

Recent AAR, AAAR and practical aspects of AAR decisions

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Relevant provisions: Chapter xvii –Act , Chapter XII –Rules

- Section 95
- What is advance ruling ?
 - Advance ruling - 95. In this chapter, unless the context otherwise requires,— “advance ruling” means ***a decision provided*** by the Authority or the 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***, in relation to the supply of goods or services or both ***being undertaken or proposed*** to be undertaken by the applicant
- Who can apply?
 - Applicant - means any person ***registered or desirous of obtaining registration*** under this Act

Relevant provisions: Chapter xvii –Act , Chapter XII –Rules

- Section 96, rule 103: Appointment on recommendation by Council
- Can be from other State
- Two members: not below the rank of Joint Commissioner
- One member from officers of Central tax
- One member from officers of State tax
- Appointment to be notified

Scope of Advance ruling

- Sec-97(2) -The question on which the advance ruling is sought under this Act, shall be in respect of:
 - classification of any goods or services or both
 - applicability of a notification issued under the provisions of this Act
 - determination of time and value of supply of goods or services or both
 - admissibility of input tax credit of tax paid or deemed to have been paid
 - determination of the liability to pay tax on any goods or services or both
 - whether applicant is required to be registered
 - 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

Procedure for filing the application

- Online Application in terms of Rule provided in Chapter XII of CGST Act
- Court fees stamp 5000+5000 (Rule 104(1))
- Manual filing and processing permitted in terms of 107(a) -MGST Notification- 55 of 2017 dt. 15.11.2017
- Basic condition- No proceeding should be pending for the questions raised or decided in any proceeding of applicant
- Principles of natural justice to be followed
- Records to be called for if required

Limitation for Filing & Decision

- Eligibility for filing -No limit
 - In relation to supply of goods and service or both being undertaken or proposed to be undertaken.
 - Pronouncement by AAR in writing within 90 days from the date of receipt of application.
- Procedure where the members differ on any question- Reference to appellate authority for hearing and decision.
 - Whether Time would be extended?

Appeal to Appellate Authority and Limitation for passing the order

- Appeal to Appellate Authority
 - Court fees stamp Rs.10,000+Rs.10,000 (Procedure Rules as per Chapter XXX)
 - To be filed within 30 days from the date of communication to the concerned officer, jurisdictional officer and the applicant.
 - State authority permitted to file appeal.
 - Appellate authority empowered to condone the delay for further 30 days.
- Limitation for passing the order
 - 90 days from the date of filing (Ref under section 98(5)i:e AAR Differing)
 - If members of appellate authority differ it shall be deemed that no advancing ruling shall be issued in respect of such question.

National Appellate Authority

- Notification issued in 2019, effective date yet to be notified.
- Section 103(1A) – AR pronounced by NAA binding on
 - applicant, being distinct person who has sought the ruling.
 - All registered person having same PAN No.

National Appellate Authority of Advance Ruling

- Constitution as per section 101 (A)
 - Appeal to NAA in case of conflicting advance ruling by appellate authorities of two or more State.
 - Appeal can be by the Commissioner or applicant being distinct person u/s 25
- Limitation (Section 101(B))
 - Limitation - 30 days of the communication on which ruling is communicated to the applicant, concerned officer & jurisdictional officer.
 - Commissioner to file appeal through authorised officer within 90 days from communication.
 - Power to condone delay by further period upto 30 days.
 - Explanation- 30 days or 90 days to be counted from date of communication of last of the conflicting ruling sought to be appealed

Order by National Appellate Authority (NAA) of Advance Ruling

- Order within 90 days from the date of filing.
- Opportunity of hearing
 - -All States & Union Territories Chief Commissioner

Rectification of Advance Ruling- Section 102

- Suo Motto rectification
 - on application by the concerned officer
 - on application by jurisdictional officer
 - on application by the applicant
- Rectification to be completed within 6 months from the date of order

Applicability of Advance Ruling – Section 103

- Section 103(1)-Advance ruling binding only
 - On the applicant
 - On the concerned officer or jurisdictional officer of the applicant
- For the rest on persuasive value
 - Facts can be distinguished
 - Additional information, circular, notification may change the scenario

