

TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No.01/2020/AAAR

Date: 30.03.2021

BEFORE THE BENCH OF

1. Thiru.G.V.KRISHNA RAO, MEMBER

2. Thiru. M. A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/11/2021 (AR)

(Passed by Tamilnadu State Appellate Authority for Advance Ruling under Section
101(1) of the Tamilnadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	M/s. Kalyan Jewellers India Limited 5th Cross, 100 Feet Road, Gandhipuram, Coimbatore, Tamil Nadu.
GSTIN or User ID	33AADCK6079K1Z8
Advance Ruling Order against which appeal is filed	Order No. 52 /ARA /2019 dated 25.11.2019
Date of filing appeal	28.01.2020
Represented by	Tvl.J.Nandakumar, Advocate, Tvl.J.Poojesh, Advocate, and Tvl. Ms. Harini S.P, Advocate
Jurisdictional Authority-Centre	Coimbatore Commissionerate
Jurisdictional Authority -State	The Deputy Commissioner (ST) Divisional Large Tax Payers Unit, C.T.Building, Dr. Balasundaram Road, Coimbatore.
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Payment of Rs. 20000/- made vide 1. challan No.UTIB 20013300464507 dated 24.01.2020, 2. challanNo.UTIB 20013300508078 dated 29.01.2020

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act, 2017/Central Goods & Services Tax Act 2017 by Tvl.

Kalyan Jewellers India Limited (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AADCK6079K1Z8. The appeal is filed against the Order No. 52 /ARA /2019 dated 25.11.2019 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2.1 The Appellant is in the business of manufacturing and trading of Jewellery Products. As a part of sales promotion the Appellant introduced the facility of different types of Pre-Paid Instruments (PPI's) viz., Closed System PPIs, Semi-closed System PPIs, Open System PPIs through its retail outlets , third party PPI issuers and online portals to their Customers and these are generally called "Gift Vouchers/Gift Cards" in trade practice. The Appellant has sought Advance Ruling on the following questions:

- (i). Whether the issue of own closed PPIs by the 'Applicant' to their customers be treated as supply of goods or supply of service
- (ii). 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
- (iii). If yes, what is the applicable rate of tax for such supply of goods or services?"
- (iii). If yes, whether the issue of PPIs by the Third party PPI issuers subject to GST at the time of issue in their hands?
- (iv). Whether the amount received by the Applicant from Third Party PPI issuers subject to GST?
- (v) If No, GST collection at the time of sale of goods or services on redemption of PPIs i.e., own and from Third Party will be a sufficient compliance of the provisions of the Act?
- (vi) 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?

3. The AAR pronounced the following rulings:

- i) 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
- ii) 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.
- iii) 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 Notification Ms. No. II(2)/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.
- iv) The questions raised at Sl.No. 4,5,6 and 7 are not answered for the reason that the said questions are not admitted as this authority does not have jurisdiction.

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

The voucher or PPI only have a redeemable face value and no intrinsic value capable of it being considered as marketable for the purpose of levy of GST. It is submitted that the amounts received upon such issuance of PPI's are treated and entered as 'Other Current Liabilities' in the statement of accounts, and only when the instruments are redeemed the amounts received are credited to the sales/revenue account of the Appellant. It is submitted that the PPI's are issued to the customers in card as well as digital formats and it is not sold to

the customers. The PPI's are in the nature of actionable claims and not goods. It is submitted that if the PPI's are made liable to tax, it would amount to double taxation as GST is levied on the supply of jewellery made by the appellant also at the time of redemption of a voucher is against the provisions of Law as well as the EU Council Directives.

PERSONAL HEARING:

5. The Appellant was granted personal hearing as required under law before this Appellate Authority on 3rd February 2021. The Authorized representatives of the Appellant Tvl.J.Nandakumar, Advocate, Tvl.J.Poojesh, Advocate and Ms. Sri Harini S.P, Advocate of the appellant company appeared for hearing. They reiterated the written submissions and claimed that PPI are actionable claims and not taxable to GST. Further they were asked to furnish any decision on 'Vouchers are actionable claim' and were allowed to have another hearing in Digital mode.
6. A virtual hearing was granted on 22nd February 2021 during which time they furnished additional written submissions and copies of judgements / decisions cited by them. Further to a specific query whether there is a provision for giving back cash in case the customer does not want to exchange the voucher for goods, they promised to come back with proof of the same. On 24th February 2021, they attached true copies of gift vouchers along with terms and conditions appended therein.

DISCUSSION & FINDINGS:

- 7.1 We have carefully considered the various submissions made by the Appellant and the applicable statutory provisions. The arguments of the appellant may be summarised as follows:
- 7.2 Vouchers issued by the appellant are of the nature of actionable claims. Actionable claims, though included within the definition of goods under section 2(52), have been included in schedule III as entry 6 and therefore cannot be treated either as supply of goods or supply of services. It follows that vouchers are not subject to levy of tax under the GST act.

- 7.3 Our view is that there is an inherent contradiction in this argument, with the provision in sub sections (4) of section 12 and 13, that deal with determining the time of supply for goods and services respectively, both use the term 'voucher', and therefore indicate that voucher relate to both goods and services. If vouchers are to be treated as actionable claims, they are only goods and not services.
- 7.4 Notwithstanding the above, we are also of the view that vouchers are neither goods nor services, and to that extent, without the need to examine whether voucher is an actionable claim, agree with the appellant, but for different reasons. Our reasoning is as follows:
- 7.5 A voucher is a means for advance payment of consideration for future supply of goods or services:
- (75) – '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 recognized 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;
- (118) – '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;
- 7.6 Voucher, being an instrument used as consideration to settle an application, is a type of money, and as long as such instrument is recognised by the Reserve Bank of India. Even if such voucher is not recognised by Reserve Bank of India, it would still form a means of payment of consideration, though it does not constitute money under the above definition.

7.7 Subsections (4) of sections 12 and 13 read as follows:

In case of supply of vouchers by a supplier, the time of supply shall be—

- (a) The date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

7.8 These sub-sections must be read and interpreted in the context of section 12 and section 13. These two sections specify the time of supply for goods and services respectively. For instance, section 12 (2) deems the supply of goods to have taken place on the date of issue of invoice or date of receipt of payment, whichever is earlier, even if the goods are actually delivered to the recipient later. Likewise, subsection (4) of section 12 and 13 deem the supply of the underlying good(s) or service(s) for which the voucher has been issued, to have taken place on the date of issue of voucher, if the supply is identifiable at that point, or the date of redemption of voucher in all other cases.

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 of the underlying good(s) or service(s). Voucher *per se* is neither a goods not 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 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 train 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 emphasised 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 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 *ratio 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.


(M.A.SIDDIQUE)

Principal Secretary/
Commissioner of Commercial Taxes,
Tamil Nadu/Member, AAAR,TN.

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(G.V.KRISHNA RAO) 26/3/2021

Principal Chief Commissioner of
GST & Central Excise,
Chennai Zone/Member, AAAR.



To

Tvl. Kalyan Jewellers India Limited,
5th Cross, 100 Feet Road,
Gandhipuram, Coimbatore.

// By RPAD/officeaparna6@gmail.com //

Copy to:

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2. The Principal Secretary/The Commissioner of Commercial Taxes,
II Floor, Ezhilagam, Chepauk, Chennai-600 005.
3. Joint Commissioner(ST)/Member,
Authority for Advance Ruling, Tamil Nadu,
Room No.503B, 5th Floor, Integrated commercial taxes Office complex,
No. 32, Elephant Gate Bridge Road, Chennai-600 003.
4. The Commissioner of GST & C.Ex., Coimbatore Commissionerate
6/7,ATD Street, Race Course Road, Coimbatore- 641018.
5. The Deputy Commissioner (ST) Divisional Large Tax Payers Unit,
C.T.Building, Dr. Balasundaram Road, Coimbatore.
6. Master File/ Spare.