

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(Constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax, (Member)

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax, (Member)

GSTIN Number, if any/ User-id		27AAACA3622KIZV
Legal Name of Applicant		Asian Paints Ltd.
Registered Address/Address provided while obtaining user id		6A, Shanti Nagar, Vakola, Santacruz(East), Mumbai 400055
Details of application		GST-ARA, Application No. 44 Dated 20.06.2018
Concerned officer		Deputy Commissioner of Sales Tax (E-636), Large Tax Payer Unit-III, Mumbai
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	<u>Retail Business</u>
B	Description (in brief)	Applicant is a manufacturer and dealer in paints and other chemical based products.
Issue/s on which advance ruling required		(i) Classification of goods and/or services or both
Question(s) on which advance ruling is required		As reproduced in para 01 of the Proceedings below.

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by Asian Paints Ltd., the applicant, seeking an advance ruling in respect of the following ISSUE.

Whether following two categories of products will be classifiable under Entry 24 of Schedule IV of Notification No. 1/2017 Central Taxes (Rate) dated 28.06.2017 liable to CGST at 14% or Entry 97 of Schedule III of Notification No. 1/2017 - Central Taxes (Rate) liable to CGST at 9%?

1. Tile Adhesive

- i. Tile Adhesive for Normal Application
- ii. Glass Tile Adhesive
- iii. Tile-on-Tile Application
- iv. Tile Adhesive for Stone Heavy Tile Application

2. Tile Grout

- i. Cement based Tile Grout
- ii. Epoxy based Tile Grout

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

Statement of relevant facts having a bearing on the question(s) raised

- 1.1. The Applicant is a manufacturer and dealer in paints and other chemical based products and adhesives.
- 1.2. Applicant is, inter alia, in the business of the buying and selling Tile Adhesives and Tile Grouting material.
- 1.3. The Applicant has been classifying the below mentioned two products under 24 of Schedule IV of Notification No. 1/2017- Central Taxes (Rate) dated 28.06.2017 and paying CGST thereon. The description of the products is explained below and the invoices for the products is annexed herewith in Table - 1

Table - 1

Sr. No.	Product Description	Classification adopted by NM	Invoice dated	Annexure
	Tile Adhesive i. Tile Adhesive for Normal Application ii. Glass Tile Adhesive iii. Tile - on - Tile Application v. Tile Adhesive for Stone & Heavy Tile Application	Entry 24 of Schedule IV		3
	Tile Grout i. Cement based Tile Grout ii. Epoxy based Tile Grout	Entry 24 of Schedule IV		

- 1.4. The brief description of each of the above two categories of product is given below for ready reference:

1.5. Tile Adhesive:

Tile adhesive is compound which converted into slurry by adding water to apply on wall/stones/tiles to fix the tiles on the surface. The compound consists of Cement, Sand and Polymer.

Sub category of tile adhesive products are explained as below:

1.5.1. Tile Adhesive for normal application:

The product Tile Adhesive for Normal Application is single component Grey cement-based polymer modified adhesive for fixing tiles on floors and walls in interior as well as exteriors. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. It is used an adhesive for bonding of tiles to surface.

1.5.2. Glass Tile adhesive:

The product Glass Tile Adhesive is single component white cement based polymer modified fiber reinforced adhesives for fixing glass mosaic tiles in interiors as well as exteriors. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. It is used an adhesive for bonding of tiles to surface.

1.5.3. Tile-on-Tile application:

The product Tile-on-Tile Adhesive is single component Grey cement based polymer modified adhesives for fixing tiles over tiles on floors and walls in interiors as well as exteriors. The product contains special adhesives that provide excellent bonding & grabbing properties. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. This product is used under the tiles to join the tiles together in order to provide strength to the walls, floors, etc. where the tiles are applied. It is used an adhesive for bonding of tiles.

1.5.4. Tile Adhesive for Stone & Heavy Tile application:

The product Tile Adhesive for Stone & Heavy Tile Application is single component Grey cement based polymer modified tile adhesive specially designed for heavy stone tile applications like granite, marble on internal as well as external vertical surfaces. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. It is used an adhesive for bonding of tiles to surface.

1.6. Tile Grout:

Tile grout is compound used as joint filler between tiles. The product has to two version i.e. Cement based and epoxy based which are described as below:

1.6.1. Cement based on tile grout:

This product is a single component polymer modified tile grout for filling tile joints upto 5mm width. It is a specially formulated premium, fast selling, low shrinkage grout that prevents ingress of water through the joint. The compound consist of Cement, sand & Colorant.

1.6.2. The Epoxy based Tile Grout:

This product is a two-component epoxy resin based tin table grout specifically designed for use in application for ceramic tiles, vitrified tiles and stone joint where hygienic and sterile condition is expected. The compound consists of Epoxy resin, Hardener & Colorant

- 1.7. The Applicant states that the above products are not manufactured by the applicant. The applicant buys the product from separate vendors and sells it under its brand name.

- 1.8. The Applicant states that under the erstwhile regime, the manufacturers of the Applicant were classifying the above products under Chapter Heading 3214. At this point it is relevant to note that the rate of excise duty for the Chapter Heading 3214 and the 3824 were same. Further, since the Applicant was merely a trader, the classification issue did not arise at the hands of the Applicant under the erstwhile Excise regime.
- 1.9. The Applicant submits that the aforesaid products have also been imported in the past under both the competing entries. Since the rate of the tax under both the entries was same, the applicant did not face the issue of correct classification.

Statement containing the applicant's interpretation of law and or facts as the case may be, in respect of the aforesaid question(s)

2. The Applicant submits that by plain reading of the description of competing entries, the aforesaid two categories of products will be classifiable under Entry 97 of Schedule III liable to CGST at 9%:
- 2.1. The Applicant submits that below two categories of products sold by the Applicant is non-refractory chemical-based preparation.

Sr. No.	Product Description	Composition
1	Tile Adhesive i. Tile Adhesive for Normal Application ii. Glass Tile Adhesive iii. Tile-on - Tile Application iv. Tile Adhesive for Stone & Heavy Tile Application	Cement, sand & polymer
2	Tile Grout i. Cement based Tile Grout ii. Epoxy based Tile Grout	i. For, cement based; Cement, sand & Colorant. ii. For, epoxy based; Epoxy resin, Hardener & Colorant.

