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UPDATES ON GOODS AND SERVICES TAX

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2022

The fifth anniversary of the introduction of the GST fell on the 28th and 29th of June 2022, the day of the 47th GST Council meeting. The discussions of the GST Council focused on the reports tabled by various Group of ministers on recommendations to rationalize GST rates to remove inverted duty structure; pruned certain list of exemptions; to clarify certain issues around the tax rates to bring uniformity; to implement measures to streamline GST compliances and promote trade facilitation.

Discussion related to report on taxability of casinos, horse racing, betting etc. They were given 15 days more and next GST council in August 22, would discuss the final taxability on these items. However, it is very important that the GST council in principle has agreed the fact that whether it is online gaming of betting, casinos, or horse racing they are a form of gambling. Therefore, the tax would be charged accordingly.

A report on the intra-state movement of precious metals like gold and silver was another subject of discussion. The GST Council has determined that the laws governing the movement of precious metals, such as requiring drivers to have Aadhar cards and e-way bills, would be set by the individual states.

The notification no: 03/2022, - Central Tax (Rate) to notification no: 11/2022, - Central Tax (Rate) which notifies the decision taken in the council meeting came in to force from 18th July 2022.

THRUST POINTS

There are major impacts in Food industry with the notification issued. Some of the daily used commodity will attract GST.

For example, some of the daily household items like pulses, cereals like rice, wheat and flour etc. earlier attracted at 5% when branded and packed in unit container W.e.f. July 18, 2022, these items would attract GST when "pre-packaged and labelled". Additionally, certain other items such as Curd, Lassi, puffed rice etc., when "pre-packaged and labelled".

There are two types of exemptions under GST law:

- **Where the product itself is exempt without any conditions**

The products without any condition are exempted vide notification.

For certain goods – now condition has been imposed for the exemption and these products are pushed towards the second set.

- ▶ Curd, Lassi, Buttermilk.
- ▶ Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Suga.

- **Where the product is exempt subject to certain conditions**

a. Condition are as follows:

- i. Not in unit container or
- ii. Unit container without any brand name or
- iii. Unit Container with brand but brand was not enforced (or given up).

The existing set of conditions for gaining the exempt status for notified daily household items were as follows:

Packed in Unit Container	Whether Branded	Earlier Tax status
Yes	No	Exempt
Yes	Yes - Given Up	Exempt
Yes	Yes - Not Given Up	Taxable
No	No	Exempt
No	Yes - Given Up	Exempt
No	Yes - Not Given Up	Exempt

Now, after the recent notification, the condition is that the products will be exempt only if they are other than prepackaged and labelled. 'Prepackaged' here means those goods which are packaged when the customer is not present. Labelled means the labelling requirements as per the Legal Metrology Act. It is to be noted that the Legal Metrology Act and Package Commodity rules are not applicable for industrial/institutional customers or if the package weight is more than 25 kg (or liters). And Cement and fertilizers are ignored for the purpose of this circular

So, a simple test can be tabulated as follows for checking whether exemption is available:

