

GOODS AND SERVICES TAX

ADVANCE RULING

Summary of Advance Rulings issued in 2018
by the Authority for Advance Rulings, Kerala

What is Advance Ruling?

“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 of the Central Goods and Services Tax (CGST) Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Burden of Tax Litigation

Tax litigation occupies a large portion of judicial time. A total of 1.45 lakh appeals related to indirect tax, which aggregated to a lock in value of Rs 2.62 lakh crore, were pending before various judicial institutions. The overall success rate of these appeals was just below 12 per cent. The Economic Survey, 2018 (Chapter 9) addresses these issues and suggests that given the low success rate of appeals the tax department should exercise greater self-restraint by limiting appeals.

Purpose of Advance Ruling

- ◆ Classification and determination of tax liability, time and value of supply of goods or services or both
- ◆ Applicability of a notification, circular, etc. issued under the provisions of various Acts
- ◆ Admissibility of Input Tax Credit (ITC) of tax paid or deemed to have been paid

Authority for Advance Ruling

The Authority for Advance Ruling (AAR), and Appellate Authority of Advance Rulings (AAAR) are constituted under the provisions of the State Goods and Services Tax (SGST) or Union Territory Goods and Services Tax (UTGST) Act, shall be deemed to be the AAR in respect of that State or Union territory. The Government shall appoint officers, not below the rank of the Joint Commissioner, as members of the AAR as per Rule 103 of CGST Rules, 2017. They have to follow the procedure specified in Section 98 of CGST Act, 2017.

Objectives of Advance Ruling

- ◆ Provide clarity on tax liability prior to the proposed activity
- ◆ Clear ambiguities in advance to reduce litigations later
- ◆ Expeditious and transparent ruling on applications at minimum cost

Contradictory Rulings by AARs

Two different rulings on solar installation came from AAR of Maharashtra and Karnataka. While the AAR of Maharashtra favoured a GST rate of 18 per cent, treating installation as a whole works contract, AAR Karnataka ruled to tax installation at the concessional rate of 5 per cent. Similarly, many AARs issued contradictory rulings on various subjects, which led the GST Council to consider a Centralised Appellate Authority for Advance Ruling (CAAAR) to resolve conflicting rulings by AARs.

Centralised Appellate Authority for Advance Ruling

The 31st GST Council decided to create a Centralised Appellate Authority for Advance Ruling (CAAAR) to resolve conflicting positions between two or more state appellate authorities' advance rulings by amending the CGST Act. It is expected that the AAAR's decision will bind states on a pan-India basis. At a policy level, this seems to be a good decision to ensure uniformity between states in application of tax laws.

'There are 515 Advance Rulings issued in the country as on 30th November 2018. The State of Maharashtra ranks at the top with 72 rulings, followed by Karnataka (34), Gujarat (29), Andhra Pradesh (24), Kerala (24), and Delhi (22) as the other top states.'

Kerala constituted the *AAR vide notification* No. 123/2017/Taxes on 21 October 2017 in exercise of the powers mentioned under the relevant Act and Rules. Government appointed Senthil Nathan S, IRS, Joint Commissioner, Central GST, Thiruvananthapuram and N. Thulaseedharan Pillai, Joint Commissioner (General), State GST department as members of AAR. Later these positions are replaced by B.G Krishnan, IRS and B.S Thyagarajababu. There are 24 Advance Rulings issued by the AAR Kerala in the year 2018, and four applications are pending for finalisation. This special issue (annual review) provides a thematic-wise summary of all advance rulings as issued by the AAR in the year 2018.

'Approximately Rs. 6,500 crore is locked before various appellate authorities and courts in Kerala. In this context, the state government is planning to introduce a comprehensive 'amnesty' scheme to settle all these pending cases.'

Status of Pending Appeals/ Cases during VAT regime

Forum	No. of cases	Locked in value (Rs. in Crore)
Appellate authority	24,899	2188.19
Tribunal	6643	400.8
High Court	2879	1266.6
Supreme Court	104	142.1
Total	34,525	3997.69

Source: State GST Department, Kerala, 30 June 2017

TAX LIABILITY

GST on medicines and surgical items supplied through pharmacy by a hospital

M/ s. Ernakulam Medical Centre Pvt. Ltd., In re

The applicant is rendering medical services with professionals like doctors, nursing staff, lab technicians, etc. Medicines supplied through pharmacy to both inpatients and outpatients under the prescription of the doctors are incidental to the health care services rendered in the hospital and beyond the ambit of taxation. Hence the petitioner sought for an Advance Ruling on the liability of hospital under GST Act on the supply of medicines and allied items through the pharmacy. The Authority held that the supply of medicines and allied items provided by the hospital through the pharmacy to the inpatients is part of composite supply of health care treatment and hence not separately taxable. But the supply of medicines and allied items provided by the hospital through the pharmacy to the outpatients is taxable.

