

Chapter 18

Advance Ruling

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95. Definitions

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 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;

Relevant circulars, notifications, clarifications issued by Government:

1. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on ‘Advance Ruling Mechanism in GST’

Related Provisions of the Statute

Section or Rule	Description
Section 2(84)	Definition of Person
Section 97(2)	Question on advance ruling
Section 100(1)	Appeal to the Appellate authority

95.1 Introduction

This section defines the expressions ‘advance ruling’, ‘applicant’, ‘application’, ‘authority’ and ‘appellate authority’, for the purpose of this chapter. 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 matters decided by the Authority for Advance Ruling (AAR, in short) and the Appellate Authority for Advance Ruling on the questions raised by the Applicant in respect of matters specified in Section 97(2) or Section 100(1).
- (ii) Such matters or questions could be in relation to supply of goods and/or supply of services being undertaken or proposed to be undertaken by the applicant. The phrase ‘being undertaken’ is a present continuous tense which refers to supply which is underway.
- (iii) The word “applicant” refers to any person already registered or one who desires to get registered under the Act. It is not mandatory to have a registration at the time of making an application for advance ruling. However in case of an unregistered person it is mandatory to quote his PAN unless he is a non-resident. The term ‘Person’ has been defined in section 2(84) of the Act.
- (iv) One can make an application to the authority under section 97(1) stating the question on which he seeks advance ruling. An application for advance ruling shall be made in FORM GST ARA-1.

- (v) Thus, an applicant can seek Advance ruling if the following conditions are fulfilled:
- (a) If such applicant is either registered under the GST law or is desirous of obtaining registration
 - (b) If the matter or question pertains to any issue specified in Section 97(2) If the advance ruling is sought in respect of any transaction involving supply of goods or services or both
 - (c) Such a transaction is being undertaken or is proposed to be undertaken. It is important to note that no advance ruling can be sought on transactions already undertaken in the past.
- (vi) The word “authority” refers to the AAR constituted under section 96 of CGST Act, 2017 in each State or Union territory.
- (vii) The expression “Appellate Authority” refers to the Appellate Authority for Advance Ruling constituted under section 99 in each State or Union territory. Therefore, every state/Union Territory will have its own Appellate Authority for Advance Ruling.

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.

Also, under erstwhile laws, advance ruling could 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.

Further, the scope of persons eligible to apply for advance ruling has been widened under the GST law as compared to the erstwhile Central Excise, Customs and Service Tax laws.

95.4 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. No, 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 but not for a supply which has already been effected.

Q3. Who can make an application to the Authority for Advance Ruling?

Ans. An application for advance ruling can be made by any person defined in section 2(84), either registered or is desirous of obtaining a registration under GST.

Q4. Advance rulings are binding on whom? Can it be binding on the department? Refer section 103

Ans. The Advance rulings given by the AAR is binding on

- a) the applicant in respect of any matter referred to in section 97(2) for advance ruling.
- b) On the concerned officer or the jurisdictional officer in respect of the applicant.

Statutory provisions

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

Extract of Delhi SGST Act, 2017:

96. Constitution of Authority for Advance Ruling

(1) *The Government shall, by notification, constitute an Authority to be known as the Delhi Authority for Advance Ruling:*

Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.

(2) *The Authority shall consist of-*

(i) one member from amongst the officers of central tax; and

(ii) one member from amongst the officers of State tax,

to be appointed by the Central Government and the State Government respectively.

(3) *The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.*

Extract of the CGST Rules, 2017

103. Qualification and appointment of members of the Authority for Advance Ruling.

The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

Relevant circulars, notifications, clarifications issued by Government:

1. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on 'Advance Ruling Mechanism in GST'

Related Provisions of the Statute

Section or Rule	Description
Section 95 of CGST Act	Definitions
Rule 103 of CGST Rules	Qualification and appointment of members of the Authority for Advance Ruling

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/Union Territory constituted under the provisions of State Goods and Services Tax Act and Union Territory Goods and Services tax Act. The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

As per Section 96 of the State GST Acts, the State Government may, on the recommendation of the Council, notify any AAR located in another State to act as the Authority for Advance Ruling for the State.

Further, the AAR shall consist of one member from amongst the officers of Central tax and one member from amongst the officers of State tax, to be appointed by the Central Government and the State Government respectively. The qualifications, method of appointment of the members and the terms and conditions of their services shall laid down in the SGST Rules.

