



W.P.No.5130 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.08.2023

PRONOUNCED ON : 27.11.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

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and

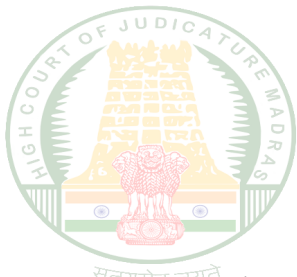
W.M.P.Nos.5227 & 5228 of 2022

Tvl.Kalyan Jewellers India Ltd.,  
Rep.by its Branch Manager,  
Authorized Signatory

... Petitioner

Vs.

- 1.Union of India  
Represented by its Secretary,  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi.
- 2.Tamil Nadu State Appellate Authority for Advance Ruling,  
5<sup>th</sup> Floor, Integrated Commercial Taxes Office Complex,  
No.32, Elephant Gate Bridge Road,  
Chennai 600 003.
- 3.The Commissioner of GST & C.Ex.,  
Coimbatore Commissionerate,  
6/7, ATD Street, Race Course Road,  
Coimbatore 641 018.
4. The Assistant Commissioner (ST)  
Divisional Large Ta Payers Unit,  
Gandhipuram Circle,  
C.T.Building, Dr.Balasundaram Road,  
Coimbatore.



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5. The Director General of GST Intelligence (D.Z.U.)  
West Block – VIII, Wing No.3, First Floor,  
R.K.Puram, New Delhi 110 006.

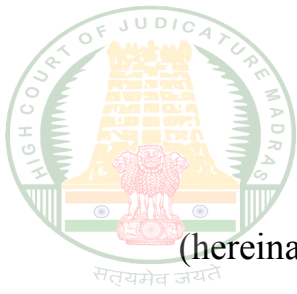
... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned order in AAAR/11/2021 dated 30.03.2021 ROM dated 22.06.2021 from the files of the second respondent so far as the finding that the time of supply of the gift voucher/PPI issued by the petitioner to its customers is at the point of issuance of voucher/PPI and quash the same.

For Petitioner : M/s.Aparna Nandakumar  
For R1 & R5 : Mr.V.Sundareswaran  
SPC  
For R2 & R4 : Mr.C.Harsharaj  
Addl.Govt.Pleader  
For R3 : Mr.K.Umesh Rao  
SSC  
and Mr.J.Vasu, JPC

### **ORDER**

The petitioner is aggrieved by the Impugned Order dated 22.06.2021 bearing reference No.AAAR/11/2021 dated 30.03.2021 – ROM passed by the second respondent/Tamil Nadu State Appellate Authority for Advance Ruling



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(hereinafter referred to as TNSAAAR) under Section 102 of the respective

GST enactments viz., Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Act, 2017.

2. Relevant portion of the Impugned Order dated 22.06.2021 passed by the second respondent reads as under:-

#### **“6.DISCUSSION& FINDINGS**

*6.1 We have considered the submissions made by the Applicant in their application for Advance ruling. On perusal of the impugned order, it is noticed that typographical error has indeed occurred in Para 7.11 and needs correction. However, since the correction sought in the rectification application has no effect in enhancing the tax liability or reducing the amount of Input Tax Credit vis-à-vis the impugned order, the requirement under proviso to Section 102 of the GST Act does not apply. The corrigendum as it stands after rectification is as follows:*

*6.2 The wordings “Gold Voucher” wherever it occurs in Para 7.11 of the Appeal order be replaced by “Gift Voucher.”*

3. By the impugned order dated 22.06.2021, the second respondent



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has partly allowed the application filed for rectification of its order passed earlier on 30.3.2021 by substituting the words/expression “Gold Voucher” with “Gift Voucher. The impugned order dated 22.06.2021 records that the change in the nomenclature will however have no bearing on the tax liability of the petitioner.

4. The petitioner herein had earlier sought for an Advance Ruling/clarification from the Advance Ruling Authority namely, the Tamil Nadu Advance Ruling Authority(AAR) under Section 98(6) of the respective GST Enactments Act, 2017 on the following issues:-

- *Whether the issue of own closed PPIs by the ‘Applicant’ to their customers be treated as supply of goods or supply of service.*
- *If yes, is the time of issue of PPI’s by the Applicant to their Customers is the time of supply of goods or services warranting tax liability.*
- *If yes, what is the applicable rate of tax for such supply of goods or services?”*
- *If yes, Whether the issue of PPIs by the Third party PPI Issuers subject to GST at the time of issue in their hands?*
- *Whether the amount received by the Applicant from Third Pary PPI Issuersss subject to GST?*
- *If No, GST collection at the time of sale of goods or services on redemption of PPIs i.e.,*



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*own and from Third Party will be a sufficient compliance of the provisions of the Act?*

- *The treatment of discount (the difference between Face Value and Discounted Value) in the hands of issuer of PPI in case of third party PPIs? Whether the applicant will be liable to pay GST on this difference Value?*

5. The said Authority for Advance Ruling, namely the Tamil Nadu Advance Ruling Authority (AAR) by its order dated 25.11.2019 bearing reference No.52/ARA /2019 gave the following Ruling in response to an application filed by the petitioner before it :-

- *The Own closed PPIs issued by the Applicant are 'vouchers' as defined under CGST/TNGST Act 2017 and are a supply of goods under CGST/TNGST Act 2017.*
- *The time of supply of such gift vouchers / gift cards by the applicant to the customers shall be the date of issue of vouchers if the vouchers are specific to any particular goods specified against the voucher. If the gift vouchers / gift cards are redeemable against any goods bought, the time of supply is the date of redemption of voucher.*
- *In the case of paper based gift vouchers classifiable under CTH 4911 the applicable rate is 6% CGST as per Sl.No.132 of Schedule II of the Notification No.1/2017-C.T.(Rate) dated 28.06.2017 and 6% SGST as per Sl.No.132 of Schedule II of Notifications Ms.No.II(2)*



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*/CTR/532 (d-4)/2017 vide G.O.(Ms)No.62 dated 29.06.2017 as amended. In the case of gift cards classifiable under CTH 8523 the applicable rate is 9% CGST as per Sl.No.382 of Schedule III of the Notification No.1/2017-C.T.(Rate) dated 28.06.2017 and 9% SGST as per Sl.No.382 of Schedule III of Notification Ms.No.II(2) /CTR/532(d-4)/2017 vide G.O.(Ms).No.62 dated 29.06.2017.*

- The questions raised at Sl.No.4,5,6 and 7 are not answered for the reasons that the said questions are not admitted as this authority does not have jurisdiction.”*

6. Aggrieved by the aforesaid order, the petitioner filed an appeal before the second respondent herein in A.R.Appeal No.01/2020/AAR. Vide order in Appeal No.AAAR/11/2021(AR) dated 30.03.2021, the second respondent had concluded as follows:-

*“7.9. To conclude, when a voucher is issued, though it is just a means of advance payment of consideration for a future supply, subsection (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 for payment of consideration.*

*7.10. Therefore, there is no need to determine whether voucher is an actionable claim to arrive at a conclusion that it is neither a goods nor a service.*

