

## Chapter– XVII

# Advance Ruling

---

### Statutory provision

#### 95. Definition clause – interpretation

In this Chapter, unless the context otherwise requires, -

- (a) “advance ruling” means a decision Provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods and/or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) "Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99.
- (c) “applicant” means any person registered or desirous of obtaining registration under the Act.
- (d) “application” means an application made to the Authority under sub-section (1) of section 97;
- (e) “Authority” means the Authority for Advance Ruling, referred to in section 96;

#### 95.1 Introduction

This Section provides the definitions of the expressions ‘advance ruling’, ‘applicant’, ‘application’, ‘authority’ and ‘appellate authority’, for the purpose of the chapter on advance rulings. The meanings of said words assigned by the definitions have to be applied unless the context otherwise requires.

#### 95.2 Analysis

- (i) The expression ‘advance ruling’ would mean the decision taken in writing from the AAR (including appellate authority) only on the questions raised by the Applicant relating to several matters specified in Section 97(2) or in Section 100(1) i.e., with respect to an order given u/s 98(4), with respect to supply of goods and / or services proposed to be undertaken or already being undertaken.
- (ii) The word “applicant” refers to any person already registered or one who desires to get registered under the Act.
- (iii) The term “application” refers to the application made for advance ruling under section 97(1), in FORM GST ARA-1.
- (iv) The word “authority” refers to the AAR constituted under section 96 in each State or Union territory.

- (v) The expression "Appellate Authority" refers to the Appellate Authority for Advance Ruling constituted under section 99 in each State or Union territory.
- (vi) Advance ruling decision can only be in respect of matters or questions specified in section 97(2) or section 100(1) of the Act in relation to the supply of goods and/or services, which is either proposed to be undertaken or is being undertaken by the applicant and cannot travel beyond that. Thus, an application can be made even before the applicant has undertaken an activity of supplying goods and/or services.
- (vii) Applicant under the GST law may be a person who is already registered under the GST Act or who wishes to obtain a registration. Therefore, registration at the time of making the application is not necessary. One can make an application to the authority under section 97(1) stating the question on which he seeks advance ruling. The term 'Person' has been defined in section 2(84) of the Act. The scope of persons eligible for making applications has been widened as compared to the list of persons as per current tax regime under Central Excise, Customs and Service Tax.
- (viii) Under current laws, while the advance ruling can be sought on specified question of law or fact, under the GST law, several situations are covered in section 97(2) of the Act.
- (ix) Under current laws, advance ruling can be sought by an applicant on an activity of production or manufacture of goods or import or export of goods proposed to be undertaken or a service proposed to be Provided by him. However, under the GST laws, advance ruling can also be sought on a present activity of supply of goods and or services being undertaken by the applicant.

### 95.3 Comparative review

For the first time an appellate authority for advance ruling has been prescribed. This is a marked departure from the pre-GST regime, which did not provide for an appellate remedy against rulings given by AAR.

### 95.4 Related Provisions

Section / Rule/ Form	Description	Remarks
Section 95	Definitions	Contains definition of various terms like Advance Ruling, Applicant, Application, Authority and Appellate Authority.
Section 2(84)	Person	Contains an inclusive list of 14 different types of persons.
Section 97(2)	Question on advance ruling	Provides a list of questions on which advance ruling can be sought by the applicant.
Section 100(1)	Appeal to the Appellate authority	Prescribed or jurisdictional CGST/SGST officer or an applicant can appeal to the appellate authority, if aggrieved by the advance ruling pronouncement of the authority.

**95.5 FAQs**

Q1. Can advance ruling be given orally?

Ans. No. Advance ruling cannot be given orally in view of section 98(6) and 98(7).

Q2. Can Advance Ruling be applied for after supply of goods and/or services?

Ans. Yes, as per section 95(a) of the Act, application can be made for Advance Ruling in relation to the supply of goods and/ or services being undertaken by the applicant.

Q3. Who can make an application for advance ruling?

Ans. An application for advance ruling can be made by any person who is registered or is desirous of obtaining a registration under the GST.

**Legend**

- (i) AAR: Authority for Advance Rulings
- (ii) AAAR: Appellate Authority for Advance Ruling
- (iii) AA: Appellate Authority
- (iv) UT: Union Territory

**Statutory provision:****96. Authority for advance ruling**

Subject to the provisions of this Chapter, for the purposes of this Act, 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

**96.1 Introduction**

The Authority for advance ruling constituted under provisions of a State GST Act or UTGST Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory. .

**96.2 Analysis**

The AAR shall be located in each State/UT.

**96.3 Comparative review**

Under current laws, there is one AAR for three Central indirect tax laws i.e. Central Excise, Customs and Service Tax constituted by the Central Government under section 28F of the Customs Act, 1962 having its office in Delhi. Under the GST law, there will be one AAR in each State or Union Territory because the concept of advance ruling is being made applicable to SGST laws/ UTGST laws as well.

**96.4 Related Provisions**

Section / Rule / Form	Description	Remarks
Section 95 (e)	Authority	Defines the meaning of 'Authority'.
Section 95 (a)	Advance Ruling	Defines 'Advance Ruling' as a written decision on matters or questions specified in section 97(2) or section 100(1).

**96.5 FAQs**

Q1. Where will the office of AAR be situated?

Ans. The office of the AAR will be situated in each state/UT.

**Statutory provision:****97. Application for Advance Ruling**

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought under this Act shall be in respect of,
  - (a) classification of any goods and/or services or both;
  - (b) applicability of a notification issued under provisions of this Act;
  - (c) determination of time and value of the 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.

**97.1 Introduction**

This section specifies the questions on which an advance ruling can be sought by way of an application which may be in such form and manner duly accompanied with the fee as may be prescribed.

**97.2 Analysis**

- (i) An applicant who seeks an advance ruling should make an application in the prescribed FORM GST ARA-1 together with a fee of Rs. 5000/- and should state the question on which such a ruling is sought.
- (ii) The question raised is limited to the following:

- Classification of goods and / or services or both;
- Applicability of notification issued under the Act.
- determining the time and value of goods or services or both;
- Input credit admissibility of tax paid or deemed to be paid;
- Determination of liability to tax on goods or services or both;
- Registration requirement of an applicant;
- Whether any particular thing done by the applicant amounts to or results in supply of goods or services or both.

### 97.3 Comparative review

The questions on which AAR can be sought is quite comprehensive as compared to the existing indirect tax regime.

Under the current laws, the applicant may withdraw the application within 30 days from the date of application. However, there is no such withdrawal provision under GST laws.

### 97.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 95(d)	Application	This section states that 'application' means an application made to the Authority under section 97(1).
Section 95(c)	Applicant	Defines applicant as a person who is registered or is desirous of obtaining registration under the GST Act.
Section 95(a)	Advance Ruling	Defines 'Advance Ruling' as a decision on matters or questions specified in section 97(2) or section 100(1).

### 97.5 FAQs

Q1. Who can make an application to the AAR?

Ans. An applicant desirous of obtaining an advance ruling (whether registered or not) can make an application to AAR.

Q2. Can a question relating to classification of services or goods be referred to AAR?

Ans. Yes, a question on classification of services or goods can be referred to AAR.

Q3. Can the issue relating to admissibility of input credit be raised in an application for advance ruling?

Ans. Yes, an issue in relation to admissibility of input tax credit of tax paid or which is deemed to have been paid can be raised in an application for advance ruling.

Q4. Can the issue relating to notification having a bearing on tax rate, be raised before the AAR?

Ans. Yes, an issue relating to applicability of any notification issued under act can be raised before the AAR

Q5. Can the application made to the authority be withdrawn at any time?

Ans. It appears that there is no such provision under GST law..

### Statutory provision

#### 98. Procedure on receipt of application

(1) 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:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not 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.

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) 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.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

**98.1 Introduction**

This section sets out the procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of an application for advance ruling by an applicant.

**98.2 Analysis****Receipt of Application**

- (i) On receipt of an application in FORM GST ARA -1, the AAR shall forward a copy to the concerned officer and, if necessary, direct him to furnish the relevant records.
- (ii) The records so called for by the AAR should be returned as soon as possible to the concerned officer.
- (iii) The AAR, at its discretion, would examine the application and the records called for, and after hearing the applicant or his authorized representative and concerned officer or his authorised representative pass an order, either admitting or rejecting the application:
- (iv) The AAR shall not 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.
- (v) Before rejecting the application, the applicant ought to be given an opportunity of being heard.
- (vi) Where the application is finally rejected, the reasons for such rejection shall be stated in the order.
- (vii) A copy of every order made shall be sent to the applicant and to the concerned officer.

**Pronouncement of advance ruling**

Where the application is admitted, the AAR shall proceed as follows:

- Examine such further material as may be placed before it by the applicant or obtained by the AAR.
- Provide opportunity of being heard to the applicant or his authorized representatives and concerned officer or this authorized representative.
- Pronounce its advance ruling on the question specified in the application.

**Reference to Appellate Authority**

- (i) Where the members of the AAR differ on any question on which the advance ruling is sought, they shall state the point/s of difference and refer it to the Appellate Authority for advance ruling for final decision.
- (ii) The AAR shall pronounce its advance ruling in writing within ninety days of the receipt of application.
- (iii) The Appellate Authority to whom a reference is made due to difference of opinion is required to pronounce the ruling within ninety days of such reference.

**Submission of advance ruling pronounced.**

A copy of the advance ruling pronounced by the concerned AAR / Appellate Authority, duly signed by the Members and certified, shall be sent to the applicant and to the concerned officer after pronouncement.

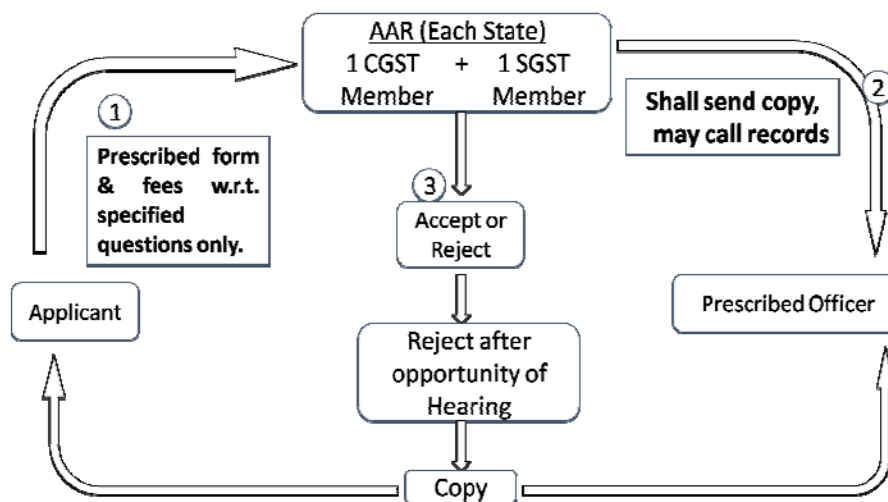
**Comparative review**

- (i) The provision has some similarities with the Advance Rulings provision in Central Indirect Tax laws.
- (ii) In case of difference of opinion, the matter would be directly referred to the appellate authority, which is a new development.

**98.3 Related Provisions**

Section / Rule / Form	Description	Remarks
Section 116	Appearance by authorised representative	This section defines the meaning of authorised representative (AR), who can be appointed as an AR, disqualification of AR etc. For the purpose of this sub section "authorised representative" shall have the meaning assigned to it in Section 116.

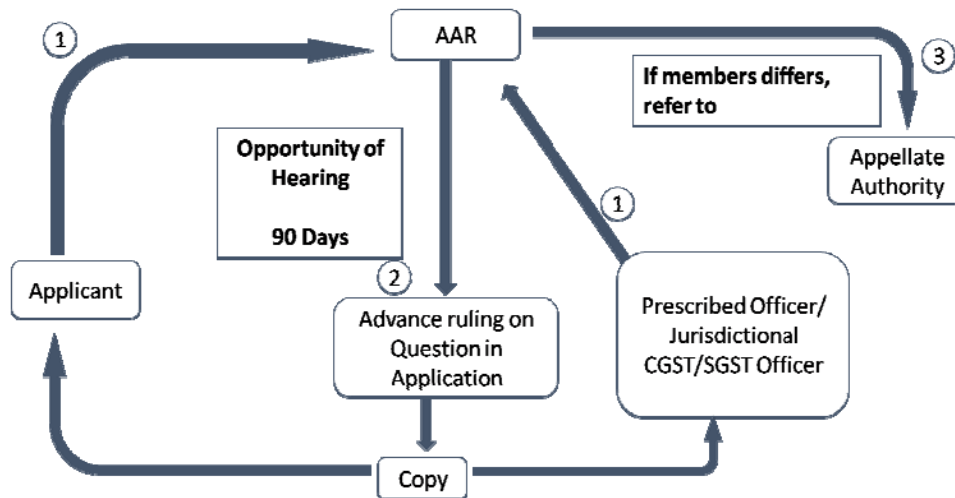
The analysis of above provision in a pictorial form is summarised as follows:

**Application for Advance ruling – Sec: 98 & 97**

\* Not to admit if already before/decided by any Adjudicating or Appellate Authority.



## Procedure for Advance ruling – Sec: 101



## 98.4 FAQs

Q1. When AAR shall not admit the application for advance ruling?

Ans. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Q2. Can an application be rejected without providing the applicant an opportunity of being heard?

Ans. No. Before rejecting the application, AAR shall provide the applicant an opportunity of being heard.

Q3. Whether it is necessary to give reasons for rejection in the order of the AAR?

Ans. Yes. Where the application is rejected, reasons for such rejection shall be given in the order.

Q4. When should a reference be made to the appellate authority?

Ans. A reference shall be made to the Appellate Authority stating the point of differences, when the members of the authority differ on any question on which advance ruling is sought.

## 98.5 MCQs

Q1. On receipt of an application for advance ruling, Authority for Advance ruling shall:

- fix a date of hearing
- forward a copy of the same to concerned officers
- None of the above

Ans. (b) forward a copy of the same to concerned officers.

Q2. AAR shall refuse to admit the application if the issue raised in the application is already pending in the applicant's own case before:

- (a) any First Appellate Authority
- (b) the Appellate Tribunal
- (c) any Court;
- (d) All the above

Ans. (d) All the above

Q3. The AAR shall pronounce its advance ruling:

- (a) Without examining further materials placed before it by the applicant
- (b) After examining further materials placed before it by the applicant
- (c) Without providing the applicant or his AR any opportunity of being heard
- (d) After providing the applicant or his AR any opportunity of being heard
- (e) (b) & (d) both

Ans. (e) (b) & (d) both

Q4. The AAR should pronounce the ruling within:

- (a) 30 days
- (b) 90 days
- (c) 60 days
- (d) 45 days.

Ans. (b) 90 days

**Statutory provision:**

**99. Appellate Authority for Advance Ruling**

Subject to the provisions of this Chapter, for the purposes of this Act, 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.

**99.1 Introduction**

The appellate authority for advance ruling shall be constituted in each state/UT.

**99.2 Analysis**

The appellate authority constituted in each state shall be deemed to be the appellate authority in respect of that state/UT.

**99.3 Comparative review**

This is a new concept hitherto not seen in the pre-GST regime.

Under current tax laws, there is no provision for an appellate authority for advance ruling, which is a new development under GST laws.

**99.4 Related Sections**

Section	Description	Remarks
Section 99	Appellate Authority for Advance Ruling	Describes the constitution of Appellate Authority for Advance Ruling for a State or Union Territory.
Section 95 (b)	Appellate Authority	Defines the meaning of 'Appellate Authority' as the one constituted under section 99.

**Statutory provision****100 Appeal to Appellate Authority**

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:  
  
Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.
- (3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

**100.1 Introduction**

This section deals with the procedure to be followed for filing of an appeal before the appellate authority against the order of the authority under section 98(4).

**100.2 Analysis**

- (i) An appeal can be filed by the concerned or jurisdictional officer or the applicant, who is aggrieved by the ruling.
- (ii) The appeal should be filed within 30 days from the date of receipt of the ruling. This period can further be extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30 days.
- (iii) The appeal shall be in the prescribed FORM GST ARA-2 together with a fee of Rs. 10,000/-

- (iv) The appeal shall be verified in the prescribed manner.
- (v) Prescribed fee to be paid by the appellant.

### 100.3 Comparative review

This is a new mechanism evolved which was not prevalent in the existing indirect tax regime.

### 100.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 99	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State / UT and who will be its members.

### 100.5 FAQs

- Q1. Who can file an appeal before the appellate authority for advance ruling?
- Ans. The concerned Officer or jurisdictional officer or the applicant may file an appeal before the Appellate Authority, if he is aggrieved by the advance ruling pronounced by the authority under section 98(4).
- Q2. What is the time limit for filing an appeal before the appellate authority for advance ruling?
- Ans. The time limit for filing an appeal before the appellate authority is 30 days from the date of communication of the advance ruling to the aggrieved party. This time can further be extended by another 30 days if sufficient cause is shown for not filing the appeal within the first 30 days.

### Statutory provision

#### 101. Orders of the Appellate Authority

- (1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
- (2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.
- (3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
- (4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

**101.1 Introduction**

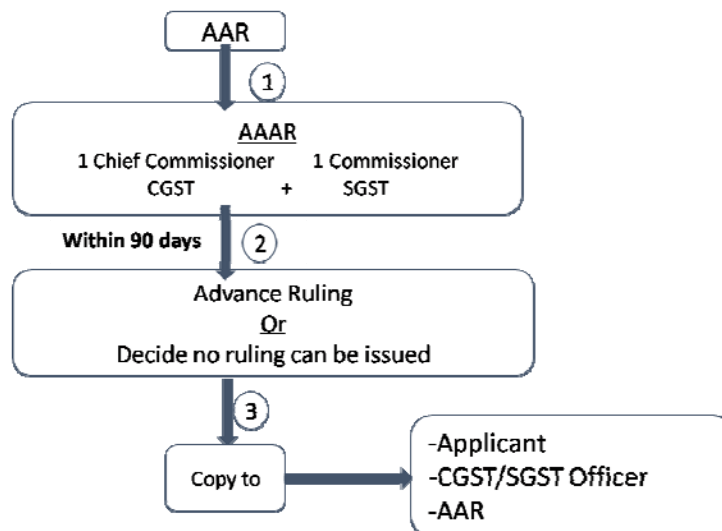
This section deals with the procedure to be followed by the appellate authority to pass an order against the advance ruling of the authority appealed against under section 100.

**101.2 Analysis**

- (i) The appellate authority must afford a reasonable opportunity of being heard to the parties before passing the order.
- (ii) The said authority can either pass such order as it deems fit, or confirm or modify the ruling appealed against.
- (iii) The order should be passed within 90 days from the date of filing appeal.
- (iv) If there is a difference of opinion between members on the question covered under the appeal, then it would be considered that no advance ruling is issued in the matter.
- (v) A copy of the appellate order should be signed by the members and communicated to the concerned officer and applicant, as soon as possible after such pronouncement.

**101.3 Related Provisions**

Section / Rule / Form	Description	Remarks
Section 99	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State / UT and who will be its members.

**Appellate Authority for Advance ruling – Sec: 100 & 101**

**Note:** Rulings pronounced will only have a prospective effect,

**101.4 FAQs**

Q1. What is the time limit for passing of an order by the appellate authority for advance ruling?

Ans. The time limit for passing of an order by the appellate authority for advance ruling is 90 days from the date of filing of appeal.

Q2. Under what circumstances, advance ruling cannot be issued in respect of the question covered under the appeal?

Ans. If members of the appellate authority differ on any point or points of the question referred to them in appeal under 101(3), then it shall be deemed that no advance ruling is issued in respect of the question covered under the appeal.

**Statutory provision****102. Rectification of advance ruling**

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:

Provided that 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.

**102.1 Introduction**

This section deals with the circumstances as to when an order of the authority or the Appellate authority can be rectified, time limit within which it can be done and the notice to the applicant or the appellant in case such rectification results in enhancing the tax liability or reducing the amount of admissible input tax credit.

**102.2 Analysis**

1. The advance ruling can be rectified by the authorities on their own accord or upon receipt of application from the jurisdictional officer or the applicant, if there are any mistakes apparent on the record.
2. The application for rectification can be made within six months, and cannot result in substantial amendment of the order.
3. If the rectification results in increase in tax liability or reducing of input credit then a hearing has to be given to the applicant/appellant.
4. The Appellate authority may amend the order to rectify any mistake apparent from the record, if such mistake:

- (a) Is noticed by it on its own accord, or
- (b) Is brought to its notice by the concerned or the jurisdictional officer or
- (c) Is brought to its notice by the applicant.

**102.3 Related Provisions**

Section/Rule/Form	Description	Remarks
Section 98	Procedure on receipt of application	This section states the procedure to be followed by the authority on receipt of an application or by the Appellate authority on a reference made to it by the authority. Section 98(6) provides for time limit of 90 days for pronouncement of advance ruling.
Section 101	Orders of the Appellate Authority	This section talks about passing of the order by the appellate authority, it's time limit, communication of the order and the situation where no advance ruling can be issued.

**102.4 FAQs**

Q1. When can an advance ruling order may be rectified?

Ans. An advance ruling may be amended by the authority or appellant authority, as the case may be, with a view to rectify any mistake apparent from the record, which:

- (a) is noticed by the AAR or Appellate Authority on its own accord, or
- (b) is brought to the notice of the AAR or Appellate Authority by the concerned or the jurisdictional officer or ;
- (c) is brought to the notice of the AAR or Appellate Authority notice by the applicant.

Q2. Under what circumstances, a notice is required to be issued to the applicant or appellant, as the case may be, before rectification of an advance ruling order?

Ans. Before rectification of an advance ruling order, a notice is required to be issued to the applicant or appellant, as the case may be, to provide him a reasonable opportunity of being heard, if such rectification has the effect of:

- enhancing the tax liability or
- reducing the amount of admissible input tax credit.

**102.5 MCQs**

Q1. Rectification of order can be done under the following circumstances

- (i) to do justice
- (ii) when there is mistake apparent on record
- (iii) if it in the interest of revenue
- (iv) none of the above.

Ans. (ii) when there is mistake apparent on record

**Statutory provision****103. Applicability of advance ruling**

- (1) The advance ruling pronounced by the Authority or, as the case may be, 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 subsection (2) of section 97 of the application for advance ruling;
  - (b) on the concerned or 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.

**103.1 Introduction**

It states the binding effect of an advance ruling.

**103.2 Analysis**

- (i) The advance ruling pronounced by the Authority under this chapter shall be binding only on the applicant and on the jurisdictional officer in respect of the applicant.
- (ii) The advance ruling shall be binding on the said persons/authorities unless there is a change in law or facts or circumstances, on the basis of which the advance ruling has been pronounced. When any change occurs in such laws, facts or circumstances, the advance ruling shall no longer remain binding on such person.

**103.3 Comparative review**

The provision is similar to the Advance Rulings provisions in current Central Indirect Tax laws as contained in section 23E of Central Excise Act, section 28J of Customs Act and section 96E of the Finance Act, 1994.

**103.4 Related Provisions**

Section / Rule / Form	Description	Remarks
Section 97	Applicability of advance ruling	This Section sets out the questions on which ruling can be sought.

**103.5 FAQs**

Q1. Is the advance ruling binding on other assesseees?

Ans. No. Advance ruling is binding only on the assessee who as an applicant has sought advance ruling in relation to any of the matters specified in subsection (2) of section 97.

Q2. Are the tax authorities bound by the advance ruling?

Ans. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling is bound by such rulings pronounced.



**Statutory provision****104. Advance Ruling to be void in certain circumstances**

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of the Act or the Rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

*Explanation.-* The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned office and the jurisdictional officer.

**104.1 Introduction**

It states the circumstances under which the ruling would be considered as void *ab initio*.

**104.2 Analysis**

- (i) If the Authorities (AAR and appellate authority) find that the advance ruling order has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio*.
- (ii) Consequently, all the provisions of the Act shall apply to the applicant as if such advance ruling had never been made.
- (iii) Before passing the order, an opportunity of being heard should be given to the applicant/appellant.
- (iv) The period beginning with the date of advance ruling and ending with the date of order under this sub-section shall be excluded in computing the period for issuance of Show-cause notice and adjudication order under sub-section(2) and (10) of both Section 73 and 74 respectively.
- (v) A copy of the order so made shall be sent to the applicant and the concerned/ jurisdictional officer.

**104.3 Comparative review**

The provision relating to the circumstances when an advance ruling can be declared void *ab initio* are more or less the same as those in the current central Indirect Tax laws as contained in section 23F of Central Excise Act, section 28K of Customs Act and section 96F of the

Finance Act, 1994 except that under GST laws, an additional criterion of “suppression of material facts” has been added to serve as a basis for declaring an advance ruling void *ab initio*.

#### 104.4 Related Provisions

Section/Rule/Form	Description	Remarks
Section 73(2) & 73 (10)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts	Sub-section 2 deals with time limit for issue of show-cause notice and sub-section 10 deals with time limit for issuance of adjudication order.
Section 74(2) & 74 (10)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts	Sub-section 2 deals with time limit for issue of show-cause notice and sub-section 10 deals with time limit for issuance of adjudication order.

#### 104.5 FAQs

Q1. Can the advance ruling be declared as void without hearing?

Ans. No. Advance ruling cannot be declared as void unless the opportunity of being heard has been given.

Q2. Under what circumstances advance ruling can be declared as void?

Ans. The authority or the appellate authority may declare an advance ruling to be void *ab initio* if it the applicant or the appellant, as the case may be, has obtained it by fraud, suppression of material facts or misrepresentation of facts.

#### Statutory provision

##### 105. Powers of the Authority and Appellate Authority

- (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.

### 105.1 Introduction

The provision specifies the powers conferred on the AAR and appellate authority in the discharge of its functions.

### 105.2 Analysis

- (i) The Authorities have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records.
- (ii) The Authorities are 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.
- (iii) Every proceeding before the Authorities shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Indian Penal Code, 1860.

### 105.3 Comparative review

The powers remain exactly the same as have been specified in section 23G of Central Excise Act, section 28L of Customs Act and section 96G of the Finance Act, 1994.

### 105.4 FAQs

Q1. What are the powers vested with the authority and the appellate authority?

Ans. The authority or the appellate authority shall have all the powers of a civil court to exercise the following powers:

- discovery and inspection;
- enforcing attendance of any person and examining him on oath;
- issuing commissions and compelling production of books of accounts and other records.

Q2. What is the nature of proceedings conducted by the AAR and appellate authority under this chapter?

Ans. The nature of proceeding conducted by AAR and appellate authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of Indian Penal Code (45 of 1860)

### 105.5 MCQs

Q1. The AAR shall be deemed to be \_\_\_\_\_ for the purpose of this chapter:

- (a) High Court
- (b) Supreme Court
- (c) Economic Offences Court
- (d) Civil Court

Ans. (d) Civil court

Q2. The proceedings under this chapter shall be deemed to be:

- (a) Quasi-judicial proceedings
- (b) Judicial proceedings
- (c) Administration proceedings
- (d) Special proceedings

Ans. (b) Judicial proceedings

### Statutory provision

#### 106. Procedure of the Authority and the Appellate Authority

The Authority or, as the case may be, the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

#### 106.1 Introduction

It states the procedure to be followed by the AAR and the appellate authority in discharging its functions.

#### 106.2 Analysis

The Authorities shall have the power to regulate their own procedure.

#### 106.3 Comparative review

The powers remain exactly the same as are contained in section 23H of Central Excise Act, section 28L of Customs Act and section 96H of the Finance Act.

#### 106.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 106	Procedure of the Authority and the Appellate Authority	This section deals with the powers of the authority and the appellate authority to regulate its own procedures.