

# **GST SECTORAL SERIES (VIRTUAL) PART I**

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### **RETAIL & FMCG**



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# Coverage

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## Background

- FMCG sector is the 4<sup>th</sup> largest sector in the Indian Economy.
- Categories are;
  - Food and Beverages (groceries, fresh and frozen foods, packaged and semi packaged foods, aerated and non-aerated beverages)
  - Personal Hygiene and Household goods (toiletries, stationery, clothing, cleaning products, cosmetics, cleaning products, stationery, glassware etc.)
  - General Healthcare (general healthcare for human as well as animal healthcare and products)
- It is one of the most regulated sectors.
- FMCG goods typically include repeat and daily usage items, meant for ultimate consumers, hence large customer base and sold through retail and modern sales.

# Classification

## What is classification?

The general meaning of classification is segregation of goods or services according to their nature and characteristics and assigning the headings and sub-headings to them.

## Why is classification?

Classification is important to determine;

- a. The rate of tax
- b. The exemptions if any
- c. Whether covered under RCM

# Classification

## Impact of wrong classification

- Subsequent Demand with interest penalty.
- Wrong claim of exemption.
- Wrong availment of ITC.
- Loss in business
- Loss of reputation.

## Caselaws - Cosmetics Vs. Medicines:

The High Court of Madhya Pradesh in the case of *Global Tele Mall*, 2018 (18) G.S.T.L. 227 (M.P.) held that hair Wash/Shampoo prepared from Ayurvedic ingredients and having therapeutic quality was classifiable as Ayurvedic Medicine.

## Classification

If a product's primary function is “care” and not “cure”, it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical conditions. *Ciens Laboratories 2013 (295) E.L.T. 3 (S.C.)*.

### **Food Supplements Vs. Medicines:**

Swad having therapeutic value is medicine though it is sold in tea stall or betel shop. *Khandelwal Drug Agencies. 2017 (5) G.S.T.L. 242 (Raj.)*

# Classification

Shee Baidyanath Ayurved Bhavan Ltd. V. CCE, Nagpur 1996 (83) E.L.T. 492 (S.C.)- Scientific and technical meaning of the terms and expressions used in the tax laws like Excise Act not to be resorted. The goods to be classified according to the popular meaning attached to them by those using the product. - Danta Manjan Lal is not a medicine. Trade Parlance theory.

**Sanitisers:**

- Cleaning Preparation - CH 3402
- Skin Washing Liquid – CH 3401
- Hand Cleansers – CH 3003
- Disinfectant – CH 3808

# Classification

**Rate Notifications 1/2017-CGST (R), ....**

Tax invoice to contain 2/4 digit HSN Code based on turnover 12/2017-CT

4 digit code – Heading

6 digit code – Sub Heading

8 digit code – Tariff Item

Unit of measure lost its relevance in GST ???

**Factors to be considered in classification of the FMCG goods:**

- Ingredients
- Manufacturing process
- Packing
- End use
- Trade Parlance



# Classification

- Residuary Entry 453 of Schedule III (Goods which are not specified in Schedule I, II, IV, V or VI)
- Similar to erstwhile Tariff Item 68 of 1975.
- Intended to cover those goods which are not specifically included in the other Schedule.
- But to be resorted, if any goods fails to find an entry in other Schedule.

## Multiple Rates

- Rates applicable to FMCG Goods: Exempt, 5%, 12%, 18% and 28%.
- If taxed, it is a cost to consumer, if not taxed, ITC is the cost to the consumer.
- Multiple rates lead to more disputes.
- Maintenance of records and compliance is more cumbersome.
- Rates based on specification:
  - Fresh or chilled, packed in unit container and with brand (meat, fish etc)
  - Dried (Edible vegetables packed in unit container and with brand, fruits)
- Rates based on value of the goods (Footwear, apparels etc)

## Multiple Rates

### **Brand name :**

The 'brand name' or 'trade name' is defined to mean a brand name or trade name whether registered or not, that is, a name or a mark such as a symbol, monogram, label, signature or invented word, 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. *Vir Rubber Products Pvt. Ltd. (2015) 13 SCC 466, para 4.*

# Multiple Rates

**Brand name Vs. House mark:**

Brand name is the one by which the product is identified and asked for.

