

GST Implication on vouchers, coupons, gift cards etc

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GST शास्त्र- GST Implication on vouchers, coupons, gift cards etc

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Introduction :

As a part of promotional activities, the trend of issuing prepaid vouchers, coupons or gift cards has reached new heights. Though these terms are interchangeably used in the common parlance, GST implications on the same are different. In this article, author has analysed different kinds of transactions and **GST implications** on vouchers, coupons, gifts cards etc.

Brief GST history :

Definition of vouchers has been added to the GST Act which was not there in the Model GST Law. Time of supply provisions for vouchers have also been provided under GST Act. The definition under GST Act has been borrowed from **European Union Council Directives**.

Section 2(118) of **CGST Act, 2017** defines voucher 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

Hence, following are the essential conditions to treat the instrument as voucher under GST –

- i) Such instrument shall create an obligation to accept it as consideration or part consideration.
- ii) Obligation to accept such instrument as consideration shall for a supply of goods or services.
- iii) Goods or services or both to be supplied or the identities of potential suppliers are indicated on such instrument itself or in related documentation.

Hence, it is pertinent to note that such voucher shall entitle the holder to use it for redemption against goods or services and supplier is under obligation to accept it as a consideration or part consideration. **However, vouchers which entitles the holder for a**

discount on purchase of goods or services, in the opinion of author, shall not be treated as voucher within the meaning of section 2(118). Tax treatment of such discount voucher would be analysed separately.

Regulations for voucher in India :

Entire payment system effected between a payer and a beneficiary is governed in India under **Payment and Settlement Systems Act, 2007** by Reserve Bank of India. Such instruments or vouchers can only be issued with prior approval of the RBI. Let's discuss few important terms defined under Guidelines issued by RBI and analyse the same –

Definitions :

2.1 Issuer: **Entities operating** the payment systems issuing PPIs to individuals / organisations. The money so collected is used by these entities to make payment to the merchants who are part of the acceptance arrangement and for facilitating funds transfer / remittance services.

2.2 Holder: Individuals / Organisations who obtain / purchase PPIs from the issuers and use the same **for purchase of goods and services**, including financial services, remittance facilities, etc.

Analysis :

- As specified above, entities operating such system are to be considered as an issuer.
- Many times third party promotes the vouchers against consideration for their services.
- It is observed that adjudicating authority often considers such third parties as an issuer which has led to wrong conclusions in the past. Such third parties are liable to pay GST only on service charges received and not on the entire amount received.

2.3 Prepaid Payment Instruments (PPIs): PPIs are payment instruments that facilitate purchase of goods and services, including financial services, remittance facilities, etc., **against the value stored on such instruments.** PPIs that can be issued in the country are classified under three types viz. (i) Closed System PPIs, (ii) Semi-closed System PPIs, and (iii) Open System PPIs.

2.4 Closed System PPIs: These PPIs are issued by an entity for **facilitating the purchase of goods and services from that entity only and do not permit cash withdrawal.** As these instruments cannot be used for payments or settlement for third party services, the issuance and operation of such instruments is not classified as payment systems requiring approval / authorisation by the RBI.

2.5 Semi-closed System PPIs: These PPIs are used for purchase of goods and services, including financial services, remittance facilities, etc., **at a group of clearly identified merchant locations / establishments which have a specific contract with the issuer**

(or contract through a payment aggregator / payment gateway) **to accept the PPIs as payment instruments. These instruments do not permit cash withdrawal**, irrespective of whether they are issued by banks or non-banks.

2.6 Open System PPIs: These PPIs are **issued only by banks and are used at any merchant for purchase of goods and services**, including financial services, remittance facilities, etc. Banks issuing such PPIs shall also **facilitate cash withdrawal at ATMs / Point of Sale (PoS) / Business Correspondents (BCs)**.

Let's analyse these systems with help of chart :

Closed System PPIs	Semi-closed System PPIs	Open System PPIs
Facilitates the purchase of goods and services from issuer only.	Facilitates the purchase of goods and services from a group of clearly identified merchant locations or establishments.	Facilitates the purchase of goods and services from any merchant .
Do not permit cash withdrawal.	Do not permit cash withdrawal.	Permit cash withdrawals at ATMs/ point of sale/ business correspondents
Can be issued by non-bank entities	Can be issued by banks or non-bank entities	Can be issued by banks only
No approval or authorization required from RBI.	Such establishments have a specific contract with the issuer.	

Whether mere issuance of PPIs are subject to GST ?

Once the classification of PPI is done on the basis of above criteria, next question comes to mind is whether mere issuance of such PPIs are subject to GST ? To answer this question, let's first understand the working mechanism of the system.

The amount collected by the issuer has to be kept in the escrow account and the issuer is under obligation to use this amount only for making payments to the participating merchant establishments and other permitted payments.

In the above context, taxability under GST is to be analysed considering following :

a) Characteristics of voucher :

- Though GST law, in India, does not identify types of voucher on the basis of its characteristics, the underlying principle can be borrowed from **European Union Council Directives**, wherein two types of vouchers are identified viz. single purpose voucher (SPV) and multipurpose voucher (MPV).
- According to directives, single purpose vouchers means a voucher where the place of supply of goods or services to which the voucher relates and applicable taxes due on such goods or services are known at the time of issue of the voucher. Vouchers other than single purpose vouchers are multi-purpose vouchers.

Taxability of single purpose voucher :

- Each transfer of a single purpose voucher shall be regarded as a supply of goods or services to which voucher relates.
- It is because the tax treatment to the underlying supply of goods or services can be determined with certainty and tax rate is applicable accordingly. Actual handing over of the goods or provision of services, in such case, shall not be regarded as an independent supply and hence no tax shall be leviable at this point of time.

Taxability of multi-purpose voucher :

- As far as multi-purpose vouchers are concerned, transfer of such voucher shall not be subject to tax.
- It is because supply of the underlying asset and tax due in respect of such supply cannot be determined with certainty which is essential to constitute an activity or transaction as supply.
- Hence, in case of multi-purpose vouchers, actual handing over of goods or actual provision of the services in return of multi-purpose voucher, which is accepted as consideration or part consideration by the supplier, shall be subject to tax.

Section 12 and section 13 of **CGST Act, 2017** also has laid down the time of supply provisions on the basis of same underlying principle.

Examples :

- **Single purpose voucher** – Voucher issued by mall redeemable to purchase jeans having value above Rs 1,000/-
- **Multi purpose voucher** – Voucher issued by mall redeemable to purchase any clothes.

b) Intrinsic nature of the transaction :

- Intrinsic nature of the transaction plays vital role in determining the liability.

- Apex court, in case of **Sodexo SVC India Pvt. Ltd.**, stated that intrinsic nature of the transaction is to be examined for which issuer is getting consideration. Such consideration is liable to tax and not the entire face value the voucher.
- Further, person who is getting money through accepting vouchers against goods or services shall be liable to tax on entire transaction.
- In case of **BSNL & Anr. Vs Union of India & Ors.**, apex court observed that *'if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon*
- In case of **Idea Mobile Communication Ltd. Vs Union of India & Ors.**, also, apex court noticed that *'the dominant position of the transaction is to provide services and not to sell the material i.e SIM card which on its own but without the service would hardly have any value at all.'*
- Considering above judicial pronouncements, if the intrinsic nature of transaction is to provide service, voucher cannot be subject tax as goods and vice versa.

c) Saleability of voucher :

- It is also pertinent to analyse saleability of vouchers.
- If such vouchers can be sold separately and are transferable, then it can be made taxable as 'goods'.
- However, if intrinsic nature of transaction is supplying services through voucher, then it cannot be made taxable as 'goods'.

Taxability of discount coupons, gift cards etc.

a) Difference between voucher and coupons or gift cards :

- In common parlance, though these words are used interchangeably, there is difference in the eyes of law.
- According to definition of voucher, the instrument which creates an obligation to accept it as a consideration or part consideration for a supply of goods or services or both, such instrument only is to be treated as voucher.
- On the contrary, discount coupons or gift cards etc. do not create an obligation on supplier to accept such coupon or cards as consideration **for supply of goods or services**. Coupon or gift card entitles holder to a discount or gift and does not carry rights to receive goods or services.
- Further, rights to allow discounts or to provide gifts against future purchases are generally reserved by the management. Also, terms of the coupons or gift cards includes that such scheme may be changed without prior intimation. This itself substantiates that such coupons or cards do not create an obligation.

b) Saleability of discount coupons or gift cards :

- Again, the test of saleability is important.
- If such vouchers can be sold separately and are transferable then it can be treated as supply.

c) Consideration will play vital role :

- Once the transfer of such discount coupons or cards is treated as supply, it is important to note whether issuer has received any consideration or not against such supply. If the consideration has been received by issuer against such coupons or cards, then it shall be made taxable subject to provisions of schedule I of CGST Act, 2017.
- In such cases, coupons and cards can be classified as trade advertising material as discount or gifts itself are the source of advertisement or promotion.

(Above article was written on 17th July, 2021 & co-authored by CA. Tushar Ajmera and CMA. Anuj Chordiya. Views expressed are strictly personal. For any queries & feedback, reach us at yogesh.ingale@talentax.in)

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