

## **ADVANCE RULING**

### **Introduction –**

- 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 concerned Officer or the Jurisdictional Officer in respect of the applicant. Further, it helps in avoiding long drawn and expensive litigation at a later date.
- 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 under GST or is desirous to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR).

### **Objective 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) by ensuring certainty in taxation aspects of transactions
- ❖ reduce litigation
- ❖ Pronounce ruling expeditiously in a transparent and inexpensive manner.

### **Definition of Advance Ruling (Sec 95(a) of CGST Act, 2017) -**

- 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 sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.
- Applicant means any person registered or desirous of obtaining registration under this Act.
- Application for advance ruling can be made in respect of supply 'being under taken'. Thus, a person can apply even in respect of activity he is already doing.
- Application should be made by applicant with fees, stating the question on which advance ruling is sought.

### **Questions for which Advance Ruling can be sought [section 97] –**

Advance Ruling can be sought for the following questions:-

- Classification of any goods or services or both
- Applicability of a notification issued under the provisions of CGST Act
- 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 the liability to pay tax on any goods or services or both
- Whether applicant is required to be registered
- 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.

### **Questions outside the scope of Advance Ruling –**

- AAR cannot take issue relating to place of supply.
- No Advance Ruling in case of past transactions-
- No advance ruling if matter already pending or decided in any proceedings

### **Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR) [Section 96 and 99]**

- The Authority for advance ruling 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 Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. [Rule 103]
- The Appellate Authority for Advance Ruling 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 [SECTION 98]**

- The applicant desirous of obtaining advance ruling should make an application to the AAR in a prescribed form (**FORM GST ARA-01**) and manner (on the common Portal) and shall be accompanied by a fee of five thousand rupees (Rs. 5,000/- each towards CGST and SGST)
- The application, verification contained therein and all relevant documents accompanying such application needs to be signed in the prescribed manner.
- Upon receipt of an application, the AAR shall send a copy of application to the concerned officer and, if necessary, call for all relevant records from the concerned officer. The relevant records called for by AAR shall be returned to the concerned Officer, as soon as possible
- The AAR may then examine the application along with the records called for and after hearing the applicant or his authorized representative will pass an order either admitting or rejecting the application.
- Application for advance ruling will not be admitted in the 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 and the application shall not be rejected unless an opportunity of hearing has been given to the applicant.
- The copy of Order admitting or rejecting the application shall be sent to the applicant and to the concerned officer.
- On admission of the application, the AAR shall pronounce its ruling within 90 days of receipt of the application. Before giving its ruling, it shall examine the application and any further material placed before it by the applicant or obtained by the Authority.
- Before pronouncing the Ruling, the AAR provides an opportunity of being heard to the applicant or his authorized representative as well as the concerned officer or his authorized representative.
- 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.
- A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

### **Procedure for payment of fees -**

- In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”.
- After entering the email id and mobile number, a One Time Password (OTP) shall be sent to the email id.
- Upon submission of OTP, Systems shall generate a temporary ID and send it to the declared email and mobile number of the applicant.
- The applicant can make the payment of the fee of Rs. 5,000/- each i.e. CGST Act and SGST Act respectively on the basis of this ID.
- The applicant is then required to download Form GST ARA-01 and file the application with the Authority for Advance Ruling.

### **Appeals against Order of AAR to the Appellate Authority [Section100 and 101] -**

- If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with the AAAR.
- Any appeal must be filed within 30 days from the receipt of the Order of the Advance Ruling Authority. The Appellate Authority may allow for an additional 30 days for filing an appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- The appeal has to be in the prescribed form and has to be verified in the prescribed manner. An appeal has to be filed by the applicant (**FORM GST ARA-02**) along with fee of Rs.10,000/- each under CGST and SGST Act. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid (**FORM GST ARA-03**).
- The appeal, the verification contained therein and all the relevant documents accompanying such appeal shall be signed-
  - (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
  - (b) in the case of an applicant, in the specified manner.
- The Appellate Authority shall pass an order after hearing the parties to the appeal within a period of 90 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 can be issued in respect of the question under appeal.
- The said authority can pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to by the Advance Ruling Authority in the case of the difference of opinion.
- A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

### **Rectification of Mistakes [Section102]**

- The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of 6 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 concerned or the jurisdictional 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.

### **Applicability of Advance Ruling [Section 103]**

- 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.
- 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.

### **Advance Ruling to be void in certain circumstances [section 104]**

- Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- If the Authorities (AAR and Appellate Authority) finds that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.
- Consequently, all the provisions of the CGST 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).
- An order declaring advance ruling to be void can be passed only after hearing the applicant / appellant.
- A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

### **Powers and Procedure of AAR and AAAR [Section 105 And 106]**

- 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, issuing commissions 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. Both the authorities are however not treated as civil court for the purpose of Chapter XXVI 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.