

Gift voucher is an actionable claim, taxable at the time of issuance only in case of specified and identified goods - Madras HC

15 January 2024



## Summary

The Madras High Court (HC) has upheld that a voucher itself does not qualify as either a good or a service under Schedule III of the Central Goods and Services Tax (CGST) Act, 2017, and consequently, gift vouchers, in their essence, are not subject to tax under the GST regime. However, modifying the AAAR decision with respect to time of supply, the HC emphasised that the supply associated with the voucher is classifiable according to the nature of goods or services supplied in exchange for the voucher issued to the customer. Accordingly, the timing of tax liability is contingent upon whether the gift voucher/card are issued for specified goods or for merchandise of a particular value. It clarified that in instances where the gift voucher pertains to identified goods, tax liability would arise at the time of issuance of the gift voucher, whereas in all other cases, the date of redemption of such voucher would be construed in terms of GST provisions.

## Facts of the case

- M/s Kalyan Jewellers India Limited (the petitioner) is engaged in the business of manufacturing and trading ornaments. As a part of sales promotion, it had introduced a facility of pre-paid instruments (PPIs) called as gift vouchers/gift cards.
- The petitioner sought an advance ruling before the Tamil Nadu authority to understand the tax implications and time of supply provisions in case of issuance of PPIs to the customers.
- The Tamil Nadu AAR had held that PPIs are supply of goods and the time of supply of such gift vouchers shall be the date of issue if the vouchers are issued specific to any particular good; otherwise, it shall be at the date of redemption.
- Aggrieved by the above ruling, the appellant had filed an appeal before the Tamil Nadu AAAR.
- The AAAR modified the AAR ruling and held that a voucher is a means for advance payment of consideration, and it is neither a good nor a service under the GST law.
- However, the AAAR held that the time of supply of the gift vouchers by the applicant to the customers shall be the date of issuance of such vouchers.

- Subsequently, aggrieved by the above ruling, the petitioner filed the present writ petition before the HC.

## Petitioner's contentions:

- The gift vouchers or PPIs are governed by the Payment and Settlement Act, 2007, and the Master Directions issued by the Reserve Bank of India (RBI).
- The petitioner submitted that the transaction can be taxed only at the time of the actual sale of the goods, i.e., at the time of redemption of the gift vouchers by a customer. Accordingly, tax liability should not arise at the time of issuance of such vouchers.
- Alternatively, it was contended that the gift vouchers are in the nature of actionable claims, and by virtue of Schedule III of the Central Goods and Services Tax Act (CGST), these are not liable to tax.

## Madras HC's observations and judgement [Writ Petition No. 5130 of 2022; Order dated 27 November 2023]:

- **Gift voucher is in nature of PPIs:** The HC analysed the nature of vouchers issued by the petitioner and noted that the vouchers are valid for a particular period and are refundable at the time of

expiry. However, one of the vouchers issued is non-refundable. The HC held that if the amount paid is non-refundable, the gift voucher will not fulfil the requirement of the Master Direction.

- **Interpretation of the terms ‘actionable claim,’ ‘vouchers’, and ‘debt’:** The HC referred to the judgement of the Supreme Court (SC) in the case of Sunrise Associates, wherein it was observed that the definition of goods specifically excludes the actionable claim under the erstwhile laws. However, the HC perused the definition of goods as prescribed under the CGST Act, which clarifies that the actionable claims are included in the definition of goods. The HC referred to the different enactments and educational guide that was issued by the Central Board of Indirect Taxes to further analyse the definition of ‘voucher’, ‘debt’, ‘instrument’ and ‘actionable claim’.
- **Gift voucher is a debt instrument:** After the exhaustive interpretation, the HC acknowledges that gift vouchers are in the nature of debt instrument, which can be redeemed on a future date on their presentation towards sales consideration for the purchase of merchandise from any of the petitioner’s retail outlets.
- **Customer has a right to approach the civil court to enforce the rights:** The HC noted that there is an obligation on the petitioner to accept the amount specified in the gift voucher, and if the amount paid is not credited into the account of the customer after the expiry

period, the customer would have a right to recover the amount as per the RBI’s Master Direction. Therefore, a right to approach a civil court to recover the amount can be exercised by the customers.

- **Gift voucher qualifies as an actionable claim:** The HC emphasised that a gift voucher 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 the purchase of merchandise sold by the petitioner. Therefore, it is an actionable claim, and by virtue of Schedule III of the Central Goods and Services Tax Act (CGST), such vouchers are not liable to be taxed. The HC noted that only the underlying transactions are taxable and noted that the impugned order passed by the AAAR, stating that it was irrelevant to analyse the voucher as an actionable claim, was not correct.
- **Determination of time of supply:** The HC held that the time of supply of gift vouchers shall be the date of issue if the vouchers are issued for a specified item of jewellery of specified value because there is transfer/supply under GST. Pertinently, these would be taxable irrespective of the fact that sale consideration is either paid in advance or paid over a period of time or later. However, if the vouchers are redeemable against any unspecified goods, the time of supply shall be the date of redemption.

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## Our comments

The taxability of gift vouchers has been a longstanding source of legal contention under the GST, as well as the erstwhile regime.

Under the pre-GST era, the apex court, in the case of Sodexo SVC India Limited, held that food vouchers are not goods but means of payment instruments that become taxable only when they are redeemed.

Earlier, the Karnataka HC, in the case of M/s. Premier Sales Promotion Pvt. Ltd., held that the issuance of vouchers is similar to pre-deposit and not supply of goods or services. Therefore, the vouchers are neither goods nor services and are not taxable.

The present ruling is on similar lines and will help in providing the required clarity on the taxability of vouchers.

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