

AARs Can Determine Place of Supply under the GST Regime- Kerala HC

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The Kerala High Court has paved the way for the **Authority for Advance Rulings (AARs)** to decide the place of supply under the **Goods and Services Tax (GST)** regime.

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Place of supply rules are key elements, particularly for services, under the GST regime, as this tax is destination-based. The rules define whether the transaction will be counted as intra - or inter -, or export, and accordingly levy of GST, Central GST and integrated GST as well as exemptions from these taxes will be determined.

Niraj Bagri, partner Dhruva Advisors, said an Indian unit supplied information technology enabled services to its parent located in the US. The company went to Kerala-based AAR to know whether it could take benefit of export of services and be exempted from GST.

However, AAR said it cannot go into the place of supply provisions, which are one of the key determinants to know whether export of services happened. If place of supply provisions happen outside India, then it would be treated as export of services.

The other conditions for services to be treated as exports are supply provider should be in India, recipient should be outside, and payment should be in foreign exchange etc.

The firm then moved to the Kerala High Court, which **said the section 97 of the CGST Act that deals with AAR** is wide enough for the Authority to determine place of supply which is the key determinant to assess the tax liability in export of services. As such, it reverted the case to AAR.

“In this case, the court has settled one of the key issues on maintainability of advance rulings wherein the question involved determination of place of supply,” said Bagri.

A liberal reading of the provision also means that any question which involves determination of tax liability can be taken before the advance ruling authorities, he said.