

Whether the applicant would be eligible to avail the input tax credit, in terms of Section 16 of the CGST Act 2017, on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers HELD BY AAR The applicant is not eligible to avail the input tax credit, in terms of Section 16 of the CGST Act 2017, on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned / accumulated by the said customers, as the input tax credit is not available in terms of Section 17(5)(h) of the CGST Act 2017. UPHELD BY AAAR

APPELLATE AUTHORITY FOR ADVANCE RULING ORDER NO.KAR/AAAR /03/2023, Dated 24th February, 2023

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING

6th FLOOR, VANIJYA THERIGE KARYALAYA, KALIDASA ROAD,

GANDHINAGAR, BANGALORE - 560009

(Constituted under section 99 of the Karnataka Goods and Services Tax Act, 2017 vide

Government of Karnataka Order No FD 47 CSL 2017, Bangalore, Dated:25-04-2018)

BEFORE THE BENCH OF

SMT. RANJANA JHA, MEMBER

SMT. SHIKHA C, MEMBER

Sl. No	Name and address of the appellant	M/s Myntra Designs Pvt Ltd, Sy No 8 to 14 and 55, Alyssa Begonia Clover Embassy Tech Village, Outer Ring Road, Devarbisanahalli Varthur Hobli, Bengaluru Urban, 560103
1	GSTIN or User ID	29AAECM9636P1ZJ
2	Advance Ruling Order against which appeal is filed	KAR/ADRG 33/2022 Dated: 14th September 2022
3	Date of filing appeal	18-10-2022 (Manual) 22-11-2022 (Electronic)
4	Represented by	Shri. Tarun Gulati, Senior Advocate & Shri. Kishore Kunal Advocate
5	Jurisdictional Authority- Centre	The Principal Commissioner of Central Tax, Bangalore East Commissionerate.
6	Jurisdictional Authority- State	LGSTO 016, Bengaluru
7	Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. Rs 20,000 /- (CGST & SGST) paid by debit in Electronic Cash Ledger vide Debit Reference No DC2911220213460 dated 19-11-2022.

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

1. At the outset we would like to make it clear that the provisions of CGST, Act 2017 and SGST, Act 2017 are in pari materia and have the same provisions in like matter and differ from each other only on a few specific

provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the KGST Act.

2. The present appeal has been filed under section 100 of the Central Goods and Service Tax Act 2017 and Karnataka Goods and Service Tax Act 2017 (herein after referred to as CGST Act, 2017 and SGST Act, 2017) by M/s Myntra Designs Pvt Ltd, Sy No 8 to 14 and 55, Alyssa Begonia Clover Embassy Tech Village, Outer Ring Road, Devarbisanahalli Varthur Hobli, Bengaluru Urban, 560103 (herein after referred to as Appellant) against the Advance Ruling order No. KAR ADRG 33/2022 dated 14th September 2022.

Brief Facts of the case:

3. The Appellant owns an e-commerce portal www.myntra.com and is a major Indian fashion e-commerce company. The Appellant is engaged in the business of selling of fashion and lifestyle products through the said e-commerce portal. In order to enhance their business, the Appellant proposes to run a loyalty programme where loyalty points will be awarded on the basis of purchases made by the customer on its e-commerce platform. The participation in the said program will be based on meeting the pre-defined eligibility criteria and subject to acceptance of the terms and conditions by the customer. The Appellant through its portal, would make the vouchers and subscription packages available to those customers who wish to redeem the loyalty points earned / accumulated.

4. The Appellant approached the Authority for Advance Ruling (AAR) seeking a ruling on the following question:-^

"Whether the Applicant would be eligible to avail the input tax credit, in terms of Section 16 of the CGST Act, 2017 on the vouchers and subscription packages procured by the Applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/accumulated by the said customers? "~

5. The AAR vide its order KAR ADRG No 33/2022 dated 14th September 2022 gave the following ruling in respect of the above questions:-^

The applicant is not eligible to avail input tax credit, in terms of Section 16 of the CGST Act 2017, on the vouchers and subscription packages procured by the applicant from third party vendors that are made available to the eligible customers participating in the loyalty program against the loyalty points earned/accumulated by the said customers, as the input tax credit is not available in terms of Section 17(5)(h) of the C GST Act, 2017.

