

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 taxable person or is liable to be registered. 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 are:

- 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 a 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 on a proposed transaction, where as under GST, Advance ruling can be obtained on 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 the 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 constituted under the provisions of 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 under the CGST Act, 2017 also.

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 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 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 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 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 hearing 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 the Advance Ruling Rules.

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 he will pass an order either admitting or rejecting the application.

Application for advance ruling will 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 this Act.

If the application is rejected, it should be 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 authorised representative as well as the jurisdictional officers of CGST/SGST.

If there is a 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. 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. 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 prescribed form and has to be verified in prescribed manner. The format has been prescribed in the Advance Ruling Rules.

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.

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 tax payer with respect to his obligations under the GST Act and an expeditious ruling, so that the relationship between the tax payer and administration is smooth and transparent and helps to avoid unnecessary litigation.