Ref: A dtance Ruling No. Ker/ 16/ 2018, 19/ 09/ 2018

GST on medicines, consumables and implants used in providing health care services

M/ s. Rajagiri Health Care & Education Trust, In re

The applicant is a multispecialty hospital having both outpatient and inpatient facilities and sought for Advance Ruling on whether the medicines, consumables and implants used in the course of providing health care services to patients admitted to the hospital for diagnosis or treatment would be considered as 'composite supply' of health care services under GST and consequently exempted under notification no.12/2017? The Authority held that the supply of medicines, consumables and implants used in the course of providing health care services to inpatients for diagnosis or treatment are naturally bundled and are provided in conjunction with each other, would be considered as "composite supply" and eligible for exemption under the category 'health care services'.

Ref: A dtance Ruling No. KE R/ 24/ 2018, dated 06/ 10/ 2018

No GST on medicines, consumables, etc provided during treatment

M/ s. KIMS Health Care Management Ltd, In re

The applicant rendering medical services sought for an Advance Ruling on whether the medicines, consumables and implants used in the course of providing health care services to inpatients for diagnosis or treatment would be considered as "Composite Supply" and eligible for exemption under the category 'health care services'? The Authority held that the supply of medicines, consumables and implants used in the course of providing health care services to inpatients for diagnosis or treatment are naturally bundled and are provided in conjunction with each other, would be considered as "Composite Supply" and eligible for exemption under the category 'health care services'.

Ref: A dtance Ruling No. KE R/ 17/ 2018, dated 20/ 10/ 2018

Transfer of right to use of any goods for any purpose is liable to GST

M/ s. Abbott Healthcare Pvt. Ltd., In re

The applicant has adopted the business model of placing their own medical instruments at the premises of hospitals or laboratories and supplied the pharmaceutical products, reagents, diagnostic kits, etc. to be used in such equipments by executing an agreement. The applicant sought for Advance Ruling on: a) whether the placement of specified medical instruments to unrelated customers like hospitals, labs, etc, for their use without any consideration, for a specific period constitute supply?; and b) whether such movement of goods constitutes otherwise than by way of supply under GST? The Authority held that the placement of specified medical instruments to unrelated customers like hospitals, labs, etc, for their use without any consideration, against an agreement containing minimum purchase obligation of products like reagents, calibrators, disposals, etc for a specific period constitute composite supply. The principal supply is the transfer of right to use of any goods for any purpose and is liable to GST under Central Tax Notification No. 11/2017.

Ref: A dtance Ruling No. KE R/ 15/ 2018, dated 26/ 9/ 18

CLARIFICATION ON RATE

18 per cent GST applicable on supply of rubber wood/ standing rubber trees

N.C. Varghese, In re

The applicant, who is a contractor, has referred an application for Advance Ruling on the rate of tax of standing rubber trees. As per the terms and conditions of State Farming Corporation, the contractor should cut and remove the trees from the estate. Further, no other trees or fuel wood in the estate are allowed to be cut down or removed. In this case, under the contract of supply, growing crops i.e., rubber trees are agreed to be severed before supply and hence, comes under the definition of 'goods'. Thus, standing rubber trees no longer remain as such. Therefore, it can only be treated as 'wood in rough form'. The Authority held that the firewood is exempted as per HSN Code 4401. There is no differentiation between soft wood and hardwood in GST. It is hereby clarified that rate of tax on rubber wood in the aforesaid transaction is 18 per cent.

Ref: Order No. CT/ 3270/ 18-C3, dated 26/ 03/ 2018

5 per cent GST on fishery products and all parts of fishing/ floating vessels, marine propellers, etc.

