

GST Alert 07/2022-23

Date 15.07.2022

### GST on Food Sector – A Synopsis

Food industry has been treated with kid gloves as far as Indirect Tax was involved, it had political as well as social ramifications. It also directly impacts food inflation. Council had chosen to tax the elite sector in the food industry by taxing the branded food items. They have now chosen to cast the net wider and include some of the untouched sectors this time. Following is the gist of the changes. **All these changes are effective from 18<sup>th</sup> July 2022**

#### Changes in GST Rate applicable on food items [Noti 6/2022-CTR]

Earlier Food items sold in a container bearing registered (or surrendered) brand name were only taxed, however, after 5 years of GST, council thought it prudent to enlarge the ambit of GST on food sector and now GST would be levied on Food items if they are merely 'pre-packaged and labelled'. **It would no more be relevant if there is a brand name or not.**

**A.** List of the 'pre-packaged and labelled' foods that would be taxed @ 5% from 18.07.2022 is as under:

1. All Goods falling under chapter heading 0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210, 0303, 0304, 0305, 0306, 0307, 0308, 0309, 0504
2. Curd, Lassi, Butter milk
3. Chena or Paneer
4. Natural Honey
5. Dried leguminous vegetables, shelled, whether or not skinned or split
6. 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



7. Dried makhana, whether or not shelled or peeled
8. Cereals
9. Wheat and meslin
10. Rye
11. Barley
12. Oats
13. Maize (Corn)
14. Rice
15. Grain sorghum
16. Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi
17. Wheat or meslin flour
18. Cereal flours other than of wheat or meslin i.e. maize (corn) flour, Rye flour, etc.
19. Cereal groats, meal and pellets, including suji and dalia
20. Meal, powder, Flour flakes, granules and pellets of potatoes
21. Meal and powder of the dried leguminous vegetables of heading 0713 (pulses) other than guar meal 1106 10 10 and guar gum refined split 0713, of sago or of roots or tubers of heading 0714 or of the products of Chapter 8
22. Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery, Khandsari Sugar
23. 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



24. All goods i.e. animal or vegetable fertilisers or organic fertilisers
25. All goods [other than coconut coir fibre] including yarn of flax, jute, other textile bast fibres, other vegetable textile fibres; paper yarn, including coir pith compost
26. Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form **other than those pre-packaged and labelled**

**B.** List of the ‘pre-packaged and labelled’ foods that would be taxed @ **12%** from 18.07.2022 is as under:

1. Tender coconut water
2. Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form [other than roasted gram]

**C. Some issues that need answers**

1. Press release issued after 47<sup>th</sup> Council meeting had this para

*C1. Hitherto, GST was exempted on specified food items, grains etc when not branded, or right on the brand has been foregone. It has been recommended to revise the scope of exemption to exclude from it pre-packaged and pre-labelled **retail pack** in terms of Legal Metrology Act, including pre-packed, pre labelled curd, lassi and butter milk*

2. When the notification was issued it had the term **pre-packaged and labelled** suffixed to all the newly taxable entries in the food sector, term ‘**Retail pack**’ or the likes is sorely missing. After the press release the trade understood that GST is going to be levied at the end consumer level and not on the entire chain.



3. Term **pre-packaged and labelled** has been defined in the notification as under:

*'(ii) The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.'*

Term Pre-Packaged Commodity is defined in section 2(l) of the Legal Metrology Act as under:

*(l) "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**;*

4. Simple meaning of the definition of the term **pre-packaged and labelled**

In simple terms, the meaning of the term **pre-packaged and labelled** is:

- the items must be placed in package
- without the purchaser being present.
- Package or its label must be required to bear declarations under Legal Meteorology Act to bring it under taxation net.

**In other words, if package is not intended to carry pre-determined quantity or is not required to bear statutory declarations, then GST shall not be imposed.**

5. **Important provisions of Legal Metrology Act and The Legal Metrology (Packaged Commodities) Rules 2011**

a. **Section 18** provides that 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.**

**b. Rule 6** mandates that **for items meant for Retail Sale** following information must be mentioned on every package or on label securely affixed thereto,

- Name of the manufacturer or packer or importer. However, this requirement is not mandatory for Food items.
- Common name of the commodity
- Net Quantity
- Manufacture Month and Year
- In case of food articles, provisions of Prevention of Food Adulteration Act 1954 shall apply

**c. Rule 3** provides that **for items meant for Retail Sale** the rules don't apply to following items:

- Packaged Commodities containing quantity of more than 25 kg or 25 litre excluding cement and fertilizer sold in bags up to 50 kg; and
- Packaged commodities meant for industrial consumers or institutional consumers.

