

TAX FLASH NEWS

5 January 2022

Vouchers traded by the Appellant are goods and not actionable claims – Karnataka AAAR

Background

Karnataka Appellate Authority for Advance Ruling¹ has upheld the order passed by lower AAR and has concluded that vouchers traded by the 'Appellant' are goods and not actionable claims. Further, since the 'Appellant' is not the issuer of the vouchers, the provisions of time of supply will be governed by the provisions of section 12(5) of the CGST Act, 2017.

Facts of the case

- 'Appellant' is engaged in the business of providing marketing services in the area of sourcing and supply of vouchers.
- It procures several types of vouchers such as 'gift vouchers', 'cashback vouchers' and 'open vouchers' from companies who are authorised by RBI to issue vouchers. Payment and Settlements Act, 2007 and the RBI guidelines regulates the system of issue and redemption of vouchers. Purchased vouchers are given to indenting companies who in turn give the vouchers to their employees who are the beneficiaries. Beneficiary will present the voucher to the merchant as a payment for the goods or services.
- Authority for Advance Ruling in Karnataka (AAR) held that supply of vouchers is taxable; time of supply would be governed by section 12(5) (i.e. in case where a periodical return is filed, date on which such return is to be filed; or in any other case, date on which tax is paid) and rate of tax would be 18%. Aggrieved by the ruling, 'Appellant' filed the appeal.

Appellant's contentions

Contentions of the 'Appellant' before the Karnataka Appellate Authority for Advance Ruling (AAAR) are as follows:

- AAR holding that the supply of the vouchers is taxable as 'goods' is contrary to the plain words of the definition of 'voucher' in section 2(118) of the CGST Act, 2017.
- Vouchers supplied by it are squarely covered within the ambit of pre-paid payment instruments (PPIs) which is nothing but money or consideration for future supply of goods and services. RBI has considered vouchers as payment instruments; that consideration itself cannot be held to be goods or services;
- Voucher being defined as an instrument where there is an obligation to accept it as consideration for supply of goods or services to be supplied to the beneficiary is an 'actionable claim'.
- Hon'ble Supreme Court in case of Sodexo SVC India Pvt Ltd vs State of Maharashtra has held that vouchers are not goods; transactions of trading in vouchers are not transactions of sale or supply of goods or services because vouchers are payment instruments or consideration for sale or supply of goods or services at a future date.

¹ M/s Premier Sales Promotion Pvt Ltd [2021-VIL-74-AAAR]

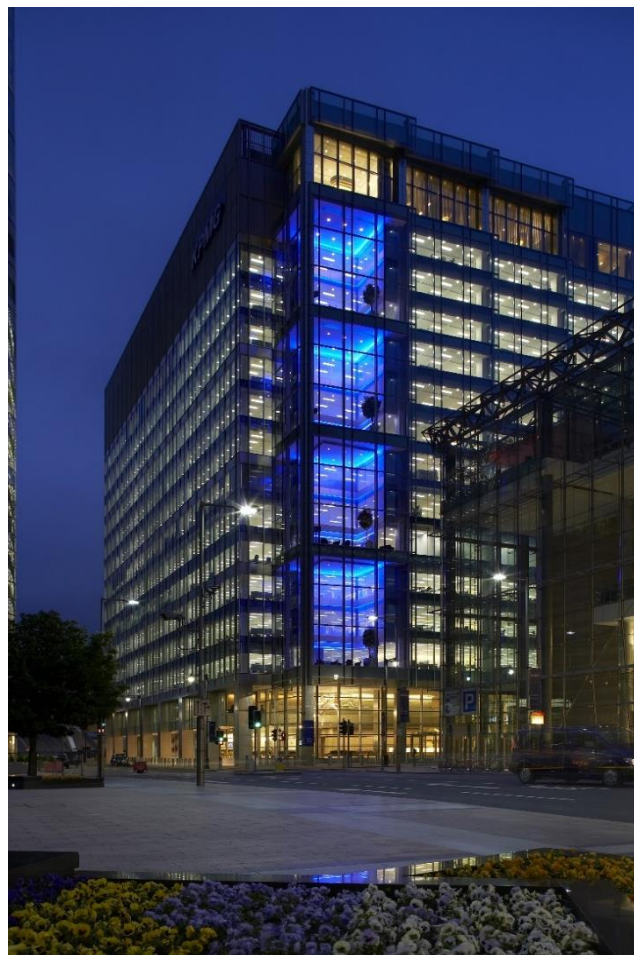
AAAR's order

Karnataka Appellate Authority for Advance Ruling dismissed the appeal filed by the 'Appellant' on all counts. Below are the findings of the AAAR:

- Voucher in the hands of the 'Appellant' does not settle an obligation but rather creates an obligation. Settlement of the obligation occurs at the time when the ultimate beneficiary uses the voucher to purchase goods and/or services.
- Definition of 'money' also makes it clear that it is only when the payment instrument is used as consideration to settle an obligation does it qualify as 'money'. This occurs only when the voucher is redeemed. Until then, it is just an instrument recognised by the RBI but is not 'money'. Therefore, the voucher in the hands of the 'Appellant' cannot be termed as 'money'.
- Vouchers have both a value and an ownership and the ownership gets transferred from the person who first purchases the voucher from the issuer to the ultimate beneficiary who redeems the voucher. Therefore, the vouchers qualify to be movable property and hence are to be considered as 'goods'.
- 'Appellant' is clearly not the issuer of the vouchers nor is it authorized by RBI to issue vouchers. It is purely trading in vouchers. Since the material facts are patently different, the decision of Supreme Court (supra) will not apply to the 'Appellant'.

Our comments

Industry in general treat vouchers/pre-paid instruments/gift cards as neither goods nor services but as 'a means/instrument for payment of consideration'. There are contrary rulings from different State AAR on this aspect with some supporting the view of the industry. Such ruling will create lot of challenges for Industry, hope the Government provide some clarification which would help Industry to not have litigations.



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