(2024) 01 CESTAT CK 0007

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.10843 Of 2022

J K Paper Limited APPELLANT

Vs

C.C.-Ahmedabad RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Citation : (2024) 01 CESTAT CK 0007

Hon'ble Judges : Ramesh Nair, Member (J);Raju, Member (T)

Bench : Division Bench

Advocate : Hasit D Dave, Anand Kumar

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The issue involved in the present case is that whether the imported quicklime used by the appellant in their manufacture of paper is classifiable under the CTH 2522 1000 as declared by the appellant or under CTH 2825 9090 as claimed by the Revenue.

2. Shri Hasit D Dave, Learned Counsel appearing on behalf of the appellant submits that the fact of the product is not under dispute as the CaO content in the product is always lesser than 98% i.e. between 92 to 97%. The supplier carried out only calcination process on the natural quicklime, the said process does not change the natural quicklime to any processed goods. On this fact, the goods are correctly classified under CTH 2522 1000.

2.1 He submits that on the identical goods, this Tribunal has decided the matter in the case of Jindal Stainless (Hisar) Ltd. vide final order No. A/50751/2020 dated 25.08.2020.

3. Shri Anand Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the limited issue to be decided in this case is where the quicklime imported by the appellant is classifiable under CTH 2522 1000 or CTH 2825 9090 as a processed goods. There is no dispute on the fact that the CaO content in the quicklime is less than 98% i.e. between the 92-97% and the process carried out by the supplier is only calcination, these facts are not under dispute. On this identical facts, the very same issue has been considered by this Tribunal in the case of Jindal Stainless (Hisar) Ltd. vide order dated 25.08.2020, wherein the following order was passed:

"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 indifferent circumstances and, therefore, cannot be relled 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 (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 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 H?O) 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."

From the above decision of this Tribunal, it can be seen that when only calcination process is carried out and CaO content is less than 98%, than the quicklime is correctly classification under CTH 2522 1000. Since, the identical facts involved in the present case, the ratio of the above decision is directly applicable in this case.

5. Accordingly, we set aside the impugned order and allow the appeal.

