



सत्यमेव जयते



Scheme of Advance Rulings for Non-Resident & Specified Resident Investors, under the Indian Customs, Central Excise and Service Tax Provision



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Authority for Advance Rulings
Central Excise, Customs & Service Tax
Department of Revenue, Ministry of Finance
Government of India
www.cbec.gov.in/cae/aar/aar.htm

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THE SCHEME OF ADVANCE RULINGS

With a view to facilitating the non-resident and specified resident investor in ascertaining his tax liabilities in terms of Customs, Central Excise duties and Service Tax, a scheme of Advance Rulings has been incorporated in the Customs Act, 1962, the Central Excise Act, 1944 and in the Finance Act, 1994 by the Finance Act of 1999 and 2003. Chapter VB in the Customs Act, 1962, Chapter IIIA in the Central Excise Act, 1944 and Chapter VA in the Finance Act, 1994 are the relevant chapters under these three Acts.

Such knowledge of tax consequences would assist an applicant in assessing in advance the viability of a proposed activity/service. The rulings being final in nature, subject of course to Section 28J (2) of the Customs Act, 1962, Section 23E (2) of the Central Excise Act, 1944 and Section 96E (2) of Finance Act, 1994 (i.e. in the event of change in law or facts) would leave the parties free of any time consuming and expensive litigation subsequently. No provision of appeal against an advance ruling exists in the three enactments.

Forms and the manner of application have been prescribed under Customs (Advance Rulings) Rules 2002, Central Excise (Advance Rulings) Rules, 2002 and Service Tax (Advance Rulings) Rules 2003.

Authority for Advance Rulings (Central Excise, Customs And Service Tax) Procedure Regulations, 2005 {"AARUL (CEST)" Procedure Regulations} details the procedure for obtaining advance rulings.

ACTIVITY / SERVICE ON WHICH ADVANCE RULINGS CAN BE SOUGHT

Activity means import or export of goods under the Customs Act, 1962 and production or manufacture of goods under the Central Excise Act, 1944. Services refers to a taxable service so specified in Chapter V of the Finance Act, 1994 under the Service Tax Provisions.

BENEFITS OF OBTAINING ADVANCE RULING

Obtaining an advance ruling helps the applicant in planning their Customs & Central Excise activities or providing of a service well in advance. It would also bring certainty in determining the indirect tax liability, as the ruling is binding. Furthermore, it helps in avoiding

long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple & expeditious.

AUTHORITY PRONOUNCING ADVANCE RULING

An advance ruling is pronounced by an Authority known as the Authority for Advance Rulings (Central Excise, Customs & Service Tax), constituted under Section 28 F of the Customs Act, 1962 and as made applicable to Central Excise Act, 1944 and Finance Act, 1994 (for Service Tax provisions). It consist of a Chairman, who is a retired judge of the Supreme Court of India and two Members, one from the Indian Revenue Service (Customs & Central Excise) who is qualified to be a Member of the Central Board of Excise & Customs and the other from the Indian Legal Services who is or is qualified to be an Additional Secretary to the Government of India.

WHO CAN SEEK AN ADVANCE RULING?

- Any person who is a non-resident setting up a joint venture in India in collaboration with a non-resident or a resident;
- Any person who is a resident setting up a joint venture in India in collaboration with a non-resident;
- A wholly owned subsidiary Indian company of which the holding company is a foreign company;
- A joint venture in India, that is to say a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is non-resident having substantial interest in such arrangement;
- A resident falling within any such class or category of persons as the Central Government may by notification in the official gazette specify in this behalf. The Central Government has specified the following categories of persons as being eligible to seek advance rulings:-
 - (a) Any Public Sector Company;
 - (b) Residents proposing to import goods under the project import facility (heading 9801 of the Customs Tariff) for seeking rulings under the Customs Act,1962;
 - (c) Residents proposing to import goods from Singapore under the Comprehensive Economic Co-operation Agreement for seeking rulings on origin of goods under the Customs Act, 1962;
 - (d) Resident Public Limited Company.

{NOTE 1: “Resident”, “Non-resident”, “Indian company”, “Foreign company” and “Public Sector Company” have the meanings respectively assigned to them in clauses (42), (30), (26), (23A) and (36A) of section 2 of the Income- tax Act, 1961.

NOTE 2: “Public Limited Company” shall have the same meaning as is assigned to “Public Company” in clause (iv) of sub-section (1) of Section 3 of the Companies Act, 1956 (1 of 1956) and shall include a private company that becomes a public company by virtue of section 43A of the said Companies Act, 1956.

NOTE 3: Categories at (b) (c) & (d) above are eligible to file application under sub-section (1) of section 28H of the Customs Act, 1962 only}

WHO IS A NON-RESIDENT?

Under the existing provisions of the Income Tax Act, 1961 (Section 6) the taxable entities are broadly divided into three groups, viz., individual, Company and all other persons such as Hindu Undivided Family, Firm, Association of Persons, etc.

These taxable entities are divided into three categories depending upon their resident status. These categories are:

- Resident;
- Resident but not ordinarily resident; and
- Non-Resident

The resident status of each group of the taxable entities is, in brief, as under:

❖ **“Individual”:**

An individual is a ‘resident’ in India in any previous year:

1. If he has been in India during the previous year for 182 days or more or
2. If the individual (not being one of the categories mentioned in para below) has been in India during the previous year for less than 182 days but has been in India for an aggregate of 365 days or more in the four years preceding the previous year and his stay in India during the previous year is 60 days or more

3. However if :

- a. a citizen of India has left India during the previous year as a member of the crew of an Indian Ship or for the purpose of employment outside India; or
- b. a citizen of India or a person of Indian origin*, being outside India, has come to India on a visit during the previous year then, he is 'resident' only if his stay in India during the previous year is 182 days or more even where the duration of their stay in India during the earlier four years is 365 days or more.

* A person of Indian origin is one if he, or either of his parents or any of his grand-parents, was born in undivided India.

Individuals, who are not 'resident' in accordance with the above, are treated as 'non-resident' under the Income Tax Act.

❖ "Company":

A company is non-resident if it is neither an Indian company nor a company the control and management of whose affairs during the previous year, is situated wholly in India.

❖ "all other person":

Every other person is a non-resident in India if, during a previous year, the control & management of its affairs is situated wholly outside India.

WHAT IS AN INDIAN COMPANY ?

"Indian Company" means a company formed and registered under the Companies Act, 1956.

WHAT IS A FOREIGN COMPANY ?

"Foreign Company" means a company, which is not a domestic company.

QUESTION ON WHICH ADVANCE RULING CAN BE SOUGHT

Customs :

- Classification of any goods under the Customs Tariff Act, 1975;
- Applicability of a notification issued under sub section (1) of Section 25 of the Customs Act, 1962 having a bearing on the rate of duty;

- Principles to be adopted for the purposes of determination of value of goods under the provisions of Customs Act, 1962.
- Applicability of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of customs under the Customs Act, 1962.
- Determination of origin of goods in terms of the rules notified under the Customs Tariff Act, 1975 and matters related thereto.

Central Excise :

- Classification of goods under the Central Excise Tariff Act, 1985;
- Applicability of a notification issued under sub-section (1) of Section 5 A of the Central Excise Act, 1944 having a bearing on the rate of duty;
- Principles to adopted for the purposes of determination of value of goods under the Central Excise Act, 1944;
- Applicability of notifications issued under the Central Excise Act, 1944, Central Excise Tariff Act, 1985 and any duty chargeable under any other law for the time being in force in the same manner as duty of excise leviable under the Central Excise Act, 1944;
- Admissibility of credit of excise duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of excisable goods (Cenvat);
- Determination of the liability to pay duties of excise on any goods under this Act.

Service Tax:

- Classification of any service as taxable service under Chapter V of the Finance Act, 1994;
- Valuation of taxable services for charging service tax;
- Principles to be adopted for the purposes of determination of value of taxable service under the provisions of Chapter V;
- Applicability of notifications issued under Chapter V;
- Admissibility of credit of duty or tax in terms of the rules made in this regard;
- Determination of the liability to pay service tax on a taxable service under the provisions of Chapter V.