6. Aggrieved by the ruling given by the AAR, the Appellant has filed this appeal on the following grounds.

6.1. The Appellant submitted that Section 17(5)(h) is not applicable to the facts and circumstances of this case: that it is clear from the provisions of Section 16 that ITC of tax paid on goods or services or both, used or intended to be used in the course or furtherance of business, is available under Section 16(1) of the CGST Act; that irrespective of the nature of vouchers and subscription packages that will be procured by the Appellant on payment of tax, ITC of such tax paid is available under Section 16(1) of the Act; that in the present case, when there is no dispute that such procurement for the proposed loyalty program would be wholly and exclusively for the purpose of its business as an e-commerce platform,, claim of ITC cannot be denied. They submitted that classification of vouchers and subscription packages as 'goods' or 'services' is totally irrelevant for the purpose of claiming ITC under the provision of Section 16(1); that the phrase 'in the course or furtherance of business' used in Section 16(1) of the Act will include all the activities which would ensue in growth and profitability of the business including marketing, advertisement, promotions and any other activity which would broaden the reach of the business; that the procurement of vouchers and subscription packages by the Appellant will be essentially in the nature of marketing spend to promote its e-commerce business and therefore, ITC of the tax paid cannot be restricted. They relied on Bombay High Court decision in the case of *Coco Cola India Pvt Ltd vs Commissioner of C.Ex Pune-III* [2009 (15) S.T.R 657 (Bom)] wherein it was held that the phrase "activities relating to business" are words of wide import and can cover all the activities that are related to the functioning of a business.

6.2. The Appellant submitted that once vouchers and subscription packages have been classified as services at the supplier's end, the same cannot be reclassified as 'goods' at the Appellant's end as has erroneously been done by the AAR in the impugned ruling; that the suppliers have classified the vouchers and subscription packages as 'services' under H S Code 9983 as "other professional, technical and business services". They relied on the following judicial decisions wherein it was held that re-classification cannot be undertaken at the recipient's end having not questioned the same at the supplier's end:-^

- a) M/s SAIL vs CCE&C, Bhubaneswar - 2022 (9) TMI 740- Supreme Court
- b) Commissioner of C.Ex, Goa vs Courtaulds Packaging (I) Ltd - 2007 (217) ELT 399 (Tri-Mumbai)
- c) Collector vs Hindustan Lever Ltd -2000 (121) ELT 437
- d) Tata Oil Mills Co Ltd vs Commissioner - 1997 (91) ELT 144~

6.3. The Appellant submitted that once the vouchers and subscription packages have been procured by them as 'services', they will be made available to the customers as 'services' and Section 17(5)(h), which is applicable to 'goods' cannot be invoked; that the AAR has erroneously concluded that vouchers and subscription packages are 'goods' on the premise that they are movable property which are capable of being transmitted electronically or supplied physically; that this finding by the AAR is contrary to the binding precedent laid down by the Hon'ble Supreme Court in Sodexo Svc India Pvt Ltd vs State of Maharashtra reported in 2015 (16) SCC 479, wherein it was held that vouchers are not goods.

6.4. The Appellant submitted that the AAR has failed to consider that even if the vouchers and subscription packages are considered as 'goods', the same are not provided by the Appellant to its customers as 'gift' and therefore Section 17(5)(h) has no application in the facts and circumstances of the present case. They submitted that the vouchers and subscription packages would be provided only to eligible customers on redemption of loyalty points earned/accumulated i.e under a contractual obligation; that the vouchers and subscription packages provided by the Appellant to its customers is not provided 'free of cost'; that although consideration is not explicitly mentioned, the consideration would be already accounted for in the commission earned charged from the sellers as determined by the Appellant and on which applicable GST would be discharged; that a transaction cannot be called as 'gift' merely because consideration is not explicitly specified.

6.5. They submitted that the procurement of vouchers and subscription packages is in the nature of marketing expense undertaken by the Appellant to promote its e-commerce business and that the proposed loyalty programme is purely driven by commercial needs and will be an integral factor in enhancing the footfall on the Appellant's platform leading to increase in earning of commission by way of supplier listing; that the presence of an underlying consideration in provision of the said vouchers and subscription packages cannot be disputed although the same is not explicitly specified. Therefore, the finding that there is no flow of consideration is perverse and liable to be set aside. They relied on the Supreme Court decision in Commissioner of Sales Tax vs Prem Nath Motors (1978 SCC Online Del 67) where it was held that irrespective of the transfer of property in goods, no tax could be levied where part or parts were replaced under warranty and no consideration was separately specified as the same was already included in the price determined and paid by the customer at the time of sale of the vehicle. They submitted that, in the present case, where the consideration for vouchers and subscription packages, although not explicitly specified, would be already accounted for in the commission charged from the sellers as determined by the Appellant, no GST will be required to be separately paid by the Appellant; that merely because consideration is not explicitly specified in a transaction, the same cannot be automatically termed as a 'gift'.

