

# Classification of Goods and Services under GST

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## Basic Understanding

- ❑ Three elements of taxation
  - ❖ Levy
  - ❖ Assessment
  - ❖ Collection
- ❑ Determination of Rate of Tax and Exemption is part of Assessment
- ❑ Classification of goods and Services becomes critical to determine both rate of tax and also exemption.

## Reference in GST law as to Classification

- ❑ There is no direct reference to the classification in the GST Acts or Rules
- ❑ The Notification issued under the GST Acts refers to classification.
- ❑ Reference may be made to Notn. No. 1/2017 or 2/1017 for goods

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
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- ❑ Explanation (iii) & (iv) –
  - (iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
  - (iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

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3

## Reference in GST law as to Classification

- ❑ For Services reference may be made to Notification No. 11/2017-CT(R)

S. No.	Chapter, Section or Heading	Description of Service	Rate (Per cent.)	Condition
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- ❑ Explanation (ii) & (iii) –
  - (ii) Reference to “Chapter”, “Section” or “Heading”, wherever they occur, unless the context otherwise requires, shall mean respectively as “Chapter”, “Section” and “Heading” in the annexed scheme of classification of services **(Annexure)**.
  - (iii) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of heading 9988.
- ❑ Notification No. 12/2017 – Explanation 3 says - For the purposes of this notification,-
  - (i) Reference to “Chapter”, “Section” or “Heading”, wherever they occur, unless the context otherwise requires, shall mean respectively as “Chapter”, “Section” and “Heading” in the scheme of classification of services.
  - (ii) Chapter, Section, Heading, Group, or Service Code mentioned in Column (2) of the Table are only indicative.

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4

## Difference between Notified Rate and Effective Rate

### ❑ Section 9(1)

*Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. - Refer Notification No. 1/2017-CT (R) & 11/2017-CT(R)*

### ❑ Section 11(1)

*Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification. - Refer Notification No. 2/2017-CT (R) & 12/2017-CT(R)*

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5

## Classification of Goods

## Introduction of Schedule I to CTA '75

- ❑ Schedule I to CTA 1975 contains – 98 chapters
- ❑ It is designed based on Harmonized System Nomenclature (HSN)
- ❑ The final Harmonized Commodity Description and Coding System is developed by World Customs Organization – adopted by 140 countries.
- ❑ The coding system consists of 8 digit (explained subsequently)
- ❑ Explanatory Notes to HSN is also released by WCO

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7

## Important Points in Schedule I to CTA '75

- ❑ Rules for the interpretation (ROI)
  - ❑ Appended to First Schedule to CTA '75
  - ❑ Contains 6 Rules
  - ❑ To be used for understanding classification
- ❑ General Explanatory Notes & Additional Notes
  - ❑ Explains the terms and symbols used in the schedule
- ❑ Section Notes
  - ❑ Given at the beginning of Sections
- ❑ Chapter Notes
  - ❑ Given at the beginning of Chapters

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8

## Important Points in Schedule I to CTA '75

- ❑ "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;
- ❑ "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;
- ❑ "tariff item" means a description of goods in the list of tariff provisions accompanying eight-digit number and the rate of customs duty;
- ❑ The list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;
- ❑ In column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.

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9

## Explanatory Notes

- ❑ In column (2) there are symbols "-", "- -", "- - -" or "- - - -". It is explained in the explanatory notes as follows:
  - ❑ "-", the description of said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading.
  - ❑ "- -" the description of an article or group of articles shall be taken to be sub-classification of the immediately preceding description of the article or group of articles which has "-".
  - ❑ "- - -" or "- - - -" the description of an article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

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10

## Rules of Interpretation

### □Rule 1.

*The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions :*

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11

## Rules of Interpretation

### □Rule 2 (a).

*Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

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12

## Rules of Interpretation

### □ Rule 2 (b).

*Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

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13

## Rules of Interpretation

### □ Rule 3 (a).

*When by application of rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

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14

## Rules of Interpretation

### □Rule 3 (b).

*When by application of rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*

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15

## Rules of Interpretation

### □Rule 3 (c).

*When by application of rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

*(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

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16



## Rules of Interpretation

### □ Rule 4.

*Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

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17

## Rules of Interpretation

### □ Rule 5.

*In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein :*

- *(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;*
- *(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.*

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18

## Rules of Interpretation

### □ Rule 6.

*For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

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19

## Non-Statutory Principles of Classification

- In case of doubt, HSN is a safe guide for ascertaining true meaning of any expression used in the Act, unless there is an express different intention indicated in the tariff itself.
- If entries in HSN and tariff are not aligned, reliance cannot be placed on HSN for classification of goods.
- Trade & expressions used in Tariff have to be understood by their popular meaning i.e. meaning attached by those using the product, and not in Technical sense. However specific technical term used it has to be followed.
- Commercial parlance test is the best test for classification, when not artificially defined by law.
- ISI specification is not ignorable in the absence of any material.
- Reference to a dictionary meaning is not safe when there is no definition in the statute for ascertaining the meaning of tariff entry. The correct guide would be trade parlance.

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20

# Classification of Services

## Background

- ❑ There is no Universal Method across the world for classification of services
- ❑ Some reference as to classification of services is done United Nations for the purposes of statistics collection, which is called Central Product Classification (CPC) published by the Department of Economic and Social Affairs of the United Nations Secretariat.
- ❑ The said classification list consists of both goods and services starting from section '0' to section '9', wherein section '0' to section '4' covers goods and section '5' to section '9' covers services.

## Explanatory Notes to Classification of Services

### ❑ Preface issued by CBIC is as follows:

- ❑ The Scheme of Classification of Services adopted for the purposes of GST is a modified version of the United Nations Central Product Classification.
- ❑ The Explanatory notes for the said Scheme of Classification of Services is based on the explanatory notes to the UNCPC, and as recommended by the committee constituted for the purpose, is annexed.
- ❑ The explanatory notes indicate the scope and coverage of the heading, groups and service codes of the Scheme of Classification of Services. These may be used by the assessee and the tax administration as a guiding tool for classification of services. However, it may be noted that where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description.

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23

## Other Aspects

- ❑ Common Understanding *vis-à-vis* Classification are different.
- ❑ SAC Not used in all places unless specified
- ❑ Others

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24

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