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# Issues and Challenges of GST on Packaged Commodities

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## ABSTRACT

*Since the implementation of GST, the intent of the central government is to widen the tax range by providing exemptions and bringing more Goods and Services into the tax network. Due to such reasons, there is a difference in the food-distributing industry. This is the first time that basic food commodities are being brought under the tax network with the provisions of packaged commodities. As per the Legal Metrology Act 2009 and the Legal Metrology (Packaged Commodities) Rules 2011s provision, a wholesale package qualifies as a packaged commodity and requires declarations under Rule 24 of the Legal Metrology (Packaged Commodities) Rules 2011. Whereas, the question that arises is that the joint observation of Rule 3 (a) read with Rule 24, gives the conclusion that the Legal Metrology Act 2009s provisions as an application to retail packages are also applicable to wholesale packages. Again, from the GST Act, the exemption to the wholesale package is not mentioned in the exemption notification, however, the question cites such an exemption.*

**Keywords:** Legal Metrology, Packaged Commodities, GST on Packaged Commodities, Consumer Protection.

## I. INTRODUCTION

GST enforcement on packaged commodities has been a subject matter of discussion amongst the trading post the 47th GST Council meeting held on July 2022. To resolve the ambiguity in interpreting various clauses pertaining to packaged commodities especially due to the enforcement of Legal Metrology (Packaged Commodity) Rules, 2011 and GST Notifications, basis the representations from the industries, the Central Board of Indirect Taxes and Customs also issued question on 17/07/2022. The Central Board of Indirect Taxes and Customs has been issuing notifications regularly, particularly in respect of food items like pulses, flour, cereals, etc. including the recent ones namely. Notification No. 6/2022-Central Tax (Rate) and Notification No. 7/2022-Central Tax (Rate), dated 13/07/2022. In this article, I would like to clarify the impact of the said change and related questions. The change so introduced the old

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provision is provided as per: Before 18/07/2022, i.e., before clarification and after clarification GST i.e. after 18/07/2022, applied on specified goods. When they were put up in a unit and when they were enforcing a registered brand name owner or when the brand name in respect of which an enforceable claim or actionable in a court of law is available. For suitable example commodities like pulses, cereals like rice, wheat, and flour etc., attracted GST at the rate of 5 per cent when branded and packed in unit packages. GST has been made applicable. To supply such packaged commodities attracting the provisions of the Legal Metrology Act 2009. Certain other food items such as Curd, Lassi, puffed rice, etc when packaged commodities would attract GST at the rate of 5 per cent. For example items like pulses, cereals like rice, wheat, and flour, etc., would attract GST when packaged commodities. Since the applicability of GST is linked with the term packaged commodities. It becomes very difficult to understand such terms. As per GST Law, packaged commodities mean a 'pre-packaged commodity' as defined in subsection (1) of Section 2 of the Legal Metrology Act, 2009. Subsection (1) of section 2 of the Legal Metrology Act reads as below: "Section 2(1) "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity.", On the basis of above definition it is clear that distribution of such packaged commodity having the following two relations would attract GST packaged commodities with proper declaration Such packages have declaration (where it is required to bear mandatory declarations under the provisions of Legal Metrology Act 2009 and the Rules made thereunder Such packages do not have declaration where it is not required to bear the declarations under the provisions of Legal Metrology Act 2009 and the Rules made thereunder. Further, from Legal Metrology (Packaged Commodities) Rules 2011 perspective, the provisions are divided into seven chapters.

As per the present question, it has further been clarified that: GST is applicable to the distribution of specific goods by any person or organization, such as the manufacturer supplying to the distributor, distributor distributing to the retailer, or retailer distributing to individual consumers and input tax credit shall be available to the person supplying the goods. As per Rule 3 (a) of Legal Metrology (Packaged Commodities) Rules 2011 and read with Rule 6, the package of these commodities such as cereals, pulses, flour, or any food items containing a quantity of more than 25 Kg/25 litres would not fall under the category of a packaged commodity for the purposes of GST and would therefore not attract GST. Rule 3(c) of Legal Metrology (Packaged Commodities) Rules 2011 has been mentioned below for reference:

## **II. PROVISIONS APPLICABLE TO PACKAGES INTENDED FOR RETAIL SALE. APPLICATION OF CHAPTER**

The provisions of this chapter shall not apply to-

- (a) packages of commodities containing a quantity of more than 25 kilograms or 25 litres;
- (b) cement, fertilizer, and agricultural farm produce sold in bags above 50 kilograms; and
- (c) packaged commodities meant for industrial consumers or institutional consumers.”

On the basis of the above, the distribution of packaged commodities for consumption by industrial consumers or institutional consumers, packages above 25 Kgs/litres. quantity and cement, fertilizer, and agricultural farm produce distributed in packages above 50 kgs are excluded from the packaged commodities rules and will not be considered packaged commodities. Therefore, such a category of commodities would not be taxable under GST law as well. Further, the condition of commodities being packed commodities should be always present to officially demand and collect tax. In other words, if the retailer distributed the commodities in loose quantity from packed commodities, then such sale by the retailer is not a distribution of packaged commodities for the purpose of GST tax. Multiple retail packages mean the wholesale packaged commodities sold or available for sale in a large pack to the ultimate consumer would also attract GST tax. Whereas a larger pack i.e., one individual package of commodities more than 25 kgs/litres would not be considered a packaged commodity for the purposes of GST tax. Even if rule 24 provides certain declarations, here the relevant provisions from Legal Metrology (Packaged Commodities) Rules 2011 are as follows:

“CHAPTER-II- Provisions Applicable to Packages Intended for Retail Sale Rule 4(2) When one or more packages intended for retail sale are grouped together for being sold as a retail package on a promotional offer, every package of the group shall comply with provisions of rule 6”

## **III. PROVISIONS APPLICABLE TO WHOLESALE PACKAGES RULE 24**

Declarations are applicable to be made on every wholesale package. – Every wholesale package shall bear thereon a legible, definite, plain, and conspicuous declaration as to –

- i. The name and address of the manufacturer or importer or where the manufacturer or importer is not the packer, of the packer;
- ii. the identity of the commodity contained in the package; and

- iii. the total number of the retail package contained in the wholesale package or the net quantity in terms of standard units of weights, measures, or a number of the commodity contained in the wholesale package; Provided that nothing in this rule shall apply in relation to a wholesale package if a declaration Similar to the declarations specified in this rule, is required to be made on such wholesale packages by or under any other law for the time being in force.”

To describe the above questions better, I have to clarify the applicability and enforceability of the Legal Metrology Act 2009 & the GST Act on specified Packed Commodities in the following manner as below:

As per the Legal Metrology Act 2009s provision, a wholesale package qualifies as a packaged commodity and requires declarations under Rule 24 of the Legal Metrology (Packaged Commodities) Rules 2011. Whereas, the question that arises is that the joint observation of Rule 3 (a) read with Rule 24, gives the conclusion that the Legal Metrology Act 2009s provisions as an application to retail packages are also applicable to wholesale packages. Again, from the GST Act, the exemption to the wholesale package is not mentioned in the exemption notification, however, the question cites such an exemption. Could it be mentioned that in so far as the question provides an exemption to wholesale packs, is it going beyond what is envisaged in the Legal Metrology Act 2009?

Since the implementation of GST, the intent of the central government is to widen the tax range by providing exemptions and bringing more Goods and Services into the tax network. Due to such reasons, there is a difference in the food distributing industry. The implementation of this taxability put the common man in difficulty. The common man will be directly hit by this enforcement of exemption. Grocery traders would certainly prefer selling commodities in loose quantities as against the packed commodities, ones for the reason of being competitive and avoiding taxes. Whereas, this could have certain non-tax implementations, fraudulent weight systems, and quality of food items. Moreover, small traders dealing in unbranded food commodities should bear a brunt of this unfair decision. To date, they did not have to obtain registration under GST and conduct compliance. However, with this change, it will be mandatory to obtain registration under GST. From a GST tax point of view, Section 14 of the CGST Act, 2017 needs to be changed. This section prescribes the time of supply in cases where there is a change in the rate of tax on specified goods and or services. While the Government has issued questions in this matter, some points still require clarification. Moreover, as time shall pass, the industry would face practical challenges and would have to approach the ministry for the same. Nonetheless, since the official demand and collection tax is in force now.

The biggest and most famous slogan of Indian sociology is 'Roti, Kapda aur Makaan'. Till today the government has taxed clothes and houses. However, food or essential food ingredients remained outside the purview of GST. This is the first time that basic food commodities are being brought under the tax network with the provisions of packaged commodities.

**(A) Rice mills, Dal Mills, and Food grain Packers switch to packing 26-30 kg bags to avoid 5% GST**

After the implementation of GST, each 25 kg bag of food grains became costlier by Rs 100 to Rs 150 as per the quality of food grain. With this, each kg of rice gets dearer by Rs 2 to 3. Therefore, to reduce this tax burden on people, rice mills have switched over to 26 kg bags.

The following change has been made with respect to packaged commodities with effect from 18/07/2022.

The Ministry of Consumer Affairs, Food, and Public Distribution (Department of Consumer Affairs) with notification, on 14th July 2022 G.S.R. 577(E).—In exercise of the powers conferred by sub-section (1), read with clauses (j) and (q) of sub-section (2), of section 52 of the Legal Metrology Act, 2009 (1 of 2010), the Central Government hereby makes the following rules further to amend the Legal Metrology (Packaged Commodities) Rules, 2011, namely:-

(1) These rules may be called the Legal Metrology (Packaged Commodities) (Second Amendment) Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette. 2. In the Legal Metrology (Packaged Commodities) Rules, 2011, in rule 6,- 3 (a) in sub-rule (1),-

(i) in clause (a), before Explanation the following proviso shall be inserted, namely:- "Provided that in the case of an electronic product which is manufactured or packed or imported after the 15th July 2022, the package of such product shall, for a period of one year from such date, declare the name of the manufacturer or packer or importer, as the case may be, on the package itself and such declaration shall also inform the consumers to scan the QR code for the address and other related information, in case such information is declared through the QR Code and not declared on the package itself;

(ii) in clause (b), the following proviso shall be inserted, namely:- "Provided that in the case of an electronic product which is manufactured or packed or imported after the 15th July 2022, the package of such product shall, for a period of one year from such date, inform the consumers to scan the QR code for the common or generic name of the commodity and where such package contains more than one product, then for the name and number or quantity of each product, in

case such information is declared through the QR Code and not declared on the package itself”; (iii) in clause (f), the following proviso shall be inserted, namely:- “Provided that in the case of an electronic product which is manufactured or packed or imported after the 15th July 2022, the package of such product shall, for a period of one year from such date, inform the consumers to scan the QR code for the size and dimension of the commodity, in case such information is declared through the QR Code and not declared on the package itself”; (b) in sub-rule (2), the following proviso shall be inserted, namely:- “Provided that in the case of electronic product, which is manufactured or packed or imported after the 15th July 2022, the package of such product shall, for a period of one year from such date, declare the telephone number and e-mail address, on the package itself and such declaration shall also inform the consumers to scan the QR code for other related information in case such information is declared through the QR Code and not declared on the package itself.”.

The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide G.S.R. number 202 (E), dated the 7th March 2011, and was last amended vide notification number G.S.R. 226 (E), dated the 28th March 2022.

F. No. 190354/172/2022-TRU Government of India Ministry of Finance Department of Revenue (Tax Research Unit) Dated the 17th July 2022, New Delhi Subject: Questions on GST applicability packaged commodities

The changes relating to the GST tax rate, in pursuance of recommendations made by the GST Council in its 47th meeting, are coming into enforcement from 18/07/2022. One such change is implementing from the imposition of GST on packaged commodities when bearing a registered brand or brand owners in respect of which an actionable claim or enforceable right in a court of law is available to the imposition of GST on such packaged commodities when packaged commodities prints their labels. Certain representations have been received seeking clarification on the scope of this change, particularly in respect of food items like pulses, flour, cereals, etc. as has been notified vide notification No. 6/2022-Central Tax Rate, dated the 13th of July, 2022, and the corresponding notifications for SGST and IGST.

These issues are clarified in the form of Frequently Asked Questions as below:

Question 1. What change has been made with respect to packaged and labelled commodities with effect from the 18th of July 2022?

Clarification - Prior to 18/07/2022, GST applied on specified goods when they were put up in a unit container and were bearing a registered brand name or were bearing a brand name in respect of which an actionable claim or enforceable right in a court of law is available. With

effect from 18/07/2022, this provision undergoes a change and GST has been made applicable on the supply of such packaged commodities attracting the provisions of the Legal Metrology Act 2009, as detailed in subsequent questions. For S. No Question Clarification example, items like pulses, cereals like rice, wheat, and flour, etc., earlier attracted GST at the rate of 5% when branded and packed in unit packages. With effect from 18/7/2022, these items would attract GST when they become packaged. Additionally, certain other items such as Curd, Lassi, puffed rice, etc. when packaged, would attract GST at the rate of 5 per cent with effect from 18/07/2022. Essentially, this is a change in modalities of imposition of GST on branded specified goods to packaged commodities of food items. (Please refer to Notification No. 6/2022-Central Tax (Rate) and corresponding notification under respective SGST Act, IGST Act)

Question 2 - What is the scope of 'pre-packaged and labelled' for the purpose of GST levy on food items like pulses, cereals, and flours?

Clarification - For the purposes of GST, the expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (1) of section 2 of the Legal Metrology Act, 2009, where the package in which the commodity is prepacked, or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act and the rules made thereunder. Clause (1) of section 2 of the Legal Metrology Act reads as below: (1) "pre-packaged commodity" means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a predetermined quantity. Thus, the supply of such specified commodity having the following two attributes would S. No Question Clarification attract GST: (i) It is pre-packaged, and (ii) It is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder. However, if such specified commodities are supplied in a package that do not require declaration(s)/compliance(s) under the Legal Metrology Act, 2009 (1 of 2010), and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy In the context of food items (such as pulses, cereals like rice, wheat, flour etc), the supply of specified pre-packaged food articles would fall within the purview of the definition of 'pre-packaged commodity' under the Legal Metrology Act, 2009, and the rules made thereunder, if such pre-packaged and labelled packages contained a quantity up to 25 kilograms [or 25 litres] in terms of rule 3(a) of Legal Metrology (Packaged Commodities) Rules, 2011, subject to other exclusions provided in the Act and the Rules made thereunder.

Question 3 - What is the scope of this coverage taking into account various exclusion(s)



provided under the Legal Metrology Act and the rules made thereunder?

Clarification - For such commodities (food items- pulses, cereals, flour, etc.), rule 3 (a) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011, prescribes that package of commodities containing a quantity of more than 25 kg or 25 litre do not require a declaration to be made under rule 6 thereof. Accordingly, GST would apply on such specified goods where the pre-packaged commodity is supplied in S. No Question Clarification packages containing a quantity of less than or equal to 25 kilograms. Illustration: Supply of pre-packed atta meant for retail sale to the ultimate consumer of 25 Kg shall be liable to GST. However, supply of such a 30 Kg pack thereof shall be exempt from levy of GST. Thus, it is clarified that a single package of these items [cereals, pulses, flour, etc.] containing a quantity of more than 25 Kg/25 litre would not fall in the category of a pre-packaged and labelled commodity for the purposes of GST and would therefore not attract GST.

Question 4 - Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?

Clarification - Yes, if several packages intended for retail sale to the ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such packages may be sold by a manufacturer through a distributor. These individual packs of 10 Kg each are meant for eventual sale to retail consumers. However, a package of saying rice containing 50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on the such wholesale package.

Question 5 - At what stage would GST apply on such supplies, i.e., whether GST would apply to specified goods sold by the manufacturer/producer to the wholesale dealer who subsequently sells them to a retailer?

Clarification - GST would apply whenever a supply of such goods is made by any person, i.e. manufacturer supplying to the distributor, distributor/dealer supplying to the retailer, or retailer supplying to the individual consumer. Further, the manufacturer/wholesaler/retailer would be entitled to input tax credit on GST charged by his supplier in accordance with S. No Question Clarification of the Input Tax Credit provisions in GST. A supplier availing threshold exemption or composition scheme would be entitled to exemption or composition rate, as the case may be, in the usual manner.

Question 6 - Whether tax is payable if such goods are purchased in packages of up to 25 kg/25

liters by a retailer, but the retailer sells it in loose quantities in his shop for any reason?

Clarification - GST applies when such goods are sold in pre-packaged and labelled packs. Therefore, GST would apply when the pre-packaged and labelled package is sold by a distributor/ manufacturer to such a retailer. However, if for any reason, the retailer supplies the item in loose quantity from the such package, such supply by the retailer is not a supply of packaged commodity for the purpose of GST levy.

