



ORIGINAL RESEARCH PAPER

Commerce

GST – ADVANCE RULING NEED OF TIME PATH BETWEEN TAXPAYER & DEPARTMENT

KEY WORDS:

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INTRODUCTION

An Advance ruling development administering give Devices to applicant in arranging his lawful exercises, which are obligated for payment of GST, well ahead of time. It additionally acquires sureness deciding the Tax obligation, as the decision given by the Authority for Advance ruling is authoritative on the Applicant just as Government specialists. Further, it helps in evading since quite a while ago drawn and costly case sometime in the not too distant future. Looking for an Advance ruling is reasonable and the strategy is basic and quick. It hence gives sureness and straightforwardness to a Taxpayer as for an issue which may conceivably cause a dispute with the tax administration. A lawfully constituted body called Authority for Advance Ruling (AAR) can give a coupling binding ruling to an Applicant who is a registered person or is desirous of obtaining registration or is covetous of acquiring enrollment. The advance ruling given by the Authority can be requested before an Appellate authority for Advance Ruling (AAAR). There are timetables recommended for passing a request by AAR and by AAAR.

Section 95 of the CGST Act defines the term advance ruling to mean a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Thus, an advance ruling is merely a decision by the Advance Ruling Authority (AAR) on the specific question asked by the applicant in relation to the supply of goods or services or both either being undertaken or proposed to be undertaken by such applicant. Further, it also includes the decision of the Appellate Authority of Advance Ruling (AAAR) in an appeal against any decision by the Advance Ruling Authority.

Objectives Of Advance Ruling

Advance Ruling means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. The aim is to provide certainty to the taxpayer with respect to his obligations under the GST Act and an expeditious ruling, so that the relationship between the taxpayer and administration is smooth and transparent and helps to avoid unnecessary litigation. The wide goals for setting up a component of Advance ruling include:

- i. provide assurance in charge risk ahead of time, according to an action proposed to be embraced by the candidate;
- ii. Attract Unfamiliar Direct Venture (FDI);
- iii. Reduce suit;
- iv. Articulate decision speedily in straightforward and cheap way;

Advance Ruling implies an assurance of assessment risk before action is done, or while it is being done. It causes the Applicant to know about obligation, with restricting sureness in tax collection.

Under section 95(a) “ Advance ruling “ means a decision provided by the authority or the appellate authority to an applicant on matters or on questions specified in section 97 or 100, in Relation to supply of goods or service both 'being undertaken or proposed to be undertaken by applicant'. Thus, advance ruling may be sought 'before start of activity or even after start of activity, providing it is being undertaken'.

Under section 95(c) “Applicant” means any person registered or desirous of obtaining registration under this act; In case study of Ramway food ltd [2018(17) G.S.T.L 39 (A.A.R. –GST)]

Observation

Recipient of goods or service cannot seek advance ruling, if supply in question is not under RCM.

Rules On Process Of Application

Rule 107A – manual filing and processing

Any reference to electronic filing of an application, intimation , reply, declaration , statement or electronic issuance of notice , order or certificate on the common portal shall , in respect of that process or procedure, include manual filing of the said application , intimation , reply , declaration , statement or issuance of the said notice , order or certificate in such forms as appended to these rules.

Under section 97(1) read with Rule 104 - Application along with fee of INR 5,000.

An applicant desirous of obtaining an advance ruling may make an application with fee of INR 5000, stating the question on which the advance ruling is sought.

Section 97(2) the question on which the advance ruling is sought under this Act, shall be in respect of–

- a) Classification of any goods or services or both;
- b) Applicability of a notification issued under the provisions of this Act;
- c) Determination of time and value of supply of goods or service or both;
- d) Admissibility of input tax credit of tax paid or deemed to have been paid;
- e) Determination of the liability to pay tax on any goods or services or both;
- f) Whether applicant is required to be registered;
- g) Whether any particular thing done by the applicant with respect to any goods or services or both amount to or results in a supply of goods or services or both, within the meaning of that term.

