



Recipient of goods / services is also entitled to seek advance ruling under GST

Anmol Industries Versus the West Bengal Authority for Advance Ruling, Goods and Services Tax & Ors.¹

The Calcutta High Court ('the Court') set aside the ruling pronounced by the Authority of Advance Ruling West Bengal ('AAR') and remanded back the matter to decide the application on merits in accordance with the Law. The Court held that any person who is registered or desirous of registering under the Goods and Services Tax law, be it supplier or recipient, shall be eligible to file an application for advance ruling.

Facts of the case:

- M/s Anmol Industries Ltd. ('the Petitioner') entered into an agreement with the Shyama Prasad Mookerjee Port, Kolkata ('Lessor'), to lease an industrial plot of land for a period of thirty years (30 years) for the purposes of setting up a commercial office complex.
- As per the allotment/agreement letter, the Petitioner was required to pay an upfront lease premium to the lessor, along with GST @18%.
- However, the Petitioner was of the view that as per entry No. 41 of Notification No. 12/2017 Central Tax (Rate) dated June 28, 2017, as amended from time

to time, the above upfront lease premium is exempt from GST.

- Therefore, the Petitioner filed an application for Ruling before the AAR, to determine the eligibility of exemption towards the upfront premium payable to the Lessor for leasing of the land for industrial purposes under the entry No. 41 of Notification No. 12/2017 Central Tax (Rate) dated June 28, 2017.
- However, the AAR authority observed that the Petitioner in the present case being a recipient of services cannot seek an advance ruling as the ruling can be sought only by the supplier and therefore the authority asked the Petitioner to submit additional submissions, if any, in this regard.
- The Petitioner therefore made a submission stating as under:
 - Referring to definition of 'Applicant' specified in section 95(c) of the Central Goods and Services Tax Act, 2017 (the 'GST Act'), the Petitioner held that application for advance ruling can be filed by any person registered or desirous of obtaining registration under the GST law.
 - Provisions nowhere state that the applicant must be a supplier to seek an advance ruling.

¹ TS-153-HCCAL-2023-GST



- The expression ‘in relation to the supply of goods or services or both’ in Section 95(a) of GST Act shall be interpreted to include both inward supply and outward supply and, therefore, either the supplier or the recipient, can file the application for advance ruling.
- As per section 103 of the GST Act, the ruling shall be binding on the applicant whosoever it may be, and the section nowhere specifies that the said ruling will be applicable to supplier or recipient.
- However, the AAR² disregarded the contention of the Petitioner and held that advance ruling cannot be sought by the recipient of the goods or services as the ruling is applicable to the applicant and the concerned officer. The Petitioner in the present case is the recipient of services and thus, the ruling shall not be binding on the supplier. The supplier may or may not follow the ruling and may charge GST on the said supply of services. If this happens, the very base of the ruling becomes useless, and the ruling loses its relevance and applicability. Thus, the application was not accepted.
- Aggrieved by the rejection of the application, the Petitioner preferred a writ before the Hon’ble Calcutta High Court.
- The High Court decided the matter in favour of the Petitioner and held that the Petitioner is eligible to file an application for Advance Ruling on the following grounds:
 - The term ‘applicant’ defined under section 95(c) of the GST Act has been defined in the widest possible manner to include any person registered or desirous of obtaining a registration under the GST Act. Reliance was also placed on the ruling of M/s. Gayatri Projects Limited³ (Calcutta High Court) to understand the meaning of the term ‘applicant’ as defined under the GST Act.

- The application filed by the Petitioner falls under clause (b) of section 97(2).

Section 97(2) deals with the question of which advance ruling can be sought under the GST laws.

Dhruva Comments

There is an apprehension among the trade / industry as to the eligibility of the recipient of goods and / or services to seek a ruling before the Authority of Advance Ruling on issues such as classification; taxability; applicability of exemption; or determination of time and value of supply etc.

Based on the approach of the Authority of Advance Ruling and the rulings delivered by the AAR Authority in the past, the general interpretation which exists is that only the supplier of goods / services could approach the AAR authorities on the matters illustrated above.

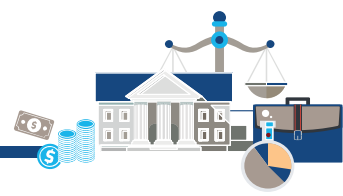
Given the above, the subject ruling by the Calcutta High Court is a welcome measure as it has clarified that the term ‘applicant’ is defined under the widest possible manner under section 95(a) of the GST Act and, would encompass any person registered or desirous of obtaining registration under the GST laws. Thus, the recipient of goods / services can file an application before the AAR Authority for the matters enlisted under section 97(2) of the GST Act.

It is pertinent to note that the rulings issued under the writ jurisdiction are applicable only to the Petitioners. However, since the ruling has addressed the question of law and therefore, it will definitely have a high persuasive value before the authorities and the Courts.

It will be interesting to see whether the supplier would consider accepting the tax position laid down in the ruling, since the advance ruling is binding only on the applicant.

² 2023 (2) TMI 875

³ M.A.T. No.2027 of 2022



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