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ADVANCE RULING – MAKE IT EVERYONE’S DARLING

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“In our opinion, a vibrant system of Advance Ruling can go a long way in reducing taxation litigation. This is not only true of these kinds of disputes but even disputes between the taxation department and private persons, who are more than willing to comply with the law of the land but find some ambiguity. Instead of first filing a return and then facing consequences from the Department because of a different perception which the Department may have, an Advance Ruling System can facilitate not only such a resolution, but also avoid the tiers of litigation which such cases go through as in the present case”[1]

It is very true that a majority of taxpayers are willing to abide by law, if only they were told that this is what the law is, and the myriad of authorities also hold the same view.

It is with this avowed objective that the Advance Ruling mechanism is introduced in the field of taxation and this write up deals only with such Advance Ruling set up under the nascent GST law.

When a massive tax reform, subsuming various indirect tax laws which held the field for several decades is set in motion and administered by the same departments, which hitherto administered the legacy levies, the hangover of their acquaintance with their branch of law is bound to be ubiquitous. While taxing the services is completely alien to the State, moving to a completely new taxable event of “supply” is a nightmare for all.

In such scenario, a robust Advance Ruling mechanism will go a long way in avoiding protracted legal disputes and the uncertainty associated with it. In an indirect tax regime, the effect of such uncertainty is more pervasive, as any subsequent and unprecedented tax demand has to be met purely by the taxpayer, thereby threatening even his survival.

How far the noble objectives behind the advance ruling mechanism are achieved in practice is the moot question and most of the stakeholders would agree that there is still a long way to go.

The following factors contribute to such perception.

- Middle level revenue officers are made as the members of the Advance Ruling authority, which is a transferable job and as they continue to be revenue officers, the element of bias cannot be ruled out.
- A new and complex law like the GST law requires judicious interpretation of the legal provisions and absence of a judicially trained person in the authority is a major drawback.

In the opinion of the author, the following measures will go a long way in reaping real benefits from the Advance Ruling mechanism.

- Instead of the adversary role of the Advance Ruling Authority, it should be made more into a conciliatory role, where the decisions are pronounced only subject to acceptance by both the parties, viz., the taxpayer and the jurisdictional revenue department. For this purpose, after hearing both the parties, a draft order may be prepared by the Authority and circulated to both the parties and the same is discussed in the next hearing and the ruling is given only if there is consensus among the parties to abide by it.
- Once the decisions are taken on the basis of consensus between the parties, there will be no scope for any further appeal.
- In order to bring a judicial approach to the proceedings and to remove the fear of bias presence of a judicially trained mind in Advance Ruling Authority is a must and if not on an exclusive basis, Judicial members of Tax Tribunals can be given the additional charge of presiding over the Advance Ruling Authority also. In addition the Authority can also have one representative each from the Centre and State. The jurisdictional authority would also be heard who shall be competent to express their consensus on behalf of the respective Government.
- Such decision should be binding on both the parties and these decisions would not operate as a precedent in other matters. Even the current law contains provisions to these effect.
- There should be a strict time frame for issuing the rulings and the rulings have to be issued within a maximum period of three months from the date of filing of the application.
- As the decision is based on consensus there is no requirement to have an appellate authority.

- Over a period of time, due to change in circumstances, judicial pronouncements, commercial practice, etc. it may be required to revisit the rulings. Hence, it may be provided that the ruling shall be valid for a period of three financial years at the end of which, status quo ante would be restored and the taxpayer is at liberty to either continue to abide by the ruling (by expressly committing so for a further period of three years) or choose to take a different stand.

The above views are not far-fetched but are juxtaposition of the following observations of the Hon'ble Supreme Court in the same case.

“The aim of any properly framed advance ruling system ought to be a dialogue between taxpayers and revenue authorities to fulfil the mutually beneficial purpose for taxpayers and revenue authorities of bolstering tax compliance and boosting tax morale. This mechanism should not become another stage in the litigation process”.

Hon'ble Justice Shri. Sanjay Kishan Kaul, in his judgement delivered recently National Co-operative Development Corporation Vs Commissioner of Income Tax - Civil Appeal Nos. 5105 to 5109/2009.