Issue of place of supply- whether advance ruling can be given
 1. View 1- No power to give ruling on issue of place of supply: determination of place of supply is kept out of purview of authority for advance ruling (AAR) stipulated u/s 97 (2) of CGST Act, 2017. – In Re: Utility powertech ltd. [544 (A.A.R.- GST) 2018 (14) G.S.T.L

Issue of whether activity is 'export and eligible for 'export

benefit ', cannot be raised before AAR as it involves examination of "place of supply " . - In re; esprit India private limited [2018 (15) G.S.T.L. 132 (A.A.R.- GST)]

2. View 2- place of supply can also be ruled ; determination of place of supply can be ruled by advance rulings authority, as it relates to determination of tax liability .- in re: five star shipping [2018 (14) G.S.T.L. 443 (A.A.R.-GST)]

Under section 98 - procedure on receipt of application

- (a) AAR to forward copy to department
- (b) admission/rejection of application
- (c) Application rejected, if issue pending or decided in applicant's case

In re; Veeram natural products [2018 (16) G.S.T.L.620 (A.A.R.- GST)]

Issues forming part of 'audit objection' or SCN raised by department – no advance ruling

In re; mosaic India Pvt. Ltd. [2018 (16) G.S.T.L. 517 (A.A.R.- GST)]

Issue already decided in pre-GST regime cannot be raised before AAR

IN RE; sterlite technologies limited [2018 (17) G.S.T.L.518 (A.A.R.- GST)]

No advance ruling, if inquiry/investigation pending after search

- (d) Rejection only after hearing and recording reasons;
- (e) Pronouncement of ruling, if application admitted
- (f) Pronouncement within 90 days of receipt; the authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.
- (g) In case of difference in opinion matter is referred to appellate authority for advance ruling.

APPEALS IN ADVANCE RULINGS

~ AAR and AAAR- Constitution; AAR and AAAR constituted under SGST or UTGST Act shall be deemed to be appellate authority in respect of that state or union territory.

~ appeal to appellate authority [section 100]

(a) Appeal within 30 days from receipt of advance ruling + 30 days condonation

(b) An appeal against the advance ruling shall be made on common portal in FORM GST ARA-02 and shall be accompanied by a fee of 10,000. Department's appeal in form ARA-03 without fee.

- orders of appellate authority [section 101]

(a) Appellate order after hearing parties confirming or modifying the ruling appealed against.

(b) Order within 90 days; the order shall be passed within a

period of ninety days from the date of filing of the appeal or a reference.

(c) Difference in opinion in members of appellate authority- no advance ruling can be issued.

- Rectification of advance ruling within 6 months by AAR/AAAR [Section 102]; the authority or the appellate authority may amend any order passed by it under section 98 or section 101.-. So as to rectify any error apparent on the face of the record, if such error is noticed by the authority or the appellate authority on its own accord, or is brought to its notice by concerned officer, jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order. Enhancement of tax or reduction of credit can be made only after hearing assessee.

-Applicability of advance ruling [section 103]; it is binding on same person, same department and on same facts and same law. Any other person cannot claim benefit of advance ruling given on application filed by an applicant.

In re; JSW Energy ltd. [2018(14) G.S.T.L. 571 (app. A.A.R.- GST)]

Advance ruling not binding in another state

- Advance ruling to be void in certain cases [section 104]; advance ruling is void, if obtained by fraud or suppression of material facts or misrepresentation of facts .prior hearing is mandatory before passing order under this section. The period from date of advance ruling to date when it is declared void shall be excluded in computing time-limit for adjudication under section 73 or 74.

-powers of authority and appellate authority [section 105]

a) powers of civil court : authority or appellate authority shall ,for the purpose of exercising its power regarding- a) discovery and inspection b) enforcing the attendance of any person and examining him on oath c) issuing commissions and compelling production of books of account and other records ,have all powers of civil court under code of civil procedure ,1908.

b) The authority or appellate authority shall be deemed to be civil court.

- procedure of Authority and Appellate Authority section 106

The Authority or the Appellate Authority shall, subject to the provisions of this chapter, have power to regulate its own procedure.

- no further appeal against order of AAAR- Writ lies

Against order of AAAR. no further appeal lies. However, writ lies against rulings of AAAR ,which may be heard by at least 2-judge bench of high court – Columbia sportswear co. v. DIT [2012] 283 ELT 321 (SC).

Table 1: Rulings Passed By States Authorities For Advance Ruling (AAR) For The Month Of August ,2020.

MIS on Rulings passed by States Authorities for Advance Ruling (AAR)							
Month: AUG, 2020							
S.No.	Name of State/ Union Territory	Opening Balance	Receipt of Applications		Disposal of Applications		Closing Balance
			During the Month	Upto the Month	During the Month	Upto the Month	
1	2	3	4	5	6	7	8
1	Andhra Pradesh	17		100		83	17
2	Arunachal Pradesh	0		0		0	0
3	Assam	0		0		0	0
4	Bihar	2		8		6	2
5	Chhattisgarh	5		22		17	5
6	Delhi	93	5	118	0	20	98
7	Goa	0	0	18	0	18	0
8	Gujarat	82		210		128	82

9	Haryana	21		40		19	21
10	Himachal Pradesh	1		3		2	1
11	Jammu & Kashmir	0		0		0	0
12	Jharkhand	6		6		0	6
13	Karnataka	20	3	221	2	200	21
14	Kerala	4		19		15	4
15	Madhya Pradesh	7		49		42	7
16	Maharashtra	76		295		219	76
17	Manipur	0		0		0	0
18	Meghalaya	0		0		0	0
19	Mizoram	0		0		0	0
20	Nagaland	1		2		1	1
21	Odisha	0		8		8	0
22	Puducherry	0		0		0	0
23	Punjab	21		31		10	21
24	Rajasthan	11	3	96	2	84	12
25	Sikkim	0		0		0	0
26	Tamil Nadu	20		119		99	20
27	Telangana	0		15		15	0
28	Tripura	0		1		1	0
29	Uttar Pradesh	0		12		12	0
30	Uttarakhand	2		36		34	2
31	West Bengal	5	2	109	4	106	3
32	Andaman & Nicobar	0		0		0	0
33	Chandigarh	0		0		0	0
34	Dadra & Nagar Haveli	0		0		0	0
35	Lakshadweep	0		0		0	0
36	Daman & Diu	1		10		9	1
	GRAND TOTAL*	395	13	1548	8	1148	400

* Note: The Details are as per the Notifications and information available with the Council's Secretariat.

Source: <http://www.gstcouncil.gov.in/advance-rulings>

Table 2 : Appeal Orders Passed By States Appellate Authority For Advance Ruling (AAAR) For The Month Of August ,2020

MIS on Appeal Orders passed by States Appellate Authority for Advance Ruling (AAAR)							
Month: AUGUST, 2020							
S.No.	Name of State/ Union Territory	Opening Balance	Receipt of Applications		Disposal of Applications		Closing Balance
			During the Month	Upto the Month	During the Month	Upto the Month	
1	2	3	4	5	6	7	8
1	Andhra Pradesh	0		0		0	0
2	Arunachal Pradesh	0		0		0	0
3	Assam	0		0		0	0
4	Bihar	0		0		0	0
5	Chhattisgarh	0		2		2	0
6	Delhi	0		0		0	0
7	Goa	0		0		0	0
8	Gujarat	0		11		11	0
9	Haryana	2		4		2	2
10	Himachal Pradesh	0		0		0	0
11	Jammu & Kashmir	0		0		0	0
12	Jharkhand	0		0		0	0
13	Karnataka	6	1	46	1	40	6
14	Kerala	4		12		8	4
15	Madhya Pradesh	2		8		6	2
16	Maharashtra	15	3	80	12	74	6
17	Manipur	0		0		0	0
18	Meghalaya	0		0		0	0
19	Mizoram	0		0		0	0
20	Nagaland	0		0		0	0
21	Odisha	1	0	9	0	8	1
22	Puducherry	0		0		0	0
23	Punjab	0		0		0	0
24	Rajasthan	2		14		12	2
25	Sikkim	0		0		0	0
26	Tamil Nadu	7		10		3	7
27	Telangana	0		3		3	0
28	Tripura	1		1		0	1
29	Uttar Pradesh	0		0		0	0

30	Uttarakhand	0		3		3	0
31	West Bengal	1		26		25	1
32	Andaman & Nicobar	0		0		0	0
33	Chandigarh	0		0		0	0
34	Dadra & Nagar Haveli	0		0		0	0
35	Lakshadweep	0		0		0	0
36	Daman & Diu	0		0		0	0
	GRAND TOTAL*	41	4	229	13	197	32

* Note: The Details are as per the Notifications and information available with the Council's

Source: <http://www.gstcouncil.gov.in/advance-rulings>

Executive Summary

An Advance rulings provide tool to applicant in planning activities related to it, which are liable to pay GST, well in advance. While the objective behind introducing the advance ruling mechanism was to limit unwanted litigation under GST, the same is yet to be achieved. The rulings given by various AARs which are widely discussed have only contributed confusion in the industry and amongst the public at large. These rulings require a careful analysis. tax position should be revalidated basis of the applicable law in force and its need.

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