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Date of Publishing: [June 11, 2025](#)

Taxability of Commodities under GST: From Branding to Pre-Packaged and Labelled Goods



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1. Introduction

Since the rollout of the Goods and Services Tax (GST) regime in India in July 2017, the taxation of essential commodities—such as grains, pulses, flour, and dairy products—has remained a subject of legal, commercial, and policy debate. A central aspect of this debate is whether these goods are taxable or exempt, and the answer has historically hinged on two key qualifiers: whether the commodity is **branded** till 17.07.2022 or whether it is **pre-packaged and labelled** post 18.07.2022.

Over the years, the government has **transitioned from a branding-based test to a compliance-based packaging test**, aiming to remove subjectivity and reduce tax evasion. This article traces this evolution, clarifies the current legal position as amended recently vide Notification No. 01/2025- Central Tax (Rate) Dated 16th January, 2025 and discusses the key challenges that continue to affect businesses.

2. The Initial Regime: Branded vs Non-Branded Goods

a. Notifications and Tax Structure (2017)

Under the original GST framework, Notification No. 2/2017-Central Tax (Rate) exempted many essential commodities if sold unbranded, while Notification No. 1/2017 imposed a 5% GST on the branded versions of the same goods.

b. What Was a 'Branded' Good?

As per the notification, a good was considered "branded" if it:

- Was put up in a unit container, and
- Bore a registered brand name, or a brand name with an actionable claim or enforceable right in a court of law.

c. Evasion Loophole: Brand Disclaimer Affidavits

To escape GST, many sellers disclaimed ownership of their brand names via affidavits, while continuing to use the same marks informally. Some sellers even disclaimed the brands legally owned by others to which they were not legally entitled. This led to legal ambiguity, disputes and revenue leakage.

3. The Shift: From Branding to Packaging (2022 Onwards)

To plug this loophole, the GST Council recommended a fundamental shift in its 47th meeting held on 29th June, 2022. This was implemented through Notification No. 6/2022-Central Tax (Rate) dated 13th July 2022, effective 18th July 2022.

Key Change:

The criterion for GST levy moved from "brand-based" to "pre-packaged and labelled", aligning with definitions under the Legal Metrology Act, 2009 and the Packaged Commodities Rules, 2011.

Definition:

A pre-packaged and labelled commodity was defined as one that is packaged without the purchaser being present and is required to bear declarations under the Legal Metrology Rules. Thus, even unbranded goods became taxable if they were sold in pre-packaged and labelled form.

4. Clarifications and Conditions: CBIC FAQ's dated 17th July, 2022

To clarify the scope of the change, the CBIC issued FAQ's which stated:

- GST applies only if the package requires declarations under Legal Metrology Rules.
- Loose or open sales are not taxable.
- Packages of more than 25 kg/litre are treated as wholesale and not taxable
- Retail packs, even if unbranded, are taxable if they are pre-packaged and labelled.

5. Key Differences: Branded vs Pre-Packaged Regimes

Aspect	Branded Regime (Pre-2022)	Pre-Packaged Regime (Post-2022)
Trigger for Tax	Brand name (registered or enforceable)	Packaging and labelling as per LM Act
Exemptions	Unbranded or brand disclaimer	Loose sale or package >25kg/litre
Evasion Risk	High (via brand disclaimers)	Low (based on statutory packaging rules)
Legal Basis	IP rights and brand protection	Legal Metrology compliance

6. Implications for Trade and Industry

a. Broader Tax Net

Even unbranded goods, if sold in consumer-ready packaging, are now subject to GST. This has brought several FPOs, cooperatives, kirana stores, and rural traders into the tax net.

b. Compliance Burden on MSMEs

The move requires even small-scale sellers to comply with Legal Metrology declarations, maintain GST registrations, and issue tax invoices, increasing cost and administrative burden.

c. Disruptions in Supply Chain

Retailers and wholesalers have had to reassess packaging practices, modify labels, and reclassify products to ensure proper tax treatment.

7. Recent Changes Effective January 2025

Until 15th January 2025, the definition of the term "pre-packaged and labelled" under Explanation (ii) to the relevant GST rate notification was as follows:

"(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 and the rules made thereunder.

Provided that, notwithstanding anything contained in the Legal Metrology Act, 2009 and the rules made thereunder, as amended from time to time, the supply of agricultural farm produce in packages containing quantities exceeding 25 kilograms or 25 litres shall not be considered as falling within the scope of the expression 'pre-packaged and labelled'."

Under this earlier framework:

- The GST applicability on a commodity was determined with reference to whether it was required to bear declarations under the LMA and the Packaged Commodities Rules.
- As per Rule 3(a) of the said Rules, no declarations are required for packages exceeding 25 kg or 25 litres. However, since these rules can be amended from time to time, any change in the threshold under the LMA framework would automatically impact GST applicability as well.
- The proviso specifically insulated *"agricultural farm produce"* from GST, even if packaged in quantities above 25 kg/litre, by carving out an exemption for packages exceeding 25 kg/litre. This effectively created two categories:
 - (i) agricultural commodities, and
 - (ii) other goods—each subject to different treatment based on changes in LMA

The Amendment: Uniformity and Legal Certainty Introduced

This position was significantly revised by Notification No. 01/2025–Central Tax (Rate), dated 16th January 2025, which substituted Explanation (ii) with the following:

"(ii) The expression 'pre-packaged and labelled' means all commodities that are intended for retail sale and containing not more than 25 kilogram or 25 litre, which are 'pre-packed' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009, 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 and the rules made thereunder."

Key Changes Introduced

1. Threshold fixed in GST notification:

The 25 kg/25 litre limit is now hardcoded into the GST notification itself, delinking it from potential future amendments in the LMA or Packaged Commodities Rules. This provides much-needed certainty and stability to taxpayers and avoids automatic extension of GST applicability due to changes in the metrology framework.

2. Removal of special carve-out for agricultural produce:

The earlier proviso creating a separate exemption for agricultural farm produce has been deleted. As a result, all commodities—whether agricultural or otherwise—are now subject to uniform treatment under GST, provided they are intended for retail sale and fall within the 25 kg/litre threshold.

8. Conclusion

The evolution from a brand-based to a packaging-based GST framework marks a significant policy shift aimed at improving clarity, compliance, and revenue certainty. The latest amendment through Notification No. 01/2025 brings long-awaited uniformity by fixing the 25 kg/litre threshold within the GST regime and eliminating preferential treatment for agricultural farm produce. As GST increasingly aligns with objective regulatory standards, businesses must proactively adapt their packaging and supply practices to remain compliant and competitive in a tax environment that is now more structured, but less forgiving.

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