



# ADVANCE RULING UNDER GST

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# AUTHORITY FOR ADVANCE RULING (AAR) UNDER GST

STRUCTURE AND SCOPE OF AAR

# AAR - CONSTITUTION, SCOPE AND FEATURES

## CONSTITUTION

- Two members
- An officer (not below JC) each, drawn from Central and State GST Dept. would constitute AAR.

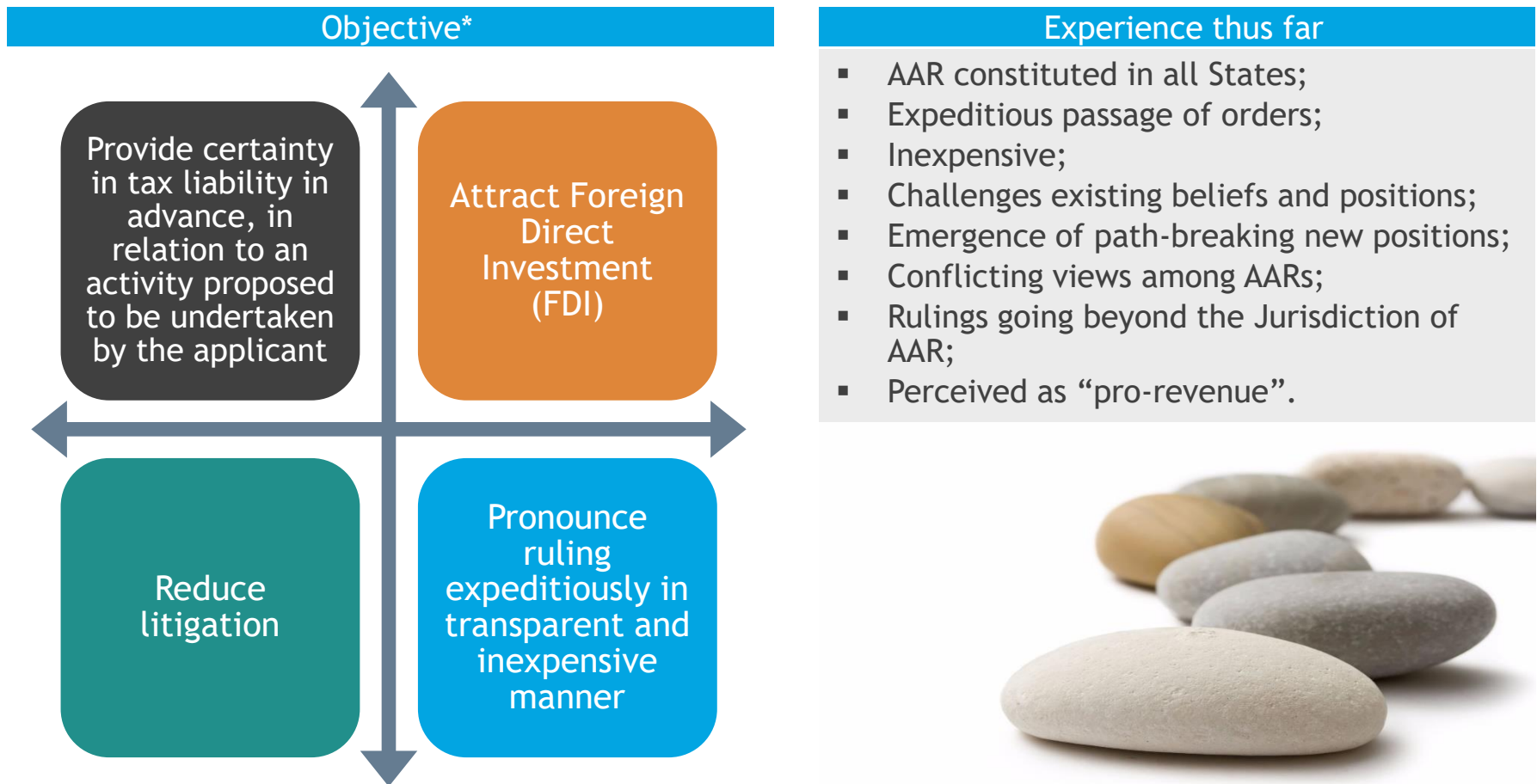
## FEATURES

- Supply undertaken or proposed to be undertaken, can be referred to AAR;
- Appeal against the ruling of AAR lies before Appellate Authority for Advance Ruling (AAAR);
- If members of AAR differ on question, it would be referred to AAAR;
- Errors apparent on record can be rectified by AAR/AAAR;
- Ruling of AAR/AAAR binding on applicant and concerned/jurisdictional officer.

## SCOPE OF AAR

- Classification of goods and/or services;
- Applicability of a notification;
- Determination of time and value of supply;
- Allowability of ITC;
- Determination of liability to pay GST on any goods/services;
- Applicant requires registration under GST;
- Whether any particular thing done by the applicant regarding goods/services will result in a supply.

# STATED OBJECTIVES AND EXPERIENCES



\* Source - “Advance Ruling Mechanism in GST” released by Directors General of Taxpayer Service, CBIC



# SNAPSHOT OF FEW ADVANCE RULINGS

# AAR - CHALLENGE TO EXISTING POSITIONS/BELIEFS

M/s. Space Age Syntex Pvt. Ltd. (AAR-Mah No:GST-ARA-13/2018-19/B-86 dated August 6, 2018)

- Issue - Taxability of Sale and Purchase of Duty-Free Import Authorization (DFIA) licenses.

M/s. Bajaj Finance Ltd. (AAR-Mah No:GST-ARA-22/2018-19/B-85 dated August 6, 2018)

- Issue - Levy of GST on 'penal interest' collected for delay in payment of EMI.

## Discussion pointers

- Nil' GST rate on "Duty credit scrips", vide Sl No:122A of Notification no:2/2017-CT (R) w.e.f. October 13, 2017.
- According to AAR, exemption is not available as DFIA is distinct from 'duty credit scrips' covered under Chapter-3 of FTP.
- DFIA, issued under Chapter-4 of FTP, does not envisage payment of duty, as it allows duty free import.
- 'Duty credit scrips', on the other hand is used to make payment of the specified duty of customs. Thus, DFIA is not in the nature of 'duty credit scrip' and ineligible for exemption.

## Discussion pointers

- Sl no:27 of Notification no:12/2017-CT(R) dated June 28, 2017 exempts 'consideration represented by way of interest or discount'. Sec.15(2)(d)of CGST Act, 2017 treats interest, late fee or penalty for delayed payment as consideration for 'supply'.
- Taxpayer argued that lending as an activity is neither 'supply' nor its liable to GST; penal interest is liquidated damage and would form part of the original loan transaction, which is exempt.
- AAR ruled that penal interest would not be treated as 'interest' for exemption. Penal interest is in nature of bounce charges/consideration for non-performance of a contract and it is 'tolerance of an act or situation' covered under entry no:5(e) of Schedule-II of CGST Act, 2017

# AAR - CHALLENGE TO EXISTING POSITIONS/BELIEFS

M/s. BASF India Ltd. (ARA-27/2017-18/B-36 dated May 21, 2018):

- Issue - Exemption from GST on High Seas Sales (HSS) and ITC reversal.

## Discussion pointers

- Taxpayer argues that IGST cannot be levied on HSS; ITC reversal is not mandated since it is not an exempt supply.
- The Authority held that as per Sec.7(2) read with Sec.5 of IGST Act, 2017, in respect of imported goods, there is no levy and collection of GST; IGST is levied in terms of Sec.3 of Customs Tariff Act read with Sec.12 of Customs Act as part of Customs duty and hence no levy of GST on HSS.
- Authority further held that HSS is 'exempt', under Sec.2(78) of CGST Act, 2017. HSS being a 'non-taxable supply', it is liable to ITC reversal under Sec.17 of CGST Act, 2017.
- Explanation -1 to Sec.17(3) of CGST Act, 2017 (implementation to be notified), excludes HSS covered under Schedule-III from the onus of ITC reversal; thus HSS doesn't warrant ITC reversal after the amendment is notified.

