

## **Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005**

### CONTENTS

1. Short title and commencement
2. Definitions
3. Language of the Authority
4. Powers of the Authority
5. Powers and functions of the Secretary
6. Signing of notices, etc
7. Mode of service of notices, etc
8. Procedure for filling applications
9. Procedure on receipt of an application
10. Commissioner to be designated by the Board
11. Additional facts by way of a petition
12. Questions not specified in the application
13. Authorization to be filed
14. Continuation of proceedings after the death, etc., of the applicant.
15. Hearing of application
16. Hearing of application ex-parte
17. Withdrawal of application
18. Modification of the order/advance ruling
19. Rectification of mistake
20. Amendment of the records
21. Supply of certified copies
22. Inspection of records
23. Declaration of advance ruling to be void in certain circumstances
24. Proceedings open to the public
25. Publication of orders/advance rulings
26. Authentication and communication of orders/advance rulings
27. Proceedings of Authority
28. Procedure in case of petition
29. Dress regulation
30. Prohibition of arms, mobile phones etc

## **Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005**

In exercise of the powers conferred by Section 28-M of the Customs Act, 1962 (52 of 1962), Section 23-H of the Central Excise Act, 1944 (1 of 1944) and Section 96-H of the Finance Act, 1994

(32 of 1994) and in supersession of the Authority for Advance Rulings (Procedural) Rules, 2003, except as respects things done or omitted to be done before such supersession, the Authority for Advance Rulings (Customs, Central Excise and Service Tax) hereby makes the following regulations to regulate its own procedure in all matters arising out of the exercise of its powers under the said Acts, namely:-

### **1. Short title and commencement :-**

(1) These regulations may be called the Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005

### **2. Definitions :-**

In these regulations, unless the context otherwise requires,-

(a) "advance ruling" means an advance ruling as defined in clause (b) of Section 28E of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Customs Act) or clause (b) of Section 23A of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as the Central Excise Act) or clause (a) of S.96A of the Finance Act, 1994 in Chapter VA of the Finance Act, 1994 (32 of 1994) (Chapter V and VA of the said Act referred to herein as the Service Tax Provisions), as the case may be;

(b) "applicant" means an applicant as defined in clause (c) of Section 28E of the Customs Act, 1962 or clause (c) of Section 23A of the Central Excise Act, 1944 or clause (b) of Section 96A of the Service Tax Provisions, as the case may be;

(c) "application" means an application under sub-section (1) of Section 28H of the Customs Act, 1962 or sub-section (1) of Section 23D of the Central Excise Act, 1944 or sub-section (1) of S.96C of the Service Tax Provisions, as the case may be;

(d) "authorized representative",-

(i) in relation to an applicant means an authorized representative as defined in sub-section (2) of Section 146A of the Customs Act, 1962 or sub-section (2) of S.35Q of the Central Excises Act, 1944 or referred to in sub-section (5) of S.96D of the Service Tax Provisions, as the case may be;

(ii) in relation to a Commissioner, means a person-

(A) authorized in writing by the Commissioner to act as an authorized representative; or

(B) appointed by the Central Government as authorized representative or authorized by the Central Board of Excise and 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 28E of the Customs Act, 1962 and referred to in clause (e) of Section 23A of the Central Excise Act, 1944 Act and clause (d) of Section 96A of the Service Tax Provisions;

(f) "Chairperson" means the Chairperson of the Authority;

(g) "Commissioner", in respect of an application, means-

(i) the Commissioner of Customs or the Commissioner of Central Excise, as the case may be, specified in the application; or

(ii) the Commissioner designated by the Chairman of the Central Board of Excise and Customs in respect of the application;

(h) "Member" means a Member of the Authority and includes the Chairperson;

(i) "petition" means any petition of interlocutory, incidental or ancillary nature or representation filed in a pending or disposed of application;

(j) "Rules" means the Customs (Advance Rulings) Rules, 2002 or the Central Excise (Advance Rulings) Rules, 2002 or the Service Tax (Advance Rulings) Rules, 2003 , as the case may be;

(k) "Secretary" means a Commissioner of Customs or Commissioner of Central Excise designated as Secretary by the Authority and includes an Additional Commissioner or a Joint Commissioner of Customs or of Central Excise, so designated;

(l) words and expressions used and not defined herein but defined in the Customs Act or the Central Excise Act or the Service Tax Provisions, as the case may be, shall have the meanings respectively assigned to them in that enactment.

### **3. Language of the Authority :-**

(1) The language of the Authority shall be Hindi/English.

(2) Where any document is in a language other than Hindi or English, a Hindi/ English translation thereof duly attested shall be filed along with the original document.

#### **4. Powers of the Authority :-**

(1) The Authority shall have the power to hear and determine all applications and petitions.

(2) The Authority may, if any difficulty arises in giving effect to its order/advance ruling, either suo motu or on a petition made by the applicant or the Commissioner within a period of three months of noticing the difficulty, by appropriate order remove such difficulty, and pass such other order as it considers just and necessary in the circumstances of the case.

(3) The Authority may reopen the hearing of any case, before pronouncement of its order/advance ruling, for sufficient cause.

(4) The Authority may, in an appropriate case, direct-

(i) examination of any records and submission of report;

(ii) conduct of any technical, scientific or market enquiry of any goods or services and submission of report and may also call for reports from experts and order such further investigation as may be necessary for effectual disposal of the application.

(5) The Authority shall have all the powers of a Civil Court in regard to the following matters, namely:-

(i) discovery and inspection;

(ii) enforcing the attendance of any person and examining him on oath;

(iii) issuing commissions; and

(iv) compelling production of books of accounts and other records.

#### **5. Powers and functions of the Secretary :-**

(1) The Secretary shall be in overall charge of the office of the Authority and shall function under direct supervision of the Chairperson.

(2) The Secretary shall-

(a) have custody of the records and the official seal of the

Authority;

(b) receive all applications and petitions filed before the Authority;

(c) scrutinize applications and petitions and point out omissions and defects in the application/petition and require the applicant/petitioner to make good the omissions or remove the defects within the time granted by the Secretary and in case of non-compliance place such application/petition before the Authority for appropriate orders;

(d) forward a copy of the application alongwith its enclosures to the Commissioner to transmit records of the case, if any, and to offer his comments on the application;

(e) place all the publications before the Authority for appropriate orders under sub-section (2) of S.28(1) of the Customs Act, 1962 or sub-section (2) of S.23D of the Central Excise Act or sub-section (2) of S.96D of the Service Tax Provisions, as the case may be;

(f) issue notices or other processes, as may be ordered by the Authority;

(g) verify service of notices or other processes on the parties to the application/ petition and obtain necessary orders of the Chairperson in case of defective service;

(h) requisition records from the custody of any person, on the orders of the Authority;

(i) return original records to the person from whose custody they were requisitioned;

(j) allow inspection of the records of the Authority;

(k) carry out any amendment of the records of the Authority to conform to its directions;

(l) grant to the parties to the application/petition certified copies of the orders/ advance rulings and documents filed in the proceedings before the Authority;

(m) preserve records of every application/petition and other materials for a period of five years from the date of disposal of the application and to weed out/destroy the same thereafter unless otherwise directed by the Authority; and

(n) discharge any other function as may be assigned by the

Authority by special or general order.

**6. Signing of notices, etc :-**

(1) Every requisition, direction, letter, authorization, or notice to be issued on behalf of the Authority, shall be signed by the Secretary or by any other officer authorized by him.

(2) Nothing contained in sub-regulation (1) shall apply to any direction which the Authority may issue to an applicant or a Commissioner or an authorized representative present during the course of the hearing.

**7. Mode of service of notices, etc :-**

(1) The service of every notice or other document required to be served on or delivered to, any person in compliance with the orders of the Authority shall be in the manner specified hereunder.

(2) The service of notice or document shall be made by hand delivery or by registered post with acknowledgement due or by speed post or by courier service or by any other means of transmission of documents including e-mail/fax.

(3) Notices or documents required to be served on the parties to the application/ petition shall be deemed to have been served, if delivered at the address indicated in the application/petition and in the case of a Commissioner at the Office of the Commissioner.

**8. Procedure for filling applications :-**

(1) Every application filed before the Authority shall be in the prescribed form, that is to say, Form-AAR (CUS) of the Customs (Advance Rulings) Rules, 2002 or Form -AAR (CE) of the Central Excise (Advance Rulings) Rules, 2002 or Form - AAR (ST) of the Service Tax (Advance Rulings) Rules, 2003 as the case may be.

