For the sake of brevity, the terms “Authority for Advanced Ruling”, “Appellate Authority for Advance Ruling”, have been referred to as AAR and AAAR respectively in this Chapter.

After studying this chapter, you would be able to:

- comprehend and explain the terms-advance ruling, applicant, application, authority and appellate authority for the purpose of Advance Ruling with reference to the statutory definitions of such terms.

- understand and describe the various aspects relating to procedure to be followed for filing an application for Advance Ruling and apply it in practical scenario.

- list the matters on which advance ruling can be sought.

- gain knowledge regarding the applicability of advance ruling.

- identify and appreciate the powers of Authority and Appellate Authority.
1. **INTRODUCTION**

An advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as concerned Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious. It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered taxable person or is desirous to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There are time lines prescribed for passing an order by AAR and by AAAR.

The broad objectives for setting up a mechanism of Advance Ruling are:

- provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
- attract Foreign Direct Investment (FDI) by ensuring certainty in taxation aspects of transactions
- reduce litigation
- pronounce ruling expeditiously in a transparent and inexpensive manner

Chapter XVII – Advance Ruling [Sections 95 to 106] of the CGST Act stipulates the provisions relating to advance ruling. State GST laws also prescribe identical provisions in relation to advance ruling.

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**Provisions of advance ruling under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.**

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2. RELEVANT DEFINITIONS

- **Advance ruling** means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; [Section 95(a)].

- **Appellate Authority** means the Appellate Authority for Advance Ruling referred to in section 99. [Section 95(b)].

- **Applicant** means any person registered or desirous of obtaining registration under this Act; [Section 95(c)].

- **Application** means an application made to the Authority under sub-section (1) of section 97; [Section 95(d)].

- **Authority** means the Authority for Advance Ruling referred to in section 96; [Section 95(e)].

3. QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT [SECTION 97]

The definition of Advance ruling given under the Act is a broad one. Under GST, Advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

Advance Ruling can be sought for the following questions:-

(a) classification of any goods or services or both

(b) applicability of a notification issued under the provisions of CGST Act

(c) determination of time and value of supply of goods or services or both

(d) admissibility of input tax credit of tax paid or deemed to have been paid

(e) determination of the liability to pay tax on any goods or services or both
(f) whether applicant is required to be registered

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

**Note: Matters which cannot be questioned before AAR are:-**

- Question already pending in any proceedings in the case of applicant
- Question already decided in any proceedings in the case of an applicant

**4. AUTHORITY FOR ADVANCE RULING (AAR) AND APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) [SECTION 96 AND 99]**

- The Authority for advance ruling constituted under the provisions of State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory under the CGST Act, 2017 also.

- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. [Rule 103 of Chapter-XII: Advance Ruling of CGST Rules, 2017]

- The Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory under the CGST Act, 2017 also.

- Thus it can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act. This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR.
5. PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]

- The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner and shall be accompanied by a fee of five thousand rupees.
- Upon receipt of an application, the AAR shall send a copy of application to the concerned officer and, if necessary, call for all relevant records from the concerned officer. The relevant records called for by AAR shall be returned to the Concerned officer, as soon as possible.
- The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.
- Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
- If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.
- If the application is admitted, the AAR shall pronounce its ruling within 90 days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.
- Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.
- If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.
- A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.
6. APPEALS AGAINST ORDER OF AAR TO THE APPELLATE AUTHORITY [SECTION 100 AND 101]

- If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR.
- In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. Thus, it can be seen that a decision of the Appellate authority is also treated as an advance ruling.
- Any appeal must be filed within 30 days from the receipt of the advance ruling. The Appellate Authority may allow for an additional 30 days for filing an appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- The appeal has to be in the prescribed form and has to be verified in the prescribed manner. An appeal has to be filed by the applicant along with fee of ₹ 10,000/-. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid.
- The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.
- The said authority can either confirm or modify the ruling appealed against.
- A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

7. RECTIFICATION OF MISTAKES [SECTION 102]

- The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of 6 months from the date of the order.
- Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional officer.
If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

**8. APPLICABILITY OF ADVANCE RULING [SECTION 103]**

An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

The law does not provide for a fixed time period for which the ruling shall apply. Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

**9. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 104]**

- Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- If the Authorities (AAR and Appellate Authority) find that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.
- Consequently, all the provisions of the CGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).
- An order declaring advance ruling to be void can be passed only after hearing the applicant/appellant.
- A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.
10. POWERS AND PROCEDURE OF AAR AND AAAR [SECTION 105 AND 106]

- Both the AAR and AAAR are vested with the powers of a civil court under Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, issuing commissions and compelling production of books of account and other records.

- Both the authorities are deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Both the authorities are however not treated as civil court for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973.

- Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The AAR and AAAR also have the power to regulate their own procedure.

TEST YOUR KNOWLEDGE

1. Which are the matters enumerated in Section 97 for which advance ruling can be sought?

2. What is the objective of having a mechanism of Advance Ruling?

3. To whom will the Advance Ruling be applicable?

4. What is the time period for applicability of Advance Ruling?

5. Can an advance ruling given be nullified?

ANSWERS/ HINTS

1. Refer Para -3

2. Refer Para -1

3. Refer Para -8

4. Refer Para -8

5. Refer Para -9
**AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019**

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and the IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions\(^1\) relating to advance ruling are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

<table>
<thead>
<tr>
<th>Existing provisions</th>
<th>Provisions as amended by the Finance (No. 2) Act, 2019</th>
<th>Remarks</th>
</tr>
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<tbody>
<tr>
<td><strong>Section 95(a)</strong></td>
<td>“advance ruling” means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;</td>
<td>New clause (f) is being inserted in section 95 of the CGST Act to define the “National Appellate Authority for Advance Ruling”. Definition of advance ruling is being amended to provide that the decision given by the...</td>
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\(^1\) Provisions existing as on the date when the Study Material was released for printing
### New clause (f) in section 95

National Appellate Authority” means the National Appellate Authority for Advance Ruling referred to in section 101A.

### National Appellate Authority will also be an advance ruling.

### New section 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.

(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 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.

(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.

New section 101 B: 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 sought 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.

New section 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.

Section 102
The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Section 102
The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101 or 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 or the National Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, appellant, the Authority or the Appellate Authority within a period of six months from the date of the order, except under certain specified circumstances.

Section 102 of the CGST Act is being amended so as to allow the National Appellate Authority to amend any order passed by it so as to rectify any error apparent on the face of the record, within a period of six months from the date of the order, except under certain specified circumstances.
months from the date of the order:

**New sub-section (1A) of section 103**

(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.

**Section 103(2)**

The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unless there is a change in law or facts, on the applicants, being distinct person and all registered persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number.
### Section 104(1)
Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

### Section 104(1)
Where the Authority or the Appellate Authority 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 or under section 101C has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

### Section 105: Powers of Authority and Appellate Authority
(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—
(a) discovery and inspection;
(b) enforcing the attendance of any person and examining him on oath;
(c) issuing commissions and compelling production of books of account and other records,

### Section 105: Powers of Authority, Appellate Authority and National Appellate Authority
(1) The Authority or the Appellate Authority 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,

Section 105 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act.
have all the powers of a civil court under the Code of Civil Procedure, 1908.
(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

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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 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 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.

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Section 106 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have power to regulate its own procedure.