

# **ADVANCE RULING UNDER GST - PROCEDURE AND ISSUES**

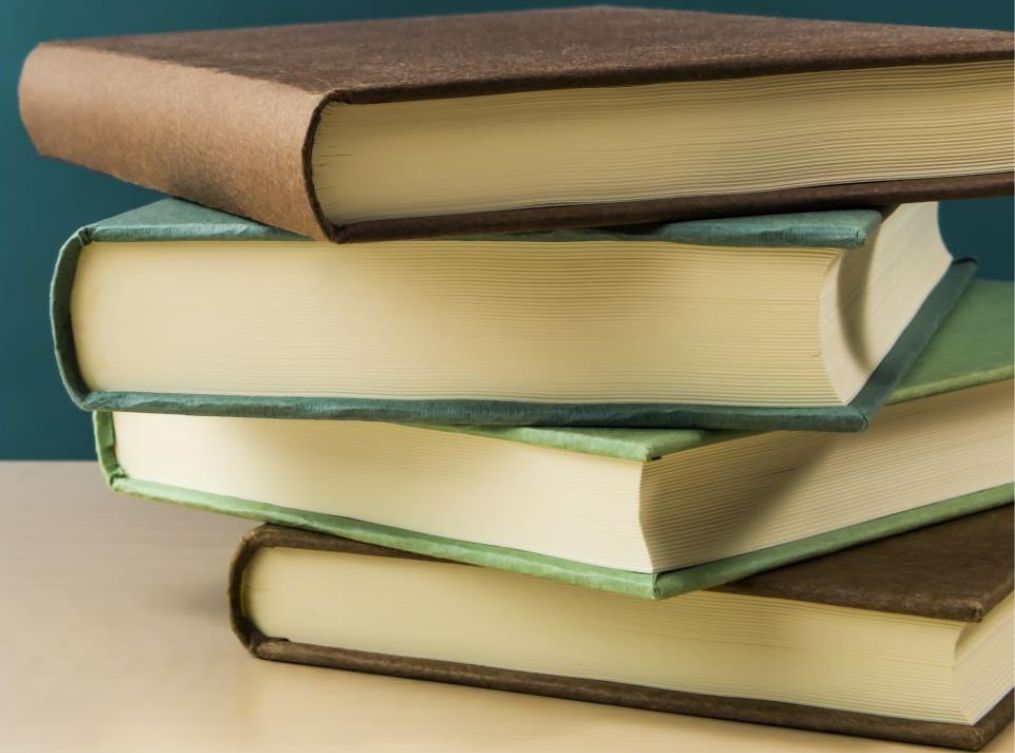
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# Agenda

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- History
- Purpose - resolving the issues or creating the issues
- Analysis of the legal provisions including the procedures
- Issues



# History

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# History

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- 1993 – Authority for Advance Ruling (AAR) established under the Income Tax as a quasi-judicial authority to resolve potential disputes of non-resident investors to build certainty and trust
  - Authority presided by a Retired Supreme Court judge
  - Binding nature of the rulings (taxpayer as well as the Revenue)
  - Lead to impartial rulings and hence achieved the purpose
- 1999 – Similar AAR established for Customs and Excise matters
- 2003 – Similar AAR established for Service tax matters
- 2017 – AAR established for GST matters
  - Constitution of the AAR starkly in contrast with the earlier Authority
- 2018 – Replacement of Commissioner/Principal Commissioner (as a ruling member) under Customs AAR
- 2019 – National Appellate Authority for Advance Ruling under GST constituted in law but yet to be established
- 2021 – Abolition of appellate authority under Customs vide Tribunals Reforms Act, 2021. The AAR for income tax also made defunct and replaced with the "Board of Advance Rulings" (BAR), which consists only of revenue officers. Rulings of BAR not binding.
- 2022 – The validity of rulings under Customs AAR limited to three years
- Dilution of independence and weakening of the framework are visible

Purpose - resolving the issues or  
creating the issues

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# Purpose – resolving the issues or creating the issues

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- Khandelwal Extractions Ltd. vs. State of U.P. 2019 (20) GSTL 727 (All.)
  - in the first place, the Authority for Advance Ruling and the Appellate Authority have been constituted principally, to nip the litigation in its bud. Any assessee who seeks an advance ruling discloses his intent to avoid possible litigation, in future. He only seeks answer on an issue/question that potentially contains the seeds of future litigation. The legislative intent appears to be to provide resolution of such issues in a time bound manner.
- Resolving the issues or creating the issues ?

# Purpose – resolving the issues or creating the issues

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- Statistical analysis
  - Advance Rulings
    - Advance rulings pronounced till date – 1455
    - Rulings in favour of applicant – 414
    - Ratio – 28.5%
  - Appellate Rulings
    - Appellate rulings pronounced till date – 246
    - Rulings in favour of appellant – 47
    - Ratio – 19.10%
  - Before CESTAT – Economic Survey 2017-18
    - Success rate – 12%
    - Petition rate – 20%
- Story before the Advance Ruling Authority appears to be inverse to the story before a judicial forum.

# Purpose – resolving the issues or creating the issues

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- Conflicting rulings by different authorities on the same issue
  - Cross-charge/ISD
  - Intermediary
  - Mining rights
  - And the list is long
- Settled positions disturbed on perfunctory reasoning's
  - Pro-revenue bias is visible
- Applicant should hence approach at their own risk and the risk of the industry



Analysis of the legal provisions  
including the procedures

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# Scheme of the Act

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- Chapter XVII of the CGST Act, 2017 contains the provisions related to advance rulings
  - Sec. 95 – Definitions
  - Sec. 96 – Authority for advance ruling
  - Sec. 97 – Application for Advance ruling
  - Sec. 98 – Procedure on receipt of application
  - Sec. 99 – Appellate Authority for Advance Ruling
  - Sec. 100 – Appeal to Appellate Authority
  - Sec. 101 – Orders of Appellate Authority
  - Sec. 101A – Constitution of National Appellate Authority for Advance Ruling (yet to be notified)
  - Sec. 101B – Appeal to National Appellate Authority (NAA - yet to be notified)
  - Sec. 101C – Order of National Appellate Authority (NAA - yet to be notified)
  - Sec. 102 – Rectification of advance ruling
  - Sec. 103 – Applicability of advance ruling
  - Sec. 104 – Advance ruling to be void in certain circumstances
  - Sec. 105 – Powers of Authority, Appellate Authority and National Appellate Authority (NAA - yet to be notified)
  - Sec. 106 – Procedure of Authority, Appellate Authority and National Appellate Authority (NAA - yet to be notified)

# Rules

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- Chapter XII of the CGST Rules, 2017 deals with certain procedural aspects
  - Rule 103 – Qualification and appointment of members of the Authority for Advance Ruling
  - Rule 104 – Form and manner of application to the Authority for Advance Ruling
  - Rule 105 – Certification of copies of advance rulings pronounced by the Authority
  - Rule 106 – Form and manner of appeal to the Appellate Authority for Advance Ruling
  - Rule 107 – Certification of copies of the advance rulings pronounced by the Appellate Authority
  - Rule 107A – Manual filing and processing

# Meaning

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- Sec. 95(a)
  - “advance ruling” means a decision provided by the Authority or the Appellate Authority [or the National Appellate Authority] to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 [or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant

# Constitution of the authority

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- Rule 103
  - The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling

# Who can file the application

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- Sec. 97(1)
  - An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- Sec. 95(c)
  - “applicant” means any person registered or desirous of obtaining registration under this Act

# Matters or questions on which application can be filed

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- Before the Advance Ruling Authority (Sec. 97(2))
  - (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 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;
  - (f) whether 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.
- Before the Appellate Authority (Sec. 100(1))
  - The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

# Procedure for filing the application

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- Rule 104
  - An application shall be made on the common portal in FORM GST ARA-01.
  - Fee of Rs. 5,000/- to be deposited (Rs. 10,000/- in aggregate – CGST + SGST)
  - The application, the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26
    - Digital signature/e-signature of the eligible representative (e.g. partner, CEO, etc.)
  - Manual filing permissible (Rule 107A)



# Procedure before the Advance Ruling Authority

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- Sec. 98
  - Copy of the application to be forwarded to the concerned officer and seek relevant records if necessary
  - Admit the application after examining the application and hearing the applicant and concerned officer
    - Application shall not be admitted where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the Act
    - Where the application is rejected, the reasons for such rejection shall be specified in the order.
  - Pronounce the ruling after considering further material and after providing for personal hearing.
  - The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.
  - A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement
    - A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling (Rule 105)

# Difference between the authorities

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- Sec. 98(5)
  - Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

# Preferring the appeal

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- Who can prefer the appeal
  - Sec. 100(1) - The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- What is the time limit for filing the appeal
  - Sec. 100(2) - within a period of 30 days from the date on which the ruling sought to be appealed against is communicated
    - Appellate Authority on sufficient cause can extend the time limit by a further period not exceeding 30 days
- What shall be the manner of filing the appeal
  - Sec. 100(3) - in such form, accompanied by such fee and verified in such manner as may be prescribed.

# Procedure for filing the appeal

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- Rule 106
  - Appeal to be filed by the applicant on the common portal in FORM GST ARA-02
  - Fee of Rs. 10,000/- to be deposited (Rs. 20,000/- in aggregate – CGST + SGST)
  - Appeal shall be made by the concerned officer or the jurisdictional officer on the common portal in FORM GST ARA-03 and no fees shall be payable
  - Appeal to be signed by the applicant as per Rule 26 and in case of concerned officer or jurisdictional officer, by an officer authorised in writing by such officer
  - Manual filing permissible (Rule 107A)

# Order of the appellate authority

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- Sec. 101
  - Pass order confirming or modifying the ruling appealed against or referred to
  - Order to be passed within a period of 90 days from the date of filing
  - Where the members differ on any point or points it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
  - Copy of the ruling to be sent to the concerned parties (Rule 107)

# Rectification of the ruling

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- Sec. 102
  - The Authority or the Appellate Authority may amend any order passed by it so as to rectify any error apparent on the face of the record.
  - The error can be noticed on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant
  - Rectification to be done within a period of six months from the date of the order
  - Rectification enhancing the liability or reducing the ITC can be made only after affording the opportunity of hearing

# Applicability of advance ruling

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- Sec. 103
  - The advance ruling pronounced by the Authority or the Appellate Authority shall be binding only —
    - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
    - (b) on the concerned officer or the jurisdictional officer in respect of the applicant
  - The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

# Advance ruling to be void

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- Sec. 104
  - Where the Authority or the Appellate Authority finds that advance ruling pronounced has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio. Opportunity of hearing to be granted before passing the order.
  - The period beginning with the date of such advance ruling and ending with the date of order declaring the ruling as void to be excluded for computing the limitation u/s 73(2)/(10) or 74(2)/(10).
  - Copy of the order to be sent to the concerned parties.



# Powers of Authority & Appellate Authority

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- Sec. 105
  - The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding —
    - (a) discovery and inspection;
    - (b) enforcing the attendance of any person and examining him on oath;
    - (c) issuing commissions and compelling production of books of account and other records,
  - have all the powers of a civil court under the CPC, 1908
  - The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195 but not for the purposes of Chapter XXVI of CrPC, 1973.
  - Every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the IPC, 1860

# Procedure of the authority

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- Sec. 106
  - The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

# National Appellate Authority for Advance Ruling

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- Sec. 101A, 101B & 101C inserted vide Finance (No. 2) Act, 2019
- Aforesaid provisions yet to be enforced
- Key aspects:
  - Judicious constitution of the National Appellate Authority (Sec. 101A)
  - Appeal can be preferred before the National Appellate Authority in case of conflicting advance rulings by the Authorities of two or more States in case of a legal entity (applicant can be either distinct person or the officer) (Sec. 101B)
  - Opportunity of hearing to be given to all the stake holders (Sec. 101C)

# Issues

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# Constitutional validity of AAR/AAAR