As the AAR and the Appellate Authority have been instituted under the respective State / Union Territory Act and not the Central Act, the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned state or union territory. Thus, an advance ruling in case of an applicant in Kerala cannot be made applicable to another division of the same company located in Karnataka. This has the potential to create an absurd scenario where the jurisdictional officer of the division located in Karnataka may choose not to abide by the Advance Ruling issued by the Kerala AAR to another division of the same company in Kerala. Similarly, a situation may also arise wherein the Authority for Advance Ruling in different States may conclude differently in respect of the same issue. Since the advance ruling is binding on the concerned officer or the jurisdictional officer only in respect of the applicant, the above mentioned officers may apply the law in a different manner with respect to another registered person under his jurisdiction. As such it is strongly suggested that a centralised appellate authority be constituted to assure uniformity across India.

Suppose, a company is having multiple registrations across India, it has applied for advance ruling in two different states on the same issue. How will the company account for the issue, if the decisions of the two authorities are contradictory to each other.

It is important to note that the members of the AAR are appointed from the lot of departmental officers, be it the CGST representative or the SGST representative. These officers who decide upon matters relating to taxability of a transaction, liability of the assessee, registration requirements and other matters stated in Section 97(2) 'are themselves a creation of the system'. Such is the nature of the constitution of the AAR or the Appellate Authority that the very same officers who have interpreted the law in favour of tax collections will now sit in judgement on matters of levy, taxability and liability. Hence before applying for an advance ruling, the applicant must appreciate the fact that the members of the AAR or the Appellate Authority cannot question the vires of the provisions of the GST law. It would not be wrong to say interpretations of the members might be prejudiced by their experiences and understanding as tax officers which could cloud the rulings and decisions given by them. To this extent it can be said that the AR and AAR are both biased with only department officers appointed as members of AR. It is suggested that a person from the judiciary should be accommodated both in the AAR and the AAAR and the strength of the AAR and the AAAR should be increased to three, so that a situation shall never arise where a decision cannot be taken due to difference in opinion of the members of the AAR or the AAAR.

Thus, it is important for an applicant to weigh his options before seeking an Advance Ruling however attractive a proposition it may seem to be. Given that Section 103 states that an advance ruling shall have a binding effect on the applicant and the officers in respect of the applicant, the applicant should analyse the impact of an advance ruling not going in his favour. Would it be more beneficial for the assessee to litigate the matter in the Court of law as and when the need arises as against submitting himself before the AAR (previously, tax officers) which would involve biased decision and disclosing his business model, books of accounts and other material facts requiring examination.

96.3 Comparative review

Under the erstwhile laws, there was only 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.

The composition of the AAR in the erstwhile law consisted of one judicial member as part of the authority. However, there are only two members in the GST AAR consisting of one member from the state and one from the centre, both being officers of the GST regime.

96.4 FAQs

Q1. Where will the office of AAR be situated?

Ans. The office of the AAR will be situated in each State/UT. However, the State Government, on the recommendation of the Council, may notify any AAR located in another State to act as the Authority for Advance Ruling for the State.

Statutory provisions

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 or services or both;*
 - (b) *applicability of a notification issued under provisions of this Act;*
 - (c) *determination of time and value of 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.*

Extract of the CGST Rules, 2017

104. Form and manner of application to the Authority for Advance Ruling.

- (1) *An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made on the common portal in FORM GST ARA-01 and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49.*
- (2) *The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.*

106. Form and manner of appeal to the Appellate Authority for Advance Ruling.

- (1) *An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.*
- (2) *An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section*

100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.

- (3) The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,-
- (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
- (b) in the case of an applicant, in the manner specified in rule 26.

107A. Manual filing and processing.

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

Relevant circulars, notifications, clarifications issued by Government:

1. Circular No. 25/25/2017-GST dated 21.12.2017 regarding Manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling.
2. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on 'Advance Ruling Mechanism in GST'

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 98	Procedure on receipt of application
Section 100	Appeal to Appellate Authority
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

97.1 Introduction

This section specifies the matters in respect of which an advance ruling can be sought and prescribes the form and manner in which an application for advance ruling may be filed.

97.2 Analysis

- (i) An applicant who seeks an advance ruling should make an application online in the prescribed FORM GST ARA-01 together with a fee of Rs. 5000/-stating the question on which such a ruling is sought. Similarly, an applicant who seeks to file an appeal before

the Appellate Authority for Advance Ruling shall apply online in FORM GST ARA-02 together with a fee of Rs. 10000/-.

- (ii) The said fee of Rs. 5000/- or Rs. 10000/- as the case may be, shall be paid by the applicant under the CGST Act and the respective State GST Act utilising the amount in the Electronic Cash Ledger in the manner specified in section 49.
- (iii) The application and all the relevant documents accompanying such application should be digitally signed through Digital Signature Certificate (DSC) or e-signature as specified in Rule 26.
- (iv) It is advised that the questions or issues in respect of which an advance ruling is sought be simple, direct and specific. The facts brought out in the application should be germane and pertinent to the issue at hand. Facts which do not necessarily concern the issue at hand should not require mention in the application as this might attract unnecessary attention to the business carried out by the assessee. Although an AAR cannot extend its scope by ruling on matters or issues not sought, it is still advisable that an applicant exercise restraint and caution while placing facts in the application.
- (v) As regards an appeal against an advance ruling by the AAR filed by the concerned officer or the jurisdictional officer, the application shall be filed online in Form GST ARA-03 without any payment of fee.
- (vi) The question raised is limited to the following:
 - a) Classification of any goods or services or both;
 - b) Applicability of notification issued under the GST law.
 - c) Determining the time and value of supply of goods or services or both;
 - d) Input credit admissibility of tax paid or deemed to be paid;
 - e) Determination of liability to pay tax on any goods or services or both;
 - f) Requirement for registration by an applicant;
 - g) Whether any particular thing done by the applicant amounts to or results in supply of goods or services or both.

Thus, it is apparent from this section that the Authority will not admit questions or matters which fall outside the purview of the issues stated above.

- (vii) It is interesting to observe that matters relating to determination of place of supply are beyond the scope of matters to be decided by the Authority. This emanates from the fact that the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned state or union territory and not beyond.
- (viii) Also, no advance ruling can be sought on matters such as those relating to
 - a) Transitional credits specified in Chapter XX of the CGST Act, 2017
 - b) E-way bill requirements

- c) Anti-Profiteering issues
 - d) Restraining officers from initiating an action/proceeding under the Act
- (ix) Manual filing of an Application for Advance Ruling: Although Rules 104 and 106 specify filing of an application on the common portal, Rule 107A was introduced to allow manual filing of the same. Accordingly Circular No. 25/25/2017-GST dated 21.12.2017 was issued detailing the procedures for manual filing of an application for advance ruling till such time the advance ruling module is made available on the common portal. An application for advance ruling, or appeal thereon to be filed by the applicant, the concerned officer or the jurisdictional officer shall be filed in quadruplicate. It is to be noted that though the application shall be filed manually, the fee is required to be deposited online in terms of section 49 of the CGST Act. The Applicant is required to download and take a print of the challan and file the application duly signed by the authorised person with the Authority for Advance Ruling. One may refer to the above circular for detailed procedures to be followed for manual filing of an application for advance ruling or an appeal to the Appellate Authority for Advance Ruling.

Note: The circular allowing manual filing of applications for advance ruling shall be effective in a State only until such time an online module is made available on the common portal.

97.3 Comparative review

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

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

97.4 FAQs

Q1. Can the application made to the authority be withdrawn at any time?

Ans. It appears that there is no such provision under present GST law. However in the case of M/s. Compass Group (India) Support Services Private Limited at the Karnataka AAR, the application was allowed to be withdrawn.

Q2. Should the applicant submit individual applications for advance ruling on various issues?

Ans. No. The applicant can choose to consolidate all the issues in one application for advance ruling.

Q3. Should the applicant make an application for advance Ruling under CGST Act, SGST Act and IGST Act separately?

Ans. No. The applicant can file one consolidated application seeking an advance ruling on all matters irrespective of the GST legislation to which the issue pertains to.

Statutory provisions

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, the 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.*

Extract of the CGST Rules, 2017**105. Certification of copies of advance rulings pronounced by the Authority.**

A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

Relevant circulars, notifications, clarifications issued by Government:

1. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on 'Advance Ruling Mechanism in GST'

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 101	Orders of Appellate Authority
Section 116	Appearance by authorised representative
Rule 107A	Manual filing and processing

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-01, the AAR shall forward a copy to the concerned officer and, if necessary, direct him to furnish the relevant records.
- (ii) Such records should be returned as soon as possible to the concerned officer. No specific time limit has been set out for submission of the said records to the AAR
- (iii) The AAR may either accept or reject the application after considering the application, examining the records, hearing the applicant and the concerned officer or their authorised representatives. However no application shall be rejected without giving the applicant an opportunity of being heard.
- (iv) Any application for advance ruling involving questions already pending or decided in any proceedings in the case of that applicant under any of the provisions of this Act shall not be admitted. Thus, it is important to note that issues pending or decided in a proceeding in respect of another person will not disentitle the applicant from seeking an advance ruling on the same issue.
- (v) Where the application is finally rejected, the reasons for such rejection shall be stated in the order.
- (vi) A copy of every order admitting or rejecting 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 in writing on the question(s) specified in the application within 90 days from the date of receipt of 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. The time period within which a reference can be made to the AAAR is not prescribed in the Act.
- (ii) The Appellate Authority to whom a reference is made is required to pronounce the ruling within ninety days of such reference.

Submission of advance ruling pronounced.

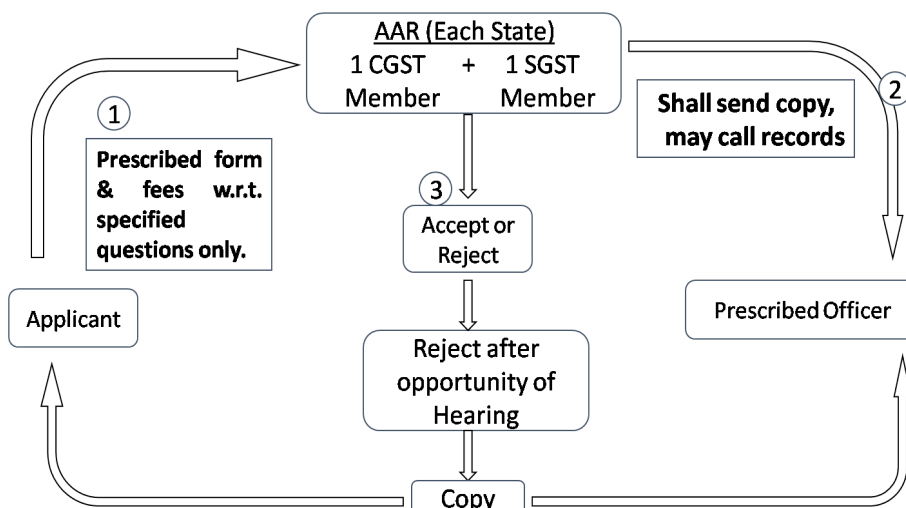
A copy of the advance ruling pronounced by the concerned AAR / Appellate Authority, duly signed by the Members and certified, shall be sent to the applicant and to the concerned officer after pronouncement. A copy of the advance ruling shall be certified to be a true copy of its original by any member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

98.3 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.

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 decided or pending under any provisions of the Act.

Procedure for Advance ruling**98.4 FAQs**

Q1. When can the AAR reject 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 or is not in relation to the issues prescribed under section 97(2) of the CGST Act.

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

Ans. No. Before rejecting the application, the AAR is bound to provide the applicant with an opportunity of being heard.

Q3. Is it necessary to specify reasons for rejecting an application 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.

It is suggested that both the AAR and the AAAR should constitute of three members (one of whom should be from the judiciary) so that a situation shall never arise when a reference is to be made to the AAAR.

98.5 MCQs

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

- (a) fix a date of hearing
- (b) forward a copy of the same to concerned officers
- (c) 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 from the date of receipt of application
- (b) 90 days from the date of receipt of application
- (c) 60 days from the date of receipt of application
- (d) 45 days from the date of receipt of application

Ans. (b) 90 days from the date of receipt of application

Q4. A copy of the Advance Ruling signed and certified by the members shall be sent to

- (a) Applicant
- (b) Concerned officer
- (c) Jurisdictional officer
- (d) All the above

Ans. d) All the above

Statutory provisions

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.

Extract of Delhi SGST Act, 2017

99. Constitution of Appellate Authority for Advance Ruling

The Government shall, by notification, constitute an Authority to be known as Delhi Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority and references made to it, consisting 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.

Relevant circulars, notifications, clarifications issued by Government:

1. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on 'Advance Ruling Mechanism in GST'

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 99 of SGST Act	Constitution of Appellate Authority for Advance Ruling

99.1 Introduction

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

99.2 Analysis

The appellate authority constituted in each State/UT shall be deemed to be the Appellate Authority in respect of that State/UT which will entertain appeals against any advance ruling that is passed by the AAR of that State/UT. However, similar to Section 96 in respect of AAR, a State Government may, on the recommendations of the Council, notify any Appellate Authority located in another State/UT to act as the Appellate Authority for the State.

The Appellate Authority for Advance Ruling shall consist of members representing the Central GST and the State GST. The Chief Commissioner of central tax as designated by the Board and the Commissioner of State tax shall constitute the Appellate Authority for Advance Ruling.

99.3 Comparative Review

This is a new concept hitherto not seen in the pre-GST regime. Under erstwhile tax laws, there was no provision for an appellate authority for advance ruling.

Statutory provisions

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 or the applicant, as the case may be:*
- 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.*

Extract of the CGST Rules, 2017**106. Form and manner of appeal to the Appellate Authority for Advance Ruling.**

- (1) *An appeal against the advance ruling issued under sub-section (6) of section 98 shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49.*
- (2) *An appeal against the advance ruling issued under sub-section (4) of section 98 shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.*
- (3) *The appeal referred to in sub-rule (1) or sub-rule (2), the verification contained therein and all the relevant documents accompanying such appeal shall be signed,-*
- (a) *in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and*
- (b) *in the case of an applicant, in the manner specified in rule 26.*

107A. Manual filing and processing.

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

Relevant circulars, notifications, clarifications issued by Government:

1. Circular No. 25/25/2017-GST dated 21.12.2017 regarding Manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling.

2. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on 'Advance Ruling Mechanism in GST'

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 97	Application for Advance Ruling
Section 99	Appellate authority for advance ruling
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

100.1 Introduction

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

100.2 Analysis

- (i) An appeal can be filed by the concerned officer 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 be further 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 filed by the aggrieved applicant in FORM GST ARA-02 along with a fee of Rs.10,000/- to be paid under the CGST Act and the respective SGST Act. The payment has to be made by debiting the electronic cash ledger only.
- (iv) An appeal preferred by the concerned officer or the Jurisdictional officer shall be in the prescribed FORM GST ARA-03 without any fee and shall to be signed by an officer authorized in writing by such officer.
- (v) The procedure for manual filing has been detailed in Circular No. 25/25/2017-GST dated 21.12.2017. The same has been discussed in Para 97.2

100.3 Comparative review

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

100.4 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 be further extended by another 30 days if sufficient cause is shown for not filing the appeal within the first 30 days.

Statutory provisions

101. Orders of the Appellate Authority

- (1) *The Appellate Authority may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or pass a fresh order against a reference made to it.*
- (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) *It is suggested that the Appellate Authority should constitute of three members so that a situation never arise where it is deemed that no advance ruling can be issued in respect of the question under the appeal or reference.*
- (5) *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.*

Extract of the CGST Rules, 2017

107. Certification of copies of the advance rulings pronounced by the Appellate Authority.

A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-

- (a) *the applicant and the appellant;*
- (b) *the concerned officer of central tax and State or Union territory tax;*
- (c) *the jurisdictional officer of central tax and State or Union territory tax; and*
- (d) *the Authority,*

in accordance with the provisions of sub-section (4) of section 101 of the Act.

Relevant circulars, notifications, clarifications issued by Government:

1. Chapter Thirty Seven of the compilation of the GST Flyers as issued by the CBIC on 'Advance Ruling Mechanism in GST'

Related Provisions of the Statute

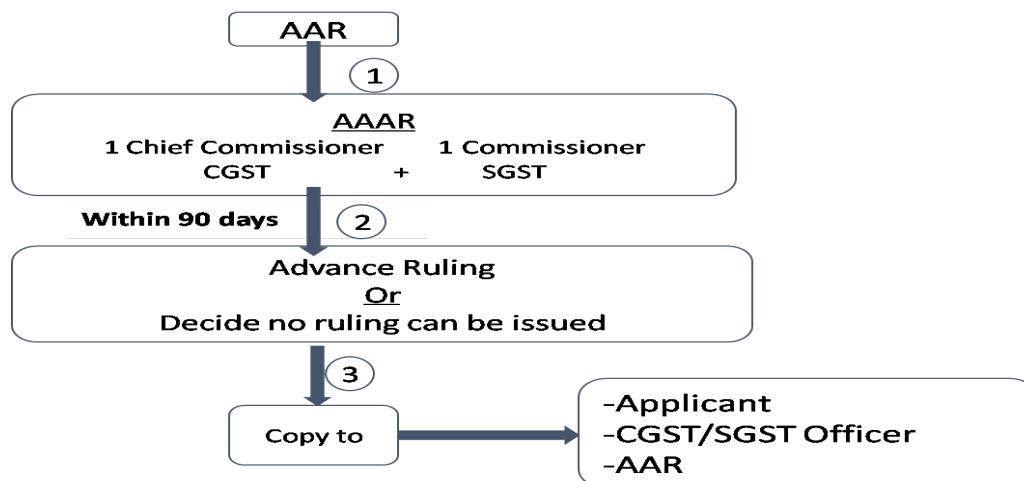
Section or Rule	Description
Section 95	Definitions
Section 97	Application for Advance Ruling
Section 99	Appellate authority for advance ruling
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

101.1 Introduction

This section prescribes the procedure to be followed by the appellate authority where an appeal has been preferred against an advance ruling by the AAR under Section 98(4) or a reference has been made to it by the AAR under Section 98(5).

101.2 Analysis

- (i) The appellate authority must afford a reasonable opportunity of being heard to the parties before passing the order in which it may choose to either:
 - (a) Confirm the Advance Ruling passed by the AAR;
 - (b) Modify the Advance Ruling appealed against; or
 - (c) Pass such orders as it may deem fit
- (ii) The order should be passed within 90 days from the date of filing appeal or date of reference by the AAR.
- (iii) If there is a difference of opinion between members of the AAAR on the question covered under the appeal, then it would be considered that no advance ruling can be issued in respect of that matter on which no consensus was reached by the members. Thus, all matters or questions for which an advance ruling has been sought will not be deemed to be matters against which no advance ruling can be passed if the Appellate Authority has reached a consensus on other matters or questions raised therein.

Appellate Authority for Advance ruling – Sec: 100& 101

Note: Rulings pronounced will only have a prospective effect.

101.3 Issues and Concerns

- (i) Is the Appellate Authority for Advance Ruling empowered to only decide on such matters contained in the Advance Ruling against which the appellant is aggrieved or can the appellate authority review the entire impugned Advance Ruling against which an appeal has been preferred?
- (ii) Where the advance ruling has been issued by the AAR under Section 98(4) of the Act and the same has been the subject matter of an appeal before the Appellate Authority, what is the status of the original ruling during the interim period until the appeal has reached finality? Would the appellants and other parties to the advance ruling be obliged to conform to the advance ruling during the interim period?
- (iii) Where an advance ruling given by the AAR has been appealed against and in respect of which the members of the Appellate Authority have not been able to reach a conclusion, would such a question or matter still be deemed to be a matter against which no advance ruling can be issued although the AAR had originally decided on the issue?
- (iv) Can the ruling by the Appellate Authority be challenged in a higher Court of law?
- (v) Why no time limit has been prescribed for making a reference to the Appellate Authority.

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 will it be deemed that no advance ruling can be issued in respect of the question covered under the appeal?

Ans. Where the 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 can be issued in respect of the question covered under the appeal.

Q3. Can the ruling by the Appellate Authority be challenged in a higher Court of law?

Ans. The CGST/SGST Act clearly states that the Advance Ruling shall be binding on the applicant in respect of any matter on which the Advance ruling has been sought and as such it does not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. 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 Hon'ble High Court or the Supreme Court.

Statutory provisions

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.

Related Provisions of the Statute

Section or Rule	Description
Section 95	Definitions
Section 98	Procedure on receipt of application
Section 101	Orders of Appellate Authority

102.1 Introduction

This section deals with the rectification of an error in the advance ruling which is apparent on the face of the record, the time limit within which it may be rectified and the procedures to be followed in respect of the same.

102.2 Analysis

1. The rectification may be made by the AAR or Appellate Authority within six months from the date of the order, and shall not result in a substantial amendment to the order being

rectified. It is not clear from the language of section 102, as to whether the error has to be noticed within six months or the amendment has to be made within six months. The rectification shall not arise on account of any interpretational issues or change in views and opinions of the members of the AAR and Appellate Authority.

Any rectification resulting in an increase in the tax liability or reduction of admissible input tax credit shall be carried out only after giving the applicant/appellant an opportunity of being heard.

In the Proviso to this section, it is mentioned 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.

If the appellant is the concerned officer or the jurisdictional officer, then is it sufficient if the notice is issued to the appellant and not to the applicant. As per the above provision, the notice has to be issued either to the applicant or the appellant.

2. The AAR or Appellate authority may amend the order to rectify any mistake apparent from records, 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 the applicant/appellant

102.3 FAQs

Q1. When can an advance ruling order 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 officer or the jurisdictional officer or;
- (c) is brought to the notice of the AAR or Appellate Authority notice by the appellant or applicant.

Q2. Under what circumstances is a notice 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:

- (i) enhancing the tax liability or
- (ii) reducing the amount of admissible input tax credit.

102.4 MCQs

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

- (a) to do justice
- (b) when there is mistake apparent on record
- (c) if it is in the interest of revenue
- (d) none of the above.

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

Q2. What is the time limit to rectify the order?

- (a) Three months from the date of the order
- (b) Six months from the date of the order
- (c) Six months from the date of communication of the order
- (d) None of the above

Ans. (b) Six months from the date of the order

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

- (1) *The advance ruling pronounced by the Authority or, the Appellate Authority under this chapter shall be binding only -*
- (a) *on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 for advance ruling;*
 - (b) *on the concerned officer 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.*

Related Provisions of the Statute:

Section or Rule	Description
Section 95	Definitions
Section 97	Application for Advance Ruling

103.1 Introduction

This provision specifies the persons to whom the Advance Ruling will apply and the period for which the Advance Ruling shall stay in effect.

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. It is

important to note the advance ruling is GSTIN specific and not PAN based. That is to say, the advance ruling obtained by an applicant would not be applicable to other distinct persons of such applicant. As such, it may be advisable to make the application for advance ruling by a distinct person, other than the distinct person who is desirous of undertaking such activity as because the person making the application shall be bound by the advance ruling and not the other distinct person.

- (ii) Therefore, an applicant/appellant does not have an option but to abide by the advance ruling that he had applied for, except approaching a higher court through a writ petition.
- (iii) The advance ruling shall be binding on the said person/authority 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.
- (iv) Although an advance ruling may not be binding on persons other than the applicant or the appellant, it does throw light on the manner in which the law is being understood and interpreted. Other assesseees could draw inferences from the advance rulings.
- (v) The above provision which seeks to bind only the applicant to the advance ruling could be misused by which applications for advance rulings are filed through a proxy carrying on business with the same/similar business model or issues. This would help gauge the interpretation of the revenue officers without having to be bound by the ruling.

103.3 Issues and Concerns

- (i) An advance ruling would be in effect only till such time that the law, facts of the case or circumstances on which the original advance ruling was based, remains unchanged. One has to consider if Circulars issued by the CBIC subsequent to an advance ruling can be considered to be a change in law, as may be contended by the proper officers. In my opinion, circulars do not have any legal authority, as such issue of circulars cannot be termed as change in law.

103.4 Comparative review

The provision is similar to the Advance Rulings provisions in erstwhile 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.

103.5 FAQs

- Q1. Is the advance ruling binding on other assessee?
- Ans. No. Advance ruling is binding only on that applicant who has sought an advance ruling in respect of the question raised in the application.
- 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 the advance ruling.

Statutory provisions**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 there under shall apply to the applicant or the appellant as if such advance ruling had never been made: No time frame has been prescribed in the Act within which the ruling can be declared void ab initio in the above circumstances.

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.

Related Provisions of the Statute

Section or Rule	Description
Section 98	Procedure on receipt of application
Section 101	Orders of Appellate Authority
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts

104.1 Introduction

It states the circumstances under which the ruling would be considered as void ab initio and the resultant impact.

104.2 Analysis

- (i) Where the Authorities (AAR or Appellate Authority, as the case may be) subsequently discover that an advance ruling has been obtained by the applicant or appellant fraudulently or by way of suppression of material facts or misrepresentation of facts, the Authorities are empowered to declare such a ruling to be void *ab initio*.

- (ii) The above would result in all the provisions of the Act becoming applicable to the applicant as if such advance ruling had never been made.
- (iii) However, no such order can be passed by the AAR or Appellate Authority without giving the applicant/appellant an opportunity of being heard. A copy of such order, once passed, shall be sent to the applicant appellant, the AAR and the concerned/jurisdictional officer.
- (iv) The period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void *ab initio* shall be excluded in computing the period for issuance of Show-cause notice and adjudication order under sub-section(2) and (10) of both Sections 73 and 74.

Sections 73(2) and 73(10) specify the time limit within which a show cause notice and adjudication order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax.

Similarly, Section 74(2) and 74(10) specifies the time limit within which a show cause notice and adjudication order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

The period of limitation for raising a demand for recovery under Section 73(10) and Section 74(10) has been pegged at 3 years and 5 years respectively from the date of furnishing the annual return for the year in respect of which a demand is being raised or within three years from the date of erroneous refund. The said period of 3 and 5 years shall be extended by the period equivalent to the period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void *ab initio*, to enable the officer to issue a show cause notice or adjudication order.

What this section seeks to do is to provide the proper officers an additional time period to recover such amount from the applicant/appellant as would have been payable by him had he not sought the advance ruling fraudulently.

104.3 Issues and Concerns

- (i) One should consider if this section can be made applicable to render an advance ruling to be void *ab initio* in bona fide cases where the applicant/appellant himself was not aware of certain facts at the time of seeking the advance ruling.
- (ii) Would the advance ruling also be declared to be void *ab initio* where an applicant on subsequent realisation of having genuinely erred in placing the facts before the AAR or Appellate Authority, voluntarily brings it to the notice of the AAR or Appellate Authority? Or would it be more appropriate for an applicant to seek another advance ruling based on current facts that have subsequently come to his notice?

- (iii) Where the applicant/appellant has raised multiple issues to be decided by way of an advance ruling and it was subsequently discovered by the Authorities that there was suppression of fact in respect of one particular issue, can the advance ruling be held to be valid in respect of the other issues raised therein not involving any suppression of fact?

104.4 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 erstwhile 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*.

104.5 FAQs

- Q1. Can the advance ruling be declared to be void without hearing?
- Ans. No. An advance ruling cannot be declared to be 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 provisions

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.*

Related Provisions of the Statute:

Section or Rule	Description
Section 195 of the Code of Criminal Procedure	Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence
Chapter XXVI of the Code of Criminal Procedure	Provisions As To Offences Affecting The Administration Of Justice
Section 193 of the Indian Penal Code	Punishment for false evidence
Section 228 of the Indian Penal Code	Intentional insult or interruption to public servant sitting in judicial proceeding
Section 196 of the Indian Penal Code	Using evidence known to be false

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:

- (i) discovery and inspection;

- (ii) enforcing attendance of any person and examining him on oath;
- (iii) 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 a _____:

- (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 provisions

106. Procedure of the Authority and the Appellate Authority

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

106.1 Introduction

It seeks to empower the AAR and the Appellate Authority to regulate its own procedure.

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.

Various states have constituted the Advance Ruling Authority and are issuing the Advance Ruling clarification on various issues under the GST Act. There is no provision stating that the Advance Ruling clarified in one state is applicable to all the states and union Territories. There is possibility of difference Advance Ruling by different states and accordingly it will be applicable to respective states only unless the different ruling is issued by the respective state. The Advance Ruling Authority should be common for all the states and union territories to reduce the disparity and to bring uniformity in the GST law.

Some of the advance rulings pronounced by different AAAR seems to be in contradiction to the intention of the Government's "ease of doing business" such as,-

“In case of West Bengal AAR it was held that marketing services provided to foreign universities does not qualify as export. It is an intermediary service and therefore GST should be levied. However, as per place of supply provisions and other criteria, it seemed to meet the requirements for qualifying as an export.

Similarly, goods sold at duty free shops were held to be taxable by the Delhi AAR. Such sale has historically been considered an export and is 'duty' free, a clear departure from set precedents. In another case, Maharashtra AAR held that solar procurement and installation contracts will attract 18% GST, while Karnataka AAR ruled a 5% GST rate,

The Karnataka Appellate Authority for Advance Rulings has upheld the levy of goods and services tax on services rendered by one office branch to other centres. In-house service functions such as human resources and payrolls, if carried out from a centre in one state for offices in other states, will attract GST for which it will have to issue an invoice. A large business based in New Delhi with centralised finance, IT and HR functions for branches across states would be deemed to be providing support services to the other locations and would need to raise invoices charging GST. Officials said that while the Centre is of the view that a single authority should be formed, states are not coming on board as of now. The council is likely to seek a consensus on this issue.

According to the advance ruling pronounced by the Maharashtra AAAR, companies providing offshore support services to multinationals are liable to pay the 18% GST levy on their revenues. Going by the tax department's definition, it appears that companies are mere intermediaries and not exporters.

Companies assisting foreign companies with back office support functions such as accounting and legal shall not qualify as exporters but shall be treated as intermediaries and shall be liable to pay IGST @ 18%. While there have been contradicting rulings on the aspect of 'intermediary' versus 'back office support', it must be taken note of that each ruling is based on the peculiar facts presented by the respective applicant. Outcome of these rulings cannot be generalized to stir up anxiety in the BPO industry in which India is a major global player. Concept of intermediary is well brought out in circular 57/31/2018-GST dated 04.09.2018, though in the context of schedule I supplies, it is very much relevant to understand the scope

of section 13(8) of IGST. Once Government has accepted the authority of jurisprudence under section 182 of Indian Contract Act, 1872 understand scope of agency, it cannot be valid only in the context of schedule I and not applicable in other contexts. Agent is essentially one where there is 'delegated authority' and person is 'detached from consequences'. When such cardinal tests are applied, there cannot be any doubt about whether the role played is that of agency or not. Mere title like back office support is not sufficient to bring the transaction into the operation of section 13(8) of IGST Act and deny export benefit.