

Pre-packaged and labelled items taxable from 18th July 2022 – Answers to your 40 important questions



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Background:

GST liability on pre-packaged and labelled commodity has been subject matter of discussion and diverse interpretation among the trade and professional last week on account of ambiguity in possible interpretation of various clauses especially due to interplay between Legal metrology Rules (LMR) and GST Notification. There was need of quick clarifications on various issues surrounding this considering the wider ramifications of such amendments on the mass of the Country.

There were requests from all quarters for clarification. CBIC, taking cognizance of possible diverse interpretation, has come out with late night clarification and few FAQs dated 17th July 2022. The clarification has removed air from some of the floating issues. Nevertheless, it would be daunting task for the MSME sector to implement the changes at such short notice.

In order to facilitate the MSME sector, we have come out with the 40 important questions relevant for the industry to consider in their business. The article covers some general clarifications followed by the specific scenarios applicable from manufacturer, miller, wholesalers, distributors and retailers' perspective.

1. What is the change in GST levy on food products?

Earlier: GST was levied on branded goods where rights over such goods was not foregone. Unbranded goods were not liable to GST. There was no relevance of pre-packaging and labelling for levy of GST.

Future: The concept of branding has been removed fully. Tax liability would arise if the goods were supplied are pre-packaged and labelled. Branded or unbranded status of commodity will not affect the taxability now onwards.

2. What is the meaning of pre-packaged and labelled for the purpose of GST liability?

The simplified meaning of **pre-packaged** as per LMR is as below:

- (i) The commodity should be in packed condition
- (ii) The packaging is normally done in the absence of purchaser being available before the supplier.
- (iii) The package may be sealed or otherwise.
- (iv) There has to be pre-determined quantity on such packages.

Meaning of label as per LMR is as below:

“label” means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity.

3. Does it mean that all commodities which are pre-packaged and labelled are liable to GST?

There are different and specific provisions under the LMR which would determine whether supply of pre-packaged and labelled goods would be liable to GST or not. The summary position of liability of GST could be tabulated as below:

Nature of packing	GST liability
Items pre-packaged and labelled where weight is 25 kg or less than 25 kg	Taxable
Item is packed (plain plastic) with less than or equal to 25 Kg and the quantity is determined at the time of sale.	Exempt
Items pre-packaged and labelled where weight is more than 25 kg	Exempt
Pre-packaged and labelled item supplied to industrial or institutional consumer	Exempt
Wholesale package of more than 25kg which does not contain any pre-packaged and labelled items inside it.	Exempt
Wholesale package of more than 25kg which contain retail pre-packaged and labelled package inside it	Taxable
Item sold in loose (unpacked, packed in transparent container in front of the customer) in any quantity	Exempt
Items liable to bear the packaging and declaration as per LMR Act but not declared on it	Taxable

4. List of commodities affected by new amendment and what is the rate of tax on sale of such pre-packaged and labelled goods?

Ans: The list of commodities affected and their rate of tax, have been specified under the **Annexure -1.**

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6. **We are supplying packages below**
7. **We have been charging GST on branded goods sold by us in packaging of more than 25 kg. Whether sale of such goods have become exempted now?**
Ans: Yes, there is no GST liability on sale of such goods even if the goods are sold under your brand name if the weight is more than 25 kg.
8. **We had unregistered our brand for availing the exemption under the GST law, however we only sell packages more than 25 kgs. – can we now re-register our brand?**
Ans: Yes, as in terms of the new taxation scheme, packages above 25 kgs are not taxable, even if they are branded. Therefore, the brand could be re-registered subject to other applicable laws.
9. **GST liability would arise on direct sale to end consumer only or even if goods are supplied through wholesalers/distributor?**
Ans: Liability is not determined based on nature of customers. If the goods sold by you are covered in the tax net based on above table, there would be tax liability irrespective of any stage or nature of customer.
10. **We are manufacturing paneer in packets of 500 grams. However, the total quantity supplied to the customer in a packet is more than 25 kg, do I still need to charge GST on such packets?**
Ans: Yes, GST is applicable on scenarios where there are number of small packages (pre-packaged and labelled) when they are supplied in a large package, which is more than 25 kgs. However, if each of the small packet is in loose form (may be transparent pack), there is no GST liability on entire package. Total weight of secondary/wholesale package will not make any difference in such case.
11. **We are buying natural honey in 30 litre packets from the villagers; however, we bottle it in 200 grams packages? Whether GST is applicable on such bottling?**
Ans: There is no GST on the purchase of bulk honey. However, once it is converted to small packaging (pre-packaged and labelled) as per LMR, there would be GST liability on sale of such retail packs.
12. **Can I sale the goods in retail without pre-packaging and labelling and remain out of GST?**
Ans: Yes, the goods may be sold by manufacturer without pre-packaging and labelling and there is no GST liability in such cases. *However, in case goods are required to be in pre-packaged and labelled condition as per LMR, you would be liable to charge GST whether such declaration is made or not as per LMR. By not making declaration, there would be violation of law under both the Acts.*
13. **Standard weight of commodity supplied by me was earlier 25 kg. Can I increase weight to 26 kg and remain out of GST?**
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Ans: There is nothing in GST law which prohibits you from increasing weight beyond 25 kg. Hence, there would not be any GST liability on sale of such increased weight package. However, the compliance, *if any*, under LMR w.r.t. change in weight have to be complied with.

14. Goods supplied by me have become taxable w.e.f. from 18th July 2022. What would be impact on input tax credit on various goods (including packing material) lying in my stock?

Ans: Below would be the implications:

- Raw material, packing material etc. held in the stock – full input tax credit would be available on such inputs held in the stock.
- Machineries and other capital goods etc. – Under the GST law, the life of the capital goods is assumed as 5 years and if a capital goods is 6 months old, the input tax credit proportionate to 4.5 years would become available.

However, the above input tax credit could be taken only if the invoices of such goods are not older than one year.

15. Goods supplied by me have become exempted w.e.f. from 18th July 2022. What would be impact on input tax credit on various goods (including packing material) lying in my stock?

Ans: Below would be the implications:

- Raw material, packing material etc. held in stock – input tax credit availed to such stock should be reversed.
- Machineries and other capital goods etc. – Under the GST law, the life of the capital goods is assumed as 5 years and if a capital goods is 6 months old, the input tax credit proportionate to 4.5 years would have to be reversed along with interest.

16. There are various marketing schemes i.e. buy one get one, 10 kg free with 20 kg etc. Whether such schemes would have any ramifications under the revised provisions?

Ans: The taxability of the goods supplied under the Scheme would depend upon various factors i.e. composite supply or mixed supply, whether consideration charged is inclusive of all goods supplied or some items are exclusively given as free, total weight being less or more than 25 kg, status of packaging etc. The tax liability and ITC impact thereon have to be suitably assessed based on consideration of various these factors.

17. If I am a Rice miller and I am purchasing a new machinery on which GST charged by the vendor is 20 Lakhs, can I take benefit of such GST charged?

Ans: If you are selling less than equal to 25 kg packets on which GST is applicable from 18th July 2022 onwards, you are eligible for availing benefit of GST paid on such machinery.

In addition to above sale, if you are also selling more than 25 kg. packets on which GST is not applicable then proportionate benefit could be claimed in terms of the provisions contained under the GST law.

- 18. Standard weight of commodity supplied by me is 30 kgs. However, I am importing new machines, wherein GST charged is huge. Can I split my packets into two bags, so that my commodity becomes taxable, and benefit of such GST charged could be taken?**

Ans: As the supply of goods in pre-packaged and labelled condition would now be liable to GST, you could avail the benefit of GST charged on such machine.