- 2.2. The Applicant submits that there are two competing entries relevant for present classification of above two categories of products.
- 2.3. Entry 97 of Schedule III to Notification No. 1/2017 - Central Taxes (Rate) dated 28.06.2017 is extracted below for ready reference:

Schedule III 9%

S. No.	Chapter /Heading/ Sub-heading / Tariff item	Description of Goods
1	2	3
97	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

- 2.4. The other competing entry is Entry 24 of the Schedule IV to Notification No. 1/2017 - Central Taxes (Rate) dated 28.06.2017. The same is extracted below for ready reference:

Schedule IV 14%

S. No.	Chap/Hdg/Sub- hdg/ Tariff item	Description of Goods
1	2	3
24	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

- 2.5. The Applicant submits that on a plain reading of the description in the above two competing entries, it is clear that the aforesaid two categories of products of the applicant will fall under Entry 97 of Schedule III being chemical products and preparations of the chemical or allied industries.

- 2.6. The applicant submits that, the aforesaid two categories of products do not fall under the description of goods specified in Entry 24 of the Schedule IV. The aforesaid two categories of product cannot be considered as 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. Thus, once it is not included in the Entry 24 of Schedule IV, it will be covered under Entry 97 of Schedule III liable to CGST at 9%.

3. **The Applicant submits that even by the Chapter Notes to Customs Tariff Act and the HSN Explanatory Notes, the above two categories products are classifiable under Chapter Heading 3824:**

- 3.1. The Applicant submits that in case of any ambiguity in classification of goods under the Notification No. 1/2017, resort shall be made to the General Explanatory Notes to the Customs Tariff Act and the HSN Explanatory Notes.

- 3.2. The Explanation to the above Rate Notification No. 1/2017 - Central Taxes (Rate) dated 28.06.2017 is extracted below for ready reference:

Explanation.- For the purposes of this Schedule,

(i) The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre- determined quantity or number, which is indicated on such package.

(ii) The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

- 3.3. In view of the Explanation (iv), the Chapter Heading under consideration shall be interpreted on the basis of rules of interpretation of the First Schedule to the Customs Tariff Act, 1975. Before resorting to the Chapter Notes and Sub Heading Notes of the Customs Tariff Act, the relevant Tariff Items of the Customs Tariff Act are extracted below for ready reference:

(A): Relevant Extract of Chapter Heading 32 14:

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
1	2	3	4	5
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	kg	10%	
3214 10 00	- Glaziers' putty, grafting putty, resin cements, kg, 10% - caulking compounds and other mastics, painters' fillings	kg	10%	
3214 90	- Others:			
3214 90 10	- Non-refractory surfacing preparations	kg	10%	
3214 90 20	- Resin Cement	kg	10%	
3214 90 90	- Other	kg	10%	

(B): Relevant Extract from Chapter Heading 3824

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
1	2	3	4	5
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 50	- Non-refractory mortars and concretes:			
3824 50 10	-- Concretes ready to use known as "Ready Mix Concrete (RMC)"	kg	10%	
3824 50 90	-- Other	kg	10%	

- 3.4. The Applicant submits that, Chapter Notes for the aforesaid Two Chapters 32 and 38 does not contain any specific Note for the above relevant Sub-Heading.

- 3.5. Thus, resort shall be made the Explanatory Notes of Harmonized System of Nomenclature published by the World Customs Organization, Brussels (HSN Explanatory Notes) to interpret the above relevant Sub-headings.

- 3.6. As per the plain reading of the HSN Explanatory Note on Chapter Heading 3214, the aforesaid two categories products does not fall under the Chapter Heading 3214. The relevant portion of the HSN Explanatory Notes is extracted below for ready reference:

32.14 - GLAZIERS' PUTTY, GRAFTING PUTTY, RESIN CEMENTS, CAULKING COMPOUNDS AND OTHER MASTICS; PAINTERS' FILLINGS; NONREFRACTORY SURFACING PREPARATIONS FOR FACADES, INDOOR WALLS, FLOORS, CEILINGS OR THE LIKE.

(B) NON-REFRACTORY SURFACING PREPARATIONS.

Non-refractory surfacing preparations are used on facades, indoor walls, floors and ceilings, swimming pool walls and floors, etc., to make them waterproof and improve their appearance. Generally they remain visible as the final surfacing.

This group includes:

- (1) Powdered preparations consisting of equal parts of plaster and sand with plasticisers.
- (2) Preparations in powder form based on quartz and cement with small quantities of added plasticisers, used for instance, after adding water, for setting wall or floor tiles.
- (3) Pasty preparations made by coating minerals fillers (ground marble, quartz, or a mixture of quartz and silicate, for instance) with a binder (plastics or resins), with added pigments and, where appropriate, water or solvent.
- (4) Liquid preparations consisting, for instance, of synthetic rubber or acrylic polymers, asbestos fibres mixed with a pigment, and water. These are applied on facades with paint brush or spray gun and form a much thicker layer than paint.