Advance Ruling to be Void – Section 104

- Order by AAR, AAAR, NAA can be declared void ab-initio.
 - if the order is obtained by fraud, suppression of material facts or misrepresentation of facts
 - Principles of natural justice to be followed
- Limitation as per section 73(2) & 73(10)- (Notice before 3 months of expiry period)
 - 3 years from the date of furnishing Annual Return for the financial year in which tax not paid or short paid or ITC wrongly availed or utilized
 - within 3 years from date of erroneous refund

Advance Ruling to be Void – Section 104 (Contd)

- Limitation as per section 74(2) & 74(10)
 - Fraud or wilful misstatement or suppression of facts
- Notice before 6 month of the time limit specified in sub-section 10
 - Order within 5 years from the date of furnishing Annual Return for the financial year in which tax not paid or short paid or ITC wrongly availed or utilized
 - within 5 years from date of erroneous refund
- Provisions for section 73 & 74 would apply for such orders

Powers of Authority, Appellate Authority & National Appellate Authority (Section-105)

- Powers of Civil Court under Civil Procedure Code, 1908
- For discovery & inspection.
- Enforcing the attendance and examining on oath.
- Issuing commissions and compelling production of books of accounts and other record.
- Proceedings deemed to be Judicial Proceedings
 - Contempt of Court?

Why & When

- This order is passed in terms of Notification No. 35/2020 - Central Tax dated 03.04.2020, extending up to 30/06/2020 the time limit for completion or compliance of any action by any authority or by any person under the GST Act where the due date for such completion or compliance otherwise falls during the period from 20.03.2020 to 29.06.2020
- Legal Issue
- Consideration before filing
- Position for prior period & later period, collection of tax for regular transaction
- Impact on sister concern or competitors
- Alternate Remedy- Provisional assessment (Section-60)

Provisional Assessment (Section 60)

- By taxable person only
- To determine value of goods or service or both
- To determine rate of tax applicable on goods or service or both.
- Request to proper officer in writing for payment on provisional basis
- Order to be passed within 90 days
- Along with payment of tax on provisional basis along with bond with surety
- Surety for the payment of difference between amount of tax as may be finally assessed and the amount of tax provisionally assessed
- Proper officer to pass assessment order within 6 months from the date of provisional order
- Joint Commissioner & Additional Commissioner empowered to extend by 6 months and for further 4 years by Commissioner
- Interest provisions apply
- Refund to be granted with interest

Recent Advance Ruling

- Standard Format – Averment as regards sub-section of section 97
 - Information about period of limitation for filing appeal against the order passed
 - Averment about provisions of CGST & State Act being same, unless specifically mentioned, Reference to CGST Act means reference to same provision of State GST Act, commonly referred to as GST Act
 - Averment about no proceeding pending nor any order passed
 - Averment about extended limitation on account of Lockdown

Atrawal Amusement park: AAR –MP-09-06-2020

Issues involved

- Engaged in construction of Water Park
 1. Whether eligible to take credit on Input Tax paid on Purchase of Water Slides? Water Slides made up of Strong PVC

Decision

1. Water Slides shall fall within the meaning of the term apparatus, equipment and machinery and therefore. shall be eligible for claim of ITC

Atrawal Amusement park: AAR –MP-09-06-2020

Issues involved

2. Water Slides are installed on Steel and Civil Structure. Credit of Tax paid on Input goods and services used in construction of this support structure will be available or not?

Decision

2. Foundation and support structures which are used to fasten plant and / or machinery to the Earth is classifiable as “Plant and / or Machinery”. In the instant case. Slides are fastened to the Steel and Civil Structure are affixed to the Earth through these Steel and Civil Structures. Therefore. these Steel and Civil Structures shall form part of the Plant and Machinery. Accordingly. the credit of Tax paid on Input goods and _ services used in construction of this support structure shall be available

Atrawal Amusement park: AAR –MP-09-06-2020

Issues involved

3. Input Tax will be available or not on Goods and services used for area development and preparation of land on which water slides are erected.

Decision

3. For Wave Pool, Machines have been installed. The foundation for these machines are eligible to be part of the Machines and the ITC shall be treated in manner similar to that of the Machines. However, the Machine Room, which is a civil structure, erected for protecting machine is neither foundation nor civil structure for machine therefore. relatable to the construction of the room for Housing the machine- shall not be eligible for ITC

Atrawal Amusement park: AAR –MP-09-06-2020

Issues involved

4. Whether applicant will be eligible to take credit of Input Goods and Services used for construction of Swimming Pool / Wave Pool as water slides directly run into pools?

Decision

- Regarding the Input Tax on Goods and services used for area development and preparation of land on which water slides are placed. we have to state that area development and expenditure on preparation of land like site formation services are part of the cost of the land and thus are interminably bound with land. These expenses are liable to be capitalized under the head Land. Therefore, on account of the specific exclusion of Land from the meaning of 'plant and machinery'. ITC related to Land Development, subject to if capitalization as per accounting principles shall not be available.

Atrawal Amusement park: AAR –MP-09-06-2020 (cont)

Decision

- Regarding eligibility of Input Tax Credit on Goods and Services used for construction of swimming pools / Wave Pool in which the water slides directly run into, we have to state that such Swimming Pools / Wave Pools are not support structure or foundation for a plant. They are independent items per se. Since they are not foundation or support structure on which slides are fastened for affixing them to earth and also on account they being Civil Structures. They are therefore excluded from the meaning of “plant and machinery”. Thus. the ITC related to the construction of the Swimming Pools and Wave Pools. subject to its capitalization shall not be available
- The provision of facilities like transformers. sewage treatment plant. Electrical Wiring and Fixtures. Surveillance systems. D.G. Sets. Lifts. Air Handling Units etc. are sine qua non for a commercial mall and hence cannot be considered separate from the building or civil structure, The provision of these are either statutory for a building or defines the nature of the Building as a commercial mall. Hence the input tax credit on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and hence blocked.

Comments

- Extensive discussion on what is plant –Explanation 17(6)
- Contradiction in explanation, includes such foundation but excludes land building and other structures.
- Foundation –Construction below the grounds that distributes load
- Can be for Building or plant
- Comparison with Commercial Mall-how far relevant?

Agarwal coal corpn. AAR-MP-08-06-2020

Facts

- Separate invoices to be raised by the Applicant on a customer for:
 - Price of supply of coal+5% GST
 - Coal handling and distribution charges +18% GST
- Loading, unloading of material at site, Storage charges of the quantity ordered , Coal safety and security ,Adequate water sprinkling , Commitment charges towards fulfilling supply, Custom clearing services, . Insurance
- Availing input tax credit and will continue to avail the same as follows:
 - 5% IGST on import of coal
 - 18% on various services availed at port

Agarwal coal corpn. AAR-MP-08-06-2020

Whether should have applied?

1. Whether the Applicant is liable to discharge tax liability @ 18% on coal handling and distribution charges wherever supply of such services is intended to be made expressly to a customer or will the Applicant be entitled to charge GST at the rate of 5% as applicable on supply of coal
 - Held that coal handling and distribution charges will be taxable @ 18% and not 5% wherever supply of such services only is intended to **be expressly made to a customer**
2. Will the applicant be entitled to utilize the input tax credit availed for discharging liability towards supply of coal and supply of coal handling and distribution charges
 - That input credit availed as per the conditions specified in section 16 shall be allowed for discharging the liability towards supply of coal and supply of coal handling and distribution charges respectively

Swayam AAR –WB- 29-06-2020

- The applicant is a Charitable trust under section 12A of the Income Tax Act, 1961. It extends legal, medical, psychological and financial support to the women and their children surviving violence and abuse. The applicant also facilitates training programs and workshops for the survivors. It wants to know whether it is liable to pay tax on its activities
- Whether Supply? No amount charged –collected from females facilitates access of the women survivors to legal aids.
- For example, it accompanies the survivor to the police and the courts and liaise with the lawyers when required. Depending upon the financial circumstances of the survivor, it often provides support in the form of reimbursement of the court fee, lawyers' fee or medical expenses, including hospitalization or psychiatric counselling. Such financial support is also extended to paying the remuneration of the trainers and charges of the facilitators for trainings and workshops.

Swayam AAR –WB- 29-06-2020

- Rcm whether applies?
- applicant makes payments not to the supplier of the services, but as financial support in the form of reimbursement to the recipient survivor. It is, therefore, not liable to pay GST based on reverse charge mechanism on such payments.
- The applicant does not charge any consideration for facilitating the legal aid
- Ans -The applicant's activities do not amount to 'supply' of service, neither is it a recipient of the services for which it often provides financial assistance to the women survivors of sexual and other violence. The applicant is, therefore, not liable to pay GST on the activities described in the application

KSC Buildcon Private Limited- Raj/AAR/20-21/03 dt. 14.05.20

- Facts of the case:
 - Allotment of work for hiring mining machinery along with man-power to produce approx. 2,00,000 metric tons per month on output per ton basis
 - Scope includes development work of mines including the earth work of drilling, excavation, removal, transportation of green marble/serpentine and dumping of waste material
 - Roads to be build for movement of vehicles
 - Responsibility for safe maintenance of haul road
 - Necessary mining machinery to be deployed along with operation and maintenance personnel
 - Skilled and unskilled manpower and professionals required
 - No lease or rent agreement entered as per Services Accounting Code (SAC)- 9973

KSC Buildcon Private Limited- Raj/AAR/20-21/03 dt. 14.05.20 (Cont)

Questions Posed

1. Applicability of SAC and classification in either
 - a. SAC 9973- Leasing or Rental serving concerning machinery and equipment with or without operator.
 - b. SAC 9954- Composite supply of work contract service.
2. What is the difference between operator and manpower as per GST provisions?
3. Whether Special Purpose Vehicle in the above work order are classified as machinery?

KSC Buildcon Private Limited- Raj/AAR/20-21/03 dt. 14.05.20 (Cont)

- Considered definition of goods and service
- Mineral extracted by the applicant from the mining site are goods. Goods extracted from the land.
- However, if the applicant do not have any ownership of the said land and mineral, before the agreement, in duration of agreement, and post agreement.
- Therefore, the activity is supporting service related to mining.
- Classification 998622 -Rate of tax 9%+9%
- HSN 998622 referred to
 - This service code includes draining and pumping of mines; over burden removal and other development and preparation services of mineral properties and sites, including tunnelling, except for oil and gas extraction; test drilling services in connection with mining operations, except for oil and gas extraction, operation of other mining units on a fee or contract basis.

Further findings

- No mention in the agreement about supplying manpower and Special Purpose Vehicles like earthmover etc
- Therefore supplies are made to himself and not to the owner
- Cannot be categorized as independent supplies
- A single consideration of Rs.400 per ton has no relation to supply of vehicle or manpower
- The compulsion to purchase/lease land in nearby area is ambiguous fact.
- The basis for consideration is quantum of mineral extracted, no supply of machinery to the contractee
- Works Contract services should lead to creation of immovable property, no immovable property created in this case as ownership of property and mineral is with the owner of the contractee
- Question 2 & 3 beyond the scope of 97(2) & hence not decided

AAAR- The Nurserymen Co-op Society Ltd- KAR/AAAR/Appeal-20/2020-21 dated 04-05-2020

Questions posed

- Whether the landscape development and maintenance of garden work for State & Central Government department, all Government local bodies (Municipalities & Corporations) etc and other Government undertaking through contract from sub-contract attracts GST as inward supplies from those vendors.

AAAR- The Nurserymen Co-op Society Ltd- KAR/AAAR/Appeal-20/2020-21 dated 04-05-2020 (Cont)

Facts

- Maintaining the gardens and landscape development involves
 - Removing old and existing unwanted weeds & plants.
 - Digging the soil and levelling of ground.
 - Planting small shrubs, flowering plants, grass etc.
- Appellants sub-contract this work to the sub-contractors.

AAAR- The Nurserymen Co-op Society Ltd- KAR/AAAR/Appeal-20/2020-21 dated 04-05-2020 (Cont)

Consideration

- Exemption notification 12/2017 dt.28.06.2017 for pure service considered for chapter heading 99
- Pure service (excluding works contract service or other composite supplies involving supply of any goods), Provided to Central, State Government, Union Territory, Local authority or governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G or function entrusted to Municipality under Article 243W of the Constitution is subject to NIL Rate

AAAR- The Nurserymen Co-op Society Ltd- KAR/AAAR/Appeal-20/2020-21 dated 04-05-2020 (Cont)

Consideration (Contd)

- Whether services supplied by the sub-contract to the appellant who is the recipient of the services is exempt from GST ?
- Entries at Sr.No 3 & 3A of Pure Service with regard to Chapter 99 will apply only if the recipient is Government or any authority specified therein .
- Argument that if the supply is exempt, the inward supply should also be exempt cannot be accepted. Sub-contractors cannot avail the benefit of exemption as per notification.

AAR- Hazarig Baug Builders Pvt Ltd- RAJ/AAR/20-21/05 dt.30.06.20

- The Applicant Company is registered in the State of Rajasthan and having GSTIN in State of Rajasthan. The Applicant company has entered into a long term Lease Agreement of 99 years with RLDA for undertaking residential & commercial development along with development of financial infrastructure as on 08.11.2019
- The Applicant Company paid a sum of Rs. 158657105.00 in parts by way of RTGS on separate days in the month of February, 2019 as Security deposit which, in case of breach is refundable after forfeiting the bid security deposited separately for both the Plots as per the terms of the lease agreement which is Rs. 3300000.00 for Plot A and of Rs. 5200000.00 for Plot B
- The issue to be examined in the present case is whether the amount paid prior to 29.03.2019 in pursuance to the lease agreement of 99 years executed on 08.11.2019 are exempt from levy of GST or not

AAR- Hazarig Baug Builders Pvt Ltd- RAJ/AAR/20-21/05 dt.30.06.20 (cont)

Submission:

- Amount paid by the applicant in February was neither an advance nor a lease premium but is in the form of security if the agreement is not entered, then in terms of agreement such amount is refundable in full
- No GST is payable on security amount
- Reference to Notification 4 of 2019 (Central Tax Rate) dt. 29.03.19 which exempts any upfront amount payable for grant of long term lease of 30 years
- Conditions of the notification complied with
- The lease premium is squarely covered by the Notification and exempt as the agreement is executed on 08.11.2019

AAR- Hazarig Baug Builders Pvt Ltd- RAJ/AAR/20-21/05 dt.30.06.20 (cont)

Conclusion:

- Notification 12/2017 (CTR) Dt.28.06.2017 at Sr. No 41 refers to one time upfront amount leviable in respect of service by way of granting long term (30 years or more) lease of industrial plot provided by State Government Industrial Development Corporation or Undertaking to industrial units
- The condition of this notification not fulfilled, as payment was part of lease agreement as per mutual understanding
- Further condition lease of industrial plots provided by State Government Industrial Development Corporation not fulfilled

AAR- Hazarig Baug Builders Pvt Ltd- RAJ/AAR/20-21/05 dt.30.06.20 (cont)

Conclusion:

- Claim of exemption for the amount transferred as security deposit not accepted as the agreement referred to the amount as first instalment of lease premium and therefore no exemption from levy of GST
- Amount deposited during February,2019 held as NOT EXEMPT as the conditions and requisitions of 41 B of the notification dt.29.03.2019 not complied with. This notification refers to grant of leasing right on or after 01.04.2019
- It was also held that RLDA being statutory authority of Government of India is providing services by way of renting of immovable property to a registered person i.e the applicant therefore the services are falling under Reverse Charge Mechanism (RCM). Applicant will have to pay GST under RCM
- RLDA has not awarded industrial plot to the applicant, but portion of land over which residential infrastructure is to be built therefore condition at Sr.No 41 of SAC 9972 not complied with

Questions?
