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## ALL ABOUT HSN CODE IN GST

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One of the challenges the taxpayers faced in the pre-GST era is the classification of goods, especially in the VAT Regime. As Value Added Tax was a state subject, the classification of items differed from state to state in few cases, which caused the litigations for the issue of “C” forms. With the rollout of GST, this challenge is done away with as we are following the HSN Codes, aka Harmonized System Nomenclature. The rates of the items or services are determined based on the HSN codes, and the taxpayers have to refer to the HSN codes from the Customs Tariff Act and conclude the rates accordingly.

### Background

The classification of items was a challenge in the Internal Trade. To overcome this, the World Customs Organization adopted HSN codes. Two hundred twenty countries use it as of 1st Oct 2020 as per the World Customs Organization (WCO). The International Convention on the Harmonized Commodity Description and Coding System governs the HSN codes or HN codes. Classifications are updated every five or six years. As per the WCO, the classification exists for more than 5000 items and 98% of the merchandise in the world trade is classified under HS. As per the WCO, the HSN code is 6 digits.

### HSN Codes in GST

India is the first country to adopt the HSN codes at 8 digits and also classify services. The HSN codes for Services start with 99 series, and they are 6 digits.

#### Q1. Is there a separate list of HSN for the Goods in GST?

No, there is no separate list of HSN's under GST, but the taxpayers have to refer to the HSN codes as specified in the Customs Tariff Act 1975. Refer to point # 4 in Notification No 11/2017 - Centra Tax (Rates) dated 28th June 2017.

#### Q2. How to Interpret/read the HSN Codes?

There are 6 General Rules for interpreting the tariff codes, and they are known as the General Rules of Interpretation.

Rules one to four are related and must be applied in sequence. Rules five and six stand on their own to be applied as needed.

Rule 1: heading are for reference only

- Rule 2(a): article in an entry includes CKD-SKD
- Rule 2(b): articles in an entry includes mixtures
- Rule 3(a): specific description to be preferred
- Rule 3(b): material that gives essential character
- Rule 3(c): later-is-better
- Rule 4: akin goods
- Rule 5: cases-packaging classified with article
- Rule 6: entries at the same level comparable

**Q3. Is it mandatory to show HSN Codes on the tax invoice?**

Yes, it is conditionally mandatory to show HSN codes on the tax invoice. As per Rule 46, display of HSN code is mandator on the tax invoice, but relaxation is provided from time to time

*As per Notification No 78/2020 – Central Tax dated 15<sup>th</sup> Oct 2020*

Sr. No	Description	No of Digits
1	Aggerate Turnover Above ₹ 5 Crores	6
2	Aggerate Turnover up to ₹ 5 Crores – B2B	4
3	Aggerate Turnover up to ₹ 5 Crores – B2C (optional)	4
4	Chemicals – which are notified	8

**Q5. What is the structure of the HSN Codes for goods?**

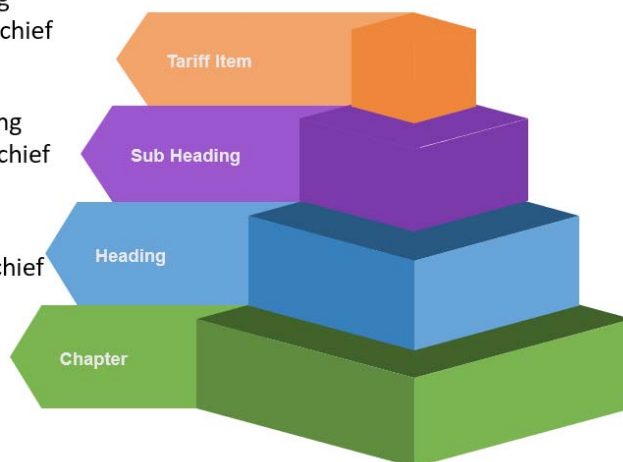
**Handkerchief - 62.13.90.10**

Item Tariff – 10 : Articles of apparel and clothing accessories, not knitted or crocheted – Handkerchief other Material – Of Man Made Fiber

Sub-Heading – 90: Articles of apparel and clothing accessories, not knitted or crocheted – Handkerchief Other Material

Heading – 13: Articles of apparel and clothing accessories, not knitted or crocheted - Handkerchief

Chapter – 62: Articles of apparel and clothing accessories, not knitted or crocheted





**Q6. What is the HSN Structure for Services ?**

HSN Code for services starts with 99 Series, and it is only 6 digits. A list of details of services can be accessed from here

**Q7. What can penal provisions be levied if the HSN code is not printed or shown on the Tax Invoice?**

A penalty can be levied under Section 122(1)(i) of the CGST Act 2017.

**Q8. When can we check the correctness of the HSN Code?**

Correctness of the HSN code can be checked during the inspection or audit or scrutiny only. The correctness of the HSN codes will determine the tax rate, and it will have an implication on the revenue collections.

**Q9. If an assess comes and asks for the HSN code classification, what should we do?**

Suppose any taxpayer comes and asks for the HSN classification of any item. In that case, you can refer to the GST portal and communicate. If there is any ambiguity, you can advise the assess to file an application for Advance Ruling under Section 96 of the CGST Act 2017.

Appellate Authority for Advance Ruling UP and Dabur India Ltd., Appellate Authority for Advance Ruling Gujarat and Vadilal Industries Ltd., Authority for Advance Ruling Maharashtra and Royal Carbon Black Pvt Ltd etc.,

**Q10. During the audit or assessment or scrutiny, what could be done if the wrong classification is found?**

Suppose any wrong classification is found during the audit or assessment, or scrutiny. In that case, notices can be issued under Section 73 or Section 74 of the CGST Act, and penal provisions can be initiated.

**Q11. Can an officer issue notice for wrong HSN classification when they discover during the verification of documents or conveyance under Rule 138B of CGST Rules?**

This could be a potential interpretation issue as Rule 138B clearly states that “the proper officer can to intercept any conveyance to verify e-waybill in physical or electronic form for all interstate or intra-state movement of goods.” As per one school of thought, verification is restricted to see if a proper e-waybill is issued, valid, and carrying the goods is carrying the same. Another school of thought says that verification of e-waybill includes the validation of the HSN codes and the goods being transferred from one location to another.

As it is a debatable topic and open Pandora’s box and litigious in nature, in such cases, it is recommended to inform any such wrongdoings to the concerned jurisdictional officer rather than issuing a notice for the wrong HSN classification. When the officers detained the goods for misclassifications, many judgments favored the assesses—Sameer Mat Industries v. State of Kerala.

**Q12. Are these challenges related to HSN codes are unique to India, or they present globally?**

Challenges related to HSN Codes are not restricted to India. It is a global phenomenon. In one of the cases in the UK, there was an issue on classifying Jaffa Cake as a biscuit or cake? Similar issues are there across the globe.

Classification plays a key role in determining the tax rate. The taxpayers should be careful while determining the HSN Code. A few of the examples of classification are Is Kit Kat a chocolate or a biscuit? Both chocolate and biscuit are found in Kit Kat. Is there any difference between a sandal and a chappal? Of course, both are used for wearing. Still, the tax rate differs on classification, especially if exported based on duty drawbacks. Recently we have seen alcohol-based sanitizer classification issues. Customs Act is applicable from 1962. We have classifications there also, even today dispute arises in classification in customs also for exports and imports. Any wrong classification can lead to penalties, and the taxpayers cannot recover from their customers often. While determining the HSN codes by the taxpayers or any officer is planning to issue a notice for the wrong classification, the following points should be considered

- Identify the item for which clarification is asked in detail
- Refer to the Customs Tariff Code for the list of HSN’s and for the Services, refer to Annexure of Notification No 11/Central Tax (rates) dated 28th June 2017
- Verify if any Advance Ruling orders are available
- Check the HSN codes being used by a similar category of taxpayers
- Ensure the end use of the item, as in the fertilizers. If they are used for agriculture, it is taxed at 5%, and other than agriculture, it is taxed at 18%.

We had classification issues in Central Excise. It took almost 20 to 30 years for the same to be settled. Now we are in the initial years of implementation of GST. It will take some time for the dust to settle. Still, there could be some litigation in the meantime. The taxpayers can avoid it by taking professional help wherever possible and approaching the department officials for clarifications or getting answered through the Advance Ruling.

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