

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

Before Sri Binod Kumar, 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/16/277

- And -

In the matter of :

Mr. Shree Kumar Chandak, Proprietor, carrying on business under the trade name M/s Fabricators India at 1, G.C. Avenue, Kolkata-700013.

Present for the applicant: Sri A.K. Dugar, Authorised Advocate and Mr. Shree Kumar Chandak, Proprietor.

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: 20.04.2016

This is an application filed by Mr. Shree Kumar Chandak, Proprietor, carrying on business under the trade name of M/s Fabricators India, 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, in short. The applicant holds VAT Registration/ TIN No. 19532581056 and has raised a question for determination of rate of tax applicable to the sale of Aluminium Water Tank Assembly, manufactured and sold by him in accordance with the drawing, design and specification of Indian Railways.

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 A.K. Dugar, Authorised Advocate of the applicant, submitted that Aluminium Water Tank Assembly is manufactured by the applicant as per drawing, design and specification of Indian Railways and is used as part of railway coach for storing water used in the toilets of passenger coaches. Sri Dugar added that this item should be considered as part of the railway coach as without it coach is not complete. He also pointed out that earlier Railway carriage batteries, railway carriage fans, push cocks and bib cocks have been held to be Railway coach parts falling under serial No. 60 of Part I of Schedule C by the Commissioner, Sales Tax, under section 102 of the VAT Act.

Sri Dugar also made a written submission and cited an order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, Eastern Branch, Calcutta in the matter of *Mechanico Enterprises Vs. Commissioner of Central Excise* dated 30.03.1998 [1998 (104) ELT 345(Tri.-Kolkata)] whereby the aluminium water tank was held to be a part of Railway coach covered under Central Excise Tariff sub-heading 8607.00.

He also cited another order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench on 17.11.1997, in the matter of *CCE, Bangalore Vs. Sri Ram Metal Works* [1998 (99) ELT 616 (Tribunal)] where the Hon'ble Tribunal held "...It is seen that the containers as fabricated, to specific design and drawings of the railways for fitment into coach and it becomes a part of the coach...". The Tribunal further held "...In the case of railways, it goes without saying that the provision of water in the coach is a necessity and the coach can be taken to be complete with the fitment of the water tank. More so, when the water tank becomes part of the coach itself..."

Sri Chandak, the applicant, submitted that he is charging VAT @ 5 % when Aluminium Water Tank Assembly is sold directly to Railways as part of railways coach, but to be on the safer side he is charging VAT @ 14.5 % to the parties who are supplying the same to Railways.

Sri Adesh Kumar, PRO, stated that entry at serial No. 60 of Part I of Schedule C of the VAT Act is as under:

Serial No.	Description of goods
60.	Rail coaches engines, wagons and freight containers and parts thereof, and rail-coach fans.

He submitted that Aluminium Water Tank Assembly manufactured by the applicant as per drawing, design and specification of Indian Railways can be considered as part of the Railway coach.

The matter is examined and I have considered the submissions made before me. I have also gone through the orders passed earlier under section 102 of the VAT Act namely, in case Nos. 24X/PRO/VAT/2006/44 and 24X/PRO/VAT/2006/49, both dated 12.07.2006, whereby Bib cocks, Push Cocks, Ball cocks and Railways Carriage Batteries were held to be integral parts of Railway Coaches and within the ambit of entry at serial No. 60 of Part I of Schedule C of the Act.

The Aluminium Water Tank Assembly, manufactured by the applicant as per drawing, design and specification of Indian Railways for specific use as part of Railway coaches is held to be covered under entry at serial No. 60 of Part I of Schedule C appended to the West Bengal Value Added Tax Act, 2003, and rate of tax on sale thereof in West Bengal is determined at 5 % under section 16(2)(b)(ii) of the Act *ibid*.

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/-20/4/2016
(Binod Kumar)
Commissioner,
Sales Tax, West Bengal