

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:

Mr. Rakesh Kumar Sharma, Member

Ms. Smaraki Mahapatra, Member

In the matter of
Appeal Case No. 03/WBAAAR/Appeal/2018 dated 10.05.2018

- And -

In the matter of:

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017, by M/s Sika India Private Limited, having its office at 1/B,20,21,19,5,15 - Industrial Estate (New), Kalyani, Dist.-Nadia, West Bengal, through its Authorised Signatory.



Present for the Appellant: Mr. Rahul Lakhwani, Advocate

Heard on: 27.06.2018

Date of Order: 26.07.2018

This Appeal has been filed by M/s Sika India Private Limited, holding GSTIN 19AAECS1119F1ZL (hereinafter referred to as the "Appellant"), on 10.05.2018, against the Ruling dated 09.04.2018, pronounced by the West Bengal Authority for Advance Ruling.

The Appellant is a manufacturer of products used in building construction. One such product is manufactured and marketed by it under the brand name of "SIKA Block Joining Mortar" and is said to be used for joining masonry units like AAC blocks, Concrete blocks, fly ash bricks, etc. The Appellant had approached the West Bengal Authority for Advance Ruling for determining the proper classification of "SIKA Block Joining Mortar". The West Bengal Authority for Advance Ruling (hereinafter referred to as "WBAAR") after hearing the matter and examining the documents, vide its Ruling dated 09.04.2018, decided that:

"SIKA Block Joining Mortar" is to be classified under tariff item 3214 90 90 of the Customs Tariff Act, 1975, and, therefore, taxable under Serial no. 24 of Schedule IV

vide Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 under CGST Act, 2017 and 1125-FT dated 28/06/2017 under WBGST Act, 2017”.

It is against this Ruling that the Appellant has filed the instant appeal under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “GST Act”).

2. The Appellant has filed Appeal principally on the following grounds:

- a. The WBAAR has travelled beyond its jurisdiction by classifying the product, “SIKA Block Joining Mortar” under Tariff Heading 3214 90 90. The Appellant had approached the WBAAR for classification of the product in Tariff Heading 3824 50 90 instead of Tariff Heading 3214 90 10;
- b. The impugned Ruling dated 09.04.2018, pronounced by the WBAAR, does not specify the basis of classifying the product “SIKA Block Joining Mortar” under Tariff 3214 90 90;
- c. The WBAAR has not considered the fact that the Appellant’s competitors are marketing similar products under HSN Tariff Heading 3824 50 90 and that the same type of product cannot be classified under two HSN Tariff Headings and thereby, chargeable under two different rates of tax.



3. The Appellant cited following case laws while arguing the case:

- a. The Appellant relied on the order of the Commissioner of Sales Tax, West Bengal, passed in case no. 24X/PRO/VAT/16/303 in the matter of M/s UAL Industries Ltd. where the Commissioner of Sales Tax, West Bengal, finds ‘dry mix mortar’, made by mixing sand, fly ash, OPC/PPC Cement, hydrated lime and polymer additives.
- b. The Appellant argued that as per common parlance the product is classifiable as mortar under Tariff Heading 3824 50 90 citing the following judgements:
 - i. Porritts & Spencer (Asia) Ltd. Vs. State of Haryana [1983(13) ELT 1607(SC)]

- ii. Asian Paints India Ltd v. Collector of Central Excise [1998 taxmann.com 6(SC)]
 - iii. Plasmac Machine Manufacturing Co. (P) Ltd v. Collector of Central Excise [1991 taxmann.com 6(SC)]
 - iv. Dabur Industries Ltd vs. CCE [2005] 4 SCC 9,
 - v. Commissioner of Central Excise v. Wockhardt Life Sciences Ltd (2012) 5 SCC 585.
- c. By citing the judgement of Morocco (India) Ltd vs. Collector of Customs, Madras [1997(91) ELT 126 (Tribunal)] & Perival Plastics Pvt Ltd vs. Commissioner of Central Excise [1998 (104) ELT 398 (Tri-Chennai)] the Appellant argued that the Specific description of 'Non-Refractory Mortar' will prevail over the general description of 'Non-Refractory surfacing preparation'.
- d. The Appellant cited the judgement in the case of CCE vs. Kitply Industries [(2011) 272 ELT 3 (SC)], Tapex Corporation Vs. CCE [1998 (103) ELT 580 (CEGAT)], Furniture Factory vs. CCE [1999(105) ELT 400 (CEGAT)] and Mahindra & Mahindra vs. CCE [1999(109) ELT 739 (CEGAT)] to argue that the latter Tariff heading 3824 50 90 will prevail over the earlier tariff heading 3214 90 90.
- e. By citing the judgement in the case of CCE v. Minwool Rock Fibres [(2012) 278 ELT 581 (SC)] the Applicant argued that in case of conflicting tariff heading, the tariff heading which is more beneficial to Assessee need to be adopted.
4. The core issue involved in this Appeal is whether 'SIKA Block Joining Mortar', manufactured and marketed by the Appellant, is to be classified under Tariff Head 3214 90 10, which the Appellant was declaring voluntarily for the past few years and which the WBAAR held as 3214 90 90 to be the correct classification, or Tariff Head 3824 50 90, which the Appellant now insists is the correct classification.



5. The Appellant admitted that it had earlier classified their product 'SIKA Block Joining Mortar' under Tariff Head out of ignorance and it made no difference as the duty/tax payable under both the heads, that is Tariff Head 3214 90 10 and Tariff Head 3824 50 90, was the same. Under the GST Act, however, there is a difference of 10 % which is pushing them out of market as its competitors are supplying the similar products charging lower tax.

Following is the comparison of duty/tax in pre- and post- GST regime:

Tariff Heading	Duty (Prior to GST)	Tax Rate under GST
38245090	Excise: 12.5%, VAT: 14.5%	18%
32149010	Excise: 12.5%, VAT: 14.5%	28%

6. The Appellant submitted that 'SIKA Block Joining Mortar' is used for joining masonry units like AAC blocks, Concrete blocks, fly ash bricks, etc., to provide strength to the building. The constituents of this item are said to be as follows:



Name of the Raw Material used	Quantity as percentage
Wallocel (Hydroxyethyl methyl cellulose)	0.1 – 0.2 %
Polymer Powder (Copolymer of vinyl acetate and ethylene)	0.2 – 0.6 %
Slag/ GGBS (Cement substitute)	15 – 35 %
Ambuja PPC (Cement)	15 – 35 %
Sand-A (Natural silica sand)	20 – 35 %
Sand-B (Natural silica sand)	30 – 45 %

7. Let us now examine the detailed entries under Tariff Heads in dispute here, which are as under:

Tariff Code	Description
3214	Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings; non-refractory surfacing preparations for facades, indoor walls, floors, ceilings or the like.
3214.10	Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings
3214.10.00	Glaziers' putty, grafting putty, resin cements, caulking

	compounds and other mastics; painters' fillings
3214.90	Other
3214.90.10	Non-refractory surfacing preparations
3214.90.20	Resin cement
3214.90.90	Other
3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.
3824.10	Prepared binders for foundry moulds or cores
3824.10.00	Prepared binders for foundry moulds or cores
3824.30	Non-agglomerated metal carbides Mixed together or with metallic binders
3824.30.00	Non-agglomerated metal carbides mixed together or with metallic binders
3824.40	Prepared additives for cements, mortars or concretes
3824.40.10	Damp proof or Water proof compounds
3824.40.90	Other
3824.50	Non-refractory mortars and concretes
3824.50.10	Concretes ready to use known as "Ready-mix concrete (RMC)"
3824.50.90	Other



8. The Appellant submitted that the 'SIKA Block Joining Mortar' has no refractory property and it is not used to withstand extreme heat or high temperatures. It is also not used for surfacing preparation for facades, indoor walls, floors, ceilings, etc., it is only used for joining masonry units like AAC blocks, Concrete blocks, fly ash bricks, etc., which qualifies it to be classified under Tariff Head 3824 50 90.

9. From the written submissions of the Appellant and the oral arguments made before us it is clear that the 'SIKA Block Joining Mortar' is non-refractory and that it is not used for preparation of surfaces. Considering the nature, use and commercial identity of the item in question and, notwithstanding the Appellant's earlier voluntary declaration about the classification of the item, we are not inclined to accept its classification under Tariff Item 3214. Instead, it is to be classified under Tariff Item 3824.

10. In view of the above discussions, the Ruling dated 09.04.2018 of the West Bengal Authority for Advance Ruling is modified to the extent that 'SIKA Block Joining Mortar' is classified under Tariff Item 3824 as notified taxable under Serial no. 97 of Schedule III vide Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 under the Central Good and Services Tax Act, 2017 and 1125-FT dated 28.06.2017 under West Bengal Goods and Services Tax Act, 2017.

The Appeal thus succeeds and stands disposed of as above.

Send a copy of this order to Appellant for information.



sd/-
(SMARAKI MAHAPATRA)
Member
West Bengal Appellate Authority
for Advance Ruling

sd/-
(RAKESH KUMAR SHARMA)
Member
West Bengal Appellate Authority
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