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GST Judicial Decisions

Gift/ Cash back vouchers are in nature of instruments covered under definition of money and do not fall under the category of Goods and Services hence GST is not leviable

M/s. Premier Sales Promotion Pvt Ltd. [2023] 147 taxmann.com 85 (High Court of Karnataka) dated 16-01-2023
In favour of Assessee

Relevant Facts

Premier Sales Promotion Pvt Ltd was a registered company engaged in the transactions of procuring Pre-paid Payment Instruments of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. Its clients issued such vouchers to their employees in the form of incentive or to other beneficiaries under promotional schemes for use as consideration for purchase of goods or services or both as specified therein.

The Advance Ruling Authority, ruled that the supply of vouchers was taxable as goods and the time of supply in all the three cases would be governed by Section 12(5) of the Central Goods and Services Tax Act, 2017.

The Appellate Authority affirmed the order passed by the Advance Ruling Authority. Being aggrieved, the assessee filed this the Writ Petition.

Held

It was not in dispute that the vouchers involved in the instant petition were semi-closed Prepaid Payment Instruments **(PPIs)** in which the goods or services to be redeemed were not identified at the time of issuance. Vouchers were distributed to its employees or the customers which could be redeemed by them. These PPIs did not permit cash withdrawal, irrespective of whether they were issued by banks or non-banking companies, and they could be issued only with the prior approval of RBI.

In substance the transaction between the assessee and its clients was procurement of printed forms and their delivery. The printed forms were like currency. The value printed on the form could be transacted only at the time of redemption of the voucher and not at the time of delivery of vouchers to assessee's client. Therefore, the issuance of vouchers was similar to pre-deposit being transaction in money and not supply of goods or services. Hence, vouchers were neither goods nor services and therefore could not be taxed.

CNK Comments

Taxability of vouchers has been a bone of contention since inception of GST law. Provisions under current GST law shows intent of Legislature to tax vouchers independently from underlying goods and services This decision comes as a huge sigh of relief for the stakeholders as it tries to settle the long-standing dispute on taxability of vouchers.

Refund of unutilized input tax credit (ITC) could not be denied when petitioner established that goods had been exported; invoices had been raised by registered dealer; and petitioner had paid invoices, which include taxes

M/s. Balaji Exim [2023] 149 taxmann.com 44 (High Court of Delhi) dated 10-03-23
In favour of Assessee

Relevant Facts

M/s. Balaji Exim was an Export-Oriented trading house supplying Spices, Pulses, Agri-commodities, Reclaim rubber, etc.

The assessee filed refund applications for unutilized ITC comprising of IGST and Cess. The refund applications were rejected indicating the legitimacy and genuineness of the exports of goods from whom the purchase was made.

Aggrieved by the said order, an appeal had been filed before the Appellate Authority which was rejected by it, stating that the supply was made without actual delivery of goods, on the strength of fake invoices but without finding any cogent material in support thereof and thus confirmed the earlier order. The assessee had no other option but to file a Writ in absence of Tribunal.

Held

Hon'ble High Court observed that the refund application had been rejected without any cogent material. There was no dispute that goods had been exported as it was confirmed that the said invoices issued by the supplier reflected in the AIO System which proved that these invoices were not fake. Hence, the supplier who was a registered person under GST law and had paid all the taxes including Cess. Thus, the refund application could not be denied on the default of a third person.

The court also stated that the allegations of any fake credit availed by a supplier could not be a ground for rejecting the refund applications of the assessee unless it proved that the assessee had not received the goods or paid for them.

The court directed the respondent to process the refund application of the assessee with respect to ITC including cess in respect of the export of goods.

CNK Comments

A positive decision clarifying that refund of unutilized ITC and cess in respect of export of goods cannot be denied at the default of supplier, where purchaser establishes that the goods had been exported, the invoices claiming refund of ITC had been raised by a registered dealer and the purchaser had paid invoices including taxes.

Genuineness of transactions need to be proved by purchasing dealers for claiming ITC

M/s. Ecom Gill Coffee Trading Pvt Ltd (Supreme Court of India) dated 13-03-23
In favour of Revenue

Relevant Facts

M/s. Ecom Gill Coffee Trading Pvt Ltd – purchasing dealer purchased green coffee bean from other dealers for the purposes of further sale in exports and in domestic market. Upon finding some irregularities in Input Tax Rebate claimed by the purchasing dealer for Assessment Year 2010-2011, the Assessing Officer **(AO)** issued notice under section 39 of the Karnataka Value Added Tax **(KVAT)** Act, 2003 seeking furnishing of accounts, books, tax invoices etc. Re-assessment order came to be passed. It was found that the purchasing dealer had claimed ITC from mainly 27 sellers and out of aforesaid 27 sellers, 6 were found to be de-registered;

3 had affected sales to the respondent but did not pay taxes and 6 have outrightly denied turnover nor paid taxes.

The first Appellate Authority confirmed the findings of the AO. However, the Tribunal allowed the second appeal on the ground that the purchasing dealer purchased the coffee from the registered dealer under genuine tax invoices and on payment by cheque and consequently allowed the ITC claimed. The revision application by the State before the High Court was dismissed, relying upon its earlier decision in the case of M/s. Tallam Apparels.

Held

The Supreme Court of India ruled that –

- The provisions of Section 70 of the KVAT Act, 2003 clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC.
- Merely because the dealer claiming such ITC claims that he was a bonafide purchaser was not enough and sufficient.
- Such a burden of proof cannot get shifted on the revenue.
- Mere production of the invoices or the payment made by cheques was not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003.
- The dealer claiming ITC had to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc.
- In fact, if a dealer claims ITC on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods.

In view of the above and for the reasons stated above and in absence of any further cogent material like furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc. and the actual physical movement of the goods by producing the cogent materials, the AO was absolutely justified in denying the ITC, which was confirmed by the first Appellate Authority. Both, the second Appellate Authority as well as the High Court have materially erred in allowing the ITC despite the concerned purchasing dealers failed to prove the genuineness of the transactions and failed to discharge the burden of proof as per section 70 of the KVAT Act, 2003.

CNK Comments

A very disturbing judgement from the Apex Court though under the pre- GST regime clarifying the ambiguities with respect to discharge of burden of proof for genuineness of transactions. A very critical aspect from the point of view of purchasing dealers as pronounced by the Court is to prove and establish the actual physical movement of goods for claiming ITC This judgement may hold good even under the GST regime.

Professional services provided to overseas entity not liable to tax, rules Delhi High Court

M/s. Ernst & Young Ltd [2023] 148 taxmann.com 461 (High Court of Delhi) dated 23-03-2023

In favour of Assessee

Relevant Facts

The petitioner was an Indian Branch Office of M/s. Ernst & Young **(E&Y)** Limited, a company incorporated under the laws of United Kingdom. E&Y Ltd had provided various professional services to overseas EY entities in terms of the agreements entered into between E&Y Limited and the respective overseas EY entities on arm's length basis. The invoices raised described the nature of services for the invoiced amount as "Professional Fees for Services". The petitioner applied for refund of the ITC availed for providing its professional services for the periods

December 2017 to March 2020.

The Adjudicating Authority issued show cause notices proposing to reject the refund applications basis:

i. How the output services were treated as export of services.
ii. How the input services had nexus with the provision of exported services and how they had been utilized for provision of the same.

The petitioner responded to the said show cause notices, explaining that the petitioner was involved in providing "business advisory services and technical assistance" and the said supplies were directly related for providing professional services.

However, the same were not considered by revenue and an un-favourable order was passed. Aggrieved by the same, the petitioner filed this writ petition.

Held

The Hon' High Court of Delhi ruled that –

- The services rendered by the petitioner to EY entities, prior to roll out of the GST regime, were considered as 'export of services'.
- The petitioner had prevailed before the concerned service tax authorities in establishing that the professional services rendered by it could not be considered as services as an 'intermediary'.
- The petitioner's application for refund of ITC for the period after March 2020 had also been accepted by the Adjudicating Authority. Thus, the petitioner had been denied ITC only for the period from December 2017 to March 2020; it had been allowed CENVAT credit for the period covered under the service tax regime as well as ITC for the period after March 2020.
- In terms of Clause (b) of Sub-section (8) of Section 13 of the IGST Act, the place of supply of intermediary services was the location of the supplier of services. In the present case, the place of supply of services has been held to be in India on the basis that the petitioner was providing intermediary services.
- However, the services rendered by the petitioner were not as an intermediary and therefore, the place of supply of the Services rendered by the petitioner to overseas entities was required to be determined on basis of the location of the recipient of the services. Since the recipient of the services was outside India, the professional services rendered by the petitioner would fall within the scope of definition of 'export of services' as defined under Section 2(6) of the IGST Act.
- There was no dispute that the recipient of services – that is EY entities – were located outside India. Thus, indisputably, the services provided by the petitioner would fall within the scope of the definition of the term 'export of service' under Section 2(6) of the IGST Act.

The petition was, accordingly, allowed.

CNK Comments

A momentous verdict setting aside the ambiguities that the professional services rendered to overseas entities was not in the nature of intermediary services and hence, GST cannot be levied on the same. The Court stressed on the point that the petitioner provided the services on its own account and were not arranged or facilitated.

KEY TAKE AWAY

- GST was not leviable on Gift/ Cash back vouchers as they do not fall under the category of Goods and Services.
- Refund of unutilized ITC could not be denied when petitioner established that goods had been exported; invoices had been raised by registered dealer; and petitioner had paid invoices, which included taxes.
- Purchasing Dealers required to prove genuineness of transactions for claiming Input Tax Credit.
- Professional services provided to overseas entity do not amount to intermediary services hence not liable to tax if rendered on own account and not as facilitator or arranger.

www.cnkindia.com

CNK
& ASSOCIATES LLP

MUMBAI

3rd Floor, Mistry Bhavan, Dinshaw Vachha Road,
Churchgate, Mumbai. 400 020, India.
Tel: +91 22 6623 0600

501/502, Narain Chambers, M.G. Road,
Vile Parle (East), Mumbai 400 057, India.
Tel: +91 22 6250 7600

Bengaluru: +91 80 2535 1353
Chennai: +91 44 3500 3458
Vadodara: +91 265 234 3483
Ahmedabad: +91 79 2630 6530
GIFT City: +91 79 2630 6530
Delhi: +91 11 2735 7350
Pune: +91 020 2998 0865
Dubai: +971 4 3559533
Abu Dhabi: +971 4355 9544