House Mark is an identification of the manufacturer.



The declaration of name of a company as per the statutory requirements would not amount to 'bearing a brand name'. *Tarai Foods Limited v. CCEX., Meerut-II - 2006 (198) E.L.T. 323 (S.C.)*,

## Multiple Rates

House mark (usually a device in the form of an emblem, word or both) is an identification of the manufacturer which is compulsory under the Drug Rules. Product mark or brand name (invariably a word or a combination of a word and letter or numeral) is the one by which the product is identified and asked for. Astra Pharmaceuticals Pvt. Ltd. 1995 (75) ELT 214 (S.C.)

The marks 'BAT UK E' on the packages of unmanufactured tobacco imported were merely for purpose of identification of packages to select suppliers' identity and did not constitute brand name within the meaning of Note 1 under Chapter 24 of Central Excise Tariff Act, 1985. ITC Ltd 2002 (142) ELT A079(S.C.)

## Multiple Rates

**CCEx, Chennai II V. Australian Foods India P. Ltd. 2013 (287) ELT 385 (S.C.)-**

Its physical manifestation on goods is not a compulsory requirement. Such goods can be said to be branded as long as its environment conveys so viz. packaging/wrapping, accessories, uniform of vendors, invoices, menu cards, hoardings/display boards of outlet, furniture/props, specific outlet itself in its entirety, and other such factors, all of which together or individually or in parts, may convey that goods is branded.

Similar view was held by AAAR (Mah.) in the case of **Aditya Birla Retail Ltd.**

# Discount, Schemes, Promotional exps

Cash discount or Quantity Discounts:

At the time of supply:

- Mentioned in the tax invoice
- Quantity given as free, same item (buy one-get one free) or different item (same rate of tax or different rate of tax), impact on ITC.

Post supply discounts:

- Agreement before the supply (occurrence and method of computation).
- Linked to relevant invoice.
- ITC attributable to discount is reversed by the recipient.

# Discount, Schemes, Promotional Exps

## Promotional Exps:

- Advertisement (simple placement of message).
- Sponsorship (Ongoing arrangement).
- Distribution of free samples.
- Promotional items.

AAR (Mah.) Sanofi India Ltd. Promotional products not given to customers under any contractual obligation and voluntarily given on certain conditions achieved by customers.



## Combo packs

### Mixed supply or composite supply?

“**composite supply**” means -

- a supply made by a taxable person to a recipient
- consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
- which are naturally bundled and
- supplied in conjunction with each other in the ordinary course of business,
- one of which is a principal supply;

“**mixed supply**” means

- two or more individual supplies,
- made in conjunction with each other by a taxable person
- for a single price
- where such supply does not constitute a composite supply.

## Combo packs

### Mixed supply or composite supply?

- The most important aspects in composite supply are ‘naturally bundled’ and ‘principal supply’
- Principal supply gives the essential character to the supply. Bundling of supplies into a single composite supply must not alter the essential character of the principal supply
- A natural bundling is a Composite Supply and an artificial bundling is Mixed Supply.
- In mixed supply identification of principal supply an improbable task.
- In a mixed supply, supply of one good or service does not necessitate the supply of another good or service.

## Combo packs

Mixed supply or composite supply?

- Buy 'toothpaste' and Get 'toothbrush' free.
- Dental kit (Toothpaste + Toothbrush).
- Package containing crayons, paints, brushes and drawing book.
- Combo pack of Popcorn and Coke.
- Toys with battery.
- Laptop with bag.



# Movement of Goods

## Hub and Spoke model after introduction of GST

Factory – Mother warehouse – Stockist – Retailers - Consumers

- Savings on multiple warehouses
- Faster movement of goods due to removal of border check posts / manual toll. (Avg 400km-450km)
- Eway bill- Gain or Bane?
- IRN
- GTA Vs. GTO
- Place of supply: Supply to a regd person- Location of such person.  
Supply to a URP-Location where goods are handed over for transportation.

# Loyalty Point Redemption

- Common in modern trade to retain the customers
- Points added on purchases.
- Utilise it in the subsequent purchase.
- Whether it is in the nature of discount or merely a method of payment?



# Vouchers

## What is voucher?

(118) “voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

## Time of supply

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
- (a) the date of issue of voucher, if the supply is identifiable at that point; or
  - (b) the date of redemption of voucher, in all other cases.

# Credit Notes / Commercial Credit Notes

## When to issue Credit Notes?

- ✓ Reduction in the taxable value
  - ✓ Reduction in the tax charged
  - ✓ Goods returned
  - ✓ Deficiency in supply of goods or service
- The details of the credit note should be declared in the month in which it has been issued.
  - The details must be declared in the return not later than \*Sept following the end of the year or date of furnishing annual return whichever is earlier.
  - No reduction in tax liability if the incidence has been passed on.

# Sales Return

## **Sales returns due to:**

- Slow moving/ non moving goods
- Damaged goods
- Expired Goods
- Any other reasons

Return under Credit Note

Return under Tax Invoice

Input tax credit?



# Cross Charge Vs. ISD

## **Cross charge:**

Multiple registrations

Movement of goods to various location

Use of common services

Distinct person Sec 25(5):

*“(5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.”*

## Cross Charge Vs. ISD

Important to understand what constitute a supply:

Sec 122: Penalty for certain offences- Higher of Rs. 10,000 or tax involved.

- Issue of invoice without supply
- Supply without invoice

ISD: (61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

## Composition Dealers

- Eligible if the TO is less than 1.5 crore.
- Can have supply of service higher of, 10% of the TO or Rs. 5 lakh.
- All business under the same PAN should opt.
- Not applicable to;
  - Manufacturer of ice cream, pan masala, or tobacco
  - A person making inter-state supplies
  - A casual taxable person or a non-resident taxable person
  - Businesses which supply goods through an e-commerce operator

No ITC, Tax cannot be charged in the invoice, bill of supply

No inter-State supply

RCM is applicable

## Composition Dealers

- Rate applicable
  - Manufacturers and traders (goods) 1%
  - Restaurants not serving alcohol 5%
  - Other service providers 6%
- Quarterly payment in CMP-08
- Return in GSTR-04 annually before 30th April.
- No need to maintain detailed record.
- ITC chain is broken, adds to cost.

# QRMP

- Optional Scheme & Option could be availed GSTIN wise
- Aggregate T/O in preceding financial year up to 5 Cr (PAN wise)
- Both GSTR-1 & GSTR-3B to be filed quarterly & Payment to be made monthly.
- Furnishing invoice wise details:
  - GSTR1 to be filed quarterly
  - Option to upload B2B invoices using IFF for value up to Rs. 50 lakhs per month
  - After 13th of the succeeding month, this facility will not be available for the previous month
- Payment mechanism:
  - PMT-06 to be filed monthly
  - Payment at quarter end to be made through 3B.
  - Two separate methods for payment calculation. (Fixed sum method and self assessment method)

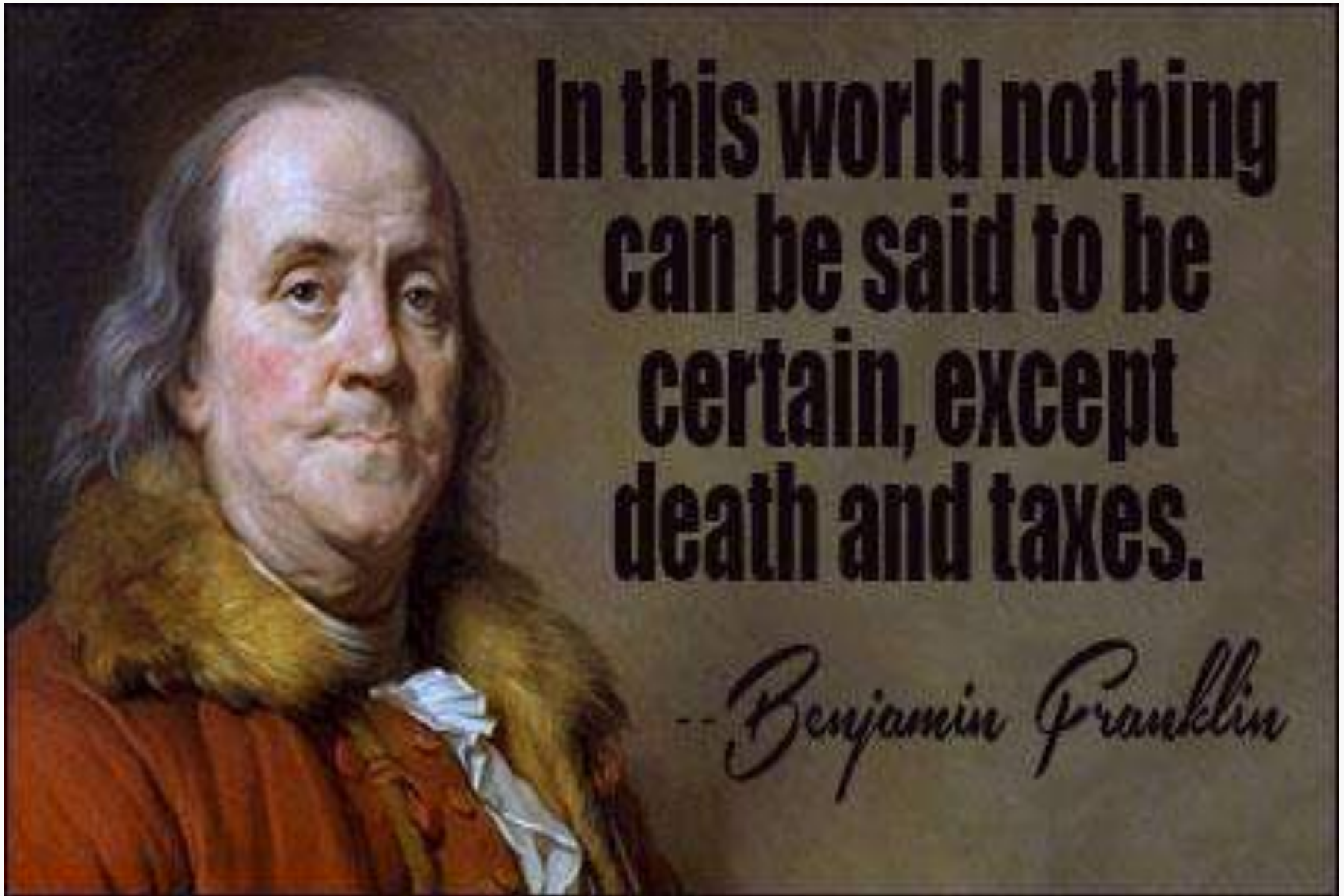
# FMCG Trade Partners

## ➤ Traditional Trade – Kirana Stores

- More than 80% market share
- Regular customers
- Varying prices
- Limited brands
- Cost of GST compliance is high

## ➤ Modern Trade:

- Departmental stores – Multiple discounts, wide product range, no middlemen, Economy of scale, more organized.
- Grocery chain
- Online Sales - ECO



*Thank You!*

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