

The background is a dark blue-grey color. It features several thin, gold-colored lines that form abstract, angular shapes. These lines extend from the edges of the frame towards the center, where they meet a large, dark blue-grey rectangle. This rectangle has a thin gold border and contains the main text of the slide. The overall aesthetic is modern and professional.

Insights about Advance Ruling in GST

Aug 2023

AHSG & CO LLP

TABLE OF CONTENTS

1. Advance Ruling – meaning and applicability
2. Matters for which advance ruling can be sought
3. Matters beyond the scope of advance ruling
4. Who can apply for advance ruling
5. Where to Apply for advance ruling
6. Process for application of advance ruling
7. Appeal against order of Advance Ruling Authority
8. Advance ruling to be void in certain cases

1. Advance Ruling – meaning and applicability

Meaning of advance ruling

As per Section 95(1) “Advance Ruling” means a decision provided by the authority or the appellate authority to an applicant on the matters or on the question specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the CGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Advance Ruling in GST provides certainty in circumstances wherein there exist some ambiguity in the interpretation of law. An Advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It 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 GST authorities. Further it helps in reducing long drawn and expensive litigation at a later stage. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration.

Applicability of advance ruling

- ❑ As per Section 103, an Advance ruling pronounced by AAR and AAAR shall be binding only on the applicant and on the concerned officer or the jurisdiction officer in respect of the applicant. Advance ruling is not applicable to the any other taxable person in the state. It is only limited to the person who has applied for an advance ruling.
- ❑ Where a recipient obtains a ruling on taxability of his inward supply of goods or services, supplier of such goods or services is not bound by the ruling and he is free to assess supply according to his own determination. [Erode Infrastructure Private Limited (AAAR – Tamil Nadu)]

2. Matters for which advance ruling can be sought

Advance ruling cannot be sought for any question relating to GST. It can be sought only in respect to the matters specified in section 97(2). Advance ruling in relation to the matter not covered therein shall be outside the jurisdiction of authority and cannot be sought. Matters in respect of which advance ruling can be sought are enumerated below:

- ☐ Classification of any goods or services or both
- ☐ Applicability of a notification issued under the provisions of this 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.

3. Matters beyond the scope of advance ruling

Since advance ruling can be sought only in relation to the matters specified in section 97(2). Matters which are beyond the scope of advance ruling, as specifically decided in various rulings, are below:

- ❑ Whether a specific product can be said to be a waste of sugar manufacture is not in relation to supply of goods or services or both, being undertaken or proposed to be undertaken by appellant, hence could not be answered. **[Madhurya chemicals (AAAR Maharashtra)]**.
- ❑ Issue as to whether a particular transaction is an inter-state supply or intra-state supply is outside scope and jurisdiction of advance ruling authority **[Fichtner consulting engineers India pvt ltd (AAR-Uttarakhand)]**.
- ❑ Where question raised by applicant related to export of service which would also require determination of place of supply of service, no advance ruling can be given by Advance Ruling Authority **[Unlimited Unnati (P.) Ltd. (AAR Gujarat)]**
- ❑ Question relating to the eligibility to credit under transitional provisions is not within the ambit of Advance Ruling Authority **[Shapoorji Pallonji and Co. (P) Ltd. (AAAR- Tamil Nadu)]**.
- ❑ Issue as to whether applicant is liable to deduct TDS under section 51 does not fall in the category of Section 97(2). **[Kandla Port trust. (AAA Gujarat)]**
- ❑ Question of appropriation of taxes paid at wrong jurisdiction and refund are outside the purview of Advance Ruling Authority as per section 97(2). **[Kakatiya Cement Sugar and Industries Limited (AAR- Andhra Pradesh)]**

4. Who can apply for advance ruling

As per section 95(c) of CGST Act 2017, "Applicant means any person registered or desirous of obtaining registration under this Act. Thus Any person whether registered or not under GST can apply for advance ruling.

AS per section 95(a) of CGST Act, 2017 "advance ruling" means a decision provided by the Authority or the Appellate Authority or the National 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 or of section 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant

Words occurring in section 95(a) 'supply being undertaken or proposed to be undertaken by applicant' deduces two broad rules. First is that advance ruling can be obtained in relation to the supply of goods and services being undertaken or proposed to be undertaken by the applicant. This clearly infers that advance ruling cannot be obtained after supply of goods or services has been completed. It can be obtained if supply is being undertaken or proposed to be undertaken.

Second is that advance ruling can be applied by the person who is undertaking or proposed to undertake supply of goods and services. i.e. person applying for advance ruling must be supplier.

Thus, it implies that advance ruling cannot be applied by recipient of supply. Many advance ruling applications were rejected on the ground that it is beyond jurisdiction of AAR to give ruling to the recipient of service. However recently Hon'ble Calcutta High Court and AAAR Maharashtra has reverse the position stating that Advance ruling application can't be rejected only because applicant is not a supplier. Excerpt of the ruling and judgment is below:

4. Who can apply for advance ruling

AAR had concluded that appellant, as recipients of services, were not entitled to maintain an application for advance ruling. It was held by the Hon'ble High court of Calcutta that Definition of "applicant" under Section 95(c) of CGST Act, 2017 is quite broad and includes any person registered or desirous of obtaining registration under Act *ibid*. Appellant was registered under Act and therefore met said criterion. Further, Question on which ruling is sought must fall within scope of section 97(2). In instant case, appellants had sought a ruling on applicability of an exemption notification under Act, which fell within scope of section 97(2)(b). Therefore, appellants were eligible to make an application for advance ruling and AAR's ruling was to be set aside and matter was to be remanded. **Anmol Industries Ltd. v. West Bengal Authority for Advance Ruling [2023] 150 taxmann.com 3 (Calcutta)**

It was held that appellant is eligible to file advance ruling application wherein advance ruling is sought as to whether GST is payable under reverse charge on services of 'renting of immovable property' received from SEZ authority in terms of Notification No. 13/2017. **[Portescap India (P.) Ltd., In re - [2022] 138 taxmann.com 465 (AAAR-MAHARASHTRA)]**

Some other advance ruling pertaining to the applicant relevant to this matter are as under:

- ❑ where applicant is neither a supplier nor a recipient in relation to supply of goods and services or both, being undertaken or proposed to be undertaken by the applicant by the virtue of section 95, the applicant has no locus standi to file application before the authority for advance rulings. [Mobile wallet (P) Ltd - (AAR Maharashtra)]
- ❑ There is no provision for seeking advance ruling in respect of third parties or parties who are not directly connected to applicant by way of supply of services or goods. [Posiedon Hydro Infratech (AAR – Gujarat)]
- ❑ Shareholder of a company cannot seek advance ruling in respect of supplies undertaken by company and, thus, sought by shareholder is not admissible and liable for rejection. [Ramohalli Krishnrao Karthik (AAR-

5. Where to Apply for advance ruling

Application for obtaining advance ruling is to be made to the Authority of Advance Ruling constituted under the State Goods and Service Tax Act of the state in which supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

Application for obtaining advance ruling cannot be simply made to the authority of advance ruling in which person is registered. If a person registered in a state, undertaking or proposed to undertake supply of goods or service in another state, have to apply with advance ruling authority of that other state from where supply is being undertaken or proposed to be undertaken.

Maharashtra advance ruling Authority has no jurisdiction when question related to supply of goods from warehouse to be opened outside Maharashtra. **[Kamdhenu Agrochem Industries LLP (AAR Maharashtra)]**

6. Process for application of advance ruling

Step 1: The Applicant desirous of obtaining advance ruling should make application in the prescribed form i.e., GST ARA – 01 Form in the manner prescribed in Advance ruling rules. Fees for application is following is Rs. 10,000 (CGST 5,000 and SGST 5,000)

Step 2: Upon Receipt of the application, the AAR shall send a copy to the officer in whose jurisdiction the applicant falls and call for all relevant records. 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 the Act.

Step 3: After the admission or rejection of application, copy of order shall be sent to the applicant and to the concerned officer.

Step 4: once application is admitted, the authority shall examine the material submitted before it and after providing an opportunity of being hear to the applicant or his authorized representative, pronounce the advance ruling on the matter specified in the application. The ruling shall be pronounced within 90 days from the date of receipt of the application.

7. Appeal against order of Advance Ruling Authority

- ❑ If the applicant is aggrieved with the findings of the AAR, the applicant can file an appeal in Appellate Authority of advance ruling. Similarly if the concerned or jurisdictional officer of CGST/SGST Act does not agree with the findings of AAR, he can also file an appeal with Appellate Authority of advance ruling (AAAR).
- ❑ 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 appellate authority must pass an order after hearing the parties to the appeal within 90 days of the filing of an appeal. If the members of the 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.
- ❑ Where conflicting advance rulings are given by the appellate authorities of two or more states, applicant aggrieved by such ruling may prefer an appeal to National Appellate Authority.

8. Advance ruling to be void in certain cases

Advance ruling obtained by applicant by fraud or suppression of material fact or misrepresentation of facts shall be void :

- ❑ Advance Ruling Authority or Appellate Authority may, by order, declare the 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
- ❑ 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.

Thanks!

DO YOU HAVE ANY QUESTION?



Anuj Garg



+91 120 42 66 272



anuj@ahsg.in



www.ahsg.in



Our Offices:

Noida

B-108, Ground Floor, Sector 64,
Noida - 201301

Delhi

311, Pratap Bhawan, Bahadur
Shah Zafar Marg, Delhi - 110002

Chandigarh

SCF 196, II Floor, Sector 7C,
Chandigarh,, 160017

Ghaziabad

G-21, IIIrd Nehru Nagar,
Ghaziabad - 201001