



## **Advance ruling- Is it serving its purpose?**

**CA. Madhukar N Hiregange**

“Advance ruling” means a decision/ ruling given to the applicant by the constituted authority on the matters relating to GST provisions

GST being a new law, amended frequently, focusing on revenue leakages has led to a lot of confusion as to the applicability of various provisions of the Act for the transaction undertaken or to be undertaken by the taxpayer. In case the taxpayer takes a wrong decision and remits lesser tax, then he would have to pay the tax along with the interest and also penalty. Further, GST being indirect tax, could have been collected from the recipient/ customer and on a later date after the completion of the transaction, it may not be practically possible to collect tax. Thereby, to facilitate the taxpayer to know the right interpretation of the law well in advance, the facility of advance ruling would be helpful if decisions were given which would stand the test of Courts.

The provisions relating to advance ruling are contained in Chapter XVII, Section 95 to 106 of the CGST Act. GST law provide an advance ruling on all types of transactions whether it is proposed or already occurred. For this purpose, each State would constitute ‘Authority of Advance Ruling (AAR)’. The details of the Benches along with communication addresses can be accessed from this link [http: // www.gstcouncil.gov.in/sites/default/files/Details-of-AAR-27-12-2018.pdf](http://www.gstcouncil.gov.in/sites/default/files/Details-of-AAR-27-12-2018.pdf)

### **Matters Covered**

Section 97(2) of the CGST Act, (corresponding provisions in all States SGST Acts) provides that ‘advance ruling’ can be sought on the following matters-

- (a) Requirement of registration
- (b) Classification of any goods or services or both
- (c) Applicability of a notification issued under the GST Acts
- (d) Determination of the liability to pay tax on any goods or services or both
- (e) Determination of time and value of supply of goods or services or both
- (f) Admissibility of input tax credit (ITC)
- (g) 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.



### **Benefits of Advance Ruling**

- (a) Helps in planning GST liability & impact on the business well in advance.
- (b) It brings certainty in determining the tax liability.
- (c) Helps to avoid long drawn and expensive litigation.
- (d) It is inexpensive, expeditious and binding.
- (e) It provides certainty and transparency to assessee with respect to an issue which may potentially dispute by the revenue department.

As the indirect taxes are to be collected from the recipients, in case suppliers missed collecting the tax or collected less tax, the suppliers may end up paying taxes from their own pockets (including any litigation expenses). In this background, it is advisable to file the advance ruling and future compliance can be made based on the ruling and unexpected demands can be avoided.

### **Disadvantages of Advance Ruling**

Advance Ruling would be binding on the department and the applicant. Advance ruling would be given by the members of the revenue services and hence the chance of having an un-biased judicious view is rare. The majority of the rulings are in favour of the revenue. Many times, it is ideal that long term practices are not disturbed and agitated. Once an adverse ruling in place-then one may need to appeal as one would not be competitive in the sector.

### **When advance ruling is preferable?**

Advance ruling can be preferred when there is doubt as to the applicability of the rate of tax, and the customer is eligible for ITC. It can also be used when dealing with the PSUs to pay the just taxes to the vendors.

In case of large turnover or long-term projects where the contracts are taxes extraor inclusive, it would be advisable to take the advance ruling, appeal and get the rate finalised in higher forums.

Advance ruling is also preferred by the multinational companies to have the certainty of the taxes and avoid disputes.

### **Conclusion**

Advance Rulings as on date may not have served the purpose for which they are sought as they would be reversed in some cases. The rulings till date have not inspired confidence due to the following reasons:

- a. In case of lack of clarity/ understanding / interpretation on issue- invariably passed in favour of revenue.
- b. The related provisions, rules, notification and benevolent circulars are not examined/ considered.



- c. They are NOT well researched considering the settled law in VAT, Central Excise and Service Tax where same/ similar provisions are there under GST law.
- d. Understanding of the industry / transaction LACKING and settled classification especially for goods are not CONSIDERED.
- e. Some orders merely based on circulars ( Circular is not law- it is merely the revenue view) and not on law.
- f. Some give a ruling without reasons- non speaking order or summarily dismissing the grounds put forward with a bland statement that they are not applicable.

The purpose of seems to have been partially met.

**Suggestions:** Members are to be given a high level training with focus on the jurisprudence, contract law and of course the supreme and high court cases subject wise in law. The extent to which old law principles would apply need to be understood in depth. This should be followed by an examination and only those who are successful would be eligible. There are some officers who seem to have a good expertise but the vast majority need to go through an in depth course especially in understanding services.

It is also advisable that a standard operating procedure for passing orders be put in place which covers the basic study/ research required for passing reasonable orders.

This article has been adapted from the chapter in book- A practical guide to Real Estate Industry published by Bloomsbury Publications.

For any further queries/comments please write to [madhukar@hiregnage.com](mailto:madhukar@hiregnage.com).

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