- 19. Should I obtain regular registration or remain under composition scheme as wholesaler if my turnover is within eligibility limit of composition scheme?**

Ans: You should obtain regular registration instead of registration under composition scheme as the retailer purchasing goods from you shall not be eligible to claim the GST benefit if the goods are supplied by you under the composition scheme.

- 20. We have imported goods in bulk and selling such goods after repackaging in smaller quantity. Whether there would be GST liability on import and subsequent sale?**

Ans: There is no GST liability on import of loose goods at the time of filing of bill of entry. However, once the goods are re-packaged and labelled containing weight upto 25 kg, there would be liability to charge GST on all future supplies.

- 21. Goods are sold through commission agent. Whether there would be any GST liability on such commission agent?**

Ans: If the commission agent is not making supply of goods in its own name, there is no GST liability on such commission agent. However, if he is charging commission from seller or buyer, he would be liable to charge GST on such commission.

On the other hand, if the goods are supplied by commission agent in its own name where commission is earned in the form of margin, there would be GST liability on such supplier on sale of pre-packaged and labelled goods upto 25 kg.

- 22. I have a grocery store and dealing in multiple commodities. How would I determine my GST liability?**

Ans: The liability can be determined in the following simplified way:

1. If the manufacturer or wholesaler/distributor from whom goods have been purchased has charged GST, you may be liable to charge GST.
2. If the manufacturer or wholesaler/distributor from whom goods have been purchased has not charged GST, you may not be liable to charge GST.

Above is simplified manner of determining GST liability on the retailer. However, there could be exceptions to this also. Some of them are as below:

1. Wholesaler/distributor may have started new business and is not registered under GST; hence, he did not charge GST. Irrespective of he not charging GST, there would be liability on retailer on sale of pre-packaged and labelled commodity upto 25 kg.
2. Wholesaler/distributor may be carrying on business as composition dealer under GST and hence may not issue tax invoice. However, there would be GST liability on retailer on sale of pre-packaged and labelled commodity upto 25 kg.
3. Wholesaler/ distributor may have supplied in bulk and accordingly, GST was exempted to them, however, the goods are re-packed by the retailer in small packages (other than loose/transparent packing), then GST would become applicable.

Liability of each supplier is independent. Retailer cannot take the view that as his vendor has not charged GST, so he is not liable. Each person has to determine liability independently on his supply.

23. Whether GST liability would arise on pre-packaged and labelled item available in the stock which are sold on or after 18th July 2022?

Ans: Yes, once the new scheme of taxation has been made effective, there would be GST liability on all supplies made on or after 18th July 2022. Hence, GST would need to be paid on old stock which is sold from 18th July onwards.

24. My total turnover is 80 lakhs as per below details. Am I liable to charge GST?

- a. Sale of unpackaged and loose items- 75 lakh
- b. Sale of pre-packaged and labelled items- 5 lakh

Ans: Once your total turnover (taxable and exempted commodities) has crossed beyond 20 lakh (40 lakh in some States) in a financial year, you would be liable to charge GST even if sale of pre-packaged and labelled commodity is less than Rs. 20 lakhs.

25. Is there any legal way for me to remain out of GST?

Ans: If your total turnover of the business is less than Rs. 20 lakh (40 lakh in some States), you are not liable to GST even if you are selling pre-packaged and labelled items of packaging upto 25 kg. In all other cases, there would be liability of GST on sale of taxable commodities.

26. As a retail store, I have been paying GST on many purchases in my business i.e., purchase of goods, rental, maintenance, capital goods etc. Can I take ITC on all such purchases?

Ans: Yes, you can take ITC on all such purchases and adjust it against GST liability arising on sale of goods. However, you would not be able to claim FULL ITC if:

- There is sale of both exempted as well as taxable goods
- If ITC is ineligible under section 17 (5) of the GST Act.

27. A customer comes and demand for 5 kg of loose floor. Do I need to charge GST?

Ans: As discussed above, there is no GST liability on sale of loose items. These items are not pre-packaged and labelled.

28. Do I need to raise tax invoice for all my sale? In case a customer purchases both taxable as well as exempted goods, how do I make the invoice?

Ans: Tax invoice has to be raised for all taxable sale made. In case of sale of both nature of goods (taxable as well as exempted) to unregistered buyer under a single supply, you can raise *tax invoice cum bill of supply* wherein sale of all goods can be disclosed. However, if you are selling goods to registered person, you have to raise tax invoice (for sale of taxable goods) and bill of supply (for sale of exempted goods) separately.

29. I am not registered under the GST Law. How would I make sale on 18th July 2022 onwards? Can I get registration within a single day? What if I do not get registration, can I not make any sale?

Ans: There is specific provision in the law which provides for liability to take registration within 30 days from the date of becoming liable to take registration. Hence, if you are not already holding GST registration, you may apply for it within 30 days from the date of liability. **In meantime, you can make sale by raising invoice to the customer charging GST.** However, it should be noted that the invoice should not bear the term “tax invoice” till the time you get registered. It is recommended to mention appropriate declaration on the normal invoice to this effect.

Once the registration has been granted, you need to raise revised invoice for all the sale affected by you in the interim period. Such invoice should clearly mention the term “revised invoice” on it.

Considering that the registration with department take its own time, it is recommended to apply for the registration at the earliest to minimise such challenges.

Sample declaration format on invoice: We have applied for GST registration as per the GST law and have been making supply and collecting tax in the interim period. Once registered, we shall raise revised invoice against this invoice.

30. Continuing above, what will happen to input tax credit of purchases made during the unregistered period?

Ans: If you apply within 30 days from 18th July 2022, the input tax credit of goods lying in stock could be taken. Also, the credit for the intervening period would become available.

31. Who are Institutional Consumers & Industrial Consumers?

Ans: As per the Legal Metrology Act and Rules:

- "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.
- "Industrial consumer" means the industrial consumer who buy packaged commodities directly from the manufacturer for use by that industry.

32. Is it necessary that the goods should bear "not for retail sale" if they are supplied to industrial or institutional consumers?

Ans: The definition of industrial or institutional consumer under LMR specifically provides for bearing of term "not for retail sale". Any commodity bearing such declaration only would be termed as supply to industrial or institutional consumer and thus not liable for GST.

However, if any industrial or institutional consumer buys any goods from any supplier where such goods are pre-packaged and labelled but does not bear the undertaking "not for retail sale", sale of such goods to these consumers would be liable to GST even if these are meant for the internal usage by such consumers.

33. I am a wholesaler. How would I determine that the goods being supplied by me are liable or not liable to GST when such goods are supplied to industrial or institutional consumer?

Ans: As clarified above, the goods being supplied to such consumers should bear the term "not for retail sales" as per LMR. If the goods supplied by you as wholesalers bear such declaration thereon, there would not be any GST liability thereon.

However, if the goods being supplied does not bear the term "not for retail sale", there would be GST liability on sale of such pre-packaged and labelled goods in less than 25 kg packs even if supplied to industrial or institutional consumers.

34. I am a wholesaler. Goods purchased by me from manufacturer does not bear the term "not for retail sale" and such goods are pre-packaged and labelled. Can I write description "not for retail sale" on such commodity and keep it out of GST?

Ans: You need to examine LMR to identify if you are permitted to make changes in the packaging in such manner to determine the tax liability.

35. I have paid GST on purchases of pre-packaged and labelled goods from manufacturer. I am aware that if such goods are sold by me in loose condition would not be liable to GST. However, how do I make decision making to sale such goods in pre-packaged or loose conditions?

Ans: When you have purchased taxable goods (in pre-packaged and labelled from), you need to pay GST on purchase. However, if you decide to sale it in loose form without charging GST, you would not be able to claim ITC on the goods and this would increase the cost of your purchase. Thus, in normal cases, you should continue to be registered and charge GST on sale of such goods.

However, if your total turnover is within the threshold limit of registration, you could take decision of not to get voluntarily registered and thus not charging GST. Also, if the margin at your level are very high, you could take decision to convert it loose packing and not charge GST as there would be saving of GST to the extent of margin earned by you.

36. I have not been maintaining my books of account and was subject to taxation under presumptive scheme under Income Tax Act. Whether amendment would have any impact on me?

Ans: Once the goods supplied by you have become taxable under GST law, you would be required to maintain books of account and other records as required under the GST Law.

37. I have been making supply of goods through e-commerce operator. Does amendment has any specific impact on me?

Ans: Supply made through e-commerce operator would have same tax treatment from chargeability of GST as if sale made through offline mode.

38. My product has become taxable, do I need to generate an E waybill for supplying such goods along with an invoice?

Ans: Yes, if the value of consignment exceeds Rs. 50,000/- and E waybill needs to be made for movement of taxable products. However, certain States have increased limit to Rs. 1, 00,000/- and/or have given relaxation in generating e-way bills in some specific cases i.e. movement within local city etc, you need to check the applicable e-way bill provision in your State.

39. My product has become taxable, do I need to generate an E invoice for supplying such goods along with a E waybill?

Ans: Yes, if the total turnover exceeds 20 cr. in any of the FY since 2017-18 onwards, E – invoice needs to be generated for taxable supplies made to registered person. However, there is no e-invoice liability on sale of exempted commodities or sale of taxable commodities to customers unregistered under GST.

40. I am supplying MRP based products which have now become taxable, and we are going to avail ITC of goods lying in stock, what do we need to take care of additionally?

Ans: Antiprofitteering impact must be examined and benefit if any should be passed on to the customers.

41. How would department come to know the nature of supplies made by us for determining if we are liable to tax?

Ans: There are various means to identify your tax liability. It could be determined based on the tax invoice raised by your suppliers, nature of commodities in respect of which you are carrying on business etc. Further, there is concept of test purchasing also as per which department officer could purchase the goods from you on test basis to determine whether tax liability is correctly discharged by you or not.

42. What should be action plan for the first day since introduction of this new tax liability?

Ans: This would depend upon your position in the supply chain. However, below could be broad guidelines:

- (i) Assess the tax impact on each of the goods purchased and sold.
- (ii) Take decision to take registration or otherwise based on the turnover limit. Also determine the nature of registration to be taken (regular or composition)
- (iii) Determine the composition of supplier i.e. whether to continue purchase of goods from composition dealer or normal dealers.
- (iv) Take inventory of all goods physically available in stock.
- (v) Collect copies of all purchase tax invoices in store lying for assessment of ITC eligibility.
- (vi) Finalise the invoice format.
- (vii) Start making supply and carry on the business.

Note: above are some of the indicative action plans.

Conclusion:

The amendment made by GST Council is certainly going to have wider ramifications for the public at large. It would certainly remove the persistent ambiguity towards taxability of items being branded or otherwise. However, the revised provisions have its own set of interpretational and implementable challenges which will take some time to settle. Certainly, it is going to have inflationary impact to some extent. It would result in increased revenue kitty for Government and wider tax base.

It would be important for all businesses to wholistically look at various business scenarios and take the decisions appropriately.

(Above questions and answers thereof are purely interpretation by the authors of the law, rules, notifications, and clarification issued by the Government from time to time. It should not construed as any professional advice and we shall not be liable for any actions taken based on above clarification).

Comments and feedback are welcomed at ashish@hiregange.com and bhaveshmittal@hiregange.com.

