

**AUTHORITY FOR ADVANCE RULING, TAMIL NADU
No.207, 2nd FLOOR, PAPJM BUILDING, No.1, GREAMS ROAD,
CHENNAI 600 006.**

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 AND
UNDER SECTION 98(4) OF THE TNGST ACT, 2017**

Members present:

Shri Balakrishna S, I.R.S., Additional Commissioner/Member (CGST), Office of the Commissioner of GST and Central Excise, Audit II Commissionerate, Chennai - 600 034.	Shri B.Suseel Kumar, B.E., MBA., Joint Commissioner/Member (SGST), Authority for Advance Ruling, Tamil Nadu, Chennai - 600 006.
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Advance Ruling No. 15/ARA/2025, dated 07.05.2025

1. *Any appeal against this Advance Ruling order shall lie before the Tamil Nadu State Appellate Authority for Advance Ruling, Chennai under Sub-Section (1) of Section 100 of CGST Act 2017/TNGST Act 2017, within 30 days from the date on which the ruling sought to be appealed is communicated.*
2. *In terms of Section 103(1) of the Act, Advance Ruling pronounced by the Authority under Chapter XVII of the Act shall be binding only-*
 - (a) *On the applicant who had sought it in respect of any matter referred to in sub-section (2) Section 97 for advance ruling.*
 - (b) *On the concerned officer or the Jurisdictional Officer in respect of the applicant.*
3. *In terms of Section 103(2) of the Act, this Advance Ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*
4. *Advance Ruling obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts, shall render such ruling to be void ab initio in accordance with Section 104 of the Act.*
5. *The provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Services Tax Act (herein referred to as the Act) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act.*

GSTIN Number, if any/User id	33AAACF1406C1ZK
Legal Name of Applicant	M/s. Fairmacs Shipstores Private Limited
Trade Name of Applicant	M/s. Fairmacs Shipstores Pvt. Ltd.,
Registered Address/ Address provided while obtaining User id	No.31, Moore Street, Chennai – 600 001.
Details of Application	Application Form GST ARA-01 received from the applicant on 03.07.2024.
Jurisdictional Officer	State – Harbour Assessment Circle North-I Zone, Chennai (North) Division. Centre – Range –II, Egmore Division, Chennai North Commissionerate
Nature of activity (s) (proposed/present) in respect of which advance ruling sought for A. Category B. Description (in brief)	Wholesaler / Distributor The applicant is a company who are wholesale traders in liquor, frozen meat products, food products. They make supplies to hotels, other institutional customers and also to ships, consulates etc. They have branches at Bangalore, Vizag and Kakinada. The applicant is mainly supplying frozen meat like fish, chicken, etc., and they also make supplies on branch transfer basis from Chennai to their Bangalore branch for which they have a GST registration in Bangalore. They are selling products packed in individual packs of 1Kg, 2Kg, 3Kg etc., to distributors with the marking 'For Institutional sale only'.
Issues on which advance ruling required	Classification of any goods or services or both. Applicability of a notification issued under the provisions of this Act. Determination of the liability to pay tax on any goods or services or both.
Question(s) on which advance ruling is required	1. Whether hotels qualify as industrial/institutional consumers as per Rule 2bb and 2bc of the Legal Metrology (Packaged Commodities) Rules, 2011? 2. As supply to institutions is not classified as 'pre-packaged and labelled', as per Rule 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011, the applicant is of the

	<p>opinion that such supplies are 'Nil' rated. Whether the applicant's understanding that ITC cannot be availed, as such supplies are 'Nil' rated, is correct?</p> <p>3. Supply to Bangalore branch is wholly done by Chennai Head Office, and at Bangalore, they sell the products only to hotels or institutions. So, there will not be any output tax and they cannot claim ITC on inter-branch transfer. Whether GST is to be charged on inter-branch transfer?</p> <p>4. The frozen meat products packed in individual packs of 1Kg, 2Kg, 3Kg etc., are sold to distributors with the marking 'For Institutional sale only', which means distributors can sell these products only to hotels/Institutions. Whether the applicant should charge GST on such supplies to distributors?</p>
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M/s. Fairmacs Shipstores Private Limited, located at No.31, Moore Street, Chennai – 600 001, (hereinafter called as the "Applicant") is a company who are wholesale traders in liquor, frozen meat products, food products. They make supplies to hotels, other institutional customers and also to ships, consulates etc. They have branches at Bangalore, Vizag and Kakinada. The applicant is mainly supplying frozen meat like fish, chicken, etc., and they also make supplies on branch transfer basis from Chennai to their Bangalore branch for which they have a GST registration in Bangalore. They are selling products packed in individual packs of 1Kg, 2Kg, 3Kg etc., to distributors with the marking 'For Institutional sale only'. They are registered under GST with GSTIN 33AAACF1406C1ZK.

2. The Applicant has made a payment of application fees of Rs.5,000/- each under sub rule (1) of Rule 104 of CGST Rules, 2017 and TNGST Rules, 2017. The Applicant has filed this application seeking Advance Ruling on the following questions, viz.,

- (i) Whether hotels qualify as industrial/institutional consumers as per Rule 2bb and 2bc of the Legal Metrology (Packaged Commodities) Rules, 2011?
- (ii) As supply to institutions is not classified as 'pre-packaged and labelled', as per Rule 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011, the applicant is of the opinion that such supplies are 'Nil' rated. Whether the applicant's understanding that ITC cannot be availed, as such supplies are 'Nil' rated, is correct?
- (iii) Supply to Bangalore branch is wholly done by Chennai Head Office, and at Bangalore, they sell the products only to hotels or institutions. So, there will

not be any output tax and they cannot claim ITC on inter-branch transfer. Whether GST is to be charged on inter-branch transfer?

(iv) The frozen meat products packed in individual packs of 1Kg, 2Kg, 3Kg etc., are sold to distributors with the marking 'For Institutional sale only', which means distributors can sell these products only to hotels/Institutions. Whether the applicant should charge GST on such supplies to distributors?

3.1 The applicant submits that the present application is maintainable under Section 97 of the CGST / TNGST Act, 2017:

- i. Classification of any goods or services or both;
- ii. Applicability of notification issued under the provisions of this Act;
- iii. Determination of the liability to pay tax on any goods or services or both;

3.2 Under the 'Statement of facts having a bearing on the questions raised', as in Sl.No.15 of the application, the applicant has stated as follows :-

"1. We are supplying frozen foods to hotels like fish, chicken, etc.

2. We are mostly sending frozen foods from Chennai to Bangalore branch transfer. We have GST registration in Bangalore also."

3.3 Under the 'Statement containing the applicant's interpretation of law and/or facts', as in Sl.No.16 of the application, the applicant states,

"1. We are not charging GST for supply to industrial and institutional consumers based on our reading of the Notification No.1/2017 – Central Tax (Rate) and Notification No.6/2022 – Central Tax (Rate) along with the FAQ published by the Department in F.No.190354/172/2022-TRU dated 17.07.2022.

2. The Legal Metrology (Packaged Commodities) Rules, 2011."

4.1 Prima facie, we find that the queries raised by the applicant get covered under clauses (a), (b) and (e) of the Section 97(2) of the CGST Act, 2017, and as such are liable to be admitted.

5.1 The applicant falls within the administrative jurisdiction of 'STATE'. The jurisdictional authority, Assistant Commissioner (ST), Harbour Assessment Circle vide their letter dated 11.09.2024 have stated that no proceedings are pending, or decided, in respect of the issues involving the questions raised by the applicant. The remarks in respect of the queries raised by the applicant were as follows :-

Q.1. Hotels are not to be treated as an institution.

Q.2. The taxpayer is eligible to avail ITC, as such supplies are not 'Nil' rated.

Q.3. GST is payable on such inter-branch transfers.

Q.4. As they are not supplying to institutions, GST is payable on such transactions with distributors.

5.2 The Central jurisdictional authority has not furnished any reply in this regard. Hence, it is construed that there are no proceedings pending or decided on the issue raised by the applicant.

PERSONAL HEARING

6.1. Mr. J. Martin Joseph Selvaraj, Consultant and a Partner in M/s. J. Martin & Associates, appeared for the personal hearing as the authorized representative (AR) of M/s. Fairmacs Shipstores (P) Ltd. The AR reiterated the submissions made in their application for advance ruling.

6.2. He further explained that the applicant is into purchase and sale of frozen meat (chicken, fish, etc.) and other products, mainly to hotels who use the same for cooking the dish for supply to the customers. He stated that since they are under the impression that such supplies to hotels falls under the 'Institutional sale' category, all such packages carry the marking 'For Institutional sale only'. He also stated that they carry out inter-branch transfer to their Bangalore unit and also to their Andaman & Nicobar unit, which are also meant for onward sale to hotels or institutions from the respective branches. To a specific query by the Members as to whether they make sales to retail outlets, he replied that they are normally not making sales to retail outlets and almost all the sale transactions are effected to hotels or institutions. When the Members raised another query as to whether the marking 'Not for retail sale' is present in such packages meant for hotels, he stated that such marking is not done, and instead such packages carry the marking 'For Institutional sale only'.

DISCUSSION AND FINDINGS

7.1 We have carefully considered the submissions made by the applicant in the advance ruling application, the additional submissions made during the personal hearing held on 16.04.2025.

7.2 We find from the application filed by the applicant that they are mainly supplying frozen meat like fish, chicken, etc., to hotels, other institutional customers and also to ships, consulates etc.

7.3 It may be noted that prior to 18th July 2022, GST was not leviable on packaged but unbranded goods, and GST was levied on branded goods where the actionable claim or enforceable right over such brand name was not foregone. However, with effect from 18.07.2022, a major change in applicability of GST on packaged goods involving the term 'pre-packaged and labelled' took place by way of issue of two notifications, viz., Notification No.06/2022-Central tax (Rate) dated 13.07.2022 and Notification No.07/2022-Central tax (Rate) dated 13.07.2022, whereby GST was made applicable on supply of such "pre-packaged and labelled" commodities attracting provisions of Legal Metrology Act, 2009.

7.4 In this regard, it is seen that Notification No.06/2022-Central tax (Rate) dated 13.07.2022, amends the parent rate Notification No.01/2017-Central Tax (Rate) dated 28.06.2017 by way of substituting the suffixing portion attached to the specified commodities beginning with the words 'and put up in unit container, and, - ----' with the phrase 'pre-packaged and labelled'. Likewise, Notification No.07/2022-Central tax (Rate) dated 13.07.2022, amends the parent exemption Notification No.02/2017-Central Tax (Rate) dated 28.06.2017 by way of substituting the

suffixing portion attached to the specified commodities beginning with the words 'other than those put up in unit container, and,-----' with the phrase 'other than pre-packaged and labelled'.

7.5 The term "pre-packaged and labelled", has been defined under the aforesaid notifications, viz., No.06/2022 & 07/2022, as follows :-

"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 (1 of 2010) and the rules made thereunder."

And as per Sec 2(l) of the Legal Metrology Act 2009, 'pre-packaged commodity' has been defined in the following manner, i.e.,

"(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."

This apart, a 'label' has been defined under Section 2(f) of the Legal Metrology Act 2009, as under,

"label means any written, marked, stamped, printed or graphic matter affixed to, or appearing upon any pre-packaged commodity."

Whereby it becomes clear that the label need not be always printed or affixed, and that even a stamp, marking, written matter also would be treated as label.

7.6 At this juncture, it becomes imperative to understand the crucial distinction between the terms 'chilled' and 'frozen', before proceeding further. In common parlance, a chilled product is normally understood to be a refrigerated product, where the products retains the shape and texture, and where the temperature is less than the room temperature, but it does not get into the 'minus' category, i.e., not below zero degrees centigrade. On the other hand, a frozen product is understood to be a hardened product, kept under freezing temperatures at much less than zero degrees centigrade. Technically speaking, the distinction between chilled and frozen cargo is as given below :-

Frozen Cargo: These cargoes are carried in a hard frozen state at a temperature of around minus 8 degrees centigrade to minus 12 degrees centigrade, to prevent the growth of bacteria, e.g., meat, butter, poultry, and fish.

Chilled Cargo: These cargoes are carried at the temperature of 6 degrees centigrade to minus 2 degrees centigrade. Maintaining the right temperature is more critical with chilled cargoes than with frozen cargoes as condensation of moisture due to variation of temperature encourages bacterial growth. e.g., cheese, eggs and fresh vegetables.

It could be understood from the above, that when the chicken meat or fish meat are to be delivered at doorstep or across the counter, they are normally done at fresh or chilled state. On the other hand, when the shelf-life is required to be maintained in respect of the said products in order to enable delivery at a much later date to destination afar, or for export consignments, or to be kept at the shelf of departmental stores over a period of time, the products concerned are required to be maintained at a frozen state, often in pre-packaged mode.

7.7 As regards, the rate of GST applicable to the impugned supply, it could be seen that the Notification No.01/2017 – CT (Rate) dated 28.06.2017 as amended, reads as follows under Schedule I (GST @ 5%) :-

S.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
1	0202, 0203, 0204, 0205, 0206, 0207 , 0208, 0209, 0210	All goods [<u>other than</u> fresh or chilled], pre-packaged and labelled;
2	0303, 0304 , 0305, 0306, 0307, 0308	All goods [<u>other than</u> fresh or chilled], pre-packaged and labelled;

It could be seen from the above, that meat of chicken (HSN 0207), or of fish (HSN 0304) '**other than** fresh or chilled', i.e., frozen products, get covered under entries at Sl.Nos. 1 and 2 respectively, provided they fall under the category of 'pre-packaged and labelled' commodities. Accordingly, the rate of duty for the impugned pre-packaged and labelled products is leviable to CGST at 2.5%, and SGST at 2.5% (totaling 5%) in case of intra-state supply, and to IGST at 5% in case of inter-state supply, subject to adherence of the conditions as stipulated under the Legal Metrological Act, 2009, and the Legal Metrology (Packaged Commodities) Rules, 2011.

7.8 On the other hand, the exemption Notification No.02/2017-CT (Rate) dated 28.06.2017, as amended, discusses inter-alia about the goods in respect of HSN **0202** (Meat of **bovine** animals, **frozen**), 0204 (Meat of **sheep or goats**, fresh, chilled or **frozen**), **0207** (Meat and edible offal, of the **poultry** of heading 0105, fresh, chilled or **frozen**) and **0304** (Fish fillets and other **fish meat** (whether or not

minced), fresh, chilled or **frozen**), as seen at Sl. Nos. 8 & 9, and at Sl. Nos. 21 & 22. For ease of reference, the relevant provisions of the said Notification as amended, is reproduced below:

S.No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
8	0203, 0204, 0205, 0206, <u>0207</u> , 0208, 0209	All goods, <u>fresh or chilled</u>
9	0202, 0203, 0204, 0205, 0206, <u>0207</u> , 0208, 0209, 0210	All goods <u>other than</u> fresh or chilled, <u>other than</u> pre-packaged and labelled
21	<u>0304</u> , 0306, 0307, 0308	All goods, <u>fresh or chilled</u>
22	0303, <u>0304</u> , 0305, 0306, 0307, 0308, 0309	All goods <u>other than</u> fresh or chilled, <u>other than</u> pre-packaged and labelled

It could be seen from the above, that fresh or chilled meat of chicken (HSN 0207), or of fish (HSN 0304) are exempted from GST by way of entries in Sl.Nos. 8 and 21 straightaway. Apart from the same, it could also be seen that even those goods pertaining to the above referred HSN '**other than** fresh or chilled', i.e., frozen products, also stand exempted from GST by virtue of entries at Sl.Nos. 9 and 22, if they do not fall within the ambit of 'pre-packaged and labelled' category.

7.9 Accordingly, on a combined reading of the rate Notification No.01/2017 – CT (Rate) dated 28.06.2017 as amended, and the exemption Notification No.02/2017-

CT (Rate) dated 28.06.2017, as amended, it becomes clear that the supply of goods satisfying the following conditions, would attract GST, viz.,

- (i) The goods are labelled and supplied in pre-packaged condition.
- (ii) The goods in pre-packaged condition are required to bear the declarations under the provisions of the Legal Metrology Act, 2009 and the rules made thereunder.

However, it is to be noted that if such specified commodities are supplied in a package that do not require declaration under Legal Metrology Act, the same would not be treated as pre-packaged and labelled for the purpose of GST levy. In this regard, it is seen that as per Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011, the provisions applicable to packages intended for retail sale shall not apply to following cases, i.e.,

- (a) Packages of commodities containing quantity of more than 25 kilogram or 25 Litre.
- (b) Cement Fertilizer and agricultural farm produce sold in bags above 50 kilogram
- (c) Packaged commodities meant for industrial consumers or institutional consumers.

