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## Indirect Tax Alert

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## Sodexo Meal Vouchers are not 'goods'

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# Summary

The Hon'ble Supreme Court sets aside the judgment of the Bombay High Court by holding that Sodexo Meal Vouchers are not '*goods*' within the meaning of Section 2(25) of the Maharashtra Municipal Corporation Act and, therefore, not liable for either Octroi or Local Body Tax.

# Background

- The petitioner is engaged in the business of providing pre-printed meal vouchers i.e. 'Sodexo Meal Vouchers'. It enters into contracts with its customers (i.e. establishments or companies having employees on their roll) for issuing the said vouchers.
- The customers provide food/meals and other items to their employees up to a certain amount. For utilisation of these vouchers by such employees, the petitioner has made arrangements with various restaurants, departmental stores, shops ('affiliates').
- The affiliates, after receiving the said vouchers, present the same to the appellant and get reimbursement of the face value of those vouchers after deduction of service charge payable by the affiliates to the appellant as per their mutual arrangement.

# Issue

Whether these vouchers can be treated as '*goods*' for the purpose of levy of Octroi or Local Body Tax (LBT) as per the relevant provisions of the Maharashtra Municipal Corporation Act.

# Decision of the Hon'ble Supreme Court

- The vouchers are not 'sold' by the appellant to its customers, as wrongly perceived by the High Court. The High Court has also wrongly observed that vouchers are capable of being sold by the appellant after brought into the limits of the city.
- These vouchers are printed for a particular customer, which are used by the said customer for distribution to its employees and these vouchers are not transferrable at all.
- In order to carry out appellant's business it is compulsorily required to obtain necessary approval/authorization from the RBI as per Payment and Settlement Systems Act, 2007.
- Policy Guidelines dated 28 March, 2014 issued by RBI regulate such transactions and bring out the real nature which is to provide service and by no stretch of imagination these vouchers can be termed as 'goods'.
- In order to ensure that payment received from the customer is paid to the affiliates, the amount has to be kept in the escrow account and the appellant is under an obligation to use this amount only for making payments to the affiliate.
- The appropriate test would be as to whether such vouchers can be traded and sold separately and the answer is in the negative. Therefore, this test of ascertaining the same to be 'goods' is not satisfied.
- The real character of the transaction is the facility by the customers as employers to their employees. According to Rule 3 of the Income Tax Rules read with Section 17 of the Income Tax Act, 1961, the value of such free food and non-alcoholic beverage provided by an employer to an employee is treated as expenditure incurred by the employer and amenity in the hands of the employee. It is this perquisite given by the customer to its employees by adopting the methodology of vouchers and for its proper implementation, services of the appellant are utilised.
- For the above reasons, the judgment of High Court is set aside by holding that

Sodexo Meal Vouchers are not 'goods' within the meaning of Section 2(25) of the Act and, therefore, not liable for either Octroi or LBT.

Sodexo SVC India Private Limited v. State of Maharashtra & Ors. in Civil Appeal Nos. 4385-4386 of 2015 decided by the Hon'ble Supreme Court on 9 December, 2015

## Upcoming Dbriefs – Register

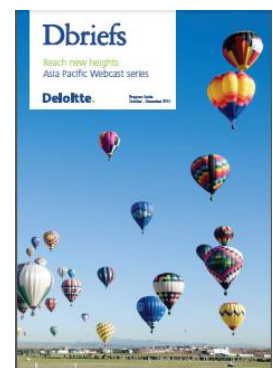
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