**d. Rule 24** mandates that **for items meant for Wholesale Sale** (means sale to an intermediary) following information must be mentioned on every package or on label securely affixed thereto,

- Name of the manufacturer or packer or importer.
- Identity of the commodity
- Net Quantity



6. There are basically 4 business models that are prevalent in the market:

**A. Model 1**

- Manufacturer, mostly rural, prepare these Food items and send them to the retailer in loose package
- Retailer further sells it in loose package / container.
- No markings are there on any package sold by the manufacturer or retailer

**B. Model 2**

- Semi – organised manufacturers prepare and send food items to retailers in bulk sealed or unsealed packages
- These bulk packages are not labelled with any information or weight details.
- The retailer stores the goods at his place either as it is or in a fridge.
- When the customer demands, the bulk bag is opened and the food item is filled into a small package/ glass / container / kulaad etc and given to customer in small quantities like 200 or 500 gms
- The package / glass / container etc in which the food is delivered DOES NOT contain any printed information.

**C. Model 3**

- Semi – organised manufacturers prepare and send food items to retailers in bulk sealed packages



- These bulk packages are labelled with information like batch details, weight, name of the manufacturer.
- The retailer stores the goods at his place either as it is or in a fridge.
- When the customer demands, the bulk bag is opened and the food item is filled into a glass / container / Kulaad etc and given to customer in small quantities like 200 or 500 gms
- The glass / container or package in which the food is delivered CONTAINS some printed information like the brand name of the manufacturer / retailer, FSAAI licence number, customer care number etc.

#### D. Model 4

- Organised manufacturers food items and seals pack them in a container
- This sealed container has all the details like brand name, weight etc on the package
- It is sent to the retailer who sells it to the customer as it is.

7. It is clear that transactions under Model 1 are not taxable even after the amendment

8. It is also clear that all the transactions in Model 4 are taxable post the amendment

9. However, following questions arise with regards to Model 2 and 3:

##### a. With regards to Model 2

- The manufacturer is selling in pre-packaged but bulk form and the quantity is less than say 25 kgs but it does not carry any information on the package – is it a violation of the Legal Metrology Act
- If the registered person violates the legal metrology act and does not put the information required by law on the package, would it be taxable under GST?
- Retailer is selling in an unlabelled container / glass - would he be taxable?



### b. With regards to Model 3

- Manufacturer is selling in pre-packaged labelled bulk form but it is not for retail consumption – would it be taxed?
- Retailer is selling it in labelled (brand name is also there) container / glass but it is not pre-packaged and the quantity (weight) details are also not mentioned on it - would it be taxed?

### 10. Opinion:

Our opinion is that if a person is in the trade of food items listed above and ALL the following conditions are met, then the products are taxable @ 5% or 12% from 18.07.2022:

- Items is sold in a package of any type
- Packaging is done in routine manner without identification of any specific purchaser.
- Package or its label is required to bear declarations under Legal Meteorology Act
- **Package is intended to carry pre-determined quantity**

**If any one condition is not satisfied, then that product would not be taxable**

### Conclusion

In view of the confusion arising out of interpretational issues surround the definition of the term 'Pre-Packaged and Labelled', the board should issue a detailed circular in FAQ format so as to clarify the issues arising out of the amendments made, many un-organised sector MSMEs and SMEs will be coming into the net for the first time, confusion in this sector would lead to chaos and will also impact inflation in food products.

*Note, besides, that it is no more immoral to directly rob citizens than to slip indirect taxes into the price of goods that they cannot do without.*

~ Albert Camus





Formulated by:

**N J Jain & Associates**  
**Chartered Accountants**

**CA Nitesh Jain**  
Managing Partner

**CA Gaurav Khetan**  
Partner

**CA Praveen Maheshwari**  
Partner

**CA Jay Dalwadi**  
Partner

### Disclaimer

*This GST Alert is only for the purpose of information and does not constitute or purport to be an advise or opinion in any manner. The information provided is not intended to create advisor-client relationship and is not for advertising or soliciting. N J Jain & Associates do not intend in any manner to solicit work through this Tax Alert. The Tax Alert is only to share information based on recent developments and regulatory changes. N J Jain & Associates is not responsible for any error or mistake or omission in this Tax Alert or for any action taken or not taken based on the contents of this Tax Alert. Business decisions are best taken in close consultation with the advisors.*



B 1301 - 1305, Ratnaakar Nine Square,  
Opp. ITC Narmada, Nr. Keshavbag Party Plot,  
Satellite, Ahmedabad - 380015. Gujarat, India.

**t** +91-79-400 22 628 / 29 / 30  
**e** info@niteshjain.co.in  
**w** www.njjain.com

**in** njjainassociates  
**tw** @associates\_nj  
**f** @njainandassociates