

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75029 of 2020

(Arising out of Order-in-Original No. CC(P)/BBSR/CUS/NO-07/COMMR/2019 dated 04.10.2019 passed by the Commissioner of Customs (Preventive), Bhubaneswar, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007)

M/s. Jindal Stainless Limited

: Appellant

Kalinga Nagar Industrial Complex,
Danagadi, Jajpur – 755 026

VERSUS

Commissioner of Customs (Preventive)

: Respondent

Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007

APPEARANCE:

Shri S.C. Choudhury, Consultant,
Shri S.N. Mohapatra, Consultant,
Shri Sunny Rajbhatt, DGM,
For the Appellant

Shri Faiz Ahmed, Authorized Representative
For the Respondent

CORAM:

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

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76970 / 2024

DATE OF HEARING / DECISION: 09.09.2024

ORDER: [PER SHRI R. MURALIDHAR]

The appellant have imported Quick Lime and classified the same under Customs Tariff Heading (CTH) 2522 1000 of the Customs Tariff Act, 1975. They have imported 12 consignments during the period from October 2014 to August 2015. After about four years, the Department issued a Show Cause Notice on the ground that the goods were classifiable under CTH 2825, which would attract a higher rate of Customs Duty.

1.1. The appellant paid the duty demanded, along with interest, before the Show Cause Notice was issued. This payment was done "under protest".

2. Subsequently, the appellant litigated the issues raised in the Notice submitting that their product was required to be classified under CTH 2522 1000 only.

2.1. However, the Id. adjudicating authority confirmed the demand and appropriated the amount already paid towards Customs Duty and interest. He also imposed a penalty under Section 114A of the Customs Act, 1962.

3. Being aggrieved, the appellant is before the Tribunal.

4. The Ld. Counsel appearing for the appellant submits that the issue is no more *res integra*. He cites the Final Order No. A/50751/2020 dated 25.08.2020 passed by the Delhi Bench of the Tribunal in the case of *Jindal Stainless (Hisar) Ltd. v. Commissioner of Customs, ICD, Patparganj in Customs Appeal No. 51224 of 2019*. He submits that the issue was identical to the present case and the Tribunal had held that the product is classifiable under Chapter 25 only.

4.1. It is also submitted that after this, the same issue had arisen in the case of *Viraj Profiles Ltd. v. Commissioner of Customs (Preventive), Mumbai [Order No.A/87057-87058/2023 dated 20.10.2023 in Customs Appeal No. 85377 of 2020 & anr. (CESTAT, Mumbai)]* wherein a similar decision was rendered by the Mumbai Bench of the Tribunal as reported in 2023 (10) TMI 1260 – CESTAT, Mumbai. He submits that, being aggrieved, the Revenue had filed an appeal before the Hon'ble Supreme Court against the said order wherein the Hon'ble Apex Court held that they

were not inclined to interfere with the decision passed by the CESTAT, Mumbai and accordingly, the Civil Appeals were dismissed; this is reported in 2024 (388) E.L.T. 673 (S.C.).

4.2. In view of these submissions, he prays that the appeal may be allowed on its merits.

4.3. He further stated that, admittedly, the entire amount along with interest was paid even before the Show Cause Notice was issued and thus, this would amount to payment of duty and interest in the course of investigation; since now it has been ruled by the Hon'ble Supreme Court that the correct classification of the goods in question would be under CTH 2522 only, he prays that the Tribunal may pass an order directing the Revenue authorities to refund the amount deposited towards Customs Duty and interest, along with appropriate interest from the date on which the payments were done by the appellant, being the period from when the investigation was taken up till these amounts are refunded by the Revenue. Towards this, they rely on the case-law of *Indore Treasure Market City Pvt. Ltd. v. Commissioner of C.G.S.T. and C.Ex., Indore* [Final Order No. 50125 of 2024 dated 11.01.2024 in Service Tax Appeal No. 55434 of 2023 – CESTAT, New Delhi] wherein the Tribunal has considered that when an amount has been deposited in the course of investigation, the same cannot be retained by the Revenue. Once the issue is decided in favour of the assessee, they would be eligible for interest at the rate of 12% towards the refund to be made by the Revenue. He also relied upon the case-law of *Parle Agro Pvt. Ltd. v. Commissioner, C.G.S.T., Noida* [2022 (380) E.L.T. 219 (Tri. – All.)] wherein the Tribunal was

pleased to direct interest at the rate of 12% to be paid on the accrued refund amount.

5. The Ld. Authorized Representative of the Revenue submits that the issue is no more *res integra*.

6. Heard both sides and perused the appeal papers and other documents placed before us.

7. We find that the issue as to whether Quick Lime would be classifiable under CTH 2522 or CTH 2825 stands decided by the Delhi Bench of the Tribunal in the case of *Jindal Stainless (Hisar) Ltd. v. Commissioner of Customs, ICD, Patparganj [Final Order No. A/50751/2020 dated 25.08.2020 in Customs Appeal No. 51224 of 2019 (CESTAT, New Delhi)]* wherein the Bench has held as under: -

"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 :

"(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 H₂O) 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.

.....

5. As a result of above observations, we find that the ratio of decisions of Tribunal in the case of M/s Bhadradi 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."

8. This issue was also before the Mumbai Bench of the Tribunal in the case of *Viraj Profiles Ltd. v. Commissioner of Customs (Preventive), Mumbai* [Order No.A/87057-87058/2023 dated 20.10.2023 in Customs Appeal No. 85377 of 2020 & anr. (CESTAT, Mumbai)] reported in 2023 (10) TMI 1260 – CESTAT, Mumbai, wherein the Mumbai Bench held as under: -

"19. In view of the foregoing detailed discussions, analysis and findings recorded in the above paragraphs, we conclude that the imported goods 'quicklime' would be appropriately classifiable under Customs Tariff Item 2522 10 00 and not as 'other' under the Customs Tariff Item 2825 90 90, as claimed by Revenue.

20. Therefore, we are of the considered view that the impugned order passed by the learned Commissioner (Appeals) dated 05.04.2021 cannot stand for judicial scrutiny by confirming the classification under the Customs Tariff Item 2825 90 90 in respect of the impugned goods and thus, the same is liable to be set aside. We are also of the considered view that the impugned order passed by the Commissioner of Customs (Preventive), Mumbai dated 30.10.2019 is liable to be set aside for limited extent and thus, is modified to the extent of reclassifying the impugned goods under Customs Tariff Item 2522 10 00 as detailed in paragraph 19

above and in setting aside the order to the extent of dropping of the adjudged demands of duty as well as the penalties imposed on the appellants."

8.1. We find that against this decision of the Tribunal, Mumbai, the Revenue had preferred an appeal before the Hon'ble Apex Court [2024 (388) E.L.T. 673 (S.C.)], which has held as under:-

"3. We are not inclined to interfere with the judgment and order passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench at Mumbai on 20-10-2023 in Custom Appeal Nos. 85377/2020 and 86172/2021 in Final Order Nos. A/87057- 87058/2023. [(2024) 17 Centax 292 (Tri. - Mum.)]."

9. Respectfully following the decisions cited above, we hold that Quick Lime is classifiable under CTH 2522 1000, as contended by the appellant, and not under CTH 2825, as is being canvassed by the Revenue.

10. Accordingly, we allow the appeal on merits, with consequential relief, if any.

11. After going through the submissions of the appellant in respect of interest, we find that admittedly, the Customs Duty and interest had been paid by the appellant during April and May 2018 whereas the instant Show Cause Notice was issued on 29.03.2019. Therefore, this has to be taken as an '*amount deposited in the course of investigation*'. Since it has now been held that the goods are to be classified under CTH 2522 only, the amounts so paid by the appellant to the Revenue are not to be retained by them and are required to be refunded to the appellant, along with interest. In the cited case-law of *Indore Treasure Market City Pvt. Ltd. v. Commissioner of C.G.S.T. and C.Ex., Indore* [Final Order No. 50125

of 2024 dated 11.01.2024 in Service Tax Appeal No. 55434 of 2023 – CESTAT, New Delhi] and Parle Agro Pvt. Ltd. v. Commissioner, C.G.S.T., Noida [2022 (380) E.L.T. 219 (Tri. – All.)], the Delhi and Allahabad Benches of the CESTAT have held that in case of refund of an amount paid during the investigation stage, the Revenue is required to pay interest at the rate of 12%. Accordingly, we also direct the Revenue officials to refund the amount of Customs Duty and interest paid by the appellant, along with interest at the rate of 12% from the date of deposit of these amounts by the appellant till the date the refund is granted by the Revenue.

12. The appeal is disposed of thus.

(Dictated and pronounced in the open court)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd