

**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JODHPUR**

**D.B. CIVIL WRIT PETITION (PIL ) NO. /2018**

**Petitioner:-**

Abhishek Chopra S/o Shri Rajesh Chopra  
Age: 33 years, Resident of Pali Marwar

**VERSUS**

**Respondents:-**

1. Union of India,  
Through Secretary Ministry of Finance  
Department of Revenue No.137,  
North Block, New Delhi-110001.
2. Union of India,  
Through Secretary Ministry of Law & Justice  
4th Floor, A Wing, Rajendra Prasad Road,  
ShastriBhavan, New Delhi - 110 001.
3. The Goods and Service Tax Council (GST Council)  
Through Secretary Office of the GST Council Secretariat,  
5th Floor, Tower II,  
Jeevan Bharti Building, Janpath Road,  
Connaught Place, New Delhi-110 001.
4. State of Rajasthan  
Through Chief Secretary, Finance Department,  
Jaipur

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**Public Interest Litigation Petition under Article 226  
of the Constitution of India read with Rule 385-A of the  
Rajasthan High court Rules, 1952**

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**IN THE MATTER OF CHAPTERS XVII OF THE CGST ACT, 2017  
& RGST ACT, 2017 READ WITH CHAPTER XII OF THE CGST  
RULES, 2017**

To,

Hon'ble The Chief Justice, and his other  
Companion Judges of the Rajasthan High Court  
at Jodhpur.

**MAY IT PLEASE YOUR LORDSHIPS,**

Petitioner, above named most respectfully submits  
as under:-

**(1) INTRODUCTION**

1. The present Petition under Articles 226 and/or 227 of the Constitution of India is being filed by way of Public Interest Litigation and the Petitioner has no personal interest. The Petition is being filed in the interest of the public at large. The present Petition is filed to seeking declaration that:

(a) Chapter XVII of the Central Goods and Services Tax (CGST) Act, 2017, more particularly Section 96 which relate to 'Authority for Advance Ruling (AAR) and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR)';

(b) Chapter XVII of the Rajasthan Goods and Services Tax (RGST) Act, 2017 more particularly Sections 96 which relate to

‘Authority for Advance Ruling (AAR)’ and Section 99 which relate to ‘Appellate Authority for Advance Ruling (AAAR)’;

(c) Chapter XII of the Central Goods and Services Tax (CGST) Rules, 2017 more particularly Rule 103 which relate to the “Qualification and appointment of members of the Authority for Advance Ruling”;

(d) Notification No.9/2017 – Central Tax dated 28.06.2017 in terms of s. 96 and s. 99 of the Central Goods and Services Tax Act, 2017;

(e) Notification No. 9/2017 – State Tax dated 29.06.2017 in terms of s. 96 and 99 of the Rajasthan Goods and Services Tax Act, 2017;

are ultra vires the Articles 14 and 50 of the Constitution of India as the same are void, defective and unconstitutional, being violative of doctrines of separation of powers and independence of judiciary which are parts of the basic structure of the Constitution and further contrary to the principles laid down by the Hon’ble Supreme Court in Union of India v. R. Gandhi (2010) 11 SCC 1 and in Columbia Sportswear Co. v. DIT (2012) 11 SCC 224.

Copy of the Chapter XVII of Central Goods and Services Tax (CGST) Act, 2017 is annexed hereto and marked as ***Annexure-1***, Copy of Chapter XVII of the Rajasthan Goods and Services Tax (RGST) Act, 2017 is annexed hereto and marked as ***Annexure-2***, Copy of Chapter XII of the Central Goods and Services Tax (CGST) Rules, 2017 is annexed hereto and marked as ***Annexure-3***, Copy of the Notification No.9/2017 – Central Tax dated 28.06.2017 is annexed hereto and marked as ***Annexure-4***, Copy of the Notification No.9/2017 – State Tax dated 29.06.2017 is annexed hereto and marked as ***Annexure-5*** to this Petition.

**(2) PARTICULARS OF THE PETITIONER**

2. The Petitioner is a qualified C.A. and has undertaken many other specialized certification courses. He works as an advisor/consultant and his core areas of expertise are banking, taxation, corporate and commercial laws. He regularly delivers lectures and is invited as regular speaker at various seminars/ workshop conducted by institutes like ICAI, ICSI, C&AG, Banks and various organizations. On account of the above, he gets an opportunity to interact with various people from different backgrounds such as businessmen, traders, Chartered Accountants, Lawyers, Students, Company Secretaries etc. The Petitioner undertakes a rigorous analysis of legal developments, policies and institutions. The

source of income of the Petitioner is from providing consultancy services in various fields of law to its individual clients and corporate.