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- Chambal Fertilisers and Chemicals Limited v. Union of India 2019 (29) G.S.T.L. 222 (Raj.) & JVS Foods Private Limited vs. Union of India 2020 (37) GSTL J77 (Raj.)
  - Union of India vs. R. Gandhi 2010 (261) ELT 3 (S.C.)
    - Difference between Courts and Tribunals
      - Courts are established by the State and entrusted with the State's inherent judicial power for administration of justice in general whereas the Tribunals are established under a specific statute.
      - Courts are exclusively manned by judges whereas Tribunals can have a Judge as a sole member or a combination of a Judicial Member and a Technical Member.
      - Courts are governed by detailed statutory procedural rules (in particular CPC & Evidence Act) whereas Tribunals generally regulate their own procedure applying CPC only where required and without being restricted by strict rules of Evidence Act.
    - If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess independence, security and capacity associated with courts.
- May not apply in the context of the Authority of Advance Ruling as it has not been formed to adjudicate a dispute (lis) initiated by the department but has been formed to pronounce a ruling on an application filed by the taxpayer. The applicant is not an aggrieved party when he files the application.

# Applicant

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- Whether an application can be filed by the subsidiary company if the question on which application is filed is pending in the proceedings initiated against the holding company ?
  - Any applicant (any person) can file the application
  - Holding and subsidiary are separate persons
  - Hence the application filed by subsidiary will have to be admitted
  - GSPL India Transco Limited vs. Union of India 2013 (32) STR 271 (Guj.)
    - Even if question pending before the CESTAT in the matter of holding company and the questions raised before AAR by the petitioner were similar, if the AAR pronounces advance ruling on the question raised by the petitioner then, it will not result in conflicting or incompatible decision between the same parties as the order of the AAR would be binding only on petitioners and the tax authorities in view of Section 96E of Finance Act, 1994.

# Applicant

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- Filing of the application by the recipient
  - Sec. 97 – An applicant (any person registered or desirous of obtaining registration) can make an application
  - Sec. 103 – Binding effect
    - Sec. 9(1) – Levy and collection from taxable person
    - Hence can the ruling pronounced against the application filed by recipient bind the supplier to the said recipient.
      - No
  - Conflicting rulings
    - Romell Real Estate Pvt. Ltd. (Mah – AAR)
    - Lucknow Producers Co-operative Milk Union Ltd. (UP – AAAR)
    - Portescap India (P) Ltd. (Mah – AAAR)

# Place of supply

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- Whether the AAR can decide the issue involving the determination of place of supply?
  - Sec. 97(2)(e) – determination of the liability to pay tax on any goods or services or both;
  - Sutherland Mortgage Services Inc. vs. Pr. Commr. of Cus., CGST & C. Ex., Kochi 2020 (35) GSTL 40 (Ker.)
    - Writ petition can be entertained since the authority has rejected the application at threshold and has not passed an order that can be appealed against.
    - Whereas Clauses (a), (b), (c), (d), (f) & (g), i.e. the clauses other than clause (e), are in specific “pigeon holes” and the provision as per clause (e) of sub-section (2) of Section 97 is in wide terms and the Parliament has clearly mandated that the latter issue of determination of liability to pay tax on any goods or services or both, should also be matters on which the applicant concerned could seek advance ruling from the Advance Ruling Authority on which the said authority is obliged to render answers thereto.
    - Therefore the authority is directed to consider the application and entertain even the issue of place of supply to determine the liability.



# Challenge to the orders of AAAR

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- AAR – AAAR – ?
- Article 136 - Special leave to appeal by the Supreme Court
  - (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.
- Article 226. Power of High Courts to issue certain writs
  - (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose
- Article 227
  - (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction

# Challenge to the orders of AAAR

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- Issues:
  - Whether judicial review can be ousted by not providing a remedy in terms of further appeal against the order of AAAR ?
  - Whether AAR/AAAR can be said to be 'tribunal' ?
  - What can be the scope of the judicial review ?

