

**GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING(APPEAL) NO. GUJ/GAAAR/APPEAL/2022/ **22**
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2021/AR/14)

Date: 06.102022

Name and address of the appellant	:	M/s. Shalby Limited, (Shalby Hospital), Opp. Karnavati Club, S.G. Highway, Ahmedabad – 380 015, Gujarat
GSTIN of the appellant	:	24AAICS5593B1ZC
Advance Ruling No. and Date	:	GUJ/GAAR/R/31/2021 dated 19.07.2021
Date of appeal	:	19.08.2021
Date of Personal Hearing	:	08.09.2022
Present for the appellant	:	Shri Nilesh V Shuchak

At the outset we would like to make it clear that the provisions of the Central Goods and Services Tax Act, 2017 and Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘CGST Act, 2017’ and the ‘GGST Act, 2017’) are in *pari materia* and have the same provisions in like matter and differ from each other only on a few specific provisions. Therefore, unless a mention is particularly made to such dissimilar provisions, a reference to the CGST Act, 2017 would also mean reference to the corresponding similar provisions in the GGST Act, 2017.

2. The present appeal has been filed under Section 100 of the CGST Act, 2017 and the GGST Act, 2017) by M/s Shalby Limited (hereinafter referred to as Appellant) against the Advance Ruling No. GUJ/GAAR/R/31/2021 dated 19.07.2021.

3.1 The appellant has raised the following questions for advance ruling in the application for Advance Ruling dated 02.12.2020 filed by it.

“Whether the medicines, consumables and implants used in the course of providing health care services to in-patients for diagnosis or treatment for patients opting with or without packages along with allied services i.e. (room rent/food/doctor fees etc.) provided by hospital would be considered as “Composite Supply” and accordingly eligible for exemption under the category “Health Care Services”?”



3.2 The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/11/2021 dated 20.01.2021, ruled as follows:

"The medicines, consumables and implants used in the course of providing health care services to in-patients for diagnosis or treatment for patient opting with or without packages along with allied services i.e. (room rent/food/doctor fees etc.) provided by hospital is a "Composite Supply". Supply of inpatient health care services by the applicant hospital as defined in Para 2(zg) of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017, as amended, is exempted from CGST as per Sl.No. 74 of the above notification."

4. After pronouncing above ruling, the GAAR received a letter F.No. CST/ENFORCEMENT/SHALBY/ADVANCE RULING/20-21/O.NO.5376 dated 06.03.2021 from the Additional Commissioner of State Tax (Enforcement), Gujarat State, Ahmedabad, stating the following:

(i) Proceeding of access to business premises under Section 71 of GGST Act was initiated on Shalby Hospital Ltd (GSTIN-24AAICS5593B1ZC) on 04.06.2019 by Gujarat State Tax and Commercial Department. That proceeding was converted into search proceeding under Section 67(2) of the Act on 05.06.2019. Search proceedings was continued till 06.06.2019.

(ii) Many discrepancies including medicines, consumables and implants administered to in-patients has been considered as composite supply by the hospital and claimed exemption as health care services, were notices during search proceedings. Considering all these discrepancies, GST DRC-01A-Part A, was issued to the hospital for the period from 01.07.2017 to 31.05.2019 vide ref. no. 858, 859 and 860 dated 11.02.2020.

(iii) Hospital had sought advance ruling on 02.12.2020 before the Advance Ruling Authority and Advance Ruling Authority had pronounced the Ruling on 20.01.2021.

(iv) Therefore it is to bring to your kind notice that the proceeding is already pending in the given case before application is, filed with Authority of Advance Ruling.

5. In view of above, the GAAR invoked Section 104 of CGST Act and held personal hearing on 15.06.2021. The appellant submitted that according to their bonafide belief, they have not obtained the ruling by fraud or suppression of facts and ruling was pronounced after following due procedure laid down in law; that the same cannot be declared to be void ab initio considering the following grounds:

5.1 Pronouncement of ruling by GAAR implies that their application has been admitted after examining the same and records in terms of Section 98(2) of CGST Act, hence the question raised in application is not reported to be pending or decided in any proceedings.



5.2 Section 98(2) will be attracted only when a show cause notice has been issued or order is passed which is not there in the present case and the investigation initiated by state tax is not within the ambit of the term proceedings. To this extent, appellant relied upon judgement of Delhi High Court in case of CIT-1 Vs Authority of Advance Ruling [2020] 119 Taxmann.com 80 (Delhi HC) and the case of Sage Publication Ltd Vs Deputy Commissioner of Income Tax (International Taxation) reported at [2016] 387 ITR 437 (Delhi), which was later affirmed by the Supreme Court in [2017] 246 Taxman 57 (SC).

5.3 The term 'Proceedings' only includes any proceedings that may result in a decision i.e. show cause notice or order and cannot include mere inquiry or investigation initiated by investigation agencies as Show Cause Notice is the point of commencement of any proceeding as per Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by CBIC.

5.4 In absence of Show Cause Notice till date, no proceeding can be said to be pending before any authority and there is no suppression of material facts.

5.5 The issue on which ruling is give in their case is no more res integra and same has been ruled by a catena of rulings relied upon by appellant.

5.6 If department is aggrieved by ruling, it could have filed appeal before appellate authority and by not filing appeal against the said ruling, it is unfair, illegal and unwarranted on the part of the department to raise the issue under pretext of pending proceedings before GAAR.

6. The Gujarat Authority for Advance Ruling (herein after referred to as 'the GAAR'), vide Advance Ruling No. GUJ/GAAR/R/31/2021 dated 19.07.2021, *inter-alia* observed that; in the advance ruling application dated 02.12.2020 appellant declared that no proceeding is pending or decided with respect to question raised in application whereas revenue already initiated assess to business premises under Section 71 of GGST Act on 04.06.2019 and the same was converted into search proceedings under section 67(2) of the act on 05.06.2019, the search proceedings continued till 06.06.2019; thereafter issued three forms GST DRC-01A-Part A was issued, all dated 11.02.2020; Section 70(2) of CGST Act has deeming provision that every inquiry referred in sub-section (1) shall be 'judicial proceeding' within the meaning of Section 193 and 228 of Indian Penal Code; therefore the subject inquiry initiated under Section 70 (1) of the SGST Act, 2017 is a judicial proceeding; the word 'any proceeding' under Section 98(2) of CGST Act will include investigation proceeding launched by state revenue as well as proceeding initiated vide GST DRC-01A Part A dated 11.02.2020; appellant choose not to declare the proceedings initiated vide GST DRC-01A and mis declared at Sr.No.17 of Form GST ARA-01; Advance Ruling cannot be used as a mechanism to nullify and frustrate the inquiry proceeding already initiated.

6.1 In view of above, the GAAR declared Advance Ruling No. GUJ/GAAR/R/11/2020 dated 20.01.2021 *void ab-inito* in terms of Section 104 of CGST Act.



7. Aggrieved by the aforesaid advance ruling, the appellant has filed the present appeal.

7.1 The appellant in the ground of appeal has submitted that the GAAR erred in declaring Advance Ruling No. GUJ/GAAR/R/11/2020 dated 20.01.2021 void ab-initio as there was no fraud or suppression/misinterpretation of facts on the part of appellant considering the following facts:

(i) There is no allegation of fraud or suppression of material facts or misinterpretation of facts in letter dated 06.03.2021 of Additional Commissioner of State Tax and hence it is not legal to presume any mis declaration at Sr.No.17 of Form GST ARA-01 as observed by GAAR at Para 19 of impugned ruling. In the said Para, GAAR observed that even revenue did not bring this mis declaration before authority prior to issuance of ruling dated 20.01.2021. An inquiry was initiated way back on 04.06.2019, in respect of which no show cause notice was issued prior to the date of application for advance ruling and this fact shows that no proceedings were pending in appellant's case under any provisions of CGST Act and thus there is no mis declaration on the part of appellant.

(ii) The advance ruling is pronounced on 20.01.2021 and hence proviso to Section 98(2) should not be applicable as that section requires that the authority shall not admit the application where the question raised in application is already pending or decided in any proceedings in case of an applicant under any provisions of this Act. Pronouncement of rulings implies that their application has been admitted after examining the application and records in terms of Section 98(2) and hence the question raised in the application was not reported to be pending or decided in any proceedings.

(iii) According to appellant's bona fide belief, proviso of Section 98(2) of CGST Act will be attracted only when a show cause notice is issued or order is passed on the question sought and in appellant's case, the matter was only under inquiry and investigation and no show cause notice was served; the investigation initiated by state tax department is not within the ambit of the term proceeding and mere initiation of an investigation would not exclude the jurisdiction of the GAAR. To above extent, appellant relied upon judgement of Delhi High Court in case of CIT-1 (International Taxations) Vs Authority of Advance Ruling [2020 (119) Taxmann.com 80(Delhi)] and judgment in case of Sage Publication Ltd Vs Deputy Commissioner of Income Tax (International Taxation) [2016 (387) ITR 437 (Delhi)] wherein it was observed that mere notice issued by an authority cannot be considered as jurisdictional bar for the AAR.

(iv) The term 'proceeding' does not cover any and all steps/actions that department may take under the act. By applying principle of *noscitur a sociis*, it can be said that the term 'pending' has to derive color from the term 'decided' and 'proceedings' only includes any proceedings that may result in a decision i.e. in nature of show cause notice or order and cannot include mere inquiry/investigation initiate by investigating agencies such as enforcement wing, which are merely empowered to investigate and issue show cause notice. The appellant submitted that show cause notice is the point of commencement of any proceeding and to this relied upon the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by CBIC and since no show cause notice is issued to them, there is no suppression of facts. Any presumption contrary to facts in



impugned ruling is not legal and proper. The appellant further submitted that filing of application for advance ruling was well within the knowledge of department, no show cause notice issued till date even though intimation request to pay the tax, as ascertained by state tax, was received by them vide letter dated 11.02.2020 as the issue raised in inquiry is not correct as there were catena of advance ruling on similar issued in favour of appellant.

(v) The appellant relied upon the judgement of Allahabad High Court in case of M/s G K Trading Company Vs UOI [2021 TIOL 31 HC ALL GST] wherein it was held that *“The word inquiry in Section 70 is not synonymous with the word proceedings in Section 6(2)(b) of UPGST Act/CGST Act.”* The GAAR erred in holding the intimation under GST DRC-01 as proceedings initiated without following judicial discipline. The appellant further submitted that Section 73(8) and 74(8) of CGST Act states that *“all proceedings in respect of the said notice shall be deemed to be concluded on payment of sum specified therein”* which supports that the show cause notice is starting point of any proceedings.

(vi) The appellant submitted that there is no allegation of suppression/mis declaration of fact in the letter dated 06.03.2021 issued by Additional Commissioner, State Tax and notice dated 09.06.2021 issued by GAAR for fixing in personal hearing and in impugned ruling.

7.2 The appellant submitted that ex-facie arrival at a decision is unreasonable. When application is filed, the revenue did not raise the issue of mis-statement or brought to the notice of GAAR that any proceedings are pending in case of the appellant. When application was admitted and ruling is pronounced, it is not open to GAAR to allege mis-statement or presume proceedings to be pending when Section 98(2) of CGST Act states that authority shall not admit the application where question raised is already pending or decided in any proceedings under CGST Act.

7.3 The appellant submitted that they requested the GAAR to provide them copies of all communications and relevant records or reports received from the concerned officers in terms of Section 98(1) of CGST Act and without above said documents, they were not able to put their defense effectively and hence they requested GAAR for one more hearing after providing copies of above said documents but the GAAR without providing the same, pronounced the ruling and hence not followed the principles of natural justice.

