

Chapter 13: Authority for Advance Ruling

13.0 Authority for Advance Ruling under Section 28E of the Customs Act, 1962:

It means **knowing the law in advance**.

As per the Finance Act, 2018, w.e.f. 29.3.2018:

Section 28E(b) of the Customs Act, 1962 “advance ruling” means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation;’;

Section 28E(ba) of the Customs Act, 1962 “Appellate Authority” means the Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961;

Section 28E(c), of the Customs Act, 1962 “applicant” means any person,—

- (i) holding a valid Importer-exporter Code Number granted under section 7 of the Foreign Trade (Development and Regulation) Act, 1992; or
- (ii) exporting any goods to India; or
- (iii) with a justifiable cause to the satisfaction of the Authority,

who makes an application for advance ruling under section 28H;’;

Section 28E(e), of the Customs Act, 1962, “Authority” means the Customs Authority for Advance Rulings appointed under section 28EA;’;

As per Section 28EA, of the Customs Act, 1962, (1) The Board may, for the purposes of giving advance rulings under this Act, by notification, appoint an officer of the rank of Principal Commissioner of Customs or Commissioner of Customs to function as a Customs Authority for Advance Rulings:

Provided that till the date of appointment of the Customs Authority for Advance Rulings, the existing Authority for Advance Rulings constituted under section 245-O of the Income-tax Act, 1961 shall continue to be the Authority for giving advance rulings for the purposes of this Act.

(2) The offices of the Authority may be established in New Delhi and at such other places, as the Board may deem fit.

(3) Subject to the provisions of this Act, the Authority shall exercise the powers and authority conferred on it by or under this Act."

Application for Advance Ruling can be made in respect of following Questions:

1. Classification of goods or services
2. Applicable of any exemption notification
3. Determination of Assessable value
4. Determination of origin of goods in case of Customs
5. Determination of liability to pay duties of excise on any goods

Application can be rejected in the following cases:

- (a) If the question rose is already pending before an officer of Excise or Tribunal or any Court.
- (b) If the matter has already been decided by CESTAT or any Court.
 - Application can be withdrawn within 30 days from the date of filing the application.
 - Authority for Advance Ruling once accepted the application can decide the case within 90 days from receipt of application.

As per the Finance Act, 2018, w.e.f. 29.3.2018 section 28-I, in sub-section (6), the Authority shall pronounce its advance ruling in writing within 3 months of the receipt of application.

On whom, is the advance ruling pronounced by the Advance Ruling Authority under service tax binding?

(CA Final Mock Test May 2015)

Answer: Section 96E of the Finance Act, 1994, an advance ruling pronounced by the Authority under section 96D 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 96C;
- (b) on the Commissioner, and the Customs authorities subordinate to him, in respect of the applicant.

Such advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Example: Basant, a non-resident intends to provide a taxable service under a joint venture in collaboration with a non-resident but has entertained some doubts about its valuation.

Aarohi, Basant's friend, has obtained an 'Advance Ruling' from the Authority for Advance Rulings on an identical point. Basant proposes to follow the same ruling in his case. Basant has sought your advice as his consultant whether he could follow the ruling given in the case of Aarohi. Explain with reasons. (CA Final RTP May 2015)

Answer: An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Basant cannot make use of the advance ruling pronounced in the identical case of his friend, Aarohi. Basant should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of ₹2,500.

13.1 Eligible persons for AAR:

An application for advance ruling can be made by any of the following if they propose to undertake any business activity in India.

1. A Non-resident setting up a joint venture in India in collaboration with a non-resident or a resident.
2. A wholly owned subsidiary Indian company, of which the holding company is a foreign company, such holding company proposes to undertake any business activity in India.
3. A joint venture in India in which at least one of the participants, partners, or equity share holders is a non-resident having substantial interest in the joint venture.
4. Public Sector Undertakings (PSUs)
5. A Public Limited (NT-67/2011, dated 22.9.2011)
6. Any existing producer or manufacturer may also seek advance ruling in relation to any new business of production or manufacture proposed to be undertaken by him (w.e.f.10-5-2013)
7. Any existing importer or exporter may also seek advance ruling in relation to any new business of import or export proposed to be undertaken by him (w.e.f. 10-5-2013)
8. A resident private limited company can make application for Advance w.e.f. 11-7-2014.
9. **W.e.f. 1-3-2015, A resident firm (includes LLP; LLP which has no company as its partner; Sole Proprietorship or One-Person Company).**
10. As may be specified by the Central Government of India by issuing a notification.

Note: W.e.f. 10-5-2013, the admissibility of the credit of service tax paid or deemed to have been paid on input services used in the manufacture of excisable goods as well. [Section 23C(2)(e)]

Example: Mr. Q owns a sole proprietorship firm, 'Safe and Super Importers'. Mr. Q has never been to any place outside India. The firm proposes to import a product. Mr. Q is not sure of the correct classification of the product under Customs Tariff. His Tax Consultant has informed him that the said classification issue has been decided by the CESTAT in a different case. However, Mr. Q does not want to take any chances and is desirous of obtaining a ruling from the Authority for Advance Ruling under section 28H of the Customs Act, 1962 with respect to the classification of the product to be imported by it.

In the light of recent amendments, state whether Safe and Super Importers can seek advance ruling in the present case under the Customs Act, 1962? (CA RTP May 2016)

Answer: With effect from 01.03.2015, a resident firm can also apply for AAR. The sole proprietorship will have to satisfy the test of residency as per section 2(42) of the Income Tax Act, 1961 to be eligible to apply for an advance ruling.

Therefore, Safe and Super Importers, being a resident proprietorship firm, is an eligible applicant for advance ruling. Since in the given case, question intended to be raised by Safe and Super Importers is already decided by the CESTAT, advance ruling cannot be sought by it.