

### **Appeal cannot be filed against the question unanswered/rejected by the AAR**

The AAAR, Karnataka in the matter of *M/s Myntra Designs Pvt. Ltd [Order No. KAR/AAAR /06/2022 dated November 21, 2022]* set aside the order of the AAR for failure in giving a ruling on the question of taxability under Goods and Service Tax (“GST”) on services provided by the assessee on the grounds that it involves determination of place of supply which is beyond its jurisdiction. Held that, the AAR was incorrect for failing to make a ruling on the matter. Further, remanded back the case to the AAR for fresh consideration.

#### **Facts:**

M/s Myntra Designs Pvt. Ltd (“**the Appellant**”) owns an e-commerce portal and is engaged in the business of selling fashion and lifestyle products. The Appellant offers advertising space on its website to one Lenzing Singapore Pte Ltd (“**Lenzing**”), a foreign company, in exchange for consideration.

The Appellant had sought ruling from the AAR, Karnataka on taxability under GST, classification and rate of tax of the service w.r.t. the transaction with the Lenzing, wherein, the AAR, Karnataka vide *Advance Ruling Order No. KAR ADRG 19/2022 dated July 1, 2022* (“**the Impugned Order**”) ruled that, the service provided by the Appellant is classified under SAC 998365 as “Sale of internet advertising space (except on commission)” and is chargeable to 18% GST as per Sl. No. 21 of *Notification No. 11/2017 Central Tax (Rate) dated June 28, 2017* (“**the Services Rate Notification**”). However, the AAR, Karnataka failed to give a ruling on whether the transaction with Lenzing is taxable under GST or not, on the grounds that the issue involved the determination of place of supply, which is outside its jurisdiction.

Being aggrieved, the Appellant has filed this appeal against the Impugned Order, in not giving any ruling on the issue of the taxability of the transaction.

The Appellant contended that the determination of the place of supply is within the ambit of determination of 'liability to pay tax on any goods or service or both' as mentioned in Section 97(2) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). Further, the AAAR has the power to make decisions on issues related to the dispute, including if the AAR made an error in not deciding on the on the issue of taxability of services provided by the Appellant. The Appellant further contended that the AAAR also has the power to remand even if remand provisions are not mentioned expressly in the CGST Act.

**Issue:**

1. Whether the AAR, Karnataka was correct in not giving a ruling on the question of taxability on the grounds that it involves determination of place of supply which is beyond its Jurisdiction?
2. Whether the AAAR has powers to decide the question of taxability on merits and pass an original ruling on the same, when the AAR has failed to pass any ruling?

**Held:**

The AAR, Karnataka in **Order No. KAR/AAAR /06/2022 of 2022** has held as under:

- Relied on the judgment of the Hon'ble Kerala High Court in the matter of **Sutherland Mortgage Services Inc vs Principal Commissioner [2020 (35 GSTL 40)]** wherein it was held that the determination of place of supply is not specifically listed in Section 97(2) of the CGST Act, but it falls under the broader category of determining liability to pay tax on goods or services outlined in Section 97(2)(e) of the CGST Act.
- Observed that, Section 97(2)(e) of the CGST Act covers within its scope, the determination of place of supply if such determination is linked with the liability to pay tax and in such cases the AAR has the jurisdiction to pass a ruling on the issue of place of supply.

- Held that, the AAR was incorrect in not passing a ruling on the question of taxability of the transaction w.r.t. the sale of advertising space on the web portal to a Lenzing was taxable in nature.
- Noted that, the AAAR can pass an original ruling only when the matter is referred to them under Section 98(5) of the CGST Act and upon appeal under Section 100 of the CGST Act, the AAAR can either confirm or modify the ruling of the AAR. However, no ruling was passed by the AAR, therefore, there is nothing for the AAAR to confirm or modify.
- Stated that, as the issue regarding the taxability of services was unanswered, hence, it can be construed that the issue was rejected by the AAR and therefore, no appeal can be legally filed against the rejection of the issue.
- Opined that, the statute is unambiguously clear that an order passed under Section 98(2) of the CGST Act, rejecting an application cannot be appealed before the AAAR.
- Held that, there is no provision of remand for fresh decision and the obvious intention of the Legislature seems to be that the AAAR should itself make the decision. However, in the interest of justice, the AAAR remanded the case back to the AAR for a ruling on the question of taxability after considering the place of supply provisions, which would meet the ends of justice for the Appellant.
- Set aside the Impugned Order and remanded the matter back for a fresh consideration.

**Relevant Provisions:**

**Section 97(2) of the CGST Act:**

*“97 Application for advance ruling-*

*(2) The question on which the advance ruling is sought under this Act, shall be in respect of,-*

- (a) classification of any goods or services or both;*
- (b) applicability of a notification issued under the provisions of this Act;*
- (c) determination of time and value of supply of goods or services or both;*
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;*
- (e) determination of the liability to pay tax on any goods or services or both;*
- (f) whether applicant is required to be registered;*
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.”*

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