
	<b>RAJASTHAN</b> <b>AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b>	
	<b>KAR BHAWAN, AMBEDKAR CIRCLE, NEAR</b> <b>RAJASTHAN HIGH COURT</b> <b>JAIPUR – 302005 (RAJASTHAN)</b>	

**ADVANCE RULING NO. RAJ/AAR/2021-22/27**

J.P.Meena Additional Commissioner	:	Member (Central Tax)
M. S. Kavia Joint Commissioner	:	Member (State Tax)
Name and address of the applicant	:	M/s ADS AGRO INDUSTRIES PRIVATE LIMITED, SP 67, SKS Industrial Area, Reengus, Sikar- 332404, Rajasthan
GSTIN of the applicant	:	08ADZFS7238N1ZU
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;
Date of Personal Hearing	:	12.10.2021
Present for the applicant	:	Advocate, Rajiv Agnihotri & CA, Sahil Garg.
Date of Ruling	:	25.10.2021

**Note:** Under Section 100 of the CGST/SGST Act, 2017, an appeal against this ruling lies before the Appellate Authority for Advance Ruling constituted under section 99 of CGST/SGST Act, 2017, within a period of 30 days from the date of service of this order.

At the outset, we would like to make it clear that the provisions of both the CGST Act and the SGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the SGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / SGST Act would be mentioned as being under the "GST Act".

The issue raised by M/s ADS AGRO INDUSTRIES PRIVATE LIMITED, SP 67, SKS Industrial Area, Reengus, Sikar- 332404, Rajasthan - (hereinafter the applicant) is fit to pronounce advance ruling as it falls under the ambit of the Section 97(2) (a) & (e) given as under:

- (a) Classification of any goods or services or both;

## A. GIST OF SUBMISSION AND INTERPRETATION OF THE APPLICANT:

1. ADS Agro Industries Private Limited (hereinafter referred as Applicant) is a company registered on 15/07/2003 & having its distillery at SP-67, Shri Khatushyamji Industrial Complex, Ringus- 332 404.
  2. The Applicant Company is a 100% grain-based distillery since 2013 and manufacturing alcohol using **Grains (i.e. broken Rice – called “Nakku” in trade)** as raw material and its by-products are CO<sub>2</sub>, Fussel Oil.
  3. Briefly stated herein, the Applicant Company while manufacturing alcohol, produces ‘cattle feed’ as a by-product which is technically known nationally and worldwide as DWGS (Distillers Wet Grain Solubles) in Wet Form also termed as “Wet Cake” in the Industry. This is primarily on account of the fact that the Applicant utilizes grains as raw materials. During distillation process, only the starch portion present in the Grain is utilized in production of the alcohol, which is the main product, and the other components viz. protein, fibre and oil are not utilized in the production of alcohol. Another by-product is obtained by further extraction, processing and conversion into Wet Cake, which is Cattle Feed/ Poultry Feed. It is imperative to put on record that no other use of wet cake other cattle feed is possible & hence, cattle feed is a by-product in the process of manufacture of alcohol and cannot be termed as ‘residue’.
- (a) The terms ‘by-product’ and ‘residue’ have been defined, explained and understood as per industry norms and have been consistently followed by the industry and the Applicant Company alike.

**By-product:** In CIMA Terminology, By-product is “a product which is recovered incidentally from the material used in the manufacture of recognized main products such as having either a net realizable value or a usable value which is relatively low in comparison with the saleable value of the main products. By products may further be processed to increase their realizable value.”

- It denotes one or more products of relatively small value that are produced simultaneously with a product of greater value.
- By-products are jointly produced products of minor importance and do not have separate costs until the split off point. They are not produced intentionally but are emerging out of the manufacturing process of the main products.
- Hence, the above would clearly reveal that cattle feed, obtained on further processing by the applicant Company is a by-product, which is known, used and sold in the industry as such. By no stretch of imagination can the by-product be termed as waste or residue. It is also relevant to mention that prescribed costing and accounting methods for by-products are being duly followed by the Applicant company, wherein the accounts are being duly audited, which further fortifies the



contention that the cattle feed being produced is a by-product and is being utilized/ treated as such for all intents and purposes.

