

Treatment of Prepaid Payment Instruments (PPIs) under the GST Act, 2017

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ABSTRACT

This paper aims at analyzing the treatment of vouchers, more specifically of Prepaid Payment Instruments (PPIs), a type of voucher under the Central Goods and Services Act, 2017 (CGST Act). This paper will look at two contentions: (i) Are PPIs Goods or Services under the CGST Act and (ii) Are PPIs money under the CGST Act. The paper will discuss some important judgements in India and the European Union (EU) and look at the problem of double taxation created by them and their implications.

Keywords: PPIs; Semi-closed PPIs; Open PPIs; Closed PPIs; SPV; MPV.

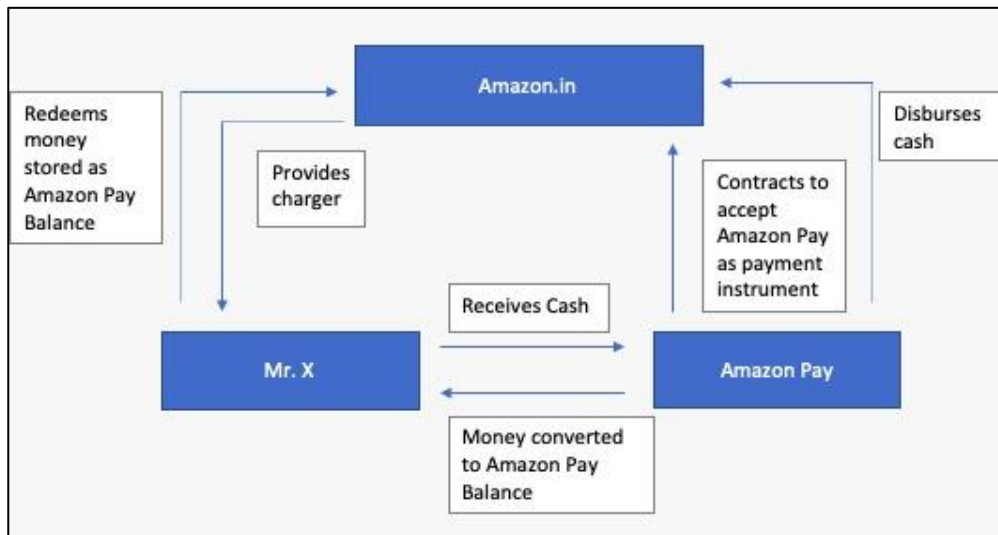
1.0 Introduction

The treatment of vouchers under Tax Law has been a point of contention even before the introduction of the GST regime. Both, the judiciary and academics throughout the country have taken different positions on this issue. The issue of taxability of vouchers becomes more pertinent today because of the change in consumer preferences both locally and globally. The Indian economy backed by the Government's Digital India Mission is moving towards a cashless future whose backbone is innovations in financial technology or *FinTech* as it is colloquially referred to. The new age payment methods have gained wide acceptance and have become a preferred choice for most consumers in the country.

Let's say Mr. X goes on Amazon.in and purchases a charger for his phone (Figure 1). He makes the payment for the charger from his Amazon Pay Balance. In this situation is Amazon supplying Mr. X a good or service under the CGST Act by providing him with the option of paying through his Amazon Pay account?

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Figure 1: Illustration of a Transaction



Is the *Amazon Pay* Account merely an alternative payment method, if so is it ‘money’ under the CGST Act? If taxable, at what point do you tax this instrument? Does taxing this instrument lead to double taxation, if yes what are its implications? These are some of the questions this paper aims to address.

2.0 Vouchers under the CGST Act

The definition of ‘voucher’ is provided under Section 2(118) of the CGST Act, 2017 as:

“ 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”¹.

Further, Section 12(4) and Section 13(4) of the CGST Act seem to create a distinction between these vouchers by dividing them into two categories. This division is based on whether or not Goods or Services that may be redeemed against the voucher are identifiable at the time of supply of these vouchers. If Goods or Services that may be redeemed are identifiable at the time of supply of the vouchers then the relevant tax is deducted at the point of supply of these vouchers. If the Goods or Services that may

be redeemed against the voucher at the time of supply of the voucher are not identifiable, then the relevant tax is deducted at the date of redemption of the voucher.

Let's Mr. X purchases a voucher worth Rupees 100 from *Kwality Walls* which can only be redeemed to purchase Ice Cream from *Kwality Walls*. In this instance, the Good that can be redeemed against the voucher (Ice Cream in this case) is identifiable at the time of supply of the voucher. All sale of Ice Cream is subject to an 18% GST and therefore, an 18% GST on the voucher will be deducted at the time of supply of this voucher irrespective of whether Mr. X uses that voucher in the future or not.

In another instance, Mr. X purchases a voucher from *Marks & Spencer* worth Rupees 1000. Mr. X can purchase anything from the store against this voucher. *Marks & Spencer* sell multiple items ranging from perfumes to t-shirts which are subject to different GST brackets. Therefore, the Good or Service that may be redeemed against this voucher is not identifiable at the time of supply and therefore, the relevant tax will be deducted at the point of redemption.