Question 7 - Whether tax is payable if such packaged commodities are supplied for consumption by industrial consumers or institutional consumers?

The supply of packaged commodities for consumption by industrial consumers or institutional consumers is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such a manner as to attract exclusion provided under the said rule 3(c), it will not be considered pre-packaged and labelled for the purposes of GST levy.

Question 8 - 'X' is a rice miller who sells packages containing 20 kg rice but does not make the required declaration under the Legal Metrology Act and the Rules made thereunder(although the said Act and the rules require him/her to make a declaration), would it still be considered as pre-packaged and labelled and therefore be liable to GST?

Clarification - Yes, such packages would be considered as pre-packaged and labelled commodities for the purposes of GST as it requires making a declaration under the Legal Metrology (Packaged Commodities) Rules, 2011 (rule 6 thereof). Hence, miller 'X' would be required to pay GST on the supply of such package(s).

Question 9 - Any other relevant issue?

Clarification - The Legal Metrology Act and the rules made S. No Question Clarification thereunder prescribe criterion(s) for exclusion (as stated above) and provides certain exemptions under rule 26 of Legal Metrology (Packaged Commodities) Rules, 2011. It is reiterated therefore that, if supplied in such a manner as to attract exclusion or such exemption, the item shall not be treated as pre-packaged commodities for the purposes of GST levy.

#### **IV. IMPACT OF GST ON UNSOLD STOCK OF PRE-PACKAGED COMMODITIES**

The above-mentioned subject and to state that in the exercise of the powers conferred by rule 33 (1) of the Legal Metrology (Packaged Commodities) Rules, 2011 the central government hereby permits the manufacturers or packers or importers of pre-packaged commodities to declare the revised retail sale price (MRP) on the unsold stock manufactured /packed/imported

prior to revision of GST, after inclusion of the applicable/ increased amount of tax or after reducing the reduced amount of tax due to GST, if any, in addition to the existing retail sale price (MRP) up to 31st January 2023 or till such date the stock is exhausted, whichever is earlier. Declaration of the changed retail sale price (MRP) shall be made by way of stamping or putting sticker or online printing, as the case may be, after complying with the following conditions:

- i. The difference between the retail sale price originally printed on the package and the revised price shall not, in any case, be higher than the extent of the increase in the tax, if any, or in the case of imposition of the fresh tax, such fresh tax, on account of implementation of GST Act and Rules. In the case of a reduction of tax, the revised price shall not, in any case, be higher than the extent of the price after the deduction of tax, if any.
- ii. The original MRP shall continue to be displayed and the revised price shall not overwrite it.
- iii. Manufacturers or packers or importers shall make at least two advertisements in one or more newspapers in this regard and also by the circulation of notices to the dealers and to the Director of Legal Metrology in the central Government and Controllers of Legal Metrology in the states and Union Territories, indicating the change in the price of such packages.

It is also clarified that any packaging material or wrapper which could not be exhausted by the manufacturer or packer or importer prior to the revision of GST, may be used for the packing of material up to 31st January 2023 or till the such date the packing material or wrapper is exhausted, whichever is earlier after making corrections required in retail sale price (MRP) on account of implementation of GST by way of stamping or putting sticker or online printing as the case may be.

To circumvent the 5 per cent Goods and Service Tax (GST) on 25 kg rice bags, which would cost an additional Rs 50 and more, rice mills have begun to roll out 26 kg bags.

“After the implementation of GST, each 25 kg of rice bag became costlier by Rs 100 to Rs 150 depending upon the quality. With this, each kg of rice gets dearer by Rs 2 to 3. Therefore, to reduce this tax burden on people, rice mills have switched over to 26 kg bags”, said KCM Duraisamy, vice president of the Federation of Tamil Nadu Rice Mill Owners and Paddy-Rice Dealers Association.

As per the Legal Metrology Act, the millers were earlier mandated to sell only 25 kg bags or rather increase the weight by 5 kg. But these rules have now been relaxed to enable sale in any

weight. Though increasing the weight by 1 kg for 25 kg bags might have saved some money for consumers, who buy in bulk, many still prefer either 5 kg or 10 kg packs. They are, however, forced to pay extra for the GST.

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