- 3.7. The Applicant submits that on a plain reading of the above HSN Explanatory Notes, it can be seen that the said Chapter Heading 3214 only includes Non-refractory surfacing preparations to make facades, indoor walls, floors and ceilings, swimming pool walls and floors, etc. water proof and improve their appearance. Further the said non-refractory preparations contained in Chapter Heading 3214 generally remain visible as final surfacing.
- 3.8. In the present case, all the above two categories of products are non-refractory preparations. However, they are not used for water-proofing or improving the appearance of the wall of tiles. The said two categories products are used for bonding of the tiles either horizontally or vertically and to grout the gaps between tiles. Further in no case, the above two categories of products emerge as final visible surface. In fact, the Tile Adhesives are never used on the surface.
- 3.9. The Applicant relies on the decision of Hon'ble CESTAT in the case of Sika India Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur - 2018-TIOL-243 CESTAT-DEL wherein while deciding the classification of finished products such as cement grout, repair mortar, repair concrete, tile adhesives, waterproofing compounding sealants for tiles, walls etc. Hon'ble CESTAT held that the above products are not of a type used for surfacing preparations for walls, ceilings etc. It is held that the said products cannot be classified under Chapter Heading 3214.
- 3.10. Thus, the Applicant submits that, the above two categories of products will not fall under Non-Refractory Surfacing Preparations contained in Chapter Heading 3214.
- 3.11. The Applicant submits that the above two categories of products will fall under Chapter Heading 3824 under the Sub Heading 3824 50 relating to Non refractory mortars and concretes.
- 3.12. The Applicant submits that the Chapter Notes and HSN Explanatory Notes does not provide any specific note to interpret the said Sub-Heading 3824 50.
- 3.13. The said Sub-heading 3824 50 contains within its ambit Non-refractory mortar and concrete. At this point is it is pertinent to note that the neither the Customs Tariff Act, 1975 nor the HSN Explanatory Notes defines the word "mortar". Thus, the words not defined in the act will have to be construed based on the settled legal principles.
- 3.14. **The Supreme Court in the case of Indo International Industries Vs. Commissioner of Sales Tax, UP - (1981) 47 STC 359 (SC) held that in interpreting items in statutes like the Excise Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to "the scientific and technical" meaning of the terms or expression used but to their popular meaning that is to say, the meaning attached to them by those dealing in them. Further, Hon'ble Supreme Court in the case of Ramavatar Bhuadaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola - (1961) 12 STC 286 (SC) held that if a word is used in a taxing statute, it has to be understood as in common parlance.**
- 3.15. **Further, Hon'ble Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh - (1967) 19 STC 469 (SC) while considering the question of whether the word "coal" covers charcoal, held that the meaning of the word 'coal' in the statute as understood in its commercial or popular sense would include "charcoal". The Apex Court upheld the decision of High Court wherein the High Court had observed that while construing entries in a statute like the Sales Tax Acts, the Court should prefer the popular meaning of the terms used in such entries and not their dictionary meanings and that so construed charcoal would be included in the word 'coal'**
- 3.16. **The Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Connaught Plaza Restaurant (P) Ltd. - (2012) 13 SCC 639 (SC) was concerned with the question of whether the soft serve ice cream would be covered under the term ice cream. The Apex Court while holding against the revenue and in the favour of the assessee to hold that ice cream would cover the soft serve ice cream. The Apex Court held that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words, they must be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it.**
- 3.17. The Applicant submits in the present case, the product is mainly used by the civil contractors and plumbers who use the above products of the Applicant company for fixing the tiles. The said contractors and plumbers use the tile adhesives as mortars for bonding the tiles with floor or the wall.
- 3.18. The Applicant submits that in the absence of definition of the term "mortar" under the Act, resort can also be made to the dictionary meaning of the term mortar. **As held by the Supreme Court in Ponds India Ltd Vs. Commissioner of Trade Tax, Lucknow - (2008) 15 VST 256 (SC) the dictionary meaning is one of the valuable aid for legal interpretation.**
- 3.19. Thus, the term "mortar" defined in various dictionaries is extracted below for ready reference:
Oxford Dictionary:
 "A mixture of lime with cement, sand and water, used in building to bond bricks or stones."
Hawley's Condensed Chemical Dictionary at Pg 863:
 "A type of adhesive or bonding agent that may be either inorganic or organic, soft and workable when fresh but sets to a hard, infusible solid on standing, either by hydraulic action or by chemical cross-linking. The chief ingredients of inorganic mortars are cement, lime, silica, sulfur and sodium or potassium silicate. Organic mortars are based on various synthetic resins (epoxy, phenolic, polyester and furan). All types are resistant to acids. Some (potassium silicate) are useful upto 1600F. Others are used for bonding acid proof brick, tiles, etc. for masonry construction and for lining chemical reaction equipment



- 3.20. Thus, on a plain reading of the dictionary meaning of mortar, it is clear that the non-refractory tile adhesives and tile grout products sold by the applicant is used as mortar by the actual users for fixing and bonding the tiles on the walls and floorings. It is not used as a surface finishing material. Hence, the said products will be covered under the above Chapter Heading 3824 only.

Additional submissions on 08.08.2018

Brief facts:

- 1.1. The Applicant is a manufacturer and dealer in paints and other chemical based products and adhesives. Applicant is, inter alia, in the business of the buying and selling Tile Adhesives and Grouting material.
- 1.2. The Applicant has been classifying the below mentioned six products under 24 of Schedule IV of Notification No. 1/2017- Central Taxes (Rate) dated 28.06.2017 and paying CGST thereon. The description of the products is explained below and the invoices for the products are annexed along with the application.

Table - 1

Sr. No.	Product Description	Classification adopted by NM
1	Tile Adhesive for Normal Application	Entry 24 of Schedule IV
2	Glass Tile Adhesive	Entry 24 of Schedule IV
3	Tile - on - Tile Application	Entry 24 of Schedule IV
4	Tile Adhesive for Stone & Heavy Tile Application	Entry 24 of Schedule IV
5	Cement based Tile Grout	Entry 24 of Schedule IV
6	Epoxy based Tile Grout	Entry 24 of Schedule IV

- 1.3. The Applicant submits that, in the present Advance Ruling Application the Applicant has raised the question for classification of 6 products which can be broadly classified in two categories; 1) Tile Adhesives and 2) Tile Grouting Material.

- 1.4. Before, going to the description of each of the products, below is the composition of the each of the product based upon the two broad category:

Type of Input	Tile Adhesive	Tile Grouting material
Grey Cement	0% to 50%	60% to 62%
Sand	47% to 48%	Not Applicable
Additives	0% to 3%	0% to 2%
Pigment	Not Applicable	0% to 0.5%
Extenders	Not Applicable	32% to 34%
Total	100%	100%

- 1.5. Thus, it can be seen that both the above two categories of products are mainly consisting of cement. The Tile Adhesives is consisting of at least 97% of cement and sand. Cement acts as principal binder in the product "Tile Adhesive" for fixing the tiles.

- 1.6. Now, the brief description of the each of the six products in detail is given below:

- 1.7. Tile Adhesive for Normal Application:

- 1.7.1. The product Tile Adhesive for Normal Application is single component cement based polymer modified adhesive for fixing tiles on floors and walls in interior as well as exteriors. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. This product is used under the tiles to join the tiles together in order to provide strength to the walls, floors, etc. where the tiles are applied. It is used as an adhesive for bonding of tiles.

- 1.8. Glass Tile Adhesive:

- 1.8.1. The product Glass Tile Adhesive is single component white cement based polymer modified fiber reinforced adhesives for fixing glass mosaic tiles in interiors as well as exteriors. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. This product is used under the tiles to join the tiles together in order to provide strength to the walls, floors, etc. where the tiles are applied. It is used as an adhesive for bonding of tiles.

- 1.9. Tile - on - Tile Application:

- 1.9.1. The product Tile-on-Tile Adhesive is single component white cement based polymer modified adhesives for fixing tiles over tiles on floors and walls in interiors as well as exteriors. The product contains special adhesives that provide excellent bonding & grabbing properties. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. This product is used under the tiles to join the tiles together in order to provide strength to the walls, floors, etc. where the tiles are applied. It is used as an adhesive for bonding of tiles.

- 1.10. Tile Adhesive for Stone & Heavy Tile Application:

- 1.10.1. The product Tile Adhesive for Stone & Heavy Tile Application is single component white cement based polymer modified tile adhesive specially designed for heavy stone tile applications like granite, marble on internal as well as external vertical surfaces. The product is sold as free flowing powder. This product is mixed with water to form a slurry and is then applied on the surface (where tiles have to be fixed) using trowel. The said surface is then combed with notch trowel and tiles are fixed. This product is used under the tiles to join the tiles together in order to provide strength to the walls, floors, etc. where the tiles are applied. It is used as an adhesive for bonding of tiles.

- 1.11. Cement based Tile Grout:

- 1.11.1. This product is a single component polymer modified tile grout for filling tile joints upto 5mm width. It is a specially formulated premium, fast selling, low shrinkage grout that prevents ingress of water through the joint.
- 1.12. Epoxy based Tile Grout:
- 1.12.1. This product is a two-component epoxy resin based tintable grout specifically designed for use in application for ceramic tiles, vitrified tiles and stone joint where hygienic and sterile condition is expected.
- 1.13. The Applicant states that the above products are not manufactured by the applicant. The applicant gets the product manufactured from separate vendors and sells it under its brand name.
- 1.14. The Applicant submits that in today's date, the market is classifying the above products under two different Chapter Headings of Customs Tariff Act, namely; Chapter Heading 3214 and Chapter Heading 3824.
- 1.15. The Applicant states that under the erstwhile regime, the manufacturers of the Applicant were classifying the above products under Chapter Heading 3214. At this point it is relevant to note that the rate of excise duty for the Chapter Heading 3214 and the 3824 were same. Further, since the Applicant was merely a trader, the classification issue did not arise at the hands of the Applicant under the erstwhile Excise regime.
- 1.16. The Applicant submits that the aforesaid products have also been imported in the past under both the competing entries. Since the rate of the tax under both the entries was same under the Central Excise Tariff Act, 1985, the applicant did not face the issue of correct classification.
- 1.17. The Applicant states that as far as classification under GST is concerned, if the products are classifiable under Chapter Heading 3214, then the said products will be liable to GST at 28% under Entry 24 of Schedule IV of the Notification No. 1/2017 - Central Tax (Rate) dated 28.06.2017. In case, it is held that above products are classifiable under Chapter Heading 3824 then the rate of GST applicable will be 18% under Entry 97 of Schedule III of the said Notification No. 1/2017 - Central Taxes (Rate) dated 28.06.2017.
- 1) In view of the above facts, the applicant has raised the question as to whether the six products will be classifiable under Entry 24 of Schedule IV of Notification No. 1/2017- Central Taxes (Rate) dated 28.06.2017 liable to CGST at 14% or Entry 97 of Schedule III of Notification No. 1/2017 - Central Taxes (Rate) liable to CGST at 9%?

Submissions:

2. The Applicant submits that by plain reading of the description of competing entries, the aforesaid six products will be classifiable under Entry 97 of Schedule III liable to CGST at 9%:
- 2.1. The Applicant submits that above six products sold by the Applicant is non refractory chemical based preparation. The said product contains predominantly cement, sand / grit and additives mixed in powder form. The said powder is converted into slurry by adding water before application.
- 2.2. The above six products do not have any refractory properties and hence will fall under the non-refractory category.
- 2.3. The Applicant submits that there are two competing entries relevant for present classification of above six products,
- 2.4. Entry 97 of Schedule III to Notification No. 1/2017 - Central Taxes (Rate) dated 28.06.2017 is extracted below for ready reference:

Schedule III 9%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
97	3284	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

- 2.5. The other competing entry is Entry 24 of the Schedule IV to Notification No.1/2017 - Central Taxes (Rate) dated 28.06.2017. The same is extracted below for ready reference:

Schedule IV 14%

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
1	2	3
24	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.

- 2.6. The Applicant submits that on a plain reading of the description in the above two competing entries, it is clear that the aforesaid six products of the applicant will fall under Entry 97 of Schedule III being chemical products and preparations of the chemical or allied industries.
- 2.7. The applicant submits that, the aforesaid six products do not fall under the description of goods specified in Entry 24 of the Schedule IV. The aforesaid six products cannot be considered as 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. It is clear that the Entry 24 covers only surfacing preparations.

- 2.8. The term surfacing preparations has not been defined under the said Notification or the Customs Tariff Act, 1975. Once the said term is no defined under the governing laws, the said words has to be interpreted based on the settled legal principles. It is settled law that any word which is not defined under the Act will have to be first interpret by applying the common parlance theory i.e. the word has to be interpreted in the way which a common understands.
- 2.9. It is submitted that under the common parlance theory, surfacing preparation means something which is used on the surface as the last finishing material. The said preparations are used to give the finishing touches on the surface. Therefore, the entry refers to surfacing preparations for facades, indoor walls, floors, ceilings where final smooth finishing is required.
- 2.10. The Applicant submits that product of the Applicant is not used as surface preparation neither it is meant to be used as a surface preparation.
- 2.11. The products of the applicant such as Tile Adhesives is nothing but a mortar used for fixing the tiles for any kind of flooring or walls. The difference between the normal mortar and the tile adhesives is the negligent percentage of additive which delays the process of drying the mortar. If a mason binds the tiles with a normal mortar, then depending upon the environmental conditions, the mortar will dry up quickly. Once the mortar has dried, the mason cannot then set the tiles or remove it without damaging the tile. On the other hand, if the mason uses the tile adhesive, the mason, the slurry remain slipper for a longer period of time and the mason can then set the tile or uproot the tile without damaging the tile. Thus, a tile adhesive basically is a mortar with an added capability of prolonging the period of drying and binding.
- 2.12. The Applicant submits that, from the above description it is clear that the Tile Adhesive is nothing but a mortar and cannot be considered as surfacing preparation. Thus, the tile adhesive cannot be classified under Chapter Heading 3214 of the Customs Tariff Act, 1975 and consequently for the GST purpose also the said products cannot be classified under Entry 24 to Schedule IV.
- 2.13. Thus, once it is not included in the Entry 24 of Schedule IV, it will be covered under Entry 97 of Schedule III liable to CGST at 9% which is more specific entry than any other entry.
- 2.14. Entry 97 include goods of Chapter Heading 3824 which are prepared binders, chemical products and preparations of the chemical or allied industries including those consisting of mixtures of natural products.
- 2.15. In the present case, the tile adhesives and the tile grout are prepared binders and chemical preparations consisting of natural products such as cement and grit. Further, the said products do not fall under any other Chapter Heading as explained above. Thus, the said products will be classifiable under Entry 97 of Schedule III consisting of goods of Chapter Heading 3824.
3. The Applicant submits that even by the Chapter Notes to Customs Tariff Act and the HSN Explanatory Notes, the above six products are classifiable under Chapter Heading 3824:
- 3.1. The Applicant submits that in case of any ambiguity in classification of goods under the Notification No. 1/2017, resort shall be made to the General Explanatory Notes to the Customs Tariff Act and the HSN Explanatory Notes.
- 3.2. The Explanation to the above Rate Notification No. 1/2017 - Central Taxes (Rate) dated 28.06.2017 is extracted below for ready reference:
Explanation. - For the purposes of this Schedule, -
(i) The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre- determined quantity or number, which is indicated on such package.
(ii) The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.
(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
(iv) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.
- 3.3. In view of the Explanation (iv), the Chapter Heading under consideration shall I can be interpreted on the basis of rules of interpretation of the First Schedule to the Customs Tariff Act, 1975. Before resorting to the Chapter Notes and Sub Heading Notes of the Customs Tariff Act, the relevant Tariff Items of the Customs Tariff Act are extracted below for ready reference:
(A): Relevant Extract of Chapter Heading 3214:

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
1	2	3	4	5
3214	GLAZIERS' PUTTY, GRAFTING PUTTY, RESIN CEMENTS, CAULKING COMPOUNDS AND OTHER MASTICS; PAINTERS' FILLINGS; NONREFRACTORY SURFACING PREPARATIONS FOR FACADES, INDOOR WALLS, FLOORS, CEILINGS OR THE LIKE			

3214 10 00	Glaziers' putty, grafting kg putty, resin cements, 10%-caulking compounds and other mastics, painters' fillings	kg.	10%	
3214 90	- Others:	kg	10%	
3214 90 10	— Non-refractory surfacing preparations	kg	10%	
3214 90 20	— Resin Cement	kg	10%	
3214 90 90	— Other			

(B): Relevant Extract from Chapter Heading 3824

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential areas
1	2	3	4	5
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 50	Non-refractory mortars and concretes:	kg.	10%	
3824 50 10	— Concretes ready to use known as "Ready Mix kg Concrete (RMC)"	kg	10%	
3824 50 90	— Other			

- 3.4. The Applicant submits that, Chapter Notes for the aforesaid Two Chapters 32 and 38 does not contain any specific Note for the above relevant Sub-Heading.
- 3.5. Thus, resort shall be made the Explanatory Notes of Harmonized System of Nomenclature published by the World Customs Organization. Brussels (HSN Explanatory Notes) to interpret the above relevant Sub-headings.
- 3.6. As per the plain reading of the HSN Explanatory Note on Chapter Heading 3214, the aforesaid six products does not fall under the Chapter Heading 3214. The relevant portion of the HSN Explanatory Notes is extracted below for ready reference:

32.14 - 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.

(B) NON-REFRACTORY SURFACING PREPARATIONS.

Non-refractory surfacing preparations are used on facades, indoor walls, floors and ceilings, swimming pool walls and floors, etc., to make them waterproof and improve their appearance. Generally they remain visible as the final surfacing. This group includes:

1. Powdered preparations consisting of equal parts of plaster and sand with plasticisers.
2. Preparations in powder form based on quartz and cement with small, quantities of added plasticisers, used for instance, after adding water, for setting wall or floor tiles.
3. Pasty preparations made by coating minerals fillers (ground marble, quartz, or a mixture of quartz and silicate, for instance) with a binder (plastics or resins), with added pigments and, where appropriate, water or solvent.
4. Liquid preparations consisting, for instance, of synthetic rubber or acrylic polymers, asbestos fibres mixed with a pigment, and water. These are applied on facades with paint brush or spray gun and form a much thicker layer than paint.

4.1. The Applicant submits that on a plain reading of the above HSN Explanatory Notes, it can be seen that the said Chapter Heading 3214 only includes Non refractory surfacing preparations to make facades, indoor walls, floors and ceilings, swimming pool walls and floors, etc. water proof and improve their appearance. Further the said non-refractory preparations contained in Chapter Heading 3214 generally remain visible as final surfacing.

4.2. In the present case, all the above six products are non-refractory preparations. However, they are not used for water-proofing or improving the appearance of the wall of tiles. The said six products are used for bonding of the tiles either horizontally or vertically. Further in no case, the above six products emerge as final visible surface. In fact, the Tile Adhesives are never used on the surface.

4.3. The Applicant relies on the decision of Hon'ble CESTAT in the case of Sika India Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur - 2018-TIOL 243-CESTAT-DEL wherein while deciding the classification of finished products such as cement grout, repair mortar, repair concrete, tile adhesives, waterproofing compounding sealants for tiles, walls etc. Hon'ble CESTAT held that the above products are not of a type used for surfacing preparations for walls, ceilings etc. It is held that the said products cannot be classified under Chapter Heading 3214.

4.4. Thus, the Applicant submits that, the above six products will not fall under Non-Refractory Surfacing Preparations contained in Chapter Heading 3214.

4.5. The Applicant submits that the above six products will fall under Chapter Heading 3824 under the Sub Heading 3824 50 relating to Non-refractory mortars and concretes.

4.6. The Applicant submits that the Chapter Notes and HSN Explanatory Notes does not provide any specific note to interpret the said Sub-Heading 3824 50.

4.7. The said Sub-heading 3824 50 contains within its ambit Non-refractory mortar and concrete. At this point is it is pertinent to note that the neither the Customs Tariff Act, 1975 nor the HSN Explanatory Notes defines



the word "mortar". Thus, the words not defined in the act will have to be construed based on the settled legal principles.

- 4.8. The Supreme Court in the case of **Indo International Industries Vs. Commissioner of Sales Tax, UP - (1981) 47 STC 359 (SC)** held that in interpreting items in statutes like the Excise Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances resort should be had not to "the scientific and technical" meaning of the terms or expression used but to their popular meaning that is to say, the meaning attached to them by those dealing in them. Further, Hon'ble Supreme Court in the case of **Ramavatar Bhuadaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola - (1961) 12 STC 286 (SC)** held that if a word is used in a taxing statute, it has to be understood as in common parlance.
- 4.9. Further, Hon'ble Supreme Court in the case of **Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh - (1967) 19 STC 469 (SC)** while considering the question of whether the word "coal" covers charcoal, held that the meaning of the word 'coal' in the statute as understood in its commercial or popular sense would include "charcoal". The Apex Court upheld the decision of High Court wherein the High Court had observed that while construing entries in a statute like the Sales Tax Acts, the Court should prefer the popular meaning of the terms used in such entries and not their dictionary meanings and that so construed charcoal would be included in the word 'coal'
- 4.10. The Hon'ble Supreme Court in the case of **Commissioner of Central Excise Vs. Connaught Plaza Restaurant (P) Ltd. - (2012) 13 SCC 639 (SC)** was concerned with the question of whether the soft serve ice cream would be covered under the term ice cream. The Apex Court while holding against the revenue and in the favour of the assessee to hold that ice cream would cover the soft serve ice cream. The Apex Court held that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words, they must be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it.
- 4.11. The Applicant submits in the present case, the product is mainly used by the civil contractors and plumbers who use the above products of the Applicant company for fixing the tiles. The said contractors and plumbers use the tile adhesives as mortars for bonding the tiles with floor or the wall
- 4.12. The Applicant submits that in the absence of definition of the term "mortar" under the Act, resort can also be made to the dictionary meaning of the term mortar. As held by the Supreme Court in **Ponds India Ltd Vs. Commissioner of Trade Tax, Lucknow - (2008) 15 VST 256 (SC)** the dictionary meaning is one of the valuable aid for legal interpretation.
- 4.13. Thus, the term "mortar" defined in various dictionaries is extracted below for ready reference:
Oxford Dictionary:
"A mixture of lime with cement, sand and water, used in building to bond bricks or stones."
Hawley's Condensed Chemical Dictionary at Pg 863:
"A type of adhesive or bonding agent that may be either inorganic or organic, soft and workable when fresh but sets to a hard, infusible solid on standing, either by hydraulic action or by chemical cross-linking. The chief ingredients of inorganic mortars are cement, lime, silica, sulfur and sodium or potassium silicate. Organic mortars are based on various synthetic resins (epoxy, phenolic, polyester and furan). All types are resistant to acids. Some (potassium silicate) are useful upto 1600F. Others are used for bonding acid proof brick, tiles, etc. for masonry construction and for lining chemical reaction equipment.
- 4.14. Thus, on a plain reading of the dictionary meaning of mortar, it is clear that the non-refractory tile adhesives and tile grout products sold by the applicant is used as mortar by the actual users for fixing and bonding the tiles on the walls and floorings. It is not used as a surface finishing material. Hence, the said products will be covered under the above Chapter Heading 3824 only.
5. **The Applicant submits that above six products will be classifiable under Chapter Heading 3824 as per Rule 3 of the General Rules for the Interpretation of First Schedule to the Customs Tariff Act, 1975.**
- 5.1. The Applicant further submits that even as per the General Interpretation Rules applicable to First Schedule to the Customs Tariff Act, 1975, the aforesaid six products will be classifiable under Chapter Heading 3824.
- 5.2. The Applicant submits that the products sold by the Applicant is mixture consisting of different goods such as cement, sand and additives.
- 5.3. Thus, the said products will be classifiable as per Rule 3 read with Rule 2(b) of the General Interpretation Rules to First Schedule. Rule 3 of the said Rules is extracted below for ready reference:
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 10 (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration,



- 5.4. As per Rule 3(b) the mixtures of different materials shall be classifiable as per the material which gives them the essential character. In the present case, no doubt it is the cement which gives them the essential character. It is the cement which is used as the main binder. Thus, the said product is classifiable as a prepared binder of cement.
- 5.5. In any case, even if the above products cannot be classified under Rule 3(b), the said products will be classifiable under Chapter Heading 3824 being the last heading occurring in numerical order among those which merits equal consideration.
6. In view of the above, it is respectfully prayed that the question raised in the present advance ruling application be answered in favour of the Applicant holding that the above six products are classifiable under Entry 97 of Schedule III liable to GST at 18%.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission, as reproduced verbatim, could be seen thus-

The applicant M/s Asian Paints Ltd. holder of GSTIN: 27AAACA3622K12V (27760300133V/C) is a dealer manufacturing as well as trading in paint, polymers and other chemicals. Applicant has filed an application in form GST ARA-01 for advance ruling in respect of classification of goods sold by it and rate of tax applicable.

The issues involved in advance ruling are as under:

- 1) Correct classification of manufacturing goods i.e. "tile adhesive" and "tile grout" as per HSN code Central Excise Tariff Act i.e. whether "goods" are covered under HSN Code 3824 or under 3214 of the said Act.
- 2) Applicability of rate of tax on good, i.e. tile adhesive and tile grout.

Applicant has filed an application under advance ruling u/s 97 of GST Act stating that M/s Asia Paints i.e. Applicant is a manufacturer of "tile adhesive & tile grout". In present situation applicant wants correct clarification regarding classification of goods as per HSN Code of Central Excise Tariff Act and rate of tax accordingly. Applicant has charged 28% on said product as per GST Act & as per HSN code 3214, but applicant has raised the issue that no such product has clearly mentioned in chapter heading of Central Excise Tariff Act and he urged that his product should fall in HSN Code 3824 instead of HSN Code 3214 and levy of tax be 18% instead of 28%. He has further stated that the product is a "non-refractory mortars" and "concretes" under sub heading 382450. He further stated that as per such heading 38245010 description is "concretes ready to use known as readymix concrete (RMC)". He stated that the goods manufactured by applicant is nothing but "mortars" as per tariff heading 382450 & product should fall 38245090 whose description is "other" for proving the claim of the dealer he has given documents such as invoices, and application.

After scrutiny of documents submitted along with application, tariff heading 3824 & 3214 & description therein, prima facie it appears that applicant is manufacturer of "tile adhesive & tile grout". Basic properties & composition of above mentioned product is as under:

- 1) Tile adhesive: - As per applicant tile adhesive is mixture of cements & sand and polymer i.e. methyl cellulose. This mixture is called as "polymers concrete" and the useful and for binding the surface of tile with wall. The tile adhesive act as a binder and make available maximum surface area for binding it provides adhesive strength & tensile strength to the particles.
- 2) Tile grout: - It is use for filling the gap of the tile and resistance to the water from percolation it as a binder. Right now appellant is charging 28% of GST on said product as per HSN Code 3214 which reads as under:

3214	Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings, non-refractory surfacing preparations for facades, in door walls, floors, ceilings or the like.	Kg	10%
3214 10 00	Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings,	Kg	10%
3214 90	others....	Kg	10%
3214 90 10	non-refractory surfacing preparations	Kg	10%
3214 90 20	Resin cement	Kg	10%
3214 90 90	others....	Kg	10%

As per the applicant request said product should be fall in HSN Code 3824 and subheading 38245090 which is as under:

38610000	Refractory cements, mortars, concretes and similar compositions, other than products of heading 3801	Kg	10%
3824	Prepared binders of foundry moulds or cores; chemical products and preparation of chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.	Kg	10%
3824 10 00	Prepared binders for foundry moulds or cores.	Kg	10%
3824 30 00	Non agglomerated metal carbides, mortars or concretes:	Kg	10%
3824 40	Prepared additives for cements, mortars or concretes:	Kg	10%
3824 40 10	--Damp proof or water proof compounds...	Kg	10%
3824 40 90	--others....	Kg	10%
3824 50	--Non-refractory mortars and concretes:	Kg	10%

Applicant stated that tile adhesive is nothing but mixture of cement sand and polymer, which is used after adding water to make it in plaster form. So as per sub heading 38245010 it is a nothing but non refractory mortar and just like ready mix concrete and therefor products should fall under HSN Code 3824 and rare of tax should be 18%.

