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GST Judicial Decisions

E-Vouchers to be considered as goods and taxable at 18% under GST

Premier Sales Promotions (P) Ltd., In re [2021] 130 taxmann.com 404 (AAR - Karnataka)- in favour of Revenue.

Relevant Facts

The applicant was involved in the business of providing marketing services wherein it received orders for supply of e-vouchers. It sourced e-vouchers for customers as per the order received and acted as an intermediary for buying and supplying of e-vouchers.

The applicant issued three types of Vouchers:

A. Gift Voucher:

For example, HSBC had given a work order for supply of Amazon Gift Vouchers of various denominations. The applicant therefore entered into an agreement with Amazon for supply of e-vouchers. Once the order was received, the applicant placed an order with Amazon and bought the e-vouchers for an agreed consideration and in turn supplied the e-vouchers purchased from Amazon to HSBC for an agreed consideration.

B. Cash Back Voucher:

An order was received from Customer "A" stating that it needed e-cash back voucher. The final consumer "B" who bought the goods of the customer "A" would receive these vouchers and scratch the card. After feeding the details into specified website, he received the Cash Back in respect of goods brought by him from Customer "A".

C. E-vouchers with multiple options

The applicant received an order from Customer "A" with multiple options given to its Final Consumer "B". For Example, the Final Consumer "B" was entitled to receive a Voucher say for Rs.500 with multiple options i.e., he could redeem it either for payment of his taxi bill, or to

receive a Specified Saloon Service or to buy a movie ticket.

By referring to the definition of voucher and time of supply, the applicant submitted that issuance of Pre-paid instruments **(PPIs)** is only a transaction in money and not classifiable under GST. Further, the applicant referred the judgement of Delhi High Court and RBI master directions to substantiate that issuance of vouchers is not a taxable activity. The applicant qualified the vouchers as actionable claims which are specifically considered neither as supply of goods nor services by virtue of Schedule III of the CGST Act.

By referring to the definition of money, the applicant contemplated that since the definition of money under GST law has also included the words "when used as a consideration to settle an obligation", these vouchers are clearly seen to fall within the ambit of this definition.

Held

The Payment Instruments, in the instant case, squarely would be covered under the definition of "vouchers" as there was an obligation for the acceptor to accept it as consideration or part consideration for a supply of goods or services or both.

A. Category of Vouchers: With respect to determination of category of voucher, the AAR held that in all these above categories of vouchers, the applicant was supplying these vouchers and they were used as payment instruments for supply of goods or services, in the hands of the end user.

B. Whether vouchers are money: The applicant was supplying the Payment Instruments to various clients, and they were not settling any obligation by treating this as consideration. It is only at a later stage, that the consumer (end user) was using them to settle their payment obligation by using the said vouchers instead of cash. Hence the payment instrument supplied by the applicant to their clients, cannot be covered under the definition of "money" at the time of supplying them. But they would take the color of money only when the same was used by the end user for payment.

C. Whether vouchers are actionable claim: Considering the definition of actionable claim, the AAR authorities held that vouchers are not debts and moreover the entitlement of redemption is transferred or delivered unto the possession of the purchaser at the time of supply of vouchers by the applicant to its clients. Further, these vouchers also have an expiry date. Therefore, such vouchers are not an actionable claims.

D. Whether goods or services: The vouchers printed on paper are undoubtedly goods, as they are tangible. The AAR referred the judgement of the Hon'ble Supreme Court in the case of Vikas Sales Corporation wherein it held that the item "Voucher" is very much like "Import license" and as the import license (even though the same is intangible) has been classified as goods, therefore, the vouchers are also qualified as goods.

E. Valuation: The face value of the e-vouchers is the value for the purpose of paying GST.

F. Time of supply: In this case neither the applicant nor their customer is aware of the transaction or the purpose for which the voucher would be redeemed, or the date of redemption. Hence the time of supply in all the scenario would be governed by the clause (a) of sub-Section (5) of Section 12 of the CGST Act i.e the date on which return is filed or tax is paid.

