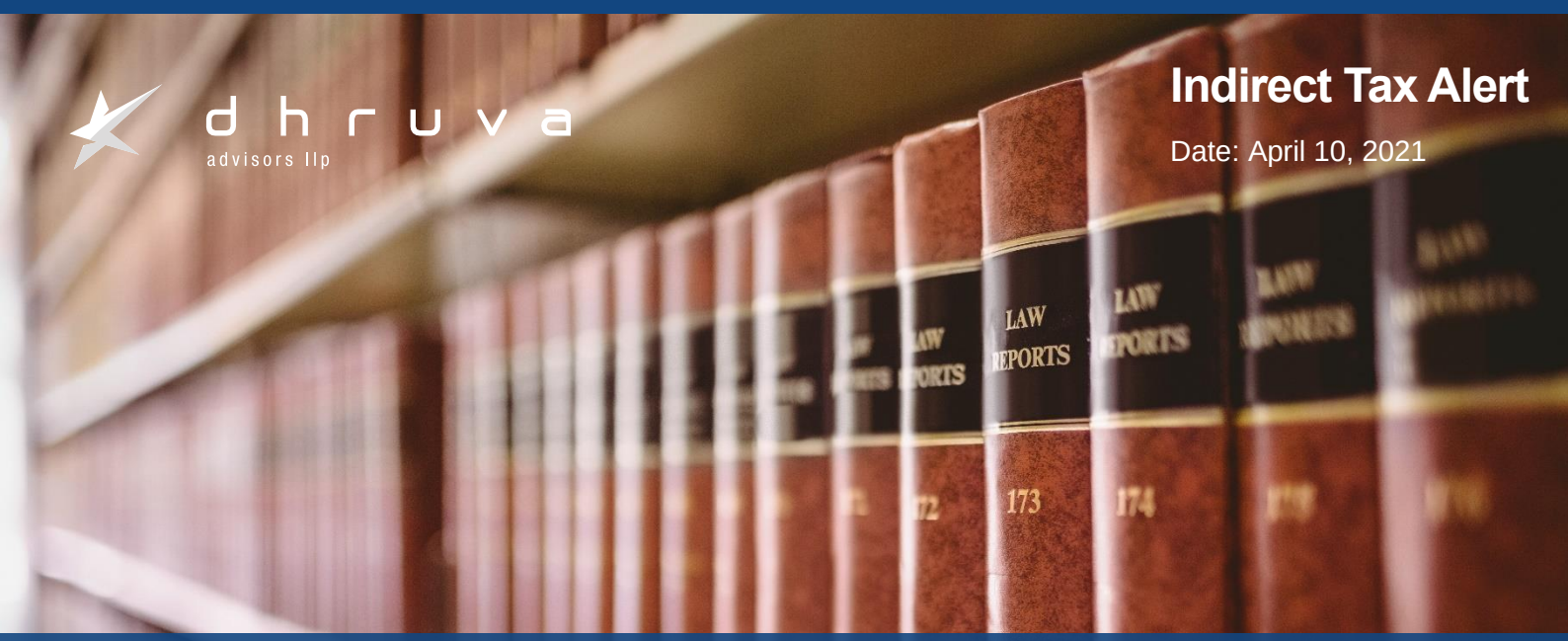

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Indirect Tax Alert

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Rulings under GST era

M/s. Kalyan Jewellers India Limited – Appellate Authority for Advance Ruling, Tamil Nadu[1]

Issues for Consideration

Whether issue of closed Pre-Paid Instruments ("PPIs") belonging to the Applicant to its customers should be treated as a supply under the GST law? If yes, then what is the time of supply and rate of tax applicable on the issue of such PPIs?

Discussion

- The Appellant is a manufacturer and trader of jewellery products. As a part of sales promotion, the Appellant issued PPIs (generally called gift vouchers or gift cards) to its customers.
- The PPIs were issued by the Appellant themselves (own closed PPIs) wherein they would receive the face value of the PPIs and the customer could redeem these PPIs in any outlet of the Appellant across the country for purchase of jewellery. The PPIs also reflect the brand name of the Applicant.
- The Appellant had approached the Authority of Advance Ruling ("the Authority") on the applicability of GST on the issue of PPIs. The Authority vide its order[2] held that the own closed PPIs are vouchers and qualify as a 'supply' of goods liable to GST.
- Aggrieved by the order, the Appellant filed an appeal before the Appellate Authority for Advance Ruling ("the Appellate Authority") and submitted as follows:
  - Vouchers issued by the Appellant are actionable claims. Although the actionable claims fall within the definition of goods under section 2(52) of the CGST Act, 2017 they have also been included under para no. 6 in Schedule III to the CGST Act, 2017 and thus, cannot be treated as either a supply of goods or supply of services.
  - The vouchers / PPIs only have a redeemable face value and no intrinsic value. Thus, it is not capable of being considered as marketable for levy of GST.
  - Amount received upon issuance PPIs is considered as 'other current liabilities' and is credited to revenue only on redemption of the instruments.
  - PPIs are issued to customers in card / digital formats and are not sold to customers. Thus, PPIs are in the nature of actionable claims.

[1] TS-131-AAAR(TN)-2021-GST
[2] Order no. 52/ARA/2019 dated November 25,2019

- After considering the submissions of the Appellant and analysing the copies of the gift vouchers along with the terms and conditions, the Appellate Authority observed as follows:
  - A voucher is a means for advance payment of consideration for future supply of goods or services. Furthermore, the term 'money', defined under section 2(75)[3] of the CGST Act, 2017, includes any other instrument recognised by the Reserve Bank of India when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination.
  - The term 'voucher' as defined under section 2(118)[4] of the CGST Act, 2017 means an instrument where there is an obligation to accept it as consideration or part consideration for supply of goods / services.
  - 'Voucher' being an instrument used as a consideration to settle an obligation is a type of 'money'. Furthermore, even though it does not constitute 'money' under the above definition, it would still form a means for the payment of consideration.
  - 'Voucher' is only a means of advance payment of consideration for a future supply and per se is neither a supply of goods nor a supply of service. Thus, there is no need to determine whether 'voucher' is an actionable claim or not.
  - Sub-section (4)[5] of section 12 and 13 of the IGST Act, 2017 determines time of supply in case of issue of vouchers. The aforesaid section provides that where the supply is identifiable at the time of issue of 'voucher', date of issue of 'voucher' shall be the time of supply. In the instant case, the gold voucher clearly indicates that the 'voucher' can be redeemed for gold jewellery at a known rate of tax. Therefore, the gold voucher would be taxable at the time of issue of the voucher. Furthermore, taxation of vouchers at the time of its issuance shall not lead to double taxation at the time of redemption of voucher for gold considering the fact that the supply is deemed to have been made at its issuance.
  - With respect to classification, the Appellate Authority observed that since 'voucher' is only an instrument of consideration and not goods or service, it should not be classified separately. The supply associated with the voucher is classifiable based on the nature of the goods or services supplied in exchange of the 'voucher' issued earlier.

Ruling

The time of supply of gift vouchers or gift cards by the Appellant to its customers shall be the date of issue of such vouchers. The applicable rate of tax shall be the rate of tax applicable on such goods.

Dhruva Comments:

Taxability of vouchers / gift cards has been a subject matter of litigation both under the pre-GST and the post-GST regime. The Appellate Authority has clarified that issue of vouchers, being merely an instrument for payment of consideration, shall not be considered as a supply under the GST law. Furthermore, GST shall not be levied on the supply of vouchers but shall be levied on the underlying supply of goods or service. It is also worth noting that in the instant case the customers would end up redeeming the vouchers or PPIs against the gold jewellery and therefore, the supply and the tax rate applicable is available at the time of issuance of the

[3] "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 recognised 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.

[4] "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.

[5] 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

voucher. While the ruling has clarified that there shall no double taxation, however, since these vouchers could be redeemed at any store on **pan India basis**, there could be an issue while identifying the place of supply. The tax would be discharged in the State where the voucher is issued, but goods may be sold in a different State. Also, there is no tax liability on receipt of advance if they are attributable to sale of goods. It would be interesting to see how these consequences emanating from the decision in this ruling will be reconciled.

M/s. Dwarikesh Sugar Industries Limited – Authority for Advance Ruling, Uttar Pradesh[6]

Issues for Consideration

- Whether expenses incurred by the Company to comply with the requirements of Corporate Social Responsibility (**"**CSR**"**) under the Companies Act, 2013 (**"**CSR expenses**"**) qualify as being incurred in the course of business and eligible for input tax credit (**"**ITC**"**) in terms of section 16 of the Central Goods and Services Tax Act, 2017 (**"**CGST Act, 2017**"**)?
- Whether ITC in relation to CSR activities that have been obligated under the law are restricted under section 17(5) of CGST Act, 2017? If yes,
  - Whether free supply of goods as a part of CSR activities is restricted under section 17(5)(h) of CGST Act, 2017?
  - Whether goods and services used for construction of school building, which is not capitalised in the books of accounts, restricted under section 17(5)(c) / 17(5)(d) of the CGST Act, 2017?

Discussion

- The Applicant is a company incorporated under the Companies Act, 2013 having its registered office in the state of Uttar Pradesh and is engaged in the business of manufacture and sale of sugar and allied products.
- To comply with the Corporate Social Responsibility (**"**CSR**"**) in terms of section 135 of the Companies Act, 2013, the Applicant undertakes the following activities:
  - Construction of school building, additional rooms, laboratories, etc.;
  - Free supply of furniture/fittings such as tables, chairs etc. to be used in the school;
  - Free supply of electrical goods for use in school; and
  - Other expenses such as the provision of goods/services to registered charitable trusts / non-governmental organisations ("NGOs").
- To undertake the above-mentioned CSR activities, the Applicant procures various goods and services (**"**inward supplies**"**) on which GST is charged by the supplier.
- The Applicant approached the Authority for Advance Ruling (**"**the Authority**"**) with a contention that ITC in respect of the GST charged on the inward supplies received for such CSR activities is eligible to be availed on the following grounds:
  - The CSR activities undertaken by the Company to comply with the requirements of the Companies Act, 2013 are incurred in the course of business.
  - "In the course of business" includes all activities which are incidental / ancillary to the business, and which are incurred during the course of business. Any activity which needs to be incurred as a part of some process in a business is to be treated as having been undertaken "in the course of business". Since the Company is compulsorily required to undertake CSR activities to run its business, such activities become an essential part of the business process as a whole and thus are treated as having been undertaken "in the course of business".
  - Furthermore, considering the wide definition of the term **"**business**"**, there is no requirement to

[6] 2021-VIL-168-AAR

establish a direct one-to-one linkage of output and input in order to avail ITC. Even incidental / ancillary activities are treated as having occurred "in the course of business" and procurements made for undertaking such activities are eligible for ITC.

- CSR expenses are incurred for the purpose of business / in the course of business. However, the actual benefits of CSR expenses are reaped by the intended recipients and not by the Company (for its personal use). Since the benefits are rendered to society and not the Company, the restrictions under section 17(5) of the CGST Act, 2017 do not apply.
- CSR expenses incurred by the Applicant have been mandated under the Companies Act, 2013.
- Accordingly, it is the Applicant's obligation to incur such expenses in order to be compliant with the law. Since CSR expenses are not incurred voluntarily, these expenses do not qualify as "gifts" and therefore their credit is not restricted under section 17(5) of the CGST Act, 2017. In this regard, it is important to note that the Hon'ble Supreme Court of India, in the case of *Ku. Sonia Bhatia* v. *The State of UP*[7], cited the definition of "gift" from Corpus Juris Secundum, Volume 38 in the following words:

