

**THE AUTHORITY FOR ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

**Advance Ruling No. KAR ADRG 33/2022
Date : 14-09-2022**

Present:

1. Dr. M.P. Ravi Prasad

Additional Commissioner of Commercial Taxes Member (State)

2. Sri. T. Kiran Reddy

Additional Commissioner of Customs & Indirect TaxesMember (Central)

1.	Name and address of the applicant	M/s. MYNTRA DESIGNS PRIVATE LIMITED, Sy. No.8 to 14 & 55, Alyssa Begonia Clover, Embassy Tech Village, Outer Ring Road, Devaribisanahalli, Varthur Hobli, Bengaluru Urban - 560 103.
2.	GSTIN or User ID	29AAECM9636P1ZJ
3.	Date of filing of Form GST ARA-01	04-01-2022
4.	Represented by	Sri. Tarun Gulati, Advocate & Authorised Representative
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru. (Range-CED8)
6.	Jurisdictional Authority - State	ACCT, LGSTO-16, Bengaluru.
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act & Rs.5,000/- under KGST Act through debit from Electronic Cash Ledger vide reference No. DC2912210255089 dated 24.12.2021.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

M/s. Myntra Designs Private Limited (herein after referred to as 'Applicant' or 'Myntra') Sy. No.8 to 14 & 55, Alyssa Begonia Clover, Embassy Tech Village, Outer Ring Road, Devaribisanahalli, Varthur Hobli, Bengaluru Urban - 560 103, having GSTIN 29AAECM9636P1ZJ, have filed an application for Advance Ruling



under Section 97 of CGST Act, 2017 read with Rule 104 of CGST Rules, 2017 and Section 97 of KGST Act, 2017 read with Rule 104 of KGST Rules, 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act & KGST Act.

2.1 The applicant, is a company registered under Companies Act 1956, having its registered office at AKA Tech Park, 3rd Floor, 7th Mile, Krishna Reddy Industrial Area, Hosur Road, Bengaluru-560068 and also registered under the provisions of CGST/KGST Act 2017. The applicant is a major Indian fashion e-commerce company & owns an e-commerce portal (www.myntra.com); engaged in the business of selling of fashion and lifestyle products through the portal. The suppliers of such products, intending to sell their products through the applicant's portal list them on the portal and sell them to customers, who place their order using the applicant's portal. Once order is placed by the customer, the applicant collects money from them towards the purchase of the said order through its portal in the capacity of an e-commerce portal operator and settles the amount payable with the supplier of the said order within a specified period.

2.2 The Applicant, in order to incentivise the customers visiting the portal / e-commerce platform, proposes to run a loyalty program, by way of issuing points to the customers on the basis of purchases, effected by the customers from various sellers on the said platform. The participation in the proposed loyalty program will be on meeting the pre-defined eligibility criteria laid down by the applicant and the same will be subject to acceptance of the applicant's terms and conditions. Further the customer will be bound by the said terms and conditions and any changes or modifications to the same by participating in the said program.

2.3 The loyalty program is sought to be introduced with an object of increasing customer base of the applicant's platform which will lead to increased footfall and sales through the said platform and thus the said loyalty program will directly impact and enhance the amount of commission earned by the Applicant in the course of their business.

3. In view of the above, the applicant has sought advance ruling in respect of 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.

4. Admissibility of the application: The question is about the "admissibility of input tax credit of tax paid or deemed to have been paid" and hence is admissible under Section 97(2) (d) of the CGST Act 2017.



5. **Statement of facts relevant to the question:**

The loyalty program operates in a specified manner & the applicant does not give the vouchers and subscription packages to every customer but is restricted only to the eligible customers participating in the said loyalty program, subject to the terms and conditions.

5.2 The applicant procures the vouchers and subscription packages from third party vendors upon payment of GST and provides the same to customers on redemption of the loyalty points earned by them. **Applicant themselves are not in the business of supply of the said vouchers and subscription packages.** The vendors will be raising invoice on the applicant by classifying their outward supply under SAC 9983 as "*other professional, technical and business services*".

