

**ADVANCE RULING PROVISIONS UNDER GST: A LODESTAR TO THE INVESTORS AND THE SAVIOUR OF THE BUSINESS FROM THE HURDLES OF LITIGATIONS?**

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**ABSTRACT**

The Indian indirect taxation regime was struggling with the complexities of numerous taxes levied by the Centre and the States which were administered by different authorities. The seventeen long years of efforts to reform the indirect taxation system which commenced in the year 2000 and culminated with the launch of GST on July 01, 2017. GST subsumed seventeen taxes and provided a common taxable event for the Centre and the States to levy tax concurrently. The drastic reform anticipated the initial confusion on the implementation of the GST Laws. Advance Ruling was one of the mechanisms provided by GST to minimise the ambiguities of the taxpayers well in advance which would save them from the later expensive and unending litigations. This article examines the concept, procedures, limitations, and effectiveness of Advance Ruling Mechanisms under GST, which was expected to act as a lodestar for taxpayers and investors.

*Keywords: Indirect Tax, Goods and Services Tax, Advance Ruling Mechanism, certainty, Business*

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## I. Introduction

THE CONCEPT of Value Added Tax (VAT) was first conceived by German businessman Dr. Wihlem Von Siemens in 1918<sup>1</sup> and by American economist T.S. Adams between 1910 and 1921.<sup>2</sup> France, in 1954, was the first country to develop this concept into legislation “*taxe sur la valeur ajoutée*”.<sup>3</sup> Inspired by the novel form of this indirect tax, almost 165 countries adopted and implemented Value Added Tax (VAT)/Goods and Services Tax (GST) successfully. Since independence, India was trying to rationalise and simplify its taxation system. In 1976, the L.K. Jha Committee recommended the adoption of ‘Value Added Tax’ in the Indian tax system.<sup>4</sup> India implemented the concept step-by-step through ‘MODVAT’ in 1986 and then ‘CENVAT’ in 2000. By 2005, the General Sales Tax of all the States in India was replaced by VAT. Even then, the indirect tax system was struggling with complexities and was hurdled by cascading effects of taxes. A rate war existed between the States as the rate of VAT was different in different States. At this juncture, former Prime Minister Atal Bihari Vajpayee mooted the idea of combining indirect taxes for the progress of the nation. The Task Force on implementation of Fiscal Responsibility and Budget Management Act, 2003 (*hereinafter*, “FRBM Act”),<sup>5</sup> headed by Vijay Kelkar which submitted its report in 2004, advocated for and designed the Goods and Services Tax.<sup>6</sup> In the budget 2006-2007, the then Finance Minister, P. Chidambaram announced that India should move towards a national-level GST, which should be shared between the Centre and the States. The Constitution 122<sup>nd</sup> Amendment Bill (2014) was enacted into The Constitution (One Hundred and First Amendment) Act, 2016, which granted the concurrent power to the Centre and the States to levy tax on the common taxable event. After overcoming the socio-economic and political hurdles of GST, the much-awaited indirect tax reform in India was implemented on July 01, 2017, through five legislations, namely, CGST, SGST, UTGST, IGST and GST (Compensation to States) Act in 2017. GST is the destination-based comprehensive tax on the supply of goods and services which is based on the value addition at each stage of the transaction and enables to claim the credit of input tax already paid in the subsequent level of

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<sup>1</sup> Kathryn James, *The Rise of the Value-Added Tax* 1 (Cambridge University Press, 2015).

<sup>2</sup> *Ibid.*

<sup>3</sup> Mahesh C. Purohit, “Adoption of Value Added Tax in India: Problems and Prospects.” 28(10) *Economic and Political Weekly* 393-404 (1993).

<sup>4</sup> Yashwant Sinha and Vinay K. Srivastava, *Indirect Tax Reform in India: 1947 To GST and Beyond* (Sage Publishing, India, 1st edn., 2020).

<sup>5</sup> Fiscal Responsibility and Budget Management Act, 2003 (Act No. 39 of 2003).

<sup>6</sup> *Supra* note 4.

transaction.<sup>7</sup> Even though the initial proposal was to prefer a single rate of tax, later it was realised that a single rate of tax is not practical in a country like India with huge economic disparities and, hence, GST was implemented with four rates, which were: 5%, 12%, 18%, and 28%.

The taxable events like manufacture, inter-state trade, providing of service, intra-state sale and purchase, entry into one jurisdiction, etc., were codified into a single taxable event of 'supply'. The indirect taxation regime completely switched to a technological-based system which is administered through a common portal, managed by the Goods and Service Tax Network (GSTN). Numerous legacy acts administered by different authorities were unified. While implementing such an extensive reform,<sup>8</sup> ambiguities may prevail. Many countries faced an increased inflation rate on implementation and other severe issues. Expecting all these, India adopted many measures in advance, to minimise the possible issues, by including provisions for Advance Ruling and Anti-profiteering mechanisms. There was a need for clarification in several areas; thus, the Government and the department had to go for certain amendments and an enormous number of notifications were issued for the smooth functioning of the GST. These numerous amendments and notifications necessitated a mechanism to clarify and to give a proper interpretation of the provisions of the GST Acts.