However, an advance ruling cannot be sought where the question –

- is already pending, in applicant's case, before any officer of the Customs/Central Excise/Service Tax, the Appellate Tribunal or any Court; or
- is the same as in a matter already decided by the Appellate Tribunal or any Court.

PROCEDURE FOR SEEKING ADVANCE RULINGS

The applicant may seek an advance ruling by filing an application to the Authority in the prescribed form and manner. The following basic steps need to be taken by an applicant:-

❖ Filing of an application

- An application, in quadruplicate, should be filed in the prescribed form either by the applicant in person or by an authorized representative or may be sent by registered post / speed post / courier service to the Secretary to the Authority.
- An application and the accompanying annexures may be neatly and legibly written typed or printed on one side of plain paper of A4 size (210X297 mm) leaving a left margin of 5 cms. and may be duly page numbered and indexed.
- Only photocopies of the documents on A-4 size may be enclosed with the application except when a document cannot be legibly reduced to A-4 size on photocopies and, in the latter case, it should be folded to A-4 size.
- The question of law or fact on which advance ruling is sought may be stated clearly in the application.

❖ Signing of an application

- An application including the documents annexed thereto should be signed in the manner indicated in note 11 to the prescribed form. Where a person signing the application and other documents claims to have been duly authorized to do so, the application should include a power of attorney, authorizing him to sign and an affidavit setting out the unavoidable reasons, which entitle him to sign it.

- If the applicant is not based in India, he shall, inter alia, indicate in a separate annexure to the application –
 - (a). his postal and e-mail address abroad;
 - (b). the name and address including e-mail address of his representative in India, if any, authorized to act on his behalf and to receive notices or other documents sent by the Authority.

❖ **Authorized Representative**

An applicant is entitled to represent his case before the Authority either personally or through an authorized representative, a document authorizing him to appear for the applicant should be enclosed in original, before the commencement of hearing. If the authorized representative is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is at the time employed. However, where the authorized representative is legal practitioner, such document of authorization shall be a duly executed vakalatnama.

❖ **Payment of Fee**

An application should be accompanied by a **fee of Rs. 2,500 (Two Thousand Five Hundred Indian Rupees)** through a demand draft drawn in favour of the “Authority for Advance Rulings (Central Excise, Customs & Service Tax)” payable at New Delhi.

❖ **Withdrawal of application**

An applicant may withdraw his application within 30 days from the date of filing the application, and thereafter at the discretion of the Authority.

TIME LIMIT FOR PRONOUNCING AN ADVANCE RULING

An advance ruling is required to be pronounced by the Authority within 90 days of the receipt of a valid application.

IS AN ADVANCE RULING BINDING ?

An advance ruling pronounced by the Authority shall be binding

- On the applicant who had sought it;

- In respect of the question raised in the application; and
- On the Commissioner of Customs / Central Excise / Service Tax, as the case may be, and the authorities subordinate to him, in respect of the applicant;

Unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

CONFIDENTIALITY

The contents of an application would not be disclosed to unauthorized persons.

ENQUIRY

For any assistance/further information, the Additional/Joint Commissioner, Authority for Advance Rulings (Central Excise, Customs & Service Tax), 4th Floor, Hotel Samrat, Kautilya Marg, Chanakyapuri, New Delhi-110021, INDIA may be contacted on any working day (Monday to Friday). The telephone numbers are given hereunder:

**0091-11-26876729 / 26876412 / 26876406,
Fax; 0091-11-26876412 / 26876409**

**Queries may also be emailed on the following
Mail ID: aarcce@nic.in**

**For detailed information / updation as well as orders /
advance rulings issued please visit our
website: www.cbec.gov.in/cae/aar/aar.htm**

Disclaimer: This brochure should not be construed as an exhaustive statement of law. For fuller details, reference should always be made to the relevant statutory provisions of the Customs Act, 1962, Central Excise Act, 1944, Finance Act, 1994 (For Service Tax provisions) and the Rules and Procedure Regulations made thereunder, as amended from time to time.