

Indirect Tax Alert

April, 2015



BOMBAY HIGH COURT HOLDS SODEXO MEAL VOUCHERS TO BE GOODS FOR PURPOSE OF OCTROI AND LBT

The Hon'ble High Court of Bombay vide its judgment rendered in the matter of *Sodexo SVC India Private Limited vs The State of Maharashtra and Ors., Writ Petition Nos. 5653 of 2010 and 7503 of 2013* on March 20, 2015 has rejected the writ petition filed by Petitioner and held that Sodexo Meal Vouchers are goods within the meaning of the Maharashtra Municipal Corporations Act 1949, as against the



Petitioner's contention that said meal vouchers are payment instructions or payment instruments issued under a payment system operated under the Payment and Settlement Systems Act, 2007 ("Act of 2007") as per the authorization received from the Reserve Bank of India, as said vouchers are a medium to acquire any article for consumption, use or sale and the said vouchers are not capable of consumption, use or sale by themselves.

Issue Involved:

The issues involved in the present case are as follows:

1. Whether the Sodexo Meal Vouchers are goods for the purposes of levy of Octroi and LBT?
2. Whether a Municipal Corporation constituted under the Maharashtra Municipal Corporations Act, 1949 is entitled to levy and/or collect Octroi or Local Body Tax (LBT) on Sodexo Meal Vouchers in accordance with the provisions of the Maharashtra Municipal Corporations Act, 1949 and the Rules framed there under?

Background:

- The Petitioner is engaged in the business of providing pre-printed Sodexo Meal Vouchers and enters into a contract with its customers for issuing the said vouchers. The customers of the Petitioner, in turn, distribute the said vouchers to their employees who are the actual users of the said vouchers. The Petitioner has contracts with various affiliates such as restaurants, departmental stores, shops, etc. Under the affiliate

contracts, the affiliates are required to provide food and other items on presentation of the said vouchers by the users. The affiliates are bound to honour vouchers once presented by the users. The affiliates after receiving the said vouchers, present the same to the Petitioner. On receipt of the vouchers, the Petitioner reimburses the affiliates after deducting service charges.

- The Petitioner had obtained certificate of authorization from the Reserve Bank of India under Section 7 of Act of 2007 to operate a payment system for issue of meal and gift vouchers in the form of 'paper based vouchers' and 'smart meal cards' with effect from June 25, 2009. The authorization was to operate a payment system for issue of meal and gift vouchers in the form of paper based vouchers.
- The Petitioner filed writ petition before the Hon'ble High Court of Bombay in order to determine whether the said meal vouchers are the goods within the meaning of the Municipal Corporations Act which are capable of being consumed, used or sold.

Judgment:

The Hon'ble High Court of Bombay, decided the issues after hearing the arguments put forward by both the parties to the Petition and while dealing with following decisions rendered by apex Court:

- (i) ***Hindustan Coca-Cola Beverage Pvt. Ltd. vs. Sangli Miraj and Kupwad Municipal Corporation and Ors (2011) 7 SCC 605***
- (ii) ***Sunrise Associates v. NCT of Delhi (2006) 5 SCC 603***
- (iii) ***R. D. Saxena v. Balram Prasad Sharma (2000) 7 SCC 264***
- (iv) ***Burmah Shell Oil Storage and Distributing Company of India Limited v. Belgaum Borough Municipality AIR 1963 SC 906***
- (v) ***TATA Consultancy Services v. State of Andhra Pradesh (2005)1 SCC 308***
- (vi) ***Bharat Sanchar Nigam Ltd. and Another v. Union of India and Others (2006)3 SCC 1***

- The Court observed that said vouchers are capable of being sold by the Petitioner to its customers, for a value, after they are brought into the limits of the City. The customers give the said vouchers to its employees called as users. On presentation of the said vouchers, the users get foods and beverages from the affiliated establishments (Restaurants) and the affiliated establishments on presentation of the said vouchers to the Petitioner, get the face value of the said vouchers after deducting the service charges. Therefore, the said vouchers which are printed on paper are the goods for the purposes of LBT and Octroi, which is payable on the entry of goods into the limits of the City for consumption, use or sale. After the vouchers are brought within the limits of the Municipal Corporations Act, the same are capable of being sold. The said vouchers which are capable of being sold, delivered and possessed have its own utility and are thus, goods.

Our Comments:

This judgment was limited only to determine the applicability of LBT and/or Octroi in respect of sale of Sodexo Meal Vouchers within the local municipality. It has been held by the Hon'ble Bombay High Court that as such vouchers have their own utility and can be bought and sold, the same are held to be goods and therefore, taxable for the purpose of LBT and/or Octroi. A Special Leave Petition has been filed against the present decision and the same is sub-judice before the Hon'ble Supreme Court. In our view, if such vouchers are held to be goods, then for all practical purposes, for other Acts as well, it will be held to be goods, and the qualification that such meal vouchers are goods cannot be limited only to LBT/Octroi. Such judgment, in our view, has left open the issue of whether such meal vouchers would qualify as 'goods' for other Acts as well.

For further queries/clarifications please write to:

Shammi Kapoor, Delhi (shammi@vaishlaw.com)

Hitender Mehta, Gurgaon (hitender@vaishlaw.com)

Shilpa Sharma, Mumbai (shilpa@vaishlaw.com)

All rights reserved.
© Vaish Associates, Advocates
1st & 11th Floor, Mohan Dev Building, 13, Tolstoy Marg, New Delhi-110001, India

Disclaimer:

While every care has been taken in the preparation of this Indirect Tax Alert to ensure its accuracy at the time of publication, Vaish Associates assumes no responsibility for any errors which despite all precautions, may be found therein. Neither this alert nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/ substitute professional advice that may be required before acting on any matter. All images, pictures, logos and trade marks appearing in the Alert are property of their respective owners.

www.vaishlaw.com

DELHI

1st & 11th Floor,
Mohan Dev Building
13, Tolstoy Marg
New Delhi - 110001, India
Phone: +91-11-4249 2525
Fax: +91-11-2332 0484
delhi@vaishlaw.com

MUMBAI

106, Peninsula Centre
Dr. S. S. Rao Road,
Parel,
Mumbai - 400012, India
Phone: +91-22-4213 4101
Fax: +91-22-4213 4102
mumbai@vaishlaw.com

GURGAON

803, Tower A,
Signature Towers
South City-I, NH-8
Gurgaon - 122001, India
Phone: +91-124-454 1000
Fax: +91-124-454 1010
gurgaon@vaishlaw.com

BENGALURU

Unit # 305,
Prestige Meridian-II,
Building No. 30, M. G. Road,
Bengaluru - 560001, India
Phone: +91-80-40903581/ 88 /89
Fax: +91-80-40903584
bangalore@vaishlaw.com