

Deconstructing Shift of Compensation Cess Levy on Tobacco, Pan Masala

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The CBIC vide notification no. 01/2023-Compensation Cess dated 31st March'2023 has notified sec 163 of the Finance Act, 2023 amending schedule of the Goods and Services Tax (Compensation to States) Act, 2017 wherein levy of compensation cess has been changed from ad valorem to RSP based. Further, an explanation has been inserted to define the "retail sales price". The relevant amendment has been reproduced below -

Sl.no.	Description of supply of goods or services	Maximum rate at which compensation cess may be collected (prior to 1st April'2023)	Maximum rate at which compensation cess may be collected (w.e.f 1st April'2023)
1	Pan Masala	135% <i>ad valorem</i>	51% of the retail sale price per unit
2	Tobacco and tobacco manufactured tobacco sticks or substitutes, including tobacco products.	4170 rupees per thousand sticks or 290% <i>ad valorem</i> or a combination thereof, but not exceeding 4170 rupees per thousand sticks plus 290% <i>ad valorem</i> .	4170 rupees per thousand sticks or 290% <i>ad valorem</i> or a combination thereof, but not exceeding 4170 rupees per thousand sticks plus 290% <i>ad valorem</i> or 100% of the retail sale price.

Further, CBIC vide notification no. 2/2023- Compensation Cess (Rate) dated 31st March'2023 has amended notification no. 1/2017- Compensation Cess (rate) dated 28th June'2017 notifying the levy of the compensation cess on pan masala and tobacco on RSP Basis from ad valorem basis. The relevant changes in compensation cess rate w.e.f. 1st April'2023 has been summarised below in the table -

S. No.	Chapter /Heading /Sub-Description of Goods heading/ Tariff item	Rate of goods and services tax compensation cess
(1)	(2)	(3)
1.	2106 90 20	Pan-masala 1 [0.32R per unit]
5.	2401	Unmanufactured tobacco (without lime tube) - bearing a brand name 4 [0.36R per unit]
6.	2401	Unmanufactured tobacco (with lime tube) - bearing a brand name 5 [0.36R per unit]
7.	2401 30 00	Tobacco refuse, bearing a brand name 6 [0.32R per unit]
19.	2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand 8 [0.36R per unit]

		name
20.	2403 11 10	Tobacco used for smoking 9 [0.12R per unit] 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
21.	2403 11 90	Other water pipe smoking 10 [0.08R per unit] tobacco not bearing a brand name.
22.	2403 19 10	Smoking mixtures for 11 [0.69R per unit] pipes and cigarettes
23.	2403 19 90	Other smoking tobacco 12 [0.28R per unit] bearing a brand name
24.	2403 19 90	Other smoking tobacco 13 [0.08R per unit] not bearing a brand name
14 [24A.	2403 91 00	"Homogenised" or 14 [0.36R per unit] "reconstituted" tobacco, bearing a brand name
25.	15 [2404 11 00]	"Homogenised" or 72% "reconstituted" tobacco, bearing a brand name
26.	2403 99 10	Chewing tobacco (without 16 [0.56R per unit] lime tube)
27.	2403 99 10	Chewing tobacco (with 17 [0.56R per unit] lime tube)
28.	2403 99 10	Filter khaini 18 [0.56R per unit]
29.	2403 99 20	Preparations containing 19 [0.36R per unit] chewing tobacco
30.	2403 99 30	Jarda scented tobacco 20 [0.56R per unit]
31.	2403 99 40	Snuff 21 [0.36R per unit]
32.	2403 99 50	Preparations containing 22 [0.36R per unit] snuff
33.	2403 99 60	Tobacco extracts and 23 [0.36R per unit] essence bearing a brand name
34.	2403 99 60	Tobacco extracts and 24 [0.36R per unit] essence not bearing a brand name
35.	2403 99 70	Cut tobacco 25 [0.14R per unit]
36.	2403 99 90	Pan masala containing 26 [0.61R per unit] tobacco 'Gutkha'
27 [36A.	2403 99 90	All goods, other than Pan0.43R per unit masala containing tobacco 'gutkha', bearing a brand name
36B.	2403 99 90	All goods, other than Pan0.43R per unit] masala containing tobacco 'gutkha', not bearing a brand name
37.	28 [2404 11 00, 2404 19 00]	All goods, other than pan96% masala containing tobacco 'gutkha', bearing a brand name
38.	29 [2404 11 00, 2404 19 00]	All goods, other than pan89% masala containing tobacco 'gutkha', not bearing a brand name

Valuation for Levy of Excise Duty, NCCD, GST and Compensation Cess on tobacco and tobacco related products -

Tobacco and Tobacco products are subjected to levy of Excise Duty, NCCD, GST and Compensation Cess.

Circular no. 1082/03/2022-CX has been issued clarifying the valuation mechanism for levy of Excise Duty and NCCD for tobacco and tobacco products.

As per section 4A of the Central Excise Act, 1944, retail sale price based assessment has been prescribed for tobacco and tobacco products (like chewing tobacco, preparations containing chewing tobacco, Jarda scented tobacco, Pan masala containing tobacco) and an abatement of 55% on the retail sale price has been prescribed for such products. Accordingly, assuming the retail sale price to be Rs. 100, the basic excise duty and NCCD is computable on an assessable value of Rs 45. The cumulative basic excise duty (@0.5%) and NCCD combined being 25.5%, at present, on such products, the amount of excise duty and NCCD payable would be Rs 11.475. It may be noted that abated value of Rs 45 in this case is a prescribed value for computation of basic excise duty and NCCD.

It is to be noted that above valuation is not relevant for purpose of levy of GST and Compensation Cess. GST shall be continued to be levied at the transaction value that is price actually paid or payable for the supply of good including duties like basic excise duty and NCCD. W.e.f. 1.04.2023, compensation cess shall be paid on the retails sales price as per the amendment mention above.

For Illustration -

Suppose, ABC Ltd. has manufactured and supplied chewing tobacco falling under Chapter heading 2403 99 10 to PQR Ltd. at a consideration of Rs. 50 per unit. The retails sales price affixed on the package is Rs. 100 per unit. The total unit supplied is 100 units.

ED plus NCCD rate - 25.5%

Abatement - 55%

GST - 28%

Compensation Cess - 0.56R

Calculation**ED and NCCD**

Value after abatement - $\text{Rs. } 100 - 55 = \text{Rs. } 45$

Total ED and NCCD - $45 * 25.5\% = 11.475$

GST and Compensation Cess -

Transaction value = $\text{Rs. } (50 + 11.475) = \text{Rs. } 61.475$

GST = $61.475 * 28\% = \text{Rs. } 17.213$

Compensation Cess - $0.56 * 100 = \text{Rs. } 56$

Total duty (ED+NCCD+GST+Compensation) - $\text{Rs. } 84.688$

It is to be noted that Excise Duty and NCCD is levied on manufacture of the goods. While, GST and Compensation Cess is levied on supply of the goods as per sec 7 of the CGST Act read with sec 9 which lays down the ingredient that makes up the taxable event. Therefore, for every supply of goods from one registered person to another registered person will attract GST and compensation cess which the recipient of such goods can claim the input tax credit of the same.

The above shift of levy of compensation cess from ad valorem to retail sale price based has been brought to boost the first stage collection of the GST revenues.