

**AUTHORITY FOR ADVANCE RULING
TAMILNADU ADVANCE RULING AUTHORITY
PAPJM Buildings, II Floor, No.1, Greams Road, Chennai-6**

**PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING U/s.98 OF THE
GOODS AND SERVICES TAX ACT, 2017.**

Members present are:

1. Ms.Manasa Gangotri Kata, IRS Joint Commissioner/Member,
Office of the Principal Chief Commissioner of GST & Central Excise,
Chennai-34.
2. Thiru S. Vijayakumar, M.Sc., Joint Commissioner (CT)/Member(FAC),
Inter-State Investigation Cell, Chennai-6

ORDER No. 1/AAR/2018 DATED 27.06.2018

GSTIN Number, if any / User id		33AACCA4158Q1ZF
Legal Name of Applicant		M/s. Anabond Limited
Registered Address/Address provided while obtaining user id		Type-II, No.36, Dr.VSI Estate, Thiruvanmiyur, Chennai 600 041.
Details of Application		GST-ARA, Application No.1 dated 24.01.2018
Concerned Officer		State: Thiruvanmiyur Assessment Circle, Centre: Chennai North- Mylapore Dvn
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Goods Provision
B	Description (in Brief)	Manufacturing of engineering adhesives and sealants, paints & other chemical formulations
Issue/s on which advance ruling required		Classification of Polysulphide Sealant
Question(s) on which advance ruling is required		What is the appropriate classification of 'Polysulphide Sealants' under GST

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

1. M/s. Anabond Ltd., Chennai (hereinafter called the applicant or the company) has preferred an application for Advance Ruling on what is the appropriate classification of 'Polysulphide sealants' manufactured by them, under GST

2. The Applicant is engaged in the manufacturing of engineering adhesives and sealants, paints & other chemical formulations which are used in various industries such as automobile, aerospace, energy, construction, marine, railway etc. Applicant manufactures, among other products, polysulphide sealants and markets it under the trade name 'Anabond Tuffseal'. Polysulphide sealants are commonly used for sealing expansion joints where large movement is anticipated in concrete construction and for joints between diverse construction materials like glass, aluminium, steel, cladding, glazing, tiling, tanks, internal and water retaining structures. It is also used for sealing expansion joints where there is vehicular traffic (e.g. airports and bridges) or pedestrian traffic. Applicant's product contains two components, viz., polysulphide polymer (resin/rubber) and hardener (acts as the curing agent). Liquid polysulfide polymers form the basic ingredient of the sealant formulation. Applicant uses Manganese dioxide base as the curing agent. Both resin and hardener are packed separately within the same container. After opening the container, hardener is mixed with resin and applied on the surface. After mixing resin and hardener, the polymerisation is initiated at room temperature which proceeds further until it is cured. The applicant has stated that, the relevant product for this application is polysulphide sealants. There are five competing headings in which the said product can be covered. They are: Heading 3214; Heading 2830; Heading 3911; Heading 4002; Heading 3506.

3. The applicant has further stated that

- ❖ Customs Tariff Heading (hereinafter referred to as CTH) 3214 covers various types of mastics viz., "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. Sealants are also known in the trade by their generic name "mastics". The product in question is a mastic based on rubber which after the addition of hardener is used as mastics. HSN Explanatory Notes provides that "mastics based on rubber" are covered under CTH 3214. Further, in view of Note 3 to Section VI (under which the heading 3214 falls) the fact that the product in question has two components and these two components have to be mixed before use

to prepare the sealant is no bar for classification under CTH 3214. The product in question is presented as a "set" containing polysulphide rubber and hardener. It also satisfies the three conditions mentioned in the Section Note. Thus, according to the terms of the Headings and Section Notes, the product is classifiable under Tariff item 32141000 and subject to GST at the rate of 28%. Furthermore, US Customs and Border Protection has classified identical products under Heading 3214 in CROSS Rulings N215915 and N216207.

- ❖ Chapter 28 covers all inorganic chemicals, organic or inorganic compounds of precious metals of rare-earth metals, or radio-active elements or of isotopes. For a chemical compound to come under Chapter 28, it should be an inorganic compound and the compound should be a separate chemically defined compound also. In the present case, polysulphides are products of a condensation reaction between organic polyhalides (e.g. Bis-2-chloroethyl formal) and alkali polysulphides and therefore, the final product, viz., the polysulphide is an organic compound. Though there are some exceptions for organic compounds to be covered under Chapter 28 (for instance, organic or inorganic compounds of precious metals of rare-earth metals, or radio-active elements or of isotopes), the polysulphide rubber compound is not covered by such exceptions. From the HSN Explanatory Notes, it is clear that the type of Polysulphides covered under the heading 2830 are mixtures of inorganic polysulphides of the same metal. The polysulphide in question is an organic compound and is a synthetic rubber. Though there are some exceptions for organic compounds to be covered under Chapter 28, the Polysulphide rubber compound is not covered by such exceptions. Therefore, classification of the product in question under Chapter 28 itself could be ruled out.
- ❖ Polysulphide polymers are of two types. The one containing Carbon-Sulphur-Carbon linkage is covered under CTH 3911 while the other containing Sulphur-Sulphur linkage is covered under CTH 4002. In terms of HSN Explanatory Notes, the Heading 3911 covers "Polysulphide polymers characterised by the presence of mono sulphide linkages in the polymer chain, for example, poly (phenylene sulphide). In polysulphides each sulphur atom is bound on both sides by carbon atoms, as opposed to the thioplasts of Chapter 40, which contain sulphur-sulphur linkages. The synthesis of

polysulphide rubber is $n\text{Na}_2\text{S}_2 + n\text{Cl-R-Cl} \rightarrow 2n\text{NaCl} + \text{--[R-S-S]}$. Thus, classification under Heading 3911 can also be ruled out.

- ❖ Heading 4002 covers "synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip". The term "synthetic rubber" is defined in Note 4 to Chapter 40 to include thioplasts. The product in question contains polysulphide rubber which is a thioplast, a synthetic rubber covered under CTH 4002. But the product in question is not polysulphide rubber alone but also contains the hardener and is presented together as a set. While the General Rules of Interpretation (GRI) provide means for classification of products presented as sets under Rule 3(b) in terms of GRI I, the application of the Rules could be resorted to only when the Section or Chapter Notes are not of help in classifying the product. Therefore, it would be necessary to look at the relevant Section and Chapter Notes before resorting to the GRIs. In the present case, as discussed above, classification of the product can be done based on the Section, Chapter Notes and Headings and therefore classification under CTH 4002 can be ruled out.
- ❖ As the product has bonding property, it is relevant to analyse the appropriateness or otherwise of classification of the product under Heading 3506 which deals with adhesives and glues. Heading 3506 covers, "prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg:". Sub-Heading 350691 specifically covers "adhesives based on polymers of headings 3901 to 3913 or on rubber". However, HSN Explanatory Notes under Heading 3506 specifically rules out such mastic preparations from that heading. The product in question is in the nature of a mastic or a sealant. Therefore, classification under CTH 3506 can be ruled out. Further, as discussed above, CTH 3214 is more specific to the product. In matters of classification the trade parlance or understanding is a crucial factor. The product in question is understood in the trade as a sealant and not as an adhesive.

4. The authorised representative of the applicant was heard in the matter. The representative furnished a synopsis of the case and also a paper book containing relied upon materials during hearing. The applicant vide their letter dated 14.05.2018 submitted Brochure of the product, Anabond Polysulphide Sealant; Technical data sheet; and photographs of the product (in both open and closed state). The details and documents furnished were examined.

5. The product in question, 'Anabond Tuffseald, Polysulphide Sealant' contains two components, viz., polysulphide polymer (resin/rubber) and hardener (acts as the curing agent). Liquid polysulfide polymers form the basic ingredient of the sealant formulation and Manganese dioxide is the curing agent. Both resin and hardener are packed separately within the same container.

Properties of the uncured material are as follows':

Resin	
Chemical type	Polysulphide
Appearance	Smooth paste
Colour	Off-white
Hardener	
Chemical type	Manganese dioxidebase
Appearance	Smooth paste
Colour	Brown
Mixed adhesive	
Mixing ratio	92:08
Colour	Grey

The resin here is a polysulphide where each sulphur atom is bound on both sides by carbon atoms. The synthesis of polysulphide rubber is $n\text{Na}_2\text{S}_2 + n\text{Cl-R-Cl} \rightarrow 2n\text{NaCl} + \text{--[R-S-S]}$. After opening the container, hardener is mixed with resin and applied on the surface by means of flat tools or specially made guns. After mixing resin and hardener, the polymerisation is initiated at room temperature which proceeds further until it is cured. The mixed paste cures into a semi-stiff rubbery mass and acts as a sealant between the surfaces. Sealants are also known in the trade by their generic

name "mastics". These mastics/sealants are commonly used for sealing expansion joints where large movement is anticipated in concrete construction and for joints between diverse construction materials like glass, aluminium, steel, cladding, glazing, tiling, tanks, internal and water retaining structures. It is also used for sealing expansion joints where there is vehicular traffic (e.g. airports and bridges) or pedestrian traffic.

6. In the GST Schedule, tariff item shall have the same meaning as specified in the First Schedule to the Customs Tariff Act, 1975. 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 their interpretation.

CTH 3214 10 00 covers "*glaziers' putty, grafting putty, resin cements, caulking compounds and **other mastics**; painters' fillings*".

