

Authority for Advance Rulings (Procedure) Rules, 2003

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Rule

AUTHORITY-FOR-ADVANCE-RULINGS-PROCEDURE-RULES-2003 of 2003

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No. G.S.R. 229(E), dated 21.3.2003.- In pursuance of section 28-M of the Customs Act, 1962 (52 of 1962) and section 23H of the Central Excise Act, 1944 (1 of 1944), the Authority for Advance Rulings hereby makes the following rules to regulate its own procedure in all matters arising out the exercise of its powers under the said Acts, namely:

1. Short title and commencement.-

(1) These rules may be called the Authority for Advance Rulings (Procedure) Rules, 2003. (2) They shall come into force on date of their publication in the Official Gazette.

2. Definitions.-

in these rules, unless the context otherwise requires, (a) "advance ruling" means an advance ruling as defined in sub clause (b) of section 28E of the customs Act, 1962 (52 of 1962) (hereinafter referred to as the said Customs Act) or sub clause (b) of section 23A of the Central Excise Act, 1944, (1 of 1944) (hereinafter referred to as the said Excise Act) as the case may be; (b) "applicant" means an applicant as defined in sub clause (c) of section 28E of the said Customs Act or sub clause (c) of Section 23A of the Central Excise Act, as the case may be; (c) "application" means an application

under sub section (1) of Section 28H of the Customs Act or under sub clause (1) of Section 23A of the Central Excise Act, as the case may be, but shall include, where the context permits, all applications, petitions, and representations of the nature referred to in rule 5;(d)"Authorised representative", (i) in relation to an applicant, shall have the meaning assigned to it in section 146A of the Customs Act or under section 35Q of the Central Excise Act, as the case may be; (ii) in relation to the Commissioner, means a person—(a) authorized in writing by the Commissioner; or (b) appointed by the Central Government as authorized representative or authorized by the Central Board of Excise & Customs to appear, plead and act for the Commissioner in any proceeding before the Authority; (e) "Authority" means the Authority for Advance Rulings constituted under section 28F of the said Customs Act read with section 23H of the said Excise Act; (f) "Chairman" means the Chairman of the Authority; (g) "Commissioner" means, (i) the Commissioner of Customs under the Customs Act or the Commissioner of Central Excise under the said Central Excise Act, as the case may be; or (ii) the Commissioner designated by the Central Board of Excise and Customs in this behalf in respect of an applicant; (h) "Member" means a member of the Authority and includes the Chairman; (i) "Rule" means the Customs (Advance Rulings) Rules, 2002 or the Central Excise (Advance Rulings) Rules, 2000 as the case may be; (j) "Secretary" means a Commissioner of Customs and Central Excise designated as the Secretary of the Authority and includes an Additional Commissioner of Customs and Central Excise and Deputy Commissioner of Customs and Central Excise appointed to assist the Secretary in his functions where the context so requires; (k) Words and expressions used and not defined herein but defined in the said Customs Act or the said Central Excise Act, as the case may be, shall have the same meanings assigned to them in the Act.

3. Language of the Authority.-

(1) The language of the Authority shall ordinarily be English: Provided that the Authority may, at the request of the parties, permit the use of Hindi in the proceedings before it to the extent it may consider appropriate and practical. (2) Where any document is in a language other than English or Hindi, an English translation thereof should also be filed along therewith.

4. Powers of the Authority.-

The Authority shall hear and determine the application made under sub section (1) of section 28H of the Customs Act or subsection (1) Section 23C of the Central Excise Act, as the such case may be, and such other applications, petitions and representations of an interlocutory, incidental or ancillary nature as may be necessary for a complete and effective disposal of the application, as the Chairman may by general or special order direct.

5. Power to remove difficulty.-

If any difficulty arises in giving effect to any order of the Authority, the Authority may, within a period of six months of passing of such order on its own motion or on an application made by the applicant or the Commissioner, which is not inconsistent with the provisions of the said Customs Act or Central Excise Act or rules made thereunder, remove difficulties.

6. Powers and function of the Secretary.-

(1)The Secretary shall have the custody of the records of the Authority and shall exercise such other functions as are assigned to him under this procedure or by the Chairman by separate order.(2)The official seal of the Authority shall be kept in custody of the Secretary.(3)The Secretary shall also have the following powers and duties, namely:(i)to receive all applications filed before the Authority;(ii)to scrutinize the applications to find out whether they are in conformity with the said Customs Act or the said Central Excise Act, as the case may be, or the rules made thereunder and the procedure(iii)to point out defects in such application to the parties and require them to remove the defects by affording them a reasonable opportunity to do so and, where, within the time granted, the defects are not removed, to obtain necessary orders of the Authority;(v)to fix the date of hearing for the applications in consultation with the Chairperson and direct the issue of notices therefor;(vi)to issue the service of notices or other processes and to ensure that the parties are properly served;(vii)to requisition records from the custody of any person including a Commissioner or any other authority;(viii)to allow inspection of records of the Authority;(ix)to bring on record any any formal amendment of the records of the Authority as directed by the Authority;(x)to grant certified copies of the orders of the Authority to the parties;(xi)to grant certified copies of documents filed in the proceedings to the parties in accordance with the rules;(xii)to bring on record legal representatives, in case of death or retirement of any party to the proceedings and to make such appropriate amendments in the cause title as may necessary in the other situations referred to in procedure;(xiii)to study or cause to study by deputing officers under his control any records which may be considered relevant for arriving at a decision by the Authority;Provided that any such study shall only be conducted on orders of the Authority;(xiv)to seek technical, chemical or market evaluation of any goods, which may be considered relevant in the case of any application. In the event such inquiry warrants a visit to the facilities of the applicant or to any other place, by the officers deputed by the Secretary to the Authority for the said purpose, the expenses for the travel, other incidental expenses and/or payment of any professional fees shall be borne by the applicant:Provided further that any such inquiry shall only be conducted on orders of the Authority.

7. Signing of Notices, etc.-

(1)Any requisition, direction, letter, authorisation, or written notice to be issued by t he Authority shall be signed by the Secretary or by an officer authorised by him.(2)Nothing contained in sub procedure (1) shall apply to any requisition or direction which the Authority may, in the course of the hearing, issue to an applicant or a Commissioner or an authorised representative.

8. Mode of service of notices.-

Every notice or other document required to be served on or delivered to any person, may be sent through process server, or by registered post or by fax to that person for his authorised representative at the address or fax number furnished by him for service or at the place where the person or his authorised representative ordinarily resides or carries on business or personally works for gain.

9. Procedure for filing applications.-

(1)An application shall be made in Form AAR (CUS) of the Customs (Advance Rulings) rules 2002 or Form AAR (CE) of the Central Excise (Advance Rulings) rules 2002, in quadruplicate and presented by the applicant in person or by an authorised representative to the Secretary or any other officer authorised by Secretary on this behalf or sent by registered post addressed to the Secretary along with a fee of two thousand five hundred Indian rupees in the form of demand draft drawn in favour of "Authority for Advance Rulings" payable at New Delhi,(2)The application, its verification and the annexures, statements and documents accompanying it, shall be signed in the manner set out in rules referred to in sub procedure (1);Provided that where a person signing the application and other documents claims to have been duly authorised in that behalf under the said rules, the application shall be accompanied by a power of attorney, authorising him to append his signature and an affidavit setting out the unavoidable reason which entitles him to sign it.(3)An application sent by registered post under sub procedure (1) shall be deemed to have been made on the date on which it is received in the office of the Authority.(4)If the applicant is not based in India, he shall indicate in Annexure 1 to the application:(a)His head office in any country,(b)the place where his office and residence is located or is likely to be located in India, and(c)the name and address of his representative in India, if any, authorised to receive notices and papers and act on his behalf.(5)The Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he may allow. Such application shall be deemed to have been made on the date when it is re presented after correction.