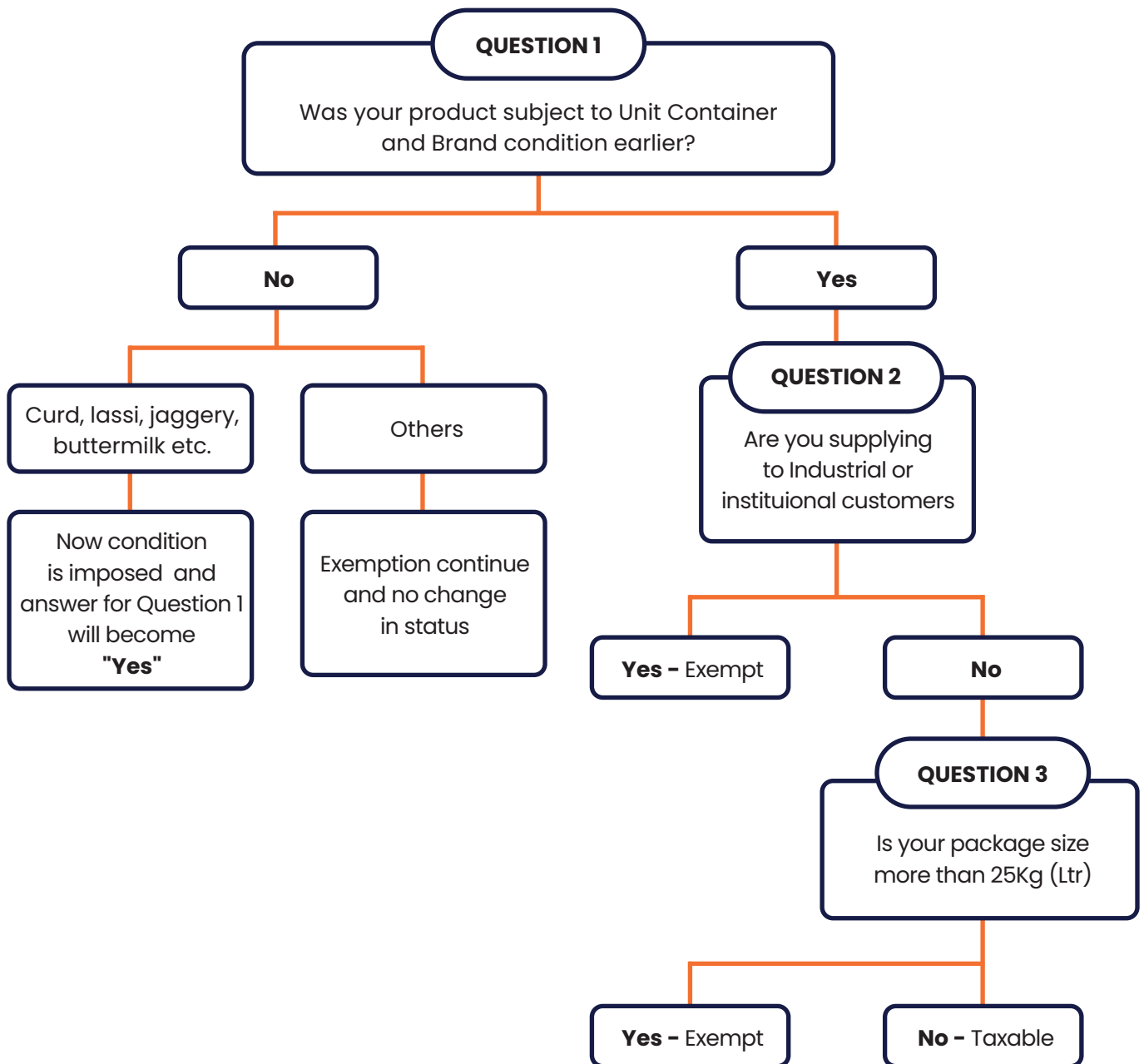
Whether Pre-packaged	Legal Metrology Act Requirement	Result
Yes	Yes	Taxable
Yes	no	Exempt
No	Yes	Exempt
No	no	Exempt

However, if such specified commodities are supplied in a package that do not require declaration(s)/compliance(s) under the Legal Metrology Act, 2009, and the rules made thereunder, the same would not be treated as pre-packaged and labelled for the purposes of GST levy.

The detailed impact of this can be seen as follows:

Whether pre-packaged	Customer	Package size	Status
No	Industrial or Institution	25 Kg (Itr) or Less	Exempt
No	Industrial or Institution	More than 25kg (Itr)	Exempt
No	Others	25 Kg (Itr) or Less	Exempt
No	Others	More than 25kg (Itr)	Exempt
Yes	Industrial or Institution	25 Kg (Itr) or Less	Exempt
Yes	Industrial or Institution	More than 25kg (Itr)	Exempt
Yes	Others	25 Kg (Itr) or Less	Taxable
Yes	Others	More than 25kg (Itr)	Exempt

The entire information above can be summarized in the following chart:



Impact:

i) Earlier, if brand name given up (Non Branded products), then it was exempt. Now retail packages shall attract GST even if it is unbranded. For example, if a local shop buys goods in bulk from the market and packages it without the customer being present, it will attract GST if the quantity is not more than 25kg/litre.

ii) Earlier, Chena or paneer which was put up in Unit Container (say 5 Kgs) and supplied to Industrial consumers were also taxable if the same was sold under a 'Brand'. Now, since supply to Industrial consumers are not covered under the Package Commodity Rules, it will not be considered as pre-packaged and labelled and hence shall now enjoy the exemption.

Accordingly, instead of focusing on the packaging and brand, the focus should now shift to who the customer is and the weight of the package. For instance, if Rice is sold in 26Kg packs for a retail customer, then the same shall enjoy the exemption under GST.

Other Key GST rate changes of goods and services.

For Goods:

Increase in tax rates for the following Items:

S.No	Description	From	To
1.	Printing, writing or drawing ink	12%	18%
2.	Power-driven pumps Eg- Bicycle pumps, submersible pumps, deep tube-well turbine	12%	18%
3.	LED lights, lamps, fixtures and metal printed circuit board	12%	18%
4.	Drawing and marking out instruments	12%	18%
5.	Solar water heater and system	5%	12%
6.	Prepared/finished/chamois/composition leather	5%	12%
7.	Tetra pak (aseptic packaging paper)	12%	18%
8.	Cut and polished diamonds	0.25%	1.5%
9.	Cheques, lose or in book forms	Nil	18%
10.	Petroleum, coal bed methane and	5%	12%
11.	E-waste	5%	18%

Decrease in tax rates for the following items:

S.No	Description	From	To
1.	Orthopedic appliances	12%	5%
2.	Ostomy appliances	12%	5%
3.	IGST on specified defence items imported by private entities when end user is the defence forces.	Applicable rate	Nil

For Services:

Increase in tax rates for the following Items:

S.No	Description	From	To
1.	Job work related to manufacturing of leather goods and footwear.	5%	12%
2.	All work contracts except land filling contracts and offshore work contracts related to Oil and Gas.	12%	18%
3.	Work contracts supplied to central and state governments, union territories, and local authorities involving predominantly earthwork and sub-contracts thereof.	5%	12%
4.	Work contracts supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, hospitals etc.	12%	18%

Decrease in tax rates for the following items:

S.No	Description	From	To
1.	Transport of goods and passengers by ropeways.	18%	5%
2.	Renting of truck/goods carriage where fuel cost is included if ITC is utilized.	18%	12%

- ▶ Transport of passengers, with or without accompanied belongings by ropeways taxable at the rate of 5% if no ITC utilized,
- ▶ Transport of goods by ropeways attract GST at the rate of 5% if ITC not utilized
- ▶ Amendments in GTA taxability as follows

Situation	Before	After
Services provided by a goods transport agency, by way of transport in a goods carriage of		
i) Goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;	Exempt	Taxable
ii) Goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;	Exempt	Taxable

Rationalisation of GST exemption on services

Situation	Before	After
Hotel rooms priced up to Rs 1000/day	Exempt	Taxable @ 12%
Transportation of passengers by air from Bagdogra and NE states	Exempt	Exemption restricted to economy class alone
Transportation by rail or a vessel of railway equipment and material	Exempt	Exemption withdrawn
Storage or warehousing of commodities that attract tax (nuts, spices, cotton, etc)	Exempt	Exemption withdrawn
Services by RBI, IRDA, SEBI, FSSAI and GSTN	Exempt	Exemption withdrawn
Fumigation in a warehouse of agricultural produce	Exempt	Exemption withdrawn
Renting of residential dwelling to registered persons	Exempt	Exemption withdrawn
Services provided by the cord blood banks by way of preservation of stem cells	Exempt	Exemption withdrawn

- ▶ Common bio-medical waste treatment facilities for treatment or disposal of bio medical waste to be taxed at 12% to allow them ITC.
- ▶ Room rent (excluding ICU) exceeding INR. 5000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% without ITC.
- ▶ Tax exemption on training or coaching in recreational activities relating to arts or culture, or sports is being restricted to such services when supplied by an individual.

GST Council allowed amendments in GSTR-3B (Monthly GST return for taxpayers). Further, it permitted auto-population of most details in Form GSTR-3B and annual returns in Form GSTR-9 for better compliance and ease in compliance.

