

**GOVERNMENT OF WEST BENGAL  
DIRECTORATE OF COMMERCIAL TAXES  
14, BELIAGHATA ROAD, KOLKATA-700015**

**Before Ms. Smaraki Mahapatra, I.A.S., Commissioner, Sales Tax, West Bengal**

In the matter of :

An application filed under section 102 of West Bengal Value Added Tax Act, 2003, read with rule 202 of the West Bengal Value Added Tax Rules, 2005.

- And -

In the matter of :

Case No: 24X/PRO/VAT/16/290

- And -

In the matter of :

M/s Asian Paints Limited, carrying on business under the same trade name at  
10<sup>th</sup> Floor, Topsia Road South, Haute Street Building, Kolkata-700046

Present for the applicant: Sri Sumanta Mitra, Authorised Advocate

Sri Adesh Kumar, Additional Commissioner, Commercial Taxes/Sales Tax,  
and Public Relations Officer (PRO) of the Directorate of Commercial Taxes,  
was also present to assist in the matter

**Date of order: 23.02.2017**

This is an application filed by M/s Asian Paints Limited, a Company carrying on business under the same trade name, through Sri Viresh Naradkar, Area Manager, hereinafter referred to as the applicant, under section 102 of the West Bengal Value Added Tax Act, 2003, hereinafter referred to as the VAT Act. The applicant, who holds VAT Registration No./ TIN 19200028002, has raised question for determination of rate of tax applicable to the sales of an item sold as wood preservative under the name of 'Asian Paints Wood Tech Termishield'.

The applicant has duly affirmed that the dispute has not arisen out of any order passed by any authority and that he has not filed any application before any Court, Tribunal, Board

or any authority under the VAT Act, praying for determination of a dispute of similar nature referred to in this application.

Sri Sumanta Mitra, Authorised Advocate of the applicant, submitted that the item 'Asian Paints Wood Tech Termishield' is manufactured in the State of Gujrat under the Central Excise Chapter heading 3808 and is sold through a network of dealers.

Sri Mitra submitted further that Asian Paints Wood Tech Termishield is made from Cashew Nut Shell Liquid (CNSL) also known as Anacardium Pericarp Extract, mixed with low density mineral solvents. It is applied on wooden furniture by means of a brush or spray and it seeps into wood. He adds that CNSL is a natural resin found in the cashew nutshell and is a byproduct of cashew nut processing. CNSL is used in developing drugs, antioxidants, fungicides and anti-termite treatment of timber.

Sri Mitra added that the Central Excise Tariff Head 3808 reads as follows: "INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI - SPROUTING PRODUCTS AND PLANT - GROWTH REGULATORS, DISINFECTANTS AND SIMILAR PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS PREPARATIONS OR ARTICLES (FOR EXAMPLE, SULPHURTREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS)". He submitted that a similar product sold by the name of 'WUDCURE' and containing cashew nutshell liquid (CNSL) was held to be insecticide covered under CE Tariff Head 3808 by the Custom Excise & Service Tax Appellate Tribunal (CESTAT), West Zone Bench, Mumbai, in a Case titled Ellora Services Vs. Commissioner of Central Excise, Mumbai-IV [2014(314) E.L.T. 777 (Tri.-Mumbai)]. He furnished a copy of the said order.

Sri Mitra also made a written submission and concluded his argument by stating that wood preservative sold under the brand name of Asian Paints Wood Tech Termishield should be taxed @ 5% under entry at serial No. 22 of Part I of Schedule C.

On being asked Sri Mitra admitted that neither Asian Paints Wood Tech Termishield nor CNSL is specified in the schedule of insecticides appended to the Insecticides Act, 1968, and that there are no restrictions on storage of the item in question.

The matter is examined and arguments put forth by the applicant's representative are considered. The principal contention of the applicant is that the wood preservative being sold under the brand name Asian Paints Wood Teach Termishield is an insecticide because of the insecticidal properties of its ingredient Cashew Nut Shell Liquid (CNSL) or Anacardium Pericarp Extract.

The wood preservative containing CNSL being sold by the applicant under the brand name 'Asian Paints Wood Teach Termishield' is not specified as insecticide in the schedule appended to the Insecticides Act, 1968 (Act No. 46 of 1968), which is an Act of Parliament. The Act defines insecticide under clause (e) of section 3 as follows:

"Insecticide" means-

- i. any substance specified in the schedule; or
- ii. such other substances (including fungicides and (weedicides) as the Central Government may, after consultation with the Board, by notification in the official Gazette, include in the schedule from time to time; or
- iii. Any preparation containing any one or more of such substances;

It is also noted that none of the requirements of the said Insecticides Act for labeling, packaging or storage of insecticide is applicable to the 'Asian Paints Wood Teach Termishield'.

Further, the item in question is also not understood in common parlance or at market place as an insecticide. It is more of a varnish used to apply on wooden furniture and like paints or any other varnish it may have some properties which would dispel insects but that does not make it to qualify as an insecticide.

Description of goods mentioned against entry at serial No. 22 of Part I of Schedule C appended to the VAT Act is as follows:

| Serial No. | Description of goods   | Conditions and Exceptions |
|------------|--|---------------------------|
| 22.        | Chemical fertilizers including basic slag, pesticides, weedicides, insecticides, germicides, fungicides and herbicides, other than bleaching powder. |                           |

Applicant's reference to Central Excise Tariff also does not help in any manner as the description of goods shown in the table above has no reference to either HSN Code or Central Excise Tariff.

In view of the foregoing discussion, rate of tax on sale of wood preservative being sold by the applicant under the brand name 'Asian Paints Wood Teach Termishield' is determined at 14.5 % under section under section 16(2)(ba) of the West Bengal Value Added Tax Act, 2003, under Schedule CA, being an item not mentioned by name or description under any other Schedule.

Application filed under section 102 in the instant case stands disposed of as above. Send a copy of this order to the applicant for information.

Sd/- 23/2/17  
(Smaraki Mahapatra)  
Commissioner,  
Sales Tax, West Bengal