As per Explanatory Notes to HSN for CTH 3214, "*The products of this heading are preparations of widely differing composition which are essentially characterised by the uses to which they are put. These preparations are usually put up in a more or less pasty form and in general they harden or cure after application....*

The products of this heading are usually applied with a caulking gun, a spatula, a trowel, a plasterer's float or similar tools.....

These preparations are mainly used to stop, seal or caulk cracks and in certain cases to bond or firmly join components together. They are distinguished from other glues and other adhesives by the fact that they are applied in thick coatings or layers....

Mastics based on rubber: These may be composed, for example, of a thioplast with the addition of fillers(graphite, silicates, carbonates, etc.) and in certain cases of an organic solvent. They are used, sometimes after the addition of a hardener to give flexible protective coatings and also for caulking....."

From the above, it is seen that the product after mixing together of the resin and curing agent is classifiable under CTH 32141000.

7. Note 3 to Section VI reads as follows:

"3. Goods put up in sets consisting of two or more separate constituents, some or all of which fall in this section and are intended to be mixed together to obtain a product of Section VI or VII, are to be classified in the heading appropriate to that product, provided that the constituents are:

- i. having regard to the manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked;*
- ii. presented together; and,*
- iii. identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary one to another."*

As per Harmonised System of Nomenclature, the general explanation of the above Note 3 is as follows:

“Note 3:

This Note deals with the classification of goods put up in sets consisting of two or more separate constituents, some of which fall in section VI. The Note is, however, limited to sets of which the constituents are intended to be mixed together to obtain a product of Section VI or VII. Such sets are to be classified in the heading appropriate to that product provided that the constituents meet conditions (a) to (c) of the Note”

Applying the above, to the case at hand, it is evident that the base and the curing agent are presented in a single pack and are intended to be used together and complimentary to one another. Thereby, the conditions of the section Note 3 is satisfied. When the conditions are satisfied, then, if on mixing, the resultant is a product of Section VI or VII, then such sets are to be classified in the heading appropriate to that product ‘Mastics’ are spelt in heading 3214 (under Section VI) of the Tariff. From the above, it is evident that the product in hand is classifiable under Heading 32141000 of the Customs Tariff.

8. Further, we find that the other probable chapter heads under which the said product may be classified as stated by the applicant, do not merit the classification for the reasons stated below:

a. Chapter 2830 90 20 covers Polysulphides. As per explanatory notes to HSN, the polysulphides classified here are mixtures of sulphides of same metal. The polysulphide in question is an organic compound and is a synthetic rubber. Therefore, the product under consideration is not classifiable under this heading.

b. Chapter 3506 91 covers adhesives based on polymers of headings 3901 to 3913 or on rubber. As per explanatory notes to HSN, ‘The heading excludes products having the character of mastics, fillings, etc., of heading 3214. Therefore the product under consideration is not classifiable under this heading.

c. Chapter 3911 covers polysulphides. As per explanatory notes to HSN, Polysulphides are polymers characterised by the presence of monosulphide linkages in the polymer chain...In polysulphides each sulphur atom is bound on both sides by carbon atoms, as opposed to the thioplasts of Chapter 40, which contain Sulphur-sulphur linkages. In the case at hand, Sulphur-Sulphur linkages are present and therefore they are thioplasts. Hence, the product is not classifiable under this heading

d. Chapter 4002 covers "synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip". The product in question contains polysulphide rubber/resin which is a synthetic rubber. Therefore, the polysulphide resin is a thioplast covered under CTH 4002. But the product in question is not polysulphide rubber/resin alone but also contains the hardener and is presented together as a set. When presented together, the product in question becomes a mastic which has a specific classification in CTH 32141000. Rule 3(a) of the General Rules of Interpretation provides that the most specific description shall be preferred. In the present case, as discussed above, classification of the product can be done based on the Section, Chapter Notes and Headings and therefore classification under Heading 4002 is ruled out.

9. In light of the above, we rule as under

RULING

It is hereby clarified that the 'Polysulphide Sealant' manufactured by the applicant and marketed under the trade name 'AnabondTuffseald' is classifiable under CTH 3214 10 00 of the First Schedule to the Customs Tariff Act, 1975 as applicable to GST as per Explanation (iii) to Notification 1/2017-Central Tax (Rate) dt 28.06.2017 and G.O. Ms No. 59, Commercial Taxes and Registration (B1) dt 29th June 2017.

L. Manasa Gangotri
27/6/18
Ms. Manasa Gangotri Kata, IRS

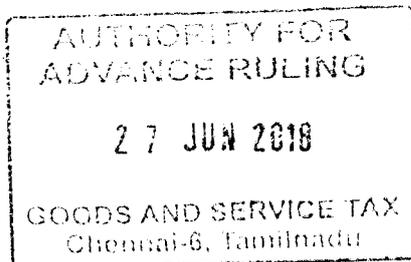
Member

Shri. S. Vijayakumar
27-6-18
Shri. S. Vijayakumar, M.Sc.,

Member (FAC)

To

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