GSTR-9 to continue with some relaxations and modifications for better reporting

GSTR-9 and GSTR-9A continue to not be applicable to those who have turnover below Rs 2 crore for FY 2021-22. The limitation under Section 73 of the CGST Act for FY 2017-18 for issuance of orders relating to demands linked with the due date of annual return, is extended till 30th September 2023. The GST Council may propose changes to Form GSTR-3B and its reporting. The move aims to fasten the Input Tax Credit (ITC) settlement wherever genuine while restrain any fake ITC claims. As per the sources, the revised GSTR-3B format would allow reporting of gross ITC available for claims to the taxpayer, the ITC claimed during the tax period and the net ITC in the electronic credit ledger of the tax payer. Late fee for delayed filing of GSTR-4 for FY 2021-22 extended up to 28th July 2022. CMP-08 (used to declare the details or summary of self-assessed tax which is payable for a given quarter by taxpayers who are registered as composition taxable person) deadline for April-June 2022 extended up to 28th July 2022.

Relief to E-commerce suppliers

GST council agreed to ease compliance for e-commerce suppliers. It allowed them to register under the composition scheme for intrastate supplies easing their registration inconvenience and for reducing the tax outlay. The new composition scheme for e-commerce suppliers for intrastate online sales will be implemented on 1st January 2023 once the IT system is set up. It means that such intrastate e-commerce will no longer need to obtain mandatory GST registration if their turnover does not exceed the limit of Rs 40 lakhs (goods) or Rs 20 lakhs (services) or such lower limits defined for some states/UTs. Interstate suppliers on e-commerce platforms shall have to obtain registration irrespective of turnover, compulsorily.

Other important discussion on 47th GST Council Meeting

More information will be provided regarding the use of funds in electronic credit ledgers and electronic cash ledgers to pay output tax obligations due in returns. These funds cannot be used to settle fines, late fees or interest. After a thorough analysis of its structure, the GST Council will convene a GoM to discuss the possibility of establishing GST Appellate Tribunals. By tolerating the two-year COVID period from March 1, 2020, to February 28, 2022 the GST Council approves a relief from the requirement to file refund claims, they resolve to disregard the two-year window and allow tax officials to appeal incorrect reimbursements. Refund requests for exports of power and some items with a reduced price are made simpler by using an inverted tax structure. In order to identify the non-complaint tax payers early on and take appropriate action to reduce revenue losses, GST Network may set up AI/ML based systems to cross-check the GST registration of applicants and improve risk-based monitoring of their behavior after registration. After careful consideration, it was decided to postpone the implementation of the GST margin system for tour operators.

Key clarifications relating to GST rate on goods and services

- ▶ Electric vehicles whether or not fitted with a battery pack, eligible for the concessional GST rate of 5%.
- ▶ Services in the form of assisted reproductive technology, IVF covered under the definition of health care services for the purpose of exemption under GST.
- ▶ Services associated with transit cargo both to and from Nepal and Bhutan to be covered under relevant entry of exemption notification.
- ▶ Sale of land after leveling, laying down of drainage lines etc. is a sale of land and would not attract GST.
- ▶ Sewage treated water is exempted from GST.
- ▶ Renting of motor vehicles for transport of passenger to a body corporate for a period is taxable in the hands of body corporate under reverse charge.
- ▶ Activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%.
- ▶ Sale of land after leveling, laying down of drainage lines etc. is sale of land and does not attract GST.
- ▶ Allowing choice of location of a plot is a supply of long term lease of the plot of land; therefore, location charge or preferential location charge are part of consideration charged for long-term lease of land and shall get the same treatment under GST.

Other Miscellaneous Changes

- ▶ All taxable service of department of posts would be subject to forward charge. Hitherto certain taxable services of department of post were taxed on RCM basis.
- ▶ Goods transport agency (GTA) is being given option to pay GST at 5% or 12% under forward charge; option to be exercised at the beginning of financial year. RCM option to continue.
- ▶ Service provided by Indian tour operator to a foreign resident for a tour partially in India and partially outside India is to be subject to tax proportionate to the tour conducted in India for such foreign tourist subject to conditions that this concession does not exceed half of tour duration.

