CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALMUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal Nos. 85377 of 2020

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/SAK/4/2019 dated 31.10.2019 passed by the Commissioner of Customs (Preventive), Mumbai)

M/s Viraj Profiles Limited .... **Appellant**
G-2, MIDC, Tarapur Industrial Area, Boisar
Taluka Palgar, Maharashtra - 401506

Versus

Commissioner of Customs (Preventive), Mumbai .... **Respondent**
New Custom House, Ballard Estate, Mumbai-400001

WITH

Customs Appeal Nos. 86172 of 2021

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-38/2021-22 dated 05.04.2021 passed by the Commissioner of Customs (Appeals), Mumbai)

M/s Viraj Profiles Limited .... **Appellant**
G-2, MIDC, Tarapur Industrial Area, Boisar
Taluka Palgar, Maharashtra - 401506

Versus

Commissioner of Customs (Preventive), Mumbai .... **Respondent**
New Custom House, Ballard Estate, Mumbai-400001

Appearance:

Shri Chirag Shetty, Advocate for the Appellant
Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87057 – 87058/2023

Date of Hearing: 21.06.2023

Date of Decision: 20.10.2023

Per: M.M. PARTHIBAN

The issue involved in these appeals relate to classification of "quicklime" imported by Viraj Profiles Ltd., (herein after, referred to as 'the appellants'). During the disputed period from 12.09.2014 to 04.06.2018, the appellants had been importing quicklime from the suppliers abroad by filing various Bills of Entry (215 B/Es) declaring its classification under customs tariff item 2522 10 00 of the First Schedule to Customs Tariff Act, 1975 and paying applicable duties of customs@ 5% BCD, 5% IGST and 10% SWS claiming the exemption benefits under various notifications such as Notification No.50/2017-Customs dated 30.06.2017 (Serial No.120) for BCD and Notification No. 01/2017-Integrated Tax dated 28.06.2017 of Schedule-I (Serial No.131) for IGST. While examining the B/E No. 6739528 dated 11.06.2018, the department interpreted on the basis of preliminary reading of Note 1 to Chapter 25 of the Customs Tariff Act, 1975 that the imported product is a calcined product of mined limestone, which has been roasted or calcined, and thus falls out of the purview of classification under chapter 25, and is rightly classifiable under tariff item/CTH 2825 90 90, attracting higher rate of import duties @ 7.5% BCD, 18% IGST and 10% SWS. On pointing out the above observations of the department, the appellants had sought for provisional assessment of the imported goods under Section 18 of the Customs Act, 1962, under CTH 2825 90 90 by executing the provisional duty bonds. Accordingly, the department had initiated show cause proceedings by issue of Show Cause Notice (SCN) dated 10.07.2019 for recovery of differential duty of Customs under Section 28(4) ibid along with interest thereon and for confiscation of imported goods under Section 111(m) ibid, imposition of penalties under Section 114A, 114AA ibid. The Order-in-Original dated 31.10.2019 passed in this regard by the learned Commissioner of Customs (Preventive), confirmed the adjudged demands on the imported quicklime by reclassifying the product under customs tariff item 2825 90 90, only in respect of imports in 76 B/Es during normal period i.e., between 21.02.2017 to 04.06.2018 holding that in the facts and circumstances of the case, and in the absence of valid finding of willful suppression and mis-declaration of facts the demand under extended period under Section 28(4) ibid cannot be invoked; the said order also imposed penalty under Section 112(a) ibid on the appellants. On the basis of this order, the Assistant Commissioner (AC) of Customs, ICD, Tarapur vide his letter F. No. Cus.(P)ICD-Tarapur/Prov.Assessment/ Viraj/13/2019-20/296 dated 09.01.2020 had finalized the provisional assessments under Section 18(2) ibid. The appellants had filed an appeal against this letter/order of AC, Customs before the Commissioner of Customs (Appeal), who after examining the matter had passed the Order-in-Appeal No. MUM-CUSTM-PREV-APP. 38/2021-22 dated 05.04.2021 in rejection of the appeal filed by the appellants and upholding the order of the original authority. Feeling aggrieved with the aforesaid Order-in-Original dated 31.10.2019 and the Order-in-Appeal dated 05.04.2021 (herein after, referred to as 'the impugned orders'), the appellants have preferred these appeals before the Tribunal.

