Promises of Ruling in Advance

"Bewilderment" appears to be the reaction of taxpayers and every other enthusiast of GST law, every time advance ruling pronounced is published in public domain. But in all fairness, consider the reasons for these reactions; and to discover them, one need not travel far. Where ruling adopts an interpretation that threatens the tax position subscribed by taxpayer empowered to self-assess tax liability, taxpayer's angst is due to the imminent litigation lurking somewhere waiting to expose the tax position by scrutiny of returns or audit of records. Taxpayers need to entertain the possibility that they might still be right in their own interpretation of the law while leaving a given taxpayer-applicant contented with the certainty that a binding ruling procures. This article attempts to survey the concerns surrounding advance ruling in GST under Chapter XVII of Central Goods and Services Tax Act, 2017 and draw reader's attention to the exact nature of "commitment" made in the law. Read on…

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Commitment of Advance Ruling

Desirous 'Applicant'

"An applicant desirous of obtaining an advance ruling" has an option to secure a "binding ruling" that even the Government cannot resile from. Not even if a contrary interpretation is laid down by the highest Court. Advance Rulings have been deprecated for their departure from popular interpretation and for disharmony with views of distraught thought-leaders. A 'desirous applicant' cannot be bewildered by the outcome of the process consciously entered into knowing fully about the 'accepted perils'

inherent in such a process. And just because another view is possible, that is no reason to seeking appellate intervention; an order must not only be wrong but so perversely wrong that except by intervention of higher Court, injustice will have triumphed, say experts.

'Two views' to any argument

It is as old as humanity, that when there is an argument, there will always be two (or more) views. It is this plurality that differentiates our race and perhaps responsible for perfection that we have achieved in the way we shape our society. But anyway, taxpayer who 'desires' to be an applicant is not blind to be possibility that 'the other view' may be taken. With this clear possibility, taxpayers cannot possibly be found to say that the view pronounced in the ruling was not in their reckoning when the application was filed. Opinion of experts in the field of GST, as compelling as it may be, do not enjoy binding force. It is this 'certainty' that taxpayers seek when they opt for a ruling in advance.

'Reason' to seek ruling

Business environment is riddled with uncertainty about many aspects and GST exasperates this situation in no small measure. Uncertainty is not that the interpretation is not 'unknowable' but the very real possibility that another interpretation may be canvassed that was not budgeted by the taxpayer. Margins in business are in single digits whereas GST

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is in double digits and any slip in interpretation, could cost the business dearly. Taxpayers are not enthused about this new tax or any new tax, for that matter. When tax is inevitable, it must be unambiguous, that is their only 'ask'. And when this tax is creditable, any enthusiasm leftover evaporates instantly. Where taxes are non-creditable, there is some motivation to 'get it right' (this time at least) and for obvious reasons. Getting it right is not only about the rate of tax but six other things also. Business needs 'certainty', not about the interpretation but certainty of 'no contest' later.

'Contest' by Administration

Whether administration should canvass an alternate interpretation is a question in rhetoric because society looks to the Government to ensure justice *in rem*. That is, if one taxpayer were to get away with undue advantage, there is no denying that Government will have done injustice to the rest of society; justice *in rem* demands inquiry *in personam*. Mindful of this responsibility, Government will (and must) challenge taxpayers' tax positions. Some may question reasons for investigative work undertaken, but that is misinformation, and in some instances, exception. It would be failure of administration if investigative work were liberal or lethargic.

'Certainty' to taxpayer

Society has accepted, in law made by elected representatives, that a 'binding' arrangement be entered into with specific taxpayers through the process of 'advance ruling'. Such a ruling obliges the State to accept the outcome of the ruling and therefore, the extent of revenue determined and without the expense of investigating the correctness of the self-assessed tax. Consequence of this arrangement is two-fold one, that a given taxpayer can proceed without fear of contest of after implementing the interpretation pronounced in the ruling and two, the rest of the society accepts no further cost of exploring the correctness of taxes paid but forfeiting the outcome of an alternative

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interpretation. When the People have given themselves a law that offers this much certainty, there is no gainsaying about the merits of the People's will. Every taxpayer enters this 'option' in broad daylight and with eyes wide open seeking 'certainty'. There is not an iota of doubt that after a ruling is passed, administration will revisit the outcome pronounced.

