



ADVANCE RULING MECHANISM – TOOL FOR DISPUTE RESOLUTION UNDER GST

CMA YOGESH CHAURASIA
Practicing Cost Accountant

Advance rulings enable the tax payers to get an insight into tax consequences of contemplated transactions so that corrective actions may be taken expeditiously. The concept of Advance ruling evolved with the opening of Indian economy through liberalization. In the initial stages the concept of Advance ruling was introduced by the Indian government for Non residents / Foreign companies to have clarity on their tax implications in India for Central / Federal taxes. This concept was extended to Central excise and customs vide Finance act 1999 and to service tax vide finance act 2003. VAT act adopted by various states also had some sort of an advance ruling mechanism typically referred to as "Determination of Disputed questions (DDQ's) under relevant VAT statutes.

While it is debatable as to whether the authority for Advance ruling (AAR) under the erstwhile indirect tax laws served its purpose, the Government of India has emphasized that AARs under the GST law will be important to clarify the doubt of the tax payers in a timely and expeditious manner in the new Indirect tax regime.

For advance rulings separate provisions have been prescribed from Section 95 to Section 106 under Chapter XVII of the CGST act 2017 and in IGST vide section 20 under chapter IX of the IGST act 2017 and similar provisions in respective State GST act 2017. Further Rules along with formats have also been prescribed containing, inter alia, 5 Rules (Rule 103 to Rule 107) and 3 formats (From Form GST ARA-1 to Form GST ARA -03) under Chapter XII: Advance ruling of CGST Rules 2017.

Advance Ruling – Meaning

Advance ruling in GST means a written interpretation of the GST laws provided by the Authority/Appellate authority of Advance ruling (AAR/AAAR) 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.

Section 96 of the CGST act envisages the constitution of the Authority of Advance ruling through the State Goods and Service tax act or Union territory goods and Service tax act and specifies that such State /Union territory

AARs shall be deemed to be the Authority for Advance ruling in respect to that particular state.

Thus there is a significant departure in the advance ruling mechanism in GST where there will be state specific ruling under one State GST law which would not be binding on another State AAR whereas in earlier regime there was one centralized AAR for Federal/Central taxes and State Specific AAR for VAT.

The authority for Advance ruling shall comprise of one member from the amongst the officer of the Central tax and one member from amongst the member of the State Tax or union territory tax to be appointed by the Central government and the State government. The appellate authority shall comprise of the Chief commissioner of central tax as designated by the board and the commissioner of state tax or union territory tax having jurisdiction over the applicant.

Advance Ruling – Procedure

- i) Any registered person or person intending to take registration under the GST Act may apply for advance ruling electronically in form GST ARA -01, stating the question on which advance ruling is sought. Such Application should be accompanied by a fee of Rs 5000/-
- ii) Wide catenas of matter are listed in GST laws on which clarification can be sought through Advance ruling mechanism. It includes the following:-
 - Classification of any goods/services.
 - Applicability of any notification issued having impact on rate of tax.
 - Determination of time and value of supply of goods or services or both
 - Determination of Eligible ITC
 - Determination of liability to pay tax on any goods/ services
 - Whether Applicant liable to be registered
 - Whether anything done in relation to goods or services or both results in supply

However it is pertinent to note that the AARs do not have the jurisdiction to decide upon Determination of Place of Supply and there by restricting the scope of AARs to decide on matters within the territorial jurisdiction of their state.

- The authority shall not admit any application where the question raised in the application is already pending or decided in any proceeding in the case of an applicant under any provisions of the GST Act.
- The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.
- The concerned officer, jurisdictional officer or an aggrieved applicant may file appeal against advance ruling to the Appellate Authority within 30 days from the date on which the ruling sought to be appealed is communicated. Time period can be extended not exceeding further 30 days on sufficient cause shown.
- In case of appeal against the advance ruling pronouncement by the aggrieved applicant to be submitted in Form GST ARA-02 along with a fee of Rs. 10,000/-. Further, in case of appeal against the advance ruling pronouncement by the concerned officer or jurisdictional officer to be submitted in Form GST ARA-03 and no fee shall be payable.
- The order shall be passed by the Appellate Authority within a period of 90 days from the date of filing appeal.

Miscellaneous Provisions

Rectification of advance ruling: The authority or the Appellate Authority may amend any order passed by it, so as to rectify any error apparent on the face of the record, 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 6 months from the date of the 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.

Who is Bound by the Advance ruling:- The advance ruling pronounced by the Authority or the Appellate Authority is binding only on

the applicant who had sought the application for advance ruling and on their respective concerned officer or jurisdictional tax authorities, unless there is a change in law, facts, or circumstances supporting the original advance ruling.

Void nature of Advance ruling: - Where the Authority or the Appellate Authority finds that the advance ruling 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 in such case all provisions/rules made under the GST Act shall apply as if such advance ruling had never been sought. Further, the period beginning with the date of such advance ruling and ending with the date of order declaring such ruling to be void-ab-initio to be excluded in computing time period for issuing notice and order in non-fraud and fraud case as envisaged under section 73 and 74 of CGST acts.

Conclusion: The definition of Advance ruling under the GST regime is a broad one and an improvement over the erstwhile regime. In pre GST era advance ruling can be given only for proposed transaction whereas under GST as confirmed by Government vide their E flier Advance ruling can be obtained also on Transactions already undertaken. However the main catch lies in the fact that assessee's operating in multiple states may get different rulings for the same transactions and thereby accumulating GST litigation matters at various stages of judicial machinery which will be unsupportive of government theme of " Good and Simple Tax"

Last but not the least in the absence of any provisions of Settlement commission under GST laws the Advance ruling mechanism has became more important for dispute resolution.

FAQ ON LETTER OF UNDERTAKING

SACHIN GANDHI

M.Com, FCMA, DIT-C-DAC, Pune

1. Who has to furnish a Letter of Undertaking?

Any registered person availing the option to supply goods or services for export without payment of integrated tax has to furnish, prior to export, a bond or a Letter of Undertaking (LUT), binding himself to pay the tax due along with the interest in the event of failure to export the goods or services.

2. How to file LUT?

Access the GST portal and login using valid credentials. Navigate to Services and to User Services. Under User Services click on the link "Furnish Letter of Undertaking".

3. What is to be filled in LUT?

GSTIN and Name (Legal Name) of the Taxpayer would get prefilled based on login. Taxpayer needs to select the financial for which LUT is being filed, enter the name, address and occupation of two witnesses. Taxpayer also needs to select all the points of self-declaration before submitting the LUT.

4. What if I have already furnished a LUT and also got approval for it?

If taxpayer has any LUT which he has already furnished and got approval for current Financial Year, then he can upload that LUT and file this application for furnishing LUT to seek the online approval for that previous LUT.

5. Is there any limitation regarding the upload of previous LUT?

Only one previous LUT document not exceeding 2 MB in size can be uploaded.

6. Can I save the application during the process of submission?

Taxpayer will have the facility to save the application at any stage for 15 days. Saved application can be retrieved from Dashboard > Services > User Services > My Saved Applications.

7. Can I preview the application?

Before signing and filing the application, taxpayer would have an option to Preview the application and save in PDF format.

8. Who has to sign the application?

Any of the Authorized Signatory needs to sign and file the verification with DSC/EVC

9. How would I know that the process of furnishing LUT has been completed?

After successful submission, system will generate ARN and acknowledgement. Taxpayer would be able to download the acknowledgement as PDF.

10. Can I view my submission after filing?

Taxpayer would be able to see his ARN under the Services > User Services > View My Submitted LUTs.