6.6. They submitted that the AAR has erred in holding that merely because the loyalty points do not have any monetary value associated with them and cannot be converted into cash or used in place of cash and cannot be used in exchange for cash, the vouchers issued by the Appellant on redemption of the said points by the customers are free of cost; that the term 'gift' has not been defined under CGST Act but as per Black's Law Dictionary, it has been defined as "the voluntary transfer of property to another without compensation."; that under the Transfer of Property Act, 1882, it has been defined as "the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee". Thus, a bare perusal of the above definitions clarifies that absence of compensation/consideration is the essential factor in order to consider any transaction as 'gift'. Further, it has been consistently held that gift is given out of own volition and without any restriction or condition attached to it; that in the present case, the Appellant does not intend to give the vouchers and subscription packages as gift to any customer visiting the Appellant's e-commerce platform; that the vouchers and subscriptions are given by the Appellant to its customers under a contractual obligation and only with an objective to enhance the business of the Appellant. Thus, where the vouchers and subscription packages will not be given gratuitously by the Appellant, the question of giving any 'gift' to the customers does not arise and Section 17(5)(h) cannot be invoked for restricting ITC.

6.7. They further submitted that even if the provision of vouchers and subscription packages by the Appellant to its customers is treated as a 'supply', no GST will be required to be separately paid by the Appellant as the consideration for the said vouchers and subscription packages would be already accounted for in the commission charged from the sellers as determined by the Appellant and on which applicable GST would be

duly discharged; that once it is established that vouchers and subscription packages provided by the Appellant do not qualify as 'goods' or 'gift', the applicability of Section 17(5)(h) cannot be sustained.

PERSONAL HEARING

7. The appellant was granted a virtual hearing on 9th December 2022 but the same was adjourned on the request of the Appellant. Another opportunity for hearing was given on 17th January 2023. The hearing on 17th January 2023 was conducted on the Webex platform following the guidelines issued by the CBIC vide Instruction F.No 390/Misc/3/2019-JC dated 21st August 2020. The Appellant was represented by Mr Tarun Gulati, Senior Advocate and Mr Kishore Kunal. Advocate.

7.1. The Senior Advocate explained gave a brief background of the case and stated that the Appellant is an online fashion platform and it has a scheme for its customers where, based on their footfall and their purchases it grants them reward points: that on the basis of the reward points, the customer is eligible to redeem the points for vouchers and subscription packages. He drew attention to the summary of how the loyalty program will operate which was narrated at Para 7 of the statement of facts made before the lower Authority. He submitted that the Appellant Myntra does not issue the vouchers but purchases them from elsewhere. The vendor who supplies the vouchers to the Appellant raises an invoice under SAC 9983 on payment of GST. The question asked by the Appellant before the AAR was whether they can avail input tax credit against such invoices. He submitted that the Appellant fulfils all the conditions for availing input tax credit as laid down in Section 16 of the CGST Act and also are not restricted by any of the provisions of Section 17. He also submitted that the provisions of Section 17(5)(h) will not apply in their case since the inward supply in question is received as a service and not goods: that this is a business expenditure and so it is in fact for the furtherance of business and hence eligible for credit under Section 16. He stated that the vouchers given to the customers are not a gift in as much as there is a contractual obligation between the Appellant and the customer: that once the customer has earned the loyalty points the Appellant is obligated to give the voucher. He drew a parallel to a manufacturer who supplies parts under warranty; that the parts so supplied during the warranty period is given without any consideration but it does not mean that the parts are given as gifts. He stated that various courts have held that such warranty parts given to customers are not taxable since the cost of the parts are inbuilt in the cost of the manufactured product and the tax is paid on the main item. Likewise, in their case, the cost of the vouchers is a business expense and there is no consideration attributable at the stage of giving the voucher to the customer; that the fact that the cost of the vouchers is a business expense incurred for the furtherance of business is sufficient compliance to Section 16 and ITC is eligible. He also emphasised that vouchers are not goods; that the Appellant does not issue the vouchers; the vouchers are non-tradable and non-transferable. He also reiterated that the expenses incurred by the Appellant in the purchase of vouchers is recovered by them at the time of sale of goods and services on their platform using the vouchers; that it is not a gift and the vouchers are not goods.

