

Understanding the linkage of GST exemption with the Legal Metrology Act, 2009 provisions-

Vide Notification No. 07/2022-CGST (R) dated 13.07.2022 w.e.f. 18.07.2022 many entries in the Exempted list of goods under GST have seen change in the conditions of exemption i.e. from the concept of brand name to the concept of pre packaged and labelled commodities as per the Legal Metrology Act, 2009 provisions and where the package is required to bear the declaration under the provisions of the above act.

The following HSN wise list of goods will be effected i.e. the same would become taxable in case the same is sold in pre packed and labelled form:

HSN	Description	Rate
0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	Meat and edible meat offal	5%
0303, 0304, 0305, 0306, 0307, 0308, 0309	Fish and crustaceans, molluscs and other aquatic invertebrates	5%
0403	Curd; Lassi; Butter milk	5%
0406	Chena or paneer	5%
0409	Natural honey	5%
0504	Guts, Bladders And Stomachs Of Animals(Other Than Fish), Whole And Pieces Thereof, Fresh, Chilled, Frozen, Salted, In Brine, Dried Or Smoked	5%
0713	Dried leguminous vegetables, shelled, whether or not skinned or split	5%
0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets	5%
08	Dried makhana, whether or not shelled or peeled	5%
1001	Wheat and meslin	5%
1002	Rye	5%
1003	Barley	5%
1004	Oats	5%
1005	Maize Corn	5%
1006	Rice	5%
1007	Grain sorghum	5%

1008	Buckwheat, millet and canary seed; [other cereals such as Jawar, Bajra, Ragi]	5%
1101	Wheat or meslin flour	5%
1102	Cereal flours other than of wheat or meslin, [maize (corn) flour, Rye flour, etc.]	5%
1103	Cereal groats, meal and pellets	5%
1105	Flour, powder, flakes, granules or pellets of potatoes	5%
1106	Flour, of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 1106 10 90], of sago or of roots or tubers of heading 0714 or of the products of Chapter 8 i.e. of tamarind, of singoda, mango flour, etc.	5%
1701 or 1702	Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar	5%
1904	Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki	5%
2009 89 90	Tender coconut water	12%
3101	Animal or vegetable fertilisers, whether or not Mixed together or chemically treated; fertilisers produced by the mixing or chemical treatment of animal or vegetable products and organic manure	5%
53	Coir pith compost	5%

Thus, one needs to now see to the various rules and regulations governing the pre packaged and labelled goods under the Legal Metrology Act, 2009.

As per Section 2(l) of the Legal Metrology Act, 2009, **“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”.**

As per Section 2(f) of the Legal Metrology Act, 2009 **“label” means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity;**

Sec 18. Declarations on pre-packaged commodities.— No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

(2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

Relevant Rules

3. Application of Chapter.—The provisions of this chapter shall not apply to—(a) packages of commodities containing quantity of more than 25 kilogram or 25 litre;

(b) cement, fertiliser and agricultural farm produce sold in bags above 50 kilogram; and

(c) packaged commodities meant for industrial consumers or institutional consumers.]

[(bb) “industrial consumer” means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration ‘not for retail sale’;

[(bc) “institutional consumer” means the institution which buys packaged commodities bearing a declaration ‘not for retail sale’, directly from the manufacturer or from an importer or from wholesale dealer for use by that institution and not for commercial or trade purposes;]

(k) “retail package” means the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and includes the imported packages:

[* * *]

[Provided that for the purposes of “retail food package”, the definition of the same contained in the rules or regulations made under the Food Safety and Standards Act, 2006 (34 of 2006) shall apply.]

(l) “retail sale”, in relation to a commodity, means the sale, distribution or delivery of such commodity through retail sales shops, agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer;

(m) “retail sale price” means the maximum price at which the commodity in packaged form may be sold to the consumer inclusive of all taxes;]

(p) “standard package” means a package containing the specified quantity of a commodity;

(q) “wholesale dealer” in relation to any commodity in packaged form means a dealer who does not directly sell such commodity to any consumer but distributes or sells such commodity through one or more intermediaries;

(r) “wholesale package” means a package containing—

(i) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or

(ii) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in similar quantities; or

(iii) packages containing ten or more than ten retail packages provided that the retail packages are labelled as required under the rules.

4. Regulation for pre-packing and sale etc. of commodities in packaged form.— [(1)] On and from the commencement of these rules, no person shall prepack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label is securely affixed thereto, such declarations as are required to be made under these rules.

[(2)] When one or more packages intended for retail sale are grouped together for being sold as a retail package on promotional offer, every package of the group shall comply with provisions of Rule 6.]

Explanation.—The existence of packages without the declaration of retail sale price within the manufacturer's premises shall not be construed as a violation of these rules and it shall be ensured that all packages leaving the premises of manufacturer for their destination shall have declaration of retail sale price on them as required in this rule

6. Declarations to be made on every package.—(1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as, to—

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned.

Explanation I.—If any name and address of a company is mentioned on the label without any qualifying words ‘manufactured by’ or ‘packed by’, it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly;

Explanation II.—If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label, in the first place and not against all of them.

[Explanation III.—In respect of packages containing food articles, the provisions of this clause shall not apply, but the provisions of, and the requirements specified in the Food Safety and Standards Act, 2006 (34 of 2006) and the rules made thereunder shall apply;]

[(aa) The name of the country of origin or manufacture or assembly in case of imported products shall be mentioned on the package;]

(b) The common or generic names of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be mentioned on the package.

(c) The net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package shall be mentioned.

(d) The month and year in which the commodity is manufactured [* * *] shall be mentioned in the package:

Provided that for packages containing food articles, the provisions of the [Food Safety and Standards Act, 2006 (34 of 2006)] and the rules made thereunder shall apply:

Provided further that nothing in this sub-clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of the Seeds Act, 1966 (54 of 1966) and the rules made thereunder:

[* * *]

Provided also that for packages containing cosmetics products, the provisions of the Drugs and Cosmetics Rules, 1945 shall apply.

[(da) If a package contains a commodity which may become unfit for human consumption after a period of time, the 'best before or use by the date, month and year' shall also be mentioned on the label:

Provided that nothing in this clause shall apply if a provision in this regard is made in any other law.

26. Exemption in respect of certain packages.—Nothing contained in these rules shall apply to any package containing a commodity if—

(a) the net weight or measure of the commodity is ten gram or ten millilitre or less, if sold by weight or measure:

[* * *]

[Provided that the provisions of this clause shall not be applicable for tobacco and tobacco products.]

(b) any package containing fast food items packed by restaurant or hotel and the like;

[(c) it contains scheduled formulations and non-scheduled formulations covered under the Drugs (Price Control) Order, 2013, made under Section 3 of the Essential Commodities Act, 1955 (10 of 1955):

Provided that no exemption shall be applicable to medical devices declared as drugs.]

(d) [* * *]

[(e) any thread which is sold in coil to handloom weavers.]

SKKA COMMENTS

From the above legal provisions, it can be seen that if the goods in the table *supra* are sold in pre-packaged form then GST @ 5/12% will be applicable on the same.