



**The Institute of  
Cost Accountants  
of India (ICAI)**

**Goods & Services Tax (GST) Certification Course**

# Disclaimer

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# Anti-profiteering mechanism



# Is Profit bad?

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- Profit is fine, profiteering is not. Don't let someone profiteer at your expense.
- Profiteering is a term for the act of making profits by methods considered unethical.

# What is anti-profiteering?

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- It is a mechanism to curb profiteering.
- Its aim is to prevent entities from making excessive profits **due to GST**.
- The Authority has been set to check that the benefit of GST is passed on to the ultimate consumer and that channel is not hiking rates inordinately citing GST as a reason.

# Need for such law?

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- Examples around the world have shown that the introduction of GST has led to inflation, with traders trying to keep their profit margins constant and the ultimate benefit not being passed on to the ultimate consumer.
- In June 2010, a report by CAG named 'Implementation of VAT in India - Lessons for Transition into Goods and Services Tax' in dealing with the impact of the introduction of VAT in India stated that the introduction VAT led to an increase in prices of products, higher tax evasion, profiteering by manufacturers and dealers due to not passing benefits due to tax rate reduction.

- Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. - *Sec 171(1) of CGST Act, 2017*
- The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force to examine cases coming under the purview of Sec 171(1) of the Act – *Sec 171(2) of CGST Act, 2017*
- Penalty of profiteering – 10% of the amount so profiteered as determined by the Authority. No penalty in case amount is deposited with 30 days of the order. *Sec 171(3A) of CGST Act*
- Chapter XV of the CGST Rules, 2017 (*Rules 122 to Rule 137*) details the constitution of the Authority, its roles and responsibilities, powers and conduct of such Authority.

## **Reduction in rate of tax**

- Any reduction in rate of tax in the new tax regime should be passed on to the next level of supply chain.
- Passing of benefits where
  - Supplies are exclusive of tax – Not much of an issue
  - Supplies are inclusive of tax – Hmmm....

## **Benefit of Input Tax Credit**

- Almost all industries and sectors benefitted from GST due to
  - Seamless flow of input tax credit
  - Allowing input tax credit on goods and or services or both which were not allowed in the erstwhile tax regime



