

Advance Ruling Scheme under GST

GST is a new tax law and in time to come will be the biggest revenue churning for the Central and State Governments. Every new tax law brings with it some unique issues dealing with interpretations of the provisions like what tax is payable, when to pay tax, whether credit is available or not, etc. Many a times these decisions are critical in nature and huge investments are at stake. GST law has provided for a well thought mechanism where by a person can approach a designated authority called the 'Authority for Advance Ruling' (AAR) and get a time bound & binding ruling on the questions that he may have. We have analyzed these provisions and explained them in FAQ mode for better understanding:

Frequently asked questions on Advance Ruling Scheme:

1. What is the scheme of Advance Ruling?

Appreciating the need of tax payers to get a reliable and binding answer to his queries pertaining to GST, Government has vide sections 95 to 104 of the CGST Act and SGST Act provided for extensive provisions for granting Advance Ruling. The process of obtaining an advance ruling is simple and time bound.

2. What is the meaning of Advance Ruling?

Section 95 (a) of the CGST Act defines the term "Advance Ruling" to mean a decision provided by the Authority or the Appellate Authority to an applicant on question raised by him on specified matters in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

3. Who can apply for attaining Advance Ruling?

Following persons can apply:

- a. Any person who is registered under GST
- b. Any person who is desirous of obtaining registration under GST

4. On which questions can advance ruling be sought?

Advance Ruling can be sought on following question:

- i. Classification of any goods or services or both
- ii. Applicability of a notification issued under the provisions of this Act
- iii. Determination of when to pay tax
- iv. Determination of Value of supply of goods or services or both
- v. Eligibility of Input Tax Credit
- vi. Determination of the liability to pay tax
- vii. Whether applicant is required to be registered;
- viii. Whether any act done by the applicant with respect to any goods or services results in a supply of goods or services.

5. At what stage can an application for advance ruling be preferred?

An application for AR can be filed in relation to a supply of goods or services or both when

- a. The supply is being undertaken by the applicant
- b. The supply is proposed to be undertaken by the applicant

In other words, AR can be preferred anytime before completion of the supply of goods or services or both.

6. Who is the Advance Ruling Authority?

The Central Government and the State Government each shall appoint one officer of the rank of Joint Commissioner as member of the AAR. Accordingly, AAR shall have officers as Members who will jointly hear and dispose off the applications received for advance rulings.

7. Where is the AAR located?

Every State Government shall appoint officers of the rank of Joint Commissioners, one from CGST and one from SGST to act as AAR.

Government of Gujarat (Finance Department) vide Notification No. (GHN-58)GST-2017-S.96(1)-TII dated 12.07.2017 has constituted Gujarat Authority for Advance Ruling consisting following members:

1. Shri Gyanchand Jain,
Joint Commissioner (CGST)
Ahmedabad North, Ahmedabad

and

2. Shri Rajan B. Mankodi,
Joint Commissioner (Legal),
State Tax, Ahmedabad

8. What is the jurisdiction of AAR?

AAR constituted under the SGST and CGST laws will have jurisdiction over the entire State. Tax payer registered say in Gujarat who is desirous of filing an application for obtaining an advance ruling will have to file his application with AAR of Gujarat

9. Who is the Appellate Authority?

State Government shall constitute an Authority to be known as the Gujarat Appellate Authority for Advance Ruling for GST for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority. This appellate authority shall consist of –

- i. Chief Commissioner of CGST
- ii. Commissioner of SGST

State Government may choose on the recommendations of the Council, to notify any Appellate Authority located in another State or Union territory to act as the Appellate Authority for the State.

10. Where is the Appellate Authority located?

Every State Government shall appoint officers of the rank of Joint Commissioners, one from CGST and one from SGST to act as AAR.

Government of Gujarat (Finance Department) vide Notification No. (GHN-59)GST-2017-S.99(1)-TII dated 12.07.2017 has constituted Gujarat Appellate Authority for Advance Ruling consisting following members:

1. Chief Commissioner of Central Tax
CGST, Ahmedabad

and

2. Dr. P. D. Vaghela,
Commissioner, State Tax,
Gujarat

11. What is the jurisdiction of Appellate Authority (AAAR)?

AAAR constituted under the SGST and CGST laws will have jurisdiction over the entire State. Tax payer registered say in Gujarat who is desirous of filing an appeal against an order of the AAR will have to file his application with AAAR of Gujarat

12. Is there a prescribed format in which the application is to be made?

Application for AR will have to made in Form GST ARA-01 on the GSTN portal. Right now the portal is not active in this regards, hence the application has to be filed manually at the office of the authority located in your Jurisdictional Commissionerate.

13. Is an applicant required to pay any fee for filing an application?

Along with the application, applicant is required to pay a fee of Rs. 5000 electronically.

14. How many copies of the application are to be filed?

Applicant is required to file the application on the GSTN portal in electronic mode and there is no provision for submission of any documents manually. However, till the GSTN is not activated in this regard, one will have to file 4 copies of the application and 1 copy will be his office copy, hence in total 5 copies will have to be prepared.

15. If the applicant bound to undertake the proposed activity for which he has obtained an advance ruling?

No, the applicant is not bound to undertake the proposed activity for which he has obtained an AR.

16. What does the phrase “application is admitted” as mentioned in section 98(4) of CGST Act mean?

The Authority may, after examining the application and the records called for and after hearing the applicant and the concerned officer, by order, either admit or reject the application. The Authority may reject the application if the question raised in the application is pending or decided any other proceedings in the case of the applicant.

Any Application cannot be rejected without giving an opportunity of being heard to the applicant.

A reasoned order for rejecting the application has to be given to the applicant.

If the AAR finds the application in order, it shall admit the same and issue an order in this regard.

17. How is the application processed after admission thereof?

After the application is admitted, AAR shall after examining all the records submitted earlier or during the proceedings by the applicant or the concerned officer and after providing an opportunity of being heard to both sides, pronounce its advance ruling on the questions specified in the application.

A reasoned order shall be issued by AAR.

18. What happens if the 2 members of the AAR have difference of opinion on the questions raised in the application?

If the members of AAR differ on any question raised in the application, 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.

19. What is the timeline within which the Authority has to pronounce its order?

The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

20. Does applicant have a right to be heard before a ruling is passed?

Yes, the applicant has the right to be heard –

- a. Before the application is sought to be rejected by the authority; and
- b. Before final ruling is passed (if application is admitted)

21. Is the ruling passed by AAR binding?

As per section 103, AR shall be binding only on the following persons:

- a. On the person filing the application
- b. On the concerned officer or the jurisdictional officer in respect of the applicant

Also note that AR shall not be binding if the underlying law, facts or circumstances supporting the original AR have changed.

22. Can the AR pronounced by AAR declared to be null and void?

If the Authority or the Appellate authority finds that AR or the appeal order pronounced by it has been obtained by committing a fraud or by suppressing or misrepresenting material facts it may in writing order such AR to be null and void. Once such order is passed, all provisions of the law and rules shall apply to the applicant.

Before cancelling the AR, applicant will have to be given a personal hearing.

23. Can the AR or the appeal order passed by them be amended, if yes what is the timeline for doing so?

Yes, the original order can be amended if any error apparent on the face of the record is noticed by the AAR or the Appellate AAR on its own accord or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant. If the amendment is resulting into enhancement of the tax liability of the applicant.

The original AR or the appeal order can be amended within a period of 6 months from the date of the order.

24. Till what time can the AR be declared to be null or void?

There is no time limit mentioned in the law for this, hence an AR can be declared as null and void any time after the original order was issued.

It is also important to note that, the period beginning with the date of such advance ruling and ending with the date of order for cancelling the original AR shall be excluded while computing the period for issuance of demand under section 73 and 74 of the CGST and SGST laws.

25. Can the applicant or the department prefer an appeal against the AR given by the AAR?

Yes, the applicant as well as the concerned officer or the jurisdictional officer if aggrieved with the AR can file an appeal within 30 days from the date of communication of the order.

Appellate Authority can condone the delay in filing of the appeal upto another 30 days if it is satisfied that the appellant was prevented by a sufficient cause from filing the appeal within the prescribed 30 days.

26. Is there a prescribed format in which the appeal is to be filed?

An appeal against the AR will have to be made in Form GST ARA-02 on the GSTN portal. It is expected that GSTN Advance Ruling module would be made active very shortly.

27. Is an applicant required to pay any fee for filing an application?

Along with the appeal, appellant is required to pay a fee of Rs. 10,000 electronically.

28. How many copies of the appeal are to be filed?

Applicant is required to file the appeal on the GSTN portal in electronic mode and there is no provision for submission of any documents manually. It is expected that GSTN Advance Ruling module would be made active very shortly.

29. What is the timeline within which the Authority has to pronounce its order?

Appellate Authority shall pronounce its order in writing within 90 days from the date of receipt of appeal or reference.

30. How is the appeal processed after filing thereof?

After the appeal is filed, Appellate Authority shall after providing an opportunity of being heard to both sides, pronounce its appeal order against the ruling appealed or reference made.

A reasoned order shall be issued by Appellate Authority.

31. What happens if the 2 members of the AAR have difference of opinion on the questions raised in the application?

If the members of Appellate Authority differ on any point or points referred to in the appeal or reference made by AAR, it shall be deemed that no AR can be issued in respect of the question under the appeal or reference.

32. What are the powers of AAR and Appellate Authority?

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

33. Is there a provision for filing of further appeal if an applicant is aggrieved with the order of the Appellate Authority?

Current GST law does not provide for any mechanism for filing further appeal against the order of the Appellate Authority either with the Appellate Tribunal, High Court or the Supreme Court, hence there is no judicial recourse available to an applicant in case the order of the Appellate authority is against him. Only recourse available to any applicant would be to approach the High Court and file a writ petition under article 226 of the Constitution of India.

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