



The Institute of Cost Accountants of India

(Statutory body under an Act of Parliament)

Tax Research Department

ADVANCED CERTIFICATE COURSE ON GST

Anti-Profiteering under GST

S.171 of CGST Act, 2017 deals with Anti-Profiteering measure

Meaning:

- ✚ Any reduction in rate of tax on any supply of goods or services
(or)
- ✚ The benefit of input tax credit (ITC)
- ✚ Shall be passed on to the recipient
- ✚ By way of commensurate reduction in prices.

The crux of the anti-profiteering rules is-

- ✓ If there is reduction in rate of tax on the supply of goods or services or
- ✓ Benefit of input tax credit under GST,
- ✓ then a registered person must pass on the benefit by reduction in prices

Scenario No. I: When tax rate is reduced:

Example: w.e.f 01.10.2019 Restaurant services rate reduced from 18% to 5%

Scenario No. II: When supplies are inclusive of taxes:

In case where contract of supplies is inclusive of taxes, this provision will cast responsibility on the supplier to reduce the price due to reduction in rate of taxes.

Example:

- ✓ FMCG items are normally sold on MRP basis or some other fixed prices by retailers.
- ✓ If there is any reduction in rate of tax it has to be passed on to the ultimate recipient.
- ✓ Accordingly, there will be a **need to revise MRP** or other prices fixed for such supplies.

Procedure of Anti-Profiteering lay down in CGST Rules 122 to 137

The Authority:

The Authority shall consist of-

(a) Chairman:

- ✓ who holds or has held a post equivalent in rank to a Secretary to the Government of India

(b) 4 Technical Members:





- ✓ Commissioners of State/Central tax for at least one year

The Authority will determine the method and procedure for determining whether the reduction in rate or the benefit of input tax credit has been passed on by the seller to the buyer by reducing the prices.

Duties of the Authority:

- I. Determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer by **reducing the prices**.
- II. Identify the taxpayer who has not passed on the benefit
- III. The Authority will exist for 2 years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Orders Passed by the Authority:

-  Reduction in prices
 -  Return to the buyer, the benefit amount not passed on along with 18% interest
 -  Payment of penalty and
 -  Cancellation of registration
-
- The Authority will pass an order within 3 months from the date of the receipt of the report from the Director-General of Safeguards.
 - An opportunity of being heard will be given if the interested parties request for it in writing.
 - Period of interest will be calculated from the date of collection of higher amounts till the date of return of such amount.
 - If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Fund.

- Interest will be calculated from the date collection of higher amounts till the date it is deposited in the Fund.

Constitution of the Standing Committee and Screening Committees:

- I. The Council will constitute a
 - ✓ Standing Committee (and)
 - ✓ a state-level Screening Committee on Anti-profiteering,
- II. Standing Committee will comprise of officers of the State and Central Government as nominated by it.
- III. The State level Screening Committee will be established in each State. It will consist of-
 - ✓ 1 officer of the State Government, nominated by the Commissioner and
 - ✓ 1 officer of the Central Government nominated by the Chief Commissioner.

Appointment, salary, allowances:

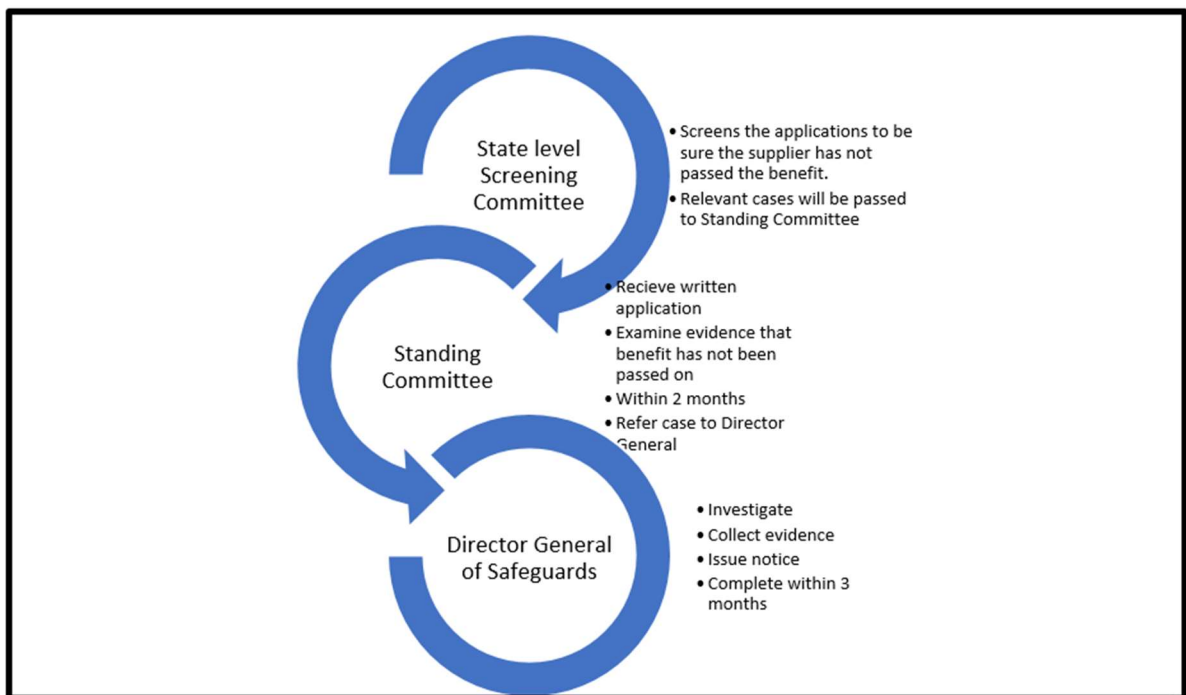
- I. The Chairman and Members of the Authority will be appointed by the Central Government on the recommendations of a selection committee (constituted by the Council)
- II. The Chairman shall be paid a monthly salary of **Rs. 2,25,000** (fixed) and other allowances and benefits.
- III. If a retired officer is selected as a chairman, he will receive a monthly salary of Rs. 2,25,000 minus amount of pension.
- IV. The Technical Member shall be paid a monthly salary of Rs. 2,05,400 (fixed) and along with allowances of a group 'A' officer.

- V. A retired person will have his salary reduced by the pension amount.
- VI. The Chairman and technical members will hold office for two years from the date on which he enters upon his office, or until he becomes 65 years old.
- VII. He will be eligible for reappointment.
- VIII. A person cannot be a chairman if he is 62 years or above.

Secretary to the Authority:

The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority.

Process adopted at Anti-Profiteering:



Confidentiality of information:

- ✓ The parties will provide information on a confidential basis.
- ✓ They may be required to furnish non-confidential summary thereof.
- ✓ If in the opinion of the party providing such information, the information cannot be summarized, then such party will submit to the Director-General of Safeguards a statement of reasons why summarization is not possible.

Cooperation with other agencies or statutory authorities

- ✓ The Director-General of Safeguards may seek the opinion of any other agency or statutory authorities if required.

Power to summon persons to give evidence and produce documents

- ✓ The Director-General of Safeguards or an officer authorised by him will have the power to summon any person necessary either to give evidence or to produce a document or any other thing.
- ✓ He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

By

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Advance Ruling under GST

Relevant Section, Rules and Forms:

CGST Sections: S.95 to 106 of CGST Act, 2017

CGST Rules: Rule 103, 104, 105, 106, 107

Forms:

- ✓ GST ARA-01: Application Form for Advance Ruling
- ✓ GST ARA-02: Appeal to the AAAR by Applicant
- ✓ GST ARA-03: Appeal to the AAAR by Officer

Fees:

ARA-01: CGST Rs 5,000 + SGST Rs 5,000

ARA-02: CGST Rs 10,000 + SGST Rs 10,000

ARA-03: Nil

Meaning:

- ✚ An advance ruling helps the applicant in **planning his activities which are liable for payment of GST**, well in advance.
- ✚ It also brings **certainty** in determining the tax liability,
- ✚ As the ruling given by the Authority for Advance Ruling is **binding** on the applicant as well as Government authorities.
- ✚ Further, it helps in **avoiding long drawn and expensive litigation** at a later date.
- ✚ Seeking an advance ruling is **inexpensive** and the procedure is simple and **expeditious**.
- ✚ It thus provides **certainty** and **transparency** to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration.
- ✚ A **legally constituted body** called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered taxable person or is liable to be registered.
- ✚ The advance ruling given by the Authority can be **appealed** before an **Appellate authority for Advance Ruling (AAAR)**.
- ✚ There are **time lines** prescribed for passing an order by AAR and by AAAR.

Objectives of Advance Ruling

- ❖ Provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- ❖ Attract Foreign Direct Investment (FDI)
- ❖ Reduce litigation
- ❖ Pronounce ruling expeditiously in a transparent and inexpensive manner

What is an Advance Ruling?

“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 subsection (1) of section 100 of the CGST Act, 2017,
- in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
- Under the present dispensation, advance rulings can be given only on a proposed transaction,
- Whereas under GST, Advance ruling can be obtained on a **proposed transaction**
- as well as a **transaction already undertaken by the appellant**.

What are the matters/questions specified in Advance Ruling?

I. Sub-section (2) of section 97

- (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.*

II. Sub-section (1) of section 100

“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”.

Imp Note:

Applicant can't ask for determination of Place of Supply (POS) in Authority for Advance Ruling, as the AAR is given by the respective state authorities.

To whom the Advance Ruling is applicable

- ❖ An advance ruling pronounced by AAR or AAAR shall be binding **only**
 - ✓ on the applicant and
 - ✓ on the concerned officer or the jurisdictional officer
 - in respect of the applicant.

- ❖ This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State.

- ❖ It is only limited to the person who has applied for an advance ruling

Time period for applicability of Advance Ruling:

- ✚ The law does not provide for a fixed time period for which the ruling shall apply.
- ✚ Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.
- ✚ However, an advance ruling shall be held to **be ab initio void** if the AAR or AAAR finds that the advance ruling was obtained by the applicant by **fraud or suppression** of material facts or misrepresentation of facts.
- ✚ In such a situation, all the provisions of the CGST/SGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).
- ✚ Ruling to be void can be passed only after hearing the applicant.

Authority for Advance Ruling (AAR) & Appellate Authority for Advance Ruling (AAAR):

- ✚ The Authority for advance ruling (AAR) constituted under the provisions of 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 under the CGST Act, 2017 also.
- ✚ The Appellate Authority for Advance Ruling (AAAR) 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 under the CGST Act, 2017 also.

- ✚ Thus, it can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act.
- ✚ This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory.
- ✚ It is also for this reason that questions on determination of **place of supply cannot be raised with the AAR or AAAR**.

Procedure for obtaining Advance Ruling

- ✚ The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner.
- ✚ The format of the form and the detailed procedure for making application have been prescribed in the Advance Ruling Rules.
- ✚ Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.
- ✚ The AAR may then examine the application along with the records and may
✚ also hear the applicant.
- ✚ Thereafter he will pass an order either admitting or rejecting the application.

- ✚ Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
- ✚ If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.
- ✚ If the application is admitted, the AAR shall pronounce its ruling within **ninety days of receipt of application**.
- ✚ Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.
- ✚ Before giving the ruling, AAR must hear the applicant or his authorised representative as well as the jurisdictional officers of CGST/SGST.
- ✚ If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue.
- ✚ If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

Appeals against order of AAR:

- ✚ If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the prescribed or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR.
- ✚ The word prescribed officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.
- ✚ Any appeal must be filed within **thirty days** from the receipt of the advance ruling. The appeal has to be in prescribed form and has to be verified in prescribed manner. The format has been prescribed in the Advance Ruling Rules.
- ✚ The Appellate Authority must pass an order after hearing the parties to the appeal within a period of **ninety days** of the filing of an appeal.
- ✚ If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

Rectification of Mistakes:

- ❖ The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of six months from the date of the order.
- ❖ Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the prescribed or the jurisdictional CGST/SGST officer.
- ❖ If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

Powers and procedure of AAR and AAAR

- 📌 Both the AAR and AAAR are vested with the powers of a civil court under Code of Civil Procedure, 1908, for
 - ✓ Discovery and
 - ✓ Inspection,
 - ✓ Enforcing the attendance of a person and
 - ✓ Examining him on oath, and
 - ✓ Compelling production of books of account and other records.
- 📌 Both the authorities are deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973.
- 📌 Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860.
- 📌 The AAR and AAAR also have the power to regulate their own procedure.

Conclusion:

- ✚ To conclude, it can be stated that the law makes a comprehensive provision for advance rulings **to ensure that disputes are minimal.**
- ✚ Timelines are also given within which the ruling is to be given by the concerned authority.
- ✚ The aim is to provide certainty to the tax payer with respect to his obligations under the GST Act and **an expeditious ruling**, so that the relationship between the tax payer and administration is smooth and transparent and helps to avoid unnecessary litigation.

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