

WEST BENGAL AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
14 Beliaghata Road, Kolkata – 700015

Name of the applicant	SIKA India Pvt Ltd
Address	1/B, 20,21,19,5,15 Industrial Estate New, Kalyani, Distt: Nadia, West Bengal-741 235
GSTIN	19AAECS1119F1ZL
Case Number	03 of 2018
Date of application	January 17, 2018
Date of advance ruling	April 09, 2018
Applicant's representative heard	Sri Partha Pratim Mukhopadhyay, Assistant Manager (Accounts)

1. The Applicant states that the proper HSN of its manufactured product "SIKA Block Joining Mortar" is 3824 50 90. The Applicant himself, however, has classified the product under HSN 3214 90 10 while filing returns under the Excise Act. Advance Ruling is sought on this issue under section 97 (2) (a) & (e) of the CGST / WBGST Act, 2017 (hereinafter referred to as "GST Act").
2. The Applicant also declares that the question raised in the Application is not pending or decided in any proceeding under any provision of the GST Act. The concerned officer has not conveyed any objection to admission of the Application.
The Application is, therefore, admitted.
3. The Applicant has stated that the product "SIKA Block Joining Mortar" is presently classified under HSN 3214 90 10 and that this product is basically ready to use Grey Cement based non-shrink, self-curing water resistance mortar for fixing AAC Blocks, Concrete Blocks Fly Ash Bricks etc. HSN 3214 talks about Glaziers, Putty, Resin Cements, Caulking Compounds and other mastics; painters' fillings, nonrefractory surfacing preparations for facades, indoor walls, floor, ceilings or the like.
4. During Personal Hearing dated 22.03.2018 the Applicant submitted a written submission in which the above points were reiterated and submitted copies of a few invoice cum delivery challans, where, the Applicant claims, the competitors were supplying similar products classified under HSN 3824 50 90. The Applicant also submitted a copy of the order no. 57583-57585/2017 dated 02/11/2017 of Customs Excise Service Tax Appellate Tribunal (hereinafter CESTAT), Delhi. The Applicant also produced an order dated 28/07/2017 passed by Commissioner (Appeals) CGST & Customs, Goa, disposing appeal case no GOA-EXCUS-000-APP-059-2017-18. The written submissions also refer to order dated 30/10/2001 passed by the Customs Excise & Gold Appellate Tribunal (hereinafter the CEGAT), Mumbai, in Roofit Industries Ltd [2002 (149) ELT 541] and also order dated 10/04/2017 of Commissioner of Sales Tax, West Bengal, passed in case no. 24X/PRO/VAT/16/303 in the matter of M/s UAL Industries Ltd.

5. In its above order, the CESTAT remands the matter to the departmental authority with direction to carefully examine the claim of the appellant (i.e. M/s Sika India Pvt Ltd) for classification of its products under subhead 3824 keeping in mind the views of the CESTAT in the above order. The views of the CESTAT are that most of the construction chemicals manufactured by the appellant that are in the nature of cement, grout, repair mortar, repair concrete etc. are not of a type used for surfacing preparations for walls, ceilings etc. and thus not classifiable under subhead 3214.
6. In its above order dated 28/07/2017 the Commissioner (Appeals), CGST & Customs, Goa, however, finds Sika Quick Mortar classifiable under tariff item 3214 90 90 in terms of Chapter Heading No. 3214 to the HSN.
7. In Roofit Industries Ltd the CEGAT, Mumbai, finds ready-mix plasters for plastering walls classifiable under subhead 3214.
8. In UAL Industries Ltd 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, classifiable as tariff item 3824 50 90.
9. None of the above orders have dealt with the Applicant's product, namely 'Sika Block Joining Mortar'. The product needs to be understood before exploring the classification options. It is a ready to use grey cement based water resistant mortar for fixing AAC blocks, fly ash bricks etc. Its chemical base is cementitious mortar modified with polymers. It is available in powdered form in 30 kg bags. It needs to be mixed thoroughly with water before applying a thin uniform layer of the paste to cleaned and levelled surface of the masonry units (AAC blocks, fly ash brick etc.) using trowel. The next masonry unit is to be gently pressed and get jointed and so on [Source: the datasheet presented by the Applicant and also the information available in the Applicant's website]. It is, therefore, a bonding compound used for joining masonry units like AAC blocks and fly ash bricks. It is a powder made pasty before use by adding water, and it hardens after application, enabling joining of the masonry units. It is applied with a trowel after cleaning the surface.
10. We will now discuss the classification options. Heading 3214 of the Tariff Act covers "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 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

Terms like non-refractory surfacing preparation or mortar are not defined in the GST Act, nor is the ambit of the related headings, in the present context, discussed in the Explanatory Notes to the Tariff Act. The orders and decisions the Applicant has referred to are also not explicit on this issue. Under such circumstances, it is a settled legal practice to refer to the Explanatory Notes to Harmonised Commodity Description and Coding System of World Customs Organization, Brussels, to decipher the Internationally accepted scope of the headings and tariff items. According to such Explanatory Notes heading 3214 includes preparations that are usually put up in a more or less pasty form and in general which harden after application. Some of them are solid or in powdered form made pasty at the time of use by heating or by addition of a liquid like water. They are usually applied with a caulking gun, a spatula, a trowel or similar tools.

Products under HSN 3214 10 00 are preparations mainly used to stop , seal, or caulk cracks, and, in certain cases bond or firmly join components together. They are distinguished from glue and other adhesives by the fact that they are applied in thick coatings or layers.

Products under HSN 3214 90 10 includes non-refractory surfacing preparations for facades, indoor walls, floors, ceilings or the like. These preparations are used to make such surfaces waterproof and improve their appearance. They include powdered preparations containing plaster and sand with plasticisers, preparations for setting walls or floor tiles, pasty preparations made by coating mineral fillers with binders with added pigments and water or solvent.

HSN 3214 90 90 is a residuary classification. It should include all other products that have the general characteristics mentioned above, and, therefore, classifiable under heading 3214, but are not specifically mentioned. Clearly, 'Sika Block Joining Mortar' satisfies the general characteristics of such products as per the Explanatory Notes above, and, therefore, classifiable under this tariff item.

11. The contesting heading 3824 covers 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. Clearly, a chemical preparation can be classified under such residuary heading only if it is not elsewhere specified. As the Applicant's product, namely 'Sika Block Joining Mortar' is already specified under tariff item 3214 90 90, heading 3824 does not come into the picture.

In view of the foregoing, we rule as under

RULING

"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.

This ruling is valid subject to the provisions under section 103 (2) until and unless declared void under section 104 (1) of the GST Act.

(PARTHA SARATHI DEY)
Member
West Bengal Authority for Advance Ruling

(VISHWANATH)
Member
West Bengal Authority for Advance Ruling