

## Chapter XVII

# 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 (Rule 84 - 85) and Chapter-VII of the UGST Act, 2017 (Section 14 to Section 16)

It is important to note that authority constituted under SGST Act /UTGST Act shall be a deemed authority under the CGST Act and the IGST Act.

Q1. What is the meaning of Advance Ruling?

Ans. As per Section 95(a) of the CGST Act/ Section 14(a) of the UTGST Act, '*Advance Ruling*' means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or section 100(1) of the CGST Act as the case may be, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Q2. What is the objective of having a mechanism of Advance Ruling?

Ans. The broad objective for setting up such an authority is to:

- (i) provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- (ii) attract Foreign Direct Investment (FDI);
- (iii) reduce litigation;
- (iv) pronounce ruling expeditiously in transparent and inexpensive manner.

Q3. Is Advance Ruling authority treated as Adjudicating Authority?

Ans. No. The definition of "*Adjudicating Authority*" as provided in Section 2(4) of the CGST Act, 2017 excludes both Advance Ruling Authorities - {Authority for Advance Ruling (in short "**AAR**") and the Appellate Authority for Advance Ruling (In short "**AAAR**")}

Q4. What are the questions or matters on which advance ruling can be obtained?

Ans. The Advance Ruling can be obtained on the following questions or 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.

Q5. What are the matters on which Advance Ruling cannot be sought?

Ans. Advance Ruling cannot be sought on any matters other than those specified in Q4 *supra*. Additionally, if the matter on which advance ruling 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 AAR shall not admit such application.

Q6. Can a taxable person proposing to undertake any new activity seek an advance ruling?

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

Q7. Can a taxable person already undertaking an activity seek an Advance Ruling on the same?

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

Q8. How shall the AAR be constituted?

Ans. The AAR shall be constituted under the provisions of the respective STGST Act or UTGST Act and such authority shall be deemed to be the AAR in respect of that State or Union territory under the CGST Act also. Thus, AAR shall not be constituted under the CGST Act.

However, a State 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.

Q9. Whether the Ruling given by AAR of one State/UT shall be applicable in another State/UT?

Ans. No. The AAR is constituted under the respective State/UT Act and not the Central Act. Hence, the Ruling given by AAR of one State/UT shall be applicable only within the jurisdiction of the concerned State/UT.

Q10. What will be the composition of AAR?

Ans. The AAR 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 the Central and State/UT Government respectively. As per Rule 103 of

the State and CGST Rules, the State and Central Government shall appoint officers not below the rank of Joint Commissioner as member of the AAR.

Q11. What is the procedure of Advance Ruling?

Ans. The following procedure needs to be adopted for obtaining Advance Ruling:

An e-application for obtaining an advance ruling under section 97(1) of the Act shall be made by the applicant on the common portal in **FORM GST ARA-01** and shall be accompanied by a fee of INR 5,000/- each under the CGST and the respective SGST/UTGST Act. The fees is to be deposited in the manner specified in section 49 of the Act. (Section 49 deals with the procedure for payment of tax/interest/penalty/other amounts and the mechanism to make payment through Electronic Cash and Credit Ledgers).

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**. Rule 26 provides for the manner of authenticating documents through Digital Signature Certificate (DSC) or e-signature as specified in the Information Technology Act.

Upon receipt of an application, the Authority shall send a copy of the same to the concerned officer and, if necessary, call upon him to furnish the relevant records. Such records to be returned as soon as possible. The word '*concerned officer*' of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. the Authority may then examine the application along with the records and may hear the applicant, concerned officer or their authorised representative. Thereafter, the AAR will pass an order admitting or rejecting 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, before rejection, an opportunity of hearing shall be provided to the applicant. 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

If, the application is admitted, the AAR shall pronounce the advance ruling in writing within 90 days from the date of receipt of the application. Before giving its Ruling, the AAR shall examine any further materials placed before it by the applicant or obtained by the AAR and provide an opportunity of hearing to the applicant, concerned officer or their authorised representative. A copy of the advance ruling so pronounced by the AAR duly signed by the members and certified to be a true copy of its original by any member of the AAR, shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

However, due to unavailability of the requisite form on the portal, a new rule 107A has been inserted providing for manual submission of the application vide Notification No. 55/2017-Central Tax, dated 15.11.2017 read with *Circular No. 25/25/2017-GST dated 21.12.2017*. Similar circulars have been issued under the respective State Acts also.

Form and manner of manual filing of application to AAR:

- (a) An application in **Form GST ARA-01** is to be submitted manually in quadruplicate.
- (b) The application shall be accompanied by a fee of 5000/- each under the CGST and the respective SGST/UTGST Act and has to be deposited online.
- (c) To make online payment of fees, 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, Systems 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 ` 5,000/- each under the CGST and the respective SGST/UTGST Act.
- (d) The applicant is then required to download and take a print of the challan and file the application with the AAR. .
- (e) The application, the verification contained therein and all the relevant documents has to be duly signed and self-attested as follows:
  - a. in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
  - b. in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
  - c. in the case of a company, by the Chief Executive Officer or the authorised signatory thereof;
  - d. in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;
  - e. in the case of a firm, by any partner thereof, not being a minor or the authorised signatory thereof;

- f. in the case of any other association, by any member of the association or persons or the authorised signatory thereof;
- g. in the case of a trust, by the trustee or any trustee or the authorised signatory thereof; or
- h. in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48 of the CGST/SGST Act.

Q12. What if, the members of AAR have different viewpoints on the Advance Ruling sought?

Ans. Where the members of the AAR 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 AAAR for hearing and decision on such question.

Q13. Can the applicant / Department file an appeal against the Ruling pronounced by the AAR?

Ans. Yes. An appeal can be filed before the AAAR by the concerned officer, the jurisdictional officer or an applicant aggrieved by an Advance Ruling within 30 days of communication of the said ruling to the concerned person. Further, AAAR may extend this period by further period not exceeding 30 days, if satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of 30 days.

Further, an appeal against advance ruling issued under Section 98(6) shall be made by an applicant on the common portal in **Form GST ARA-02** along with fees of ` 10,000/- each under the CGST and the respective SGST/UTGST Act to be deposited in the manner specified in section 49 of the Act. However, an appeal by the concerned officer or jurisdictional officer shall be in **Form GST ARA-03** on the common portal and no fees shall be payable by the said officer.

Since, the required forms are not made available on the portal; manual filing of appeal to AAAR is provided in the CGST and SGST/UTGST Rules as stated above subject to adherence of conditions and procedure as prescribed in *Circular No. 25/25/2017-GST dated 21.12.2017*. Similar circulars have been issued by States also. This Circular *inter alia* provides that:

- An appeal shall be filed manually in quadruplicate, in **FORM GST ARA-02** (physical form) along with fees of ` 10,000/- each to be paid online under the CGST and the respective SGST/UTGST Act. The procedure for payment of fee is same as stated above.
- An appeal by the concerned officer or the jurisdictional officer shall also be filed manually in quadruplicate in **Form GST ARA-03** and no fee shall be payable by the said officer for filing the appeal.

- Further, the appeal, the verification contained therein and all the relevant documents accompanying such appeal must be signed and self-attested:
  - in the case of the concerned officer or jurisdictional officer, by an officer authorized in writing by such officer; and
  - in the case of an applicant, in the manner specified above.

Note: If the space provided for answering any item in the forms is found to be insufficient, separate sheets may be used.

Q14. How shall the AAAR be constituted?

Ans. The AAAR shall be constituted under the provisions of the respective SGST Act or UTGST Act and such authority shall be deemed to be the AAAR in respect of that State or Union territory under the CGST Act also. Thus, AAAR shall not be constituted under CGST Act.

However, a State 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 AAAR is not constituted.

Q15. What will be composition of AAAR?

Ans. The AAAR 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.

Q16. Is there any time limit within which Appellate order is to be passed?

Ans. The order, either confirming or modifying the Ruling appealed against or referred to, shall be passed within 90 days from the date filing of appeal or reference, after giving the parties to the appeal or reference an opportunity of being heard. A copy of the Advance Ruling so pronounced duly signed by the members and certified in the manner prescribed shall be sent to the applicant and the appellant, the concerned officer/jurisdictional officer of the CGST and SGST/UTGST and the AAR after such pronouncement.

Q17. What if, the Appellate Authority is not able to decide on the matters referred to them in appeal or reference?

Ans. In that case, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

Q18. Can the Ruling issued by the AAR or order passed by the AAAR be rectified?

Ans. In case there is any error apparent on the face of the records, the AAR or AAAR as the case may be, can amend the original order passed by it, if such error is

noticed by the AAAR or AAR on its own record or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant, within a period of 6 months from the date of said 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.

Q19. Is advance ruling binding on all tax payers?

Ans. No – Advance Ruling pronounced by AAR or AAAR shall be binding only on the applicant who has sought it.

Q20. Is Advance Ruling binding on all departmental officers?

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

Q21. From when will the Advance Ruling be applicable?

Ans. Sec. 103(2) of the CGST Act, 2017 provides that the decision of advance ruling shall be binding unless there is change in law, facts or circumstances supporting the original Advance Ruling .have changed. Hence, unless the case is covered by the said exceptions, it shall be binding on the applicant in respect of all the transactions covered by the Ruling in case of the applicant.

Q22. What is the time period for applicability of advance ruling?

Ans. The law does not provide for a fixed time period for which the Advance Ruling pronounced by AAR or AAAR shall apply. It shall remain binding till the time the law, facts or circumstances supporting the original Advance Ruling have not changed.

Q23. Whether the Advance Ruling has precedent value of a judgment of the High Court or the Supreme Court?

Ans. No, the Advance Ruling is binding only in respect of the matter referred for the concerned applicant. It has no precedent value. However, even for persons other than applicant, it may have a persuasive value in case of favorable rulings.

Q24. What are the powers of AAR or AAAR?

Ans. The AAR or AAAR shall have all the powers of the Civil Court under the Code of Civil procedure, 1908 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 AAR or AAAR 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 AAR or AAAR 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. *The AAR or AAAR shall have the powers to regulate its own procedure.*

Q25. Can an Advance Ruling given be nullified?

Ans. If the AAR or AAAR finds that advance ruling has been obtained by the applicant or appellant by fraud or suppression of material facts or misrepresentation of facts, it may, after providing the applicant or the appellant an opportunity of hearing, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the Rules shall apply to the said applicant or the appellant as if such advance ruling has never been made.

A copy of the said Order shall be sent to the applicant, the concerned officer and the jurisdictional officer.

Q26. Where does the application for AAR or the appeal before AAAR shall be filed?

Ans. The application or the appeal shall be filed in the jurisdictional office of the respective State AAR or State AAAR respectively.

Q 27. Whether Appeal can be filed before the High Court or the Supreme Court against the ruling of AAAR?

Ans. The CGST /SGST Act do not provide for any appeal against the ruling of AAAR. Thus, no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant. However, Writ Jurisdiction may lie before the Hon'ble High Court or Special Leave petition before the Hon'ble Supreme Court.

## 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 AAR shall comprise of:

- (a) One member from amongst the officers of Central tax and one member from amongst the officers of State tax/Union Territory tax.
- (b) One sitting High Court Judge.
- (c) (a) & (b)
- (d) (a) and (b)

Ans. (a) *One member from amongst the officers of Central tax and one member from amongst the officers of State tax/Union Territory tax.*

Q4. The Appellant Authority for Advance Ruling shall comprise of:

- (a) Chief Commissioner of Central tax as designated by the Board and Commissioner of State tax/ Union Territory tax, having jurisdiction over the applicant.
- (b) Principal Chief Commissioner of Central tax and Commissioner of State tax/ union Territory tax, having jurisdiction over the applicant.
- (c) Two sitting High Court Judges.
- (d) None of the above.

Ans. (a) *Chief Commissioner of Central tax as designated by the Board and Commissioner of State tax/ Union Territory tax, having jurisdiction over the applicant.*

Q5. Who may make an application for Advance Ruling?

- (a) Applicant
- (b) Jurisdictional officer
- (c) Both Applicant and Jurisdictional officer
- (d) Concerned Officer

Ans. (a) *Applicant*

Q6. What procedure should be followed 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. Who can appeal to the AAAR?

- (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*

Q9. Appeal before AAAR 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 circumstances, 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 AAAR differ on any point or points referred to in appeal
- (b) If the members of the AAR 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 AAAR 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 hearing 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 AAAR 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 judgment is pronounced on the same issue and the judgment is exactly the opposite of the clarification issued under the ruling

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

Q17. Who will get the copy of order of Advance Ruling pronounced by the AAAR?

- (a) Applicant Taxpayer.
- (b) Concerned Central / State Officer and Other Jurisdictional State / Central Officer.
- (c) Authority for Advance Ruling.
- (d) All of the above.

Ans. (d) *All of the above.*

Q18. Advance Ruling cannot be sought in respect of:

- (a) admissibility of input tax credit
- (b) classification of goods and/or services
- (c) whether applicant is required to be registered
- (d) whether applicant is entitled to refund

Ans. (d) *whether applicant is entitled to refund*

Q19. Authority for Advance Ruling shall not admit an application if:

- (a) show cause notice has been issued
- (b) appeal has been filed to Appellate Tribunal against the adjudication order
- (c) appeal has been filed before the Hon'ble high Court
- (d) None of the above

Ans. (d) *None of the above.*

Q20. An applicant may seek Advance Ruling in relation to supply of goods and/or services-

- (a) being undertaken by him
- (b) proposed to be undertaken by him
- (c) already undertaken by him
- (d) all of the above

Ans. (d) *all of the above*

Q21. AAR or AAAR shall be constituted

- (a) Under respective State GST Act
- (b) Under Central GST Act
- (c) Both under Central GST and State GST Act

Ans. (c) *Under respective State GST Act*

Q22. An Advance Ruling can be sought by:

- (a) Only by a registered person
- (b) By a person desirous of obtaining registration
- (c) Both (a) and (b)
- (d) None of the above

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

Q23. A member of AAR shall not be below the rank of:

- (a) Deputy Commissioner
- (b) Assistant Commissioner
- (c) Joint Commissioner
- (d) Commissioner

Ans. (c) *Joint Commissioner*

Q24. The fee for filing an application for Advance Ruling is:

- (a) ` 5000/- under CGST Act
- (b) ` 5000/- under SGST Act
- (c) ` 5000/- each under CGST and SGST Act
- (d) ` 10000/- under any of the above Act

Ans. (c) *` 5000/- each under CGST and SGST Act*

Q25. The fee for filing an appeal before AAAR by the applicant is:

- (a) ` 25000/- under CGST Act
- (b) ` 25000/- under SGST Act
- (c) ` 10000/- each under CGST and SGST Act
- (d) ` 25000/- under any of the above Act

*Ans. (c) `10000/- each under CGST and SGST Act*

Q26. The fee for filing an appeal before AAAR by the Department is

- (a) ` 5000/- under CGST Act
- (b) ` 5000/- under SGST Act
- (c) ` 10000/- each under CGST and SGST Act
- (d) None of the above

*Ans. (d) None of the above*

Q27. The AAR after examining the application and relevant records shall:

- (a) pass an order admitting the application
- (b) pass an order rejecting the application
- (c) pass an order admitting or rejecting the application
- (d) allow the applicant to amend the application

*Ans. (c) pass an order admitting or rejecting the application*

Q28. A copy of Advance Ruling has to be certified to be a true copy of its original:

- (a) by all members of the AAR
- (b) by any member of the AAR
- (c) certification is not required
- (d) certification is optional

*Ans. (b) by any member of the AAR*

Q29. Within how many days of filing of appeal or reference, the Appellate order shall be pronounced

- (a) 30 days
- (b) 60 days

(c) 90 days

(d) 120 days

Ans. (c) 90 days

Q30. An appeal against the ruling of AAR shall be filed?

(a) before the Appellate Tribunal

(b) before the Commissioner (Appeal)

(c) in the jurisdictional office of the respective State AAAR

(d) in the jurisdictional office of the Central AAAR

Ans. (c) *in the jurisdictional office of the respective State AAAR*