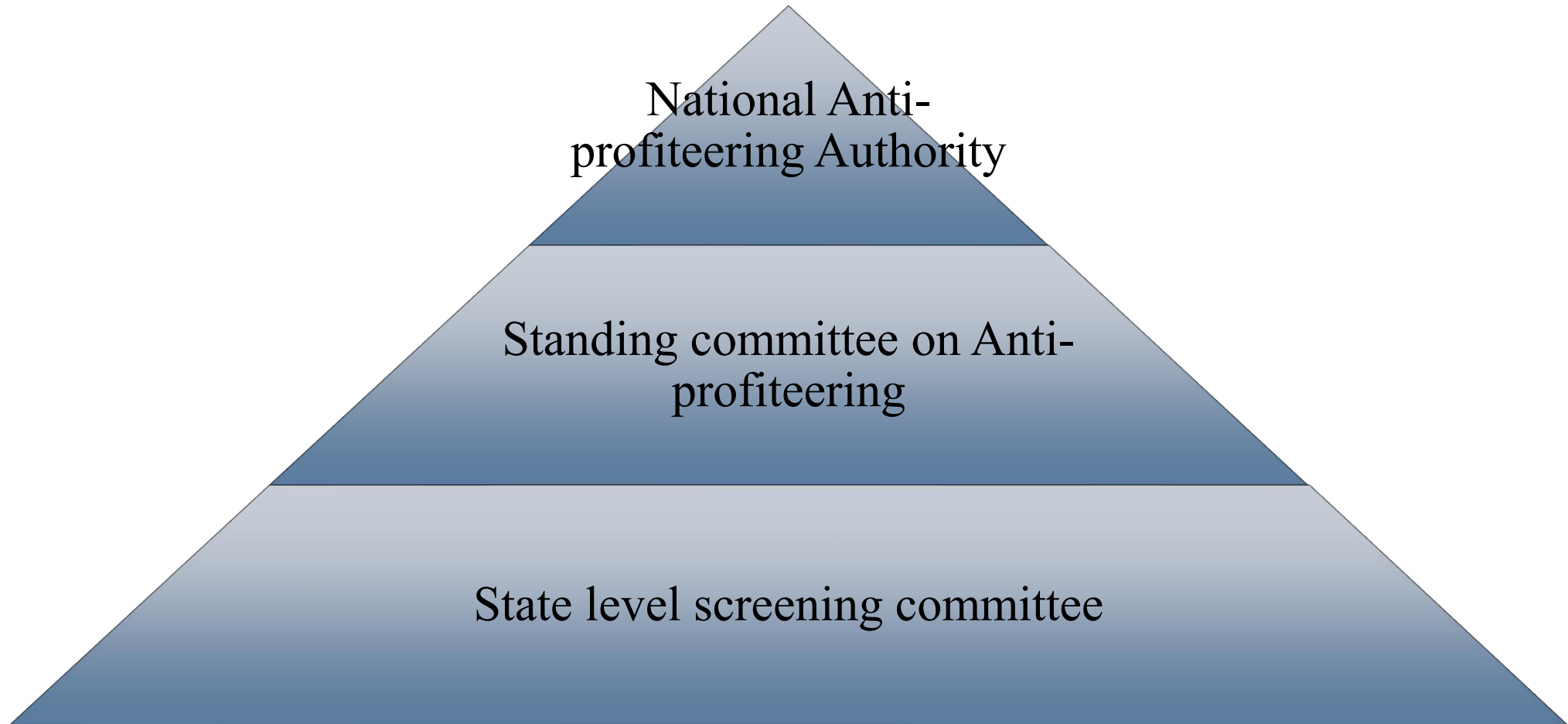
# Illustration

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Description	Pre GST	Post GST (price constant)	Post GST (Adjusted)
<b>Purchase price of goods</b>	<b>1,00,000</b>	<b>1,00,000</b>	<b>1,00,000</b>
Excise Duty @ 12.5%	12,500	-	-
VAT @ 5.5%	6,188	-	-
GST @ 18%	-	18,000	18,000
<b>Landed Cost</b>	<b>1,18,688</b>	<b>1,18,000</b>	<b>1,18,000</b>
Operations Expenses	5,000	5,000	5,000
Tax on above (15%/ 18%)	750	900	900
<b>Total Cost</b>	<b>1,24,438</b>	<b>1,23,900</b>	<b>1,23,900</b>
Sale Price	1,25,000	1,25,000	1,11,750
VAT @ 5.5%	6,875	-	-
GST @ 18%	-	22,500	20,115
<b>Total Invoice Value</b>	<b>1,31,875</b>	<b>1,47,500</b>	<b>1,31,865</b>
<b>Profit to dealer</b>	<b>6,750</b>	<b>20,000</b>	<b>6,750</b>
<b>Tax to Government</b>	<b>20,125</b>	<b>22,500</b>	<b>20,115</b>

# The Authority

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# State Level screening committee

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- Constitution of the Committee [*Rule 123(2) of CGST Rules*]
  - To be constituted by the respective State
  - One officer each of the State Government and of the Central Government, to be nominated by the Commissioner
- First point of contact for any application under the anti-profiteering regulations concerning the State.
- Applications to be examined and, if deem okay, forwarded with recommendation to the Standing committee

# Standing Committee

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- Constitution of the Committee [*Rule 123(1) of CGST Rules*]
  - As may be nominated by the State Government and Central Government
- Next level to the State screening committee. Also has jurisdiction over matters relating to National levels.
- Within a period of 2 months from the receipt of written application (received from an interested party or from the Commissioner), examine the accuracy and adequacy and determine whether there is prima-facie evidence to support the claim

# National Anti-profiteering Authority

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- Constitution of the Authority (*Rule 122 of CGST Rules*)
  - A Chairman, equivalent to the rank of Secretary under GOI
  - Four technical members, equivalent to tax commissioners, to be nominated by the Council
  - An officer not below the rank of Additional Commissioner shall be the Secretary to the Authority.
- Power & Duties
  - To determine the methodology and procedure for determination of compliance of Sec 171 of the Act
  - To determine whether tax rate reduction or input tax benefit has been passed on
  - To identify those who have not complied to the provision of the law
  - To order, as appropriate, within 3 months of receiving report

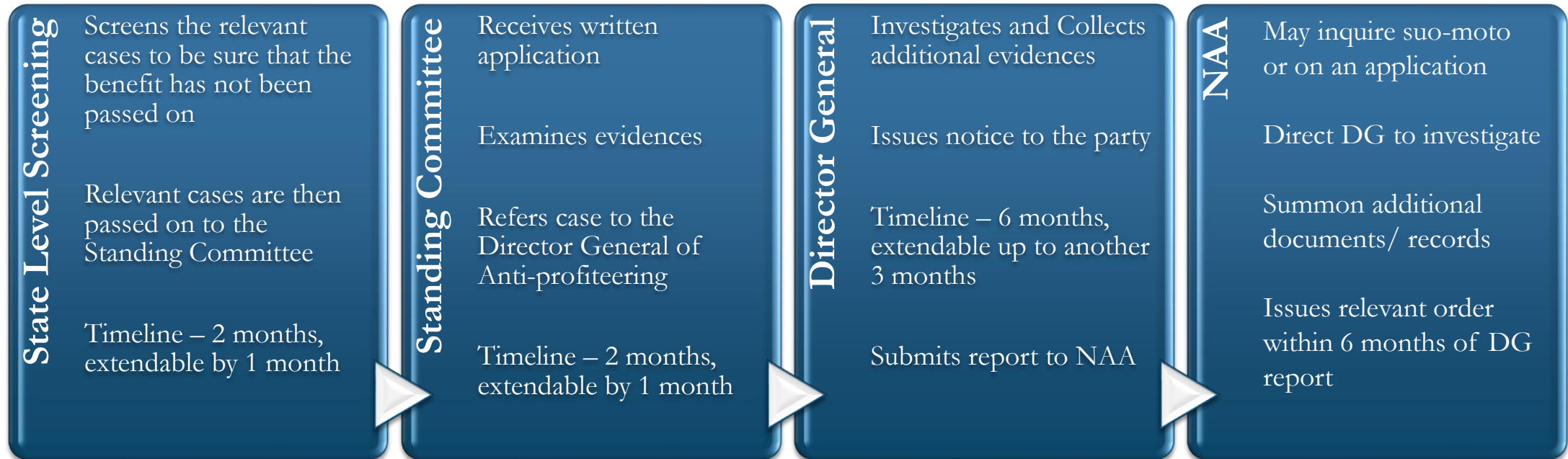
# National Anti-profiteering Authority

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- Decision of the Authority
  - A minimum of 3 members of the Authority shall constitute a quorum
  - Majority rules. In case of equality of votes, the Chairman shall have the Casting vote
- Authority to furnish performance report to the Council by the 10<sup>th</sup> of the month following the quarter
- The Authority may require any authority of Central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.
- The Authority shall cease to exist after the expiry of 4 years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

# Procedure under NAA

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# Powers of NAA

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# How to file complaint

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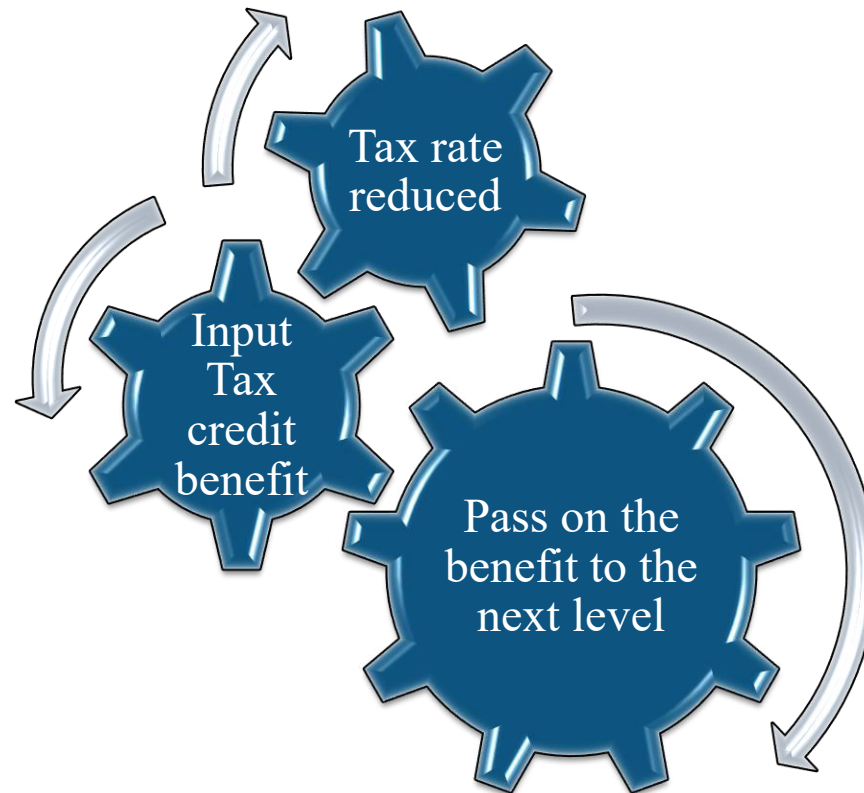
- Online : [www.naa.gov.in](http://www.naa.gov.in)
- Helpline : 011-21400643 (on working days)
- Email : [sc.antiprofitteering@gov.in](mailto:sc.antiprofitteering@gov.in) (for National level complaints), [secretary.naa@gov.in](mailto:secretary.naa@gov.in) (NAA), for state screening committees, please refer to the website
- Physical :
  - Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance, 2<sup>nd</sup> floor, Bhai Veer Singh sahitya Sadan, Bhai Veer Singh Marg, Gole market, New Delhi -110 001.
  - National Anti-profiteering Authority, Dept. of Revenue, Ministry of Finance, 6<sup>th</sup> Floor, Tower One, Jeevan Bharati, Connaught Place, New Delhi-110 001.

- Very difficult to establish one-to-one correlation between input tax credit on inward supplies and tax payable on outward supplies. So, ultimately, it will come to the margins. How it will be determined? Absolute number, % of Cost price, % of sale price?? It becomes a very subjective matter.
- Benefits in inward supplies negated with increase in operational costs. How this will be viewed from a anti-profiteering perspective. The Law is clear, benefit of lower input tax credit needs to be passed on.
- There are no detailed rules relating to computation mechanism, documents to be maintained, limitation period etc. This keeps the door ajar for the authority to exercise its discretionary powers!!

- With no room for any deviation prescribed, the law may be viewed as straightjacketing and may lead to unwanted harassment by the authorities.
- Article 301 of our Constitution provides freedom of trade and commerce. Can putting restrictions on the profits of trade be seen as violation of our fundamental rights?
- The appointment of NAA lies with the Central Government. Due to the concurrent nature of the tax laws, some taxpayers are under State jurisdiction. How will the jurisdiction of State Tax be determined by the Central Government?

# Summing Up

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# Advance Ruling under GST





# What is Advance Ruling?

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- “Any advice, information or undertaking provided by a tax authority to a specific tax payer or a group of tax payers concerning their tax situation and on which they are entitled to rely” – as per OCED Report, 2004
- It is a written interpretation of tax laws, issued by tax authorities upon request, on clarification of certain tax matters. It is often requested when the taxpayer is confused and uncertain about certain provisions.
- Advance Ruling provisions are there both under Direct Tax laws and Indirect Taxes laws (pre-GST and GST era).
- Advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant. The effect, however, is prospective in nature.



# Some terminologies

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- “Advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in Sec 97(2) or Sec 100(1) of the CGST Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. *Sec 95(a) of CGST Act*
- “Authority” means the Authority for Advance Ruling referred to in Section 96. *Sec 95(e) of CGST Act*
- “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99. *Sec 95(b) of CGST Act*
- “Applicant” means any person registered or desirous of obtaining registration under this Act. *Sec 95(c) of CGST Act*
- “Application” means an application made to the Authority under Sec 97(1). *Sec 95(d) of CGST Act*

# Advance Ruling

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- *U/s 97(2) of CGST Act*, Advance Ruling can be sought for the following questions:
  - Classification of goods or services or both
  - Applicability of a Notification issued
  - Determination of time and value of supply of goods or services or both
  - Admissibility of Input Tax Credit of tax paid or deemed to have been paid
  - Determination of tax liability to pay tax on any goods or services or both;
  - Clarification on registration requirements of the applicant
  - whether any particular thing done by the applicant amounts to or results in a supply of goods or services or both.

# Probable questions - Advance Ruling

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## **Classification of goods or services or both**

- Impact of wrong classification
- Determining the nature & contents of supply – goods/ services/ Composite supply/ Mixed supply/ Works contract?
- Pre-GST classification & Post-GST Classification issues

## **Applicability of a Notification**

- Impact of each Notification
- Granting exemption from registration
- Waiver of taxes beyond a prescribed rate
- Date of applicability of each notification & its effect on compliance

## **Determination of time and value of supply of goods or services or both**

- Identifying the time of supply – inherent conflicts in recording of transactions in the books of accounts
- Identifying the supplies on which tax liability arises under reverse charge u/s 9(3) and u/s 9(4)
- Evaluating the parties involved – related or unrelated person, distinct person
- Determining whether price would be the sole consideration for supply
- Ascertaining Value of Supply as per Sec 15 of CGST Act or applicability of Chapter IV of CGST Rules

## **Admissibility of Input Tax Credit of tax paid or deemed to have been paid**

- Identifying eligibility of ITC based on Registration
- Identifying eligibility of ITC based on Supply
- Blocked Credit/ Proportionate Credit/ Reversal of Credit
- Impact of Notification on ITC eligibility
- Correlation with pricing & Anti-Profiteering provisions

## **Determination of tax liability to pay tax on any goods or services or both**

- Ascertaining Tax Liability based on Registration
- Time of Supply/ Value of Supply
- Eligibility of ITC to be adjusted against tax liability

## **Clarification on registration requirements of the applicant**

- Registration requirement – Chapter VI of CGST Act
- Exemptions from taking registration, which were subsequently notified
- Issues related to Casual Taxable Person/ Non-Resident Taxable Person
- Compliances based on type of Registration

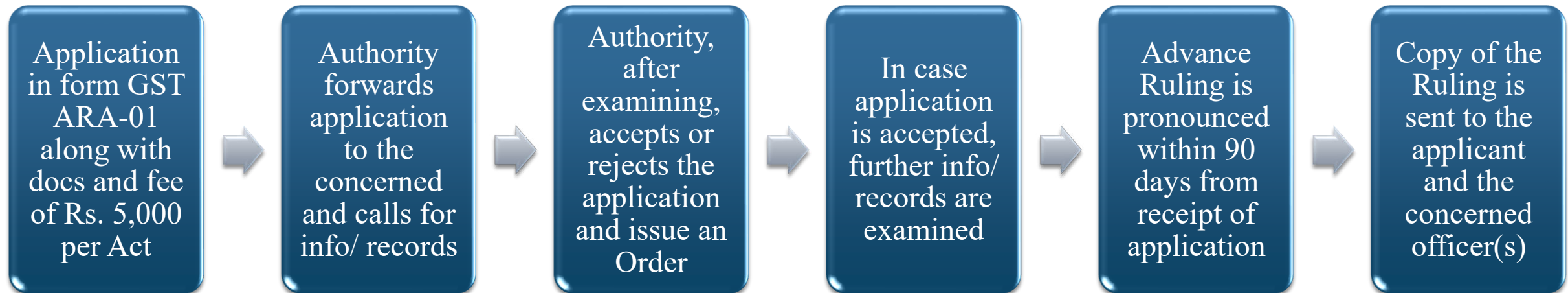
# Authority for Advance Ruling

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- 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. *Sec 96 of CGST Act*
- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. *Rule 103 of CGST Rules*

# Procedure for Advance Ruling

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- 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 the Act. *1<sup>st</sup> proviso to Sec 98(2) of CGST Act*
- No application shall be rejected unless an opportunity of hearing has been given to the applicant. *2<sup>nd</sup> proviso to Sec 98(2) of CGST Act*
- Where the application is rejected, the reasons for such rejection shall be specified in the order. *3<sup>rd</sup> proviso to Sec 98(2) of CGST Act*
- 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. *Sec 98(5) of CGST Act*

# Appeal against the Advance Ruling

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- The concerned officer(s) or the applicant, aggrieved by any advance ruling, may appeal to the Appellate Authority. *Sec 100(1) of CGST Act*
- Appeal to be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated. *Sec 100(2) of CGST Act*
- Appellate Authority may extend the 30 days period by another period not exceeding 30 days in case of any sufficient cause preventing the appellant to act. *Proviso to Sec 100(2) of CGST Act.*
- Appeal to be filed by
  - Applicant - In form GST ARA-02 accompanied by fee of Rs. 10,000 per Act
  - Department – In form GST ARA-03 (without any fee)

# Appeal to Appellate Authority

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- Order confirming or modifying the ruling appealed against or referred to shall be passed within 90 days from the date of filing of the appeal or a reference to the deadlock at the Authority for Advance Ruling level. *Sec 101(2) of CGST Act*
- 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(3) of CGST Act*
- A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members shall be sent to the applicant, the concerned officer(s) and to the Authority after such pronouncement. *Sec 101(4) of CGST Act*

# Rectification of Advance Ruling

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- 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. Such amendment can be done on its own accord, or if brought to notice by the concerned officer(s) or the applicant within a period of 6 months from the date of the order. *Sec 102 of CGST Act*
- No rectification, which has the effect of enhancing the tax liability or reducing admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard. *Proviso to Sec 102 of CGST Act*

# Applicability of Advance Ruling

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- *U/s 103(1) of CGST Act*, the advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only
  - On the applicant who had sought it in respect of any matter referred to for advance ruling
  - On the concerned officer or the jurisdictional officer in respect of the applicant.
- Where the Authority or the Appellate Authority finds that advance ruling pronounced 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*. *Sec 104(1) of CGST Act*
- No order shall be passed unless an opportunity of being heard has been given to the applicant or the appellant. *Proviso to Sec 104(1) of CGST Act*

# Powers of Authority/ Appellate Authority

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- For the purpose of exercising its powers regarding
  - 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,

the Authority/ Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908. *Sec 105(1) of CGST Act*

- The Authority or the Appellate Authority shall be deemed to be a civil court and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings. *Sec 105(2) of CGST Act*
- The Authority or the Appellate Authority shall, subject to the provisions of the Act, have power to regulate its own procedure. *Sec 106 of CGST Act*