

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA

WRIT PETITION NO. 5569 OF 2022 (T-RES)

BETWEEN :

M/S PREMIER SALES PROMOTION PVT LIMITED
FLAT NO. 10/4, MITHRA TOWER
4TH FLOOR, KASTURBA ROAD
BENGALURU-560 001..... PETITIONER

(BY SHRI. G.SHIVADASS, SENIOR ADVOCATE FOR
SHRI. M.S. NAGARAJA, ADVOCATE)

AND :

1. THE UNION OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NORTH BLOCK
NEW DELHI-110 001
(REPRESENTED BY ITS SECRETARY)
2. THE PRINCIPAL CHIEF COMMISSIONER
OF CENTRAL TAX, QUEENS ROAD
BENGALURU-560 001.
3. THE COMMISSIONER OF COMMERCIAL TAXES
DEPARTMENT OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA

KALIDASA MARG, GANDHI NAGAR
BENGALURU-560 009

...RESPONDENTS

(BY SHRI. JEEVAN J. NEERALGI, AGA FOR R3 AND
STANDING COUNSEL FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER NUMBER KAR/AAAR/11/2021-22 DATED 22/12/2021 PASSED BY THE KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.11.2022, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

This Writ Petition is presented with the following prayers:

- (i) *quash the Order number KAR/AAAR/11/2021-22 dated December 22, 2021 passed by the Karnataka Appellate Authority for Advance Ruling;*
- (ii) *issue a suitable writ, order or direction as this Hon'ble Court may deem fit and proper to the Respondents to make suitable provisions in reference to the underlying subject of this writ;*
- (iii) *to pass such other orders, directions and writs as this Hon'ble High Court may deem fit in the facts and circumstances of the*

case, and in the interests of Justice, including the costs of this writ petition.

2. Heard Shri. G. Shivadass, learned Senior Advocate for the assessee and Shri. Jeevan J. Neeralgi, learned AGA for the Revenue.

3. Briefly stated the facts of the case are, assessee is a registered Company¹ 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 issue 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.

¹registered under the Companies Act, 1956

4. Assessee submitted an application² dated February 23, 2021 before the Karnataka Authority for Advance Ruling, for a Ruling *whether the Pre-paid Payment Instruments³ or vouchers themselves, or the act of supplying them is taxable, and at what stage, for each of the three categories of transactions undertaken by the assessee and if the transaction were liable to tax, under which category and what would be the rate of tax applicable?*

5. The Advance Ruling Authority, vide Order⁴ dated July 30, 2021 has ruled that the supply of vouchers is 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, 2017⁵ and the rate of GST⁶ as per Entry

² FORM GST ARA 01

³ 'PPI' for short

⁴ KAR/ADRG 37/2021

⁵ 'the CGST Act' for short

⁶ Goods and Services Tax

No. 453 of Schedule 3 of Notification No. 1/2017-Central Tax(Rate) dated June 28, 2017. The assessee challenged the said order before Karnataka Appellate Authority for Advance ruling. The Appellate Authority has affirmed the order passed by the Advance Ruling Authority. Feeling aggrieved, the assessee has presented this writ petition.

6. Shri. G. Shivadass, learned Senior Advocate for the assessee submitted that:

- the RBI⁷ has issued a master direction⁸ on issuance and operation of PPIs. Para 9.1(i)(g) of the direction specifically recognizes the PPIs for the purchase of goods and services. The vouchers involved in this case are PPIs which do not disclose

⁷ Reserve Bank of India

⁸ DPSS.CO.PD.No.1164/02.14.006/2017-18

the goods and services at the time of issuance;

- since the goods are not identifiable at the time of issuance, as per Section 12(4)(b) of the CGST Act, 2017, the time of supply shall be the date of redemption;
- the voucher would remain only as an instrument till such time it is used for discharging obligation towards the supply of goods or services. At best voucher can be considered as an actionable claim defined in Section 2(1) of the CGST Act till it is presented for redemption. Such actionable claim is neither goods nor services as defined in Schedule-III of the CGST Act;
- actual supply of goods or services takes place only when the voucher is presented for redemption by a customer to a supply of

goods and services except when the voucher itself identifies the goods or services for the value mentioned in the voucher. The voucher would remain to be an instrument till the time of redemption. Therefore, the impugned Order passed by the Advance Ruling Authority is contrary to law.

7. Shri. G. Shivadass has placed reliance on following authorities:

- *Sodexo SVC India Private Ltd. Vs. State of Maharashtra*⁹,
- *M/s. Kalyan Jewellers India*¹⁰ (Appeal filed u/s 100(1) of the Tamil Nadu Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017)

8. Shri. Jeevan J. Neeralgi, learned AGA for the Revenue opposing the writ petition submitted

⁹ 2016 (331) ELT 23 (SC) (para 15)

¹⁰ AAAR/11/2021 (para 7.9)a

that the assessee would be knowing precisely what is offered to the customer. Therefore, it cannot be held that goods are not identifiable. With regard to the authority in *M/s. Kalyan Jewellers India*, he submitted that the parties involved in that case were Kalyan Jewellers and his customers. Therefore, on facts, the principle is not applicable to the case on hand.

9. We have carefully considered rival contention and perused the records.

10. Undisputed facts of the case are, assessee is a Company engaged in the transaction of procuring PPIs of Gift Vouchers, Cash Back Vouchers and E-Vouchers from the issuers and supplying them to its clients for specified face value. The clients issue them 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. Assessee receives orders for supply of e-vouchers wherein the assessee sources e-vouchers for such clients as per the orders received and acts as an intermediary between the assessee and the supplier of e-vouchers.

11. The argument of Shri. Shivadass in substance is, the voucher, when accepted shall be consideration or part-consideration for supply of goods or services or both and the voucher itself cannot be treated as goods or services.

12. Thus, the question that falls for consideration is, whether in the facts of this case, vouchers themselves are chargeable to tax at the time of supply or chargeable when goods and services are redeemed?

13. Under Section 2(75) of the CGST Act, 2017, "Money" is defined as under:

"Money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value.

(Emphasis Supplied)

14. Under Section 2(118) of the CGST Act, 2017, "Voucher" is defined thus:

"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."

15. Shri. Shivadass's contention is, 'vouchers' are recognised by the RBI as 'payment instrument' to be accepted as consideration or part-consideration for supply of goods and services. However, the vouchers themselves cannot be

treated as 'goods or services' for the purpose of levy of GST. When the vouchers do not have any intrinsic value and they represent the value of future goods or services to be redeemed, the levy of tax on the vouchers is without authority of law and it also amounts to multiple levy of taxes.

16. The definition of 'vouchers' as defined under the CGST Act, makes it clear that vouchers are mere instruments accepted as consideration for supply of goods or services. They have no inherent value of their own. As vouchers are considered as instruments, they would fall under the definition of 'money', defined under CGST Act. The CGST Act excludes 'money' from the definition of goods and service and therefore not leviable to tax.

17. In *Union of India Vs. Delhi Chit Fund Association*,¹¹ the Delhi High Court has held thus:

¹¹W.P. (C) 4512/2012

"10. 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."

18. It is clear from the above authority that mere transaction of money or actionable claim, no services are involved and therefore no tax is leviable.

19. In *Sodexo SVC India Pvt. Ltd (supra)*, relied upon by the assessee, the Apex Court held as follows:

"15. We have already taken note of the nature of the transaction. After going through the relevant provisions and the principle laid down in various judgments explaining the features of 'services' and 'goods', we are of the opinion that the Sodexo Meal Vouchers cannot be treated as 'goods' for the purpose of levy of Octroi or LBT..."

(Emphasis Supplied)

20. In *M/s Kalyan Jewellers (supra)*, it is observed thus:

"7.9. To conclude, when a voucher is issued, though it is just a means of advance payment of consideration for a future supply, sub-section (4) of section 12 and 13 determine the time of supply of the underlying good(s) or service(s). Voucher per se is neither a goods nor a service. It is a means of payment of consideration."

(Emphasis Supplied)

21. It is not in dispute that the vouchers involved in the instant petition are semi-closed PPIs in which the goods or services to be redeemed are not identified at the time of issuance. Vouchers are distributed to its employees or the customers which can be redeemed by them. These PPIs do not permit cash withdrawal, irrespective of whether they are issued by banks or non-banking Companies and they can be issued only with the prior approval of RBI.

22. In substance the transaction between the assessee and his clients is procurement of printed forms and their delivery. The printed forms are like currency. The value printed on the form can 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 is similar to pre-deposit and not supply of goods or services. Hence, vouchers are neither goods nor services and therefore cannot be taxed.

23. In view of the above discussion, this writ petition merits consideration. Hence the following:

ORDER

(a) Writ petition is **allowed**.

(b) Order dated December 22, 2021 passed by The Karnataka Authority for Advance Ruling and the order no. KAR/AAAR/11/2021-22 dated December 22, 2021 passed by the Appellate

Authority affirming the order passed by the Advance Ruling Authority are quashed holding that vouchers do not fall under the category of goods and services and they are exempted from levy of tax.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS