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The World of Business is based on informed **decisions**. Decisions which make or break an organisation. A right estimation may lead it to scale new heights, and on the other hand, a wrong cost projections may lead to complete wipeout of the business.

**Ambiguities in Law**

Any **Law**, no matter how beautifully drafted, is **incapable** to deal with every single transaction happening in its jurisdiction. The same could be the case with GST Law in India. As a result, there may remain ambiguities in the minds of dealers as to:

- What **tax rate** to charge on their product?
- How and Where should his goods be **classified**?
- Whether any given notification is **applicable** to him?
- How to determine the **time and value** of supply of goods or services or both?
- Whether input tax credit of tax paid or deemed to have been paid, is **admissible**?
- How to **determine** the liability to pay tax on any goods or services or both?
- Whether he is **required** to be registered?
- Whether any particular thing done by him 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?

To ward off against such situations and problems the concept of **Advance Ruling** has been laid under Chapter XVII of the Central Goods and Service Tax Act, 2017 [parallel provisions are there in the State Goods & Services Tax Laws]. This chapter covers a total of 12 sections ranging from section 95 to section 106.

**Advance ruling** is defined under Section 95(a) as a **decision** provided by the Authority or the Appellate Authority to an applicant on matters or on questions in relation to the supply of goods and/or services being undertaken or proposed to be undertaken by the applicant. Thus, the purpose of forming an authority for advance ruling is **to provide clarity** on many unanswered questions of law which arise due to various anomalies in law. It also helps business and investors to work out the tax component on their future proposed project before any major investment is made. As it helps the public by providing clarity of law, the resultant is lower litigations by revenue authority as decisions of Advance Ruling Authority are **binding** on them and the applicant also.

### **Constitution of Authority:**

The constitution of **Advance Ruling Authority** has been specified under section 96(2) of the Central Goods and Services Tax Act, 2017. It would consist of one member from amongst the officers of the Central Tax and one member from amongst the officers of the State Tax which shall be appointed by the Central and State Governments respectively.

The **Appellate Authority** on the other hand has been specified under section 99(2) of the Central Goods and Services Tax Act, 2017. It would consist of the Chief Commissioner of Central Tax as designated by the Board; and the Commissioner of State Tax having jurisdiction over the applicant.

### **Questions that may be raised**

Section 97(2) specifies the categories of questions which can be asked from the Authority for Advance Ruling by making an application in the form and manner prescribed, along with the prescribed fee for the questions that may be asked from it. These questions have been specified above.

Under the ideal situation these questions should have been answered in law itself for every business and every situation. But how is it possible to imagine all possible situations while drafting the law. So there remain numerous deficiencies which result in litigations. Thus, Advance ruling acts as a law clarifying authority. And a well directed and properly drafted question asked from authority for advance ruling may save number of years of litigation with the GST Department.

### **How to Apply for Advance Ruling?**

Rule 104 of CGST Rules prescribes the Form and manner of making application to the Authority for Advance Ruling. An application for obtaining an advance ruling under Section 97(1)

shall be made on the common portal in FORM GST ARA-01 and shall be accompanied by a fee of 5000 rupees, to be deposited in the manner specified in section 49 and signed in the manner specified in rule 26.

**Manual filing and processing:** -

As the GST common portal could not be made functional to accept applications online for obtaining Advance Ruling, a new rule 107A inserted, and Circular No. 25/25/2017-GST was issued to allow Manual filing and processing for the same. So now for the time being an application for obtaining advance ruling can be made manually, in quadruplicate, in FORM GST ARA-01 . The application shall be accompanied by a fee of five thousand rupees which is to be deposited online by the applicant, in the manner specified under section 49 of the CGST Act.

It is reiterated that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the CGST Act. In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”. After entering the email id and mobile number, a One-Time Password (OTP) shall be sent to the email id. Upon submission of OTP, the System shall generate a temporary ID and send it to the declared email and mobile number of the applicant. On the basis of this ID, the applicant can make the payment of the fee of Rs. 5,000/- each under the CGST and the respective SGST Act. The applicant is then required to download and take a print of the challan and file the application with the Authority for Advance Ruling.

**Procedure of Advance Ruling Authority:** -

Section 98 provides for the procedure to be adopted by the advance ruling authority on receipt of an application seeking advances ruling. On receipt of such application the authority shall **send a copy** of it to the officer concerned and call upon him to furnish the relevant records. The authority then will **examine the application** and such records and **hear the applicant** and the concerned officer through their authorized representative or in person. An **order** will then be passed either **admitting or rejecting** the application . No such application shall be admitted, which has a question similar to any previously pending question or any matter **previously decided** in relation to the applicant, in any proceedings under any other provisions of the GST Act. If the authority wishes to **reject an application**, it can do so only after providing an **opportunity of being heard** to the applicant and also the order thus made should provide the **reason for rejections**. A copy of above order shall be sent to the applicant and concerned officer.

After the authority, has admitted the application, it shall examine any further material placed before it or obtained by it and provide an opportunity of being heard to the applicant or his A.R. as well as to the concerned officer. There after the authority shall **pronounce its advance ruling** on the question specified in the application. Time limit for disposal of application is **90 days** of receipt of application.

A Certified and Signed copy of ruling shall be sent to -

- the applicant;
- the concerned officer and
- the jurisdictional officer.

### **Difference of opinion amongst members**

Where the members of the authority differ on any question, they shall mention the points(s) on which they differ and refer to the **appellate authority** for hearing and decision thereon.

### **Appellate Authority for Advance Ruling** (S.99 of CGST Act)

Any Appellate Authority constituted under any State or Union Territory GST Act shall be deemed to have jurisdiction over that State or UT only. The Appellate authority shall consist of

- (i) the Chief Commissioner of central tax as designated by the Board; and
- (ii) the Commissioner of State tax:

Provided that the Government may, on the recommendations of the Council, notify any Appellate Authority located in another State or Union territory to act as the Appellate Authority for the State.

### **Appeal to the appellate Authority** (S.100)

An appeal against the advance ruling made u/s 98(4) may be filed within 30 days of receipt of ruling, by the aggrieved party.

This period may be extended by another 30 days if sufficient cause is disclosed by the appellant before the authority.

Time Limit : 30 days of receipt of appeal

Condonation of delay : Upto 30 days, if sufficient cause shown.

Fee : Rs.10000

Who can prefer appeal : Applicant, Concerned officer,  
Jurisdictional officer.

### **Orders of Appellate Authority** (Section 101)

An appellate authority shall pass such order as it may deem fit either **confirming or modifying** the ruling of the advance ruling authority made u/s 98(6) or reference u/s 98(5). Such order shall however be passed only after giving the parties to the appeal or reference an opportunity of being heard.

**No** order can be passed if members of the appellate authority **differ** on any point referred to in an appeal or reference. In such a case a **deadlock** situation may arise and the applicant may feel that his time has been wasted. However, such situations shall be useful for government to draft or amend the provision of law in such a manner so as to take care of ambiguities in law avoiding such deadlock scenarios.

After the appellate authority has admitted the application, it may **examine** any further material placed before it or obtained by it and provide an **opportunity** of being heard to the applicant or his authorized representative as well as to the concerned officer. Thereafter the authority shall pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

A Certified and Signed copy of the advance ruling so pronounced shall be sent to

- the applicant;
- the concerned officer;
- the jurisdictional officer; and
- the Authority.

**Rectification** of advance ruling (S.102) can be made by the authority u/s 98 and by the appellate authority u/s 101 of any **mistake apparent from record** within a period of 6 months from the date of the order. However proper opportunity of being heard is to be provided to the applicant if such rectification would result in enhancing the tax liability or reducing the input tax credit.

Advance ruling shall be **Binding on**

- (1) The applicant
- (2) The concerned officer or jurisdictional officer.

And it shall be binding upto the time the law facts or circumstances remain the same. In case the applicant obtains an advance ruling, and before he applies the ruling for his business, if the facts change like say the raw material which was earlier imported is now sourced from India itself, then on the basis of such changes, the jurisdictional officer may refuse to accept the ruling citing change in facts of the case.

If the authority or the appellate authority finds that the applicant has obtained the advance ruling by **fraud** or suppression of material facts or mis-representation of facts, it may pass an order declaring such ruling as **void ab initio** i.e. it shall be deemed to never have been made. This order shall be passed only after providing an opportunity of being heard to the applicant.

And for making any recoveries u/s 73 or 74 the period between date of such advance ruling and date of order shall be excluded.

**Powers:** Authority or Appellate Authority shall have all the powers of civil court under the Code of Civil Procedure, 1908 regarding discovery and inspection, enforcing the attendance of any person and examining him on oath or for issuing commissions and compelling production of books of account and other records.

**Similar provisions:** Taxation laws have traditionally provided provisions of advance ruling for the benefit of public, to facilitate foreign investment into the country and to safeguard against harassment due to unclear Law. Some statutes however call these provisions as determination or clarification. Given below is a comparison chart of similar provisions of advance ruling under old laws with that under GST laws.

Comparison Chart of Advance Ruling Provisions of various tax Laws:

	Income Tax	Excise, Customs, Service Tax	DVAT	GST
Acts	Income-tax Act, 1961	Customs Act, 1962	Dvat Act, 2004	Central GST Act, 2017
Sections	245N(a)	Sec. 28F	Section 84 & 85	Sec. 95 to 106

	Income Tax	Excise, Customs, Service Tax	DVAT	GST
<b>Fees</b>	Rs. 10,000 to Rs.10 Lakhs	Rs. 2,500	NA	Rs. 5,000
<b>Disposal time</b>	6 months	90 days	As Prescribed in 84(5)	90 days
<b>Form</b>	Form 34C /D/ DA/ E/E A	Excise: AAR CE-1 Customs: AAR CUS-1 Service Tax: AAR ST-1	DVAT-42	FORMS ARA-1, ARA-2, ARA-3
<b>Questions that may be asked</b>	questions of law or fact pertaining to the income tax liability of the non-resident, clarification for double tax avoidance agreements	Classification, valuation, Applicability of notifications, Admissibility of input-tax credit, Determination of the tax liability,	whether any person would be a dealer/ required to be registered? a transaction is or would be a sale/ works contract? a sale is/not liable to tax or is exempt? determination of tax credit, import of goods, value of any goods imported into Delhi? determination of taxable turnover/ sale price/tax rate? the location of any sale or purchase? Application of a composition scheme?	Determination of tax rate/ time and value of supply, classification/ applicability of notifications/ admissibility of Input tax credit/requirement for registration
<b>Authority</b>	Authority for Advance Ruling	Authority for Advance Rulings, Central Excise, Customs & Service Tax	Commissioner	Authority for advance ruling
<b>First Appellate Authority</b>	ITAT	CESTAT	Tribunal	Appellate Authority for advance ruling