5.3 The expenditure incurred by the applicant in running the loyalty program and procuring the said vouchers and subscription packages from third party vendors is not in the nature of capital expenditure or in the nature described under Sections 30 to 36 of the Income Tax Act 1961. Thus the said amount is expended wholly and exclusively for the purpose of business of the applicant and the same is allowed under Section 37(1) of the Income Tax Act in computing the income chargeable under the head "*Profits and gains of business or profession*".

5.4 The vouchers procured by the applicant that are to be issued against the loyalty program could be of the following nature:

- a. Vouchers where the nature of supply is known at the time when the voucher is supplied.
- b. Vouchers where the nature of supply is not known at the time when the voucher is supplied.

5.5 The applicant quoting the definition of voucher in terms of Section 2(118) of the CGST Act 2017 submits that the time of supply of vouchers would be the date of issue of voucher and accordingly GST would be levied on such procurements made by the applicant where the supply is identifiable at the time of supply of voucher by the third party vendor, in terms of Section 12(4)(a) of the CGST Act 2017.

5.6 Further, the subscription packages procured by the applicant, on payment of applicable GST, from the third party vendors will be in the nature of subscriptions to various applications, membership benefit under various applications and the like. The vendors charge GST by classifying the outward supply to the applicant under SAC 9983 as "*other professional, technical and business services*".



6. **Applicant's interpretation of Law :**

The applicant contends that they procure the vouchers and subscription packages from third party vendors who raise GST invoice on the applicant by classifying their outward supply under SAC 9983 as "Other professional, technical and business services"; the applicant is a GST registered person, engaged in the business of providing e-commerce platform which is taxable under the GST Act/s and the applicant requires more customers to visit the platform & undertake transactions for their outward supply of services and thus they are entitled to take credit of GST charged by the vendors on the said vouchers and subscription packages, which are used for running the loyalty program.

(i) The applicant, quoting Section 16 of the CGST Act 2017, contends that the following eligibilities / conditions have been specified in order to be entitled to take input tax credit.

- a. The person availing the credit should be a 'registered person'
- b. The credit should be of input tax charged on any supply of goods or services or both to the registered person.
- c. The said supply of goods or services or both are used as intended to be used in the course or furtherance of the registered person's business.

On fulfilment of the aforesaid conditions, the amount of input tax credit shall be credited to the electronic credit ledger of such person. In the instant case all the conditions are fulfilled and hence the applicant is entitled to claim the credit.

(ii) Procurement of voucher and subscription packages is for 'business' of the applicant.

(iii) Procurement and provision of voucher and subscription packages is 'in the course of and furtherance of business'

(iv) ITC not restricted or blocked under Section 17 of the Act.

(v) Credit of input tax paid on such purchases for business was available under the erstwhile regime as well.

(vi) Beneficial interpretation is required to be applied to the present case.



PERSONAL HEARING PROCEEDINGS HELD ON 07.07.2022

7. Sri Tarun Gulati, Advocate & Authorised Representative of the applicant appeared for personal hearing proceedings through video conference and reiterated the facts narrated in their application.

FINDINGS & DISCUSSION

8. At the outset we would like to make it clear that the provisions of CGST Act, 2017 and the KGST Act, 2017 are in pari-materia and have the same provisions in like matters 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.

9. We have considered the submissions made by the applicant in their application for advance ruling. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts along with the arguments made by the applicant & the submissions made by their learned representative during the time of hearing.

10. The Applicant proposes to run a loyalty program where loyalty points will be awarded on the basis of purchase made by the customer on their 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 applicant, through their portal, would make the vouchers and subscription packages available to those customers who wish to redeem the loyalty points accumulated by them and the applicant will not receive any monetary consideration from the said customers. Further the loyalty points are non-transferable, can't be converted into cash and can't be used in place of cash. The applicant would be procuring the vouchers & subscription packages, on payment of applicable GST, from third party vendors who would be classifying their supply under SAC 9983 as "other professional, technical and business" service.

11. In view of the above, the applicant sought advance ruling in respect of the question mentioned at para 3 supra with regard to eligibility to avail the input tax credit of GST paid on the said vouchers & subscription packages, to be procured by third party vendors.

The applicant contended in support of their claim on the following

12. grounds:



- i. they are entitled to claim ITC of the GST paid on procurement of vouchers & subscription packages as per Section 16 of the CGST Act 2017 and classification of vouchers as goods or services is totally irrelevant ;
- ii. the vouchers & subscription packages so procured and made available to redeem against the loyalty points accumulated by the customers, are exclusively for the purpose of business as an e-commerce platform;
- iii. the loyalty program is purely driven by commercial needs & will be an integral factor in enhancing the footfall on the applicant's platform leading to increase in earning commission by way of supplier listing;
- iv. the term '*in the course or furtherance of business*', used in Section 16(1) of the CGST Act 2017, includes all the activities that would ensue in growth and profitability of the business including marketing, advertisement, promotions and any other activity that broadens the business and the procurement of vouchers & subscription packages by the applicant will be essentially in the nature of marketing spend to promote the e-commerce business;
- v. all the eligibility conditions prescribed under Section 16(1) of the CGST Act 2017 are clearly fulfilled and thus the credit of input tax must be allowed to the applicant on any amount expended for the purpose of their business;
- vi. even the bar under Section 17(5)(h) of the CGST Act 2017 is also not applicable as the supply of vouchers & subscription packages by the third party vendors has been classified as 'service' but not as 'goods';
- vii. the vouchers, irrespective of being goods or not, will be offered only under contractual obligation for which consideration may not be explicitly specified by the applicant as the same will not be given free of charge and hence can't be termed as 'gift' to the customers.

13. The applicant primarily contends that they fulfill all the required conditions prescribed under Section 16(1) of the CGST Act 2017 and the inward supply, i.e. procurement of vouchers & subscription packages, is classified as a service and thus Section 17(5)(h) is not applicable & thereby allowing the customers to redeem the loyalty points earned for vouchers & subscription packages can't be termed as a 'gift' and hence the applicant is eligible to claim the ITC of GST paid on such procurement.

14. Now we proceed to examine as to whether the applicant is eligible to avail the input tax credit in terms of Section 16(1) of the Act, *ibid*, on the



vouchers and subscription packages procured by them from third party vendors and supplied to customers participating in the loyalty program against the loyalty points earned. In this regard, the relevant portion of sub-section (1) of Section 16 is reproduced hereunder:

*“16. Eligibility and conditions for taking input tax credit.— (1) Every 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 to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.”*
(emphasis added)

From the above it can be seen that input tax credit is an entitlement to a registered person which can be taken subject to such conditions and restrictions as may be prescribed. In this regard it is seen that sub-section (5) of Section 17 prescribes that input tax credit shall not be available in respect of certain supplies. Clause (h) of the Section 17(5) is relevant to the proceedings and reproduced as under:

“(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a)..

(b)..

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i)..”

Thus the issue before us is to decide whether the inward supply i.e. the vouchers merits classification as ‘goods’ or ‘service’ and if they are goods, whether they were disposed of by way of gift or otherwise.

15. In this regard we invite reference to the definition of ‘voucher’, under Section 2(118) of the CGST Act 2017, which is as under:

“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.



It could be seen from the above definition that the subscription packages procured by the applicant from third party vendors and supplied to customers against loyalty points, is also a 'voucher' as it places an obligation on the potential supplier to accept it as consideration for supply of goods or services to the holder of the instrument or the customer. Thus the subscription package has all the required qualities to qualify as a voucher.

16.1 Now we proceed to decide whether the inward supply of vouchers including subscription packages, by the third party vendors to the applicant, amounts to supply of goods or services. The vouchers printed on paper are undoubtedly goods, as they are tangible. Now the question is whether the e-vouchers, which are intangible, are also goods or not. In this regard, we invite reference to Section 2(52) of the CGST Act 2017, wherein the term "goods" has been defined to mean as under:

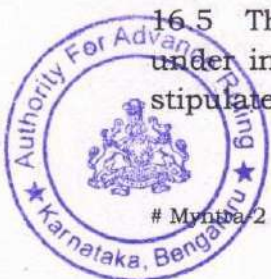
Section 2(52) –goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

16.2 From the above definition it is seen that the term 'goods' is not restricted to tangible property, instead refers to every kind of movable property which is capable of being transmitted or supplied. Vouchers are a movable property, capable of being transmitted electronically or supplied physically, thus they qualify as 'goods'.

