

Northern India Regional Council of The Institute of Cost Accountants of India

Goods and Service Tax: Authority for Advance Rulings (Saturday, 06 December, 2020)

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The presentation covers:

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Section	Description
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What is Advance Ruling?

Advance ruling” means a decision provided by the Authority or the App Authority to an applicant

1. on matters or
2. on certain questions specified under the Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Advantages of Advance Ruling

1. An advance ruling **helps the applicant in planning his activities** which are liable for payment of GST, well in advance.
2. It brings certainty in determining the tax liability, as the ruling by the AAR is binding on the applicant as well as on the relevant Government authorities.

Advantages of Advance Ruling

3. It helps in **avoiding long drawn and expensive litigation** at a later date.
 4. Seeking an advance ruling is **inexpensive** and the procedure is simple and expeditious.
 5. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration.
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Advantages of Advance Ruling

6. 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.

Appeal against the ruling given by Authority for Advance Ruling

1. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR).
2. Time lines prescribed for passing an expeditious order by AAR and by AAAR.

Advance Ruling mechanism under the GST laws

Chapter XVII

(Sec 95 to Sec 106 of CGST Act, 2017
read with comparable Sections of
SGST and UTGST Act, 2017)

Rules 103 to 107-A of CGST Rules, 2017

Sec 96: State/UT Authority for advance ruling to be authority under CGST Act.

Subject to the provisions of this (Ch-XVII),
for the purposes of this Act,

the AAR constituted under the

SGST or UTGST Acts, 2017

shall be deemed to be the

**Authority for advance ruling in respect of
that State or Union territory.**

Sec 96: Location of The Authorities for advance ruling.

1. The AAR shall be located in each State/UT constituted under the State GST and UT GST Act.
2. The Government shall appoint officers not below the rank of Jt Commissioner as member of the AAR.

Sec 96: Notification of AAR under SGST/UTGST, Act 2017

As per Sec 96 of the SGST Acts,
the State Govt **may**, on the
recommendation of the Council, notify
any AAR located in another State to act
as the Authority for Advance Ruling for
the State.

Sec 96: Maharashtra SGST Act, 2017

The Authority shall consist of—

1. One member from amongst the officers of central tax ;
and
2. one member from amongst the officers of State tax,
to be appointed by the Central Government and the
State Government, respectively.
3. The qualifications, the method of appointment of the
members and the terms and conditions of their services
shall be such as may be prescribed.

Sec 95: Who can apply for advance ruling?

1. “Applicant” refers to any person already registered or one who desires to get registered under the Act.
2. It is not mandatory to have a registration at the time of making an application for advance ruling.

Sec 95: Who can apply for advance ruling?

3. In case of an unregistered person it is mandatory to quote his PAN unless he is a non-resident.

Sec 97: Application for Advance Ruling

1. An Applicant can make an application stating the question on which he seeks advance ruling.
2. An application for advance ruling shall be made in **FORM GSTARA-1**.
[FORM GST ARA 01 06 Dec 2020.pdf](#)

Sec 97 (2): Questions on which the advance ruling may sought:—

Adv. ruling may be sought in respect of:-

1. **Classification** of any goods or services or both
2. **Applicability of a notification** issued under the provisions of this Act
3. Determination of **time** (Sec 12 to 14) **and value** (Sec 15) of supply of goods or services or both

Sec 97 (2): Questions on which the advance ruling may sought:—

- 4. Admissibility of ITC (Secs 16 to 21) of tax paid or deemed to have been paid;**
- 5. Determination of the liability**
(forward or RCM) to pay tax on any goods or services or both
- 6. Whether applicant is required to be registered (Secs 22 to 24)?**

Sec 97 (2): Questions on which the advance ruling may sought:—

7. 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 (Sec 7).

Sec 98: Procedure on receipt of application

1. AAR on receipt of application, **forward a copy** of the application to the concerned official asking for the records
2. AAR to return the record after purpose of requisitioning record at serial number 1 above, is over.

Sec 98: Admission or rejection of application

The AAR may admit or reject the application: After examining the application and the records and after hearing the applicant and the concerned officer, by order, either admit or reject the application.

Sec 98: Rejection of application for advance ruling

1. No application shall be rejected, unless **an opportunity of hearing** has been given to the applicant.
2. Where the application is rejected, the **reasons for such rejection** shall be specified in the order.

Sec 98: Rejection of application for advance ruling

1. A copy of every order shall be sent to the applicant and to the concerned officer.
2. Where an **application is admitted**, the Authority shall, after examining such further material as may be placed before it
5. and after providing an opportunity of being heard **pronounce its advance ruling**.

Sec 98: Time limit for advance ruling

The Authority shall pronounce its advance ruling **in writing** **within ninety days** from the date of receipt of application.

Sec 98: Difference of opinion among members of AAR

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 **App Authority** for hearing and decision on such question.

Sec 98: Time limit for advance ruling

A copy of the advance ruling of 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.

Sec 99: Appellate Authority for advance ruling

For the purposes of this Act, the **Appellate Authority for Advance Ruling** constituted under the provisions of a State GST Act or a UTGST Act, shall be deemed to be the **Appellate Authority in respect of that State or Union territory.**

Sec 100: Appeal to Appellate Authority for advance ruling

Who may file appeal? The concerned officer, the jurisdictional officer or an applicant **aggrieved by any advance ruling pronounced under Sec 98(4) pronounced by AAR, may appeal to the Appellate Authority.**

Sec 100: Appeal to Appellate Authority for advance ruling

Time limit for filing appeal: Every appeal under this section shall be filed **within a period of thirty days** from the date on which the ruling sought to be appealed against is communicated to the

1. concerned officer, the jurisdictional officer and
2. the applicant.

Sec 100: Condonation of delay in filing Appeal to Appellate Authority for advance ruling

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 **thirty days**,
allow it to be presented **within a further period not exceeding thirty days**.

Sec 100 (3): Form for filing Appeal to Appellate Authority for advance ruling

Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

The appeal shall be filed in GST ARA-02.
[FORM_GST_ARA_02_06 Dec 2020.pdf](#)

Sec 101: Orders of the Appellate Authority for advance ruling

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: Orders of the Appellate Authority for advance ruling

Time Limit for passing of order: The order referred to in sub-section (1) shall be passed within a period of **ninety 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): Orders of the Appellate Authority for advance ruling

Difference of opinion among the members: 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): Orders of the Appellate Authority for advance ruling

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.

Sec 101-A: Constitution of National App Authority for advance ruling

The Government shall, on the recommendation of the Council, by notification, **constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling** for hearing appeals made under section 101B.

Sec 101-A (2): Composition of National App Authority for advance ruling

The NAAAR shall consist of—

- (i) the President, who has been a Judge of the Supreme Court or
- (ii) is or has been the Chief Justice of a High Court, or
- (iii) is or has been a Judge of a High Court for a period not less than five years

Sec 101-A (2): Appointment of President of National App Authority for advance ruling

The President of the NAAAR shall be appointed by the CG after consultation with the CJI or his nominee.

Sec 101-A (2): Technical Members of National App Authority for advance ruling

(ii) a Technical Member (Centre), who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

Sec 101-A (3): Technical Members of National App Authority for advance ruling

A Technical Member (State) who is or has been an officer of the SG not below the rank of Addl Commr of VAT of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or **in the field of finance and taxation**

Sec 101-A (3): Filling of vacancy for President of NAAAR

In the event of the occurrence of any vacancy in the office of the President by reason of his **death, resignation or otherwise,**

or where the President is unable to discharge his functions owing to absence, illness or any other cause the **senior most Member of the NAAAR** shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Sec 101-A (4): Appointment of Technical Members of NAAAR

The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

Sec 101-A (5): Appointment of Technical Members of NAAAR

No appointment of the Members of the National Appellate Authority shall be invalid merely

by the reason of any vacancy or defect in the constitution of the Selection Committee.

