

# Detailed Study Report on

# AUTHORITY FOR ADVANCE RULINGS

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## **Scheme of Advance Ruling under Indirect Tax Laws**

### **Scheme of Advance Ruling**

Appreciating the need for foreign investors to be assured in advance of their likely indirect tax liability in respect of Customs Duties, Central Excise duties, a scheme of Advance Rulings has been incorporated in the Customs Act, 1962 and Central Excise Act, 1944 by Finance Act, 1999. Later, vide Finance Act, 2003, the legal provisions relating to Advance Rulings has been extended to Service Tax also.

Obtaining an advance ruling helps the applicant in planning their activities which are liable for payment of Customs, or Central Excise or service tax, well in advance. It also brings certainty in determining the duty/tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as Government authorities. Further, it helps in avoiding longdrawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious.

### **What is Advance Ruling**

Advance Ruling means the determination of a question of law or fact regarding the liability to pay duty/tax in relation to **an activity which is proposed to be undertaken**, by the applicant. Activity means import or export under the Customs Act; production or manufacture of goods under the Central Excise Act; and taxability of service to be provided under the Finance Act, 1994. In other words, Advance Ruling is a ruling to determine in advance the tax liability in respect of a proposed economic/business activity.

## **Concept of Advance Rulings under Revised Kyoto Convention of WCO and Under WTO Agreement on Trade Facilitation**

Standard 9.9 of the Revised Kyoto Convention, which is the International Convention on the Simplification and Harmonization of Customs procedures and was adopted in June, 1999 as a blueprint for modern and efficient Customs procedures in the 21st century, deals with Advance Rulings. It states as under:-

*“The Customs shall issue binding rulings at the request of the interested person, provided that the customs have all the information they deem necessary”.*

Further, the WTO Agreement on Trade Facilitation signed on 6/12/2013 at Bali, Indonesia, under Article 3, also make it obligatory for the member countries to have mechanism of Advance Ruling. The Article 3 of Agreement on Trade Facilitation reads as under:-

### **ARTICLE 3: ADVANCE RULINGS**

*1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.*

*2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:*

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or*
- (b) has already been decided by any appellate tribunal or court.*

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3. *The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.*

4. *Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.*

5. *An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.*

6. *Each Member shall publish, at a minimum:*

*(a) the requirements for the application for an advance ruling, including the information to be provided and the format;*

*(b) the time period by which it will issue an advance ruling; and*

*(c) the length of time for which the advance ruling is valid.*

7. *Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.*

8. *Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.*

9. *Definitions and scope:*

*(a) An advance ruling is a written decision provided by a Member 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 good at the time of importation with regard to:*

*(i) the good's tariff classification, and*

*(ii) the origin of the good;*

*(b) In addition to the advance rulings defined in subparagraph a, Members are encouraged to provide advance rulings on:*

*(i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;*

*(ii) the applicability of the Member's requirements for relief or exemption from customs duties;*

*(iii) the application of the Member's requirements for quotas, including tariff quotas; and*

*(iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.*

*(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.*

*(d) A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.*

### **Objectives for setting up Advance Ruling Authority**

- (a)** To provide certainty in tax liability under the Central Excise, Customs and Service Tax laws in advance in relation to an activity proposed to be undertaken by the applicant;
- (b)** **To attract Foreign Direct Investment (FDI);**
- (c)** To reduce litigation;
- (d)** To pronounce ruling expeditiously in transparent and inexpensive manner;

- (g) To implement Standard 9.9 of Revised Kyoto Convention under WCO.

### **Legislative Journey of Scheme of Advance Ruling in Indirect Taxes**

In the Budget speech of 1998-99, Finance Minister of India proposed the setting up of AAR for Excise and Customs to meet the need for foreign investors to be assured in advance of their likely indirect tax liability. Legislative provisions for advance rulings were introduced in Customs Act, 1962 and Central Excise Act, 1944 vide Finance Act of 1999.