2.1 Learned Advocate appearing for the appellants, stated that they are a manufacturer of flats, angles, fasteners etc., which are products of the steel industry. He submits that as a part of its manufacturing process, appellants use the subject goods for removing impurities from steel. The subject goods were imported from two suppliers namely M/s RAS AL Khaimah Lime Co. situated at Ras Al Khaimah, UAE and M/s. Carmeuse Majan LLC situated at Oman under contracts for long term supply of goods having Calcium Oxide (CaO) 92%, (Magnesium oxide) MgO 2.5% max., (Silicone oxide) SiO_2 0.75% max, Loss on Ignition (LOI) 2.4% max, lump size 10mm to 80mm. The suppliers firstly mine limestone from their mines where the quality of limestone is very high and thereafter calcine the limestone in a kiln. He also submitted that no processing other than calcination is undertaken by appellant's suppliers.

2.2 Learned Advocate further submits that the appellants have been importing the subject goods in the past for more than 20 years and classifying the same under CTH 2522 10 00 of the Customs Tariff Act and the department are well aware that they were clearing it without any demur. It is only in the year 2018, an enquiry into the import of the subject goods was commenced which culminated into issuance of a show cause notice and the impugned order by the Commissioner of Customs (Preventative), Mumbai wherein the demand of differential customs duty for normal period amounting to Rs. 3,72,66,955/- has been confirmed against the appellants on the ground that the subject goods are classifiable under CTH 2825 90 90 and are not eligible for exemption benefit under the notifications, as they ought to have been classified under CTH 2825 90 90 of the Customs Tariff Act, 1975.

2.3 Furthermore he submitted that the issue of classification in the above case is no longer *res integra* in view of the decision of the Tribunal in the case of *Commissioner of Central Excise, Hyderabad-III Vs. M/s Bhadradri Minerals Pvt. Ltd.* reported in 2015 (324) E.L.T. 395 (Tri.-Bang.) and *Jindal Stainless (Hisar) Ltd. Vs. Commissioner of Customs, New Delhi*, reported in 2020 (8) TMI 743 –CESTAT - NEW DELHI wherein it was categorically held that CTH 2825 covers calcium oxide which is of purity 98% or more. He also submitted that the test report of the samples of imported goods indicate that level of Calcium Oxide in the subject goods is between 91% to 95% and thus, below 98%. In the present case, for classifying the goods under CTH 2825 the percentage of calcium oxide ought to be 98% or more. It is not in dispute that percentage of available calcium oxide in the imported goods is less than 98%. Hence, he submitted that the goods were rightly classified under CTH 2522 of the Customs Tariff Act.

2.4 Learned Advocate stated that reliance placed by the department on the BIS standard IS:1540-1 (1980) for quicklime which is used in chemical industry to hold that the subject goods are Grade 'A' quicklime and consequently are classifiable under CTH 28.25 is erroneous. By referring to its scope he stated that the BIS standard does not cover metallurgical industries and the said standard merely prescribes different grades of quicklime. It does not provide any guidance on which grade of quicklime would be regarded as pure. In fact, the grades as specified in the standard are for different purposes as may be required by different industries. Thus, classification of imported goods cannot be made on the basis of BIS standard for classifying the same under CTH 2825.

2.5 Learned Advocate placed reliance on the decision of Tribunal in the case of *Agfa India Pvt. Ltd. Vs. CC reported as 2017 (353) ELT 251 (Tri-Chennai)* to state that Rule 3(a) of General Rules of Interpretation would squarely apply to this case and 'quick lime' being specific entry under CTH 2522 shall prevail over a general entry of 'others' under CTH 2825.