**(3) DECLARATION AND UNDERTAKING OF THE PETITIONERS**

3. That the Petitioner is filing the present petition in Public Interest on their own and not at the instance of any other person or organization. The litigation cost and the travelling expenses are being borne by the Petitioner themselves. The Advocate for the Petitioner has volunteered pro bono legal services. There are no contempt proceedings against the Petitioner.

**(4) FACTS**

4. That the facts of the case in brief are as follows:-

4.1 The Petitioner has preferred this petition against tribunalisation of justice, bureaucratisation of justice and its impact on judicial independence and separation of powers before this Hon'ble Court. Therefore, The Petitioner submits that he has locus standi to maintain the present writ petition.

4.2 The 1<sup>st</sup> and 2<sup>nd</sup> respondent are the Union of India, represented through the Ministry of Finance, Department of Revenue and Ministry of Law and Justice and are responsible for

enactment of the Central Goods and Services Tax Act, 2017, 3<sup>rd</sup> Respondent is The Goods and Service Tax Council (GST Council), which is a constitutional body under Article 279A of the Constitution, Article 279A (4) (c) of the Constitution of India and is responsible for making recommendations to the Union and the States on the model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax etc. 4<sup>th</sup> Respondent is the State of Rajasthan through its Finance Department is responsible for enactment of the Rajasthan Goods and Services Tax Act, 2017.

4.3 Genesis: The idea of moving towards the GST was first mooted by the then Union Finance Minister in his Budget for 2006-07. Initially, it was proposed that GST would be introduced from 1st April, 2010. The Empowered Committee of State Finance Ministers (EC) which had formulated the design of State VAT was requested to come up with a roadmap and structure for the GST. Joint Working Groups of officials having representatives of the States as well as the Centre were set up to examine various aspects of the GST and draw up reports specifically on exemptions and thresholds, taxation of services and taxation of inter-State supplies. It is submitted that, the fiscal powers between the Centre and the States have been clearly demarcated in the Constitution with almost no overlap between the respective

domains. In case of inter-State sales, the Centre has had the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the originating States. As for services, it has been the Centre alone that is empowered to levy service tax. Introduction of GST required amendments in the Constitution so as to concurrently empower the Centre and the States to levy and collect the GST. It is also submitted that, to address all these and other issues, the Constitution (122<sup>nd</sup> Amendment) Bill was introduced in the 16th Lok Sabha on 19.12.2014. The Bill provided for a levy of GST on supply of all goods or services except for Alcohol for human consumption. It was proposed that the tax shall be levied as Dual GST separately but concurrently by the Union (central tax - CGST) and the States (including Union Territories with legislatures) (State tax - SGST) / Union territories without legislatures (Union territory tax- UTGST). The Parliament would have exclusive power to levy GST (integrated tax - IGST) on inter-State trade or commerce (including imports) in goods or services. Further the bill had been ratified by required number of States and received assent of the President on 8th September, 2016 and has since been enacted as Constitution (101<sup>st</sup> Amendment) Act, 2016 w.e.f. 16th September, 2016.

4.4 One of features of GST was to constitute 'Advance Ruling Authority' in order to enable the taxpayer to seek a binding clarity

on taxation matters from the department. Centre would adopt such authority under CGST Act. Pre-GST regime under separate laws namely Excise, Custom and Service tax had the scheme of Advance Ruling. Obtaining an advance ruling helps the applicant in planning their activities which are liable for payment of Customs, or Central Excise or service tax, well in advance. It also brings certainty in determining the duty/tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious.

4.5 Concept of Advance Rulings envisaged under Revised Kyoto Convention of WCO and Under WTO Agreement on Trade Facilitation. Standard 9.9 of the Revised Kyoto Convention, which is the International Convention on the Simplification and Harmonization of Customs procedures and was adopted in June, 1999 as a blueprint for modern and efficient Customs procedures in the 21<sup>st</sup> Century, deals with Advance Rulings.

4.6 Legislative Journey of Scheme of Advance Ruling in Indirect Taxes: In the Budget speech of 1998-99, Finance Minister of India proposed the setting up of AAR for Excise and Customs to meet

the need for foreign investors to be assured in advance of their likely indirect tax liability. Legislative provisions for advance rulings were introduced in Customs Act, 1962 and Central Excise Act, 1944 vide Finance Act of 1999. In 2003, the concept of Advance Ruling was incorporated in service tax matters by incorporating legislative provisions in the Finance Act, 1994 vide Finance Act, 2003.

4.7 Statutory Provisions Regarding AAR in Pre-GST regime under major indirect taxes:-

Customs: The legal provisions relating to AAR are contained in Chapter V-B of the Customs Act, 1962 from Section 28E to Section 28M. Further, the Customs (Advance Rulings) Rules, 2002 have also been issued.

Central Excise: In respect of Central Excise, the provisions relating to AAR are contained in the Chapter III-A of Central Excise Act, 1944 from Section 23A to Section 23H. Further, the Central Excise (Advance Rulings) Rules, 2002 have also been issued.

Service Tax: In respect of service tax, the provisions relating to AAR are contained in the Chapter V-A of Finance Act, 1994 from Section 96A to Section 96 I. Further, the Service Tax (Advance Rulings) Rules, 2003 have also been issued.

#### 4.8 Composition of the Authority of Advance Ruling under the pre RST regime:-

The advance ruling in India is rendered by an Authority constituted specifically for this purpose known as the Authority for Advance Rulings. It consists of a Chairman and two Members. The Chairman is a retired Supreme Court Judge. One of the Members to be appointed to be a member of the CBDT, who may be referred to as the Revenue Member. The other Member is an officer of the Indian Legal Service, who is qualified to be an Additional Secretary to the Government of India and may be referred to as the Law member. The salaries and allowances payable to, and the terms and conditions of service of the Members have been prescribed by the Government of India. The Constitution of the Authority is such that it functions as an independent quasi-judicial body deemed to be a Civil Court for the purpose of Section 195 of the Code of Criminal Procedure, 1973.

4.9 Four Laws namely CGST Act, UTGST Act, IGST Act and GST (Compensation to States) Act have been passed by the Parliament and since been notified on 12th April, 2017. The levy of the tax commenced only after the GST Laws were enacted by all the State Legislatures. Accordingly, the appointed date for bringing into force the GST regime was fixed as 01.07.2017.

4.10 The entire scheme and concept of AAR has been explained in the judgment passed by the Hon'ble Supreme Court in Columbia Sportswear Company vs. Director of Income-tax, Bangalore) reported in (2012) 11 SCC 224 wherein the question before the Hon'ble court was whether AAR is Tribunal or not? Same was answered in para 7 to 10, excerpts of the same are as infra:

*"7. The meaning of the expression "tribunal" in Article 136 and the expression "tribunals" in Article 227 of the Constitution has been explained by Hidayatullah, J., in Hari Nagar Sugar Mills Ltd. v. Shyam Sunder Jhunhunwala AIR 1961 SC 1669 in paragraph 32, relevant portion of which is quoted herein below:*

*"With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary Courts of Civil Judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. They are very similar to Courts, but are not Courts. When the Constitution speaks of 'Courts' in Art. 136, 227 or 228 or in Art. 233 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Arts. 136 and 227.*

*By "Courts" is meant Courts of Civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State and is aptly called the judicial power of the State. In the exercise of this power,*

*a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established...."*

*Thus, the test for determining whether a body is a tribunal or not is to find out whether it is vested with the judicial power of the State by any law to pronounce upon rights or liabilities arising out of some special law and this test has been reiterated by this Court in *Jaswant Sugar Mills Ltd. v. Lakshmi Chand* AIR 1963 SC 677, *Associated Cement Companies Ltd. v. P.N. Sharma* AIR 1965 SC 1595 and in the recent decision of the Constitution Bench in *R. Gandhi* (supra).*

*8. We may now examine the provisions of Chapter XIX B of the Act on Advance Ruling to find out whether the Authority pronounces upon the rights or liabilities arising out of the Act. Section 245N(a) of Chapter XIX B which defines "advance rulings" is extracted herein below:*

*"245N. In this Chapter, unless the context otherwise requires,-*

*(a) "advance ruling" means-*

*(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or*

*(ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident, and such determination shall include the determination of any question of law or of fact specified in the application;*

*(iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of*

*fact relating to such computation of total income specified in the application:*

*[Provided that where an advance ruling has been pronounced, before the date on which the Finance Act, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of this clause as it stood immediately before such date, such ruling shall be binding on the persons specified in section 245S;]*"

*A plain reading of the very definition of advance ruling in Section 245N (a) would show that the Authority is called upon to make a determination in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant or in relation to the tax liability of a non-resident arising out of such transaction which has been undertaken or proposed to be undertaken by a resident applicant with such non-resident and such determination may be on any question of law or fact specified in the application. Further, the Authority may make a determination or decision in respect of a issue relating to the computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision may include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application. Thus, the Authority may determine not only a transaction but also the tax liability arising out of a transaction and such determination may include a determination of issue of fact or issue of law. Moreover, the Authority may determine the quantum of income and such determination may include a determination on a issue of fact or issue of law.*

*9. We also find that the determination of the Authority is not just advisory but binding. Section 245S in Chapter XIX-B is quoted hereunder:*

*"245S. (1) The advance ruling pronounced by the Authority under section 245R shall be binding only-*

*(a) on the applicant who had sought it;*

*(b) in respect of the transaction in relation to which the ruling had been sought; and*