Sec 101-A (3): Appointment of President of National App Authority for advance ruling

A Technical Member (State) who is or has been an officer of the SG not below the rank of Addl Commr of VAT of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or **in the field of finance and taxation**

Sec 101-A (3): Appointment of President of National App Authority for advance ruling

A Technical Member (State) who is or has been an officer of the SG not below the rank of Addl Commr of VAT of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or **in the field of finance and taxation**

Sec 101-A (3): Tenure of President and Members of NAAAR

The President of the National Appellate Authority shall hold office for a **term of three years** from the date on which he enters upon his office, or until he attains the age **of seventy years**, whichever is earlier and shall also be eligible for reappointment.

Sec 101-A (93): Tenure of Technical Members of NAAAR

The Technical Member (Centre) or Technical Member (State) of the NAAAR shall hold office for a term of **five years** from the date on which he enters upon his office, or

until he attains the age of **sixty-five years**, whichever is earlier and shall also be eligible for reappointment.

Sec 101-A (8 and 9): Tenure of Technical Members of NAAAR

The Technical Member (Centre) or Technical Member (State) of the NAAAR shall hold office for a term of **five years** from the date on which he enters upon his office, or

until he attains the age of **sixty-five years**, whichever is earlier and shall also be eligible for reappointment.

Sec 101-A (11): Removal of President or Members of NAAAR

The Govt may, after consultation with the CJI, remove from the office such President or Member, who—

1. has been adjudged an insolvent; or
2. has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

Sec 101-A (11): Removal of President or Members of NAAAR

3. has become physically or mentally incapable of acting as such President or Member; or
4. has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
5. has so abused his position as to render his continuance in office prejudicial to the public interest.

Sec 101-A (11): Removal of President or Members of NAAAR

Provided that the President or the Member **shall not be removed** on any of the grounds specified in clauses

(4) and (5), **unless he has been informed of the charges against him and**

has been given an opportunity of being heard.

Sec 101-A (11): Removal of President or Members of NAAAR

Provided that the President or the Member **shall not be removed** on any of the grounds specified in clauses

(4) and (5), **unless he has been informed of the charges against him and**

has been given an opportunity of being heard.

Sec 101-A (12): Removal of President or Members of NAAAR

The President and Technical Members of the NAAAR shall not be removed, except by an order made by the Govt on the ground of **proven misbehaviour** or incapacity after an inquiry made by a Judge of the SC nominated by the CJI on a reference made to him by the Govt and such President or Member had been given an opportunity of being heard.

Sec 101-A (14): Bar from Practice before NAAAR

The President or Members of the NAAR, on ceasing to hold their office,
shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Sec 101-B: Appeal before NAAAR

Where, in respect of the questions before AAR under (Sec 97(2)), **conflicting advance rulings are given**

by the App Authorities of two or more States or Union territories or both.

Sec 101-B: What matters could be Appealed before NAAAR

The matters could include:

1. Where the App Authorities of two or more states have given conflicting opinion on the same subject or
2. Where the members of the AAAR differ on any point (and where no opinion could be given under Sec 101(3)).

Sec 101-B: Who may appeal before NAAAR?

1. Any officer authorised by the Commir or
2. an applicant, being distinct person referred to in Sec 25

aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority:

3. Provided that the officer shall be **from the States in which such advance rulings have been given.**

Sec 101-B: Form in which the appeal to be filed with before NAAAR

Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

The form prescribed is GST ARA-03

Sec 101-B: Time limit for filing appeal before NAAAR

1. Every appeal under this section shall be filed **within a period of thirty days** from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers.

Sec 101-B: Time limit for filing appeal before NAAAR

- 2. Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer.**

Sec 101-B: Extension of time limit for filing appeal before NAAAR

1. The NAAAR may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days,
2. or as the case may be, ninety days,
3. Allow such appeal to be presented **within a further period not exceeding thirty days.**

Sec 101-B: Extension of time limit for filing appeal before NAAAR

1. The period of **thirty days** or
 2. as the case may be, **ninety days**
- shall be counted from the **date of communication of the last of the conflicting rulings** sought to be appealed against.

Sec 101-C: Orders of the NAAAR

The NAAAR may, after giving an opportunity of being heard to

1. The applicant,
2. The officer authorized by the Commissioner,
3. All Principal Chief Commis, Chief Commis of Central tax and
4. Chief Commir and Commir of State tax of all States and
5. Chief Commi and Commir of UTs tax of all UT,

Sec 101-C: Orders of the NAAAR

1. Pass such order as it thinks fit, confirming or modifying the rulings appealed against.
2. If the members of the NAAAR **differ in opinion on any point**, it shall be decided according to the opinion of the majority.
3. The order referred to in sub-section (1) shall be passed as far as possible **within a period of ninety days** from the date of filing of the appeal under section 101B.

Sec 101-C: Orders of the NAAAR

(A copy of the advance ruling pronounced by the NAAAR shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to:

1. The applicant,
2. The officer authorised by the Commir,
3. The Board,
4. The Chief Commir and Commir of State tax of all States and Chief Commir and

Sec 101-C: Orders of the NAAAR

5. Commissioner of Union territory tax of all Union territories and
6. To the Authority or Appellate Authority, as the case may be,
after such pronouncement.

Sec 102: Amendment of order by any Authority

The Authority or the App Authority or the NAAAR may amend any order passed by it under Sec 98 or Sec 101 or Sec 101C, respectively, so as to rectify any error apparent on the face of the record,

Sec 102: Rectification of error in order by any Authority

If such error is noticed by the Authority or the App Authority or the NAAAR **on its own accord**, or is **brought to its notice** by the concerned officer, the jurisdictional officer, the applicant or the Appellant, the Authority or the App Authority **within a period of six months** from the date of the order.

Sec 102: Rectification of error in order by any Authority

No rectification which has the effect of **enhancing the tax liability** or **reducing the amount of admissible ITC**, shall be made unless the applicant or the appellant has been given an **opportunity of being heard**

Section 103: Applicability of Ruling of Authority and App Authority

The advance ruling pronounced by the Authority or the App. Authority under this Chapter shall be binding only

1. On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Sec 97 for advance ruling;
2. On the concerned officer or the jurisdictional officer in respect of the applicant.

Section 103:Applicability of advance ruling by NAAAR

The advance ruling pronounced by the NAAAR under this Chapter shall be binding on—

1. The applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same PAN.
2. (b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same PAN

Section 103: Applicability of advance ruling by NAAAR

The advance rulings shall be binding
unless

1. the law,
2. facts or circumstances
supporting the original advance ruling
have changed

Section 104: Advance ruling to be void in certain circumstances

1. Where the Authority or the AppAuthority or the NAAAR finds that advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts,

Section 104: Advance ruling to be void in certain circumstances

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.

Section 104: Advance ruling to be void in certain circumstances

**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.

Section 104: Advance ruling to be void in certain circumstances

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 Sec 73 or sub-sections (2) and (10) of Sec 74.

Section 105: Powers of the Authority, App Authority and NAAAR

The Authority, App Authority or the NAAAR shall, for the purpose of exercising its powers regarding—

1. discovery and inspection;
2. enforcing the attendance of any person and examining him on oath;
3. 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

Section 105: Powers of the Authority, App Authority and NAAAR

The Authority or the AppAuthority ³or the NAAAR shall be deemed to be a civil court for the purposes of section 195 of the CCP, 1973, and

every proceeding before the Authority or the App.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

Sec 106: Procedure of the Authorities

The Authority or the Appellate Authority or the National Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure

Thank you very much.

Have a nice evening!

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