2.6 He further submitted that the reliance placed by Revenue in the impugned order on the decision of the Authority of Advance Ruling in *Lhoist India V. CCE reported as 2008 (221) ELT 465 (AAR)* is mechanical and misplaced. He submitted that as per Section 28 J of the Customs Act, 1962, Advance Ruling is binding only on the parties who are party to the said proceedings and thus do not apply in their case.

2.7 Thus, he stated that in view of the imported goods having been correctly classified by the appellants, the question of demand of differential duty, imposition of penalty and interest in this case does not arise.

3.1 Learned Authroised Representative (AR) appearing for the Revenue reiterated the findings recorded by the learned Commissioner (Preventive) in the impugned order and stated that the appellant have been importing Hi Cal Quicklime from M/s Carmeuse Majan LLC, Oman and M/s Ras Al Khaimah Lime Co. 'Noora', UAE. The declared description in the bills of entry is 'Quicklime' under CTH 25221000. The imported quicklime is used by the appellants 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 re-classification 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 2522 10 00. Thus in respect of B/E No. 6739528 dated 11.06.2018 in which the mis-classification was noticed and thereafter all the assessments were done on provisional basis.

3.2 It was further submitted by learned AR, that from the conjoint reading of the (i)HSN Explanatory Notes to Note (1) of the Chapter 25, and (ii) HSN Explanatory Notes B(11) to the tariff entry 282590, the following conclusion could be arrived:

(a) Heading 2522 covers impure calcium oxide containing very little or no clay.
(b) Purified calcium oxide is covered under heading 2825
(c) Chapter 28 headings cover separate chemically defined compounds, whether or not containing impurities.
(d) Separate chemically defined compounds containing impurities remain classified in Chapter 28.
(e) Such impurities result from manufacturing process (including purification) like unconverted starting materials, impurities present in the starting materials etc.
(f) Heading 2825 covers calcium oxide in pure state (i.e. containing practically no clay, iron oxide, manganese oxide etc.).
(g) One of the methods of obtaining pure calcium oxide is by calcining precipitated calcium carbonate.
(h) Heading 2825 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).

3.3 Learned AR also stated that 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 ($CaCO_3$; 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 (CO_2), leaving quicklime. In terms of the HSN Explanatory notes and Chapter Heading Notes, quicklime in crude state is classifiable in CTH 2522. 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.

4. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper book by learned Advocate for the appellants as well as Authorised Representatives for the Revenue, and the arguments advanced during the hearings of this case.

5. 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 2522 10 00 as claimed by the appellants; or, is it classifiable under Customs Tariff Item 2825 90 90 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.

6. 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.

"***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."

"Section 1. Short title, extent and commencement. *-*

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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.

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.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES (GEN) TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eightdigit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

7. From the plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of

goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8. In context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

(i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)

(ii) reference to an article, shall also include such article in the incomplete or unfinished state, subject to the condition that article, as presented, has the essential character of the complete or finished article. Further, reference in a heading to a material or substance shall be taken to include mixtures or combinations of that material or substance with other materials or substances, and to goods consisting wholly or partly of such material or substance; (GIR 2)

(iii)if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]

(iv) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)

(v) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

(vi) When the description of the goods under a heading is preceded by ‘single dash ’i.e., “-”, the said goods shall be taken to be a sub-classification of the article or group of articles covered by the said heading. (GEN1)

(vii) Where, however, the description of goods is preceded by “- -”, the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has “-” single dash. (GEN1)

(viii) Where the description of goods is preceded by "---" or "----", the said goods shall be taken to be a sub-classification of the immediately preceding description of the goods or article or group of articles which has "-" or "--". (GEN1)

9. 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	
			Standard	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 20 30	- Hydraulic lime	Kg.	10%	-"

&

"Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	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 :*			
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 00	- Lithium oxide and hydroxide	Kg.	10%	-
2825 30	*- Vanadium oxides and hydroxides:*			
2825 30 10	--- Vanadium pentaoxide flakes	Kg.	10%	-

"Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
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 10	--- Germanium oxides	Kg.	10%	-
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	Kg.	10%	-
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	--- Calciumhydroxide	Kg.	10%	-
2825 90 50	--- Ammoniumhydroxide	Kg.	10%	-
2825 90 90	**--- Other**	Kg.	10%	-"

10.1 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 2825 90.