7.10 As per Rule 2 (bb) of Legal Metrology (Packaged Commodities) Rules, 2011,

*“**industrial consumer**” means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer **for use by that industry** and the package shall have declaration ‘not for retail sale’.*

And, as per Rule 2 (bc) of the Rules, *ibid*,

*“**institutional consumer**” means the institution which buys packaged commodities bearing a declaration ‘not for retail sale’ directly from the manufacturer or from an importer or from wholesale dealer **for use by that institution and not for commercial or trade purposes.***

Accordingly, from a plain reading of the above definitions, the four conditions, viz., (i) the impugned commodity shall bear a declaration **‘not for retail sale’**, (ii) it is procured directly from the manufacturer or from an importer or from wholesale dealer, (iii) it is meant for use by that institution, and (iv) it is not for commercial or trade purposes, are required to be fulfilled, for the transaction to get covered within the ambit of ‘institutional consumer’ category. However, in respect of the ‘industrial consumer’ category, it could be noticed that the fourth condition, viz., **‘not for commercial or trade purposes’**, is conspicuously absent, while the other three conditions remain intact. In this regard, we observe that the probable purpose behind the said distinction in the respective definitions, is due to the fact that while the term ‘industry’ is meant to cover a specific sector, viz., manufacturing units, processing units, hotels and the like, the term ‘institution’ on the other hand would

cover all other bodies like educational institutions, trusts, societies, etc. Further, it is to be seen that such goods which are meant for use by such institutions, are not supposed to be used for further commercial or trade purposes. We observe that in the case of hotels, frozen meat is normally subjected to further processing/cooking process, and the resultant product/dish is served to the clients on commercial basis. Accordingly, where the recipient of supply of is a hotel, even in the event of considering the fact that such frozen products are not subjected to further trading by such hotels, the fact remains that such products are meant for use by that industry for further commercial purposes. We are, therefore, of the opinion that the hotels which purchase frozen meat from the applicant do not fit into the definition of an 'institutional consumer' as laid down under Rule 2 (bc) of Legal Metrology (Packaged Commodities) Rules, 2011, and are to be treated as an 'industrial consumer', in terms of Rule 2 (bb) of the Rules *ibid*.

7.11 Notwithstanding the same, we observe that the moot point for consideration here is that the supply to hotels of frozen foods like fish, chicken, etc., irrespective of the fact as to whether it is meant either for an 'industrial consumer' or for an 'institutional consumer', is eligible for exemption from payment of GST, vide entry Sl.No.9 of Notification No.2/2017-CT (Rate) dated 28.06.2017 as amended, as it is clear that they are outside the ambit of 'pre-packaged and labelled' category by virtue of clause (c) to rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011.

7.12 in this regard , it is also seen that the above position stands confirmed through the FAQ issued by Government of India, Ministry of Finance, Department of Revenue (Tax Research Unit), dated 17th July, 2022, in F. No. 190354/172/2022-TRU, wherein under Sl.No.7, it has been clarified as follows :-

S. No	Question	Clarification
7.	Whether tax is payable if such packaged commodities are supplied for consumption by industrial consumers or institutional consumers?	Supply of packaged commodity for consumption by industrial consumer or institutional consumer is excluded from the purview of the Legal Metrology Act by virtue of rule 3 (c) of Chapter-II of Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, if supplied in such manner as to attract exclusion provided under the said rule 3(c), <u>it will not be considered as pre-packaged and labelled for the purposes of GST levy.</u>

7.13 In effect, the supply of packaged commodities containing frozen meat products to institutional or an industrial consumer becomes eligible for exemption from payment of GST, if and only if the following conditions are fulfilled, viz.,

- (i) The packaged commodities should bear a declaration '**Not for Retail sale**'.

- (ii) The purchase is made directly from the manufacturer or from an import or from wholesale dealer.
- (iii) The purchase is made for use by that institution and **not for commercial or trade purposes**, in the case of an institutional supply.
- (iv) The purchase is made for use by that industry, in the case of an industrial supply.

7.14 From the facts of the case and the questions raised by the applicant as enumerated in Sl.No.14 of the application for advance ruling filed by the applicant, we find that a declaration 'For institutional sale only', is reported to be affixed on the packages. However, in this regard we observe that the requirement under the first condition, demands in specific terms that the packaged commodities should bear the declaration 'Not for retail sale'. Further, when the Members raised a specific query during the personal hearing held on 16.04.2025, as to whether the marking 'Not for retail sale' is present in such packages meant for hotels, the authorised representative for the applicant stated that such marking is not done, and instead such packages carry the marking 'For Institutional sale only'. Hence, we are of the opinion that the first condition is not fulfilled in the instant case.

7.15 As regards the second condition, we notice that from the additional submissions made during 'the personal hearing and from the sample copies of invoices furnished therein, that the Applicant is neither a manufacturer nor an importer of the impugned goods. However, since they purchase frozen products in pre-packaged form and fresh products in bulk quantities, and undertake resale of such goods, we find that they act as a wholesale dealer of the goods in question.

7.16 Coming to the last condition, as discussed already in detail in para 7.10 above, hotels being considered as 'institutional consumers', is effectively ruled out in view of the fact that the resultant output ends up as an outward supply on commercial basis. Hence, we find that such sale of packaged commodities to hotels by the Applicant, is to be considered as a supply made to 'industrial consumer', and that the same should be for use by that hotel/industry.

7.17 Accordingly, we observe that while the other two conditions appear to have been fulfilled in the instant case, the first and primary condition, viz., the declaration of 'Not for Retail Sale', has not been fulfilled in the instant case. Hence, for supplies to be made to institutional or industrial consumers, we find that the exemption from GST as claimed by the Applicant would be available, if and only if, it fulfils all the conditions envisaged under Rule 2(bb) and Rule 2(bc) of the Packaged Commodities Rules, 2011.

7.18 Under the facts and circumstances of this case, we attempt to discuss and answer the queries raised by the applicant in the application for advance ruling filed, as follows:-

- (i) ***Whether hotels qualify as industrial/institutional consumers as per Rule 2bb and 2bc of the Legal Metrology (Packaged Commodities) Rules, 2011?***

Hotels qualify as an 'industrial consumer' as per Rule 2(bb) of the Legal Metrology (Packaged Commodities) Rules, 2011, in view of the detailed discussions as in para 7.10 above.

(ii) As supply to institutions is not classified as 'pre-packaged and labelled', as per Rule 3(b) of the Legal Metrology (Packaged Commodities) Rules, 2011, the applicant is of the opinion that such supplies are 'Nil' rated. Whether the applicant's understanding that ITC cannot be availed, as such supplies are 'Nil' rated, is correct?

Yes. The supplies to institutional or industrial consumer shall not be considered as 'pre-packaged and labelled' for the purpose of GST levy, as they get covered under Rule 3(c) of the Legal Metrology (Packaged Commodities) Rules, 2011. Such supplies are indeed 'Nil' rated, as they are covered under the exemption notification No.02/2017-CT (Rate) dated 28.06.2017, **if and only if** it fulfils all the conditions envisaged under Rule 2(bb) and Rule 2(bc) of the Packaged Commodities Rules, 2011. As a corollary, if the said conditions are not fulfilled, such supplies cannot be treated as exempted, even if they are made to an industry or an institution. Further, in the instant case of the applicant, we notice that the declaration 'Not for Retail Sale' is reportedly not affixed/printed in the packages, and therefore, such supplies are not exempted from payment of GST. However, on fulfilment of the requisite conditions, if such outward supplies are treated as 'Nil' rated, ITC on the inward supply involved in such cases cannot be availed.

(iii) Supply to Bangalore branch is wholly done by Chennai Head Office, and at Bangalore, they sell the products only to hotels or institutions. So, there will not be any output tax and they cannot claim ITC on inter-branch transfer. Whether GST is to be charged on inter-branch transfer?

With regard to GST liability on inter-branch transfer of goods, Section 25(4) of the CGST Act, 2017, addresses the issue in specific terms, and it runs as follows :-

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

It becomes clear from the above that once a branch or depot of a company is required to obtain a different GSTIN, whether within the state or inter-state, they become distinct persons and accordingly, every branch or depot with individual GSTINs belonging to one company will be treated as an individual entity. Further, as per clause (2) to Schedule I of the CGST Act, 2017, "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business", is an activity which is to be treated as supply under Section 7 of the Act, *ibid*, even if made without consideration. Therefore, GST is chargeable if transactions take place between two persons with different GSTINs. In fine, we are of the opinion that intra-state stock transfers holding the same GSTIN are not subject to GST, whereas stock transfers to distinct persons within the state and inter-state stock transfers are chargeable to

tax under GST. In the instant case, we observe that while the applicant's Head Office is in Chennai, they have a branch at Bangalore, and another at Andaman & Nicobar as well. As these branches are located outside the state of Tamilnadu, they become distinct entities which necessitates the need for a separate GST registration for such branches. Normally, supplies to such branches outside the home state are taxable to GST (IGST for inter-state supplies). However, as per the facts of the case furnished by the Applicant, the supply of the impugned products to its branch is reported to undergo further supply only to hotels or other institutional consumers. In this regard, we find that Rule 3(c) of the Chapter II of the Packaged Commodities Rules, inter-alia states as 'packaged commodities meant for industrial consumers or institutional consumers', whereby it becomes clear that the end user should be an industrial consumer or an institutional consumer, and that the same should not be for retail sale. Hence, for the supplies meant for industrial/institutional consumers, we find that the exemption from GST would be available **if and only if** it fulfils all the conditions envisaged under Rule 2(bb) Rule of the Packaged Commodities Rules 2011 for "**Industrial Consumer**", or under Rule 2(bc) of the Rules, ibid for "**Institutional Consumer**". In the instant case of inter-branch transfers, since the requirement of affixing/printing the declaration 'Not for Retail Sale' is reportedly not made in the packages, such supplies do not fall under the exempted category.

(iv) The frozen meat products packed in individual packs of 1Kg, 2Kg, 3Kg etc., are sold to distributors with the marking 'For Institutional sale only', which means distributors can sell these products only to hotels/Institutions. Whether the applicant should charge GST on such supplies to distributors?

It may be seen that packages of commodities containing quantity of more 25 kilograms as specified in rule 3(a) of the Legal Metrology (Packaged Commodities) Rules, 2011, and quantity of ten gram or less as specified in rule 26(a) of the rules, ibid, are kept outside the purview of the said rules. In this regard, we find that the analogy of the discussion as above in respect of query Sl. No.(iii), applies to this query as well, since frozen meat products packed in individual packs of 1Kg, 2Kg, 3Kg, etc., get covered as 'pre-packaged and labelled' commodities. Such supplies become eligible for exemption under notification No.02/2017-CT (Rate) dated 28.06.2017, provided the distributor to whom the Applicant makes outward supply, is also a wholesale dealer, and provided such packages carry the declaration 'Not for Retail Sale'. However, since the mandatory requirement of declaration is not available in the instant case, and since the status of the distributor as a wholesale dealer is not clear/confirmed, we are of the opinion that the applicant should charge GST on such supplies to distributors.

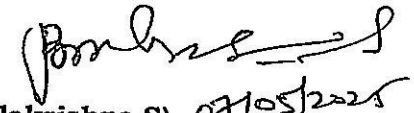
8. In view of the above, we rule as under;

RULING

- (a) Hotels qualify as an 'industrial consumer' as per Rule 2(bb) of the Legal Metrology (Packaged Commodities) Rules, 2011, in view of the detailed discussions as in para 7.10 above.
- (b) The declaration 'Not for Retail Sale' is reportedly not affixed/printed in the packages, and therefore, such supplies are not exempted from payment of GST. However, on fulfilment of the requisite conditions, if such outward supplies are treated as 'Nil' rated, ITC on the inward supply involved in such cases cannot be availed.
- (c) With regard to inter-branch transfers, since the requirement of affixing/printing the declaration 'Not for Retail Sale' is reportedly not made in the packages, such supplies do not fall under the exempted category.
- (d) Since the mandatory requirement of declaration 'Not for Retail Sale' is not available in the packages instant case, and since the status of the distributor as a wholesale dealer is not clear/confirmed, the applicant should charge GST on such supplies to distributors.


(B.Suseel Kumar)
Member (SGST)




(Balakrishna S) 07/05/2025
Member (CGST)

To

M/s. Fairmacs Shipstores Private Limited,
No.31, Moore Street, Chennai – 600 001.

(By RPAD)

Copy submitted to

1. The Principal Chief Commissioner of GST and Central Excise,
26/1, Uthamar Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai 600 005.
3. The Commissioner of GST and Central Excise,
Chennai North Commissionerate,
GST Bhavan, 26/1, M.G. Road,
Nungambakam, Chennai 600 034.

Copy to

1. The Assistant Commissioner (ST),
Harbour Assessment Circle,
CT Building, Elephant Gate Bridge Road,
Chennai 600 003.
2. Master File / Stock File – A1