



# NATIONAL APPELLATE AUTHORITY FOR ADVANCE RULING

**CMA Bhogavalli Mallikarjuna Gupta**  
 Chief Taxologist & Head of Cloud Business  
 Logo Infosoft Business Technology Private Limited

**A**dvance Ruling means a written opinion or decision given by the competent authority with respect to transactions proposed to be undertaken or being carried out on the taxability of the transactions under GST by a person registered under the GST Act or willing to register under the GST Act. As per the Revised Kyoto Convention in 1999 and it is obligatory for all the members of the World Trade Organization to have a mechanism on Advance Ruling as per the provisions of Article 3 of the Agreement on the Trade Facilitation. The following are the differences between the Advance Ruling in the GST compared to the Advance Ruling under the Central Excise, Customs and Service Tax.

- a) Advance Ruling is at State level – GST is a destination-based taxation, the transactions impacted by the GST will have a direct impact on the collections of the state.
- b) Appellate Authority – unlike the previous tax regimes, where the order is passed by the Advance Ruling Authority which was binding on the applicant and the jurisdictional officer as it was binding and could not be appealed, under GST an order passed by the Advance Ruling Authority could be appealed with the Appellate Authority for Advance Ruling at the State level.
- c) Representation from Judiciary – there is no representation from the Judiciary for the benches constituted at the State Level for the Authority for Advance Ruling and Appellate Authority for Advance Ruling.

As the benches are constituted at the State Level, there are conflicting orders passed by the benches of the Authority for Advance Ruling or Appellate Authority for Advance Ruling filed by the applicants having presence in multiple states. This was clearly visible in the case of by M/s Giriraj Renewables Private Ltd, where the Maharashtra Bench and Karnataka Bench has given conflicting views on the treatment for setting up of and operate solar photovoltaic plants for supply of generated power. Also as there is no representation from the Judiciary, it also ultra-virus and there are humpty judgements on the matter related to representation from Judiciary as mentioned in the Union of India v. R. Gandhi (2010) 11 SCC 1, or Columbia Sportswear Co. v. DIT (2012) 11 SCC 224 or Kesavananda Bharati v. State of Kerala.

The basic intent of setting up of the Advance Ruling Authority is being defeated and creating confusion for the taxpayers, representations have been made by various Trade and Industrial Bodies and the Professional bodies. To address the above challenges, amendment has been made to the Central Goods and Service Tax Act 2017 wide Finance Bill (No 2) 2019 through introduction of the National Appellate Authority for Advance Ruling. NAAAR)

## Constitution of National Appellate Authority for Advance Ruling

The Government on the recommendations of the Goods and Service Tax will constitute the National Appellate Authority for Advance Ruling to address the challenges faced by the distinct person under GST. It will be notified from an effective date given in the notification.

## Members of the National Appellate Authority for Advance Ruling

When ever the NAAAR is constituted it will consist of three members, one from the judiciary and other two are from the Central and State official of GST.

Sr. No	Member	Eligibility	Appointed by	Tenure
1	President	He / she should have been a) Judge of Supreme Court	By the Government in consultation with the Chief Justice of India or	Earliest of the following a) Three years

		<ul style="list-style-type: none"> <li>b) Chief Justice of High Court</li> <li>c) Judge of High Court for a period not less than 5 years</li> </ul>	his Nominee	<ul style="list-style-type: none"> <li>b) Seventy years</li> </ul> Eligible for reappointment
2	Technical Member – Central	He / she should be <ul style="list-style-type: none"> <li>a) IRS</li> <li>b) Group A officer with minimum 15 years of service</li> </ul>	By the Government basis on the recommendations of the Selection Committee (to be prescribed and notified)	Earliest of the following <ul style="list-style-type: none"> <li>a) Five years</li> <li>b) Sixty-five years</li> </ul> Eligible for reappointment
3	Technical Member – State	He / she should be <ul style="list-style-type: none"> <li>a) Not below the rank of Additional Commissioner in VAT</li> <li>b) Additional Commissioner with minimum three years' experience in the areas of GST or Finance or Taxation</li> </ul>	By the Government basis on the recommendations of the Selection Committee (to be prescribed and notified)	Earliest of the following <ul style="list-style-type: none"> <li>a) Five years</li> <li>b) Sixty-five years</li> </ul> Eligible for reappointment

The senior most member of the NAAAR will become the President in event of death or resignation or for any other reason till the new President is appointed as per the provisions of the Act.

The President or the Technical Members salary, allowances and other conditions of service will be notified by the Government.

The President or the Technical Members may resign by addressing to the Government and they shall serve a notice period of three months or till the time a new President or Technical Member is appointed, whichever is earlier.

The President or the Technical Members may not be removed from office except by an order of the Government or on the grounds of proven misbehaviour or incapacity, after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India. The Government may suspend the President or the Technical Members after the inquiry and in consultation of the Chief Justice of India.

As per the provisions of the Article 220 of the Constitution of India, the President of the Technical Members after completing their tenure or submission of resignation before the completion of tenure cannot plead before the NAAAR and not eligible to appear before NAAAR.

### Appeal to National Appellate Authority for Advance Ruling

An appeal can be filed with the NAAAR by the applicant or by the officer where they have received conflicting orders from the Appellate Authority for Advance Ruling

Sr. No	Description	Applicant	Department Officer
1	Who can file the appeal?	Applicant who have filed for a clarification as per provisions of Section 97(2) of CGST Act	Officer of the state who got a conflicting order for the same clarification raised by the applicant
2	In how many days the appeal can filed?	30 days from the date of ruling	30 days from the date of ruling If the officer is authorised by the Commissioner, then the time limit is 90 days.
3	Is there any extension of	Yes, 30 days extension can be	Yes, 90 days extension can

	time limit for filing of appeal?	provided if there is sufficient cause.	be provided if there is sufficient cause.
4	From what date is the due date computed?	The latter date of the conflicting order is issued.	The latter date of the conflicting order is issued.

### **Process of issue of order by the National Appellate Authority for Advance Ruling**

An opportunity is provided by the NAAAR to the applicant and the officer authorized by the Commissioner for the appeal being filed before passing the order.

In case if there is difference of opinion between the members, then majority opinion will be considered.

The order will be passed by the NAAAR as far as possible in ninety days.

The order passed by the NAAAR will be signed by all the members and certified as prescribed.

A copy of the order is passed a copy of the order is sent to the following persons

- a) Applicant
- b) Officer authorized by the Commissioner
- c) Chief Commissioner and Commissioner of State Tax
- d) Chief Commissioner and Commissioner of Union Territory
- e) Appellate Authority or Authority as required

### **Rectification of Orders Passed by National Appellate Authority for Advance Ruling**

If an order passed by the NAAAR has any error apparent on the face of the record and is noticed by them or by the applicant can be rectified within a period of six months from the date of passing the order.

Applicability of the orders passed by National Appellate Authority for Advance Ruling

The order passed by the National Appellate Authority for Advance Ruling will be binding on the following

- a) Applicant, who has filed the applicant i.e. the PAN holder
- b) On the jurisdictional officer

The order passed shall be binding on both the parties unless there is change in the law or facts and circumstances supporting the order have changed.

### **Orders Passed by National Appellate Authority for Advance Ruling void in certain cases**

The orders passed by National Appellate Authority for Advance Ruling will be void and Ab initio if it is found that the applicant or the appellant has obtained the order by misrepresentation of facts, fraud or suppression of facts.

Before making the order void, an opportunity will be proved to the applicant or the appellant.

### **Powers of the National Appellate Authority for Advance Ruling**

The powers of the National Appellate Authority for Advance Ruling will be same as the Appellate Authority for Advance Ruling or Authority for Advance Ruling. NAAAR will have the powers of a civil court under the Code of Civil Procedure, 1908.

### **Author's views**

Setting up of National Appellate Authority for Advance Ruling is a welcome move and will resolve the confusion which the taxpayers are having currently due to the contradicting orders passed by different state authorities. This will definitely reduce the litigation but the AAR and AAAR still do not have any representation from the judiciary, on this ground it can be challenged in the court of law and which can lead to some confusion on the orders passed by various benches of AAR or AAAR.

One of the best things in the GST Act is time limit is provided for each and every action but in the case of the orders to be passed by the National Appellate Authority for Advance ruling what is disturbing is the wording used "as far as possible within a period of ninety days" thereby meaning that it can be passed beyond ninety days also.

With the rollout of the NAAAR, the feasibility and the possibility of de notifying the AAAR should be explored so that the taxpayer does not spend much time and efforts on these matters. This would improve the ease of doing business.

As NAAAR is already enacted and passed in both the houses of Parliament, what is remaining is notifying the same and bringing it to so the aggrieved parties can take benefit of the NAAAR.

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