

AUTHORITY FOR ADVANCE RULING – MADHYA PRADESH

Goods and Service Tax

O/o THE COMMISSIONER, COMMERCIAL TAX,

MOTI BUNGALOW,

MAHATMA GANDHI MARG, INDORE (M.P.) - 452007

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PROCEEDINGS OF THE AUTHORITY FOR ADVANCE RULING

U/S,98 OF THE GOODS AND SERVICES TAX ACT ,2017

Members Present

1. Shri Manoj Kumar Choubey

Joint Commissioner

Office of the Commissioner of Commercial Tax, Indore Division-1

2. Shri Virendra Kumar Jain

Joint Commissioner

Office of the Commissioner CGST and Central Excise, Indore

GSTIN Number, if any / User-id	23AABCA8056G1ZX
Name and address of the applicant	ADANI WILMAR LIMITED SOYA COMPLEX, SANCHI ROAD, VIDISHA
Clause(s) of Section 97(2) of CGST / SGST Act, 2017 under which the question(s) raised	(a) Classification of any goods or services or both. (b) Applicability of a notification issued under the provisions of this Act. (e) Determination of the liability to pay tax on any goods or services or both.
Present on behalf of applicant	S. KRISHNAN, CHARTERED ACCOUNTANT
Case Number	13/2021
Order dated	27/12/2021
Order Number	20/2021

PROCEEDINGS

(Under sub-section (4) of Section 98 of Central Goods and Service Tax Act, 2017 and the Madhya Pradesh Goods & Service Tax Act, 2017)

1. The present application has been filed u/s 97 of the Central Goods and Services Tax Act, 2017 (hereinafter also referred to CGST Act and SGST Act respectively) by M/s ADANI WILMAR LIMITED (hereinafter referred to as the Applicant), registered under the Goods & Services Tax.

The provisions of the CGST Act and MPGST Act are identical, except for certain provisions. Therefore, unless a specific mention of the dissimilar provision is made, a

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reference to the CGST Act would also mean a reference to the same provision under the MP GST Act. Further, henceforth, for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act or MP GST Act would be mentioned as being under the GST Act.

3. BRIEF FACTS OF THE CASE

- 3.1 M/s Adani Wilmar Limited (the applicant), is a person registered under the provisions of CGST Act (the Act) and MP GST Act read with section 20(v) of IGST Act, vide GSTIN: 23AABCA8056G1ZX, having principal place of business, at Vidisha.
- 3.2 The applicant is engaged in the business of manufacturing and sale of Soya Oil, wherein Soya DOC, **Soya husk** etc are obtained through the process of solvent extraction of soya seed at the factory located at Vidisha. Soya oil is principal product of process of solvent extraction of Soya seed. During the process of manufacture, many by-products and waste products are also obtained.
- 3.3 Soya husk resulting from extraction of soyabean oil is sold to the customers by the applicant company. The Soya husk so supplied by the applicant is used by the customers as input / ingredients to Cattle feed.
- 3.4 There are two different perceptions with regard to taxability of Soya husk are prevalent in the market and in trade circles as under:-
- (i) Soya husk resulting from the extraction of Soyabean Oil is NIL rated, which is exempt from payment of GST as Poultry feed and **Cattle feed** under **HSN heading 2302**, under **Entry 102** of Notification No.2/17-Central Tax (Rate) dated, 28.06.2017, exempting the goods included therein from payment of GST.
 - (ii) Soya husk resulting from the extraction of Soyabean oil, being principal input/ ingredient for manufacture or processing of Cattle feed and Poultry feed which may become value added product in the market. Soya husk being principal input/ ingredient to Poultry feed and Cattle feed industry, which is taxable @5% under **Sub-heading 2304** as per **Entry 105** of Notification No.1/17-Central Tax (Rate) dated, 28.06.2017

4. QUESTIONS RAISED BEFORE THE AUTHORITY:

- 1) Whether **Soya husk** resulting from the extraction of Soyabean Oil, being an input / ingredient to Cattle feed is exempt from payment of GST, under **HSN heading 2302**, under **Entry 102** of Notification No.2/17-Central Tax (Rate) dated, 28.06.2017, exempting the goods included therein from payment of GST.
- 2) If the answer to question 1 is no, then the determination/ classification of correct tariff and rate of tax thereon under which soya husk resulting from extraction of Soyabean oil, being an input / ingredient to Cattle feed, will fall?

