

## Chapter 17

# Advance Ruling

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### Statutory provisions

#### **95. Definitions**

*In this Chapter, unless the context otherwise requires, -*

- (a) “advance ruling” means a decision provided by the Authority or the Appellate Authority<sup>1</sup>[or the National Appellate Authority] to an applicant on matters or on questions

<sup>1</sup> Inserted *vide The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently*

<p><i>specified in sub-section (2) of section 97 or sub-section (1) of section 100<sup>2</sup>[or of section 101C], in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;</i></p> <p>(b) <i>"Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99;</i></p> <p>(c) <i>"applicant" means any person registered or desirous of obtaining registration under the Act;</i></p> <p>(d) <i>"application" means an application made to the Authority under sub-section (1) of section 97;</i></p> <p>(e) <i>"Authority" means the Authority for Advance Ruling, referred to in section 96;</i></p> <p>(f) <i><sup>3</sup>"National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A].</i></p>
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#### Related Provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 2(84)	Definition of Person
Section 97(2)	Question on advance ruling
Section 100(1)	Appeal to the Appellate Authority
Section 101B	Appeal to National Appellate Authority

#### 95.1 Introduction

This section defines the expressions 'advance ruling', 'applicant', 'application', 'Authority', 'Appellate Authority' and 'National Appellate Authority', for the purpose of this Chapter. The meanings of these words as assigned by the definitions have to be applied unless the context otherwise requires.

#### 95.2 Analysis

- (i) The expression 'advance ruling' means a decision given by the Authority for Advance Ruling (AAR, in short), the Appellate Authority for Advance Ruling (AAAR, in short) and the National Appellate Authority for Advance Ruling (NAAAR, in short) on the questions raised by the applicant in respect of matters specified in section 97(2) or section 100(1) or section 101C (section 101C is yet to be notified) in relation to the supplies of goods and/or services undertaken by the applicant.
- (ii) Such matters or questions could be in relation to supply of goods and/or supply of

<sup>2</sup> Inserted *vide The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently*

<sup>3</sup> Inserted *vide The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently*

services being undertaken or proposed to be undertaken by the applicant. The phrase 'being undertaken' is a present continuous tense which refers to supply which is underway. The scope of the advance ruling has been widened by including even questions/clarification pertaining to the activities which are being undertaken by the applicant. However, clarifications pertaining to supplies which have already been completed cannot be sought before the advance ruling authorities.

- (iii) The word "applicant" refers to any person already registered or one who desires to get registered under the Act. It is not mandatory to have a registration at the time of making an application for advance ruling. However, in case of an unregistered person it is mandatory to quote his PAN unless he is a non-resident. The term 'Person' has been defined in section 2(84) of the Act. An unregistered person can register temporarily on the GST portal and obtain a temporary reference number (TRN) with basic details like PAN, address, e-mail id and mobile number. The unregistered person can apply manually for an advance ruling quoting this TRN.
- (iv) One can make an application to the authority under section 97(1) stating the question on which he seeks advance ruling in relation to the supply of goods/services undertaken or proposed to be undertaken by the applicant. It is to be noted that the question shall be in relation to the outward supplies undertaken/ proposed to be undertaken by the applicant only. The applicant cannot raise questions pertaining to any inward supplies received except on the issues of input tax credit on such inward supplies.
- (v) Thus, an applicant can seek advance ruling if the following conditions are fulfilled:
  - (a) The applicant is either registered under the GST law or is desirous of obtaining registration.
  - (b) The matter or question pertains to any issue specified in sub-section (2) of section 97 or sub-section (1) of section 100 or of section 101C, in relation to any transaction involving the supply of goods or services or both.
  - (c) Such a transaction is being undertaken or is proposed to be undertaken. It is important to note that, no advance ruling can be sought on transactions already undertaken in the past.
- (vi) The word "Authority" refers to the AAR constituted under section 96 of CGST Act, 2017 in each State or Union Territory.
- (vii) The expression "Appellate Authority" refers to the Appellate Authority for Advance Ruling constituted under section 99 in each State or Union territory. Therefore, every State/Union Territory will have its own AAAR.
- (viii) The expression "National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.

### 95.3 Comparative review

For the first time an AAAR has been prescribed. This is a marked departure from the pre-GST regime, which did not provide for an appellate remedy against rulings given by AAR.

Also, under erstwhile laws, advance ruling could be sought by an applicant on an activity of production or manufacture of goods or import or export of goods proposed to be undertaken or a service proposed to be provided by him. However, under the GST laws, advance ruling can also be sought on a present activity of supply of goods and/or services being undertaken or proposed to be undertaken by the applicant.

Further, the scope of “persons eligible to apply for advance ruling” has been widened under the GST law as compared to the erstwhile indirect tax laws - Central Excise, Customs and Service Tax laws.

### 95.4 FAQs

Q1. Can advance ruling be given orally?

Ans. No. Advance ruling cannot be given orally in view of sections 98(6) and 98(7).

Q2. Can advance ruling be applied for after supply of goods and/or services?

Ans. No, as per section 95(a) of the Act, an application can be made for advance ruling in relation to the supply of goods and/ or services being undertaken by the applicant but not for a supply which has already been effected.

Q3. Who can make an application to the AAR ?

Ans. An application for advance ruling can be made by any person defined in section 2(84), either registered or is desirous of obtaining a registration under GST Law.

Q4. Advance rulings are binding on whom? Can they be binding on the Department?

Ans. Advance rulings given by the AAR are binding on-

- a) the applicant in respect of any matter referred to in section 97(2) for advance ruling.
- b) on the concerned officer or the jurisdictional officer in respect of the applicant.

### Statutory provisions

#### **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.*

**Extract of Delhi SGST Act, 2017:****96. Constitution of Authority for Advance Ruling**

(1) *The Government shall, by notification, constitute an Authority to be known as the Delhi Authority for Advance Ruling:*

*Provided that the Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for the State.*

(2) *The Authority shall consist of-*

*(i) one member from amongst the officers of central tax; and*

*(ii) one member from amongst the officers of State tax,*

*to be appointed by the Central Government and the State Government respectively.*

(3) *The qualifications, the method of appointment of the members and the terms and conditions of their services shall be such as may be prescribed.*

**Extract of the CGST Rules, 2017****103. Qualification and appointment of members of the Authority for Advance Ruling.**

<sup>4</sup>*[The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.]*

**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95 of CGST Act	Definition of Advance Ruling
Rule 103 of CGST Rules	Qualification and appointment of members of the Authority for Advance Ruling

**96.1 Introduction**

The AAR constituted under provisions of a State GST Act or UTGST Act shall be deemed to be the AAR in respect of that State or Union territory

**96.2 Analysis**

The AAR shall be located in each State/Union Territory constituted under the provisions of SGST Act/ UTGST Act. As per corresponding section 96 of the respective State GST Acts read with Rule 103 of the State GST Rules, the Government shall appoint officers not below the rank of Joint Commissioner as member of the AAR.

<sup>4</sup> Substituted w.e.f. 01.07.2017 vide Notf no. 22/2017- CT dt. 17.08.2017

The AAR of each State/UT shall consist of one member from amongst the officers of Central tax and one member from amongst the officers of State tax, to be appointed by the Central Government and the State Government respectively. The qualifications, method of appointment of the members and the terms and conditions of their services shall be as prescribed

As per section 96 of the State GST Acts, the State Government may, on the recommendation of the Council, notify any Authority located in another State to act as the Authority for Advance Ruling for the State.