*7.11.It therefore follows that where a voucher identifies the goods or service that can be*



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*received on redeeming, the supply of the underlying goods or service takes place at the time of issue of the voucher. This is the case with vouchers issued by a metro rail company for monthly trip tickets. In such cases, it may not even be possible to know when vouchers would be redeemed for availing of certain service, and therefore, the law provides for taxing of the service at the point of time of issue of voucher itself when the supply is clearly known at the time of issue. The supply of underlying goods or service therefore gets taxed only at the time of issue of voucher and not at the time of actual availing of service or time of redeeming the voucher. The same is true in the case of the **gold voucher\*** presently under our consideration. Since the **gold voucher** clearly indicates that the voucher can be redeemed for gold jewellery at a known rate of tax, **gold voucher\*** also falls under this category. Therefore, it is our view that the **gold voucher\*** (representing the underlying future supply of gold jewellery) would be taxable at the time of issue of the voucher. It must be emphasized that this interpretation does not result in double taxation as transfer of gold subsequently will not be subject to tax at the time of redeeming the voucher for gold, as the supply is deemed to have been done at the time of issue of voucher itself (Section 12(4)).*

*7.12. Basing that taxing vouchers cannot be understood solely from the provisions contained in GST law, the appellants have urged us and brought in European Council directives, etc., that is to look into foreign legislation and jurisprudence. However, in Indian context, vouchers has cross-linkage to RBI master directions pertaining to Pre-Paid Instruments*





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*apart from the relevant contractual terms and conditions. Therefore, each and every case is to be examined critically based on the facts and circumstances and context of that case and a generic proposition or a ration decidendi cannot be adopted.*

*7.13.Voucher by GST law is recognized as an instrument of consideration (non-monetary form) for future supply. Regarding classification of voucher, since voucher is only an instrument of consideration and not goods or services, the same is not classifiable separately but only the supply associated with the voucher is classifiable according to the nature of the goods or services supplied in exchange of the voucher earlier issued to the customer”*

*8. In the light of the above, we rule as under:*

### **RULING**

*The Order of the Advance Ruling Authority is modified to the extent as discussed in para 7.11 and 7.13 above as follows:-*

*The time of supply of the gift vouchers/gift cards by the applicant to the customers shall be the date of issue of such vouchers and the applicable rate of tax is that applicable to that of the goods.*

*The subject appeal is disposed of accordingly.”*

[\* **Note:** The expression “**Gold Voucher**” was substituted with the expression “**Gift Voucher**” in the Impugned Order]





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WEB COPY 7. The above order dated 30.03.2021 in A.R.Appeal No.01/2020/AAAR holds that the “ Gift Voucher” issued by the petitioner was neither a supply of goods nor a supply of services. At the same time, concludes that the voucher would be taxable at the time of its issuance in view of Section 12 (4)(a) of the respective GST enactments.

8. Under Such circumstances, the petitioner filed a rectification application under Section 102 of the respective GST Enactments Act on 28.04.2021 before the second respondent herein which has now culminated in the impugned order dated 22.06.2021 bearing reference No.AAAR/11/2021 dated 30.03.2021-ROM.

9. The facts of the case are that the petitioner, a Public Limited Company having its registered office at Sitaram Mill Road, Punkunnam, Thrissur, Kerala – 680 002 is carrying on the business in the manufacture and sale of ornaments all over India through its retail outlets. It has wide net work of retail outlets in the State of Tamil Nadu also.



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10. As a part of the sales promotion, the petitioner formulated a Scheme by issuing different types of Pre-Paid Instruments (hereinafter referred to as PPI's and/or/Gift Vouchers). These PPI's are known as "Gift Vouchers/Gift Cards" in the market (hereinafter referred to as PPI's and/or/Gift Vouchers). These "Gift Vouchers" are sold both in its retail outlets as well as through online portals by engaging the services of third party service providers.

11. It is the case of the petitioner that these Gift Vouchers/ Gift cards or PPI's are governed by the Payment and Settlement Act, 2007 and the Master Directions issued by the Reserve Bank of India on 11.10.2017 and relevant Notification/Circulars/Communications issued by the Reserve Bank of India including the Issuance and Operation of Prepaid Payment Instruments (PPI's) dated 11.10.2017 of the Reserve Bank of India and that no tax was payable by the petitioner on the date of its issuance to its customers.

12. The specific case of the petitioner is that these Gift Vouchers/Gift Cards are "actionable claims" and therefore not liable to tax as they fall



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within the purview of the execution in Section 7(2) of the respective GST Enactments read with Schedule III to the respective GST Enactments.

13. It is submitted that as per Section 7(2) of the respective GST Enactments, these “ Gift Vouchers” are “actionable claims” within the meaning of Section 3 of the Transfer of Property Act, 1882 and since it is specified in the Schedule III, it is to be treated neither as a “supply of goods” nor as a “supply of services” and therefore the petitioner was not liable to tax at the time of its issuance to its customers.

14. Alternatively, it is the case of the petitioner that the petitioner can be taxed only at the time of actual sale of the merchandise i.e., at the time of redemption of the Gift Vouchers by a customer. The accounting procedure adopted by the petitioner was described before the said authority as follows:-

“Gift Vouchers are sold by a business concern to customers to allow them to purchase the products on a future date. The Cards are sold for cash and are treated as in terms of ‘Money’. There are two significant stages in Gift Vouchers which need to be considered when processing transactions as follows:-

- **Sales:** The Gift Vouchers/Cards are sold to the customers for cash and the business has



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an obligation to supply goods in specified future dates.

- **Redemption:** Customers can redeem the Gift Vouchers/Cards (at the face value) in return, for the products.

When the Applicant sells Gift Cards/Vouchers to the value of Rs.1,500/- the deferred revenue journal entries reflected in the record are as follows:

**Accounting for Gift Voucher transaction–  
Sales**

Account	Debit	Credit
Cash/Bank	Rs.1,500/-	-
Gift voucher liability		Rs.1,500/-
Total	Rs.1,500/-	Rs.1,500/-

The Applicant has received the cash of Rs.1,500/-. However, the goods have not been provided / sold to the customers, therefore the revenue cannot be recognized. The amount is credited in the Balance Sheet as Gift Voucher Liability Account.

When a Gift Voucher is redeemed by a customer, the Applicant satisfies its obligation to supply the goods and its liability is extinguished. The journal entry in the ledger will be as follows:-

**Accounting for Gift Voucher –Redemption**



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<b>Account</b>	<b>Debit</b>	<b>Credit</b>
Gift voucher liability	Rs.1,500/-	-
Sales	-	Rs.1,500/-
Total	Rs.1,500/-	Rs.1,500/-

The Applicant has supplied the goods to the customer and now the revenue is recognized. The amount of Rs.1,500/- is transferred from the Gift Voucher Liability Account to the Revenue (Sales) Account.

The 'Applicant' has produced copies of few Gift Voucher/Card, Ledger Account extracts for the period of March 2018 and also sample copies of Sale Invoices, wherein the value of Gift Voucher/Card has been adjusted/redeemed against the total value of Jewellery or / other jewellery items sold to the customers. In the sale invoices at the branch at the time of redemption, it is seen that the 'Mode of receipt' is noted as "Cash" and "Gift Voucher".

15. It is submitted that for the purpose of accounting in the Trial Balance for the month of March 2018, the petitioner has reflected the amount received for PPI's/Gift Vouchers as an "Advance" from the customer under the heading "Other Current Liabilities" for amounts from Sundry Creditors.

16. In support of the plea, the learned counsel for the petitioner has placed reliance on the following decisions:-



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- i. ***Sodexo SVC India Limited vs. State of Maharashtra and Others, (2016) 53 GST 293;***
- ii. ***Sunrise Associates vs. Government of NCT, Delhi and Others, (2006) 5 SCC 603;***
- iii. ***Premier Sales Promotion Private Limited vs. Union of India and Others, W.P.No.5569 of 2022.***

17. On the other hand, the learned counsel for the respondent would submit that PPI's issued by the petitioner was nothing but a Pre-Paid Card Instrument /Voucher and was liable to tax under the machinery prescribed under Section 12(4)(a) of the respective GST Enactments.

18. It is submitted that tax liability is on the goods to be delivered on a future date. However, tax was payable at the time of issuance of the "Gift Vouchers" as there was identification of the merchandise in the "Gift Vouchers" issued by the petitioner .

19. It is submitted that Section 12(4) of the respective GST Enactments specifically deals with supply of "Vouchers" as defined in Section 2(118) of the respective GST enactments and therefore, the Impugned Order of the



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second respondent-TNSAAAR does not fall for any interference.

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20. It is submitted that PPI's / Voucher are not "actionable claim" as was argued by the learned counsel for the petitioner as they do not satisfy the definition of "actionable claim" in Section 3 of the Transfer of Property Act, 1882.

21. Therefore, it was submitted that the argument of the petitioner that the petitioner was outside the purview of GST levy in view of Section 7(2) of the respective GST enactment read with Schedule III was irrelevant.

22. The learned counsel for the respondent would further submit that the petitioner has to merely alter the method of billing. It is submitted that at the time of issuance of PPIs /Voucher, tax has to be paid as they are issued for specified commodity sold by the petitioner and therefore, in terms of Section 12(4)(a) of the respective GST Enactments, tax was payable on the value of the " Gift Voucher" at the time of issuance of PPI's / Voucher by the petitioner.





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WEB COPY 23. It is further submitted that balance tax was payable only on the differential amounts payable at the time of redemption of the “Gift Voucher” and not on the entire value of merchandise to be purchased by customer once again.

24 I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

25. I have also examined the definition of “voucher” as defined in Section 2(118) and the definition of the expression “actionable claim” in Section 2(1) of the respective GST Enactments of 2017.

26. I have also examined the definition of “actionable claim” under Section 3 of the Transfer of Property Act, 1882. I have also examined the provisions of the respective GST Enactments of 2017 including Schedule III to the respective GST Enactments of 2017 and Payment and Settlement Act, 2007 and Master Directions issued by the Reserve Bank of India on 11.10.2017.

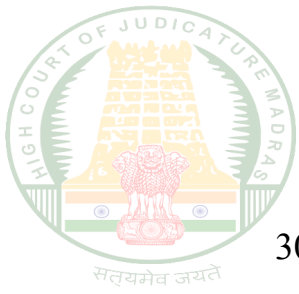


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**WEB COPY** 27. I have also perused the order passed by the Advance Ruling Authority on 25.11.2019 vide Order No.52/ARA/2019, Order dated 30.03.2021 passed by the second respondent/TNSAAAR in A.R.Appeal No.01/2020/AAARl and the Impugned Order dated 22.06.2021 bearing reference No.AAAR/11/2021(AR) passed under Section 102 of the Tamil Nadu GST Act, 2017 rejecting the application partly filed by the petitioner to rectify the Order dated 30.03.2021.

28. I have also perused the sample copies of the invoices issued by the petitioner which have been enclosed along with the typed set of papers. At the outset, it may be kept in mind that the petitioner was not collecting tax at the time of issuance of PPIs/ Gift Vouchers/Card.

29. The salient feature of the Gift Card/Vouchers according to the petitioner is that it is valid for a particular period. At the end of the period, in case the Gift Card/ Voucher, is not used, the cash paid at the time of their issuance will be refunded back to the customers.



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30. However, the terms of receipt in the case of “**Owikilver Gift Card**” issued by the petitioner indicates that the amount paid at the time of its issuance was non-refundable. In Rs.10,000 **Qwikcliver Voucher**, there is no indication of Tax paid at the time of its issuance. The card is valid for a period of one year from the date of its issuance. It has a secret pin covered by a foil paper. It has to be scratched to ascertain the PIN at the time redemption for settling payment on a future date.

31. The terms and conditions of “**Owikilver Gift Card**” reads as under:-

- *Qwikilver gift card is valid for 365 days from the date of issue.*
- *This Qwikilver gift card expires on 01.12.2021.*
- *This Qwikilver gift card is non-refundable.*
- *This Qwikilver gift card can be adjusted against purchase of any jewellery across Kalyan Jewellers showrooms in India.*
- *Pan Card copy to be furnished for transactions above 2 Lakhs.*
- *If mode of payment is cheque, then Qwikilver gift card is subject to clearance of cheque.*
- *Partial Redemption of this Qwikilver gift card is not permitted.*
- *The card has to be physically produced at the*



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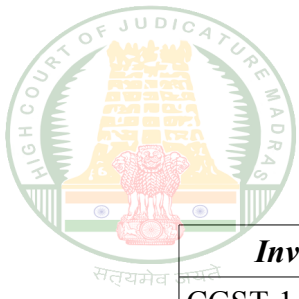
*time of redemption.*

- *All disputes are subject to jurisdiction of the Courts at Thrissur, Kerala.*

32. To redeem the value in the “Gift Voucher/Card”, a customer is expected to disclose the pin to the cashier in any of the petitioners’ retail outlets across the country at the time of purchase.

33. The gross amount charged in invoice dated 10.12.2020 bearing reference Bill No.SLMGPSC03586 filed along with the typed set of papers in Page No.49 issued to a customer named Kannan Palanisamy at the time of redemption of the Gift voucher/Card in one of its outlet gives the following summary:-

<b>Invoice Summary</b>		<b>Settlement summary</b>		<b>Mode of Receipt</b>	
Invoice details	Invoice Amt.	Transactions	Amount	Card	1,995.00
Gross Amount	20,117.43	Invoice Total	20,464.25	Cash	0.70
Less MC Discount	249.24	Less: Old Ornaments	-8,468.55	Qwikcliver Voucher	10,000.00
Taxable Amount	19,868.19	Net Receivable	11,995.70		



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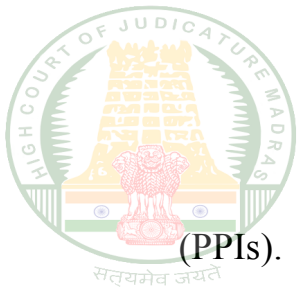
<b>Invoice Summary</b>		<b>Settlement summary</b>		<b>Mode of Receipt</b>	
CGST 1.50%	298.03				
SGST 1.50%	298.03				
Invoice Total	20,464.25				

Amount in Words : Rupees Eleven Thousand Nine Hundred and Ninety  
Five and Seventy Paise Only  
Total : Rs.11,995.70

34. Under Section 5 of the Payment and Settlement Act, 2007, any person desirous of commencing or carrying any payment system can apply to the Reserve Bank of India. Power has been vested with the Reserve Bank of India for regulating such operations.

35. The Reserve Bank of India, has issued a Master Direction on 11.10.2017 bearing reference:RBI/DPSS/2017-18/58 Master Direction DPSS.CO.PD.No.1164/02.14.006/2017-18 for all Prepaid Payment Instrument Issuers, System Providers and System Participants.

36. Paragraph 2.4 of the Master Direction issued by the Reserve Bank of India on 11.10.2017 defines “closed system Prepaid Payment Instrument”



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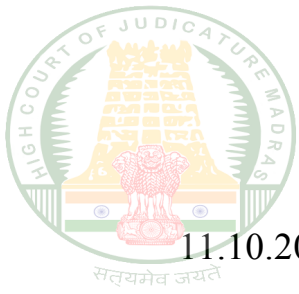
(PPIs). Paragraph No.2.3 and 2.4 of the Master Direction dated 11.10.2017

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<b>2.3-Prepaid Payment Instruments (PPIs)</b>	<b>2.4-Closed System (PPIs)</b>
<i>PPIs are payment instruments that facilitate purchase of goods and services, including financial services, remittance, facilities, etc., against the value stored on such instruments. PPIs that can be issued in the country are classified under three types viz., (i) Closed System PPIs, (ii) Semi-closed System PPIs and (iii) Open System PPIs.”</i>	<i>These PPIs are issued by an entity for facilitating the purchase of goods and services from that entity only and do not permit cash withdrawal. As these instruments cannot be used for payments or settlement for third party services, the issuance and operation of such instruments is not classified as payment systems requiring approval/authorization by the RBI.”</i>

37. If the amount paid is non-refundable, the Gift Card/Voucher will not satisfy the requirement of Para 13.3 of the Master Direction dated 11.10.2017. Para 13.3 of the Master Direction dated 11.10.2017 clarifies that in case, the PPI holder approaches the PPI issuer for refund of such amount, at any time after the expiry date of PPI, then the same shall be paid to the PPI holder in a bank account.

38. Further, as per para 13.7 of the Master Direction dated



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11.10.2017, a holder of PPIs is permitted to redeem the outstanding balance in the PPI, if for any reason the scheme is wound-up or is directed by RBI to be discontinued.

39. Para 13 of the Master Direction dated 11.10.2017 reads as under:-

*“13. Validity and Redemption*

- 13.1. All PPIs issued in the country shall have a minimum validity period of one year from the date of last loading / reloading in the PPI. PPI issuers are free to issue PPIs with a longer validity. In case the PPI is issued in the form of card (with validity period mentioned on the card), then the customer shall have the option to seek replacement of the card.*
- 13.2. PPI issuers shall caution the PPI holder at reasonable intervals, during the 45 days' period prior to expiry of the validity period of the PPI. The caution advice shall be sent by SMS / e-mail/post or by any other means in the language preferred by the holder indicated at the time of issuance of the PPI.*
- 13.3 Non-bank PPI issuers cannot transfer the outstanding balance to their Profit & Loss account for at least three years from the expiry date of PPI. In case the PPI holder approaches the PPI issuer for refund of such amount, at any time after the expiry date of PPI, then the same shall be paid to the PPI holder in a bank account.*





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- 13.4 *Banks issuing PPIs shall be guided by the instructions on Depositor Education and Awareness Fund issued by Department of Banking Regulation, RBI, vide, circular DBOD.No.DEAF  
Cell.BC.101/30.01.002/2013-14 dated March 21, 2014, as amended from time to time.*
- 13.5 *Issuers shall clearly indicate the expiry period of the PPI to the customer at the time of issuance of PPIs. Such information shall be clearly enunciated in the terms and conditions of sale of PPI. Where applicable, it shall also be clearly outlined on the website / mobile application of the issuer.*
- 13.6 *PPIs with no financial transaction for a consecutive period of one year shall be made inactive by the PPI issuers after sending a notice to the PPI holder/s. These can be reactivated only after validation and applicable due diligence. These PPIs shall be reported to RBI separately.*
- 13.7 *The holders of PPIs shall be permitted to redeem the outstanding balance in the PPI, if for any reason the scheme is being wound-up or is directed by RBI to be discontinued.”*

40. Thus, there is no doubt that the “Gift Voucher/Card issued by the petitioner is a “**Prepaid Payment Instruments**” (PPIs) within the meaning of the Master Direction dated 11.10.2017 of the Reserve Bank of India and the petitioner is bound to either allow its redemption against purchase or refund if it is not used before its expiry. I shall now refer to the provisions of



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the respective GST Enactments.

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41. Section 2(21) of the TN VAT Act, 2006 and Section 2(j) of the TN Sales Tax Act, 1959 defined the expression “**goods**”. These definitions specifically excluded the “**actionable claim**” from their purview.

42. In fact, most of the definition of “Goods” in the Sales Tax Enactments and the VAT Enactments in the Country that were in force earlier prior to the enactment of the respective GST Enactments, specifically excluded “**actionable claim**” from their definition. This was also noted by the Hon’ble Supreme Court in **Sunrise Associates. Vs Govt. of NCT, New Delhi and Others** (2006) 5 SCC 603.

43. However, there is a marked departure under the new regime under the respective GST Enactment as in force from 1.7.2017. The expression “**goods**” has been defined in Section 2(52) of the respective GST Enactments. The definition of “**goods**” includes every kind of moveable property. The



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definition of “**goods**” also includes “**actionable claim**”, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. The definition however excludes money and securities.

44. The expression “**actionable claim**” has been defined in Section 2(1) of the respective GST Enactment. It incorporates the definition of “**actionable claim**” in Section 3 of the Transfer of Property At, 1882.

45. The expression “**voucher**” has been defined in Section 2 (118) of the respective GST Enactments. As per Section 2(118) of the respective GST Enactments, a “**voucher**” is an “**instrument**” where there is an obligation to accept it as a consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied.

46. As per the definition of “**voucher**”, the identity of the potential supply may be either indicated on the “instrument” itself or in a related documentation including the terms and conditions of use of such “instrument”.



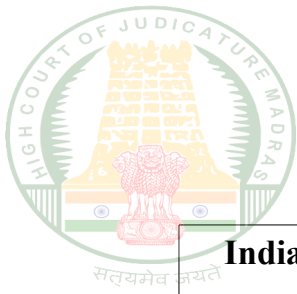
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**WEB COPY** 47. There is no definition for the expression “**instrument**” in the respective GST Enactments. The expression “**instrument**” is defined in Section 2(14) of the Indian Stamp Act, 1899. The definition of “**instrument**” in Section 2(14) of the Indian Stamp Act, 1899 employs the expression “**document**”.

48. The expression “**document**” has also not been defined in the respective GST Enactments. The expression “**document**” has been however defined in Section 3(18) of the General Clauses Act, 1897.

49. Respective definition of the expression “**instrument**” in Section 2(14) of the Indian Stamp Act, 1899 and “**documents**” in Section 3(18) of the General Clause Act, 1897, are reproduced below for easy reference:-

<b>Indian Stamp Act, 1899</b>	<b>Section 3(18) of the General Clause Act, 1897</b>
<b>Section 2(14): Instrument-</b> “ <b>instrument</b> ” includes-	<b>Section 3 Definitions-</b> In this Act, and in all Central Acts and Regulations made after the commencement of this Act,



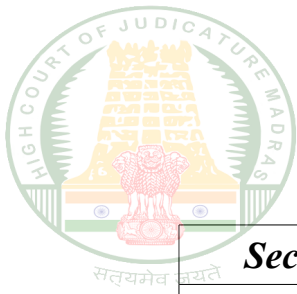
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<p><b>Indian Stamp Act, 1899</b></p>	<p><b>Section 3(18) of the General Clause Act, 1897</b></p>
	<p>unless there is anything repugnant in the subject or context,—</p>
<p>(a) every <b>document</b>, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded;</p> <p>(b) a <b>document</b>, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and</p> <p>(c) any other document mentioned in Schedule I,</p>	<p><b>(18)“document”</b> shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter;</p>

50. Definition of “**actionable claim**” in Section 2(1), “**goods**” in Section 2(52) and “**voucher**” in Section 2(118) in the respective GST Enactments are reproduced below for easy reference:-

<p><b><i>Section 2 :- In this Act, unless the context otherwise requires:-</i></b></p>	
<p>Section 2(1)“<b>Actionable claim</b>” shall have the same meaning assigned to it in Section 3 of the Transfer of Property Act, 1882(4 of 1882).</p>	
<p>Section 2(52)</p>	<p>Section 2(118)</p>
<p>“<b>Goods</b>” means every kind of movable property other than money and securities but includes <b>actionable claim</b>, growing crops, grass and things attached to or forming</p>	<p>“<b>Voucher</b>” 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</p>



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**Section 2 :- In this Act, unless the context otherwise requires:-**

*part of the land which are agreed to be severed before supply or under a contract of supply.*

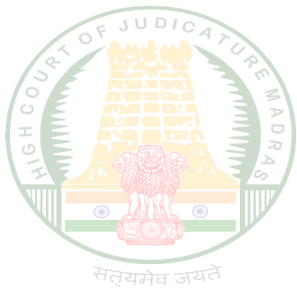
*where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;*

51. The definition of “**Actionable Claim**” in Section 3 of the Transfer of Property Act, 1882 is reproduced below for easy reference:-

**“Transfer of Properties Act, 1882**

**Section 3. Interpretation clause.—***In this Act, unless there is something repugnant in the subject or context,—*

*“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;”*



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**WEB COPY** 52. There are distinct elements in the definition of “**actionable claim**” in Section 3 of the Transfer of Property Act. As the nomenclature suggest, an “**actionable claim**” is a “**debt**” or a “**beneficial interest**” in a movable property not in possession of the claimant, which the Court recognize as an affording ground for granting relief to a claimant. An “**actionable claim**” is assignable in terms of Section 130 of the Transfer of Property Act, 1882.

53. To understand better, the definition of “**actionable claim**” in Section 3 of the Transfer Act, 1882, can be dissected to be read as follows:-

“ <b>Actionable claims</b> ” means a claim to any:-			
<b>Debt; or</b>	“ <b>beneficial interest</b> ” in a <b>movable property</b> ,not in “ <b>actual</b> ” or “ <b>constructive possession</b> ” of the claimant,		
Whether, such “ <b>debt</b> ” or “ <b>beneficial Interest</b> ” in a <b>movable property</b> be,			
existent,	accruing,	Conditional or	contingent
which the Civil Courts recognise as affording grounds for relief,			

54. The exclusion in the definition of “**actionable claim**” can be understood as follows:-





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A Debt secured by:	
1. Mortgage of Immovable Property; or	is not an “ <b>Actionable claim</b> ”
2. Hypothecation of movable property; (or)	
3. Pledge of movable property,	

55. In the Educational Guide that was issued on 20.6.2012 by the Central Board of Indirect Taxes in the wake of sweeping changes brought to the Finance Act, 1994 vide Finance Act, 2012 with effect from 1.7.2012, clarifications were issued regarding “**actionable claim**” and “**voucher**”. At that point of time the “**voucher**” was not defined in the Finance Act, 1994.

56. Educational Guide clarified that if a service fee or processing fee or any other charge were collected in the course of transfer or assignment of a “debt” then it would be chargeable to service tax. Relevant portion from the “Educational Guide” is reproduced below:-

### **2.8.7 What are actionable claims?**

*As per section 3 of the Transfer of Property Act, 1893 actionable claims means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any*



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*beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.*

*Illustrations of actionable claims are -*

- *Unsecured debts*
- *Right to participate in the draw to be held in a lottery.*

**2.8.8 *If an unsecured debt is transferred to a third person for a consideration would this activity be treated as service?***

*No. Since unsecured debt is an actionable claim, a transaction only in such actionable claim is outside the ambit of service. However if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.*

**2.8.9 *Would sale, purchase, acquisition or assignment of a secured debt like a mortgage also constitute a transaction in money?***

*Yes. However if a service fee or processing fee or any other charge is collected in the course of transfer or assignment of a debt then the same would be chargeable to service tax.*

**2.8.10 *What is the scope of 'beneficial interest in moveable property' in the definition of actionable claim?***

*Black's Law Dictionary defines 'beneficial interest' as follows -*

*“A right or expectancy in something (such as a trust or an estate), as opposed to legal*



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*title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property”*

*Therefore ‘beneficial interest in moveable property’ is a right or expectancy in a moveable property like right to receive income accruing from a moveable property. It may be noted that accrual of income from a moveable property could be in the nature of a consideration for a taxable service, e.g. a hiring fees or a license fee accruing on hiring or licensing of a moveable property. In such a situation the service being provided in relation to such moveable property would not be covered in the exclusion clause. It is only if the beneficial interest in such property is transferred to another person for a consideration that the activity of transferring the beneficial interest would be covered.*

**2.8.11 *Would vouchers that entitle a person to enjoy a service, for example a health club, be an actionable claim?***

*No. Such a voucher does not create a ‘beneficial interest’ in a moveable property but only entitles a person to enjoy a particular service for a single or specified number of times.*

**2.8.12 *Would recharge vouchers issued by service companies for enabling clients/consumers to avail services like mobile phone communication, satellite TV broadcasts, DTH broadcasts etc be ‘actionable claims?’***



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*No. Such recharge vouchers do not create a 'beneficial interest' in a moveable property but only enable a person to enjoy a particular service.*

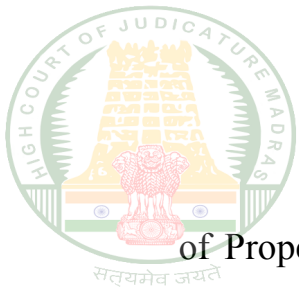
**2.9 Provision of service by an employee to the employer is outside the ambit of service**

**2.9.1 Are all services provided by an employer to the employee outside the ambit of services?**

*No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside ambit of employment for a consideration would be a service. For example, if an employee provides his services on. contract basis to an associate company of the employer, then this would be treated as provision of service.*

57. The Education Guide clarified that an “**unsecured debt**” is an “**actionable claim**” and transaction in “**actionable claim**” were outside the ambit of the definition of “service”.

58. Educational Guide though issued in the context of amendment to the provisions of Finance Act, 1994 on 20.6.2012 does serve as a use guide. A part of the clarification contained is useful to answer the present query in so far as the definition of “**actionable claim**” under the Section 3 of the Transfer



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of Property Act, 1882 is concerned. It is relevant for the purpose of the present discussion.

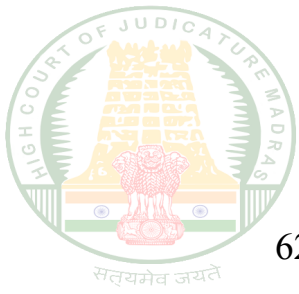
59. There is however no definition for the expression “**debt**” in the respective GST enactments.

60. The Hon’ble Supreme Court in **UOI Vs. Raman Iron Foundary**, (1974) 2 SCC 231, referred to a famous quote of Lindley, L.J., in **Webb v. Stenton** [(1883) 11 QBD 518]. It reads as follows:-

*“a **debt** is a sum of money which is now payable or will become payable in the future by reason of a present obligation”. There must be debitum in praesenti; solvendum may be in praesenti or in futuro —that is immaterial.”*

61. The expression “**debt**” was explained as follows:-

*“when there is an obligation to pay a sum of money at a future date, it is a debt owing but when the obligation is to pay a sum of money in praesenti, it is a debt due. A sum due would, therefore, mean a sum for which there is an existing obligation to pay in praesenti, or in other words, which is presently payable.*



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62. There, the Hon'ble Supreme Court referred to the famous passage from the decision of the Supreme Court of California in **People vs. Arguello** (1869) 37 Calif 524 which was quoted with approval by the Hon'ble Supreme Court in **Kesoram Industries and Cotton Mills Ltd. v. Commissioner of Wealth Tax**, AIR 1966 SC 1370.

63. The Hon'ble Supreme Court in **UOI Vs. Raman Iron Foundary**, (1974) 2 SCC 231, was interpreting General Conditions of Contract between the parties. In para 9, the Hon'ble Supreme Court observed as under:-

*9. The first thing that strikes one on looking at clause 18 is its heading which reads: "Recovery of Sums Due". It is true that a heading cannot control the interpretation of a clause if its meaning is otherwise plain and unambiguous, but it can certainly be referred to as indicating the general drift of the clause and affording a key to a better understanding of its meaning. The heading of clause 18 clearly suggests that this clause is intended to deal with the subject of recovery of sums due. Now a sum would be due to the purchaser when there is an existing obligation to pay it in praesenti. It would be profitable in this connection to refer to the concept of a "debt", for a sum due is the same thing as a debt due. The classical definition of "debt" is to be found in **Webb v. Stenton** [(1883) 11 QBD 518] where Lindley, L.J., said: "...a debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation". There*



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*must be debitum in praesenti; solvendum may be in praesenti or in futuro — that is immaterial. There must be an existing obligation to pay a sum of money now or in future. The following passage from the judgment of the Supreme Court of California in **Peple v. Arguello** [(1869) 37 Calif 524] which was approved by this Court in **Kesoram Industries v. Commissioner of Wealth Tax** [AIR 1966 SC 1370 : (1966) 2 SCR 688, 702 : 59 ITR 767] clearly brings out the essential characteristics of a **debt**: (at p. 702)*

*“Standing alone, the word ‘debt’ is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a debt owing, and of the latter that it is a debt due.”*

*This passage indicates that when there is an obligation to pay a sum of money at a future date, it is a debt owing but when the obligation is to pay a sum of money in praesenti, it is a debt due. A sum due would, therefore, mean a sum for which there is an existing obligation to pay in praesenti, or in other words, which is presently payable. Recovery of such sums is the subject matter of clause 18 according to the heading. That is the dominant idea running through the entire clause 18.*

64. “Gift Voucher/Card” issued by the petitioner is a “**document**” within the meaning of Section 3(18) of the General Clause Act,





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1897 and thus an “**instrument**” within the meaning of Section 2(14) of the Indian Stamp Act, 1899 as a right/liability is created and is recorded. The amount specified in it is a debt.

65. “Gift Voucher/Card” thus acknowledges debt. Thus, “Gift Voucher/Card” is nothing but a “debt instrument”. It can be redeemed on a future date on its presentation towards ‘sale consideration’ for purchase of the merchandise from any one of the petitioner’s retail outlets.

66. The value of the “Gift Voucher/Card” is meant to be set-off towards payment for the sale of the merchandise traded by the petitioner. A customer or his or her donee is/are entitled to redeem the value in the “Gift Voucher/Card” towards sale consideration of purchase to be made by them from the petitioner’s outlet under the terms of the scheme under which it is issued. If the petitioner commits a breach or fails to allow such redemption, such customer would have right to enforce.

67. The amount acknowledged therein is refundable to the customer after the expiry of the period of its validity, if it is not used and/or redeemed



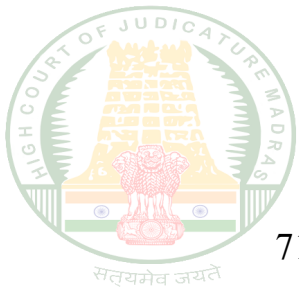
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by a customer against any purchase under the law, notwithstanding the terms of the contract extracted above in the beginning of this order in view of the RBI's master circular.

68. There is an obligation on the part of the petitioner to accept the amount specified in the "Gift Voucher/Card" issued by it for being set off towards consideration payable for purchase of merchandise traded by the petitioner in its retail outlets.

69. Similarly, if amounts paid are not credited into the account of the customer, after the expiry of the period of its validity, it would give a cause of action to such customer to recover the amount as per RBI's Master Direction referred to supra.

70. A right to approach a civil court to recover the amount paid is available under the Scheme as per RBI's Master Direction under which the petitioner issued such as "Gift Voucher/Card" as a Prepaid Instruments (PPI's).



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71. If the petitioner either,

- a. fails to allow redemption of the value in the “Gift Voucher/Card” at the time of sale of merchandise to a customer; or
- b. fails to credit the amount to the account of a customer after period of its validity if the “Gift Voucher/Card” was not redeemed by the customer,

such customer has a right to approach the Civil Court to enforce the rights.

72. Civil Court will normally recognize the rights of the customer under “Gift Voucher/Card” when read with the RBI Master Direction as a ground for affording a relief to a distraught customer who is either unable to use the “Gift Voucher/Card” or who fails to get a credit of the amount into his or her account after the period of its validity, if for some reason, “Gift Voucher/Card” was not redeemed by the customer.

73. The “Gift Voucher/Card” is a debit card. It is like a frozen cash received in advance and thaws on its presentation at the retail outlet for being set off against the amount payable by a customer for purchase of merchandise sold by the petitioner or the amount specified therein is to be returned to the customer as per RBI’s Master Direction where a customer fails to utilize it within the period of its validity.



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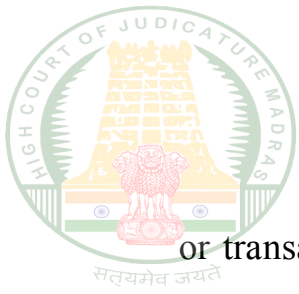
**WEB COPY** 74. “Gift Voucher/Card” is therefore an “**actionable claim**” within the meaning of Section 2(1) of the respective GST Enactments read with Section 3 of the Transfer of Property Act, 1882.

75. Schedule III read with Section 7 of the respective GST Enactments lists the activities or transactions which shall be treated neither as supply of goods nor supply of services.

76. Relevant portion of Section 7(2)(a) and Sl.No.6 to Schedule III of the respective GST Enactments are reproduced below for easy reference:-

<b>Section 7:-Scope of Supply:-</b>	<b>Schedule III</b>
(2)Notwithstanding anything contained in sub-section (1),-  (a)activities or transactions specified in <b>Scheduled III</b> , or  (b).....  Shall be treated neither as. Supply of goods nor a supply of services.	<b>Activities or Transactions which shall be treated neither as a supply of Goods nor a supply of services:</b> <b>6.<u>Actionable claims</u></b> , other than lottery, betting and gambling.

77. As per Section 7(2) of the respective GST Enactments, activities



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or transactions specified in Schedule III shall be treated neither as supply of goods nor supply of services.

78. Therefore, the petitioner is not liable to pay tax on “Gift Voucher/Card” in view of in view of Section 7(2)(a) r/w Sl.No.6 to Schedule III of the respective GST Enactments.

79. Since “**Actionable claim**” is specified in Sl.No.6 in the Schedule III, no tax is payable on it. “Gift voucher/Card” issued by the petitioner qualify as “**actionable claim**” within the meaning of the definition of “**actionable claim**” in Section 3 of the Transfer Act, 1882 as incorporated in Section 2(1) of the respective GST Enactments.

80. Therefore, the view in the impugned order that there is no need to determine whether “**voucher**” is an “**actionable claim**” to arrive at a conclusion that it is neither a supply of “**goods**” nor a supply “**service**” in a way is partly correct. However, the ultimate conclusion arrived is not correct.

81. Suffice to state that the “Gift Vouchers/ Card” satisfy the definition of “**actionable claims**” within the meaning Section 3 of the Transfer of



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Property Act, 1882 and are as such not liable to tax by themselves. Only the underlying transactions are taxable.

82. Although, the petitioner has stated in the terms of the Scheme that the amount paid under the scheme is refundable, it is to be noted that there is a restrictive clause in the Qwickilver card that the amount is not refundable. It is not binding on the customer. Such a clause is contrary to the RBI's Master Directions content of which has been extracted above.

83. At the same time, it has to be clarified that if the "Gift Voucher/Card" are issued for a specified and identified goods, or for a merchandise of a particular value, tax is payable on such identified goods at the time of issuance of the "Gift voucher/ Card", as there is supply of an identified good in view of Section 12(4)(a) of the respective GST Enactments.

84. Such transactions are "supply" and therefore "transfer" within the meaning of clause 1(a) and 1(c) to Schedule II of the respective GST Enactments read with Section 7(1-A) of the respective GST Enactments. There is also sale within in the meaning of Section 4 of the Sale of Goods Act,

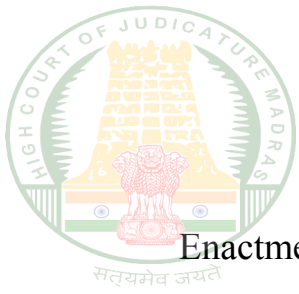


85. Section 7(1A) and Clauses 1(a) and 1(c) to Schedule II of the Respective GST Enactments read as under:-

<b>II Schedule</b> of the Respective GST Enactments. <i>Activities or Transaction to be treated as supply of Goods or service</i>	<b>Section 7</b> of the Respective GST Enactments. <i>Scope of Supply: For the purpose of this Act, the expression “supply” includes:-</i>
<i>Sl.1-</i>	<i>Sub Section (1-A)</i>
<b>Transfer</b>	
<i>(a) any transfer of title in goods is a supply of good c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.</i>	<i>Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated as either as supply of goods or supply of service as referred to in <b>Schedule II.</b></i>

86. As per clause 1(a) to Schedule II of the respective GST Enactments read with Section 7(1-A) of the Enactments, any transfer of title in goods is a supply of goods.

87. Similarly, under clause 1(c) to Schedule II of the respective GST



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Enactments read with Section 7(1-A) of the Enactments, any transfer of title in goods under an agreement which stipulates that property in goods shall pass on a future date upon payment of full consideration as agreed, is to be treated as a supply of goods or service.

88. Thus, if the “Gift Voucher/Card” is issued for an identified goods/merchandise, tax is payable notwithstanding the fact that only a part of the sale consideration is/was received by the petitioner in advance at the time of issuance of the “Gift Voucher/Card”.

89. If the sale of an identified merchandise of specified amount is concluded at the time of issuance of “Gift Voucher/ Gift Card” although full consideration is not paid and there is no delivery of merchandise, tax is still payable in terms of Section 12(4)(a) of the Act. This is the mechanism under Section 12(4)(a) of the respective GST Enactments.

90. On the other hand, if the “Gift Voucher/ Card” was issued for any unspecified goods to be purchased on a future date from a whole range of products/goods/merchandise offered for sale by the petitioner, tax is payable on such “goods” or “merchandise” only at the time of sale i.e. at the time of





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redemption of “Gift Voucher/Card” in view of Section 12(4)(b) of the respective GST Enactments.

91. Relevant portion of Section 12(4) of the respective GST Enactments are reproduced below:-

<b>Section 12:</b>	<b>Time of supply of goods</b>	
(4)	<i>In case of supply of vouchers by a supplier, the time of supply shall be –</i>	
	(a)	(b)
	<i>the date of issue of voucher, if the supply is identifiable at that point of time; or</i>	<i>the date of redemption of voucher, in all other cases.</i>

92. The reason for the above differential treatment is not difficult to fathom. In the case of the former, for all practical purpose, there is a sale of an identified merchandise of a particular value without actual delivery of identified merchandise. Consideration is either paid in advance or paid over a period of time or later.

93. For instance, a person may buy a voucher or a coupon as a “gift” of a specified goods of a specific value for being gifted to a donee. The donee,



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is merely required to collect the merchandise from the store by presenting the

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“Gift Voucher/Card” and the complete the sale by taking delivery of the goods. It will be a situation covered by Section 12(4)(a) of the respective GST Enactments.

94. Similarly if the goods are identified at the time of the issuance of the “Gift Voucher/Card”, GST is payable although full payment is not made and payments are made in installments and delivery is taken later. Here, the generation of invoice and delivery of the identified goods or merchandise or article is merely postponed to a future date i.e. on the date of production/presentation of “Gift Card/ Gift Voucher”.

95. On the other hand, if the “Gift Voucher/Card” is issued for a particular value which is to be redeemed for purchase of an unspecified and unidentified article, goods or item or merchandise etc., from the whole range of such article, goods or item or merchandise traded or service supplied by a dealer on a future date, the time of supply of goods or service for the purpose of taxation will be postponed to a future date ie. to the date of redemption of the “Gift Voucher / Card” against the actual purchase of the article, goods or item or merchandise or purchase of sale service as the case may be.



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WEB COPY 96. Therefore, unless there a clear identity of the “**goods**” or “**service**” and its value is ascertained on the date of issuance of the “gift voucher”, question of taxing a future supply of an unspecified goods or service which is to take place on a future date is not contemplated under the Scheme of the respective GST Enactments. This is the true purport of Section 12(4) of the respective GST Enactments.

97. Incidentally, the Karnataka High Court in **M/s. Premier Sales Promotion Pvt. Limited, vs. The Union of India, Ministry of Finance, Department of Revenue, North Block, New Delhi 110 001 2023(70) GSTL 345**, held as follows:-

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*



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*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.*

98. The confusion and doubt surrounding the interpretation of Section 12(4) of the respective GST Enactments are partly on account of the fact that it is a new provision under the new regime under the respective GST Enactments as in force from 01.07.2017.

99. Neither, the definition of 'Voucher' as in Section 2(118) nor Section 12(4) of the respective GST Enactments were there in the Model GST Laws that were in circulation in 2016.

100. In Section 2 of the Model GST Law, there were only 112 sub-sections. Section 11 of the Model GST Law that was in circulation 2016 corresponds to Section 12 of the respective GST Enactments.

101. A provision similar to Section 12(4) was not there in the Model



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GST Law that was in circulation in 2016 although a provisions for

determining continuous supply of services under the proposed GST

Enactments was there. Clause 11(4) of the Model GST Law read as under:-

*“11(4) For the purpose of sub-section (3) above, the Central or a State Government may specify, by notification, the services that shall be treated as continuous supply of services.”*

102. The other reason for confusion is perhaps because, both the Union and the State GST Bills which preceded the enactment of the respective GST Enactments did not precede a detailed discussions or deliberations on this aspect in the Parliament.

103. The Goods and Service Tax Council (GST Council) which was constituted under Article 279A of the Constitution of India must have deliberated on the same.

104. However, Court was unable locate the deliberation of the GST Council on this aspect. For sure, there would have been some discussion on



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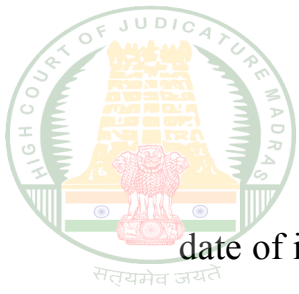
the subject.

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105. What is evident is that all the State Assemblies merely followed the Parliament and passed the respective State GST Enactments for their respective States in line with the avowed philosophy under amendment to the Constitution for One nation One Tax under the GST Regime.

106. Although, Point of Taxation Rules, 2011, existed under the previous regime under the Finance Act, 1994 with effect from 1.4.2011 vide Notification No.18/2011-ST dated 1.3.2011, it did not specifically deal with voucher, as an “**actionable claim**” was outside the purview of the definition of “goods” for the purpose of Section 65B(25) of the Finance Act, 1994 and definition of “**service**” in Section 66(44) of the Finance Act, 1994 which was defined these two expressions for the first time with effect from 01.07.2012 vide Finance Act, 2012.

107. Therefore, the view of the Advance Ruling Authority dated 24.11.2019 vide its Order No.52/ARA/2019, that the time of supply of the “Gift Vouchers/ Cards” issued by the petitioner to the customers shall be the



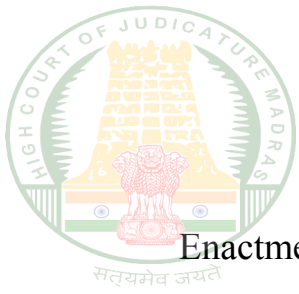
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date of issuance of such vouchers irrespective of the nature of transaction and rate of tax is that applicable to that of the goods is not fully correct.

108. At the same time, the conclusion in para 7.9 of the impugned order dated 30.03.2021 that voucher *per se* is neither a goods or a service is correct in view of Section 7 r/w III Schedule to GST Enactments and Section 3 of the Transfer of Property Act, 1882 is correct. The conclusion that the “Gift Card/Voucher” *per se* is not taxable is correct.

109. In view of the above discussion, the conclusion of the 2<sup>nd</sup> Respondent in its impugned order dated 22.06.2021 reiterating its earlier view in its order dated 30.03.2021 while upholding the view of Advance Ruling Authority dated 24.11.2019 vide its Order No.52/ARA/2019 has to be partly modified.

110. If the “Gift Vouchers/Cards” is for a specified item of jewellery of specified value, tax is payable at the time of its issuance, as there is supply(i.e transfer) within in the meaning of Section 7(1-A) of the respective GST



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Enactments read with Sl.No.1(c) to the II Schedule to the respective GST Enactments. Therefore, tax is payable in view of Section 12(4)(a) of the respective GST Enactments at the time of issuance of such “Gift Vouchers/Cards”.

111. On the other hand, if there is no supply ie. no transfer within in the meaning of Section 7(1-A) of the respective GST Enactments read with Sl.No.1( c) to the II Schedule to the respective GST Enactments, time of supply will get postponed to the actual time of redemption of the “voucher” to a future date of sale of merchandise or such goods when such Gift Voucher/Card is presented by the customer at the Counter of the petitioner.

112. The petitioner will be liable to tax on the date of redemption under Section 12(4)(b) of the respective GST Enactments.

113. Therefore, the clarification in the impugned order is modified to that extent. The impugned order is quashed to that extent.

114. This writ petition is partly allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.





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Index : Yes/No  
Neutral Citation : Yes/No  
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**To**

1. The Secretary,  
Union of India  
Department of Revenue,  
Ministry of Finance,  
North Block,  
New Delhi.
2. Tamil Nadu State Appellate Authority for Advance Ruling,  
5<sup>th</sup> Floor, Integrated Commercial Taxes Office Complex,  
No.32, Elephant Gate Bridge Road,  
Chennai 600 003.
3. The Commissioner of GST & C.Ex.,  
Coimbatore Commissionerate,  
6/7, ATD Street, Race Course Road,  
Coimbatore 641 018.
4. The Assistant Commissioner (ST)  
Divisional Large Ta Payers Unit,  
Gandhipuram Circule,  
C.T.Building, Dr.Balasundaram Road,  
Coimbatore.
5. The Director General of GST Intelligence (D.Z.U.)  
West Block – VIII, Wing No.3, First Floor,  
R.K.Puram, New Delhi 110 006.



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**C.SARAVANAN. J.**

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27.11.2023