

GST on Director Remuneration Version 2.0

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The corporates were still trying to interpret the appalling advance ruling given by the Rajasthan Authority of Advance Ruling (Raj. AAR) in the case of M/s **Clay Craft India Pvt. Ltd. [TS-218-AAR-2020-NT]** whereby it was held that the consideration paid to the directors by the applicant company will attract Goods and Services Tax (GST) under Reverse Charge Mechanism (RCM) in the hands of the applicant, as it is covered under entry No. 6 of Notification No. 13/ 2017 Central Tax (Rate) dated 28 June 2017 issued under section 9(3) of the Central Goods and Services Tax Act, 2017 (CGST Act).

In our last article, <<[Eye Share: Taxability of Director Payments under GST in the light of recent AAR](#)>> we discussed about the bizarre ruling given by the Raj. AAR and the impact that it might have on the industry. We also pointed out about the fact that Raj. AAR completely overlooked the logic behind taxing the director remuneration and read the underlying law too strictly (entry no. 6 of Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017 which states that 'Services supplied by a Director of a company or a body corporate to the said company or the body corporate' shall be paid on reverse charge basis by the recipient of the such services, wherein Supplier of Services is 'A director of a company or a body corporate' and Recipient Services of Services is 'The company or a body corporate located in the taxable territory'). Vide our article we also highlighted the fact that Raj AAR missed out on appreciating other provisions and legislations apart from GST which needed to be read in conjunction with the aforesaid entry.

While this article is not even a month old, we have a divergent view coming on the same issue from Karnataka AAR in the case of **M/s Anil Kumar Agarwal [TS-269-AAR-2020-NT]** wherein it has been held that there could be two possibilities in the said matter viz. the applicant could be an employee of the said company i.e. executive director or he could be a non-executive director providing his expertise and consultancy to the company as and when required.

In the first case, services of the applicant as an employee to the employer are neither treated as supply of goods nor supply of services as the same would fall under Schedule III of CGST Act. In the latter case, remuneration paid by company would be liable to reverse charge under GST by virtue of [Notification no. 13/2017 Central Tax \(Rate\)](#), Dt. 28 June 2017. The Karnataka AAR went a step further to say that PF, ESI records would have proven if the assessee is a salaried director or not.

The above view of Karnataka AAR seems to be more balanced and thought through than their counterpart in Rajasthan. However, in September 2019, the same Karnataka AAR gave a conflicting view on a similar matter in case of **Alcon Consulting Engineers (India) Private Limited [TS-844-AAR-2019-NT]** wherein the AAR held that GST should be charged on remuneration paid to the directors irrespective of they being executive director or non-executive director. While it is common to see that different state AARs give dissenting views on similar issues, it is erratic to find the same bench of AAR giving differing views in a span of less than six months.

A classic example of this was presented a few months back when the solar industry suffered due to the disparity in AAR rulings given by different states. The frequent divergent advance rulings only added to the confusion of the already perplexed solar power industry until the department issued a clarification in this regard and put the issue to bed.

While the solar power industry is contended by the much awaited clarification, the director remuneration issue is a widespread issue applicable to all sectors unlike the solar power issue. Hence, turmoil of contrary AARs is haunting the corporates. While legally an AAR is only binding on the applicant and his jurisdictional officers, it is likely that this ruling may be referred to by the revenue authorities while dealing with the taxability of similar situations especially in Rajasthan where an adverse ruling was issued.

As usual, the industry awaits some clarification and resolution to the issue from the GST council so that each state cannot have their way while passing rulings. It is important that the government quickly slake the concern of the industry and issue an appropriate clarification.

Way Forward

Now, the million dollar question is that should the corporates wait endlessly for a departmental clarification or should they take some proactive steps to safeguard their positions. The corporates need to first analyse their situation which may differ on a case to case basis. Some parameters that may

play a key role in making decisions are:

- States where the company has presence in;
- Types of directors on the board of company viz. executive directors or non-executive directors
- The compensation package offered to such directors;
- The documentation maintained in this regard i.e. offer letter, PF, ESI records, TDS deducted and deposited, Letter of Intent, employment agreement, are some examples which could prove to be of aid during any departmental inquiry

The Karnataka and Rajasthan AAR have already expressed their views on this aspect; their rulings though applicable to the applicant and his jurisdictional officers, would certainly have persuasive value in these states. The Companies need to identify whether they fall under these jurisdictions or not. If they do, they may have to follow these rulings respectively. However, if the companies have presence in other states, they may seek an advance ruling in their state or obtain counsel opinion also. This step will be crucial, more so, if the exposure is large.

Thus, the need of the hour is to establish some accord and uniformity across rulings issued in various states otherwise, this issue could soon become an apple of the discord.