As the AAR and the AAAR have been instituted under the respective State / Union Territory Act and not the Central Act, the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned State or Union Territory. Thus, an advance ruling in case of an applicant in Kerala cannot be made applicable to another division of the same company located in Karnataka. This has the potential to create a difficult situation where the jurisdictional officer of the division located in Karnataka may choose not to abide by the Advance Ruling issued by the Kerala AAR to another division of the same company in Karnataka. Similarly, a situation may also arise wherein the AAR in different States may conclude differently in respect of the same issue. Since the advance ruling is binding on the concerned officer or the jurisdictional officer only in respect of the applicant, there is no assurance that the same officers may apply the interpretation flowing from the jurisdictional AAR in the same or different manner with respect to another registered person in the State. But there is no reason to be anxious as the aim of tax administration is to ensure stability in the law and not create instability by deliberately misapplying the interpretations on AARs.

It is important to note that the members of the AAR are appointed from amongst the Government officers in tax Department, be it the CGST representative or the SGST representative. These officers who decide upon matters relating to taxability of a transaction, liability of the assessee, registration requirements and other matters stated in section 97(2) 'are themselves a creation of the system'. Such is the nature of the constitution of the AAR or AAAR that the very same officers who have interpreted the law in favour of tax collections will now sit in judgement on matters of levy, taxability and liability. Hence before applying for an advance ruling, the applicant must appreciate the fact that the members of the AAR or AAAR or NAAAR cannot question the *vires* of the provisions of the GST law.

The key to securing accurate ruling, is to present the facts accurately and ask the right questions. The understanding about the business seems to cloud taxpayer's mind so much that facts required to be appreciated by Authority are inaccurately presented. Care must be taken to avoid incomplete or inaccurate facts. Questions must be succinctly put instead of circuitous case study approach with 'if-then' alternatives.

Thus, it is important for an applicant to carefully consider before seeking an advance ruling however attractive and compelling the taxpayer's interpretation may seem to be. Given that section 103 states that an advance ruling shall have a binding effect on the applicant and the officers in respect of the applicant, the applicant should analyse the impact of an adverse ruling.

### 96.3 Comparative review

Under the erstwhile laws, there was only one AAR for all the three Central indirect tax laws i.e., Central Excise, Customs and Service Tax constituted by the Central Government under section 28F of the Customs Act, 1962 having its office in Delhi regulated under the Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005. In supersession of the said Regulations the Board made 'The Customs Authority for Advance Rulings Regulations, 2021', vide Notification No. 01/2020-Customs (NT), dated 04.01.2021 which came into effect from 01.04.2021. The Regulations prescribed two Authorities for Advance Ruling- in Delhi and in Mumbai with separate jurisdictions As per section 28EA of the Customs Act, the Board shall appoint an officer of the rank of Principal Commissioner of Customs or Commissioner of Customs as Customs Authority for Advance Rulings by way of notification. An appeal against the ruling lies only before the High Court under section 28KA of the Customs Act. Under the GST law, there will be one AAR in each State or Union Territory because the concept of advance ruling is being made applicable to SGST laws/ UTGST laws as well.

The composition of the AAR in the erstwhile law consisted of one Judicial Member as part of the authority. However, there are only two members in the GST AAR consisting of one member from the State and one from the Centre, both being officers of the GST regime.

### 96.3 FAQ

Q1. Where will the office of AAR be located ?

Ans. The office of the AAR will be located in each State/UT. However, the State Government, on the recommendation of the Council, may notify any AAR located in another State to act as the Authority for Advance Ruling for the State.

### Statutory provisions

#### 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 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.

**Extract of the CGST Rules, 2017****104. Form and manner of application to the Authority for Advance Ruling.**

- (1) 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.
- (2) The application referred to in sub-rule (1), the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule 26.

**106. Form and manner of appeal to the Appellate Authority for Advance Ruling.**

- (1) An appeal against the advance ruling issued under sub-section (6) of section 98 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.
- (2) An appeal against the advance ruling issued under sub-section (6) of section 98 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.
- (3) The appeal referred to in sub-rule (1) or sub-rule (2), 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.

**<sup>5</sup> [107A. Manual filing and processing.**

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, 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 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 these rules.]

<sup>5</sup> Inserted vide Notf no. 55/2017-CT dt. 15.11.2017



**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 98	Procedure on receipt of application
Section 100	Appeal to Appellate Authority
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

**97.1 Introduction**

This section specifies the matters in respect of which an advance ruling can be sought and prescribes the form and manner in which an application for advance ruling may be filed. No advance ruling can be sought on matters other than those specified in section 97(2).

**97.2 Analysis**

- (i) An applicant who seeks an advance ruling should make an application online in the prescribed Form GST ARA-01 together with a fee of ₹ 5,000/- CGST and ₹ 5,000/- SGST stating the question on which such a ruling is sought. The amount of fee shall be deposited in accordance with section 49. It is to be noted that the fee of ₹ 5,000/- CGST and Rs.5,000/- SGST shall not be refunded in any case.
- (ii) The application and all the relevant documents accompanying such application should be digitally signed through Digital Signature Certificate (DSC) or e-signature as specified in Rule 26.
- (iii) It is advised that the questions or issues in respect of which an advance ruling is sought be simple, direct and specific. The facts brought out in the application should be germane and pertinent to the issue at hand. Facts which do not necessarily concern the issue at hand should not be mentioned in the application as this might attract unnecessary attention to the business carried out by the assessee. Although an AAR cannot extend its scope by ruling on matters or issues not sought, it is still advisable that an applicant exercises restraint and caution while placing facts in the application.
- (iv) The question raised should be limited to the following:
  - a) Classification of any goods or services or both
  - b) Applicability of notification issued under the GST law
  - c) Determining the 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 liability to pay tax on any goods or services or both

- f) Requirement for registration by an applicant
- g) Whether any particular act done by the applicant amounts to or results in supply of goods or services or both.

Thus, it is apparent from this section that the Authority will not admit questions or matters which fall outside the purview of the issues stated above. The advance ruling application will be rejected if the question raised in the application is not covered within the purview of section 97(2) without getting into the merits of the case. It is important to note that an appeal cannot be filed before AAAR against such a rejection as the same is not appealable under section 100 as 100(1) clearly provides that if the applicant concerned is aggrieved by any advance ruling pronounced under section 98(4) of the Act, then the appeal would lie before the AAAR. The applicant can only challenge such rejection by way of judicial review in writ proceedings.

- (v) It is interesting to observe that matters relating to determination of “place of supply” are conspicuous by their absence. Place of supply poses a conflict between States as binding ruling in one State (on place of supply) yielding revenue to that State may deny revenue to another State which may be involved in the supply transaction. But place of supply as ‘incidental’ to other questions like taxability of the supply or zero-rated nature of the supply, are not beyond the scope of matters to be decided by the Authority. This emanates from the fact that the ruling given by the AAR and AAAR will be applicable only within the jurisdiction of the concerned State or Union Territory and not beyond. Recently, the Kerala High Court had examined the question as to whether the determination of the issue of place of supply can be the subject matter of advance ruling in the case of *Sutherland Mortgage Services [2020 (3) TMI 186 (Kerala) High Court]*. The Hon'ble Court held :

*“23. In the instant case, it is true that the issue relating to determination of place supply as aforesaid is not expressly enumerated in any of the clauses as per clauses (a) to (g) of sec. 97(2) of the CGST Act, but there cannot be any two arguments that the said issue relating to determination of place of supply, which is one of the crucial issues to be determined as to whether or not it fulfils the definition of ‘place of service’, would also come within the ambit of the larger of issue of “determination of liability to pay tax on any goods or services or both” as envisaged in clause (e) of sec. 97(2) of the CGST Act. The Advance Ruling Authority has proceeded on a tangent and has missed the said crucial aspect of the matter and has taken a very hyper technical view that it does not have jurisdiction for the simple reason that the said issue is not expressly enumerated in sec. 97(2) of the Act. This Court has no hesitation to hold that the said view taken by the Advance Ruling Authority is legally wrong and faulty and therefore the matter requires interdiction in judicial review in the instant writ proceedings. In that view of the matter, it is ordered that the abovesaid view taken by the Advance Ruling Authority is legally wrong and faulty and is liable to be quashed and accordingly declared and ordered.”*

However, the AAR in other States in many instances have rejected applications where the subject matter of the application involved determining the 'place of supply'.

- (vi) Also, no advance ruling can be sought on matters such as those relating to -
- a) Transitional credits specified in Chapter XX of the CGST Act, 2017
  - b) E-way bill requirements
  - c) Anti-profiteering issues
  - d) Restraining officers from initiating an action/proceeding under the Act

**Manual filing of an application for advance ruling:** Although rules 104 and 106 specify filing of an application on the common portal, rule 107A was introduced to allow manual filing of the same. Accordingly, *Circular No. 25/25/2017-GST dated 21.12.2017* was issued detailing the procedures for manual filing of an application for advance ruling till such time the advance ruling module is made available on the common portal. It is to be noted that though the application shall be filed manually, the fee is required to be deposited online in terms of section 49 of the CGST Act. The applicant is required to download and take a print of the challan and file the application duly signed by the authorised person with the Authority/Appellate Authority for Advance Ruling. The circular allowing manual filing of applications for advance ruling shall be effective only till such time online module is made available on the common portal. The GST portal provides the advance ruling application functionality. However, authorities in many States require hard copy submission of the application and supporting documents post filing of the appeal online.

### 97.3 Comparative review

The questions on which AAR can be sought are quite comprehensive as compared to the erstwhile indirect tax regime.

Under the erstwhile laws, the applicant may withdraw the application within 30 days from the date of application. However, there is no such express withdrawal provision under present GST law. This enables an applicant to withdraw the advance ruling application before a decision has been pronounced.

### 97.4 FAQs

- Q1. Should the applicant submit individual applications for advance ruling on various issues?  
Ans. No. The applicant can choose to consolidate all the issues in one application for advance ruling. There is no bar in the law that not more than one question can be raised in a single application.
- Q2. Should the applicant make an application for Advance Ruling under CGST Act, SGST Act and IGST Act separately?

Ans. No. The applicant can file one consolidated application seeking an advance ruling on all matters irrespective of the GST legislation to which the issue pertains to.

### Statutory provisions

#### **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 officers.*
- (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.*

**Extract of the CGST Rules, 2017****105. Certification of copies of advance rulings pronounced by the Authority.**

*A copy of the advance ruling shall be certified to be a true copy of its original by any Member of the Authority for Advance Ruling.*

**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 101	Orders of Appellate Authority
Section 116	Appearance by authorised representative
Rule 107A	Manual filing and processing

**98.1 Introduction**

This section sets out the procedure to be followed by the AAR on receipt of an application for advance ruling by an applicant.

**98.2 Analysis*****Receipt of Application***

- (i) On receipt of an application in Form GST ARA-01, the AAR shall forward a copy to the concerned officer and, if necessary, direct him to furnish the relevant records. Note that concerned officer is liable to provide 'interpretation' of the tax treatment applicable to the questions raised in the application. AAR is not bound to choose between the two interpretations (of applicant and of concerned officer) but conduct its own inquiry to reach a finding and pass its ruling.
- (ii) Such records should be returned as soon as possible to the concerned officer. No specific time limit has been set out for submission of the said records to the AAR
- (iii) The AAR may either accept or reject the application (if found non-maintainable) after considering the application, examining the records, hearing the applicant and the concerned officer or their authorised representatives. However, no application shall be rejected without giving the applicant an opportunity of being heard.
- (iv) Any application for advance ruling involving questions already pending or decided in any proceedings in the case of that applicant under any of the provisions of this Act shall not be admitted. A declaration is required to be made by the applicant at the time of filing the application to this extent. The provision does not define the term 'proceedings' nor does it mention any judicial forum before which the matter if pending the advance ruling application shall be rejected. Hence, this is an important point to take note of before filing

an advance ruling application. Care should be taken to collect this information from clients in order to avoid rejections after filing. Point to be noted is that the concerned departmental officers of the applicant shall disclose the fact to the AAR in case of any initiation of proceedings against the applicant. Many applications have been rejected by AARs of different States where the question raised was pertaining to eligibility of ITC on inward supplies for construction of immovable property which is to be let out on rent. In the case of *Vikram Traders [2020 (3) TMI 893- AAR Karnataka]* the application was rejected on the ground that the matter was pending before the Hon'ble Supreme Court in the case of *M/s. Safari Retreats Private Limited and Another vs. Chief Commissioner of Central Goods & Service Tax & Others [2019 (5) TMI 1278 - (Orissa High Court)]* and therefore the application was rejected as the matter was subjudice. This rejection is not legally untenable as the provision states that the matter shall be pending/decided in any proceedings in the case of the applicant only. Thus, it is important to note that issues pending or decided in a proceeding in respect of another person will not disentitle the applicant from seeking an advance ruling on the same issue.

- (v) Where the application is finally rejected, the reasons for such rejection shall be stated in the order.
- (vi) A copy of every order admitting or rejecting shall be sent to the applicant and to the concerned officer.

#### **Pronouncement of advance ruling**

Where the application is admitted, the AAR shall proceed as follows:

- Examine such further material as may be placed before it by the applicant or obtained by the AAR.
- Provide 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 in writing on the question(s) specified in the application within 90 days from the date of receipt of application. Delay beyond 90 days is not expected to be fatal to the binding nature of ruling passed beyond this time limit.

#### **Reference to Appellate Authority**

- (i) Where the members of the AAR differ on any question on which the advance ruling is sought, they shall state the point(s) of difference and refer it to AAAR for final decision. The time period within which a reference can be made to the AAAR is not prescribed in the Act nor there is any clarity if any fees for filing an appeal is required to be deposited.
- (ii) The AAAR to whom a reference is made is required to pronounce the ruling within ninety days of such reference.

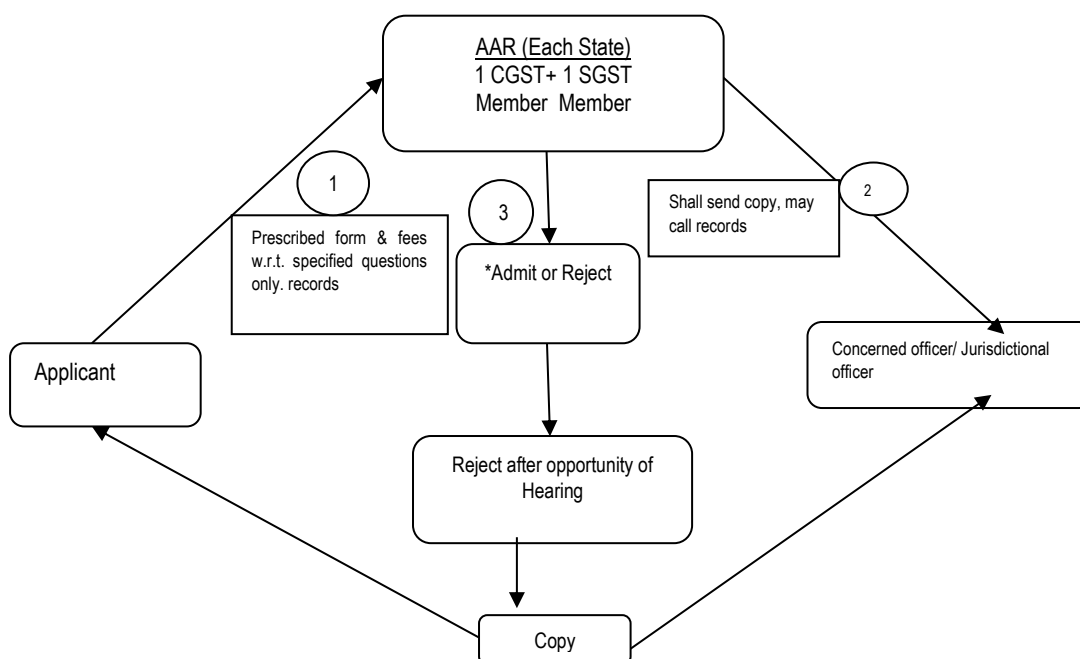
**Communication of advance ruling pronounced.**

A copy of the advance ruling pronounced by the concerned AAR, duly signed by the members and certified, shall be sent to the applicant, concerned officer and jurisdictional officer after pronouncement. A copy of the advance ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Ruling.

**98.3 Comparative review**

- (i) The provision has some similarities with the advance ruling provisions in Central Indirect Tax laws.
- (ii) In case of difference of opinion, the matter would be directly referred to AAAR, which is a new development.

An analysis of the above provision is presented in the following flowchart:

**APPLICATION FOR ADVANCE RULING – SECTIONS: 98 & 97**

\* Not to admit if already decided or pending under any provisions of the Act.

**Procedure for Advance ruling****98.4 FAQs**

Q1. When can the AAR reject the application for advance ruling?

Ans. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act or is not in relation to the issues prescribed under section 97(2) of the CGST Act.

Q2. Can an application be rejected without providing the applicant an opportunity of being heard?

Ans. No. Before rejecting the application, the AAR is bound to provide the applicant with an opportunity of being heard.

Q3. Is it necessary to specify reasons for rejecting an application in the order of the AAR?

Ans. Yes. Where the application is rejected, reasons for such rejection shall be given in the order.

Q4. When should a reference be made to AAAR?

Ans. A reference shall be made to AAAR stating the point of differences, when the members of the Authority differ on any question on which advance ruling is sought.

### 98.5 MCQs

Q1. On receipt of an application for advance ruling, the Authority for Advance Ruling shall:

- (a) fix a date of hearing
- (b) forward a copy of the same to concerned officers
- (c) None of the above
- (d) Both (a) and (b)

Ans. (b) forward a copy of the same to concerned officers.

Q2. AAR shall refuse to admit the application if the issue raised in the application is already pending in the applicant's own case before:

- (a) the Appellate Authority
- (b) the Appellate Tribunal
- (c) any Court
- (d) All the above

Ans. (d) All the above

Q3. The AAR shall pronounce its advance ruling:

- (a) Without examining further materials placed before it by the applicant
- (b) After examining further materials placed before it by the applicant
- (c) Without providing the applicant or his authorised representative an opportunity of being heard
- (d) After providing the applicant or his authorised representative an opportunity of being heard
- (e) Both (b) & (d)



Ans. (e) Both (b) & (d)

Q4. The AAR should pronounce the ruling within:

- (a) 30 days from the date of receipt of application
- (b) 90 days from the date of receipt of application
- (c) 60 days from the date of receipt of application
- (d) 45 days from the date of receipt of application

Ans. (b) 90 days from the date of receipt of application

Q4. A copy of the advance ruling signed and certified by the members shall be sent to

- (a) Applicant
- (b) Concerned officer
- (c) Jurisdictional officer
- (d) All the above

Ans. (d) All the above

#### Statutory provisions

##### **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.*

#### Extract of Delhi SGST Act, 2017

##### **99. Constitution of Appellate Authority for Advance Ruling**

*The Government shall, by notification, constitute an Authority to be known as Delhi Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the advance ruling pronounced by the Advance Ruling Authority consisting of –*

- (i) *the Chief Commissioner of central tax as designated by the Board; and*
- (ii) *the Commissioner of State tax:*

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

**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 99 of SGST Act	Constitution of Appellate Authority for Advance Ruling

**99.1 Introduction**

The Appellate Authority for Advance Ruling shall be constituted in each State/UT. The State Government may, on the recommendations of the Council, notify any Appellate Authority located in another State or Union territory to act as AAAR for the State.

**99.2 Analysis**

AAAR constituted in each State/UT shall be deemed to be the AAAR in respect of that State/UT which will entertain appeals against any advance ruling that is passed by the AAR of that State/UT. However, similar to section 96 in respect of AAR, a State Government may, on the recommendations of the Council, notify any Appellate Authority located in another State/UT to act as AAAR for the State.

AAAR shall consist of Members representing the Central GST and the State GST. The Chief Commissioner of central tax as designated by the Board and the Commissioner of State tax shall constitute the AAAR .

**99.3 Comparative Review**

This is a new concept hitherto not found in the pre-GST regime. Under erstwhile tax laws, there was no provision for an Appellate Authority for Advance Ruling.

**Statutory provisions****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 or 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.*

**Extract of the CGST Rules, 2017****106. Form and manner of appeal to the Appellate Authority for Advance Ruling.**

- (1) An appeal against the advance ruling issued under sub-section (6) of section 98 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.
- (2) An appeal against the advance ruling issued under sub-section (6) of section 98 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.
- (3) The appeal referred to in sub-rule (1) or sub-rule (2), 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.

**<sup>6</sup> [107A. Manual filing and processing.**

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, 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 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 these Rules.]

**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 97	Application for Advance Ruling
Section 99	Appellate Authority for Advance Ruling
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

<sup>6</sup> Inserted vide Notf no. 55/2017-CT dt. 15.11.2017

### 100.1 Introduction

This section deals with the procedure to be followed for filing of an appeal before the Appellate Authority against the ruling` of the Authority under section 98(4).

### 100.2 Analysis

- (i) An appeal can be filed by the concerned officer or jurisdictional officer or the applicant, who is aggrieved by the ruling.
- (ii) Reference application may also be filed by AAR (when they are not in agreement *inter se*) to seek resolution by AAAR.
- (iii) The appeal should be filed within 30 days from the date of receipt of the ruling. This period can be further extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30 days.
- (iv) The appeal shall be filed by the aggrieved applicant in Form GST ARA-02 along with a fee of ₹ 10,000/- to be paid under the CGST Act and ₹ 10,000/- under the respective SGST Act. The payment has to be made online by debiting the electronic cash ledger only.
- (v) An appeal preferred by the concerned officer or the jurisdictional officer shall be in the prescribed Form GST ARA-03 without any fee and shall be signed by an officer authorized in writing by such officer.
- (vi) The procedure for manual filing has been detailed in *Circular No. 25/25/2017-GST dated 21.12.2017*. The same has been discussed in Para 97.2

### 100.3 Comparative review

This is a new mechanism evolved which was not prevalent in the erstwhile indirect tax regime.

### 100.4 FAQs

Q1. Who can file an appeal before AAAR ?

Ans. The concerned officer or jurisdictional officer or the applicant may file an appeal before AAAR , if he is aggrieved by the advance ruling pronounced by the Authority under section 98(4).

Q2. What is the time limit for filing an appeal before AAAR ?

Ans. The time limit for filing an appeal before AAAR is 30 days from the date of communication of the advance ruling to the aggrieved party. This time limit can be further extended by another 30 days if sufficient cause is shown for not filing the appeal within the first 30 days.

**Statutory provisions****101. Orders of Appellate Authority**

- (1) *The Appellate Authority may, after giving the parties to the appeal 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.*

**Extract of the CGST Rules, 2017****107. Certification of copies of the advance rulings pronounced by the Appellate Authority.**

*A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-*

- (a) *the applicant and the appellant,*
- (b) *the concerned officer of central tax and State or Union territory tax,*
- (c) *the jurisdictional officer of Central tax and State or Union territory tax, and*
- (d) *the Authority,*

*in accordance with the provisions of sub-section (4) of section 101 of the Act.*

**Related Provisions of the Statute**

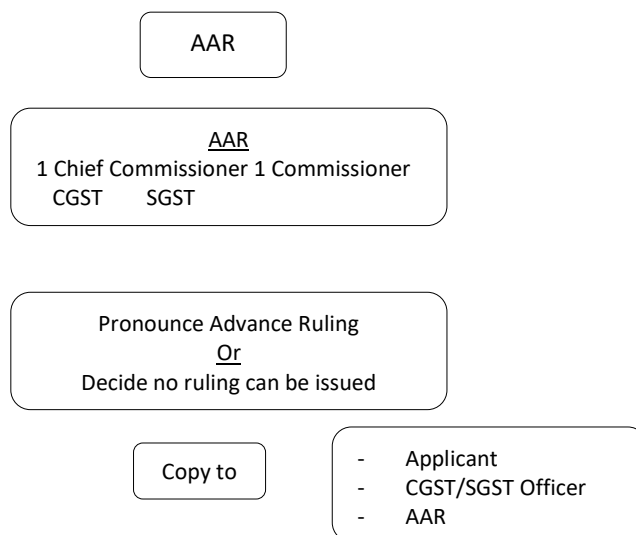
<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 97	Application for Advance Ruling
Section 99	Appellate Authority for Advance Ruling
Section 49	Payment of tax, interest, penalty and other amounts
Rule 26	Method of authentication

**101.1 Introduction**

This section prescribes the procedure to be followed by AAAR where an appeal has been preferred against an advance ruling by the AAR under section 98(4) or a reference has been made to it by the AAR under section 98(5).

**101.2 Analysis**

- (i) The AAAR must afford a reasonable opportunity of being heard to the parties before passing the order in which it may choose to either:
  - (a) Confirm the Advance Ruling passed by the AAR, or ;
  - (b) Modify the Advance Ruling appealed against; or
  - (c) Pass such orders as it may deem fit.
- (ii) The order should be passed within 90 days from the date of filing of the appeal or date of reference by the AAR.
- (iii) If there is a difference of opinion between members of the AAAR on the question covered under the appeal, then it would be considered that no advance ruling can be issued in respect of that matter on which no consensus was reached by the members. Thus, all matters or questions for which an advance ruling has been sought will not be deemed to be matters against which no advance ruling can be passed if AAAR has reached a consensus on other matters or questions raised therein.

**Appellate Authority for Advance Ruling – Section: 100 and 101**

**101.3 Issues and Concerns**

- (i) Is the AAAR empowered to decide only such matters contained in the Advance Ruling against which the appellant is aggrieved or can the Appellate Authority review the entire impugned Advance Ruling against which an appeal has been preferred?
- (ii) Where the advance ruling has been issued by the AAR under section 98(4) of the Act and the same has been the subject matter of an appeal before AAAR, what is the status of the original ruling during the interim period until the appeal has reached finality? Would the appellants and other parties to the advance ruling be obliged to conform to the advance ruling during the interim period?
- (iii) Where an advance ruling given by the AAR has been appealed against and in respect of which the members of AAAR have not been able to reach a conclusion, would such a question or matter still be deemed to be a matter against which no advance ruling can be issued although the AAR had originally decided the issue?
- (iv) It is important to note that no time limit has been prescribed for making a reference to AAAR.

**101.4 FAQs**

Q1. What is the time limit for passing an order by AAAR?

Ans. The time limit for passing an order by AAAR is 90 days from the date of filing of appeal.

Q2. Under what circumstances will it be deemed that no advance ruling can be issued in respect of the question covered under the appeal?

Ans. Where the members of AAAR differ on any point or points of the question referred to them in appeal under section 101(3), then it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

Q3. Can the ruling by AAAR be challenged in a higher Court of law?

Ans. The CGST/SGST Act clearly states that the advance ruling shall be binding on the applicant in respect of any matter on which the advance ruling has been sought and as such it does not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus, no further appeal lies and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant. However, the writ jurisdiction may be invoked before the Hon'ble High Court or the Supreme Court.

**SECTION 101A-NATIONAL APPELLATE AUTHORITY****<sup>7</sup>[101A. Constitution of National Appellate Authority for Advance Ruling.**

- (1) *The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.*
- (2) *The National Appellate Authority shall consist of—*
- (i) *the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;*
  - (ii) *a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;*
  - (iii) *a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.*
- (3) *The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:*
- Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:*
- Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.*
- (4) *The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.*
- (5) *No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.*

<sup>7</sup> Inserted vide *The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently*



- (6) *Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.*
- (7) *The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:  
Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.*
- (8) *The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.*
- (9) *The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.*
- (10) *The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:  
Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.*
- (11) *The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—*
- (a) *has been adjudged an insolvent; or*
  - (b) *has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or*
  - (c) *has become physically or mentally incapable of acting as such President or Member; or*
  - (d) *has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or*
  - (e) *has so abused his position as to render his continuance in office prejudicial to the public interest:*
- Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.*

- (12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.
- (13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).
- (14) Subject to the provisions of Article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.]

#### Related Provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 101B	Appeal to National Appellate Authority
Section 101C	Order of National Appellate Authority
Rule 107A	Manual filing and processing

#### 101A.1 Introduction

This section provides for Constitution of NAAAR. Each State has separate Appellate Authority which gives its advance ruling on issues sought by the applicants. Many rulings of different States have contradictory ruling due to which a necessity of a Central Appellate Authority was felt. This authority is constituted for addressing the conflicting decisions of different Appellate Authorities.

#### 101A.2 Analysis

##### **Constitution of NAAAR**

The NAAAR shall consist of—

- (i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

- (ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A;
- (iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least 3 years of experience in the administration of an existing law or the SGST Act or in the field of finance and taxation.

**Appointment**

- The President of the NAAAR shall be appointed by the Government after consultation with the Chief Justice of India or his nominee.
- The Technical Member (Centre) and Technical Member (State) of the NAAAR shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
- No appointment of the Members of the NAAAR shall be invalid merely by the reason of any vacancy or defect in the Constitution of the Selection Committee.
- Before appointing any person as the President or Members of the NAAAR, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

**Salary and Allowances**

The salary, allowances and other terms and conditions of service of the President and the Members of the NAAAR shall be such as may be prescribed.

**Tenure**

The President of the NAAAR shall hold office for a term of 3 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall also be eligible for reappointment.

The Technical Member (Centre) or Technical Member (State) of the NAAAR shall hold office for a term of 5 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall also be eligible for reappointment.

**Resignation**

The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office. Provided that the President or Member shall continue to hold office until the expiry of 3 months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

**Removal**

The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

However, the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

Further, the President and Technical Members of the NAAAR shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

**Restrictions**

Subject to the provisions of Article 220 of the Constitution, the President or Members of the NAAAR, on ceasing to hold their office, shall not be eligible to appear, act or plead before the NAAAR where he was the President or, as the case may be, a Member

**101A.3 Comparative review**

This is a new concept hitherto not found in the pre-GST regime. Under erstwhile tax laws, there was no provision for a NAAAR .

**101A.4 FAQs**

Q1. Who shall constitute the NAAAR?

