



Vouchers under GST: Navigating a Grey Area

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The use of vouchers has been on the rise, and a large number of transactions today are done through them. They are used in different contexts as – employee incentives, sales schemes and as discount offers. In most cases, there is an issuing party, the party that accepts the coupon for the said good or service, and the final consumer that redeems the voucher. In the context of taxation, it is important to be able to categorize them to reduce ambiguity. The central question is as to the modality of the vouchers – are they a means to an end, or an end in themselves? Do we then classify them as goods, services or payment instruments? In the course of this post, I attempt to decipher the legislative intent of the goods and service tax (GST) 2017 as well as a comparison of the treatment of vouchers in other jurisdictions with similar provisions.

The Central Goods and Services Tax Act, 2017 (CGST Act) defines the term ‘voucher’ under section 2(118) as a “an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services...”. It is pertinent to mention that the definition calls a voucher an ‘instrument’ which gives rise to an ‘obligation’. An obligation is a legal duty imposed on a person, and in this context, it relates to a service that the person accepting the voucher would be providing to the party that issued

the voucher in the first place. However, the use of the word ‘instrument’ obscures such a simplification. Further, under the time of supply provisions (sections 12 and 13) of both goods as well as services, under subsection (4), the words “in case of vouchers” are mentioned. This shows the legislative intent of not being able to fit them into any category, i.e., vouchers are neither goods nor services.

There is, however an attempt to reconcile the text of the law with their tax treatment, by arguing that vouchers are of diverse kinds and their taxability is based on the circumstances of their use, and their tax liability should be seen on a case-by-case basis. This position is a tempting one to adopt, but it doesn’t give a conclusive answer as to the nature of vouchers themselves.

There has been no direct case law on tax treatment of vouchers, though the Supreme Court in the *Sodexo SVC India Pvt. Ltd. v. State of Maharashtra*, (2015) 16 SCC 479 (the “Sodexo Coupons Case), with respect to entry tax and income tax, held that the Sodexo meal vouchers were a service supplied by Sodexo and, as a result, it would not be subject to entry tax. The Court laid emphasis on the ‘real nature of the transaction’, which it found to be that of a facility provided to the end customer. The Court also mentioned that “the appropriate test [to determine if they are goods] would be as to whether such vouchers can be traded as and sold separately. The answer is in the negative. Therefore, the test ascertaining them to be “goods” is not satisfied.” It is pertinent to point out that case law on entry tax cannot directly be imported into the GST regime; however, the manner in which the Supreme Court has appreciated the complexity of the transaction is of importance.

The definition of vouchers under the CGST Act is a direct import from Article 30a of the EU VAT Directive. This may allow us to explore the EU jurisprudence on the subject. The European Court of Justice (ECJ) in *Argos Distributors Ltd v. Commissioner of Customs & Excise*, ECJ, 1996, C-288/94, stated that “vouchers are, by their nature, no more than documents evidencing the obligation assumed by the supplier to accept the voucher at

their face value”. In *Astra Zeneca UK Ltd. v. HMRC*, ECJ C-40/09, the Court held them to convey a future right to goods or services. The ECJ in its line of case law has rejected the possibility of vouchers either being an indeterminate kind of ‘goods’ or an advance payment for the future. Instead, it supports the notion of “transfer of right”. In this regard, the ECJ decisions also reflect that vouchers should be looked at as a supply of service.

It is clear that vouchers do not prima facie meet the test of goods, but that is not reason enough to hold that they are in fact services. The definition clearly mentions the word ‘instrument’, so the argument of it being a money substitute cannot be rejected at the outset. We must further examine the difference, if any, between payment instruments and vouchers. The European Commission^[1] provides some clarity on the distinction between the two. The redemption of a voucher against goods or services is not a payment, but rather the ‘exercising of a right’ subsequent to a payment which occurred when the voucher was issued. On the other hand, when stored or prepaid credit is used to meet the cost of goods or services, an entitlement to those goods or services occurs only when payment is made. Thus, the fundamental difference is in the exercise of an acquired right.^[2]

Thus, if we follow the line of argument of the European Commission, we see that vouchers cannot be categorized as a ‘payment instrument’ either. However, in absence of a clear case law that categorically classifies vouchers and their tax liability under the GST regime, it will remain a contested matter. The possibility of it being a payment instrument, due to the word ‘instrument’ in its definition, cannot be done away with.

This post is an attempt to delineate the problem of the taxability of vouchers and not to offer a conclusive answer. The GST in India is at a nascent stage, and is subject to change every day. At this point it is important for lawyers, accountants and legislators to engage with such complexities and contentions and come up with clear notifications that would lead to legitimate expectations for persons that engage in such complex

transactions. Foreign jurisdictions that have previously resolved disputes in this regard should aid the Indian courts to reach a conclusive decision on the same. I am of the opinion that it is likely for vouchers to be treated as services for the purpose of levying GST, not only on the basis of the jurisprudence from the European Court of Justice but also the Supreme Court's view of such complex transactions in the Sodexo case.

– Siddhant Bhasin

[\[1\]](#) European Commission [proposal](#) for Council Directive on VAT Treatment of Vouchers.

[\[2\]](#) Ibid

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