exclusion under Heading 8517; and therefore, even though these goods may transmit or receive by line (a cable), even though these goods might be a transmitter or receiver or multiplexer or other equipment on the line, even though these goods may transmit or receive digital data; still however, they fall under S.H. 85287100 in view of exclusion of Heading 8528 from the classification of Heading 8517; that there is a clear error in the Revenue's case, because DHE are not goods of Heading No.8528 and therefore they are not excluded from scope and coverage of Heading 8517 of the Tariff; that admittedly, Headings 8517 and 8528 of the Customs Tariff are absolutely similar to respectively Headings 85.17 and 85.28 of HSN and Transmission or reception apparatus of Heading 8443, 8525, 8527 and 8528 are excluded from Heading 85.17 of HSN also. But the Notes under both the heading Nos. 8517 and 8528 of HSN establish that DHE was not in the nature of "reception apparatus for television" as contemplated under Heading No.85.28 of HSN; and therefore it also stands established that DHE is not excluded from Heading 85.17 of the Customs Tariff. Thus, the whole case of the Revenue that DHE being in the nature of reception apparatus for television was excluded from Heading No.8517 is ex-facie erroneous and incorrect;

**18.14** That they have explained their case for classification of the goods imported by them under Heading 8517 hereinabove, and we have also explained how the Revenue's case for classification of such goods under Heading 8528 is unsustainable in facts as well as in law, however, without prejudice to our submissions and explanation put forth hereinabove, they request for complying with the principles of natural justice in this adjudication proceedings; that they would like to cross examine these two persons whose statements are heavily relied upon by the Revenue in the show cause notice, and inferences adverse to them have also been drawn by the Revenue on the basis of the statements of these two persons; that they cited the decision of Hon'ble Delhi High Court has held in case of Lachhman Das Tobacco Dealers V/s UOI reported in 1978 (2) ELT (J500) and Bata Shoe Co. Pvt. Ltd. V/s UOI reported in 1978 (2) ELT (501) decision of Hon'ble Gujarat High Court in case of Arunodaya Mills Ltd. V/s UOI reported in 1985 (21) ELT 390 (Guj.), Walker Anjaria and Sons Pvt. Ltd. V/s Collector reported in 1987 (28) ELT 425 and Hindalco Industries Ltd. V/s Collector reported in 1999 (31) RLT 147, Nico Extrusions Private Limited – 2009 (248) ELT 497, Harika Resim P. Ltd. 2010 (253) ELT 108, Khandelwal Enterprises – 1983 (13) ELT 1258, Arya Abhushan Bhandar – 2002 (143) ELT 25 (SC), F.M. Potia – 2000 (126) ELT 107 (Bom.), Narendra Chandradas – 2000 (125) ELT 269 (Gau.) and Nagraj Valchand Jain – 2000 (123) ELT 50 (Bom.) and stated that in the present case also, as aforesaid, statements of Shri Ajit Limaye and Shri Subrata Bhattacharya are specifically relied upon in the show cause notice, and inferences adverse to us are also sought to be drawn on the basis of statements of Shri Ajit Limaye and Shri Subrata Bhattacharya and therefore, their for opportunity of cross examination of the above referred two witnesses is also in accordance with the statutory provision of Section 138B of the Customs Act.

**18.15** That the goods are imported by them for last several years, and also by various importers located all over the country; that the goods in question are classified under Heading 8517 all throughout the country, and proper Custom Officers in charge of various Customs Stations have assessed such goods, namely, DHE to custom duties under Heading 8517 without raising any objection about classification and applicable rate of duty; that it is only because of the investigation commenced by DRI authorities by the middle of year 2016 that the importers of such goods have been compelled to deposit duties as applicable to goods classifiable under Heading 8528, though such duties are deposited under



protest or by way of provisional assessment. But the fact remains that such goods are accepted by even Custom officers as classifiable under Heading 8517 of the Tariff and therefore the proposal now made to change mode of assessment with past effect is illegal and unjustified; that any change in mode of assessment is permissible only for cogent reasons, and that too with prospective effect; that therefore they submit that the proposals levelled in the show cause notice being contrary to the settled practice of assessment all throughout the country, such proposals deserve to be dropped for past imports and clearances;

**18.16** That the goods covered under Bills of Entry listed at Annexure-"A" to the show cause notice have been cleared for home consumption after the proper Custom officers assessed the Bills of Entry finally; that the assessment of imports covered under these Bills of Entry stand fully concluded, but such concluded transactions are now sought to be reopened by invoking Sub Section (4) of Section 28 of the Customs Act, alleging suppression of facts by them; that this is an impermissible and unauthorised action; that it is suggested at para 15.2 of the show cause notice that they were fully aware that the imported goods were for CATV meant for Cable TV Operators, but still they chose to classify the goods under Heading 8517 in order to avail nil rate of basic customs duty; that but this suggestion is wholly incorrect and unjustified, because they have been carrying a genuine and bonafide belief that the goods imported by them were telecommunication equipment and hence classifiable under Heading 8517 of the Tariff; that they still hold this belief and impression, because it arises out of the fact that the goods imported by them are specifically covered under Explanatory Notes under Heading 85.17 of HSN, and the Hon'ble Supreme Court has also held that such goods were in the nature of telecommunication equipment; that various importers of similar goods located at various places in the country had been importing and discharging custom duties on such goods under Heading 8517 of the Tariff, and data of such imports has also been available on various Websites, including the details published by the Customs Department and therefore, they have been carrying a genuine and bonafide impression that the goods imported by us were chargeable to nil rate of duty as classifiable under Heading 8517 of the Tariff; that though DRI authorities have conducted a detailed investigation, no evidence is brought on record by them to establish or even to suggest that they or their executives were aware that the goods like DHE were classifiable under Heading 8528 of the Customs Act but still however, they classified the goods under Heading 8517 for not paying basic custom duty thereon; therefore, the suggestion made at para 15.2 of the show cause notice is without any basis and without any justification, and invocation of larger period of limitation on such suggestion is an unauthorised action; that the the dispute raised by the Revenue is about classification of the goods imported by us. Admittedly, these goods were accepted by Custom officers as classifiable under Heading 8517 of the Tariff till the commencement of the investigation by DRI; that the fact that proper Custom officers have accepted classification under Heading 8517 in past shows that the present one is a case where any ordinary person of reasonable prudence could hold and carry an impression that the goods attracted custom duties under Heading 8517 of the Tariff; that in cases of dispute about classification, no malafide or ill-intention can be attributed to the assessee because classification is a mixed question of facts and law; whereas interpretation of a Tariff heading/Sub Heading is a pure question of law; that they relied on decision of Commissioner V/s. Ishaan Research Lab (P.) Ltd. **2008 (230) ELT 7,** Shahnaz Ayurvedics **2004 (173) ELT 337** Haryana Roadways Engineering Corporation Ltd. **2001 (131) ELT 662** and Wipro Ltd. **2005 (179) ELT 211, wherein** it is held by the Hon'ble Courts that larger period of limitation cannot be invoked against an assessee when the dispute was about classification of goods;

**18.17** That the proposal to impose penalties on them is also liable to be withdrawn, because there is no violation committed by us as contemplated under Section 112(a) or 114A of the Customs Act in this case; that in support of the above submission, reliance is also placed on the following judgements:

- i) Liladhar Pasoo Forwarders Pvt. Ltd. V/s. CC, Mumbai 2000 (122) ELT 737 (Tri.)
- ii) Arokiaraj V/s. CC, Chennai, 2004 (168) ELT 336 (Tri.-Chennai)
- iii) Ravish Karnath V/s. CC, Bangalore 2009 (234) ELT 238 (Kar.) [Maintained in 2016 (338) ELT A26 (SC)]

**18.18** That the proposal to recover interest under Section 28AA of the Act is also not sustainable; that the goods covered under the Bills of Entry at Annexure-"A" to the show cause notice have been allowed to be cleared for home consumption by proper Custom officers after finally assessing duties thereon; that these goods have never been seized nor released provisionally; that when goods have never been seized nor provisionally released, such goods cannot be confiscated notionally; that in case of Manjula Showa Ltd. 2008 (227) ELT 330, the Appellate Tribunal has held that goods cannot be confiscated nor could any condition of redemption fine be imposed when there was no seizure of any goods; that the Larger Bench of the Tribunal in case of Shiv Kripa Ispat Pvt. Ltd. 2009 (235) ELT 623 has also upheld this principle; that proposal for confiscation of the goods imported by them covered under Bills of Entry listed at Annexures-"A" and "B" to the show cause notice is illegal and unjustified, and therefore this proposal may also be withdrawn in the interest of justice.

**18.19** That on the above premises, they submit that the main proposal to classify/reclassify the goods imported by us under S.H. 85287100 is unsustainable in facts as well as in law; and therefore this proposal may be withdrawn; that classification of the goods imported by us deserves to be upheld and confirmed under Heading 8517 of the Tariff, and they also request you to do so in the interest of justice; that they also request you to drop and withdraw proposals for demanding and recovering custom duties of Rs.6,54,340/- and Rs.2,00,31,047/-, and also to drop and withdraw other proposals for imposing penalty, charging interest and ordering confiscation of the goods imported by them and request to finalise the assessment of Bills of Entry listed at Annexure-"B" to the show cause notice under Heading 8517 of the Tariff, with consequential restitution of amount previously deposited by us towards basic custom duty because such duty has been "nil" for the goods meriting classification under Heading 8517 of the Tariff;

**19. Personal Hearing:** Personal Hearing in respect of Show Cause Notice dated 06.04.2018 was fixed on 30.08.2024. Advocate of M/s. GTPL Hathway Ltd. appeared for Personal Hearing on 30.08.2024 wherein he submitted a copy of written submission dated 29.08.2024 and reiterated the submission made therein. The advocate in written submission dated 29.08.2024 has interalia stated as under:

**19.1 Whether in the facts of the present case the extended period of limitation can be invoked:** That the Hon'ble Tribunal vide order dated 13.09.2023 remanded the matter for de-novo adjudication essentially for considering the various alternative classifications and also to consider the decisions of the Hon'ble Supreme Court; that Hon'ble Tribunal while remanding the matter also held that because various alternative classifications are possible weightage to the fact that the disputed matter is of legal interpretation, and therefore, the extended period of limitation cannot be invoked as per the settled

law should be kept in mind; that the Hon'ble Tribunal also held that if there is an alternative classification which is not proposed in the show cause notice then fresh proceedings with all legal effects may be undertaken; that it is submitted that in the facts of the present case, the Hon'ble Tribunal has already held that the issue is of legal interpretation and hence the extended period of limitation cannot be invoked. In this context, it is to be noted that the appellant filed the bills of entry during the month of March and April, 2013; that the show cause notice was issued invoking the provisions of Section 28(4) while invoking the extended period of limitation on 29.09.2014 and therefore, the entire demand is barred by limitation; that the classification of the goods is an academic issue inasmuch as either way the demand cannot be confirmed under the extended period of limitation; furthermore, it is also to be noted that earlier the show cause notice was issued in-between rival Headings 85176290 and 85287390, which was confirmed by the Commissioner under CTH 85287390 as proposed in the show cause notice, however, the department filed appeal challenging such classification while proposing that actually the classification should be under CTH 85287100; that after the show cause notice was issued the Hon'ble Supreme Court in the case of M/s. Multi Screen Media Pvt. Ltd. reported in 2015 (322) ELT 421 and the CESTAT in the case of Brigadier R. Deshpande reported in 2018 (363) ELT 572 categorically held that "Head end equipment" is classifiable under CTH 8525, which is a classification which is neither claimed by the noticee or the department. Therefore, considering such facts, even otherwise the extended period of limitation cannot be invoked in the facts of the present case; that HS Committee (World Customs) has given an opinion that a digital encoder which converts digital video, audio or/and data of the source information to digital signals is classifiable under CTH 8517 and 8525; that therefore, the noticee was under a bona-fide belief that CTH 8517 was the correct classification; that the show cause notice being looked from any angle is beyond the normal period of limitation and no ingredients exist so as to enable the department to invoke the extended period of limitation;

**19.2 About classification of the goods:** That the issue of classification of "head end equipment" has been settled by the Hon'ble Supreme Court in the case of M/s. Multi Screen Media Pvt. Ltd. reported at 2015 (322) ELT 421 whereby the Hon'ble Supreme Court categorically held that when the equipment is capable of both receiving and transmitting functions, then such equipment cannot be classified under CTH 8528. The Hon'ble Supreme Court categorically observed that the apparatus under CTH 8528 is the apparatus which is only capable of receiving signals and is not capable of transmitting signals. Therefore, when the apparatus is both capable of transmitting signals and receiving signals, then such apparatus cannot be classified under CTH 8528. The issue of classification of head end equipment also came before the CESTAT, Delhi, whereby the dispute was about head end equipment similar to the one which is imported by the appellant. The CESTAT in the case of Brigadier R. Deshpande reported at 2018 (363) ELT 572 came to a conclusion that head end equipment, which is capable of transmission of TV channels over cable TV is classifiable under CTH 8525. The CESTAT came to such conclusion based upon the decision of the Hon'ble Supreme Court in the case of M/s. Multi Screen Media Pvt. Ltd. (supra). The decision of the CESTAT, Delhi was carried on in appeal before the Hon'ble Supreme Court on some limited issues and the Hon'ble Supreme Court in its decision reported at 2019 (368) ELT 235 observed that the finding of the CESTAT that head end equipment is classifiable under CTH 8525 has not been challenged by the department and so in so far as the issue of classification is concerned, the issue has been finalized. Therefore, it is submitted that the issue of classification of head end equipment is already settled.

**19.3 Classification of the goods cannot be done under any other heading which was not proposed in the SCN;** That the Hon'ble Supreme Court has in the case of M/s. Ballarpur Industries Ltd. reported at 2007 (215) ELT 489 categorically held that the show cause notice is the foundation of the matter of levy and recovery of duty and it would not be open for the department to argue a case beyond the show cause notice; that the Hon'ble Supreme Court has in the case of M/s. Toyo Engineering India Ltd. reported at 2006 (201) ELT 513 has held that the grounds which did not find mention in the show cause notice cannot be argued by the department and the department cannot travel beyond the scope of the show cause notice; that the CESTAT Ahmedabad in the case of Ratnaveer Precision Engineering reported at 2023 (5) TMI 48 came to a conclusion that the claim of the Revenue that the adjudicating authority can classify the goods in a Customs Tariff Heading different from the one proposed in show cause notice, cannot be accepted; therefore, when in the present case when the classification proposed in the SCN is CTH 85287390 and the Hon'ble Apex court has decided the classification under CTH 8525. The case of the department in the SCN cannot go any further inasmuch as it is already decided by the Hon'ble apex court that the classification under CTH 8525 is correct and when such classification is not proposed in the SCN , the case of the revenue for reclassification under CTH 85287390 has to fail.

## **20 Discussion and Findings:**

**20.1** I find from the records that the present Show Cause Notice dated 06.04.2018 has been retrieved from Call Book for adjudication in view of Final Order No. 12159-12160/2023 dated 13.09.2023 issued by Hon'ble CESTAT, Ahmedabad in the matter of Appeal No. 12323/2018 filed in case of M/s. Gujarat Telelink Pvt. Ltd. I find that Department had filed Appeal No. 12323/2018 before the Hon'ble Tribunal on the ground that impugned goods viz. "Encoder Model No. UBLA-Magic-8100A" be classified under CTI 85287100 in case of M/s. Gujarat Telelink Pvt. Ltd and in present case also similar imported goods viz. "Encoder Model No. UBLA-Magic-8100A" is involved apart from other goods viz. Decoder, Multiplexer etc.,.

**20.2** I also find that after issuance of Show Cause Notice on 06.04.2018, extension for adjudication was sought from the Chief Commissioner of Customs, Ahmedabad who accorded the extension on 15.02.2019 and the SCN was transferred to Call Book on 12.09.2019. Further, the importer was informed vide letter F.No. VIII/10-16/Pr. Commr./O&A/2018 dated 22.12.2020 the reason for transfer of Show Cause Notice to Call Book as stipulated under Sub -Section 9A of Section 28 of the Customs Act, 1962 Accordingly, the time limit specified in Section 28 (9) ibid shall apply from the date when the reason specified under Section 28 (9A) has ceased to exist i.e., with effect from 13.09.2023 that is the date of Final Order No. 12159-12160/2023 issued by Hon'ble CESTAT, Ahmedabad.

**21.** I find that Hon'ble CESTAT, Ahmedabad vide Final Order No. 12159-12160/2023 dated 13.09.2023 decided case of M/s. Gujarat Telelink Pvt. Ltd. by way of remand as stated at para 3 & 4 of the said Order which is re-produced below:

*"3. We have gone through the rival submissions and find that the impugned product which is used in transmission of signals through cable network is disputed for classification. However, we find that it is not coming out what is the product description and its usage and its akinness or otherwise to other products decided by Hon'ble Supreme Court and coordinate bench of Delhi concurring with Apex Court decision, in the order or from the grounds of appeal as raised by the department.*

Again, we find that vital decisions have been made after the above classification of the product as stated by the appellant which indicate the product may merit classification under a different tariff head depending upon akinness, as was done by a W.C.O. ruling made available. Further, the ruling in the subsequent decisions, HSN Notes, WCO etc. have also not been considered in so far as the impugned decision is concerned. WCO ruling to the extent HSN is aligned has a lot of persuasive value, though cannot be in conflict with Apex Court decision. Therefore, we are inclined to remit the matter back to the Commissioner to go through the exact nature of the product and rulings given by the Hon'ble Supreme Court as well as W.C.O. after ascertaining the detailed nature of the product. Matter is thus allowed by way remand with directions that while considering the law of the land and various alternate classifications the Commissioner will definitely give weightage to the fact that disputed matter is of legal interpretation and therefore the extended period cannot be invoked as per settled law. An alternate classification to give effect to law of land propounded by SC though is not barred by us but same if found to be beyond those proposed in show cause notice would amount to fresh proceeding with all legal effects.

4. Both the appeals are allowed byway or remand in above terms. Miscellaneous application filed for allowing the additional grounds pertains to legal material is also allowed and disposed of."

22. From the facts of the case and submissions of M/s. GTPL Hathway Ltd, following questions have arisen for consideration in the present case:-

- i Whether the goods having description "8 in 1 Encoder Model No. ULBA-MAGIC-8100A' imported under B/E No. 9849597 with declaration of Customs Tariff Item No.85176990 should be classified under 85287100 and further the goods as detailed in Annexure-B to the Show Cause Notice imported under Bill of Entry No. 7959288 dated 26.12.2016 provisionally assessed under Customs Tariff Item No.85299090/85287390 should also be classified under Customs Tariff Item No.85287100 or otherwise?
- ii Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, liability of confiscation of the imported goods and the penalties on M/s. GTPL Hathway Ltd. arise or otherwise?

22.1 Points at Sr.No.(ii) supra, viz. Duty liability with interest, Confiscation of goods and penal liabilities would be relevant only if the main point stated at Sr.No. 15 (i) supra is decided in line with the classification proposed in the Show Cause Notice. Thus, the main point is being taken up firstly for examination.

**23. Whether the goods having description "8 in 1 Encoder Model No. ULBA-MAGIC-8100A' imported under B/E No. 9849597 with declaration of Customs Tariff Item No.85176990 should be classified under 85287100 and further the goods as detailed in Annexure-B to the Show Cause Notice imported under Bill of Entry No. 7959288 dated 26.12.2016 provisionally assessed under Customs Tariff Item No.85299090/85287390 should also be classified under Customs Tariff Item No.85287100 or otherwise?**

23.1 I find that DRI has initiated the investigation against the importer on the intelligence that certain importer of 'Digital Headend equipment for CATV' like Digital Encoders, Decoders, Modulators/demodulators, Multiplexers, QAM Modulators etc. were evading Custom Duty by mis-classifying these goods under

CTH 8517 claiming them to be telecom equipment and did not disclose the principal usage of the said goods that same were used for reception and transmission of Cable Television namely 'Headend equipment'.

**23.2** Classification under the Customs Tariff Act, 1975 is made in accordance with the General Rules of Interpretation. Rule 1 of General Rules of Interpretation (GRI) provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs may then be applied. I find it worth to re-produce the description of goods mentioned in CTH 8517 and those in CTH No. 8528 to ascertain as to what would be merit classification of the impugned goods.

**23.2.1** The relevant heading/description of CTH 8517 reads as under:

"8517 – Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area networks), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528.

- Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as local or wide area network)

8517.61 – Base stations

8517.62 – Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus

8517.69 – Other"

**23.2.2** The relevant heading/description in the CTH 8525 reads as under:

**2825** - Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders;

**23.2.3** The relevant heading/description in the CTH 8528 reads as under:

8528 – Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

- Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:

8528.71 – Not designed to incorporate a video display or screen

8528.7100- Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus not designed to incorporate a video display or screen

8528.72 – Other, colour

8528.73 –Other, monochrome"

**23.3** I find that Heading 8525 provides for 'transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or



sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders'. CTH 8517, 8525 and 8528 utilize the terms transmission and reception. The applicable distinction in terms of headings 8517, 8525 and 8528 is whether the transmission or reception is "of voice, images or other data" or "for television". Thus, even if the transmission or reception is "of voice, images or other data," if that transmission or reception is "for television", the apparatus is excluded from heading 8517 by the terms of that heading.

**24.** I find it worth to discuss the application/ function of Encoders/Digital Headend for merit classification of the impugned goods. The relevant text browsed from the Wikipedia is reproduced as under:

**24.1 Encoders:** An encoder is a device, circuit, transducer, software program, algorithm or person that converts information from one format or code to another, for the purposes of standardization, speed or compression. A simple encoder or simply an encoder in digital electronics is a one-hot to binary converter. One may say it is the reverse of a Decoder in its functioning and that is true in terms of functioning.

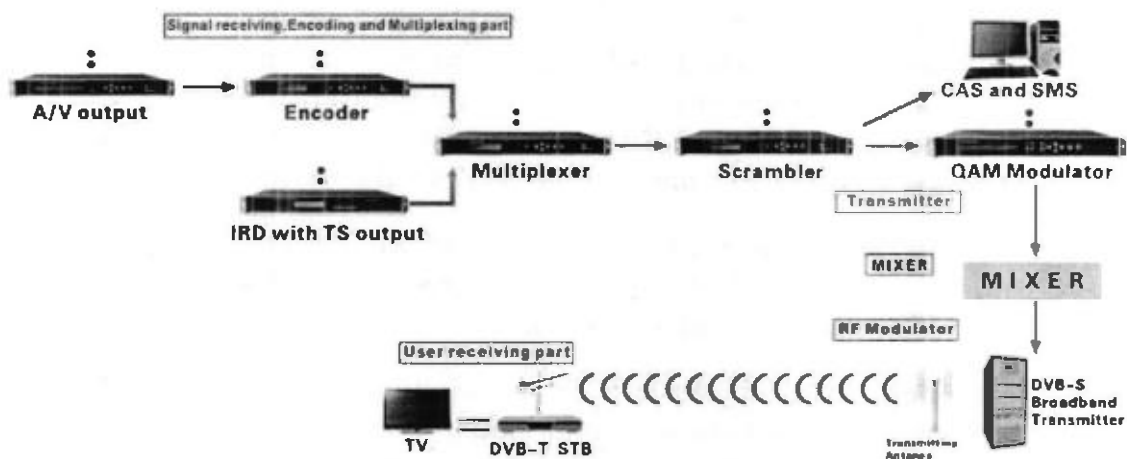
**24.2** A cable television headend is a master facility for receiving television signals for processing and distribution over a cable television system. The headend facility is normally unstaffed and surrounded by some type of security fencing and is typically a building or large shed housing electronic equipment used to receive and re-transmit video over the local cable infrastructure"

**24.3** From the website, <https://partners.nxtdigital.in/productsandservices.php>, The Cable Operators' Premise Equipment is stated to be as under:

"The Cable Operators' Premise Equipment or COPE is the basic device that you will need to receive and transmit digital signals through NXT DIGITAL, the Hinduja HITS network. It has been designed to make your transition from analogue to digital, simpler. The equipment can fit into any premise easily with its compact size. NXT DIGITAL has customized the COPE to suit your business model. It allows you to receive and transmit up to 500 channels depending on your choice of package. It allows you flexible package options with the amenity of inserting your own local channels. It has been designed keeping Indian conditions in mind and comes with a UPS installed, to provide temporary back-up in case of a power failure. You can choose from four different variants or tiers of COPE according to your requirements and subscriber demands".

**24.3.1** It would be appropriate to show a chart of a headend equipment.

### DVB-T Flow Chart



**24.3.2** As can be seen from the above chart, I find that the Encoders are digital headend equipment which helps in transmitting data. It is not in dispute that the importer has imported these digital headend equipment like encoders. Encoders are addressed as COPE/Digital Headend items for the purposes of trading/marketing them.

**24.3.4** A headend is a cable television industry term for a combination of television signal transmission apparatus. Each system is individually configured as per the set specifications for every particular customer. Generally, the headend receives satellite television signals, modified the signal and then transmits the signal into a cable television. Thus, the headend serves an integral function in the cable TV transmission chain. Headends contain combinations converters, signal processors/generators, combiners, scramblers, amplifiers, modulators/demodulators and receivers. The receiver/descramblers are used in cable television applications for receiving, decoding and retransmitting a television signal. The receiver/descrambler decodes a scrambled signal for further transmission, reception and subsequent display.

**25** I find that impugned goods consist of digital encoder, multiplexers and modulators used in cable television.

The digital encoders convert analogue or digital video, audio and data signals of the source information such as CATV (Cable Television) programming into digital signals by means of compressing and encoding techniques in compliance with the MPEG-2 and the newer MPEG-4AVC/H.264, or MPEG-4, video compression standards.

The digital multiplexer combines several input MPEG-2 transport stream signals into a single MPEG-2 transport stream, using multiplexing technologies, in order to increase efficiency in transmission. The apparatus is capable of receiving multiple (upto 64) input MPEG-2 transport stream signals and integrating and reproducing those input transport stream signals into a MPEG-2 transport stream signal compliant with the DVB-ASI (Digital Video Broadcasting Asynchronous Serial Interface) standard. It can integrate multiple video, audio (including multi-channel audio) and data signals in the same multiplexed output signal.

A modulator (or RF modulator) takes a baseband input signal and then output a radio frequency (RF) modulated signal. This is often a preliminary step in signal transmission, to another device such as a television.

The encoder, multiplexers and modulators are to be used for transmission of Cable television (CATV) program providers to the Cable Operators.

**26** I find that it is undisputed fact that importer is Multi System Operator (MSO) who provides Cable TV service to Local Cable Operator (LCOs) and other local subscribers. Therefore, I find that it would be worth to discuss how CATV transmission system functions:

A program-provider supplies analogue or digital video, audio & data signals to Encoders which compress and encode the video, audio & data signals into ASI (output) signals in compliance with MPEG-2 standard.

Output signals (streaming signal compressed & encoded by MPEG-2 standard) of several Encoders are entered into a Multiplexer which combines several signals (ASI) of Encoders into a ASI output Transport Stream signal by means of some multiplex techniques in order to carry several communication channels.

Output signals (ASI) of Multiplexer are entered into a Signal Converter which converts ASI signals into DS-3 or STM signals which will be transported further to the Optical Transmitter.

The Optical transmitter transmits the optical video, audio & data signals to the Optical Receiver through the optical network run by Network Operator.

Optical Signals or Optical Receiver are transported to Signal Converter which converts DS-3 or STM signals into ASI signals.

The ASI signals of the Signal Converter are connected to the Decoder which converts ASI signals into audio, video & data signals. The video & audio signals of the Decoder are transported to Modulator which converts or modulates video, audio & data signals into RF (Radio Frequency) signals.

The RF signals enter into HFC network to supply TV service subscribers.

Thus the encoder compresses and encodes signals received from the program provider in accordance with MPEG standards. The encoder then transmits or passes along the processed signals, to the multiplexer. The multiplexer receives the processed signals and combines them into a single MPEG transport stream for output. This multiplexed output is then passed on or transmitted to a modulator which combines the signals again into a DVB-ASI standard, process then further, and transmits them or passes them along for eventual transmission to be received and displayed by the CATV subscriber."

**27.** I find that Supreme Court has decided the impugned goods viz. 'decoder' in favour of the revenue in case of Commissioner of Cus., New Delhi Vs. C-Net Communication (I) Pvt. Ltd reported in 2007 (216) ELT 337 (S.C.) wherein interalia it has been held as under:

*" [Judgment per : V.S. Sirpurkar, J.] - Revenue has filed this appeal under Section 130E(B) of the Customs Act, 1962 challenging the decision of the Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"). By the impugned judgment the Tribunal allowed the appeal filed by the assessee M/s. C-Net Communication (I) Pvt. Ltd., challenging the orders passed by the Assessing Authority and the Confirming Order passed by the Commissioner of Appeals. The question which has fallen for consideration is "whether goods, namely,*

*Signal Decoder which is normally used by a Cable Operator for distributing Satellite signals collected by Dish Antenna is covered under Entry 8528 or 8529".*

*2. Such collected signals, if weak, are strengthened by the Decoder and are fed further to the customers' television. Normally, the signals so collected by the feed-horn are weak and, therefore, a device called Low Noise Block down Converter is used for the amplification of those signals. The Decoder also converts the signals received from the Satellite by way of Dish Antenna into useable signals. In short, the signals are modulated into proper frequency and with the help of channel combiners, distribution amplifiers, channel converters and top off boxes, the signals are distributed to the subscribers for viewing the programmes. This apparatus is useful in case of some of the broadcasters transmitting the Pay Channels and for that purpose the Cable Operator connects the Decoder after the Satellite Receiver and the Decoders perform the de-coding function only after the reception of signals by Satellite Receiver and then feeds into the frequency level which the Decoder can withstand. The Revenue insists that these Decoders are covered by Entry 8528 which reads as under :*

*"8528 - Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors"*

*3....*

*4....*

*5....*

*6....*

*7....*

*8....*

*9. ...*

*10. ....*

*11....*

*12....*

*13....*

*14....*

*15. While the appeal was being heard, this Court had directed the respondents to file technical/product literature for the proper adjudication of the matter. The respondents accordingly have filed such literature. A "decoder", as per the Dictionary of Computer, W.R. Spencer, is an electronic device that is capable of accepting decoded data at its input and generating unencoded data at its output. The decoding process employed may conform to an agreed standard or be user-defined. The outputs of these devices are capable of directly driving external equipment such as LCD or LED-type displays. As per the information obtained from Wikipedia which is a free encyclopedia, the "decoder" is described as under :*

*"A decoder is a device which does the reverse of an encoder, undoing the encoding so that the original information can be retrieved. The same method used to encode is usually just reversed in order to decode.*

*In digital electronics this would mean that a decoder is a multiple-input, multiple-output logic circuit that converts coded inputs into coded outputs, where the input and output codes are different, e.g., n-to-2<sup>n</sup>, BCD decoders."*

The User Manual which has been supplied to the court indicates that :

*"This decoder enables normal viewing of satellite programmes broadcast using the STARCrypt system of encryption. When used in conjunction with the correct viewing card these broadcasts are descrambled. The decoder incorporates the following features :*

- *Phono connectors for connection to a satellite receiver.*
- *Option de-emphasis for baseband input signal;*
- *Power on LED indicator;*
- *De-emphasis on LED indicator;*
- *Pay preview programme capability;*
- *Cable and SMA TV compatibility;*
- *Compatibility with most existing satellite receivers."*

*From the User's Manual it is apparent that the decoder is an equipment which is required to be connected to the power supply by way of a cord. The said cord is terminated at one end with a connector to be inserted into the power input socket on the rear panel of the apparatus. This decoder is required to be connected with the help of cords to the satellite receiver. All this is connected to the Television set. In short it is only when the connections between the decoder satellite receiver and the Television have been made that the subscriber would be able to view the programme if he has the valid card for the same. The functioning of the decoder, therefore, clearly indicates that it is essential for receiving the decoded signals and the subscriber can view the programmes either of the pay channels or meant for the cable subscribers with the aid of the decoder. In case the decoder is not connected to the Television and to the satellite receiver, then it will not be possible for the subscriber to view any programme which is aired by the Cable TV or which is meant as a pay channel. In short, before making a full use of Television, the signals which are received by the dish-antenna are passed through the decoder which does the function of decoding the encoded signals so that the viewer can watch them. Under such circumstances it is clear that it become "reception apparatus for television". It may be that even without the decoder the television may work but in order to enjoy the television in a more meaningful manner, as also for its complete utilization the decoder is required. It may not be fitting into the description of "television receiver" but it certainly is an apparatus which works for receiving the signals for television. In our view, therefore, when we compare unamended and the amended Entries, it is clear that the amended Entry has widened the scope of the earlier Entry and what was earlier "television receiver" has now become "reception apparatus for television". If this is so, in our opinion, the amended Entry under 8528 would aptly apply to the decoder which is one of the "apparatus for receiving the signals for television". In our opinion the true test is not as to whether the television could still work without the decoder, but the true test is as to the function that the decoder achieves in the user of the television. It is clear to our mind that decoder with which we are concerned passes the signals which have been received from satellite after decoding them into television so as to enable the viewer to have intelligible signals which, at times, would be available only by way of pay channels or which would be available if viewer is a subscriber to the Cable TV. Again that is not the only function of the decoder. At number of times the signals which are received from the satellite are weak and, therefore, would not reach the television intelligibly for the viewer, the decoder strengthens these signals. This leaves us with no doubt that decoder can be aptly described as a "reception apparatus for television". It is an apparatus which helps the television to receive intelligible signals for the viewer.*

**16.** As per Stroud's Judicial Dictionary the term "apparatus" includes the distribution board of an electrical installation. It must be considered when current is passing through and not when it is in its inanimate state. This meaning has been

assigned to it in *Waddell's Curator Bonis v. Alexander Lindsay Ltd.* [1960 SLT 189 (OH)]. This would indicate that the terms "apparatus" has been interpreted as something which is inclusive of some other appliance. This is clearly an indicator to the fact that the amendment was brought in with an idea to include a unit like the Decoder. This term was absent at the pre-amended stage and its inclusion in Entry 8528 clearly indicates the intent of the Legislature that the scope of the Entry was to be broadened and widened so as to include a signal unit like decoder. Unfortunately all this has escaped the attention of the Tribunal.

**17.** Learned counsel for the respondent strongly argued that the decoder in question is not a satellite receiver and is merely connected between the satellite receiver and the modulator. In case where the satellite signals are encoded or scrambled condition and the decoder is used only for the purpose of decoding the encoded/scrambled signals and that the signals decoder is nothing but one of the device connected after the satellite receiver and is used to convert the scrambled signals into unscrambled signals. Thus, the decoder is not a "satellite receiver". There can be no quarrel with this argument regarding the function of the decoder. However, what we are at pains to point out is the effect of amendment which has undoubtedly widened the scope of the Entry 8528. The argument put forward by the respondent would have been a sound argument had the Entry 8528 been restricted to "television receivers". However, now the Entry is not restricted to "television receivers" and has been widened into "reception apparatus for television". The thrust is on the word "reception apparatus", as against the thrust on the word "receiver" in the unamended Entry. In our opinion, the word "apparatus" would certainly mean the compound instrument or chain of series of instruments designed to carry out specific function or for a particular use."

**28.** I have also gone through the Final Order No. 12159-12160/2023 dated 13.09.2023. I find that the ratio of decision of Hon'ble Supreme Court in case of CC Vs. Multi Screen Media Pvt. Ltd reported in 2015 (322) ELT 572 (SC) relied on by the importer in said CESTAT Order is not applicable in the present case as in that case, dispute was regarding classification of 'business satellite receivers' whether under CTH 8525 as claimed by importer or under CTH 8528 as claimed by the revenue whereas in the present case, the dispute pertains to classification of Digital Headend whether under CTH 8517 as claimed by the importer or under CTI 85287100 as claimed by the Revenue. Further, I find that looking to the function of the imported impugned goods and activities of M/s. GTPL Hathway Ltd., I find that goods are meant for CATV and as per the Explanatory notes to the Harmonized System of Nomenclature for CTH 8528, the impugned goods merits classification under CTI 85287100.

**29** Thus, on harmonious reading of the provisions of CTH 8528 and functions/application of the impugned goods and decision of Hon'ble Supreme Court, I find that imported goods covered under the Show Cause Notice are meant for cable TV network which are broadcast over the air, able and direct broadcast satellite TV systems, are reception apparatus for television.

**30** I find that CTH 8517 specifically excludes transmission or reception apparatus of heading CTH 8528. Explanatory notes to CTH 8517 covers networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks. On the other hand, I find that CTH 8528 refers to reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus. The Explanatory notes to the Harmonized System of Nomenclature for CTH 8528 says that the heading includes (1) Television reception apparatus, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, for the display of signals (television sets) and (2) Apparatus for the reception of television signals, without display capabilities (e.g. receivers of



satellite television broadcasts). These apparatus receive signals and convert them into a signal suitable for display.

I find that the data that will pass through the encoders, multiplexers, modulators etc., is television programming received through satellite for television viewing and finally it will be transmitted to subscriber's home and watched in the vast majority of the cases, on their television. Therefore, applying the Rule 1 of General Rules of Interpretation, the impugned goods covered under Show Cause Notice dated 06.04.2018 being "Reception apparatus for television" merits classification under Customs Tariff Item No. 85287100. Therefore, I find that goods classified under Customs Tariff Item No. 85176990 under Bill of Entry No. 9849597 dated 15.04.2013 by the importer is required to be rejected. Further the goods classified under Customs Tariff Item No. 85299090/85287390 under Bill of Entry No. 7959288 dated 26.12.2016 which is provisionally assessed is required to be re-assessed/finalized under Customs Tariff Item No.85287100 .

**31.1** I find that M/s. GTPL Hathway Ltd had placed reliance on the decision of Hon'ble Supreme Court in case of Bharat Sanchar Nigam Ltd. V/s. Reliance Communications Ltd. reported in (2011) 1 Supreme Court Cases 394 and have cited Para 32 of the said Order and have submitted that Constitution Bench of the highest Court of the Land has held that telecommunication includes television signals and therefore, their imported goods falls under CTH 8517. I find that the said plea of the importer does not sound goods as the said decision was delivered by the Hon'ble Supreme Court in the context of interconnection agreement with the appellant when the respondent was a basic service operator and dispute was that respondent was underpaying access deficit charges to the appellant allegedly by resorting to call-masking technique and by landing incoming international call at wrong points of interconnection (PoI). Whereas the present case is of classification of impugned goods under Taxing Statute of Customs Tariff Act, 1975. Time and again it has been settled by the Apex Court that, the definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute. In this regard, I rely on the ratio of decision of Hon'ble Supreme Court in the case of Commr. of C.Ex., Nagpur Vs. Universal Ferro & Allied Chemicals Ltd. reported in 2020 (372) ELT 14 (SC) wherein in has been interalia held as under :

*"22. This Court has held, that it is a settled principle in Excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. It has further been held, that the conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute."*

Further Hon'ble Supreme Court in the case of Commr. of C.Ex., New Delhi Vs. Connaught Plaza Restaurant (P) Ltd. reported in 2012 (286) ELT 321 (SC) wherein in has been interalia held as under:

*"43. We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose and scheme cannot be applied mechanically to another statute. As aforesaid, the object of the Excise Act is to raise revenue for which various goods are differently classified in the Act. The conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for non-levy of*

excise duty, thereby causing a loss of revenue. [See; *Medley Pharmaceuticals Limited v. Commissioner of Central Excise and Customs, Daman* - (2011) 2 SCC 601 = 2011 (263) E.L.T. 641 (S.C.) and *Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited* - 2009 (12) SCC 419 = 2009 (237) E.L.T. 225 (S.C.)]. The provisions of PFA, dedicated to food adulteration, would require a technical and scientific understanding of "ice-cream" and thus, may require different standards for a goods to be marketed as "ice-cream". These provisions are for ensuring quality control and have nothing to do with the class of goods which are subject to excise duty under a particular tariff entry under the Tariff Act. These provisions are not a standard for interpreting goods mentioned in the Tariff Act, the purpose and object of which is completely different."

**Further** Hon'ble Supreme Court in the case of *Commr. of C.Ex., Nagpur Vs. Shree Baidyanath Ayurved Bhavan Ltd.* reported in 2009 (237) ELT 225 (SC) wherein in has been interalia held as under:

"41. True it is that Section 3(a) of the *Drugs and Cosmetics Act, 1940* defines 'Ayurvedic, Sidha or Unani Drug' but that definition is not necessary to be imported in New Tariff Act. The definition of one statute having different object, purpose and scheme cannot be applied mechanically to another statute. As stated above, the object of Excise Act is to raise revenue for which various products are differently classified in New Tariff Act."

I find that in the present case, CTH 8517 specifically exclude 'transmission or reception apparatus of heading 8443,8525 or 8528" and CTI 85287100 is for "Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or vide recording or reproducing apparatus not designed to incorporate a video display or screen." Thus there is clear intention of the Revenue to exclude the impugned goods from CTH 8517. Therefore, the ratio of case law cited by the importer is not applicable to their case.

**31.2** I find that importer has contended that Classification of the goods cannot be done under any other heading which was not proposed in the SCN. I find that this allegation has no merit as the Show Cause Notice No. DRIMZU/CI/INT-38/2018 dated 06.04.2018 has proposed to classify the goods under CTI 85287100 covered under Bill of Entry No.9849597 dated 14.04.2013 and 7959288 dated 26.12.2016

## **32 Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, on M/s. GTPL Hathway Ltd. arise or otherwise?**

**32.1** Keeping the aforesaid discussions in mind, I proceed to examine the matter further. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of Duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBIC/ICEGATE web portal [www.cbic.gov.in](http://www.cbic.gov.in), or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the

Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the provision of the Customs Act, 1962 or the Allied Acts.

**32.2** I find that Shri Subrata Bhattacharya, Vice-President of M/s. GTPL Hathway Ltd in his statement dated 22.03.2018 have admitted that they provide Cable TV Services to Local Cable Operators (LCOs) as well as direct customers and they provide free to air channels to the subscribers including standard Definition and Hi-definition and for that they required Digital Headend Equipment which in turn includes decoders provided by broadcaster, encoders, IRD (Integrated Receiver Decoders), Multiplexers etc.. Thus inspite of being fully aware of the fact that the imported goods were meant for transmission and reception of broadcast signals for Television meant for Cable TV, Operator, still they choose to classify under different CTHs at the time of import in order to avail NIL Basic Customs Duty. Further, it is an admitted fact that M/s. Thomson Video Networks, SAS, France, who is supplier of Digital Handed Equipment to M/s. Modern Communications and Broadcast System Pvt. Ltd and from whom M/s. GTPL Hathway Ltd had procured/purchased the said goods on High Sea Sale basis. During the search conducted at the premises of Thomson Video Networks India Pvt. Ltd on 18.09.2017, certain invoices/ Email were recovered. Perusal of the Invoice No. THVN1386 dated 20.06.2012, THVN0788 dated 07.10.2011, THVN0800 dated 11.10.2011 wherein the CTH for DHE like Encoder is mentioned as '8528' has revealed that later on it has been changed. Further, E mail dated 22.05.2013 from Shri Ajit Limaye to Mr. Roulliaux, Germany, shipment and Customs, Thomson, France alongwith the corresponding Invoice No. THVN2176 dated 22.05.2013 having HS Code 8528719000 shows that request has been made to delete the HS Code 8528719000. (Details alongwith screen shot of Invoice and E mail are mentioned at Para NO.7 of the Show Cause Note). Thus, I find from the above documentary evidence, that importer with clear intent to evade the payment of customs duty have classified the impugned goods under other CTH declaring the same as Telecom equipment and therefore, suppressed the actual description of goods and mis-classified the same with intention to evade Customs Duty. Hence, the extended period provisions under Section 28 (4) of the Customs Act, 1962 is rightly invoked in the Show Cause Notice and they have intentionally and knowingly adopted the modus operandi to mis-state the correct classification of imported goods and willfully mis-classified their imported goods. It is therefore very much apparent that M/s. GTPL Hathway Ltd. has willfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, M/s. GTPL Hathway Ltd have indulged in willful mis-declaration of classification of the impugned goods and suppressed correct classification of the impugned goods from the Customs, Ahmedabad with a view to avail the benefit of lower Customs Duty. By way of adopting this modus in respect of impugned goods, M/s. GTPL Hathway Ltd have short paid the duty of Rs. 6,54,340/- in respect of the Bill of Entry No.9849597 dated 15.04.2013 and Rs.2,00,31,047/- in respect of Bill of Entry No.7959288 dated 26.12.2016. Hence, duty is required to be recovered by invocation of extended period for demand of the said Customs

Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that the aforementioned total Customs Duty of Rs. 2,06,85,387/- (Rupees Two Crore, Six Lakh, Eighty Five Thousand, Three Hundred and Eighty Seven only ) is recoverable from M/s. GTPL Hathway Ltd. under the provisions of Section 28(4) of the Customs Act, 1962. Since the Bill of Entry No.7959288 dated 26.12.2016 provisionally assessed under Customs Tariff Item No. 85299090/85287390, same is required to be assessed finally under Customs Tariff Item No 85287100 and duty paid during the provisional assessment is required to be adjusted at the time of finalization of the said Bill of Entry No.7959288 dated 26.12.2016.

**32.3** It has also been proposed in the Show Cause Notices to demand and recover interest on the differential Customs Duty of **Rs. 2,06,85,387/- (Rupees Two Crore, Six Lakh, Eighty Five Thousand, Three Hundred and Eighty Seven only)** in respect of the imports made under Bill of Entry No.No.9849597 dated 15.04.2013 and Bill of Entry No.No.7959288 dated 26.12.2016 under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that the differential Customs Duties of **Rs. 2,06,85,387/- (Rupees Two Crore, Six Lakh, Eighty Five Thousand, Three Hundred and Eighty Seven only)** is liable to be recovered under Section 28(4) of the Customs Act, 1962. I, therefore hold that the interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

**32.4** M/s. GTPL Hathway Ltd. has contended that extended period cannot be invoked in the present case as there is no mis-declaration or suppression of facts; that extended period is invokable only under Section 28(4) of the Customs Act, which is an exception to the provisions of Section 28(1), providing for a period of two years for issuance of Notice in a normal case and it is settled law that an exception is required to be construed; that the extended period cannot be invoked as the present issue of classification involves an interpretation of the law i.e., of entry, HSN, etc.; that mis-classification does not amount to mis-declaration or suppression of facts. They have relied on few judgements to support their contention. In this regard, I find that the first and foremost fact that needs to be appreciated is that M/s. GTPL Hathway Ltd. has declared the Customs Tariff Item No. 85176990 for the goods covered in the Bill of Entry No.No.9849597 dated 15.04.2013 and Customs Tariff Item No. 85299090/85287390 for the goods covered in the Bill of Entry No.7959288 dated 26.12.2016 as a 'telecom equipment' despite fully knowing the fact that the goods imported were basically used for MPEG-2 and MPEG-4 signal compression and transmission for CATV and were not telecommunication equipment. Further, Shri Subrata Bhattacharya, Vice-President of M/s. GTPL Hathway Ltd in his statement dated 22.03.2018 have admitted that they provide Cable TV Services to Local Cable Operators (LCOs) as well as direct customers and they provides free to air channels to the subscribers including standard Definition and Hi-definition and for that they required Digital Headend Equipment which in turn includes decoders provided by broadcaster, encoders, IRD (Integrated Receiver Decoders), Multiplexers etc. Thus inspite of being fully aware of the fact that the imported goods were meant for transmission and reception of broadcast signals for Television meant for Cable TV Operator, still they chose to classify under different CTHs at the time of import in order to avail NIL Basic Customs Duty. Further, it is an admitted fact that M/s. Thomson Video Networks, SAS, France is supplier of Digital Handed Equipment to M/s. Modern

Communications and Broadcast System Pvt. Ltd and from whom M/s. GTPL Hathway Ltd had procured the said goods on High Sea Sale basis. During the search conducted at the premises of Thomson Video Networks India Pvt. Ltd on 18.09.2017, certain invoices/E mail were recovered. Perusal of the Invoice No. THVN1386 dated 20.06.2012, THVN0788 dated 07.10.2011, THVN0800 dated 11.10.2011 revealed that the CTH for DHE like Encoder is mentioned as '8528' but later on it has been changed. Further, E mail dated 22.05.2013 from Shri Ajit Limaye to Mr. Roulliaux, Germany, shipment and Customs, Thomson, France alongwith the corresponding Invoice No. THVN2176 dated 22.05.2013 having HS Code 8528719000 revealed that request has been made to delete the HS Code 8528719000. (Details alongwith screen shot of Invoice and E mail are mentioned at Para NO.7 of the Show Cause Note). Thus, it proves that they have classified the impugned imported goods under a different Customs Tariff Heading to evade Customs Duty. By no stretch of imagination it can be said that the importer was not aware about the entire technical specifications of the goods that he had purchased. The Department has assessed the Bills of Entry on the basis of the details provided by the Importer. It is only after the investigation, mis-declaration of the classification of the impugned goods came to light. Thus, I find that the M/s. GTPL Hathway Ltd. has willfully mis-declared the classification of the impugned imported goods and suppressed the correct classification of the impugned goods with an intention to evade payment of Customs Duty at applicable rate and therefore, the elements of Section 28(4) of the Customs Act, 1962 are very much present in the instant case. Further, the case laws cited by the importer envisage circumstances wherein the ingredients of Section 28(4) of the Customs Act, 1962 did not exist, however, the present case involves such ingredients of wilful mis-declaration of classification and suppression of correct classification of the impugned goods at the time of import. Thus, the ratio of the none of case laws cited by the importer is applicable to the case at hand.

**32.5** Further, I find that importer had sought the cross examination of Shri Subrata Bhattacharya, Vice-President of M/s. GTPL Hathway Ltd and Shri Ajit Limaye in the written submission filed on 16.10.2018, however, during the personal hearing held on 30.08.2024, advocate of the importer filed additional submission dated 29.08.2024 and reiterated the content of their additional submission dated 29.08.2024 and in the said written submission there is no request for cross examination. Further, I find that there is no dispute that importer is engaged in Cable TV service to Local Cable Operator as well as direct customers and the imported goods at no stretch of imagination is imported for telecommunication service, however, constantly importer is claiming that impugned goods imported by them were telecommunication equipment and no evidence showing that impugned goods are telecommunication equipments are produced whereas the Department has already discharged their burden as to how the impugned goods are mis-classified by the importer. Therefore, even without relying on the statement of Shri Subrata Bhattacharya, Vice-President of M/s. GTPL Hathway Ltd and Shri Ajit Limaye, there is independent evidence that importer inspite of knowing that impugned goods were meant for CATV, they mis classified as 'telecommunication equipment' and suppressed the facts from the department and evaded the customs duty and therefore there is no violation of Natural Justice even on denial of cross examination of aforesaid two person sought by the importer. I rely on the ratio of decision of Hon'ble Delhi Tribunal rendered in case of Commissioner of C.Ex & S.T-LUT, Delhi Vs. Gas Authority of India reported in 2019 (366) ELT 941 (Tri. Del.) wherein it has been held as under.

**"14.** *The case law as relied upon by the respondent to impress that it was the duty of Department to prove the classification of the product/article is not applicable to the present facts and circumstances as department herein has already discharged*



*its burden of proving the product manufactured by respondent is NGL and not Naphtha. Thereafter it is for respondent to rebut if they feel aggrieved. But there is nothing brought on record to falsify the said report except the minor procedural discrepancy while obtaining the samples from the other units of respondent and while getting those samples tested. Also the respondent had opportunity to contest the said report below itself. But admittedly said option has not been exercised by the respondent. From the above discussion it becomes clear that chemistry involved in extraction & segregation of various hydrocarbons in a refinery or petroleum industry supports that the product extracted by respondent is Natural Gasoline liquid and not Naphtha."*

**33. Whether the imported goods covered under B/E No. 9849597 having assessable value of Rs. 54,54,000/- as mentioned in Annexure 'A' of the Show Cause Notice and the imported goods covered under Bill of Entry No. 7959288 dated 26.12.2016 having assessable value of Rs. 6,80,37,929/- as mentioned in Annexure 'B' of the Show Cause Notice are liable for confiscation under Section 111(m) of the Customs Act, 1962?**