M/s. IMS Proschool P Ltd. (ARA-37/2017-18/B-44 dated June 5, 2018):

- Issue: GST exemption on educational course offered by an approved training partner of National Skill Development Council (NSDC).

## Discussion pointers

- Tax payer claims exemption from GST on fee charged by him on educational course, on the ground that he is empaneled as approved training partner by NSDC and thus covered by entry no:69 of Notification no:12/2017-CT(R) dated June 28, 2017.
- Authority ruled that exemption would be available only if the approved training partner conducts the training programs that are falling under 'National Skill Development Programme' (NSDP), such as Prime Ministers Koushal Vikas Yojna, Sankalp, Udan, Star, etc.
- Benefit of exemption under the notification is restrictive and would be available only on NSDPs implemented by NSDC and not for each and every programme conducted by the training partner.



# AAR - EMERGENCE OF NEW POSITIONS

M/s. Columbia Asia Hospitals Pvt. Ltd. (KAR ADRG 15/2018, dated July 27, 2018)

- Issue - Need of employee-cost recharge by India Management Office (IMO) to units located in other States and levy of GST on the cross-charge.

## Discussion pointers

- Tax payer argued that services provided by “employee to the employer in course of or in relation to his employment” is neither a supply of goods nor service, vide entry no:1 of Schedule-III; employment contract exists at company level and not at IMO level.
- According to AAR, IMO and units are ‘related person’ u/s.15 of CGST Act, 2017; per entry no:1 of Schedule-I of CGST Act,2017 transaction between ‘related person’ or ‘distinct person’ even without a consideration, would constitute ‘supply’.
- AAR observed that ‘employee-employer’ relationship exists only between IMO and employee, and not between units and employee, thus requiring cross-charge and levy of GST.

M/s. Rod Retail Pvt. Ltd. (01/DAAR/2017 dated Dec 28, 2017)

- Issue: Levy of GST on goods supplies to international out-bound passengers, from security hold area located beyond the customs frontier of India in the Delhi International Airport and eligibility of ‘zero rate’.

## Discussion pointers

- Taxpayer argued that Article 286 of Constitution of India, prohibits States from levying tax on goods sold or purchased in course of import/export. Since goods are exported, benefit of zero rating is available.
- AAR ruled that w.e.f July 1, 2017, export of goods takes place only when they are taken out to a place “outside India”; Sec.2(56) of CGST Act, 2017 defines India means the territory of India including its territorial waters and the air-space above its territory and territorial waters. Goods can be said to be exported only when they cross the territory of India and not on the mere crossing of Customs frontier of India.
- In Vasu Clothing case, the Madhya Pradesh High Court has directed tax authority to seek instruction from CBIC for issuing clarification.



# AAR - EMERGENCE OF NEW POSITIONS

M/s. Vserve Global Pvt Ltd (ARA-03/2018-19/B-59 dated July 7, 2018)

- Issue - Whether back-office support service provided by Indian service supplier to an overseas party, post conclusion of the sale contract by the overseas party and Indian buyers, would be 'export'?

## Discussion pointers

- The taxpayer submitted that they have an agreement with the overseas service recipient for providing various support activities (documentation, liaise with inspection agencies and also with supplier for cargo readiness, processing payment requests, follow-up for smooth shipping on board, pay-roll processing, etc). According to him, the service will qualify as Business and Production Service (Accounting & book keeping, pay-roll services, etc.) and the 'Place of Supply' is outside India, thus qualify as zero-rated supply.
- Taxpayer also cited the decision of Godaddy India Web Services P Ltd (2016 (46) STR 806 (AAR) where it was held that support service in relation to marketing, branding, off-line marketing, oversight of the quality of the third-party care centre and payment processing on principle to principle, would not be considered as 'intermediary' service.
- Rejecting the argument of the tax payer, the AAR ruled that:
  - Sum of all the activities indicates that applicant arranges or facilitates supply of goods or services between overseas client and customer in India, thus fall within the definition of 'intermediary'.
  - The place of supply would thus be location of the applicant which is in India; hence the service in question does not qualify as export of service.



# AAR - QUESTIONABLE RULINGS



## Scope of AAR

Advance Ruling mechanism, though applies on a larger canvass (classification, exemption, rate, ITC, registration, taxability, etc.), determination of 'Place of Supply' is beyond the scope of the AAR mechanism.

## Impermissible domain

However, in multiple rulings, the AAR has swayed into the impermissible domain and in few cases, the authority has side-stepped from answering.



## Rulings where AAR adverted to answer question on PoS

- M/s Behr-Hella Thermocontrol India Pvt. Ltd. [AAR-Advance Ruling No. 12/2018-19/B-116 Mumbai, dated September 15, 2018]
- M/s Grasshopper Production [AAR-Goa Advance ruling no. Goa/GAAR/3 of 2018-19/2269, dated September 20, 2018]
- M/s. Vserve Global Pvt Ltd [ARA-03/2018-19/B-59 dated July 7, 2018]

## Rulings where the AAR has desisted from answering questions on PoS

- M/s Pon Pure Chemical India Private Limited, [GUJ/GAAR/ADM//2017-18/1 dated October 30, 2017]
- M/s Toshniwal Brothers (SR) Private Limited [KAR-ADGR 23/2018 dated September 19, 2018]



# AAR - QUESTIONABLE RULINGS

## Rulings where AAR adverted to answer question on PoS

- ▶ M/s Behr-Hella Thermocontrol India Pvt. Ltd. (AAR-Advance Ruling No. 12/2018-19/B-116 Mumbai, dated September 15, 2018)
  - Issue: Whether IGST is required to be paid on the testing services provided on the prototype goods made available by the overseas clients, being a 'zero rated supply'.
  - The tax payer submitted that the actual consumption of the testing services performed by the applicant is happening outside India in the form of the test reports therefore the place of supply would be outside India and the service provided to the overseas clients would qualify as 'Export of service'.
  - The authority ruled that testing services provided on the prototypes made available to the taxpayer in India by the overseas clients will be liable to tax and would not qualify as zero-rated supply.
- ▶ M/s Grasshopper Production [AAR-Goa Advance ruling no. Goa/GAAR/3 of 2018-19/2269, dated September 20, 2018]
  - Issue: Whether Event Management support services provided by the applicant in Goa to a registered person located in Maharashtra is governed under Section 12(7)(i) of the IGST Act, 2017 for determining the place of supply?
  - The taxpayer stated as per Section 12(7) of IGST Act, 2017, the place of supply for event managements services will be the location of the service recipient i.e. Maharashtra and IGST will be applicable.
  - The Authority also ruled in line with the submissions of the taxpayer and held that the IGST will be applicable on the transaction.
- ▶ M/s. Vserve Global Pvt Ltd [ARA-03/2018-19/B-59 dated July 7, 2018]
  - AAR did not heed to the preliminary submission of Tax officer about lack of jurisdiction of AAR on place of supply. As discussed in the previous slide, AAR held that the applicant is clearly covered and falls in the definition of an intermediary as defined under the IGST Act.

# AAR - QUESTIONABLE RULINGS

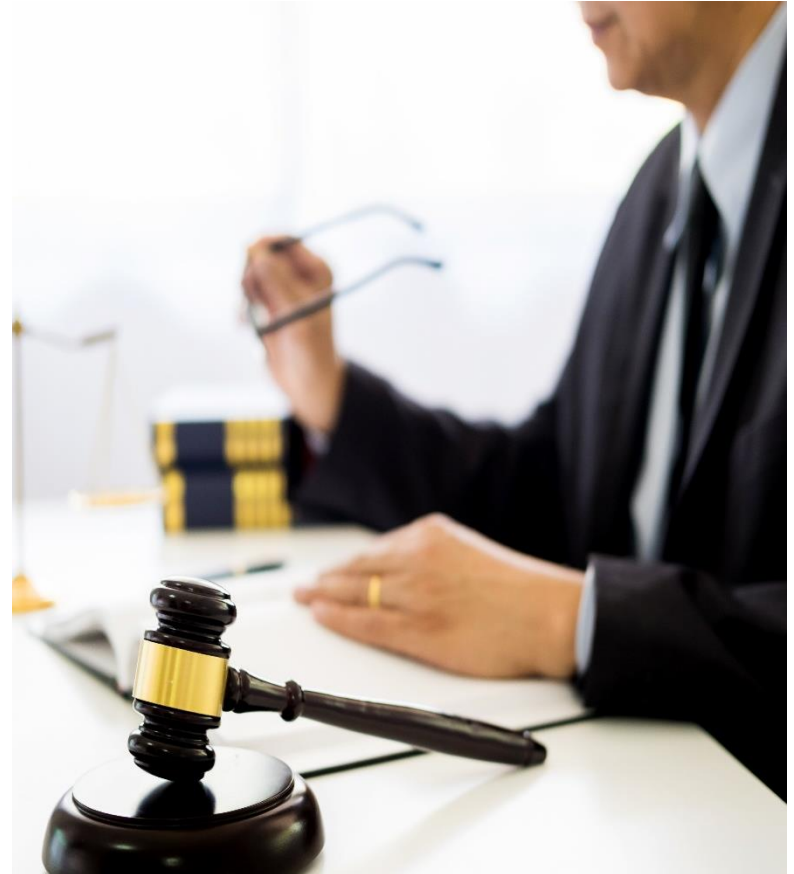
## Rulings where the AAR has desisted from answering questions on PoS

- ▶ M/s Pon Pure Chemical India Private Limited, [GUJ/GAAR/ADM//2017-18/1 dated October 30, 2017]
  - Issue: Levy of IGST on ‘High Sea Sale’ transaction
  - The authority rejected the application of the taxpayer on the ground of lack of jurisdiction as the issue raised was pertaining to the ‘Place of supply’.
  
- ▶ M/s Toshniwal Brothers (SR) Private Limited [KAR-ADGR 23/2018 dated September 19, 2018]
  - Issue:
    - Whether pure and mere promotion and marketing services will be “intermediary services” for the purpose of Section 12 of the IGST Act, 2017;
    - If ‘after-sale support services’ are also provided under a composite contract; would it be composite supply;
    - Whether the above contract would qualify as export if the client is overseas entity, in terms of clause ( 6) of Section 2 of IGST Act, 2017 and will be a zero-rated supply as provided in Section 16 of the IGST Act, 2017.
  - The authority ruled for all the issues except on the question of ‘place of supply’ and determination of export of service as it is not in the purview of jurisdiction of the authority

# AAR - QUESTIONABLE RULINGS

## AAR passed ruling despite withdrawal request of application and GST on 'Free supply'

- ▶ M/s. KPH Dream Cricket P Ltd (AAR/GST/PB/02 dated August 20, 2018)
  - Issue: Taxpayer filed an advance ruling application to ascertain applicability of GST on 'free supply' of complimentary ticket for IPL matches and eligibility of ITC on such free supplies.
  - The application was later withdrawn by the taxpayer citing certain circulars dealing with free supplies and ITC.
  - However, the Authority refused withdrawal of application by the applicant, citing that tax authority is also stakeholder and it is mandatory to hear him and provide clarity on the topic.
  - Thus, it would not be in the 'public interest' to leave the question unanswered and accordingly issued the ruling. Identical application filed by the same taxpayer, before the MP AAR, was allowed to be withdrawn.
  - Supply of free ticket is an 'act of forbearance' by tolerating the entry of the person who received the complimentary ticket, which is covered by entry 5(e) of Schedule-II of CGST Act, 2017.
  - The value would be the price as applicable to the price of a normal ticket.





AAR HORIZON

# AAR - HORIZON





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