

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

COURT No. 2

Customs Appeal No. 75518 of 2023

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/04/2023 dated 04.05.2023 passed by Commissioner of Customs (Port), Kolkata)

M/s. KEC International Limited

(RPG House, 463, Dr. Annie Basant Road, Worli, Mumbai-400030)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Kolkata-700001)

Respondent

With

Customs Appeal No. 75943 of 2024

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/04/2023 dated 04.05.2023 passed by Commissioner of Customs (Port), Kolkata)

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Kolkata-700001)

Appellant

VERSUS

M/s. KEC International Limited

(RGP House, 463, Dr. Annie Basant Road, Worli, Mumbai-400030)

Respondent

APPEARANCE :

Shri T. Viswanathan & Shri Akhilesh Kanasia, both Advocate for the Appellant/Respondent
Shri Samir Chitkara & Shri S. Debnath, Authorized Representative for the Respondent/Appellant

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75086-75087/2026

Date of Hearing : 12 January 2026

Date of Pronouncement : 20.01.2026

PER R. MURALIDHAR

The appellant KEC International Ltd. have imported Optical Ground Wire (OPGW) Fiber Optic Cable during period 16/6/2016 to 11/6/2021 classifying the same under Customs Tariff Heading 8544 70 90. After taking up certain investigations, a Show Cause Notice came to be issued on 11/06/2021 alleging that the product would get classified under CTH 9001 00 00. Accordingly, the differential duty of Rs. 2,38,07,593/- was demanded along with interest and penalty. A Show Cause Notice was also issued to the DGM Taxation and the Senior Manger Taxation seeking to know as to why penalty should not imposed on them. The appellants filed their detailed reply stating that they have been classifying the goods under CTH 8544 70 90 right from 2012 onwards. Their earlier consignment was duly tested by Electronics Regional Test Laboratory (EAST) and Test Report was issued by them on 10/01/2014. Based on this Test Report, the Department accepted the classification as CTH 85447090 vide their letter dated 18/06/2015. In the case of the subsequent imports during the period 16/06/2016 to 11/06/2021 also the same goods were imported and hence they had correctly classified the goods under CTH 8544 70 90. They also contested the issue on limitation. After due process, the Adjudicating Authority vide the impugned order, has dropped the demand to the extent of Rs.2,23,22,087/- in respect of the imports done during the period 16/6/2016 to 10/06/2019 on the ground that there was no suppression on the part of the appellant. On account of limitation, this portion of the demand was dropped. However, he has confirmed the demand in respect of the two Bills of Entry, for the imports done during the period 11/06/2019 to 11/06/2021 confirming the demand of Rs. 14,85,505/-. He dropped the proposed penalty against the DGM Taxation and Senior Manager Taxation. Being aggrieved by the confirmed demand of Rs. 14,85,505/- M/s. KEC International Ltd. has filed the present appeal before the Tribunal. Being aggrieved with the dropping of demand of Rs. 2,23,22,087/- along with interest and penalty, the Revenue is before the Tribunal. Though in the Appeal Form

CA-5, the revenue has mentioned the DGM Taxation and Sr. Manager Taxation as Respondents and canvassing has been made to impose penalties on them, in the absence of filing of specific Appeal against these persons, which are to be properly accounted for as Appeals, we hold that the points pertaining to these individuals cannot be taken up as part of the Appeal filed against KEC. Therefore, we are not considering the Revenue's case in respect of these two persons.

