

DIRECTORS REMMUNERATION - LIABILITY OF GST

Yesterday there was a news that Rajasthan Authority of Advance Ruling has ruled that the directors remuneration is liable to GST under RCM basis.

The AAR has relied on the provision of Sec 9 of the Act, which states that services supplied by the directors are liable to GST.

This judgment is bound to create ripples in the industry circles. If this ruling is followed by GST Authorities, of other States all the companies will be soon facing notices from GST officers, asking them to pay GST @18% on remuneration paid by them since July 2017 plus interest @ 24% for delay.

Without going much into technicalities, we respectfully submit that his decision is not tenable in courts of law and most of the eminent consultants are also of the same opinion.

It is noteworthy to understand that AAR is an authority created by the Act. A business entity can seek an advance ruling on any contentious issue which may give rise to conflict with the department in future. Thus on the basis of an application made by any business entity, the AAR provides an opinion on the taxability of the issue in question. However this opinion is binding on that entity which has sought the ruling.

We and most of the GST consultants are of the opinion that the remuneration paid to Director is parallel to the remuneration paid to any other employee and for the work done as employee and thus outside the orbit of GST.

And we still believe so.

However, we suggest the companies to undertake following precautions which will strengthen the claim that Director is receiving the remuneration as employee.

Like any other employee –

- An appointment letter should be issued to every director.

- Director should withdraw a fix sum of amount as salary every month and pay applicable TDS and PF
- At the year end, based on performance measured in terms of sales / profit / EPS etc. , ex-gratia payment, in addition to remuneration already paid, may also be paid.
- To keep a record of leave similar to as maintained for other employees
- Kindly follow the above and keep the record.

So the companies need not panic, however to reduce the anxiety and have a peace of mind, we suggest the following –

01. For the remuneration paid for 19-20, (viz. 01/04/19 to 31/03/20) they can pay the GST on remuneration paid and claim it as ITC in the same month in which the payment is made. However this payment will attract the interest @ 24% p.a. (which can be claimed as deduction under Income Tax)
02. Henceforth, i.e. say from FY 20-21 the GST is to be paid on all such payments and claim it is as ITC.

In case of difficulty, please contact us

With Regards,

CA M K Gavaskar