

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

REGIONAL BENCH – COURT NO. 2

CUSTOMS APPEAL NO: 85555 OF 2023

[Arising out of Order-In-Original No: 105/2022-23/Commr/NS-I/CAC/JNCH dated 23rd March 2023 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva.]

Mukand Limited *... Appellant*
Thane Belapur Road, Dighe, Kalwa,
District Thane, Maharashtra – 400 605.

versus

Commissioner of Customs (NS-I) *...Respondent*
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

APPEARANCE:

Shri C K Chaturvedi, Advocate for the appellant
Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85372/2024

DATE OF HEARING:	04/10/2023
DATE OF DECISION:	01/04/2024

PER: C J MATHEW

The appellant, M/s Mukand Limited, imported 65 consignments
of ‘quicklime’ between June 2019 and April 2021 from Oman and

United Arab Emirates for deployment as ‘flux’ to remove slag, or impurities, in steel production undertaken by them. The goods were claimed for coverage against tariff item 2522 1000 of First Schedule to Customs Tariff Act, 1975 with attendant concessional rate of ‘basic customs duty (BCD)’ *vide* notification no. 50/2017-Cus dated 30th June 2017 (at serial no. 120) and of ‘integrated goods and service tax (IGST)’ *vide* rate notification no. 01/2017-Integrated Tax dated 28th June 2017 (serial no. 131 in schedule I). Yet another tariff item 2825 9090 of First Schedule to Customs Tariff Act, 1975 by reference to

*‘QUICKLIME, SLAKED LIME AND HYDRAULIC LIME,
OTHER THAN CALCIUM OXIDE AND HYDROXIDE OF
HEADING 2825’*

corresponding to heading 2522 of First Schedule to Customs Tariff Act, 1975 was brought to bear as being more appropriate to declaration in bills of entry by customs authorities to initiate proceedings against them.

2. Impliedly, ‘calcium oxide’ and ‘calcium hydroxide’ are also, one way or the other, variety of ‘lime’ but from unalloyed comprehension of the more sophisticated description as

*‘HYDRAZINE AND HYDROXYLAMINE AND THEIR
INORGANIC SALTS; OTHER INORGANIC BASES; OTHER
METAL OXIDES, HYDROXIDES AND PEROXIDES’*

in heading 2825 of First Schedule to Customs Tariff Act, 1975, and

even if not specifically included therein, customs authorities have taken recourse, and inappropriately, to the headings of the two chapters, to confirm recovery therein under section 28 of Customs Act, 1962. And it is that happenstance ‘cross-over’, compounded by distinguishment in tax policy, that perpetuates the dispute over ₹ 1,49,50,442/- in order¹ of Commissioner of Customs (NS-I), JNCH, Nhava Sheva impugned before us.

3. The case of Revenue, as set forth also before us by Learned Authorized Representative, is that ‘separate chemically defined compounds’, even if containing impurities or dissolved in water, would have to be classified against one of the headings in chapter 28 despite possibility of inclusion in another heading elsewhere and that the nature, as well as source, of impurities, as specified in the first of the *Explanatory Notes* pertaining to chapter 28 in the Harmonized System of Nomenclature (HSN), should be the benchmark for distinguishment of products which are used without further refining. Likewise, it was contended that note B(11) in *Explanatory Notes* of the same chapter in the Harmonized System of Nomenclature (HSN) specific to the revised heading, viz.,

‘(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

¹ [order-in-original no. 105/2022-23/Commr/NS-I/CAC/JNCH dated 23rd March 2023]

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 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).'

leaves no room for further doubt about the classificatory design. Relying on the 'material test certificate (MTC)', it was further contended that, with total impurities being 0.598%, 'loss on ignition' of 2.01 would enhance 'calcium oxide' content to over 98%, demonstrating purity that conforms to benchmark in the relevant *Explanatory Notes*, and consequent unavailability of heading 2522 of First Schedule to Customs Tariff Act, 1975 for classification.

4. The contention of Learned Counsel for appellant that the impugned goods are not 'calcium oxide (CaO)' extracted by 'calcination of precipitated calcium carbonate' which was essential for change in classification, was derogated as incorrect by Learned

Authorized Representative referring to expression ‘such as’, in the *Explanatory Notes* not excluding other process to achieve the same end.

5. Learned Counsel relied upon the decision of the Tribunal in *Jindal Stainless (Hissar) Ltd v. Commissioner of Customs, New Delhi* which, in final order², disposing off appeal³ against order⁴ of Commissioner of Customs, ICD, New Delhi, held that

‘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)”.

² [no. A/50751/2020 dated 25th August 2020]

³ [customs appeal no. 51224 of 2019]

⁴ [order-in-original no. 20-21/COMMR/SVS/ICD/PPG/2018 dated 31st December 2018]

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.'

and argued that the computation of purity should be as at the time of presentation for import and not the state it achieves during deployment in production after import, particularly as the impugned goods are designed to act as 'flux' without fusing in the finished goods. Further reliance was placed on the decision⁵ of the Tribunal in *Viraj Profiles Limited v. Commissioner of Customs (Preventive), Mumbai* – another importer similarly situated – which held that

'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:

⁵ [order no. A/87057-87058/2023 dated 20th October 2023]

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10.1 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 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 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.

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12.1 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:

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12.2 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:

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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.

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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 (CO₂) 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 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. 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. 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.

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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.

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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.'

while disposing of appeal⁶ against order⁷ of Commissioner of Customs (Preventive), Mumbai.

6. Besides the appropriateness of logic claimed as justification for revision of classification by adjudicating authority, which fails in the light of decisions *supra*, the impugned order relies on ruling by an Authority which does not bind the appellant herein or the Tribunal. We also find it inappropriate that the adjudicating authority has chosen to denigrate the findings of an appellate authority thus

⁶ [customs appeal no. 85377 of 2020 and 86172 of 2021]

⁷ [order-in-original no. PCCP/ADJ/CCP/SAK/4/2019]

‘25.6.2 Similarly, the second case in reference i.e., in the case of *M/s. Jindal Stainless (Hisar) Ltd.*, reliance has been again considerably placed on the case of *M/s Bhadradri Minerals P. Ltd.* and on the fact that CaO content in the imported goods is in the range of 92-97%, which is again less than 98%, a referral benchmark for classifying Quicklime under CTH 2522 / 2825, which has been arbitrarily fixed in the judgement pronounced in both the above mentioned cases. For better understanding of the case, HSN Explanatory Note 11 under Tariff Heading 28.25 is again produced below for reference:

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‘....It is nowhere mentioned in the said Explanatory Notes that only the quicklime having equal to or more than 98% of calcium oxide are to be classified under CTI 2825. This wrong inference of the above mentioned Explanatory Notes in both the cases referred by the notice has led to the judgement which needs to be reviewed. As the judgement of the said case is also based on the mis-interpretation of the Explanatory Notes 11 of the Tariff Heading 2825, the ratio of the case laws cited by the Noticee is not applicable to the facts of the case at hand.’

which is only in the domain of constitutional courts, for discarding the plea of precedent in rulings of the Tribunal in *Commissioner of Central Excise, Hyderabad – III v. Bhadradri Minerals Pvt Ltd [2015 (324) ELT 395 (Tri.-Bang.)]* and in *Jindal Stainless (Hisar) Ltd v. Commissioner of Customs, New Delhi [2020 (8) TMI 743 – CESTAT New Delhi]* and suffices to set aside the impugned order. We find that the benchmark of purity, as settled by above decisions, was not attained at the time of import of the impugned goods. Further, the elaborate and

detailed discussion in *re Viraj Profiles Limited* resolves the controversy, once and for all, on heading 2522 of First Schedule to Customs Tariff Act, 1975 being the correct one. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 01/04/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*