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Concept of Advance ruling under Goods and Services Tax Act, 2017 - An analytical and critical study

- Sonali Awasthi

Symbiosis Law School, Hyderabad

ABSTRACT

The term “Advance Ruling” denotes any decision given by the authority to its applicant for the purpose of planning certain activities for the payment of Good and Services Tax. Authority and appellate authority for advance rulings helps the applicant in providing the information related to payment of indirect tax or questions prescribed in Section 97(2), 100 (1) of the “Central Goods and Services Tax Act, 2017” in terms of goods and services taken on by the applicant. This definition of advance ruling can be interpreted broadly as the implementation of GST Act has improved the definition of advance ruling, it covers a proposed transaction and transaction that has already been taken by the applicant. The aim of this research study is to identify the scope of advance rulings, analyse the role and performances of authority of advance rulings and examine the issues pertaining to advance rulings and suggest the required changes, according to the author’s knowledge. The methodology of the research that has been followed in the present study is a Doctrinal research methodology which helps the researcher to arrive at conclusion by collecting qualitative data from the secondary sources.

Keywords: Advance Rulings, Goods and Services Tax Act, Authority for Advance Rulings

INTRODUCTION

The introduction of “Goods and Services Act, 2017” has led to several issues faced by the trade and commerce sector such as: availing legacy credit, issues related to the generation of e-way bills, uploading of returns and several other trivial problems were faced by taxpayers. The advance ruling under the GST Act, 2017 provides a wider scope compared to Excise, Custom and Service Tax by providing speedy resolution for any tax dispute arising in trade and industry. Advance ruling resolves the issues in advance. Under GST Act, 2017, the orders passed by the authorities of advance ruling provided for an appeal, this element was missing in earlier tax legislations. The purpose of bringing advance ruling in the system was to provide inexpensive, less procedural and to provide certainty and interpretation of law in advance for the activity taken by the assessee in future.

Assessee faces various issues arising from his proposed ventures which results in involving risk. To avoid any unexpected or exposed risk which can lead to threat and adverse circumstances in a business operation, the role of advance rulings is broadened for the benefit of the taxpayers. The advance rulings attract the non- residents which leads to Foreign Direct Investment, advance rulings sought to provide clarity on tax liability and tax matters in advance which helps them in avoiding any tax dispute. The vital role played by the advance rulings is it reduces the cost of litigation and any legal dispute. The decision of the authority is given in an inexpensive and transparent manner expeditiously.

The historical background of advance ruling can be traced back to the time when there was amendment in Income Tax Act, 1961 in the year 1993, the provisions for advance ruling came into force from that particular amendment in Section 245N to 245R of Income Tax Act. For indirect taxes, the provisions of advance rulings were also incorporated in the year 1999.¹ In May 2003, the provisions of advance ruling were further expanded to the service tax. Also, the provisions of advance rulings are included in Customs Act, Central Excise Act and Finance Act.

“Authority for Advance Rulings” is a legally constituted body, constituted under the provisions of “State and Union Territory Goods and Services Act”. The ruling of authority of advance ruling is

¹ Atul Gupta, “Handbook on Advance Ruling under GST” 9 (2nd ed. 2020).

binding on government authorities, applicant and it will only be applicable and binding on the concerned union territory or state. The advance ruling pronounced by the authority could be further appealed before “Appellate authority for Advance Ruling.” Both advance ruling authority and its appellate authority are given the power equivalent to that of a civil court prescribed “under the Code of Civil Procedure, 1908”.² They are authorized with the power to compel for production of records, books of accounts, examines oath, checks on the attendance of applicant or its representatives, inspection and discovery of the relevant material. For any proceedings under the Section 195 of “Code of Criminal Procedure, 1973” both the advance ruling authority and its appellate authority are authorized with the powers of civil court. For applicability, any proceedings falling under “Section 193, 196 and 228 of Indian Penal Code, 1860”, all the hearing and proceedings before both the AAR and AAAR will be considered as judicial proceedings. These authorities are given the authority to determine their own procedure.³

RESEARCH METHODOLOGY

The methodology of the research that has been followed in the present study is a Doctrinal research methodology which helps the researcher to arrive at conclusion by collecting qualitative data from the secondary sources. The doctrinal method requires locating and finding the sources of the law and then it involves interpreting and analyzing those texts with logic, reasoning and analogy. This methodology is used by the researcher to analyse advance rulings under “Goods and Services Act, 2017” with the help of statutes, policies, law reporters, reference books, legal history, judicial pronouncements, bibliographic reviews, commission and committee reports, articles, websites, magazines and newspapers for the observation of theoretical information and analysis.

RESEARCH QUESTIONS

The researcher has dealt with the following research questions in the present study:

1. What is the scope and mechanism of advance rulings under “Goods and Services Act, 2017”?

² CBIC, “Advance Ruling” (March 01, 2021, 1:00 PM), <https://cbic-gst.gov.in/aces/Documents/advance-ruling-authority-rules.pdf>.

³CBIC, “Advance Ruling Mechanism in GST” (March 01, 2021, 2:21 PM), <https://www.cbic.gov.in/resources/htdocs-cbec/gst/advnc-rulin-mechanism-gst-20Jul.pdf;jsessionid=B713F02807338C8B87E91C07FDF08CC1>

2. What are the major loopholes and pertinent issues of advanced rulings effectuated under the GST Act, 2017?
3. What are the effective suggestive measures to tackle the loopholes of advance rulings in GST Law?

RESEARCH OBJECTIVES

The objectives of this research paper are:

- To identify the scope of advance rulings under GST Act, 2017.
- To develop a deeper understanding of the mechanism of advance rulings.
- To analyse the role and performance of authority of advance rulings.
- To examine the key issues pertaining to advance rulings and suggest the required changes, according to the author's knowledge.

DISCUSSION

CHAPTER I: SCOPE AND MECHANISM OF ADVANCE RULINGS UNDER “GOODS AND SERVICES ACT, 2017”

An advance ruling is helpful for those particular applicants whose motive is to plan their activities in accordance with their liability to pay GST. It tends to provide the applicants with certainty to make decisions with respect to the rulings passed by the “Advance Ruling Authority” which is binding on assessee as well as the authorities of government. It protects the assessee against any expensive litigation and helps in avoiding any extensive procedure. Advance ruling is simple, certain, inexpensive, transparent with the easiest procedure. Any potential dispute which can lead to an issue in the courts of law can be resolved by the rulings of advance ruling authority, in advance.

Authority and appellate authority for advance rulings helps the applicant in providing the information related to payment of indirect tax or questions prescribed in Section 97(2), 100 (1) of “Central Goods and Services Tax Act, 2017” in terms of goods & services taken on by applicant. The subject matters prescribed **Under 97(2), 100(1) of the “Central Goods and Services Tax Act, 2017”** are as follows: “*classification of any goods or services or both; applicability of a notification issued under the provisions of CGST Act; determination of time and value of supply*

of goods or services or both; admissibility of input tax credit of tax paid or deemed to have been paid; determination of the liability to pay tax on any goods or services or both; whether applicant is required to be registered; whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”

Whereas “**Section 100 (1) of the Central Goods and Services Tax Act, 2017**” states that right to appeal is provided to the applicant who has been aggrieved, jurisdictional officer and the concerned officer to appeal before the “advance ruling appellate authority” (AAAR) for any advance rulings given by the advance ruling authority. The decision pronounced by the concerned appellate authority is also considered to be advance ruling.

“Authority for advance ruling” (AAR) and “Appellate authority for advance ruling” (AAAR)

“Authority for Advance Rulings” is a legally constituted body, established “under the provisions of State and Union Territory Goods and Services Act”, it is also deemed to be advance ruling authority of Union territory and State under the CGST Act, 2017.

The advance ruling pronounced by the authority could be further appealed before “Appellate authority for Advance Ruling.” It is also a legally constituted body, established “under the provisions of State and Union Territory Goods and Services Act”, it is also deemed to be advance ruling appellate authority of Union territory and State under the CGST Act, 2017.

Thus, it can be noticed that the advance ruling authority or appellate authority is legally established under the acts of State and Union territory and not under any central act.⁴ It means that the ruling of authority of advance ruling is binding on government authorities, applicant and it will only be applicable and binding on the concerned Union territory or State. Hence, the matters related to determination of place of supply are not dealt by the AAR or AAAR.

Applicability of advance ruling

Any advance ruling given by the advance ruling authority or appellate authority is considered to be binding on the jurisdictional officer or concerned officer or the assessee or applicant. The

⁴ Shantanu Sharma, “Advance Rulings”, IDTC-ICAI 1, 1-8 (2019).

advance rulings are given for the particular matter and does not have any precedential value. The pronouncement of advance ruling cannot be binding for any other taxable person, even if the subject matter of the case is same. In the case of “**Nanak Road v. Advance Ruling Authority**”⁵, it was held that advance ruling will only be applicable to those concerned officer, applicant and jurisdictional officer for that particular case.

Advance Ruling when held ab initio void

If the Advance ruling authority and appellate authority determines that the assessee has misrepresented or suppressed the material facts or through fraud has made an effort to obtain the advance ruling then the advance ruling so pronounced will be considered as ab initio void. Also, the provisions of the SGST/CGST will be applicable to the particular assessee or applicant who has applied for advance ruling in a manner that no advance ruling never occurred. Before making an order of declaring an advance ruling void, it is necessary to hear applicant before the concerned authority and after that only pronouncement given by the advance ruling authority or appellate authority can be declared to be void ab initio.

Advance Ruling Procedure

The applicant or assessee who wants to obtain any information regarding the questions and subject matter prescribed under 97(2), 100(1) of the “Central Goods and Services Tax Act, 2017” can file an application before the advance ruling authority in the forms and manner as specified in the Rules of Advance Ruling. These rules consist of the proper format in which a form should be filled and a procedure in a detailed form to make a particular application to obtain an advance ruling.⁶

When the application has been filed then it is the responsibility of the Advance ruling authority to send the copy of the whole form and application with the particular receipt of the application to the concerned officer who belongs to that particular jurisdiction, this officer has the right to call for the any other details or records. After this advance ruling authority has the power to examine the application filed by the assessee along with their records. The advance ruling authority will then hear to the subject matters raised by the applicant and after hearing the matter will pass a ruling to either admit or reject particular application of the assessee.

⁵ “**Nanak Road v. Advance Ruling Authority**”, 56 SCC Bom 213 (2019).

⁶ Ajit Saxena, “**Authority for advance rulings in indirect taxes**” ILR 215, 224 (2019).

If the questions or subject matters raised before the advance ruling authority has already been decided or is still pending in any particular proceedings then such application will not be admitted by the advance ruling authority.

The application filed before the advance ruling authority, if rejected then it is obligatory for the authorities to state the reasons for the rejection of application through speaking order. The application filed before the advance ruling authority, if admitted then the advance ruling authority will give its ruling within 90 days of issuance of such receipt of application. The authorities before pronouncing any rulings, should do the proper examination of the application, records, any materials that are furnished by concerned departmental officer or applicant. Before pronouncing any ruling, it is procedure to hear the authorized representative or applicant or jurisdictional officer as prescribed by SGST/CGST.⁷

If amongst the two members of advance ruling authority there is a difference of opinion then in such a case, the subject matter will be discussed before the advance ruling appellate authority for those specific concerns in which difference of opinion is arising. If the members belonging to the advance ruling appellate authority which is the highest-level authority is itself doubtful and are not able to come to any conclusion, then in such a case no advance ruling will be passed.

Appeals against the rulings of AAR before the “Appellate Authority of Advance Ruling”.

If the applicant who has filed the application for the advance ruling before the advance ruling authority and is not satisfied by the ruling given by the AAR, then he has the right to appeal before the AAAR. Also, if the jurisdictional or concerned officer are also not satisfied by the findings of AAR then they also have the authority to file the appeal before the AAAR. The concerned officer under CGST/SGST refers to the officer who has been appointed by the administration of CGST/SGST for the purpose of that particular advance ruling.

The appeal before the AAAR can be filed within 30 days of the receiving the receipt of pronouncements of advance ruling. The format specified under the rules of advance rulings should be followed and the appeal shall be made in the verified manner and prescribed form.

⁷ Daizy Chawla, “Advance Ruling Under GST Regime”, LTJR 2, 12 (2020).

Within 90 days of filing the appeal, the appellate authority hears to the party and decides upon the rulings. After the completion of this procedure, the appellate authority passes an order. If any member differs in opinion, then in such a case, no advance ruling is made on that particular subject matter or question under appeal.

After the order is passed, within 6 months of issuance of such advance ruling, the advance ruling authority and appellate authority is given an opportunity to rectify or amend their mistakes.⁸ These mistakes can be brought forward by the jurisdictional officer, applicant or by the authority on its own. If such rectification and amendment have the power to reduce input tax credit or expand the liability of assessee then it is necessary that applicant should be heard before passing any order.

CHAPTER II: MAJOR LOOPHOLES AND PERTINENT ISSUES OF ADVANCED RULINGS EFFECTUATED UNDER THE GST ACT, 2017

The present mechanism of advance ruling effectuated under GST Act, 2017 are facing problems, it discourages the assessee to reach to the advance ruling authority for the interpretation as the rulings pronounced by them are only very confusing for tax analyst, industry players and lawyers. The powers of advance ruling authorities are not effectively utilised in the grievance redressal of taxpayers as there exists major loopholes and pertinent issues associated with advance rulings effectuated under GST Act, 2017 such as:

In the “Central Goods and Services Tax Act” and the “State Goods and Services Tax Act”, there is no specific law or legislation for the appeal against AAAR pronouncements, if the party is not satisfied by the rulings of AAAR. It will be compulsory for both the jurisdictional officer and applicant to abide by the rulings given by the AAAR. If difference of opinion arises amongst the members of the AAAR, then the question or subject matter is left undecided without any procedure to appeal which in itself ambiguous. The alternative to file a writ petition in High Court and Supreme Court in India is provided but the objective of establishment of advance ruling was to reduce litigation, indirectly the only remedy to deal with matters in High Court and Supreme Court will increase their burden and will defeat the purpose of advance rulings.

⁸ Bharathi Agrawal and Kajal Juneja, “Concept of Advance Ruling”, ICAI 1, 5 (2020).

In the case of “**R.B. Shreeram Durga Prasad and Fatehchand Nursing Das vs. Settlement Commission (IT & WT)**”⁹, the Supreme Court focused on the necessity of principles of natural justice and focused upon the view that party seeking advance ruling should be heard before passing any orders. The court held that “Courts cannot review the decision itself but can review the procedure followed.” The judgment passed by the apex authority, in its decision itself, is limiting the powers of courts to just check upon the procedure whereas the main problem usually lies in the decision of the rulings only.

In the case of “**Jsw Energy Limited v. Union of India**”¹⁰, Bombay High Court held that “no appeal can be filed against an order of the Appellate Authority of Advance Rulings on merits since no appeal has been provided under the GST Act.” The well settled principle that writ is maintainable before any high court has been violated. The review of such decisions is necessary for keeping a check on the authority exceeding its power. This judgement created the chaos in trade and industry sector and the number of applications before the authority of advance ruling decreased as there was no mechanism for appeals against the order. It was believed by the taxpayers that authorities are likely to make bias and arbitrary decision in the favour of revenue officers only. The whole objective of providing speedy resolution is being defeated as most of the assessee are opting for adjudication process which includes seeking relief by means of courts and tribunals for the justice.¹¹

After, the introduction of advance rulings, several applications were filed by the applicant before authority of advance rulings. It was observed from these decisions that, the orders passed by the authority of advance rulings were biased towards revenue department only.¹² The rule of beneficial construction is also defeated, as the advance rulings should be made in the benefit of assessee but instead it's been made in the favor of revenue department. It was held in “**CBIC v. Kullu Valley Transport Co. Ltd.**”¹³, “A beneficial legislation should receive liberal interpretation which would advance the purpose and object of the enactment, most beneficial or favorable to the assessee should be adopted.” The applicants were facing severe consequences and rarely got any relief. The

⁹“**R.B. Shreeram Durga Prasad and Fatehchand Nursing Das v. Settlement Commission (IT & WT)**” 1 SCC 628 (1989).

¹⁰ “**Jsw Energy Limited v. Union of India**” 89 SCC Bom 423 (2019).

¹¹ Hiregange, “**Advance ruling- Is it serving its purpose?**”, MIGST 223, 234 (2020).

¹² Arjun Pal, “**Critical Analysis of the Working of Authority for Advance Ruling (Aar) in India**”, ITIA 1, 1-6 (2020).

¹³ “**CBIC v. Kullu Valley Transport Co. Ltd.**” 77 ITR 518 (SC) (2018).

root cause of these issues was associated with the constitution of the forum of authority for advance ruling which comprises of only the revenue officers and didn't consist any judicial member, to keep a check on proceedings.

“Under Sec. 103(2) of CGST/SGST Act 2017, it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed.” There is no time period that has been mentioned about the applicability of the rulings given by the advance ruling authority which creates uncertainty & vagueness in the law.

Advance ruling authorities of different states tends to creates difficulties by pronouncing different rulings for the same subject matter, which creates confusion and chaos in the minds of taxpayers. In the case of “*In re M/s Giriraj Renewables Private Ltd. (AAR Karnataka)*”¹⁴, it was ruled by the Karnataka Authority of Advance Ruling that a contract for construction of a solar power plant is not a composite supply and hence photovoltaic modules should be taxable at 5% and other items at their respective GST rates.” Whereas in the “*In re M/s Giriraj Renewables Private Ltd.*”¹⁵, it was held that for the same tax payer applicant, Maharashtra AAR had held the contract to be a works contract of immovable property and taxable at 18%.” Also, in the case of “*In re M/S Anil Kumar Agrawal, Karnataka*”¹⁶ and in pronouncement of “*In re M/s Clay Craft India Pvt. Ltd., Rajasthan*”¹⁷, in these cases, the subject matter was related to the consideration or fees of the directors of the company with respect to the tax liability under CGST Act, but different interpretations were given by both the authorities.

These are only few instances cited here but there are like plethora of contradictory rulings. It becomes difficult for the applicant as to which ruling to follow, when on the same subject matter or questions different rulings are passed by different State Advance Ruling Authority, this creates ambiguities, chaos, unrest and irregularities in law as divergent rulings are given by the different authorities on same question and subject matter. Advance rulings lack the precedential value of its ruling which creates a lot of ambiguity in relation to law, as the advance ruling passed shall only be binding for the particular matter and only on the jurisdictional officer and applicant. The aim

¹⁴ “*In re M/s Giriraj Renewables Private Ltd. (AAR Karnataka)*”, 2 TMI 340 (2018).

¹⁵ “*In re M/s Giriraj Renewables Private Ltd. (AAR Maharashtra)*”, 3 TMI 345 (2019).

¹⁶ “*In re M/S Anil Kumar Agrawal, Karnataka*”, 5 TMI 221 (2020).

¹⁷ “*In re M/s Clay Craft India Pvt. Ltd, Rajasthan*”, 4 TMI 228 (2020).

of advance ruling mechanism was to give clarity on the tax issues but it is creating lot ambiguity, chaos and confusion by the contradictory rulings.

CHAPTER III: SUGGESTIVE MEASURES TO TACKLE THE LOOPHOLES OF ADVANCE RULINGS IN GST LAW

Advance ruling lacks the confidence of assessee as the purpose of bringing advance ruling in the system was to provide inexpensive, less procedural and to provide certainty and interpretation of law in advance for the activity taken by the assessee in future. But advance ruling has so far, defeated its purpose as the ruling given by them is not even binding or has any precedential value. Also, usually the advance rulings are biased towards the revenue department which creates lack of understanding and clarity. There are few suggestive measures to tackle the loopholes of advance rulings in GST law.

There is high pendency of applications before the advance ruling authority, the purpose of providing speedy resolution is being defeated. To liquidate the pendency of cases, it is necessary that Central Governments should appoint more members in the AAR for providing speedy justice. The composition of only two members in the advance ruling authority is way too less to handle subject matters related to “Goods and Services Tax”.

To fulfill the purpose of transparency of advance rulings, timely analysis of all the rulings should be taken place to avoid any arbitrariness as the orders passed by the authority of advance rulings are biased towards the revenue department only.

The composition of advance ruling authority should be in such a manner that it should include the authorities with high level-training and expertise concerning contract law, jurisprudence and other subject wise matter discussed in the court of law. The members should also include tax experts and industrial expert from non-governmental sector to bring the expert level knowledge which is required in certain subject matters.

The Advance ruling authorities are at their liberty to follow their set of rules, laws and regulations. They are considered to be the quasi-judicial bodies but does not follow any procedure as it is not expressly given in the GST law. There should be Standard Operating Procedure in pronouncing

orders and rulings with the proper examination of all notifications, circulars, rules and provisions. Also, to design any plan or strategy these rulings should be taken into consideration.

Advance ruling authority and its appellate authority does not consist of any judicial members, they only have the members from the revenue department who lacks the knowledge, expertise and experience of a judicial authority. The appointment of judicial members to remove departmental bias and to keep the objective view. It is also important to keep the checks and balances on the advance ruling authority.

It is necessary that on the national level, there should be some appellate authority for looking upon the matters which are left undecided because of the difference of opinion, amongst the members of advance ruling appellate authority. Also, this authority should deal with the rulings which are contradictory in nature as passed by the different advance ruling state authorities. This would also help in setting the precedential value of these rulings. The aim of the constitution of this authority on national level should be to remove unambiguity and uncertainty from law and provide uniformity in advance rulings. The applicability of advance ruling should be influential and act as a guidance for the other state authorities of advance ruling authority.

CONCLUSION

The conclusion that can be drawn in the present study on the basis of findings and discussion presented by the researcher is the concept of advance ruling is very important for the assessee's who are planning to open a new business as usually they land up making a bad decision because of the unawareness or ambiguities in law. The advance rulings help the assessees in the interpretation of law and planning of the business in advance according their tax liabilities. Advance rulings can be taken when there arises any doubt regarding the rate of tax or Input Tax Credit and other subject matters provided under the CGST Act. To avoid any kind of disputes, advance rulings are also taken by the multinational companies to gain the clarification and certainty regarding the tax structure. In pre-GST period, the advance rulings were only given for the proposed transaction but in GST era through E-filing, the advance rulings can also be taken for the transactions that are already been undertaken.

Advance ruling was established for the benefit of the assesseees but it is creating lot of problems for them as the powers of advance ruling authorities are not effectively utilised in the grievance redressal of taxpayers as there exists lacunae in the Advance Ruling part of GST law. Any advance ruling given by the advance ruling authority or appellate authority is considered to be binding on the jurisdictional officer or concerned officer or the assessee or applicant. The advance rulings are given for the particular matter and does not have any precedential value. The assesseees belonging to various states are likely to get different rulings for the same transaction which creates confusion, chaos, ambiguity and is against the government theme of “Good and Simple Tax”. Also, lack of any settlement commission under the GST Act, 2017 increases the scope of Advance rulings in the process of dispute resolution. For the better functioning of the Advance rulings, it is necessary to establish and give more to the “National Tribunal for Advance Ruling” to resolve all the disputes pertaining to different advance ruling in same transaction from multiple states. The judicial members with experience and expertise should also be included in the authorities of advance ruling for an unbiased ruling.



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