

## Chapter XV

# Advance Ruling

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### FAQ's

#### **Chapter-XVII of the CGST Act, 2017 (Section 95 to Section 106) read with Chapter – XII - Advance Ruling of the CGST Rules, 2017 and Chapter-VII of the UGST Act, 2017(Section 14 to Section 16)**

Q1. Is Advance Ruling authority treated as Adjudicating Authority?

Ans. The definition of “Adjudicating Authority” as defined in Section 2 (4) of CGST ACT, 2017 excludes Advance Ruling Authority (Both the Authority for Advance Ruling and the Appellate Authority for Advance Ruling).

Q2. What are the matters on which clarification can be obtained?

Ans. The Advance Ruling can be obtained on the following matters:

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under provisions of the Act;
- (c) determination of time and value of the supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;
- (f) whether applicant is required to be registered;
- (g) 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.

Q3. What are the matters on which advance ruling cannot be sought?

Ans. No advance ruling can be sought on any matters other than those specified in response to Q2. Additionally, if the matter on which clarification is sought is already pending or decided in any proceedings in the applicant's case under any of the provisions of the Act, then the application of advance ruling will not be admitted.

Q4. Can a taxable person proposing to undertake any new activity seek an advance ruling?

Ans. Yes. Advance ruling for any proposed activity to be undertaken by any registered person or desirous of obtaining registration under the Act can be sought for.

Q5. Can a taxable person already undertaking an activity seek an advance ruling on the same?

Ans. Yes. Advance ruling on an existing activity undertaken by any registered person or desirous of obtaining registration under the Act can be sought for.

Q6. Where will the Advance Ruling Authority be located?

Ans. The Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

However, the Government may, on the recommendation of the Council, notify any Authority located in another State / Union territory to act as the Authority for the State or the Union territory where Authority for Advance Ruling is not constituted

Q7. What will be composition of Advance Ruling Authority?

Ans. The Advance Ruling Authority will comprise of two members – one member from amongst the officers of central tax and one member from amongst the officers of State / Union Territory tax, to be appointed by Central Government. The qualification, method of appointment of the members and the terms and conditions of their service will be prescribed. As per Rule 103 of the CGST Rules, officer of the rank of Joint Commissioner shall be appointed as member of the Authority for Advance Ruling.

Q8. What is the procedure of Advance Ruling?

Ans. The following procedure needs to be adopted for obtaining advance ruling

(a) Applicant to file application for Advance Ruling under section 97(1) of the Act shall be made on the common portal in **FORM GST ARA-01** and shall be accompanied by a fee of ₹ 5,000/- to be deposited in the manner specified in section 49 of the Act.

The application, the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in Rule 26 of CGST Rules.

(b) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records. Such records to be returned as soon as possible.

(c) Then, the Authority will decide on admission or rejection of the application and send the copy of the order (admission or rejection) to the applicant and to the concerned officer. Reasons in case of rejection to be stated in the order.

However, the Authority shall not be admit the application, where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act

(d) If, the Authority decides to admit the matter then the Authority shall pronounce the advance ruling within 90 days from the date of receipt of the application

A copy of the advance ruling so pronounced by the Authority duly signed by the members and certified to be a true copy of its original by any member of the Authority for Advance Ruling, shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

Both in case of rejection of the application and pronouncing of the ruling, the Authority will provide an opportunity to be heard to the applicant and the department authorities or their authorised representatives.

Q9. Is there a time limit within which the application needs to be disposed off?

Ans. The Advance ruling should be pronounced in writing within 90 days of receipt of application.

Q10. What if, the members of Advance Ruling Authority have different viewpoints on the advance ruling sought?

Ans. Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

Q11. Can the applicant / department file an appeal against the ruling pronounced by the Advance Ruling Authority?

Ans. Yes. An appeal can be filed before the Appellate Authority of Advance Ruling within 30 days of communication of the advance ruling.

Q12. What will be composition of Appellate Authority for Advance Ruling?

Ans. The Appellate Authority for Advance Ruling will comprise of – Chief Commissioner of Central tax as designated by the Board and Commissioner of State / Union Territory tax having jurisdiction over the applicant.

Q13. Where will the Appellate Authority for Advance Ruling be located?

Ans. The Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

However, the Government may, on the recommendation of the Council, notify any Appellate Authority located in another State / Union territory to act as the Appellate Authority for the State or the Union territory where Appellate Authority for Advance Ruling is not constituted

Q14. What if, the Appellate Authority is not able to decide on the matters referred to them by the advance authority or in appeal?

Ans. In this case, it will be deemed that no advance ruling can be issued on the matter under the appeal or reference.

Q15. Can the ruling issued by the authority or order passed by the appellate authority be modified?

Ans. In case there is any error apparent on the face of the records then the Advance Ruling Authority or Appellant Authority for the Advance Ruling, as the case may be, can amend the Original Order passed by it within a period of 6 months from the date of said Order.

Q16. Is the advance ruling binding for all the tax payers?

Ans. Advance Ruling will be binding only on the applicant who has sought for advance ruling

Q17. Is the advance ruling binding on all the department officers?

Ans. No – Advance ruling will be binding only on the concerned officer or the jurisdictional officer in respect of the applicant.

Q18. From when will the advance ruling be applicable?

Ans. Advance ruling will be applicable from the date of issue i.e. prospectively.

Q19. What are the powers of Advance Ruling Authority and the Appellate Authority for Advance Ruling?

Ans. The Advance Ruling Authority and the Appellate Authority for Advance Ruling shall have all the powers of the Civil Court 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 accounts and other records.

Further, 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.

Further, if the Advance Ruling Authority and the Appellate Authority for Advance Ruling finds that advance ruling has been obtained by the applicant or appellant by fraud or suppression of material facts or misrepresentation of facts, it can declare such ruling or Order to be Void ab-initio.

Q20. Can the Advance Ruling pronounced under Section 98 or 101 be rectified?

Ans. Yes. The Authority or the Appellate Authority may amend any order passed by it under

section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by

- the Authority or
- the Appellate Authority on its own accord, or
- is brought to its notice by the concerned officer,
- the jurisdictional officer,
- the applicant or
- the appellant

within a period of six months from the date of the order:

However, no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

## MCQ's

### Advance ruling (Section 95 to Section 106)

Q1. What is the meaning of applicant?

- (a) Person registered under the Act.
- (b) Person desirous of obtaining registration under the Act.
- (c) Tourist as defined under section 15 of IGST Act, 2017.
- (d) (a) or (b).

Ans. (d) (a) or (b)

Q2. Where shall the Advance Ruling Authority be located?

- (a) The Authority shall be located in each state / Union Territory.
- (b) The Authority shall be located in Centre.
- (c) The Authority shall be located in both Centre & State.
- (d) None of the above

Ans. (a) *The Authority shall be located in each state / Union Territory*

Q3. The Advance Ruling Authority shall comprise of

- (a) One member from amongst the officers of Central tax.
- (b) One member from amongst the officers of State tax or Union Territory tax as the case may be.
- (c) (a) & (b)

(d) None of the above

Ans. (c) (a) & (b)

Q4. The Appellant Authority for Advance Ruling shall comprise of

- (a) Chief Commissioner of Central tax as designated by the board
- (b) Commissioner of State tax or union Territory tax, as the case may be, having jurisdiction over the applicant
- (c) (a) & (b)
- (d) (a) or (b)

Ans. (c) (a) & (b)

Q5. Who shall make an application for advance ruling?

- (a) Applicant
- (b) Department
- (c) Appellate Authority
- (d) None of the above

Ans. (a) Applicant

Q6. What procedure should follow if the members of the Authority differ on any question on which the advance ruling is sought?

- (a) The members of the authority shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.
- (b) The Authority will not take any decision and reject the application
- (c) The Authority will remand the case to jurisdictional officer
- (d) None of the above

Ans. (a) *The members of the authority shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question*

Q7. Within how many days the Authority shall pronounce its decision on advance ruling from the date of receipt of application

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 120 days

Ans. (c) 90 days

Q8. Whether the ruling pronounced under Section 98 of CGST Act, 2017 have prospective or retrospective effect?

- (a) Prospective effect
- (b) Retrospective effect
- (c) Prospective/Retrospective effect based on case to case

Ans. (a) *Prospective effect*

Q9. Who can appeal to the Appellate Authority?

- (a) Jurisdictional CGST/SGST officer or the applicant
- (b) Any Taxable Person
- (c) Any citizen concerned about the ruling passed
- (d) All of the above

Ans. (a) *Jurisdictional CGST/SGST officer or the applicant*

Q10. Appeal before the appellate authority can be filed within how many days?

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 120 days

Ans. (a) *30 days*

Q11. Under what circumstance the members of the Appellate Authority deem that no advance ruling can be issued in respect of the questions covered under the appeal

- (a) If the members of the Appellate Authority differ on any point or points referred to in appeal
- (b) If the members of the Advance Ruling Authority differ on any point or points referred to in appeal
- (c) Applicant wants to withdraw the application
- (d) Both A and C

Ans. (a) *If the members of the Appellate Authority differ on any point or points referred to in appeal*

Q12. Who has the power to amend the order issued under section 98 or 101, to rectify any error apparent from record?

- (a) Advance Ruling Authority
- (b) Appellate Authority for the Advance Ruling

- (c) Authority or, as the case may be, the Appellate Authority.
- (d) None of the above.

Ans. (c) *Authority or, as the case may be, the Appellate Authority*

Q13. Who can apply for rectification of error on record?

- (a) Applicant
- (b) Concerned officer or Jurisdictional Officer
- (c) Advance Ruling Authority or the Appellate Authority on its own accord can rectify the error
- (d) All of the above

Ans. (d) *All of the above*

Q14. When should the opportunity of being heard be given to applicant or the appellant for rectification of advance ruling?

- (a) If the rectification has the effect of enhancing the tax liability.
- (b) If the rectification has the effect of reducing the amount of admissible input tax credit.
- (c) (a) or (b)
- (d) None of the above

Ans. (c) *(a) or (b)*

Q15. The Advance Ruling pronounced by the Appellate Authority shall be binding on

- (a) The applicant who sought the advance ruling.
- (b) The jurisdictional officer in respect of the applicant
- (c) (a) and (b)
- (d) None of the above

Ans. (c) *(a) and (b)*

Q16. When can the Authority declare the advance ruling pronounced as void?

- (a) If ruling is obtained by suppression of material facts
- (b) If the applicant is in the business of supplies on which clarification has been sought
- (c) If the applicant does not engage in the business of supplies after 6 months of obtaining the ruling
- (d) If a Supreme Court judgement is pronounced on the same issue and the judgement is exactly the opposite of the clarification issued under the ruling

Ans. (a) *If ruling is obtained by suppression of material facts.*