

Vouchers – Whether Goods or Services, leviable to GST and corresponding GST Credit on same

Background:

The Hon'ble Karnataka High Court in *M/s Premier Sales Promotion Pvt Limited v. Union of India [Writ Petition No. 5569 of 2022 (T-RES) dated January 16, 2023]* has held that, the issuance of vouchers is similar to pre-deposit instruments, which have no inherent value of their own and therefore, it does not fall under the category of supply of goods or services. Hence, vouchers being neither goods nor services, are exempted from the levy of tax.

Recently, the AAAR, Karnataka in the matter of *M/s. Myntra Designs Pvt. Ltd. [KAR/AAAR/03/2023 dated February 24, 2023]* has upheld the advance ruling passed by AAR, Karnataka while modifying the findings to arrive at its conclusion and has stated that, a registered person can take Input Tax Credit (“ITC”) subject to conditions and restrictions as per Section 16 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) and the conditions for eligibility of ITC include an inward supply of goods or services, which are charged to tax by the supplier and used or intended to be used in the course or furtherance of business. However, ITC is restricted for non-business use and forms of supply as mentioned in Section 17(5) of the CGST Act.

Facts:

M/s. Myntra Designs Pvt. Ltd. (“the Appellant”) runs an e-commerce portal where fashion and lifestyle products are sold on its portal. In order to promote its business and increase the footfall on the e-commerce portal, the Appellant proposes to run a loyalty program, where loyalty points will be awarded to customers based on their purchases on the portal. The Appellant purchases the vouchers and subscription packages in the form of coupon codes from vendors, who supply the codes on payment of GST and issues them to eligible customers

electronically without charging any fees. The customers can redeem the coupon codes on applicable websites or platforms within the validity period.

In this context, the Appellant filed an application before the AAR, Karnataka (“**the AAR**”) praying for a ruling on whether it would be eligible to avail the ITC as per Section 16 of the CGST Act on the vouchers and subscription packages procured by the Applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points accumulated by the said customers.

The AAR ruled on September 14, 2022 (“**the Impugned Ruling**”) that the Appellant is not eligible to avail ITC as per Section 16 of the CGST Act as the ITC is not available as per Section 17(5)(h) of the CGST Act.

Aggrieved by the advance ruling of the AAR, this appeal has been filed by the Appellant on the grounds that the Section 16(1) of the CGST Act allows them to claim ITC on goods or services used or intended to be used in the course or furtherance of their e-commerce business, regardless of the nature of vouchers and subscription packages and Section 17 (5)(h) of the CGST Act is not applicable to its case.

The Appellant submitted that, that the vouchers and subscription packages cannot be reclassified as 'goods' at its end, as they were classified as 'services' by the supplier under HS Code 9983 as “other professional, technical and business services”.

The Appellant contended that, the question of classifying the vouchers as 'gift', would not arise as vouchers cannot be regarded as 'goods' and the bar under Section 17(5)(h) of the CGST Act only applies to 'goods'.

Further contended that, vouchers and subscription packages are not given as 'gift' and that mere absence of a consideration does not lead to the assumption that the issuance of electronic gift vouchers to eligible customers amounts to a 'gift' by the Appellant.

Issue:

Whether the Appellant is eligible to claim ITC on vouchers and subscription packages procured by the company from third-party vendors for its loyalty program, as per Section 16 of the CGST Act?

Held:

The AAAR, Karnataka in **KAR/AAAR/03/2023** held as under:

- Observed that, the AAR, has approached the issue of ITC eligibility by deciding on whether the vouchers are 'goods' or services' and then arriving at the conclusion, that they are 'goods', and has proceeded to deny the ITC on the grounds that the vouchers are 'gifts' given to the customers and hence ineligible for credit in terms of Section 17(5)(h) of the CGST Act.
- Analysed Chapter V (Sections 16-19) of the CGST Act, and noted that, a registered person can take ITC subject to conditions and restrictions as per Section 16 and the conditions for eligibility of ITC include an inward supply of goods or services, which are charged to tax by the supplier and used or intended to be used in the course or furtherance of business. However, ITC is restricted for non-business use and forms of supply as mentioned in Section 17(5) of the CGST Act.
- Relied on the judgment of the Hon'ble Karnataka High Court in the matter of ***M/s. Premier Sales Promotion Pvt Ltd. V. the Union of India [Writ Petition NO. 5569 OF 2022 dated January 16, 2023] discussed supra***, wherein, it was held that the vouchers are neither goods nor services and therefore cannot be taxed under the GST.
- Stated that, though the Appellant submitted that the vouchers cannot be considered as gifts to customers, this argument is irrelevant as it is also established that ITC is not eligible on such vouchers.
- Upheld the Impugned Ruling while modifying the findings to arrive at its conclusion.

Relevant Provisions

Section 17(5) of the CGST Act:

“Apportionment of credit and blocked credits-

Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:-

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

*(I) in the manufacture of such motor vehicles, vessels or aircraft;
or*

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

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