Annexure I –

HSN wise list of goods which will be affected i.e., the same would become taxable in case the same is sold in prepacked and labelled form

HSN	Product Description	Old Rate	New Rate
0202	Meat of bovine animal, other than fresh chilled	NIL	5 %
0203	Meat of swine, fresh, chilled or frozen	NIL	5 %
0204	Meat of sheep or goat, fresh, chilled or frozen	NIL	5 %
0205	Meat of horse, asse, mules or hinnies, fresh, chilled or frozen	NIL	5 %
0206	Edible offal of bovine animal, swine, sheep, goat, horses, asses, mules or hinnies, fresh, chilled or frozen	NIL	5 %
0207	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen	NIL	5 %
0208	Other meat & edible meat offal, fresh, chilled or frozen	NIL	5 %
0209	Pig fat, free of lean meat & poultry fat, not rendered or otherwise extracts, fresh, chilled, frozen, salted, in brine, dried or smoked.	NIL	5 %
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal	NIL	5 %
0303	Fish, frozen, excluding fish fillets and other fish meat of heading 0304	NIL	5 %
0304	Fish fillets and other fish meat (whether or not minced), fresh chilled or frozen	NIL	5 %
0305	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process	NIL	5 %
0306	Crustaceans, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine, smoked crustaceans, whether in shell or not, whether or not cooked before or during the smoking process; crustaceans, in shell, cooked by steaming or by boiling in water, whether or not chilled, frozen, dried, salted or in brine	NIL	5 %
0307	Molluscs, whether in shell or not, live, fresh, chilled, frozen, dried, salted or in brine;	NIL	5 %
0308	AQUATIC INVERTEBRATES OTHER THAN CRUSTACEANS AND MOLLUSCS, LIVE, FRESH, CHILLED, DRIED, SALTED OR IN BRINE	NIL	5 %
0309	Flours, meals and pellets of fish, crustaceans, molluscs and other aquatic invertebrates, fit for human consumption	NIL	5 %
0403	Yogurt, BUTTERMILK, CURDLED MILK AND CREAM, YOGURT, KEPHIR AND OTHER FERMENTED OR ACIDIFIED MILK AND CREAM, WHETHER OR NOT CONCENTRATED OR CONTAINING ADDED SUGAR OR OTHER	NIL	5 %

	SWEETENING MATTER OR FLAVOURED OR CONTAINING ADDED FRUIT, NUTS OR COCO		
0406	Cheese and curd	NIL	5 %
0409	Natural honey	NIL	5 %
0504	GUTS, BLADDERS AND STOMACHS OF ANIMALS (OTHER THAN FISH), WHOLE AND PIECES THEREOF, FRESH, CHILLED, FROZEN, SALTED, IN BRINE, DRIED OR SMOKED	NIL	5 %
0713	DRIED LEGUMINOUS VEGETABLES, SHELLLED, WHETHER OR NOT SKINNED OR SPLIT	NIL	5 %
0714	MANIOC, ARROWROOT, SALEP, JERUSALEM ARTICHOKEs, SWEET POTATOES AND SIMILAR ROOTS AND TUBERS WITH HIGH STARCH OR INULIN CONTENT, FRESH, CHILLED, FROZEN OR DRIED, WHETHER OR NOT SLICED OR IN THE FORM OF PELLETS; SAGO PITH	NIL	5 %
08	Dried makhana, whether or not shelled or peeled put up in unit container	NIL	5 %
10	All goods i.e., cereals	NIL	5 %
1001	Wheat and meslin	NIL	5 %
1002	Rye	NIL	5 %
1003	Barley	NIL	5 %
1004	Oats	NIL	5 %
1008	Buckwheat, millet, and canary seed; other cereals such as Jawar, Bajra, Rag	NIL	5 %
1101	Wheat or meslin flour	NIL	5 %
1102	Cereal flours other than of wheat or meslin	NIL	5 %
1103	cereal groats, meal, and pellets, including suji and dalia	NIL	5 %
1104	Cereal grains otherwise worked (for example, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground	NIL	5 %
1105	Meal, powder, Flour, flakes, granules, and pellets of potatoes	NIL	5 %
1106	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	NIL	5 %
2106	Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, other than those pre-packaged & labelled	NIL	5 %
2106 90	Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form [other than roasted gram]	2.5	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	NIL	5 %
5305 to 5308	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	NIL	5 %
1702	Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery	Nil	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 Murk	Nil	5 %