

## GST on Pre-Packaged Food Items – What happens when they are Exported?



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The food processing industry is one of the largest industries in India, if not the world. The growth is not restricted to domestic sales, but exports as well. According to data released by the Ministry of Commerce and Industry, agricultural and processed food product exports increased by 14% in the first quarter of FY 2022-23 compared to the same period in FY 2021-22.

In this background, given the recent GST implications on pre-packaged food items, there seems to be wide ranging implications on export of pre-packaged food items. Let's analyse the same in this article.

### **GST on Pre-Packaged Food Items:**

Based on the recommendations in the 47<sup>th</sup> GST Council Meeting, Notification No. 6/2022-Central Tax (Rate) dated 13<sup>th</sup> July 2022 was issued wherein GST was made applicable at 5% on food items (such as rice, wheat, flour, pulses, meat, etc.) when they are “pre-packaged and labelled”. Based on definition in the above-mentioned notification, in order to be considered as “pre-packaged and labelled”, the following two conditions are to be fulfilled:

- a. It shall fall under the definition of “pre-packaged commodity” under Section 2(l) of Legal Metrology Act, 2009
- b. The package bears the declarations under the provisions of the Legal Metrology Act and the rules made thereunder

### **What is Pre-Packaged Commodity?**

The term “pre-packaged commodity” has been defined under Section 2(l) of 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;**”*

From a plain reading of the definition, it can be said that any goods which have been packed prior to identification of purchaser AND which has a pre-determined quantity would be considered as “pre-packaged” commodity. Milk/curd packets, rice or wheat flour packets displayed on store shelves would be suitable examples for the same.

Further, since the definition does not mention any restrictions, any packed goods which are exported would also fall under the definition of “pre-packaged commodities”.

### **Declarations under Legal Metrology Act:**

For a product to be considered as “pre-packaged and labelled” as per GST, the package is also required to bear declarations as specified in the Legal Metrology Act (LMA) and the Rules thereunder. This takes us to Section 18 of LMA which provides that, in order to manufacture or sell a pre-packaged commodity, declarations as per Legal Metrology (Packaged Commodities) Rules, 2011 is mandatory.

### **Whether Declarations are required for Export of Pre-packaged Goods?**

The Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred to as “PC Rules”) consists of seven chapters wherein Chapter II and III specify declarations required for retail and wholesale packages. Neither of these Chapters provide for any declarations on commodities meant for export.

The only relevant chapter is Chapter IV which only provides for restriction on sale of export package in India unless it is re-packed or relabeled in accordance with declarations in Chapter II.

Thus, it could be said that there are no specific declarations required under Legal Metrology law for pre-packaged commodities which are meant for export. However, it is to be noted that declarations as per the Metrology laws of the importing country may require to be labelled on the commodities while exporting from India.

On a practical front, it is seen that the importer outside the country provides details of declarations required to be affixed, to the exporter in India. The exporter then affixes such declarations and exports the commodities.

### **GST Refund in case of Export of Pre-packaged Food Items:**

Based on the analyses above, it could be said that pre-packaged commodities meant for export would not be considered as “pre-packaged and labelled” for GST purposes since it does not fulfil the requirement for declaration under Legal Metrology Act. Thus, it could be said that such export commodities are exempt from GST.

Now the question arises, whether exporters of such pre-packaged food items are eligible for making exports with payment of tax and claiming refund of IGST paid? What are the implications on exporters who were exporting branded food items and were claiming refund of IGST paid? Let's analyse this in the upcoming paragraphs.

### **Whether Pre-packaged food items can be Exported with Payment of Tax?**

Further to the above discussions, if export of packaged commodities does not require any declarations under LMA and could be considered as exempt from GST, then can it be said that the exporters would NOT be eligible for making exports with payment of tax? Would they be required to make exports under LUT without payment of tax?

### **What are the implications?**

If an interpretation is taken that declaration is not required under LMA for exporting goods and hence exempt from GST, then for all such industries (such as agri, food, meat, spice, cereals etc.) which are exporting with payment of IGST would be required to stop immediately and start exporting under LUT without payment of IGST. At present, the above interpretation prevails legally. However, the question remains whether the same is the intention of the Government? It may be not, taking into consideration the extent of exports and foreign currency generated by food processing industry. It would be very beneficial if the Government takes note of this inconsistency and provide suitable clarifications.