

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench COURT-2

Customs Appeal No. 20974 of 2015

[Arising out of the Order-in-Appeal No. 75&76/2015 dated 22.01.2015 passed
by the Commissioner of Customs (Appeals), Bangalore.]

Kluber Lubrication India Private, Limited.

No.347-A, Hebbal Industrial Area,
Mysore – 570016

.....Appellant

VERSUS

**Commissioner of Customs,
Bangalore**

Air Cargo complex Devanahalli
Bangalore, Karnataka-560300

.... Respondent

Appearance:

Mr. Rohan Karia, Advocate for Appellant

Mr. Rajesh Shastry, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 21587 of 2024

Date of Hearing: 08.03.2024

Date of Decision: 05.09.2024

Per: Pullela Nageswara Rao

M/s. Kluber India Pvt. Ltd., the appellant is engaged in the manufacture/repacking and trading of industrial lubricants. The appellant filed 6 (six) bill of entries for the import of "Slaked Lime" under the commercial name of "(BC) M7" from M/s. Kluber Lubrication,

Germany, classifying the imported goods under Customs Tariff Item Entry 2522 20 00 as "Slaked Lime" with the benefit of Sl. No. 517 of Notification No. 21/2002-Cus dated 01.03.2002 (as amended). The goods were accompanied by 'Material Safety Data (MSD) sheet, wherein chemical characterization of imported goods was mentioned as 'Calcium hydroxide". The Bills of Entry are duly supported by suppliers invoice, wherein they were described as 'BC(M7)' with the statistic product No. mentioned as 25222000. The goods were assessed provisionally, as the valuation was in question due to related party transaction and were cleared.

2. The Department conducted detailed investigation as regards the classification and eligibility of the benefit of Sl. No. 517 of Notification No. 21/2002-Cus dated 01.03.2002 (as amended) and held a view that the goods are classifiable under Customs Tariff Item Entry 2825 90 40 on the basis of the data sheet, invoice and technical documents and that the imported goods were identified as 'Calcium Di-hydroxide' and not as "slaked lime". The Show Cause was issued for demand of differential duty along with interest and proposed imposition of penalty, invoking the extended period of limitation, on the ground that imported goods have been identified as 'Calcium Di-hydroxide' as per the technical data sheet of the supplier and not as 'Slaked lime' as declared and therefore, they are classifiable under Customs Tariff Item Entry 28259040,

3. The Adjudication Authority confirmed the re-classification of the goods under Customs Tariff Item Entry 28259040, the appellant filed an appeal before the Commissioner (Appeals). The Department also filed an appeal before the Commissioner (Appeals) for modifying the order

with regard to the extent of penalty imposed on the appellant under section 114A of the Customs Act, 1962, as it was equivalent to duty and did not include the interest, thereon. The Commissioner (Appeals) has rejected the appellant's appeal and allowed the department's appeal. Aggrieved by the order of the Commissioner (Appeals) the appellant filed this appeal before the Tribunal.

4. The Learned Counsel for the appellant during the hearing contended that; Chapter 25 falls under Section V, which covers 'mineral products'; Chapter 25, provides the classification of Salt, Sulphur, Earths and stone, plastering material, Lime cement, etc.; further note 1 to chapter 25 clarifies that those products, which are in crude state are covered under Chapter 25; HSN explanatory note to chapter heading 2522 provides that 'Slaked lime' is classified under Customs Tariff Chapter Heading (CTH) 2522 and purified 'Calcium hydroxide falling' under Chapter Heading 2825 is excluded under Chapter Heading 2522; Chapter 28 provides the classification of various inorganic chemicals; it is evident from the HSN explanatory note, Customs Tariff Heading 2825 covers only 'Calcium-Hydroxide' in pure state and 'Slaked lime' falling under 2522 is excluded; 'Slaked lime' imported by them is also referred as caustic lime or hydrated lime and is chemically known as Calcium-hydroxide or Calcium Di-hydroxide and it is obtained by calcination of lime; lime is produced by heating of lime stone or similar substance in a kiln at a temperature of above 1800 degrees Fahrenheit; the heat drives away the Carbon Dioxide and converts the Calcium Carbonate into 'calcium oxide' or 'Quick lime'; in this regard they have extracted the definition of calcium hydroxide as per "HAWLEY'S" condensed chemical dictionary, which reads as follows;

"Calcium Hydroxide (Calcium Hydrate, Hydrated Lime, Caustic Lime, Slaked Lime) CAS No. 1305-62-0. Ca(OH)₂ properties: Soft, white, crystalline powder with alkaline slightly bitter taste.

Slaked Lime - See Calcium Hydroxide; lime, hydrated."

5. The Learned Counsel contends that; 'Slaked lime' is nothing but calcium hydroxide in its crude state; the imported 'Slaked lime' is used by appellant in the manufacturer of greases; the goods imported are in the form of powder and not purified; the 'slaked lime' classified under Chapter 2522 and Calcium-Hydroxide falling under Chapter 2825 are both chemically the same product; however, for the purpose of classification the distinction is drawn on the basis of the purity of the product; as per the HSN explanatory notes, where the goods contain very little or no clay, the same being purified Calcium-Hydroxide is classified under Chapter 2825, where the goods are not purified Calcium-Hydroxide, the same are classified under Chapter 2522; reliance is placed on the following decisions in the matter;

a) Commissioner of C.Ex. Hyderabad-III Vs. Bhadradi Minerals Pvt. Ltd.- 2015 (324) ELT 395 (Tri-Bang)

b) M/s. Jindal Stainless (Hisar) Ltd. Vs. The Commissioner of Customs, New Delhi - 2020-VIL-391-CESTAT-DEL-CU

c) Sanyo Special Steel Manufacturing India Pvt. Ltd. Vs. Commissioner of Customs (NS-I), Nhava Sheva- 2024 (2) TMI 1029 - CESTAT, MUMBAI.

6. The Learned Counsel further submitted that the TARIC goods nomenclature information adopted by the European Union, provides that Calcium-Hydroxide of purity of 98% or more is to be classified under Customs Tariff Item entry (CTH) 28259011 as evident from the US Customs Ruling, NY A87057, wherein goods composed of 93.5%

Calcium-Hydroxide were held to be classified under CTH 2522. The Test Report pertaining to the imported goods as given by M/s. Kluber Lubrication, Germany (supplier) provides the composition of Calcium-Hydroxide present in the impugned goods as 96.5%; supplier after testing the goods, accordingly, classified the impugned goods under Customs Tariff Item Entry 25222000 in the invoice.

7. The learned counsel further submitted that the re-classification of the imported goods as mono-constituent substance classifiable under Customs Tariff Heading(CTH) 2825 merely on the ground that the Material Safety Data (MSD) sheet states the composition of the imported goods as containing 'calcium hydroxide' without examining the purity of the goods or getting it tested is untenable.

8. The learned counsel further submitted that; the demand notice was issued on 31.12.2013 demanding the differential duty on re-classification of the goods imported during the period December 2009 December 2011 and cleared provisionally, hence the demand was issued beyond the normal period of one year, invoking the extended period is not tenable. Further extended period is not invocable, since there was no suppression or misstatement of fact with an intention to evade payment of duty. The supplier of the goods has tested the goods and ascertained the purity of the imported goods as 96.5% calcium hydroxide, they have adopted the same classification adopted by the supplier having regard to the purity of the imported goods.

9. Learned counsel further submitted that since the recovery of duty is not sustainable and there is no suppression or misdeclaration of facts

they are not liable for payment of interest and penalty cannot be imposed. The appellant has relied on the following case laws;

a) Continental Jt. Venture Foundation Vs. Commisisoner of Central Excise, 2007 (216) ELT 177 (SC)

b) Ispat Industries Ltd. Vs. CCE, 2006 (199) ELT 509 (Tri.-Mum).

c) NIRC Ltd. Vs. CCE, 2007 (209) ELT 22 (Tri.-Del.)

d) Chemicals & Fibres of India Ltd. Vs. CCE, 1988 (33) ELT 551 (Tri.)

10. They learned counsel further submitted that the order has confirmed imposition of penalty equivalent to duty demand according to the provisions of 114A of the Customs Act; section 114A of the Customs Act clearly provides that the penalty equivalent to duty or interest is imposable, hence imposition of penalty equivalent to duty and interest is not tenable; the appellant has contended that in cases of disputes relating to classification, penalty cannot be imposed; further placing reliance on the Hon'ble Apex Court decision in the matter of **Densons Pultretaknik Vs. Commissioner of Central Excise - 2003 (155) ELT 211 (SC)**, wherein it is held that merely claiming classification under a particular subheading does not amount to suppression of facts.

11. The learned Authorised Representative (AR) for the revenue reiterated the findings in the impugned order.

12. Heard both sides and perused the records.

13. We find that in this case goods were provisionally assessed at the time of clearance, since the importer and the supplier are related parties. The goods were proposed for re-classification and the

adjudicating authority and the appellate authority have held that the goods are classifiable under Customs Tariff entry 28259040 as 'calcium hydroxide' based on the description given in the Material Safety Data(MSD) sheet enclosed with the import documents. We find that the Appellant is not contending that the goods are not 'calcium hydroxide' and that 'slaked lime' and 'calcium hydroxide' are one and the same, the only distinction is with respect to the purity of the item, wherein if the purity is more than 98% it is classifiable under chapter heading 2825 has 'calcium di-hydroxide' and when the purity is less than 98% the same is classifiable under Customs Tariff Chapter Heading 2522 as 'slaked lime'. We find that the purity of the imported goods as per the test report of the supplier is 96.5%. The appellant has submitted that the TARIC goods nomenclature information adopted by European Union provides that 'calcium hydroxide' of purity of 98% or more is to be classified under Customs Tariff Chapter heading 2825. The appellant has also contended that the notice is hit by limitation, since Show Cause Notice (SCN) was issued on 31.12.2013 for the imports made during December 2009 to December 2011. We find that this argument of the appellant is not correct, since the goods were provisionally assessed and the re-classification was proposed along with finalisation of the provisional assessments.

14. We find that in view of the above discussion and since the purity of the 'calcium hydroxide' imported is less than 98% the impugned goods are classifiable under Customs Tariff Chapter heading(CTH) 2522 has opposed to chapter heading 2825 proposed and confirmed by the Revenue. Further, we do not find on record any test report of the impugned goods conducted by the department. Further, we find that the

appellant has claimed the benefit of exemption at Sl. No.517 of Notification No. 21/2002-Cus dated 01.03.2002 as amended by Notification No. 11/2006-Cus dated 132006. Since, we find that the impugned goods are classifiable under Customs Tariff Chapter heading (CTH) 2522 2000, they are eligible for the benefit of Sl. No.517 of Notification No.21/2002-Cus dated 01.03.2002 (as amended), consequently, as no differential duties are payable the payment of interest and imposition of penalties also does not rise.

15. Accordingly, appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in open court on 05.09.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar