Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At New Delhi

REGIONAL BENCH- COURT NO.IV

Customs Appeal No. 51224 of 2019

(Arising out of OIO-20-21/Commr/SVS/ICD/PPG/2018 dated 31/12/2018 passed by Commissioner of Customs, ICD, New Delhi-110096)

M/s. Jindal Stainless (Hisar) Ltd. **.........Appellant**
OP Jindal Marg, Hisar
Haryana-125005

VERSUS

The Commissioner of Customs **.........Respondent**
Inland Container Depot,
Patparganj, New Delhi-110096

APPEARANCE:
Shri. S.C. Choudhary, Consultant & Shri Vikas Jain, AGM for the Appellant
Shri. Rakesh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 50751 /2020

DATE OF HEARING: 19.02.2020
DATE OF DECISION: 25.08.2020

Raju

This appeal has been filed by M/s Jindal Stainless (Hisar) Ltd. against change of classification of the product imported by them and consequently demand of differential customs duty.

2. Learned Counsel for the appellant pointed out that the dispute related to the classification of quick lime imported by them. He pointed out that the Adjudicating Authority has held that product imported by them is classifiable under heading 28 25 of customs Tariff Act as against heading 25 22 claimed by the appellant. He pointed out that the quick lime is made out of roasted limestone and commonly used for white washing, pan shops and as a reducing agent in many industries like that of appellant. The process of manufacture was described as follows:

"Limestone from mine ⟶ Roasting (Calcination) (apply heat at about 800 Degree Centrigrade) ⟶ Quicklime(of 2522)⟶ add water (H2O) ⟶ Calcium hydroxide (called slaked lime) [gives out quick bubbles, hence name quick lime]⟶ add CO2 ⟶ Calcium Carbonate ⟶ further precipitate ⟶ Precipitated

Calcium Carbonate (CaCo3)→Roasting (Calcination)by heating) → Calcium Oxide →[Cao of 2825]".

2.1 The Commissioner while changing classification of the goods from chapter 25 to chapter 28 has relied on the note 1 of the chapter 25 which reads as follows:

> *1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.*

2.2 The Commissioner has also relied on his assertion that the percentage of CaO is in the range of 94 to 97% and, therefore, the product is "separate chemically defined compound". The Commissioner has also relied on the 0decision of Advance Ruling Authority in the case of M/s Lhoist India Pvt. Ltd.2008 (221) ELT 465 (AAR)

2.3 Learned Counsel relied on the HSN description of the heading 25 22 which reads as under:

> *25.22- Quicklime, slaked lime and hydraulic lime, other than calcium oxide and hydroxide of heading 2825*
>
> *2522.10 – Quicklime*
>
> *"Quicklime (an impure calcium oxide) is obtained by calcining limestone containing very little or no clay. It combines very rapidly with water, giving off considerable heat and producing slaked lime (Calcium hydroxide)*
>
> *The heading excludes purified calcium oxide and calcium hydroxide (heading 28.25)"*

2.4 He argued that even if the limestone is roasted or calcined to manufacture Quicklime it would still be classifiable under chapter heading 2522 because the heading itself described that Quicklime is obtained by calcining limestone. Learned Counsel relied on the decision of Tribunal in the case of Ganesh International vs CC, Nagpur 2004 (169) ELT 284 (Tri) wherein it was held that "It cannot be the intention of the legislature to first mention a product under one of the entries and then to exclude it by a Chapter Note. These notes, therefore, should be read to mean that the legislature is speaking of those products which are not specifically mentioned under the heading. ”

2.5 Learned Counsel argued that even if the product is roasted, it would be covered under Chapter 2522 as per rule 3(a) of General Rules for Interpretation of Customs Tariff which prescribed that the heading which provide most specific description shall be preferred to a heading which gives general description. Learned Counsel submitted that heading 25 22 specifically covers Quicklime and heading 28 25 not only has no mention of Quicklime but rather excludes Quicklime. He further pointed out that product under heading 28 25 covers only oxides in pure state, such as the product obtained by Calcining Precipitated Calcium carbonate. He argued that many more steps are needed to convert Quicklime into Precipitated Calcium Carbonate.

2.6 Learned Counsel further argued that product does not contain 95 to 97% calcium oxide. They submitted sample copies of Certificate of Ananlysis showing percentage of CaO as 92.5 and 92.9.

2.7 Learned Counsel relied on the decision of Tribunal in the case of Bhadradri Minerals Pvt. Ltd. 2015 (324) ELT 395 (Tri- Bangalore), Sakshi Makfin Pvt. Ltd. vs CCE Panchkula 2016 (343) ELT 972 (Tri- Chan.) and in the case of Gulshan Polyol Ltd vs CCE & Service Tax 2019 (366) ELT 728 (Tri All).

2.8 Learned Counsel further argued that the decision of Advance Ruling Authority cannot be applied in the instant case mechanically. He pointed out that in the said case, the facts of the case were substantially different. In that case, the quicklime manufactured by them was classified under chapter 25 because of earlier ruling of Supreme Court and CESTAT and nil rate of excise duty. The applicant in the said case wanted the product to be classified under chapter 28 and wanted to pay 12% Excise duty. He argued that in the said case, the applicant has persuaded authority that they want to avoid the risk of availing the benefits on the strength of decision rendered in a different context and then facing demand at the later stage. In the said case, Chainman Justice P.V. Reddy had doubted the intention of the applicant in para 7 & 8 by his order as reproduced below:

> *"7. It is interesting to note that at the relevant point of time when the Supreme Court decided the matter, lime was subjected to duty at 12% whereas now Quicklime attracts nil duty. The reason for granting duty relief to Quicklime seems to be based on its non-commercial use and the class of consumers.*
>
> *8. This is perhaps a rare case in which the applicant has come forward to pay duty for its product under Tariff item 2825 9090 instead of claiming duty relief available for quicklime. Apparently, the applicant being convinced of the correct classification would like to avert the risk of availing the benefit on the strength of decisions rendered in a different context and then facing a backlash at a later stage."*

He argued that in the said case by paying tax, application was able to pass on the CENVAT Credit to the buyers. He pointed out that Justice Reddy in his order at Para 6 has mentioned that note 1 of chapter 25 cannot be invoked to exclude these goods from Chapter 25. This would make the specific inclusion of Quick Lime in chapter 25 irrelevant. He has observed, in sum, "I would like to clarify that applicant products falls outside Chapter 25 not because quick lime goes out of Chapter 25 on account of Note 1 but because of exclusion clause contained in Heading 2522.

2.9 Learned Counsel further pointed out that explanatory notes under chapter 2825 mentioned that CaO has approximately 98% purity. This is relied on by Tribunal in the case of Bhadradri Minerals Pvt. Ltd. (supra) wherein it was held that what is covered by Chapter 28.25 is Calcium Oxise which is of 98% purity or more. Learned counsel pointed our that purity of CaO in their imports was 92 to 96%.

3. Learned Departmental Representative argued that test reports submitted by party at the time of import of the subject goods show the CaO percent as 92 to 97%. He explained the process of manufacture from para 14.8 of the SCN. Learned AR relied on the decision of the Tribunal in the case of Nuchem Industries 1999 (105) E.L.T. 711 (Tri). In the said decision, he argued that the said goods were held to be not classifiable under chapter 25. He pointed out that the said decision was upheld by Apex Court as reported at 1998 (99) E.L.T. 197 (S,C.). He also relied on the decision of Tribunal in the case of Brijbasi Lime works 1996 (88) E.L.T. 681 (tri) where relying on the decision in the case of Sunderson Minerals Ltd. v/s Collector

vide order No. 184/90-C, dated 11/07/1990 wherein it was held that the goods were classifiable under chapter 28.

4. We have gone through rival submissions. It is seen that the goods imported by the appellant have purity in the range 95-97% as stated in the SCN. Certificated produced by the appellant shows the range to be slightly below that.