# Challenge to the orders of AAAR

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- Columbia Sportswear Co. vs. Director of Income Tax, Bangalore 2012 (283) ELT 321 (S.C.)
  - Issue before the Apex Court was whether a petition seeking special leave to appeal before the said Apex Court under Article 136 against the order of the advance ruling authority constituted under Chapter XIX-B of the Income Tax Act, 1961?
  - Held:
    - Authority for advance ruling can be considered as a 'tribunal'
      - Vested with the judicial power of the State by any law to pronounce upon rights or liabilities arising out of some special law (Harinagar Sugar Mills vs. Shyam Sunder [AIR 1961 SC 1669])
      - Authority empowered to determine issue of fact or issue of law.
      - The law makes the ruling binding on the applicant and the authorities and hence the Advance Ruling Authority acts in judicial capacity
    - A provision of an Act of legislature making the decision of the Authority final or binding could not come in the way of the exercise of jurisdiction vested in the Court by way of constitutional provisions (Article 136, 226 & 227)
    - Jurisdiction under Article 136 being a discretionary power can be exercised by the Apex Court only if the petition raises substantial questions of general importance or a similar question is already pending before the Apex Court for decision
    - In the present facts the petition cannot be entertained directly by the Apex Court and hence requested the Division bench of the jurisdictional High Court to hear and dispose of the matter as expeditiously as possible.

# Challenge to the orders of AAAR

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- Similar views taken in
  - UAE Exchange Centre Ltd. vs. Union of India 2009 (236) E.L.T. 223 (Del.)
  - National Co-operative Development Corporation v. Commissioner of Income Tax (2020) 119 taxmann.com 137 (SC)

# Challenge to the orders of AAAR

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- Scope of judicial review
  - Dabur India Ltd. vs. Commissioner of CGST 2020 (34) G.S.T.L. 9 (All.)
    - Judicial review is confined to the decision making process and is not directed against the decision itself.
    - While exercising powers of judicial review the Court has to find whether the decision making authority acted within its jurisdictional limits, committed errors of law, adhered to the principles of natural justice or acted in breach thereof, and whether the decision is perverse or not.
    - The courts exercising judicial review do not ordinarily substitute the decision of the authority by their judgment. Merely because two views are possible, a court sitting in judicial review shall not exercise its discretion in favour of an alternative view to that of the authority.
    - The powers of judicial review are thus distinct from powers of an appellate court.
    - The order of Appellate Authority can be judicially reviewed and not appealed against.
  - Also refer
    - JSW Energy Ltd. vs. Union of India 2019 (27) GSTL 198 (Bom.)
      - In exercise of powers of judicial review, the Court is mainly concerned with issues like the decision making authority exceeding its jurisdictional limits, committing errors of law, acting in breach of principles of natural justice or otherwise arriving at a decision which is *ex facie* unreasonable or vitiated by perversity.

# Challenge to the orders of AAAR

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- Scope of judicial review
  - Khandelwal Extractions Ltd. vs. State of U.P. 2019 (20) GSTL 727 (All.)
    - Ex-parte order passed by the Appellate Authority for Advance Ruling
    - Matter remanded
  - Kasturba Health Society vs. Union of India 2022 (58) G.S.T.L. 287 (Bom.)
    - Contention neither been considered nor answered specifically
    - Matter remanded
  - C.M.S. Info Systems Ltd. vs. Commissioner of CGST, Mumbai East 2019 (28) GSTL 27 (Bom.)
    - Flaw in decision making process by not giving findings on the submissions
    - Matter remanded
  - Union of India vs. Amazon Seller Services Pvt. Ltd. 2019 (365) ELT 477 (Del.)
    - Failure to consider the legal ratio which mandates strict interpretation of exemption notification

# Challenge to the orders of AAAR

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- Scope of judicial review
  - Factors that can be considered (judicial errors):
    - Authority acting outside its jurisdictional limits
    - Authority committing errors of law
    - Authority not adhering to the principles of natural justice or acting in breach thereof
    - Authority arriving at a decision which is *ex facie* unreasonable or vitiated by perversity
  - Outside the scope
    - New facts
    - New grounds
    - Adjudication of the facts
    - When view taken is plausible

# Direct challenge to the order of AAR

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- Possible where principles of natural justice has been violated
  - Mother Earth Environ Tech Pvt. Ltd. vs. AAR 2021 (50) G.S.T.L. 11 (Kar.)



# Scope of the authority

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- Can AAR go beyond the referred issue and pass a ruling on other issue(s) ?
  - Sec. 98(4) - Where an application is admitted the Authority shall ..... pronounce its advance ruling on the question specified in the application.
- Abbott Healthcare P. Ltd. vs. Commr. of Commercial Tax, Thrissur 2020 (34) GSTL 579 (Ker.)
  - The petitioner entered into a agreement with unrelated parties (hospitals/labs) to place the medical instruments, for their use, without any consideration for a specified period and for the supply of specified quantities of reagents, calibrators, disposables etc. at the prices specified in the agreement, through its distributors on payment of applicable GST.
  - Application was filed seeking a ruling on applicability of GST on the placement of medical instruments.
  - The Authority held that the supply in question is a composite supply of instruments along with reagents, etc. and hence shall be liable to tax as supply of right to use the goods (i.e. instruments).
  - High Court held that the Authority went beyond the terms of reference since the issue posed only related to the placement of medical instruments and not of supply of reagents and that too by the distributors of the petitioner.
  - Matter remanded to the Authority to pass fresh order.

# Scope of appellate authority

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- Whether the Appellate Authority ought to confine itself to the issue as to whether the primary ground relied upon by the Advance Ruling Authority was right or not or can it reject the appeal on a new ground ?
  - JSW Energy Ltd. vs. Union of India 2019 (27) GSTL 198 (Bom.)
    - It is in the context of the adjudicatory proceedings, which, to a great extent, are adversarial in nature that the Tribunal is not competent to make out in favour of the Revenue, a case which the Revenue never canvassed or which the assessee was never required to meet.
    - Scope of proceedings where an assessee or a potential assessee seeks advance ruling are not adversarial in nature.
    - Ultimately, the Appellate Authority is required to give its ruling on the question posed by taking into account the relevant circumstances and eschewing irrelevant ones.
    - Therefore, if the Advance Ruling Authority may have missed a particular point, it is not as if the Appellate Authority is precluded from advertent to such point and basing its ruling on the same.

# Binding nature of the decisions of AAR/AAAR

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- Sec. 103
  - Rulings binding on the applicant as well as concerned officer or the jurisdictional officer in respect of the applicant.
    - Meaning of 'concerned officer' and 'jurisdictional officer'
  - Shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed
- Before the quasi-judicial or judicial authorities
  - Sec. 103 will not apply
  - Sec. 75(12) – Only the liability declared in the statement/return can be self-assessed tax permitting direct recovery
  - Sec. 73 or 74 mandates issuance of SCN and adjudication if any tax/ITC/refund is to be recovered
  - Sec. 107 – Appeals to the Appellate Authority
    - Sec. 107(11) – vested with the power to pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against
    - Sec. 107(16) – Appellate order shall, subject to the provisions of section 108 (revision) or section 113 (tribunal order) or section 117 (High Court order) or section 118 (Supreme Court order) be final and binding on the parties.
  - Sec. 112 – Appeals to Appellate Tribunal
    - Sec. 113(1) – vested with the power to pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against
    - Sec. 113(6) – Save as provided in section 117 (High Court order) or section 118 (Supreme Court order), orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.
- AAR/AAAR orders therefore are not binding on the quasi-judicial or judicial authorities.

# Binding nature of the decisions of AAR/AAAR

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- For persons other than the applicant or the officers of such other persons
  - Not binding (Sec. 103 will not apply)
  - Sandeep Patil vs. Union of India 2019 (31) GSTL 398 (Bom.)
    - CBIC Circular dated 29th May, 2018 clarified that as per Section 103 of Central Goods and Services Tax Act, 2017, this advance ruling applies only to the applicant, i.e. Rod Retail Private Limited, which was not a Duty-Free Shop but a Duty Paid Shop.
  - Persuasive value ?
    - Stature of the GST AAR/AAAR starkly different from the earlier Authorities under Customs, etc.
    - Members are Revenue officers and not judicial members
      - Bombay Flying Club vs. Commissioner of Service Tax, Mumbai-II 2013 (29) STR 156 (Tri.-Bom)
        - It is true that the decision of the AAR is binding only to the parties involved in that ruling. But when the facts involved are similar and the question for decision is identical, due consideration needs to be given to the said ruling, especially considering the fact the AAR is presided by a Retired Judge of the Hon'ble Apex Court and the other members of the authority are erstwhile members of the Central Board of Excise & Customs and Central Board of Direct Taxes. Thus the status of AAR is higher than that of this Tribunal and therefore, this Tribunal cannot ignore the ruling given by the AAR in a case where the facts are similar/identical and the questions of law are identical. Reasoning's are not cogent and settled principles are ignored at times
    - Hence the rulings should not have even a persuasive value
    - But we live in reality
      - A sane person to an insane society must appear insane - Kurt Vonnegut, Welcome to the Monkey House

# Rectification vs. appeal

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- How to consider limitation for filing the appeal when the applicant has preferred a rectification application u/s 102
  - Sec. 102 – The Authority or the Appellate Authority [or the National Appellate Authority] may amend any order passed by it ..... within a period of six months from the date of the order.
  - Sec. 100(2) – Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated .....
  - Doctrine of merger will apply if rectification order is passed. However it shall not apply if the rectification application is rejected at the threshold citing no apparent errors.

# Rectification vs. appeal

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- N.M.D.C. LTD. v. AAR 2021 (49) G.S.T.L. 342 (Kar.)
  - Time elapsed in pursuing the rectification cannot be excluded from the statutory time of 60 days granted to file the appeal
  - Doctrine of merger is not applicable if the rectification application is dismissed summarily in absence of any apparent error
  - Oil and Natural Gas Corporation Limited v. Gujarat Energy Transmission Corporation Limited and Others - (2017) 5 SCC 42
    - Limitations prescribed in laws is based on certain underlined, fundamental, general issues of public policy to expeditiously decide the grievances.
    - Such limitations fall within Section 29(2) of the Limitation Act
      - Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
    - Equivalent to Section 3 of the Limitation Act.
  - Asstt. Commr. (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Ltd 2020 (36) G.S.T.L. 305 (S.C.)
    - High Court can entertain petition under Article 226 so long as it is preferred within the limitation provided for the alternative remedy, if any.
    - Doing otherwise goes against the decision in the case of ONGC supra
  - vigilantibus non-dormientibus Jura subveniunt
    - Law assists those that are vigilant with their rights, and not those that sleep thereupon
- Preferable to pursue both the remedies independent with a non-prejudice clause.

# Withdrawal of application

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- Withdrawal of application is not prohibited in law.
  - However once the ruling is pronounced the application cannot be withdrawn.
    - One has to then challenge the ruling to get it overturned or get the matter remanded back to the AAR and thereafter consider withdrawal.
- Whether the application can be withdrawn after the final hearing but before the pronouncement ?
  - Should be possible in absence of any bar in law
- Cases where withdrawal permitted
  - Man Structural Pvt. Ltd. (RAJ/AAR/2020-21/07)
  - Trucity Developers LLP (RAJ/AAR/2020-21/09)
  - C M Enviro Systems Private Limited (KAR ADRG 31/2018)

# At the end

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- Refrain from approaching the AAR unless the possible outcome (largely expected on the Revenue side) is what you are looking for
  - E.g. Situations where the recipient may agree for the application of the higher rate of tax only based on advance ruling and the supplier is looking to avoid litigation
  - Hence one should begin with the end in mind
- For those who are already burdened with an adverse ruling
  - Consider filing petitions under Article 226 r/w 227 indicating the judicial error (that will open the scope for judicial review) claiming appropriate relief (including remand and then withdrawal)
  - Consider litigating the issue based on SCN as the rulings do not bind the quasi-judicial or judicial authorities



# Thanks !!

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