10.2 We find that Heading 2522 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 2522. There is no dispute on the fact that the imported goods in the present case are 'quicklime' and thus by applying GIR 1 would be classifiable under tariff item 2522 10 00. 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.

10.3 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.

10.4 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.

10.5 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 prima facie view that the imported goods are appropriately classifiable under CTH 2522 10 00.

11. Revenue has also contended that the imported goods are rightly classifiable under tariff item 2825 90 90, as 'calcined' quick lime is excluded from the scope of coverage of goods under Chapter 25 in terms of its Chapter Note 1 and on the basis of HSN explanatory notes 1(a) to Chapter 28, B(11) of tariff entry 28.25, presence of impurities, BIS 1540-1 (1980), GIR 3(c), which have been discussed in detail and summarized in paragraph 201 of the impugned order dated 31.10.2019.

12.1 Therefore, in order to decide further within the two Chapter Headings 2522 or 2825, whether the imported goods fall under the first category as 'quicklime' or under the second category 'calcium oxide', one needs to look further into relative Section or Chapter notes. Further, as both the appellants and Revenue have relied upon the HS explanatory notes of the World Customs Organization (WCO), for classification of impugned goods and as these HS explanatory notes describe in detail the scope and coverage of the goods under the Customs classification, which is in tandem with the classification of goods agreed in the international trade and is duly adopted by all member countries to WCO, and India being a member country, we need to look into these aspects too. It is also important to note that classification of goods for customs purposes as per the Harmonized System of Nomenclature (HSN) is an international obligation for India under an International Convention on the Harmonized Commodity Description and Coding System brought into effect from 01.01.1988 and among the various uses, one of it relevant to this case before us to follow the HSN as a basis for Customs tariffs and as a vital element of core Customs process areas of Customs controls and procedures, including risk assessment, information technology and compliance. Accordingly, the extract of relevant Chapter notes in First Schedule to Customs Tariff Act and the WCO's HSN in respect of heading 2522 and 2825 is discussed in detail along with extracted portion of the same as given below:

"SECTION V

MINERAL PRODUCTS

CHAPTER 25

Salt; sulphur; earths and stone; plastering materials, lime and cement

Notes:

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 which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

2. This Chapter does not cover :

(a) sublimed sulphur, precipitated sulphur and colloidal sulphur (heading 2802);

(b) earth colours containing 70% or more by weight of combined iron evaluated as Fe_2O_3 (heading 2821);

(c) medicaments and other products of Chapter 30;

(d) perfumery, cosmetic or toilet preparations (Chapter 33);

(e) setts, curbstones and flagstones (heading 6801); mosaic cubes or the like (heading 6802); roofing, facing or damp course slates (heading 6803);

(f) precious or semi-precious stones (heading 7102 or 7103);

(g) cultured crystals (other than optical elements) weighing not less than 2.5g each, of sodium chloride or of magnesium oxide, of heading 3824; optical elements of sodium chloride or of magnesium oxide (heading 9001);

(h) billiard chalks (heading 9504); or

(i) writing or drawing chalks and tailors' chalks (heading 9609).

3. Any products classifiable in heading 2517 and any other heading of this Chapter are to be classified in heading 2517.

4. Heading 2530 applies, inter alia, to: vermiculite, perlite and chlorites, unexpanded; earth colours, whether or not calcined or mixed together; natural micaceous iron oxides; meerschaum (whether or not in polished pieces); amber; agglomerated meerschaum and agglomerated amber, in plates, rods, sticks or similar forms, not worked after moulding; jet; strontianite (whether or not calcined), other than strontium oxide; broken pieces of pottery, brick or concrete."

12.2 In this regard, we find that Chapter Note 1 to Chapter 25 of Section V covering mineral products, provide for the general scope of goods that do not get covered under the said Chapter. Besides, Chapter Note 2 also lists out goods that are not covered under Chapter 25. Thus, we find that these Chapter Notes 1 and 2 to Chapter 25 generally guide classification of goods under this Chapter. As there is no specific mention of products of heading 2825 in Chapter Note 2 for excluding from the scope of chapter 25, it is clear that there is no overlapping of classification in respect of any goods of heading 2522. Further, as the description of sub-heading 2522 itself provide for excluding calcium oxide and hydroxide of Chapter heading 2825 from the scope of its coverage as discussed in detail at paragraphs 10.1 to 10.3 above, there arises no specific requirement to mention it as product under the exclusion list of chapter note 2. If we analyse the Chapter Note 1, there are six major elements guiding the classification of goods. These have been listed as follows:

(a) Mineral products that are in the crude state are only covered under Chapter 25;
(b) Mineral products which are subjected to certain specific process such as washing, crushing, grounding etc. (as specified therein) or other mechanical process or physical process would alone be covered under Chapter 25
(c) Mineral products after being subjected to certain processes by which these have become products that have been roasted, calcined are not covered under Chapter 25
(d) Mineral products which are obtained by mixing or subjected to processing beyond that mentioned in each heading is also not covered under Chapter 25
(e) When the context require, mineral product subjected to a particular process such as heating (as mentioned in heading 2517, as 'whether or not heated') would still be covered under Chapter 25
(f) Mineral products which are subjected to certain specified process in Chapter Note 4 would still continue to be classified under Chapter 25.

In respect of the present issue, the sub-clause (c) & (e) above is applicable, and it could be concluded that calcined mineral product is not covered under Chapter 25 unless the context require and specify so for inclusion in Chapter 25.

12.3 In order to understand the above aspect more clearly let us also look into the HSN explanatory notes for sub-heading 2522, the extract of which is given below:

"Harmonized Commodity

Description and Coding System

Explanatory Notes

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

2522.10 – Quicklime

2522.20 – Slaked lime

2522.30 – Hydraulic lime

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

Hydraulic lime is obtained by low temperature calcination 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 uncombined quicklime, which may be slaked with water.

The heading excludes purified calcium oxide and calcium hydroxide (heading 28.25)."

The above explanatory notes to sub-heading 2522 clearly provide that 'quicklime' and 'hydraulic lime' are obtained by calcining and low temperature calcination of limestone, respectively. In order to appreciate the above, let us understand the process of calcination as explained in the Britannica Encyclopedia which states that 'Calcination', means *the heating of solids to a high temperature for the purpose of removing volatile substances, oxidizing a portion of mass, or rendering them friable. Calcination, therefore, is sometimes considered a process of purification. A typical example is the manufacture of lime from limestone. In this process the limestone is brought to a temperature high enough to expel the carbon dioxide, producing the lime in a highly friable or easily powdered condition. Calcination in special cases may be carried on in furnaces designed to exclude air, for which an inert gas may be substituted.*

12.4 In other words, from the above HSN explanatory notes it could be concluded that 'lime stone' being a mineral product is calcined to produce 'quicklime'. Further, when lime stone is subjected to the process of low temperature of calcination then 'hydraulic lime' is produced. These two products would remain classifiable under Chapter heading 2522. However, when the lime stone is subjected to high temperature calcination ranging as high as 1340°C, dissociation of limestone happens i.e., a general chemical process in which molecules (or ionic compounds such as salts, or complexes) gets separated or split into other things such as atoms, ions, or radicals, usually in a reversible manner. In simple words, it can be said that the mineral product 'quicklime' when subjected to high temperature calcination becomes 'calcium oxide' by eliminating carbon-dioxide (CO_2) and such calcium oxide is not covered under Chapter 25, as these are chemical products classifiable under heading 2825.

13. We also find that our above views is duly supported by the Order of the Tribunal in the case of Collector of Central Excise, Chandigarh Vs. Nuchem Ind. (P) Ltd., reported in 1999 (105) E.L.T. 711 (Tribunal) which has also duly followed the judgement of the Hon'ble Supreme Court in the case same assessee. The relevant paragraph of the above order is extracted below:

> *"26. The present case concerns the same assessee and the same material for a later period. The Tariff Headings and the Chapter Note in question being materially the same, the law laid down by the Supreme Court is finding on the Tribunal and the authorities. If, however, it is the stand of the department that the exclusion of roasted or calcined items, in terms of the subject Chapter Note, is only from Chapter 25 or, more particularly, Tariff Headings 25.01, 25.03 and 25.05 and not to make such products non excisable, if, they fall in other Chapters or under other Headings, appropriate action may be considered by the Government. In fact, Tariff sub-heading 2505.60 which mentions quick lime, slaked lime and hydraulic lime refers to such goods other than calcium oxide and hydroxide of Heading No. 28.25 which would point to the latter two products falling under that heading which covers, inter alia, inorganic chemicals, that chapter itself falling in Section VI which covers products of the Chemical or Allied Industries. As against this, Chapter 25 under which, lime falls is in Section V which covers mineral products. Chapter Note 2 under Chapter 25 covers only material falling under 25.01, 25.03 and 25.05 which have been subjected to mechanical or physical processes for eliminating impurities without changing the structure of the product but not products that have been roasted, calcined etc. Obviously the latter type of processes result in a chemical process changing the structure of the product. It is be noted that the Supreme Court did not disturb the findings of the Tribunal while dismissing the department's appeal as the Counsel for the Government could not enlighten the Court about the findings of the Collector (Appeals) which he adopted as the stand of the Government in the appeal.*
>
> *27. For the aforesaid reasons; following the Supreme Court decision in respondent's own case, for the same goods, I concur with the findings of the Judicial Member ordering dismissal of the department's appeal. The papers may be referred to the Bench for passing the final order in accordance with the majority view."*

14.1 In order to further examine the classification in terms of HS explanatory notes of the WCO, which describe in detail the scope and coverage of the goods under the Customs classification, the extract of HS classification in respect of heading 2825 is given below:

"Harmonized Commodity

Description and Coding System

Explanatory Notes

28.25- 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
2825.20 - Lithium oxide and hydroxide
2825.30 - Vanadium oxides and hydroxides
2825.40 - Nickel oxides and hydroxides
2825.50 - Copper oxides and hydroxides
2825.60 - Germanium oxides and zirconium dioxide
2825.70 - Molybdenum oxides and hydroxides
2825.80 - Antimony oxides
2825.90 – Other

This heading covers :

(A) Hydrazine and hydroxylamine and their inorganic salts.

(B) The metal oxides, hydroxides and peroxides of this Chapter not included in preceding headings.

The most important products are :

(1) Hydrazine and its inorganic salts…….

(2) Hydroxylamine and its inorganic salts……

XX XX XX XX

(10) Berylium oxide and hydroxide.

(a) Oxide (BeO). Prepared from beryllium nitrate or sulphate. White powder, insoluble in water; can be crystallised. Used for making beryllium salts, synthetic precious or semi-precious stones and as a catalyst.

(b) Hydroxide ($Be(OH)_2$). White powder resembling alumina in appearance.

(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 (CaO_2) 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)."

From perusal of the detailed coverage of the goods under the scope of the above entries particularly those under in the sub-heading 282590, at first para of B(11) above, it is clear that the calcium oxide (CaO) in the pure state i.e., not containing clay, iron oxide, manganese oxide etc. would alone qualify for the chemical product covered under the scope of this sub-heading.

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 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.

15. Revenue has also claimed that the exemption entry for the purpose of levy of CVD/IGST under Notification No. 01/2017-Integrated Tax dated 28.06.2017 of Schedule-I (Serial No.131) have specified only quicklime of heading 2522, and impugned order classified the imported

goods under 2825, and thus the appellants are excluded in claiming the exemption benefit. In this regard, the exemption entry in the above notification is extracted below:

"[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No.1/2017-Integrated Tax(Rate)

New Delhi, the 28thJune, 2017

G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the integrated tax of-

(i)5 per cent. in respect of goods specified in Schedule I,
(ii)12 per cent. in respect of goods specified in Schedule II,
(iii)18 per cent. in respect of goods specified in Schedule III,
(iv)28 per cent. in respect of goods specified in Schedule IV,
(v)3 per cent. in respect of goods specified in Schedule V, and
(vi)0.25 per cent. in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on inter-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

S. No.	Chapter / Heading / Sub-heading / Tariff item No.	Description of Goods
(1)	(2)	(3)
xx	xx	xx
131.	2522	Quicklime, slaked lime and hydraulic lime, other than calcium oxide and hydroxide of heading 2825.
xx	xx	xx"

We find that the above notification has prescribed the effective rate of integrated Goods and Service Tax that is payable on the imported goods as countervailing duty (CVD). Inasmuch as the imported goods are covered under the description 'quicklime' and by the chapter heading '2522' there is no irregularity in the claim of such exemption. Thus, we do not find any infirmity in the claim for exemption benefit made by the appellants. In fact the CBEC circular No.9/96-Customs dated 13.02.1996, clarifies this aspect by specifically stating that the imported goods when covered specifically by the exemption entry by its description, then notwithstanding the fact that the goods are not covered by the Chapter/Heading No./Sub-heading Nos. mentioned in the notifications would still be available, on the basis of the law laid down by the Hon'ble Supreme Court in the case of *Jain Engineering Vs. Collector of Customs* – 1987 (32) E.L.T. 3 S.C. Further, it is not the case of Revenue that the impugned goods do not find fitment in heading 2522 of the First Schedule to Customs Tariff Act, 1975 or that the 'integrated tax' rate at serial no. 131 of Schedule I is, by the corresponding description, unquestionably excluded from every tariff item comprising heading 2522 of the First Schedule to Customs Tariff Act, 1975. Nor is it the case of Revenue that the 'quicklime' at serial no. 131 of Schedule I of the 'integrated tax' rate notification do not find placement in chapter 25 of First Schedule to the Customs Tariff Act, 1975. Thus, we find that the impugned order dated 31.10.2019 rejecting the exemption benefit of the above notification, is not legally sustainable.

16. We further find from the standards prescribed by the Bureau of Indian Standards (BIS) in respect of IS:1540 (Part-I):1980 providing the 'specification for Quick lime and Hydrated lime for chemical industries' state in its scope of coverage of the BIS that this standard does not cover lime for the metallurgical industry, besides excluding its scope for other uses such as building, agricultural, glass and ceramic industries. Further, the various Grades of lime such as Grade-A, Grade-B and Grade-C are provided depending upon their suitability to specific uses on the basis of chemical properties such as follows:

Grade A – Bleaching powder, paper, textiles and varnish manufacture

Grade B – Sugar and calcium carbide industry

Grade C – suitable for soda ash, caustic soda by lime soda process, water treatment and tanning industry.

Thus, we find that the IS:1540 is not applicable for the quicklime used in the manufacturing process of iron & steel industry as in the present case.

17. We also observe that the CBEC's Circular No.18/91-CX.3 in F. No. 112/6/91-CX3 dated 10.07.1991 which was issued in the context of classification of 'burnt lime' under sub-heading 2505.60 not being directly related to the issue of impugned goods and the decision given by the Authority for Advance Ruling in Lhoist India supra, apply only in respect of the applicant who had sought it and the related jurisdictional

Customs authorities for that applicant in terms of Section 28J *ibid*, we do not find it necessary to examine these aspects in the present case.

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:*
>
>> *"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 :*
>
> *"(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.

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."

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.

21. In the result, the confirmation of demands and penalties imposed on the appellants in the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 20.10.2023)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha