

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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75617 of 2023
Customs Appeal No.75620 of 2023

[Arising out of Order-in-Appeal No.Kol/Cus.(Port)/KS/376-377/2023 dated
11.05.2023 passed by Commissioner of Customs (Appeals), Kolkata]

M/s ITC Ltd.

(106, Sardar Patel Road, Secunderabad-500003)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

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

Respondent

APPEARANCE :

Shri Agnibesh Sengupta & Shri Indranil Banerjee, Advocates for the Appellant
Shri A.K.Choudhary, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.77352-77353/2025

DATE OF HEARING : 28 AUGUST 2025

DATE OF DECISION : 28 AUGUST 2025

Per Ashok Jindal :

Both the appeals are having a common issue and therefore, both are disposed of by a common order.

2. The facts of the case are that the appellant filed various Bills of Entry declaring the imported goods as "PCC Lime 0/20MM (Quicklime)(Pulp Conversion Chemical)". The appellant sought classification of the said goods imported under Customs Tariff Item No. 2522 1000. However, the assessing officer assessed the impugned Bills of Entry under Customs Tariff Item No. 2825 9090 under Section 17(4) of the Customs Act, 1962. Later on, orders were passed under Section

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17(5) of the Act. The said orders were challenged before the Ld. Commissioner (Appeals), who, vide the impugned orders, confirmed the orders passed by the lower authorities. Against such orders, the appellant is before us.

3. Heard both sides and considered the submissions.

4. We find that a similar issue has been examined by this Tribunal in the case of *M/s. JSW Steel Ltd. v. Commissioner of Customs, Cochin* [2025 (5) TMI 455 - CESTAT, Bangalore] (Final Order No. 20529 of 2025 dated 28.04.2025 in Customs Appeal No. 21776 of 2016) wherein the Tribunal observed as under: -

"5. Heard both sides. The only issue to be decided is whether the product "Quick Lime" imported by the appellant falls under CTH 2522.10 or 2825.9090 of the Customs Tariff 1985. The classification by the Revenue is based on the Lab Test Results report which says that the sample is in the form of white lumps and powder; composed of mainly Calcium Oxide (Quick Lime) along with small amounts of compounds of Iron, Magnesium, Manganese, etc.; available CaO = 92.2% and based on the fact that the Chapter 25 includes mineral products in the crude state or washed, crushed, ground, powdered, or concentrated by floatation, magnetic separation or other mechanical or physical process and heat treatments like roasting, fusion or calcination are not allowed.

6. Let's examine the relevant Chapter Headings and the reasoning given by the Commissioner (Appeals) in the impugned order. The period of dispute is from September 2015 to November 2015. During this period the relevant tariff headings were as follows:

SECTION V-MINERAL PRODUCTS

Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement

Notes:

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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.

2522 Quicklime, Slaked Lime and Hydraulic Lime, other than Calcium Oxide and Hydroxide of Heading 2825

2522 10 00 - Quicklime

2522 20 00 - Slaked lime

2522 30 00 - Hydraulic lime

The Commissioner (Appeals) rejected the classification of the product under CTH 2522 on the ground that it is calcined product which is excluded as per Note 1 reproduced above and classified the same under CTH 2825 as separately defined compound.

7. Now, let's see Chapter Heading 28, which is reproduced below:

Chapter 28: Inorganic chemicals, organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes.

Notes:

1. Except where the context otherwise requires, the headings of this Chapter apply only to:

(a) separate chemical elements and separate chemically defined compounds, whether or not containing impurities:

2825 90-Other:

2825 90 10 --- Tin oxide

2825 90 20 --- Cadmium oxide

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2825 90 40 --- Calcium hydroxide

2825 90 50 --- Ammonium hydroxide

2825 90 90 --- Other

8. As per the HSN Notes, Chapter 2522 which includes "Quick Lime" is explained as:

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) is usually employed for soil improvement or in the sugar industry.

Hydraulic lime is obtained by low temperature calcinations of limestone containing sufficient clay (although usually less than 20%) to ensure that the product sets under water. Hydraulic lime differs from natural cement in that it still contains appreciable amounts of un combined quicklime, which may be slaked with water."

This heading excludes purified calcium oxide and calcium hydroxide heading 2825.

Similarly, the HSN notes at Chapter heading 2825 explains as follows:

(11) Calcium oxide, hydroxide and peroxide. This heading covers only the Oxide (CaO) and the hydroxide (Ca (OH)₂), 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 its resistance to wear. Calcium peroxide (CaO₂) is a white or yellowish powder, hydrated (usually with 8 H₂O), sparingly soluble in water. Used as a

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bactericide and as a detergent, in medicine and in the preparation of cosmetics.

Quicklime (calcium oxide) and slaked lime (calcium hydroxide) are excluded (heading 2522)

9. Based on the above Tariff Headings and the Explanation given in the HSN Notes, it is very clear that "Quick Lime" is classifiable under CTH 2522 unless the chemical analysis proves that it has purity of 98% calcium oxide. Admittedly, in the present case, the purity is only 92%. Moreover, there is a specific classification of the product "Quick Lime" under CTH 2522 1000 while the classification prompted by Revenue is 2825 9090 is only a 'Residuary Entry', and taking into consideration the Interpretative Rules of Classification, specific heading is to be preferred to the residuary entry unless it is established that the product is pure calcium oxide. The decision in the case of CCE, Hyderabad-III vs. Bhadradi Minerals Pvt Limited (supra) relied upon by the appellant has been brushed aside only on the ground that the product there was 80%, on the same analogy that the calcium oxide with purity less than 98% does not merit classification under CTH 2825.

10. This Tribunal in the case of M/s. Viraj Profiles Limited vs. Commissioner of Customs (Preventive), Mumbai: 2023 (10) TMI 1260 CESTAT Mumbai dated 20.10.2023 in an identical set of facts observed as:

14.2 From the test reports of samples of imported goods, which are relied upon documents in the adjudication proceedings, we find that the chemical test conducted by the Central Revenue Control Laboratory (CRCL), Jawaharlal Nehru Custom House, on the samples of imported goods and its report dated 18.04.2018 indicate that the description of the goods as 'white lumps of irregular shapes & sizes along with waste powder. It is mainly composed of calcium oxide (quick lime) along with traces of Iron & Silicious matter'. On the percentage of chemical composition, the report stated that available lime 93.8%. Further, one another such chemical testing of imported goods by CRCL in report dated 16.05.2018, indicate that the imported goods contain '92.27% of calcium oxide and 0.96% of magnesium oxide'. Further, the HSN explanatory notes in the second para of B(11) also specify that

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calcium oxide of high degree of purity i.e., app. 98% or more would alone gets covered under the scope of sub-heading 2825. As seen from the test reports, the content of calcium oxide or lime is much less than the requisite 98%. Thus, we are of the considered view that in terms of the HSN explanatory notes, both on account of presence of specified material making it not in pure state and the composition of calcium oxide not upto the requisite 98% making it not a product of high degree, would not enable the imported goods to be classified under sub-heading 2825.

....

18. We also find that on similar issue of classification of quick lime the Co-ordinate Bench of the Tribunal in the case Jindal Stainless (Hisar) Ltd. (supra) had decided the appropriate classification of quick lime under chapter 25. The relevant paragraphs in the said order is extracted below:

"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:

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"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 Bhadradi 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 Bhadradi 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 (ie. 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

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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.

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 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."

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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".

11. In the present case as discussed above, the chemical analysis clearly states that the purity is only 92% and accordingly, the product "Quick Lime" is rightly classifiable under CTH 2522 1000. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, as per law."

5. Admittedly, in the Bills of Entry filed, the purity of Calcium Oxide is less than 98% and therefore, the product in question i.e., Quicklime, is rightly classifiable under Customs Tariff Item No. 25221000, following the decision in the case of *M/s. JSW Steel Ltd. (supra)*.

6. In view of this, we do not find any merit in the impugned orders and accordingly, the same are set aside.

7. In the result, the appeals are allowed, with consequential relief, if any.

(Operative part of the order pronounced in the open court)

**(Ashok Jindal)
Member (Judicial)**

**(Sanjiv Srivastava)
Member (Technical)**

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