Final Ruling

The supply of Vouchers are taxable as goods and the time of supply in all three cases would be governed by Section 12(5) of the CGST Act 2017 and GST 18% shall be levied in accordance with Entry No. 453 of Schedule 3 of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

CNK Comments

The ruling is in contradiction to the ruling by AAAR Tamil Nadu in the case of Kalyan Jewelers India Ltd. wherein it was held that PPIs fall under the definition of vouchers and are neither supply of goods nor services. Also, in the pre-GST era re-charge coupons were held to be an actionable claim.

Taxability of vouchers has been a subject matter of litigation in both the pre-GST era as well as GST era. Further clarification will be required from the Government in this regard.

Disallowance of ITC if the vendor fails to furnish return in Form GSTR-1 & GSTR-3B by the due date

Eastern Coalfields Ltd., In Re [2021] 130 taxmann.com 232 (AAR-West Bengal)- in favour of Revenue.

Relevant Facts

The applicant produced and supplied coal. They received services and availed input tax credit **(ITC)** during the tax periods January, February & March 2020. Payments against such supplies were also made by the applicant. However, the vendor furnished GSTR-1 & GSTR-3B for the months January, February & March 2020 in the month of November 2020 thereby restricting availment of ITC in the auto-drafted FORM GSTR-2B of the applicant for the month of November 2020 with the remark "Return Filed Post Annual Cut-off".

The applicant sought an advance ruling in respect of the following:

1. Whether the applicant was entitled for ITC already claimed by him on the invoices raised for the period Jan to March 2020 for which the supplier had actually paid the tax, either in cash or through utilization of ITC.
2. Whether the applicant was required to reverse the said ITC already availed by him where the supplier had actually paid the tax, though belatedly and fulfilled the responsibility and conditions cast upon him by Section 16(2) of the CGST Act, 2017.

As per Rule 36(4), any ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under Section 37(1), shall not exceed 10% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers Section 37(1). Further, a proviso has been inserted to Rule 36(4) vide Notification No. 30/2020-Central Tax dated 03.04.2020, which reads as follows:

"Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August 2020 and the return in FORM GSTR-3B for the tax period September 2020 shall be furnished with the cumulative adjustment of ITC for the said months".

After analyzing Rule 36(4), in the instant case, the applicant availed ITC in the months of Jan, Feb and March 2020 in respect of such supplies which were not uploaded by the supplier during the said tax periods. The applicant had, therefore, availed ITC in violation of the restrictions as prescribed in Rule 36(4).

Further, the applicant stated that since FORM GSTR- 2B has been made effective from 01.01.2021, hence the auto-drafted FORM

GSTR-2B generated for the month of November 2020 does not have any statutory force towards entitlement of ITC for the tax period January, February and March 2020. The Authority agreed with the submission of the applicant but at the same time, the applicant could not deny that the provisions of rule 36(4) were already in force during the period when the applicant has availed ITC by contravening the provisions of the rule.

Held

- The applicant has availed ITC in excess of his entitlement prescribed under sub-rule (4) of rule 36.
- The excess ITC availed out of reconciliation during this period shall be required to be reversed in Table 4(B)(2) of FORM GSTR-3B, for the month of September 2020. Failure to reverse such excess availed ITC on account of cumulative application of Rule 36(4) of the CGST Rules would be treated as availment of ineligible ITC during the month of September 2020

CNK Comments

Reversal of ITC by the recipient on account of belated filing of returns and delayed payment of taxes by the supplier could be litigious as Section 16 merely mandates payment of tax to Government and makes no mention about the consequences with respect to delayed payment of tax.

No interest applicable if the remittance of wrong availment of ITC is made good by way of adjustment of electronic credit ledger

F1Auto Components (P.) Ltd. Vs. State Tax Officer, Chennai [2021] 128 taxmann.com 342 (High Court - Madras) - in favour of assessee

Relevant facts

The Appellant received an intimation from the State GST authorities in respect of wrongful availment of ITC. On receipt of the said intimation, the Appellant voluntarily made payment in Form GST DRC – 03 partially by way of reversal of ITC and partially through remittance of cash. However, the authorities levied interest under Section 50 of the CGST Act on the total amount of payment (i.e., through ITC as well as cash) made by the Appellant. The authorities contended that, on the co-joint reading of Section 50 and Section 42 of the CGST Act, the Appellant shall be liable to pay interest on the total amount of reversal. The Appellant filed a writ petition before the Hon'ble Madras High Court challenging the levy of interest by the authorities.

Held

- The Court observed that in this case, the claim of ITC was erroneous, but it was not a case of mismatch of credit. Accordingly, they opined that Section 42 cannot be invoked in this case.
- They held that interest liability shall be computed only for the net payment made through cash and accordingly, the levy of interest in respect of payment made through reversal of ITC was set aside.
- Further, they observed that the levy of interest on belated remittance of cash is compensatory and mandatory and accordingly, upheld the levy of interest only on the cash portion.

CNK Comments

The applicability of interest to the extent of tax discharged by reversing ITC, has been a debated topic. However, the order has brought much needed relief for tax-payers wherein interest in case of wrong availment of ITC will be applicable only if there is any payment by way of debiting cash ledger.

No demand can be raised during investigation or without issuance of notice under section 74(1) of the Act

Deem Distributors (P.) Ltd. Vs. Union of India [2021] 129 taxmann.com 134 (High Court - Telangana)– in favour of assessee

Relevant facts

The petitioner was a partnership firm involved in the business of dealing in goods and services related to ferrous waste and scrap, re-melting scrap ingots of iron or steel etc. The petitioner had availed ITC based on invoices issued by certain fictitious suppliers/firms without receiving any material. Accordingly, the petitioner was requested to reverse the ITC of Rs. 1.52 crores availed on such invoices immediately.

The petitioner filed a writ petition contending that liability could not be determined when the investigation was incomplete and that any advice or demand by the Department could at best be a provisional one. When no enquiry was initiated, the petitioner could not be compelled coercively to pay amounts to the department.

Held

- It was held by the Hon'ble High Court that the notice under section 74(1) of the Act will be issued by the proper officer or the officer in charge if he is of the opinion that the ITC has been wrongly or fraudulently utilized by the person and requiring him to show cause as to why he should not pay any tax or penalty which is proposed to be levied in the notice.
- But the taxpayer has an option under section 74(5) of the Act that if he wants to pay the amount he can pay it, but it doesn't give any power to respondent to ask for any interest or penalty or any liability from the taxpayer person.
- Accordingly, the writ petition was allowed, and the respondent was stopped from pressurizing the petitioner for making any payment of tax or liability without issuing a notice under section 74(1).
- The respondent was directed to refund the amount which was paid by petitioner with the interest @ 7% p.a. from the date of payment till date of refund within 4 weeks from the date of receipt of a copy of this order.
- It was however made clear that respondents can proceed with the investigation as well as enquiry under the provisions of the Act against the petitioner and act strictly in accordance with the Act.

CNK Comments

The judgement sets a precedent to ensure that the procedure prescribed under the law is duly adhered. Similar ruling was given in the case of Nandhi Dhall Mills India Pvt Ltd by Madras High Court.

No GST on canteen charges recovered from employees

M/s. Tata Motors Ltd. In Re [Advance Ruling No. GUJ/GAAR/R/39/2021] (AAR – Gujarat)- partly in favour of applicant.

Relevant facts

The Applicant was providing canteen facility to its employees in accordance with the Factories Act, 1948. For this, the Applicant availed the services of a canteen contractor for a consideration. The Applicant recovered a nominal subsidized amount from each employee on monthly basis and paid the same to the canteen contractor.

The Applicant sought an advance ruling on the following:

- Whether ITC was available on GST charged by service provider on canteen facility?

- Whether GST was applicable on nominal amount recovered from employees for use of canteen facility?