(2) The application shall be filed in quadruplicate and presented by the applicant in person or by an authorized representative to the Secretary or any other officer authorized by the Secretary in this behalf or sent by registered post or by courier service or by speed 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 (Customs, Central Excise and Service Tax)" payable at New Delhi.

(3) Applications for advance ruling shall be received between 10:00

a.m. and 1:00 p.m. and between 2:00 p.m. and 5:00 p.m. on any working day.

(4) Every application, its verification, annexures, statements and supporting documents shall be signed in the manner set out in the Rules.

(5) The application shall be accompanied by evidence that the person who has signed the application, verification and other documents is authorized/competent to sign under the Rules.

(6) Every application, its verification, annexures, statements and supporting documents shall be on A-4 size paper and should be neatly and legibly written, typed or printed leaving a left margin of 5 cms. and only on one side of a page in double-line spacing.

(7) An application under sub-regulation (1) shall be deemed to have been filed on the date on which it is received in the office of the Authority.

(8) 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.

#### **9. Procedure on receipt of an application :-**

(1) The officer receiving the application shall put his initials and the stamp of the Authority thereon together with the date and time of receipt thereof and shall also acknowledge its receipt and he shall also enter the particulars of the application in the register of daily filing, maintained for that purpose.

(2) The application shall be scrutinized by the officer authorized by the Secretary for that purpose for any deficiency/defect and any deficiency/defect notices in the application or annexure thereof shall be communicated to the applicant at the earliest.

(3) The applicant shall be required to rectify the deficiency/defect within the time granted by the Secretary and such application shall be deemed to have been received on the date when it is re-submitted after removal of such deficiency/defect, for the purposes of sub-section (6) of S.28(1) of the Customs Act, 1962 or sub-

section (6) of S.23D of the Central Excise Act or sub-section (6) of S.96D of the Service Tax Provisions, as the case may be.

(4) Date of receipt of an application free from any defect or deficiency in the secretariat of the Authority shall be deemed to be the date of the application for the purposes of sub-section (4) of Section 28H of the Customs Act, 1962 or sub-section (4) of Section 23D of the Central Excise Act, 1944 or sub-section (4) of S.96C of the Service Tax Provisions.

(5) When an application is free from any defect/deficiency, an endorsement "examined and registered" shall be made thereon and a serial number allotted thereto.

(6) In case the defect/deficiency is not removed/made good within the time granted under sub-regulation (3), the application shall be placed before the Authority for appropriate orders.

(7) On allotment of serial number to an application under sub-regulation (5), a copy of the application shall be forwarded to the concerned Commissioner of Customs/ Central Excise for furnishing relevant records with comments, if any.

(8) On receipt of the relevant record/comments from the concerned Commissioner under sub-regulation (7) or after expiry of two weeks or such further period as may be allowed by the Authority, the application shall be placed before the Authority for passing orders in terms of sub-section (2) of S.28(1) of the Customs Act, 1962 or sub-section (2) of S.23D of the Central Excise Act or sub-section (2) of S.96D of the Service Tax Provisions, as the case may be.

(9) In a case where the Authority considers that prima facie the application is liable for rejection, a notice shall be issued to the applicant indicating the reasons therefor together with the comments, if any, of concerned Commissioner, giving an opportunity to the applicant of being heard in person or through an authorized representative and a copy of the notice shall be endorsed to the concerned Commissioner.

(10) On the date fixed for hearing or such other date to which the case is adjourned, the Authority may pass an order either allowing or rejecting the application under sub-section (2) of S.28(1) of the Customs Act, 1962 or sub-section (2) of S.23D of the Central Excise Act or sub-section (2) of S.96D of the Service Tax Provisions, as the case may be, and a copy of the order passed by

the Authority shall be sent to the applicant and the concerned Commissioner.

(11) Where an application is allowed, the comments of the concerned Commissioner and further material, if any, shall accompany a copy of the order sent to the applicant drawing his attention to the statutory provisions that he has a right to be heard, if he so desires, before pronouncement of advance ruling and the reasons of the applicant should reach the Authority within two weeks of receipt of the copy of the order.

(12) Hearing of the application shall normally be held between 11:00 a.m. and 5:00 p.m. on a working day in the Court-room of the Authority or an alternative place fixed by the Authority.

(13) In the absence of request for personal hearing from the applicant, advance ruling shall be pronounced after hearing the concerned Commissioner or his authorized representative, if present, on the date of hearing and on the basis of records available with the Authority.

(14) Where the Authority reserves an application for consideration, the advance ruling or such other order as the Authority may deem fit shall be pronounced in the open Court under intimation to the applicant and the concerned Commissioner and a copy of the advance ruling/order shall be served upon the parties to the application.

**10. Commissioner to be designated by the Board :-**

Where in an application there is no Commissioner specified by the applicant, a copy of the application and enclosures thereto shall be forwarded by the Authority to the Chairman of the Central Board of Excise and Customs calling upon him to designate, within such period as may be fixed by the Authority, a Commissioner for the purposes of the application, failing which the application shall be proceeded with in the absence of a Commissioner.

**11. Additional facts by way of a petition :-**

(1) The Authority may, at its discretion, either suo motu or on a petition made to this effect by a party to the application, permit or require the applicant or the Commissioner to submit such additional facts as may be necessary to enable it to pronounce its advance ruling.

(2) The additional facts sought to be brought on record, by the petitioner shall be supported by necessary documents, if any, duly verified.

**12. Questions not specified in the application :-**

(1) The applicant shall not, except with the leave of the Authority, urge or be heard in respect of any question other than the question specified in the application but in pronouncing an advance ruling on the question set forth in the application, the Authority may at its discretion consider such other aspects as may be necessary to pronounce the advance ruling on the question specified in the application.

(2) On a petition made by an applicant, the Authority may permit amendment of a question, in appropriate cases.

**13. Authorization to be filed :-**

(1) An authorized representative appearing for the applicant/Commissioner shall before the commencement of the hearing, file before the Secretary, a document authorizing him to appear for the applicant/Commissioner.

(2) Every authorized representative appearing on behalf of the applicant/ Commissioner shall notify to the Secretary the address of his office, before the commencement of the hearing.

(3) Any change of an authorized representative shall be intimated by the concerned party to the Secretary as well as to the other party to the application.

(4) No person other than an applicant or the concerned Commissioner or their authorized representative, shall be heard in person save by special leave of the Authority.

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

Where the applicant, being an individual, dies, or being a company or association or persons, whether incorporated or not, 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 the proceedings in the application may be continued by the executor, administrator, liquidator, receiver or assignee or other legal representative of the applicant, as the case may be, on a petition made in this behalf, if the Authority considers that the

circumstances so justify.

### **15. Hearing of application :-**

(1) On the day fixed for hearing or any other day to which the case is adjourned, the Authority shall hear the applicant or his authorized representative in cases where it is proposed to reject the application or where the applicant seeks an opportunity of being heard; the Authority may also hear the Commissioner or his authorized representative, if it considers it necessary, before pronouncing its advance ruling.

(2) In an appropriate case, the Authority may call upon any person to depose or to supply such material/document, as it may consider necessary to arrive at a decision.

(3) The Authority may, in an appropriate case where an important question of law arises, issue notice to a Law Officer of the Central Government including the Attorney General and Solicitor General to assist the Authority in the matter.

(4) It will also be open to the Authority to appoint an advocate as amicus curie to assist the Authority in an application.

(5) The Authority may, on such conditions as the circumstances of the case require, adjourn the hearing of the application.

### **16. Hearing of application ex-parte :-**

Where on the day fixed for hearing or any other day to which the case is adjourned, the applicant or the Commissioner does not appear in person or through an authorized representative when the application is called for hearing, the Authority may dispose of the application ex parte on merits; Provided that where an application has been disposed of under this regulation and the applicant or the Commissioner, as the case may be, applies within seven days of receipt of a copy of the order/advance ruling and the Authority is satisfied that there was sufficient cause for his non-appearance when the application was called 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/advance ruling and restore the application for fresh hearing.

### **17. Withdrawal of application :-**

The applicant may withdraw his application within thirty days from the date of such application and thereafter only with the leave of

the Authority.

**18. Modification of the order/advance ruling :-**

The Authority may suo moru or on a petition by the applicant or the Commissioner, but before the pronouncement of an advance ruling or before an advance ruling pronounced has been given effect to, on being satisfied that an order/advance ruling was pronounced under mistake of law or fact, modify such order/advance ruling in such respects as it considers appropriate, after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

**19. Rectification of mistake :-**

(1) The Authority may, with a view to rectify any mistake apparent from the record, amend any advance ruling pronounced by it before such ruling has been given effect to.

(2) Such amendment may be made suo motu or when the mistake is brought to the notice of the Authority by the applicant or the Commissioner, but only after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

**20. Amendment of the records :-**

If at any stage of the proceedings it is brought to the notice of the Authority that there is any factual or material error in the records, the Authority may permit amendment of the records after hearing the applicant and the Commissioner.

**21. Supply of fertified copies :-**

The Secretary may grant certified copies of documents, orders or advance rulings to the applicant or the Commissioner on a written request.

**22. Inspection of records :-**

(1) The applicant or the Commissioner or his authorized representative may be allowed to inspect the records of an applicant/petition on making a written request to the Secretary subject to the condition that only those documents shall be made available for inspection that are relied upon in the proceedings before the Authority.

(2) Inspection shall be allowed only in the presence of an officer of the Authority and taking of notes and not copies of the documents shall be permitted.

**23. Declaration of advance ruling to be void in certain circumstances :-**

(1) Where it is brought to the notice of the Authority on a representation made by the Commissioner or otherwise that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, the matter shall be examined by the Authority and any such representation shall be supported by an affidavit duly attested and accompanied with attested copies of documents relied upon.

(2) If the Authority after examining the representation is prima facie of the view that the advance ruling appears to have been obtained by the applicant by fraud or misrepresentation of facts, the applicant shall be given a notice to explain as to why the ruling should not be declared void ab initio under sub-section (1) of Section 28K of the Customs Act, 1962 or sub-section (1) of S.23F of the Central Excise Act or sub-section (1) of S.96F of the Service Tax Provisions, as the case may be.

(3) Such notice to the applicant shall be in writing-

(a) informing him of the grounds on which it is proposed to declare the advance ruling as void ab initio;

(b) enclosing copies of the documents, if any, sought to be relied upon;

(c) giving an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for declaring the advance ruling void ab initio; and

(d) giving a reasonable opportunity of being heard in person or through an authorized representative in the matter.

(4) A copy of the notice with enclosures shall also be forwarded to the Commissioner for comments, if any, and a reasonable opportunity shall also be allowed to the Commissioner or his authorized representative of being heard before passing any order.

(5) Where the Authority finds that the advance ruling was obtained by the applicant by fraud or misrepresentation of facts, the same shall be declared void ab initio.

**24. Proceedings open to the public :-**

Proceedings before the Authority shall be open to the public and where the applicant/Commissioner so requests the Authority may order in a given case that no person other than the applicant, the Commissioner or their authorized representatives shall remain present during such proceedings.

**25. Publication of orders/advance rulings :-**

Such of the orders/advance rulings 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.

**26. Authentication and communication of orders/advance rulings :-**

(1) Every order/advance ruling of the Authority shall be duly signed by the Chairperson and the Members of the Authority pronouncing the order/advance ruling and bear the official seal of the Authority.

(2) A certified copy each of order/advance ruling of the Authority shall be communicated to the applicant and the Commissioner under the signature of the Secretary or another officer of the Authority authorized by the Secretary in this behalf and bear the official seal of the Authority.

**27. 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, the Chairperson alone or the Chairperson and the remaining Member may function as the Authority.

(2) Subject to the provisions of sub-regulation (3), in case there is difference of opinion among the Members hearing an application, the opinion of the majority of Members shall prevail and order/advance ruling 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-regulation (1) and are divided in their opinion, the opinion of the Chairperson shall prevail.

**28. Procedure in case of petition :-**

The provisions contained in these regulations for hearing and disposal of an application shall apply, mutatis mutandis, to the hearing and disposal of all petitions before the Authority.

**29. 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.

**30. Prohibition of arms, mobile phones etc :-**

No person shall be allowed to bring mobile phones, sticks, arms or other weapons in the room where the Authority conducts the proceedings.