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# Rajput Jain & Associates

Chartered Accountants





# About Us

- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

# Advance Ruling

Under GST Act







# Agenda

- **INTRODUCTION**
- **QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT [SECTION 97]**
- **PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]**
- **APPEALS AGAINST ORDER OF AAR TO THE APPELLATE AUTHORITY [SECTION 100 AND 101]**
- **RECTIFICATION OF MISTAKES [SECTION 102]**
- **APPLICABILITY OF ADVANCE RULING [SECTION 103]**
- **ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 104]**
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# 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 Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious.
- 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 taxable person or is desirous to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There are time lines prescribed for passing an order by AAR and by AAAR.
- The broad objectives for setting up a mechanism of Advance Ruling are:
  - 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



# QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT [SECTION 97]

Under GST, Advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

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.



# PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]

- The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner and shall be accompanied by a fee of **five thousand rupees**.
- 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 and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.
- Application for advance ruling will not be admitted in 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.
- If the application is admitted, the AAR shall pronounce its ruling within **90 days** of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.
- Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.
- 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.

# APPEALS AGAINST ORDER OF AAR TO THE APPELLATE AUTHORITY [SECTION 100 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 AAAR.
- In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. Thus, it can be seen that a decision of the Appellate authority is also treated as an advance ruling.
- Any appeal must be filed **within 30 days** from the receipt of the advance ruling. 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 along with fee of ` **10,000/-**. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid. “
- The Appellate Authority must 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 is issued in respect of the question under appeal.
- The said authority can either confirm or modify the ruling appealed against.
- 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 [SECTION 102]

- 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) find 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.
- 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.

# Contact Us

- Address: P-6/90, Connaught Circus Connaught Place New Delhi- 110001
- Telephone: +91 011 -23343333
- Email : [info@carajput.com](mailto:info@carajput.com)
- Website : [www.carajput.com](http://www.carajput.com)

## Corporate Office

- Address: 1598, Level-1, Sector 22-B, Chandigarh
- Telephone:017-25085213, 9814333213
- Email : [rajputjainandassociates@gmail.com](mailto:rajputjainandassociates@gmail.com)

## Branch Office

- Address: 204, Prakash Chamber, 6, Netaji Subash Marg, Darya Ganj, New Delhi-110002
- Telephone: +91 011 -43520194
- Email: [support@carajput.com](mailto:support@carajput.com)
- Address: 163, Building No.65 Lakhe chaur Marg New Baneshwor, Kathmandu, Nepal
- Telephone: +977-01-2051061
- Email: [pmahaseth@carajput.com](mailto:pmahaseth@carajput.com)

## Head Office



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