5. RECORD OF PERSONAL HEARING



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- 5.1 Shri S, Krishnan, Chartered Accountant - Authorized Representative of the applicant appeared for personal hearing on behalf of the applicant and reiterated the submissions made in the application.

The applicant states that -

- 5.2 Sl.No.102 of Notification No.2/17-Central Tax (Rate) dated, 28.06.2017 exempting the goods from the whole of GST reads as under:-

Sl.No.	Chapter/Heading/ Sub-heading/ Tariff item	Description of goods
102	2301, 2302, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed , including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake (other than rice bran).

- 5.3 Sl.No. 103A, 103B & 105 of Notification No. 1/17-Central Tax (Rate) dated, 28.06.2017 prescribing GST rate of 5% (CGST 2.5% & SGST 2.5%) read as under:-

Sl.No.	Chapter/Heading/ Sub-heading/ Tariff item	Description of goods
103A	2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants (other than aquatic feed including shrimp feed and prawn feed, poultry feed and cattle feed , including grass, hay and straw, supplement and husk of pulses, concentrates and additives, wheat bran and de-oiled cake).
103B	2302	Rice bran (other than de-oiled rice bran)
105	2304	Oil cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil.

- 5.4. Tariff item 2302 read as under:-

Tariff Item	Description of goods
2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants.
2302 10	- of maize (corn)
2302 10 10	- Maize bran
2302 10 90	- Other
2302 30 00	- of Wheat



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2302 40 00	- of other cereals
2302 50 00	- of Leguminous plants

5.5 Tariff item 2304 read as under:-

Tariff Item	Description of goods
2304	Oil cake and other solid residues whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil.
2304 00	-Oil cake and other sold residues whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil.
2304 00 10	-Oil cake and oil cake meal of soyabean, expeller variety.
2304 00 20	-Oil cake of soyabean, solvent extracted (defatted) variety.
2304 00 30	-Meal of soyabean, solvent extracted (defatted)
2304 00 90	-Other

5.6 A reference may be made to para 4 of **Circular No.80/54/2018-GST** dated, 31st December 2018 issued by CBIC, wherein certain clarifications are made with regard to raw materials/ inputs used to manufacture / formulation of Aquatic feed, animal feed, Poultry feed, Cattle feed etc under above Headings and Sub-headings. Para 4.2 of the said Circular reads as under:-

“4.2 - A number of raw materials such as fish meal falling under heading 2301 meat and bone meal also failing under heading 2301, oil cakes of various oil seeds, soya seeds, bran, sharps, residue of starch and all other goods falling under headings 2302, 2303, 2304 etc are used to manufacture/ formulation of aquatic feed, animal feed, cattle feed, poultry feed etc. These raw materials/ inputs cannot be directly used for feeding animal and cattle. The Larger Bench of the Hon. Supreme Court in the Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar (2018-361-E.L.T-577) has laid down that inputs for animal feed are different from the animal feed. Said S.No.102 covers the prepared aquatic/ poultry/ cattle feed falling under headings 2309 and 2301. The entry does not apply to raw material/ inputs like fish meals or meat cum bone meal (MBM) falling under heading 2301”



Thus, the clarifications issued by the above Circular and the decision of Larger Bench of the Hon. Supreme Court in the Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar (2018-361-E.L.T-577) are relevant to the interpretation of entries with regard to taxability of inputs / ingredients which are used in the manufacture and processing of Cattle feed and Poultry feed under Entry 103A, 103B and 105 of Notification No.1/2017-Central Tax (Rate) dated, 28.06.2017 and **Entry 102** of Notification No.2/17-Central Tax (Rate) dated, 28.06.2017, exempting the goods included therein from payment of GST.

5.7 As per entry 102 of Exemption Schedule, aquatic feed including shrimp feed and prawn feed, **poultry feed & cattle feed**, including grass, hay & straw, supplement & husk of

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pulses, concentrates & additives, wheat bran & de-oiled cake (other than rice bran) under Tariff item 2301, **2302**, 2308 & 2309 are NIL rated and such items do not attract GST. **Under the said entry, poultry feed and cattle feed of Tariff item 2302 are NIL rated.** Chapter head 2302 does not specify the supplier or the recipient of goods i.e. Poultry feed and Cattle feed, to enjoy exemption from payment of GST under Entry 102 of Exemption Schedule.

5.8 Soya husk may also be covered under Tariff item **2302 50 00** as **residue of Leguminous plants.**

5.9 As per tariff item 2302, the said tariff item includes Bran, sharps and **other residues**, whether or not in the form of pellets, derived from the sifting, **milling or other working** of cereals or of **leguminous plants.** It means that the said tariff includes poultry feed and cattle feed derived from the sifting, milling or other working of cereals or of **leguminous plants.**

5.10 As per entry 105 of Schedule I. the tariff 2304 covers Oil cake and **other solid residues**, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil attract tax @5% (CGST 2.5% & SGST 2.5%).

5.11 It is evident from the above that -

(a) As per para 4 of **Circular No.80/54/2018-GST** dated, 31st December 2018 as referred to above, the raw materials / inputs falling under heading 2302, 2303, 2304 etc that are used in manufacture / formulation of aquatic feed, animal feed, cattle feed, poultry feed cannot be covered under Entry 102 of Exemption Notification.

(b) As per para 4 of **Circular No.80/54/2018-GST** dated, 31st December 2018, the exemption entry falling under entry 102 of Notification No.2/2017-Central Tax (Rate) dated, 28.06.2017 covers the **prepared** aquatic/ poultry / cattle feed falling under heading 2302.

(c) The same goods falling under tariff 2302, is put to use **other than** poultry feed or cattle feed attract tax @5% (CGST @2.5% & SGST @2.5%).

(d) Further, there is a specific entry under **tariff 2304** where the husk of soyabean may attract tax @5%.

5.12 As per the Rules of interpretation of HSN code, the **specific entry shall prevail over the general entry** i.e. soya husk is specifically covered under HSN 2304 attracting tax @5%.

5.13 As per Rule 3 of General Rules for the interpretation of import tariff, "when any 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 per sub-Rule (a), which reads as under:-

The heading which provides the most specific description shall be preferred to headings providing a more general description.

6. **COMMENTS OF THE JURISDICTIONAL OFFICER**



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The comments of the Jurisdictional Officer were called for in respect of the application submitted by the applicant. Accordingly, the comments were received from , Joint Commissioner (Technical), Office of the Principal Commissioner CGST & Central Excise, Bhopal, vide his letter dated, 13.12.2021, wherein the brief of the comment made by him is as following -

“The heading 2304 squarely covers Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil, the applicant has also categorically stated that soya husk is product obtained from the extraction of soyabean oil.

The goods of the applicant are not covered under by entry No.102 of Notification 02/17-Central Tax (Rate) dated, 28.06.2017 which reads as follows:-

“102. Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake”.

The goods sold by the applicant is not aquatic feed, shrimp feed, poultry feed or cattle feed but soya husk which is an input for cattle feed as submitted by them in their application, hence the benefit of notification number 02/17 cannot be extended to them.

Once the benefit of notification No.2/17 is ruled out, it is submitted that the goods of the applicant are squarely governed by entry No.105 of Notification 01/17 central tax (rate) dated, 28.06.,.2017 attracting GST @5% which reads as under:-

“2304 Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil (other than aquatic feed including shrimp feed and prawn feed, poultry 7 S. No. Chapter/ Heading/ Sub-heading/ Tariff item Description of Goods (1) (2) (3) feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake”.

In view of the above, this office of the opinion that product soya husk obtained from the extraction of soyabean oil is classifiable under HSN 2304 and taxable by virtue of entry No.105 of Notification 01/17-Central Tax (Rate) dated, 28.06.2017 attracting GST @5%”.

DISCUSSIONS AND FINDINGS:

- 7.1 We have carefully considered the submissions made by the applicant in the application and during the time of personal hearing.
- 7.2 We find that the question before us essentially pertains to -
 - (a) Classification of any goods or services or both.
 - (b) Applicability of a notification issued under the provisions of this Act.



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(e) Determination of the liability to pay tax on any goods or services or both.