10. Submission of additional facts before the Authority.-

(1)The Authority may at its discretion permit or require the applicant to submit such additional facts as may be necessary to enable it to pronounce its advance ruling.(2)Where in the course of the proceedings before the Authority, a fact is alleged which cannot be borne out by or is contrary to the record, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

11. Questions contained in the application.-

The applicant shall not, except by leave of the Authority, urge or be heard in support of any additional question not set forth in the application, but in deciding the application the Authority shall at its discretion consider all aspect of the questions set forth as may be necessary to pronounce a ruling on the substance of the question posed for its consideration.

12. Date and place of hearing to be notified.-

(1)Where an application under sub section (1) of Section 28H of the said Customs Act or sub section (1) of Section 23C of said Central Excise Act is received from an applicant and there is no Commissioner designated as per the provisions of the Act and the rules and procedure made thereunder, a copy of the application and enclosures there to shall be forwarded to the Board calling upon it to specify or designate, within a period of two weeks, the Commissioner for the purposes of

the application, failing which the application may be decided without hearing the Commissioner.(2)On receipt of an application under sub section (1) of Section 28H of the said Customs Act sub section (1) of Section 23C of the said Central Excise Act in respect of which a Commissioner has been designated as per the provisions of such Acts and the rules and procedure made thereunder, the authority shall notify the date and place hearing of the application forwarded a copy of the application to the Commissioner calling upon him to furnish the relevant records of the case along with his comments, if any, on the contents of the application and nominate his authorised representative if he desired to be heard.

13. Authorization to be filed.-

An authorized representative appearing for the application at the hearing shall file, before the commencement of the hearing, a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is person regularly employed by the applicant the capacity in which he is at the time employed.

14. Continuation of proceedings after the death, etc., of the applicant.-

Where the applicant dies or is wound up or dissolved or disrupted or amalgamated or succeeded to by any other person or otherwise comes to an end, the application shall not abate and may be permitted by the Authority, where it considers that the circumstances justify it, to be continued by the executor, administrator, or other legal representative of the applicant or by the liquidator, receiver or assignee, as the case may be, on an application made in this behalf.

15. Hearing of application.-

(1)On the day fixed, or any other day to which the hearing may be adjourned, the Authority shall hear the applicant or his authorized representative in cases where it is proposed to reject the application or the applicant seeks / has sought an opportunity of being heard. The Authority may also hear the Commissioner or his authorised representative as well as if it considers it necessary before pronouncing its advance ruling.(2)In appropriate cases the Authority may call upon any person to supply such material, as it may consider necessary to assist the Authority in arriving at a decision.(3)The Authority may, on such conditions as the circumstances of the case may require, adjourn the hearing of the application.

16. Hearing of application ex parte.-

Where on the date fixed for hearing or any other day to which the hearing may be adjourned, the applicant or the Commissioner does not appear in person or through an authorized representative when called on for hearing, the Authority may dispose of the application ex parte on merits:Provided that where an application has been disposed of as above and the applicant or the Commissioner, as the case may be, applies within 15 days of receipt of the order and satisfies the

Authority that there was sufficient cause for his non appearance when the application was called upon for hearing, the Authority may after allowing the opposite party a reasonable opportunity of being heard, make an order setting aside the ex parte order and restore the application for fresh hearing.

17. Modification of the order.-

Where the Authority finds suo motu or on a representation made to it by the applicant or the Commissioner or otherwise, but before the advance ruling pronounced by the Authority has been given effect to by the assessing officer, that there is a change in law or facts on the basis of which the ruling was pronounced, it may by order modify such ruling in such respects as it considers appropriate, after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

18. Rectification of mistakes.-

(1)The Authority may, with a view to rectifying any mistake apparent from the record, amend any order passed by it before the ruling pronounced by the Authority has been given effect to by the assessing officer.(2)Such amendment may be made suo motu or when the mistake is brought to its notice by the applicant or the Commissioner, but only after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

19. Amendment of the Record.-

If at any stage of the proceedings before the Authority it appears that there is any factual or material error in the records the same shall be amended after hearing the applicant and the Commissioner.

