

# Advance Ruling Mechanism under GST

## Introduction

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

## Objectives of Advance Ruling

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

- i. provide certainty in tax liability in advance, in relation to an activity proposed to be undertaken by the applicant;
- ii. attract Foreign Direct Investment (FDI);
- iii. reduce litigation;
- iv. pronounce ruling expeditiously in transparent and inexpensive manner;

## What is an Advance Ruling?

“Advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 of the HPGST Act, 2017, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant.

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

## What are the matters/questions specified in Section 97(2) & Section 100(1) of the HPGST Act, 2017

- (a) classification of any goods or services or both;
- (b) applicability of a notification issued under the provisions of HPGST Act;
- (c) determination of time and value of supply of goods or services or both;
- (d) admissibility of input tax credit of tax paid or deemed to have been paid;
- (e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

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

Section 100(1) of the HPGST Act, 2017 provides that concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced by the Authority for Advance Ruling, may appeal to the Appellate Authority.

‘Authority for advance ruling’ (AAR) and ‘Appellate authority for advance ruling’ (AAAR)

The Authority for Advance Ruling (AAR) and the Appellate Authority for Advance Ruling (AAAR) constituted under

the provisions of the Himachal Pradesh Goods and Services Tax Act shall be deemed to be the Authority for advance ruling (AAR).

## Procedure for obtaining Advance Ruling

The applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner. The format of the form and the detailed procedure for making application have been prescribed in Rule 104 of the HPGST Rules, 2017. An application for obtaining an advance ruling under sub-section (1) of section 97 shall be made 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 (Section 49 deals with procedure of payment of tax/interest/penalty and the mechanism to make payment through Electronic Cash and Credit Ledgers). The application, the verification contained therein and all the relevant documents accompanying such application shall be signed in the manner specified in rule

26 of the HPGST Rules, 2017. Rule 26 provides for the manner of authenticating documents through Digital Signature Certificate (DSC) or e-signature as specified in the Information Technology Act.

Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter the AAR will pass an order either admitting or rejecting the application.

Application for advance ruling shall 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 CGST Act.

If the application is rejected, it should be only after an opportunity of being heard is provided to the applicant and by way of a speaking order giving the reasons for rejection.

If the application is admitted, the AAR shall pronounce its ruling within ninety days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.

If there is difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

## Appeals against order of AAR

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If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. The form and manner of filing appeal with AAAR is given in Rule 106 of the HPGST Rules, 2017. An appeal against the advance ruling 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. Similarly, if the prescribed or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word prescribed officer of SGST/CGST means an officer who has been designated by the SGST/CGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. An appeal against the advance ruling 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. The appeal (by the applicant or jurisdictional officer), the verification contained therein and all the relevant documents accompanying such appeal shall be signed, in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and in the case of an applicant, in the manner specified in rule 26 (DSC/e-signature).

Any appeal must be filed within thirty days from the date on which the advance ruling is communicated to the concerned officer, the jurisdictional officer and applicant.

The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

## Manual Filing of applications before AAR & AAAR

As per rules 104 and 106 of the HPGST Rules, 2017 the application for obtaining an advance ruling and filing an appeal against an advance ruling shall be made by the applicant on the common portal. However, due to the unavailability of the requisite forms on the common portal, a new rule 107A has been inserted vide notification No. 55/2017-State Tax, dated 15.11.2017, which states that in respect of any process or procedure prescribed in Chapter XII, 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 the 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 the HPGST Rules.

Further, in this regard, a Circular no.25/25/2017-GST dated 21.12.2017 prescribing the detailed procedure for manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling has been issued by the Central Government.

Therefore, till the advance ruling module is made available on the common portal, the following conditions and procedure have been prescribed for the manual filing and processing of the applications.

## Form and Manner of Application to the Authority for Advance Ruling

An application for obtaining an advance ruling under sub-section (1) of section 97 of the HPGST/CGST Act and the rules made thereunder, shall be made in quadruplicate, in FORM GST ARA-01. The application shall clearly state the question on which the advance ruling is sought. The application shall be accompanied by a fee of five thousand rupees which is to be deposited online by the applicant, in the manner specified under section 49 of the HPGST Act. It is reiterated that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the HPGST Act.

In order to make the payment of fee for filing an application for Advance Ruling on the common portal, the applicant has to fill his details using “Generate User ID for Advance Ruling” under “User Services”. After entering the email id and mobile number, a One Time Password (OTP) shall be sent to the email id. Upon submission of OTP, Systems shall generate a temporary ID and send it to the declared email and mobile number of the applicant.

On the basis of this ID, the applicant can make the payment of the fee of Rs. 5,000/- each under the HPGST and the CGST Act. The applicant is then required to download and take a print of the challan and file the application with the Authority for Advance Ruling.