In 2003, the concept of Advance Ruling was incorporated in service tax matters by incorporating legislative provisions in the Finance Act, 1994 vide Finance Act, 2003.

Till 31.03.2014, the AAR has issued rulings in 99 cases.

### **Statutory Provisions Regarding AAR**

**Customs:** The legal provisions relating to AAR are contained in Chapter V-B of the Customs Act, 1962 from **Section 28E to Section 28M**. Further, the Customs (Advance Rulings) Rules, 2002 have also been issued.

**Central Excise:** In respect of Central Excise, the provisions relating to AAR are contained in the Chapter III-A of Central Excise Act, 1944 from **Section 23A to Section 23H**. Further, the Central Excise (Advance Rulings) Rules, 2002 have also been issued.

**Service Tax:** In respect of service tax, the provisions relating to AAR are contained in the Chapter V-A of Finance Act, 1994 from **Section 96A to Section 96 I**. Further, the Service Tax (Advance Rulings) Rules, 2003 have also been issued.

**Further, Authority for Advance Rulings (Central Excise, Customs and Service Tax) Procedure Regulations, 2005** has been issued vide



notification No. 01/2005-AAR, dated 07/01/2005 in exercise of the powers conferred by section 28M of the Customs Act, 1962 (52 of 1962), section 23H of the Central Excise Act, 1944 (1 of 1944) and section 96H of the Finance Act, 1994 (32 of 1994).

### **Scope of Advance Rulings:**

Advance rulings can be sought in respect of following matters.

#### **Customs :**

- **Classification** of any goods under the Customs Tariff Act, 1975;
- **Applicability of a notification** issued under sub section (1) of Section 25 of the Customs Act, 1962 having a bearing on the rate of duty;
- **Principles** to be adopted for the purposes of **determination of value of goods** under the provisions of Customs Act, 1962.
- **Applicability of notifications** issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs under the Customs Act, 1962.
- **Determination of origin of goods** in terms of the rules notified under the Customs Tariff Act, 1975 and matters related thereto.

#### **Central Excise :**

- **Classification** of any goods under the Central Excise Tariff Act, 1985;
- **Applicability of a notification** issued under sub-section (1) of Section 5 A of the Central Excise Act, 1944 having a bearing on the rate of duty;
- **Principles** to be adopted for the purposes of **determination of value of the goods** under the provisions of the Central Excise Act, 1944;
- **Applicability of notifications** issued under the Central Excise Act, 1944, Central Excise Tariff Act, 1985 and any duty chargeable

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under any other law for the time being in force in the same manner as duty of excise leviable under the Central Excise Act, 1944;

- **Admissibility of credit of service tax** paid or deemed to have been paid on input service or excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of the excisable goods.
- Determination of the liability to pay duties of excise on any goods under the Central Excise Act, 1944.

### Service Tax:

- **Classification** of any service as taxable service under Chapter V of the Finance Act, 1994;
- **Valuation** of taxable services for charging service tax;
- **Principles** to be adopted for the purposes of **determination of value** of taxable service under the provisions of Chapter V;
- **Applicability of notifications** issued under Chapter V;
- **Admissibility of credit of duty** or tax in terms of the rules made in this regard;
- Determination of the liability to pay service tax on a taxable service under the provisions of Chapter V

### **Who can apply for Advance Rulings**

- A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or
- A resident setting up a joint venture in India in collaboration with a non-resident; or
- A wholly owned subsidiary Indian company, of which the holding company is a foreign company;
- A joint venture in India,
- A resident falling within any such class or category of persons as the Central Government may by notification in

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the official gazette specify in this behalf.

The term “**non-resident**” shall have the meaning assigned to it in section 2 (30) of the Income-tax Act, 1961 which defines “non-resident” as “a person who is not a “resident” and for the purposes of sections 92, 93 & 168, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6”.

The term “**Resident**” includes an individual, Hindu Undivided Family (HUF), a company and every other person as per the provisions of Section 6 of Income Tax Act, 1961.

By issuing notification under Section 28E (c) (iii) of the Customs Act, 1962; Section 23A( c) (iii) of the Central Excise Act, 1944 and section 96A (b) (iii), the Government has made following class of persons as applicant eligible for advance ruling:-.

Sr. No.	Notification No. and date			Remarks
	Customs Act, 1962	Central Excise Act, 1944	Finance Act, 1994 ( for service tax )	
1	69/2005- Customs (NT) dated 29/7/2005	-	-	specified a resident as an applicant, intending to <b>import any goods from Republic of Singapore under CECA</b> between Republic of India and Republic of Singapore and for the purpose of seeking advance ruling in respect of determination of origin of goods
2.	124/2009- Customs (NT), dated 20-8-	21/2009- CE (NT), dated	27/2009- ST, dated 20.8.2009	<b>Any public sector company</b> as an applicant eligible for advance Ruling.

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	2009	20.8.2009		[A resident who proposes to import goods claiming for assessment under heading 9801 ( Project Imports) of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), eligible for advance Ruling]
3.	67/2011- Customs (NT), dated 22-9- 2011	4/2013- CE (NT), dated 1.3.2013	4/2013-ST, dated 1.3.2013	Specified “resident public limited company” as class of person eligible for advance Ruling.
4.	51/2014- Customs (NT), dated 11.7.2014	18/2014- CE(NT), dated 11.7.2014	15/2014- ST, dated 11.7.2014	Specified “the resident private limited Company” as class of person eligible for advance Ruling.  <i>The term “private limited company” shall have the same meaning as is assigned to “private company” in clause (68) of section 2 of the Companies Act, 2013 (18 of 2013);</i>

### Binding Nature of Advance Ruling

An advance ruling pronounced by the Authority is binding on the

- a) Applicant and
- b) The concerned Commissioner (s) of Customs or Central Excise or Service Tax, as the case may be and the authorities subordinate to him,

in respect of the question(s) raised in the application.

The advance ruling is valid till there is a change in law or facts on the basis of which it was pronounced.

### Application for Advance Ruling

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- ❖ An applicant desirous of obtaining an advance ruling may make an application, stating the question on which the advance ruling is sought.
- ❖ Application to be submitted to the Secretary, Advance Ruling Authority in Quadruplicate in prescribed format.

Forms prescribed are

- ❖ For Customs - AAR (Cus-I)
  - ❖ For Central Excise - AAR (CE-I)
  - ❖ For Service Tax - AAR (ST-I)
- 
- ❖ Demand Draft of Rs. 2500/- in favour of Authority for Advance Ruling payable at New Delhi is also to be submitted along with application.
  - ❖ Separate applications are required to be filed under Customs Act, Central Excise Act and Finance Act, 199
  - ❖ An applicant may withdraw his application within thirty days from the date of the application.
  - ❖ An applicant can authorize a representative to act on his behalf

But, the applicant is not bound to undertake the proposed activity in relation to which he has obtained an advance ruling.

### **Procedure on Receipt of Application**

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records :

**Provided** that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

Where in an application, there is no Commissioner specified by the applicant, a copy of the application and enclosures thereto shall be forwarded by the Authority to the Chairman, CBEC calling upon him to designate, a Commissioner for the purposes of the application,

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failing which the application shall be proceeded with in the absence of a Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application

(3) Where an application is allowed the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(4) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

(5) The Authority shall pronounce its advance ruling in writing **within ninety days of the receipt** of application.

(6) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement.

### **Withdrawal of Application**

The applicant may withdraw his application within thirty days from the date of such application and thereafter, only with the leave of the Authority.

### **Rejection of Application**

The Authority shall not allow the application where the question raised in the application is, -

- ❖ already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court;
- ❖ the same as in a matter already decided by the Appellate Tribunal or any Court

**Provided** further that no application shall be rejected unless an opportunity has been given to the applicant of being heard :

**Provided** also that where the application is rejected, reasons for such rejection shall be given in the order.

### **Advance ruling to be void in certain circumstances**

Where the Authority finds, on a representation made to it by the Commissioner of Customs or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by **fraud or misrepresentation of facts**, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of Customs Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

### **Modification of Advance Ruling**

The Authority may *suo motu* or on a petition by the applicant or the Commissioner, but before pronouncement of an advance ruling or before an advance ruling pronounced has been given effect to, on being satisfied that an order/advance ruling was pronounced under mistake of law or fact, modify such order /advance ruling in such respects as it considers appropriate, after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

### **Rectification of Mistakes in the Advance ruling:**

- ❖ The Authority may, with a view to rectifying any mistake apparent from the record, amend any advance ruling pronounced by it before such ruling has been given effect to.
- ❖ Such amendment may be made *suo motu* or when the mistake is brought to the notice of the Authority by the applicant or the

Commissioner, but only after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

### **Composition of the Authority:**

The Authority is a high level quasi-judicial body headed by a retired judge of the Supreme Court of India. Besides the Chairperson, there are two Members, who have wide experience in technical and legal matters, namely :-

- (a) An officer of the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Central Board of Excise and Customs.
- (b) An officer of the Indian Legal Service who is qualified to be an Additional Secretary to the Government of India.

The Authority for Advance Rulings (AAR) is located at New Delhi.

### **Powers of the Authority:**

- (1) The Authority shall have the power to hear and determine all applications and petitions.
- (2) The Authority may, if any difficulty arises in giving effect to its order/advance ruling, either *suo motu* or on a petition made by the applicant or the Commissioner within a period of three months of noticing the difficulty, by appropriate order remove such difficulty, and pass such other order as it considers just and necessary in the circumstances of the case.
- (3) The Authority may reopen the hearing of any case, before pronouncement of its order/advance ruling, for sufficient cause.
- (4) The Authority may, in an appropriate case, direct -
  - (i) examination of any records and submission of report;
  - (ii) conduct of any technical, scientific or market enquiry of any goods or services and submission of report and may also call



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for reports from experts and order such further investigation as may be necessary for effectual disposal of the application.

(5) The Authority shall have all the powers of a civil court in regard to the following matters, namely :-

- (i) discovery and inspection;
- (ii) enforcing the attendance of any person and examining him on oath;
- (iii) issuing commissions; and
- (iv) compelling production of books of account and other records.

### **Proceedings of the Authority**

- ❖ When one or both of the Members of the Authority other than the Chairperson is unable to discharge his functions owing to absence, illness or any other cause or in the event of occurrence of any vacancy or vacancies in the office of the Members, the Chairperson alone or the Chairperson and the remaining Member may function as the Authority.
- ❖ In case there is difference of opinion among the Members hearing an application, the opinion of the majority of Members shall prevail and order/advance ruling of the Authority shall be expressed in terms of the view of the majority but any Member dissenting from the majority view may record his reasons separately.
- ❖ Where the Chairperson and one other Member hear a case and are divided in their opinion, the opinion of the Chairperson shall prevail.

Proceedings before the Authority shall be open to the public and where the applicant/Commissioner so requests the Authority may order in a given case that no person other than the applicant, the Commissioner or their authorized representatives shall remain present during such proceedings.

### **Powers and functions of the Secretary of AAR**

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(1) The Secretary shall be in overall charge of the office of the Authority and shall function under direct supervision of the Chairperson.

(2) The Secretary shall -

- (a) have custody of the records and the official seal of the Authority;
- (b) receive all applications and petitions filed before the Authority;
- (c) scrutinize applications and petitions and point out omissions and defects in the application/petition and require the applicant/petitioner to make good the omissions or remove the defects within the time granted by the Secretary and in case of non-compliance place such application/petition before the Authority for appropriate orders;
- (d) forward a copy of the application along with its enclosures to the Commissioner to transmit records of the case, if any, and to offer his comments on the application;
- (e) place all the applications before the Authority for appropriate orders under sub-section (2) of section 28-I of the Customs Act or sub-section (2) of section 23D of the Central Excise Act or sub-section (2) of section 96D of the Service Tax Provisions, as the case may be;
- (f) issue notices or other processes, as may be ordered by the Authority;
- (g) verify service of notices or other processes on the parties to the application/petition and obtain necessary orders of the Chairperson in case of defective service;
- (h) requisition records from the custody of any person, on the orders of the Authority;
- (i) return original records to the person from whose custody they were requisitioned;
- (j) allow inspection of the records of the Authority;

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- (k) carry out any amendment of the records of the Authority to conform to its directions ;
- (l) grant to the parties to the application/petition certified copies of the orders/advance rulings and documents filed in the proceedings before the Authority;
- (m) preserve records of every application/petition and other materials for a period of five years from the date of disposal of the application and to weed out/destroy the same thereafter unless otherwise directed by the Authority; and
- (n) discharge any other function as may be assigned by the Authority by special or general order.

### **Points to be remembered while preparing the Application.**

- (1) Make sure to enclose Certified copies of documents evidencing their being a valid applicant in respect of Joint Venture, Wholly owned Indian Subsidiary Company viz:-
  - i) Present Shareholding pattern duly certified by Chartered Accountant / Regd. Company Secretary
  - ii) Copy of Memorandum of Articles & Associations, last Balance Sheet, if any etc.
  - iii) Copies of Joint Venture Agreement, MOU etc.
  - iv) List of Present Chairman/Managing Director/Directors alongwith their status whether Indian/Non-Resident or whether representative of foreign holding company or Indian company

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- (2) furnish the details in application and Annexure -1 & Annexure-II properly without leaving column blanks. The facts stated in the applications should be explained properly.
- (3) Statement containing the applicant's interpretation of law and / or facts in respect of questions should be enclosed with application.
- (4) Issue, on which Advance Rulings is sought, should be in proper question form.
- (5) Name and address of Jurisdictional Commissioner should be mentioned in the Application.
- (6) Questions related to Service Tax should not be clubbed in the applications of Central Excise or Customs. Separate applications are required to be filed under each Act.
- (7) Legible copies of documents should be furnished along with application.
- (8) The designation and authorization in favour of person who is signing the application should be filed with the application
- (9) Present economic/business activity should be properly explained in the application form, without which it is difficult to ascertain it to be a "proposed" activity.

### **Legal provisions at a glance**

Heading of section	Relevant Section
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## Authority for Advance Ruling

	<b>Custom Act, 1962</b>	<b>Central Excise Act, 1944</b>	<b>Finance Act, 1994 ( for Service tax)</b>
Definitions	28E	23A	96A
Authority for advance Ruling	28F		-
Vacancies etc. not to invalidate proceedings	28G	23B	96B
Application for advance Rulings	28H	23C	96C
Procedure on receipt of application	28I	23D	96D
Applicability of advance Ruling	28J	23E	96E
Advance ruling to be void in certain circumstances	28K	23F	96F
Power of Central Government to make rules	-	-	96-I.
Powers of authority	28L	23G	96G
Procedure of authority	28M	23H	96 H
Rules	Customs (Advance Rulings) Rules, 2002	Central Excise ( Advance Rulings) Rules, 2002	Service Tax (Advance Rulings) Rules, 2003
Regulations	AAR(Central Excise, Customs and Service Tax) Procedure Regulations, 2005		
Forms of Application	AAR (Cus-I)	AAR (CE-I)	AAR (ST-I)

For detailed study in the matter, website of Advance Ruling Authority: [www.cbec.gov.in/aar/aar.htm](http://www.cbec.gov.in/aar/aar.htm) may kindly be referred.

**Note:** This write up has been attempted to help the departmental officers. This may not be a perfect write up and there is scope to improve it further.

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If you have any suggestions in this regard, you are requested to send your suggestions /comments to [ramachandran.pgn7@gmail.com](mailto:ramachandran.pgn7@gmail.com) or [goyalcp@hotmail.com](mailto:goyalcp@hotmail.com).

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