Advance Ruling Paradox

It is not good to point out something wrong in the law as this would mean questioning the wisdom of the experts drafting the law. Nevertheless, there are possibilities of omissions or errors which apparently seems to be there. In the GST law, which has become effective in India from 1st July 2017, the subject of Advance Ruling has been dealt with under section 95 to section 105 of CGST Act, 2017. In almost all countries where mature laws are there, the concept of Advance Ruling has been laid down. The purpose of Advance Ruling is that the applicant may go before the Authority of Advance Ruling to seek ruling in relation to applicability of taxes, classification of supplies, eligibility of input tax credit, applicability of any notification etc. **in advance** so that the applicant keeps carrying on his business without the fear of litigation.

In the sections quoted above, it has been mentioned that the applicant may seek ruling in relation to supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Here, it is important to note that Advance Ruling covers even those supplies which the applicant has already undertaken, which means that the applicant has already decided about the taxability etc. and is paying or not paying the tax as per his wisdom. A ruling on such a supply cannot be said to be a ruling obtained in advance. In earlier laws of Central Excise or Service Tax (Section 23A of the Central Excise Act, 1944 and Section 96A of the Finance Act, 1994) the Advance Ruling could be obtained in respect of activity/service proposed to be undertaken. There are no words like “being undertaken” in earlier laws.

The existence of such a clause in an act is bound to create confusion / disputes. Suppose an applicant is already paying the tax on supplies being undertaken and the Authority for Advance Ruling passes the ruling that the supply is not taxable or vice versa, how will such a situation be handled. The provisions of applicability of Advance Ruling are also bound to add more confusion. This section says that the Advance Ruling is binding only on the applicant who had sought it in respect of any matter for advance ruling, and on the concerned officer or the jurisdictional officer in respect of the applicant. Again, supposing there are four assessees in the jurisdiction of an officer making the identical supplies, paying taxes at full rate and one of them goes to the Authority for Advance Ruling and obtains a ruling in his

favour (say no tax, or concessional rate of tax), what will be the fate of other three? When we say it is binding on the jurisdictional officer, is it possible that he continues charging full rate of tax from the rest of three assessees and allows concessional rate or no tax to the one who has gone to the Authority for Advance Ruling and obtained the ruling? No, it is not possible, particularly when the law says it is binding on the jurisdictional officer. And if it is so, then to say that it is binding on only the applicant becomes infructuous.

Under section 98, there is a provision that the Authority for Advance Ruling shall not admit an application where the question raised in the application is already pending in any proceeding. Here if at the time of audit or otherwise, the department has already raised the question on the subject matter, the applicant cannot go before the Authority for Advance Ruling. When we read this provision with the definition of applicant given in section 95(c) ibid, it says that an applicant may be a person registered or desirous of obtaining registration under this Act. In other words, an applicant may be a registered as well as a non-registered person also. If there is an issue in respect of which already the question has been against a body corporate raised by the department, the body corporate cannot approach the Authority for Advance Ruling as per the condition, but if any director of the same body corporate, in individual capacity (non-registered), makes an application on the same matter, what will be the fate? As per the law, his application can be admitted, again leading to disputes.

It appears that the application by a non-registered person, the application in respect of supplies **being undertaken** and applicability of Advance Ruling are contradictory. The parallel provisions were not there in earlier laws but have been incorporated now. Is such incorporation deliberate? The same needs re-examination.

Section 20 of the Integrated Goods And Service Tax Act, 2017 lays down that the provisions of Central Goods and Services Tax Act relating various issues, including Advance Ruling “shall mutatis maturatis applies to Integrated Tax as they apply in relation to Central Tax as they are enacted under this Act”. This means only the issue covered by CGST Act, 2017 are applicable under IGST Act, 2017. Now if one compares both the Acts, there is no provision of Place of Supply of Goods or Service in CGST Act, 2017. The provisions relating to this issue are subject matter of IGST Act, 2017. In other words only those issues of CGST are applicable to IGST which are there in CGST. The applicability of provision of advance ruling of CGST do

not and cannot cover the issues pertaining to Place of Supply of Goods or Services. Even the CBEC flyer on Advance Ruling says that "..... the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned State or Union Territory. It is also for this reason that questioning on determination of Place of Supply cannot by raised with the "AAR or AAAR."

There is an instance. In a ruling passed by West Bengal Advance Ruling Authority in matter of Global Reach Education Services Pvt. Ltd. It has been held that the services of the applicant are not "Export of Services" and are taxable under the GST Act. The basic issue was place of Supply of Service. The concerned officer had objected to admission of the application on the ground that determination of the place of supply is beyond the jurisdiction of the Advance Ruling Authority. The authority however observed that the objection is misplaced as the issue is not determination of Place of Supply, but whether the applicant is making a taxable supply of service and liable to pay tax thereon.

The department in all likelihood might have gone into appeal before appellate advance Ruling authority. But what is important to see is that an advance ruling authority has encroached upon territory, which was not in their jurisdiction and if they are right, then they have indirectly held that they have authority to determine the Place of Supply in order to determine the taxability, bypassing the provision of the Act and the CBEC clarification.

The way authorities of advance ruling are giving the rulings, soon, a parallel law will come into existence. It is going to be perilous and vulnerable and against the spirit of objectives of advance ruling.