

Advance Ruling Mechanism Under GST - Did it Deliver the Promised Land?

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Advance ruling is globally recognised as a measure for facilitating ease of business through certainty of taxation. In India, this was encapsulated both under income tax and indirect tax laws. On transition to GST regime, a comprehensive advance ruling mechanism was introduced for businesses with the stated objective of certainty of taxation leading to increase in foreign direct investment, reduction of litigation and expeditious rulings. This was also aligned with the larger vision of one nation one tax. This intent is also reflected in the CBIC Flyer on Advance Ruling mechanism in GST, which states that the *'law makes a comprehensive provision for advance rulings to ensure that disputes are minimal. The aim is to provide certainty to the taxpayer with respect to obligations under the GST Act and an expeditious ruling so that the relationship between tax payer and administration is smooth and transparent and helps to avoid unnecessary litigation.'*

However, the past years have witnessed a widening chasm between the expectations from the advance ruling system and its reality. A closer look indicates that the gap is on account on systemic and conceptual anomalies necessitating an overhaul.

Governing provisions for advance rulings specify that the authority for advance ruling and related appellate authority is to be state specific and comprise only of members from the Central and State administration. It is only at the stage of centralised appellate level that the composition of authority would expand to include a judicial member. This requires a revisit as the administrative authorities have a natural pro-revenue disposition. On this aspect, the composition of advance ruling authority has been challenged before the appropriate courts and final word on this is yet to emerge. Rulings with a wider impact such as denial of input tax credit on common services not routed through ISD, GST on cross charge of employee cost between distinct person, determination of place of supply vis-à-vis exports etc. are a case in point. Further, rejection of application on grounds of maintainability e.g. advance ruling sought in other States by the applicant, matter pending before the higher appellate courts with respect to different party, investigation commencing after filing of advance ruling application are additional examples which reflect the gap in application of law. Flexibility of the applicant to obtain advance ruling in different States, or the difference between existing proceedings and mere initiation of inquiry against a taxpayer, or whether an applicant is excluded from seeking advance ruling in case the matter is pending solely in the case of the applicant or any other party are finer aspects which have been missed in these rejection orders and are reflective of the gap that would've been filled had a judicial member been included in the composition of advance ruling authority.

Moreover, constitution of National Appellate Authority for Advance Ruling is a much awaited ask as there are diverse rulings issued by States on the same set of issues. While the centralized appellate authority (as and when constituted) should provide much awaited relief; however, the scope and ambit of such appeals will be limited only to cases where conflicting advance rulings has been given by two or more States. Therefore, while the centralized appellate authority should mitigate the issue of conflicting rulings to a large extent, dismissal of application by the advance ruling authority on grounds of maintainability and the quality of rulings vis-à-vis consistency with settled principles, comprehensive technical application may still leave room for further litigation. Given that GST Appellate Tribunals are yet to be constituted, it would have to be seen whether the GST Council would recommend a common appellate

forum instead of having separate centralized appellate forum for advance rulings.

Notably, an advance ruling can be sought solely with respect to classification, applicability of a notification, time and value of supply, admissibility of input tax credit, determination of liability to pay tax, requirement to obtain GST registration, or whether any activity would qualify as supply within the meaning of GST laws. However, diverse approach being adopted by state level authority with respect to these questions are further distancing the taxpayer from achieving certainty of tax position with respect to its pan India business operations. Another hurdle in the acceptability of this route as a broader dispute mitigating route stems from the lack of clarity particularly with respect to the coverage of 'liability to pay tax' in the context of place of supply. While some authorities have rejected applications on the ground that questions regarding place of supply are not admissible; some have proceeded to issue rulings. This has led to writ remedy being availed by taxpayers for seeking desired relief. There are additional examples of diverse rulings vis-à-vis classification and consequent tax rates.

Separately, while the past years have shown a high number of rulings been issued by the authorities, systemic lacunae have led to a departure from the stated objective of advance ruling mechanism and consequent rise in litigation. It has also resulted in taxpayers bearing the brunt of divergent tax treatment with respect to business operations across States. This showcases the need for correction of identified anomalies to assuage the concerns of taxpayers and revive the flagging interest in the advance ruling mechanism.