16.3 Further, the Hon'ble Supreme Court of India, in the case of Tata Consultancy Services Vs State of Andhra Pradesh (2004) observed that *goods can be tangible or intangible, the test to determine whether property is goods is whether the concerned item is capable of abstraction, consumption & use and whether it can be transmitted, transferred, delivered, stored, possessed etc.* In the instant case the item "voucher" has all the aforesaid capabilities and hence it gets covered under goods, though it is intangible.

16.4 Also, the Hon'ble Supreme Court of India, in the case of Vikas Sales Corporation Vs. CCE (1996), with regard transfer of import licenses held that *Import licenses are not actionable claims, they got a monetary value, they are freely transferable and hence they are goods.* In the instant case the item "Voucher" is very much similar to "Import license". Thus the impugned vouchers get covered under goods.

16.5 Thus voucher is undoubtedly a moveable property and squarely gets covered under intangible goods. Further Schedule II to Section 7 of the CGST Act 2017 stipulates the activities or transactions to be treated as supply of goods or supply of



services. Para 1(a) of Schedule II to Section 7 specifies that any transfer of the title in goods is supply of goods. The transaction of supply of vouchers in the instant case involves transfer of the title and hence they are covered under supply of goods.

17. Now we proceed to examine whether the vouchers are given free of charge as a gift or otherwise. In this regard, we invite reference to the loyalty program, proposed by the applicant, which will operate in the following manner:

- (i) The participation of a customer in the loyalty program will be dependent on meeting the pre-defined eligibility criteria laid down by the Applicant.
- (ii) An eligible customer has to opt-in to participate in the program by agreeing to the terms and conditions associated with the program.
- (iii) A customer will earn reward points in lieu of the purchases made through the applicant's platform.
- (iv) The loyalty points will not have any monetary value associated with them and they can't be converted into cash or used in place of cash and can't be used in exchange of cash.
- (v) A customer may redeem such points against the various rewards or benefits which are in the nature of vouchers and subscription packages given out by the applicant.
- (vi) The applicant would not receive any consideration from the customer for the said vouchers and subscription packages and which will be provided only upon redemption of adequate loyalty points by the customer.
- (vii) The applicant, as per the accepted terms and conditions, will be under an obligation to provide the said vouchers and subscription packages to the participating customers who wish to redeem the loyalty points accrued to them.

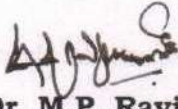
18. It can be seen from the loyalty program that the applicant, on the basis of a particular transaction / purchase by the customer through their e-commerce platform and subject to acceptance of the terms and conditions of the applicant by the customer, allows the customer to earn loyalty points. The applicant in the said transaction recovers the full amount from the customer and gives the loyalty points free of cost. Further the said loyalty points, in the applicants own admission, do not have any monetary value, are non-transferable and cannot be converted to cash. The redemption of loyalty points, admittedly involves no flow of consideration from the customer. Thus redemption of loyalty points by the customer for receiving vouchers from the applicant implies that the vouchers are issued free of cost to the customer and amounts to disposal of vouchers(goods) by way of gift and squarely covered under clause (h) of Section 17(5) of the Act, *ibid*.



19. In view of the foregoing, we pass the following

RULING

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.



(Dr. M.P. Ravi Prasad)

Member

Karnataka Advance Ruling Authority
Place : Bengaluru - 560 009



(T. Kiran Reddy)

Member

MEMBER
Karnataka Advance Ruling Authority
Bengaluru - 560 009

Date : 14-09-2022

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore East Commissionerate, Bengaluru.
4. The Assistant Commissioner of Commercial Taxes, LGSTO-16, Bengaluru.
5. Office Folder.

