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# Questions for which Advance Ruling can be Sought (Sec 97)

- Under GST, Advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.
- Applicant under the GST law may be a person who is already registered under the GST Act or who wishes to obtain a registration. Therefore, registration at the time of making the application is not necessary.
- 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 the 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.
  - It is to be noted that questions on determination of place of supply cannot be raised with the AAR.
- Prescribed or jurisdictional CGST/SGST officer or an applicant can appeal to the appellate authority (AAAR). If aggrieved by the advance ruling pronouncement of the authority

## Note –

### **I Matters which cannot be questioned before AAR are -**

1. Question already pending in any proceedings in the case of applicant.
2. Question already decided in any proceedings in the case of an applicant.

**II** Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a SGST Act or UTGST Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory under CGST Act, 2017 also. (Sec 96)

Thus, it can be seen that the AAR is constituted under the respective State/Union Territory Act and not the Central Act.

**III** An applicant who seeks an advance ruling should make an application in the prescribed FORM GST ARA-1 together with a fee of Rs. 5,000/- and should state the question on which such a ruling is sought.

# Procedure on receipt of application (Sec 98)

## **Receipt of Application**

**Sec 98(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 officer.

**Sec 98(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.

**Sec 98(3)** A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

## **Pronouncement of Advance Ruling**

**Sec 98(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 authorised representative as well as to the concerned officer or his authorised representative,
- pronounce its advance ruling on the question specified in the application.

## **Reference to Appellate Authority**

**Sec 98(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.

## **Ruling of Advance Authority (AAR)**

**Sec 98(6)** The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

## **Submission of Advance Ruling Pronounced**

**Sec 98(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.

# Appellate Authority for Advance Ruling (Sec 99)

## Appeal to Appellate Authority (Sec 100)

### **Appellate Authority for Advance Ruling (Sec 99)**

1. The Appellate Authority for Advance Ruling shall be constituted in each state/UT.
2. The Appellate Authority for Advance Ruling constituted under the provisions of a SGST Act or a UTGST Act shall be deemed to be the Appellate Authority in respect of that State or Union territory for CGST Act also.

### **Appeal to Appellate Authority (Sec 100)**

**Sec 100(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.

**Sec 100(2)** Every appeal under this section shall be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant: **Provided** that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of 30 days, allow it to be presented within a further period not exceeding 30 days.

**Sec 100(3)** Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

# Order of Appellate Authority (Sec 101)

**Sec 101(1)** The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

**Sec 101(2)** The order referred to in sub-section (1) shall be passed within a period of 90 days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

**Sec 101(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.

**Sec 101(4)** A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

# Rectification of Advance Ruling (Sec 102)

## Applicability of advance ruling (Sec 103)

**Sec 102** 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

within a period of 6 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.

**Sec 103(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 sub-section (2) of section 97 for advance ruling;
- (b) on the concerned officer or the jurisdictional officer in respect of the applicant.

**Sec 103(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.



# Advance ruling to be void in certain circumstances (Sec 104)

**Sec 104(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 this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

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

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

**Sec 104(2)** A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

# Powers of Authority and Appellate Authority (Sec 105)

**Sec 105(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.

**Sec 105(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.