4.1 The heading 2522 reads as following:

> *"25.22- Quicklime, slaked lime and hydraulic lime, other than calcium oxide and hydroxide of heading 28.25."*
>
> *2522.10- Quicklime"*

It is seen that it specifically covers Quicklime under sub heading 25 22.10. Chapter note 1 of chapter 25 prescribes as follows:

> *"Quicklime (an impure calcium oxide) is obtained by calcining limestone containing very little or no clay. It combines very rapidly with water, giving off considerable heat and producing slaked lime (Calcium hydroxide)*
>
> *The heading excludes purified calcium oxide and calcium hydroxide (heading 28.25)."*

The HSN also prescribes as follows:

> "*1. Except where their context ..... otherwise requires, ... but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading."*

4.2 It is seen that Revenue has relied on the decision of the Tribunal in the case of Nuchem Industries Pvt. Ltd. (supra) which was upheld by Hon'ble Apex Court. It is seen that the said decision has been given in the context of Central Excise duties. At the material time, Central Excise Tariff was not aligned to HSN. Learned Counsel for the appellant pointed out that the Central excise Tariff was align with HSN only with effect from 20.03.1990. He pointed out that this distinction has been specifically examined by Tribunal in the case of Bhadradri Minerals Pvt.Ltd. (supra) in para 5.1 and 5.2. In view of above, it is apparent that the said decision would render in different circumstances and, therefore, cannot be relied as binding precedent.

4.3 It is seen that the decision of Tribunal in the case of Bhadradari Minerals Pvt. Ltd. (supra) has been rendered in practically identical circumstances. The said decision relies on the HSN explanatory notes 11 under chapter heading 2825. The said chapter note provides as follows:

> *"**5.3** HSN Explanatory Note under Tariff Heading 28.25 also excludes Calcium Oxide which has a purity less than 98% from Chapter 28 in view of the fact that what is covered under 28.25 is Calcium Oxide of purity 98%. The relevant Chapter Note is reproduced below :*
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> *"(11) Calcium Oxide, Hydroxide and Peroxide : This Heading covers only the oxide (CaO) and the hydroxide (CaOH), in the pure state (i.e. containing practically no clay, iron oxide, manganese oxide, etc.) such as the product obtained by calcining precipitated calcium carbonate;*
>
> *The Heading also covers fused lime obtained by fusing ordinary quicklime in an electric furnace. This product has a high degree of purity (approximately) 98% calcium oxide; it is crystalline and generally colourless. It is used, in particular, for refractory linings for furnaces, in the manufacture of crucibles and for addition to concrete, in small pieces, to increase in resistance to water.*
>
> *Calcium peroxide (CaO) is a white or yellowish powder, hydrated (usually with 8 H_2O) sparingly soluble in water. Used as a bactericide and as a detergent, in medicine and in the preparation of cosmetics.*
>
> *Quicklime (calcium oxide) and slaked lime (calcium Hydroxide) are excluded (heading 25.22)".*

In the instant case, it is not in dispute that what is imported has purity less than 98%. Therefore, the decision squarely applies to the facts of the case.

4.4 Revenue has relied on the Advance Ruling Authority given in the case of M/s Lhoist India Pvt. Ltd.(supra) wherein burnt lime having 94-96% CaO was held to be classifiable under chapter heading 2825. The facts in the said case were significantly different. The said decision has been passed without taking note of chapter note 11 to chapter 28. Moreover, in the said decision, Hon'ble Justice PV Reddy chairman of the authority has observed as follows:

> *"22. This is perhaps a rare case in which the applicant has come forward to pay duty for its product under Tariff Item 2825 90 90 instead of claiming duty relief available for quick lime. Apparently, the applicant being convinced*

of the correct classification, would like to avert the risk of availing the benefit the strength of decisions rendered in a different context and then facing a backlash at a later stage."

From the above it is apparent that the facts and circumstances were significantly different.

5. As a result of above observations, we find that the ratio of decisions of Tribunal in the case of M/s Bhadradri Minerals Pvt. Ltd. is applicable to the facts of the instant case. Therefore, the product is rightly classified under chapter 25. The appeal is consequently allowed.

(Pronounced in the open court on 25.08.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Diksha