7.2. On the applicability of Section 17(5)(h) to their case, he submitted that before the lower authority he had relied on judgments of the Bombay and Delhi High Courts in the cases of Coco Cola India Ltd and Prem Nath Motors Pvt Ltd respectively to state that the vouchers are not gifts given to the customers; that the lower Authority has not considered their submissions in this regard. He also relied on the most recent judgment of the Supreme Court in the case of UOI vs Steel Authority of India wherein at Para 16 it was held that the classification of a product at the consignor's end should be treated as final and cannot be changed or questioned at the consignee's end. He also relied on 2 other judgments of the Tribunal which are on the same lines viz. Tata Oil Mills and Courtaulds Packaging Therefore, he submitted that the lower authority has erred in deciding that the vouchers are goods when in actual fact the Appellant has received the vouchers from the vendor as services; that the vouchers are not tradable and are only money value which are redeemable by the customer against particular services or goods.

7.3. On a specific query from the Bench regarding the kind of goods and/or services offered against the vouchers, he agreed to submit an illustrative list of the goods and services which can be purchased on their platform using the vouchers. The Bench also requested the Appellant to furnish copies of the contract with the vendor who supplies the vouchers as well as the agreement entered into by the Appellant with the customers outlining the terms and conditions for redemption of the vouchers. The Bench also called for a more detailed submission on the laws relating to 'gifts'. The Advocate agreed to furnish the required documents and details within a week's time.

8. The Advocate vide letter dated 24th January 2023 requested for an additional two week's time to submit the required documents as collecting the same was taking longer than expected.

8.1. The Counsels for the Appellant submitted the additional written submissions vide letter dated 8th Feb 2023 along with the relevant documents. They submitted that the vouchers and subscription packages are procured from third party vendors upon payment of applicable GST and the third-party vendors would be

classifying their outward supply as services under HS Code 9983 i.e. "other professional, technical and business services"; that the agreement will be entered into with the intent of receiving marketing and promotional related services i.e supplying subscription services, distributing electronic codes which are used by the Appellant for distribution to its customers on the platform. These codes can be redeemed for procurement of goods and services. A copy of the draft agreement between the Appellant and the third-party vendor was furnished. The main clauses of the draft Agreement with the third party vendors reads as follows:-^

a. Vendor will supply codes to the Appellant which will be valid for 18 months, however the validity can be extended based on mutual consent;-^

i. Codes provided to the Appellant under Agreement shall be valid for redemption by customers at all times;

ii. In case customers have any concerns arising from or relating to the redemption of Codes, the vendor shall resolve the issue and fulfill the redemption request within mutually agreed timelines;

iii. Expired/inactive Codes will be replaced during the Term of the Agreement, with fresh Codes at no further cost;

iv. The Codes will be shared by the vendor within 7 days of request raised by the Appellant.~

b. Vendor (Service provider) will upload details of all sale invoices raised by it on GSTN portal in Form GSTR-1 on a monthly basis based on which Appellant will claim ITC;

c. In case of any error/omission with respect to data provided by the vendor while filing GSTR-1 and on account of which Appellant suffers credit loss, rectification will be done by the Vendor. Appellant will reserve right to monetary compensation equivalent to credit loss, interest and penalties;~

8.2. The Appellant submitted that they will communicate the terms and conditions of the proposed loyalty programme to its eligible customers. They submitted a copy of the terms and conditions for redemption of codes wherein it is stated as follows:-^

a. Codes will be given only to the eligible loyalty programme member during the offer period for redemption;

b. Offer can be availed by the eligible member only once;

c. Offer will be valid for a limited period only and the Appellant will have the right to terminate the offer without notice;

d. Offer cannot be clubbed with any other discount/offer/promotion on the Appellant's platform;

e. Offer shall not be settled with cash in lieu by the Appellant and the offer is non-transferrable;

f. All decision pertaining to redemption of this offer is at sole discretion of the Appellant;

g. Appellant reserves right to disqualify from the benefits of this offer on account of any fraudulent activity;~

They submitted that a bare perusal of the above discloses that these vouchers are given by the Appellant only to the eligible customers under contractual obligation.

8.3. They submitted an illustrative list of goods and services which can be procured on redemption of the codes/e-vouchers issued to the eligible customers under the loyalty program, viz:-^

a. Coupon for a limited period subscription to an Over the Top ("OTT") platform;

b. Coupon for a limited time period premium subscription to an online dating platform;

c. Coupon for a discount on purchase of confectionery and bakery goods from the brands platform;

d. Coupon for a discount on purchase of fast food from a fast-food delivery brand;

e. Coupon for a discount on purchase of a brand's products on the platform.~

They submitted that a reading of the above terms, clearly establishes the position on facts that the supply of

electronic gift vouchers by the vendors is a transaction of service and is essential for the business activities of the Appellant. Therefore, the Appellant is eligible to claim ITC on the tax paid on procurement of these vouchers.

8.4. They also submitted that the Karnataka High Court in the decision in the WP 5569/2022 of M/s Premier Sales Promotion Pvt Ltd vs UOI & Ors has held that vouchers cannot be considered as 'goods'; that the above judgment was delivered after the conclusion of the personal hearing and is being placed on record as it has direct relevance to the case at hand; that in view of the above judgment, the question of classifying the vouchers as 'gift', would not arise as vouchers cannot be regarded as 'goods' and the bar under Section 17 (5)(h) of the CGST Act only applies to 'goods'. They submitted that without prejudice to the above, and as desired by the Appellate Authority, they will be making detailed submissions to substantiate that, vouchers cannot be considered as gifts.

8.5. They submitted that the Vouchers and subscription packages are not given by the Appellant as 'gift'; that the word 'gift' has not been defined in the CGST Act. However, Section 2(xii) of Gift-Tax Act (18 of 1858) defines the word 'gift' to mean "transfer by one person to another of any existing movable or immovable property voluntarily and without consideration in money or money's worth". Similarly, as per Black's Law Dictionary, 11th edition, it has been defined as, "the voluntary transfer of property to another without compensation". Whereas, under Transfer of Property Act, 1882, it has been defined as "the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee"; that the term 'gift' has been exhaustively dealt by the Hon'ble Supreme Court in *Sonia Bhatia v. State of U.P.* [1981] 2 SCC 585, wherein it has been held that unless the transfer is gratuitous, transfer cannot be considered to be 'gift'; that in the present case there is no gratuitous transfer; that mere absence of a consideration does not lead to the assumption that the issuance of electronic gift vouchers to eligible customers amounts to a 'gift' by the Appellant.

8.6. They submitted that a voluntary transfer made for a business purpose under a contractual obligation cannot be considered as gratuitous and therefore, cannot be considered as a 'gift'. They relied on the Supreme Court decision in the case of *Asokan v. Lakshmikutty*, (2007) 13 SCC 210 and *Federal Commissioner of Taxation v. McPhail* [1968] 117 CLR 111 26 March 1968 wherein the Hon'ble Court has observed that, to constitute a 'gift', the property should be transferred voluntarily and not as a result of a contractual obligation and no advantage of material character was received by transferor. They also made a reference to the Hon'ble Gujarat High Court decision in *Commissioner of Gift-Tax v. Nandkishore Sakarlal (Individual)*, 2003 SCC OnLine Guj 359 and the case of *Birla Corporation Ltd. v. Dy. CIT*, [2012] 134 ITD 142, to buttress their argument that the vouchers and subscription packages provided by the Appellant to its customer under the loyalty programme does not constitute 'gift' as these are not gratuitous transfer and are provided pursuant to express terms and conditions to eligible customers. Further, they submitted that these vouchers are offered to ensure increased footfall on the Appellant's platform. Therefore, the issuance of vouchers to the customers cannot qualify as 'gifts' and the bar under Section 17(5)(h) of the CGST Act will not be applicable in the present case.

DISCUSSIONS AND FINDINGS

9. We have gone through the submissions made by the Appellant both in their grounds of appeal and during the personal hearing. We have also taken into consideration the additional submissions and documents furnished by the Appellant. The issue for determination is whether the Appellant is eligible to avail input tax credit on the vouchers and subscription packages procured from a third-party vendor on payment of tax.

10. The Appellant runs an e-commerce portal where fashion and lifestyle products are sold on the said portal. In order to promote their business and increase the footfall on the e-commerce portal, the Appellant proposes to run a loyalty program where loyalty points will be awarded to customers based on their purchases on the portal. The customers who have accumulated a certain pre-determined number of loyalty points will be eligible to get electronic vouchers which can be redeemed on applicable websites/applications/platforms. The Appellant purchases the vouchers and subscription packages in the form of coupon codes from vendors who supply the codes on payment of GST. The Appellant issues the coupon codes electronically to the eligible customers, without charging any consideration from the customers for the same. The coupon codes are redeemed by the customers on applicable websites/applications/platforms within the validity period. In this background let us examine whether the Appellant is eligible for the input tax credit (ITC) on the procurement of the vouchers and subscription packages from third parties.

11. The eligibility to input tax credit is governed by the provisions of Chapter V (Sections 16 to 19) of the CGST Act. Section 16 states that a registered person shall, subject to such conditions and restrictions as

may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business. Thus, the primary conditions for eligibility of ITC is that there should be an inward supply of either goods or services or both; such inward supply should be charged to tax by the supplier and such inward supply should necessarily be used or intended to be used in the furtherance of business. However, as mentioned in Section 16(1) of the CGST Act, the fulfilment of these primary requirements is subject to the conditions and restrictions prescribed. The conditions which are required to be met for eligibility to ITC are enumerated in sub-section 2 of Section 16. Section 17 of the CGST Act lays down the restrictions for availment of ITC wherein the entitlement of input tax credit is made available only to those goods and services or both which are used for business purposes or for taxable supplies, including zero-rated supplies. Input tax credit is restricted when the goods and services or both are used for non-business purposes or exempt/non-taxable supplies. Further, notwithstanding the entitlement conferred by Section 16(1), certain goods and services and certain forms of supply, as mentioned in Section 17(5) of the CGST Act, are expressly denied input tax credit. Therefore, in order to determine the eligibility of ITC it is necessary to examine all the above provisions of law.

12. We find that the lower Authority has approached the issue of ITC eligibility by first deciding on whether the vouchers are 'goods' or 'services' and after arriving at a conclusion that they are 'goods', has proceeded to deny the ITC on the grounds that the vouchers are 'gifts' given to the customers and hence ineligible for credit in terms of Section 17(5)(h) of the CGST Act. The Appellant has argued that deciding whether the inward supply is in the nature of goods or services cannot be done at the recipients end. It is for the supplier to correctly determine whether the supply is of goods or of services. In this case, the Appellant has furnished a copy of the draft agreement with their vendors wherein the vendor states that they are in the business of issuing electronic vouchers as 'services'. The Appellant in the additional written submissions dated 8th Feb 2023, has placed reliance on the decision dated 16-01-2023 of the Karnataka High Court in the case of Premier Sales Promotions Pvt Ltd wherein the Hon'ble High Court has held that vouchers are neither goods nor services and therefore cannot be taxed. The Appellant has argued their case stating that when the vouchers are held to be neither 'goods nor services' by the Karnataka High Court in the above-mentioned order, the restriction under Section 17(5)(h) of the CGST Act cannot be made applicable to their case and the question of classifying the vouchers as 'gift' would not arise. We have gone through the said High Court decision which was passed with respect to a writ petition filed by M/s Premier Sales Promotions Pvt Ltd against the order No KAR/AAAR/11/2021-22 dated 22nd December 2021 passed by this Authority. We find that the petitioner has challenged the order of this Authority before the High Court in writ proceedings and the Hon'ble High Court has proceeded to examine the matter on merits in the same manner as an appeal proceeding. The GST statute does not provide for further appeal against the orders of the Appellate Authority for Advance Ruling. The provisions of Section 103 of the CGST Act make it clear that the orders of the Authority for Advance ruling and the Appellate Authority for Advance ruling are binding on the applicant and the jurisdictional officer of the applicant. Further, the orders of the AAR and the Appellate AAR are not adjudication orders as the said Authorities are specifically excluded from the definition of 'adjudicating authority' given in Section 2(4) of the CGST Act. Section 2(4) of the CGST Act reads as follows: 'Adjudicating authority' means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in subsection (2) of section 171:

13. The appeal mechanism under GST which is covered in Chapter XVIII of the CGST Act, has a four-tier appeal mechanism. The first stage of appeal lies before the Appellate Authority in terms of Section 107 of the CGST Act, against any order or decision passed under the GST Acts by any 'adjudicating authority'. The second stage of appeal lies with the GST Tribunal against the orders of the Appellate authority and the orders of the Revision authority. Only after exhausting the appeal remedies in these two tiers, can an appeal be preferred before the High Court in terms of Section 113 of the CGST Act. Against the orders of the High Court, the final stage of appeal lies before the Supreme Court. However, in the current scenario, because the GST Tribunal is yet to be constituted, the High Courts have been entertaining writ petitions under Article 226 of the Constitution of India against the orders of the Appellate Authority. This is only so as not to leave the aggrieved person remediless. This is possible only when the statute provides for an appeal to the High Court. In the case of orders passed by the Appellate AAR, the mechanism for a further appeal does not exist in the statute. The writ jurisdiction of the High Court in terms of Article 226 of the Constitution of India cannot be invoked in such cases for converting the writ proceedings into an appellate enquiry. This is the law laid down by the Bombay High Court in the case of JSW Energy Ltd vs UOI (2019 (27) GSTL 198 (Bom)) and Jotun India Pvt Ltd (2022-TIOL-1609-HC-MUM-GST). The Bombay High Court has held that the scrutiny in writ jurisdiction of the orders passed by the lower Authority and the Appellate Authority of Advance Ruling is minimal. Under the writ proceedings, the Court can examine the order of the Appellate Authority by applying the principles of judicial review and not the principles which apply in case of an appeal. Any attempt by the Court to examine the orders of the Appellate Authority for Advance Ruling on their substantive merits or

demerits will amount to enlarging the supervisory power of the High Court under Article 226/227 of the Constitution into an appellate power. Any challenge to the order passed by the Appellate Authority for Advance Ruling before the High Court in writ proceedings will have to be confined to a judicial review which will inter alia include the issue as to whether there has been a failure of natural justice at the appeal stage thereby vitiating the decision-making process leading to the making of the order by the Appellate Authority for Advance Ruling.

14. Nonetheless, the decision of the Hon'ble Karnataka High Court dated 16-01-2023 in the case of M/s Premier Sales Promotions Pvt Ltd, holding that 'vouchers' are neither goods nor services is to be respected as the law applicable as on date until the decision is stayed or reversed by a higher court on an appeal by the Department. Hence until the jurisprudence on this issue reaches a finality, we respectfully follow the decision rendered by the High Court on the taxability of vouchers. Having thus said, we move to the point of eligibility of input tax credit on the vouchers intended to be purchased by the Appellant. As already stated above, the primary condition for eligibility to input tax credit is that there should be an inward supply of either goods or services or both on which tax is charged by the supplier. In this case, as held by the Karnataka High Court in the decision cited supra, the vouchers are held to be neither goods nor services and cannot be taxed to GST. Therefore, when the vouchers intended to be procured by the Appellant is neither goods nor service, the question of eligibility of input tax credit does not arise.

15. The Appellant has made detailed submissions to the effect that the vouchers are not provided to the customers 'free of cost'; that although consideration is not explicitly mentioned, the same would be accounted for in the commission charged from the sellers and on which applicable GST would be discharged. They emphasised that the presence of an underlying consideration in provision of the voucher codes cannot be disputed although the same is not explicitly specified. In their defence, they have cited the example of a manufacturer who supplies parts under warranty; that the parts so supplied during the warranty period is given without any consideration but it does not mean that the parts are given free of cost; that the cost of the parts given under warranty are inbuilt in the cost of the manufactured product and the tax is paid on the main item. They relied on the Supreme Court decision in the case of Commissioner of Sales Tax vs M/s Prem Nath Motors (P) Ltd in this regard. In view of our findings in Para 14 above, we do not find it necessary to labour on this argument.

16. The Appellant has also made detailed submissions on why the vouchers cannot be termed as 'gifts' given to the customers. Again, we find that examining this aspect is of no relevance since we have already held that input tax credit is not eligible on an inward supply which is held by the High Court as being neither a supply of goods or service. Therefore, while we agree with the ultimate ruling given by the lower Authority that input tax credit is not available on the vouchers received by the Appellant, we modify the findings to arrive at this conclusion, in the manner discussed above.

17. In view of the above we pass the following order

ORDER

We reject the appeal filed by M/s Myntra Designs Pvt Ltd and uphold the Advance Ruling No KAR ADRG 33/2022 dated 14-09-2022 while modifying the findings in the manner discussed in this order.

(RANJANA JHA)
Member
Karnataka Appellate Authority
for Advance Ruling

(SIHKHA C)
Member
Karnataka Appellate Authority
for Advance Ruling