M/ s. Saraswathi Metal Works, In re

The applicant is a manufacturer of marine propellers, rudder set, stern tube set, propeller shaft and MS shaft for couplings used in fishing or floating vessels. They approached for Advance Ruling on the following issues: a) the tax rate of marine propellers, rudder set, stern tube set, propeller shaft, MS shaft for couplings; b) whether replacement of parts during warranty period constitutes supply under GST?; and c) whether eligible to avail 18 per cent input tax credit on purchase of raw materials, as the manufactured products taxable at rate of 5 per cent. The Authority held that the marine propellers, rudder set, stern tube set, propeller shaft, MS shaft for couplings used as part of fishing vessels, factory ships and other vessels for processing or preserving fishery products are taxable at 5 per cent GST. The supply of parts under warranty being without consideration, no GST is payable. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the applicant who undertakes the warranty replacement is not required to reverse the input tax credit on the parts. Also the supplier is eligible to avail the credit of higher input tax paid on purchase of raw materials, even though the

manufactured products are taxable at lesser tax rate.
Ref: A dtance Ruling No. KE R/ 25/ 2018, dated 20/ 10/ 2018

12 per cent GST applicable on supply of works contracts awarded by Government

M/ s. Mary Matha Construction Company, In re

The applicant, who is a sub-contractor, sought for Advance Ruling on tax rate applicable for works contracts awarded by various government agencies and PSUs including Kerala State PWD, Central University of Kerala and HLL Infra Tech Services Ltd, etc. The Authority held that the supply of works contracts awarded by Kerala State PWD and Central University of Kerala attracts 12 per cent GST. But the supply of work awarded by M/s. HLL Infra Tech Services Ltd. for the construction of Biotech lab and administrative block at Life Sciences Park, Trivandrum attracts 18 per cent GST.

Ref: A dtance Ruling No. KE R/ 14/ 2018, dated 26/ 09/ 2018

18 per cent GST applicable on tile adhesive and joint filler

M/ s. New RVE Enterprises, In re

The applicant is a manufacturer of tile adhesive and joint filler. The tile adhesive is manufactured by mixing natural products like silica sand and dolomite powder with cement and chemicals. It is a 'prepared binder' specified under HSN 3824 which is taxable at 18 per cent GST. However the assessing authority pointed out that this item will come under HSN 3214, which stands for glaciers putty, grafting putty, resin cement, caulking compound, etc. Hence the petitioner sought for Advance Ruling on the tax rate applicable for the tile adhesive and joint fillers. The Authority held that the tile adhesive and joint filler manufactured by mixing natural products like silica sand, dolomite powder, cement and chemicals come under the category of 'prepared binder' specified under HSN 3824 which is taxable at 18 per cent GST.

Ref: A dtance Ruling No. KE R/ 19/ 2018, dated 19/ 09/ 2018

5 per cent GST applicable on implants for joint replacements

Shri Gopal Gireesh (Veena Chemicals), In re

The applicant is a retail dealer of implants for joint replacements. He sought Advance Ruling on the rate of tax in respect of various commodities. The applicant has stated that all the commodities listed in the Annexure are implants for handicapped patients in the nature of joint replacement falling under HSN Code 90213100 and are included under schedule 1. The Authority held that the implants for joint replacements falling under HSN Code 90213100 are covered under Notification No. 01/2017 of Central Tax (Rate) dated 28.06.2017 attracting GST at the rate of 5 per cent.

Ref: Order No. CT/ 4683/ 2018-C3, dated 29/ 5/ 2018

Carry bags made of polypropylene non-woven fabrics is taxable at 5 per cent

M/ s. JJ Fabrics, In re

The applicant, who is a manufacturer of carry bags made of polypropylene non-woven fabrics, sought an Advance Ruling on the rate of tax of the same. The applicant has referred to the clarification order C3/17556/09 dated 29.09.2009, wherein it was clarified that packing bags, textile bags, and carry bags made out of non-woven fabrics of polypropylene are covered by the HSN code 6305.33.00 of the Customs Tariff Act. The Authority held that the carry bags made of polypropylene non-woven fabrics are classified under entry 224 of Schedule 1 of the Notification No. 01/2017 of Central Tax (Rate) dated 28.06.2017 and State Notification No. 360/2017 dated 30.06.2017, and hence taxable at rate of 5 per cent.

Ref: Order No. CT/ 5492/ 18-C3, dated 29/ 05/ 2018

18 per cent GST applicable to whole wheat Malabar Parota M/ s. Modern Food Enterprises Pvt. Ltd., In re

The applicant is a manufacturer of 'Classic Malabar Parota' and 'Whole Wheat Malabar Parota'. They requested for an Advance Ruling on classification of 'Classic Malabar Parota' and 'Whole Wheat Malabar Parota' and eligibility of exemption from vide Notification No.2/2017 of Central Tax/SRO No.361/2017. The Authority held that the 'Classic Malabar Parota' and 'Whole Wheat Malabar Parota' classified under Schedule III of GST Laws vide Heading 2106 'Food preparations not elsewhere specified or included' and is taxable at 18 per cent GST. Eligibility of exemption from GST vide Notification No. 2/2017 of Central Tax / SRO No.361/2017 is applicable only for specific commodity 'Bread branded or otherwise' covered under HSN 1905.

Ref: A dtance Ruling No. KE R/ 23/ 2018, dated 12/ 10/ 2018

CLASSIFICATION

GST on processing natural gas and other inputs received from BPCL

M/ s. Prodair Air Products India (P) Ltd, In re

The applicant is a manufacturer of industrial gases such as Hydrogen, Nitrogen, Oxygen, etc. They sought Advance Ruling on: a) whether the activity undertaken by them amounts to 'job work' as defined under Section 2(68) of GST Laws and consequently classified as supply of services?; b) what would be the tax rate for supply of job work services?; and c) what is the value on which they would be liable to pay GST? The Authority held that the activity undertaken by the applicant of processing natural gas and other inputs received from BPCL on free of cost basis and manufacturing industrial gases from them shall fall under the scope of 'job work' under GST. The activity of the applicant being job work is a provision of service, as the input as well as output is owned by the principal and not by the applicant and falls under HSN 9988 taxable at 18 per cent GST. GST is payable on the transaction value for which job work service is rendered.

Ref: A dtance Ruling No. KE R/ 22/ 2018, dated 20/ 10/ 2018

Industrial gases produced out of major materials supplied is Job Work

M/ s. Bharat Petroleum Corporation Limited, In re

The applicant is a public sector undertaking operating oil refinery and producer of several petroleum products. They sought Advance Ruling on: a) whether Re-gasified Liquefied Natural Gas (RLNG), de-mineralized water (DM Water), Hydrogen Rich off Gas, Raw Water, etc. can be sent by the applicant to M/s. Prodair Air Products Pvt Ltd without payment of GST under the job work provisions in terms of Section 143 of GST; b) whether Hydrogen, Nitrogen and Steam (Industrial Gases) can be bought back without payment of GST under the job work provisions in terms of Section 143 of GST? The Authority held that the activity of the applicant of sending Re-gasified Liquefied Natural Gas (RLNG), De-Mineralized Water (DM Water), Hydrogen Rich off Gas and Raw Water free of cost to M/s. Prodair Air Products Pvt. Ltd. for manufacture of Hydrogen and Nitrogen are 'job work' as defined under Section 2(68) read with Section 143 of the CGST/KSGST Acts.

Ref: A dtance Ruling No. KE R/ 21/ 2018, dated 20/ 10/ 2018

No GST on Quit/ lease rent to Kerala Government for land used for agriculture

M/ s. The Cochin Plantations Ltd., In re

The applicant is a planter holding 192.8 hectares of land on perpetual lease from the Kerala Government. They requested Advance Ruling on whether quit rent/lease rent paid to Kerala Government on the land used for agricultural purpose can be classified under HSN

9986 or HSN 9973? The Authority held that the quit rent/lease rent paid to Kerala Government on the land used for agricultural purpose be classified under HSN 9986 and eligible for exemption under GST. As per Notification No.12/2017-CT (Rate)/SRO.No.371/2017, the government has exempted intra-state supply of services covered under heading 9986. As per this notification services relating to cultivation of plants or agricultural produce by way of 'vacant land with or without a structure incidental to its use' are exempted from tax liability.

Ref: *Advance Ruling No. KER/11/2018, dated 20/10/2018*

Goods are liable to IGST when they are imported into India

M/ s. Synthite Industries Ltd., In re

The applicant has approached for Advance Ruling on various contexts of imports: a) whether on procuring goods from China, in a context where the goods purchased are not brought into India, is GST payable by them?; b) on the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India, is GST payable by them?; c) on procuring goods from China not against specific export order, in a context when the goods purchased are not brought into India, is GST payable by them?; and d) on the sale of goods from the Netherlands warehouse to their end customers in and around the Netherlands, without entering India, is GST payable by them? The Authority held that the goods are liable to IGST when they are imported into India and the IGST is payable at the time of importation of goods into India. The applicant is neither liable to GST on the sale of goods procured from China and directly supplied to USA nor on the sale of goods stored in the warehouse in the Netherlands, after being procured from China, to customers, in and around the Netherlands, as the goods are not imported into India at any point.

Ref: *CT/2275/18-C3, dated 26/03/2018*

REFUND

GST refund and registration issues due to failure of GSTN portal not coming under the purview of AAR

Mr. Sutapa Sutradhar, In re

The applicant is a casual taxable person doing business on fireworks. He approached AAR for refund of tax paid as he could not complete registration as Casual Taxable Person due to GSTN Portal problems. The Authority held that the issues relating to refund of tax paid and failure to complete the registration as Casual Taxable Person due to GSTN Portal problems is not a matter coming under the purview of Advance Ruling.

Ref: *Advance Ruling No. KER/18/2018, dated 26/09/2018*

INPUT TAX CREDIT

Transitional ITC not eligible on computers, laptops, etc.

M/ s. Geojit Financial Services Ltd., In re

The applicant is engaged in providing various retail financial services like stock broking, share broking, marketing of initial

public offering of companies and mutual funds, corporate advisory services, etc. which were not taxable under VAT Law. In the circumstances, the applicant sought Advance Ruling on: a) whether computers, laptops, etc. used by the applicant for providing output service would qualify as inputs for the purpose of availing transitional ITC under Section 140(3) of SGST Act?; b) if the goods are physically available as closing stock as on 30th June, 2017, can the applicant avail ITC for the VAT paid? The Authority held that the computers, laptops, etc. used by the applicant for providing output service would not qualify as inputs for the purpose of availing transitional ITC under the above section. Also, ruled that the goods, even though physically available as closing stock as on 30th June 2017, ITC is not eligible for the VAT paid.

Ref: *Advance Ruling No. KER/13/2018, dated 19/09/2018*

Absorbing developmental charges in fixing land cost is lawful

M/ s. PPD Living Spaces Pvt. Ltd., In re

The applicant is a real estate developer executing a layout development project called 'Emerald Hills'. They sought Advance Ruling on the following: a) is it correct to structure agreement by fixing the land cost by absorbing the development charges?; and b) whether the ITC availed has to be paid back on pro rata basis, on plots sold after completion? The Authority held that it is lawful to structure agreement by fixing the land cost after absorbing the development charges. The Input Tax Credit availed in respect of the GST paid on goods and/or services used/consumed for the development of the land, in respect of the plots sold after the issuance of Completion Certificate is liable to be reversed on pro rata basis.

Ref: *Advance Ruling No. KER/20/2018, dated 19/09/2018*

GST small business exemption eligible to co-owners separately in case of jointly owned property

Elambrancheri Khaldoon, In re

The petitioner is one of the co-owners of a jointly owned immovable property. In the circumstances, an Advance Ruling is sought in respect of the following: a) whether small business exemption under Section 22 of the GST Act is available to all owners separately in case of jointly owned property; b) engaging a co-owner to collect and distribute rent among all the owners for administrative convenience will have any implication on the business exemption under Section 22 of the GST Act for individual co-owners. The Authority held that the small business exemption, provided under Section 22 of the GST Act, is eligible to the co-owners separately in the case of jointly owned property, where the rent is collected together, but divided equally and transferred to the respective co-owner. Engaging a co-owner to collect and distribute rent among all the owners for administrative convenience has no implication on the business exemption under Section 22 of the GST Act for individual co-owners.

Ref: *Advance Ruling No. KER/12/2018, dated 19/09/2018*

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Printed & Published by : **Shri Kiran Lal P.S,** Registrar, GIFT

Date of Publication : 10 January 2019

We would like to thank Shri B.S Thyagarajababu, Joint Commissioner, SGST Department, Kerala, Shri A.B Chandrashekar, Shri Ajith Kumar D.S for their valuable inputs to this document. We also acknowledge Shri Anil Kumar for assisting us in editing, Smt. Sheeja N., Smt. Vrintha and Shri Anish. A, Kasaragod for typesetting and design services.

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