2. We have taken up both the appeals for hearing together.
3. Coming to the appeal filed by the Revenue against the dropping of the demand to the extent of Rs. 2,23,22,087/-, the Learned AR submits that the detailed verification and investigation taken up by the DRI proves that the 'OPGW Fiber Optic Cable' is required to be classified under CTH 9001 00 00. The LB has already held on 22/11/2017 that the PWG Fibre Optic Cable is classifiable under CTH 9001 00 00. The appellant has knowingly mis-declared the CTH as 8544 70 90 even for the subsequent imports carried out till 11/06/2021. Therefore, the Adjudicating Authority is in error in giving the reprieve on the ground of limitation to the appellant. He reiterates the detail grounds taken by the Revenue in their appeal and prays that the impugned order may be set aside to this extent and the appeal filed by the Revenue may be allowed.
4. The Ld. Advocates appearing on behalf of the importer KEC submits that since the issue is that of interpretation and the importer has cleared the goods after filing the Bills of Entry, without concealing any facts, no case of suppression has been made out against them. Therefore, they rely on the detailed findings of the Adjudicating authority for dropping the demand in respect of the extended period. They also relied on several other similar case laws holding that the extended period demand is legally not sustainable.
5. On going through the facts of the case, we find that the issue as to whether the impugned goods would get classified under CTH 9001 00

00 (as contended by Revenue) or under CTH 8544 70 90 (as contended by the importer) has been subject of litigation for many years right from the year 2006 onwards. We find that vide Circular No. 12/2006-Cus dated 28/02/2006, clarification/instructions were issued by CBEC for arriving at the correct classification of the goods in question. Further, this issue has been litigated at various levels by various importers. In view of different views taken by different coordinate Benches of the Tribunal, the issue reached the Larger Bench in the case of **Commissioner of Customs (Import) Mumbai Vs. Vodafone Essar Gujarat Ltd.** The Larger Bench vide **Order No. I/07-23/2017/LB dated 22/11/2017** has held that the goods in question would be classifiable under CTH 9001 00 00. Against this Larger Bench decision, the importer filed an appeal before the Hon'ble Supreme Court. The Hon'ble Apex Court vide their **Order dated 11.06.2020. in CEA No. 3501 of 2020, [2020 (373) ELT A93 (SC)]** has admitted the appeal and also granted interim Stay of the impugned LB Order subject to certain conditions. This shows that even as on date, the issue of classification of the impugned goods has not reached finality. We also find that on similar issues, the Tribunals have been consistently holding that since the issue is that of interpretation of correct classification of the goods, the suppression clause cannot be applied to fasten the demand for the extended period. One such decision on the very same issue has been given in the case of **ABB Ltd. Vs. CC and Final Order No. 20674/2024 dated 19/08/2024 (Tri. Bangalore)**. Therefore, considering the factual details and the consistent view of the coordinate Benches of the Tribunal that suppression clause would not be applicable in such cases, we do not find any necessity to interfere with the Order passed by the Adjudicating Authority dropping the confirmed demand of Rs. 2,23,22,087/-. Accordingly, we dismiss the appeal filed by the Revenue.

6. In respect of the confirmed demand being contested by the importer, the Learned Counsel appearing on his behalf makes the following submissions:

- (i) In respect of the consignment imported by them during the period 2012-13, the appellant had classified the goods under CTH 8544 70 90 at the time of imports. However, the Department took the view that they are classifiable under CTH 9001 00 00 and the appellant was made to pay the differential Customs Duty and clear the goods on provisional assessment basis. Sample was drawn from the imported consignment and the same was sent for testing to Electronics Regional Test Laboratory (EAST). After testing the same, the Laboratory has clearly given the findings that "*individual protective coating sheath on each fibrecore provided*". This Test Report was accepted by the Customs Department vide F. No. S60(VA&B)-85/2015A/MISC dated 18/06/2015. As per this letter, the Department accepted the classification as CTH 8544 70 90 and stated that the processing of finalization of the provisionally assessed Bills of Entry would be taken up. After finalizing the provisional assessment classifying the goods under CTH 8544 70 90, the consequent refund was denied by the Adjudicating Authority. On appeal, the Commissioner (Appeals) set aside the Order-in-Original and allowed the refund claim. Being aggrieved, the Revenue filed their appeal C/76240/2017 before this Bench. This Bench vide **Final Order No. 77608-77609/2023 dated 1/12/2023** held that the appellant was eligible for the refund claim and dismissed the appeal filed by the Revenue. Therefore, the Learned Counsel submits that for all practical purposes, the classification and related issues are settled in favor of the appellant in their own case as on date. The decision of the Larger Bench holding that the product will fall under CTH 9001 00 00, cited by the Ld A R, stands stayed by the Hon'ble Supreme Court.
- (ii) The Ld Counsel submits that as per the above factual details, the appellant had the support of the Test Report clearly in their favor which had attained finality since no

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appeal was filed by the Revenue against the Test results. On the other hand, for initiating the present proceedings, the Department has not drawn any sample in any of the consignments imported during the period 11/06/2019 to 11/06/2021. Therefore, the Department does not have any evidence in the form of any Test Report confirming that the product will fall under CTH 9001 00 00. The Show Cause Notice has relied on the letter dated 17/06/2020 issued by ADJ (Transmission) Tech, New Delhi to highlight that "*in higher count OPGW cable, the fibres are not individually sheathed but the bundles of optical fibres are sheathed together with sheathing material*", which is also based on partial reading of this letter.

- (iii) The Ld. Counsel submits that the Revenue has only reproduced only a part of the reply from the Department of Telecommunication. He points out that in the same letter, the Department of Telecommunication has made it very clear that "*the details of OPGW cable like fibre count etc, have not been provided by DRI*". He further submits that the Department has not brought in any evidence that any samples have been collected and the same were got tested by any test laboratory. He also points out to the communication dated 20 January 2021 and February 8, 2021 from Head CSC ERTL (E), Kol-91 to show that there is absence of sample of optical fiber cable. Revenue is precluded from questioning the Test Report after more than 7 years, having accepted it in 2014 itself and having finalized the Bills of Entry as per the classification arrived at based on this Test Report.

7. In view of the above submissions, he prays that the Department has not come out with any proper evidence to fortify their claim that in the case of the two Bills of Entry in question, the

classification is required to be taken up under CTH 9001 00 00. Accordingly, he prays that the confirmed demand may be set aside.

8. The Learned AR appearing on behalf of the Revenue submits that the actual usage of the end product is also required to be seen. The exemption from Custom Duty is given when the goods are used for data transmission for telecommunication and not when they are used for transmission of electricity. He draws our attention to such usage of the goods in question being undertaken by Electricity Dept. at Orissa. The Ld AR also relies on the detailed findings of the Adjudicating Authority and justifies the confirmed demand.

9. Heard both sides and perused documentary evidence placed before us.

10. As we have already noted in the earlier paragraphs, the issue has been under litigation for about two decades. The copy of Circular No. 12/2006-Cus dated 28/02/2006 on this issue is reproduced below:-

Optical fibre cables — Mis-classification of — Instructions

Circular No. 12/2006-Cus., dated 28-2-2006

F.No. 528/8/2006-Cus(TU)

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Mis-classification of 'optical fibre cables' - Reg.

I am directed to invite your attention to the representation of domestic manufacturers of fibre optic cables wherein they have stated that import of cables of sub-heading 9001 10 are mis-declared or mis-classified as products of Heading 8544.

2. The issue of classification of optical fibre cables was examined by the Board. The Board felt that heading Nos. 8544 and 9001, read with exclusions specified in Chapter Note 1(h) to Chapter 90 of the First Schedule to the Customs Tariff Act and Explanatory Notes of Harmonized Commodity Description and Coding System (HSN), cover mutually exclusive category of optical fibre cables under their respective headings. These are distinguishable in that the optical fibre cables of Heading 8544 are made up of individually sheathed fibres, whereas cables of Heading 9001 are not individually sheathed and specifically exclude products of 8544.

3. Further Board also noted certain importers may mis-declare the optical fibre cables of Heading 9001 under Heading 8544 to avail lower rate of duty applicable to Information Technology Agreement (ITA-1) bound items. In order to check such mis-classification/mis-declaration of optical fibre cables of Chapter 9001 in the guise of cables of Chapter 8544, careful examination and verification may be done by field officers. In this regard, the field formations under your charge may be alerted about such *modus operandi* and to detect and report any cases of mis-classification/mis-declaration.

11. We have also gone through the Testing taken up for the past consignment of 2012-13 by EAST Laboratory. The relevant Test Report is reproduced below:-

65 Form No. QRT/2014

Government of India
Ministry of Communications and Information Technology
Department of Electronics & Information Technology, Standardisation Testing & Quality Certification Directorate
ELECTRONICS REGIONAL TEST LABORATORY (EAST)

TEST REPORT ON FIBER OPTIC CABLE PAGE 01 OF 04

1.0 SCOPE

1.1 Service Request No. : TE/0103/11-13

1.2 Test Report No. : ERTL(E)/TES/O102/0019/12-13
Date: 10/01/2014

1.3 Requested by (Name & Address of the organisation) : OFFICE OF THE COMMISSIONER OF CUSTOMS
15/1, STRAND ROAD
CUSTOMS HOUSE
KOLKATA 700 001
WB

1.4 Description, Identification of the item to be tested

Item	:	FIBER OPTIC CABLE
Make	:	NIL
Model	:	NIL
Sl.No.	:	NIL
Qty.	:	1

1.4.1 Applicable Spec. of the item(s) tested: 24 FIBER

1.4.2 Characterisation and condition of the item

Characterisation	:	Not applicable
Condition	:	Satisfactory

1.5 Date of item receipt of item : 13/12/2013 ✓

1.6 Date of start of testing : 03/01/2014 ✓

1.6.1 Date of completion of testing : 06/01/2014

1.7 Location where testing performed : In house

1.8 Ambient condition during measurement : 24°C
60% RH. Max.

1.9 Spec. used for testing : AS PER LETTER OF CUSTOMS ✓

1.9.1 Details of non-standard method followed (if any) : NIL

Government of India
Ministry of Communications and Information Technology
Department of Electronics & Information Technology, Standardisation Testing & Quality Certification Directorate
ELECTRONICS REGIONAL TEST LABORATORY (EAST)

Form No. QAF/22/25
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TEST REPORT NO. : ERTL (E) / TES / O 102 / 0019 / 12 - 13
TEST REPORT ON : FIBER OPTIC CABLE

MAKE : ---	TEST ENGINEER	DATE
MODEL : ---	DILIP ROY	6-Jan-14
SERIAL NO. : ---		
JOB NO. : 0019 / TE / 12 - 13		

TEST RESULTS :

TEST NO.	TEST OR ENVIRONMENT	QUANTITY TESTED	SPECIFICATION LIMIT	TEST RESULT	REMARKS
1	Physical verification	1 cable	Whether the goods are optical fiber cables	Yes, goods are optical fiber cables, it is a 24 (4 x 6 = 24) core fiber cable.	Pass/Fail decision is not given as it is a requirement analysis job only. Test result provided.
2	Physical verification	1 cable	Whether the goods have been manufactured by a process in which the fibres are coated with different colours and are housed in jelly material which would amount to individually sheathing the fiber.	Yes, processed individual fibres coated in 6 different colours and are housed in jelly like material. There are such 4 jelly filled cables (each have 6 core fibers cable) contained in a metallic tube which are armoured by aluminium rods. So it is a 24 (4 x 6 = 24) core fiber cable	
3	Physical verification	1 cable	In particular, whether the optical fibres which have individually protective sheath made of resin (also described as coating).	Individual protective coating sheath on each fibercore provided	
4	Physical verification	1 cable	Whether these optical fiber cables can be taken to have been made up of individually sheathed fibres	Yes, these optical fiber cable have been made up of individually sheathed fiber.	

Tested by : 
(Test. Engrg.)

Checked by : 
S Goswami,
Scientist 'C'

12. From the above Test Report, it is seen that in the above Tables at Test No. 3 the Scientist C has clearly recorded that "the individual protective coating sheath on each fibercore provided". In respect of Test No.4 he records "Yes. These optical fiber cables have been made up of individually sheathed fiber".

13. We have gone through the letter dated 18/06/2015 which is reproduced below:-

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भारत सरकार
GOVERNMENT OF INDIA
सीमा शुल्क अधिकार का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (PORT)
सीमा शुल्क सदन, 15/1, स्ट्रैंड रोड, कोलकाता - 700001
CUSTOM HOUSE, 15/1, STRAND ROAD, KOLKATA 700001
PHONE: 91-33-22436493 FAX: 91-33-22435998

Date: 18.06.2015

F. No. S60(VA&B)-85 /2015A(Misc)

To
M/s KEC International Limited
Telecom Division
Building No. 9A, 8th Floor
DLF Cyber City Phase-3
Gurgaon
Haryana-122 002.

Sir

Subject: - Copy of test report, clarification regarding product code & release of BG-Reg.

Please refer to 3 your letters bearing no. Nil all dated 13.05.15 regarding the above mentioned subject.

Vide the said letter, you have requested this office for the following:-

- (i) Vide your 1st letter, you have requested this office to provide the copy of the test report where this office has sent the samples of 'DPGW Fibre Optic Cable' for testing.
- (ii) Vide your 2nd letter, you have requested this office to give the clarification regarding the current practice of classifying your goods.
- (iii) Vide your 3rd letter, you have requested this unit for release of Bank Guarantee and finalization of provisional assessment.

In view of the above,

- (a) the copy of the test report bearing No. ERTL(E)/TES/D 102/CO19/12-13 dated 10.01.14 is hereby enclosed with this letter.
- (b) The goods 'DPGW Fibre Optic Cable' are being currently classified under CTH 85447090 as per the decision approved by the competent authority after receiving of test report in your case.
- (c) This unit is in the process of finalization of your past imports and return of bank guarantee.

Encs: as stated

Yours faithfully
(K.C.Jena)
Additional Commissioner of Customs
Appraising Group-VA&B (Port)
Custom House, Kolkata



14. From the above letter, it is clear that the Test Report dated 10/01/2014 as observed in the earlier paragraphs, has been accepted by the Department. There is nothing to indicate from the arguments of the Revenue that any decision was taken to question this Test Report by way of any further appeal. The acceptance of the CTH based on the Test Report was conveyed by the Additional Commissioner of Customs on 18/06/2015. After this, the assessments were finalized classifying the goods under CTH as 8544 70 90. When the refund of the Custom Duty was litigated, the Commissioner (Appeals) has held that the appellant is eligible for the refund for the duty initially paid by them under tariff heading 9001 00 00. The litigation towards refund also has reached finality with this Bench passing **Final Order No. 77608-77609/2023 dated 1/12/2023** holding that the appellant is eligible for the refund.

15. The above factual details make it clear that the appellant's claim and belief is backed by the earlier Test Report and the consequent refund granted. On the other hand, the Revenue does not have an iota of concrete evidence by way of any drawing of sample and testing the same and Test Report to fortify their argument that the goods will fall under CTH 9001 00 00. The queries raised on the Testing Agency, after 7 years from the date of Test Report has not elicited any favourable reply supporting the Revenue's view. On the other hand, the letters written to the Testing Agency, seem to question their method for arriving at the result. Having accepted the Test Report and processed the finalization of the Bills of Entry based on the same more than 7 years back, we do not see the reason for revisiting the same after so many years. Prima facie it appears that after about 4 years from the date of decision of LB in the case of **Vodafone [Order No. I/07-23/2017/LB dated 22/11/2017]**, Revenue suddenly became wiser and invoked the extended period provisions and initiated the present proceeding in a hurried way without having drawn any sample for the past consignments. The Board Circular dated 28.02.2006 clarifies that

necessary verification is required to be taken up in each and every case to come to the correct conclusion about the classification. Even as the Board Circular is not binding on the assessee, it is very much binding on the Revenue, so long as it does not run contrary to any HC / SC decision. Therefore, non-drawal of samples and testing the same proves fatal to the case of the Revenue in the present proceedings.

