

Gift vouchers are neither goods nor services, but instruments used as consideration for payment – Controversy Saga Continues

The AAAR, Tamil Nadu in the matter of ***Kalyan Jewellers India Ltd. [Order-in-Appeal No. AAAR/11/2021 (AR), dated March 30, 2021]*** modified the order passed by the AAR, Tamil Nadu to the extent that vouchers are neither good nor service and the Central Goods and Services Tax Act, 2017 (“CGST Act”), recognized it as an instrument of consideration (non-monetary form) for future supply. Further, Held that, Goods and Services Tax (“GST”) will be levied at the time of issue of the voucher and not at the time of actual availing of service or time of redeeming the voucher as the supply is deemed to have been made at the time of issue of voucher itself.

Facts:

Kalyan Jewellers India Ltd. (“the Appellant”) is in the business of manufacturing and trading of Jewellery Products. As a part of sales promotion, the Appellant introduced the facility of different types of Pre-Paid Instruments (“PPIs”) viz., Closed System PPIs, Semi-closed System PPIs, Open System PPIs through its retail outlets, third party PPI issuers and online portals to their Customers that are generally called ‘Gift Vouchers/ Gift Cards’ in trade practice.

This appeal is filed against the order passed by the AAR, Tamil Nadu in ***Order no. TN/52/ARA/2019 dated November 25, 2019*** wherein, it was held that ‘vouchers’ are a supply of goods as defined under CGST Act and GST @ 12% and 18% would be levied depending on whether on such PPIs is paper based or magnetic strip based respectively.

Issues:

Whether gift vouchers are goods or services, its time of supply and applicable rate of tax.

Held:

The AAAR, Tamil Nadu in ***Order-in Appeal No. AAAR/11/2021 (AR), dated March 30, 2021*** held as under:

- Noted that, the vouchers issued by the Appellant are of the nature of actionable claims that is included within the definition of goods under Section 2(52) of the CGST Act and have been included in entry 6 of the Schedule III of the CGST Act and
Flat no. 34B, Ground Floor, Pocket -1, Mayur Vihar, Phase –I, Delhi - 110091
Email: bimaljain@a2ztaxcorp.com; Web: www.a2ztaxcorp.com; Tel: +91 11 4242 7056

therefore, cannot be treated either as supply of goods or supply of services. Hence, vouchers are not subject to levy of tax under the CGST Act.

- Observed that, voucher, being an instrument used as consideration to settle payment, is a type of money, and as long as such instrument is recognized by the Reserve Bank of India and even if it is not recognized by Reserve Bank of India, it would still form a means of payment of consideration, though it does not constitute money under the definition in the CGST Act
- Stated that, when a voucher is issued, though it is just a means of advance payment of consideration for a future supply but, Section 12(4) and Section 13(4) of the CGST Act determine the time of supply of the of the underlying goods or services supplied against voucher. Voucher per se is neither a goods nor a service and it is a means for payment of consideration. Therefore, there is no need to determine whether voucher is an actionable claim to arrive at a conclusion that it is neither a goods nor a service.
- Held that, the law provides for taxing of the service at the point of time of issue of voucher itself when the supply is clearly known at the time of issue and not at the time of actual availing of service or time of redeeming the voucher. Since the gold voucher clearly indicates that the voucher can be redeemed for gold jewellery at a known rate of tax, gold voucher also falls under this category. Therefore, gold voucher would be taxable at the time of issue of the voucher. Such interpretation does not result in double taxation as transfer of gold subsequently will not be subject to tax at the time of redeeming the voucher for gold, as the supply is deemed to have been done at the time of issue of voucher itself.
- Further held that, voucher is recognized under CGST Act as an instrument of consideration in a non-monetary form for future supply. Since voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer.
- Modified the order dated November 25, 2019 passed by the AAR, Tamil Nadu to the extent that the supply of the gift vouchers/cards shall be the date of issue of such vouchers and the applicable rate of tax is that applicable to that of goods.

Our Comments:

The above judgment brings up a significant issue concerning what is really taxable; supply of voucher in essence or underlying goods or services? Amusingly, the GST law, however

has set up, meaning of 'vouchers' and a mechanism for deciding its value and time of supply yet neglects to explain the genuine aim of taxability. Preferably, vouchers have no inherent value of their own and are just an instrument which are accepted as consideration for supply of underlying goods or service.

Indeed, even Rule 32(6) of the CGST Rules, attests the view that a voucher gets its worth from the underlying goods or services redeemable against them. Subsequently, if the supply of goods/services is not clearly known at the time of issuance of voucher or if it does not indicate the goods/services against which the voucher can be redeemed, will bring result in double tax collection; once at the time of supply of vouchers and afterward again at the time of supply of basic goods or services. Therefore, the CBIC must come out with appropriate clarification in this regard.

It is pertinent to note that if the vouchers are considered as an instrument for payment that means the same is covered under the definition of 'Money' under the CGST Act, which excluded from the definition of both "Goods" and "Services" and hence not chargeable to GST. Further, in the service tax regime, the definition of 'Money' was essentially same as under CGST Act.

The Hon'ble Delhi High Court in ***Union of India vs. Delhi Chit Fund Association (W.P. (C) 4512/2012, dated April 23, 2013*** has held that, a mere transaction in money represents the gross value of the transaction. But what is chargeable to service tax is not the transaction in money itself since it can by no means be considered as a service.

Therefore, as per our view, there might not be any GST implications on the issuance of vouchers unless underlying goods or services are actually supplied as consideration, which is received towards issuance of voucher is in the form of deposit only.

Relevant Provisions:

Section 2(118) of the CGST Act:

"(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;"

Section 12(4) of the CGST Act:

“Time of supply of goods-

(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.”

We have recently released the **6th Edition of our GST Book titled “GST LAW AND COMMENTARY – WITH ANALYSES AND PROCEDURES”, in a set of 3 Volumes**. We thank you all for the support and your enduring response.

Have a look at the complete tour of the Book at: <https://rb.gy/3hifj3>

Order your copy now and be a part of GST learning excursion in most comprehensive and lucid form !!

This book can be ordered online at: <https://rb.gy/benrpb>

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.