

Advance Ruling

Q 1. What is the meaning of Advance Ruling?

Ans. An '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 100(1) of CGST/SGST Act as the case may be, in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant. (section 95 of CGST/SGST Law and section 12 of UTGST law)

Authority for Advance Rulings(AAR) are appointed under the respective SGST/UTGST Act(s) and the same are deemed to be the Authority for advance ruling under CGST Act also in respect of that State or Union territory.

Q 2. Which are the questions for which advance ruling can be sought?

Ans. Advance Ruling can be sought for the following questions:

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under provisions of the GST Act(s);
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services under the Act;
- (f) whether applicant is required to be registered under the Act;
- (g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Q 3. Whether questions relating to place of supply can be asked under Advance Ruling Mechanism?

Ans. No.

Q 4. What is the objective of having a mechanism of Advance Ruling?

Ans. The broad objective for setting up such an authority is to:

- (i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant;
- (ii) helps taxpayer in financial planning and making new investments
- (iii) attract Foreign Direct Investment (FDI);
- (iv) reduce litigation;
- (v) pronounce ruling expeditiously in transparent and inexpensive manner.

Q 5. What will be the composition of Authority for advance rulings (AAR) under GST?

Ans. 'Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST/ UTGST. They will be appointed by the Central and State government respectively.

Q 6. Is it necessary for a person seeking advance ruling to be registered?

Ans. No, any person registered under the GST Act(s) or desirous of obtaining registration can be an applicant. (Section 95(b))

Q 7. At what time an application for advance ruling be made?

Ans. An applicant can apply for advance ruling even before taking up a transaction (proposed supply of goods or services) or in respect of a supply which is being undertaken. The only restriction is that the question being raised is already not pending or decided in any proceedings in the case of applicant.

Q 8. What is the fees for filing an application before AAR and AAAR?

Ans. A fee of Rs. 10000/- (Five thousand each under CGST and SGST Act) has to be deposited along with every application GST ARA-01 to AAR.

A fee of Rs. 20000/- (Ten thousand each under CGST and SGST Act) has to be deposited along with every application GST ARA-02 to AAAR.

In respect of application by department in form GST ARA-03, no fee is required to be enclosed.

Q 9. In how much time will the Authority for Advance Rulings have to pronounce its ruling?

Ans. As per Section 98(6) of CGST/SGST Act, the Authority shall pronounce its ruling in writing within ninety days from the date of receipt of application.

Q 10. What is the Appellate authority for advance ruling (AAAR)?

Ans. Appellate authority for advance ruling (AAAR), shall be constituted under the SGST Act or UTGST Act and such AAAR shall be deemed to be the Appellate Authority under the CGST Act in respect of the respective state or Union Territory. An applicant, or the jurisdictional officer, if aggrieved by any advance ruling, may appeal to the Appellate Authority.

Q 11. How many AAR and AAAR are constituted under GST?

Ans. There is one AAR and AAAR constituted for each State. Details of addresses, contact details along with emails of AAR are available at-

<http://www.gstcouncil.gov.in/sites/default/files/Details%20of%20AAR%2030-11-18.pdf>.

Similarly, the details of AAAR are available at-

Q 12. To whom will the Advance Ruling be applicable?

Ans. The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in 97 (2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Q 13. Whether the advance ruling have precedent value of a judgment of the High Court or the Supreme Court?

Ans. No, the advance ruling is binding only in respect of the matter referred. It has no precedent value. However, even for persons other than applicant, it does have persuasive value.

Q 14. What is the time period for applicability of Advance Ruling?

Ans. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.

Q 15. Can an advance ruling given be nullified?

Ans. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) 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.

Q 16. What is the procedure for obtaining Advance Ruling?

Ans. Section 97 and 98 deals with procedure for obtaining advance ruling. The applicant desirous of obtaining advance ruling should make application to AAR in form GST ARA-01. The format of the form and the detailed procedure for making application is prescribed in the CGST Rules.

Section 98 provides the procedure for dealing with the application for advance ruling. The

AAR shall send a copy of application 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 AAR will pass an order either admitting or rejecting the application.

Q 17. Under what circumstances will the application for Advance Ruling be compulsorily rejected?

Ans. Application has to be rejected if the question raised in the application is already pending or decided in any proceedings in the case of applicant under any of the provisions of GST Act(s)

If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

Q 18. What is the procedure to be followed by AAR once the application is admitted?

Ans. If the application is admitted, the AAR shall pronounce its ruling within ninety 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/UTGST.

Q 19. What happens if there is a difference of opinion amongst members of AAR?

Ans. If there is 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.

Q 20. What are the provisions for appeals against order of AAR?

Ans. The provisions of appeal before AAAR are dealt in section 100 and 101 of CGST/SGST Act or section 14 of the UTGST Act.

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/UTGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word concerned officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.

Any appeal must be filed within thirty days from the receipt of the advance ruling. The

appeal has to be in Form GST ARA-02 and has to be verified in manner as prescribed in the CGST Rules, 2017

The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety 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.

Q 21. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

Ans. The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant.

However, Writ Jurisdiction may lie before Hon'ble High Court or the Supreme Court.

Q 22. Can the AAR & AAAR order for rectification of mistakes in the ruling?

Ans. Yes, AAR and AAAR have power to amend their order to rectify any mistake apparent from the record within a period of six 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 CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant or the appellant must be heard before the order is passed. (Section 102)

Q 23. Where can one find the orders passed by AARs and AAARs?

Ans. The orders passed by AARs are available at <http://gstcouncil.gov.in/rulings-by-advance-authority> and those by AAARs are available at <http://gstcouncil.gov.in/orders-appellate-authority-advance-ruling> . Till October, 2018, 615 applications were filed to AARs and 286 applications have been disposed of; and 21 applications have been filed to AAARs out of which 14 have been decided.