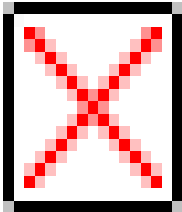


National Appellate Authority for Advance Ruling- Status, way forward and fallout of orders

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Background



THE National Appellate Authority for Advance Ruling was constituted through the Finance [Act 2019](#) by suitable insertions of new sections and amendments in Chapter XVII of the [CGST Act](#). The authority has not started functioning yet as the provisions are yet to be notified. The avowed objective of creating the authority was to decide a question of law when there are conflicting decisions of Appellate authorities between Rulings of two or more States or Union territories. Considering that the amendment was made to the CGST Act in 2019, it is appropriate to mention that the same is urgently required in the current circumstances.

Suggestions on the new provisions -Status and Way forward

A) Appeal arising out of conflicting views of Appellate Authority for Advance Ruling (AAAR)

It is pertinent that section 101B(1) should also provide for an appeal to the NAAFAR if members of Appellate Authority differ on any points referred to it as per section 101(3). The current status of appeals to Appellate Authority for Advance Rulings is that there are 2 members (One CGST and one SGST) and in case of conflict in their views the same is not referred to a third member as there is no provision for the same under section 101. What is concerning to the Trade and Industry is that an assessee files an Advance Ruling Application under section 97 and being aggrieved by its order under 98 the assessee files an appeal under section 100 to AAAR. In these circumstances the assessee must have at least invested a lot of time and effort to reach this stage. In case two members of AAAR differ on their views, the advance ruling cannot be issued. Considering that the entire provisions of Chapter XVII have been inserted so that there is certainty to the Trade, the amendment suggested is the need of the hour.

B) Constitution of NAAFAR

Considering the development stage of GST law and the doubts of the Trade and Industry, it would be helpful if there is one Judicial Member, preferably an Advocate, who has practised on the Revenue side at the High Courts for at least 15 years or is Member of Indian Legal Service and has held the post of not less than 5 years as an Additional Secretary. It is pertinent that this approach may pass the test of Constitutional validity in the light of Madras High Court order in the case of Revenue Bar Association Chennai versus UOI and State of TN. In the Constitution of the Bench of NAAFAR it is desirable that the combined interests of Centre and State Governments would be optimally represented if they have one Member representing both Central /State GST. The Members representing Revenue can change on a periodical basis or can be appointed on a case to case basis. The Bench as provided in the law will be presided by the President. The constitution with one external Judicial member will lend a balance of views and enhance fairness in the judicial process.

C) Applicability of Advance Ruling

Section 103 of the CGST Act provides that a Ruling of NAAFAR will be binding on the applicants who sought the Ruling and registered persons having same PA number under the Income Tax Act. In this regard it is important to note the sequence of events that lead to an appeal to NAAFAR. Invariably the sequence of events is -

- 1) In State X, Appellant Y who files an Advance Ruling (e.g. on Classification of goods may not be granted a Classification as applied for) which is also confirmed by its Appellate Authority. However, in State B, another appellant Z seeks an independent view on a competing product (similar in all aspects) and the view of the appellant Z is confirmed by appellate Authority in State B, which is conflicting to the view taken by State X Appellate Authority for Advance Ruling
- 2) Revenue notices the divergence and files an appeal before NAAFAR as per timelines. NAAFAR hears the matter and confirms the view of the State Appellate Authority of State B in favour of the appellant Z.

In these circumstances the Appellant Y in State X may have accepted the decision and implemented it in his case. In these circumstances the Act should provide for the applicability of the Ruling of NAAFAR even to party Y provided they file an application to it for applicability of the same ruling. This is in the background of the facts and other attendant circumstances being the same as that of the first order passed by NAAFAR. Considering the avowed objective of GST Council to avoid litigation and de-cluttering the High Courts, the suggested steps can go a long way in reducing unnecessary burden on the High Courts.

Suggestions - Fallout of NAAFAR orders

In matters like classification, credit entitlement, taxability of services arising out of supply of goods etc under the GST regime, assessee in order to be within the four corners of law, file for Advance Rulings whenever the clarity on law is required. However the gestation between the time the application is filed and the time the issue reaches finality is arduously long. Considering that in matters like Classification of goods, there will be a downstream liability of intermediate trade arising out of supply of goods on assumed positions, appropriate amendments is desired in law so that differential duties when settled (barring interest) would be creditable to the buyer of goods provided all parameters of section 16 and attendant rules are in compliance.

In case, matters take more than 2 financial years to be resolved, the capacity to take ITC under law would have been exhausted going by the provisions of law under section 16 of the CGST Act. It is therefore desired that time bound orders should be passed in by AAR, AAAR and NAAFAR respectively.

Considering the pressure on the existing redressal systems, appropriate extension maybe provided for ITC in case the delay is not due to the fault of the assessee seeking the ruling.

IMPACT OF NAAFAR ON LITIGATION AT HIGHER FORUMS OF JUSTICE

In the period from 2017 July to 2020 Feb, all appellants after unsuccessful applications for Rulings till AAAR move the Jurisdictional High Courts. This needs to be seen in the light of Supreme Court orders in the case of

Columbia Sportswear Limited versus UOI (though in the context of Income Tax Act) [2012-TIOL-134-SC-IT-LB] wherein the Hon'ble Supreme Court held -

12. In a recent advance ruling in *Groupe Industrial Marcel Dassau* [2011-TIOL-28-ARA-IT](#)

, the Authority has, however, observed: "... But permitting a challenge in the High Court would become counterproductive since writ petitions are likely to be pending in High Courts for years and in the case of some High Courts, even in Letters Patent Appeals and then again in the Supreme Court. It appears to be appropriate to point out that considering the object of giving an advance ruling expeditiously, it would be consistent with the object sought to be achieved, if the Supreme Court were to entertain an application for Special Leave to appeal directly from a ruling of this Authority, preliminary or final, and render a decision thereon rather than leaving the parties to approach the High Courts for such a challenge. ..." We have considered the aforesaid observations of the Authority, but we do not think that we can hold that an advance ruling of the Authority can only be challenged under Article 136 of the Constitution before this Court and not under Articles 226 and/or 227 of the Constitution before the High Court. In *L. Chandra Kumar v. Union of India and Others* (supra), a Constitution Bench of this Court has held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution. Therefore, to hold that an advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless, we do understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and thereafter in Letters Patent Appeal before the Division Bench and as a result the object of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. We are, thus, of the opinion that when an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible.

13. The only other question which we must consider is whether we should entertain this petition under Article 136 of the Constitution or ask the petitioner to approach the High Court under Articles 226 and/or 227 of the Constitution. Article 136 of the Constitution itself states that this Court may, "in its discretion", grant special leave to appeal from any order passed or made by any court or tribunal in the territory of India. The words "in its discretion" in Article 136 of the Constitution makes the exercise of the power of this Court in Article 136 discretionary. Hence, even if good grounds are made out in a Special Leave Petition under Article 136 for challenge to an advance ruling given by the Authority, this Court may still, in its discretion, refuse to grant special leave on the ground that the challenge to the advance ruling of the authority can also be made to the High Court under Articles 226 and/or 227 of the Constitution on the self-same grounds. In fact, in *Sirpur Paper Mills Ltd. v. Commissioner of Wealth Tax, Hyderabad* - [2002-TIOL-1371-SC-WT-LB](#)

it has been observed that this Court does not encourage an aggrieved party to appeal directly to this Court against the order of a Tribunal exercising judicial functions unless it appears to the Court that a question of principle of great importance arises. Unless, therefore, a Special Leave Petition raises substantial questions of general importance or a similar question is already pending before this Court for decision, this Court does not entertain a Special Leave Petition directly against an order of the tribunal.

It is pertinent that despite the efforts of all Hon'ble High Courts the matters concerning appeals through Writ Petitions are taking time as the pressure on High Courts is immense. In the light of this it is *de minimis*

that the Hon'ble GST Council considers amending the section 101B to also provide for appeals from AAAR to NAAFAR so that the pressure on High Courts is substantially reduced.

While it is still pertinent that the observations of the Constitution Bench of the Supreme Court in *L Chandra Kumar v/s UOI* = [2002-TIOL-159-SC-CB](#)

is relevant and that the superintendence of the High Courts over Tribunals, Courts within their jurisdiction cannot be taken away, an appeal from AAAR provided to the NAAFAR will convince the Trade and Industry at large to accept decisions as the forum will have lot of credibility and fairness.

Conclusion:

It is imperative that as appeals move from assessment orders of GST through section 117 in the next 5 to 7 years, we must not face a situation that there are number of Writ Petitions pending at the High Courts on account of Advance rulings than appeals arising out of assessments. It is imperative that a speedy, quick resolution should be provided to many Technical issues arising out of GST by NAAFAR and

it is certain that, it can be achieved, if the same is put to work ASAP with larger canvas of operation.

[The views expressed are strictly personal.]

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