20. Fees for supply of additional certified copies.-

(1)The Secretary may order grant of additional certified copies of documents or orders to the applicant or the Commissioner on a written request made by either of them.(2)Copying fees for supply of additional certified copies to the applicant shall be charged at rupees three per page and such fees shall be paid in advance in cash .

21. Inspection of records and fees thereof.-

(1)The applicant or the Commissioner or an authorized representative may be allowed to inspect the records of the case on making an application in writing to the Secretary provided that only those documents shall be allowed to be inspected which have been relied upon in the proceedings before the Authority.(2)The inspection shall be allowed only in the presence of an officer of the Authority and the applicant may be permitted to make notes of inspection but not to take copies of any document.(3)Fees for inspecting records of the Authority shall be charged from the applicant as follows:(a)Rupees one hundred for the first hour or part thereof, and(b)Rupees fifty for every

additional hour or part thereof.(4)Fees for inspection shall be paid in advance in cash.

22. Declaration of advance ruling to be void in certain circumstances.-

(1)Where a representation is made to the Authority by the commissioner of Customs or Commissioner of Central Excise or otherwise, that an advance ruling pronounced by it under sub section (6) of section 28 1 of the said Customs Act or under sub section (6) of Section 28D of the said Central Excise Act has been obtained by the applicant by fraud or misrepresentation of facts, such representation shall be made in quadruplicate and shall be accompanied by a statement of facts incorporating the fraud or misrepresentation as also particulars of the evidence to substantiate the claim of fraud or misrepresentation of facts.(2)On receipt of such representation a notice shall be issued to the applicant along with a copy of the representation for rebuttal and a reasonable opportunity shall be allowed to the applicant and the Commissioner for being heard before passing an order under sub section (2) of section 28 1 of the said Customs Act or sub section (2) of section 23D of the said Central Excise Act, as the case may be.

23. Proceedings not open to the public.-

Proceedings before the Authority shall not be open to the public and no person other than the applicant, the Commissioner or their authorized representatives shall, without the permission of the Authority, remain present during such proceedings.

24. Publication of orders.-

Such of the orders of the Authority, as the Chairperson deems fit for publication in any authoritative report or the press, may be released for such publication on such terms and conditions as the Chairperson may specify.

25. Authentication and communication of orders.-

(1)Every order of the Authority shall be duly signed by the members and bear the official seal of the Authority.(2)One certified copy of such order of the Authority shall be communicated to the applicant and the Commissioner under the signature of the Secretary or any other officer of the Authority authorised by him in this behalf and bear the official seal of the Authority.

26. Proceedings of Authority.-

(1)When one or both of the members of the Authority other than the Chairperson is unable to discharge his functions owing to absence, illness or any other cause or in the event of occurrence of any vacancy or vacancies in the office of the members and the case cannot be adjourned for any reason, the Chairperson alone or the Chairman and the remaining member may function as the Authority.(2)Subject to the provisions of sub procedure (3), in case there is difference of opinion among the members hearing an application, the opinion of the majority of members shall prevail

and orders of the Authority shall be expressed in terms of the view of the majority but any member dissenting from the majority view may record his reasons separately.(3)Where the Chairperson and one other member hear a case under sub-procedure (1) and are divided in their opinion, the opinion of the Chairman shall prevail.

27. Procedure in case of other application.-

The provision contained in these procedural rules for the hearing and disposal of application under subsection (1) of Section 28H of the said Customs Act under sub clause (1) of Section 23C of the said Central Excise Act shall apply, mutatis mutandis, to the hearing and disposal of all other applications, petitions and representations before the Authority.

28. Dress regulation.-

(1)An authorized representative shall appear before the Authority in dress prescribed for the members of his profession by the competent professional body, if any,(2)All other persons appearing before the Authority shall be properly dressed.