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Chartered Accountants

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Advance Ruling

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Advance Ruling



What is Advance Ruling

An advance tax ruling is a tool for multinational corporations, and for individual tax filers for clarifying and conforming particular taxation arrangements. A written interpretation of tax laws is issued by tax authorities to corporations and individuals who request clarification of taxation arrangements.

Why is advance ruling under GST necessary:

The objective of any advance ruling, including under GST is to-

1. Provide certainty for tax liability in advance in relation to a future activity to be undertaken by the applicant.
2. Attract Foreign Direct Investment (FDI) – By clarifying taxation and showing a clear picture of the future tax liability of the FDI. The clarity and clean taxation will attract non-residents who do not want to get involved in messy tax disputes.
3. Reduce litigation and costly legal disputes.
4. Give decisions in a timely, transparent and inexpensive manner.
5. Pronounce ruling expeditiously in a transparent and reasonable manner;
6. Seeking advance ruling does not include much cost.
7. Opportunity of personal hearing can be granted to applicant.

Significance of Advance Ruling

- 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

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.

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.

- 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.

Application for Advance ruling – Sec 97

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** Login using user credentials.
- Go to<Services>/<User Services>/<My Applications>/<Create New Application>.

When can one request for GST Advance Ruling:

Any taxpayer can request for advance ruling when he is uncertain of the provisions. Advance tax ruling is applicable on –

- (a) Classification of any goods and/or services under the Act
- (b) Applicability of a notification which affects the rate of tax
- (c) Determination of time and value of supply of goods/services
- (d) Whether input tax credit paid (or deemed to be paid) will be allowed
- (e) Determination of the liability to pay tax on any goods/services

(f) Whether the applicant has to be registered under GST

(g) Whether any particular thing done by the applicant regarding goods/services will result in a supply.

Process of Advance Ruling under GST

An advance ruling is first sent to Authority for Advance Ruling (Authority). Any person unhappy with the advance ruling can appeal to the Appellate Authority for Advance Ruling (Appellate Authority).



Process of Advance Ruling under GST

Forms

Application for Advance ruling has to be made in FORM GST ARA-01 along with Rs. 5,000.

Decision of the Authority

The Authority can by order, either admit or reject the application.

Will all applications be allowed:

The Authority will NOT admit the application when-

- The same matter has already been decided in an earlier case for the applicant
- The same matter is already pending in any proceedings for the applicant

Basically, Advance Ruling will not be possible in any pending case or any decision already given.

Applications will be rejected only after giving an opportunity of being heard. Reasons for rejection shall be given in writing.

When will the authority give their decision:

Advance ruling decision will be given within 90 days from application.

If the members of the Authority differ in opinion on any point, they will refer the point to the Appellate Authority.

Advance Ruling will have prospective effect only.

On whom will the advance ruling apply:

The advance ruling will be binding only –

- (a) On the applicant
- (b) On the jurisdictional tax authorities in respect of the applicant.

If the law, facts of the original advance ruling change then the advance ruling will not apply.

Appeal to the Appellate Authority

If the applicant aggrieved by the advance ruling he can appeal to the Appellate Authority.

1. Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
2. The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act

or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

3. Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.
4. The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.
5. Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
6. No appeal shall be filed under sub-section (1), unless the appellant has paid
 - a. in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - b. a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.
7. Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
8. The Appellate Authority shall give an opportunity to the appellant of being heard.
9. The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
10. The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

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