

AAR Changing the Landscape of Transactional Taxation

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An advance ruling helps an applicant to bring certainty in determining the tax liability reducing the tax risk on companies, as the ruling is binding on the applicant as well as tax authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. A little over 1000 days have passed since the introduction of the GST regime in India in July 2017. In this short duration of time, more than 1160 application of Advance rulings received from which more than 780 Advance rulings passed and more than 170 application of Appellate Authority of Advance rulings have been received from which 113 have been issued on a wide range of matters under GST, with most of them being passed against the applicants. Few of these rulings pertain to the export industry. In this article, we would discuss some of the important rulings in detail which are passed in relation to the export industry.

In the case of **BASF India Ltd. [TS-275-AAR-2018-NT]** the applicant raised an issue on chargeability of GST on sale of goods in High seas. Appreciating the jurisdiction of Indian tax authorities, AAR ruled that No GST would be applicable on Goods till the time of customs clearance. However, AAR also ruled that input tax credit will have to be reversed to the extent of inputs, input services, and common input services as per the GST rules. This ruling did not go down well with tax-payers as the reversal of input tax was an additional cost to the taxpayers. In February 2019 Government bowed down to the demands of industry and amended the GST to provide that reversal of input tax credit would not be required in case of High sea sales. This comes as a great relief to the exporters as the sale of goods on high seas will not entail any reversal of input tax credit, however, it has been seen that many companies are still following the Advance ruling causing a high tax cost for the companies.

In yet another case applicant sought advance ruling on the question as to whether activities of the applicant will be treated as 'export of services' or not? In the case of **Esprit India (P) Ltd. [TS-318-AAR-2018-NT]**, **Take off Academy [TS-526-AAR-2018-NT]** and **Lambda Therapeutic Research Ltd. [TS-530-AAR-2018-NT]** tax officers rejected the application on the ground that this question is intrinsically related to the determination of place of supply of service, and is beyond the jurisdiction of the Advance Ruling Authority. Whereas in cases like **Global Reach Education Services (P) Ltd [TS-123-AAR-2018-NT]**, West Bengal Authority accepted the application and gave an opinion on merits. This application also reached the Appellate stage where again it was decided on merits. Divergent views on this issue lead's to confusion among the exporters, as regards whether a particular transaction would be answered by authority or not? Exporters have to wait 90 days before they know whether the authority would answer their export-related application or abstain from answering on some technical grounds.

Asahi Kaesi India [TS-855-AAR-2018-NT] sought an advance ruling whether services provided by them to Asahi Japan another overseas group will be considered as export of services or not?. The applicant had entered into two agreements with the recipient, one is "Services agreement" and the second one as "Marketing services agreement". Services provided by the applicant include research on corporate accounting, finance, personnel and labour relations, research and development etc. The relationship between the parties is that of independent contractors, implying that the parties never created the relationship of principal and agent. The authority observed that service is provided by an applicant on its own account to Asahi Japan and thereby were regarded as exports under GST. Whereas, the same authority in the case of **Vserv Global pvt. Ltd [TS-676-AAR-2018-NT]** has a different view even though facts were broadly similar. In this case, the authority held that back-office support services rendered by the applicant did not qualify as 'export of service' and was in the nature of arranging or facilitating the supply of goods or services between overseas company and customers, falling in the category of intermediary services.

Technically speaking future of back-office services in India in dark, as the department has cited that this transaction is taxable fueling the transaction cost by 18%. With such steep cost escalation, India would lose its competitive advantage to other cost-effective Asian countries.

Confusion in taxability of Intermediary services was fueled further when in case of *Mrs. Vishakahar Prashant Bhave*, the authority held that this would be an inter-state transaction liable for IGST whereas, in case of **Vserv Global Pvt Ltd**, authority ruled that it is in an intra-state transaction chargeable to Central and State GST. The major point to be noted here is that both the rulings were passed by the Maharashtra Authority yielding contradictory views. This leaves Exporters in utter confusion regarding the component of tax to be charged, which will have an immediate impact on tax credit adjustment. A wrong selection of tax component would again lead to tax payments and levy of interest.

Exports play a crucial role in building an economy and due to several initiatives of the government, India reached an annual export of USD 491.64 billion with a hike of 8 2.13% as compared to the previous financial year. Billions of foreign exchange and millions of lives depend on this sector, which has been entangled by the devil of GST and not even legal framework of AAR's is been able to pull the exporters out of this situation. We hope the government would spend more time and energy on rationalizing and easing the legal framework for the benefit of the economy as a whole.