



Advance Ruling Under State-level VAT Laws

On the lines of provisions on advance ruling in the Income Tax, Central Excise, customs & service tax laws, VAT Laws of States like Haryana, Maharashtra, Karnataka and Delhi contain provisions on Advance Ruling. There is no such provision in the Model Value Added Tax Act, 2003 made by Prof. Atre, consultant to Finance Ministry and hence, the proposal of these states to bring in the provision of Advance Ruling in their VAT laws is certainly a welcome and progressive step. Under Maharashtra Act, interpretation of any provision can directly be sought from the Tribunal with only limitation that the advance ruling shall be granted only on the important and substantial questions of law. Under Haryana Act, the State Government may suo motu or on an application made to it by a dealer or a body of dealers, issue an order clarifying any point relating to levy, assessment and collection of tax. Under Karnataka Act, the Commissioner may constitute an Authority to clarify the rate of tax in respect of any goods or the eligibility to tax of any transaction under the Act. Any registered dealer seeking clarification or advanced ruling may make an application to the Authority. This article attempts to analyse the implication of these provisions and the major points with comparative analysis under VAT Laws.

The concept of Advance Ruling has been introduced first time in State Sales tax Laws by some of the States. States like Haryana, Karnataka and Maharashtra have incorporated provisions on advance ruling in their VAT laws. Delhi Value Added Tax Act, 2004 (DVAT Act) has also incorporated provisions for determination of specific questions and ruling on interpretations of law. There is no such provision in the Model Value Added Tax Act, 2003 made by Prof. Atre, consultant to Finance Ministry and hence, the proposal of these states to bring in the provision of Advance Ruling in their VAT laws is certainly a welcome and progressive step in the administration of VAT in our



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laws.

Meaning of Advance Ruling

Section 245N of the Income-tax Act, 1961 (herein after termed as IT act) as amended by the Finance Act, 2000 with effect from 1.6.2000 define the term 'Advance Ruling' as

- a) "advance ruling" means—
- (i) a determination by the Authority in relation to transaction which has been undertaken or is proposed to be undertaken by a non-

country. There are already provisions on advance ruling in the Income Tax, Central Excise, Customs & Service Tax

- resident applicant; or
- (ii) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident, and such determination shall include the determination of any question of law or of fact specified in the application;
- (iii) a determination or decision by the Authority in respect of any issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination

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or decision of any question of law or of fact relating to such computation of total income specified in the application;

Under Vat Acts of States, the term “Advance Ruling” has not been defined either by the Haryana Value Added Tax Act, 2003 (HVAT Act) or Maharashtra Value Added Tax Act, 2002 (MVAT Act) or DVAT Act. In the Karnataka Value Added Tax Act, 2003 (KVAT Act) these words have been used and have been defined in section 164(a) as follows:

“Advance Ruling” means a determination by the authority in relation to a transaction, which has been undertaken or is proposed to be undertaken by a dealer registered under the Act.”

The HVAT Act has used the words “Clarifying” which also means determination by the authority in relation to a transaction.

Scheme of Advance Rulings Under Direct Tax Laws

The Institution of Authority for Advance Ruling was created by the Finance Act, 1993 under the Income-tax Act. A chapter XIX-B was introduced under the Income-tax Act with effect from 1.6.93. A large number of advance rulings given by the Authority in Income-tax law in the last few years, the numerous wealth of judicial pronouncement by the Supreme Court, High Court and the Tribunals in deciding various tax disputes have helped to remove uncertainty and imbalance in the tax administration and creating confidence in the non-resident to plan their income-tax affairs well in advance by having a precise knowledge of tax liability for avoiding long drawn and expensive litigation.

The concept of advance ruling

initially was applicable only to the non-resident but subsequently, this was extended to the specified category of residents by making an amendment u/s 245N of IT Act w.e.f. 1.10.98. The substantive provision of law relating to this Authority are contained u/s 245N to 245V of the IT Act (Chapter XIX-B) and the procedure is spelt out in Income-tax Rule, 1962—Rule 44E and 44F and also the “Authority for Advance Ruling (Procedure) Rules, 1996” notified under the powers vested in the Authority u/s 245V of IT act.

Scheme of Advance Rulings Under Customs, Central Excise and Service Tax Laws

Setting up an Authority for Advance Rulings, Customs & Central Excise to give binding Rulings, in advance, on Customs, Central Excise and Service Tax matters is one of the important measures taken to facilitate foreign investment into the country. Advance Rulings afford far greater certainty to intending foreign investors in respect of their indirect tax liabilities. The legal provisions of Advance Rulings were introduced through the Finance Acts of 1998, 1999 and 2003.

The process of obtaining the ruling is highly expeditious as the Authority is statutorily required to deliver the ruling within 90 days of receipt of an application. Rulings are pronounced after providing an opportunity of being heard by the Authority and in pursuance of other accepted judicial norms. Advance Rulings pronounced by the Authority are binding on departmental officers engaged in assessment of goods and services and on the applicant, and hence rule out

possibilities of disputes and litigation, subsequently. Furthermore Advance Rulings are not appellable by the department or the applicant, under the Customs, Central Excise or Service tax law.

Advance Rulings Under VAT Acts of States

Perusal of provisions in HVAT Act, MVAT Act & KVAT Act indicate that these have been drafted afresh and has no parallel to similar provisions contained in any other statute. In the following paragraphs an attempt has been made to analyse the implication of these provisions contained in VAT acts of these States.

A. Position in MVAT Act & Rules:

Under section 55 (1) of the MVAT Act as amended by Amendment Act of 2005, a registered dealer may apply in the prescribed form and manner [Form No. 903 under rule 63 of Maharashtra Value Added Tax Rules, 2005 (MVAT Rules)] to the Tribunal for obtaining an advance ruling on the interpretation of any provision of the MVAT Act, Rules or Notifications in respect of transactions proposed to be undertaken by him, even though any question relating to the said provision has not arisen in any proceeding like assessment, appeal etc.. This sub section is very wide in nature and the interpretation of any provision can directly be sought from the Tribunal with only limitation under sub-section (2) of section 55 that the advance ruling shall be granted only on the important and substantial questions of law. If the Tribunal finds that the application does not involve any important or substantial question of law, then the Tribunal may reject the application. The Tribunal, however,

must give reasonable opportunity of hearing to the applicant.

After application is admitted, for determination of the question, the President of the Tribunal shall constitute a Bench consisting of 3 members of the Tribunal, a senior practitioner entitled to appear before the Tribunal to be nominated by the President and an officer not below the rank of Joint Commissioner of the Sales Tax Department, to be nominated by the Commissioner. The Bench, after hearing shall pronounce its advance ruling on the questions specified in the application. As far as possible, the Bench shall render the advance ruling within 4 months of the receipt of the application by the Tribunal. - Section 55(3), MVAT Act.

According to sub section 55(4) of MVAT Act, the advance ruling shall be binding unless there is a change of law on the basis of which advance ruling has been pronounced and accordingly, no such question shall be entertained in any proceeding by any authority appointed or constituted under the VAT Act except in any appeal to the High Court. Even the Tribunal itself is not competent to decide otherwise under this section, on any issue once it gives ruling in advance.

Issues under MVAT Act

- The advance ruling shall be granted only on the important and substantial questions of law. If the Tribunal finds that the

application does not involve any important or substantial question of law, then the Tribunal may reject the application.

- The advance ruling shall be binding and no such question shall be entertained in any proceeding by any authority appointed or constituted under the VAT Act except in any appeal to the High Court. Even the Tribunal itself is not competent to decide otherwise, on any issue once it gives ruling in advance.



B. Position in HVAT Act & Rules:

The provisions are contained in section 56 of HVAT Act and Rule 68 of Haryana Value Added Tax Rules, 2003 (HVAT Rules), which are as follows :

According to section 56 (3), the State Government may, if it considers necessary or expedient so to do, for the purpose of maintaining uniformity in the levy, assessment and collection of tax or for the removal of any doubt, *suo motu* or on an application made to it in the **Form VAT M4** and manner on payment of the court fee stamp of Rs. 500 by a dealer or a body of dealers, issue an order clarifying any point relating to levy, assessment and collection of tax and all persons employed in the administration of this Act except an appellate authority, and all dealers affected thereby shall observe and follow such order.

If any person feels aggrieved by an order, he may at any time prefer an appeal against such order to the Tribunal and for this purpose the

order shall be deemed to be an order passed under HVAT Act. Appeal preferred against such order to the Tribunal, shall be heard and decided by the full-member Tribunal section 56(5).

The Tribunal may, after giving notice to the State Government, stay the operation of the order appealed before it as above and where a stay is granted, the appeal shall be heard and decided within a period of sixty days from the date of the stay order-section 56(6).

Issues under HVAT Act

From the above, following issues emerge in respect of law on advance ruling:

- There is no provision for advance ruling by State Government itself. State Government is the agency to issue rules in respect of law.
- All the authorities excluding appellate authorities will be bound by advance ruling order. Strictly interpreting even the revisional authority is bound by clarification issued by State.
- There is no provision of reconsideration of advance ruling issued which mean that advance ruling once issued cannot be reconsidered by the State Government. However, issuer continues to enjoy inherent power to reconsider or withdraw the ruling. An express provision providing for such power and also the restrictions and conditions for use of such power will go a long way benefiting the revenue and assessees.

One of issues in respect of law on advance ruling under HVAT Act is 'no provision for advance ruling by State Government itself'. Another issue is that all the authorities excluding appellate authorities will be bound by advance ruling order. Strictly interpreting even the revisional authority is bound by clarification issued by State.

- An application of an advance ruling cannot be made on an issue, which has been settled by Tribunal or High Court or Supreme Court. But there is no bar in the Act for making an application on an issue, which is pending before High Court or Supreme Court. A clarification issued by the State during the pendency of an issue before High Court or Supreme Court may influence the decision in that case.

C. Position in KVAT Act & Rules: Section 60 of KVAT Act is on clarification and advance ruling and prescribe that the Commissioner may constitute an 'Authority for Clarification and Advance Rulings', consisting of three Additional Commissioners, to clarify the rate of tax in respect of any goods or the eligibility to tax of any transaction under the Act. Any registered dealer seeking clarification or advanced ruling under Section 60 may make an application to the Authority in form VAT 540 and accompanied by proof of payment (Rs. 1000, by way of a crossed DD in favour of the CCT, Karnataka Bangalore).

The order of the authority shall be binding only on the applicant who seeks clarification and only in respect of the goods or transaction in relation to which a clarification is sought and also only on all the subordinate officers. The order of the Authority shall be binding unless there is a change in law or facts on the basis of which the order was passed.

Where the authority finds, on a representation made to it by any

The application for advance ruling under HVAT Act can be made by a dealer or a body of dealers i.e. a trade association. Similar provisions have been incorporated in the MVAT Act. Under the HVAT Act, the State Government *suo motu* can also issue clarification on any issue.

officer or otherwise, that an order passed by it was obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such order to be *void ab initio* and thereupon all the provisions of this Act shall apply to the applicant as if such order had never been made.

Rule 165 of KVAT Rules - Scheme and Procedures on Advance Ruling

The Commissioner may constitute the Authority consisting of three Additional Commissioners as members and authorize the most senior member to act as Chairman. The Authority may either, allow or reject the application. No application shall be rejected unless an opportunity has been given to the applicant to show cause in writing against such rejection, and where the application is rejected, reasons for such rejections shall be given in the order. The order of Authority shall be passed within three months of the receipt of any application, and a copy of every order made under Section 60 shall be sent to the applicant and the officer concerned.

The Authority shall not allow the application where the question raised in the application, is already pending before any officer or authority of the Department or Appellate Tribunal or any Court in any proceeding before them, or relates to a transaction or issue

which is designed apparently for the avoidance of tax.

Any requisition, direction, letter, authorization or written notice to be issued by the Authority shall be signed by the Secretary or by an officer authorized by him.

The applicant shall not, except by leave of the Authority be heard in support of any additional question not set-forth in the application, but in deciding the application, the Authority shall at its discretion consider all aspects of the questions set-forth as may be necessary to pronounce a ruling on the substance of the questions posed for its consideration.

Where the Authority finds on its own motion or on a representation made to it by the applicant or the officer concerned, but before the clarification or ruling pronounced by the Authority has been given effect to by the officer concerned, that there is a change in law or facts on the basis of which the clarification or ruling was pronounced, it may by order modify such ruling in such respects as it considers appropriate, after allowing the applicant and the officer a reasonable opportunity of being heard.

The applicant or the officer concerned or an authorised representative may be allowed to inspect the records of the case on making an application in writing to the Secretary, provided that only those documents shall be allowed to be inspected which have been relied upon in the proceedings before the Authority.

☞ The inspection shall be allowed only in the presence of an offi-

cer of the Authority and the applicant may be permitted to make notes of inspection but not to take copies of any document.

☞ Fees for inspecting records of the Authority shall be charged from the applicant as follows.-

1. One hundred rupees for the first hour or part thereof, and
2. Fifty rupees for every additional hour or part thereof.

☞ Fees for inspection shall be paid in advance in cash.

Every order of the Authority under Section 60 shall be duly signed by the members and bear the official seal of the Authority. One certified copy of such order of the Authority shall be communicated to the applicant and the officer concerned under the signature of the Secretary or any other officer of the Authority authorized by him in this behalf and bear the official seal of the Authority.

An applicant may withdraw an application made under sub-section (1) of Section 60 within thirty days from the date of application.

D. Position under the DVAT Act & Rules: Section 84 & 85 are important sections from the point of view of taxpayers. The two sections cover very important taxpayers friendly measure.

a. Determination of specific Question (section 84 & rule 58): Under section 84(1) a person may apply to the Commissioner in the prescribed manner for the determination of any determinable question. The question however should not have come out of any proceedings before court.

b. Ruling on general questions (Section 85):

The Commissioner may, by notification in the official Gazette, publish his ruling on the answer to any question involving the interpretation of this Act or application of this Act to a class of persons or class of transactions subject to such restrictions and conditions as the Commissioner may deem fit. The ruling shall be treated as coming into effect on the date stated in the ruling (which may be a date prior to the publication of the ruling) or, if no date is stated in the ruling, on the date of publication of the official Gazette.

c. Prescribed manner: As per Rule 58:

- Any person desiring that a question be determined shall furnish a concise statement of the case stating in writing in Form DVAT-42 therein precisely the question to be determined, and indicating clearly the basis for the question.
- Where the person applying for the determination so desires, the statement may separately include a draft ruling for the Commissioner's consideration and must be accompanied by a demand draft in favour of "The Commissioner Delhi Value Added Tax" for Rs. 1000.
- The statement of the case

Perusal of provisions in HVAT Act, MVAT Act & KVAT Act indicate that these have been drafted afresh and has no parallel to similar provisions contained in any other statute.

referred shall contain a declaration that the question submitted for determination does not arise from any order passed under the Act or under the Delhi Sales Tax Act, 1975, or Delhi Sales Tax on Works Contract Act, 1999, or Delhi Sales Tax on Right to Use Goods Act, 2002, which were in force before the commencement of the Act and shall be signed by the person or his agent.

d. Determinable questions: The determinable questions have been listed out & include:-

- whether any person, society, club or association or any firm or any branch or department of any firm is or would be a dealer;
- whether a transaction is or would be a sale, or requires an adjustment to be made under section 8 of DVAT Act arising out of a sale;
- whether a transaction is or would be in the nature of works contract, or transfer of right to use any goods; etc.

e. Time Limit for Determination:

The Commissioner shall make the determination within 6 months from the date of submission of the question {rule 58(5)}. Where the Commissioner fails to make such determination, and the person thereafter implements the transaction which is the subject of the application and in the manner described in the application and has, in the application for the determination of the determinable question, indicated the answer to the determinable question which the person believes to be correct the Commissioner shall be deemed to have made and issued to the person on the day after the expiry of the prescribed period,

a determination of the determinable question in the terms of the proposed determination.

f. No further Determination: If any such question arises from any order already passed under this Act or under the Delhi Sales Tax Act, 1975 or the Delhi Sales Tax on Works Contract Act, 1999 or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994, as then in force in Delhi, no such question shall be entertained for determination but such question may be raised in an objection or appeal against such order.

g. No assessment which is inconsistent with the determination: Where the Commissioner has issued to a person a determination in respect of a particular transaction and the person implements the transaction based on the determination issued to him than no assessment may be raised by the Commissioner against that person which is inconsistent with the determination and no penalty may be imposed on the person if the determination is later held incorrect. Same provision would apply to Ruling under section 85.

E. General Points in above VAT acts

1. Advance Ruling vis-a-vis clarification: Advance ruling is applicable only in respect of one person i.e applicant whereas clarification is applicable in respect of all the persons having the same facts as has been provided for seeking of clarification. Example : Applicant A seeks advance ruling on certain facts applicable to him. Advance ruling on his application will be applicable to him in respect of those facts. No other person hav-

ing the same facts can take shelter under that advance ruling issued to some other person. Whereas any person having same facts can plead the clarification issued on application of somebody.

2. Application for Advance Ruling: The application for advance ruling under HVAT Act can be made by a dealer or a body of dealers i.e. a trade association. Similar provisions have been incorporated in the MVAT Act. Under the HVAT Act, the State Government *sou motu* can also issue clarification on any issue. Whereas, only registered dealer is entitled to make an application under the KVAT Act. Under DVAT act any person can make application for determinable of specific question as per DVAT Act.

The application under the HVAT Act can be made for clarification on any point relating to levy, assessment and collection of tax. The only condition is that such an issue should not have been settled by an order of the Tribunal or the law declared by the High Court or Supreme Court. Similarly MVAT Act provides that application can be made for interpretation on any provisions of Act, rules or notification. Whereas, an application under KVAT Act can be made to clarify on the applicable rate of tax in respect of any goods or exigibility to tax of any transaction under the Act. Under DVAT Act application for the determination of a question may be made in respect of a proposed transaction, a transaction that is being undertaken, or a transaction has been concluded. However, an application for the determination of a determinable question may not be made after –
(a) the Commissioner has com-

menced the audit of the person pursuant to section 58 of this DVAT Act; or

(b) the Commissioner has issued an assessment for the tax period in which the transaction that is the subject of the determinable question occurred.

3. Authority for advance ruling: For giving of advance ruling, State Government is an authority under the HVAT Act. Whereas Commissioner under the KVAT Act constitute the authority. Three additional commissioners and bench of Tribunal is the authority under the MVAT Act to pronounce an advance ruling. Commissioner under DVAT Act is the authority for giving any ruling under section 85.

4. Advance Ruling shall be binding on: Advance ruling pronounced under HVAT Act is binding on all dealers affected thereby including the dealers who are not party to seeking of such ruling and all persons employed in the administration of the HVAT Act except an appellate authority.

- The advance ruling pronounced under MVAT Act is binding on every body without an exception.
- The advance ruling pronounced under KVAT Act is binding only on dealer who has sought such ruling and only in respect of goods / transaction for which it has been sought. All the authorities subordinate to Commissioner will be bound by it.
- Under DVAT act it would be binding on the person making application under section 84 for determination of specific question.

5. Rejection of Advance Ruling Application: There is no provision

of rejection of an application for advance ruling in HVAT Act. Thus, an application for advance ruling cannot be rejected under HVAT Act unless it is not in respect of an issue, which has been settled by Tribunal, High Court or Supreme Court. In fact an application cannot be made for any such issue under HVAT Act. Similarly, the KVAT Act also does not have any provision for rejection of application. Whereas in MVAT Act an application for advance ruling can be rejected by Tribunal, in case it finds that the application does not involve an important and substantial question of law.

6. Appeal by an aggrieved party: Any person aggrieved by an order of advance ruling may prefer an appeal against such order to the

Tribunal under HVAT Act and it shall be heard and decided by full member Tribunal. MVAT Act provides that the advance ruling order can be challenged in the High Court. The appeal against such advance ruling may either be made by Commissioner or by an aggrieved party. Under the KVAT Act the advance ruling order remains binding unless there is change in law or facts on the basis of which order was passed.

7. Reversal/withdrawal of advance ruling: There is no provision in the HVAT Act for the withdrawal or reversal of the advance ruling given by the State Government. However in the absence of an express power given in the Act, an issuer has an inherent power to withdraw the rul-

ing. Whereas MVAT Act provides that Tribunal can overrule its earlier advance ruling then the Tribunal may direct that the overruling shall not affect the liability of any person liable to pay tax in respect of any period ending on or before the date of overruling. KVAT Act also does not provide for overruling of advance ruling issued. DVAT Act provides that the Commissioner may withdraw or qualify a determination or ruling under section 85 issued but such withdrawal or qualification shall not affect the entitlement of any person to rely on the determination with respect to any transaction or action which he has commenced or which he has completed prior to the withdrawal or qualification. ■

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