16. We note that the **LB decision of Vodafone** has held that goods are classifiable under CTH 9001 00 00 which has been stayed and the issue is *sub-judice* before the Supreme Court. Therefore, the classification of the goods in question in the present case, is not within our jurisdiction. Hence, we are not even attempting to go into the arguments adduced by both the sides to pitch for the classification to be adopted.

17. We are confining ourselves to the very specifics of the factual details of the present case. We have found that that Revenue has not made out any case of suppression and the issue is that of interpretation. Hence, we have held that the dropping of the demand pertaining to the extended period by the Adjudicating authority is correct.

18. In respect of the confirmed demand for the normal period, we find that the importer is backed by the earlier Test report dated 10.1.2014 [reproduced above] in respect of identical goods in their own case. There is no allegation to the effect that the goods under litigation are different from the goods that were tested and the Report was generated on 10.1.2014. On the other hand, except for presumptions and assumptions, without drawing any sample and getting them tested, the Revenue has not made out any case against the appellant for the consignments imported during the period under question. The CBEC had issued the Instructions way back in 2006 to get the consignments verified properly before finalizing the classification. This was not followed by the Revenue as can be seen

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from the e mail dated 17.6.2021 from ADG (T) TEC ND [relied upon by the Revenue], extracted below :

Email

KEC Intimation
RUD-1
Shashi Prasad

Fwd: Request for test/ analysis of samples of OPGW - reg.

From : SATYAM YADAV <satyamy.d110801@gov.in>
Subject : Fwd: Request for test/ analysis of samples of OPGW - reg.
To : Shashi Prasad <shashisp.c040601@gov.in>, Nilesh Rai <nilesh.raai@nic.in>

Wed, Jun 17, 2020 09:24 PM

From: "KAMLA PARGAI" <adgt1.tec@gov.in>
To: "Director(NR) RTEC" <dirnr.tec@gov.in>
Cc: "Saurabh Gupta" <ddgnr.tec@gov.in>, "SATYAM YADAV" <satyamy.d110801@gov.in>, "DDG (T)" <ddgt.tec@gov.in>, "Director T TEC" <dir1.tec@gov.in>
Sent: Wednesday, June 17, 2020 6:13:23 PM
Subject: Re: Request for test/ analysis of samples of OPGW - reg.

Dear Ma'am,

Kindly refer to the trailing mail from Director(T),TEC regarding request for analysis of samples of OPGW cable. In this regard, the reply of Transmission division for the technical queries raised against point no. 3 of the letter dated 15.06.2020, is submitted as below:

- i. The details of OPGW cable like fibre count etc, have not been provided by DRI. However, in higher count OPGW cable, the fibres are not individually sheathed but the bundles of optical fibres are sheathed together with sheathing material.
- ii. The Cladding is an integral part of the optical fibre and the same is not sheathing of optical fibres.
- iii. The Dual acrylic coating over the cladding is an integral part of the optical fibre and the same is not sheathing of the optical fibres.
- iv. The fibre in Simplex optical fibre cable and Duplex optical fibre cable may be considered as individually sheathed optical fibre.

This is for kind information and further necessary action please.

Regards

Kamla Pargai
ADG(T)
TEC ND

From: "Director T TEC" <dir1.tec@gov.in>
To: "Saurabh Gupta" <ddgnr.tec@gov.in>, "Director(NR) RTEC" <dirnr.tec@gov.in>
Cc: "DDG (T)" <ddgt.tec@gov.in>, "KAMLA PARGAI" <adgt1.tec@gov.in>, "Asstt. Director General Telecom Engineering Centre, DOT" <adgt2.tec@gov.in>
Sent: Tuesday, June 16, 2020 2:06:07 PM
Subject: Fwd: Request for test/ analysis of samples of OPGW - reg.

Seen
Ramesh
08-07-2021

Kindly find attached herewith the mail from DRI regarding request for analysis of samples. In this regard, the following is submitted please:

1. As per letter attached, DRI has stated that they have been informed that the case relates to Transmission Division and they have been informed that the

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19. We have gone through some of the case laws, emphasizing the importance of sample testing where classification of product is invoked. Some cases are discussed below.

20. The Ahmedabad Bench in the case of **Stonex India Pvt Ltd vs Mundra Customs, vide Final Order No.12527-12528/2024 dated 25 October, 2024**, has held as under :

5.7 Without prejudice to above, we find that demand of customs duty of past imports under Annexure B and C to SCN is also not sustainable on the ground that goods were not tested by department in respect of past imports in respect of which demand is made in Annexure-B and C to SCN. It is settled position of law that each Bill of entry is a separate assessment and test report of one bill of entry cannot be made applicable to the goods imported under another bill of entry. Each consignment must be assessed separately, especially for natural mined rocks, where properties vary significantly.

21. The Tribunal in the case of **Shalimar Paints Ltd. v. Commissioner -- 2001 (134) E.L.T. 285 (Tribunal)**, has held as under :

"7. The first grievance of the appellant is that though the classification lists in question covered about 30 products, test reports relatable to only 4 products are available and there is absolutely no material against the appellant in so far as the remaining 26 products are concerned. He submits that presuming though denying that the test reports of CRCL are correct, the same can be made the basis for classifying only those products to which the test report relates. The same cannot be made applicable to the other items for which no samples were either drawn or if samples were drawn, there is no test report. For this proposition he relied upon the Tribunal's decision in the case of S.D. Kemexc Indus. v. CCE - 1995 (75) E.L.T. 377. In the said decision assessee was manufacturing 22 different types of chemicals. The Department drew samples only from two types of chemicals. It was held that test reports can be made applicable only for the two products for which the samples were drawn and not to the rest of the products. Following the ratio of the above decision we fully agree with the contention of the Id. adv. that the test reports, if at all could be made applicable only to the 4 items in question to which it belonged to. The balance 26 products would be classified under Heading 27.15 on the basis of the declarations made by the appellant which is based upon their

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technical literature as well as the production records and for which the Revenue has not adduced any evidence to shift the classification to heading 32.10."

**Affirmed by Hon'ble Supreme court in case of
Commissioner v. Shalimar Paints Ltd. - 2002 (145) E.L.T. A242**

22. The Delhi Tribunal, in the case of **Commissioner of customs (preventive) Vs Marks Marketing P Ltd. Reported as 2017 (346) ELT 144 (Tri - Del)** has held as under :

"9. We find no merit in the above statement of the Revenue. Admittedly, the change in the classification of the present import of fabrics is based upon the test result by the chemical examiner whereas it is not disputed that no such test results were carried out in respect of previous imports. The law on the issue is well settled. The test reports of the samples drawn from a particular consignment cannot be applied to the previous consignments. Merely because the deponent of the statement has agreed before the Customs that the previous consignment may be of the same composition, by itself does not establish that the previous consignments were admittedly of the same composition. The expression used by the deponent is 'may be' and he himself was not sure of the same fact. The composition of the fabrics may vary or change from the consignment to consignment inasmuch as there is not much difference in the wool content of the fabrics. Revenue has not given us any reason as to why the ratio of Tribunal's decision in the case of [Shalimar Paints](#) (supra) which stands upheld by the Hon'ble Supreme Court, is not applicable to the facts of the present case. Apart from the decision of Shalimar Paints, we note that there are number of other precedent decisions holding to the same effect."

23. Therefore, we set aside the confirmed demand of Rs. 14,85,505/- and allow the appeal of the importer to this extent.

24. In view of the foregoing, the appeal filed by the Revenue is dismissed and the appeal filed by the importer stands allowed with consequential relief, if any, as per law.

25. We would like to make it once again clear that in the present appeal filed by the importer, we have not taken any view as to what would be the correct classification of the goods in question. The importer's Appeal

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has been allowed only based on the detailed discussions and analysis done in the preceding paragraphs.

(Pronounced in the open court on 20.01.2026.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja