

# Rajput Jain & Associates

**Chartered Accountant**  
An ISO 9001:2008 Certified Firm

## Advance Ruling

under

# GST

**(Section 95 to 106)**



Rajput Jain & Associates, Chartered Accountants offers its clients a full range of services. The company has been setup by a group of young, enthusiastic, highly skilled and motivated professional who have taken experience from the top consulting firm and are extensively experienced in their accounting, taxation, assurance, and business advisory service to various clients and other stakeholders.



We are the exclusive member in India of the associates of international tax consultants, an associates of independent professional firm represented throughout Europe, US, Canada, South Africa, Australia and Asia

## Alternative Dispute Resolution Mechanism

- For smooth implementation of any taxation system, it is very important to have an inbuilt parallel dispute resolution mechanism. This assumes greater significance in India on account of inefficient judicial system and widespread nuisance at the executive level.
- Such system is necessary to save time, money, hassle and closure of trade.
- Internationally two approaches are followed:
  1. There must be a resolution mechanism – Settlement Commission.
  2. There should be prevention system – Advance Rulings.
- In GST, we only have a prevention system. Resolution mechanism, though introduced initially in Model GST Law, was never made reality.

- Helps the applicant in **planning** his activities which are liable for payment of GST, well in advance
- Determining the **tax liability well in advance**
- **Binding on the applicant as well as Government** authorities
- **Avoiding long drawn and expensive litigation** at a later date
- **Seeking an advance ruling is inexpensive** and the procedure is simple and expeditious
- **Certainty and transparency to a taxpayer** with respect to an issue which may potentially cause a dispute with the tax administration

## Objectives for setting up Advance Ruling Authority

- 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 transparent and inexpensive manner;

- WTO Agreement on Trade Facilitation signed on 06.12.2013, by Article 3, makes it obligatory for the member countries to have an Advance Ruling mechanism.
- Article 3 of the Agreement, in a summarized form is as under:
  1. Each Member country shall issue an advance ruling in a reasonable, time-bound manner. In case, refusal, same shall be promptly notified the applicant in writing, with due facts and the basis refusing the application.
  2. Member country is free to decline an advance ruling where the question raised in the application is already pending before the governmental agency, tribunal or court or has already been decided by any tribunal or court.
  3. The member country shall provide a valid reasonable time after its Rulings unless the law has changed.
  4. In any case, where the member country revokes, modifies or invalidates the advance ruling, same shall be communicated to the applicant with all relevant facts and the basis for its decision.

5. In case of giving effect to retrospective amendments - the member country may only do so where the ruling was based on the incomplete, incorrect, false or misleading information.
6. Member country shall publish a minimum requirement for the application including format, time limit to issue and validity period of an advance ruling if approved.
7. Member country shall have a review mechanism to revoke, modify or invalidate the advance ruling.
8. Definition and scope: An advance ruling is a written decision provided by a Member country to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the goods at the time of importation like tariff classification, the origin of the good, the criteria, exemption from customs duties, tariff quotas, etc.

# Meaning of the term “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 Section 97(2) or Section 100(1) of the CGST Act, in relation to the supply of goods or services or both **proposed to be undertaken or being undertaken** by the applicant.

“Applicant” means any person **registered or desirous of obtaining registration.**

## Definitions

- “Application” means an application made to the Authority under Section 97(1).
- “Authority” means the Authority for Advance Ruling referred to in Section 96.
- “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in Section 99.



## Constitution of 'Authority for Advance Ruling'

**CGST Act** – The Authority for Advance Ruling constituted under the provisions of SGST Act or UTGST Act shall be deemed to be the Authority for Advance Ruling in respect of that State or Union Territory.

**SGST Act** - The State Government shall, by notification, constitute an Authority to be known as the Delhi State Authority for Advance Ruling. Provided that the Government may, on the recommendation of the Council, notify any Authority located in **another State** to act as the Authority for the State.

**UTGST Act** - The Central Government shall, by notification, constitute an Authority to be known as the (name of the Union territory) Authority for Advance Ruling: Provided that the Central Government may, on the recommendations of the Council, notify any Authority located in **any State or any other Union territory** to act as the Authority for the purposes of this Act

## Constitution of 'Authority for Advance Ruling'

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The Authority shall consist of-

- (i) one member from amongst the officers of central tax to be appointed by the Central Government; and
- (ii) one member from amongst the officers of State tax to be appointed by the State Government.

The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.

The Central Government and the State Government shall appoint officer of the rank of Joint Commissioner as member of the Authority of Advance Ruling.

## Constitution of 'Authority for Advance Ruling'

The Authority shall consist of—

- (i) one member from amongst the officers of central tax to be appointed by the Central Government; and
- (ii) one member from amongst the officers of Union territory tax to be appointed by the Central Government.

The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

The Central Government shall appoint officer of the rank of Joint Commissioner as member of the Authority of Advance Ruling.

## Constitution of 'Authority for Advance Ruling'

- Each State & UT will have its own Advance Ruling Authority.
- The Authority will comprise one member CGST and one member SGST.
- Such members will be of designation Joint Commissioner.

Advance Ruling can be sought for the following questions:

- Classification of goods or services or both;
- Applicability of a Notification;
- Determination of time and value of supply of goods or services or both;
- Admissibility of Input Tax Credit;
- Determination of liability to pay tax on any goods or services or both;
- Whether the applicant is required to be registered;
- Whether any particular thing done by the applicant qualifies as ‘supply’ within the meaning of the term

# Procedure of Filing Application

- An Applicant desirous of obtaining an Advance Ruling may make an application in such form and manner and accompanied by such fee as may be prescribed.
- An application for obtaining an advance ruling shall be made on the **common portal** in FORM GST ARA-01 and shall be accompanied by a fee of **five thousand rupees**, to be deposited in the manner specified in Section 49.
- Payment of fees can be made only using electronic cash ledger. Electronic credit ledger cannot be used for payment fee.
- Application can be filed at [www.gst.gov.in](http://www.gst.gov.in). Login using user credentials. Go to <Services>/<User Services>/<My Applications>/<Create New Application>.

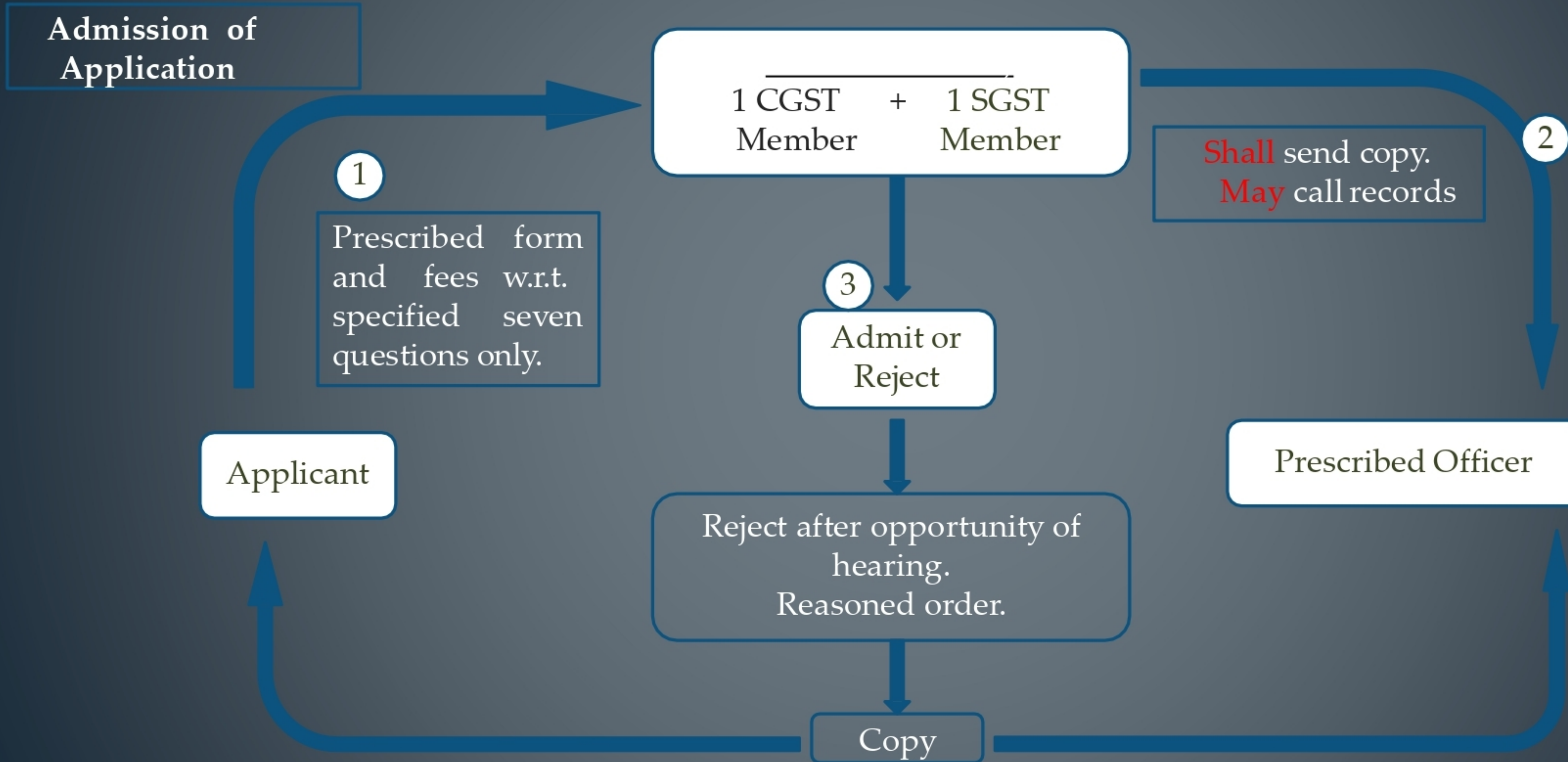
# Practical Aspects for Obtaining Advance Ruling

S. No.	Particulars	Details	Source
1	Prescribed form and Mode of filing	<b>GST ARA-01</b> to be filed online on GST Common Portal	Rule 104 of the CGST Rules , 2017
2	Amount of fee to be paid	Rs. 5,000/- under the CGST Rules, 2017. Further, Rs. 5,000/- shall be paid under the SGST Rules, 2017. Consequently, effective fee shall be Rs. 10,000/-	
3	Mode of payment of fee	Internet banking or credit/debit cards or NEFT or RTGS or cash through authorized banks.	Section 49 of the CGST Act

- The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in Rule 26.
- Rule 26 provides for digital signature signing (mandatory for company), Bank OTP or Common Portal OTP.
- It is also provided that in respect of any process or procedure, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.



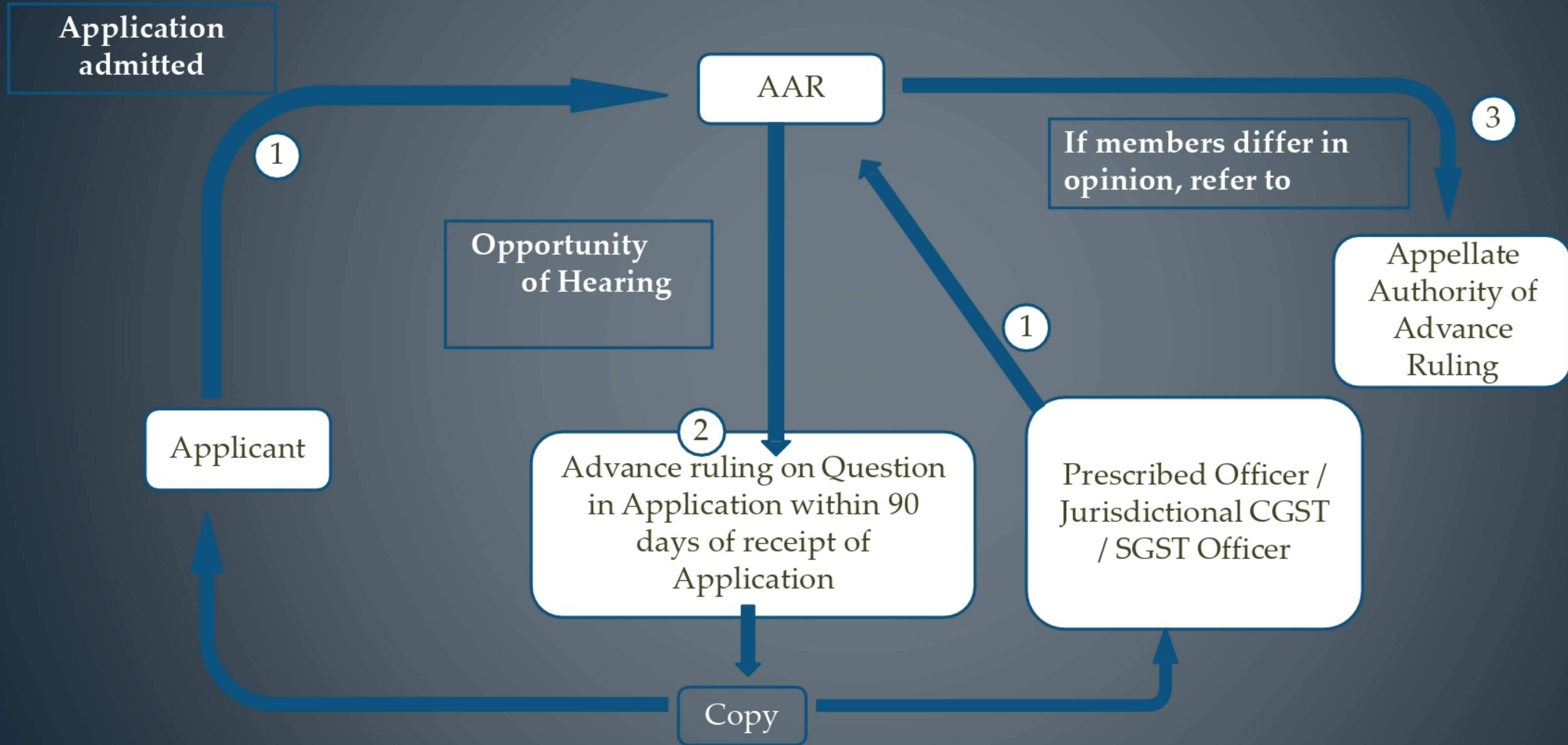
# Procedure of Receipt of Application– Sec 98



\* Not to admit if the question is already pending or decided in any proceeding in the case of an applicant under the provisions of this Act.

- Section 96D(2) of Finance Act 1994 - The Authority may, after examining the application and the records called for, by order, either allow or reject the application. Provided that the Authority shall not allow the application where the question raised in the application is, -
  - a) already pending in the applicant's case before any Central Excise Officer, the Appellate Tribunal or any Court;
  - b) the same as in a matter already decided by the Appellate Tribunal or any Court
- CBEC Circular dated 29.11.2013 – True import of Section 96D(2)(b) is that the question of law which stands already decided by the Appellate Tribunal or any court in the case of any party.
- FAQ for GST 2<sup>nd</sup> Edition – Clarified that Advance Ruling Application can be rejected if the question being raised is already not pending or decided in any proceeding in the case of applicant

# Procedure for Advance ruling – Sec 98



## Constitution of Appellate Authority for Advance Ruling – Sec 99

- **CGST Act** – The Appellate Authority for Advance Ruling constituted under the provisions of SGST Act or UTGST Act shall be deemed to be the Appellate Authority in respect of State or UT.
- **SGST Act** - (1) The Government shall, by notification, constitute an Authority to be known as Delhi State Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority.
- Provided that the State Government may, on the recommendations of the Council, notify any Appellate Authority located in **any State or any other Union territory** to act as the Appellate Authority for the purposes of this Act.

## Constitution of Appellate Authority for Advance Ruling – Sec 99

- **UTGST Act** - The Central Government shall, by notification, constitute an Appellate Authority to be known as the (name of the Union territory) Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority.
- Provided that the Central Government may, on the recommendations of the Council, notify any Appellate Authority located in **any State or any other Union territory** to act as the Appellate Authority for the purposes of this Act.

## Constitution of Appellate Authority for Advance Ruling – Sec 99

**UTGST Act** - The Appellate Authority shall consist of—

- i. the Chief Commissioner of central tax as designated by the Board; and
- ii. the Commissioner of Union territory tax having jurisdiction over the applicant.

**SGST Act** - The Appellate Authority shall consist of-

- (i) the Chief Commissioner of central tax as designated by the Board; and
- (ii) the Commissioner of State tax having jurisdiction over the applicant.

## Who can file Appeal ?

Following can file appeal before Appellate Authority Advance Ruling:

- i. The concerned officer;
- ii. The jurisdictional officer;
- iii. The applicant.

Appeal can be filed against order passed under Section 98(4). Section 98(4) provides for order by Advance Ruling Authority **after** admission of Advance Ruling application.

## Time limit to file appeal?

- Every appeal shall be filed within thirty (30) days from the date on which ruling sought to be appealed against is **communicated** to the concerned officer, jurisdictional officer, or the applicant.
- Provide that 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 (30) days, allow it to be presented within a further period **not exceeding** thirty (30) days.



**Whether email/ uploading on Common Portal will qualify as valid service ?**

- ▶ Any decision, order, summons, notice or other communication shall be served by any of the following methods:
  - ▶ (i) by giving or tendering it directly or by a messenger including a courier to the addressee or taxable person or his manager or authorized representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person;
  - ▶ (ii) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorized representative, if any, at his last known place of business or residence;
  - ▶ (iii) by sending a communication to his email address provided at the time of registration or as amended from time to time;

- ▶ (iv) by making it available on the common portal;
- ▶ (v) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain;
- ▶ (vi) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

## Time of 'service'

- ▶ Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in subsection (1).
- ▶ When decision, order, summon, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless contrary is proved.

Whether condemnation of delay be granted beyond 30 days ?

## Procedure of Filing Appeal

- An appeal against the advance ruling shall be made by an Applicant on the Common Portal in Form GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in Rule 49.
- Payment of fees can be made only using electronic cash ledger.
- An appeal against the advance ruling shall be made by the concerned officer or the jurisdictional officer referred to in Section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal.
- Application can be filed at [www.gst.gov.in](http://www.gst.gov.in). Login using user credentials. Go to <Services>/<User Services>/<My Applications>.

# Practical Aspects Relating to Appeal to the Appellate Authority for Advance Ruling

S. No.	Particulars	Details	Source
1	Prescribed form for filing an appeal to the Appellate Authority by an applicant	<b>GST ARA-02</b> to be filed online on GST Common Portal	Rule 106(1) of the CGST Rules, 2017
2	Amount of fee to be paid for filing an appeal	Rs.10,000/- to be paid under CGST Rules, 2017. Further, Rs. 10,000 is to be paid under SGST Rules, 2017. Thus, effectively fee of Rs. 20,000/- is to be paid.	
3	Mode of payment of fee	Internet banking or credit/debit cards or NEFT or RTGS or cash through authorized banks	Section 49 of the CGST Act, 2017
4.	Prescribed form for filling an appeal to Appellate Authority by an officer [Departmental Appeal]	<b>FORM ARA-03</b> to be filled on GST portal with <b>no fee</b> .	Rule 106(2) of the CGST Rules, 2017

- The appeal referred to in sub-rule (1) & (2), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in Rule 26.
- Rule 26 provides for digital signature signing (mandatory for company), Bank OTP or Common Portal OTP.
- It is also provided that in respect of any process or procedure, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.



**Whether INR 10000 or INR 20,000 is to be paid for filing appeal against Advance Ruling order?**

# Appellate Authority for Advance ruling – Sec 100 & 101

Appeal by aggrieved concerned officer/  
jurisdictional officer/ applicant

Reference by AAR in case of difference  
in opinion

Within 30 days of  
comm. of AAR ruling \*

Fees as may be  
prescribed

Chief Commissioner  
Central Tax

Commissioner  
SGST/UGST

Within 90 days

②

Opportunity of Being  
Heard

confirmed or modified  
Or  
Decide no ruling can be  
issued#

③

Copy to

-Applicant  
-Concerned officer  
-Jurisdictional officer  
-AAR

\* Period may further be  
extended by 30 days.

# Where members of AAAR  
differ on any point/points, it  
shall be deemed that no  
advance ruling can be issued.



## Status of Advance Ruling in case of difference

AAR or AAAR may rectify the ruling brought to its notice

- For mistake apparent from record.
- Either on own motion or if brought to notice by prescribed/ jurisdictional CGST/ SGST/ UTGST officer or applicant
- Opportunity of being heard if prejudicial to Applicant/Appellant

**Such mistake should be recognized by AAR, officer or the applicant within 6 months of date of order**

Note:- Not to amend substantive part of the order

- ▶ Section 161 - Authorities can rectify any error which is apparent on the face of record in any decision, order, notice, certificate, or any other document.
- ▶ This section is notwithstanding the whole Act.
- ▶ Detection of error within three months of the date of the order.
- ▶ Rectification can be done within six months of the date of concerned document.
- ▶ Period of six months shall not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Time limit in Advance

Ruling?

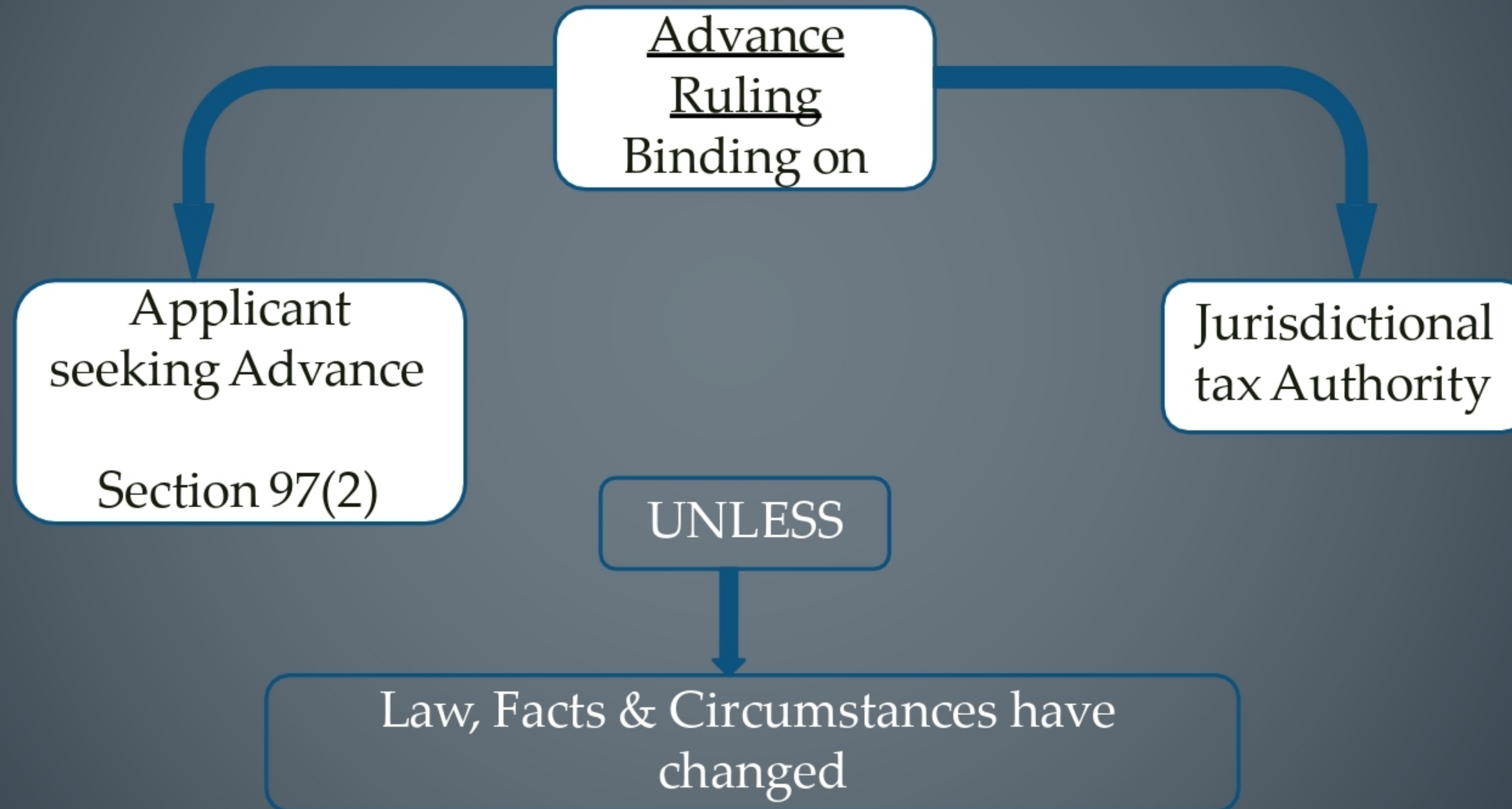
- ▶ The service of any notice, order or communication shall not be called in question if the same has already been acted upon by the person to it is issued.
- ▶ The service of any notice, order of communication shall not be called in question if the same is not called in question at the earliest proceeding.

- ▶ Sec 162 – Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.
- ▶ Sec 107 – First Appellate Authority – Appeal can be filed against order of adjudicating authority. The definition of adjudication authority excludes AAR.
- ▶ Sec 112 – Appellate Tribunal – Appeal can be filed against order of First Appellate Authority or Revisional Authority.



- ▶ Sec 117 – High Court - Appeal can be filed against order of State Bench of Appellate Tribunal
- ▶ Sec 118 – Supreme Court - Appeal can be filed against order of National Bench of Appellate Tribunal or order of High Court.
- ▶ Article 226 – Constitution of India - High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari, or any of them, for the enforcement of any of the rights conferred by part – III and for any other purpose.

# Applicability of Advance ruling – Sec 103



## Ruling void *ab initio* – Sec 104

- If AAR / AAAR finds ruling obtained by the Applicant/Appellant by fraud / misrepresentation of facts / suppression of material facts.
- By order declare advance ruling as void-ab-initio, after giving an opportunity of being heard.

Note:- All provisions of the Act shall apply after excluding period in between date of Advance Ruling and the void-ab-initio order

# Power / Procedure of AAR/ AAAR– Sec 105 and 106

- Deemed to be civil court for the purpose of:
  - Discovery and inspection;
  - Enforcing the attendance of any person and examining him on oath;
  - Issuing commissions and compelling production of books of accounts and other records
- Proceedings treated as judicial proceedings;
- Power to regulate its own procedure.

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