This distinction along with the definition of 'voucher' was borrowed from the *EU Directive 2016/1065*² which created two types of vouchers:

1. Single Purpose Vouchers (SPV); and
2. Multi-Purpose Vouchers (MPV).

As per this Directive, SPV's are taxed at the time of supply while MPV's are taxed at the time of redemption.

3.0 Divisibility of Vouchers and RBI Regulation

The Vouchers in themselves can be divided into two categories:

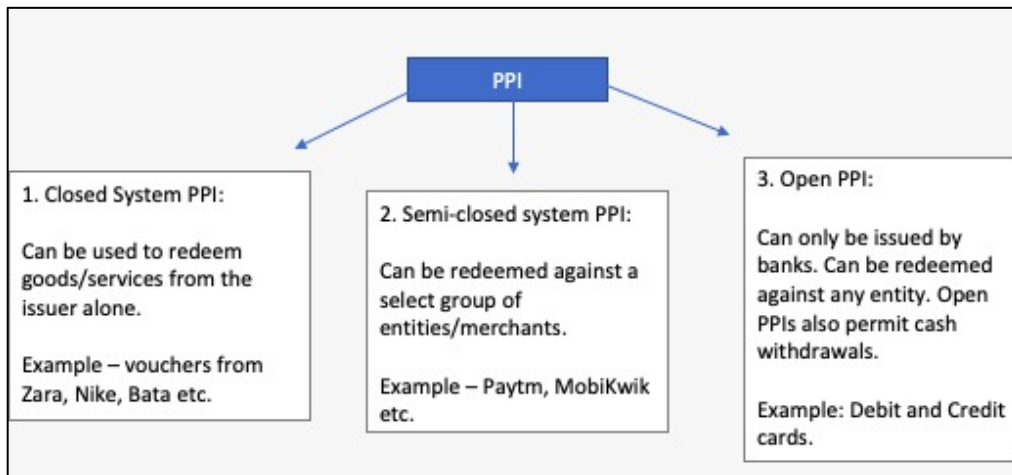
1. Vouchers in the nature of PPI's; and
2. Vouchers not in the nature of PPI's.

PPI's have the ability to store value in them while non-PPI vouchers do not have this ability. The Reserve Bank of India (RBI) regulates all forms of payment systems in the Country. The RBI has under Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007 (PSS Act) has issued a Master Direction³ to regulate PPIs. The RBI has divided PPIs into the three categories (Figure 2). Only closed and semi-closed PPIs are relevant for the purpose of this paper (Figure 2).

4.0 Position under the erstwhile VAT Regime

The taxability of vouchers came up before the Hon'ble Supreme Court in *Sodexo SVC India (P.) Ltd. v. State of Maharashtra*⁴.

Figure 2: Categorization of PPIs per RBI



Background of the case: Sodexo SVC India was in the business of issuing meal vouchers. It entered into agreements with employers which would then issue the vouchers to their employees. The employees could exchange these meal vouchers in exchange for food or food related items at any establishment which has entered into an agreement with Sodexo India to accept the meal vouchers such as restaurants, grocery stores, shops etc. These establishments would then collect and return these vouchers to Sodexo India in exchange for reimbursement at the face value of these vouchers after deduction of a service charge as agreed to under the mutual agreement (Figure 3).

Issue: The issue that came up before the Court was whether these meal vouchers could be categorized as goods for the purpose of levying a municipal tax.

Holding: The Court’s final holding was that meal vouchers could not be categorized as goods. The Court opined that the nature of the transaction is more akin to that of a service which is evident from the fact that Sodexo India only received a service charge at two points. The actual sale is made by the establishments and the role of Sodexo India was merely in a facilitative capacity. Further, the Court also pointed out that these vouchers were not transferable which is an essential characteristic of a good.

5.0 The Issue of Categorization

5.1 Goods or services

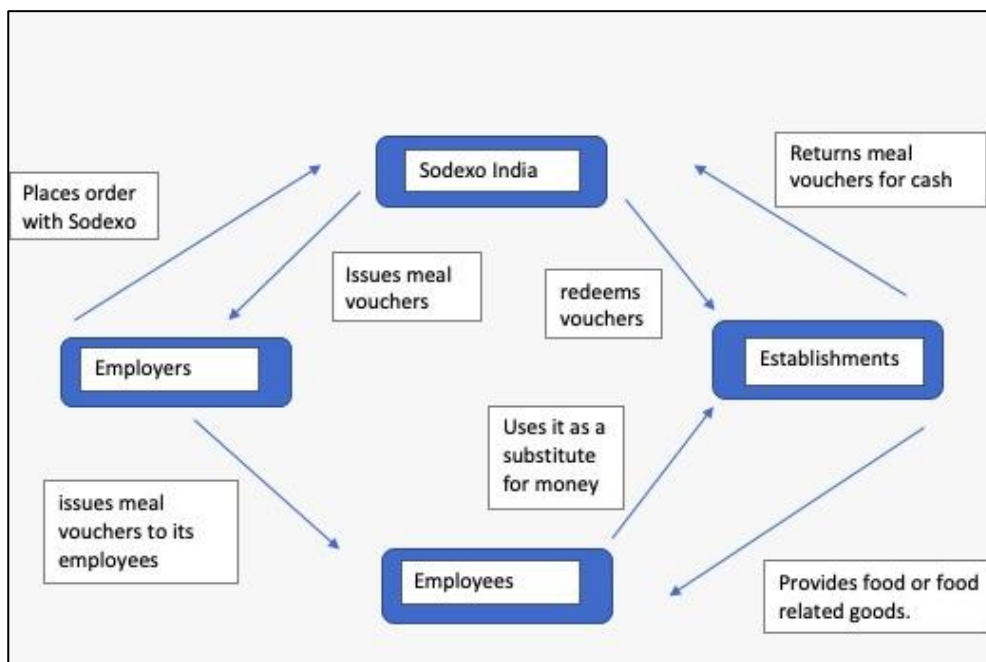
The GST Act, 2017 defines the term vouchers, however, fails to provide any clarity on whether vouchers would constitute goods or services. Inevitably, one would

come back to the Supreme Court verdict in the Sodexo India Case⁵, where it held that meal vouchers would not constitute ‘goods’.

However, there are issues in applying the Sodexo verdict for the following reasons:

- i. The judgement was delivered under the erstwhile VAT regime.
- ii. The judgement was delivered in the context of the Maharashtra Municipal Corporation Act.
- iii. Sodexo Meal Vouchers are a subset of the vast concept of vouchers/ PPIs.

Figure 3: Illustration of a Transaction with Sodexo Meal Vouchers



5.2 Actionable claim or Money:

The categorization of vouchers/ PPIs as actionable claims or money under the CGST Act, 2017 has great commercial significance. Money and Actionable claims cannot be classified as goods or services under the Act and therefore, cannot be subjected to the levy of GST.

The term ‘money’ has been defined under Section 2(75) of the CGST Act, 2017. It is excluded from the definition of goods under Section 2(52) and from the definition of services under Section 2(102) of the Act.

The term actionable claim has been defined under Section 2(1) of the Act and cannot be categorized as a good or supply of service under Schedule III, Entry 6 of the Act. Further, the term actionable claim has been defined under Section 3 of the Transfer of Property Act, 1882 as:

*“a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent”*⁶

Therefore, it can be argued that vouchers in the form of PPIs create a future beneficial interest in a particular good and therefore, could be categorized as an actionable claim.

Section 2(75) of the Act defines money as an instrument that is recognized by the RBI which can be used as consideration for the settlement of an obligation or exchanged with an Indian legal tender of another denomination. PPIs are comprehensively regulated by the RBI under the PSS Act under multiple notifications and a master direction. Therefore, it can also be argued that PPIs would be categorized as money and hence, cannot be subjected to the levy GST.

6.0 The AAR and AAAR Verdict in the Kalyan Jewelers Case

Background of the case: Kalyan Jewelers is in the business of manufacturing and trading jewellery. It issued vouchers in the form of PPIs under a promotional scheme and approached the Tamil Nadu Authority for Advance Ruling (“AAR”) for clarity on the classification of the gift vouchers as goods or services⁷.

Holding: The Court held that vouchers in the form of PPIs are goods under the CGST Act, 2017. It further held that PPIs are not actionable claims because they are neither a claim nor a beneficial interest in immovable property in favour of the PPI holder. After all, the interest in the immovable property cannot be determined at the time of the issue of the PPI. It also held that Vouchers in the form of PPIs would be categorized as ‘moveable property’ under Section 3(26) of the General Clauses Act, 1977. They are purchased for a consideration, have value and specified ownership.

This verdict leads down a dangerous slippery slope as it leads to double taxation. GST is levied at the point of issue of the PPIs and at the time of redemption against goods/ services.

This verdict was appealed by Kalyan Jewelers and came up before the Appellate Authority for Advance Ruling (“AAAR”)⁸. Upon Appeal, the AAAR reversed the

findings of the AAR and held that vouchers are neither goods nor services, but rather are instruments of consideration for the future supply of goods/ services and are, therefore, not taxable.

7.0 Conclusion

The taxability of vouchers under the CGST Act continues to fall under a grey area. PPIs are very wide in their nature and give rise to multiple unanswered questions. The Indian Judiciary has stayed behind the curve in tackling these challenges. Despite the Tamil Nadu AAAR correcting the AAR's blunder in the Kalyan Jewelers Case that led to double taxation, there is no finality on this position. The only way forward is for the parliament to issue a clarificatory notification or for the Supreme Court to take up to the issue and settle it, giving it finality.

Endnotes

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6. Section 3, Transfer of Property Act, 1882. Available at <https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>
7. Kalyan Jewellers India Ltd 2020 (32) G.S.T.L. 689.
8. Kalyan Jewellers India Limited TN/AAAR/11/2021(AR).