- Ans. (i) The President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than 5 years;
- (ii) A Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A;

- (iii) A Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least 3 years of experience in the administration of an existing law or the SGST Act or in the field of finance and taxation. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act or is not in relation to the issues prescribed under section 97(2) of the CGST Act.

Q2. Who shall appoint the President and the members of the NAAAR?

Ans. The President of the NAAAR shall be appointed by the Government after consultation with the Chief Justice of India or his nominee

The Technical Member (Centre) and Technical Member (State) of the NAAAR shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

Q3. What is the tenure of holding office by the President and the members of the NAAAR?

Ans. The President of the NAAAR shall hold office for a term of 3 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall also be eligible for reappointment.

The Technical Member (Centre) or Technical Member (State) of the NAAAR shall hold office for a term of 5 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall also be eligible for reappointment.

Q4. When can the President and the Members of the NAAAR be removed from holding office?

Ans. The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who—

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

However, the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

Further, such removal shall not take place, except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.

### 101A.5 MCQs

Q1. The President of the NAAAR shall be:

- (a) Judge of the High Court
- (b) Judge of the Supreme Court
- (c) Chief Justice of India
- (d) Retired Judge of High Court

Ans. (b) Judge of the Supreme Court

Q2. The Members of the NAAAR shall hold office for a term of:

- (a) five years from the date on which he enters upon his office
- (b) seven years from the date on which he enters upon his office
- (c) four years from the date on which he enters upon his office
- (d) one year from the date on which he enters upon his office

Ans. (a) five years from the date on which he enters upon his office

Q3. The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who:

- (a) has been convicted for a period of continuous seven years.
- (b) Is medically unfit.
- (c) has been adjudged an insolvent
- (d) All of the above

Ans. (c) has been adjudged an insolvent

**<sup>8</sup>[101B. Appeal to National Appellate Authority**

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting advance rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority:

*Provided that the officer shall be from the States in which such advance rulings have been given.*

(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 applicants, concerned officers and jurisdictional officers:

*Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:*

*Provided further that the National 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, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.*

*Explanation. — For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings ought to be appealed against.*

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

**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definitions of Advance Ruling
Section 101A	Constitution of National Appellate Authority for Advance Ruling.
Section 101C	Order of National Appellate Authority
Rule 107A	Manual filing and processing

<sup>8</sup> Inserted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

**101B.1 Introduction**

This section prescribes the procedure to be followed where in respect of the questions referred to sub-section (2) of section 97, two or more conflicting advance rulings are given by Appellate Authorities of two or more States or Union Territories or both under sub section (1) or sub-section (3) of section 101, any officer authorised by Commissioner or Applicant, may prefer an appeal to NAAAR.

**101B.2 Analysis**

- (i) Where on questions referred to in sub-section (2) of section 97 conflicting advance ruling are given by the Appellate Authorities of two or more States or Union Territories or both under sub section (1) or sub-section (3) of section 101, any officer authorised by Commissioner or Applicant being distinct person, may prefer an appeal to NAAAR. The officer mentioned above shall be from the respective States in which such advance ruling has been sought. It is to be noted that only an applicant, being a distinct person (section 25) who is aggrieved by the ruling can prefer an appeal before the NAAAR. E.g.: Head office in Chennai has received a ruling from TN AAAR and the branch office in Bengaluru has received a contradictory ruling from the Karnataka AAAR. The appeal can be preferred only by such persons as the Head office and Branch office in different States are considered as distinct persons under the GST law.
- (ii) The appeal shall be filed within 30 days from the date on which ruling sought to be appealed against is communicated to the applicants and concerned officers. The officer authorised by Commissioner can file an appeal within a period of 90 days from the date of communication.
- (iii) The above period can be further extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30/90 days.
- (iv) The appeal above shall be filed in such form, accompanied by such fee and verified in such manner as may be prescribed.
- (v) NAAAR has not yet been constituted to take office and discharge functions. Pending the same, judicial review is the alternate remedy where conflict discussed in section 101A arises and is adverse to the applicant.

**101B.3 Comparative review**

This is a new mechanism evolved which was not prevalent in the erstwhile indirect tax regime.

**101B.4 FAQs**

Q1. When can an appeal be preferred to NAAAR?

Ans. In case, conflicting rulings are given by the Appellate Authorities of two or more States or Union Territories or both under Section 101(1) or (3), any office authorised by the



Commissioner or an Applicant, being distinct persons aggrieved by such advance rulings, may prefer an appeal to NAAAR.

Q2. What is the time limit period for filing the appeal?

Ans. An appeal shall be filed within 30 days from the date on which the ruling sought to be appealed against is communicated to the applicant, concerned officers and jurisdictional officers.

### 101B.5 MCQs

Q1. The time limit for filing appeal for the officer authorised by the Commissioner is -

- (a) 30 days from the date of the order
- (b) 90 days from the date of the order
- (c) 90 days from the date of communication of the order
- (d) None of the above

Ans. 90 days from the date of communication of the order

#### **<sup>9</sup>[101C. Order of National Appellate Authority**

- (1) *The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.*
- (2) *If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.*
- (3) *The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.*
- (4) *A copy of the advance ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.]*

<sup>9</sup> Inserted vide *The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently* .

**Related Provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definitions of Advance Ruling
Section 101A	Constitution of National Appellate Authority for Advance Ruling.
Section 101B	Appeal to National Appellate Authority
Rule 107A	Manual filing and processing

**101C.1 Introduction**

This section pertains to the orders passed by the NAAAR

**101C.2 Analysis**

- (i) The NAAAR must afford a reasonable opportunity of being heard to the parties before passing the order in which it may choose to either:
  - (a) Confirm the Advance Ruling passed by the AAAR
  - (b) Modify the Advance Ruling appealed against
  - (c) Pass such orders as it may deem fit
- (ii) If the Members of NAAAR differ in opinion at any point it shall be decided according to the opinion of the majority.
- (iii) The order should be passed within 90 days from the date of filing of the appeal under section 101B.
- (iv) The order should be duly signed by the members of NAA and certified in such manner as may be prescribed. It is interesting to see overriding effect being allowed by the Parliament in respect of the conflicting rulings (by AAR or even AAAR ) of any State.

**101C.3 Comparative review**

This is a new mechanism evolved which was not prevalent in the erstwhile indirect tax regime.

**101C.4 MCQs**

1. If the members of NAAAR differ in opinion on any point, then it shall be decided -
  - (a) as per opinion of majority
  - (b) as per opinion of President
  - (c) No opinion shall be given
  - (d) None of the above

Ans. (a) as per opinion of the majority

2. The order of NAAAR shall be passed within a period of -
- 90 days from the day of filing the appeal
  - 120 days from the day of filing the appeal
  - 60 days from the day of filing the appeal
  - None of the above

Ans. (a) 90 days from the day of filing the appeal

### Statutory provisions

#### **102. Rectification of advance ruling**

*The Authority or the Appellate Authority <sup>10</sup>[or the National Appellate Authority] may amend any order passed by it under section 98 or section 101 <sup>11</sup>[or of section 101C, respectively] 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 <sup>11</sup>[or the National Appellate Authority] on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or ~~the appellant~~ <sup>12</sup>[appellant, the Authority or the Appellate Authority] 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.*

### Related Provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definition of Advance Ruling
Section 98	Procedure on receipt of application
Section 101	Orders of Appellate Authority

#### **102.1 Introduction**

This section deals with the rectification of an error in the advance ruling, which is apparent on the face of the record, the time limit within which it may be rectified and the procedure to be followed in respect of the same.

<sup>10</sup> Inserted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

<sup>11</sup> Inserted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

<sup>12</sup> Substituted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently.

**102.2 Analysis**

1. The rectification may be made by the AAR, AAAR or NAAAR within six months from the date of the order and shall not result in a substantial amendment to the order being rectified. It is not clear from the language of section 102, as to whether the error has to be noticed within six months or the amendment has to be made within six months. The rectification shall not arise on account of any interpretational issues or change in views and opinions of the members of the AAR, Appellate Authority and NAAAR.

In the proviso to this section, it is mentioned 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.

The AAR, Appellate authority or NAAAR may amend the order to rectify any mistake apparent from records, if such mistake:

- (a) Is noticed by it on its own accord, or
- (b) Is brought to its notice by the concerned or the jurisdictional officer or the applicant or the appellant the AAR or the AAAR.

**102.3 FAQs**

Q1. When can an advance ruling order be rectified?

Ans. An advance ruling may be amended by the AAR or the AAAR or the or NAAAR as the case may be, with a view to rectify any mistake apparent from the record, which:

- (a) is noticed by the AAR, AAAR or NAAAR on its own accord, or
- (b) is brought to its notice by the concerned officer or the jurisdictional officer or the applicant or the appellant or the AAR or the AAAR;

Q2. Under what circumstances a notice is required to be issued to the applicant or appellant, as the case may be, before rectification of an advance ruling order?

Ans. Before rectification of an advance ruling order, a notice is required to be issued to the applicant or appellant, as the case may be, to provide him a reasonable opportunity of being heard, if such rectification has the effect of:

- (i) enhancing the tax liability or
- (ii) reducing the amount of admissible input tax credit.

**102.4 MCQs**

Q1. Rectification of order can be done under which of the following circumstances:

- (a) to do justice
- (b) when there is a mistake apparent on record

- (c) if it is in the interest of revenue
- (d) none of the above.

Ans. (b) when there is a mistake apparent on record.

Q2. The time limit to rectify the order is -

- (a) Three months from the date of the order
- (b) Six months from the date of the order
- (c) Six months from the date of communication of the order
- (d) None of the above

Ans. (b) Six months from the date of the order

### Statutory provisions

#### **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;*
- (b) *on the concerned officer or jurisdictional officer in respect of the applicant.*

<sup>13</sup>[(1A) *The advance ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—*

- (a) *the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);*
- (b) *the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961]*

(2) *The advance ruling referred to in sub-section (1) <sup>14</sup>[and sub-section (1A)] shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.*

<sup>13</sup> Inserted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

<sup>14</sup> Inserted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

**Related Provisions of the Statute:**

<b>Section or Rule</b>	<b>Description</b>
Section 95	Definitions of Advance Ruling
Section 97	Application for Advance Ruling

**103.1 Introduction**

This provision specifies the persons to whom the advance ruling will apply and the period for which the advance ruling shall stay in effect.

**103.2 Analysis**

- (i) The advance ruling pronounced by the Authority under this chapter shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. It is important to note the advance ruling is GSTIN specific. That is to say, the advance ruling obtained by an applicant would not be applicable to other distinct persons of such applicant. As such, it may be advisable to make the application for advance ruling by a distinct person, other than the distinct person who is desirous of undertaking such activity because the person making the application shall be bound by the advance ruling and not the other distinct person. However, advance ruling pronounced by NAAAR shall be binding on all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.
- (ii) Therefore, an applicant/appellant does not have an option but to abide by the advance ruling that he had applied for, except approaching a higher court through a writ petition.
- (iii) The advance ruling shall be binding on the said person/authority unless there is a change in law or facts or circumstances, on the basis of which the advance ruling has been pronounced. When any change occurs in such laws, facts or circumstances, the advance ruling shall no longer be binding on such person.
- (iv) Although an advance ruling may not be binding on persons other than the applicant or the appellant, it does throw light on the manner in which the law is being understood and interpreted. Other assesses should carefully draw inferences from the advance rulings.
- (v) The above provision which seeks to bind only the applicant to the advance ruling could be misused by which applications for advance rulings are filed through a proxy carrying on business with the same/similar business model or issues. This would help gauge the interpretation of the revenue officers without having to be bound by the ruling.

**103.3 Issues and Concerns**

- (i) An advance ruling would be in effect only till such time that the law, facts of the case or circumstances on which the original advance ruling was based, remain unchanged. One has to consider if Circulars issued by the CBIC subsequent to an advance ruling can be

considered to be a change in law, as may be contended by the proper officers. Circulars do not have any legal authority and are binding only on the Department; as such issue of Circulars cannot be termed as change in law.

- (ii) Care should be taken while implementing the decision of the AAR/AAAR/NAAAR. If the law, facts and circumstances have been the same since the inception of the GST law, then there is a probability that demands can be raised for the past periods for applying the law differently in the past. In other words, the advance ruling decisions are considered to be retrospectively applicable and not prospectively. E.g.: An AR was filed seeking clarification on the tax rate applicable to a particular supply of goods. These goods have been supplied in the past too, say @ 12%. The tax rate decided by the AAR is 18%. The applicant runs the risk of facing demand for the period prior to making the application since the product and the provisions of the law were the same for the past periods too. Hence, it is important to weigh this risk of litigation for the past periods before filing an application for advance ruling.

#### 103.4 Comparative review

The provision is similar to the advance ruling provisions in erstwhile Central Indirect Tax Laws as contained in section 23E of the Central Excise Act, section 28J of the Customs Act and section 96E of the Finance Act, 1994.

#### 103.5 FAQs

Q1. Is the advance ruling pronounced by the AAR / AAAR binding on other assessee?

Ans. The advance ruling pronounced by the AAR or the AAAR shall be binding only -

- (a) on the applicant who had sought it in respect of any matter referred to section 97(2);
- (b) on the concerned officer or jurisdictional officer in respect of the applicant.

Q2. Are all the tax authorities bound by the advance ruling?

Ans. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling, are bound by the advance ruling.

#### Statutory provisions

##### **104. Advance Ruling to be void in certain circumstances**

- (1) *Where the Authority or the Appellate Authority <sup>15</sup>[or the National Appellate Authority] finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 <sup>16</sup>[or under section 101C] has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation*

<sup>15</sup> Inserted vide *The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently*

<sup>16</sup> Inserted vide *The Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently*

*of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of the Act or the Rules made there under 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 office and the jurisdictional officer.*

#### Related Provisions of the Statute

<b>Section or Rule</b>	<b>Description</b>
Section 98	Procedure on receipt of application
Section 101	Orders of the Appellate Authority
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts

#### 104.1 Introduction

It states the circumstances under which the ruling would be considered as void *ab initio* and the resultant impact.

#### 104.2 Analysis

- (i) Where the Authorities (AAR, AAAR or NAAAR, as the case may be) subsequently discover that an advance ruling has been obtained by the applicant or appellant fraudulently or by way of suppression of material facts or misrepresentation of facts, the Authorities are empowered to declare such a ruling to be void *ab initio*.
- (ii) The above would result in all the provisions of the Act becoming applicable to the applicant as if such advance ruling had never been made.
- (iii) However, no such order can be passed by the AAR, AAAR and NAAAR without giving the applicant/ the appellant an opportunity of being heard. A copy of such order, once



passed, shall be sent to the applicant, appellant, AAR, AAAR, NAAAR and the concerned/jurisdictional officer.

- (iv) The period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void *ab initio* shall be excluded in computing the period for issuance of show-cause notice and adjudication order under sub-sections (2) and (10) of both sections 73 and 74.

Sections 73(2) and 73(10) specify the time limit within which a show cause notice and adjudication order respectively, may be issued/made in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax.

Similarly, sections 74(2) and 74(10) specify the time limit within which a show cause notice and adjudication order respectively, may be issued in a case where the tax is not paid, short paid, erroneously refunded or ITC has been wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

The period of limitation for raising a demand for recovery under section 73(10) and section 74(10) has been pegged at 3 years and 5 years respectively from the date of furnishing the annual return for the financial year in respect of which a demand is being raised or from the date of erroneous refund. The said period of 3 and 5 years shall be extended by a period equivalent to the period beginning with the date of advance ruling and ending with the date of order declaring the advance ruling to be void *ab initio*, to enable the officer to issue a show cause notice or adjudication order.

What this section seeks to do is to provide the proper officers an additional time period to recover such amount from the applicant/appellant as would have been payable by him had he not sought the advance ruling fraudulently. This section puts great responsibility on the applicant to ensure that all necessary material facts are disclosed in the application so as to provide a true and correct picture of the business/transaction being undertaken. If the ruling has been obtained by suppressing material facts, then the other audit and investigation proceedings can be initiated against the applicant.

### 104.3 Issues and Concerns

- (i) One should consider if this section can be made applicable to render an advance ruling void *ab initio* in *bona fide* cases where the applicant/appellant himself was not aware of certain facts at the time of seeking the advance ruling.
- (ii) Would the advance ruling also be declared to be void *ab initio* where an applicant on subsequent realisation of having genuinely erred in placing the facts before the AAR, AAAR or NAAAR, voluntarily brings it to the notice of the AAR or AAAR or NAAAR? Or would it be more appropriate for such an applicant to seek another advance ruling based on current facts that have subsequently come to his notice?

- (iii) Where the applicant/appellant has raised multiple issues to be decided by way of an advance ruling and it was subsequently discovered by the Authorities that there was suppression of fact in respect of one particular issue, can the advance ruling be held to be valid in respect of the other issues raised therein not involving any suppression of fact?

#### 104.4 Comparative review

The provision relating to the circumstances when an advance ruling can be declared void *ab initio* are more or less the same as those in the erstwhile Central Indirect Tax Laws as contained in section 23F of the Central Excise Act, section 28K of the Customs Act and section 96F of the Finance Act, 1994 except that under GST laws, an additional criterion of “*suppression of material facts*” has been added to serve as a basis for declaring an advance ruling as void *ab initio*.

#### 104.5 FAQs

Q1. Can an advance ruling be declared to be void without hearing?

Ans. No. An advance ruling cannot be declared to be void unless an opportunity of being heard has been given.

Q2. Under what circumstances advance ruling can be declared as void?

Ans. The AAR or AAAR or NAAAR may declare an advance ruling to be void *ab initio* if it the applicant or the appellant, as the case may be, has obtained it by fraud, suppression of material facts or misrepresentation of facts.

#### Statutory provisions

##### 105. Powers of Authority and Appellate Authority

(1) The Authority or the Appellate Authority <sup>17</sup>[or the National 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 <sup>18</sup> [or the National 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

<sup>17</sup> Inserted vide *The Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

<sup>18</sup> Inserted vide *Finance (No. 2) Act, 2019* with effect from a date to be notified subsequently

*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.*

**Related Provisions of the Statute:**

<b>Section or Rule</b>	<b>Description</b>
Section 195 of the Code of Criminal Procedure, 1973 (CrPC)	Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence
Chapter XXVI of the CrPC	Provisions as to offences affecting the administration of justice
Section 193 of the Indian Penal Code , 1860 (IPC)	Punishment for false evidence
Section 228 of the IPC	Intentional insult or interruption to public servant sitting in judicial proceeding
Section 196 of the IPC	Using evidence known to be false

**105.1 Introduction**

The provision specifies the powers conferred on the AAR, AAAR and NAAAR in the discharge of their functions.

**105.2 Analysis**

- (i) The Authorities have all such powers of a Civil Court as set out under the Code of Civil Procedure, 1908 for the purpose of discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records.

The Authorities are deemed to be a Civil Court for the purposes of section 195, except for the purposes of Chapter XXVI of the CrPC . The CrPC is a code to regulate the provisions relating to criminal procedure. Section 195 of CrPC bars any Court from taking cognizance of offences relating to contempt of the lawful authority of public servants, except on a complaint in writing of the public servant concerned or of some other public servant to which he is administratively subordinate. The object of the said section is to "protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds". Section 195 of CrPC provides the mandatory prerequisites, before a court can take cognizance of the offences specified therein. The procedure to be followed in such cases, where the court desires to initiate prosecution in respect of the offence(s) committed during, or in relation to, a proceeding before itself, is provided under section 340 of CrPC. The definition of 'Court' given in section 195 has been applied to

section 340 under Chapter XXVI of the CrPC. Thus, the advance ruling authorities will not be considered as a 'Court' for the provisions of Chapter XXVI.

- (ii) Every proceeding before the Authorities shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the IPC. This implies that even though the members of the AAR, AAAR and NAAAR may not be persons of judicial background, the proceedings before the three advance ruling authorities are considered as if the proceedings are held before a Judge.

### 105.3 Comparative review

The powers remain exactly the same as have been specified in section 23G of the Central Excise Act, section 28L of the Customs Act and section 96G of the Finance Act, 1994.

### 105.4 FAQs

Q1. What are the powers vested with the AAR and AAAR ?

Ans. The AAR or AAAR or NAAAR shall have all the powers of a Civil Court in respect of the following:

- (i) discovery and inspection;
- (ii) enforcing attendance of any person and examining him on oath;
- (iii) issuing commissions and compelling production of books of accounts and other records.

Q2. What is the nature of proceedings conducted by the AAR, AAAR and NAAAR under this Chapter?

Ans. The nature of proceeding conducted by AAR, AAAR and NAAAR shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the IPC

### 105.5 MCQs

Q1. The AAR/AAAR/NAAAR shall be deemed to be a \_\_\_\_\_ under the Code of Civil Procedure, 1908:

- (a) High Court
- (b) Supreme Court
- (c) Economic Offences Court
- (d) Civil Court

Ans. (d) Civil Court

Q2. The proceedings under this Chapter shall be deemed to be:

- (a) Quasi-judicial proceedings

- (b) Judicial proceedings
- (c) Administration proceedings
- (d) Special proceedings

Ans. (b) Judicial proceedings

### Statutory provisions

**106. Procedure of Authority, Appellate Authority <sup>19</sup>[and National Appellate Authority]**

*The Authority or the Appellate Authority <sup>19</sup>[or the National Appellate Authority] shall, subject to the provisions of this Chapter, have power to regulate its own procedure.*

#### 106.1 Introduction

It seeks to empower the AAR, AAAR and NAAAR to regulate their own procedures.

#### 106.2 Analysis

The Authorities shall have the power to regulate their own procedure.

#### 106.4 Comparative review

The powers remain exactly the same as are contained in section 23H of the Central Excise Act, section 28L of the Customs Act and section 96H of the Finance Act.

#### 106.5 Issues and Concerns

Various States have constituted Advance Ruling Authority and are issuing the Advance Ruling on various issues under the GST Law. There is no provision that the Advance Ruling pronounced in one State is applicable to all the States and Union Territories. There is possibility of difference of advance ruling by different States and accordingly it will be applicable to respective States only. Alternatively, just as the rulings of the NAAAR are binding on the persons registered under the same PAN, the decisions of one AAR can be made binding on all the persons registered under the same PAN.

**NOTE** – Readers may note that the provisions related to National Appellate Authority for Advance Ruling (NAAAR) discussed in this Chapter are yet to come into force.

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<sup>19</sup> Inserted *vide Finance (No. 2) Act, 2019 with effect from a date to be notified subsequently.*