**33.1** M/s. GTPL Hathway Ltd. have mis-classified the goods under Customs Tariff Item No. 85176990 for the goods covered in the Bill of Entry No. 9849597 dated 15.04.2013 and Customs Tariff Item No. 85299090/85287390 for the goods covered in the Bill of Entry No. 7959288 dated 26.12.2016 as a telecom equipment despite fully knowing the fact that the goods imported were basically used for MPEG-2 and MPEG-4 signal compression and transmission for CATV and were not telecommunication equipment. By way of adopting this modus in respect of impugned goods covered under B/E No. 9849597 having assessable value of Rs. 54,54,000/- as mentioned in Annexure 'A' of the Show Cause Notice and the imported goods covered under Bill of Entry No. 7959288 dated 26.12.2016 having assessable value of Rs. 6,80,37,929/- as mentioned in Annexure 'B' of the Show Cause, Noticee have got the clearance without payment of Basic Customs Duty. Thus M/s. GTPL Hathway Ltd. has deliberately and knowingly indulged in suppression of facts in respect of their imported product and has wilfully mis-classified the goods with an intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Importer is required to make and subscribe to a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act. In this case, M/s. GTPL Hathway Ltd. has resorted to mis-classification of the goods by wrongly classifying it under different CTH instead of Customs Tariff Item No. 85287100 in the Bills of Entry filed by them as detailed in Annexure-A and B to the Show Cause Notice with an intention to evade Basic Customs Duty that would have accrued to them if they had correctly classified the same. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. I thus find that willful mis-declaration of classification of the impugned goods and suppression of correct classification of the impugned goods from the Air Cargo Complex, Ahmedabad on the part of M/s. GTPL Hathway Ltd. has rendered the said goods cleared from Air Cargo Complex, Ahmedabad liable for confiscation under Section 111(m) of the Customs Act, 1962.

**33.2** As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to imposed in lieu of confiscation in respect of the imported goods, which are not physically



available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under:-

**“125 Option to pay fine in lieu of confiscation –**

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit...”

**33.3** I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

*The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act ....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

**33.4** I also find that Hon'ble High Court of Gujarat by relying on the above referred judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

“.

“.

**174.** ..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142*

(Mad.)), wherein the following has been observed in Para-23;

*"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act...", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

**175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."**

**33.5** In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation for imported goods covered under B/E No. 9849597 dated 15.04.2013 having assessable value of Rs. 54,54,000/- as mentioned in Annexure 'A' of the Show Cause Notice and the imported goods covered under Bill of Entry No. 7959288 dated 26.12.2016 having assessable value of Rs. 6,80,37,929/- as mentioned in Annexure 'B' of the Show Cause Notice.

**34. Whether M/s. GTPL Hathway Ltd is liable for penalty under Section 112(a)/ Section 114A of the Customs Act, 1962 ?**

**34.1** The Show Cause Notice proposes penalty under the provisions of Section 112(a), or Section 114A of the Customs Act, 1962 on M/s. GTPL Hathway Ltd . The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging willful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in foregoing paras, M/s. M/s. GTPL Hathway Ltd had willingly mis-declared the classification of the impugned imported goods with an intention to avoid the payment of Basic Customs Duty that would have accrued to them if they had correctly classified the same. I have already held that the differential Customs Duty of Rs. 2,06,85,387/- (Rupees Two Crore, Six Lakh, Eighty Five Thousand, Three Hundred and Eighty Seven only) is confirmed and liable to be recovered from M/s. GTPL Hathway Ltd under Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4)

ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. GTPL Hathway Ltd.

**34.2** The Show Cause Notice also proposes imposition of penalty under Section 112(a) of the Customs Act, 1962 on M/s. GTPL Hathway Ltd. In this regard it is to mention that the fifth proviso to section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

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

In the instant case, I have already found that M/s. GTPL Hathway Ltd is liable to penalty under Section 114A of the Customs Act, 1962 and therefore penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

**35.** In view of my findings in paras supra, I pass the following order:

**:: ORDER::**

**35.1** I reject the declared classification of the subject goods, viz. '8 in 1 Encoder Model No. UBLA-Magic-8100A' imported by M/s. GTPL Hathway Ltd. in the Bill of Entry No.9849597 dated 15.04.2013 under Customs Tariff Item No.85176990 (as detailed in Annexure A to the Show Cause Notice) and order to re-classify the said goods under Customs Tariff Item No.85287100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and reassess the subject Bill of Entry accordingly;

**35.2** I reject the declared classification of the subject goods imported by M/s. GTPL Hathway Ltd. in the Bill of Entry No.7959288 dated 26.12.2016 under Customs Tariff Item No.85299090/85287390 (as detailed in Annexure B to the Show Cause Notice) and order to re-classify the said goods under Customs Tariff Item No.85287100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and reassess the subject Bill of Entry accordingly;

**35.3** I confirm the demand of Differential Customs Duty amounting to **Rs. 6,54,340/- (Rupees Six Lakh, Fifty Four Thousand, Three Hundred and Forty only)** as detailed in Annexure- A of the Show Cause Notice leviable on the "imported goods" covered under Bills of Entry No. 9849597 dated 15.04.2013 imported by M/s GTPL Hathway Limited under Section 28(4) of the Customs Act, 1962 readwith the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

**35.4** I confirm the demand of Differential Customs Duty amounting to **Rs. 2,00,31,047/- (Rupees Two Crore, Thirty One Thousand and Forty Seven only)** as detailed in Annexure- B of the Show Cause Notice leviable on the "imported goods" covered under Bills of Entry No. 7959288 dated 26.12.2016 imported by M/s GTPL Hathway Limited under Section 28(4) of the Customs Act, 1962 readwith the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same. Further, I order to appropriate **Rs. 2,00,31,047/- (Rupees Two Crore, Thirty One Thousand and Forty Seven only)** paid during the **provisional Assessment** of Bills of Entry No. 7959288 dated 26.12.2016.

**35.5** Interest at the appropriate rate shall be charged and recovered from M/s GTPL Hathway Limited, under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 35.3 & 35.4 above.

**35.6** I hold the imported goods totally valued at **Rs.7,34,91,929/- (Rupees Seven Crore, Thirty Four Lakh, Ninety One Thousand, Nine Hundred and Twenty Nine only)** as listed in Annexure- A & B of the Show Cause Notice imported vide Bill of Entry No. 9849597 dated 15.04.2013 and 7959288 dated 26.12.2016 liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s GTPL Hathway Limited the option to redeem the goods on payment of Fine of **Rs.75,00,000/- (Rupees Seventy Five Lakh only)** under Section 125 of the Customs Act, 1962.

**35.7** I impose penalty of **Rs. 2,06,85,387/- (Rupees Two Crore, Six Lakh, Eight Five Thousand, Three Hundred and Eighty Seven only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s GTPL Hathway Limited., under Section 114A of the Customs Act, 1962 in respect of Bills of Entry No. 9849597 dated 15.04.2013 and 7959288 dated 26.12.2016 detailed in Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the importer, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

**36** This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

**37** The Show Cause Notice No. DRI/MZU/CI/INT-38/2018 dated 06.04.2018 is disposed off in above terms.



10.09.2024

**(Shiv Kumar Sharma)**  
Principal Commissioner

**DIN-20240971MN0000240463**

F.No. VIII/10-16/Pr Commr./O&A/2018

Date: 10.09.2024.

**BY Speed Post A.D**

To,

**1. M/s. GTPL Hathway Limited.,**  
GTPL House, FP No. 50,  
Opp. Armedia, Near Pakwan Crossroad,  
Sindhu Bhavan Road, Bodakdev,  
Ahmadabad -380059

Copy to:

- The Chief Commissioner of Customs, Ahmedabad Zone
- The Additional Director General, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai
- The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- The Deputy Commissioner, Air Cargo Complex, Ahmedabad
- Guard File.