An advance ruling is a legal process in which the authority gives clarification to certain specified matters which helps to have certainty in determining the tax liability.<sup>9</sup> It helps an applicant in planning his business activities realising the liability of GST in advance.<sup>10</sup> The ruling given by the Authority for Advance Ruling is binding on the applicant as well as

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<sup>7</sup> KPMG, "FAQs, What is GST?", *available at*: <https://home.kpmg/in/en/home/services/tax/indirect-tax/goods-and-services-tax/gst-faqs.html> (Last Visited on Jan. 26, 2023).

<sup>8</sup> KPMG, "FAQs, Which taxes have been subsumed under GST?", *available at*: <https://home.kpmg/in/en/home/services/tax/indirect-tax/goods-and-services-tax/gst-faqs.html> (Last Visited on Jan. 26, 2023). The central taxes subsumed under CGST include: Central Excise duty, Additional Excise duties, Excise Duty levied under the Medicinal and Toiletries Preparation Act, Service Tax levied under Chapter V of the Finance Act, 1994, Additional Customs Duty, commonly known as Countervailing Duty (CVD), Special Additional Duty of Customs (SAD), Central Sales Tax, Surcharges, Central cesses. The State taxes subsumed under GST are: VAT/Sales tax, Entertainment tax (unless it is levied by the local bodies), Luxury tax, Taxes on lotteries, betting and gambling, State cess and surcharges in so far as they relate to supply of goods and services, Entry tax, Octroi/Local body tax.

<sup>9</sup> Keval Shah, "Authority for advance rulings - A critical analysis", *available at*: <https://www.avalara.com/in/en/blog/2019/11/authority-for-advance-rulings-a-critical-analysis.html> (Last Visited on Jan. 26, 2023).

<sup>10</sup> *Ibid.*

Government authorities.<sup>11</sup> An advance ruling is really a boon to the assesseees as it provides clarifications regarding their doubts, well in advance. This enables taxpayers to calculate their tax liability beforehand. This type of provision can attract foreign investors, as it provides a safe and friendly place for investments.

## II. Origin and Development of the Concept of Advance Ruling

The government is duty-bound to ensure certainty and transparency in tax laws, reduce uncertainty, and enhance taxpayers' confidence in the taxation system. The consequence of ambiguity and uncertainty in the taxing provisions is that the assessee will have to pay penalties and interest which will augment the business expenditure. Setbacks in the market will have a deleterious impact on the economic growth of the country. As clarity and certainty are important features of taxation provisions for the proper economic growth of a country, there should be some mechanisms to remove the ambiguities as and when they arise.

The Authority for Advance Ruling (AAR) is a quasi-judicial body which protects taxpayers from being involved in disputes and thus facing the associated difficulties such as inordinate delay, high expense, and procedural complexities of litigation by giving clarifications and necessary advice in advance. It gives certainty of their own tax liability well in advance which enables them to plan their transactions conveniently. This is also an ideal provision that a country should possess to give a safe position to its investors. This section deals with the evolution of the concept of Advance Ruling Authority.

### **Concept of Advance Rulings under Revised Kyoto Convention of WCO and Under WTO Agreement on Trade Facilitation<sup>12</sup>**

The concept of Advance Rulings was mentioned under "Standard 9.9 of the Revised Kyoto Convention, the International Convention on the Simplification and Harmonization of Customs procedures which was adopted in June 1999 and is considered the blueprint for modern and efficient Customs procedures in the 21st century."<sup>13</sup> It states that, "The Customs

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<sup>11</sup> *Ibid.*

<sup>12</sup> Ramachandran. G, Murali Rao R.J, Pandiaraj. N, "Detailed Study Report On Authority For Advance Rulings", available at: <https://nacin.gov.in/resources/file/downloads/53ca42eee84e2.pdf> (Last Visited on Jan. 26, 2023).

<sup>13</sup> Bharti Aggarwal and Kajal Juneja, "Advance Ruling", available at: [https://icmai.in/TaxationPortal/upload/IDT/Article\\_GST/59.pdf](https://icmai.in/TaxationPortal/upload/IDT/Article_GST/59.pdf) (Last Visited on Jan. 26, 2023).

shall issue binding rulings at the request of the interested person, provided that the customs have all the information they deem necessary”.<sup>14</sup>

Incorporation of the mechanism of Advance Ruling in their taxing statutes was made obligatory for the member countries by the WTO Agreement on Trade Facilitation signed on December 06, 2013, at Bali, Indonesia,<sup>15</sup> under article 3<sup>16</sup> of the said agreement which gave the details of the functioning of the mechanism for clarifying the doubts relating to the taxing statutes. The surveys conducted by the Organisation for Economic Cooperation and Development (OECD), regarding the provisions provided by the countries for supporting foreign investment, recommended that it is mandatory for all member countries to adopt such a system of advance ruling.

The advance ruling was first adopted in India in the Income Tax Act of 1961.<sup>17</sup> The Direct Taxes Enquiry Committee under the chairmanship of Dr K.N. Wanchoo, (popularly known as the Wanchoo Committee) was appointed to research the problems of direct taxes by giving preference to the problems of tax evasion and black money, and to give necessary suggestions for reformation of the direct tax system. The committee recognised and recommended the necessity for including an Advance Ruling System in 1971.<sup>18</sup> The committee reported that such a mechanism will significantly reduce the burden of the department caused by the accumulation of cases and decrease the instances of disputes and controversies.<sup>19</sup> Choksi Committee, 1977, was appointed for providing suggestions regarding legal and administrative measures for the rationalisation of direct tax laws, and was also in favour of establishing an authority for the advance ruling to ensure certainty to the taxpayers. Raja Chelliah Committee, whose aim was to make an in-depth study regarding direct and indirect taxes and to adopt extensive measures for rationalisation and simplification, which aimed at augmenting the economic growth of the country, also advocated for the establishment of advance ruling mechanism. The adoption of a new economic policy in 1991

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Supra* note 12.

<sup>16</sup> World Trade Organisation, Ministerial Conference: Ninth Session, Bali, 3-6 December 2013 WT/MIN(13)/36, WT/L/911, Agreement on Trade Facilitation, art. 3, *available at*: [https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/desci36\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc9_e/desci36_e.htm) (Last Visited on Jan. 26, 2023).

<sup>17</sup> The Income Tax Act, 1961 (Act No. 43 of 1961).

<sup>18</sup> Deloitte, “Authority for advance rulings in indirect taxes”, *available at*: <https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-advance-rulings-authority-indirect-taxes-noexp.pdf> (Last Visited on Jan. 26, 2023).

<sup>19</sup> *Ibid.*

further necessitated the advance ruling and thus, the then finance minister Dr. Manmohan Singh announced, in the annual fiscal budget of 1992-93, the establishment of the advance ruling mechanism in income tax. Accordingly, the advance ruling was triggered by the Finance Act, 1994,<sup>20</sup> and was included in Chapter XIX-B (sections 245N to 245V)<sup>21</sup> of the Income-Tax Act, 1961.<sup>22</sup> It came into force with effect from June 01, 1993.<sup>23</sup>

Regarding indirect taxes, it was incorporated in Customs Act, 1962,<sup>24</sup> and Central Excise Act, 1944.<sup>25</sup> In Customs Act, 1962, provisions of advance ruling were included under section 28E to section 28M of Chapter V-B. In Central Excise Act, 1944,<sup>26</sup> the provisions dealing with AAR were included under section 23A to section 23H of Chapter III-A. When the Service Tax was enacted in 1994,<sup>27</sup> the mechanism of Advance Rulings was also included.<sup>28</sup> AAR provisions were prescribed under section 96A to section 96I, in Chapter V-A of the Finance Act, 1994.<sup>29</sup> While conceptualising the extensive indirect tax reform, the GST and the advance ruling mechanisms were adopted from the legacy acts, and incorporated under Chapter XVII of CGST and SGST.

Advance ruling mechanism, by providing the clarifications in advance and removing the ambiguities, provides for a smooth and disciplined economic growth of the country. In India, the Fiscal Responsibility and Budget Management Act (FRBM),<sup>30</sup> introduced in 2003, also provides a legal sanction and background for financial discipline and development.

### III. Advance Ruling under GST

An efficient economic system entails the smooth functioning of the tax system. GST, which was enacted after repealing a series of laws, requires clarifications in certain areas which

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<sup>20</sup> The Finance Act, 1994 (Act No. 34 of 1994).

<sup>21</sup> Tarun Kumar Madaan, "Concept of Advance Ruling under Income Tax Act' 1961", *available at*: <https://taxguru.in/income-tax/concept-of-advance-ruling-under-income-tax-act-1961.html> (Last Visited on Jan. 26, 2023). Chapter XIX-B, consisting of sections 245N to 245V, provides a scheme for giving advance rulings in respect of transactions involving non-residents and specified residents, with a view to avoid needless litigations and promoting better tax-payer relations.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> The Customs Act, 1962 (Act No. 52 of 1962).

<sup>25</sup> The Central Excise Act, 1944 (Act No. 1 of 1944).

<sup>26</sup> *Ibid.*

<sup>27</sup> Service Tax Act, 1994, *available at*: [https://wb.gov.in/acts/act\\_service\\_tax\\_service\\_tax.pdf](https://wb.gov.in/acts/act_service_tax_service_tax.pdf) (Last Visited on Jan. 26, 2023).

<sup>28</sup> *Supra* note 12.

<sup>29</sup> *Supra* note 12.

<sup>30</sup> *Supra* note 5.

cannot be foreseen. This may give rise to disputes between the tax administration and the taxpayers.<sup>31</sup> To settle the disputes and to provide clarifications in advance and thereby help the taxpayers and investors from struggling with the hurdles of litigations, GST created the Advance Ruling Authority (AAR)<sup>32</sup> and its Appellate Authority (AAAR)<sup>33</sup> described under Chapter XVII vide sections 95 to 106 of the Central GST Act, 2017. This enables the taxpayer to have clarity about the tax obligations beforehand so that they can design the strategy of their transactions accordingly.

### **Objectives of Advance Ruling**

The broad objectives set out by the Central Board of Direct Taxes for including the mechanism of Advance Ruling are:

- i. To provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;<sup>34</sup>
- ii. Attract Foreign Direct Investment (FDI);<sup>35</sup>
- iii. Minimise litigation; and
- iv. To procure expeditious ruling in a transparent and inexpensive manner.

An advance ruling under GST is the decision given by the AAR or the AAAR to an applicant on specific matters or questions mentioned under section 97(2) or section 100(1),<sup>36</sup> in relation to the supply of goods or services or both.<sup>37</sup> The areas on which the AAR can issue orders are as follows:<sup>38</sup>

- 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 services or both;
- d) Admissibility of the 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;

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<sup>31</sup> Shatakshi Sharma, "Advance Ruling System in India: A Review", *available at*: <https://www.lawctopus.com/academike/advance-ruling-system-india-review/> (Last Visited on Jan. 26, 2023).

<sup>32</sup> The Central Goods and Services Tax Act, 2017 (Act No. 12 of 2017), s. 96.

<sup>33</sup> *Id.*, s. 99.

<sup>34</sup> National Academy of Customs, Indirect Taxes & Narcotics, "GST (GOODS AND SERVICES TAX) Advance Ruling Mechanism in GST", *available at*: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/advnc-rulin-mechanism-gst-20Jul.pdf> (Last Visited on Jan. 26, 2023).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Supra* note 32, s. 100.

<sup>37</sup> *Supra* note 32, s. 95 (a).

<sup>38</sup> *Supra* note 32, s. 97(2).

- f) Whether the applicant is required to be registered;
- 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.<sup>39</sup>

### **Constitution of Advance Ruling Authorities**

The Authority for advance ruling is constituted<sup>40</sup> for each State under the provisions of a State Goods and Services Tax Act<sup>41</sup> or Union Territory Goods and Services Tax Act.<sup>42</sup> The Appellate Authority for Advance Ruling is also constituted for each State and Union Territories.<sup>43</sup> The advance ruling authority shall consist of one member from amongst the officers of Central tax and one member from amongst the officers of State Tax/Union Territory.<sup>44</sup> The qualification prescribed for the member of the Authority for Advance Ruling is an officer not below the rank of Joint Commissioner.<sup>45</sup> The Appellate Authority is represented by the Chief Commissioner of Central Tax as designated by the Board and the Commissioner of State Tax.<sup>46</sup> The members will be appointed by the Central Government and the State Government respectively.

### **IV. Functioning of Advance Ruling Authorities**

A registered taxable person or a person desirous of obtaining registration can file an application to the AAR regarding the specified matters such as the classification of goods and services, the applicability of notification, the requirement of registration, determination of time and value of supply, admissibility of ITC, determination of the liability to pay tax, whether some transaction is resulting in the supply of goods or services,<sup>47</sup> on the common portal in 'FORM GST ARA-01' along with a fee of five thousand rupees.<sup>48</sup> The authority shall issue a notice to the concerned officer and shall call for the necessary records from him and examine it. The authority will admit or reject the application after providing an opportunity of hearing to the applicant or his authorised representative and to the concerned

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<sup>39</sup> *Ibid.*

<sup>40</sup> *Supra* note 32.

<sup>41</sup> *Supra* note 32, ch. XVII, ss. 95 to 106.

<sup>42</sup> Integrated GST Act, 2017 (Act No. 13 of 2017), s. 20.

<sup>43</sup> *Supra* note 32, s. 99.

<sup>44</sup> *Supra* note 34.

<sup>45</sup> The Central Goods and Services Rules, 2017, r. 103.

<sup>46</sup> *Supra* note 34.

<sup>47</sup> *Supra* note 34.

<sup>48</sup> The Central Goods and Services Rules, 2017, Rule 104.

officer or his authorised representative.<sup>49</sup> Admission will not be granted in cases where the issues raised in the application are pending or were previously decided in any proceeding in the case of an applicant under any of the provisions of this Act.<sup>50</sup> This measure is to avoid multiplicity of cases. If the application is admitted, the authority will further examine the material placed before it by the applicant and the concerned officer, and pronounce its advance ruling<sup>51</sup> within ninety days, on the question specified in the application. If the members of the authority differ on any point, then the matter will be referred to the AAAR.<sup>52</sup> The copy of the ruling will be provided to both the applicant and the concerned officer.

### Appeal

The aggrieved party, the applicant<sup>53</sup> or the concerned officer<sup>54</sup> may file an appeal to the appellate authority within 30 days. The Appellate Authority may pass an order confirming or modifying the ruling after following the natural justice principle, within ninety days of filing the appeal. If there is a difference of opinion between the members of the Appellate Authority on any point, then it is deemed that no advance ruling can be issued.<sup>55</sup> If any mistake is observed by the authority on its own accord or is brought to its notice by the applicant or the prescribed or the jurisdictional CGST/SGST officer, then AAR and AAAR will have the power to rectify the mistake apparent from the record within a period of six months from the date of the order.<sup>56</sup> At any time, when the AAR or AAAR realises that an advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, such ruling will be declared to be *void ab-initio* by that authority.<sup>57</sup>

The Advance Ruling Authority and Appellate Authority enjoys all the powers of a civil court under the Code of Civil Procedure, 1908,<sup>58</sup> and they also have the discretion to regulate their own procedures. Both the authorities are deemed to be a civil court for the purposes of

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<sup>49</sup> *Supra* note 32, s. 98 (1), (2).

<sup>50</sup> *Supra* note 31.

<sup>51</sup> *Supra* note 32, s. 98 (4).

<sup>52</sup> *Supra* note 32, s. 98 (5).

<sup>53</sup> The applicant may file the appeal on common portal in FORM GST ARA-02 along with a fee of Rs 10,000.

<sup>54</sup> The concerned officer may file the appeal on the common portal in FORM GST ARA-03. No fee for the officer.

<sup>55</sup> *Supra* note 32, s. 101 (3).

<sup>56</sup> *Supra* note 31.

<sup>57</sup> *Supra* note 32, s. 104.

<sup>58</sup> The Civil Procedure Code, 1908 (Act No. 5 of 1908).

section 195<sup>59</sup> of the Code of Criminal Procedure, 1973. The proceedings of the Advance Ruling Authority shall be deemed to be judicial proceedings under sections 193<sup>60</sup> and 228<sup>61</sup> and for the purpose of section 196<sup>62</sup> of the Indian Penal Code, 1860.<sup>63</sup> The advance ruling issued by the AAR or the AAAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant.<sup>64</sup> The advance ruling shall remain in force until the facts or circumstances of the original advance ruling is altered.<sup>65</sup> Considering the convenience of the assesseees, the 23<sup>rd</sup> GST Council meeting initiated the facility for manual-filing of the application for advance ruling.<sup>66</sup>

In *M/S Saisanket Enterprise Through Proprietor Milind Murudkar 21 Electronics Complex Ground Floor Pardesipura, Indore (Madhya Pradesh) v. The Commissioner Commercial Tax Moti Bunglow Mahatma Gandhi Marg, Indore (Madhya Pradesh)*, decided on June 14, 2022, the High Court of Madhya Pradesh held that an assessee cannot approach the advance ruling authority after receiving the notice from the department.<sup>67</sup>

## V. Advantages of Advance Ruling

Advance ruling mechanisms aid the businessmen to analyse the impact of the GST liability of their concern in advance and this further enables them to plan their business so as to ensure its smooth functioning. It removes ambiguities and confusions, and provides certainty to matters with regard to those matters listed under section 97(2) of the CGST Act, 2017. As the GST is following the four-rate structure of 5%, 12%, 18% and 28%, a slight variation in the description of goods and services will attract heavy GST rates. For example, the rate of burfi is 5%, the rate of nuts is 12 %, the rate of chocolate is 28%.<sup>68</sup> So, the rate of chocolate burfi and burfi nourished with nuts attracts higher rates. Here, the advance ruling authority ruled that the burfi nourished with nuts and chocolates also attracts 5% GST. The Advance Ruling

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<sup>59</sup> The Code of Criminal Procedure, 1973 (Act No. 2 of 1974), s. 195.

<sup>60</sup> The Indian Penal Code, 1860 (Act No. 45 of 1860), s.193.

<sup>61</sup> *Id.*, s. 228.

<sup>62</sup> *Id.*, s. 196

<sup>63</sup> *Supra* note 32, s. 105 (2).

<sup>64</sup> *Supra* note 32, s. 103 (1).

<sup>65</sup> *Supra* note 32, s. 103 (2).

<sup>66</sup> Gaurav Agarwal, "An insight analysis of 23rd GST Council Meeting", 87 taxmann.com 145 (Article) (2017), available at: <https://www.taxmann.com/research> (Last Visited on Jan. 26, 2023).

<sup>67</sup> Writ Petition No. 8363 of 2022, available at: [https://www.livelaw.in/pdf\\_upload/madhya-pradesh-hc-423047.pdf](https://www.livelaw.in/pdf_upload/madhya-pradesh-hc-423047.pdf) (Last Visited on Jan. 26, 2023).

<sup>68</sup> Rachel Chitra, "Sweet makers find GST a tough nut to crack" *The Times of India*, Jul. 26, 2017, available at: [http://timesofindia.indiatimes.com/articleshow/59764088.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/59764088.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (Last Visited on Jan. 26, 2023).

Authority provides answer for these types of confusions which protects the businessmen from attracting a higher liability in the future. After imposing the higher rate, if the assessee is going for litigation, it will be time consuming and expensive. By providing clarity in advance, the advance ruling provisions protect the assessee from long and arduous litigations. This provision offers transparency to the GST system and reduces the litigations as well. In *Deepak & Co., In re.*,<sup>69</sup> the AAR ordered that the supply of food and beverages in trains is to be considered as supply of 'Goods'. The facts of the case were that the assessee was conducting the business of supply of food and beverages to the travellers in trains according to the items prescribed and tariff approved by the Indian Railways. The tax liability of supply of any food or beverage consumed on or away from the premises is 5%. The assessee filed an application for advance ruling for getting certainty about the tax obligation.<sup>70</sup> Since train is a mode of transport, the Authority for Advance Ruling held that it cannot be considered as a restaurant, eating joint, mess or canteen, etc., and hence the supply of goods, i.e., food, bottled water, etc., in the train should be charged to GST on the value of the individual items at the applicable rates as there is no element of service in it.<sup>71</sup>

In *Synthite Industries Ltd., In re.*,<sup>72</sup> the AAR ordered that goods procured from one country and supplied to another does not attract IGST. The facts of the case were as follows:<sup>73</sup>

The assessee received an order from a customer in the USA for the supply of spices. It placed a corresponding order with a Chinese supplier, who shipped the goods directly to the customer in the USA. The Chinese supplier raised an invoice on the assessee and assessee raised the invoice on the customer in the USA. The assessee filed an application for advance ruling to determine if GST is leviable on sale of goods to the USA Company, when such goods would be shipped directly from China to the USA without entering India. The Authority for Advance Ruling (AAR) held that the goods are liable to GST when imported into India. As goods are not imported into India at any point of time, the assessee is not liable to pay IGST on the sale of goods procured from China and supplied to USA.

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<sup>69</sup> [2018] 93 taxmann.com 94 (AAR - New Delhi), available at: <https://www.taxmann.com/research> (Last Visited on Jan. 26, 2023).

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> [2018] 92 taxmann.com 144 (AAR), available at: <https://www.taxmann.com/research> (Last Visited on Jan. 26, 2023).

<sup>73</sup> *Ibid.*

In *M/S Bharat Petroleum Corporation Limited*,<sup>74</sup> the applicant had been conducting an oil refinery which required industrial gases such as hydrogen, nitrogen, and steam which are obtained from the processing of Re Gasified Liquefied Natural Gas (RLNG), De mineralised water (DM water), Hydrogen rich-off gas and raw materials.<sup>75</sup> The processing of input was entrusted with *M/s Prodiar Air Products Pvt Ltd.* to whom the input was transmitted through pipe line and after processing, they were to return the products in the same manner. The points which had to be clarified were whether the raw materials can be sent by the applicant without payment of GST under the “job work” provisions in terms of section 143<sup>76</sup> of GST and whether the processed products can be brought back without the payment of GST under section 143 of GST.<sup>77</sup> The Kerala Authority for advance ruling ruled that even though it involves manufacturing, the transport of the inputs from the principal for processing through pipe line to the premises of the job worker as well as return of the processed goods after job work to the principal amounts to “job work” as defined under section 2(68)<sup>78</sup> read with section 143 of CGST/KGST Acts, and it does not attract the payment of GST.

## VI. Critical Analysis of Advance Ruling

Advance tax ruling which provides a written interpretation of tax laws which is issued by tax authorities to corporations and individuals who applies for clarification of certain tax matters has indeed provided certainty in tax matters and reduced litigations.<sup>79</sup> However, there are certain areas which requires a revisit to prevent this most beneficial system being rendered futile and otiose in such scenarios.<sup>80</sup> The serious issue is that since there is an AAR for each State and Union Territory, contradictory orders have been passed by AARs in different States, which may defeat the entire purpose of the authority by increasing the confusions rather than reducing it. An instance of contradictory rulings by the AARs of different States is the availability of ITC for demo cars used for the promotion of business. The Advance Ruling Authority of Goa decided in favour of the applicant in *In re M/s. Chowgule Industries Private*

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<sup>74</sup> No. KER/21/2018, dated Oct. 20, 2018.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Supra* note 32, s. 143.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Supra* note 32, s. 2 (68).

<sup>79</sup> Cleartax, “Advance Ruling under GST”, available at: <https://cleartax.in/s/advance-ruling-gst> (Last Visited on Jan. 26, 2023).

<sup>80</sup> Sandeep Huilgol, “Is there a need for the AAR under the CGST Act to be bound to dispose off *ex parte* applications on merits?”, 110 taxmann.com 393 (Article) (2019), available at: <https://www.taxmann.com/research> (Last Visited on Jan. 26, 2023).

Limited<sup>81</sup> and allowed the ITC. The Advance Ruling Authorities of Kerala and Maharashtra also decided on the same line. But the Advance Ruling Authority of Madhya Pradesh in *In re Khatwani Sales And Services LLP (GST AAR Madhya Pradesh)*<sup>82</sup> decided that the claim for ITC for the demo cars is rejected as per section 17(5)(a) of the CGST Act, 2017.<sup>83</sup>

Another instance is the decision by the Karnataka Appellate Authority of Advance Ruling (AAAR). In *M/s Giriraj Renewables Private Ltd.*,<sup>84</sup> the matter raised was regarding the contract entered by the appellant with different developers for setting up of solar photo voltaic plants. The issue was whether it can be considered as a composite supply or a works contract. The Karnataka AAAR ordered that it is a work contract taxable at 5%. In *re Fermi Solar Farms Private Ltd. (Authority for Advance Ruling)*,<sup>85</sup> the Maharashtra Appellate Authority of Advance Ruling issued an order to the effect that this is liable to be taxed as a supply of goods and services at the rate of 18%. Here, the person having a contract with different States has to pay a different rate of GST in the different States for similar transactions.

The media reports that the government is thinking of restructuring the authority either by a centralised AAR or four regional authorities but till now, no official declaration has been issued.<sup>86</sup>

The Constitution of AAR and AAAR is challenged on the ground that it is violating the principles of judicial independence and separation of powers. The matter is pending before the Calcutta High court.<sup>87</sup> CA Rajendra Kumar Duggar challenged the constitution of the Authority of Advance Ruling and Appellate Authority for Advance Ruling under the CGST/SCGST Act as being “*Coram non-Judice*” because of total absence of a judicial

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<sup>81</sup> Advance Ruling No. GOA/GAAR/07of 2018-19/4796, judgement dated Mar. 26, 2019.

<sup>82</sup> Advance Ruling Order No. 13/2020, dated Jul. 23, 2020.

<sup>83</sup> Tax Guru, “Eligibility for inputs tax credit on Demo Vehicles”, Jul. 23, 2020, *available at*: <https://taxguru.in/goods-and-service-tax/eligibility-inputs-tax-credit-demo-vehicles.html> (Last Visited on Jan. 26, 2023).

<sup>84</sup> Appeal Number: Order No. KAR/AAAR/02/2018-19, dated Sep. 05, 2018.

<sup>85</sup> Appeal Number: No. GST- ARA-03/2017/B-07, dated Mar. 03, 2018.

<sup>86</sup> Harsha Jethmalani, “GST: Setting up a centralized advance ruling authority—the sooner the better”, *Live Mint*, *available at*: <https://www.livemint.com/Money/TLvqLWeKe33ZLhp7VvahVJ/GST-Setting-up-a-centralized-advance-ruling-authoritythe-s.html> (Last Visited on Jan. 26, 2023).

<sup>87</sup> *Rajendra Kumar Duggar v. Union of India*, WPA 2186 of 2020.

member.<sup>88</sup> He further contended that the constitution of the authorities is arbitrary and violative of articles 14 and 50<sup>89</sup> of the Constitution of India. But being a highly complicated area, it is not possible to avoid the member from the department, thus the only remedy that remains is to include a judicial member.

The reports states that majority of the AAR rulings are decided in favour of revenue.<sup>90</sup> Often, the rulings do not seem to be based on adequate analysis and a mature consideration of the issues involved.<sup>91</sup> The above discussed advance rulings show that the advance ruling authorities disrupt the settled positions in certain instances. The Authorities must refrain from such practices and should be careful not to distort the settled positions and should also refrain from creating more confusion.

### **Limitations**

Even though these provisions were welcomed by the industry with much admiration and expectation, it has its own limitations. The main limitation is that the ruling is binding only to the applicant and the concerned officer or jurisdictional officer. So, the rulings of AAR or AAAR of one State are not binding on the AAR of other States. Hence, there are instances of giving contradictory rulings by different States on the same point which leads to greater confusion in the industry.

Regarding the constitution of the advance ruling mechanism under the Income Tax Act and the erstwhile indirect taxes authority consisted of judicial members, which enables the authority to give a reasoned judgement based on legal provisions and natural justice. But the authority under GST does not possess a judicial member which lowers the confidence of the public. While considering a case, if there is a difference of opinion amongst the members of AAAR, no order can be awarded. Further, there are no provisions for appeal from the ruling of AAAR. These points destroy the value of the system. The situation worsened when the Bombay High Court ordered, in the case of *JSW Energy Limited*,<sup>92</sup> that appeal cannot be preferred against an order of the Appellate Authority of Advance Rulings on “merits” because the appeal provisions are not yet included under GST. Even though the

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<sup>88</sup> Taxscan Team, “Calcutta HC issues notice to Govt. in PIL challenging constitution of AAR & AAAR under GST”, *Taxscan*, available at: <https://www.taxscan.in/calcutta-hc-issues-notice-to-govt-in-pil-challenging-constitution-of-aar-aaar-under-gst/85830/> (Last Visited on Jan. 26, 2023).

<sup>89</sup> The Constitution of India, art. 50.

<sup>90</sup> *Supra* note 9.

<sup>91</sup> *Supra* note 12.

<sup>92</sup> *Supra* note 9.

announcement of the creation of National Appellate Authority for Advance Ruling was made through the Finance Act, 2019, by suitable insertions of new sections and amendments in Chapter XVII<sup>93</sup> of the CGST Act, it has not yet been implemented.<sup>94</sup> Another deficit of the system is that the awareness regarding the advantages of advance ruling among the assesseees and the common man is very limited.<sup>95</sup> Hence, it is rarely adopted by the taxpayers.

## VII. Conclusion and Suggestions

### Suggestions

The following suggestions and recommendations may be incorporated for improving the system: (a) For the effective functioning of the advance ruling mechanism, AAR of the different States should function in coordination. Like the common portal of GST, there should be an arrangement to view all the cases from all the states and the similar items should be identified and brought to the notice of the AAR of those states. AAR of these states may discuss and provide a unanimous decision. This will prevent the instances of issuing different rulings by different AARs in similar matters;

(b) While deciding a case, if a difference of opinion occurs between the members of AAAR, it is deemed that no ruling can be provided which is an absurd policy. This defect must be rectified either by increasing the number of members which enables a majority decision or by referring the matter to the national appellate tribunal on occasion of such an instance;

(c) Appeal provisions are essential to build confidence in the mind of the public that justice will be accorded to them by the hierarchy of authorities. Hence, appeal provisions must be incorporated for the AAAR for the aggrieved parties;

(d) Provisions for restoration of the case which is ordered *ex-parte* is not included in the Act. Such measures should be included to make the scheme laudable and commendable;

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<sup>93</sup> The Finance (No. 2) Act, 2019 (Act No. 23 of 2019), s. 105, available at: <http://www.indianlegislation.in/BA/BaActToc.aspx?actid=35728> (Last Visited on Jan. 26, 2023).

<sup>94</sup> R Sridhar, "National Appellate Authority for Advance Ruling- Status, way forward and fallout of orders" *Taxindiaonline.com*, available at: [https://taxindiaonline.com/RC2/inside2.php3?filename=bnews\\_detail.php3&newsid=38248](https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=38248) (Last Visited on Jan. 26, 2023).

<sup>95</sup> In a survey conducted by the author of 82 persons from six States in India regarding the GST, one of the questions put forward was "Is Advance Ruling Authority assisting the business?" to which 53.7% answered positively and the rest 46.3% said this provision is not helping the business.

(e) Before GST, the AAR had the status of a major independent body consisting of a chairman, a revenue member, and a law member,<sup>96</sup> senior officers from the Indian Revenue Services (IRS) and the law ministry, which was capable of creating confidence among the taxpayers about the independence and objectivity of the decisions given by the authority.<sup>97</sup> The efficiency of AAR under GST can be ensured by adopting a system which has a similar constitution;

(f) Measures should be adopted to create awareness among the masses about the benefits of advance rulings. Then only the public can explore and utilise the beneficial arrangement provided by the GST Act. The expenses and the time for securing an advance ruling should be reasonable and affordable.

### **Concluding Remarks**

Finally, it is noteworthy to observe that five and half years journey of indirect tax regime has witnessed numerous advance rulings with respect to GST provisions. Several contradictory decisions were given by the AAARs of different states on the same point. Presently, the provisions for a Centralised Appellate Authority are not included for Advance Ruling under GST. The 31st GST Council meeting has recommended the formation of a Centralised AAAR to avoid contradictory decisions.<sup>98</sup> Certainty and predictability<sup>99</sup> in taxation are two vital elements for creating a climate beneficial for the fiscal growth of a country.<sup>100</sup> The Advance Ruling scheme, which is intended to provide certainty and clarity to prospective domestic and foreign investors, is a blessing to the industry. So, for the more acceptable functioning of the AAR and AAAR, the existing minor defects have to be removed. This most desirable shock-absorbing system, which protects the industry as well as individuals from confusion and prolonged litigations, must be maintained for the robust economic growth of the country. If maintained with its finest qualities, it can certainly be a boon to investors and businesses.

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<sup>96</sup> *Supra* note 12.

<sup>97</sup> *Supra* note 12.

<sup>98</sup> Taxmann, “25 Best GST Cases in year 2018”, 101 taxmann.com 207 (Article) (2019), available at: <https://www.taxmann.com/research> (Last Visited on Jan. 26, 2023).

<sup>99</sup> *Supra* note 12.

<sup>100</sup> *Supra* note 12.