Recommendations relating to GST law and procedure

- ▶ Retrospective amendment in section 50(3) of CGST Act, with effect from 01 July 2017, to provide that interest will be payable on the wrongly availed ITC only when the same is utilized.
- ▶ If any operator discovers any omission or incorrect information in any TCS return therein, he shall correct such omission or incorrect information in the statement to be provided for the month during which such omission or incorrect information is noticed, subject to payment of interest u/s 50(1), no rectification shall be allowed after the 30th day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.
- ▶ Exemption from filing annual return in FORM GSTR-9/9A for FY 2021-22 to be provided to taxpayers having Aggregate Annual Turnover (AATO) up to INR 2 Crores.
- ▶ The late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2021-22 under section 47 of the said Act shall stand waived for the period from the 1st day of May 2022 till the 28th day of July 2022.
- ▶ Time period from 01 March 2020 to 28 February 2022 to be excluded from calculation of the limitation period for filing refund claim by the taxpayer under section 54 and 55 of CGST Act, as well as for issuance of demand/order (by proper officer) in respect of erroneous refunds under section 73 of CGST Act. Further, limitation under section 73 for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, to be extended till 30 September 2023.
- ▶ Provision for automatic revocation of suspension of registration in cases where suspension of registration was done for non-compliance in terms of continuous non-filing of specified number of returns once all the pending returns are filed on the portal by the taxpayer.
- ▶ Explanation 1 after rule 43 of CGST Rules to be amended to provide that there is no requirement of reversal of ITC for exempted supply of duty credit scrips by the exporters.
- ▶ Re-credit of amount in electronic credit ledger to be provided in those cases where erroneous refund amount sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of rule 96(10) of the CGST Rules, is deposited by him along with interest and penalty, wherever applicable. A new FORM GST PMT-03A is introduced for the same. This will enable the taxpayers to get re-credit of the amount of erroneous refund, paid back by them, in their electronic credit ledger.

- ▶ UPI & IMPS to be provided as an additional mode for payment of GST to taxpayers.
- ▶ Amendment in sub-section (10) of section 49 of CGST Act to provide for transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person.
- ▶ Comprehensive changes in Form GSTR-3B proposed, which would be placed in the public domain for seeking inputs/suggestions of stakeholders.
- ▶ If return filed after the due date as per section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50. I.e: Interest will not be charged on the liability paid using electronic credit ledger.
- ▶ In respect of refunds pertaining to supplies to SEZ developer/unit, an explanation to be inserted in rule 89(1) of CGST Rules to clarify that “specified officer” under the said sub-rule shall mean the “specified officer” or “authorized officer”, as defined under SEZ Rules, 2006.
- ▶ Amendment in CGST Rules to provide for refund of unutilized ITC on account of export of electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.
- ▶ Exemption of IGST on import of goods under Advance Authorisation/Export Promotion Capital Goods scheme/Export Oriented Unit scheme proposed to be continued beyond 30 June 2022.
- ▶ Change in formula for calculation of refund under rule 89(5) to consider utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This would help those taxpayers who are availing ITC on input services also.
- ▶ With regard to refund of IGST paid on Goods/Services – If there is any discrepancy between the data furnished by the exporter of goods in the Shipping Bill and those furnished in the statement of outward supplies in FORM GSTR-1;The application for a refund of the integrated tax paid on the goods exported out of India shall be deemed to have been filed on the date that the exporter resolves any discrepancy with respect to the said shipping bill.
- ▶ Rule 95A relating to refund of taxes to the retail outlets established in departure area of an international airport beyond immigration counters making tax free supply to an outgoing international tourist – shall deemed to have been omitted with effect from 1st July 2019.

Conclusion

A suggestion for the GST rate on various goods and services was made at the 47th GST council meeting, the same has been implemented through the notification and modifications to the GSTR 3 and GSTR 4 were made as well. The upcoming 48th GST council meeting is scheduled to take place in Tamil Nadu, during the first week of August 2022.

Disclaimer:

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