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Analysing developments impacting business

GST UPDATE | RATE RATIONALIZATION ON FOOD PRODUCTS

27 July 2022

INTRODUCTION

Amongst the myriad representations placed before the Goods and Service Tax Council (GST Council) for consideration in their 47th meeting, one of the significant issues was rate rationalization on food products.

Hitherto, GST was chargeable on various food products so long as they were supplied in a unit container and bore a registered brand name or a brand in respect of which an enforceable right in law existed. Conversely, if there was no registered brand name or the enforceable right in law was relinquished, GST was exempt.

As can be understood, this distinction between 'branded' and 'unbranded' food products was sought to be removed in order to (a) plug tax leakage (b) formalize the unbranded food products market and (c) create a level playing field for the benefit of the consumer.

The GST Council recommended to tax pre-packaged retail pack of food products required to be labelled in terms of Legal Metrology Act, 2009 with effect from 18 July 2022.

THE NOTIFICATIONS

Following the GST Council recommendations, the Central Government has, by way of Notification Numbers 06/2022-Central Tax (Rate) and 07/2022-Central Tax (Rate), both dated 13 July 2022, caused amendments to the rate schedule to make unbranded and branded food products exigible to GST.

The amendments, in essence, replace the phraseology '*bearing a brand name*' with '*other than pre-packaged and labelled*', which has been defined to mean as a pre-packed item under the Legal Metrology Act, 2009.

COMMENTS

The GST Council has recommended to bring unbranded pre-labelled retail package within the tax ambit. However, it appears that the Central Government has gone beyond the scope of recommendation and has imposed tax on wholesale packages also as the definition stated in the amendment notifications refers to Section 2(l) of the Legal Metrology Act, 2009, which covers both wholesale and retail packages and treats them as pre-packed commodities. Further, retail packages are required to be labelled under

Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011 (PC Rules), whereas wholesale package is required to be labelled under Rule 24 of the PC Rules.

Therefore, when a food product is placed in a package of any nature, irrespective of any sealing, it will qualify as pre-packaged and pre-labelled, thus exigible to GST with effect from 18 July 2022, whether such package is branded or not.

Separately, with respect to inventory already in the distribution channel, the maximum retail price (MRP) for retail packages would have to be revised upwards to the extent of imposition of such tax. Per Rule 18(3) of the PC Rules, the declared MRP can be revised upwards subject to two conditions, viz. (a) the manufacturer or the packer place an advertisement in one or more newspapers about the revision of retail sale price; and (b) such communication is also to be made to the Controller of Legal Metrology in the given state and relevant authority within the Central Government.

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