

Advance Ruling Mechanism in GST

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 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 person or is desirous of obtaining registration. 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.

Objectives of Advance Ruling

The broad objectives for setting up a mechanism of Advance Ruling include:

- i. provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant;
- ii. attract Foreign Direct Investment (FDI);
- iii. reduce litigation;
- iv. pronounce ruling expeditiously in transparent and inexpensive manner;

What is an Advance Ruling?

“Advance ruling” means a decision provided by the Authority or the 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 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.

The definition of Advance ruling given under the Act is a broad one and an improvement over the existing systems of advance rulings under Customs and Central Excise Laws. Under the present dispensation, advance rulings can be given only for a proposed transaction, whereas under GST, Advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant.

What are the matters/questions specified in Section 97(2) & Section 100(1) of the CGST Act, 2017

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of CGST Act;
- (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 or both;
- (f) whether applicant is required to be registered;
- (g) 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.

Section 100(1) of the CGST Act, 2017 provides that concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced by the Authority for Advance Ruling, may appeal to the Appellate Authority.

Thus it can be seen that a decision of the Appellate authority is also treated as an advance ruling.

‘Authority for advance ruling’ (AAR) and ‘Appellate authority for advance ruling’ (AAAR)

The Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) constituted under

the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling (AAR) and Appellate Authority for Advance Ruling (AAAR) in respect of that State or Union territory under the CGST Act, 2017 also.

Thus it can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State / Union Territory Act and not the Central Act. This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. **It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR.**

To whom the Advance Ruling is applicable

An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who has sought the advance ruling 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.

Time period for applicability of 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.

However, an advance ruling shall, by an order passed by the AAR/AAAR, be declared 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 CGST/SGST 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 providing an opportunity of hearing to the applicant.

Procedure for obtaining Advance Ruling

The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner. The format of the form and the detailed procedure for making application have been prescribed in Rule 104 of the CGST Rules, 2017. An application for obtaining an advance ruling under sub-section (1) of section 97 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 (Section 49 deals with procedure of payment of tax/interest/penalty and the mechanism to make payment through Electronic Cash and Credit Ledgers). The application, the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule

26 of the CGST Rules, 2017. Rule 26 provides for the manner of authenticating documents through Digital Signature Certificate (DSC) or e-signature as specified in the Information Technology Act.

Upon receipt of an application, 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 the AAR will pass an order either admitting or rejecting the application.

Application for advance ruling shall 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 CGST Act.

If the application is rejected, it should be only after an opportunity of being heard is provided to the applicant and by way of a speaking order giving the reasons for rejection.

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.

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.

Appeals against order of AAR

If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. The form and manner of filing appeal with AAAR is given in Rule 106 of the CGST Rules, 2017. An appeal against the advance ruling shall be made by an applicant on the common portal in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited in the manner specified in section 49. Similarly, if the prescribed or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word prescribed 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. An appeal against the advance ruling shall be made by the concerned officer or the jurisdictional officer referred to in section 100 on the common portal in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal. The appeal (by the applicant or jurisdictional officer), the verification contained therein and all the relevant documents accompanying such appeal shall be signed, -

- (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
- (b) in the case of an applicant, in the manner specified in rule 26 (DSC/e-signature).

Any appeal must be filed within thirty days from the date on which the advance ruling is communicated to the concerned officer, the jurisdictional officer and applicant.

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.

Manual Filing of applications before AAR & AAAR

As per rules 104 and 106 of the CGST Rules, 2017 the application for obtaining an advance ruling and filing an appeal against an advance ruling shall be made by the applicant on the common portal. However, due to the unavailability of the requisite forms on the common portal, a new rule 107A has been inserted vide notification No. 55/2017-Central Tax, dated 15.11.2017, which states that in respect of any process or procedure prescribed in Chapter XII, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include the manual filing of the said application, intimation, reply,

declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to the CGST Rules. Circular no.25/25/2017-GST dated 21.12.2017 prescribing the detailed procedure for manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling has been issued.

Therefore, till the advance ruling module is made available on the common portal, the following conditions and procedure have been prescribed for the manual filing and processing of the applications.

Form and Manner of Application to the Authority for Advance Ruling

An application for obtaining an advance ruling under sub-section (1) of section 97 of the CGST Act and the rules made thereunder, shall be made in quadruplicate, in FORM GST ARA-01. The application shall clearly state the question on which the advance ruling is sought. The application shall be accompanied by a fee of five thousand rupees which is to be deposited online by the applicant, in the manner specified under section 49 of the CGST Act. It is reiterated that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the CGST Act.

In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”. After entering the email id

and mobile number, a One Time Password (OTP) shall be sent to the email id. Upon submission of OTP, Systems shall generate a temporary ID and send it to the declared email and mobile number of the applicant.

On the basis of this ID, the applicant can make the payment of the fee of Rs. 5,000/- each under the CGST and the respective SGST Act. The applicant is then required to download and take a print of the challan and file the application with the Authority for Advance Ruling.

The application, the verification contained therein and all the relevant documents accompanying such application shall be signed-

- (a) in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- (b) in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
- (c) in the case of a company, by the Chief Executive Officer or the authorized signatory thereof;
- (d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in

this behalf;

- (e) in the case of a firm, by any partner thereof, not being a minor or the authorized signatory thereof;
- (f) in the case of any other association, by any member of the association or persons or the authorised signatory thereof;
- (g) in the case of a trust, by the trustee or any trustee or the authorised signatory thereof; or
- (h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48 of the CGST Act.

Form and Manner of Appeal to the Appellate Authority for Advance Ruling

An appeal against the advance ruling issued under subsection (6) of section 98 of the CGST Act and the rules made thereunder shall be made by an applicant in quadruplicate, in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited online, in the manner specified in section 49 of the CGST Act. It may be noted that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the CGST Act. The payment of fee shall be made as per the procedure detailed earlier.

An appeal made by the concerned officer or the jurisdictional

officer referred to in section 100 of the CGST Act and the rules made thereunder shall be filed in quadruplicate, in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal. As per section 100 (2) of the CGST Act, the appeal shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicant or the concerned officer or the jurisdictional officer, as the case maybe.

The appeal, the verification contained therein and all the relevant documents accompanying such appeal shall be signed-

- a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and
- b) in the case of an applicant, in the manner specified above

The application for advance ruling or the appeal before the Appellate Authority shall be filed in the jurisdictional office of the respective State Authority for Advance Ruling or the State Appellate Authority for Advance Ruling respectively.

If the space provided for answering any item in the Forms is found to be insufficient, separate sheets may be used. Further, the application, the verification appended thereto, the Annexures to the application and the statements and documents accompanying the Annexures must be self-attested.

The contact details of all the AARs for all States are available at http://www.gstcouncil.gov.in/sites/default/files/Details-of-AAR-as-on_22-11-2017.pdf

Rectification of Mistakes

The law gives power to AAR and AAAR 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 prescribed 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 must be heard before the order is passed.

Powers and procedure of AAR and AAAR

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, 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.

Conclusion

To conclude it can be stated that the law makes a comprehensive provision for advance rulings to ensure that disputes are minimal. Timelines are also given within which the ruling is to be given by the concerned authority.

The aim is to provide certainty to the taxpayer with respect to his obligations under the GST Act and an expeditious ruling, so that the relationship between the taxpayer and administration is smooth and transparent and helps to avoid unnecessary litigation.