  "A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation therefor. A 'gift' is a gratuity and an act of generosity and not only does not require a consideration, but there can be none."
- Citing the definition, Hon'ble Supreme Court observed that *"The concept of gift is diametrically opposed to the presence of any consideration or compensation. A gift has aptly been described as a gratuity and an act of generosity and stress has been laid on the fact that if there is any consideration then the transaction cease to be a gift."*

- The Authority, after considering the aforesaid submissions by the Applicant, observed as follows:
  - Any company that meets the criteria for CSR is mandatorily required to incur CSR activities in order to be compliant with the Companies Act, 2013. Non-compliance with these provisions may lead to business disruptions.
  - Hon'ble CESTAT Mumbai, in the case of *M/s. Essel Propack Ltd.* v. *Commissioner of CGST, Bhiwandi*[8] stated that:

    "CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production and sustainability of the company itself would be at stake."
  - Furthermore, the Hon'ble High Court of Karnataka, in the case of *M/s. Commissioner of Central Excise, Bangalore* v. *Millipore India (P) Ltd.*[9] stated the following:

    "That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products, Tribunal was right in holding that the service tax paid in all these cases would fall within the input services and the assessee is entitled to the benefit thereof."
  - In view of the provisions of the Companies Act, 2013 and the aforementioned observations, the Applicant is compulsorily required to undertake CSR activities to run its business and accordingly, such activities become an essential part of its business process as a

[7] 1981 (3) TMI 250
[8] 2018 (362) E.L.T. 833 (Tri. - Mumbai)
[9] 2011 (4) TMI 1122

whole. Therefore, the said CSR activities are to be treated as being incurred "in the course of business".

- Now since the activities qualify as occurring in the course or furtherance of business, it is pertinent to analyse whether the ITC in respect of inward supplies received for CSR activities falls under section 17 of the CGST Act, 2017, which talks about the apportionment of credit and blocked credits.
- In connection with the above, section 17(5)(h) of the CGST Act, 2017 states that ITC shall not be available in respect of "goods lost, stolen, destroyed, written off or disposed of by way of gifts or free samples."
- The aforesaid section restricts the credit of goods that have been written off or disposed of by way of gifts or free samples.
- The term "gift" has not been defined under the CGST Act, 2017. However, in common parlance a gift is something that is provided to someone occasionally, without consideration, and is voluntary in nature.
- Therefore, a clear distinction needs to be drawn between goods given as "gifts" and those provided / supplied as part of CSR activities. While the former is voluntary and occasional, the latter is obligatory and regular in nature. CSR expenses incurred by the Applicant have been mandated under the Companies Act, 2013.
- It is the Applicant's obligation to incur such expenses in order to be compliant with the law. Since CSR expenses are not incurred voluntarily, they do not qualify as "gifts" and therefore their credit is not restricted under section 17(5) of the CGST Act, 2017.
- Furthermore, in respect of the inward supplies received specifically for construction activities, section 17(5)(c) and 17(5)(d) of the CGST Act, 2017 restrict the credit on construction / work contract services.
- In light of the above, the Authority for Advance Ruling-Rajasthan ("the Authority-Rajasthan"), in the case of *M/s. Rambagh Palace Hotels Pvt. Ltd.*[10], observed that *"input tax credit in general is not available for construction, reconstruction, renovation, addition, alteration or repair of an immovable property even when such goods or services or both are used in course or furtherance of business. However, the limitation in such a scenario is the extent of capitalisation."* The Authority-Rajasthan ruled that "ITC will not be available to the extent of capitalisation of building material /GST on labour supply."

Ruling

- CSR expenses qualify as being incurred in the course of business and are eligible for ITC in terms of section 16 of the CGST Act, 2017.
- The free supply of goods as part of CSR activities is not restricted under section 17(5)(h) of the CGST Act, 2017.
- ITC in respect of the goods and services used for the construction of school building, the utilisation of which constitutes part of a CSR activity, is not restricted under section 17(5)(c) or section 17(5)(d) of CGST Act, 2017 to the extent capitalised.

Dhruva Comments:

There has been a continuing debate regarding eligibility to claim ITC pertaining to the inward supplies for CSR activities, which is required to be undertaken mandatorily in accordance with the provisions of the Companies Act, 2013.

Due to the limited applicability of the Advance Ruling, the departmental authorities in other jurisdictions may adopt a view that since the definition of construction as provided under the CGST Act, 2017 is an inclusive one, it should be read as expansive in nature and thus, ITC in respect of goods / services used for the construction

[10] 2019 (5) TMI 248

of an immovable property, irrespective of whether capitalised or not, would not be available. Accordingly, if the matter is still disputed or litigated by revenue authorities, relief may be available at tribunal or higher judicial forums.

M/s. Vivo Mobile India Private Limited - Authority for Advance Ruling, Uttar Pradesh[11]

Issues for Consideration

- Whether Input Tax Credit ("ITC") can be availed by the recipient based on the invoice issued by the person registered under the category of Input Service Distributor ("ISD")?
- Whether ITC can be availed based on the revised invoice issued by a person other than the one who has issued an original invoice but having the same Permanent Account Number ("PAN")?

Discussion

- The Applicant has received manpower services from M/s. Harbir Singh Contractor ("the service provider").
- The service provider for the period from July 2017 to October 2017 issued a tax invoice to the Applicant based on the GST registration obtained. However, at the time of filing the GST return, the service provider noticed that they had inadvertently obtained registration under the category of ISD.
- The ITC of the invoices issued by the supplier was also not reflected in the GSTR 2A of the Applicant. Accordingly, the service provider obtained another registration under the normal category with effect from July 01, 2017 and issued revised invoices to the Applicant in terms of section 31(3)(a) of the CGST Act, 2017 from the new registration obtained.
- The Applicant approached the Authority for Advance Ruling ("the Authority") on the following questions:
  - Whether ITC is admissible based on the original invoice issued by the supplier under the category of ISD?
  - If not, can ITC be availed based on the revised invoice issued by the supplier?
- The Applicant submitted that section 31(3)(a) of the CGST Act, 2017 provides a mechanism to issue a revised tax invoice for the period from which GST liability arises until the time when registration was granted.
- Furthermore, the Applicant submitted that all the conditions that are required for availing ITC as per section 16(2) of the CGST Act, 2017 are satisfied. Accordingly, ITC should be allowed either on the basis of the original invoice or based on the revised invoice.
- The Authority, after considering the aforesaid submissions by the Applicant, observed as follows:
  - With regard to the first question regarding the admissibility of ITC based on the original invoices issued by the service provider under the category of ISD, the Authority by referring to the definition of ISD specified under section 2(61) of the CGST Act, 2017 observed that the ISD can only distribute the accumulated ITC and not issue the tax invoice.
  - Furthermore, the Authority observed that the service provider has already claimed a refund of the tax deposited under the ISD registration.
  - Accordingly, the Authority held that as the ISD cannot issue a tax invoice, there is no question of availment of ITC by the Applicant.
  - With respect to the second question of availing ITC based on the revised invoice, the Authority observed that in terms of section 31(3)(a) of the CGST Act, 2017 read with rule 53 of the CGST Rules, 2017 a revised invoice is required to be issued by the same registered person who has issued the original invoice and not by any other person.

[11] 2021-VIL-169-AAR

- Furthermore, the Authority by relying on section 25 of the CGST Act, 2017 observed that if a person obtains two separate registrations on the same PAN number, they are to be treated as distinct persons under the CGST Act.
- Accordingly, the Authority held that it is not permissible for one person / legal entity to revise the invoices issued by another person / legal entity.

Ruling

- The ISD can only distribute the accumulated ITC and cannot issue the tax invoice and hence ITC cannot be availed based on the invoice issued by the ISD.
- It is not permissible to issue revised tax invoices under section 31(3)(a) of the CGST Act, 2017 by a person other than the one who has issued the original invoice even though entities are registered under the same PAN. Accordingly, ITC cannot be availed based on such a revised invoice.

Dhruva Comments:

The provisions of section 16 of the CGST Act, 2017 provide that no registered person shall be entitled to ITC in respect of any supply of goods or services or both to him unless, he is in possession of a tax invoice or debit note issued by a supplier registered under the CGST Act, or such other taxpaying documents as may be prescribed.

The ISD is not a supplier of a service but only a distributor of a service who is required to distribute the ITC to the entities registered under the same PAN. Rule 54 of the CGST Rules, 2017 prescribes the document that should be issued by the ISD for distribution of credit in which it is clearly required to be mentioned that the document is issued only for distribution of ITC.

The invoice issued by the ISD is not treated as a tax invoice nor tax-paying document basis which the ITC could be availed by the recipient.

The ruling of Authority seems to be appropriate in considering that the revised invoice is required to be issued by the same registered person who has issued the original invoice as the registered persons under the same PAN are treated as separate distinct persons under the GST law.

One may have to adopt a practical approach and assess the situation considering the fact that the tax has been paid under the revised invoice. Any such relief can be expected at higher levels.

Circular

Clarification on changes in section 46 of the Customs Act, 1962

- Section 46 of the Customs Act, 1962 ("the Act") was amended by the Finance Bill, 2021 (which recently received presidential assent on March 28, 2021) to provide that the Bill of entry ("BOE") should be presented before the end of the day ("EOD") (including holidays) preceding the day on which the aircraft or vessel or vehicle ("carrier") carrying the goods arrives at a customs station for clearance for home consumption or warehousing. Previously, BOE could be presented before the end of the next day following the day (excluding holidays) on which the carrier arrives. Furthermore, section 46 also empowers the CBIC to prescribe different time limits for the presentation of BOE but not later than the EOD of arrival of the carrier.

- The CBIC has now issued circular no. 08/2021-Customs dated March 29, 2021 to clarify the issues relating to the filing of the BOE:
  - An importer may not be able to comply with the new provisions of section 46 in case of short haul vessels/ flights as he may not get the Master Bill of Lading ("MBL") / Master Airway Bill ("MAWB") on the preceding day of the vessel / aircraft. Accordingly, the CBIC has amended the Bill of Entry (Electronic Integrated Declaration) Regulations, 2018 by issue of notification no.34/2021-Customs (N.T.) dated March 29, 2021 to prescribe the different time limits for the filing of BOE which is as follows:

Sr. No. (1)	Customs Station (2)	BOE to be filed latest by EOD of arrival of carrier (3)	BOE to be filed latest by EOD preceding the day of arrival of carrier (4)
1	Sea port	Imports consigned from - Bangladesh - Maldives - Myanmar - Pakistan - Sri Lanka	Imports consigned from all countries other than those mentioned in column (3)
2	Airport	All imports	None
3	Land Customs Station	All imports	None
4	Inland Container Depot	None	All imports

- The importers should file the BOE well in advance. In case of late filing of BOE, it should attract late filing charges.
- The requirement of filing of MBL / MAWB for the filing of advance BOE has been done away with. Only the reference to House Bill of Lading ("HBL") / House Airway Bill ("HAWB") would be sufficient at the time of advance filing of the BOE. Thus, an importer can now file advance BOE on the strength of either the MBL / MAWB or HBL / HAWB or both.
- Furthermore, to regularise BOE filed in advance, an option would be enabled in the ICEGATE for the importer to subsequently update the MBL / MAWB in the BOE that has been filed in advance basis the HBL / HAWB. The said amendment to BOE would be auto approved by the system and would not attract any additional fees.

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