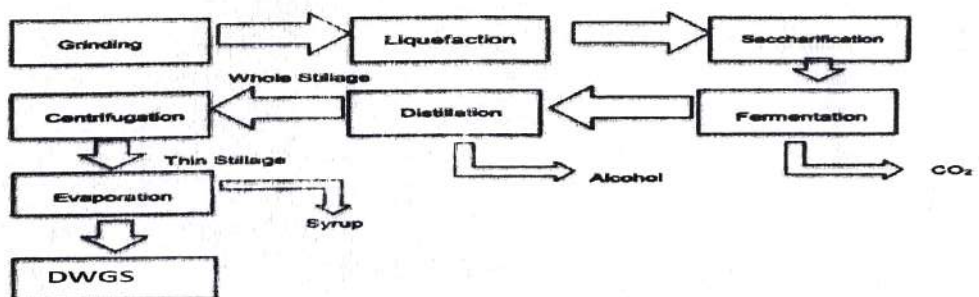
- Furthermore, end use of this product DWGS is Animal/ Cattle/ Poultry feed/ Concentrates Additives and there is no use of it for any purpose other than Animal/ Cattle/ Poultry Feed.

(b) **Residue:** Residue is a term used to describe material that has no value, or even negative value if it has to be disposed-off at some cost. Examples include gases, saw dust, smoke and other unsalable residues from the manufacturing process. Residue presents no accounting problems because it has no sales value, and therefore it is not included in the valuation stock.

- This is the residue such a smoke, dust, gases, slag, etc., which arises in course of manufacturing process and practically no measurable sale or utility value. In certain types of processes and operations, some material physically disappears on account of shrinkage, evaporation etc., with the result that the quantity of the output is less than the input. Such wastage is termed invisible waste where the residual instead of fetching any value, creates a problem for its dispose which entails further costs. Special arrangements have to be made for disposal and refuse, effluent, obnoxious gases, etc.
- The effect of the residue/ waste is to reduce the quantity of output.

Above would clearly reveal that the cattle feed being produced is not a residue or waste, but a by-product. The waste being generated by the Applicant Company is in the nature of water (Spent Wash), which is reused/ recycled into the distillery/ alcohol manufacturing process after treatment. Presently, Spent Wash is not allowed to be sold as such due to prevailing government guidelines. The Applicant Company is not selling the Spent Wash and hence there is no sale of residue by the Applicant.

**Step by Step Process of Production of Extra Neutral Alcohol (ENA) – i.e., Grain Based Plant is as under:**



From the above chart, it is clear that distilleries get Alcohol (ENA) after the distillation process as well as Wet Distillers Grain, i.e., Cattle Feed, i.e., the by-product.

During distillation process, only the starch portion present in the Grain is utilized in production of the alcohol and the remaining components viz. protein, fiber and oil are not utilized in the production of alcohol. These become basic raw material for production of cattle feed.

**What remains after Distillation process is – Whole Stillage (WS)**

Distillery Effluent / Spent Wash / Whole Stillage is the residue/waste after production of Alcohol during distillation process. Spent wash is not marketable and can be sold as such.

**5. DWGS (Distillers Wet Grains Soluble):** (also popularly known as “Wet Cake” in Distillery Industry):-

**DWGS** (Distillers Wet Grains Soluble), a by-product, which is being produced after the decantation whereby solids are segregated or separated, in well-designed centrifuge Decanters. The grain particles collected, are called “DWGS”, a semi solid wet cake type product containing moisture.

Decantation section comprises of Centrifuge Decanter for separation of suspended solids from the Spent Wash coming out of Distillation Plant. Wet cake has 30-35% w/w solids as removed from bottom of Decanter.

Thin slops of “spent wash” or “distiller’s dregs” coming out of Decanter are collected in a tank and transferred for part recycle & further for Evaporation.

Needless to mention that, the applicant has invested huge amount to install Centrifuge Decanters to get DWGS.

**It is pertinent to note that Decanters are not part of Distillation Process. They are required to be installed separately. In this regard, a certificate from M/s Praj Industries Limited, premier unit for set up of turnkey distillery projects is annexed herewith.**

It is important to understand that whether slops of “spent wash” or “distiller’s dregs” coming out of Decanter are is a waste or a by-product. Here DWGS or Wet Cake is produced in a significant quantity and value by investing in Centrifuge Decanters and by any stretch of imagination cannot be considered as mere residue or waste.

Accordingly, DWGS is a saleable by-product and used as Animal Feed/Cattle Feed/Poultry Feed and hence it is a sale of Animal Feed/Cattle Feed/Poultry Feed.



6. That the Company is selling the Cattle Feed / Poultry Feed (DWGS) to its dealers who are further selling the same as cattle feed/ poultry feed/ animal feed supplement in the market and similarly to the end consumers are purchasing these goods as cattle feed/ poultry feed/ animal feed supplement and using as such.

### **TAXABILITY UNDER GST**

Relevant entry no. 2303 and 2309 under GST Tariff is given hereunder for ready reference: -

<b>S. No</b>	<b>Chapter/Heading/Sub-Heading/Tariff Item</b>	<b>Description of Goods</b>	<b>CGST/SGST Rate</b>	<b>IGST Rate</b>
1	2303	Residues of Starch manufacture and similar residues, beet pulp, bagasse, and other waste of sugar manufacture, <b>brewing or distillery dregs and waste</b> , whether or not in the form of pellets.	SGST @ 2.5% CGST @2.5%	5.00%
2	2309	Aquatic feed including shrimp feed and prawn feed, <b>poultry feed &amp; cattle feed</b> , including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake other than rice bran.	Nil	Nil

### **Whether DWGS is dregs and waste of distillery?**

DWGS or Wet Cake is produced in a significant quantity in the manufacturing process and has its own market value and cannot be considered as mere residue or waste. It is apparent that to produce DWGS, the applicant has made huge capital investment in Centrifuge Decanters as explained in para 6 above.

**The end use of DWGS is only for the purpose of Cattle Feed. It has no other use.**

Further, due to following reasons the DDWS should be classified under entry 2309 i.e., Cattle Feed: -

- Spent Wash or Distillery dreg is having high Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Acidity and containing hazardous contents, it is neither marketable nor usable as cattle feed.

- Alcohol distillation had been the most highly polluting industry due to its high effluent generation; assessed under red category and it was mandatory for the industry to obtain "Environmental Clearance, abbreviate EC" certificate from the Govt. Of India, MOEF. Environment Clearance (EC) used to be granted only to the distilleries based on zero discharged technology and were to follow their guidelines. The effluent was generated like spent wash or distillery dregs were not tradable without the consent of Govt. Of India and these were only to be treated & re-treated to attain zero discharge.

Presently, the current guidelines issued by Central Pollution Control Board doesn't allow any distillery to deal/ dispose the spent wash & hence, the same is not marketable at all. Therefore, it is mandatory for the distillers to process the spentwash through decanters to convert the same into DWGS (Distiller's Wet Grain Solubles) which can only be used as Cattle Feed/ Animal Feed Supplement. Decanters are installed to treat the spent wash & can be used only after the process of distillation.

Spent wash is being be passed through decanter and concentrated in multi-effect evaporator (MEE). Thick syrup and wet cake will be mixed together to form Distiller's Wet Grains with Soluble (DWGS) to achieve zero discharge.

- DWGS is an excellent, lower cost alternative feed ingredient that continues to be produced in large quantities by the dry-grind alcohol industry. The high energy, mid-protein, and high digestible phosphorus content of DWGS make it a very attractive, partial replacement for some of the more expensive, traditional energy (corn), protein (soyabean meal), and phosphorus (mono or dicalcium phosphate) used in animal feeds. DWGS is also added to properly formulated feeds and results in excellent animal health, performance, and food product quality. The Chemical Composition of DWGS is: -
  - a. Water -72 %
  - b. Protein -5.80%
  - c. Fat -2.40 %
  - d. Fiber -2.38 %
  - e. Carbohydrates -2 %
  - f. Ash -1.31%
  - g. pH -3.90

No environmental agency allows any distillery to sell any hazardous products such as distillery dregs or spent wash as known the untreated characteristics.

- It is much important to understand that it as animal feed under HSN Code 2309 as DWGS or Cattle feed in its marketable form. The word dregs better come as residual which is of insignificant value, volume and usage.



- Here our by-product DWGS is having a significant value, volume and usage as cattle feed. The input –output ratio is also significant. For Example, Cost of Grain is Rs.17.50/kg than value of Cattle feed (wet) is Rs. 3.5/kg = 20 %; 1 Kg of grain produces apx. 450 ML of Alcohol & 1.8 Kg of Cattle Feed which is having a significant volume & value.
- So, in any case or in any comparison Wet Cake or DWGS should not be taxable under HSN Code 2303 as “distiller’s dregs” as it is categorically classified as “poultry feed & cattle feed” under HSN Code 2309 as per the notification dated 31st December 2018.

### **Cattle Feed as Defined by Hon’ble Supreme Court of India:**

The “Cattle Feed” explained by the Supreme Court in the case of **Commissioner of Sales Tax Vs. Ram Chander Asha Ram** reporter as 123 STC 415, that “in the generic sense the expression “Cattle Feed was inclusive of everything which is fit for consumption for cattle.”

### **TRADE PARLANCE (Commercially known name) / Settled Law Cases**

- a. While interpreting the fiscal statute, it is a settled law of the land that the language used in the statute must be interpreted as such. The view finds support from the judgment of Hon’ble Supreme Court in 8 STC 561 (SC), 41 STC 409 (SC) and 17 STC 326 (SC). End use of the product wet cake is for Cattle feed / Poultry feed and there is no use of it for any purpose other than Cattle/ Poultry Feed.
- b. Even commercially in our trade parlance, the dealers term the said products as “cattle feed”. The principle that in determining the meaning of connotation of words and expressions, these should be construed in the sense in which they are understood in the trade, by the dealer and the consumer, when the goods in question are marketable and not when they do not have a commercial market. In determining the meaning or connotation of words and expressions describing an article or commodity the turnover of which is taxed under a sales tax enactment, if there is one principle, fairly well settled that it is the words or expressions in the statute which must be construed in the sense in which these are understood in the trade, by the dealer and the consumer.
- c. Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. The reason is that, as pointed out by a story, J., in 200 chests of Tea, the legislature does “not suppose our merchants, or geologists or botanists”.
- d. In Case of **United Copiex (India) Pvt. Ltd. v/s CST-94 ELT 28(SC)** wherein it was held that classification is to be based on statutory definition, if any, and in the absence thereof on trade or common parlance.

- e. As per case of **Plasmac Machine Mfg. Co. Pvt. Ltd. v/s CCE 51 ELT 161 (SC)**, goods are to be classified according to their popular meaning as understood in the commercial sense and not as per the scientific/technical meaning.
- f. As per case of **CCE v/s Favourite Industries-2012(278) ELT 145 (SC)**, it is a well settled legal proposition of law that liberal construction is to be given to beneficial notification and therefore the product should be classified on the basis of its use. Further, there is a principle of statutory interpretation (**Harmonious construction**) used in the Indian legal system. It holds that when two provisions of a legal text seem to conflict, they should be interpreted so that each has a separate effect and neither is redundant or nullified.
- g. As per case of **Rhino Machines Pvt. Ltd. v/s CCE, Vadodara-2005 (181) ELT 63 (T)**, goods have to be assessed in the form in which they are cleared from the factory.
- h. As per case of **Share Medical Care v/s UOI-2007(209) ELT 321 (SC)**, if the applicant is entitled to benefit under two different Notifications or under two different heads, he can claim more benefit and it is duty of authorities to grant such benefits if applicant is entitled to such benefit.
- i. As per the case of **HCL Ltd. v/s Collector of Customs, New Delhi-2001 (130) ELT 405 (SC)**, when pluralities of exemptions are available, the assessee has the option to choose any of the exemptions, even if the exemption so chosen is generic and not specific.
- j. Further, **Circular No. 80/54 /2018 –GST Dated 31/3/2018** clearly states that Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients such as cereals and proteins. These are covered in chapter 23 under heading code 2309.

**B. QUESTIONS ON WHICH THE ADVANCE RULING IS SOUGHT:-**

- A. Whether in the facts and circumstances of the case elaborated in body of ground hereunder, DWGS is by-product or residues?
- B. Whether “DWGS” is to be classified under Tariff Entry 2309 of GST Tariff?
- C. Whether in the facts and circumstances of the case, “DWGS” which is sold as Cattle Feed in the Trade are to be classified under Tariff Entry 2309 of GST Tariff?

**C. PERSONAL HEARING**

In the matter personal hearing was granted to the applicant on 12.10.2021. Shri Rajiv Agnihotri, Advocate & Sahil Garg, CA (Authorised Representative) of applicant appeared for PH. During the PH, they reiterated the submissions already made in the written application. They requested for early disposal of the application.



#### **D. FINDINGS, ANALYSIS & CONCLUSION:**

1. We have gone through the facts of the case and submission made by the applicant at the time of preliminary hearing.
2. The applicant company in their written submission stated that company is a 100% grain-based distillery and manufacturing alcohol using Grains as raw material. The Applicant Company while manufacturing alcohol, produces DWGS (Distillers Wet Grain Solubles) in Wet Form also termed as "Wet Cake" in the Industry. During distillation process, only the starch portion present in the Grain is utilized in production of the alcohol, which is the main product, and the other components viz. protein, fibre and oil are not utilized in the production of alcohol. Another by-product is obtained by further extraction, processing and conversion into Wet Cake, which is Cattle Feed/ Poultry Feed.
3. The applicant wants to seek clarification whether DWGS (Distillers Wet Grain Solubles) is by-product or residues and also seek classification thereof.
4. Before we delve deep to decide the case, it would be proper in the fitment of justice to discuss the relevant provisions of the statute which are as under-

- CGST rates on goods as per [Notification No.1/2017-Central Tax (Rate), dated 28th June, 2017, as amended from time to time] ( as on 31.3.2021):-

S. No.	Sub-heading /Chapter / Heading/ Tariff item	Description of Goods	Rate
1	2	3	4
104	2303	Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets	2.5%

- CGST rates on goods as per [Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017, as amended from time to time]:-

S. No.	Sub-heading /Chapter / Heading/ Tariff item	Description of Goods	Rate
1	2	3	4
102	"2301,2302, 2308, <b>2309</b> "	"Aquatic feed including shrimp feed and prawn feed, poultry feed & <b>cattle feed</b> , including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake [other than rice-bran]"	NIL

