

GST शास्त्र: Taxability of Goods Bearing Registered/ Unregistered Brand Names

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[CA Yogesh Ingale 26 Feb 2019 36,795 Views 6 comments](#) [Goods and Services Tax | Articles](#)

♦ Introduction

GST was implemented in India from 1st July 2017 and a number of Notifications have been issued since then. The Rules have been amended multiple number of times and the law as it stands today is a complex vortex requiring significant skills for merely comprehending basic facets of the law.

The amendment to principle **notification no. 1/2017 – CT (R) dt. 28th June, 2017** vide **notification no. 27/2017 – CT (R) dt. 22nd September, 2017** introduced concept of goods bearing registered / unregistered brand name and their taxability though the concept was in place in earlier tax regimes. In this article, let's have a walk through the legal provisions, rules and judicial pronouncements in this regard.



♦ Legal provisions :

1. Notification no. 1/2017 – CT (R) dt. 28th June, 2017

Entry no.	HSN	Description of goods	Applicable tax rate
11	0406	Chena or paneer put up in unit container and bearing a registered brand name	5%
13	0409	Natural honey, put up in unit container and bearing a registered brand name	5%

25	0713	Dried leguminous vegetables, shelled, whether or not skinned or split [put up in unit container and bearing a registered brand name]	5%
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Explanation :

The phrase “registered brand name” means **brand name or trade name**, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

2. Notification no. 2/2017 – CT (R) dt. 28th June, 2017

Entry no.	HSN	Description of goods	Applicable tax rate
27	0406	Chena or paneer, other than put up in unit container and bearing a registered brand name	Exempt
29	0409	Natural honey, other than put up in unit container and bearing a registered brand name	Exempt
25	0713	Dried leguminous vegetables, shelled, whether or not skinned or split [other than put up in unit container and bearing a registered brand name]	Exempt

(only few entries have been taken for illustration purposes)*

Explanation :

(i) The phrase “unit container” means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.

(ii) The phrase “registered brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, **and which is registered under the Trade Marks Act, 1999.**

3. Amendment in above notifications vide notification no. 27/2017- CT (R) & 28/2017 – CT (R) dt. 22nd September, 2017

(i) For words “put up in unit container and bearing a registered brand name” the words, brackets and letters “put up in unit container and –

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE]”, shall be substituted

(ii) Explanation :

(a) The phrase “brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase “registered brand name” means,-

(i) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;

(ii) a brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957;

(iii) a brand registered as on the 15th May 2017 under any law for the time being in force in any other country.”

Definition of unit container remained unchanged.

Let’s analyse the above amendments in following three parts :

Part no.1:

Considering amendment in definition of “registered brand name” and differentiation made between “brand name & registered brand name”, what is the purpose of introducing such provision?

a) Earlier, specified goods are taxable under GST, at the rate specified, if they are put up in unit container **and** are bearing a registered brand name.

b) It is pertinent to note that only if both conditions were satisfied, goods were liable to tax.

c) Below given table specify the situations in which specified goods were taxable/exempted between the period 1st July 2017 to 21st September, 2017 i.e till the amendment took place –

Whether goods are put up in unit container?	Whether goods are bearing a registered brand name?	Whether goods are bearing a brand name which is not registered?	Whether goods are taxable / exempted?
Yes	Yes	No	Taxable
Yes	No	Yes	Exempted
No	Yes	No	Exempted
No	No	Yes	Exempted

d) Considering pattern of taxability, suppliers started to deregister their brands under Trade Marks Act, 1999 and getting the benefit of exemption. At the same time, these suppliers were enjoying the goodwill of their brand in the market.

e) To tackle this situation and to enhance the taxability of brands registered under other acts also, amendment vide **notification no. 27/2017- CT (R) dt. 22nd September, 2017** was introduced. Through this notification, following conditions were prescribed for taxability of goods –

I. Put up in unit container **and**

II. Bearing a registered brand name or

Bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily forgone, subject to the conditions as in the ANNEXURE],

f) Hence from 22nd September 2017 onwards, where goods, as prescribed in the schedule, put up in unit container and bearing a registered brand name or even if brand name is not registered but on which an actionable claim or enforceable right in a court of law is available, are taxable at the rate specified.

Part no. 2:

Difference between registered brand name and brand name on which an actionable claim or enforceable right in a court of law is available

a) Registered brand name is defined under **notification no. 27/2017 – CT (R)** as follows: –

1. A brand registered as on the 15th May 2017 under Trade Marks Act, 1999, **irrespective of whether or not the brand is subsequently deregistered.**

2. A brand registered as on the 15th May 2017 under Copyright Act, 1957 (14 of 1957)

3. A brand registered as on the 15th May 2017 under any law for the time being in force in any other country

b) Apart from above, the phrase brand name is defined under the same notification as follows: –

The phrase “brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

c) In the eyes of law, registered brand name possesses legal benefits under respective laws. However, unregistered brand name does not possess legal benefits but still it can be protected by means of common law of tort. To succeed in such action, it is necessary to establish that unregistered brand names has comparable goodwill or reputation in connection with the product, service or business with which it is used.

Part no. 3:

Whether mere declaration mentioning the name and registered address of supplier as the manufacturer, as per the statutory requirement, can be considered as “not bearing a brand name or trade name” and hence eligible for exemption from payment of GST?

a) In case of brand names, which are not covered under definition of ‘registered brand name’, even a trade name which is used in relation to goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such goods and some person using such name or mark with or without any indication of the identity of that person, shall be considered as brand name.

b) Industry is facing problem as to whether declaration, mentioning the name and address of the manufacturer as per the statutory requirement (say as per Legal Metrology Act, 2009), is to be considered as brand name or not.

c) In this regard, we need to analyse provisions related to brand name under earlier laws and judicial pronouncements in this regard.

d) As per **notification no. 8/2003 – CE dt. 1st March, 2003**, SSI exemption was not applicable to specified goods bearing a brand name or trade name, whether registered or not, **of another person**, except few cases.

As per explanation A, “brand name or trade name means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of identity of that person.”

e) Under GST, requirement of registration of brand name is prescribed separately. Remaining part of definition is identical. However, it is important to note that SSI exemption is not applicable in case of goods bearing a brand name **of another person**.

f) In case of Tarai Foods Limited Vs CCEx. Meerut-11-2006 (198) E.L.T. 323 (SC), honourable supreme court observed that *“Under the standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on label squarely affixed thereto a definite, plain and conspicuous declaration as to, inter alia, the name and address of the manufacturer. If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container at all in law and the distinctiveness of T.H. 2001.10 would be meaningless.”*

g) In terms of section 18 of the Food Safety and Standards Act, 2006, no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations. Rule 6 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, in turn mandates provision of details of the manufacturer of the product on the food package. Hence, if name of the manufacturer is construed as a brand name, then every food product would be considered as branded.

h) Advance ruling in case of Aditya Birla Retail Limited –

It was held in above case that goods bearing a name and address of manufacturer, as per the statutory requirement cannot be considered as not bearing a brand name. Reliance was placed by authority on the decision in case of Commissioner of Central Excise, Trichy vs Grasim Industries Ltd [2005 (183) E.L.T. 123 (SC)], where it was held that even the name of some other company, if it is used for the purpose of indicating a connection between the product and that company would be sufficient to constitute a brand name. It was also contended that the said decision rendered by three-member bench of the Honourable Supreme Court would have precedence over the decisions of the Honourable Supreme Court (rendered by two-member bench) in case of Tarai Foods.

However, in author’s view, the premise of both the cases was different. Advance Ruling Authorities could have distinguished both cases as the question before Honourable Supreme Court in the case of Tarai Foods was different than that was in case of Grasim Industries Ltd. In case of Grasim Industries Ltd., the Honourable Supreme Court was

concerned with whether the use of words 'A subsidiary of Grasim Industries Ltd.' by manufacturer i.e subsidiary company of Grasim Industries Ltd. (**goods bearing a brand name or trade name of another person**), can be construed as a 'brand name' or not and hence both the decisions operate in different domains.

i) Hence, to conclude, in the author's view, mere declaration mentioning the name and registered address of the supplier as the manufacturer, as per the statutory requirement, cannot be considered as "bearing a brand name or trade name" and hence shall be eligible for exemption under GST.

Other points to be considered: –

a) Provisions do not state that goods must itself bear or be physically affixed with brand name or trade name. Hence, in some situations, where an affixation may be impossible, such goods shall be considered as branded goods, as long as its environment conveys that it is branded.

b) Even a use of part of a brand name or trade name could be considered as goods bearing a brand name so long as it indicates a connection in the course of trade between such goods and some person using such brand name.

c) In case of unregistered brand name, for foregoing an actionable claim or enforceable rights on a brand name and to avail GST exemption –

✓ the person undertaking packing of such goods in unit containers which bear a brand name shall file an affidavit to that effect with the jurisdictional Commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name **and**

✓ the person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English

and the local language, that in respect of the brand name printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.

(Article is jointly authored by CA Yogesh Ingale, CA Tushar Ajmera & CMA Anuj Chordiya)

(Above article was written on 11th February, 2019. Views expressed are strictly personal. For any queries & feedback, reach us at yogesh.ingale@yriassociates.com)

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Author Bio



Name: [CA Yogesh Ingale](#)

Qualification: CA in Practice

Company: Yogesh R. Ingale & Associates / TalenTax Renaissance Pvt. Ltd.

Location: Pune, Maharashtra, IN

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