

Jumbo Trumpets...

Gift Vouchers are 'actionable claims' wherein underlying transactions are only liable for GST

- Nandhini SR, Advocate – Swamy Associates

Context: The issue that arose for consideration was taxability of 'Gift Vouchers' sold by Petitioner jewelry through its retail outlets/online portals/through third party service providers.

The Petitioner had contended that 'Gift Vouchers' are 'actionable claims' which are excluded from GST by virtue of Section 7(2) read with Schedule III where in all actionable claims other than lottery betting and gambling are treated as constituting neither supply of goods nor supply of services. The Petitioner alternatively contended that, tax if leviable can only be at the stage of redemption of gift voucher for merchandise.

It has been contended for the revenue that the Vouchers are not satisfying the definition of 'actionable claims' and are liable for tax under the machinery prescribed under Section 12(4)(a) of the GST Act, 2017

Held: Regarding taxability of supply of 'Gift Vouchers' it has been concluded that the 'Gift Voucher/card' is actionable claim within the meaning of Section 2(l) of GST Act, 2017 read with Section 3 of Transfer of property Act 1882 and hence no GST is payable on supply of such gift cards/vouchers by virtue of Section 7(2)(a) read with Sl.No.6 of Schedule III of GST enactment.



Relevant pointers for conclusion:

The Court applying the provisions of GST Act read with provisions of Payment and Settlement Act and RBI Regulations, concluded that the gift vouchers are 'Pre paid instruments'.

Gift Voucher has been held as a document within the meaning of Section 3(18) of General Clauses Act and thus 'instrument' under Section 2(14) of Indian Stamp Act 1899 as a right/liability is created and recorded therein. The amount specified there in is a 'debt' and thus gift voucher is a debit instrument, which can be redeemed on a future date on its presentation towards sale consideration for merchandise. The value of gift voucher is meant to be set off against consideration payment for sale of merchandise sold by the petitioner. If a breach is committed by the issuer, the customer has a right to enforce through Civil Court.

The gift voucher is like a frozen cash received in advance which can be set off against amount payable on purchase of merchandise or is to be returned to customer as per RBI master direction where customer fails to utilize within period of its validity.

As per the definition of actionable claim under Section 3 of the Transfer of Property Act, 1882 made applicable to the GST law, it means a "debt" or a "beneficial interest" in a movable property not in possession of the claimant, which the Court recognizes to be legally enforceable.

Therefore the taxability is of underlying transaction of supply of goods/services and not supply of vouchers



Regarding taxability of underlying transactions:

If gift vouchers are issued for identified goods, or for merchandise of particular value, tax is payable at the time of issuance of gift card as there is supply of identified goods in view of Section 12(4) (a) of GST Act. The transaction would be transfer of title in goods wherein property would pass at a future date (Section 7 of GST read with Section (1) (a) and (1) (c) of Schedule II to GST Act). Therefore tax is payable notwithstanding the fact that only part of sale consideration is received in advance. Since sale is concluded, though full consideration not paid or delivery not given, tax is payable. If voucher is for unspecified goods to be purchased on future date, tax is payable at the time of sale, which is time of redemption of Gift voucher as per Section 12 (4) (b) of the GST enactment.

**Tvl.Kalyan Jewellers India Ltd. v. Union of India & Ors. -
W.P.No.5130 of 2022-High Court of Madras**