After scrutiny of the document and contention of applicant along with description mention in HSN Code 3214 & 3824, this office is of opinion that applicant has rightly charged 28% GST as per the classification of goods under tariff heading 3214 of Central Excise tariff Act.

The HSN Code 3824 is not applicable to the goods manufactured by applicant i.e. tile adhesive and tile grout, because no doubt it is mortar i.e. mixture of sand, cement and polymer and ready mix concrete (RMC) is mixture of aggregate sand, cement, water but not polymer. After adding polymer as a adhesive, polymer reduces the water holding capacity of concrete and make it hard instantly. Polymer contained mixture also reduces compressive strength of the concrete, which is basic property of the cement / concrete mixture. Polymer i.e. methyl cellulose is act as plasticizer and in rightly fall in non-refractory surfacing preparation as per HSN code 3214.

The description of non-refractory surfacing preparation is as under:

Non refractory surfacing preparations are used on facades, indoor walls, floors and ceilings, swimming pool walls and floors, etc., to make them waterproof and improve their appearance. Generally they remain visible as the final surfacing. This group includes:

- 1) Powdered preparations consisting of equal parts of plaster and sand with plasticizers.
- 2) Preparations in powder form based on quartz and cement with small quantities of added plasticizers, used for instance, after adding water, for setting wall or floor tiles.
- 3) Pasty preparations made by coating mineral fillers (ground marble, quartz, or a mixture of quartz and silicate, for instance with a binder (plastics or resins), with added pigments and, where appropriate, water or solvent.

A plasticizer is either a non-surface active compound or an active substance added to a suspension, usually a mix, to increase the separation of particles and to prevent subsiding or clumping. It helps to improve a material's plasticity or fluidity. Plasticizers are lubricating additives that help to prevent sludge, varnish and other deposits from forming on surfaces. Plasticizers are also used in concrete blends to lower water use and maintain the same slump (flow) property. This makes the concrete stronger and more resistant to future water penetration.

Subheading 382450 i.e. non refractory mortars and concretes is for prepared binders of foundry molds or cores, where in heating effect is most important criteria.

Concrete is a building material that is made from various materials such as gravel, sand pebbles, crushed stones, cement and water. Since it is made up of many materials, it is considered a composite material. The various aggregates such as gravel and stones are bound together by a mixture of cement and water that hardens over time and provide strength to the concrete.

Various types of concrete are produced depending on its intended purpose, including:

- Portland cement concrete - This is the common concrete that is used as a building material for residential, industrial and commercial purposes. The cement used in this concrete is rich in alumina content (aluminous cement). This is a lime-based concrete.
- Asphalt concrete - this type is used primarily for road construction. The role of cement in this case is played by bitumen, which tightly holds and binds the concrete composites in the presence of coal tar at high temperatures.
- Polymer concrete - This type is used where the cementing material is a polymer.

High temperature have the effect of weakening the bond and endangering the construction. The construction material can be cement-based or gypsum-based. Notable examples of dry mixture mortars which utilize methyl cellulose include tile adhesives, EIFS, insulating plasters, hand-troweled and machine-sprayed plaster, stucco, self-leveling flooring, extruded cement panels, skim coats, joint & crack fillers, and tile grouts. Typical usage is about 0.2% - 0.5% of total dry powder weight for dry mixtures.

Derivatives of methyl cellulose which improve performance characteristics include hydroxypropyl methyl cellulose (HPMC) and hydroxyethyl methyl cellulose (HEMC). These derivatives typically improve the characteristics such as water retention, vertical surface slip resistance, open time, etc.

A large number of air bubbles can reduce the wet density of mortar, and after hardening of the slurry, pores will be formed inside the slurry, so that the internal structure of mortar will become loose, and thus the mortar strength will also be significantly reduced.

Adding HPMC into the mortar, there will be a smaller decrease in the flexural strength of mortar but a larger decrease in the compressive strength. On the basis of structural engineering and common parlance test ready-mix concrete is rightly classified in description non refractory mortars and concretes under heading 3824 of central excise tariff act.

Applicant has given number of citation of various courts on common parlance test, which are squarely applicable to the products covered by heading 3214 where in rate of tax is 28%. In facts the decision given below cited by the applicant supports the view express by this office.

- 1) M/s. Indo International Industries Vs. Commissioner of Sales Tax, UP - (1981) 47 STC (SC)
- 2) M/s. Ramavatar Bhudaiprasad etc. Vs. Assistant sales tax Officer, Akola - (1961) 12 STC 286 (SC).

- 3) M/s. Commissioner of sales Tax, Madhya Pradesh Vs. Jswant Singh Charan Singh - (1967) 19 STC 469 (SC).
- 4) M/s. Commissioner of Central Excise Vs. Connaught Plaza Restaurant () Ltd. - (2012) 13 SCC 639 (SC).
- 5) M/s. Ponds India Ltd. Vs. Commissioner of Trade Tax, Lucknow - (2008) 15 VST 256 (SC).

The applicant had relied upon the decisions of Hon'ble court including apex court on the principles of common parlance test but not a single evidence with reference to the person dealing with product been brought on the record. Therefore the decisions are not at all applicable to the facts on record.

Therefore in view of above deliberation the products are nothing but nonrefractory surfacing preparations used on indoor walls, floors and ceilings as a binder to provide tensile strength, large surface area, flexure strength to the tile by way of adhesive or polymer and rightly classified in heading 3214 of central excise tariff act and should be taxable at rate of 28 %.

04. HEARING

The case was taken up for Preliminary hearing on dt. 18.07.2018 when Sh. Rahul Thakkar, Advocate along with Sh. Hiral Raja, G. M. Taxation & Sh. Niket Prasad Branch Manager and Sh. Ajay Patel, Sr. Manager Taxation appeared and contended for admission of application as per contentions in their ARA and oral & written submissions. Jurisdictional Officer, Sh. J. M. Raut, Dy. Commr. of Sales Tax (E-636), Large Tax Payer Unit-III, Mumbai appeared and made written submissions.

The application was admitted and called for final hearing on 08.08.2018 when Sh. Rahul Thakkar, Advocate along with Sh. Hiral Raja, G. M. Taxation & Sh. Ajay Patel, Sr. Manager Taxation & Sh. Yogender Pandey appeared & made oral & written submissions. The Jurisdictional Officer was not present.

05. OBSERVATIONS

We have gone through the facts of the case, documents on record and submissions made by both, the applicant and the department.

The issue before us is a classification issue. The applicant has requested on a ruling as to whether "Tile Adhesive" (which includes Tile Adhesive for Normal Application, Glass Tile Adhesive, Tile-on-Tile Application, Tile Adhesive for Stone Heavy Tile Application) and "Tile Grout" (which includes Cement based Tile Grout and Epoxy based Tile Grout) will be classifiable under Entry 24 of Schedule IV of Notification No. 1/2017 Central Taxes (Rate) dated 28.06.2017 (Chapter Heading 3214) liable to CGST at 14% or Entry 97 of Schedule III of Notification No. 1/2017 - Central Taxes (Rate) (Chapter Heading 3824) liable to CGST at 9%?.

The Applicant has submitted that they are in the business of the buying and selling Tile Adhesives and Tile Grouting material and that the said products are not manufactured by them. They have further submitted that they buy the products from separate vendors and sells it under its brand name. Their submissions states that under the erstwhile Central Excise regime, the manufacturers of the Applicant were classifying the above products under Chapter Heading 3214 and they were merely traders, classification issue did not arise at their end. They have further submitted that the aforesaid products have also been imported in the past under both the competing entries, i.e. 3214 and 3824 and they did not have a classification issue because the rate of the tax under both the entries was same. Their contention is not correct. It is the duty of the manufacturer to arrive at a proper classification in respect of the goods manufactured. Just because multiple classifications attract the same rate of tax, it is not proper for a

manufacturer to choose any classification that is deemed fit. The classification has to be based on the basis of a proper description of the goods.

We find that the applicant in their submissions have mentioned that the concerned products are non-refractory chemical-based preparation. Now it is seen that non-refractory preparations are covered under Chapter 3214. The applicant has submitted that in view of Explanation (iv) to the above Rate Notification No. 1/2017-C. T. (Rate) dated 28.06.2017 the Chapter Heading under consideration shall be interpreted on the basis of rules of interpretation of the First Schedule to the Customs Tariff Act, 1975. They have also stated that under the Customs Tariff Act, the Chapter Notes for the aforesaid Two Chapters 32 and 38 does not contain any specific Note for the above relevant Sub-Heading. Hence resort shall be made the Explanatory Notes of Harmonized System of Nomenclature published by the World Customs Organization, Brussels (HSN Explanatory Notes) to interpret the above relevant Sub-headings. The relevant portion of the HSN Explanatory Notes is extracted below for ready reference:

32.14 - GLAZIERS' PUTTY, GRAFTING PUTTY, RESIN CEMENTS, CAULKING COMPOUNDS AND OTHER MASTICS; PAINTERS' FILLINGS; NONREFRACTORY SURFACING PREPARATIONS FOR FACADES, INDOOR WALLS, FLOORS, CEILINGS OR THE LIKE.

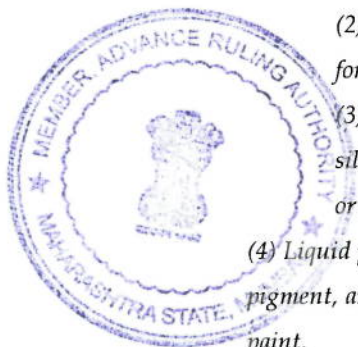
(B) NON-REFRACTORY SURFACING PREPARATIONS.

Non-refractory surfacing preparations are used on facades, indoor walls, floors and ceilings, swimming pool walls and floors, etc., to make them waterproof and improve their appearance. Generally they remain visible as the final surfacing.

This group includes:

- (1) Powdered preparations consisting of equal parts of plaster and sand with plasticizers.*
- (2) Preparations in powder form based on quartz and cement with small quantities of added plasticizers, used for instance, after adding water, for setting wall or floor tiles.*
- (3) Pasty preparations made by coating minerals fillers (ground marble, quartz, or a mixture of quartz and silicate, for instance) with a binder (plastics or resins), with added pigments and, where appropriate, water or solvent.*
- (4) Liquid preparations consisting, for instance, of synthetic rubber or acrylic polymers, asbestos fibres mixed with a pigment, and water. These are applied on facades with paint brush or spray gun and form a much thicker layer than paint.*

It is seen from (2) above that this group of Non refractory surfacing preparations which fall under Chapter 32.14 includes "preparations in powder form based on quartz and cement with small quantities of added plasticizers, used for instance, after adding water, **for setting wall or floor tiles.**". The polymers used in the above mentioned products acts as plasticizers. As mentioned in their application the product Tile Adhesive mentioned by them are specifically used for setting tiles, whether on floor, walls or other tiles, etc and therefore it is apparent that their products would be classifiable under Chap. 32 and not Chap 38. Further we find that Tile grout is compound used as joint filler between tiles. This product is also used for setting the wall/floor tiles because the same is used between two tiles as an adhesive by way of filling the gap between two tiles so that the tiles become attached to each other.



06. In view of the extensive deliberations as held hereinabove, we pass an order as follows :

ORDER

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 44/2018-19/B-

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Mumbai, dt.

17/9/2018

Question :-1. Whether following two categories of products will be classifiable under Entry 24 of Schedule IV of Notification No. 1/2017 Central Taxes (Rate) dated 28.06.2017 liable to CGST at 14% or Entry 97 of Schedule III of Notification No. 1/2017 – Central Taxes (Rate) liable to CGST at 9%?

1. Tile Adhesive

- i. Tile Adhesive for Normal Application
- ii. Glass Tile Adhesive
- iii. Tile-on-Tile Application
- iv. Tile Adhesive for Stone Heavy Tile Application

2. Tile Grout

- i. Cement based Tile Grout
- ii. Epoxy based Tile Grout

Answer :- In view of the discussions made above, the products in question will be classifiable under Entry 24 of Schedule IV of Notification No. 1/2017 Central Taxes (Rate) dated 28.06.2017 liable to GST @ 28% (14% each of CGST and SGST).



—sd—
B. V. BORHADE
(MEMBER)

—sd—
PANKAJ KUMAR
(MEMBER)
CERTIFIED TRUE COPY

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax.
5. Joint commissioner of State tax, Mahavikas for Website.


MEMBER
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI

Note :- An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India building, Nariman Point, Mumbai – 400021.