

# **Advance Ruling under GST – Confusions galore**



Certainty and predictability are essential pillars of a good taxation system. Unfortunately, the tax legislations are marred by numerous interpretational issues leading to unintended disputes between taxpayers and tax administration. One of the prevalent Dispute Resolution Mechanism to provide certainty to taxpayers and avoid future litigation is Advance Ruling. Even the World Trade Organisation ('WTO') mandates establishment of a ruling mechanism as an international trade facilitation measure.

In the erstwhile Indirect Tax law, the facility to obtain Advance Ruling was initially confined to non-residents and subsequently expanded to Indian taxpayers. Further, an applicant could have taken Advance Ruling only for "proposed activity" and not for an ongoing activity.

Under Goods and Services Tax ('GST') regime, any applicant can seek Advance Ruling on all present as well as proposed activities. Advance Ruling is given by the Authority of Advance Ruling ('AAR') which is appealable before an Appellate Authority for Advance Ruling ('AAAR'). If an applicant gets conflicting rulings in different States, it can challenge the order of AAAR before National Appellate Authority for Advance Ruling ('NAAAR').

In less than 3 years, Advance Ruling mechanism has seen host of disputes and interpretational issues. In this Article, the Authors have attempted to highlight the controversies surrounding Advance Ruling under GST regime.

## Possibility of seeking Advance Ruling by same taxpayer in multiple States

GST law treats a person having multiple registrations in same or different State(s) or Union Territory(ies) ('State') as distinct persons. The first dispute that has erupted is whether a person registered with GST authorities in different States, can seek separate ruling in each State.

Section 98(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act') bars admission of an application for Advance Ruling where the question raised has been pending or already decided in any other proceedings of an applicant.

In case of Hindustan Coca-Cola Beverages Pvt. Ltd., 2019-VIL-397-AAR (Kar), AAR refused to entertain the taxpayer's application under Section 98(2) of the CGST Act on the ground that the same was already answered by Gujarat AAR in taxpayer's own case.

In Authors' view, AAR could not have rejected the application on the ground that AAR of another State dealt with a similar issue as there is no restriction to this effect. As GST law itself treats multiple registered units of an applicant in different States as distinct persons, such units are not same applicant. This is also contrary to the concept of NAAAR. The purpose of setting up NAAAR was to provide an appellate mechanism to a person has got conflicting rulings in different States. Further, on multiple occasions, AARs of different States have entertained same issue of taxpayer.<sup>1</sup>

<sup>1</sup>Chowgule Industries Pvt. Ltd., 2020-VIL-06-AAR, 2019-VIL-213-AAR  
Giriraj Renewables Pvt. Ltd., 2018-VIL-36-AAR, 2018-VIL-20-AAR



## Possibility of seeking Advance Ruling on disputed issue

In the case of *Vikram Traders, 2020-VIL-71-AAR (Kar)*, AAR refused to admit applicant's application on the pretext that the applicant relied on the Orissa High Court judgement against which the revenue filed SLP before the Supreme Court. As SLP is pending before the Supreme Court, AAR held that issue has become sub-judice.

In Authors' view, AAR erred in rejecting the application even though the legal issue is pending before the Supreme Court. It is pertinent to note that the said proceeding is not against the applicant. As stated above, Section 98(2) of the CGST Act bars admission of application before AAR only where the question is pending or already answered in any other proceeding of an applicant. AAR again failed to interpret Section 98(2) in a right perspective.



## Scope of 'Advance Ruling'

The next issue that arises is on the jurisdiction of AAR to address 'place of supply' issues. In the past, various State AARs have refused to entertain 'place of supply' issues. On the contrary, other State AARs took up 'place of supply' issues and determined taxability of a transaction.

Section 97(2) of the CGST Act lists out the issues that can be taken up by AAR. Though this list does not specifically cover 'place of supply', it is important to note clause (e) of Section 97(2) which covers 'determination of the liability to pay tax on any goods or services'. This clause is wide enough to encompass 'place of supply' that determines tax liability of a person. State AARs who refrained from entertain 'place of supply' issues missed this crucial aspect and took a hyper technical view. In the case of *Sutherland Mortgage Services INC v. Principal Commissioner, 2020-VIL-102-KER.*, the Kerala High Court has recently laid down the correct legal position. In this case, AAR rejected Advance Ruling application relating

to 'place of supply' issue on the ground of lack of jurisdiction. The High Court observed that tax authorities must endeavour to provide certainty of tax liability to taxpayers so that they can arrange their business affairs accordingly. The High Court held that 'place of supply' issue squarely falls under the purview of Section 97(2) and remitted the case back to AAR for fresh decision.

As per Article 227 of Constitution of India, High Court's power of superintendence is over all Courts and Tribunals in their respective jurisdiction. Thus, a High Court judgment is not binding upon the authorities in other States but have a persuasive value. Though the High Court has addressed the controversy for the time being, it is important to see whether the revenue challenges this judgment in Supreme Court and other State AARs follow this judgment or not.

Despite the above, overall Section 97(2) of the CGST Act is still not wide enough to cover all issues where a taxpayer will be interested in seeking Advance Ruling. Some of these issues are refund, ITC reversals mandated under GST law, interest, penalty, procedural issues etc.

## Binding effect

Advance Ruling pronounced by AAR or AAAR is binding on the applicant as well as the department qua that applicant. Importantly, as the AAR and AAAR are constituted under the respective State Act and not the Central Act, ruling will bind only the applicant within that State only. Advance Ruling is neither binding on other applicants nor departmental officers but will have persuasive value.

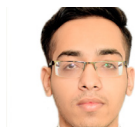


## To sum up

The Government needs to have a fresh look at whole Advance Ruling Mechanism under GST regime. The Government must attempt to widen the mechanism as far as possible and eliminate entry barriers like the ones mentioned above. Further, AARs need to be more judicious vis-à-vis the present revenue-minded approach. In the long run, effective Advance Ruling Mechanism will result in a “win win situation” for both taxpayers and tax administration and will go a long way in implementing Government’s motto of “Sabka Sath Sabka Vikas”.



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