

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30018 of 2020

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-014-19-20 dated 29.06.2019
passed by Pr. Commissioner of Central Tax & Customs (Appeals), Visakhapatnam)

M/s Jindal Stainless Ltd.,

31, Kalinga Nagar Industrial Complex,
Danagadim Jajpur,
Odisha – 755 026.

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APPELLANT

VERSUS

**Commissioner of Customs
Visakhapatnam– Customs**

GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

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RESPONDENT

APPEARANCE:

Shri S.C. Choudary, Consultant for the Appellant.

Shri K Sreenivasa Reddy, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30413/2024

Date of Hearing:20.11.2024
Date of Decision:11.12.2024

[ORDER PER: ANGAD PRASAD]

This appeal has been filed by the appellant M/s Jindal Stainless Ltd., against Order-in-Appeal No. VIZ-CUSTM-000-APP-014-19-20 dated 29.06.2019 by which Order-in-Original No. 264/2018 dated 26.12.2018 is upheld.

2. The issue involved in this appeal is whether "Quick Lime" imported by the appellant is to be classified under CTH 25221000 or under CTH 28259090 of the Customs Tariff Act, 1975.

3. As per the Memorandum of appeal, Appellant M/s Jindal Stainless Ltd., has purchased "Quick Lime" of foreign origin and imported into India by filing various Bills of Entries (Bes). Appellant have claimed classification of their imported goods, which are "Quick Lime", under Chapter sub-heading

25221000. Imported "Quick Lime" is having more than 90% (Calcium Oxide) and ranging between 90-92% and being obtained by calcination process of Lime stone. Department contested that the imported "Quick Lime" is classifiable under Chapter sub-heading 28259090 under "Metallic Oxide" and attract applicable rate of duty, which is higher to the rate claimed by the appellant. The appellants were served various show cause notices demanding differential duties to the Customs. The appellant have submitted that the goods imported by them is "Quick Lime (Burnt Lime)" which is obtained by calcining industrial grade lime. Chapter sub-heading 25221000 specifically covers "Quick Lime" irrespective of the content of Calcium Oxide contained in "Quick Lime" even lime is subjected to the process of calcinations. "Quick Lime (Burnt Lime)" does not merit classification under Chapter sub-heading 28259090 as the product is not purified calcium oxide.

4. Learned Assistant Commissioner passed the impugned Order-in-Original No. 264/2018 dated 26.12.2018 and rejected the classification of import "Quick Lime" claimed by the appellant under Chapter 25221000. Being aggrieved by the Order-in-Original dated 26.12.2018, appellant have filed Appeal No. 49/2019-VCH against the Order-in-Original No. 264/2018 dated 26.12.2018 passed by Assistant Commissioner before Learned Commissioner (Appeals), Guntur, Central Tax & Customs, Visakhapatnam. According to Learned Consultant, Learned Commissioner (Appeals) after hearing the appellant's appeal, rejected the same by not taking into consideration the submissions by the appellant, hence this appeal filed before Hon'ble Tribunal.

5. Appellant submitted that they are importing "Quick Lime" through different ports classifying the same under CTH 25221000. Under this classification, they were clearing their goods by paying applicable customs

duties, as also they paid the differential duty along with interest under protest.

6. Learned Consultant has relied on the following judgments to support his argument:

- i) Commissioner of Customs (Preventive), Mumbai Vs Viraj Profiles Ltd., [2024 (388) ELT 673 (S.C.)]
- ii) M/s Jindal Stainless (Hisar) Ltd., Vs The Commissioner of Customs, New Delhi Appeal No. C/51224/2019 vide Final Order No. A/50751/2020 dated 25.08.2020
- iii) M/s Viraj Profiles Ltd., Vs Commissioner of Customs (Preventive), Mumbai Appeal No. C/85377/2020 with C/86172/2021 vide Final Order No. A/87057-87058/2023 dated 20.10.2023
- iv) Sanyo Special Steel Manufacturing India Pvt Ltd., Vs Commissioner of Customs (NS-I), Nhava Sheva, Raigad Appeal No. C/85219/2023 vide Final Order No. A/85021/2024 dated 08.01.2024.
- v) M/s Jindal Stainless Ltd., Vs Commissioner of Customs (Preventive), Kolkata Appeal No. C/75029/2020 vide Final Order No. A/76970/2024 dated 09.09.2024.

7. Learned Authorised Representative (AR) appearing for the Revenue reiterated the findings recorded by Learned Commissioner in the impugned order and stated that the appellant have imported "Quick Lime". The imported "Quick Lime" is used by the appellant for removing impurities from steel as part of manufacturing process in their smelting plant. As the Department had noticed that the imported product was calcined product of the mined limestone and preliminary reading of Note 1 to Chapter 25 showed that the products which have been roasted or calcined, fell out of the purview of classification under Chapter 25, they resorted to reclassification of the goods. Further, the Department claimed that the Hi Cal Quicklime was a manufactured product, obtained by calcinations and did not merit classification under CTH 25221000.

8. Learned AR also stated that the chemical name of Quick lime is Calcium Oxide (CaO). Quicklime is a metal oxide and thus is an inorganic compound. The purity percentage or CaO content of quicklime depends on source material from which it has been mined. Quicklime, also referred to as CaO, is usually made by the thermal decomposition of materials, such as limestone or seashells, that contain calcium carbonate (CaCO₃) mineral calcite) in a lime kiln. This is accomplished by heating the material to above 825 °C in a process called calcination to liberate a molecule of carbon dioxide (CO₂), leaving quicklime. In terms of the HSN Explanatory notes and Chapter Heading Notes, quicklime in crude state is classifiable in CTH 2522 whereas Calcium Oxide is classifiable in the CTH 2825 and stated that CaO content in quicklime is determining factor of classification of quicklime. Since the CaO content is higher in the imported products, they are classifiable under CTH 2825. In view of the above, he prayed that the appeals filed by the appellant may be dismissed.

9. Heard the arguments of both sides in details and perused the records.

10. Brief issue for consideration before us is the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Item 25221000 as claimed by the appellant; or, is it classifiable under Customs Tariff Item 28259090 as contended by the Department, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period.

11. In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

12. In this regard, Section 12 of the Customs Act, 1962 is relevant which provides as under:

“Section 12. Dutiable goods. –

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.”

13. In this regard, Section 2 of the Customs Tariff Act, 1975 is also relevant which is as under:

“Section 2. Duties specified in the Schedules to be levied. –

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

14. In this regard, Customs Tariff Act, 1975 as general rule for the interpretation is also relevant which is as under:

xxx xxx xxx xxx

**THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)**

**THE GENERAL RULES FOR THE INTERPRETATION OF
IMPORT TARIFF (GIR)**

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken

to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

15. In the case before us, the contending classification of imported goods discussed in the impugned order are either under 2522 10 00 or 2825 90 90 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the broader Chapter level itself i.e., Chapter 25 and Chapter 28, there is difference of views among the appellants and the department. Thus, the

dispute in classification lies in the narrow compass of determining the appropriate chapter under which the imported goods is covered in terms of the legal basis as elaborated above in paragraphs 6 to 8 above, and thereafter to decide the respective Tariff Items in which the imported goods are falling there under. In order to closely examine the scope of contending Chapter, Headings, Sub-headings and Tariff Items thereof for determining correct classification of imported goods, relevant tariff entries in the First Schedule to the Customs Tariff Act are extracted as below: "

"Tariff Item	Description of goods	Unit	Rate of Duty	
			Stand ard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
2522 -	QUICKLIME, SLAKED LIME AND HYDRAULIC LIME, OTHER THAN CALCIUM OXIDE AND HYDROXIDE OF HEADING 2825			
2522 10 00	Quicklime	kg.	10%	-
2522 20 00	Slaked lime	kg.	10%	-
2522 30 00	Hydraulic lime	kg.	10%	-"

&

"Tariff Item	Description of goods	Unit	Rate of Duty	
			Stand ard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
	"Hydrazine and hydroxylamine and their inorganic salts; other inorganic bases; other metal oxides, hydroxides and peroxides			
2825 10	- Hydrazine and hydroxylamine and their inorganic salts:	kg.	10%	-
2825 10 10	---- Hydrazine anhydrous	kg.	10%	-
2825 10 20	-----Hydrazine hydrate	kg.	10%	-
2825 10 30	-----Hydrazine sulphate	Kg.	10%	-
2825 10 40	----Hydroxylamine sulphate	Kg.	10%	-
2825 10 90	----Other	Kg.	10%	-
2825 20 20	-Lithium oxide and hydroxide	Kg.	10%	-
2825 30	-Vanadium oxides and hydroxides:			
2825 30 10	---Vanadium pentaoxide flakes	Kg.	10%	-
2825 30 90	----Other	kg.	10%	-
2825 40 00	-Nickel oxides and hydroxides	kg.	10%	-
2825 50 00	-Copper oxides and hydroxides	kg.	10%	-
2825 60	-Germanium oxides and zirconium dioxide:			
2825 60 20	---Zirconium dioxide	Kg.	10%	-
2825 70	-Molybdenum oxides and hydroxides:			
2825 70 10	---Molybdenum trioxide	Kg.	10%	-
2825 70 20	---Molybdic acid			
2825 70 90	---Other	Kg.	10%	-
2825 80 00	- Antimony oxides	Kg.	10%	-
2825 90	- -Other:			
2825 90 10	---Tin oxide	Kg.	10%	-

2825 90 20	---Cadmium oxide	Kg.	10%	-
2825 90 40	---Calcium hydroxide	Kg.	10%	-
2825 90 50	---Ammonium hydroxide	Kg.	10%	-
2825 90 90	---Other	Kg.	10%	-"

16. From the above it could be seen that the description of the Chapter 25 covers Salt; Sulphur; earths and stone; plastering materials, lime and cement which are basically mineral products of Section V of the First Schedule to the Customs Tariff. However the description of Chapter 28 covers inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements of isotopes which are products of chemical or allied industries falling under Section VI of the said Schedule. Further, it can be said that Chapter heading 2522, clearly provides that quicklime, slaked lime and hydraulic lime are classifiable under specific tariff items provided for therein; however, calcium oxide and hydroxide of Chapter heading 2825 are excluded from the scope of coverage under the heading 2522. Similarly, the description of the Chapter heading 2825 provide for coverage of the goods under its scope which are specifically mentioned as Hydrazine and hydroxylamine and their inorganic salts; other inorganic bases; other metal oxides, hydroxides and peroxides. However, if any inorganic basis or metal oxides, hydroxides and peroxides which are not specifically mentioned therein by a specific tariff entry, then they will be classified under "other" category in sub-heading 28259090.

17. We find that Heading 25221000 covers within its scope and ambit, mainly of three specific goods such as the following: (i) first one i.e., "quicklime"; (ii) the second one, "slaked lime", and (iii) third one, "hydraulic lime". Hence, in simple words, it can be stated that all the goods covered under the above description at (i) to (iii) above would be rightly classifiable under chapter heading 25221000. There is no dispute on the fact that the imported goods in the present case are 'quicklime' and thus by applying GIR

1 it would be classifiable under tariff item 25221000. Further, from the exclusion provided for calcium oxide and hydroxide of heading 2825, it transpires that the quicklime as a mineral product, when subjected to certain processes or treatment, whereby if these mineral products were converted into separate chemical elements or separate chemically defined compounds, such as calcium oxide in the present case, then such products would be more appropriately classified as chemical products under heading 2825, owing to the reason that the chemical properties of the goods have been changed from the mineral product to chemical product. Thus, it is clear from the above analysis and discussion that the scope of coverage of goods under chapter heading 2522 and 2825 are exclusive to each other.

18. We find that careful examination of the tariff entries of chapter heading 2522 & 2825, it reveals that it is not the case that the goods covered under CTH 2522 and CTH 2825 represent contending classification for applying GIR 3 as made out by Revenue. This is for the reason that quick lime cannot be referred to as containing wholly or partly of goods of CTH 2522 and CTH 2825. There is clear exclusion of calcium oxide and hydroxide of CTH 2825 from the scope of CTH 2522, and only separate chemical elements or separate chemically defined compounds are covered under the scope of CTH 2825.

19. Further, it transpires from plain reading of GIR 2 and 3, that GIR 2(b) would apply for classifying goods so as to include mixtures or combination of a particular material or substance when found mixed or combines with other material. In attempting such classification of goods in terms of GIR 2(b), when one is confronted with classification under two or more contending headings, then GIR 3 would apply. As a general rule, the heading that provides most specific description would be preferred to heading which provide a more generic description. However, if the goods cannot be

classifiable by following GIR 3(a) or 3(b), then by applying GIR 3(c) classification of the product would be decided to bring it under the heading that occur last in the numerical order among those which equally merit consideration. In the present case, the facts reveal that the imported goods are quicklime. There is no case of mixture of different material or substance to merit application of GIR 2 or 3. Thus, the Revenue's argument for classification of quick lime under heading 2825 as it occurs last among other classification under heading 2522 is not legally sustainable.

20. Thus, we find that there is no case for application of Rule 3 of GIR in this case. In view of the above, we are of the view that the imported goods are appropriately classifiable under CTH 25221000.

21. Further, we also note that in Appeal No. C/51224/2019, Principal Bench, New Delhi, in the case of M/s Jindal Stainless (Hisar) Ltd., Vs The Commissioner of Customs, New Delhi vide Final Order No. A/50751/2020 dated 25.08.2020, of the very same appellant decided that "Quick Lime" is covered under the Heading 25221000. In Appeal No. C/75029/2020 of M/s Jindal Stainless Ltd., vide Final Order No. A/76970/2024 dated 09.09.2024 with regard to same appellant CESTAT, Kolkata decided and held that "Quick Lime" is classifiable under Chapter 25221000.

22. CESTAT, Mumbai in the case of M/s Viraj Profiles Ltd., Vs Commissioner of Customs (Preventive), Mumbai in Appeal No. C/85377/2020 with C/86172/2021 vide Final Order No. A/87057-87058/2023 dated 20.10.2023 decided that imported "Quick Lime" would be properly classifiably under Customs Tariff Item 25221000 and not as others under the Customs Tariff Item 25289090 as claimed by Respondent. This finding has also been confirmed by Hon'ble Supreme Court in Appeal No. 9655/2024 in the case of **Commissioner of Customs**

(Preventive), Mumbai Vs Viraj Profiles Ltd., [2024 (388) ELT 673 (S.C)] holding that “Quick Lime and Hydraulic Lime” are obtained by calcining and low temperature calcinations of limestone, respectively, and that these two products would remain classifiable under Chapter 2522 as per explanatory notes to heading 2522. Therefore, matter is settled by the Hon’ble Apex Court.

23. In view of the above discussion, analysis and finding recorded in the above paragraphs, we conclude that the imported goods “Quick Lime” would be properly classifiable under Customs Tariff Item 25221000 and not as others under the Customs Tariff Act Item 28259090.

24. Therefore, we are of the considered view that impugned Order-in-Appeal is not legally sustainable and accordingly set aside.

25. Accordingly, we allow the appeal with consequential reliefs, if any, as per law.

(Order Pronounced in open court on 11.12.2024)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)