

**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/16/303

- And -

In the matter of :

M/s UAL Industries Limited, carrying on business under the same trade name at 16, Mayfair Road, Kolkata-700019

Present for the applicant: Sri S.N. Bhattacharya and Sri Pradip Dutta, Authorised Representatives

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: 10.04.2017**

This is an application filed by M/s UAL Industries Limited, a Company carrying on business under the same trade name, through Sri Swarup Mukherjee, Principal Officer of the Company, hereinafter referred to as 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 19200034016, has raised question for determination of rate of tax applicable to the sales of ' Dry Mix Mortar'.

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 S.N. Bhattacharya, authorised representative of the applicant, submitted that the item 'Dry Mix Mortar' is a new product for the applicant and hence they want to know the rate of tax applicable to the sale of the item under the VAT Act.

Sri Bhattacharya submitted that 'Dry Mix Mortar' is a ready to use mortar to be sold by them under the name of 'KON\_CRETE MORTAR' in laminated plastic bags of 40 Kgs. each and it is said to be a thin bed mortar used to fix AAC Blocks.

Sri S.N. Bhattacharya adds that 'Dry Mix Mortar' is made by mixing river sand, fly ash, OPC/PPC Cement, Hydrated Lime and Polymer additives and it is normally used as mortar to fix fly ash bricks/AAC blocks which gives superior strength, higher durability and strong bond between brick/block. For using it 25 to 30% water by weight of mortar is added and a mixture is prepared and a layer of 3 to 4 mm thickness of this mixture is placed uniformly and subsequent line of blocks placed over it. He added that the product falls under the Central Excise Tariff code No. 3824 50 90 and normally attracts central excise duty at the rate of 12.5 %.

Sri Bhattacharya submitted a written submission and technical specifications of the item in question and argued that since 'Dry Mix Mortar' is used as a jointing material for joining of fly ash bricks/AAC blocks it should be treated as an adhesive and taxed at the rate of 5 % under item No. 33B of Part of I of Schedule C of the VAT Act.

Sri Bhattacharya also stated that similar products being sold by the competitors under the name of RMC (Ready Mix Concrete or Ready Mix Cement) and Non-Refractory Mortar are being sold in market charging tax at the rate of 5 %. The applicant, in written submission, referred to some judicial pronouncements namely, Union of India Vs. N.S. Rathnam & Sons [2015 (322) E.L.T. 353 (SC)]; Purushottam Govindji Halai vs. Shree B.N. Desai [1952-2-SCR 887 = AIR 1961 SC 552] and Advance Bricks Company vs. Assessing Authority [1988 SCR (1) 272 1987; SCC Suppl. 650], none of which is directly linked with the classification of the item in question.

The matter is examined and arguments put forth by the applicant's representatives are considered.

Typically, mortar is composed of a thick mixture of water, sand and OPC/PPC Cement. The applicant in addition to these constituents also adds hydrated lime and polymer

additives. The water is used to hydrate the Ordinary Portland Cement (OPC)/ Portland Pozzolana Cement (PPC) and hold the mix together, unlike concrete which also has stone chips in it for higher structural strength. Mortar is used to hold building materials such as brick or blocks together.

Description of items against entry at serial No. 33B of Part of I of Schedule C is as follows:

<b>Serial No.</b>	<b>Description of goods</b>	<b>Conditions and Exceptions</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
33B	Gums and adhesives.	

The item in question namely, 'Dry Mix Mortar' made by mixing river sand/ processed sand, fly ash, OPC/PPC Cement, Hydrated Lime and Polymer additives is essentially a Masonry Mortar used in construction of buildings for holding bricks or blocks in place. As per Bureau of Indian Standards Code of Practice for preparation and use of Masonry Mortars is covered under IS : 2250 -1981 and it does not cover any glue or adhesive.

From the above discussion it is clear that the item 'Dry Mix Mortar' is a cementing material used in building construction. It is neither understood as a glue or adhesive in common parlance nor dealt in as glue or adhesive at market place. Since 'Dry Mix Mortar' is not mentioned either by name or description under Schedules- A, B, C or D, the same is held taxable as unspecified item under Schedule CA, at the rate of 14.5 %, under section 16(2)(ba) of the West Bengal Value Added Tax Act, 2003.

It is further held that to avoid any discrimination, sale of similar products like RMC (Ready Mix Concrete or Ready Mix Cement) and Non-Refractory Mortar, as pointed out by the applicant, will also attract tax at the same rate.

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/- 10/4/17  
(Smaraki Mahapatra)  
Commissioner,  
Sales Tax, West Bengal