- 7.3 As per entry 102 of Exemption Schedule, aquatic feed including shrimp feed and prawn feed, **poultry feed & cattle feed**, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake (other than rice bran) under Tariff item 2301, **2302**, 2308 & 2309 are NIL rated and such items do not attract GST. **Under the said entry, poultry feed and cattle feed of Tariff item 2302 are NIL rated.** Chapter head 2302 does not specify the supplier or the recipient of goods i.e. Poultry feed and Cattle feed, to enjoy exemption from payment of GST under Entry 102 of Exemption Schedule.
- 7.4 Soya husk may also be covered under Tariff item **2302 50 00** as residue of **Leguminous plants**.
- 7.5 As per tariff item 2302, the said tariff item includes Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, **milling or other working** of cereals or of **leguminous plants**. It means that the said tariff includes poultry feed and cattle feed derived from the sifting, milling or other working of cereals or of **leguminous plants**.
- 7.6 As per entry 105 of Schedule I. the tariff 2304 covers Oil cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil attract tax @5% (CGST 2.5% & SGST 2.5%).
- 7.7 The applicant is engaged in the business of manufacturing and sale of Soya Oil, wherein Soya DOC, **Soya husk** etc are obtained through the process of solvent extraction of soya seed at the factory located at Vidisha. Soya oil is principal product of process of solvent extraction of Soya seed. During the process of manufacture, many by-products and waste products are also obtained.
- 7.8 The applicant is supplying soya husk to the manufacturers / processors of Poultry feed and Cattle feed, who in turn, supply the manufactured/ processed product to its customers to be used as poultry feed or cattle feed.
- 7.9 Soya husk is used by the customers of the applicant as input/ ingredient in the manufacture or processing of Poultry feed and Cattle feed.
- 7.10 Soya husk sold to the manufacturers or processors by the applicant may be exempt from payment of GST being NIL rated under Chapter 2302 and **Tariff item 2302 50 00 as residue of Leguminous plants** under entry 102 of Notification No.2/17-Central Tax (Rate) dated, 28.06.2017.
- 7.11 Exemption Entry 102 is general entry exempting GST on supply of **prepared** Poultry feed and Cattle feed under Chapter 2302.
- 7.12 Entry 105 of Schedule I is a specific entry prescribing GST @5% on solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil under Chapter 2304.



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- 7.13 The applicant is selling only soya husk, resulting from extraction of Soyabean oil to the manufacturers / processors of Cattle feed and Poultry feed.
- 7.14 As per the interpretation of the applicant under Rule 3(a), specific entry will prevail over the general entry in case where the goods are covered under more than one entry.
- 7.15 Accordingly, the applicant is of the opinion that Soya husk will be covered by specific entry 105 of Schedule I attracting GST @5% (2.5% CGST & 2.5% SGST) under Chapter 2304.
- 7.16 However, in trade circles, there is perception that when soya husk is sold, it is exempt from payment of GST as Poultry feed and Cattle feed under Chapter 2302.
- 7.17 Further, there also exists the perception in trade circles that whenever soya husk is sold to a processing/ manufacturing unit of Poultry feed and Cattle feed, it will attract GST @5% under Chapter head 2304, as it is not sold as Poultry feed and Cattle feed.

8.

RULING

(Under Section 98 of Central Goods and Services Tax Act, 2017 and the Madhya Pradesh Goods and Services Tax Act, 2017)

- 8.1 Soya husk resulting from the extraction of Soyabean oil, being principal input/ ingredient for manufacture or processing of Cattle feed and Poultry feed which may become value added product in the market. Soya husk being principal input/ ingredient to Poultry feed and Cattle feed industry, which is taxable @5% under Sub-heading 2304 as per Entry 105 of Notification No.1/17-Central Tax (Rate) dated, 28.06.2017
- 8.2 We are of the opinion that Soya husk will be covered by specific entry 105 of Schedule I attracting GST @5% (2.5% CGST & 2.5% SGST) under Chapter 2304.
- 8.3 The ruling is valid subject to the provisions under section 103(2) until and unless declared void under section 104(1) of the GST Act.

SK
(Manoj Kumar Choubey)
(Member)

Copy to:- 13/2021/A.A.R/R-28/40

1. Applicant

2. The Principal Chief Commissioner, CGST & Central Excise, Bhopal Zone, Bhopal

3. The Commissioner(SGST) Indore /

4. The Commissioner, CGST & Central Excise, Indore/Bhopal

5. The Concerned Officer

6. The Jurisdictional Officer – State/Central

SK
(Virendra Kumar Jain)
(Member)

INDORE dated 27/12/2021

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