

CHAPTER XVII

ADVANCE RULING

Commentary :

The object of advance ruling is to enable a person to have clarity of tax dimensions in respect to a new business and venture, thereby eliminating unwanted differences and litigations in future. Unlike other statutes, the provisions not only provide for advance ruling authority, but also for an appellate authority for advance ruling.

95. DEFINITIONS

In this Chapter, unless the context otherwise requires,—

- (a) “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, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;
- (b) “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;
- (c) “applicant” means any person registered or desirous of obtaining registration under this Act;
- (d) “application” means an application made to the Authority under sub-section (1) of section 97;
- (e) “Authority” means the Authority for Advance Ruling referred to in section 96.

96. AUTHORITY FOR ADVANCE RULING

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling 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 in respect of that State or Union territory.

Commentary :

The corresponding section 96 of the SGST Act provides that the respective State Government shall by notification constitute the State Authority for Advance Ruling. Alternatively it also provides that the State Government may, on the recommendation of the Council, notify an authority of a different State to act as the authority for the State. Sub-section (2) thereof provides that the authority shall consist of one member from the officers from central tax and one member from the officers from state tax, to be appointed by such Central Government and State Government respectively.

Further section 15 of the UTGST Act provides that the Central Government shall by

notification constitute the Authority for Advance Ruling in respect to each Union Territory. Alternatively it also provides that the Central Government may, on the recommendation of the Council, notify an authority of a State or different Union Territory to act as the authority for the Union Territory. Sub-section (2) thereof provides that the authority shall consist of one member from the officers from central tax and one member from the officers from Union Territory tax, to be appointed by the Central Government.

The Authorities for Advance Ruling so appointed under the SGST / UTGST Act are deemed to be the Authority for Advance Ruling under the CGST Act.

97. APPLICATION FOR ADVANCE RULING

- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.
- (2) The question on which the advance ruling is sought under this Act, shall be in respect of,—
 - (a) classification of any goods or services or both;
 - (b) applicability of a notification issued under the provisions of this 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.

Commentary :

Advance ruling can be obtained only in respect to questions set forth in section 97 (2) above.

98. PROCEDURE ON RECEIPT OF APPLICATION

- (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer 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 said concerned officer.

- (2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application 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:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

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

- (3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.
- (4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.
- (5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.
- (6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.
- (7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

99. APPELLATE AUTHORITY FOR ADVANCE RULING.

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

Commentary :

The corresponding section 99 of the SGST Act provides that the respective State Government shall by notification constitute the State Appellate Authority for Advance Ruling. Such Appellate Authority shall consist of the Chief Commissioner of Central Tax as designated by the Board and the Commissioner of State Tax. Alternatively it also provides that the State Government may, on the recommendation of the Council, notify any Appellate Authority of a different State or Union Territory to act as the Appellate Authority for the State.

Further section 16 of the UTGST Act provides that the Central Government shall by

notification constitute the Appellate Authority for Advance Ruling in respect to each Union Territory. Alternatively it also provides that the Central Government may, on the recommendation of the Council, notify any Appellate Authority of a State or different Union Territory to act as the Appellate Authority for the Union Territory. Sub-section (2) thereof provides that such Appellate Authority shall consist of the Chief Commissioner of Central Tax as designated by the Board and the Commissioner of Union Territory Tax having jurisdiction over the applicant.

The Authorities for Advance Ruling so appointed under the SGST / UTGST Act are deemed to be the Appellate Authority for Advance Ruling under the CGST Act.

100. APPEAL TO APPELLATE AUTHORITY.

- (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section 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 concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

- (3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

101. ORDERS OF APPELLATE AUTHORITY

- (1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
- (2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.
- (3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
- (4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

102. RECTIFICATION OF ADVANCE RULING.

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

103. APPLICABILITY OF ADVANCE RULING

- (1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—
 - (a) on the applicant who had sought it in respect of any matter referred to in sub-section (2) of section 97 for advance ruling;
 - (a) on the concerned officer or the jurisdictional officer in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Commentary :

The advance ruling pronounced by the authority or appellate authority shall be binding on the applicant and on the jurisdictional officer of the applicant, unless the law, facts and circumstances have changed.

104. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.—The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

105. POWERS OF AUTHORITY AND APPELLATE AUTHORITY

- (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
- (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) issuing commissions and compelling production of books of account and other records,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

- (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

106. PROCEDURE OF AUTHORITY AND APPELLATE AUTHORITY

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

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