The application, the verification contained therein and all the relevant documents accompanying such application shall be signed-

- (a) in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
- (b) in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;
- (c) in the case of a company, by the Chief Executive Officer or the authorized signatory thereof;
- (d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;

- (e) in the case of a firm, by any partner thereof, not being a minor or the authorized signatory thereof;
- (f) in the case of any other association, by any member of the association or persons or the authorised signatory thereof;
- (g) in the case of a trust, by the trustee or any trustee or the authorised signatory thereof; or
- (h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48 of the CGST Act.

## Form and Manner of Appeal to the Appellate Authority for Advance Ruling

An appeal against the advance ruling issued under sub-section (6) of section 98 of the HPGST Act and the rules made thereunder shall be made by an applicant in quadruplicate, in FORM GST ARA-02 and shall be accompanied by a fee of ten thousand rupees to be deposited online, in the manner specified in section 49 of the HPGST Act. It may be noted that though the application shall be filed manually till the advance ruling module is made available on the common portal, the fee is required to be deposited online in terms of section 49 of the HPGST Act. The payment of fee shall be made as per the procedure detailed earlier.

An appeal made by the concerned officer or the jurisdictional officer referred to in section 100 of the HPGST Act and the rules made thereunder shall be filed in quadruplicate, in FORM GST ARA-03 and no fee shall be payable by the said officer for filing the appeal. As per section 100 (2) of the HPGST Act, the appeal 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 applicant or the concerned officer or the jurisdictional officer, as the case maybe.

The appeal, 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 above

The application for advance ruling or the appeal before the Appellate Authority shall be filed in the jurisdictional office of the respective State Authority for Advance Ruling or the State Appellate Authority for Advance Ruling respectively.

If the space provided for answering any item in the Forms is found to be insufficient, separate sheets may be used. Further, the application, the verification appended thereto, the Annexures to the application and the statements and documents accompanying the Annexures must be self-attested.

The contact details of AARs for the state of Himachal Pradesh are as follows:

| Sr. No. | Name of Officer   | Designation  | Contact details  |
|---------|-------------------|--|--|
| 1)      | ( 2 )             | ( 3 )  | (4)  |
| 2       | Sh.Hitesh Sharma  | Joint Commissioner of State Taxes and Excise, Himachal Pradesh | Contact No. 01894235546<br>Email id: detc.tax@mailhptax.gov.in |
| 3       | Sh.Ravindra Kumar | Joint Commissioner, CGST, Himachal Pradesh                     | Contact No. 01722704039<br>Email id: ravindra.kumar76@nic.in   |

## Rectification of Mistakes

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

## Powers and procedure of AAR and AAAR

Both the AAR and AAAR are vested with the powers of a civil court under Code of Civil Procedure, 1908, for discovery and inspection, enforcing the attendance of a person and examining him on oath, and compelling production of books of account and other records. Both the authorities are deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973. Any proceeding before the authority shall be deemed to be judicial proceeding under section 193 and 228 and for the purpose of section 196, of the Indian Penal Code, 1860. The AAR and AAAR also have the power to regulate their own procedure.

## Conclusion

To conclude it can be stated that the law makes a comprehensive provision for advance rulings to ensure that disputes are minimal. Timelines are also given within which the ruling is to be given by the concerned authority.

The aim is to provide certainty to the taxpayer with respect to his obligations under the GST Act and an expeditious ruling, so that the relationship between the taxpayer and administration is smooth and transparent and helps to avoid unnecessary litigation.

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## Form GST ARA -01

*[See Rule 104(1)]*

### Application Form for Advance Ruling

|     |  |                                      |                                 |  |
|-----|--|--------------------------------------|---------------------------------|--|
| 1.  | GSTIN Number, if any/ User-id  |                                      |                                 |  |
| 2.  | Legal Name of Applicant  |                                      |                                 |  |
| 3.  | Trade Name of Applicant (Optional)   |                                      |                                 |  |
| 4.  | Status of the Applicant [registered / un-registered]                                 |                                      |                                 |  |
| 5.  | Registered Address / Address provided while obtaining user id                        |                                      |                                 |  |
| 6.  | Correspondence address, if different from above                                      |                                      |                                 |  |
| 7.  | Mobile No. [with STD/ISD code]   |                                      |                                 |  |
| 8.  | Telephone No. [with STD/ISD code]  |                                      |                                 |  |
| 9.  | Email address  |                                      |                                 |  |
| 10. | Jurisdictional Authority   | <<name, designation, address>>       |                                 |  |
| 11. | i. Name of Authorised representative   | Optional                             |                                 |  |
|     | ii. Mobile No.   |                                      | iii. Email Address              |  |
| 12. | Nature of activity(s) (proposed / present) in respect of which advance ruling sought |                                      |                                 |  |
|     | A. Category  |                                      |                                 |  |
|     | Factory / Manufacturing  | Wholesale Business                   | ▲                               |  |
|     | Warehouse/Deport   | Bonded Warehouse                     | Retail Business                 |  |
|     | Office/Sale Office   | Leasing Business                     | Service Provision               |  |
|     | EOU/ STP/ EHTP   | SEZ                                  | Service Recipient               |  |
|     | Works Contract   |                                      | Input Service Distributor (ISD) |  |
|     | B. Description (in brief)  | (Provision for file attachment also) |                                 |  |
| 13. | Issue/s on which advance ruling required (Tick whichever is applicable) :-           |                                      |                                 |  |
|     | (i) classification of goods and/or services or both                                  |                                      | <input type="checkbox"/>        |  |
|     | (ii) applicability of a notification   |                                      | <input type="checkbox"/>        |  |



|     |   |   |
|-----|---|---|
|     | issued under the provisions of the Act  |   |
|     | (iii) determination of time and value of supply of goods or services or both  | <input type="checkbox"/>                        |
|     | (iv) admissibility of input tax credit of tax paid or deemed to have been paid  | <input type="checkbox"/>                        |
|     | (v) determination of the liability to pay tax on any goods or services or both  | <input type="checkbox"/>                        |
|     | (vi) whether applicant is required to be registered under the Act   | <input type="checkbox"/>                        |
|     | (vii) whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term                      | <input type="checkbox"/>                        |
| 14. | Question(s) on which advance ruling is required   |   |
| 15. | Statement of relevant facts having a bearing on the question(s) raised.   |   |
| 16. | Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicant's view point and submissions on issues on which the advance ruling is sought). |   |
| 17. | I hereby declare that the question raised in the application is not (tick) - <input checked="" type="checkbox"/>  |   |
|     | a. Already pending in any proceedings in the applicant's case under any of the provisions of the Act<br>b. Already decided in any proceedings in the applicant's case under any of the provisions of the Act                        |   |
| 18. | Payment details   | Challan Identification Number (CIN) –<br>Date - |

### VERIFICATION

I, \_\_\_\_\_ (name in full and in block letters), son/daughter/wife of \_\_\_\_\_ do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents is correct. I am making this application in my capacity as \_\_\_\_\_ (designation) and that I am competent to make this application and verify it.

Signature

Place \_\_\_\_\_

Name of Applicant/Authorised Signatory

Date \_\_\_\_\_

Designation/Status



**Form GST ARA -02**  
*[See Rule 106(1)]*  
**Appeal to the Appellate Authority for Advance Ruling**

| Sr. No.   | Particulars   | Remarks   |
|---|---|---|
| 1   | Advance Ruling No.  |   |
| 2   | Date of communication of the advance ruling                 | DD/MM/YYYY                                      |
| 3   | GSTIN / User id of the appellant                            |   |
| 4   | Legal Name of the appellant.                                |   |
| 5   | Trade Name of the appellant (optional).                     |   |
| 6   | Address of appellant at which notices may be sent           |   |
| 7   | Email Address of the appellant                              |   |
| 8   | Mobile number of the appellant                              |   |
| 9   | Jurisdictional officer / concerned officer                  |   |
| 10  | Designation of jurisdictional officer / concerned officer   |   |
| 11  | Email Address of jurisdictional officer / concerned officer |   |
| 12  | Mobile number of jurisdictional officer / concerned officer |   |
| 13  | Whether the appellant wishes to be heard in person?         | Yes/No  |
| 14.   | The facts of the case (in brief)                            |   |
| 15.   | Ground of Appeal  |   |
| 16.   | Payment details   | Challan Identification Number (CIN) –<br>Date - |
| <b>Prayer</b>   |   |   |
| <p>In view of the foregoing, it is respectfully prayed that the Ld. Appellate Authority, &lt;Place&gt; may be pleased to:</p> <ol style="list-style-type: none"> <li>a. set aside/modify the impugned advance ruling passed by the Authority for Advance Ruling as prayed above;</li> <li>b. grant a personal hearing; and</li> <li>c. pass any such further or other order (s) as may be deemed fit and proper in facts and circumstances of the case.</li> </ol> <p>And for this act of kindness, the appellant, as is duty bound, shall ever pray.</p> |   |   |

**VERIFICATION**

I, \_\_\_\_\_ (name in full and in block letters), son/daughter/wife of \_\_\_\_\_ do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents is correct. I am making this application in my capacity as \_\_\_\_\_ (designation) and that I am competent to make this application and verify it.

Signature

Place \_\_\_\_\_

Name of Appellant/Authorised Signatory

Date \_\_\_\_\_

Designation/ Status