'No fear' of precedent value

Advance ruling bears no 'binding precedence' that other taxpayers must abide by or that can be cited by other taxpayers and expect adherence by administration. Rulings hold force over a vary narrow compass but the grief that rulings seem to cause is the possibility that the interpretation taken in one ruling could 'set the cat among the pigeons' in cities and jurisdictions where tax compliance was a bliss unaware of this interpretation to identical facts. To expect this new law to be applied selectively or to leave long-standing practices unquestioned is disrespect to this new law. This law came about by no less than a Constitutional amendment and with a commitment to rid society of the ills that many had resigned to live with. When a Chartered Accountant in Trivandrum can advise on GST implications of a transaction to a Company in Dibrugarh, it is nothing short of remarkable. If one is sure of the tax position then, a ruling is welcome to adopt a different interpretation yet leave this taxpayer unmoved. GST never promised 'no litigation' but it certainly promised 'clarity'. Clarity does not mean continuity of past tax practices and interpretation. Clarity means 'knowability'. Clarity for all taxpayers, but certainty, only for applicant to ruling.

'Surprised' by exposure of interpretation

Interpretations never before imagined have been revealed by advance rulings. Taxpayers are surprised not with the possibility of the views taken (in a ruling) but that such a view was never considered taxpayer, right from Jul 2017. Nobody likes surprises, certainly not when it comes to tax treatment. If some exceptions are left out, for the most part, interpretations are not impossible because it is come out from reading the very words of the lawmaker. One is welcome not to subscribe to such an interpretation but certainly not expect to be free from challenge. Experts caution that advance ruling is patently erroneous and for this reason discourage taxpayers from seeking a ruling. But then, beeline that taxpayers are seen making to the Office of AAR seems to indicate that public outcry may not be entertained in boardroom deliberations or are there so many indignant applicants. In either case, every taxpayer with their panel of expert advisors weigh binding certainty of a ruling against perils of prolonged litigation with uncertainty in the interregnum. Taxpayer-applicants have helped bring into the open, interpretations that were never in the reckoning, either due to missing the nuances of GST or its ability to accommodate such new interpretations. Courts will have final say about the interpretation application to other taxpayers on issues involved brought out by taxpayer-applicants.

'Banking' on competence imbalance

Earlier laws will bear testimony of the vast dissimilarities in interpretation of essentially the same law on the same facts. Contractor in one State would be routinely assessed to tax on

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the basis of 'standard mark-up over costs', whereas, in the neighbouring State be assessed on actual 'contract receipts' and admissible deductions for taxes already paid. Although GST is a new law, the imbalance remains in administrative skills to comprehend this new law and experiment possible interpretations. Taxpayers accustomed to the skill levels in one jurisdiction are no longer able to bank on them because advance rulings have exposed these new possibilities for administrators in all jurisdictions to be enlightened and to pursue.

'Anxious' about exchange of information

Interpretation adopted in advance rulings are not only made public but possibly put through a process of 'sorting and sieving' to extract HSN-wise database of tax positions to challenge taxpayers with granular information tax position they currently employ. With extension of cooperation and collaboration amongst tax administrators of all States and Centre, there is no requirement that every State must have its own 'subject matter experts'. Karnataka could offer administrative expertise in IT industry; Goa could offer expertise in Hospitality and Tourism industry while Maharashtra in Automotive industry. And collaboration between States with overlapping skills would be just another day at the office for tax administrators. And this is not even an unintended benefit to administration in a 'connected world'. In fact, exchange of information has uncovered no small share of revenue recently and taxpayers that have been at the receiving end of demands emanating out of 'intelligence gathered' will bear witness to this phenomenon. GSTN is committed to taking this exercise of gathering information and turning them into intelligible tax demands to a whole new level, not as something that is possible with the Common Portal but a duty towards society to uncover demands that slipped through the cracks in the unconnected world that GST has left behind.

Self-assessed tax 'almost' accurate

While Government has come through on the demands of trade about 'minimum Government, maximum governance' by placing the entire responsibility of assessment on taxpayers, the fear now is about the perils associated with interpretational possibilities with this new law. With this new regime of self-assessment here to stay, taxpayers are compelled to 'unlearn and relearn' and come to an accurate understanding of the workings of this new law. For the most part, taxpayers have got it right with their understanding. Leasing is now supply of services and high-seas sales are excluded from scope of supply itself. CGST paid is a host-State is not creditable in home-State even against CGST liability. So, for the most part, taxpayers have arrived at the correct interpretation of transaction in the umbral region of their operations but, there are transactions in the penumbra where taxpayers are attempting adventurous interpretation fuelled to some extent by the potential upside and a desire to 'set this law straight'. These transactions may not occur every day but do occur often enough to significantly affect the operating results of a business. Taxpayers are therefore not ready to severe their recourse to a ruling in advance.

'Critical' examination of GST law

Vociferous calls are heard to abandon this forum, if there is to be any chance of securing a lawful and conscientious interpretation of this new law. These calls are from well-meaning enthusiastic thought-leaders and they deserve some latitude about their approach to criticism because, truth be told, pursuing the path that puts to test the boundaries of this law must be counted a service to the Nation. And this pursuit does not augur well with straight-

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shooting that advance rulings have come to be associated with. The need is to ensure that GST law that has been welcomed by everyone, does not go untested for its vires as well as its boundaries. Constitution has laid boundaries that not even GST law can gloss over or overstep. GST must coexist with levies that have not been subsumed. And responsibility falls on the challengers who need Courts to grant them its indulgence.

'Defects' in facts

Applicants must share responsibility for failure on their part in bringing to the surface, the 'fact-in-issue' before the authorities. It is no one's case advance rulings are designed to be pro-revenue, even in the backdrop of the mountain of rulings to show. Failure in presenting facts can be fatal even before the highest Court and this cannot be brushed aside. Even if mischievous applications are ignored because discussing rulings on them is underserving of readers' consideration, there are scores of applications where the fact-in-issue does not appear to have been brought out for consideration of the authorities. Whether this failure was in presentation or its appreciation, there has been a failure that affected the outcome. And implications of such rulings perceived by other taxpayers, is heart-breaking. But the take-away from such rulings is that any anxiety about its ramifications is not entirely justified because of the scope available to distinguish them on law and facts. It is important to note that the blame over the outcome of these rulings have, in part, to be justifiably laid at the doorstep of applicants. When Courts are not free from failure of presentation, advance rulings cannot be protected from this misadventure nor be banished for the inevitable consequences.

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'Judiciousness' of Rulings

Final criticism about this forum is that Executive functionaries occupy the position to pronounce these ruling. Decisions affecting civil consequences must be exercised judiciously. Being judicious is neither the exclusive privilege of the Judiciary nor being injudicious the presumption about the Executive. It is a responsibility that competent, qualified and experienced functionaries are carefully chosen and appointed to discharge. To say that there is not a single ruling that silenced naysayers with its brilliance in elucidating this new law, would be a plain lie. Consider that Executive functionaries are empowered to speak for the State and to grant the applicant a 'binding pronouncement' about the interpretation that the State admits unequivocally. And if the People, acting through their elected representatives, have authorised Executive functionaries to speak for the State, there may be little to find fault with such a policy resolve of the People. There is something that taxpayer-applicants seem to find comfort in this forum that motivates them to find their way past all the din around advance rulings.

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Conclusion

International Treaty law may be called to one's attention where sovereign authorities all too often enter into binding negotiations, with either a contract or policy resolution or State law affording the framework, that parties agree *a priori* to obey and comply even if it suffers from any interpretational misadventure. Sovereign Nations have been party to such binding negotiations because legal experts say, Courts cannot enter before commencement of *lis*. Taxpayer-applicants admit that 'certainty' has been their primary objective and 'accuracy' being a by-product.

Our Apex Court has not been shy of moving away from its own past and with great eagerness availed itself of the very next opportunity to lay down the interpretation that needs to be applied. If society has accepted this possibility of the Apex Court even, society must at least reconsider the direction of its criticism, if not its criticism itself, surrounding advance rulings in GST. Advance ruling is an option that well-informed taxpayers choose to avail because it holds the promise of certainty albeit with possibility of disappointment. ■■■