5. Let us analysis the present case in the light of above legal provisions keeping in mind the facts and documents/information submitted by the applicant in this regard.
6. The case laws cited by the applicant are not applicable in this case as the facts are different from the present case.
7. On gone through the above Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017 (as amended from time to time), we are of the view that that relevant key element/ingredients of entry no. 102 of the said Notification are as under:-
  - 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]"
8. We find that entry no. 102 of the said Notification clarifies the picture of feeds, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake etc. As far as relevancy of term 'cattle feed' in the case, it is **opinioned** that DWGS (Distillers Wet Grain Solubles) cannot be categorized as cattle feed mere being slight valuable in the market and mere installation of huge machinery for its production. The items/description of goods falling under entry No. 102 is quite different from DWGS and only for the purpose of just availing the benefits of exemption under Notification No. 2/2017-Central Tax (Rate), dated 28th June, 2017, it cannot be termed as 'cattle feed'. Entry No. 102 of the said notification is separate entry and items pertaining to this entry do not fit in the frame as by-product or residue whatever name it called of brewery, generated during the process of manufacturing of alcohol.
9. Further, on gone through, we are of the view that relevant key element/ingredients of Entry No. 104 of the Notification No. 1/2017-Central Tax (Rate), dated 28th June, 2017, (as amended from time to time) are as under :-
  - Residues of starch manufacture and similar residues
  - brewing or distilling dregs and waste,
10. As per meaning provided in Wikipedia, the **Brewing** is the production of beer by steeping a starch source (commonly cereal grains, the most popular of which is barley/wheat) in water and fermenting the resulting sweet liquid with yeast.
11. In the instant case, it is fact that in the process of manufacturing of alcohol, the 'starch portion' present in the wheat grain is utilized through distillation process. Means 'starch present in the wheat grain' is being processed in brewery. Hence, main key element i.e. 'starch' is present here. Further, the applicant company is a kind of brewery where brewing or



distilling process are being undertaken. In the result of manufacturing process of alcohol, several residues, dregs and waste are come into picture.

12. As far as nature of DWGS (Distillers Wet Grain Solubles) is concern, it is nothing but brewing or distilling dregs and waste as it is come out in the picture as a result of brewing or distilling process.
13. As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beetpulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops; Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses). All these products remain classified in the heading whether presented in wet or dry.
14. In view of above, we find that DWGS (Distillers Wet Grain Solubles) is an inevitable outcome in the process of manufacturing of alcohol. Apart from nomenclature whether it is residue or by-product, we find that it is a kind of brewing or distilling dregs & waste and is classifiable under Chapter / Heading/Sub-heading / Tariff item 2303 of GST Tariff.
15. In view of the foregoing, we rule as follows: -

#### RULING

Question A: Whether in the facts and circumstances of the case elaborated in body of ground hereunder, DWGS is by-product or residues?


Answer A:- It is a kind of brewing or distilling dregs & waste.

Question B:- Whether "DWGS" is to be classified under Tariff Entry 2309 of GST Tariff?


Answer B:- No.

Question C:- Whether in the facts and circumstances of the case, "DWGS" which is sold as Cattle Feed in the Trade are to be classified under Tariff Entry 2309 of GST Tariff?

Answer C:- No. "DWGS" is to be classified under Chapter / Heading/Sub-heading / Tariff item 2303 of GST Tariff.

  
(J.P. MEENA) 25/10/2021  
MEMBER  
CENTRAL TAX



  
(M. S. KAVIA) 25/10/2021  
MEMBER  
STATE TAX

SPEED POST

M/s ADS AGRO INDUSTRIES PRIVATE LIMITED,  
SP 67, SKS Industrial Area,  
Reengus,  
Sikar- 332404, Rajasthan

F. No. AAR/AAIPL/2021-22/204-208

Date: 25/10/2021

Copy to: -

1. The Chief Commissioner, CGST and Central Excise, Jaipur Zone, NCRB, Statue Circle, Jaipur-302005 (Raj.).
2. The Commissioner, State Tax, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme-, Jaipur 302005.
3. The Commissioner, Central Tax, CGST and Central Excise Commissionerate, Alwar (Rajasthan).
4. The Deputy Commissioner, State Tax, Circle- B, Sikar, Sanwali Road, Near Dist Library, Sikar (Raj) INDIA 332001.