

# Advance Ruling: GST Provisions

The advance ruling is a mechanism in which an assessee can raise issue before the authority in advance. It is a method of settling anticipated disputes in advance. It can be an effective bid to reduce confusion and promote transparency in tax administration. It also reduces risk of litigation. Many a times it is prudent to get the legal issues clarified before investment is made. In that situation, advance ruling mechanism can protect investments.

[CGST Act](#) provides for advance ruling in Section 95 to 106 of the Act. The Act provides for Authority for advance ruling in all states to be constituted under SGST/UTGST laws. Section 97(1) of the CGST Act says that 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.

Section 14 to 16 of the [UTGST Act](#) provides for constitution of Authority of advance ruling. Provisions are likely to remain similar in all SGST laws. The Authority shall consist of–

- (i) one member from amongst the officers of central tax; and
- (ii) one member from amongst the officers of Union territory tax,

to be appointed by the State government and Central Government in case of union territories. The qualifications, the method of appointment of the members and the terms and conditions of their service shall be such as may be prescribed.

**Section 16 of the UTGST Act provides that the Appellate Authority shall consist of**

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- (i) the Chief Commissioner of central tax as designated by the Board; and
- (ii) the Commissioner of Union territory tax having jurisdiction over the applicant.

There is a departure from the present advance ruling authority operating in indirect taxes.

The appointment of serving officers as advance ruling authority is likely to make the remedy of advance ruling ineffective and illusory. It has been experience of the tax-payers in the earlier regime of indirect taxes that departmental officers are biased and decide the matters in favour of the revenue. It has also been experienced that departmental officers, even when working as quasi-judicial authorities show scant regard for legal provisions and judicial precedence.

Creation of such biased authorities do not serve any purpose. It does not result in any relief to the assessee. On the other hand, it results in deterioration in regard of rule of laws and mockery of tax administration. Further, it fuels corruption and nepotism. Biased and unfair judgments of departmental authorities increases delays in determination of disputed points. It views of these it is submitted that tax laws ought to create authorities which are unbiased, fair and efficient. Further there must be provisions to punish biasedness and unfairness in these authorities. If it is not possible to create such fair and unbiased authorities, it is better not to create authorities. Creation of ineffective, biased and unfair authorities merely results in delays, corruption and mockery of rule of laws.

**Application:**

An application before the authority can be filed by any person registered under the Act or desirous of obtaining registration under this Act. Thus, it is not necessary that the applicant must be registered under these laws.

Section 97(2) of the CGST Act provides that following issues can be raised before the authority of advance ruling:

- (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.

From the list, it is clear that all issues can be raised before the authority of advance ruling, except question of determination of place of service.

Reading the provisions together, the law is creating vast structure for advance ruling. Every state shall one or more authority of advance ruling. Every state shall have appellate authority of advance ruling. Any person, registered under the Act or desirous of taking registration under the Act can approach the authority of advance

ruling. Almost all issues that can crop up in GST administration can be raised before the authority of advance ruling.

### **Binding effect of Advance ruling:**

Section 103 of the CGST Act provides that 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; (b) on the concerned officer or the jurisdictional officer in respect of the applicant. The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Considering the binding effect of advance ruling on the applicant, it becomes extremely necessary to create fair and unbiased authority for advance ruling. If such authorities are not fair, assessee may not approach them for fear of getting biased unfair orders which shall be binding on them. When an expectant registrant approaches the authority and receives biased and unfair order, he may decide not to start his business.

### **Procedure:**

The procedure has been prescribed in Section 98 of the CGST Act.

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. 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.

The Authority may, after examining the application and the records called for and after hearing the applicant or his authorized representative and the concerned officer or his authorized representative, by order, either admit or reject the application. 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. No application shall be rejected unless an opportunity of hearing has been given to the applicant. Where the application is rejected, the reasons for such rejection shall be specified in the order.

Where an application is admitted, 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 authorized representative as well as to the concerned officer or his authorized representative, pronounce its advance ruling on the question specified in the application. The

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

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.

### **Appeal to Appellate authority:**

An appeal against the order of the authority of advance ruling can be filed before the appellate authority of advance ruling under Section 100 of the CGST Act.

The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98 by the Authority of advance ruling, may appeal to the Appellate Authority. An appeal can be filed only when the authority of advance ruling admits the application and pronounce ruling on the application. There can be no appeal against order of rejection of application by the authority of advance ruling under section 98(2) of the CGST Act.

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

Procedure to be followed in appeal is provided in Section 101 of the CGST Act. 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. The order of appellate authority of advance ruling 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 when there is point of difference between the members of authority of advance ruling. 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. 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.

**Rectification of error:**

Section 102 of the CGST Act gives power to authority of advance ruling and the appellate authority of advance ruling power to rectify errors apparent on the face of records. 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.

**Advance ruling void in certain circumstances:**

The authority of advance ruling and the appellate authority of advance ruling has been granted power of rectify error apparent on the face of records. Section 104 of the CGST Act provides that 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.

No such order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant. A copy of the order made declaring the advance ruling void shall be sent to the applicant, the concerned officer and the jurisdictional officer.

**Powers of authority:**

The Authority of advance ruling or the Appellate Authority of advance ruling 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](#).

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.

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

Such Advance ruling provisions is a great opportunity to develop a tax system which is not plagued by unnecessary disputes, delays, inefficiency and corruption. These objectives can be attained if we can appoint fair and unbiased persons as authority of advance ruling and appellate authority of advance ruling.

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