*(c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.*

*(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced."*

*The binding effect of advance ruling as provided in Section 245S has been dealt with by the Authority (Chairman and two Members) in Cyril Eugene Pereira, In re [1999] 105 Taxman 273 (AAR-New Delhi) and at page 672 of the ITR, the Authority held:*

*"Thus, sub-section (2) of section 245S has limited the binding nature of the ruling to the case of the applicant in respect of the transaction in relation to which the advance ruling is sought and to the Commissioner and authorities subordinate to him only in respect of the applicant and the transaction involved. This is not to say that a principle of law laid down in a case will not be followed in future. The Act has made the ruling binding in the case of one transaction only and the parties involved in that case in respect of that transaction. For other transactions and for other parties, the ruling will be of persuasive nature."*

*The Authority, thus, held that the advance ruling of the Authority is binding in the case of one transaction only and the parties involved in respect of that transaction and for other parties, the ruling will be of persuasive nature. The Authority, however, has clarified that this is not to say that a principle of law laid down in a case will not be followed in future. This decision of the Authority in Cyril Eugene Pereira, In re (supra) has been taken note of by this Court in Union of India v. Azadi Bachao Andolan[2003] 263 ITR 706/132 Taxman 373 to hold that the advance ruling of the Authority is binding on the applicant, in respect of the transaction in relation to which the ruling had been sought and on the Commissioner and the income-tax authorities subordinate to him and has persuasive value in respect of other parties. However, it has also been rightly held by the Authority itself*

*that this does not mean that a principle of law laid down in a case will not be followed in future.*

*10. As Section 245S expressly makes the Advance Ruling binding on the applicant, in respect of the transaction and on the Commissioner and the income tax authorities subordinate to him, the Authority is a body acting in judicial capacity. H.M. Seervai in his book "Constitutional Law of India" (Forth Edition) while discussing the tests for identifying judicial functions in paragraph 16.99 quotes the following passage from Prof. de Smiths Judicial Review on page 1502:*

*"An authority acts in a judicial capacity when, after investigation and deliberation, it performs an act or makes a decision that is binding and collusive and imposes obligation upon or affects the rights of individuals."*

*We have, therefore, no doubt in our mind that the Authority is a body exercising judicial power conferred on it by Chapter XIX-B of the Act and is a tribunal within the meaning of the expression in Articles 136 and 227 of the Constitution..."*

4.11 Section 103 of CGST Act and RGST Act, gives binding effect of its ruling on Applicant as well as on the concerned officer or the jurisdictional officer in respect of the applicant, further Section 105 of CGST Act and RGST Act provides power of Civil Court to AAR and AAAR. Excerpts of relevant paras of sections 103 and 105 of the relevant Acts namely CGST and RGST respectively are pari materia as infra:

*"...103.(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—  
(a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;*

*(b) on the concerned officer or the jurisdictional officer in respect of the applicant.*

*(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*

*105.(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—*

*(a) discovery and inspection;*

*(b) enforcing the attendance of any person and examining him on oath;*

*(c) issuing commissions and compelling production of books of account and other records,*

*have all the powers of a civil court under the Code of Civil Procedure, 1908.*

*(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code..."*

4.12 Considering the judgment of Hon'ble Supreme Court in Columbia Sportswear Company vs. Director of Income-tax, Bangalore(supra) and section 103 and 105 of CGST& RGST Act, it is clear that AAR and AAAR constituted under CGST and RGST are bodies exercising judicial power conferred on it by respective laws and are tribunal within the meaning of the expression in Articles 136 and 227 of the Constitution.

4.13 It is submitted that the constitution of Tribunals namely AAR and AAAR under CGST have been notified under RGST rules wherein it has been provided that officer of the rank of Joint Commissioner from Central and State government shall form AAR under section 96 and Chief Commissioner of Central Tax and Commissioner of State Tax shall form AAAR under section 99 of CGST and RGST Acts. This makes it clear that legislature has subsumed the power of judiciary and infact passed on to Executive in gross violation of basic structure doctrine of separation of power. It is further submitted that these provisions suffer from severe infirmities with regards to doctrine of separation of powers and the independence of the judiciary that forms part of the basic structure of the Constitution. The provisions further run contrary to the directions which ought to be followed as guidelines regarding the structuring and organisation of Tribunals in India as was laid down by the Hon'ble Supreme Court in R. Gandhi (2010)11SCC1).

4.14 The Hon'ble Supreme Court in R. Gandhi case (supra) had laid down the following directions and mandated that the Government of India follow the directions as guidelines while constituting the NCLT and NCLAT:

a. Only Judges and Advocates can be considered for appointment as Judicial Members of the Tribunal. Only High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practiced as a Lawyer for ten years can be considered for appointment as a Judicial Member;

b. Persons who have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and Indian Legal Service (Grade-1) cannot be considered for appointment as judicial members. The expertise in Company Law service or Indian Legal service will at best enable them to be considered for appointment as technical members;

c. As the NCLT takes over the functions of High Court, the members should as nearly as possible have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as Technical members.

d. A 'Technical Member' presupposes an experience in the field to which the Tribunal relates.

e. Instead of a five-member Selection Committee with Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and Secretary in the Ministry of Law and Justice as members, the Selection Committee should broadly be on the following lines:

- i. Chief Justice of India or his nominee - Chairperson (with a casting vote);
- ii. A senior Judge of the Supreme Court or Chief Justice of High Court - Member;
- iii. Secretary in the Ministry of Finance and Company Affairs - Member; and
- iv. Secretary in the Ministry of Law and Justice - Member

f. The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the concerned field. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over.

Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as post- retirement havens. If these Tribunals are to function effectively and efficiently they should be able to attract younger members who will have a reasonable period of service.

g. Any person appointed as members should be prepared to totally disassociate himself from the Executive.

h. To maintain independence and security in service, suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.

i. The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.

j. Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special benches are constituted, the number of Technical Members shall not exceed the Judicial Members.

4.15 The above guidelines were given by the Hon'ble Supreme Court based on the following principles as enumerated in para 44 of the said judgment:-

i) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

ii) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

iii) Whenever there is need for 'Tribunals', there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects

requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary.

iv) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of courts). Similarly, while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of judiciary or the standards of judiciary, the court may interfere to preserve the independence and standards of judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive.”

4.16 It is submitted that even though the Hon'ble Supreme Court has prescribed the various guidelines in the decision of R. Gandhi (supra) with regard to the constitution of the NCLT and NCLAT, the same stands applicable to all the tribunals in India.

4.17 The Petitioner is concerned about the independence of judicial tribunals and seeks to protect the same and hence, is filing the present writ petition under Article 226 of the Constitution of India as public interest litigation.

4.18 The petitioner has directly filed a petition under Article 226 of the Constitution as the impugned provisions and Rules are arbitrary and violative of Article 14 and 50 of the Constitution. The right to life under Article 21 includes the right to justice by an independent judiciary and by a Tribunal which is free from executive or political influence. The Petitioner is vitally concerned with the administration of justice and maintenance of rule of law which has been held to be part of the basic structure of the Constitution.

4.19 The glaring infirmities and consequences to the independent judicial administration of the various tribunals and appellate tribunals has compelled the present Petitioner to file the

present writ petition under Article 226 of the Constitution of India.

4.20. That to the best of knowledge of the Petitioner, no public interest petition raising the same issue is filed before this Hon'ble Court.

**(5) SOURCE OF INFORMATION**

5. That source of information of the facts pleaded, is based on the relevant notifications published in the Official Gazette published by Ministry of Law and Justice from time to time and made available to the public on their official website [www.cbec.gov.in](http://www.cbec.gov.in) and from various notification published by the State of Rajasthan from time to time and made available to the public on their official website and upon the further inquiries made by the Petitioner to determine the veracity of the same. The information is based on public documents which are freely available in public domain.

**(6) NATURE & EXTENT OF INJURY CAUSED / APPREHENDED**

6. It is submitted that the constitution of Tribunals namely AAR and AAAR under CGST have been notified under RGST rules wherein it has been provided that officer of the rank of Joint Commissioner from Central and State government shall form AAR

under section 96 and Chief Commissioner of Central Tax and Commissioner of State Tax shall form AAAR under section 99 of CGST and RGST Acts. This makes it clear that legislature has subsumed the power of judiciary and infact passed on to Executive in gross violation of basic structure doctrine of separation of power. It is further submitted that these provisions suffer from severe infirmities with regards to doctrine of separation of powers and the independence of the judiciary that forms part of the basic structure of the Constitution. The provisions further run contrary to the directions which ought to be followed as guidelines regarding the structuring and organisation of Tribunals in India as was laid down by the Hon'ble Supreme Court in R. Gandhi (2010)11SCC1).

**(7) REPRESENTATIONS MADE**

7. That the Petitioner has not made any representation in this regard to the authorities as the Petitioner is challenging the constitutional validity of the impugned provisions of the said Act, therefore, there is no requirement of any kind of representation to be made to the authorities.

**(8) G R O U N D S**

a) It is submitted that, this Writ Petition furnishes a typical instance of a widespread malady which has infested the legislative

system in India, the tendency of the legislature of not exercising legislative restraint and crossing their limits by encroaching into the judicial domain, contrary to the broad separation of powers envisaged under our Constitution.

b) Composition of the Authority under the pre RST regime:-

The advance ruling in India is rendered by an Authority constituted specifically for this purpose known as the Authority for Advance Rulings. It consists of a Chairman and two Members. The Chairman is a retired Judge of the Supreme Court. One of the Members to be appointed to be a member of the CBDT, who may be referred to as the Revenue Member. The other Member is an officer of the Indian Legal Service, who is qualified to be an Additional Secretary to the Government of India and may be referred to as the Law member. The salaries and allowances payable to, and the terms and conditions of service of the Members have been prescribed by the Government of India. The Constitution of the Authority is such that it functions as an independent quasi-judicial body deemed to be a Civil Court for the purpose of Section 195 of the Code of Criminal Procedure, 1973.

c) It is submitted that, as mentioned hereinabove earlier before the GST regime, the authority of Advance Ruling was headed by a Judicial member who was a retired Supreme Court Judge but subsequently after the enactment of the biggest tax reform GST, the Respondents have eliminated judicial member

from the constitution of the AAR and AAAR. It is also submitted that as per the legislation under the Act the decision of AAR and AAAR is binding on the applicant, on the concerned officer or the jurisdictional officer in respect of the applicant in respect of the transaction, therefore, the authority is a body acting in judicial capacity. Therefore, the authority is a body exercising judicial power and is a Tribunal within the meaning of the expression in articles 136 and 227 of the Constitution. However, as there is a total absence of a judicial member in the constitution of AAR and AAAR, the entire constitution of AAR and AAAR is “Coram non judice”. Hence a legal proceeding before the AAR and AAAR is outside the presence of a judge (without a judge), with improper venue, or without jurisdiction, therefore, any adjudication and judgment passed by the AAR and AAAR which has no authority to adjudication under the Act which is clearly in violation of the Article 14 and 50 of the Constitution of India and would be “Coram non Judice” and a nullity. It is further submitted that in terms of section 96 of the CGST and RGST Act, the Parliament has abdicated its authority by empowering the Central Government and State Government to frame Rules. This amounts to delegation of essential judicial functions that is unconstitutional. This also amounts to the granting of an uncanalised power to the executive to control vital bodies that perform, in essence, judicial functions. On this ground, s 96 of the CGST Act, 2017 and RGST Act, 2017

alongwith rules made pertaining to these sections deserve to be struck down on the ground of Article 14 for arbitrariness and Article 50 of the Constitution of India.

d) It is submitted that, the present CGST Act, 2017 and RGST Act, 2017 and rules there under insofar as it amends the structure and re-organization of AAR and AAAR is unconstitutional and violative of the basic structure of the Constitution. Absence of Judicial member has led to mockery of principles enunciated in the basic structure of constitution. The impugned provisions and the impugned Rules, 2017 violate the principles of separation of powers which is not only part of basic structure but also an elementary component of the rule of law. That in *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 and in *Minerva Mills Ltd. v. Union of India*,(1980) 3 SCC 625, larger benches of Hon'ble Supreme Court have held, interalia, that an independent judiciary and it's power of judicial review are among the basic features of the Constitution.

e) The Hon'ble Supreme Court speaking through Constitution Bench in *S. P. Sampath Kumar v. Union of India*, (1987)1 SCC 124 at para 7, has held that,

*"It can no longer be disputed that total insulation of the judiciary from all forms of interference from the co-ordinate branches of the Government is a basic essential feature of the Constitution, the same independence from possibility of Executive pressure or influence must also be ensured to the Chairman, vice Chairman and Members of the Administrative*

*Tribunals... The Constitution makers have made anxious provision to secure total independence of the judiciary from executive pressure or influence."*

That the constitutional guarantee of an independent judicial branch and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to entrust the Tribunals with Members not being Members of the 'Judicial service' of the State, as they are not entitled to protection similar to the constitutional protection afforded to the Courts.

f) That if the constitutional Scheme and intent are to be preserved, it must be held that the 'total insulation of the judiciary' referred to in the case of S. P. Sampath Kumar v. Union of India, (1987) 1 SCC 124 is not just for the 'judiciary' comprising of Judges appointed to the regular Courts. The 'judiciary' in this context must be understood as taking within its fold, all courts and Tribunals and other adjudicatory bodies, whatever be the label assigned to them. The independence and impartiality which are essential for the proper exercise of the judicial power, are to be secured not only for the Courts but also for Tribunals and their members, who, though they do not belong to the 'Judicial Service' are entrusted with judicial powers. Any other view would effectively eviscerate the constitutional guarantee of an independent Judicial Branch.

g) It is submitted that, the safeguards which ensure independence and impartiality are not for promoting personal prestige of the functionary but for preserving and protecting the rights of the citizens and others who are subject to the jurisdiction of the Tribunal, and for ensuring that such Tribunals will be able to command the confidence of the public.

h) The Hon'ble Supreme Court had laid down that when judicial powers are transferred from the Courts to Tribunals, the standard of the Tribunals should approximately be the same as that of the Courts. The impugned provisions and rules relating to the appointment of the Members are in violation of this principle laid down by the Hon'ble Supreme Court. It is shocking that the impugned Provisions and Rules of 2017 do not contain any provision for appointment of Judicial Members to AAR or AAAR, which is directly contrary to various decisions of the Hon'ble Supreme Court and High Courts in India.

i) It is submitted that, Article 50 of the Constitution is part of the basic structure of the Constitution, and is one example of a specific constitutional provision embodying the basic features of separation of powers and rule of law. The Impugned provisions directly encroach into these basic features and derogate from the same by vesting unbridled powers in the Executive and the same is in complete breach of Article 50 which emphasizes that the

State shall take steps to separate the judiciary from the executive in the public services of the State.

j) In absence of judicial member in AAR and AAAR, it will lead to executive taking power of judiciary and executive who enjoys the office to the pleasure of government. There has been significant number of decisions against the tax department constituting Technical and Judicial Member under pre GST regime, it will now be apprehensive to pass orders against the relevant ministry. Ironically, it vitiates the very power of judiciary by making one judge in his own cause "Nemo judex in causa sua". Thus under the impugned Provisions and Rules, the administrative assistance and support to all the tribunals is to be provided by the parent ministry. This is directly contrary to the guidelines prescribed by the Hon'ble Supreme Court in the case of R. Gandhi (supra) and Columbia Sportswear Co. (supra).

**(9) DELAY, IF ANY, IN FILING THE PETITION AND EXPLANATION THEREOF**

Since validity of provisions of CGST Act and RGST Act with rules made thereunder is assailed by way of this petition, there does not arise the issue of delay.

**(10) RELIEFS PRAYED FOR**

10. It is therefore humbly prayed that this Petition may kindly be allowed by issuing appropriate writ, order or directions:-

(a) Declaring Chapter XVII of the Central Goods and Services Tax (RGST) Act, 2017 more particularly Section 96 which relate to 'Authority for Advance Ruling (AAR) and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR) as ultra vires of Article 14 and 50 of the Constitution of India;

(b) Declaring Chapter XVII of the Rajasthan Goods and Services Tax (RGST) Act, 2017 more particularly Sections 96 which relate to 'Authority for Advance Ruling (AAR)' and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR)' as ultra vires of Article 14 and 50 of the Constitution of India;

(c) Declaring Chapter XII of the Central Goods and Services Tax (CGST) Rules, 2017 more particularly Rule 103 which relate to the "Qualification and Appointment of members of the Authority for Advance Ruling" as ultra vires of Article 14 and 50 of the Constitution of India;

(d) Quashing and set-aside the Notification No.9/2017 – Central Tax dated 28.06.2017 in terms of s. 96 and s.99 of the Central Goods and Services Tax Act, 2017;

(e) Quashing and setting-aside the Notification No.9/2017 – State Tax dated 29.06.2017 in terms of s. 96 and s. 99 of the Rajasthan Goods and Services Tax Act, 2017;

(h) Granting any other relief or reliefs in the facts and circumstances of the present case as may be deem fit by this Hon'ble Court;

**(11) INTERIM ORDER, IF PRAYED FOR**

11. That during the pendency and disposal of the present petition, the respondents may be directed

(a) Operation of the Chapter XVII of the Central Goods and Services Tax (CGST) Act, 2017 more particularly Section 96 which relate to 'Authority for Advance Ruling (AAR)' and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR)' and Chapter XVII of the Rajasthan Goods and Services Tax (RGST) Act, 2017 more particularly Sections 96 which relate to 'Authority for Advance Ruling (AAR)' and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR)' and

Chapter XII of the Central Goods and Services Tax (CGST) Rules, 2017 more particularly Rule 103 which relate to the “Qualification and appointment of members of the Authority for Advance Ruling” may be stayed

**(12) CAVEAT**

12. That the Petitioner has come to know that a Caveat at large on behalf of the Union of India, Chief Commissioner of CGST & Commissioner of CGST was filed before this Hon’ble Court on 07.10.2017. It appears that the said caveat has come to expire. The Petitioner has no information about filing of any subsequent caveat extending/renewing the aforesaid caveat dated 07.10.2017.

**HUMBLE PETITIONER  
THROUGH HIS COUNSEL**

**(SHARAD KOTHARI / LALIT PAREEK)  
ADVOCATES**

**NOTES:-**

1. No such PIL agitating the issues enumerated herein has previously been submitted before this Hon'ble Court or before any other Court in India.
2. P.F. Notices and extra copies will be submitted within the prescribed time.
3. This Petition has been typed by my private steno in my office.

4. Pie papers were not readily available hence this Petition has been typed on these papers.
5. Vires has not been challenged in this case.
6. Email ID of undersigned counsel : advlpareek@gmail.com

**(SHARAD KOTHARI / LALIT PAREEK)  
ADVOCATES**

**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JODHPUR**

**D. B. CIVIL WRIT PETITION (PIL) NO. \_\_\_/2018**

**Petitioner:-**

Abhishek Chopra

**VERSUS**

**Respondents:-**

Union Of India & others

**AFFIDAVIT IN SUPPORT OF PETITION**

I, Abhishek Chopra S/o Shri Rajesh Chopra Aged about 33 years, R/o Pali Marwar do hereby solemnly state on oath as under:-

1. That I am the petitioner in the present writ petition and am well conversant with the facts and circumstances of the case.
2. That the present Petition has been drafted by my counsel under my instructions.

3. That facts mentioned in the Petition are correct to the best of my knowledge.

4. That legal submissions mentioned herein are believed to be correct on the basis of legal advice given by my counsel.

**DEPONENT**

**VERIFICATION**

I, the above named deponent do hereby solemnly state on oath that the facts mentioned in the Para No. 1 to 4 of this affidavit are true to my personal knowledge. No part of it is false and nothing has been concealed. SO HELP ME GOD.

**DEPONENT**

DATE:-

**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JODHPUR**

**D. B. CIVIL WRIT PETITION (PIL) NO.\_\_\_\_/2018**

**Petitioner:-**

Abhishek Chopra

**VERSUS**

**Respondents:-**

Union Of India & others

**AFFIDAVIT IN SUPPORT OF DOCUMENTS**

I, Abhishek Chopra S/o Shri Rajesh Chopra Aged about 33 years, R/o Pali Marwar do hereby solemnly state on oath as under:-

1. That I am the petitioner in the present writ petition and am well conversant with the facts and circumstances of the case.
2. That Annexure-1 to Annexure-5 are true and correct copies of their originals.

**DEPONENT**

**VERIFICATION**

I, the above named deponent do hereby solemnly state on oath that the facts mentioned in the Para No. 1 & 2 of this affidavit are true to my personal knowledge. No part of it is false and nothing has been concealed. SO HELP ME GOD.

**DEPONENT**

**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JODHPUR**

**D. B. CIVIL WRIT PETITION (PIL) NO.\_\_\_\_/2018**

**Petitioner:-**

Abhishek Chopra

**VERSUS**

**Respondents:-**

Union of India & others

**ADDITIONAL AFFIDAVIT**

I, Abhishek Chopra S/o Shri Rajesh Chopra Aged about 33 years, R/o Pali Marwar do hereby solemnly state on oath as under:-

1. That I am the Petitioner Society and well conversant with the facts and circumstances of the case.
2. That as per High Court Rules, I am submitting my address proof, which may kindly be treated as part & parcel of this Writ Petition.

3. That the address mentioned in the Petition and the address mentioned herein are of the same place.

**DEPONENT**

**VERIFICATION**

I, the above named deponent do hereby solemnly state on oath that the facts mentioned in the Para No. 1 to 3 of this affidavit are true to my personal knowledge. No part of it is false and nothing has been concealed. SO HELP ME GOD.

**DEPONENT**

DATE:-



**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JODHPUR**

**D. B. CIVIL WRIT PETITION (PIL) NO. \_\_\_/2018**

**Petitioner**

**VERSUS**

**Respondents**

Abhishek Chopra

Union of India & others

**S Y N O P S I S**

Dates	Particulars
	<p>By way of instant PIL validity of Chapter XVII of the Central Goods and Services Tax (CGST) Act, 2017, more particularly Section 96 which relate to 'Authority for Advance Ruling (AAR) and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR)'; Chapter XVII of the Rajasthan Goods and Services Tax (RGST) Act, 2017 more particularly Sections 96 which relate to 'Authority for Advance Ruling (AAR)' and Section 99 which relate to 'Appellate Authority for Advance Ruling (AAAR)'; Chapter XII of the Central Goods and Services Tax (CGST) Rules, 2017 more particularly Rule 103 which relate to the "Qualification and appointment of members of the Authority for Advance Ruling"; has been assailed as the same seeks to constitute the authority of Advance Ruling and Appellate Authority of Advance Ruling in violation of Article 14 &amp; 50 of Constitution of India and in contravention of the law laid down by the Hon'ble Supreme Court in the cases of <b><i>Columbia Sportswear Company vs. Director of Income-tax, Bangalore</i></b> reported in (2012) 11 SCC 224 as also <b><i>Union of India vs. R. Gandhi</i></b> reported in (2010) 11 SCC 1.</p> <p>Hence the present petition.</p>

**(SHARAD KOTHARI / LALIT PAREEK)  
ADVOCATES**