Held

Hon'ble Gujarat AAR referred section 17(5)(b) of CGST Act and observed the following:

- Sub clause of Section 17(5)(b)(i) ends with colon: and was followed by a proviso and this proviso ends with a semicolon.
- Colons are used in sentences to show that something is following, like a quotation, example, or list.
- Semicolons are used to join two independent clauses/ subclauses, or two complete thoughts that could stand alone as complete sentences.
- Section 17(5)(b)(i) sub-clause ending with a colon and followed by a proviso which ends with a semi colon was to be read as independent sub-clause, independent of sub clause Section 17(5)(b)(iii) and its proviso [of subclause iii]. Thereby, the proviso to section 17(5)(b)(iii) is not connected to the sub-clause of Section 17(5)(b)(i) and cannot be read into it.

Thus, it was held that,

1. ITC on GST paid on canteen facility was blocked credit under Section 17 (5)(b)(i) of CGST Act and inadmissible to the applicant.
2. GST, in the hands on the applicant, was not leviable on the amount which was collected from employees and paid to the Canteen service provider.

CNK Comments

The above ruling was in contradiction with earlier ruling by Kerala AAR in Caltech Polymers Private Limited (upheld by AAAR), which has treated the canteen recoveries as supply.

Further the above ruling giving ITC benefit to travel concession and denying to food, catering and health services which are otherwise mandatory cannot be the intention of law.

GST applicable only on amount exceeding ₹7,500 collected by Residential Welfare Associations

Greenwood Owners Association [2021] 128 taxmann.com 182 (Madras) – in favour of assessee

Relevant facts

Petitioners was a Resident Welfare Association **(RWA)** in apartment complex.

The petitioner challenged an order of the Authority for Advance Ruling (AAR) levying tax on the entirety of the contribution by them to a RWA and also challenged Circular No. 109/28/2019 dated 22-7-2019.

The AAR, had by impugned order dated 21-6-2019, held that the grant of exemption was conditional upon the contribution being an amount of Rs. 7,500 or less. If the contribution exceeded the sum of Rs. 7,500, then the very entitlement of that RWA to exemption would stand defeated and the entirety of the amount collected would have to be brought to tax.

Taking inspiration from this position, the impugned Circular No. 109/28/2019 dated 22-7-2019 had been passed toeing the line of the AAR.

Held

- The plain words employed in Entry No. 77 of Notification No. 12/2017 Central Tax (Rate), dated 28-6-2017 being, up to an amount of Rs. 7,500 can only be interpreted to mean that any contribution in excess of the same would be liable to tax.

Held

- Therefore, the Madras High Court has ruled that only an amount in excess of Rs. 7,500 per month per member collected by RWAs was taxable under the GST Act.

- It has set aside an order by The Tamil Nadu AAR in 2019, that if the amount collected by a registered housing society/resident welfare association exceeds Rs. 7,500 per month per flat, GST of 18% was payable on the entire amount and not on the difference amount.

- The High Court also quashed a Circular by the Central Board of Indirect Taxes and Customs (CBIC) that GST would be applicable on the entire maintenance amount if it exceeds Rs. 7,500 per month per person, which was issued post the AAR verdict.

CNK Comments

The above judgment has given much relief to the society and its members by correctly interpreting the language of exemption notification. Therefore, GST would be levied on an amount in excess of Rs. 7,500. The NIL Rated or Exempted, Services or Goods, like Electricity charges, Water Charges and Property taxes are to be excluded from the total amount reimbursed by the members of RWA to arrive taxable value. However, this decision has now being stayed by the Court on account of legal issue and further hearing of the same is to be done on 9-12-2021.

KEY TAKE AWAY

- E-Vouchers shall be considered as goods and will be taxable at the rate of 18%
- For default on part of supplier to furnish returns within the due date, ITC shall be disallowed to the recipient where the return filing is beyond the due date for availment of credit.
- No Interest will be payable if the remittance of wrong availment of ITC is made good by debiting of electronic credit ledger
- No Demand can be raised without issuance of notice.
- GST is not applicable on canteen charges recovered from employees
- GST applicable only on amount exceeding Rs.7,500 collected by Residential Welfare Associations

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