7.4 The appellant in their additional submissions relied upon the judgment dated 17.08.2022 of Hon'ble High Court of Telangana in the case of M/s.Srico Projects Pvt. Ltd., Vs. Telangana State Authority for Advance Ruling & Another. The appellant submitted that the impugned order or ruling dated 19.07.2021 that mechanically declares the Advance Ruling dated 20.01.2021 as void is not legal or proper as it has not properly considered their submissions.

8. During the course of personal hearing held on 08.09.2022, the authorized representative of the appellant reiterated the submissions made in their appeal and written submissions made. He submitted that no show cause notice has been issued to the appellant and therefore proceedings cannot be said to be initiated against them. He



requested to set aside the order of GAAR and allow his appeal as the order of GAAR is not legal and proper.

FINDINGS :-

9. We have carefully gone through and considered the appeal and written submissions filed by the appellant, submissions made at the time of personal hearing, Advance Ruling given by the GAAR and other material available on record.

10. The main issue to be decided is whether the Advance Ruling No. GUJ/GAAR/R/31/2021 dated 19.07.2021 pronounced by GAAR declaring its Advance Ruling No. GUJ/GAAR/R/11/2021 dated 20.01.2021 void ab-initio in terms of Section 104 of CGST Act, 2017 is legally correct.

11. For understanding the issue, chronological order of the events is elaborated below:

(i) Proceedings to access business premises of appellant was initiated on **04.06.2019** by Gujarat State Tax and Commercial Tax Department which was later on converted into search proceeding on 05.06.2019 under section 67(2) of GGST Act and the same continued till **06.06.2019**.

(ii) On account of various discrepancies, appellant was issued with three GST DRC-01A Part A on **11.02.2020** by Assistant Commissioner of State Tax, Enforcement & Co-ordination, Gujarat State, Ahmedabad intimating them the tax ascertained by department and advising them to pay the tax along with applicable interest and penalty.

(iii) Appellant submitted application for advance ruling on **02.12.2020** for which GAAR pronounced ruling dated **20.01.2021** answering the question raised by appellant.

(iv) On **22.01.2021**, appellant submitted the ruling dated 20.01.2021 to Assistant Commissioner of State Tax, Enforcement & Co-ordination, Gujarat State, Ahmedabad.

(v) On **08.03.2021**, the GAAR received a letter F.No. CST/ENFORCEMENT/SHALBY/ADVANCE RULING/20-21/O.NO.5376 dated 06.03.2021 from the Additional Commissioner of State Tax (Enforcement), Gujarat State, Ahmedabad, informing about the proceedings initiated against the appellant before the appellant had filed application before GAAR.

(v) On **09.06.2021**, the GAAR issued letter to the appellant intimating them about the personal hearing scheduled on 15.06.2021 to decide whether ruling dated 20.01.2021 is required to be declared void ab-initio under section 104 of CGST Act.

(vi) The GAAR vide ruling dated **19.07.2021** declared its previous ruling dated 20.01.2021 void ab-initio in terms of Section 104 of CGST Act, 2017.

12. From the above, it is amply clear that search proceedings were initiated by Gujarat State Tax authorities before the appellant applied for advance ruling. Further the appellant was also issued with GST DRC-01A by the state tax authorities for payment of GST ascertained along with applicable interest and penalty.



13. Letter dated 06.03.2021 of the Additional Commissioner of State Tax has brought certain crucial facts to the notice of the GAAR, which implied that, GAAR had been misled into admitting the application in as much as the appellant had withheld information regarding commencement of investigation against them on the issue raised by them in their application for advance ruling.

14. The relevant section 98(2) of CGST Act is reproduced below:

98(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

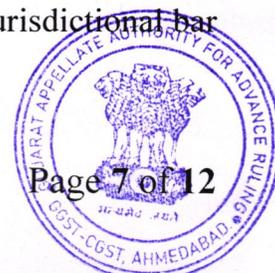
Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

15. The appellant, in their grounds of appeal, stressed on the point that proviso to Section 98(2) of CGST Act 2017 will be applicable only when a show cause notice is issued or order is passed on the question sought and the term 'proceedings' does not cover any/all steps taken by department and therefore cannot include mere inquiry/investigation initiated by investigating agencies which are merely empowered to investigate and issue show cause notice. The term proceeding is a very comprehensive term and generally speaking means a prescribed course of action for enforcing legal right and hence it necessarily comprises the requisite steps by which judicial action is invoked. The process of investigation in tax administration is such a step towards the action of issuing a show cause notice which culminates in a decision. Investigation is activated when there is evidence to show that there is tax evasion. The objective of investigation is to carry out in depth analysis of taxpayer's transactions, activities and records to ensure that tax due to government exchequer is not lost in evasion. Therefore, initiation of investigation can be said to be the start of proceedings to safeguard government revenue. Further the appellant was also issued with Form GST DRC-01A Part A which was intimation of liability, under the provisions of Section 74(5), to pay GST in terms of the proceedings initiated against the appellant. We are therefore of view that the use of words 'any proceedings' in proviso to Section 98(2) of CGST Act will encompass the investigation initiated against the appellant and also notice of intimation of tax liability issued to them.

16. Appellant has relied upon various judgments/case laws in support of their contention that commencement of investigation cannot be considered as jurisdictional bar



on Advance Ruling authority. On examination of those judgments with reference to the facts of present case, we are of view that that, case laws relied by appellant are not applicable due to following reasons:

CIT-1 (International Taxations) Vs Authority of Advance Ruling [2020 (119) Taxmann.com 80(Delhi)]:

The above decision of Delhi High Court was rendered in respect of provisions of Income Tax Act, 1961. The case of petitioner (Income Tax Department) in case of CIT-1 Vs AAR was that the respondent AAR had no jurisdiction to deal with the case of respondent applicant since the assessing officer had issued a scrutiny notice and the main issue before the assessing officer in scrutiny proceedings is the same as before authority for advance rulings. The AAR had not agreed with above objection raised by Income Tax Department and had proceeded to give a ruling and the same ruling was challenged by Income Tax Department in Delhi High Court. The Delhi High Court observed that the revised return has been selected for scrutiny under computer aided selection system (CASS) and a notice dated 16.08.2018 under section 143(2) of the act had been issued. The admitted reason for selection of respondent's case for scrutiny was "taxable income shown in revised return is less than the taxable income shown in original return and large refund has been claimed" whereas the question admitted for ruling was "Whether on the facts and circumstance of the case and in law, the Royalty receivable by the applicant from Crocs India Pvt Ltd for use of Intellectual Property Right relating to design, development, marketing, distribution etc would be taxable in the hands of applicant only at the time of actual receipt under Art. 12 of Agreement between India and Netherlands for avoidance of double taxation and prevention of fiscal evasion?".

High Court, relying upon its decision in case of Sage Publication Vs Deputy Commissioner of Income Tax, agreed with AAR that notice under section 143(2) merely ask the applicant to produce any evidence on which it may like to rely in support of its return. It does not even remotely disclose any application of mind to the return filed by applicant. For this reason, AAR is correct in holding that the question cannot be said to be pending to attract the bar under clause (i) of proviso to Section 245(R) of the Act.

In present case, the question raised before the GAAR is squarely covered under the investigation proceeding initiated by State GST as the grounds of assessment is clearly explained in the GST DRC-01A Part A issued by Assistant Commissioner, Enforcement & Co-ordination, State Tax.

Sage Publication Ltd Vs Deputy Commissioner of Income Tax (International Taxation) [2016 (387) ITR 437 (Delhi)]

This is relied upon by Delhi High Court while rendering judgment in case of CIT Vs AAR, therefore, this case is not applicable in present case as discussed in previous para.

M/s G K Trading Company Vs UOI [2021 TIOL 31 HC ALL GST]

The facts of the case are UPGST (State Tax) initiated an investigation against the petitioner under Section 70 of UP GST Act and thereafter, DGGI, Meerut also initiated inquiry against the petitioner through issuance of summons under Section 70 of CGST



Act. The petitioner contended that once inquiry has been initiated by State Tax, DGGI cannot initiate any proceedings against them in view of Section 6(2)(b) of UP GST Act, 2017.

In above case, Allahabad High Court inter alia held that “the word ‘inquiry in Section 70 has a special connotation and a specific purpose to summon any person whose attendance may be considered necessary by the proper officer either to give evidence or to produce a document or any other thing. It cannot be intermixed with some statutory steps which may precede or may ensue upon the making of the inquiry or conclusion of inquiry.” High Court further held that “The word “inquiry” in Section 70 is not synonymous with the word “proceedings”, in Section 6(2)(b) of the U.P.G.S.T. Act/ C.G.S.T. Act.”

After going through the above, it is amply clear that facts of present case and the case relied upon by the appellant are very different.

M/s Srico Projects Pvt Ltd V/s Telangana State Authority for Advance Ruling [W.P. No. 26145 of 2022]

The facts of the case are that the petitioner submitted application for advance ruling on 11.05.2019 on the question what would be the rate of tax on works contract services rendered by it to the Central Government Employees Welfare Housing Organisation. Thereafter, on 15.02.2021, DGGI, Hyderabad Zonal Unit issued letter to petitioner alleging short payment of GST on the same issue to which petitioner sought answer from Advance Ruling Authority. After time interval of three years from date of application, on 25.04.2022, authority issued notice to petitioner for scheduling personal hearing on 27.04.2022 and on 03.06.2022 the application was rejected.

Hon’ble High Court, inter alia, observed that it is evident that notice was issued to petitioner by DGGI much after filing of application for advance ruling and the same cannot be a bar under the proviso to Section 98(2) of CGST Act and the question of petitioner informing the authority that it was being enquired into did not arise as the application was filed much prior point of time.

The appellant’s argument does not find strength from above referred case law as in the relied upon case, application was made much prior from initiation of inquiry/investigation by DGGI and the question cannot be said to pending in any proceeding under the act whereas in the case of appellant, they filed application for advance ruling after initiation of investigation proceedings by State Tax and also suppressed the fact that the question sought by them is not pending or decided in any proceeding.

17. The appellant, relying upon the Master Circular No. 1053/02/2017-CX dated 10.03.2017 issued by CBIC, argued that show cause notice is the point of commencement of any proceeding and since no show cause notice is issued to them, there is no suppression of facts. On examination of above referred circular, it is evident that in para 2.1 of said circular, it is stated that “show cause notice is the starting point of any legal proceedings against the party.” Further, it is clarified in para 2.1 that the show cause notice is basic document for settlement of any tax or initiation of any punitive action for



recovery of tax evaded by contravention of provisions of Central Excise Act or rules made there under. Furthermore, we find that above referred circular is issued in Central Excise Regime when there was no concept of issuance of form GST DRC-01A. The concept of issuance of GST DRC-01A has been introduced after implementation of GST. Therefore the referred circular is not relevant under the GST law.

18. The appellant has further contended that there is no allegation of suppression/mis-declaration of fact in the letter dated 06.03.2021 issued by Additional Commissioner of State Tax and notice dated 09.06.2021 issued by GAAR for fixing the personal hearing and in the impugned ruling. After going through the both above letters referred by the appellant, we find that in the letter dated 06.03.2021 issued by Additional Commissioner, of State Tax to the GAAR, it is clearly mentioned that *proceeding is already pending in the given case before application is filed to advance ruling authority* which shows that appellant indulged in the act of suppression/mis declaration of facts before the GAAR by declaring that question sought in the application for advance ruling is not pending in any proceeding under the provision of the act. Further, in para 4 of letter dated 09.06.2021 issued by GAAR, it is clearly mentioned that *in terms of Section 104 of CGST Act, 2017, if authority finds that the applicant has obtained the ruling by fraud or suppression of material facts or misrepresentation of fact, it may, by order, declare such ruling to be void ab-initio*. The said letter dated 09.06.2021 also quoted the contents of Additional Commissioner of State Tax's letter dated 06.03.2021, which was also enclosed with the letter dated 09.06.2021 issued to the appellant. Therefore, we do not agree with this contention of appellant.

19. The appellant submitted that advance ruling is pronounced on 20.01.2021 and hence proviso to Section 98(2) which requires that the authority shall not admit the application where the question raised in application is already pending or decided in any proceedings in case of applicant under any provisions of CGST Act, should not be applicable and pronouncement of rulings implies that their application has been admitted after examining the application and records in terms of Section 98(2) and hence the question raised in the application was not reported to be pending or decided in any proceedings. After going through the facts of the case, it is clear that on receipt of letter from the Additional Commissioner of State Tax informing the GAAR about the pending proceeding in the case of the appellant, the GAAR invoked the Section 104 of CGST Act, which empowers the authority for advance ruling that after the pronouncement of ruling, if it finds that the ruling was obtained by fraud or suppression of material fact or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio whereas section 98(2) is applicable at the time of admission of application for advance ruling. In this case, appellant misled the GAAR by suppressing the fact of pending investigation and proceedings by State Tax.

20. Another contention of the appellant is that ex-facie arrival at a decision is unreasonable and when application is filed, the revenue did not raise the issue of mis-statement or brought to the notice of GAAR that proceedings are pending against the appellant either when the application was admitted and before the ruling is pronounced, it is not open to GAAR to allege mis-statement or presume proceedings to be pending when Section 98(2) of CGST Act states that authority shall not admit the application where



question raised is already pending or decided in any proceedings under CGST Act. It is admitted fact that State Tax Department brought to the notice of the GAAR that the advance ruling has been obtained by suppression of material facts and therefore, the GAAR took cognizance of this information placed before it and pronounced the ruling dated 19.07.2021. It is trite law that when one comes for justice one should come with clean hands. The appellant has indeed not revealed the fact of proceedings/investigation pending against them before the State Tax department on the same issue which was sought in application for advance ruling.

21. We find that the appellant in their application for advance ruling made before the GAAR had at Para 17 of Form GST ARA-01 had ticked on both the options thereby declaring that the question raised in the application is not already pending in any proceedings in the applicant's case under any of the provisions of the Act and not already decided in any proceedings in the applicant's case under any of the provisions of the Act. The same is reproduced below:

17.	<i>I hereby declare that the question raised in the application is not (tick)-</i>
✓	<i>a. Already pending in any proceedings in the applicant's case under any of the provisions of the Act</i>
✓	<i>b. Already decided in any proceedings in the applicant's case under any of the provisions of the Act</i>

22. The appellant was aware of the fact that investigations/proceedings were initiated against them by the Gujarat State Tax department and further three GST DRC-01A Part A all dated 11.02.2020 were also issued by the said department. The questions raised in the Advance Ruling application dated 02.12.2020 and the issue pending in the referred investigation and the proceedings initiated are the same. We find that the appellant has obtained the advance ruling by suppressing these material facts. Explanation 2 under Section 74 of CGST Act, 2017 provides as under:

"For the purposes of this Act, the expression 'suppression' shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer"

There can be no doubt that the appellant had indeed not declared/ mis-declared the fact of initiation of proceedings clearly evidenced by GST DRC-01A Part A issued in this case and therefore this is also covered under the scope of the term 'suppression' as defined above. It was incumbent upon the appellant while making application for Advance Ruling, to have declared the true and complete facts, given the provisions of the GST law, in particular Sections 98(2) and 104 of the CGST Act, 2017. We, therefore hold that invocation of Section 104 of CGST Act by the GAAR and declaring advance ruling dated 20.01.2021 void ab initio is legal.



23. In view of the foregoing, we reject the appeal filed by appellant M/s Shalby Limited Ltd and uphold the Advance Ruling No. GUJ/GAAR/R/31/2021 dated 19.07.2021 of the Gujarat Authority for Advance Ruling.



(Milind Torawane)
Member (SGST)

Place : Ahmedabad

Date : 06.10.2022.



(Vivek Ranjan)
Member (CGST)