

NATIONAL SEMINAR ON GOODS AND SERVICES TAX (GST)

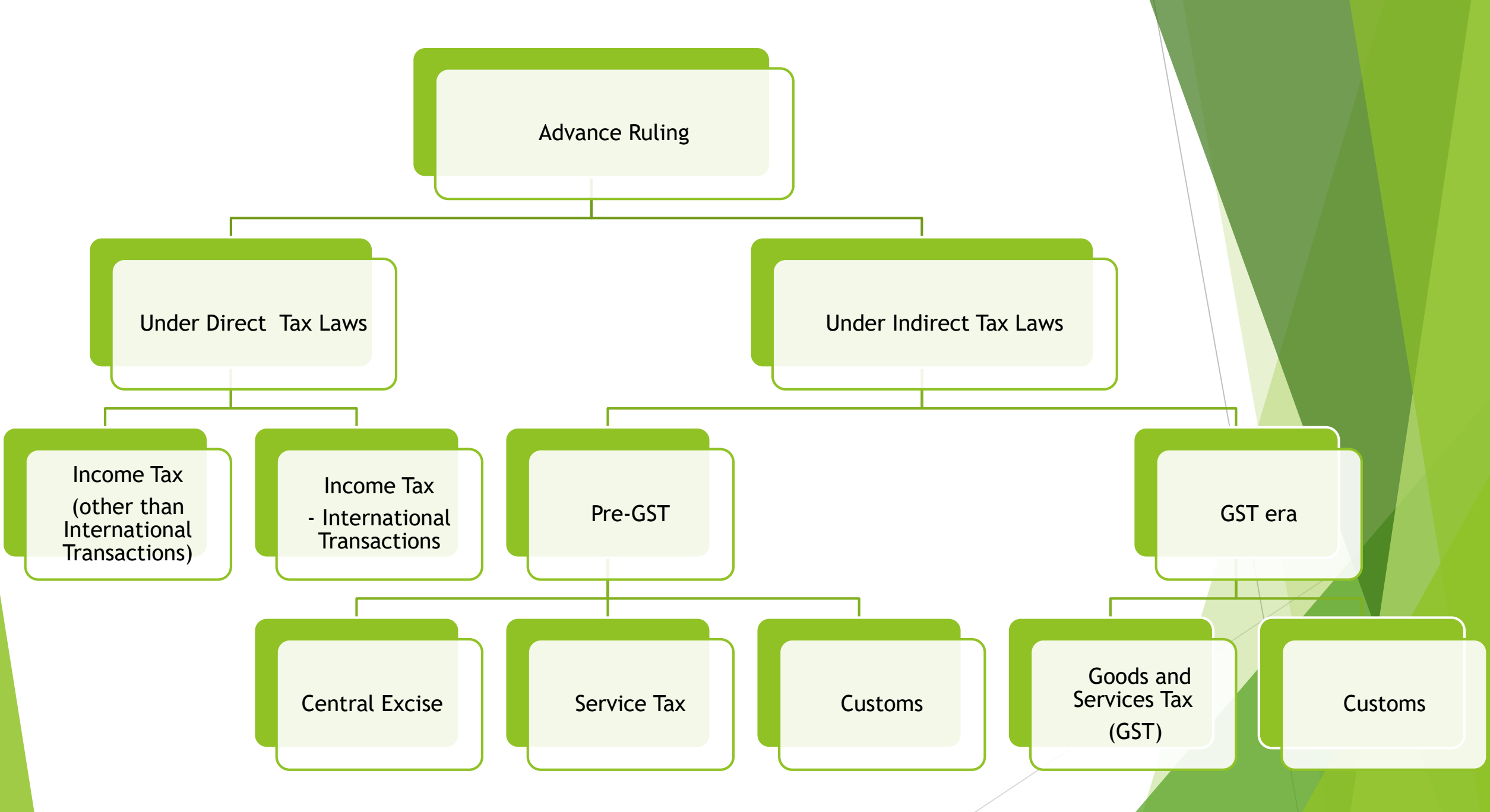
Organised by

Tax Research Department & Bhubaneswar Chapter
-The Institute of Cost Accountants of India
27-28th January, 2018
Bhubaneswar

Advance Ruling

- as per OECD Report (2004)

‘ any advise, information or undertaking provided by a tax authority to a specific tax payer or a group of tax payers concerning their tax situation and on which they are entitled to rely’



Advance Ruling - classification

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graph TD; A[Advance Ruling - classification] --> B[Public Rulings]; A --> C[Private Rulings]; B --> D["- On general or specific tax issues<br/>- May be applied without making any application for ruling"]; C --> E["- Statement issued upon request of a (potential) tax payer indicating the tax administration's view of the tax treatment of a particular set of facts and circumstances contemplated, in the process of completion, or completed and not yet assessed"]
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Public Rulings

- On general or specific tax issues
- May be applied without making any application for ruling

Private Rulings

- Statement issued upon request of a (potential) tax payer indicating the tax administration's view of the tax treatment of a particular set of facts and circumstances contemplated, in the process of completion, or completed and not yet assessed

Advance Ruling under GST

Chapter XVII of the CGST / SGST Act, 2017
[Sec. 95 to 106]

read with the Chapter XII [Rules 103 to 107A]
Of the CGST Rules, 2017

Sec 95 - Definitions

- (a) 'advance ruling' means a decision provided by the Authority or the Appellate Authority to an applicant on matter or on questions specified in sub-section (2) of Section 97 or sub-section (1) of section 100, *in relation to the supply of goods or services or both* being undertaken or proposed to be undertaken by the applicant.
- (b) 'Appellate Authority' - Appellate Authority for Advance Ruling u/s 99
- (c) 'applicant' means any person registered or desirous of obtaining registration under this Act;
- (d) 'application' means an application made to the Authority under sub-section (1) of Section 97;
- (e) 'Authority' means the Authority for Advance Ruling referred to in Section 96

Application for Advance ruling - Sec 97

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ Classification of goods or services or both;
- ▶ Applicability of a Notification;
- ▶ Determination of time and value of supply of goods or services or both;
- ▶ Admissibility of Input Tax Credit of tax paid or deemed to have been paid ;
- ▶ Determination of tax liability to pay tax on any goods or services or both ;
- ▶ Clarification on registration requirements of the applicant ;
- ▶ 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.

Issues related to -Application for Advance ruling - Sec 97

u/s 97(2) Advance Ruling can be sought for the following questions:

► Classification of goods or services or both :

- ❖ impact of wrong classification
- ❖ Pre-GST classification & Post-GST Classification issues
- ❖ Comparative Analysis

► Applicability of a Notification :

- ❖ Impact of each Notification
- ❖ granting exemption from registration
- ❖ waiver of taxes beyond a prescribed rate
- ❖ date of applicability of each notification & its effect on compliance - both under GST & Statutory Compliance (Income Tax, Statutory Audits & Financial Statements)

Issues related to Application for Advance ruling - Sec 97.. Cont.

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ Determination of time and value of supply of goods or services or both :
- ❖ Identifying the time of supply - inherent conflicts in recording of transactions in the books of accounts
- ❖ Identifying the supplies on which tax liability arises under reverse charge u/s 9(3) & 9(4)
- ❖ Determining the nature & contents of supply - 'goods' / services/ composite supply/ mixed supply/ works contract ?
- ❖ Determining the proper classification
- ❖ Evaluating the parties involved - related or unrelated
- ❖ Determining whether price would be the sole consideration for supply
- ❖ Ascertaining its value as per Sec.15

Issues related to Application for Advance ruling - Sec 97..cont.

u/s 97(2) Advance Ruling can be sought for the following questions:

- ❖ Admissibility of Input Tax Credit of tax paid or deemed to have been paid
- ❖ Identifying eligibility of ITC based on Registration
- ❖ Identifying eligibility of ITC based on Supply
- ❖ Blocked Credit / Proportionate Credit
- ❖ Impact of Notification on ITC eligibility (say, if outward supplies, which were taxable, is notified to be nil/ exempted, what would be the impact)
- ❖ Correlation with pricing & Anti-Profiteering Issue

- ▶ Determination of tax liability to pay tax on any goods or services or both
- ❖ Ascertaining Tax Liability based on Registration,
- ❖ Time of Supply,
- ❖ Consider the eligibility of ITC to be adjusted against tax liability

Issues related to Application for Advance ruling - Sec 97..cont.

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ Clarification on registration requirements of the applicant
- ❖ Registration requirement Sec.22/23/24/25
- ❖ Exemptions from taking registration, which were subsequently notified
- ❖ Issues related to Time period calculation for both Casual Taxable Person / Non-Resident Taxable Person
- ❖ Eligibility of ITC based on Registration
- ❖ Compliance factors based on Registration

Procedure on Receipt of Application- Sec 98

Appellate Authority for Advance ruling - Sec 99

Appeal to Appellate Authority - Sec 100

Orders of Appellate Authority - Sec 100

Rectification of Advance ruling - Sec 102

Applicability of Advance ruling - Sec 103

Ruling void *ab initio* - Sec 104

Power / Procedure of AAR/ AAAR- Sec 105 and 106

- ▶ Deemed to be civil court;
- ▶ Proceedings treated as judicial proceedings;
- ▶ Power to enforce attendance, examining on oath, issuing commission, compelling production of books / records;
- ▶ Power to regulate its own procedure.



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